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April 21, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, DC 20528

Dear Acting Secretary Wolf:

As President of the Boston Bar Association (BBA), a volunteer organization of 13,000 members drawn from private practice, corporations, government agencies, legal-aid organizations, the courts, and law schools, I write to strongly urge you to take immediate measures to deploy the Department of Homeland Security's (DHS) existing statutory authority to: (1) enlist the help of non-citizen healthcare workers through grants of parole, deferred action, and discretion in the inspection process at ports-of-entry; (2) expedite the review of petitions and applications involving healthcare workers; and, (3) refrain from penalizing applicants for permanent residency who have been treated for COVID-19 with the use of public benefits. We believe these and other measures are necessary to mitigate the effects of COVID-19 pandemic on the residents of the Commonwealth of Massachusetts, citizens and immigrants alike. The COVID-19 pandemic has disrupted the daily functioning of our country in an unprecedented way. For this reason, bold and decisive action is necessary immediately.

DHS is the principal federal agency charged with oversight of the immigration system and is well positioned to leverage its authority to help communities deploy the energy of non-citizen healthcare workers. Non-citizens make up a substantial portion of the healthcare workforce and play an invaluable role in the daily lives of all Americans. In a 2018 report, the BBA noted that "twelve percent of nurses, nearly one in four doctors, and one-third of nursing, psychiatric, and home health aides are foreign-born" in the Commonwealth. The statistics are similar nationwide. Recently, the American Immigration Council found that "[n]early a third (31.8 percent) of all physicians specializing in family medicine, internal medicine, and pediatrics—three specialties associated with primary healthcare—are foreign-trained."¹ The necessity of enlisting non-citizen physicians is amplified by the Association of American Medical College, which recently predicted that "[t]he United States will see a shortage of up to nearly 122,000 physicians by 2032 as demand for physicians continues to grow faster than supply..."² Against this backdrop, we request that DHS take the following measures to ensure the health and safety of immigrants and the community:

¹ <https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained-doctors-are-critical-to-serving-many-us-communities.pdf> at 6.

² <https://www.aamc.org/news-insights/press-releases/new-findings-confirm-predictions-physician-shortage>

1. Direct United States Citizenship and Immigration Services (USCIS) and United States Customs and Border Protection (CBP) to work jointly to enlist the talent and energy of non-citizen healthcare professionals in the fight against COVID-19. The Immigration and Nationality Act (INA) and its implementing regulations provide DHS with a wide array of tools to recruit and retain critical healthcare workers. For example, DHS should assert its parole authority under INA §212(d)(5) to grant and extend employment authorization of healthcare workers who are in the United States without admission. Similarly, DHS should offer deferred action and extended employment authorization to healthcare workers who are present without a status. There are an estimated 27,000 to 29,000 healthcare workers who are currently protected by DACA but are at risk of losing employment authorization.³ DHS should act swiftly to assure healthcare workers are granted individualized parole (or deferred action) with employment authorization to ensure their vital help in combating COVID-19.

Similarly, DHS should take active steps to enlist the help of international medical graduates in J-1 status who are in residency and fellowship programs. These talented physicians are generally ineligible to apply for a change of status within the United States. For example, a J-1 physician who qualifies for O-1 status is required to travel abroad, apply for an O-1 visa stamp, and then seek readmission. In light of the pandemic, these steps take precious time and expose the physician (and his or her dependents) to unnecessary risk. Instead, we propose that these physicians be allowed to go to the nearest port-of-entry and present themselves and their dependents for inspection. Existing authority at 8 CFR §235.1(a) provides that an “[a]pplication to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection....” CBP operates ports-of-entry throughout the U.S. and at nearly every major international airport. Although these ports have traditionally served newly arriving travelers, courts have recognized that admissions are not limited to travelers arriving from abroad. *See Ramirez v. Brown* 852 F.3d 954 (9th Cir. 2017) (grant of TPS is equivalent to admission); *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013) (same); *contra, Serrano v. U.S. Att’y Gen.*, 655 F.3d 1260 (11th Cir. 2011) (per curium). Valuable time can be saved by allowing physicians otherwise qualified for O-1 visa status to apply for admission at local port-of-entry without the need of international travel by directing local port directors to exercise their authority under 8 CFR §212.1(g) to waive the normal visa stamp requirement in cases of emergency.

2. Direct USCIS to reinstate its premium processing program and otherwise expedite review of petitions and applications involving healthcare workers. We join the American Medical Association⁴ and others to request that USCIS resume its “premium processing” program so that hospitals and other healthcare facilities have assurance that their petitions will be reviewed quickly. Under the premium processing program USCIS guarantees review of

³ See <https://www.nytimes.com/2020/04/02/opinion/trump-coronavirus-daca.html> (visited 04/12/2020); <https://www.americanprogress.org/issues/immigration/news/2020/04/03/482637/dreamers-help-keep-country-running-coronavirus-pandemic/> (visited 04/12/2020).

⁴ <https://searchlf.ama-assn.org/undefined/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2020-3-24-AMA-Letter-to-USCIS-re-COVID%252019.pdf>

select petition types within 15 day of submission. Without premium processing USCIS review times stretch out over several months. Furthermore, we ask that USCIS expedite review of petitions and applications involving healthcare workers that are not currently included in the premium processing program.

3. Direct USCIS to clarify that it will not assess as a negative factor in its public charge determination an applicant's use or receipt of a public benefit or period of unemployment due to the COVID-19 pandemic. USCIS's current COVID-19 Public Charge statement lacks the clarity necessary to reassure applicants that they may seek treatment without reprisal. The agency states that

“...To address the possibility that some aliens impacted by COVID-19 may be hesitant to seek necessary medical treatment or preventive services, USCIS will neither consider testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination...”

<https://www.uscis.gov/greencard/public-charge> (last visited 4/12/2020).

But in the next paragraph USCIS provides:

The [public charge] rule requires USCIS to consider the receipt of certain cash and non-cash public benefits, ***including those that may be used to obtain testing or treatment for COVID-19 in a public charge inadmissibility determination....***

Id. (emphasis added).

To save lives and address the current public health crisis posed by COVID-19, USCIS should resolve any doubt that an individual's use or receipt of public benefits or lack of work as a result of the COVID-19 pandemic will not be a negative factor in its consideration of a totality of circumstances. It is vital that no person afflicted with COVID-19 be dissuaded from seeking treatment otherwise the entire community remains vulnerable. To meet its mission of protecting Americans, USCIS should act quickly to reassure applicants for permanent residency that receipt of public benefits or lack of work due to COVID-19 will not be used as a negative factor in assessing applications for adjustment of status.

Sincerely,



Christine Netski
President