

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 breathe, 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 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.

A handwritten signature in black ink, appearing to read 'Mahsa Khanbabai', written over a horizontal line.

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:

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