

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

July 31, 2019

Kenneth T. Cuccinelli  
Acting Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave. NW  
Washington, D.C. 20529

Dear Acting Director Cuccinelli:

We write to express our concern that changes to U.S. Citizenship and Immigration Services' (USCIS) "Notice to Appear (NTA)" policy will lead to grave consequences for survivors of human trafficking, sexual assault, domestic violence, and other serious crimes, as well as for the safety of the public at large. The new policy undermines access to life-saving protections created by the bipartisan Violence Against Women Act (VAWA) and the Trafficking Victim Protection Act (TVPA), among many other federal and state laws enacted to safeguard victims. We urge you to rescind the changes to the NTA policy to help protect survivors of violence and uphold public safety.

In a June 28, 2018 memorandum, USCIS dramatically expanded the circumstances in which it may initiate, through issuance of an NTA, deportation proceedings for individuals whose immigration benefit applications are denied by the agency.<sup>1</sup> USCIS later announced that it would apply this new policy to requests for humanitarian protection, including T and U visa applications and VAWA self-petitions, beginning on November 19, 2018.

This announcement deviated from the long-standing practice under which USCIS typically refrained from issuing NTAs in connection with survivor-based filings.<sup>2</sup> In significant part, that practice reflected the chilling effect that NTA issuance would have on victims coming forward to access these protections. Indeed, a bipartisan majority in Congress created these protections in VAWA and the TVPA out of recognition that immigrant survivors often fear

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<sup>1</sup> USCIS Policy Memorandum, "Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Alien" (Jun. 28, 2018); <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.

<sup>2</sup> Priyanka Boghani, "Undocumented Crime Victims Face Heightened Risk of Deportation" *Frontline* (Nov. 30, 2018); <https://www.pbs.org/wgbh/frontline/article/undocumented-crime-victims-face-heightened-risk-of-deportation/>; Martin de Bourmont, "New U.S. Policy Raises Risk of Deportation for Immigrant Victims of Trafficking" *Foreign Policy* (Jul. 9, 2018); [https://foreignpolicy.com/2018/07/09/new-us-policy-raises-risk-of-deportation-for-immigrant-victims-of-trafficking-immigration-visa/?fbclid=IwAR3Nf0pvUszN4OO30cNSDSKb61v2Obo\\_UzvVsbGOExqvjRn82piGN9qzEIE](https://foreignpolicy.com/2018/07/09/new-us-policy-raises-risk-of-deportation-for-immigrant-victims-of-trafficking-immigration-visa/?fbclid=IwAR3Nf0pvUszN4OO30cNSDSKb61v2Obo_UzvVsbGOExqvjRn82piGN9qzEIE).

reaching out for help because of the threat of immigration enforcement.<sup>3</sup> In passing these laws, Congress sought to encourage such individuals not only to pursue protection, but often to assist law enforcement in prosecuting criminals.

The shift in USCIS NTA policy contravenes this congressional intent by heightening, rather than alleviating, fear that seeking protection could prompt enforcement consequences, including separation from family members and deportation.<sup>4</sup> As such, the policy threatens to deter immigrant survivors from seeking protection and cooperating with law enforcement.<sup>5</sup> Moreover, the placement of these individuals in removal proceedings following the denial of their applications is cruel, compounds the suffering they have already endured, and reinforces the threats that perpetrators frequently make to have their victims removed if they seek help.

In many cases, survivors are unable to obtain or renew legal immigration status because their abusers or captors have withheld their documentation or otherwise prevented them from maintaining status.<sup>6</sup> Further, there are numerous reasons why USCIS might deny otherwise valid T, U, and VAWA claims. These include many survivors' inability to access legal representation—*pro se* survivors often face challenges in navigating complex application forms and evidentiary requirements.<sup>7</sup> Case denials also stem from agency error. Such errors may arise from misapplications of law, failures to account for relevant evidence submitted by applicants, and administrative oversights that lead to erroneous decisions. Additionally, denials of valid claims may result from increasingly restrictive adjudication policies and practices. For example, a USCIS policy that went into effect in September 2018 heightens adjudicators' discretion to deny certain cases without first requesting additional information from the applicant.<sup>8</sup>

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<sup>3</sup> See H.R. Rpt. No. 103-395, at 26-27 (1993)(stating “Consequently, a battered spouse may be deterred from taking action to protect him or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation. Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave”). See also section § 1502(a)(2), Pub. L. No. 106-386, Stat. 1464 (2000). Congress found that “providing battered immigrant women and children . . . with protection against deportation . . . frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers.”

<sup>4</sup> Zolan Kanno-Youngs, “Trump’s Immigration Crackdown Has Blunted Police Efforts to Be Tough on Crime” *New York Times* (May 14, 2019) (stating “Last year, the Trump administration also began allowing Citizenship and Immigration Services the ability to order immigrants to appear in court when they are denied a visa, which immigration lawyers have said have given potential applicants pause.”), available at <https://www.nytimes.com/2019/05/14/us/politics/trumps-immigration-visa-crime.html?action=click&module=MoreInSection&pgtype=Article&region=Footer&contentCollection=Politics>

<sup>5</sup> See AILA Policy Brief “AILA Policy Brief: Expanded NTA Guidance Will Have Devastating Effects on Survivors of Domestic Abuse, Trafficking, and Other Serious Crimes” (Nov. 27, 2018); <https://www.aila.org/infonet/aila-policy-brief-expanded-nta-guidance-will-have>.

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

<sup>7</sup> See Christine Popp, “USCIS’s New Policy is a Boon to Abusers and Traffickers” (Nov. 28, 2018); <https://thinkimmigration.org/blog/2018/11/28/usciss-new-policy-is-a-boon-to-abusers-and-traffickers/>.

<sup>8</sup> USCIS Policy Memorandum, “Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator’s Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b)” (Jul. 13, 2018);

[https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM\\_10\\_Standards\\_for\\_RFEs\\_and\\_NOIDs\\_FI\\_NAL2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FI_NAL2.pdf).

Therefore, under the new NTA memorandum, survivors with valid claims may be placed into removal proceedings because they chose to seek protection rather than remain in the shadows. The resulting chilling effect will perpetuate cycles of violence against noncitizen survivors who might have otherwise escaped them. More broadly, it emboldens traffickers and abusers to perpetrate similar offenses against others, citizen and noncitizen alike. As such, the NTA policy poses distinct public safety risks.

In light of these concerns, we ask that you honor the intent of Congress and help protect the safety of survivors, as well as of the public as a whole, by rescinding the changes to the NTA policy in their entirety. We also request that you provide responses to the following inquiries by **September 28, 2019**:

1. Please describe the current status of, and any plans for, implementation of USCIS's June 28, 2018 memorandum, including but not limited to the application of that memorandum to individuals seeking T visas, U visas, and VAWA relief.
2. Please identify how many NTAs and Referrals to ICE (RTIs) USCIS has issued pursuant to this memorandum, both overall and to individuals who filed: (A) T visa applications; (B) U visa applications; and (C) VAWA self-petitions, as well as the reasons for the issuance of any such NTAs.
3. Please provide any estimates/analysis performed by USCIS concerning the number of NTAs that the agency could issue pursuant to this memorandum, both overall and to individuals who file: (A) T visa applications; (B) U visa applications; and (C) VAWA self-petitions.
4. Please provide copies of any operational guidance and training materials relating to the June 28, 2018 memorandum, including any guidance or materials provided to adjudicators who work on T visa applications, U visa applications, and VAWA self-petitions.
5. Please describe the NTA Prosecutorial Review Panel (PRP) process, including any criteria guiding consideration of requests for prosecutorial discretion in the issuance of NTAs for humanitarian-based and other cases, and provide any associated guidance or training materials.
6. Please indicate the number and outcome of cases that have been adjudicated by prosecutorial review panels, both overall and as broken down by: (A) T visa applications; (B) U visa applications; and (C) VAWA self-petitions.
7. Please provide copies of any USCIS documents concerning the likely deterrent or "chilling effect" of the new NTA memo on the filing of new cases with USCIS, including but not limited to the submission of T and U visa applications and VAWA self-petitions, as well as any USCIS documents regarding the implications of this memorandum on cooperation with law enforcement.

8. Please describe recourse mechanisms or processes for addressing instances in which USCIS may erroneously apply the June 28, 2018 memorandum. Please also describe how USCIS Headquarters will provide oversight over quality assurance in the implementation of the NTA memo.

President Trump has asserted that, “[m]y Administration will focus on ending the absolutely horrific practice of human trafficking. And I am prepared to bring the full force and weight of our government, whatever we can do, in order to solve this horrific problem.”<sup>9</sup> Yet USCIS’s June 28, 2018 memorandum runs counter to that stated commitment by creating barriers for survivors of human trafficking and other crimes to reach out for help. Rescission of the NTA policy is vital to protecting noncitizens and citizens throughout the country against traffickers, abusers, and other violent criminals.

Regrettably, the June 28, 2018 memorandum represents only one of a series of recent enforcement-oriented actions that break with Congress’s mandate that USCIS function as a service-oriented immigration benefits agency. It bears emphasis that USCIS exists to facilitate our legal immigration system, not to deter the public from accessing it.

We appreciate your attention to these critical matters and look forward to your prompt response.

Sincerely,



PRAMILA JAYAPAL  
Co-Chair  
Women’s Working Group  
on Immigration Reform



VERONICA ESCOBAR  
Co-Chair  
Women’s Working Group  
on Immigration Reform



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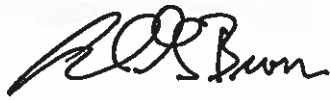
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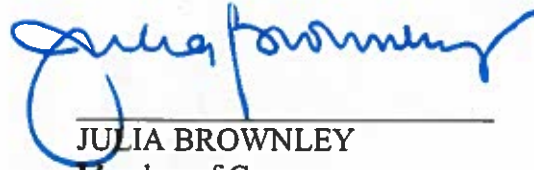
SUZANNE BONAMICI  
Member of Congress

<sup>9</sup> President Donald Trump, “President Donald J. Trump is Working to End Human Trafficking,” (Mar. 13, 2018); <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-working-end-human-trafficking/>.





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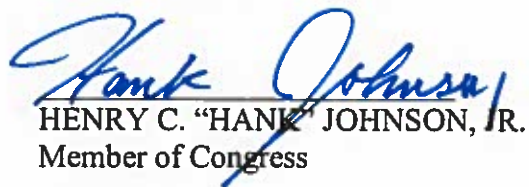


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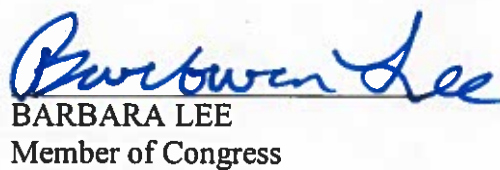
  
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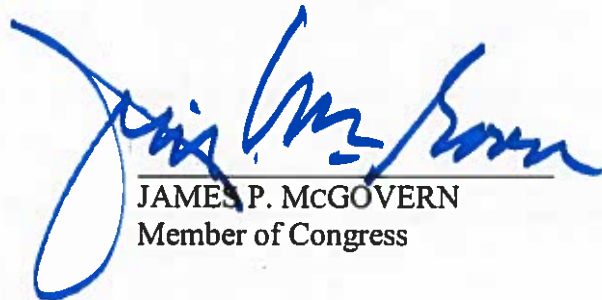
  
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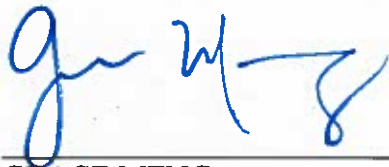
  
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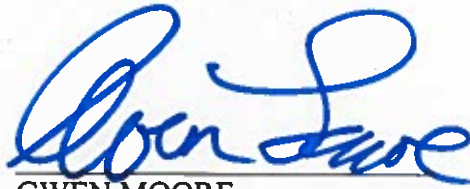
  
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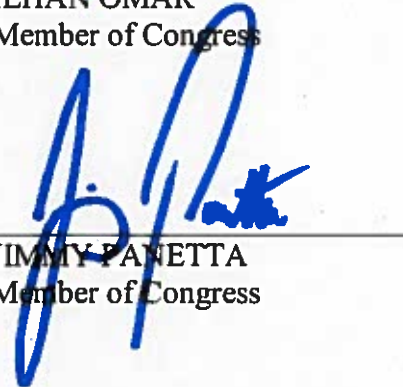
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