



Migrant Center for Human Rights Protecting the Persecuted

November 20, 2020

Submitted via www.regulations.gov

RE: RIN 1615–AC40; CIS No. 2653–19; DHS Docket No. USCIS– 2019–0024, OMB Control Number 1615–0040; Public Comment Opposing Proposed Rulemaking on Employment Authorization for Certain Classes of Aliens With Final Orders of Removal

The Migrant Center for Human Rights (“Migrant Center”) writes in response to the Department of Homeland Security’s (DHS) [Notice of Proposed Rulemaking on Employment Authorization for Certain Classes of Aliens With Final Orders of Removal](#), published in the Federal Register on November 19, 2020, which proposes to largely eliminate the right to work for individuals with a final order of removal who would otherwise be eligible due to their temporary permission to remain in the U.S. under an Order of Supervision.

The Migrant Center is a 501(c)(3) non-profit organization that provides *pro bono* and *low bono* legal services to immigrants, specializing in detention and removal cases. Our team’s legal expertise includes more than eight years of immigration litigation experience assisting several thousand individuals and representing dozens in removal proceedings, in release requests, and in affirmative and defensive application processes before USCIS and EOIR, including in applications for Employment Authorization Documents (EADs), U and T visas, and asylum. Additionally, as a non-profit organization, we have extensive expertise in working with low income *pro se* immigrants and therefore are particularly aware of the unique challenges they face in trying to navigate our legal system without counsel.

On behalf of the immigrants we work with, as well as our non-profit organization as both a community organization and a business entity, we write to urge your reconsideration of several provisions of the Proposed Rule that we have good reason to believe will have an immediate and profoundly negative effect on people in our community, as well as a create a significant and unnecessary burden for their families, our organization, and the community at large.



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While the Proposed Rule's stated aim is to "reduce the incentive for aliens to remain in the United States after receiving a final order of removal and to strengthen protections for U.S. workers" it is very unlikely that the Proposed Rule will do either of these things and some indication that it will in fact have the opposite effect.¹ Additionally, there are significant other costs to the Proposed Rule, that on balance outweigh any hypothetical conjecture of immigrants' motivations and the impact on other workers - nowhere supported by evidence in the Proposed Rule - and indicate that this Proposed Rule should not become regulation.

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 12866, sec. (1)(b)(6) states that "[e]ach agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs". The negligible benefits of the Proposed Rule certainly do not justify its costs, financial and psychological.

In fiscal year 2019 individuals on Orders of Supervision filed 5,697 initial EAD applications, of which 4,071 were approved, and 19,306 renewal applications, with 21,350 approved (there was some carry over of those filed the previous year). According to DHS, out of 25,421 2019 approvals (4,071 + 21,350) only 659, or 2.6%, would stay eligible under the Proposed Rule. Closing the door to work authorization for 97.4% of currently eligible people must only be done upon careful, well-reasoned consideration. By the government's own figures 24,762 livelihoods are at stake.

¹ Not only does DHS provide no evidence to back up this assumption, this assumption rests on other unfounded -- and ignored assumptions: 1) that there is employment in the home country; 2) that the individual has funds to return to their home country, 3) that they have no family or other ties / reasons to remain in the U.S, and 4) that there are no safety concerns returning to their home country.



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In reviewing the Proposed Rule it is important to keep in mind that USCIS will be making EAD decisions “in its sole and unreviewable discretion”. This makes it especially important that any future regulation is well thought out.

Sections of the Proposed Rule not discussed below should not be taken as agreement with those sections. Furthermore, we request that the content of any hyperlinks included here be considered (all information referenced without hyperlinks, or otherwise cited, is taken directly from the Proposed Rule).

The Proposed Rule is Unjustifiably Punitive

Section 241(a)(7) of the Immigration and Nationality Act (INA) gives the DHS Secretary authority to grant employment authorization if the Secretary determines that:

- (1) An alien cannot be removed from the United States because all countries of removal as designated by the alien or delineated under section 241 of the INA, 8 U.S.C. 1231, have refused to receive the alien, or
- (2) the alien’s removal is impracticable or contrary to the public interest. INA 241(a)(7)(A) and (B), 8 U.S.C. 1231(a)(7)(A) and (B).

This authority has been incorporated into regulation at 8 CFR 274a.12(c)(18). Exercising the Secretary’s authority such as to not offer EADs to those immigrants who fall into category two will only result in unnecessary harm to all concerned. The Proposed Rule basically states that DHS will only “continue to allow aliens who are subject to a final order of removal to apply for discretionary employment authorization if (1) DHS has determined that their removal is impracticable because all countries from whom DHS has requested travel documents have *affirmatively* declined to issue such documents and (2) the aliens establish economic necessity” (emphasis added).



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There are two obvious issues with this limitation at first glance. First, penalizing an immigrant by not allowing them to earn a living and forcing them to seek out charity simply because their country is refusing to answer DHS' removal inquiries is unjustifiable. In the Migrant Center's experience there are often a handful of countries that simply refuse to expeditiously respond to inquiries for months on end.² We currently have a client in detention -- with zero criminal history -- that DHS has been trying to remove for over two years and for whom a federal *habeas* petition is currently pending. He has been trying to do everything he can to get his country to take him back and has been driven to extreme depression, hunger strikes, and suicidal thoughts due to the lack of inaction on his case. This is just one example. We have worked with people in the last year alone from a handful of countries that cannot be removed. The current plight of Cuban asylum seekers stands out.³ By denying groups of people based on their countries not making arrangements for their return will result in illegal nationality based discrimination, especially where it is the policy of the country or the nature of our bilateral relations that prevent their removal. This Proposed Rule will also apply to individuals with final orders of removal who are released before it is determined that their country will not take them back anytime soon, such as those with medical vulnerabilities. Under the Proposed Rule, despite having additional costs associated with medical care, they will not be allowed to work. This puts them at increased medical risk.

It is worth noting that, despite what the Proposed Rule suggests,⁴ often DHS does not release individuals with final orders of removal at the 90-day mark regardless of their cooperation in obtaining travel documents etc, but rather DHS waits 180 days or more. The

² Visa sanctions have been previously invoked under INA Section 243(d) against the following countries for not taking their nationals back: Guyana in 2001; The Gambia in 2016; Cambodia, Eritrea, Guinea, and Sierra Leone in 2017; Burma and Laos in 2018; Cuba, Ghana, and Pakistan in 2019; and Burundi and Ethiopia in 2020. Visa sanctions have since been lifted against Guyana, Guinea, and The Gambia. See "Visa Sanctions Against Two Countries Pursuant to Section 243(d) of the Immigration and Nationality Act," at <https://www.ice.gov/visasanctions> (Last updated Aug. 13, 2020).

³ https://mailchi.mp/097f680497b3/prolonged_detention

⁴ "The 90-day period is extended if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent removal."



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Proposed Rule states that in FY 2019 only about 4.8% (659) immigrants who were temporarily released on an Order of Supervision (13,766) could not be removed due to DHS's inability to obtain travel documents.⁵ It appears that these 659 cases only include the cases where DHS has given up and not the cases where DHS is continuing to try to talk to the country of removal, which DHS could carry on for several years as in the case example above. In fact, the Proposed Rule states that:

DHS believes that the number of aliens who would qualify for this exception will remain small because even after an alien is temporarily released on an order of supervision, DHS continues to work with the foreign governments to obtain travel documents and DHS sometimes receives travel documents for such aliens shortly after their release or within the following fiscal year.

The Proposed Rule would clearly serve to deny the ability of immigrants to support themselves financially if the country of removal refuses to communicate quickly with DHS -- this is especially problematic when an individual is effectively stateless due to a lack of a birth certificate or otherwise not being registered as a citizen as the Migrant Center has seen in several cases -- or DHS simply decides that the agency is still searching for a resolution. It is anathema to our country's understanding of justice to allow an agency to drag out a case indefinitely without any clear benchmarks for action. This undermines accountability and transparency with the very real consequence that individuals may be denied the right to work for years.⁶

⁵ DHS seems to blame the Supreme for needing to release people after six months if they have not arranged removal in that time. In *Zadvydas v. Davis*, the Supreme Court held that an alien with a final order of removal cannot be kept in detention once it has been determined that there is not a "significant likelihood of removal in the reasonably foreseeable future." The Court established six months as the "presumptively reasonable period of detention." This does *not* apply if there is a lack of good faith efforts by the individual, despite what the Proposed Rule suggests. DHS claims that six months is not enough time to arrange for someone's removal yet those on Orders of Supervision were removed in FY 2018 on average after 187 days, almost 6 months exactly (this was 321 days in FY 2017). Even if we interpret this data to mean that DHS will need more than a year to deport the 13,766 individuals -- out of hundreds of thousands removed each year (showing that there is a minority of people who cannot be removed within the 6 month timeframe) -- there is no reason to detain them at taxpayer expense when the vast majority can be removed later on.

⁶ While there is no clear statutory or regulatory right to work international human rights norms explain that, arising from the inherent dignity of all human beings, individuals cannot be denied the right to work and support themselves without a valid justification. The Proposed Rule does not create a valid justification for denying the right to work as



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Second, the Proposed Rule does not acknowledge the value of EADs as identity documents. In many states in the U.S. the EAD is the only form of U.S. government issued ID that an immigrant can obtain. These documents can help establish identity for purposes of enrolling in school, etc. In fact, the Migrant Center always recommends applying for EADs for minor children for this reason. We can easily foresee a refugee family finding themselves in this situation if their removal is not practicable due to bilateral relations, the Flores Settlement Agreement, pregnancy or a medical condition that does not make detention possible, etc.

The Proposed Rule is also unjustifiably punitive as it rests on the false premise that “*all* aliens who have a final order of removal will be subject to removal from the United States, either to a country where the alien is a citizen, subject, or national, the alien was born, or the alien has a residence, or to any country that is willing to accept the alien” (emphasis added). This is simply not true. There are a good number of individuals with final removal orders whose removal orders have been stayed for one reason or another and therefore whose removal cannot be effected at the present time. These stays of removal may be granted by the federal courts, the Board of Immigration Appeals, or DHS itself (application form I-246). Stays of removal are important case management tools that temporarily hold the execution of a removal order while a matter is pending, whether this be a case matter, medical / humanitarian matter, urgent family matter, etc. To give a couple of examples of when an individual with a stay of removal should be allowed to work, consider an individual whose case is pending with a federal court of appeals for more than a year or the father of a young girl sick with cancer undergoing hospital treatments. It is inapposite to enact a regulation where the courts, the Department of Justice, or DHS itself determine that the person should stay in the U.S. but should not be able to support themselves and their family.

currently written. Wanting to encourage deportations is not a valid justification when the means is unlawful. Forcing someone into poverty, starvation, and homelessness to push them into leaving the country is not in alignment with human rights norms.



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The Proposed Rule is also disingenuous when it states that “aliens assisting law enforcement may qualify for employment authorization if they are eligible for T non-immigrant status (trafficking victims), U non-immigrant status (victims of criminal activity), and S non-immigrant status (witnesses in criminal investigations or prosecutions)” because there can be wait times for adjudication on these cases of over four years. Previously DHS would grant EADs to crime victims waiting for a U visa to become available but this is no longer the case. The Migrant Center is currently representing a father of five U.S. citizen children whose waitlist / deferred action / EAD adjudication has been pending since 2016 when he stepped in to prevent an active shooter from terrorizing his place of employment. Removing the possibility of him obtaining work authorization under an Order of Supervision means that his children will need to go onto public benefits when he is a perfectly able-bodied man willing and wanting to work. It is for cases like this that enacting a *per se* prohibition on work authorization is inhuman and illogical.

The Proposed Rule will be Costly for the Applicant

As the Proposed Rule states, it “could result in lost earnings for those no longer eligible” in the range of \$614,037,170 to \$1,459,358,741. This is no small amount. Some individuals will be forced to look for work under the table, despite their best intentions of wanting to do things legally. These jobs will likely not be paid as well and will likely not allow the individual to develop in their chosen profession. International human rights law protects the right to work in part because through work we are able to develop ourselves as human beings. Denying individuals the ability to pursue a career is needlessly harmful.

In addition, DHS estimates “increased filing burdens” in the form of needing to fill out an additional I-765 WS or similar form proving economic necessity (cost \$11,712 to \$105,459) and gather additional evidence. (Currently economic necessity is only a discretionary factor and not a mandatory eligibility requirement as it will become under the Proposed Rule.)



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“The estimated costs of this proposed rule would range from a minimum of about \$94,868, (annualized 7%) associated with biometrics and added burdens for relevant filing forms to a maximum of \$1,496,016,941 (annualized 7%) should no replacement labor be found for aliens on orders of supervision.”

The increased cost comes in the form of time, attorney fees (counsel is more necessary under this more complicated process and attorney fees will be higher due to the increase in work involved), and filing fees (\$410 application fee plus \$30 biometrics fee). Under the Proposed Rule everyone will need to go to biometrics taken when biometrics may already be current if the person was just released from DHS custody where biometrics are automatically taken of everyone. It would be more logical for DHS to refer to its central database and not require biometrics if they were recently taken. Doing so only serves to slow down the adjudication process, which delays benefits for the individuals affected by this Proposed Rule as well as for other individuals with other types of applications being processed by USCIS. As written the Proposed Rule unnecessarily delays the process at extra cost to the applicant (in fees and the additional time before they can work) and the government (in taking time away from the adjudication of other applications and in the cost of conducting biometrics which is normally determined as requiring \$85).

The Proposed Rule completely fails to consider how the extra preparation burden in both gathering evidence and filling out additional forms will make it next to impossible for *pro se* applicants to adequately prepare their applications. Access to immigration benefits should not be made unnecessarily more difficult for low income individuals.

The Proposed Rule entirely fails to address the psychological burden being unable to earn a living and support one’s family will likely have on individuals, especially those accustomed to and expected by society and their families to be the breadwinners. This could result in financial costs for psychological care for children and others in the individual’s household.



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“DHS has determined that the proposed rule may adversely cause personal and family-related hardships, including causing disruptions to the alien, U.S. citizen, or LPR spouses and/or children dependent on the income currently earned by the affected alien and may decrease disposable income and increase the poverty of certain family members. However, DHS notes that an alien with a final order of removal will eventually be removed from the country and such families should ultimately expect to experience such hardships. Thus, this proposed rule could result in families experiencing such hardships earlier in comparison to the state of affairs in the absence of the proposed rule.”

Why the Administration believes that this hardship is ok simply because it *may* occur in the future is incomprehensible.

One of the most pernicious aspects of the Proposed Rule is that it requires individuals to be employed at the time they seek to renew their EAD. As a preliminary matter this is unjustifiably discriminatory as this is an additional burden that disadvantages them vis-a-vis first time applicants. Both classes of people may have the same economic necessity. There is no reason that renewal applicants should need to be employed at the time of application and several reasons why this is a horrible idea. First, it may force people to stay in or accept employment in abusive conditions (for similar reasons the Braceros program⁷ has come under intense criticism, as well as the H-2B program⁸). Second, it may encourage people to jump into the first job they are offered and then leave it as soon as they get their renewal, increasing the employer’s recruitment and training costs for no reason.

⁷ We Should Remember the Bracero Program... and Shudder, <https://cis.org/North/We-Should-Remember-Bracero-Program-and-Shudder>; Four Reasons Guest Worker Programs Have Failed in the Past, https://abcnews.go.com/ABC_Univision/Politics/guest-worker-programs-failed-past/story?id=18591194; How did we get to 11 million unauthorized immigrants? <https://www.npr.org/transcripts/518201210>; Braceros: History, Compensation, <https://migration.ucdavis.edu/rmn/more.php?id=1112>.

⁸ Time to eliminate or reform the H-2B visa program, <https://thehill.com/opinion/immigration/504843-time-to-eliminate-or-reform-the-h-2b-visa-program>; H-2A and H-2B Temporary Worker Visas: Policy and Related Issues, <https://fas.org/sgp/crs/homesec/R44849.pdf>; Frequently asked questions about the H-2B temporary foreign worker program, <https://www.epi.org/publication/frequently-asked-questions-about-the-h-2b-temporary-foreign-worker-program/>.



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For similar reasons as those above, the requirement that the employer use E-verify⁹ is hugely problematic. It forces people into particular jobs, which may not help them develop in their chosen profession as best aligned with their skills -- thereby decreasing the overall benefit to society -- and creates an arguably unlawful prohibition on the type of employment available. And it may be particularly difficult for individuals to obtain and hold onto employment right now: “It is not clear what level of reductions the pandemic will have on the ability of EAD holders to find jobs (as jobs are less available)”. COVID-19 is a factor outside the individual’s control and, like similar factors, should not be allowed to cause someone to lose their work authorization as they may need that in the future (under the Proposed Rule applicants would never be able to reapply once they become unemployed, which could last for years).

It also sets individuals up for raising red flags with employers as they will need to inquire into the E-verify status of the company. Employers may decide not to hire someone who has a final order of removal as they will likely view their duration of employment as tentative (not to mention that any day the individual could be re-detained and simply not show up for work). While discrimination in hiring and firing is possibly illegal employers may or may not be familiar with these law and/or inclined to follow them. Lastly, it is unjustifiably punitive to deny a renewal EAD to an individual simply because the employer may not want to gather all the extra documentation to show that they are in compliance / good standing with E-verify or go through the process and cost of enrolling. The Proposed Rule therefore unjustifiably limits where someone can work.

Additionally, the Proposed Rule sets up a one-year EAD authorization cap, which means that applicants (as well as USCIS) will need to go through this process anew every year. This is unnecessary and, while one year authorization may be appropriate in some cases, it certainly

⁹ E-Verify returns the case processing results, which could either automatically confirm the employee as employment authorized or return a tentative non-confirmation (TNC). Receiving a TNC does not mean an employee is not authorized to work in the United States; rather, it indicates there is an initial system mismatch between the information the employer entered in E-Verify from the employee’s Form I-9 and the records available to DHS or SSA. Employees receiving a TNC have the option to contest (take action).



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does not need to be a mandatory rule. In fact, USCIS previously determined that work authorization for asylum seekers with pending I-589 applications should be changed from one to two years because it was unnecessarily burdensome to reapply every year.

The Proposed Rule will be Costly for the Family

The Proposed Rule intelligently acknowledges that there could be “other impacts possibly involving personal and family-related hardships or disruptions to the individual, U.S. citizen, LPR spouse and/or children dependent on the income”. This cost comes not only in the form of lost income and family strain but also may have long-term effects on the health and well-being of the family. Consider a situation where the father is no longer allowed to work and the mother has to pick up two jobs and never has time to spend with her children. This is likely to result in the children experiencing all sorts of developmental issues and is fundamentally unfair to the mother, who very well could be a U.S. citizen. This scenario is extra problematic where the mother may be nursing. And this scenario assumes that there is a two-parent household which is often not the case.

The Proposed Rule goes on to say that the “loss of earnings would result in a transfer of costs from the alien to their support network, including family members, community groups, non-profits or third-party organizations to provide for the alien and any dependents.” It is entirely unclear how the drafters of the Proposed Rule think that these groups will be able to pick up the \$1,459,358,741 slack. This seems laughable. Community groups and non-profit or third-party organizations, such as the Migrant Center, already operate on bare bones funding. Relying on donors to financially support an able-bodied person who is willing to work makes no sense. There are many pressing needs in the community that require the assistance of non-profits but this is not one of them. Directing funding to providing basic needs such as housing and food will result in over one billion dollars of funding being pulled from other crucial community programs, according to the government’s own numbers. Additionally, assuming that someone



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has a family or other support network is problematic. This Proposed Rule will only lead to poverty and homelessness.

The Proposed Rule may also lead to an increase in domestic violence and abuse scenarios as it forces people who are living for months or years in the U.S. to rely on their partner or others for basic needs. We have worked with many domestic violence survivors who stay with their abusive partners for financial reasons. Our country should be encouraging financial independence, not taking away any chance that people have of standing on their own two feet.

The Proposed Rule changes 8 CFR 274a.12(c)(18) to limit the positive discretionary factor of supporting a spouse or child to only “dependent U.S. citizen or lawful permanent resident spouse, child(ren), and/or parent” (we do support adding parents and would also encourage the inclusion of those who are primary caregivers to others). Taking away the recognition of the important role that individuals play in supporting non-citizen and resident family members -- which include spouses with DACA or TPS, children legally here seeking asylum, etc. -- is harmful, unnecessary and contrary to our American family values. Most people have a strong desire to help their families, as well as the necessity to do so, and this should be recognized as a positive factor by our government regulations.

The Proposed Rule also adds the following discretionary factors: 1) Whether the individual is complying with the order of supervision; 2) The anticipated length of time before the individual can be removed from the United States; and 3) The individual’s criminal history. These factors have no bearing on the individual’s necessity to work and support themselves and their families and therefore should have no bearing on their ability to do so. Our country recognizes -- and international agreements¹⁰ recognize -- the right to seek and hold employment. The Proposed Rule seems to suggest that the right to work is a privilege and not a right.¹¹ The

¹⁰ See e.g. International Covenant on Economic, Social, and Cultural Rights, Articles 6-7, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

¹¹ For example, the Proposed Rules states, without providing evidence / data, that “many of whom are criminals” and that because they have no right to be in the U.S. it “is contrary to the national interest” to allow them to work. However, as they cannot be deported, the reverse is actually more accurate for the reasons stated in this public comment. (In FY 2019 5,269 out of 13,766 individuals on Orders of Supervision have a criminal record. However,



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Proposed Rule also ignores that it is in the public interest of individuals to be able to support themselves and their families.

The Proposed Rule will be Costly for the Community

The Proposed Rule seems to think that by kicking 24,762 people out of the labor pool more U.S. citizens, LPRs, and others authorized to work will jump into this gap. While it is possible that other workers will fill some of these vacancies, this is not necessarily of net benefit to the U.S. worker. The reality is that those denied work authorization will often be forced to take under-the-table jobs at lower wages, thus depressing wages across the industry for all workers, U.S. citizen and otherwise. It also encourages worker-abuse in the job place.

The Proposed Rule foresees “labor turnover costs that employers of alien workers with orders of supervision could incur when their employees’ EADs expire and are not renewed”.¹² Labor turnover costs are significant. As an employer, the Migrant Center knows from first-hand experience the time, energy, and cost involved in recruiting a qualified candidate and in training that candidate. Losing an employee in whom we have already invested a significant amount of capital for no valid reason is anathema to maintaining and developing a robust economy. The Proposed Rule should be making things easier on employers, not harder, especially as employers struggle to survive during the COVID-19 pandemic.

the Proposed Rule does not say if this is including convictions for illegal entry and reentry, or whether this excludes those with misdemeanors such as obstruction of highway, driving without a license, etc.)

¹² DHS states this could include: Separation costs include exit interviews, severance pay, and assigning other employees to temporarily cover the departing employee’s duties and functions, which may require overtime or temporary staffing. Replacement costs typically include those related to advertising positions, search and agency fees, screening applicants, interviewing, background verification, employment testing, hiring bonuses, and possible travel and relocation costs. Once hired, employers may incur additional costs for training, orientation, and assessments. Additionally, other direct costs may include loss of productivity and possible reduced profitability due to operational and production disruptions. Moreover, employers may incur indirect costs, including loss of institutional knowledge, networking, and impacts to morale and interpersonal work relationships.



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For similar reasons it is incredibly problematic that the Proposed Rule requires employers “to enroll in and maintain an E-Verify account as a participant in good standing”. The additional cost to employers of complying with the E-Verify system will often be prohibitive. Forcing employers to choose between E-Verify and who to hire creates a possibly illegal trade-off. The federal government is basically dictating that private employers need to participate in E-Verify or, alternatively, that the federal government make hiring and firing decisions for the employer.

Requiring employers to enroll in E-Verify is especially problematic because the E-Verify system is flawed¹³ and has resulted in individuals being denied access to employment for no legitimate reason. There is therefore a basis, beyond cost, for why an employer would choose not to enroll in E-Verify. The Proposed Rules seems to be a rather underhanded way of forcing employers into a program that they have already chosen not to participate in.

The Proposed Rule estimates employment tax losses to the federal government of between \$93,947,687 and \$228,789,887. The Proposed Rule acknowledges that it “could have losses in other federal, state, and local taxes” but does not estimate or include an amount, making it difficult for the public to have adequate notice to be able to comment fully on the Proposed Rule. The Proposed Rule does not even mention that the loss of household income will force some family members to enroll in public benefits such as food, cash and rent assistance, thereby increasing the cost on the U.S. taxpayer unnecessarily.

The Proposed Rule does not calculate the additional cost to USCIS processing times as a result of the additional forms and evidence they must review before issuing a decision, all for the same fee. (While USCIS is trying to increase the EAD application fee from \$410 to \$550 this increase is ostensibly based on general operating costs across the board and not on the need to

¹³ See e.g.: What’s Wrong with E-Verify <https://www.aclu.org/other/whats-wrong-e-verify>; E-Verify: Background Information <https://www.nilc.org/issues/workersrights/everifyinfo/>; Why E-Verify is failing <https://www.politico.com/news/agenda/2019/10/29/e-verify-immigration-060347>; Error Rates in E-Verify <https://immigrationforum.org/article/error-rates-in-e-verify/>; Serious Problems with E-Verify <https://www.cato.org/blog/serious-problems-e-verify>.



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spend extra adjudication resources as required by the Proposed Rule at issue here. The increase is currently on hold in litigation. See, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 85 FR 46788 (Aug. 3, 2020)).

Conclusion

The Proposed Rule will make it more difficult for both represented and unrepresented individuals to obtain work authorization, increasing the cost and psychological stress for them, their families and communities, including an increase in the burden borne by U.S. taxpayers. The Proposed Rule does not support its contention that it will “strengthen[sic] protections for U.S. workers in the labor market” and rather appears to do the opposite by encouraging labor violations and depressing wages. We urge you to rescind and amend the Proposed Rule as outlined above.

Sincerely,

//s// Sara Ramey

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