Employer Immigration Compliance Plans, Policies and Procedures

Volume 2

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Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
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Anti-Discrimination Notice. It is illegal to discriminate against work-authorized individuals in hiring, firing, recruitment or referral for a fee, or in the employment eligibility verification (Form I-9 and E-Verify) process based on that individual's citizenship status, immigration status or national origin. Employers **CANNOT** specify which document(s) the employee may present to establish employment authorization and identity. The employer must allow the employee to choose the documents to be presented from the Lists of Acceptable Documents, found on the last page of Form I-9. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) at 1-800-255-7688 (employees), 1-800-255-8155 (employers), or 1-800-237-2515 (TTY), or visit www.justice.gov/crt/about/osc.

What is the Purpose of This Form?

Employers must complete Form I-9 to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986, to work in the United States. In the Commonwealth of the Northern Mariana Islands (CNMI), employers must complete Form I-9 to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 27, 2011.

General Instructions

Both employers and employees are responsible for completing their respective sections of Form I-9. For the purpose of completing this form, the term "employer" means all employers, including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors, as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Public Law 97-470 (29 U.S.C. 1802). An "employee" is a person who performs labor or services in the United States for an employer in return for wages or other remuneration. The term "Employee" does not include those who do not receive any form of remuneration (volunteers), independent contractors or those engaged in certain casual domestic employment. Form I-9 has three sections. Employees complete Section 1. Employers complete Section 2 and, when applicable, Section 3. Employers may be fined if the form is not properly completed. See 8 USC § 1324a and 8 CFR § 274a.10. Individuals may be prosecuted for knowingly and willfully entering false information on the form. Employers are responsible for retaining completed forms. **Do not mail completed forms to U.S. Citizenship and Immigration Services (USCIS) or Immigration and Customs Enforcement (ICE).**

These instructions will assist you in properly completing Form I-9. The employer must ensure that all pages of the instructions and Lists of Acceptable Documents are available, either in print or electronically, to all employees completing this form. When completing the form on a computer, the English version of the form includes specific instructions for each field and drop-down lists for universally used abbreviations and acceptable documents. To access these instructions, move the cursor over each field or click on the question mark symbol ( ) within the field. Employers and employees can also access this full set of instructions at any time by clicking the Instructions button at the top of each page when completing the form on a computer that is connected to the Internet.

Employers and employees may choose to complete any or all sections of the form on paper or using a computer, or a combination of both. Forms I-9 obtained from the USCIS website are not considered electronic Forms I-9 under DHS regulations and, therefore, cannot be electronically signed. Therefore, regardless of the method you used to enter information into each field, you must print a hard copy of the form, then sign and date the hard copy by hand where required.

Employers can obtain a blank copy of Form I-9 from the USCIS website at https://www.uscis.gov/sites/default/files/files/form/i-9.pdf. This form is in portable document format (.pdf) that is fillable and savable. That means that you may download it, or simply print out a blank copy to enter information by hand. You may also request paper Forms I-9 from USCIS.

Certain features of Form I-9 that allow for data entry on personal computers may make the form appear to be more than two pages. When using a computer, Form I-9 has been designed to print as two pages. Using more than one preparer and/or translator will add an additional page to the form, regardless of your method of completion. You are not required to print, retain or store the page containing the Lists of Acceptable Documents.

The form will also populate certain fields with N/A when certain user choices ensure that particular fields will not be completed. The Print button located at the top of each page that will print any number of pages the user selects. Also, the Start Over button located at the top of each page will clear all the fields on the form.

The Spanish version of Form I-9 does not include the additional instructions and drop-down lists described above. Employers in Puerto Rico may use either the Spanish or English version of the form. Employers outside of Puerto Rico must retain the English version of the form for their records, but may use the Spanish form as a translation tool. Additional guidance to complete the form may be found in the Handbook for Employers: Guidance for Completing Form I-9 (M-274) and on USCIS' Form I-9 website, I-9 Central.

Completing Section I: Employee Information and Attestation

You, the employee, must complete each field in Section 1 as described below. Newly hired employees must complete and sign Section 1 no later than the first day of employment. Section 1 should never be completed before you have accepted a job offer.

Entering Your Employee Information

Last Name *(Family Name)*: Enter your full legal last name. Your last name is your family name or surname. If you have two last names or a hyphenated last name, include both names in the Last Name field. *Examples of correctly entered last names include De La Cruz, O'Neill, Garcia Lopez, Smith-Johnson, Nguyen*. If you only have one name, enter it in this field, then enter "Unknown" in the First Name field. You may not enter "Unknown" in both the Last Name field and the First Name field.

First Name *(Given Name)*: Enter your full legal first name. Your first name is your given name. *Some examples of correctly entered first names include Jessica, John-Paul, Tae Young, D'Shaun, Mai*. If you only have one name, enter it in the Last Name field, then enter "Unknown" in this field. You may not enter "Unknown" in both the First Name field and the Last Name field.

Middle Initial: Your middle initial is the first letter of your second given name, or the first letter of your middle name, if any. If you have more than one middle name, enter the first letter of your first middle name. If you do not have a middle name, enter N/A in this field.

Other Last Names Used: Provide all other last names used, if any (e.g., maiden name). Enter N/A if you have not used other last names. For example, if you legally changed your last name from Smith to Jones, you should enter the name Smith in this field.

Address (Street Name and Number): Enter the street name and number of the current address of your residence. If you are a border commuter from Canada or Mexico, you may enter your Canada or Mexico address in this field. If your residence does not have a physical address, enter a description of the location of your residence, such as "3 miles southwest of Anytown post office near water tower."

Apartment: Enter the number(s) or letter(s) that identify(ies) your apartment. If you do not live in an apartment, enter N/A.

City or Town: Enter your city, town or village in this field. If your residence is not located in a city, town or village, enter your county, township, reservation, etc., in this field. If you are a border commuter from Canada, enter your city and province in this field. If you are a border commuter from Mexico, enter your city and state in this field.

State: Enter the abbreviation of your state or territory in this field. If you are a border commuter from Canada or Mexico, enter your country abbreviation in this field.

ZIP Code: Enter your 5-digit ZIP code. If you are a border commuter from Canada or Mexico, enter your 5- or 6-digit postal code in this field.

Date of Birth: Enter your date of birth as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). For example, enter January 8, 1980 as 01/08/1980.

U.S. Social Security Number: Providing your 9-digit Social Security number is voluntary on Form I-9 unless your employer participates in E-Verify. If your employer participates in E-Verify and:

1. You have been issued a Social Security number, you must provide it in this field; or
2. You have applied for, but have not yet received a Social Security number, leave this field blank until you receive a Social Security number.

Employee's E-mail Address (Optional): Providing your e-mail address is optional on Form I-9, but the field cannot be left blank. To enter your e-mail address, use this format: name@site .domain. One reason Department of Homeland Security (DHS) may e-mail you is if your employer uses E-Verify and DHS learns of a potential mismatch between the information provided and the information in government records. This e-mail would contain information on how to begin to resolve the potential mismatch. You may use either your personal or work e-mail address in this field. Enter N/A if you do not enter your e-mail address.

Employee's Telephone Number (Optional): Providing your telephone number is optional on Form I-9, but the field cannot be left blank. If you enter your area code and telephone number, use this format: 000-000-0000. Enter N/A if you do not enter your telephone number.

Attesting to Your Citizenship or Immigration Status

You must select one box to attest to your citizenship or immigration status.

1. **A citizen of the United States.**

2. **A noncitizen national of the United States:** An individual born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

3. **A lawful permanent resident**: An individual who is not a U.S. citizen and who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. This term includes conditional residents. Asylees and refugees should not select this status, but should instead select "An Alien authorized to work" below.

   If you select "lawful permanent resident," enter your 7- to 9-digit Alien Registration Number (A-Number), including the "A," or USCIS Number in the space provided. When completing this field using a computer, use the dropdown provided to indicate whether you have entered an Alien Number or a USCIS Number. At this time, the USCIS Number is the same as the A-Number without the "A" prefix.

4. **An alien authorized to work**: An individual who is not a citizen or national of the United States, or a lawful permanent resident, but is authorized to work in the United States.

   If you select this box, enter the date that your employment authorization expires, if any, in the space provided. In most cases, your employment authorization expiration date is found on the document(s) evidencing your employment authorization. Refugees, asylees and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau, and other aliens whose employment authorization does not have an expiration date should enter N/A in the Expiration Date field. In some cases, such as if you have Temporary Protected Status, your employment authorization may have been automatically extended; in these cases, you should enter the expiration date of the automatic extension in this space.

   Aliens authorized to work must enter one of the following to complete Section1:

   1. Alien Registration Number (A-Number)/USCIS Number; or
   2. Form I-94 Admission Number; or
   3. Foreign Passport Number and the Country of Issuance

   Your employer may not ask you to present the document from which you supplied this information.

   Alien Registration Number/USCIS Number: Enter your 7- to 9-digit Alien Registration Number (A-Number), including the "A," or your USCIS Number in this field. At this time, the USCIS Number is the same as your A-Number without the "A" prefix. When completing this field using a computer, use the dropdown provided to indicate whether you have entered an Alien Number or a USCIS Number. If you do not provide an A-Number or USCIS Number, enter N/A in this field then enter either a Form I-94 Admission Number, or a Foreign Passport and Country of Issuance in the fields provided.

   Form I-94 Admission Number: Enter your 11-digit I-94 Admission Number in this field. If you do not provide an I-94 Admission Number, enter N/A in this field, then enter either an Alien Registration Number/USCIS Number or a Foreign Passport Number and Country of Issuance in the fields provided.

   Foreign Passport Number: Enter your Foreign Passport Number in this field. If you do not provide a Foreign Passport Number, enter N/A in this field, then enter either an Alien Number/USCIS Number or a I-94 Admission Number in the fields provided.

   Country of Issuance: If you entered your Foreign Passport Number, enter your Foreign Passport's Country of Issuance. If you did not enter your Foreign Passport Number, enter N/A.

Signature of Employee: After completing Section 1, sign your name in this field. If you used a form obtained from the USCIS website, you must print the form to sign your name in this field. By signing this form, you attest under penalty of perjury (28 U.S.C. § 1746) that the information you provided, along with the citizenship or immigration status you selected, and all information and documentation you provide to your employer, is complete, true and correct, and you are aware that you may face severe penalties provided by law and may be subject to criminal prosecution for knowingly and willfully making false statements or using false documentation when completing this form. Further, falsely attesting to U.S. citizenship may subject employees to penalties, removal proceedings and may adversely affect an employee's ability to seek future immigration benefits. If you cannot sign your name, you may place a mark in this field to indicate your signature. Employees who use a preparer or translator to help them complete the form must still sign or place a mark in the Signature of Employee field on the printed form.

If you used a preparer, translator, and other individual to assist you in completing Form I-9:

- Both you and your preparer(s) and/or translator(s) must complete the appropriate areas of Section 1, and then sign Section 1. If Section 1 was completed on a form obtained from the USCIS website, the form must be printed to sign these fields. You and your preparer(s) and/or translator(s) also should review the instructions for **Completing the Preparer and/or Translator Certification** below.
- If the employee is a minor (individual under 18) who cannot present an identity document, the employee's parent or legal guardian can complete Section 1 for the employee and enter "minor under age 18" in the signature field. If Section 1 was completed on a form obtained from the USCIS website, the form must be printed to enter this information. The minor's parent or legal guardian should review the instructions for Completing the Preparer and/or Translator Certification below. Refer to the Handbook for Employers: Guidance for Completing Form I-9 (M-274) for more guidance on completion of Form I-9 for minors. If the minor's employer participates in E-Verify, the employee must present a list B identity document with a photograph to complete Form I-9
- If the employee is a person with a disability (who is placed in employment by a nonprofit organization, association or as part of a rehabilitation program) who cannot present an identity document, the employee's parent, legal guardian or a representative of the nonprofit organization, association or rehabilitation program can complete Section 1 for the employee and enter "Special Placement" in this field. If Section 1 was completed on a form obtained from the USCIS website, the form must be printed to enter this information. The parent, legal guardian or representative of the nonprofit organization, association or rehabilitation program completing Section 1 for the employee should review the instructions for Completing the Preparer and/or Translator Certification below. Refer to the Handbook for Employers: Guidance for Completing Form I-9 (M-274) for more guidance on completion of Form I-9 for certain employees with disabilities.

Today's Date: Enter the date you signed Section 1 in this field. Do not backdate this field. Enter the date as a 2-digit month, 2-digit day and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014. A preparer or translator who assists the employee in completing Section 1 may enter the date the employee signed or made a mark to sign Section 1 in this field. Parents or legal guardians assisting minors (individuals under age 18) and parents, legal guardians or representatives of a nonprofit organization, association or rehabilitation program assisting certain employees with disabilities must enter the date they completed Section 1 for the employee.

Completing the Preparer and/or Translator Certification

If you did not use a preparer or translator to assist you in completing Section 1, you, the employee, must check the box marked **I did not use a Preparer or Translator**. If you check this box, leave the rest of the fields in this area blank.

If one or more preparers and/or translators assist the employee in completing the form using a computer, the preparer and/or translator must check the box marked **"A preparer(s) and/or translator(s) assisted the employee in completing Section 1"** , then select the number of Certification areas needed from the dropdown provided. Any additional Certification areas generated will result in an additional page. Form I-9 Supplement, Section 1 Preparer and/or Translator Certification can be separately downloaded from the USCIS Form I-9 webpage, which provides additional Certification areas for those completing Form I-9 using a computer who need more Certification areas than the 5 provided or those who are completing Form I-9 on paper. The first preparer and/or translator must complete all the fields in the Certification area on the same page the employee has signed. There is no limit to the number of preparers and/or translators an employee can use, but each additional preparer and/or translator must complete and sign a separate Certification area. Ensure the employee's last name, first name and middle initial are entered at the top of any additional pages. The employer must ensure that any additional pages are retained with the employee's completed Form I-9.

Signature of Preparer or Translator: Any person who helped to prepare or translate Section 1of Form I-9 must sign his or her name in this field. If you used a form obtained from the USCIS website, you must print the form to sign your name in this field. The Preparer and/or Translator Certification must also be completed if "Individual under Age 18" or "Special Placement" is entered in lieu of the employee's signature in Section 1.

Today's Date: The person who signs the Preparer and/or Translator Certification must enter the date he or she signs in this field on the printed form. Do not backdate this field. Enter the date as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014.

Last Name *(Family Name):* Enter the full legal last name of the person who helped the employee in preparing or translating Section 1 in this field. The last name is also the family name or surname. If the preparer or translator has two last names or a hyphenated last name, include both names in this field.

First Name (*Given Name*): Enter the full legal first name of the person who helped the employee in preparing or translating Section 1 in this field. The first name is also the given name.

Address (Street Name and Number): Enter the street name and number of the current address of the residence of the person who helped the employee in preparing or translating Section 1 in this field. Addresses for residences in Canada or Mexico may be entered in this field. If the residence does not have a physical address, enter a description of the location of the residence, such as "3 miles southwest of Anytown post office near water tower." If the residence is an apartment, enter the apartment number in this field.

City or Town: Enter the city, town or village of the residence of the person who helped the employee in preparing or translating Section 1 in this field. If the residence is not located in a city, town or village, enter the name of the county, township, reservation, etc., in this field. If the residence is in Canada, enter the city and province in this field. If the residence is in Mexico, enter the city and state in this field.

State: Enter the abbreviation of the state, territory or country of the preparer or translator's residence in this field.

ZIP Code: Enter the 5-digit ZIP code of the residence of the person who helped the employee in preparing or translating Section 1 in this field. If the preparer or translator's residence is in Canada or Mexico, enter the 5- or 6-digit postal code.

Presenting Form I-9 Documents

Within 3 business days of starting work for pay, you must present to your employer documentation that establishes your identity and employment authorization. For example, if you begin employment on Monday, you must present documentation on or before Thursday of that week. However, if you were hired to work for less than 3 business days, you must present documentation no later than the end of the first day of employment.

Choose which unexpired document(s) to present to your employer from the Lists of Acceptable Documents. An employer cannot specify which document(s) you may present from the Lists of Acceptable Documents. You may present either one selection from List A or a combination of one selection from List B and one selection from List C. Some List A documents, which show both identity and employment authorization, are combination documents that must be presented together to be considered a List A document: for example, the foreign passport together with a Form I-94 containing an endorsement of the alien's nonimmigrant status and employment authorization with a specific employer incident to such status. List B documents show identity only and List C documents show employment authorization only. If your employer participates in E-Verify and you present a List B document, the document must contain a photograph. If you present acceptable List A documentation, you should not be asked to present, nor should you provide, List B and List C documentation. If you present acceptable List B and List C documentation, you should not be asked to present, nor should you provide, List A documentation. If you are unable to present a document(s) from these lists, you may be able to present an acceptable receipt. Refer to the Receipts section below.

Your employer must review the document(s) you present to complete Form I-9. If your document(s) reasonably appears to be genuine and to relate to you, your employer must accept the documents. If your document(s) does not reasonably appear to be genuine or to relate to you, your employer must reject it and provide you with an opportunity to present other documents from the Lists of Acceptable Documents. Your employer may choose to make copies of your document(s), but must return the original(s) to you. Your employer must review your documents in your physical presence.

Your employer will complete the other parts of this form, as well as review your entries in Section 1. Your employer may ask you to correct any errors found. Your employer is responsible for ensuring all parts of Form I-9 are properly completed and is subject to penalties under federal law if the form is not completed correctly.

Minors (individuals under age 18) and certain employees with disabilities whose parent, legal guardian or representative completed Section 1 for the employee are only required to present an employment authorization document from List C. Refer to the Handbook for Employers: Guidance for Completing Form I-9 (M-274) for more guidance on minors and certain individuals with disabilities.

Receipts

If you do not have unexpired documentation from the Lists of Acceptable Documents, you may be able to present a receipt(s) in lieu of an acceptable document(s). New employees who choose to present a receipt(s) must do so within three business days of their first day of employment. If your employer is reverifying your employment authorization, and you choose to present a receipt for reverification, you must present the receipt by the date your employment authorization expires. Receipts are not acceptable if employment lasts fewer than three business days.

There are three types of acceptable receipts:

1. A receipt showing that you have applied to replace a document that was lost, stolen or damaged. You must present the actual document within 90 days from the date of hire or, in the case of reverification, within 90 days from the date your original employment authorization expires.
2. The arrival portion of Form I-94/I-94A containing a temporary I-551 stamp and a photograph of the individual. You must present the actual Permanent Resident Card (Form I-551) by the expiration date of the temporary I-551 stamp, or, if there is no expiration date, within 1 year from the date of admission.
3. The departure portion of Form I-94/I-94A with a refugee admission stamp. You must present an unexpired Employment Authorization Document (Form I-766) or a combination of a List B document and an unrestricted Social Security Card within 90 days from the date of hire or, in the case of reverification, within 90 days from the date your original employment authorization expires.

Receipts showing that you have applied for an initial grant of employment authorization, or for renewal of your expiring or expired employment authorization, are not acceptable.

Completing Section 2: Employer or Authorized Representative Review and Verification

You, the employer, must ensure that all parts of Form I-9 are properly completed and may be subject to penalties under federal law if the form is not completed correctly. Section 1 must be completed no later than the end of the employee's first day of employment. You may not ask an individual to complete Section 1 before he or she has accepted a job offer. Before completing Section 2, you should review Section 1 to ensure the employee completed it properly. If you find any errors in Section 1, have the employee make corrections, as necessary and initial and date any corrections made.

You or your authorized representative must complete Section 2 by examining evidence of identity and employment authorization within 3 business days of the employee's first day of employment. For example, if an employee begins employment on Monday, you must review the employee's documentation and complete Section 2 on or before Thursday of that week. However, if you hire an individual for less than 3 business days, Section 2 must be completed no later than the end of the first day of employment.

Entering Employee Information from Section 1

This area, titled, "Employee Info from Section 1" contains fields to enter the employee's last name, first name, middle initial exactly as he or she entered them in Section 1. This area also includes a Citizenship/Immigration Status field to enter the number of the citizenship or immigration status checkbox the employee selected in Section 1. These fields help to ensure that the two pages of an employee's Form I-9 remain together. When completing Section 2 using a computer, the number entered in the Citizenship/Immigration Status field provides drop-downs that directly relate to the employee's selected citizenship or immigration status.

Entering Documents the Employee Presents

You, the employer or authorized representative, must physically examine, in the employee's physical presence, the unexpired document(s) the employee presents from the Lists of Acceptable Documents to complete the Document fields in Section 2.

You cannot specify which document(s) an employee may present from these lists. If you discriminate in the Form I-9 process based on an individual's citizenship status, immigration status, or national origin, you may be in violation of the law and subject to sanctions such as civil penalties and be required to pay back pay to discrimination victims. A document is acceptable as long as it reasonably appears to be genuine and to relate to the person presenting it. Employees must present one selection from List A or a combination of one selection from List B and one selection from List C.

List A documents show both identity and employment authorization. Some List A documents are combination documents that must be presented together to be considered a List A document, such as a foreign passport together with a Form I-94 containing an endorsement of the alien's nonimmigrant status.

List B documents show identity only, and List C documents show employment authorization only. If an employee presents a List A document, do not ask or require the employee to present List B and List C documents, and vice versa. If an employer participates in E-Verify and the employee presents a List B document, the List B document must include a photograph.

If an employee presents a receipt for the application to replace a lost, stolen or damaged document, the employee must present the replacement document to you within 90 days of the first day of work for pay, or in the case of reverification, within 90 days of the date the employee's employment authorization expired. Enter the word "Receipt" followed by the title of the receipt in Section 2 under the list that relates to the receipt.

When your employee presents the replacement document, draw a line through the receipt, then enter the information from the new document into Section 2. Other receipts may be valid for longer or shorter periods, such as the arrival portion of Form I-94/ I-94A containing a temporary I-551 stamp and a photograph of the individual, which is valid until the expiration date of the temporary I-551 stamp or, if there is no expiration date, valid for one year from the date of admission.

Ensure that each document is an unexpired, original (no photocopies, except for certified copies of birth certificates) document. Certain employees may present an expired employment authorization document, which may be considered unexpired, if the employee's employment authorization has been extended by regulation or a Federal Register Notice. Refer to the Handbook for Employers: Guidance for Completing Form I-9 (M-274) or I-9 Central for more guidance on these special situations.

Refer to the M-274 for guidance on how to handle special situations, such as students (who may present additional documents not specified on the Lists) and H-1B and H-2A nonimmigrants changing employers.

Minors (individuals under age 18) and certain employees with disabilities whose parent, legal guardian or representative completed Section 1 for the employee are only required to present an employment authorization document from List C. Refer to the M-274 for more guidance on minors and certain persons with disabilities. If the minor's employer participates in E-Verify, the minor employee also must present a List B identity document with a photograph to complete Form I-9.

You must return original document(s) to the employee, but may make photocopies of the document(s) reviewed. Photocopying documents is voluntary unless you participate in E-Verify. E-Verify employers are only required to photocopy certain documents. If you are an E-Verify employer who chooses to photocopy documents other than those you are required to photocopy, you should apply this policy consistently with respect to Form I-9 completion for all employees. For more information on the types of documents that an employer must photocopy if the employer uses E-Verify, visit E-Verify's website at www.dhs.gov/e-verify. For non-E-Verify employers, if photocopies are made, they should be made consistently for ALL new hires and reverified employees.

Photocopies must be retained and presented with Form I-9 in case of an inspection by DHS or another federal government agency. You must always complete Section 2 by reviewing original documentation, even if you photocopy an employee's document(s) after reviewing the documentation. Making photocopies of an employee's document(s) cannot take the place of completing Form I-9. You are still responsible for completing and retaining Form I-9.

List A - Identity and Employment Authorization: If the employee presented an acceptable document(s) from List A or an acceptable receipt for a List A document, enter the document(s) information in this column. If the employee presented a List A document that consists of a combination of documents, enter information from each document in that combination in a separate area under List A as described below. All documents must be unexpired. If you enter document information in the List A column, you should not enter document information in the List B or List C columns. If you complete Section 2 using a computer, a selection in List A will fill all the fields in the Lists B and C columns with N/A.

Document Title: If the employee presented a document from List A, enter the title of the List A document or receipt in this field. The abbreviations provided are available in the dropdown when the form is completed on a computer. When completing the form on paper, you may choose to use these abbreviations or any other common abbreviation to enter the document title or issuing authority. If the employee presented a combination of documents, use the second and third Document Title fields as necessary.

Full name of List A Document	Abbreviations
U.S. Passport	U.S. Passport
U.S. Passport Card	U.S. Passport Card
Permanent Resident Card (Form I-551)	Perm. Resident Card (Form I-551)
Alien Registration Receipt Card (Form I-551)	Alien Reg.Receipt Card (Form I-551)
Foreign passport containing a temporary I-551 stamp	1. Foreign Passport 2. Temporary I-551 Stamp
Foreign passport containing a temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)	1. Foreign Passport 2. Machine-readable immigrant visa (MRIV)
Employment Authorization Document (Form I-766)	Employment Auth. Document (Form I-766)
For a nonimmigrant alien authorized to work for a specific employer because of his or her status, a foreign passport with Form I/94/I-94A that contains an endorsement of the alien's nonimmigrant status	1. Foreign Passport, work-authorized non-immigrant 2. Form I-94/I94A 3. "Form I-20" or "Form DS-2019" Note: In limited circumstances, certain J-1 students may be required to present a letter from their Responsible Officer in order to work. Enter the document title, issuing authority, document number and expiration date from this document in the Additional Information field.
Passport from the Federated States of Micronesia (FSM) with Form I-94/I-94A	1. FSM Passport with Form I-94 2. Form I-94/I94A
Passport from the Republic of the Marshall Islands (RMI) with Form I-94/I94A	1. RMI Passport with Form I-94 2. Form I-94/I94A
Receipt: The arrival portion of Form I-94/I-94A containing a temporary I-551 stamp and photograph	Receipt: Form I-94/I-94A w/I-551 stamp, photo
Receipt: The departure portion of Form I-94/I-94A with an unexpired refugee admission stamp	Receipt: Form I-94/I-94A w/refugee stamp
Receipt for an application to replace a lost, stolen or damaged Permanent Resident Card (Form I-551)	Receipt replacement Perm. Res. Card (Form I-551)
Receipt for an application to replace a lost, stolen or damaged Employment Authorization Document (Form I-766)	Receipt replacement EAD (Form I-766)
Receipt for an application to replace a lost, stolen or damaged foreign passport with Form I-94/I-94A that contains an endorsement of the alien's nonimmigrant status	1. Receipt: Replacement Foreign Passport, work-authorized nonimmigrant 2. Receipt: Replacement Form I-94/I-94A 3. Form I-20 or Form DS-2019, if presented
Receipt for an application to replace a lost, stolen or damaged passport from the Federated States of Micronesia with Form I-94/I-94A	1. Receipt: Replacement FSM Passport with Form I-94 2. Receipt: Replacement Form I-94/I-94A
Receipt for an application to replace a lost, stolen or damaged passport from the Republic of the Marshall Islands with Form I-94/I-94A	1. Receipt: Replacement RMI Passport with Form I-94 2. Receipt: Replacement Form I-94/I-94A

Issuing Authority: Enter the issuing authority of the List A document or receipt. The issuing authority is the specific entity that issued the document. If the employee presented a combination of documents, use the second and third Issuing Authority fields as necessary.

Document Number: Enter the document number, if any, of the List A document or receipt presented. If the document does not contain a number, enter N/A in this field. If the employee presented a combination of documents, use the second and third Document Number fields as necessary. If the document presented was a Form I-20 or DS-2019, enter the Student and Exchange Visitor Information System (SEVIS) number in the third Document Number field exactly as it appears on the Form I-20 or the DS-2019.

Expiration Date (if any) (mm/dd/yyyy): Enter the expiration date, if any, of the List A document. The document is not acceptable if it has already expired. If the document does not contain an expiration date, enter N/A in this field. If the document uses text rather than a date to indicate when it expires, enter the text as shown on the document, such as "D/S"(which means, "duration of status"). For a receipt, enter the expiration date of the receipt validity period as described above. If the employee presented a combination of documents, use the second and third Expiration Date fields as necessary. If the document presented was a Form I-20 or DS-2019, enter the program end date here.

List B - Identity: If the employee presented an acceptable document from List B or an acceptable receipt for the application to replace a lost, stolen, or destroyed List B document, enter the document information in this column. If a parent or legal guardian attested to the identity of an employee who is an individual under age 18 or certain employees with disabilities in Section 1, enter either "Individual under age 18" or "Special Placement" in this field. Refer to the Handbook for Employers: Guidance for Completing Form I-9 (M-274) for more guidance on individuals under age 18 and certain person with disabilities.

If you enter document information in the List B column, you must also enter document information in the List C column. If an employee presents acceptable List B and List C documents, do not ask the employees to present a List A document. No entries should be made in the List A column. If you complete Section 2 using a computer, a selection in List B will fill all the fields in the List A column with N/A.

Document Title: If the employee presented a document from List B, enter the title of the List B document or receipt in this field. The abbreviations provided are available in the dropdown when the form is completed on a computer. When completing the form on paper, you may choose to use these abbreviations or any other common abbreviations to document the document title or issuing authority.

Full name of List B Document	Abbreviations
Driver's license issued by a State or outlying possession of the United States	Driver's license issued by state/territory
ID card issued by a State or outlying possession of the United States	ID card issued by state/territory
ID card issued by federal, state, or local government agencies or entities	Government ID
School ID card with photograph	School ID
Voter's registration card	Voter registration card
U.S. Military card	U.S. Military card
U.S. Military draft record	U.S. Military draft record
Military dependent's ID card	Military dependent's ID card
U.S. Coast Guard Merchant Mariner Card	USCG Merchant Mariner card
Native American tribal document	Native American tribal document
Driver's license issued by a Canadian government authority	Canadian driver's license
School record (for persons under age 18 who are unable to present a document listed above)	School record (under age 18)
Report card (for persons under age 18 who are unable to present a document listed above)	Report Card (under age 18)
Clinic record (for persons under age 18 who are unable to present a document listed above)	Clinic record (under age 18)
Doctor record (for persons under age 18 who are unable to present a document listed above)	Doctor record (under age 18)
Hospital record (for persons under age 18 who are unable to present a document listed above)	Hospital record (under age 18)
Day-care record (for persons under age 18 who are unable to present a document listed above)	Day-care record (under age 18)
Nursery school record (for persons under age 18 who are unable to present a document listed above)	Nursery school record (under age 18)

Full name of List B Document	Abbreviations
Individual under age 18 endorsement by parent or guardian	Individual under Age 18
Special placement endorsement for persons with disabilities	Special Placement
Receipt for the application to replace a lost, stolen or damaged Driver's License issued by a State or outlying possession of the United States	Receipt: Replacement driver's license
Receipt for the application to replace a lost, stolen or damaged ID card issued by a State or outlying possession of the United States	Receipt: Replacement ID card
Receipt for the application to replace a lost, stolen or damaged ID card issued by federal, state, or local government agencies or entities	Receipt: Replacement Gov't ID
Receipt for the application to replace a lost, stolen or damaged School ID card with photograph	Receipt: Replacement School ID
Receipt for the application to replace a lost, stolen or damaged Voter's registration card	Receipt: Replacement Voter reg. card
Receipt for the application to replace a lost, stolen or damaged U.S. Military card	Receipt: Replacement U.S. Military card
Receipt for the application to replace a lost, stolen or damaged Military dependent's ID card	Receipt: Replacement U.S. Military dep. card
Receipt for the application to replace a lost, stolen or damaged U.S. Military draft record	Receipt: Replacement Military draft record
Receipt for the application to replace a lost, stolen or damaged U.S. Coast Guard Merchant Mariner Card	Receipt: Replacement Merchant Mariner card
Receipt for the application to replace a lost, stolen or damaged Driver's license issued by a Canadian government authority	Receipt: Replacement Canadian DL
Receipt for the application to replace a lost, stolen or damaged Native American tribal document	Receipt: Replacement Native American tribal doc
Receipt for the application to replace a lost, stolen or damaged School record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement School record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Report card (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Report card (under age 18)
Receipt for the application to replace a lost, stolen or damaged Clinic record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Clinic record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Doctor record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Doctor record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Hospital record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Hospital record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Day-care record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Day-care record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Nursery school record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Nursery school record (under age 18)

Issuing Authority: Enter the issuing authority of the List B document or receipt. The issuing authority is the entity that issued the document. If the employee presented a document that is issued by a state agency, include the state as part of the issuing authority.

Document Number: Enter the document number, if any, of the List B document or receipt exactly as it appears on the document. If the document does not contain a number, enter N/A in this field.

Expiration Date (if any) (mm/dd/yyyy): Enter the expiration date, if any, of the List B document. The document is not acceptable if it has already expired. If the document does not contain an expiration date, enter N/A in this field. For a receipt, enter the expiration date of the receipt validity period as described in the Receipt section above.

List C - Employment Authorization: If the employee presented an acceptable document from List C, or an acceptable receipt for the application to replace a lost, stolen, or destroyed List C document, enter the document information in this column. If you enter document information in the List C column, you must also enter document information in the List B column. If an employee presents acceptable List B and List C documents, do not ask the employee to present a list A document. No entries should be made in the List A column.

Document Title: If the employee presented a document from List C, enter the title of the List C document or receipt in this field. The abbreviations provided are available in the dropdown when the form is completed on a computer. When completing the form on paper, you may choose to use these abbreviations or any other common abbreviations to document the document title or issuing authority. If you are completing the form on a computer, and you select an Employment authorization document issued by DHS, the field will populate with List C#8 and provide a space for you to enter a description of the documentation the employee presented. Refer to the M-274 for guidance on entering List C #8 documentation.

Full name of List C Document	Abbreviations
Social Security Account Number card without restrictions	(Unrestricted) Social Security Card
Certification of Birth Abroad (Form FS-545)	Form FS-545
Certification of Report of Birth (Form DS-1350)	Form DS-1350
Original or certified copy of a U.S. birth certificate bearing an official seal	Birth Certificate
Native American tribal document	Native American tribal document
U.S. Citizen ID Card (From I-197)	Form I-197
Identification Card for use of Resident Citizen in the United States (Form I-179)	Form I-179
Employment authorization document issued by DHS (List C #8)	Employment Auth. document (DHS) List C #8
Receipt for the application to replace a lost, stolen or damaged Social Security Account Number Card without restrictions	Receipt: Replacement Unrestricted SS Card
Receipt for the application to replace a lost, stolen or damaged Original or certified copy of a U.S. birth certificate bearing an official seal	Receipt: Replacement Birth Certificate
Receipt for the application to replace a lost, stolen or damaged Native American Tribal Document	Receipt: Replacement Native American Tribal Doc.
Receipt for the application to replace a lost, stolen or damaged Employment Authorization Document issued by DHS	Receipt: Replacement Employment Auth. Doc. (DHS)

Issuing Authority: Enter the issuing authority of the List C document or receipt. The issuing authority is the entity that issued the document.

Document Number: Enter the document number, if any, of the List C document or receipt exactly as it appears on the document. If the document does not contain a number, enter N/A in this field.

Expiration Date (if any) (mm/dd/yyyy): Enter the expiration date, if any, of the List C document. The document is not acceptable if it has already expired, unless USCIS has extended the expiration date on the document. For instance, if a conditional resident presents a Form I-797 extending his or her conditional resident status with the employee's expired Form I-551, enter the future expiration date as indicated on the Form I-797. If the document has no expiration date, enter N/A in this field. For a receipt, enter the expiration date of the receipt validity period as described in the Receipt section above.

Additional Information: Use this space to notate any additional information required for Form I-9 such as:

- Employment authorization extensions for Temporary Protected Status beneficiaries, F-1 OPT STEM students, CAP-GAP, H-1B and H-2A employees continuing employment with the same employer or changing employers, and other nonimmigrant categories that may receive extensions of stay
- Additional document(s) that certain nonimmigrant employees may present
- Discrepancies that E-Verify employers must notate when participating in the IMAGE program
- Employee termination dates and form retention dates
- E-Verify case number, which may also be entered in the margin or attached as a separate sheet per E-Verify requirements and your chosen business process.
- Any other comments or notations necessary for the employer's business process

You may leave this field blank if the employee's circumstances do not require additional notations.

Entering Information in the Employer Certification

Employee's First Day of Employment: Enter the employee's first day of employment as a 2-digit month, 2-digit day and 4-digit year (mm/dd/yyyy).

Signature of Employer or Authorized Representative: Review the form for accuracy and completeness. The person who physically examines the employee's original document(s) and completes Section 2 must sign his or her name in this field. If you used a form obtained from the USCIS website, you must print the form to sign your name in this field. By signing Section 2, you attest under penalty of perjury (28 U.S.C. § 1746) that you have physically examined the documents presented by the employee, the document(s) reasonably appear to be genuine and to relate to the employee named, that to the best of your knowledge the employee is authorized to work in the United States, that the information you entered in Section 2 is complete, true and correct to the best of your knowledge, and that you are aware that you may face severe penalties provided by law and may be subject to criminal prosecution for knowingly and willfully making false statements or knowingly accepting false documentation when completing this form.

Today's Date: The person who signs Section 2 must enter the date he or she signed Section 2 in this field. Do not backdate this field. If you used a form obtained from the USCIS website, you must print the form to write the date in this field. Enter the date as a 2-digit month, 2-digit day and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014.

Title of Employer or Authorized Representative: Enter the title, position or role of the person who physically examines the employee's original document(s), completes and signs Section 2.

Last Name of the Employer or Authorized Representative: Enter the full legal last name of the person who physically examines the employee's original documents, completes and signs Section 2. Last name refers to family name or surname. If the person has two last names or a hyphenated last name, include both names in this field.

First Name of the Employer or Authorized Representative: Enter the full legal first name of the person who physically examines the employee's original documents, completes, and signs Section 2. First name refers to the given name.

Employer's Business or Organization Name: Enter the name of the employer's business or organization in this field.

Employer's Business or Organization Address (Street Name and Number): Enter an actual, physical address of the employer. If your company has multiple locations, use the most appropriate address that identifies the location of the employer. Do not provide a P.O. Box address.

City or Town: Enter the city or town for the employer's business or organization address. If the location is not a city or town, you may enter the name of the village, county, township, reservation, etc. that applies.

State: Enter the two-character abbreviation of the state for the employer's business or organization address.

ZIP Code: Enter the 5-digit ZIP code for the employer's business or organization address.

Completing Section 3: Reverification and Rehires

Section 3 applies to both reverification and rehires. When completing this section, you must also complete the Last Name, First Name and Middle Initial fields in the Employee Info from Section 1 area at the top of Section 2, leaving the Citizenship/ Immigration Status field blank. When completing Section 3 in either a reverification or rehire situation, if the employee's name has changed, record the new name in Block A.

Reverification

Reverification in Section 3 must be completed prior to the earlier of:

- The expiration date, if any, of the employment authorization stated in Section 1, or
- The expiration date, if any, of the List A or List C employment authorization document recorded in Section 2 (with some exceptions listed below).

Some employees may have entered "N/A" in the expiration date field in Section 1 if they are aliens whose employment authorization does not expire, e.g. asylees, refugees, certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau. Reverification does not apply for such employees unless they choose to present evidence of employment authorization in Section 2 that contains an expiration date and requires reverification, such as Form I-766, Employment Authorization Document.

You should not reverify U.S. citizens and noncitizen nationals, or lawful permanent residents (including conditional residents) who presented a Permanent Resident Card (Form I-551). Reverification does not apply to List B documents.

For reverification, an employee must present an unexpired document(s) (or a receipt) from either List A or List C showing he or she is still authorized to work. You CANNOT require the employee to present a particular document from List A or List C. The employee is also not required to show the same type of document that he or she presented previously. See specific instructions on how to complete Section 3 below.

Rehires

If you rehire an employee within three years from the date that the Form I-9 was previously executed, you may either rely on the employee's previously executed Form I-9 or complete a new Form I-9.

If you choose to rely on a previously completed Form I-9, follow these guidelines.

- If the employee remains employment authorized as indicated on the previously executed Form I-9, the employee does not need to provide any additional documentation. Provide in Section 3 the employee's rehire date, any name changes if applicable, and sign and date the form.
- If the previously executed Form I-9 indicates that the employee's employment authorization from Section 1 or employment authorization documentation from Section 2 that is subject to reverification has expired, then reverification of employment authorization is required in Section 3 in addition to providing the rehire date. If the previously executed Form I-9 is not the current version of the form, you must complete Section 3 on the current version of the form.
- If you already used Section 3 of the employee's previously executed Form I-9, but are rehiring the employee within three years of the original execution of Form I-9, you may complete Section 3 on a new Form I-9 and attach it to the previously executed form.

Employees rehired after three years of original execution of the Form I-9 must complete a new Form I-9.

Complete each block in Section 3 as follows:

Block A - New Name: If an employee who is being reverified or rehired has also changed his or her name since originally completing Section 1 of this form, complete this block with the employee's new name. Enter only the part of the name that has changed, for example: if the employee changed only his or her last name, enter the last name in the Last Name field in this Block, then enter N/A in the First Name and Middle Initial fields. If the employee has not changed his or her name, enter N/A in each field of Block A.

Block B - Date of Rehire: Complete this block if you are rehiring an employee within three years of the date Form I-9 was originally executed. Enter the date of rehire in this field. Enter N/A in this field if the employee is not being rehired.

Block C - Complete this block if you are reverifying expiring or expired employment authorization or employment authorization documentation of a current or rehired employee. Enter the information from the List A or List C document(s) (or receipt) that the employee presented to reverify his or her employment authorization. All documents must be unexpired.

Document Title: Enter the title of the List A or C document (or receipt) the employee has presented to show continuing employment authorization in this field.

Document Number: Enter the document number, if any, of the document you entered in the Document Title field exactly as it appears on the document. Enter N/A if the document does not have a number.

Expiration Date (if any) (mm/dd/yyyy): Enter the expiration date, if any, of the document you entered in the Document Title field as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). If the document does not contain an expiration date, enter N/A in this field.

Signature of Employer or Authorized Representative: The person who completes Section 3 must sign in this field. If you used a form obtained from the USCIS website, you must print Section 3 of the form to sign your name in this field. By signing Section 3, you attest under penalty of perjury (28 U.S.C. §1746) that you have examined the documents presented by the employee, that the document(s) reasonably appear to be genuine and to relate to the employee named, that to the best of your knowledge the employee is authorized to work in the United States, that the information you entered in Section 3 is complete, true and correct to the best of your knowledge, and that you are aware that you may face severe penalties provided by law and may be subject to criminal prosecution for knowingly and willfully making false statements or knowingly accepting false documentation when completing this form.

Today's Date: The person who completes Section 3 must enter the date Section 3 was completed and signed in this field. Do not backdate this field. If you used a form obtained from the USCIS website, you must print Section 3 of the form to enter the date in this field. Enter the date as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014.

Name of Employer or Authorized Representative: The person who completed, signed and dated Section 3 must enter his or her name in this field.

What is the Filing Fee?

There is no fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the "USCIS Privacy Act Statement" below.

USCIS Forms and Information

For additional guidance about Form I-9, employers and employees should refer to the *Handbook for Employers: Guidance for Completing Form I-9 (M-274)* or USCIS' Form I-9 website at www.uscis.gov/I-9Central.

You can also obtain information about Form I-9 by e-mailing USCIS at I-9Central@dhs.gov, or by calling 1-888-464-4218 or 1-877-875-6028 (TTY).

You may download and obtain the English and Spanish versions of Form I-9, the *Handbook for Employers*, or the instructions to Form I-9 from the USCIS website at https://www.uscis.gov/i-9. To complete Form I-9 on a computer, you will need the latest version of Adobe Reader, which can be downloaded for free at http://get.adobe.com/reader/. You may order USCIS forms by calling our toll-free number at 1-800-870-3676. You may also obtain forms and information by contacting the USCIS National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TTY).

Information about E-Verify, a fast, free, internet-based system that allows businesses to determine the eligibility of their employees to work in the United States, can be obtained from the USCIS website at http://www.uscis.gov/e-verify, by e-mailing USCIS at E-Verify@dhs.gov or by calling 1-888-464-4218 or 1-877-875-6028 (TTY).

Employees with questions about Form I-9 and/or E-Verify can reach the USCIS employee hotline by calling 1-888-897-7781 or 1-877-875-6028 (TTY).

Photocopying Blank and Completed Forms I-9 and Retaining Completed Forms I-9

Employers may photocopy or print blank Forms I-9 for future use. All pages of the instructions and Lists of Acceptable Documents must be available, either in print or electronically, to all employees completing this form. Employers must retain each employee's completed Form I-9 for as long as the individual works for the employer and for a specified period after employment has ended. Employers are required to retain the pages of the form on which the employee and employer entered data. If copies of documentation presented by the employee are made, those copies must also be retained. Once the individual's employment ends, the employer must retain this form and attachments for either 3 years after the date of hire (i.e., first day of work for pay) or 1 year after the date employment ended, whichever is later. In the case of recruiters or referrers for a fee (only applicable to those that are agricultural associations, agricultural employers, or farm labor contractors), the retention period is 3 years after the date of hire (i.e., first day of work for pay).

Forms I-9 obtained from the USCIS website that are not printed and signed manually (by hand) are not considered complete. In the event of an inspection, retaining incomplete forms may make you subject to fines and penalties associated with incomplete forms.

Employers should ensure that information employees provide on Form I-9 is used only for Form I-9 purposes. Completed Forms I-9 and all accompanying documents should be stored in a safe, secure location.

Form I-9 may be generated, signed, and retained electronically, in compliance with Department of Homeland Security regulations at 8 CFR 274a.2.

USCIS Privacy Act Statement

AUTHORITIES: The authority for collecting this information is the Immigration Reform and Control Act of 1986, Public Law 99-603 (8 USC § 1324a).

PURPOSE: This information is collected by employers to comply with the requirements of the Immigration Reform and Control Act of 1986. This law requires that employers verify the identity and employment authorization of individuals they hire for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

DISCLOSURE: Providing the information collected by this form is voluntary. However an employer should not continue to employ an individual without a completed form. Failure of the employer to prepare and/or ensure proper completion of this form for each employee hired in the United States after November 6, 1986 or in the Commonwealth of the Mariana Islands after November 27, 2011, may subject the employer to civil and/or criminal penalties. In addition, employing individuals knowing that they are unauthorized to work in the United States may subject the employer to civil and/or criminal penalties.

ROUTINE USES: This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The employer must retain this form for the required period and make it available for inspection by authorized officials of the Department of Homeland Security, Department of Labor and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 35 minutes per response, when completing the form manually, and 26 minutes per response when using a computer to aid in completion of the form, including the time for reviewing instructions and completing and retaining the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW, Washington, DC 20529-2140; OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**

Employment Eligibility Verification

Department of Homeland Security

U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2019

►**START HERE:** **Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.**

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)*

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Other Last Names Used *(if any)*

Address *(Street Number and Name)*	Apt. Number	City or Town	State	ZIP Code

Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	Employee's E-mail Address	Employee's Telephone Number
	☐☐☐ - ☐☐ - ☐☐☐☐		

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

☐ 1. A citizen of the United States

☐ 2. A noncitizen national of the United States *(See instructions)*

☐ 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____

☐ 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____
Some aliens may write "N/A" in the expiration date field. *(See instructions)*

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

OR

3. Foreign Passport Number: _____

Country of Issuance: _____

QR Code - Section 1
Do Not Write In This Space

Signature of Employee	Today's Date *(mm/dd/yyyy)*

Preparer and/or Translator Certification (check one):

☐ I did not use a preparer or translator. ☐ A preparer(s) and/or translator(s) assisted the employee in completing Section 1.

(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator	Today's Date *(mm/dd/yyyy)*

Last Name *(Family Name)*	First Name *(Given Name)*

Address *(Street Number and Name)*	City or Town	State	ZIP Code

STOP *Employer Completes Next Page* STOP

Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2019

Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

Employee Info from Section 1	Last Name *(Family Name)*	First Name *(Given Name)*	M.I.	Citizenship/Immigration Status

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title		Document Title		Document Title
Issuing Authority		Issuing Authority		Issuing Authority
Document Number		Document Number		Document Number
Expiration Date *(if any)(mm/dd/yyyy)*		Expiration Date *(if any)(mm/dd/yyyy)*		Expiration Date *(if any)(mm/dd/yyyy)*
Document Title				
Issuing Authority				
Document Number				
Expiration Date *(if any)(mm/dd/yyyy)*				
Document Title				
Issuing Authority				
Document Number				
Expiration Date *(if any)(mm/dd/yyyy)*				

Additional Information

QR Code - Sections 2 & 3
Do Not Write In This Space

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: _____ ***(See instructions for exemptions)***

Signature of Employer or Authorized Representative	Today's Date*(mm/dd/yyyy)*	Title of Employer or Authorized Representative

Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Employer's Business or Organization Name

Employer's Business or Organization Address (Street Number and Name)	City or Town	State	ZIP Code

Section 3. Reverification and Rehires *(To be completed and signed by employer or authorized representative.)*

A. New Name *(if applicable)*			**B.** Date of Rehire *(if applicable)*
Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Date *(mm/dd/yyyy)*

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date *(if any)* *(mm/dd/yyyy)*

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Name of Employer or Authorized Representative

LISTS OF ACCEPTABLE DOCUMENTS
All documents must be UNEXPIRED

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		**1.** Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		**1.** A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		**2.** ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		**2.** Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		**3.** School ID card with a photograph		**3.** Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)		**4.** Voter's registration card		**4.** Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: **a.** Foreign passport; and **b.** Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		**5.** U.S. Military card or draft record		**5.** Native American tribal document
		6. Military dependent's ID card		**6.** U.S. Citizen ID Card (Form I-197)
		7. U.S. Coast Guard Merchant Mariner Card		**7.** Identification Card for Use of Resident Citizen in the United States (Form I-179)
		8. Native American tribal document		**8.** Employment authorization document issued by the Department of Homeland Security
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Examples of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.

POLICY AND STATUTES

ICE Enforcement Policy Memos and Sample Notices

April 30, 2009
ICE Worksite Enforcement Memo

Office of Investigations

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

APR 3 0 2009

MEMORANDUM FOR: Assistant Director
Deputy Assistant Directors
Special Agents in Charge

FROM: Marcy M. Forman
Director, Office of Investigations

SUBJECT: Worksite Enforcement Strategy

Worksite Enforcement Strategy

I. The Purpose and Priorities of Worksite Enforcement

The prospect for employment in the United States continues to be one of the leading causes of illegal immigration, creating a market for criminal smuggling organizations who exploit people willing to pay high fees and take great risks to enter the United States without detection. Immigration and Customs Enforcement (ICE) has a vital responsibility to engage in effective worksite enforcement to reduce the pull of illegal employment, ease pressure at the border, and protect employment opportunities for the nation's lawful workforce.

DHS has extensive but finite resources which it must effectively allocate. Arresting and removing illegal workers must be part of a strategy to deter unlawful employment, but alone is insufficient as a comprehensive worksite enforcement strategy. Of the more than 6,000 arrests related to worksite enforcement in 2008, only 135 were of employers. Enforcement efforts focused on employers better target the root causes of illegal immigration. An effective strategy must do all of the following: 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to hire illegal workers; and 3) encourage all employers to take advantage of well-crafted compliance tools. To accomplish these goals, ICE must prioritize the criminal prosecution of the actual employers who knowingly hire illegal workers because such employers are not sufficiently punished or deterred by the arrest of their illegal workforce.

Although criminal prosecution of employers will efficiently advance the stated goal of worksite enforcement, ICE will not rely solely on that approach. ICE will continue to fulfill its responsibility to arrest and process for removal illegal workers encountered during worksite enforcement operations. Furthermore, ICE will use all available civil and administrative tools, including civil fines and debarment, to penalize and deter illegal employment.

SUBJECT: Worksite Enforcement Strategy
Page 2

ICE will strategically approach worksite enforcement efforts to maximize their impact. To that end, ICE offices should refer to this Worksite Enforcement Strategy when beginning any worksite enforcement investigation. ICE offices also must refer to the reporting requirements and humanitarian guidelines applicable to worksite enforcement operations.

II. Criminal Prosecution of Employers

- The criminal prosecution of employers[1] is a priority of ICE's worksite enforcement (WSE) program and interior enforcement strategy.
- ICE is committed to targeting employers, owners, corporate managers, supervisors, and others in the management structure of a company for criminal prosecution through the use of carefully planned criminal investigations.
- ICE offices should utilize the full range of reasonably available investigative methods and techniques, including but not limited to: use of confidential sources and cooperating witnesses, introduction of undercover agents, consensual and non-consensual intercepts and Form I-9 audits.
- ICE offices should consider the wide variety of criminal offenses that may be present in a worksite case. ICE offices should look for evidence of the mistreatment of workers, along with evidence of trafficking, smuggling, harboring, visa fraud, identification document fraud, money laundering, and other such criminal conduct.
- Absent exigent circumstances, ICE offices should obtain indictments, criminal arrest or search warrants, or a commitment from a U.S. Attorney's Office (USAO) to prosecute the targeted employer before arresting employees for civil immigration violations at a worksite. In the absence of a timely commitment from a USAO, ICE offices should obtain guidance from ICE Headquarters prior to proceeding with a worksite enforcement operation.

III. Administrative and Civil Tools

ICE offices should use administrative tools to advance criminal cases and, in the absence of criminal charges, to support the imposition of civil fines or other available penalties.

A. Form I-9 Audits

The most important administrative tool is the Notice of Inspection (NOI) and the resulting administrative Form I-9 audit.

- The Form I-9 audit process will be utilized in both criminal and administrative investigations to identify illegal workers, including criminal aliens employed at a business.
- Although auditors will assume primary responsibility for conducting Form I-9 audits, ICE special agents and auditors must coordinate closely because this process will often serve as an important step in the criminal investigation and prosecution of employers.

[1] In this context, "employer" refers to someone involved in the hiring or management of employees. This includes owners, CEOs, supervisors, managers and other occupational titles.

- ICE offices may issue documents to employers, including Discrepancy and Suspect Document letters, for the purpose of fostering prompt corrections in hiring and documentation practices and also laying the groundwork to establish probable cause to support subsequent criminal charges if corrections are not made.

B. Civil Fines

Civil fines, although not as key as criminal prosecution, are an important part of an effective worksite enforcement strategy. These fines provide a penalty when the evidence is not sufficient to support a criminal prosecution or as otherwise appropriate. In the mid-1990's, employers received notices of intent to fine (NIFs) totaling $26 million.

- ICE offices should work with attorneys in OPLA when issuing a NIF, to facilitate the collection of civil fines for each worker employed in violation of the law.

C. Debarment Proceedings

Debarment precludes companies that have knowingly hired illegal workers from securing work on federal contracts. Debarment, therefore, carries highly significant consequences. As ICE increasingly pursues debarment, the practice may have a significant deterrent effect.

- ICE offices should initiate the debarment process, if appropriate, following the successful prosecution of an employer or the occurrence of another trigger to debarment.

D. Outreach

Through the ICE Mutual Agreement between Government and Employers (IMAGE) program and other means, ICE will continue to seek out employers who want to comply with our nation's immigration laws and provide them with the training and tools they need to minimize the risk of unwittingly hiring illegal workers.

IV. Critical Infrastructure and National Security Sites

- ICE has a responsibility to help assure a legal workforce at America's critical infrastructure workplaces and other security-sensitive locations. Based on careful investigative work, ICE will initiate audits, searches, and targeted employee interviews to remove unlawful workers from such worksites.
- Whenever possible, critical infrastructure protection enforcement operations also will target the employer, including contractors, for criminal or administrative penalties.

V. Executing a Worksite Enforcement Operation

Historically, ICE's worksite enforcement operations receive significant attention from Congress, non-governmental organizations, the press, and the public. In addition, particularly because the arrest of a number of illegal workers at the same site can have rippling

consequences on others in the community, ICE offices must refer to and comply with the following:

A. Reporting Requirements

All worksite investigations will adhere to pre-existing reporting requirements, including providing 14-day notice to ICE Headquarters in advance of developing or executing enforcement activity. Advance reporting should include a comprehensive operational plan with a section dedicated to the prosecution plan as well as the worksite operation checklist. Requests for exceptions due to exigent circumstances will require immediate telephonic notification to the Assistant Director, Operations.

B. Humanitarian Guidelines

The existing humanitarian guidelines, found on the Office of Investigation's intranet, remain in effect, except they will apply to all worksite enforcements involving 25 or more illegal workers rather than 150.

VI. Conclusion

ICE is committed to robust worksite enforcement. The above guidance re-prioritizes and refines the existing ICE worksite enforcement strategy and methodology, in order to emphasize the criminal prosecution of employers who violate the law. This strategy is subject to further refinements and improvements as deemed necessary. Additional guidance will be issued in the Special Agent Handbook, currently under revision. While ICE is re-focusing efforts to develop criminal cases against employers who hire and use illegal workers, the administrative arrest of the illegal workforce under ICE's existing immigration authorities continues to be an integral aspect of the overall ICE worksite enforcement strategy. To ensure maximum deterrence, ICE also will pursue all other available tools to encourage employers to utilize and rely on this nation's lawful workforce.

POLICY AND STATUTES

ICE Enforcement Policy Memos and Sample Notices

November 21, 2009
ICE I-9 Inspection Overview

Office of Public Affairs
U.S. Department of Homeland Security

U.S. Immigration and Customs Enforcement

December 1, 2009

Fact Sheet

Form I-9 Inspection Overview

On November 6, 1986, the enactment of the Immigration Reform and Control Act required employers to verify the identity and employment eligibility of their employees and created criminal and civil sanctions for employment related violations. Section 274A (b) of the Immigration and Nationality Act (INA), codified in 8 U.S.C. § 1324a (b), requires employers to verify the identity and employment eligibility of all individuals hired in the United States after November 6, 1986. 8 C.F.R. § 274a.2 designates the Employment Eligibility Verification Form I-9 (Form I-9) as the means of documenting this verification. Employers are required by law to maintain for inspection original Forms I-9 for all current employees. In the case of former employees, retention of Forms I-9 are required for a period of at least three years from the date of hire or for one year after the employee is no longer employer, whichever is longer.

The administrative inspection process is initiated by the service of a Notice of Inspection (NOI) upon an employer compelling the production of Forms I-9. U.S. Immigration and Customs Enforcement (ICE) typically will allow 3 business days to present the Forms I-9. Often, ICE will request the employer provide supporting documentation, which may include a copy of the payroll, list of current employees, Articles of Incorporation, and business licenses.

ICE agents or auditors then conduct an inspection of the Forms I-9 for compliance. When technical or procedural violations are found, pursuant to INA §274A(b)(6)(B) (8 U.S.C. § 1324a(b)(6)(B)), an employer is given ten business days to make corrections. An employer may receive a monetary fine for all substantive and uncorrected technical violations. Employers determined to have knowingly hired or continued to employ unauthorized workers under INA § 274A(a)(1)(a) or (a)(2) (8 U.S.C. § 1324a(a)(1)(a) or (a)(2)) will be required to cease the unlawful activity, may be fined, and in certain situations may be prosecuted criminally. Additionally, an employer found to have knowingly hired or continued to employ unauthorized workers may be subject to debarment by ICE, meaning that the employer will be prevented from participating in future federal contracts and from receiving other government benefits.

Monetary penalties for knowingly hire and continuing to employ violations range from $375 to $16,000 per violation, with repeat offenders receiving penalties at the higher end.
Penalties for substantive violations, which includes failing to produce a Form I-9, range from $110 to $1,100 per violation. In determining penalty amounts, ICE considers five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers, and history of previous violations.[1]

[1] See INA §274A(e)(5) (8 U.S.C. 1324a (e)(5))

www.ice.gov

ICE will notify the audited party, in writing, of the results of the inspection once completed. The following are the most common notices:

- Notice of Inspection Results – also known as a "compliance letter," used to notify a business that they were found to be in compliance.
- Notice of Suspect Documents - advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has determined that the employee is unauthorized to work and advises the employer of the possible criminal and civil penalties for continuing to employ this individual. ICE provides the employer and employee an opportunity to present additional documentation to demonstrate work authorization if they believe the finding is in error.
- Notice of Discrepancies - advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has been unable to determine their work eligibility. The employer should provide the employee with a copy of the notice, and give the employee an opportunity to present ICE with additional documentation to establish their employment eligibility.
- Notice of Technical or Procedural Failures – identifies technical violations identified during the audit and gives the employer 10 business days to correct the forms. After 10 business days, uncorrected technical and procedural failures will become substantive violations.
- Warning Notice - issued in circumstances where substantive verification violations were identified but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the employer.
- Notice of Intent to Fine (NIF) - may be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations.

In instances where a NIF is served, charging documents will be provided specifying the violations committed by the employer. The employer has the opportunity to either negotiate a settlement with ICE or request a hearing before the Office of the Chief Administrative Hearing Officer (OCAHO) within 30 days of receipt of the NIF. If the employer takes no action after receiving a NIF, ICE will issue a Final Order. If a hearing is requested, OCAHO assigns the case to an Administrative Law Judge (ALJ), and sends all parties a copy of a Notice of Hearing and government's complaint, thus setting the adjudicative process in motion.

The Notice of Hearing spells out the procedural requirements for answering the complaint and the potential consequences of failure to file a timely response. Many OCAHO cases never reach the evidentiary hearing stage because the parties either reach a settlement, subject to the approval of the ALJ, or the ALJ reaches a decision on the merits through dispositive prehearing rulings.

Determination of Recommended Fine

The cumulative recommended fine set forth in the Notice of Intent to Fine is determined by adding the amount derived from the **Knowing Hire / Continuing to Employ Fine Schedule** (plus enhancement or mitigation) with the amount derived from the **Substantive / Uncorrected Technical Violations Fine Schedule** (plus enhancement or mitigation). Typically, the date of the violation shall be the date ICE conducted the Form I-9 inspection and not the date the Form I-9 was completed by the employer.

Penalties for Knowing Hire / Continuing to Employ Violations

Employers determined to have knowingly hire or continuing to employ violations shall be required to cease the unlawful activity and may be fined. The agent or auditor will divide the number of knowing hire and continuing to employ violations by the number of employees for whom a Form I-9 should have been prepared to obtain a violation percentage. This percentage provides a base fine amount depending on whether this is a First Tier (1st

time violator), Second Tier (2nd time violator), or Third Tier (3rd or subsequent time violator) case. The standard fine amount listed in the table relates to each knowing hire and continuing to employ violation. The range of the three tiers of penalty amounts[2] are as follows:

Knowing Hire / Continuing to Employ Fine Schedule
(For violations occurring on or after 3/27/08)

	Standard Fine Amount		
Knowing Hire and Continuing to Employ Violations	**First Tier $375 - $3,200**	**Second Tier $3,200 - $6,500**	**Third Tier $4,300 - $16,000**
0% - 9%	**$375**	**$3,200**	**$4,300**
10% - 19%	**$845**	**$3,750**	**$6,250**
20% - 29%	**$1315**	**$4,300**	**$8,200**
30% - 39%	**$1785**	**$4,850**	**$10,150**
40% - 49%	**$2255**	**$5,400**	**$12,100**
50% or more	**$2,725**	**$5,950**	**$14,050**

[2] Since the passage of IRCA in 1986, federal civil monetary penalties have been increased on two occasions in 1999 and 2008 pursuant to the Federal Civil Penalties Inflation Act of 1990, as amended by the Debt Collection Improvement Act of 1996. These adjustments are designed to account for inflation in the calculation of civil monetary penalties and are determined by a non-discretionary, statutory formula. (See 73 FR 10130 (February 26, 2008)

Knowing Hire / Continuing to Employ Fine Schedule
(For violations occurring between 9/29/99 and 3/27/08)

	Standard Fine Amount		
Knowing Hire and Continuing to Employ Violations	**First Tier $275 - $2,200**	**Second Tier $2,200 - $5,500**	**Third Tier $3,300 - $11,000**
0% - 9%	**$275**	**$2,200**	**$3,300**
10% - 19%	**$600**	**$2,750**	**$4,600**
20% - 29%	**$925**	**$3,300**	**$5,900**
30% - 39%	**$1250**	**$3,850**	**$7,200**
40% - 49%	**$1575**	**$4,400**	**$8,500**
50% or more	**$1,900**	**$4,950**	**$9,800**

Penalties for Substantive and Uncorrected Technical Violations

The agent or auditor will divide the number of violations by the number of employees for whom a Form I-9 should have been prepared to obtain a violation percentage. This percentage provides a base fine amount depending on whether this is a first offense, second offense, or a third or more offense. The standard fine amount listed in the table relates to each Form I-9 with violations. The range of penalty amounts are as follows:

Substantive / Uncorrected Technical Violation Fine Schedule

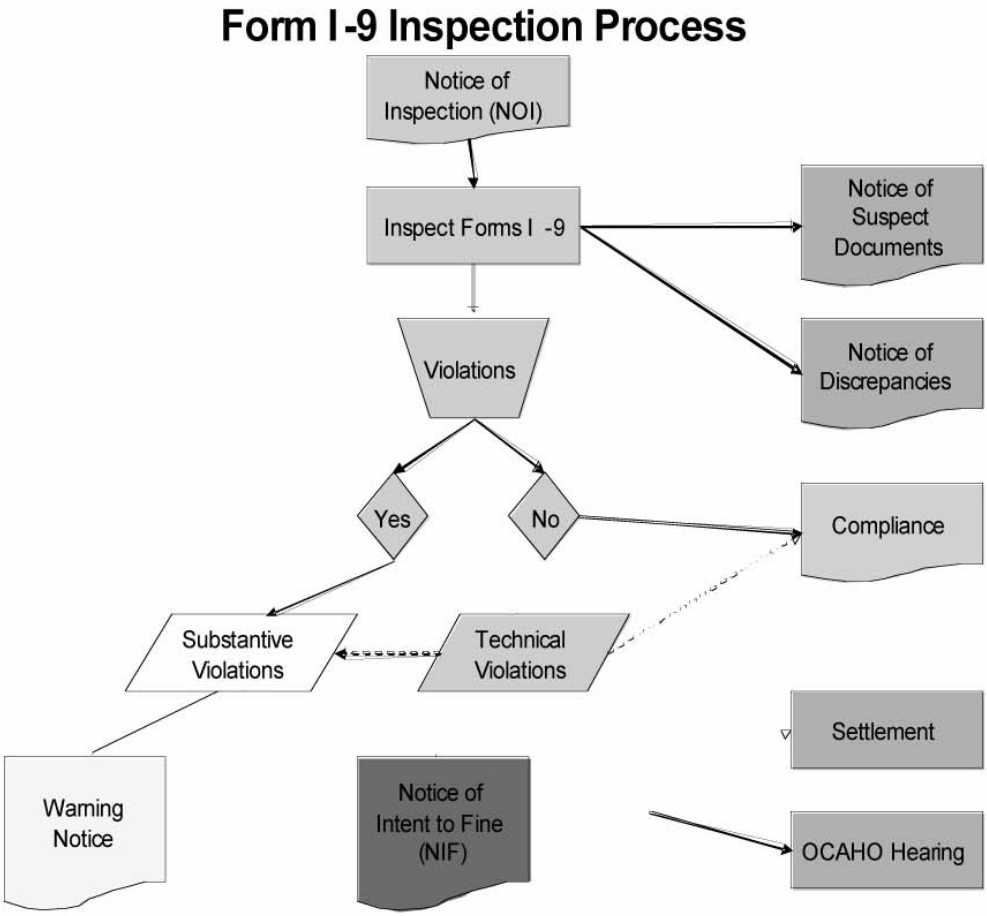
	Standard Fine Amount		
Substantive Verification Violations	**1st Offense $110 - $1100**	**2nd Offense $110 - $1100**	**3rd Offense + $110 - $1100**
0% - 9%	**$110**	**$550**	**$1,100**
10% - 19%	**$275**	**$650**	**$1,100**
20% - 29%	**$440**	**$750**	**$1,100**
30% - 39%	**$605**	**$850**	**$1,100**
40% - 49%	**$770**	**$950**	**$1,100**
50% or more	**$935**	**$1,100**	**$1,100**

Enhancement Matrix

The following matrix will be used to enhance or mitigate the recommended fine contained on the Notice of Intent to Fine. [3]

Factor	Aggravating	Mitigating	Neutral
Business size	+ 5%	- 5%	+/- 0%
Good faith	+ 5%	- 5%	+/- 0%
Seriousness	+ 5%	- 5%	+/- 0%
Unauthorized Aliens	+ 5%	- 5%	+/- 0%
History	+ 5%	- 5%	+/- 0%
Cumulative Adjustment	+ 25%	- 25%	+/- 0%

[3] *Id.*



ICE

U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of four integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.

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POLICY AND STATUTES

ICE Enforcement Policy Memos and Sample Notices

Sample I-9 Inspection Notices

Office of Investigations

U.S. Department of Homeland Security
[Address]
[Address]

U.S. Immigration and Customs Enforcement

NOTICE OF INSPECTION

[Date]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

U.S. Immigration and Customs Enforcement (ICE) regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that ICE has scheduled a review of your forms for *Insert date and time*. You may, however, waive the three-day period, should you wish to do so, by annotating and signing the bottom of this letter and advising this office of your decision.

During the review, *Insert name and title of ICE point of contact* will discuss the requirements of the law with you and inspect your Forms I-9. The purpose of this review is to assess your compliance with the provisions of the law. ICE will make every effort to conduct the review of records in a timely manner so as not to impede your normal business routine.

Sincerely,

Insert name
Insert title (GS or above)

I wish to waive the three day notice to which I am entitled by regulation.

_____	_____	_____
(Printed Name)	(Signature)	(Date)

Office of Investigations

U.S. Department of Homeland Security
[Address]
[Address]

U.S. Immigration and Customs Enforcement

NOTIFICATION OF INSPECTION RESULTS

[Date]

[Case Number]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

On *Insert date of inspection,* Special Agents of U.S. Immigration and Customs Enforcement (ICE) conducted a compliance review and inspection of *Insert name of employer*. During this review, the requirements of Section 274A of the Immigration and Nationality Act were discussed and your Forms I-9 reviewed.

As a result of that inspection, ICE has determined that there is no basis for further investigation to be conducted at *Insert name of employer*.

We greatly appreciate your cooperation.

Sincerely,

Insert name
Insert title (GS or above)

Office of Investigations

U.S. Department of Homeland Security
[Address]
[Address]

U.S. Immigration and Customs Enforcement

NOTICE OF TECHNICAL OR PROCEDURAL FAILURES

[Date]

[Case Number]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

On *Insert date of inspection,* Special Agents of U.S. Immigration and Customs Enforcement conducted an inspection of *Insert name of employer* to determine compliance with Section 274A of the Immigration and Nationality Act (INA). At that time, *Insert number of Forms I-9* Employment Eligibility Verification Forms (Forms I-9) were presented for inspection. During the inspection of the Forms I-9 presented, technical or procedural failures to meet the employment verification requirements of Section 274A(b) of the INA were discovered. Pursuant to Section 274A(b)(6) of the INA, these technical or procedural failures are considered violations of Section 274A(b) of the INA if they remain uncorrected.

Note: Additional failures to meet the employment verification requirements of Section 274A(b) of the INA may have been discovered. These failures are not included in this notification and may result in the issuance of a Notice of Intent to Fine. If a Notice of Intent to Fine is issued, it will be served separately from this notification.

This letter and accompanying documents are to notify *Insert name of employer* of the technical or procedural failures encountered and to provide *Insert name of employer* a period of not less than ten business days within which to correct these failures. Accompanying this letter are copies of *Insert number of Forms I-9 being returned* Forms I-9 that contain technical or procedural failures. The technical or procedural failures found on each Form I-9 have been highlighted or circled in ink. They include one or more of the following technical or procedural failures:

- ☐ Employee's maiden name, address or birth date missing in Section 1
- ☐ No alien registration number next to the phrase in Section 1, "A Lawful Permanent Resident" where the number is in Sections 2 or 3 of the I-9 (or on a document retained with the Form I-9 and presented at the I-9 inspection)

SUBJECT: Notice of Unauthorized Aliens
Page 2

If you or the employees feel that this determination is in error and the employees are authorized to work, or if you or the employees have any other questions, you or the employees may call *Insert name and title of ICE point of contact* at *Insert telephone number*.

Sincerely,

Insert name
Insert title (GS or above)

Office of Investigations

U.S. Department of Homeland Security
[Address]
[Address]

U.S. Immigration and Customs Enforcement

NOTICE OF DISCREPANCIES

[Date]

[Case Number]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

On *Insert date of inspection,* Special Agents of U.S. Immigration and Customs Enforcement (ICE) conducted an inspection of *Insert name of employer* to determine compliance with Section 274A of the Immigration and Nationality Act. During that inspection, the requirements of the law were discussed and Forms I-9 were inspected.

This letter is to inform you that, according to the records checked by ICE, the identity and employment eligibility of the following individuals were unable to be verified. This letter does not mean that ICE has determined that these employees are not authorized to work. There are many reasons that discrepancies may appear in a work authorized employee's record. **You should not fire the employees on the attached list or take adverse action against them based upon this letter.**

Insert name(s) or attach list

In order to resolve these cases, ICE is requesting your assistance and cooperation in order to make arrangements to interview the employees identified in this letter. An ICE representative will contact you to schedule date(s) for interviews to be conducted at your facility. Rather than interviewing each employee, ICE may request your assistance in completing the attached certification notice, along with providing the appropriate documentation to verify the identity and continued employment authorization of the person(s) named.

We understand that some of these employees may be authorized to work and that the records we reviewed did not confirm this fact. We encourage employees whose names are on this list, but who believe they are authorized to work in the United States, to reconcile any discrepancy regarding their employment eligibility information with you before we arrive at your location for interviews. When you obtain the appropriate information, please call *Insert name and title*

SUBJECT: Notice of Discrepancies
Page 2

of ICE point of contact at *Insert telephone number*. ICE will re-verify the information provided about the employees, including any new information provided by you or the employees. You will then be notified of the employee's status in writing regarding whether the discrepancy has been resolved or if a personal interview will be required.

If any employees on this list do not wish to clarify their employment eligibility through your personnel department, we will request your cooperation in order to personally interview them during our visit to your business.

Attached is a notice that we are requesting you provide to each employee identified in this letter. This notice identifies each employee by his or her name, Social Security number, and alien registration number (if applicable). We ask that you give a copy of this notice to each employee immediately. The notice also includes space for you and your employee to document the employee's receipt of the notice. Please ensure that each employee understands what steps he or she must take to resolve this situation, including providing you with more information.

If you or the employees feel that this determination is in error and the employees are authorized to work, or if you or the employees have any other questions, you or your employees may call the ICE contact noted above.

Sincerely,

Insert name
Insert title (GS or above)

Office of Investigations

U.S. Department of Homeland Security
[Address]
[Address]

U.S. Immigration and Customs Enforcement

NOTICE OF UNAUTHORIZED ALIENS

[Date]

[Case Number]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

On *Insert date of apprehension,* U.S. Immigration and Customs Enforcement (ICE) apprehended the following individual(s):

Insert name(s) or attach list

You employed the individuals at your place of business, *Insert name of employer*. The individuals have been deemed by ICE to be unauthorized to work in the United States.

Unless they present valid identification and employment eligibility documentation acceptable for completing the Form I-9, other than the documents previously presented, they are unauthorized to work in the United States.

Any continued employment of the individuals without satisfying the employment eligibility verification requirements may subject you to civil penalties for knowingly continuing to employ unauthorized aliens in violation of Section 274A(a)(2) of the Immigration and Nationality Act. A civil money penalty ranging from $375 to $3,200 per unauthorized alien may be imposed for a first violation of knowingly hiring or continuing to employ an unauthorized alien. Higher monetary penalties can be imposed for a second or subsequent violation. Further, criminal charges may be brought against any person or entity which engages in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens. This is a very serious matter that requires your immediate attention.

SUBJECT: Notice of Unauthorized Aliens
Page 2

If you or the employees feel that this determination is in error and the employees are authorized to work, or if you or the employees have any other questions, you or the employees may call *Insert name and title of ICE point of contact* at *Insert telephone number*.

Sincerely,

Insert name
Insert title (GS or above)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARNING NOTICE

Name: _____ Date: _____

Address: _____ File Number: _____

_____

On _____, officers of U.S. Immigration and Customs Enforcement conducted an inspection of Forms I-9 and related employment records for:

_____

_____

_____

(Business Name and Address)

The following deficiencies were identified:

SEE ATTACHMENT

The U.S. Government encourages voluntary compliance with the law. As a matter of discretion, we have chosen to issue only this WARNING NOTICE in lieu of imposing any sanctions at this time. However, we anticipate your full cooperation in correcting the violation or violations which resulted in the issuance of this WARNING NOTICE and any other violations which may exist in your Forms I-9. If it is determined that the listed violations are not immediately corrected or other violations are detected, civil or criminal proceedings may be instituted against you.

A follow-up inspection of Forms I-9 and related employment records is scheduled for _____.

Should you have any questions, you may contact this office at _____.
(Telephone Number)

Sincerely,

_____ _____

(Signature) _____

_____ _____

(Title) (Address)

SERVICE OF WARNING NOTICE

I hereby certify that, on _____, I served the above Warning Notice and The Handbook for Employers
(Month/Day/Year)

to _____
(Name and Title)

of _____
(Name of Entity)

by _____
(Personal Service or Certified Mail)

at _____
(Street Address)

_____ _____
(Name & Signature) (Title)

ICE Form I-846 (Page 1 of 2) (05/08)

PURPOSE OF THIS WARNING NOTICE

This WARNING NOTICE is issued to bring to your attention your responsibilities under the Immigration and Nationality Act (Act), as amended. Representatives of U.S. Immigration and Customs Enforcement (ICE) are available to discuss these responsibilities with you. The Handbook for Employers (M-274) provided to you with this WARNING NOTICE discusses the requirements of the law. Should you have any questions, you may contact the office noted in the front of the WARNING NOTICE.

PROHIBITED PRACTICES

Section 274A of the Act renders it unlawful for a person or entity, after November 6, 1986, to hire, or to recruit or refer for a fee for employment, an individual, knowing that he or she is not authorized by law to work in the United States. The Act prohibits a person or entity from continuing to employ an individual hired after November 6, 1986, knowing that he or she is or has become unauthorized to work in the United States. The Act also prohibits a person or entity from requiring a person to post bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability for employer sanctions violations.

In addition, under this law you may not discriminate against any individual (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or, in the case of a citizen or protected individual, because of his or her citizenship status. The Office of Special Counsel for Immigration-Related Unfair Employment Practices, U.S. Department of Justice, enforces the anti-discrimination provisions of the Act.

VERIFICATION REQUIREMENTS

The law requires employers and those recruiters or referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors to verify on the "Employment Eligibility Form," Form I-9, the identity and employment eligibility of all individuals hired, or recruited, or referred for a fee for employment in the United States after November 6, 1986. However, a Form I-9 need not be completed for individuals who were hired after November 6, 1986, but who quit or were terminated prior to June 1, 1987.

Employers and recruiters or referrers for a fee must produce Forms I-9 for inspection upon request of officers of ICE, the Employment Standards Administration, or the Office of Special Counsel.

ADDITIONAL INFORMATION

The law imposes civil penalties consisting of fines up to $10,000 per unauthorized alien for violations of the provision pertaining to the hiring, recruiting, or referring for a fee, or continued employment of an individual hired after November 6, 1986, knowing that he or she has become unauthorized to work in the United States, fines up to $11,000 per violation occurring on or after September 29, 1999, and fines up to $16,000 per violation occurring on or after March 27, 2008. For those who engage in a pattern or practice of violations of these provisions, the law imposes criminal penalties consisting of a fine of up to $3,000 for each unauthorized alien, imprisonment for up to 6 months for the entire pattern or practice, or both. Failure to adhere to the verification requirements of the law will result in civil penalties consisting of a fine ranging from $100 to $1,000 per violation for each individual with respect to whom such a violation occurred before September 29, 1999 and not less than $110 and not more than $1,100 per violation occurring on or after September 29, 1999.

ICE Form I-846 (Page 2 of 2) (05/08)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

FINAL ORDER TO CEASE VIOLATIONS AND PAY FINE

Pursuant to:

Section 274A of the Immigration and Nationality Act and Part 274a, Title 8, Code of Federal Regulations

or

Section 274C of the Immigration and Nationality Act and Part 270, Title 8, Code of Federal Regulations

United States of America	Office Address
A-File Number	Fines Case Number
In the Matter of (Respondent):	
Address (Street Number and Name)	
City, State, and ZIP Code	

On _____, a Notice of Intent to Fine (copy attached) was served upon you stating the allegation(s) and charge(s), and the penalty to be assessed against you.

The Notice of Intent to Fine advised you of your right to contest the fine by requesting a hearing before an administrative law judge within 30 days of the service of the Notice. The Notice also advised you that failure to request a hearing on a timely basis would result in the issuance of a final and unappealable order by U.S. Immigration and Customs Enforcement (ICE).

☐ ICE has not received on a timely basis a written request for a hearing before an administrative law judge.

☐ Your request for a hearing before an administrative law judge was withdrawn in writing pursuant to an agreement between the parties.

☐ The parties have agreed to settle this matter without an administrative hearing.

Therefore, it is ordered that you: Pay a fine in the amount of $_____ and cease and desist from such violations (with the exception of Section 274A(a)(1)(b) violation(s)).

Payment must be in the form of a cashier's check, money order, or bank check made payable to "U.S. Immigration and Customs Enforcement." Payment must be submitted within 30 days of the receipt of this order to the following address:

Signature of Issuing Officer
Name of Issuing Officer
Title of Issuing Officer
Date

ICE Form I-764 (Page 1 of 2) (05/08)

- NOTICE -

Failure to comply with this final order may result in ICE filing suit in the appropriate district court to seek compliance with this order.

In the Matter of (Respondent):

Certificate of Service

Served by (print name) _____

Date served _____

Method of service _____

Person or entity served _____

Title of person served _____

Place of service _____

Signature of employee or officer _____

Name and title of employee or officer _____

ICE Form I-764 (Page 2 of 2) (05/08)

POLICY AND STATUTES

Federal Immigration Statutes

IRCA
Immigration Reform and Control Act of 1986

Pub. L 99-603 Immigration Reform and Control Act of 1986

TITLE I--CONTROL OF ILLEGAL IMMIGRATION

Part A – Employment

SEC. 101. CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS.

(a) In General.

(1) New provision. Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

Unlawful Employment of Aliens

Sec. 274A. (a) Making Employment of Unauthorized Aliens Unlawful.

(1) In general. It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States

(A) an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B) an individual without complying with the requirements of subsection (b).

(2) Continuing employment. It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense. A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract. For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of state employment agency documentation. For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which docume ntation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(b) Employment Verification System. The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation.

(A) In general. The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of such sentence, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such a document.

(B) Documents establishing both employment authorization and identity. A document described in this subparagraph is an individual's

(i) United States passport;
(ii) certificate of United States citizenship;
(iii) certificate of naturalization
(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the

Attorney General authorizing the individual's employment in the United States;

or

(v) resident alien card or other alien registration card, if the card

(I) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection, and

(II) is evidence of authorization of employment in the United States.

(C) Documents evidencing employment authorization. A document described in this subparagraph is an individual's

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or

(iii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual. A document described in this subparagraph is an individual's

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (ii), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(2) Individual attestation of employment authorization. The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is

authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

(3) Retention of verification form. After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual

(i) three years after the date of such hiring,

or

(ii) one year after the date the individual's employment is terminated, whichever is later.

(4) Copying of documentation permitted. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form. A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(c) No Authorization of National Identification Cards. Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and Changes in Employment Verification System.

(1) Presidential monitoring and improvements in system.
"(A) Monitoring. The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system. To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system. Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity. The system must be capable of reliably determining whether–

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents. If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system. Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information. The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification. A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes. The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(G) Restriction on use of new documents. If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this

Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

(3) Notice to congress before implementing changes.

(A) In general. The President may not implement any change under paragraph (1) unless at least

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D), before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report. In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes.

(i) Hearings and review. The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action. No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes requiring two years notice and congressional review. As used in this paragraph, the term 'major change' means a change which would

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

(E) General revenue funding of social security card changes. Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

(4) Demonstration projects.

(A) Authority. The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than three years.

(B) Reports on projects. The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance.

(1) Complaints and investigations. The Attorney General shall establish procedures

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of

cases of violations of subsection (a) under this subsection.

(2) Authority in investigations. In conducting investigations and hearings under this subsection

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

(B) administrative law judges may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.
In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing.

(A) In general. Before imposing an order described in paragraph (4) or (5) against a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation

(B) Conduct of hearing. Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders. If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4) or (5).
(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations. With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or

entity previously subject to one order under this subparagraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this subparagraph; and

(B) may require the person or entity

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations. With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Administrative appellate review. The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(7) Judicial review. A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(8) Enforcement of orders. If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal Penalties and Injunctions for Pattern or Practice Violations.

(1) Criminal penalty. Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions if any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations. Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of Indemnity Bonds.

(1) Prohibition. It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty. Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous Provisions.

(1) Documentation. In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption. The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien. As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

(i) Effective Dates.

(1) 6-month public information period. During the six-month period beginning on the first day of the first month after the date of the enactment of this section

(A) the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of this section, and

(B) the Attorney General shall not conduct any proceeding, nor issue any order, under this section on the basis of any violation alleged to have occurred during the period.

(2) 12-month first citation period. In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a violation or violations may have occurred and shall not conduct any proceeding, nor issue any order, under this section on the basis of such alleged violation or violations.

(3) Deferral of enforcement with respect to seasonal agricultural services.

(A) In general. Except as provided in subparagraph (B), before the end of the application period (as defined in subparagraph (C)(i)), the Attorney General shall not conduct any proceeding, nor impose any penalty, under this section on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services.

(B) Prohibition of recruitment outside the united states.

"(i) In general. During the application period, it is unlawful for a person or entity (including a farm labor contractor) or an agent of such a person or entity, to recruit an unauthorized alien (other than an alien described in clause (ii)) who is outside the United States to enter the United States to perform seasonal agricultural services.

(ii) Exception. Clause (i) shall not apply to an alien who the person or entity reasonably believes meets the requirements of section 210(a)(2) of this Act (relating to performance of seasonal agricultural services).

(iii) Penalty for violation. A person, entity, or agent that violates clause (i) shall be deemed to be subject to a order under this section in the same manner as if it had violated paragraph (1)(A), without regard to paragraph (2) of this subsection.

(C) Definitions. In this paragraph:

(i) Application period. The term 'application period' means the period described in section 210(a)(1).

(ii) Seasonal agricultural services. The term 'seasonal agricultural services' has the meaning given such term in section 210(h).

(j) General Accounting Office Reports.

(1) In general. Beginning one year after the date of enactment of this Act, and at intervals of one year thereafter for a period of three years after such date, the Comptroller General of the United States shall prepare and transmit to the Congress and to the taskforce established under subsection (k) a report describing the results of a review of the implementation and enforcement of this section during the preceding twelve-month period, for the purpose of determining if

(A) such provisions have been carried out satisfactorily;

(B) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(C) an unnecessary regulatory burden has been created for employers hiring such workers.

(2) Determination on discrimination. In each report, the Comptroller General shall make a specific determination as to whether the implementation of that section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin.

(3) Recommendations. If the Comptroller General has determined that such a pattern of discrimination has resulted, the report

(A) shall include a description of the scope of that discrimination, and

(B) may include recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(k) Review by Taskforce.

(1) Establishment of joint taskforce. The Attorney General, jointly with the Chairman of the Commission on Civil Rights and the Chairman of the Equal Employment Opportunity Commission, shall establish a taskforce to review each report of the Comptroller General transmitted under subsection (j)(1).

(2) Recommendations to congress. If the report transmitted includes a determination that the implementation of this section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin, the taskforce shall, taking into consideration any recommendations in the report, report to Congress recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(3) Congressional hearings. The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting any report of the taskforce under paragraph (2) within 60 days after the date of receipt of the report.

(l) Termination Date for Employer Sanctions.

(1) If report of widespread discrimination and congressional approval. The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under subsection (j), if

(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section; and

(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

(2) Senate procedures for consideration. Any joint resolution referred to in clause (B) of paragraph (1) shall be considered in the Senate in accordance with subsection (n).

(m) Expedited Procedures in the House of Representatives. For the purpose of expediting the consideration and adoption of joint resolutions under subsection (l), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(n) Expedited Procedures in the Senate.

(1) Continuity of session. For purposes of subsection (l), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

(2) Rulemaking power. Paragraphs (3) and (4) of this subsection are enacted

"(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (l), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

"(3) Committee consideration.

"(A) Motion to discharge. If the committee of the Senate to which has been referred a joint resolution relating to the report described in subsection (l) has not reported such joint resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same report which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same report.

(B) Consideration of motion. A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to mo ve to reconsider the vote by which the motion is agreed to or disagreed to.

(4) Motion to proceed to consideration.

(A) In general. A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on resolution. Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate on motion. Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under the ir control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any

debatable motion or appeal.

(D) Motions to limit debate. A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.

(2) Interim regulations. The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act, first issue, on an interim or other basis, such regulations as may be necessary in order to implement this section.

(3) Grandfather for current employees. (A) Section 274A(a)(1) of the Immigration and Nationality Act shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act.

(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act.

(b) Conforming Amendments to Migrant and Seasonal Agricultural Worker Protection Act. (1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended

(A) by striking out "101(a)(15)(H)(ii)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a)";

(B) in section 103(a) (29 U.S.C. 1813(a))

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 .S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

(c) Conforming Amendment to Table of Contents. The table of contents is amended by inserting after the item relating to section 274 the following new item:

" Sec. 274A. Unlawful employment of aliens.

(d) Study on the Use of a Telephone Verification System for Determining Employment Eligibility of Aliens.--(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility of aliens in the United States. Such study shall concentrate on those data bases that are currently available to the Federal Government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants who are aliens.

(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of aliens for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal Government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, backup safeguards, and audit trail performance.

(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974.

(4) Such study shall be conducted within twelve months of the date of enactment of this Act.

(5) The Attorney General shall prepare and transmit to the Congress a report

(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

(B) not later than twelve months after such date, setting forth the findings of such study.

(e) Feasibility Study of Social Security Number Validation System. The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act, and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act, a full and complete report on the results of the study together with such recommendations as may be appropriate.

(f) Counterfeiting of Social Security Account Number Cards. (1) The Comptroller General of the United States, upon consultation with the Attorney General and the Secretary of Health and Human Services as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

(3) Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.

SEC. 102. UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) In General. Chapter 8 of title II is further amended by inserting after section 274A, as inserted by section 101(a), the following new section:

Unfair Immigration-Related Employment Practices

Sec. 274B. (a) Prohibition of Discrimination Based on National Origin or Citizenship Status.

(1) General rule. It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment

(A) because of such individual's national origin, or

(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

(2) Exceptions. Paragraph (1) shall not apply to

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964,

or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) Definition of citizen or intending citizen. As used in paragraph (1), the term 'citizen or intending citizen' means an individual who

(A) is a citizen or national of the United States,

or

(B) is an alien who

(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and

(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen; but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) Additional exception providing right to prefer equally qualified citizens. Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(b) Charges of Violations.

(1) In general. Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints. No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) Special Counsel.

(1) Appointment. The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counse') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) Duties. The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1).

(3) Compensation. The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

(4) Regional offices. The Special Counsel, in accordance with regulations of the Attorney General,

shall establish such regional offices as may be necessary to carry out his duties.

(d) Investigation of Charges.

(1) By special counsel. The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and sub ject to paragraph (3), file a complaint before such a judge.

(2) Private actions.–If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

(3) Time limitations on complaints. No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

(e) Hearings.

(1) Notice. Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) Judges hearing cases. Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) Complainant as party. Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint.

In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

(f) Testimony and Authority of Hearing Officers.

(1) Testimony. The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) Authority of administrative law judges. In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(g) Determinations.

(1) Order. The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i).

(2) Orders finding violations.

(A) In general. If, upon the preponderance of the evidence, an administrative law judge determines that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) Contents of order. Such an order also may require the person or entity

(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(5), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay; and

(iv) (I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(C) Limitation on back pay remedy.In providing a remedy under subparagraph (B) (iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such subparagraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) Treatment of distinct entities. In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) Orders not finding violations. If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) Awarding of Attorneys' Fees. In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) Review of Final Orders.

(1) In general. Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) Further review. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28,

United States Code.

(j) Court Enforcement of Administrative Orders.

(1) In general. If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

(2) Court enforcement order. Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) Enforcement decree in original review. If, upon appeal of an order under subsection (i) (1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) Awarding of attorney's fees. In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

(k) Termination Dates.

(1) This section shall not apply to discrimination in hiring, recruiting, referring, or discharging of individuals occurring after the date of any termination of the provisions of section 274A, under subsection (l) of that section.

(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 274A(j) if

(A) the Comptroller General determines, and so reports in such report that

(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 274A, or

(ii) such section has created an unreasonable burden on employers hiring such workers; and

(B) there has been enacted, within such period of 30 calender days, a joint resolution stating in substance that the congress approves the findings of the Comptroller General con tained in such report. The provisions of subsections (m) and (n) of section 274A shall apply to any joint resolution undr subparagraph (B) in the same manner as they apply to a joint resolution under subsection (1) of such section".

(b) No Effect on EEOC Authority. Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), or any other authority provided therein.

(c) Clerical Amendment. The table of contents is amended by inserting after the item relating to section 274A (as added by section 101(c)) the following new item:

Sec. 274B. Unfair immigration-related employment practices.

SEC. 103. FRAUD AND MISUSE OF CERTAIN IMMIGRATION-RELATED DOCUMENTS.

(a) Application to Additional Documents.–Section 1546 of title 18, United States Code, is amended–

(1) by amending the heading to read as follows:

Sec. 1546. Fraud and misuse of visas, permits, and other documents;

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States";

(4) by striking out "$2,000" and inserting in lieu thereof "in accordance with this title";

(5) by inserting "(a)" before "Whoever" the first place it appears;

and

(6) by adding at the end the following new subsections:

(b) Whoever uses

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation, for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined in accordance with this title, or imprisoned not more than two years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).

(b) Clerical Amendment. The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents."

POLICY AND STATUTES

Federal Immigration Statutes

IIRIRA
Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Pub. L. 104-208
Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Relevant Provisions

TITLE II-ENHANCED ENFORCEMENT AND PENALTIES AGAINST ALIEN SMUGGLING; DOCUMENT FRAUD

Subtitle A - Enhanced Enforcement and Penalties Against Alien Smuggling

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SEC. 201. WIRETAP AUTHORITY FOR INVESTIGATIONS OF ALIEN SMUGGLING OR DOCUMENT FRAUD.

Section 2516(1) of title 18, United States Code, is amended -

(1) in paragraph (c), by striking "or section 1992 (relating to wrecking trains)" and inserting "section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents)";

(2) by striking "or" at the end of paragraph (l);

(3) by redesignating paragraphs (m), (n), and (o) as paragraphs (n), (o), and (p), respectively; and

(4) by inserting after paragraph (l) the following new paragraph:

"(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);".

SEC. 202. RACKETEERING OFFENSES RELATING TO ALIEN SMUGGLING.

Section 1961(1) of title 18, United States Code, as amended by section 433 of Public Law 104-132, is amended

(1) by striking "if the act indictable under section 1028 was committed for the purpose of financial gain";

(2) by inserting "section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers),"after "section 1344 (relating to financial institution fraud),";

(3) by striking "if the act indictable under section 1542 was committed for the purpose of financial gain";

(4) by striking {if the act indictable under section 1543 was committed for the purpose of financial gain";

(5) by striking "f the act indictable under section 1544 was committed for the purpose of financial gain"; and

(6) by striking "if the act indictable under section 1546 was committed for the purpose of financial gain".

SEC. 203. INCREASED CRIMINAL PENALTIES FOR ALIEN SMUGGLING.

(a) COMMERCIAL ADVANTAGE. Section 274 (a) (1) (B) (i) (8 U.S.C. 1324 (a) (1) (B) (i)) is amended by inserting "or in the case of a violation of subparagraph (A) (ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain" after "subparagraph (A) (i)".

(b) ADDITIONAL OFFENSES. Section 274 (a) (8 U.S.C. 1324(a)) is amended

(1) in paragraph (1) (A)

(A) by striking "or" at the end of clause (iii);

(B) by striking the comma at the end of clause (iv) and inserting"; or"; and

(C) by adding at the end the following new clause:

"(v) (I) engages in any conspiracy to commit any of the preceding acts, or
"(II) aids or abets the commission of any of the preceding acts,";

(2) in paragraph (1) (B)

(A) in clause (i), by inserting "or (v)(I)" after "(A)(i)";

(B) in clause (ii), by striking "or (iv)" and inserting "(iv), or (v)(II)";

(C) in clause (iii), by striking "or (iv)" and inserting "(iv), or (v)"; and
(D) in clause (iv), by striking "or (iv)" and inserting "(iv), or (v)";

(3) in paragraph (2)(B), by striking "be fined" and all that follows and inserting the following: "be fined under title 18, United States Code, and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years."; and

(4) by adding at the end the following new paragraph:

"(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

"(B) An alien described in this subparagraph is an alien who

"(i) is an unauthorized alien (as defined in section 274A(h)(3)), and

"(ii) has been brought into the United States in violation of this subsection.".

(c) SMUGGLING OF ALIENS WHO WILL COMMIT CRIMES. Clause

"(i) of section 274(a)(2)(B) (8 U.S.C. 1324(a)(2)(B)) is amended to read as follows:

"(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,"

(d) APPLYING CERTAIN PENALTIES ON A PER ALIEN BASIS.-Section 274(a)(2) (8 U.S.C. 1324(a)(2)) is amended by striking "for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved" and inserting "for each alien in respect to whom a violation of this paragraph occurs".

(e) SENTENCING GUIDELINES.

(1) IN GENERAL. Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines for offenders convicted of offenses related to smuggling, transporting, harboring, or inducing aliens in violation of section 274(a) (1)(A) or (2) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), (2)(B)) in accordance with this subsection.

(2) REQUIREMENTS. In carrying out this subsection, the Commission shall, with respect to the offenses described in paragraph (1)

(A) increase the base offense level for such offenses at least 3 offense levels above the applicable level in effect on the date of the enactment of this Act;

(B) review the sentencing enhancement for the number of aliens involved (U.S.S.G. 2L1.1(b)(2)), and increase the sentencing enhancement by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

(D) impose an additional appropriate sentencing enhancement upon an offender with 2 or more prior felony convictions arising out of separate and prior prosecutions for offenses that involved the same or similar underling conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history

category;

(E) impose an appropriate sentencing enhancement on a defendant who, in the course of committing an offense described in this subsection

(i) murders or otherwise causes death, bodily injury, or serious bodily injury to an individual;

(ii) uses or brandishes a firearm or other dangerous weapon; or

(iii) engages in conduct that consciously or recklessly places another in serious danger of death or serious bodily injury;

(F) consider whether a downward adjustment is appropriate if the offense is a first offense and involves the smuggling only of the alien's spouse or child; and

(G) consider whether any other aggravating or mitigating circumstances warrant upward or downward sentencing adjustments.

(3) EMERGENCY AUTHORITY TO SENTENCING COMMISSION. The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

(f) EFFECTIVE DATE.-This section and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act.

SEC. 204. INCREASED NUMBER OF ASSISTANT UNITED STATES ATTORNEYS.

(a) IN GENERAL. The number of Assistant United States Attorneys employed by the Department of Justice for the fiscal year 1997 shall be increased by at least 25 above the number of Assistant United States Attorneys that were authorized to be employed as of September 30, 1996.

(b) ASSIGNMENT. Individuals employed to fill the additional positions described in subsection (a) shall prosecute persons who bring into the United States or harbor illegal aliens or violate other criminal statutes involving illegal aliens.

SEC. 205. UNDERCOVER INVESTIGATION AUTHORITY.

(a) IN GENERAL. Title II is amended by adding at the end the following new section:

UNDERCOVER INVESTIGATION AUTHORITY

SEC. 294. (a) IN GENERAL.-With respect to any undercover investigative operation of the Service which is necessary for the detection and prosecution of crimes against the United States

(1) sums appropriated for the Service may be used for leasing space within the United States and the territories and possessions of the United States without regard to the following provisions of law:

(A) section 3679(a) of the Revised Statutes (31 U.S.C. 1341),

(B) section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)),

(C) section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255),

(D) the third undesignated paragraph under the heading 'Miscellaneous' of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34),

(E) section 3648 of the Revised Statutes (31 U.S.C. 3324),

(F) section 3741 of the Revised Statutes (41 U.S.C. 22), and

(G) subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 395; 41 U.S.C. 254 (a) and (c));

(2) sums appropriated for the Service may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to the provisions of section 304 of the Government Corporation Control Act (31 U.S.C. 9102);

(3) sums appropriated for the Service, and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and of section 3639 of the Revised Statutes (31 U.S.C. 3302); and

(4) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3617 of the Revised Statutes (31 U.S.C. 3302).

The authority set forth in this subsection may be exercised only upon written certification of the Commissioner, in consultation with the Deputy Attorney General, that any action authorized by paragraph (1), (2), (3), or (4) is necessary for the conduct of the undercover operation.

(b) DISPOSITION OF PROCEEDS NO LONGER REQUIRED. As soon as practicable after the proceeds from an undercover investigative operation, carried out under paragraphs (3) and (4) of subsection (a), are no longer necessary for the conduct of the operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) DISPOSITION OF CERTAIN CORPORATIONS AND BUSINESS ENTITIES. If a corporation or business entity established or acquired as part of an undercover operation under paragraph (2) of subsection (a) with a net value of over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or Commissioner's designee determines practicable, shall report the circumstances to the Attorney General, the Director of the Office of Management and Budget, and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) FINANCIAL AUDITS. The Service shall conduct detailed financial audits of closed undercover operations on a quarterly basis and shall report the results of the audits in writing to the Deputy Attorney General".

(b) CLERICAL AMENDMENT. The table of contents is amended by inserting after the item relating

to section 293 the following:

Sec. 294. Undercover investigation authority.

Subtitle B - Deterrence of Document Fraud

Sec. 211. Increased criminal penalties for fraudulent use of government-issued documents.

Sec. 212. New document fraud offenses; new civil penalties for document fraud.

Sec. 214. Criminal penalty for knowingly presenting document which fails to contain reasonable basis in law or fact.

Sec. 217. Criminal forfeiture for passport and visa related offenses.

Sec. 218. Penalties for involuntary servitude.

Sec. 219. Admissibility of videotaped witness testimony.

Sec. 220. Subpoena authority in document fraud enforcement.

SEC. 211. INCREASED CRIMINAL PENALTIES FOR FRAUDULENT USE OF GOVERNMENT-ISSUED DOCUMENTS.

(a) FRAUD AND MISUSE OF GOVERNMENT-ISSUED IDENTIFICATION DOCUMENTS. (1) Section 1028(b) of title 18, United States Code, is amended

(A) in paragraph (1), by inserting "except as provided in paragraphs (3) and (4)," after "(1)" and by striking "five years" and inserting "15 years";

(B) in paragraph (2), by inserting "except as provided in paragraphs (3) and (4)," after "(2)" and by striking "and" at the end;

(C) by redesignating paragraph (3) as paragraph (5); and

(D) by inserting after paragraph (2) the following new paragraphs:

"(3) a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed to facilitate a drug trafficking crime (as defined in section 929(a)(2) of this title);

"(4) a fine under this title or imprisonment for not more than 25 years, or both, if the offense is committed to facilitate an act of international terrorism (as defined in section 2331(1) of this title); and".

(2) Sections 1425 through 1427, sections 1541 through 1544, and section 1546(a) of title 18, United States Code, are each amended by striking "imprisoned not more" and all that follows through "years" each place it appears and inserting the following: "imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)".

(b) CHANGES TO THE SENTENCING LEVELS.

(1) IN GENERAL. Pursuant to the Commission's authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines for offenders convicted of violating, or conspiring to violate, sections 1028(b)(1), 1425 through 1427, 1541 through 1544, and 1546(a) of title 18, United States Code, in accordance with this subsection.

(2) REQUIREMENTS. In carrying out this subsection, the Commission shall, with respect to the offenses referred to in paragraph (1)

(A) increase the base offense level for such offenses at least 2 offense levels above the level in effect on the date of the enactment of this Act;

(B) review the sentencing enhancement for number of documents or passports involved (U.S.S.G. 2L2.1(b)(2)), and increase the upward adjustment by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

(D) impose an additional appropriate sentencing enhancement upon an offender with 2 or more prior felony convictions arising out of separate and prior prosecutions for offenses that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category; and

(E) consider whether any other aggravating or mitigating circumstances warrant upward or downward sentencing adjustments.

(3) EMERGENCY AUTHORITY TO SENTENCING COMMISSION. The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

(c) EFFECTIVE DATE. This section and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act.

SEC. 212. NEW DOCUMENT FRAUD OFFENSES; NEW CIVIL PENALTIES FOR DOCUMENT FRAUD.

(a) ACTIVITIES PROHIBITED. Section 274C(a) (8 U.S.C. 1324c(a)) is amended

(1) in paragraph (1), by inserting before the comma at the end the following: "or to obtain a benefit under this Act";

(2) in paragraph (2), by inserting before the comma at the end the following: "or to obtain a benefit under this Act";

(3) in paragraph (3)

(A) by inserting “or with respect to” after “issued to”;

(B) by adding before the comma at the end the following: “or obtaining a benefit under this Act”; and

(C) by striking “or” at the end;

(4) in paragraph (4)

(A) by inserting “or with respect to” after “issued to”;

(B) by adding before the period at the end the following: “or obtaining a benefit under this Act”; and

(C) by striking the period at the end and inserting “, or”; and

(5) by adding at the end the following new paragraphs:

“(5) to prepare, file, or assist another in preparing or filing, any application for benefits under this Act, or any document required under this Act, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted, or

“(6)(A) to present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and (B) to fail to present such document to an immigration officer upon arrival at a United States port of entry”.

(b) DEFINITION OF FALSELY MAKE. Section 274C (8 U.S.C. 1324c), as amended by section 213 of this division, is further amended by adding at the end the following new subsection:

“(f) FALSELY MAKE. For purposes of this section, the term ‘falsely make’ means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted”.

(c) CONFORMING AMENDMENT. Section 274C(d)(3) (8 U.S.C. 1324c(d)(3)) is amended by striking "each document used, accepted, or created and each instance of use, acceptance, or creation" each place it appears and inserting "each document that is the subject of a violation under subsection (a)".

(d) WAIVER BY ATTORNEY GENERAL. Section 274C(d) (8 U.S.C. 1324c(d)) is amended by adding at the end the following new paragraph:

“(7) WAIVER BY ATTORNEY GENERAL. The Attorney General may waive the penalties imposed by this section with respect to an alien who knowingly violates subsection (a)(6) if the alien is granted asylum under section 208 or withholding of deportation under section 243(h)”.

(e) EFFECTIVE DATE. Section 274C(f) of the Immigration and Nationality Act, as added by subsection (b), applies to the preparation of applications before, on, or after the date of the enactment of this Act.

SEC. 217. CRIMINAL FORFEITURE FOR PASSPORT AND VISA RELATED OFFENSES.

Section 982(a) of title 18, United States Code, is amended by inserting after paragraph (5) the following new paragraph:

"(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law

"(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of a violation of, or a conspiracy to violate, subsection (a); and

"(ii) any property real or personal

"(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of a violation of, or a conspiracy to violate, subsection (a), section 274A(a)(1) or 274A(a)(2) of the Immigration and Nationality Act, or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title; or

"(II) that is used to facilitate, or is intended to be used to facilitate, the commission of a violation of, or a conspiracy to violate, subsection (a), section 274A(a)(1) or 274A(a)(2) of the Immigration and Nationality Act, or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title.

The court, in imposing sentence on such person, shall order that the person forfeit to the United States all property described in this subparagraph.

"(B) The criminal forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsections (a) and (d) of such section 413".

SEC. 218. CRIMINAL PENALTIES FOR INVOLUNTARY SERVITUDE.

(a) AMENDMENTS TO TITLE 18.-Sections 1581, 1583, 1584, and 1588 of title 18, United States Code, are amended by striking "five" each place it appears and inserting "10".

(b) REVIEW OF SENTENCING GUIDELINES.-The United States Sentencing Commission shall ascertain whether there exists an unwarranted disparity

(1) between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for kidnapping offenses in effect on the date of the enactment of this Act; and

(2) between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for alien smuggling offenses in effect on the date of the enactment of this Act and after the amendment made by subsection (a).

(c) AMENDMENT OF SENTENCING GUIDELINES.

(1) IN GENERAL. Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review its guidelines on sentencing for peonage, involuntary

servitude, and slave trade offenses under sections 1581 through 1588 of title 18, United States Code, and shall amend such guidelines as necessary to

(A) reduce or eliminate any unwarranted disparity found under subsection (b) that exists between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for kidnapping offenses and alien smuggling offenses;

(B) ensure that the applicable guidelines for defendants convicted of peonage, involuntary servitude, and slave trade offenses are sufficiently stringent to deter such offenses and adequately reflect the heinous nature of such offenses; and

(C) ensure that the guidelines reflect the general appropriateness of enhanced sentences for defendants whose peonage, involuntary servitude, or slave trade offenses involve

(i) a large number of victims;

(ii) the use or threatened use of a dangerous weapon; or

(iii) a prolonged period of peonage or involuntary servitude.

(2) EMERGENCY AUTHORITY TO SENTENCING COMMISSION. The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

(d) EFFECTIVE DATE.-This section and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act.

SEC. 219. ADMISSIBILITY OF VIDEOTAPED WITNESS TESTIMONY.

Section 274 (8 U.S.C. 1324) is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence".

SEC. 220. SUBPOENA AUTHORITY IN DOCUMENT FRAUD ENFORCEMENT.

Section 274C(d)(1) (8 U.S.C. 1324c(d)(1)) is amended

(1) by striking “and” at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting “, and”; and

(3) by inserting after subparagraph (B) the following:

“(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).”

TITLE IV-ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

Subtitle A - Pilot Programs for Employment Eligibility Confirmation

Sec. 401. Establishment of programs.

Sec. 402. Voluntary election to participate in a pilot program.

Sec. 403. Procedures for participants in pilot programs.

Sec. 404. Employment eligibility confirmation system.

Sec. 405. Reports.

Subtitle B - Other Provisions Relating to Employer Sanctions

Sec. 411. Limiting liability for certain technical violations of paperwork requirements.

Sec. 412. Paperwork and other changes in the employer sanctions program.

Sec. 413. Report on additional authority or resources needed for enforcement of employer sanctions provisions.

Sec. 414. Reports on earnings of aliens not authorized to work.

Sec. 415. Authorizing maintenance of certain information on aliens.

Sec. 416. Subpoena authority.

Subtitle C - Unfair Immigration-Related Employment Practices

Sec. 421. Treatment of certain documentary practices as unfair immigration-related employment practices.

SEC. 401. ESTABLISHMENT OF PROGRAMS.

(a) IN GENERAL. The Attorney General shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

(b) IMPLEMENTATION DEADLINE; TERMINATION. The Attorney General shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act. Unless the Congress otherwise provides, the Attorney General shall terminate a pilot program at the end of the 4-year period beginning on the first day the pilot program is in effect.

(c) SCOPE OF OPERATION OF PILOT PROGRAMS. The Attorney General shall provide for the operation

(1) of the basic pilot program (described in section 403(a) of this division) in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States;

(2) of the citizen attestation pilot program (described in section 403(b) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2)(A) of this division; and

(3) of the machine-readable-document pilot program (described in section 403(c) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2) of this division.

(d) REFERENCES IN SUBTITLE. In this subtitle

(1) PILOT PROGRAM REFERENCES. The terms "program" or "pilot program" refer to any of the 3 pilot programs provided for under this subtitle.

(2) CONFIRMATION SYSTEM. The term "confirmation system" means the confirmation system established under section 404 of this division.

(3) REFERENCES TO SECTION 274A. Any reference in this subtitle to section 274A (or a subdivision of such section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act.

(4) I-9 OR SIMILAR FORM. The term "I-9 or similar form" means the form used for purposes of section 274A(b)(1)(A) or such other form as the Attorney General determines to be appropriate.

(5) LIMITED APPLICATION TO RECRUITERS AND REFERRERS. Any reference to recruitment or referral (or a recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(a)(1)(B)(ii).

(6) UNITED STATES CITIZENSHIP. The term "United States citizenship" includes United States nationality.

(7) STATE. The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

(a) VOLUNTARY ELECTION. Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (e), the Attorney General may not require any person or other entity to participate in a pilot program.

(b) BENEFIT OF REBUTTABLE PRESUMPTION.

(1) IN GENERAL. If a person or other entity is participating in a pilot program and obtains

confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated section 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

(2) CONSTRUCTION. Paragraph (1) shall not be construed as preventing a person or other entity that has an election in effect under subsection (a) from establishing an affirmative defense under section 274A(a)(3) if the person or entity complies with the requirements of section 274A(a)(1)(B) but fails to obtain confirmation under paragraph (1).

c) GENERAL TERMS OF ELECTIONS.

(1) IN GENERAL. An election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Attorney General shall specify. The Attorney General may not impose any fee as a condition of making an election or participating in a pilot program.

(2) SCOPE OF ELECTION.

(A) IN GENERAL. Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply (during the period in which the election is in effect)

(i) to all its hiring (and all recruitment or referral) in the State (or States) in which the pilot program is operating, or
(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES. In addition, the Attorney General may permit a person or entity electing

(i) the basic pilot program (described in section 403(a) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating, or

(ii) the citizen attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

(3) ACCEPTANCE AND REJECTION OF ELECTIONS.
(A) IN GENERAL. Except as provided in subparagraph (B), the Attorney General shall accept all elections made under subsection (a).

(B) REJECTION OF ELECTIONS. The Attorney General may reject an election by a person or other entity under this section or limit its applicability to certain States or places of hiring (or recruitment or referral) if the Attorney General has determined that there are insufficient resources to provide appropriate services under a pilot program for the person's or entity's hiring (or recruitment or referral) in any or all States or places of hiring.

(4) TERMINATION OF ELECTIONS. The Attorney General may terminate an election by a person or

other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A person or other entity may terminate an election in such form and manner as the Attorney General shall specify.

(d) CONSULTATION, EDUCATION, AND PUBLICITY.

(1) CONSULTATION. The Attorney General shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

(2) PUBLICITY. The Attorney General shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the advantages to employers (and recruiters and referrers) of making an election under this section.

(3) ASSISTANCE THROUGH DISTRICT OFFICES. The Attorney General shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented

(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the requirements of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

(e) SELECT ENTITIES REQUIRED TO PARTICIPATE IN A PILOT PROGRAM.

(1) FEDERAL GOVERNMENT.

(A) EXECUTIVE DEPARTMENTS.

(i) IN GENERAL. Each Department of the Federal Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

(ii) ELECTION. Subject to clause (iii), the Secretary of each such Department

(I) shall elect the pilot program (or programs) in which the Department shall participate, and (II) may limit the election to hiring occurring in certain States (or geographic areas) covered by the program (or programs) and in specified divisions within the Department, so long as all hiring by such divisions and

in such locations is covered.

(iii) ROLE OF ATTORNEY GENERAL. The Attorney General shall assist and coordinate elections under this subparagraph in such manner as assures that-

(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a program, and

(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

(B) LEGISLATIVE BRANCH. Each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hiring in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which the Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

(2) APPLICATION TO CERTAIN VIOLATORS. An order under section 274A(e)(4) or section 274B(g) of the Immigration and Nationality Act may require the subject of the order to participate in, and comply with the terms of, a pilot program with respect to the subject's hiring (or recruitment or referral) of individuals in a State covered by such a program.

(3) CONSEQUENCE OF FAILURE TO PARTICIPATE. If a person or other entity is required under this subsection to participate in a pilot program and fails to comply with the requirements of such program with respect to an individual

(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual, and

(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A).

Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

(f) CONSTRUCTION. This subtitle shall not affect the authority of the Attorney General under any other law (including section 274A(d)(4)) to conduct demonstration projects in relation to section 274A.

SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

(a) BASIC PILOT PROGRAM. A person or other entity that elects to participate in the basic pilot program described in this subsection agrees to conform to the following procedures in the case of the hiring (or recruitment or referral) for employment in the United States of each individual covered by the election:

(1) PROVISION OF ADDITIONAL INFORMATION. The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I-9 or similar form

(A) the individual's social security account number, if the individual has been issued such a number, and

(B) if the individual does not attest to United States citizenship under section 274A(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Attorney General shall specify, and shall retain the original form and make it available for inspection for the period and in the manner required of I-9 forms under section 274A(b)(3).

(2) PRESENTATION OF DOCUMENTATION.

(A) IN GENERAL. The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

(i) A document referred to in section 274A(b)(1)(B)(ii) (as redesignated by section 412(a) of this division) must be designated by the Attorney General as suitable for the purpose of identification in a pilot program.

(ii) A document referred to in section 274A(b)(1)(D) must contain a photograph of the individual.

(iii) The person or other entity has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably appears on its face to be genuine and it reasonably appears to pertain to the individual whose identity and work eligibility is being confirmed.

(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION. If the Attorney General finds that a pilot program would reliably determine with respect to an individual whether

(i) the person with the identity claimed by the individual is authorized to work in the United States, and

(ii) the individual is claiming the identity of another person, if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of such section, the Attorney General may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien sha ll be deemed to be a verification of the individual's identity.

(3) SEEKING CONFIRMATION.

(A) IN GENERAL. The person or other entity shall make an inquiry, as provided in section 404(a)(1) of this division, using the confirmation system to seek confirmation of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Attorney General) after the date of the hiring (or recruitment or referral, as the case may be).

(B) EXTENSION OF TIME PERIOD. If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirmation system cannot receive inquiries at all times during a day, the person or entity merely has to assert that t he entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

(4) CONFIRMATION OR NONCONFIRMATION.

(A) CONFIRMATION UPON INITIAL INQUIRY. If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the confirmation system within the time period specified under section 404(b) of this division, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

(B) NONCONFIRMATION UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.

(i) NONCONFIRMATION. If the person or other entity receives a tentative nonconfirmation of an individual's identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall so inform the individual for whom the confirmation is sought.

(ii) NO CONTEST. If the individual does not contest the nonconfirmation within the time period specified in section 404(c) of this division, the nonconfirmation shall be considered final. The person or entity shall then record on the I-9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

(iii) CONTEST. If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(c) of this division. The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirme d under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

(iv) RECORDING OF CONCLUSION ON FORM. If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(c) of this division regarding an individual, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

(C) CONSEQUENCES OF NONCONFIRMATION.

(i) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT. If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Attorney General of such fact through the confirmation system or in such other manner as the Attorney Gene ral may specify.

(ii) FAILURE TO NOTIFY. If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less than $500 and no more than $1,000 for each individual with respect to whom such violation occurred.

(iii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION. If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

(b) CITIZEN ATTESTATION PILOT PROGRAM.

(1) IN GENERAL. Except as provided in paragraphs (3) through (5), the procedures applicable under the citizen attestation pilot program under this subsection shall be the same procedures as those under the basic pilot program under subsection (a).

(2) RESTRICTIONS.

(A) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM. The Attorney General may not provide for the operation of the citizen attestation pilot program in a State unless each driver's license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State

(i) contains a photograph of the individual involved, and

(ii) has been determined by the Attorney General to have security features, and to have been issued through application and issuance procedures, which make such document sufficiently resistant to

counterfeiting, tampering, and fraudulent use that it is a reliable means of identification for purposes of this section.

(B) AUTHORIZATION TO LIMIT EMPLOYER PARTICIPATION. The Attorney General may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Attorney General determines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

(3) NO CONFIRMATION REQUIRED FOR CERTAIN INDIVIDUALS ATTESTING TO U.S. CITIZENSHIP. In the case of a person or other entity hiring (or recruiting or referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I-9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)

(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B)(i) or (D) of such section; and

(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only if the person or entity retains the form and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3).

(4) WAIVER OF DOCUMENT PRESENTATION REQUIREMENT IN CERTAIN CASES.

(A) IN GENERAL. In the case of a person or entity that elects, in a manner specified by the Attorney General consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

(B) RESTRICTION. The Attorney General shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

(5) NONREVIEWABLE DETERMINATIONS. The determinations of the Attorney General under paragraphs (2) and (4) are within the discretion of the Attorney General and are not subject to judicial or administrative review.

(c) MACHINE-READABLE-DOCUMENT PILOT PROGRAM.

(1) IN GENERAL. Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the basic pilot program under subsection (a).

(2) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM. The Attorney General may not provide for the operation of the machine-readable-document pilot program in a State unless driver's licenses and similar identification documents described in section 274A(b)(1)(D)(i) issued by the State include a machine-readable social security account number.

(3) USE OF MACHINE-READABLE DOCUMENTS. If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (2) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual's identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

(d) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM. No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) IN GENERAL. The Attorney General shall establish a pilot program confirmation system through which the Attorney General (or a designee of the Attorney General, which may be a nongovernmental entity)

(1) responds to inquiries made by electing persons and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.To the extent practicable, the Attorney General shall seek to establish such a system using one or more nongovernmental entities.

(b) INITIAL RESPONSE. The confirmation system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

(c) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION. In cases of tentative nonconfirmation, the Attorney General shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Immigration and Naturalization Service, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

(d) DESIGN AND OPERATION OF SYSTEM. The confirmation system shall be designed and operated-

(1) to maximize its reliability and ease of use by persons and other entities making elections under section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

(2) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

(3) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

(4) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including

(A) the selective or unauthorized use of the system to verify eligibility;

(B) the use of the system prior to an offer of employment; or

(C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

(e) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY. As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation).

(f) RESPONSIBILITIES OF THE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE. As part of the confirmation system, the Commissioner of the Immigration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) of this division which are pro vided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

(g) UPDATING INFORMATION. The Commissioners of Social Security and the Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subsection (c).

(h) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.

(1) IN GENERAL. Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under a pilot program.

(2) NO NATIONAL IDENTIFICATION CARD. Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

SEC. 405. REPORTS.

The Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall

(1) assess the degree of fraudulent attesting of United States citizenship,

(2) include recommendations on whether or not the pilot programs should be continued or modified, and

(3) assess the benefits of the pilot programs to employers and the degree to which they assist in the enforcement of section 274A.

SUBTITLE B-OTHER PROVISIONS RELATING TO EMPLOYER SANCTIONS

SEC. 411. LIMITING LIABILITY FOR CERTAIN TECHNICAL VIOLATIONS OF PAPERWORK REQUIREMENTS.

(a) IN GENERAL. Section 274A(b) (8 U.S.C. 1324a(b)) is amended by adding at the end the following new paragraph:

"(6) GOOD FAITH COMPLIANCE.

"(A) IN GENERAL. Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

"(B) EXCEPTION IF FAILURE TO CORRECT AFTER NOTICE. Subparagraph (A) shall not apply if

"(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

"(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

"(iii) the person or entity has not corrected the failure voluntarily within such period.

"(C) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.-Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2)".

(b) EFFECTIVE DATE.-The amendment made by subsection (a) shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 412. PAPERWORK AND OTHER CHANGES IN THE EMPLOYER SANCTIONS PROGRAM.

(a) REDUCING THE NUMBER OF DOCUMENTS ACCEPTED FOR EMPLOYMENT VERIFICATION. Section 274A(b)(1) (8 U.S.C. 1324a(b)(1)) is amended

(1) in subparagraph (B)

(A) by striking clauses (ii) through (iv),

(B) in clause (v), by striking "or other alien registration card, if the card" and inserting ", alien registration card, or other document designated by the Attorney General, if the document" and redesignating such clause as clause (ii), and

(C) in clause (ii), as so redesignated

(i) in subclause (I), by striking "or" before "such other personal identifying information" and inserting "and",

(ii) by striking "and" at the end of subclause (I),

(iii) by striking the period at the end of subclause (II) and inserting ", and", and

(iv) by adding at the end the following new subclause:

"(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.";

(2) in subparagraph (C)

(A) by adding "or" at the end of clause (i),

(B) by striking clause (ii), and

(C) by redesignating clause (iii) as clause (ii); and

(3) by adding at the end the following new subparagraph:

"(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS. If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection".

(b) REDUCTION OF PAPERWORK FOR CERTAIN EMPLOYEES. Section 274A(a) (8 U.S.C. 1324a(a)) is amended by adding at the end the following new paragraph:

(6) TREATMENT OF DOCUMENTATION FOR CERTAIN EMPLOYEES.

(A) IN GENERAL. For purposes of this section, if

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual, the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) PERIOD. The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) LIABILITY.

(i) IN GENERAL. If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) REBUTTAL OF PRESUMPTION. The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) EXCEPTION. Clause (i) shall not apply in any prosecution under subsection (f)(1)".

(c) ELIMINATION OF DATED PROVISIONS. Section 274A (8 U.S.C. 1324a) is amended by striking subsections (i) through (n).

(d) CLARIFICATION OF APPLICATION TO FEDERAL GOVERNMENT. Section 274A(a) (8 U.S.C. 1324a(a)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

(7) APPLICATION TO FEDERAL GOVERNMENT. For purposes of this section, the term 'entity' includes an entity in any branch of the Federal Government.

(e) EFFECTIVE DATES.

(1) The amendments made by subsection (a) shall apply with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of the enactment of

this Act) as the Attorney General shall designate.

(2) The amendment made by subsection (b) shall apply to individuals hired on or after 60 days after the date of the enactment of this Act.

(3) The amendment made by subsection (c) shall take effect on the date of the enactment of this Act.

(4) The amendment made by subsection (d) applies to hiring occurring before, on, or after the date of the enactment of this Act, but no penalty shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act for such hiring occurring before such date.

SEC. 413. REPORT ON ADDITIONAL AUTHORITY OR RESOURCES NEEDED FOR ENFORCEMENT OF EMPLOYER SANCTIONS PROVISIONS.

(a) IN GENERAL. Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on any additional authority or resources needed

(1) by the Immigration and Naturalization Service in order to enforce section 274A of the Immigration and Nationality Act, or

(2) by Federal agencies in order to carry out the Executive Order of February 13, 1996 (entitled "Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Naturalization Act Provisions") and to expand the restrictions in such order to cover agricultural subsidies, grants, job training programs, and other Federally subsidized assistance programs.

(b) REFERENCE TO INCREASED AUTHORIZATION OF APPROPRIATIONS.-For provision increasing the authorization of appropriations for investigators for violations of sections 274 and 274A of the Immigration and Nationality Act, see section 131 of this division.

SEC. 414. REPORTS ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.

(a) IN GENERAL.-Subsection (c) of section 290 (8 U.S.C. 1360) is amended to read as follows:

"(c)(1) Not later than 3 months after the end of each fiscal year (beginning with fiscal year 1996), the Commissioner of Social Security shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the aggregate quantity of social security account numbers issued to aliens not authorized to be employed, with respect to which, in such fiscal year, earnings were reported to the Social Security Administration.

"(2) If earnings are reported on or after January 1, 1997, to the Social Security Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Attorney General with information regarding the name and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings. The information shall be provided in an electronic form agreed upon by the Commissioner and the Attorney General."

(b) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS. The Commissioner of Social Security shall transmit to the Attorney General, by not later than 1 year after the date of the enactment of this Act, a report on the extent to which social security account numbers and cards are

used by aliens for fraudulent purposes.

SEC. 415. AUTHORIZING MAINTENANCE OF CERTAIN INFORMATION ON ALIENS.

Section 264 (8 U.S.C. 1304) is amended by adding at the end the following new subsection:

"(f) Notwithstanding any other provision of law, the Attorney General is authorized to require any alien to provide the alien's social security account number for purposes of inclusion in any record of the alien maintained by the Attorney General or the Service."

SEC. 416. SUBPOENA AUTHORITY.

Section 274A(e)(2) (8 U.S.C. 1324a(e)(2)) is amended

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ", and"; and

(3) by inserting after subparagraph (B) the following:

"(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2)."

SUBTITLE C - UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

SEC. 421. TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS UNFAIR IMMIGRATION- RELATED EMPLOYMENT PRACTICES.

(a) IN GENERAL. Section 274B(a)(6) (8 U.S.C. 1324b(a)(6)) is amended

(1) by striking "For purposes of paragraph (1), a" and inserting "A"; and

(2) by striking "relating to the hiring of individuals" and inserting the following: "if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)."

(b) EFFECTIVE DATE. The amendments made by subsection (a) shall apply to requests made on or after the date of the enactment of this Act.

POLICY AND STATUTES

Federal Immigration Statutes

INA
Immigration and Nationality Act

Immigration and Nationality Act
Relevant Sections

INA Sec. 274. [8 U.S.C. 1324] BRINGING IN AND HARBORING CERTAIN ALIENS

(a) Criminal Penalties.

(1) (A) Any person who

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law, shall be punished as provided in subparagraph (B); or

(v) (1) (I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs-

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) (2) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, (3) be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), (4) be fined under title 18, United States Code, imprisoned not more than 5 years, or both;
(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) (5) during and in relation to which

the person causes serious bodily injury (as defined in section 1365 of title 18, United States Code) to, or places in jeopardy the life of, any person, be fined under title 18, United States Code, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, United States Code, or both.

1(a) (C) It is not a violation of clauses (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs (6)

(A) be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both; or

(B) in the case of

(i) (7) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) (8) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry, be fined under title 18, United States Code, and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3) (A) (9) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be

fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(B) An alien described in this subparagraph is an alien who

(i) is an unauthorized alien (as defined in section 274A(h)(3)), and

(ii) has been brought into the United States in violation of this subsection.

(4) (11) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

(C) (i) aliens were transported in a manner that endangered their lives; or

(ii) the aliens presented a life-threatening health risk to people in the United States.

(b) 9(a) SEIZURE AND FORFEITURE

(1) IN GENERAL- Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) APPLICABLE PROCEDURES- Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS- In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(c) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(d) (10) Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

(e) (12) OUTREACH PROGRAM- The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.

INA Sec. 274A. [8 U.S.C. 1324a] **UNLAWFUL EMPLOYMENT OF ALIENS**

(a) Making Employment of Unauthorized Aliens Unlawful.

(1) In general. It is unlawful for a person or other entity

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B) (i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).

(2) Continuing employment. It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense. A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract. For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragra ph (1)(A).

(5) Use of state employment agency documentation.-For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(6) (1) Treatment of documentation for certain employees.

(A) In general. For purposes of this section, if

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual, the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) Period. The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability.

(i) In general. If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) Rebuttal of presumption. The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) Exception. Clause (i) shall not apply in any prosecution under subsection (f)(1).

(7) (2) Application to Federal Government. For purposes of this section, the term "entity" includes an entity in any branch of the Federal Government.

(b) Employment Verification System. The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation.

(A) In general. The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

Such attestation may be manifested by either a hand-written or an electronic signature. 2(a) A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity. A document described in this subparagraph is an individual's

(i) United States passport;

(ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document

(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

(II) is evidence of authorization of employment in the United States, and

(III) (3) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(C) Documents evidencing employment authorization. A document described in this subparagraph is an individual's

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

(ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual. A document described in this subparagraph is an individual's

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(E) (4) Authority to prohibit use of certain documents. If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

(2) Individual attestation of employment authorization. The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or an electronic signature . 2(a)

(3) Retention of verification form. After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain a paper, microfiche, microfilm, or electronic version of 2(a) the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated, whichever is later.

(4) Copying of documentation permitted. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form. A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(6) (5) Good faith compliance.

(A) In general. Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

(B) Exception if failure to correct after notice. Subparagraph (A) shall not apply if

(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

(iii) the person or entity has not corrected the failure voluntarily within such period.

(C) Exception for pattern or practice violators. Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

(c) No Authorization of National Identification Cards. Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and Changes in Employment Verification System.

(1) Presidential monitoring and improvements in system.

(A) Monitoring. The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system. To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system. Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity. The system must be capable of reliably determining whether

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents. If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system. Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information. The system must protect the privacy and security of personal information and identifiers utilized in the system.
(E) Limited denial of verification. A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes. The system may not be used for law enforcement

purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(G) Restriction on use of new documents. If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

(3) Notice to congress before implementing changes.

(A) In general. The President may not implement any change under paragraph (1) unless at least

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D), before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report. In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes.

(i) Hearings and review. The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action. No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.
(D) Major changes defined. As used in this paragraph, the term "major change" means a change which

would

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

(E) General revenue funding of social security card changes. Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

(4) Demonstration projects.

(A) Authority.-The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

(B) Reports on projects. The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance.

(1) Complaints and investigations. The Attorney General shall establish procedures

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases

of violations of subsection (a) or (g)(1) under this subsection.

(2) Authority in investigations. In conducting investigations and hearings under this subsection

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) (6) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing.

(A) In general. Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing. Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders. If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations. With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection
(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty

in an amount of

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations. With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Order for prohibited indemnity bonds. With respect to a violation of subsection (g)(1), the order under this subsection may provide for the remedy described in subsection (g)(2).

(7) Administrative appellate review. The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modif ied or vacated) the decision and order is referred to the Attorney General pursuant to regulations, 7/ in which case the decision and order of the Attorney General shall become the final agency decision and order 8/ under this subsection. The Attorney General may not delegate the Attorney General's authority under this

paragraph to any entity which has review authority over immigration-related matters.

(8) Judicial review. A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) Enforcement of orders. If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal Penalties and Injunctions for Pattern or Practice Violations.

(1) Criminal penalty. Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations. Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of Indemnity Bonds.

(1) Prohibition. It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty. Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e), to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous Provisions.

(1) Documentation. In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption. The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien. As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

(i)-(n) (9)

FOOTNOTES FOR SECTION 274A

INA: ACT 274A FN 1

FN 1 Added by / 412(b) of IIRIRA , effective as "to individuals hired on or after 60 days after the date of enactment of this Act."

INA: ACT 274A FN 2

FN 2 Paragraph (7) added by / 412(d) of IIRIRA , effective for "hiring occurring before, on, or after the date of the enactment of [IIRIRA], but no penalty shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act for such hiring occurring before such date."

INA: ACT 274A FN 2a

FN 2a Section 274A(b)(1)(A), (2) and (3) were amended by Section 1 of Public Law 108-390 , dated October 30, 2004.

EFFECTIVE DATE.–The amendments of Public Law 108-390 shall take effect on the earlier of–

(1) the date on which final regulations implementing such amendments take effect; or

(2) 180 days after the date of the enactment of this Act.

INA: ACT 274A FN 3

FN 3 Added by / 412(a) of IIRIRA , effective "with respect to hiring (or recruitment or referral) occurring

on or after such date (not later than 12 months after the date of enactment of [IIRIRA]) as the Attorney shall designate."

INA: ACT274A FN 4

FN 4 Added by / 412(a) of IIRIRA , effective "with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA]) as the Attorney shall designate."

INA: ACT274A FN 5

FN 5 Added by / 411 of IIRIRA , effective for "failures occurring on or after the date of the enactment of [IIRIRA]."

INA: ACT274A FN 6

FN 6 / Added by / 416 of IIRIRA .

INA: ACT274A FN 7

FN 7 Amended by / 379(a)(1) of IIRIRA , effective for "orders issued on or after the date of the enactment of this Act."

INA: ACT274A FN 8

FN 8 Amended by / 379(a)(2) of IIRIRA , effective for "orders issued on or after the date of the enactment of this Act."

INA: ACT274A FN 9

FN 9 Subsections (i) through (n) were struck as "dated provisions" by / 412(c) of IIRIRA.

INA Sec. 274B. [8 U.S.C. 1324b]

UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

(a) Prohibition of Discrimination Based on National Origin or Citizenship Status.

(1) General rule. It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 274A(h)(3)) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment

(A) because of such individual's national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

(2) Exceptions.-Paragraph (1) shall not apply to

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) Definition of protected individual. As used in paragraph (1), the term "protected individual" means an individual who

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 210(a) , or 245A(a)(1), is admitted as a refugee under section 207 , or is granted asylum under section 208 ; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) Additional exception providing right to prefer equally qualified citizens. Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(5) Prohibition of intimidation or retaliation. It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual s o intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of subsections (d) and (g), to have been discriminated against.

(6) (1) Treatment of certain documentary practices as employment practices. A person's or other entity's request, for purposes of satisfying the requirements of section 274A(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of par agraph (1).

(b) Charges of Violations.

(1) In general. Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's

behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation a nd shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints. No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) Special Counsel.

(1) Appointment. The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the "Special Counsel") within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) Duties. The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1).

(3) Compensation. The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

(4) Regional offices. The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) Investigation of Charges.

(1) By special counsel. The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration- related employment practices and, based on such an investigation an d subject to paragraph (3), file a complaint before such a judge.

(2) Private actions. If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days

after the date of receipt of the notice. The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.

(3) Time limitations on complaints. No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

(e) Hearings.

(1) Notice. Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) Judges hearing cases. Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) Complainant as party. Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

(f) Testimony and Authority of Hearing Officers.

(1) Testimony. The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) Authority of administrative law judges. In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.
(g) Determinations.

(1) Order. The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i).

(2) Orders finding violations.

(A) In general. If, upon the preponderance of the evidence, an administrative law judge determines that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) Contents of order.-Such an order also may require the person or entity

(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(5), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay;

(iv)(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against,

(II) except as provided in subclauses (III) and (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual discriminated against,

(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against, and

(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6), to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against;

(v) to post notices to employees about their rights under is section and employers' obligations under section 274A ;

(vi) to educate all personnel involved in hiring and complying with this section or section 274A about the requirements of this section or such section;

(vii) to remove (in an appropriate case) a false performance review or false warning from an employee's personnel file; and

(viii) to lift (in an appropriate case) any restrictions on an employee's assignments, work shifts, or movements.

(C) Limitation on back pay remedy.-In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with the Special Counsel. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such subparagraph. No order shall require the hiring of an individual as an employee or the payment to an

individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) Treatment of distinct entities. In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) Orders not finding violations. If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged and is not engaging in any such unfair immigration related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) Awarding of Attorney's Fees. In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) Review of Final Orders.

(1) In general. Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) Further review. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(j) Court Enforcement of Administrative Orders.

(1) In general. If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

(2) Court enforcement order-Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) Enforcement decree in original review. If, upon appeal of an order under subsection (i)(1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) Awarding of attorney's fees. In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

(k) Termination Dates.

(1) This section shall not apply to discrimination in hiring, recruiting, referring, or discharging of individuals occurring after the date of any termination of the provisions of section 274A, under subsection (l) of that section.

(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 274A(j) if

(A) the Comptroller General determines, and so reports in such report that

(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 274A, or

(ii) such section has created an unreasonable burden on employers hiring such workers; and

(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 274A shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (l) of such section.

(l) Dissemination of Information Concerning Anti-Discrimination Provisions.

(1) Not later than 3 months after the date of the enactment of this subsection, the Special Counsel, in cooperation with the chairman of the Equal Employment Opportunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section and under title VII of the Civil Rights Act of 1964 in connection with unfair immigration-related employment practices. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section and such title.

(2) In order to carry out the campaign under this subsection, the Special Counsel

(A) may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign, and

(B) shall consult with the Secretary of Labor, the chairman of the Equal Employment Opportunity Commission, and the heads of such other agencies as may be appropriate.

(3) There are authorized to be appropriated to carry out this subsection $10,000,000 for each fiscal year (beginning with fiscal year 1991).

FOOTNOTES FOR SECTION 274B

INA: ACT 274B FN 1

FN 1 Amended by / 421 of IIRIRA, effective as to requests made on or after the date of the enactment of [IIRIRA].

PENALTIES FOR DOCUMENT FRAUD

INA Sec. 274C. [8 U.S.C. 1324c]

(a) Activities Prohibited. It is unlawful for any person or entity knowingly

(1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this Act or to obtain a benefit under this Act,

(2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act or to obtain a benefit under this Act,

(3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act or obtaining a benefit under this Act,

(4) to accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b) or obtaining a benefit under this Act , or

(5) (1) to prepare, file, or assist another in preparing or filing, any application for benefits under this Act, or any document required under this Act, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted, or

(6) (A) to present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and (B) to fail to present such document to an immigration officer upon arrival at a United States port of entry.

(b) Exception.-This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of title 18, United States Code.

(c) Construction. Nothing in this section shall be construed to diminish or qualify any of the penalties

available for activities prohibited by this section but proscribed as well in title 18, United States Code.

(d) Enforcement.

(1) Authority in investigations. In conducting investigations and hearings under this subsection

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) (2) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(2) Hearing.

(A) In general. Before imposing an order described in paragraph (3) against a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing. Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders. If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity has violated subsection (a), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (3).

(3) Cease and desist order with civil money penalty. With respect to a violation of subsection (a), the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of

(A) not less than $250 and not more than $2,000 for each document that is the subject of a violation under subsection (a) (3), or

(B) in the case of a person or entity previously subject to an order under this paragraph, not less than $2,000 and not more than $5,000 for each document that is the subject of a violation under subsection (a).
In applying this subsection in the case of a person or entity composed of distinct, physically separate

subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(4) Administrative appellate review. The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modif ied or vacated) the decision and order is referred to the Attorney General pursuant to regulations (4), in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection.

(5) Judicial review. A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(6) Enforcement of orders. If a person or entity fails to comply with a final order issued under this section against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review

(7) (5) Waiver by attorney general. The Attorney General may waive the penalties imposed by this section with respect to an alien who knowingly violates subsection (a)(6) if the alien is granted asylum under section 208 or withholding of removal under section 241(b)(3). (6)

(e) (7) Criminal Penalties for Failure to Disclose Role as Document Preparer. (1) Whoever, in any matter within the jurisdiction of the Service, knowingly and willfully fails to disclose, conceals, or covers up the fact that they have, on behalf of any person and for a fee or other remuneration, prepared or assisted in preparing an application which was falsely made (as defined in subsection (f)) for immigration benefits, shall be fined in accordance with title 18, United States code, imprisoned for not mo re than 5 years, or both, and prohibited from preparing or assisting in preparing, whether or not for a fee or other remuneration, any other such application.

(2) Whoever, having been convicted of a violation of paragraph (1), knowingly and willfully prepares or assists in preparing an application for immigration benefits pursuant to this Act, or the regulations promulgated thereunder, whether or not for a fee or other remuneration and regardless of whether in any matter within the jurisdiction of the Service, shall be fined in accordance with title 18, United States Code, imprisoned for not more than 15 years, or both, and prohibited from preparing or assisting in preparing any other such application.

(f) (8) Falsely Make. For purposes of this section, the term “falsely make” means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted.

FOOTNOTES FOR SECTION 274C
INA: ACT 274C FN 1

FN 1 Paragraphs (5) and (6) (and conforming amendments to paragraphs (1), (2), (3), and (4)) added by / 212(a) of IIRIRA .

INA: ACT 274C FN 2

FN 2 Added by / 220 of IIRIRA (with conforming amendment to subparagraph (B).

INA: ACT 274C FN 3

FN 3 Subparagraphs (A) and (B) amended by / 212(c) of IIRIRA .

INA: ACT 274C FN 4

FN 4 Amended by / 379 of IIRIRA , effective for "orders issued on or after the date of the enactment of this Act."

INA: ACT 274C FN 5
FN 5 Added by / 212(d) of IIRIRA .

INA: ACT 274C FN 6

FN 6 The last part of this sentence was the subject of a secondary amendment by / 308(g)(10)(D) of IIRIRA.

INA: ACT 274C FN 7

FN 7 Added by / 213 of IIRIRA.

INA: ACT 274C FN 8

FN 8 Subsection (f) and conforming amendments to section 274C(d)(3) were added by / 212(b) of IIRIRA and are applicable to the preparation of applications before, on, or after the date of enactment of IIRIRA.

POLICY AND STATUTES

State Statutes - Examples

Arizona Immigration Law

House Engrossed

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2779

AN ACT

AMENDING SECTION 13-2009, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; AMENDING TITLE 41, CHAPTER 23, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2505; AMENDING SECTION 43-1021, ARIZONA REVISED STATUTES; MAKING APPROPRIATIONS; PROVIDING FOR THE DELAYED REPEAL OF TITLE 23, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES AND SECTION 41-2505, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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H.B. 2779

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-2009, Arizona Revised Statutes, is amended to read:

13-2009. Aggravated taking identity of another person or entity; classification

A. A person commits aggravated taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of either:

1. Five or more other persons or entities, including real or fictitious persons or entities, without the consent of the other persons or entities, with the intent to obtain or use the other persons' or entities' identities for any unlawful purpose or to cause loss to the persons or entities whether or not the persons or entities actually suffer any economic loss.

2. Another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose and causes another person or entity to suffer an economic loss of three thousand dollars or more.

3. ANOTHER PERSON, INCLUDING A REAL OR FICTITIOUS PERSON, WITH THE INTENT TO OBTAIN EMPLOYMENT.

B. In an action for aggravated taking the identity of another person or entity under subsection A, paragraph 1 of this section, proof of possession out of the regular course of business of the personal identifying information or entity identifying information of five or more other persons or entities may give rise to an inference that the personal identifying information or entity identifying information of the five or more other persons or entities was possessed for an unlawful purpose.

C. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

D. Aggravated taking the identity of another person or entity is a class 3 felony.

Sec. 2. Title 23, chapter 2, Arizona Revised Statutes, is amended by adding article 2, to read:

ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED ALIENS

23-211. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS STATE OR A COUNTY, CITY OR TOWN THAT ISSUES A LICENSE FOR PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

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3. "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS EMPLOYMENT SERVICES FOR AN EMPLOYER PURSUANT TO AN EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEE AND EMPLOYER.

4. "EMPLOYER" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION THAT TRANSACTS BUSINESS IN THIS STATE, THAT HAS A LICENSE ISSUED BY AN AGENCY IN THIS STATE AND THAT EMPLOYS ONE OR MORE INDIVIDUALS WHO PERFORM EMPLOYMENT SERVICES IN THIS STATE. EMPLOYER INCLUDES THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE AND SELF-EMPLOYED PERSONS.

5. "KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN" MEANS THE ACTIONS DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a. THIS TERM SHALL BE INTERPRETED CONSISTENTLY WITH 8 UNITED STATES CODE SECTION 1324a AND ANY APPLICABLE FEDERAL RULES AND REGULATIONS.

6. "LEGAL EMPLOYMENT AFFIDAVIT" MEANS AN AFFIDAVIT THAT INDICATES THAT AN EMPLOYER DOES NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN, THAT AN EMPLOYER WILL NOT DIRECT ANY OTHER PERSON TO EMPLOY AN UNAUTHORIZED ALIEN AND THAT AN EMPLOYER MAKES A GOOD FAITH EFFORT TO COMPLY WITH ALL FEDERAL AND STATE LAWS REGARDING THE AUTHORIZATION FOR EMPLOYMENT IN THE UNITED STATES OF EVERY EMPLOYEE WHO IS EMPLOYED BY THE EMPLOYER IN THIS STATE.

7. "LICENSE":

(a) MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL, REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

(b) INCLUDES ANY TRANSACTION PRIVILEGE TAX LICENSE.

(c) DOES NOT INCLUDE:

(i) ANY LICENSE ISSUED PURSUANT TO TITLE 45 OR 49.

(ii) ANY PROFESSIONAL LICENSE.

8. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

23-212. Employment of unauthorized aliens; prohibition; legal employment affidavit; violation; classification

A. AN EMPLOYER SHALL NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

B. ON OR BEFORE SEPTEMBER 1, 2007, THE ATTORNEY GENERAL SHALL PRESCRIBE THE FORM OF THE LEGAL EMPLOYMENT AFFIDAVIT THAT IS REQUIRED TO BE FILED UNDER SUBSECTION D OF THIS SECTION. THE ATTORNEY GENERAL SHALL MAKE THE PRESCRIBED LEGAL EMPLOYMENT AFFIDAVIT FORM PUBLICLY AVAILABLE ON THE ATTORNEY GENERAL'S WEBSITE AND SHALL NOTIFY EACH AGENCY AND POLITICAL SUBDIVISION OF THIS STATE OF THE AVAILABILITY OF THE PRESCRIBED AFFIDAVIT FORM. IF AN AGENCY OR POLITICAL SUBDIVISION OF THIS STATE HAS A WEBSITE, THE AGENCY AND POLITICAL SUBDIVISION OF THIS STATE SHALL PROVIDE AN ELECTRONIC LINK FROM THE AGENCY OR POLITICAL SUBDIVISION'S WEBSITE TO THE LEGAL EMPLOYMENT AFFIDAVIT FORM ON THE ATTORNEY GENERAL'S WEBSITE.

C. ON OR BEFORE SEPTEMBER 1, 2007, THE ATTORNEY GENERAL SHALL PRESCRIBE A NOTICE FORM THAT EXPLAINS THE REQUIREMENTS OF THIS SECTION AND HOW TO COMPLY WITH THIS SECTION.

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D. ON OR BEFORE JANUARY 1, 2008, EVERY EMPLOYER SHALL FILE WITH THE SECRETARY OF STATE A SIGNED SWORN LEGAL EMPLOYMENT AFFIDAVIT, ON THE FORM PRESCRIBED BY THE ATTORNEY GENERAL. ANY EMPLOYER THAT BEGINS TO TRANSACT BUSINESS IN THIS STATE AFTER JANUARY 1, 2008 SHALL FILE WITH THE SECRETARY OF STATE WITHIN THIRTY DAYS OF THE INITIAL TRANSACTION OF BUSINESS IN THIS STATE A SIGNED SWORN LEGAL EMPLOYMENT AFFIDAVIT, ON THE FORM PRESCRIBED BY THE ATTORNEY GENERAL. THE SECRETARY OF STATE SHALL ACCEPT ONLY THE LEGAL EMPLOYMENT AFFIDAVIT FORMS THAT ARE PRESCRIBED BY THE ATTORNEY GENERAL.

E. BEGINNING SEPTEMBER 1, 2007 THROUGH OCTOBER 31, 2007, THE LEGAL EMPLOYMENT AFFIDAVIT FORM PRESCRIBED UNDER SUBSECTION B OF THIS SECTION AND THE NOTICE FORM PRESCRIBED UNDER SUBSECTION C OF THIS SECTION SHALL BE PROVIDED TO EMPLOYERS AS FOLLOWS:

1. THE INDUSTRIAL COMMISSION SHALL PROVIDE THE AFFIDAVIT AND NOTICE TO EVERY EMPLOYER CONTAINED IN THE INDUSTRIAL COMMISSION'S DATABASE THAT IS MAINTAINED FOR WORKERS' COMPENSATION INSURANCE PURPOSES UNDER TITLE 23.

2. THE DEPARTMENT OF ECONOMIC SECURITY SHALL PROVIDE THE AFFIDAVIT AND NOTICE TO EVERY EMPLOYER IN THE DATABASE THAT IS MAINTAINED PURSUANT TO SECTION 23-722.01.

F. AFTER JANUARY 1, 2008, THE SECRETARY OF STATE OR THE CORPORATION COMMISSION, AS APPLICABLE, SHALL PROVIDE THE LEGAL EMPLOYMENT AFFIDAVIT FORM PRESCRIBED UNDER SUBSECTION B OF THIS SECTION AND THE NOTICE FORM PRESCRIBED UNDER SUBSECTION C OF THIS SECTION TO EACH PERSON OR ENTITY, AS DEFINED IN SECTION 10-140, THAT SUBMITS A FILING UNDER TITLE 10 OR 29.

G. AFTER JANUARY 1, 2008, THE INDUSTRIAL COMMISSION AND THE DEPARTMENT OF ECONOMIC SECURITY, AS APPLICABLE, SHALL PROVIDE THE LEGAL EMPLOYMENT AFFIDAVIT FORM PRESCRIBED UNDER SUBSECTION B OF THIS SECTION AND THE NOTICE FORM PRESCRIBED UNDER SUBSECTION C OF THIS SECTION TO EVERY NEW EMPLOYER THAT IS ADDED TO EITHER DATABASE DESCRIBED IN SUBSECTION E OF THIS SECTION.

H. AFTER JANUARY 1, 2008, EVERY AGENCY SHALL PROVIDE THE LEGAL EMPLOYMENT AFFIDAVIT FORM PRESCRIBED UNDER SUBSECTION B OF THIS SECTION AND THE NOTICE FORM PRESCRIBED UNDER SUBSECTION C OF THIS SECTION TO ANY EMPLOYER THAT APPLIES FOR A NEW LICENSE THAT IS ISSUED BY THAT AGENCY.

I. EACH EMPLOYER IN THIS STATE IS REQUIRED TO FILE ONLY ONE LEGAL EMPLOYMENT AFFIDAVIT UNDER THIS SECTION WITH THE SECRETARY OF STATE.

J. ON RECEIPT OF A LEGAL EMPLOYMENT AFFIDAVIT UNDER THIS SECTION, THE SECRETARY OF STATE SHALL DISTRIBUTE TO THE EMPLOYER AN INFORMATIONAL PAMPHLET REGARDING THE BASIC PILOT PROGRAM AND FEDERAL IMMIGRATION LAWS. THE SECRETARY OF STATE SHALL MAINTAIN A DATABASE OF EMPLOYERS THAT FILE A LEGAL EMPLOYMENT AFFIDAVIT AND SHALL MAKE THE FILED LEGAL EMPLOYMENT AFFIDAVIT PUBLICLY AVAILABLE ON THE SECRETARY OF STATE'S WEBSITE.

K. AN EMPLOYER COMMITS FALSE SWEARING UNDER THIS SECTION BY FILING A FALSE SWORN LEGAL EMPLOYMENT AFFIDAVIT, BELIEVING IT TO BE FALSE, OR, AFTER FILING THE SWORN LEGAL EMPLOYMENT AFFIDAVIT, BY KNOWINGLY TAKING ACTION THAT VIOLATES THE SWORN AFFIDAVIT.

L. A CRIMINAL ACTION FOR A VIOLATION UNDER SUBSECTION K OF THIS SECTION FOR FILING A FALSE SWORN LEGAL EMPLOYMENT AFFIDAVIT SHALL BE BROUGHT AGAINST THE EMPLOYER BY THE COUNTY ATTORNEY IN THE COUNTY WHERE THE UNAUTHORIZED ALIEN EMPLOYEE IS EMPLOYED.

M. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE COURT SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING AT THE EARLIEST PRACTICABLE DATE.

N. AN EMPLOYER THAT FAILS TO FILE A SIGNED SWORN LEGAL EMPLOYMENT AFFIDAVIT UNDER SUBSECTION D OF THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

O. IF AN EMPLOYER IS CHARGED WITH A VIOLATION OF SUBSECTION N OF THIS SECTION AND FAILS TO FILE A LEGAL EMPLOYMENT AFFIDAVIT WITHIN TEN DAYS AFTER THE DATE ON WHICH THE CRIMINAL CHARGES WERE FILED UNDER SUBSECTION N OF THIS SECTION, THE EMPLOYER IS GUILTY OF A CLASS 6 FELONY.

P. FALSE SWEARING UNDER SUBSECTION K OF THIS SECTION IS:

1. FOR A FIRST VIOLATION DURING A FIVE YEAR PERIOD, A CLASS 6 FELONY. THE EMPLOYER SHALL PAY AN ADDITIONAL PENALTY OF AT LEAST TWO THOUSAND FIVE HUNDRED DOLLARS BUT NOT MORE THAN FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE STATE GENERAL FUND. EXCEPT FOR THE SURCHARGE PROVIDED BY SECTION 16-954, THIS PENALTY IS NOT SUBJECT TO ANY SURCHARGE. ON CONVICTION, THE COURT MAY SUSPEND ANY LICENSE THAT IS HELD BY THE EMPLOYER THAT IS NECESSARY TO OPERATE ITS BUSINESS. IF THE EMPLOYER HOLDS LICENSES AT MORE THAN ONE LOCATION, THE COURT MAY SUSPEND A LICENSE ONLY FOR THE LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. WITHIN FIVE BUSINESS DAYS AFTER A CONVICTION, THE EMPLOYER SHALL FILE A NEW SIGNED SWORN LEGAL EMPLOYMENT AFFIDAVIT WITH THE SECRETARY OF STATE.

2. FOR A SECOND VIOLATION DURING A FIVE YEAR PERIOD, A CLASS 6 FELONY, AND THE COURT SHALL NOT ENTER AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR PURSUANT TO SECTION 13-702, SUBSECTION G. THE EMPLOYER SHALL PAY AN ADDITIONAL PENALTY OF AT LEAST FIVE THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS TO BE DEPOSITED IN THE STATE GENERAL FUND. EXCEPT FOR THE SURCHARGE PROVIDED BY SECTION 16-954, THIS PENALTY IS NOT SUBJECT TO ANY SURCHARGE. ON CONVICTION, THE COURT MAY SUSPEND ANY LICENSE THAT IS HELD BY THE EMPLOYER THAT IS NECESSARY TO OPERATE ITS BUSINESS. IF THE EMPLOYER HOLDS LICENSES AT MORE THAN ONE LOCATION, THE COURT SHALL REVOKE A LICENSE ONLY FOR THE LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. WITHIN FIVE BUSINESS DAYS AFTER A CONVICTION, THE EMPLOYER SHALL FILE A NEW SIGNED SWORN LEGAL EMPLOYMENT AFFIDAVIT WITH THE SECRETARY OF STATE.

3. FOR A THIRD VIOLATION DURING A FIVE YEAR PERIOD, A CLASS 5 FELONY. THE EMPLOYER SHALL PAY AN ADDITIONAL PENALTY OF AT LEAST TEN THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE STATE GENERAL FUND. EXCEPT FOR THE SURCHARGE PROVIDED BY SECTION 16-954, THIS PENALTY IS NOT SUBJECT TO ANY SURCHARGE. ON CONVICTION, THE COURT SHALL REVOKE ANY LICENSE THAT IS HELD BY THE EMPLOYER THAT IS NECESSARY TO OPERATE ITS BUSINESS. IF THE EMPLOYER HOLDS LICENSES AT MORE THAN ONE LOCATION, THE

COURT SHALL REVOKE A LICENSE ONLY FOR THE LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. WITHIN FIVE BUSINESS DAYS AFTER A CONVICTION, THE EMPLOYER SHALL FILE A NEW SIGNED SWORN LEGAL EMPLOYMENT AFFIDAVIT WITH THE SECRETARY OF STATE.

Q. FOR THE PURPOSES OF THIS SECTION, PROOF OF VERIFYING THE EMPLOYMENT AUTHORIZATION OF AN EMPLOYEE THROUGH THE BASIC PILOT PROGRAM CREATES A REBUTTABLE PRESUMPTION THAT AN EMPLOYER DID NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

R. A PERSON WHO HAS BEEN CONVICTED OF FALSE SWEARING PURSUANT TO SUBSECTION K OF THIS SECTION SHALL NOT BE SUBJECT TO A SEPARATE SUBSEQUENT PROSECUTION RELATING TO THE EMPLOYMENT OF OTHER UNAUTHORIZED ALIENS AT THE SAME TIME AND PLACE INVOLVED IN THE PREVIOUS CONVICTION.

S. A PERSON WHO FILES A FALSE AND FRIVOLOUS COMPLAINT AGAINST AN EMPLOYER UNDER THIS SECTION IS GUILTY OF A CLASS 2 MISDEMEANOR.

T. A PERSON WHO HAS BEEN PREVIOUSLY CONVICTED OF FILING A FALSE AND FRIVOLOUS COMPLAINT UNDER SUBSECTION S OF THIS SECTION AND WHO FILES A SUBSEQUENT FALSE AND FRIVOLOUS COMPLAINT AGAINST AN EMPLOYER UNDER THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

23-213. Employer actions; federal law compliance

THIS ARTICLE SHALL NOT BE CONSTRUED TO REQUIRE AN EMPLOYER TO TAKE ANY ACTION THAT THE EMPLOYER BELIEVES IN GOOD FAITH WOULD VIOLATE FEDERAL OR STATE LAW.

23-214. Verification of employment eligibility; public employers; basic pilot program; auditor general

A. AFTER HIRING AN EMPLOYEE, THIS STATE SHALL VERIFY THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE BASIC PILOT PROGRAM.

B. THE AUDITOR GENERAL SHALL CONDUCT A PERFORMANCE AUDIT THAT EVALUATES THE USE OF THE BASIC PILOT PROGRAM BY THIS STATE UNDER SUBSECTION A AND SHALL REPORT THESE FINDINGS AND ANY RECOMMENDATIONS TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE. THE PERFORMANCE AUDIT SHALL INCLUDE THE FOLLOWING:

1. THE COSTS INCURRED BY THIS STATE TO VERIFY THE EMPLOYMENT ELIGIBILITY OF EMPLOYEES THROUGH THE BASIC PILOT PROGRAM.

2. THE NUMBER OF ADDITIONAL EMPLOYEES REQUIRED BY THIS STATE TO VERIFY THE EMPLOYMENT ELIGIBILITY OF EMPLOYEES THROUGH THE BASIC PILOT PROGRAM.

3. A SUMMARY OF RESULTS AND ANY ERROR RATES THAT OCCURRED WHEN THE BASIC PILOT PROGRAM IS USED BY THIS STATE.

C. AFTER SEPTEMBER 1, 2008, EVERY POLITICAL SUBDIVISION OF THIS STATE, AFTER HIRING AN EMPLOYEE, SHALL VERIFY THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE BASIC PILOT PROGRAM.

Sec. 3. Title 41, chapter 23, article 1, Arizona Revised Statutes, is amended by adding section 41-2505, to read:

41-2505. Awarded contracts; employee verification; definitions

A. A PROCUREMENT OFFICER OF THIS STATE SHALL NOT AWARD A CONTRACT UNDER THIS CHAPTER TO ANY CONTRACTOR OR SUBCONTRACTOR THAT PROVIDES SERVICES

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IN THIS STATE UNLESS THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTOR WHO PERFORM THE SERVICES IN THIS STATE WILL BE VERIFIED BY THE CONTRACTOR OR SUBCONTRACTOR THROUGH THE BASIC PILOT PROGRAM. THIS SUBSECTION ONLY APPLIES TO CONTRACTS THAT ARE AWARDED AFTER THE EFFECTIVE DATE OF THIS SECTION.

B. AFTER SEPTEMBER 1, 2008, A POLITICAL SUBDIVISION OF THIS STATE SHALL NOT AWARD A CONTRACT TO ANY CONTRACTOR OR SUBCONTRACTOR THAT PROVIDE SERVICES IN THIS STATE UNLESS THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTOR WHO PERFORM THE SERVICES IN THIS STATE WILL BE VERIFIED BY THE CONTRACTOR OR SUBCONTRACTOR THROUGH THE BASIC PILOT PROGRAM.

C. BEFORE A CONTRACT IS AWARDED PURSUANT TO THIS SECTION, THE CONTRACTOR AND SUBCONTRACTOR SHALL PROVIDE TO THE PROCUREMENT OFFICER THE BASIC PILOT PROGRAM VERIFICATION DOCUMENTS FOR ALL EMPLOYEES WHO WILL PERFORM SERVICES UNDER THE CONTRACT.

D. FOR THE PURPOSES OF THIS SECTION:

1. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

2. "SERVICES" MEANS THE FURNISHING OF LABOR, TIME OR EFFORT IN THIS STATE BY A CONTRACTOR OR SUBCONTRACTOR. SERVICES INCLUDE CONSTRUCTION OR MAINTENANCE OF ANY STRUCTURE, BUILDING OR TRANSPORTATION FACILITY OR IMPROVEMENT OF REAL PROPERTY.

Sec. 4. Section 43-1021, Arizona Revised Statutes, is amended to read:

43-1021. Additions to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 increases the beneficiary's Arizona gross income.

2. An amount equal to the "ordinary income portion" of a lump sum distribution that was excluded from federal adjusted gross income pursuant to section 402(d) of the internal revenue code.

3. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the state of Arizona, reduced, for tax years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

4. Annuity income received during the taxable year to the extent that the sum of the proceeds received from such annuity in all taxable years prior to and including the current taxable year exceeds the total consideration and premiums paid by the taxpayer. This paragraph applies only to those

annuities with respect to which the first payment was received prior to December 31, 1978.

5. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

6. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

7. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the income tax act of 1954, as amended. This paragraph shall apply to all property which is held for the production of income and which is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

8. The amount of depreciation or amortization of costs of any capital investment that is deducted pursuant to section 167 or 179 of the internal revenue code by a qualified defense contractor with respect to which an election is made to amortize pursuant to section 43-1024.

9. The amount of gain from the sale or other disposition of a capital investment which a qualified defense contractor has elected to amortize pursuant to section 43-1024.

10. Amounts withdrawn from the Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan or a county or city retirement plan by an employee upon termination of employment before retirement to the extent they were deducted in arriving at Arizona taxable income in any year.

11. That portion of the net operating loss included in federal adjusted gross income which has already been taken as a net operating loss for Arizona purposes or which is separately taken as a subtraction under the special net operating loss transition rule.

12. Any nonitemized amount deducted pursuant to section 170 of the internal revenue code representing contributions to an educational institution which denies admission, enrollment or board and room accommodations on the basis of race, color or ethnic background except those institutions primarily established for the education of American Indians.

13. The amount paid as taxes on property in this state with respect to which a credit is claimed under section 43-1078.

14. Amounts withdrawn from a medical savings account by the individual during the taxable year computed pursuant to section 220(f) of the internal revenue code and not included in federal adjusted gross income.

15. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

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16. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1080 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

17. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

18. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1081 or 43-1081.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

19. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1074.02, 43-1081 or 43-1081.01, as applicable.

20. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

21. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

22. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization or a public school for which a credit is claimed under section 43-1089 or 43-1089.01.

23. Any amount deducted in computing Arizona gross income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1090.

24. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1087 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

25. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1081.02.

26. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

27. With respect to property for which an expense deduction was taken pursuant to section 179 of the internal revenue code, the amount in excess of twenty-five thousand dollars.

28. The amount of any deductions that are claimed in computing federal adjusted gross income representing expenses for which a credit is claimed under section 43-1075.

29. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1090.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

30. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1090.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1090.01.

31. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2007 THROUGH DECEMBER 31, 2012, THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS PAID TO AN UNAUTHORIZED ALIEN AND THAT IS DEDUCTED AS A BUSINESS EXPENSE UNDER SECTION 162 OF THE INTERNAL REVENUE CODE. THIS PARAGRAPH APPLIES ONLY TO A TAXPAYER THAT KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN. FOR THE PURPOSES OF THIS PARAGRAPH:

(a) "KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN" MEANS THE ACTIONS DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a. THIS TERM SHALL BE INTERPRETED CONSISTENTLY WITH 8 UNITED STATES CODE SECTION 1324a AND ANY APPLICABLE FEDERAL RULES AND REGULATIONS.

(b) "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

Sec. 5. Intent

It is the intent of the legislature that, on receipt of a complaint that an employer has allegedly violated section 23-212, Arizona Revised Statutes, as added by this act, the attorney general or county attorney investigate the alleged violation.

Sec. 6. Severability

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 7. Legislative findings

The Legislature finds that this act complies with the requirements of 8 United States Code section 1324a(h)(2) by addressing employer sanctions through licensure and similar means. Criminal penalties contained in this act are associated exclusively with the state crimes of failing to file an

affidavit and false swearing on an affidavit filed with the secretary of state, not the act of employing unauthorized persons.

Sec. 8. Short title

This act shall be known as and may be cited as the "Arizona Fair and Legal Employment Act."

Sec. 9. Appropriation; attorney general enforcement; exemption

A. The sum of $500,000 is appropriated from the state general fund in fiscal year 2007-2008 to the attorney general for the purpose of enforcing any immigration related matters and section 23-212, Arizona Revised Statutes, as added by this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 10. Appropriation; county attorney enforcement; exemption

A. The sum of $2,500,000 is appropriated from the state general fund in fiscal year 2007-2008 to the department of administration to be distributed to the county attorneys in this state for the purpose of enforcing any immigration related matters and section 23-212, Arizona Revised Statutes, as added by this act. The department of administration shall distribute these monies to each county attorney as follows:

1. $1,500,000 to each county attorney of a county in this state having a population of one million five hundred thousand or more persons as determined by the most recent United States decennial census.

2. $500,000 to each county attorney of a county in this state having a population of eight hundred thousand or more persons but less than one million five hundred thousand persons as determined by the most recent United States decennial census.

3. The remainder of monies to be distributed as equally as possible to each county attorney of counties in this state having a population of less than five hundred thousand persons as determined by the most recent United States decennial census.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 11. Appropriation; secretary of state administration; exemption

A. The sum of $200,000 is appropriated from the state general fund in fiscal year 2007-2008 to the secretary of state for the purpose of administering section 23-212, Arizona Revised Statutes, as added by this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

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Sec. 12. Delayed repeal

A. Title 23, chapter 2, article 2, Arizona Revised Statutes, as added by this act, is repealed from and after December 31, 2012.

B. Section 41-2505, Arizona Revised Statutes, as added by this act, is repealed from and after December 31, 2012.

POLICY AND STATUTES

State Statutes - Examples

Utah Immigration Law

S.B. 81 Enrolled

ILLEGAL IMMIGRATION

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John W. Hickman

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill deals with provisions related to the immigration status of individuals within the state.

Highlighted Provisions:

This bill:

. requires a county sheriff to make a reasonable effort to determine the citizenship status of a person confined to a county jail for a period of time and to verify the immigration status of a confined foreign national, and makes it a rebuttable presumption, for the purpose of determining the grant or issuance of a bond, that a person verified by the sheriff's efforts as a foreign national not lawfully admitted into the United States is at risk of flight;

. provides that the Alcoholic Beverage Control Commission may not grant a restaurant liquor license or private club license to a person who is not lawfully present in the United States;

. provides for the creation and issuance of identification documents and requires that those identification documents issued by public entities go only to United States citizens, nationals, or legal permanent resident aliens with certain exceptions;

. provides for exceptions to the issuance of identification documents by public entities based on valid documentation of certain approved or pending immigration status and places time period restrictions on the length of validity of the documents;

. requires public employers to register with and use a Status Verification System to verify the federal authorization status of a new employee;

. beginning July 1, 2009, provides that a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor's new employees;

. provides that it is unlawful to discharge a lawful employee while retaining an unauthorized alien in the same job category;

. requires an agency or political subdivision of the state to verify the lawful presence in the United States of an individual who has applied for a state or local public benefit, as defined by federal law, or a federal public benefit that is administered by the agency or the political subdivision and provides for exceptions;

. requires an applicant for a state or local public benefit to certify the applicant's lawful presence in the United States, and provides penalties for making a false, fictitious, or fraudulent statement or representation in the certification;

. provides, subject to the availability of funding, for the establishment of a Fraudulent Documents Identification Unit by the attorney general for the primary purpose of investigating, apprehending, and prosecuting individuals who participate in the sale or distribution of fraudulent identification documents created and prepared for individuals who are unlawfully residing within the state;

. requires the attorney general to negotiate a Memorandum of Understanding with the United States Department of Justice or the United States Department of Homeland Security for the enforcement of federal immigration and customs laws within the state by state and local law enforcement personnel;

. prohibits a unit of local government from enacting an ordinance or policy that limits or prohibits a law enforcement officer or government employee from communicating or cooperating with federal officials regarding the immigration status of a person within the state; and

. makes it a class A misdemeanor for a person to:

. . transport into this state or for a distance of 100 miles within the state an alien for

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commercial advantage or private financial gain, knowing that the alien is in the United States in violation of federal law, in furtherance of the illegal presence in the United States; or

. . conceal, harbor, or shelter from detection an alien, in a place within this state for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2009.

This bill coordinates with H.B. 63, Recodification of Title 63 State Affairs in General, by providing technical renumbering.

Utah Code Sections Affected:

AMENDS:

32A-4-103, as last amended by Laws of Utah 2003, Chapter 314

32A-5-103, as last amended by Laws of Utah 2003, Chapter 314

ENACTS:

17-22-9.5, Utah Code Annotated 1953

63-99a-101, Utah Code Annotated 1953

63-99a-102, Utah Code Annotated 1953

63-99a-103, Utah Code Annotated 1953

63-99a-104, Utah Code Annotated 1953

67-5-22.5, Utah Code Annotated 1953

67-5-26, Utah Code Annotated 1953

76-10-2701, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **17-22-9.5** is enacted to read:

17-22-9.5. **Citizenship determination of incarcerated persons.**

(1) The sheriff shall make a reasonable effort to determine the citizenship status of a person charged with a felony or driving under the influence under Section 41-6a-502 when the person is confined to the county jail for a period of time.

(2) If the confined person is a foreign national, the sheriff shall make a reasonable effort to verify that the person:

(a) has been lawfully admitted into the United States; and

(b) the person's lawful status has not expired.

(3) (a) If the sheriff cannot verify the confined person's lawful status from documents in the person's possession, the sheriff shall attempt to verify that status within 48 hours of the person's confinement at the jail through contacting:

(i) the Law Enforcement Support Center of the United States Department of Homeland Security; or

(ii) an office or agency designated for citizenship status verification by the United States Department of Homeland Security.

(b) The sheriff shall notify the United States Department of Homeland Security of a person whose lawful citizenship status cannot be verified under Subsection (2) or (3)(a).

(4) It is a rebuttable presumption for the purpose of determining the grant or issuance of a bond that a person who is verified under this section as a foreign national not lawfully admitted into the United States is at risk of flight.

Section 2. Section **32A-4-103** is amended to read:

32A-4-103. Qualifications.

(1) (a) The commission may not grant a restaurant liquor license to any person who has been convicted of:

(i) a felony under [~~any~~] *a* federal or state law;

(ii) [~~any~~] *a* violation of [~~any~~] *a* federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(iii) [~~any~~] *a* crime involving moral turpitude; or

(iv) on two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug.

(b) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1)(a) applies if any of the following has been convicted of [~~any~~] *an* offense described in Subsection (1)(a):

(i) a partner;

(ii) a managing agent;

(iii) a manager;

(iv) an officer;

(v) a director;

(vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(vii) a member who owns at least 20% of the applicant limited liability company.

(c) The proscription under Subsection (1)(a) applies if [~~any~~] *a* person employed to act in a supervisory or managerial capacity for a restaurant has been convicted of [~~any~~] *an* offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke a restaurant liquor license if after the day on which the restaurant liquor license is granted, a person described in Subsection (1)(a), (b), or (c):

(a) is found to have been convicted of [~~any~~] *an* offense described in Subsection (1)(a) prior to the license being granted; or

(b) on or after the day on which the license is granted:

(i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

(ii) (A) is convicted of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug; and

(B) was convicted of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug within five years before the day on which the

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person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of a restaurant liquor license according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

(a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug; and

(ii) was convicted of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not grant a restaurant liquor license to [~~any~~] *a* person who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant a restaurant liquor license to an applicant that is a partnership, corporation, or limited liability company if [~~any~~] *a* partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation, or member who owns at least 20% of the applicant limited liability company is or was:

(A) a partner or managing agent of [~~any~~] *a* partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of [~~any~~] *a* corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of [~~any~~] *a* limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(b) An applicant that is a partnership, corporation, or limited liability company may not be granted a restaurant liquor license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) a partner or managing agent of the applicant partnership;

(ii) [~~any~~] *a* managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company.

(c) A person acting in an individual capacity may not be granted a restaurant liquor license if that person was:

(i) a partner or managing agent of a partnership that had any type of license, agency, or

permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) a manager or member of a limited liability company who owned at least 20% of the limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) A minor may not be granted a restaurant liquor license.

(b) The commission may not grant a restaurant liquor license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company.

(6) If [~~any~~] *a* person to whom a license has been issued under this part no longer

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possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

(7) The commission may not grant a restaurant liquor license to an applicant who is not lawfully present in the United States.

Section 3. Section **32A-5-103** is amended to read:

32A-5-103. Qualifications.

(1) (a) The commission may not grant a private club license to [~~any~~] *a* person who has been convicted of:

(i) a felony under [~~any~~] *a* federal or state law;

(ii) [~~any~~] *a* violation of [~~any~~] *a* federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(iii) [~~any~~] *a* crime involving moral turpitude; or

(iv) on two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug.

(b) In the case of a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of [~~any~~] *an* offense described in Subsection (1)(a):

(i) a partner;

(ii) a managing agent;

(iii) a manager;

(iv) an officer;

(v) a director;

(vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(vii) a member who owns at least 20% of the applicant limited liability company.

(c) The proscription under Subsection (1)(a) applies if [~~any~~] *a* person employed to act

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in a supervisory or managerial capacity for a private club has been convicted of [~~any~~] *an* offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke a private club license if after the day on which the private club license is granted, a person described in Subsection (1)(a),

(b),
or (c):
(a) is found to have been convicted of [~~any~~] *an* offense described in Subsection (1)(a) prior to the license being granted; or
(b) on or after the day on which the license is granted:
(i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
(ii) (A) is convicted of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug; and
(B) was convicted of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).
(3) The director may take emergency action by immediately suspending the operation of a private club license according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):
(a) is arrested on a charge for [~~any~~] *an* offense described in Subsection (1)(a)(i), (ii), or (iii); or
(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug; and
(ii) was convicted of driving under the influence of alcohol, [~~any~~] *a* drug, or the combined influence of alcohol and [~~any~~] *a* drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).
(4) (a) (i) The commission may not grant a private club license to [~~any~~] *a* person who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant a private club license to [~~any~~] *an* applicant that is a partnership, corporation, or limited liability company if [~~any~~] *a* partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation, or member who owns at least 20% of an applicant limited liability company is or was:
(A) a partner or managing agent of [~~any~~] *a* partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;
(B) a managing agent, officer, director, or a stockholder who holds or held at least 20% of the total issued and outstanding stock of [~~any~~] *a* corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or
(C) a manager or member who owns or owned at least 20% of [~~any~~] *a* limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.
(b) An applicant that is a partnership, corporation, or limited liability company may not be granted a private club license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within
the
last three years:
(i) [~~any~~] *a* partner or managing agent of the applicant partnership;
(ii) [~~any~~] *a* managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
(iii) [~~any~~] *a* manager or member who owned at least 20% of the applicant limited liability company.
(c) A person acting in an individual capacity may not be granted a private club license if that person was:
(i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) a manager or member of a limited liability company who owned at least 20% of the limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) A minor may not be granted a private club license.

(b) The commission may not grant a private club license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company.

(6) If [~~any~~] *a* person or entity to whom a license has been issued under this chapter no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

(7) The commission may not grant a private club license to an applicant who is not lawfully present in the United States.

Section 4. Section **63-99a-101** is enacted to read:

CHAPTER 99a. IDENTITY DOCUMENTS AND VERIFICATION

63-99a-101. **Title.**

This chapter is known as "Identity Documents and Verification."

Section 5. Section **63-99a-102** is enacted to read:

63-99a-102. **Creation of identity documents -- Issuance to citizens, nationals, and legal permanent resident aliens -- Exceptions.**

(1) The following entities may create, publish, or otherwise manufacture an identification document, identification card, or identification certificate and possess an engraved plate or other device for the printing of an identification document:

(a) a federal, state, or local government agency for employee identification, which is designed to identify the bearer as an employee;

(b) a federal, state, or local government agency for purposes authorized or required by law or a legitimate purpose consistent with the duties of the agency, including such documents as voter identification cards, driver licenses, identification cards, passports, birth certificates, and Social Security cards; and

(c) a public school or state or private educational institution to identify the bearer as an administrator, faculty member, student, or employee.

(2) The name of the issuing entity shall be clearly printed upon the face of the identification document.

(3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity providing an identity document, card, or certificate under Subsection (1)(b) or (c) shall issue the document, card, or certificate only to:

(a) a United States citizen;

(b) a national; or

(c) a legal permanent resident alien.

(4) (a) Subsection (3) does not apply to an applicant for an identification document who presents, in person, valid documentary evidence of the applicant's:

(i) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) pending or approved application for asylum in the United States;

(iii) admission into the United States as a refugee;

(iv) pending or approved application for temporary protected status in the United States;

(v) approved deferred action status; or

(vi) pending application for adjustment of status to legal permanent resident or conditional resident.

(b) (i) An entity listed in Subsection (1)(b) or (c) may issue a Subsection (1)(b) or (c) identification document to an applicant who satisfies the requirements of Subsection (4)(a).

(ii) Except as otherwise provided by federal law, the document is valid only:

(A) during the period of time of the individual's authorized stay in the United States; or

(B) for one year from the date of issuance if there is no definite end to the individual's period of authorized stay.

(iii) An entity issuing an identification document under this Subsection (4) shall clearly indicate on the document:

(A) that it is temporary; and

(B) its expiration date.

(c) An individual may renew a document issued under this Subsection (4) only upon presentation of valid documentary evidence that the status by which the individual originally qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

(5) (a) Subsection (3) does not apply to an identification document issued under Subsection (1)(c) that is only:

(i) valid for use on the educational institution's campus or facility; and

(ii) includes a statement of the restricted use conspicuously printed upon the face of the identification document.

(b) Subsection (3) does not apply to a driving privilege card issued or renewed under Section 53-3-207 .

(6) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Section 6. Section **63-99a-103** is enacted to read:

***63-99a-103.* Status verification system -- Registration and use -- Performance of services -- Unlawful practice.**

(1) As used in this section:

(a) "Contractor" means a subcontractor, contract employee, staffing agency, trade union, or any contractor regardless of its tier.

(b) "Public employer" means a department, agency, instrumentality, or political subdivision of the state.

(c) (i) "Status Verification System" means an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C., Sec. 1373, to verify the citizenship or immigration status of an individual within the jurisdiction of the agency

or political subdivision for a purpose authorized under this section.

(ii) "Status Verification System" includes:

(A) the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a, known as the Basic Pilot Program;

(B) an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration and Reform Control Act of 1986;

(C) the Social Security Number Verification Service or similar online verification process implemented by the United States Social Security Administration; or

(D) an independent third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in Subsection (1)(c)(ii)(A), (B), or (C).

(d) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).

(2) (a) Each public employer shall register with and use a Status Verification System to verify the federal employment authorization status of a new employee.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) (a) Beginning July 1, 2009:

(i) a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the state.

(ii) a contractor shall register and participate in the Status Verification System in order to enter into a contract with a public employer.

(b) (i) For purposes of compliance with Subsection (3)(a), a contractor is individually responsible for verifying the employment status of only new employees who work under the contractor's supervision or direction and not those who work for another contractor or subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

(ii) Each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified through the Status Verification System the employment status of each new employee of the respective contractor or subcontractor.

(c) Subsection (3)(a) does not apply to a contract:

(i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009, even though the contract may involve the physical performance of services within the state on or after July 1, 2009; or

(ii) that involves underwriting, remarketing, broker-dealer activities, securities placement, investment advisory, financial advisory, or other financial or investment banking services.

(4) (a) It is unlawful for an employing entity in the state to discharge an employee working in Utah who is a United States citizen or permanent resident alien and replace the employee with, or have the employee's duties assumed by, an employee who:

(i) the employing entity knows, or reasonably should have known, is an unauthorized alien hired on or after July 1, 2009; and

(ii) is working in the state in a job category:

(A) that requires equal skill, effort, and responsibility; and

(B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec. 206 (d)(1), as the job category held by the discharged employee.

(b) An employing entity, which on the date of a discharge in question referred to in Subsection (4)(a) is enrolled in and using the Status Verification System to verify the employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is exempt from liability, investigation, or lawsuit arising from an action under this section.

(c) A cause of action for a violation of this Subsection (4) arises exclusively from the provisions of this Subsection (4).

Section 7. Section **63-99a-104** is enacted to read:

63-99a-104. **Receipt of state, local, or federal public benefits -- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.**

(1) Except as provided in Subsection (3) or where exempted by federal law, an agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years of age who has applied for:

(a) a state or local public benefit as defined in 8 U.S.C., Sec. 1621; or

(b) a federal public benefit as defined in 8 U.S.C., Sec. 1611, that is administered by an agency or political subdivision of this state.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) Verification of lawful presence under this section is not required for:

(a) any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(b) assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C., Sec. 1396b(v)(3), of the individual involved and are not related to an organ transplant procedure;

(c) short-term, noncash, in-kind emergency disaster relief;

(d) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by the communicable disease;

(e) programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter, specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments, which:

(i) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient; and

(iii) are necessary for the protection of life or safety;

(f) the exemption for paying the nonresident portion of total tuition as set forth in Section 53B-8-106 ; and

(g) an applicant for a license under Section 61-1-4 , if the applicant is registered with the Financial Industry Regulatory Authority and files an application with the state Division of Securities through the Central Registration Depository.

(4) An agency or political subdivision required to verify the lawful presence in the United States of an applicant under this section shall require the applicant to certify under penalty of perjury that:

(a) the applicant is a United States citizen; or

(b) the applicant is:

(i) a qualified alien as defined in 8 U.S.C., Sec. 1641; and

(ii) lawfully present in the United States.

(5) An agency or political subdivision shall verify a certification required under Subsection (4) through the Systematic Alien Verification for Entitlements Program, hereafter referred to in this section as the "program," operated by the United States Department of Homeland Security or an equivalent program designated by the Department of Homeland Security.

(6) (a) An individual who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in a certification under Subsection (4) is subject to the criminal penalties applicable in this state for:

(i) making a written false statement under Subsection 76-8-504 (2); and

(ii) fraudulently obtaining public assistance program benefits under Sections 76-8-1205 and 76-8-1206 or unemployment compensation under Section 76-8-1301 .

(b) If the certification constitutes a false claim of U.S. citizenship under 18 U.S.C., Sec. 911, the agency or political subdivision shall file a complaint with the United States Attorney General for the applicable district based upon the venue in which the application was made.

(7) An agency or political subdivision may adopt variations to the requirements of this section which:

(a) clearly improve the efficiency of or reduce delay in the verification process; or

(b) provide for adjudication of unique individual circumstances where the verification procedures in this section would impose an unusual hardship on a legal resident of Utah.

(8) It is unlawful for an agency or a political subdivision of this state to provide a state, local, or federal benefit, as defined in 8 U.S.C., Sec. 1611 and Sec. 1621, in violation of the provisions of this section.

(9) Each state agency or department that administers a program of state or local public benefits shall:

(a) provide an annual report to the governor, the president of the Senate, and the speaker of the House regarding its compliance with this section; and

(b) (i) monitor the program for application verification errors and significant delays;

(ii) provide an annual report on the errors and delays to ensure that the application of the program is not erroneously denying a state or local benefit to a legal resident of the state; and

(iii) report delays and errors in the program to the United States Department of Homeland Security.

Section 8. Section **67-5-22.5** is enacted to read:

67-5-22.5. **Fraudulent Documents Identification Unit.**

Subject to the availability of funding, the attorney general shall establish a Fraudulent Documents Identification Unit:

(1) for the primary purpose of investigating, apprehending, and prosecuting individuals or entities that participate in the sale or distribution of fraudulent documents used for identification purposes; and

(2) to specialize in fraudulent identification documents created and prepared for individuals who are unlawfully residing within the state.

Section 9. Section **67-5-26** is enacted to read:

67-5-26. **Memorandum of Understanding regarding enforcement of federal immigration laws -- Communications regarding immigration status -- Private cause of action.**

(1) The attorney general shall negotiate the terms of a Memorandum of Understanding between the state and the United States Department of Justice or the United States Department

of Homeland Security as provided in 8 U.S.C., Sec. 1357(g) for the enforcement of federal immigration and customs laws within the state by state and local law enforcement personnel, to include investigations, apprehensions, detentions, and removals of persons who are illegally present in the United States.

(2) The attorney general, the governor, or an individual otherwise required by the appropriate federal agency referred to in Subsection (1) shall sign the Memorandum of Understanding on behalf of the state.

(3) (a) A unit of local government, whether acting through its governing body or by an initiative or referendum, may not enact an ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from communicating or cooperating with federal officials regarding the immigration status of a person within the state.

(b) Notwithstanding any other provision of law, a government entity or official within the state may not prohibit or in any way restrict a government entity or official from sending to, or receiving from, the United States Department of Homeland Security information regarding the citizenship or immigration status, lawful or unlawful, of an individual.

(c) Notwithstanding any other provision of law, a person or agency may not prohibit or in any way restrict a public employee from doing the following regarding the immigration status, lawful or unlawful, of an individual:

(i) sending information to or requesting or receiving information from the United States Department of Homeland Security;

(ii) maintaining the information referred to in Subsection (3)(c)(i); and

(iii) exchanging the information referred to in Subsection (3)(c)(i) with any other federal, state, or local government entity.

(d) This Subsection (3) allows for a private right of action by a natural or legal person lawfully domiciled in this state to file for a writ of mandamus to compel a noncompliant local or state governmental agency to comply with the reporting laws of this Subsection (3).

Section 10. Section **76-10-2701** is enacted to read:

Part 27. Transporting or Harboring of Illegal Aliens

76-10-2701. **Transporting or harboring aliens -- Definition -- Penalty.**

(1) For purposes of this part, "alien" means an individual who is illegally present in the United States.

(2) It is unlawful for a person to:

(a) transport, move, or attempt to transport into this state or for a distance of greater than 100 miles within the state an alien for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law, in furtherance of the illegal presence of the alien in the United States; or

(b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or shelter from detection an alien in a place within this state, including a building or means of transportation for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law.

(3) A person who violates Subsection (2)(a) or (b) is guilty of a class A misdemeanor.

(4) Nothing in this part prohibits or restricts the provision of:

(a) a state or local public benefit described in 8 U.S.C., Section 1621(b); or

(b) charitable or humanitarian assistance, including medical care, housing, counseling, food, victim assistance, religious services and sacraments, and transportation to and from a location where the assistance is provided, by a charitable, educational, or religious organization or its employees, agents, or volunteers, using private funds.

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(5) (a) It is not a violation of this part for a religious denomination or organization or an agent, officer, or member of a religious denomination or organization to encourage, invite, call, allow, or enable an alien to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses.

(b) Subsection (5)(a) applies only to an alien who has been a member of the religious denomination or organization for at least one year.

Section 11. **Effective date.**

This bill takes effect on July 1, 2009.

Section 12. **Coordinating S.B. 81 with H.B. 63 -- Technical renumbering.**

If this S.B. 81 and H.B. 63, Recodification of Title 63 State Affairs in General, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication renumber Title 63, Chapter 99a to Title 63G, Chapter 11 and Sections 63-99a-101 through 63-99a-104 to Sections 63G-11-101 through 63G-11-104 .

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POLICY AND STATUTES

State Statutes - Examples

Missouri Immigration Law

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

CONFERENCE COMMITTEE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 1549, 1771, 1395 & 2366

94TH GENERAL ASSEMBLY

3681L.12T 2008

AN ACT

To repeal sections 8.283, 302.720, and 544.470, RSMo, and to enact in lieu thereof twenty-four new sections relating to illegal aliens, with penalty provisions, and an effective date for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 8.283, 302.720, and 544.470, RSMo, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 43.032, 67.307, 208.009, 285.309, 285.500, 285.503, 285.506, 285.512, 285.515, 285.525, 285.530, 285.535, 285.540, 285.543, 285.550, 285.555, 292.675, 302.063, 302.720, 544.470, 577.722, 577.900, 578.570, and 650.681, to read as follows:

43.032. Subject to appropriation, the superintendent of the Missouri state highway patrol shall designate that some or all members of the highway patrol be trained in accordance with a memorandum of understanding between the state of Missouri and the United States Department of Homeland Security concerning the enforcement of federal immigration laws during the course of their normal duties in the state of Missouri, in accordance with 8 U.S.C. Section 1357(g). The superintendent shall have the authority to negotiate the terms of such memorandum. The memorandum shall be signed by the superintendent of the highway patrol, the governor, and the director of the department of public safety.

67.307. 1. As used in this section, the following terms mean:

(1) "Law enforcement officer", a sheriff or peace officer of a municipality with the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of municipalities;

(2) "Municipality", any county, city, town, or village;

(3) "Municipality official", any elected or appointed official or any law enforcement officer serving the municipality;

(4) "Sanctuary policy", any municipality's order or ordinance, enacted or followed that:

(a) Limits or prohibits any municipality official or person employed by the municipality from

communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien within such municipality; or

(b) Grants to illegal aliens the right to lawful presence or status within the municipality in violation of federal law.

2. No municipality shall enact or adopt any sanctuary policy. Any municipality that enacts or adopts a sanctuary policy shall be ineligible for any moneys provided through grants administered by any state agency or department until the sanctuary policy is repealed or is no longer in effect. Upon the complaint of any state resident regarding a specific government entity, agency, or political subdivision of this state or prior to the provision of funds or awarding of any grants to a government entity, agency, or political subdivision of this state, any member of the general assembly may request that the attorney general of the state of Missouri issue an opinion stating whether the government entity, agency, or political subdivision has current policies in contravention of this section.

3. The governing body, sheriff, or chief of police of each municipality shall provide each law enforcement officer with written notice of their duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration.

4. This section shall become effective on January 1, 2009.

208.009. 1. No alien unlawfully present in the United States shall receive any state or local public benefit, except for state or local public benefits that may be offered under 8 U.S.C. 1621(b). Nothing in this section shall be construed to prohibit the rendering of emergency medical care, prenatal care, services offering alternatives to abortion, emergency assistance, or legal assistance to any person.

2. As used in this section, "public benefit" means any grant, contract, or loan provided by an agency of state or local government; or any retirement, welfare, health, postsecondary education, state grants and scholarships, disability, housing, or food assistance benefit under which payments, assistance, credits, or reduced rates or fees are provided. The term "public benefit" shall not include unemployment benefits payable under chapter 288, RSMo. The unemployment compensation program shall verify the lawful presence of an alien for the purpose of determining eligibility for benefits in accordance with its own procedures.

3. In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an applicant who is eighteen years of age or older shall provide affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States, provided, however, that in the case of state grants and scholarships, such proof shall be provided before the applicant receives any state grant or scholarship. Such affirmative proof shall include documentary evidence recognized by the department of revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States. In processing applications for public benefits, an employee of an agency of state or local government shall not inquire about the legal status of a custodial parent or guardian applying for a public benefit on behalf of his or her dependent child who is a citizen or permanent resident of the United States.

4. An applicant who cannot provide the proof required under this section at the time of

application may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence, in order to receive temporary benefits or a temporary identification document as provided in this section. The affidavit shall be on or consistent with forms prepared by the state or local government agency administering the state or local public benefits and shall include the applicant's Social Security number or any applicable federal identification number and an explanation of the penalties under state law for obtaining public assistance benefits fraudulently.

5. An applicant who has provided the sworn affidavit required under subsection 4 of this section is eligible to receive temporary public benefits as follows:

(1) For ninety days or until such time that it is determined that the applicant is not lawfully present in the United States, whichever is earlier; or

(2) Indefinitely if the applicant provides a copy of a completed application for a birth certificate that is pending in Missouri or some other state. An extension granted under this subsection shall terminate upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist because the applicant is not a United States citizen.

6. An applicant who is an alien shall not receive any state or local public benefit unless the alien's lawful presence in the United States is first verified by the federal government. State and local agencies administering public benefits in this state shall cooperate with the United States Department of Homeland Security in achieving verification of an alien's lawful presence in the United States in furtherance of this section. The system utilized may include the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security.

7. The provisions of this section shall not be construed to require any nonprofit organization organized under the Internal Revenue Code to enforce the provisions of this section, nor does it prohibit such an organization from providing aid.

8. Any agency that administers public benefits shall provide assistance in obtaining appropriate documentation to persons applying for public benefits who sign the affidavit required by subsection 4 of this section stating they are eligible for such benefits but lack the documents required under subsection 3 of this section.

285.309. 1. Every employer doing business in this state who employs five or more employees shall, if applicable, submit federal 1099 miscellaneous forms to the department of revenue. Such forms shall be submitted to the department of revenue within the time lines established for the filing of Missouri form 99 forms.

2. Any employer who intentionally, on five or more occasions, fails to submit information required under subsection 1 of this section shall be fined not more than two hundred dollars for each time the employer fails to submit the information on or after the fifth occurrence.

285.500. For the purposes of sections 285.500 to 285.515 the following terms mean:

(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.;

(2) "Employer", any individual, organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ five or more individuals performing public works as defined in section 290.210, RSMo;

(3) "Knowingly", a person acts knowingly or with knowledge,

(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or

(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

285.503. 1. An employer knowingly misclassifies a worker if that employer fails to claim the worker as an employee but knows that the worker is an employee.

2. The attorney general may investigate alleged or suspected violations of sections 285.500 to 285.515 and shall have all powers provided by sections 407.040 to 407.090, RSMo, in connection with any investigation of an alleged or suspected violation of sections 285.500 to 285.515 as if the acts enumerated in sections 285.500 to 285.515 are unlawful acts proscribed by chapter 407, RSMo. The attorney general may serve and enforce subpoenas related to the enforcement of sections 285.500 to 285.515.

285.506. In any action brought under sections 285.500 to 285.515, the state shall have the burden of proving that the employer misclassified the worker.

285.512. Whenever the attorney general has reason to believe that an employer is engaging in any conduct that would be a violation of sections 285.500 to 285.515, the attorney general may seek an injunction prohibiting the employer from engaging in such conduct. The attorney general may bring an action for injunctive relief in the circuit court of any county where the alleged violation is occurring or about to occur.

285.515. If a court determines that an employer has knowingly misclassified a worker, the court shall enter a judgment in favor of the state and award penalties in the amount of fifty dollars per day per misclassified worker up to a maximum of fifty thousand dollars. The attorney general may enter into a consent judgment with any person alleged to have violated sections 285.500 to 285.515.

285.525. As used in sections 285.525 to 285.550, the following terms shall have the following meanings:

(1) "Business entity", any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo;

(2) "Contractor", a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;

(3) "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;

(4) "Employer", any person or entity employing any person for hire within the state of Missouri, including a public employer. Where there are two or more putative employers, any person or entity taking a business tax deduction for the employee in question shall be considered an employer of that person for purposes of sections 285.525 to 285.550;

(5) "Employment", the act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the state of Missouri;

(6) "Federal work authorization program", any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603;

(7) "Knowingly", a person acts knowingly or with knowledge,

(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or

(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result;

(8) "Political subdivision", any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied;

(9) "Public employer", every department, agency, or instrumentality of the state or political subdivision of the state;

(10) "Unauthorized alien", an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);

(11) "Work", any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

285.530. 1. No business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

2. As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

3. All public employers shall enroll and actively participate in a federal work authorization program.

4. An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has no

violated subsection 1 of this section.

5. A general contractor or subcontractor of any tier shall not be liable under sections 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

285.535. 1. The attorney general shall enforce the requirements of sections 285.525 to 285.550.

2. An enforcement action shall be initiated by means of a written, signed complaint under penalty of perjury as defined in section 575.040, RSMo, to the attorney general submitted by any state official, business entity, or state resident. A valid complaint shall include an allegation which describes the alleged violator as well as the actions constituting the violation, and the date and location where such actions occurred. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

3. Upon receipt of a valid complaint, the attorney general shall, within fifteen business days, request identity information from the business entity regarding any persons alleged to be unauthorized aliens. Such request shall be made by certified mail. The attorney general shall direct the applicable municipal or county governing body to suspend any applicable license, permit, or exemptions of any business entity which fails, within fifteen business days after receipt of the request, to provide such information.

4. The attorney general, after receiving the requested identity information from the business entity, shall submit identity data required by the federal government to verify, under 8 U.S.C. 1373, the immigration status of such persons, and shall provide the business entity with written notice of the results of the verification request:

(1) If the federal government notifies the attorney general that an employee is authorized to work in the United States, the attorney general shall take no further action on the complaint;

(2) If the federal government notifies the attorney general that an employee is not authorized to work in the United States, the attorney general shall proceed on the complaint as provided in subsection 5 of this section;

(3) If the federal government notifies the attorney general that it is unable to verify whether an employee is authorized to work in the United States, the attorney general shall take no further action on the complaint until a verification from the federal government concerning the status of the individual is received. At no point shall any state official attempt to make an independent determination of any alien's legal status without verification from the federal government.

5. (1) If the federal government notifies the attorney general that an employee is not authorized to work in the United States, and the employer of the unauthorized alien participates in a federal work authorization program, there shall be a rebuttable presumption that the employer has met the requirements for an affirmative defense under subsection 4 of section 285.530, and the employer shall comply with subsection 6 of this section.

(2) If the federal government notifies the attorney general that an employee is not authorized to

work in the United States, the attorney general shall bring a civil action in Cole County if the attorney general reasonably believes the business entity knowingly violated subsection 1 of section 285.530.

(a) If the court finds that a business entity did not knowingly violate subsection 1 of section 285.530, the employer shall have fifteen business days to comply with subdivision (1) and paragraph (a) of subdivision (2) of subsection 6 of this section. If the entity fails to do so, the court shall direct the applicable municipal or county governing body to suspend the business permit, if such exists, and any applicable licenses or exemptions of the entity until the entity complies with subsection 6 of this section;

(b) If the court finds that a business entity knowingly violated subsection 1 of section 285.530, the court shall direct the applicable municipal or county governing body to suspend the business permit, if such exists, and any applicable licenses or exemptions of such business entity for fourteen days. Permits, licenses, and exemptions shall be reinstated for entities who comply with subsection 6 of this section at the end of the fourteen day period.

6. The correction of a violation with respect to the employment of an unauthorized alien shall include the following actions:

(1) (a) The business entity terminates the unauthorized alien's employment. If the business entity attempts to terminate the unauthorized alien's employment and such termination is challenged in a court of the state of Missouri, the fifteen-business-day period for providing information to the attorney general referenced in subsection 3 of this section shall be tolled while the business entity pursues the termination of the unauthorized alien's employment in such forum; or

(b) The business entity, after acquiring additional information from the employee, requests a secondary or additional verification by the federal government of the employee's authorization, under the procedures of a federal work authorization program. While this verification is pending, the fifteen-business-day period for providing information to the attorney general referenced in subsection 3 of this section shall be tolled; and

(2) A legal representative of the business entity submits, at an office designated by the attorney general, the following:

(a) A sworn affidavit stating that the violation has ended that shall include a description of the specific measures and actions taken by the business entity to end the violation, and the name, address, and other adequate identifying information for any unauthorized aliens related to the complaint; and

(b) Documentation acceptable to the attorney general which confirms that the business entity has enrolled in and is participating in a federal work authorization program.

7. The suspension of a business license or licenses under subsection 5 of this section shall terminate one business day after a legal representative of the business entity submits the affidavit and other documentation required under subsection 6 of this section following any period of restriction required under subsection 5 of this section.

8. For an entity that violates subsection 1 of section 285.530 for a second time, the court shall direct the applicable municipal or county governing body to suspend, for one year, the business permit, if such exists, and any applicable license or exemptions of the business entity. For a subsequent violation, the court shall direct the applicable municipal or county governing body to forever suspend the business permit, if such exists, and any applicable license or exemptions of the business entity.

9. In addition to the penalties in subsections 5 and 8 of this section:

(1) Upon the first violation of subsection 1 of section 285.530 by any business entity awarded a state contract or grant or receiving a state-administered tax credit, tax abatement, or loan from the state, the business entity shall be deemed in breach of contract and the state may terminate the contract and suspend or debar the business entity from doing business with the state for a period of three years. Upon such termination, the state may withhold up to twenty-five percent of the total amount due to the business entity;

(2) Upon a second or subsequent violation of subsection 1 of section 285.530 by any business entity awarded a state contract or grant or receiving a state-administered tax credit, tax abatement, or loan from the state, the business entity shall be deemed in breach of contract and the state may terminate the contract and permanently suspend or debar the business entity from doing business with the state. Upon such termination, the state may withhold up to twenty-five percent of the total amount due to the business entity.

10. Sections 285.525 to 285.550 shall not be construed to deny any procedural mechanisms or legal defenses included in a federal work authorization program.

11. Any business entity subject to a complaint and subsequent enforcement under sections 285.525 to 285.540, or any employee of such a business entity, may challenge the enforcement of this section with respect to such entity or employee in the courts of the state of Missouri.

12. If the court finds that any complaint is frivolous in nature or finds no probable cause to believe that there has been a violation, the court shall dismiss the case. For purposes of this subsection, "frivolous" shall mean a complaint not shown by clear and convincing evidence to be valid. Any person who submits a frivolous complaint shall be liable for actual, compensatory, and punitive damages to the alleged violator for holding the alleged violator before the public in a false light. If the court finds that a complaint is frivolous or that there is not probable cause to believe there has been a violation, the attorney general shall issue a public report to the complainant and the alleged violator stating with particularity its reasons for dismissal of the complaint. Upon such issuance, the complaint and all materials relating to the complaint shall be a public record as defined in chapter 610, RSMo.

13. The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section or section 285.530. The court may take judicial notice of any verification of an individual's status previously provided by the federal government and may request the federal government to provide automated or testimonial verification.

14. Compensation, whether in money or in kind or in services, knowingly provided to any unauthorized alien shall not be allowed as a business expense deduction from any income or business taxes of this state.

15. Any business entity which terminates an employee in accordance with this section shall not be liable for any claims made against the business entity under chapter 213, RSMo, for the termination.

285.540. The attorney general shall promulgate rules to implement the provisions of sections 285.525 to 285.550. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo.

This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

285.543. The attorney general shall maintain a database that documents any business entity whose permit, license, or exemption has been suspended or state contract has been terminated.

285.550. If any municipal or county governing body fails to suspend the business permit, if such exists, and applicable licenses or exemptions as directed by the attorney general as a result of a violation of section 285.530 or 285.535 within fifteen days after notification by the attorney general, the municipality shall be deemed to have adopted a sanctuary policy as defined in section 67.307, RSMo, and shall be subject to the penalties thereunder.

285.555. Should the federal government discontinue or fail to authorize or implement any federal work authorization program, the general assembly shall review sections 285.525 to 285.555 for the purpose of determining whether the sections are no longer applicable and should be repealed.

292.675. 1. As used in this section, the following terms shall mean:

(1) "Construction", construction, reconstruction, demolition, painting and decorating, or major repair;

(2) "Department", the department of labor and industrial relations;

(3) "Person", any natural person, joint venture, partnership, corporation, or other business or legal entity;

(4) "Public body", the state of Missouri or any officer, official, authority, board or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds;

(5) "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. "Public works" includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility.

2. Any person signing a contract to work on the construction of public works for any public body shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work on such construction project.

3. Any employee found on a worksite subject to this section without documentation of the successful completion of the course required under subsection 2 of this section shall be afforded twenty days to produce such documentation before being subject to removal from the project.

4. The public body shall specify the requirements of this section in the resolution or ordinance and in the call for bids for the contract. The contractor to whom the contract is awarded and any subcontractor under such contractor shall require all on-site employees to complete the ten-hour training program required under subsection 2 of this section. The public body awarding the contrac

shall include this requirement in the contract. The contractor shall forfeit as a penalty to the public body on whose behalf the contract is made or awarded, two thousand five hundred dollars plus one hundred dollars for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period in subsections 2 and 3 of this section have elapsed. The public body awarding the contract shall include notice of these penalties in the contract. The public body awarding the contract shall withhold and retain therefrom, all sums and amounts due and owing as a result of any violation of this section when making payments to the contractor under the contract. The contractor may withhold from any subcontractor, sufficient sums to cover any penalties the public body has withheld from the contractor resulting from the subcontractor's failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the contractor may recover the amount of the penalty resulting from the fault of the subcontractor in an action maintained in the circuit court in the county in which the public works project is located from the subcontractor.

5. In determining whether a violation of this section has occurred, and whether the penalty under subsection 4 of this section shall be imposed, the department shall investigate any claim of violation. Upon completing such investigation, the department shall notify the public body and any party found to be in violation of this section of its findings and whether a penalty shall be assessed. Determinations under this section may be appealed in the circuit court in the county in which the public works project is located.

6. If the contractor or subcontractor fails to pay the penalty within forty-five days following notification by the department, the department shall pursue an enforcement action to enforce the monetary penalty provisions of subsection 4 of this section against the contractor or subcontractor found to be in violation of this section. If the court orders payment of the penalties as prescribed under subsection 4 of this section, the department shall be entitled to recover its actual cost of enforcement in addition to such penalty amount.

7. The department may establish rules and regulations for the purpose of implementing the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

8. This section shall not apply to work performed by public utilities which are under the jurisdiction of the public service commission, or their contractors, or work performed at or on facilities owned or operated by said public utilities.

9. The provisions of this section shall not apply to rail grade crossing improvement projects where there exists a signed agreement between the railroad and the Missouri department of transportation or an order issued by the department of transportation ordering such construction.

10. This section shall take effect on August 28, 2009.

302.063. The department of revenue shall not issue any driver's license to an illegal alien nor to any person who cannot prove his or her lawful presence pursuant to the provisions of this chapter and the regulations promulgated thereunder. A driver's license issued to an illegal alien in another state shall not be honored by the state of Missouri and the department of revenue for any purpose. The state of Missouri hereby declares that granting driver's licenses to illegal aliens is repugnant to the public policy of Missouri and therefore Missouri shall not extend full faith and credit to out-of-state driver's licenses issued to illegal aliens. As used in this section, the term "illegal alien" shall mean an alien who is not lawfully present in the United States, according to the terms of 8 U.S.C. Section 1101, et seq.

302.720. 1. Except when operating under an instruction permit as described in this section, no person may drive a commercial motor vehicle unless the person has been issued a commercial driver's license with applicable endorsements valid for the type of vehicle being operated as specified in sections 302.700 to 302.780. A commercial driver's instruction permit shall allow the holder of a valid license to operate a commercial motor vehicle when accompanied by the holder of a commercial driver's license valid for the vehicle being operated and who occupies a seat beside the individual, or reasonably near the individual in the case of buses, for the purpose of giving instruction in driving the commercial motor vehicle. A commercial driver's instruction permit shall be valid for the vehicle being operated for a period of not more than six months, and shall not be issued until the permit holder has met all other requirements of sections 302.700 to 302.780, except for the driving test. A permit holder, unless otherwise disqualified, may be granted one six-month renewal within a one-year period. The fee for such permit or renewal shall be five dollars. In the alternative, a commercial driver's instruction permit shall be issued for a thirty-day period to allow the holder of a valid driver's license to operate a commercial motor vehicle if the applicant has completed all other requirements except the driving test. The permit may be renewed for one additional thirty-day period and the fee for the permit and for renewal shall be five dollars.

2. No person may be issued a commercial driver's license until he has passed written and driving tests for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the Secretary and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570), as well as any other requirements imposed by state law. Applicants for a hazardous materials endorsement must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Nothing contained in this subsection shall be construed as prohibiting the director from establishing alternate testing formats for those who are functionally illiterate; provided, however, that any such alternate test must comply with the minimum requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570) as established by the Secretary.

(1) The written and driving tests shall be held at such times and in such places as the superintendent may designate. A twenty-five dollar examination fee shall be paid by the applicant upon completion of any written or driving test. The director shall delegate the power to conduct the examinations required under sections 302.700 to 302.780 to any member of the highway patrol or any person employed by the highway patrol qualified to give driving examinations. **The written test shall only be administered in the English language. No translators shall be allowed for applicants taking the test.**

(2) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the department of revenue. Such rules and regulations shall substantially comply with

the requirements of 49 CFR Part 383, Section 383.75. A certification to conduct third-party testing shall be valid for one year, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester.

(3) Beginning August 28, 2006, the director shall only issue or renew third-party tester certification to junior colleges or community colleges established under chapter 178, RSMo, or to private companies who own, lease, or maintain their own fleet and administer in-house testing to their employees, or to school districts and their agents that administer in-house testing to the school district's or agent's employees. Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his certification revoked by the department. The department shall provide written notice and an opportunity for the third-party tester to be heard in substantially the same manner as provided in chapter 536, RSMo. If any applicant submits evidence that he has successfully completed a test administered by a third-party tester, the actual driving test for a commercial driver's license may then be waived.

(4) Every applicant for renewal of a commercial driver's license shall provide such certifications and information as required by the secretary and if such person transports a hazardous material must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Such person shall be required to take the written test for such endorsement. A twenty-five dollar examination fee shall be paid upon completion of such tests.

(5) The director shall have the authority to waive the driving skills test for any qualified military applicant for a commercial driver's license who is currently licensed at the time of application for a commercial driver's license. The director shall impose conditions and limitations to restrict the applicants from whom the department may accept alternative requirements for the skills test described in federal regulation 49 C.F.R. 383.77. An applicant must certify that, during the two-year period immediately preceding application for a commercial driver's license, all of the following apply:

(a) The applicant has not had more than one license;

(b) The applicant has not had any license suspended, revoked, or cancelled;

(c) The applicant has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in this chapter or federal rule 49 C.F.R. 383.51(b);

(d) The applicant has not had more than one conviction for any type of motor vehicle for serious traffic violations;

(e) The applicant has not had any conviction for a violation of state or local law relating to motor vehicle traffic control, but not including any parking violation, arising in connection with any traffic accident, and has no record of an accident in which he or she was at fault;

(f) The applicant is regularly employed in a job requiring operation of a commercial motor vehicle and has operated the vehicle for at least sixty days during the two years immediately preceding application for a commercial driver's license. The vehicle must be representative of the commercial motor vehicle the driver applicant operates or expects to operate;

(g) The applicant, if on active duty, must provide a notarized affidavit signed by a commanding officer as proof of driving experience as indicated in paragraph (f) of this subdivision;

(h) The applicant, if honorably discharged from military service, must provide a form-DD214 or other proof of military occupational specialty;

(i) The applicant must meet all federal and state qualifications to operate a commercial vehicle; and

(j) The applicant will be required to complete all applicable knowledge tests.

3. A commercial driver's license may not be issued to a person while the person is disqualified from driving a commercial motor vehicle, when a disqualification is pending in any state or while the person's driver's license is suspended, revoked, or canceled in any state; nor may a commercial driver's license be issued unless the person first surrenders in a manner prescribed by the director any commercial driver's license issued by another state, which license shall be returned to the issuing state for cancellation.

4. Beginning July 1, 2005, the director shall not issue an instruction permit under this section unless the director verifies that the applicant is lawfully present in the United States before accepting the application. The director may, by rule or regulation, establish procedures to verify the lawful presence of the applicant under this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

544.470. **1.** If the offense is not bailable, or if the person does not meet the conditions for release, as provided in section 544.455, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

2. There shall be a presumption that releasing the person under any conditions as provided by section 544.455 shall not reasonably assure the appearance of the person as required if the circuit judge or associate circuit judge reasonably believes that the person is an alien unlawfully present in the United States. If such presumption exists, the person shall be committed to the jail, as provided in subsection 1 of this section, until such person provides verification of his or her lawful presence in the United States to rebut such presumption. If the person adequately proves his or her lawful presence, the circuit judge or associate circuit judge shall review the issue of release, as provided under section 544.455, without regard to previous issues concerning whether the person is lawfully present in the United States. If the person cannot prove his or her lawful presence, the person shall continue to be committed to the jail and remain until discharged by due course of law.

577.722. 1. It shall be unlawful for any person to knowingly transport, move, or attempt to transport in the state of Missouri any illegal alien who is not lawfully present in the United States, according to the terms of 8 U.S.C. Section 1101, et seq., for the purposes of trafficking in violation of sections 566.200 to 566.215, RSMo, drug trafficking in violation of sections 195.222 to 195.223, RSMo, prostitution in violation of chapter 567, RSMo, or employment.

2. Any person violating the provisions of subsection 1 of this section shall be guilty of a felony for which the authorized term of imprisonment is a term of years not less than one year, or by a fine in an amount not less than one thousand dollars, or by both such fine and imprisonment.

3. Nothing in this section shall be construed to deny any victim of an offense under sections 566.200 to 566.215, RSMo, of rights afforded by the federal Trafficking Victims Protection Act of 2000, Public Law 106-386, as amended.

577.900. 1. If verification of the nationality or lawful immigration status of any person who is charged and confined to jail for any period of time cannot be made from documents in the possession of the prisoner or after a reasonable effort on the part of the arresting agency to determine the nationality or immigration status of the person so confined, verification shall be made by the arresting agency within forty-eight hours through a query to the Law Enforcement Support Center (LESC) of th

United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If it is determined that the prisoner is in the United States unlawfully, the arresting agency shall notify the United States Department of Homeland Security. Until August 28, 2009, this section shall only apply to officers employed by the department of public safety to include: the highway patrol, water patrol, capitol police, fire marshal's office, and division of alcohol and tobacco control.

2. Nothing in this section shall be construed to deny any person bond or prevent a person from being released from confinement if such person is otherwise eligible for release.

578.570. Any person who:

(1) Knowing or in reckless disregard of the truth, assists any person in committing fraud or deception during the examination process for an instruction permit, driver's license, or nondriver's license;

(2) Knowing or in reckless disregard of the truth, assists any person in making application for an instruction permit, driver's license, or nondriver's license that contains or is substantiated with false or fraudulent information or documentation;

(3) Knowing or in reckless disregard of the truth, assists any person in concealing a material fact or otherwise committing a fraud in an application for an instruction permit, driver's license, or nondriver's license; or

(4) Engages in any conspiracy to commit any of the preceding acts or aids or abets the commission of any of the preceding acts;

is guilty of a class A misdemeanor.

650.681. 1. Notwithstanding any other provision of law, no government entity, political subdivision, or government official within the state of Missouri shall prohibit, or in any way restrict, any government entity or official from communicating or cooperating with the United States Bureau of Immigration and Customs Enforcement regarding the citizenship or immigration status, lawful or unlawful, of any individual.

2. Municipalities and political subdivisions may collect and share the identity of persons by the same means the Federal Bureau of Investigation or its successor agency uses in its Integrated Automated Fingerprint Identification System or its successor program.

3. Notwithstanding any other provision of law, no person or agency within the state of Missouri shall prohibit, or in any way restrict, a public employee from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the United States Bureau of Immigration and Customs Enforcement;

(2) Maintaining such information; or

(3) Exchanging such information with any other federal, state, or local government entity.

4. Upon the complaint of any state resident regarding a specific government entity, agency, or political subdivision of this state or prior to the provision of funds or awarding of any grants to a government entity, agency, or political subdivision of this state, any member of the general assembly may request that the attorney general of the state of Missouri issue an opinion stating whether the

government entity, agency, or political subdivision has current policies in contravention of subsections 1 and 3 of this section.

5. No state agency or department shall provide any funding or award any monetary grants to any government entity, agency, or political subdivision determined under subsection 4 of this section to have a policy in contravention of subsections 1 and 3 of this section until the policy is repealed or no longer in effect.

6. The provisions of subsections 1 and 3 of this section shall not apply to any state or local agency administering one or more federal public benefit programs as such term is defined in 8 U.S.C. Section 1612.

[8.283. 1. If a state agency for whom work is being performed by a contractor determines upon reasonable evidence that the contractor or a subcontractor engaged to complete work required by the contract hired one or more aliens who are unauthorized to work in the United States, the state agency shall order the contractor to cause the discharge of such unauthorized workers. 2. If upon reasonable evidence the state agency determines that a contractor or subcontractor has knowingly violated the Immigration Reform and Control Act of 1986, or its successor statute, in employing aliens unauthorized to work in the United States, the agency may cause up to twenty percent of the total amount of the contract or subcontract performed by the employer of such unauthorized workers to be withheld from payment to the employer in violation of such statute.

3. If a contractor is determined by a state agency upon reasonable evidence to have engaged a subcontractor to complete work required by the contract with knowledge that the subcontractor violated or intended to violate the Immigration Reform and Control Act of 1986, or its successor statute, in hiring or continuing to employ aliens unauthorized to work in the United States, the state agency may withhold from the contractor up to double the amount caused to be withheld from payments to the subcontractor.

4. Any contractor or subcontractor from whom payment is withheld under subsection 2 or 3 of this section shall be ineligible to perform other contracts or subcontracts for the state of Missouri for a period of two years from the date of such action.

5. No state agency or contractor taking any action authorized by this section shall be subject to any claim arising from such action and shall be deemed in compliance with the laws of this state regarding timely payment.

6. The provisions of this section shall only be effective to the extent that such provisions are not preempted or prohibited by Section 1324(a) of Title 8 of the United States Code, as now or hereafter amended, and any regulations promulgated thereunder, relating to the employment of unauthorized aliens.**]**

Section B. The provisions of sections 67.307, 285.525, 285.530, 285.535, 285.540, 285.543, 285.550, 285.555, and 650.681 of section A of this act shall become effective on January 1, 2009.

Section C. The enactment of section 292.675 of section A of this act shall become effective on August 28, 2009.

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POLICY AND STATUTES

State Statutes - Examples

Missouri Rule Implementing 2008 Law

Volume 34, Number 14
Pages 1455–1530
July 15, 2009

SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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MISSOURI REGISTER

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April 1, 2009	**May 1, 2009**	May 31, 2009	June 30, 2009
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December 15, 2009	**January 18, 2010**	January 29, 2010	February 28, 2010

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation, Reimbursement And Procedure of General Applicability

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-3.180 Medical Pre-Certification Process **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2009 (34 MoReg 723–724). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under section 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70–3.190 Telehealth Services **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 16, 2009 (34 MoReg 608–610). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

ORDER OF RULEMAKING

By the authority vested in the attorney general under section 285.540, RSMo Supp. 2008, the attorney general adopts a rule as follows:

15 CSR 60-15.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2009 (34 MoReg 724). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The attorney general received five (5) comments on the proposed rule.

COMMENT #1: Denise Hasty with Associated General Contractors of St. Louis and Jack Atterberry of Associated General Contractors of Missouri pointed out that definition of "identity information" in the proposed rule did not comport with federal law and/or was inconsistent with federal law.

RESPONSE AND EXPLANATION OF CHANGE: The definition of identity information has been revised so that the information and documentation permitted by federal law meets the requirements of Missouri law.

COMMENT #2: The Builders Association pointed out that a limited liability company is not a corporation.

RESPONSE AND EXPLANATION OF CHANGE: The definition was changed to reflect the comment.

COMMENT #3: Associated General Contractors of Missouri, Associated General Contractors of St. Louis, and Lathrop & Gage commented that federal law does not require employers to keep copies of identifying documents presented by employees to verify employment eligibility and asked that that requirement be eliminated.

RESPONSE: Federal law does not prohibit an employer from keeping copies of such documents, and the Missouri requirement to keep such documents only effects newly hired employees hired after January 1, 2009. Therefore, no change was made in the rule.

COMMENT #4 The Missouri School Board's Association commented that the rule appears to include the provision of tangible goods to a governmental entity contrary to legislative intent. A related staff comment was a possible construction of the rule that included mere material suppliers to contractors and subcontractors who provided no services under the public contract.

RESPONSE AND EXPLANATION OF CHANGES: Staff agrees and a definition was added to make clear that the statute and rule only applies to services. Other parallel revisions were made to make clear that the rule applies only to contracts for services.

COMMENT #5: Staff received several oral comments and questions about application of the rule to insurers who provide medical or dental insurance coverage to public employees and whether such insurers were employers within the meaning of the public contract portions of the rule. Similar comments were made by Associated Building Contractors of Missouri regarding insurers or other companies that provide required insurance, bonds, or other surety obligations in connection with public contracts.

RESPONSE AND EXPLANATION OF CHANGES: An additional definition was added to make clear that the rule does not apply in such situations.

15 CSR 60-15.010 Definitions

(1) The terms used in Title 15, Division 60, Chapter 15 of the *Code of State Regulations* bear the same meaning in the rules pertaining to unauthorized alien workers as they do in section 285.525, RSMo Supp. 2008, as amended.

(2) The following definitions further clarify terms used in section 285.525, RSMo Supp. 2008, and Title 15, Division 60, Chapter 15 of the *Code of State Regulations*:

(A) "Business entity"—in addition to the definition as used in section 285.525(1), RSMo Supp. 2008, business entities include limited liability companies (LLCs);

(B) "Contract or grant"—does not include a permit or license issued by any political subdivision, county, or municipality;

(C) "Contractor"—does not include a person, employer, or business entity providing bonding or insurance products to employees of the state, a political subdivision, county, or municipality;

D) "Identity information"—includes a copy of the Form I-9 com-
ted by the employer and employee including copies of documents
sented by the employee establishing identity and employment eli-
ility or, alternatively, an E-Verify case verification number and a
y of any documents received from the Social Security
inistration or U.S. Department of Homeland Security regarding
employment eligibility of the employee or employees;
E) "State-administered or subsidized tax credit, tax abatement, or
n"—includes credits provided under section 99.845.4–.12, RSMo
0; and
F) "Subcontractor"—does not include a business entity that mere-
supplies goods or materials to a contractor or subcontractor hired
the contractor to perform services to perform a contract with the
e, a political subdivision, municipality, or county.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

ORDER OF RULEMAKING

the authority vested in the attorney general under section
.540, RSMo Supp. 2008, the attorney general adopts a rule as
ows:

15 CSR 60-15.020 is adopted.

notice of proposed rulemaking containing the text of the proposed
was published in the *Missouri Register* on April 1, 2009 (34
Reg 724–725). Those sections with changes are reprinted here.
s proposed rule becomes effective thirty (30) days after publica-
n in the *Code of State Regulations*.

MMARY OF COMMENTS: The attorney general received two
comments on the proposed rule.

MMENT #1: Associated General Contractors of Missouri and
ociated General Contractors of St. Louis commented that the pro-
ed rule was unclear about when a contractor must provide a pub-
entity with the required affidavit.
SPONSE AND EXPLANATION OF CHANGE: The rule has
n modified to make clear that the contractor's affidavit must be
vided to the public entity with a bid or response to a request for
posal. Affidavits that subcontractors must provide to general sub-
ntractors are not required until the general contractor hires the sub-
ntractor.

MMENT #2: Associated General Contractors of Missouri,
ociated General Contractors of St. Louis, the Missouri School
ard's Association, and Lathrop & Gage objected to a perceived
uirement of the rule that it was being applied retroactively and that
allowance of ninety (90) days to file the affidavit regarding an
sting contract unfairly advantaged some potential bidders.
SPONSE AND EXPLANATION OF CHANGE: The reference
the ninety (90)-day period does not appear in the rule but was
luded in the emergency rule only because the rule was not pro-
lgated until several months after the effective date of the statute.
was, therefore, unnecessary in the final rule. There was no intent
pply the statute retroactively to a date prior to its effective date.
wever, the prohibition against employing illegal workers became
ctive January 1, 2009, and, therefore applies to the performance
existing contracts even though the affidavit requirement does not.
ne changes in wording were made to more clearly effect this leg-
tive intent and effect.

CSR 60-15.020 Form of Affidavit

(1) Any bid or response to a request for proposal (RFP) for the award of any contract for services or grant in excess of five thousand dollars ($5,000) by the state or by any political subdivision of the state to a business entity, or application by any business entity to receive a state-administered or subsidized tax credit, tax abatement, or loan from the state, shall be accompanied by an affidavit containing the following:

(2) A subcontractor must provide a similar affidavit to its contractor or subcontractor at the time the subcontractor is hired.

(3) A contractor or subcontractor is not required to perform an electronic verification check described above on an employee hired before January 1, 2009.

(4) Any business entity having a contract or grant in excess of five thousand dollars ($5,000) from the state, a political subdivision, municipality, or county awarded before the effective date of this law is not required to complete the affidavit described above until the grant or contract is renewed but is not relieved from compliance with the provisions of section 285.530(1), RSMo Supp. 2008.

(5) Any business entity that has received a state administered or subsidized tax credit, tax abatement, or loan from the state prior to the effective date of this law is not required to complete the affidavit described above but is not relieved from compliance with section 285.530(1), RSMo Supp. 2008.

(6) Any business entity that merely provides goods or products to the state or a political subdivision with no services is not required to file the affidavit described above.

(7) The attorney general may make available a form of affidavit that will satisfy the requirements of section 285.530, RSMo Supp. 2008.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

ORDER OF RULEMAKING

By the authority vested in the attorney general under section 285.540, RSMo Supp. 2008, the attorney general adopts a rule as follows:

15 CSR 60-15.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2009 (34 MoReg 725). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The attorney general received five (5) comments on the proposed rule.

COMMENT #1: Associated General Contractors of Missouri and Associated General Contractors of St. Louis commented that the statutory provision regarding penalties for a frivolous complaint should be in the regulation.
RESPONSE: Rules are not intended merely to repeat clear statutory provisions. Staff does not believe that penalty language needs any clarification or interpretation, so no change has been made in the rule.

COMMENT #2: Staff noted that section 285.535, RSMo, requires a complaint to be sworn.

RESPONSE AND EXPLANATION OF CHANGE: Regulation was modified to make clear that complaints must be under oath, which requires a written complaint.

COMMENT #3: Staff noted that the word "off" following "print" was slang and grammatically incorrect.
RESPONSE AND EXPLANATION OF CHANGE: The word "off" was removed. Also note that the zip code is incorrect. It should be "65102."

COMMENT #4: Staff noted that the statute specifically provides that a political subdivision or municipality is permitted to file a complaint.
RESPONSE AND EXPLANATION OF CHANGE: Regulation was modified to be consistent with statute.

COMMENT #5: Staff noted that early complaints under the emergency rule often did not contain any identifying information about the alleged alien worker and therefore made investigation impossible and required requests for amended complaints.
RESPONSE AND EXPLANATION OF CHANGE: Regulation was modified to emphasize the need for specificity in the complaint.

15 CSR 60-15.030 Complaints

(1) State officials, business entities, or any state resident may file a complaint in writing and under oath with the Missouri Attorney General's Office that a business entity or employer has knowingly employed, hired for employment, or continued to employ an unauthorized alien to perform work in Missouri in violation of section 285.530, RSMo Supp. 2008.

(2) Persons wishing to file a complaint may request a complaint form from the Missouri Attorney General's Office, PO Box 899, Jefferson City, MO 65109; or may download and print the form from the Missouri Attorney General's website at www.ago.mo.gov.

(3) The form must be completed in its entirety, and the person submitting a complaint must:

(C) Verify that they are either: a Missouri resident, an official of the state, a political subdivision or municipality, or a registered agent, corporate officer, or legal representative of a business entity;

(D) A detailed description of the violation, including reasonably specific information about the alleged alien worker;

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

ORDER OF RULEMAKING

By the authority vested in the attorney general under section 285.540, RSMo Supp. 2008, the attorney general adopts a rule as follows:

15 CSR 60-15.040 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2009 (34 MoReg 725–726). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The attorney general received four (4) comments on the proposed rule.

COMMENT #1: Associated General Contractors of Missouri and Associated General Contractors of St. Louis commented that the rule should be completely rewritten, had technical errors in cross-referencing, and was unclear about procedures to be followed. They also commented that it can only be a court, rather than the attorney general, that can terminate a contract of a violator, order suspension of a license or permit, or place a violator on a suspension or debarment list.
RESPONSE AND EXPLANATION OF CHANGE: This rule has been substantially rewritten to address these comments and delineate more clearly the procedure to be followed by the attorney general upon receipt of a valid complaint. The revisions also more clearly delineate the various enforcement alternatives available to the attorney general depending upon whether the employer responds, the federal government determines that an employee is ineligible, and whether the violation is knowing, a first time violation or second violation. The revisions also more clearly delineate the additional penalties for violators who hold applicable contracts or grants with governmental entities. The suggestions concerning suspension and termination were noted but the recommendations are directly contrary to clear legislative intent and direction.

COMMENT #2: A staff member commented that additional language in the title of the rule describing the content would be beneficial to the reader.
RESPONSE AND EXPLANATION OF CHANGE: Additional language was added to the title of the rule.

COMMENT #3: Staff noted that there was no need for a definition of identity information in the section because 15 CSR 60-15.010 already defined the term.
RESPONSE AND EXPLANATION OF CHANGE: The definition in section (2) was removed because it was redundant.

COMMENT #4: Staff also noted that sections (4)–(9) in the proposed rule should be in 15 CSR 60-15.050 for organizational clarity and readability.
RESPONSE AND EXPLANATION OF CHANGE: Sections (4)–(9) in the proposed rule were moved to 15 CSR 60-15.050 in the order.

15 CSR 60-15.040 Investigation of Complaints; Failure to Respond to Attorney General Request for Identity Information

(1) Upon the receipt of a valid complaint, the Missouri Attorney General's Office shall, within fifteen (15) days, request by certified mail that the business entity provide identity information regarding person(s) alleged to be unauthorized alien workers.

(2) The business entity shall provide the "identity information" within fifteen (15) days of the receipt of the request. If the business entity fails to do so, the attorney general shall direct any applicable state agency, political subdivision, and municipal or county governing body to suspend any licenses or permits of the business entity effective fifteen (15) days from the receipt of notice by the applicable state agency, political subdivision, county, or municipality from the attorney general unless the business entity submits to the attorney general evidence of one (1) of the following within that time:

(A) That the business entity has terminated the individual, or is attempting to terminate the individual and is being challenged in court or other administrative proceeding; or

(B) That the business entity, after acquiring additional information from the employee, has requested a secondary or additional verification by the federal government of the employee's authorization.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 15—Unauthorized Alien Workers

ORDER OF RULEMAKING

By the authority vested in the attorney general under section 285.540, RSMo Supp. 2008, the attorney general adopts a rule as follows:

15 CSR 60-15.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2009 (34 MoReg 726). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The attorney general received one (1) comment on the proposed rule.

COMMENT #1: Associated General Contractors of Missouri and Associated General Contractors of St. Louis commented that the rule should be completely rewritten, had technical errors in cross-referencing, and was unclear about procedures to be followed. They also commented that it can only be a court, rather than the attorney general, that can terminate a contract of a violator, order suspension of a license or permit, or place a violator on a suspension or debarment list.

RESPONSE AND EXPLANATION OF CHANGE: This rule has been substantially rewritten to address these comments and delineate more clearly the procedure to be followed by the attorney general upon receipt of a valid complaint. The revisions also more clearly delineate the various enforcement alternatives available to the attorney general depending upon whether the employer responds, the federal government determines that an employee is ineligible, and whether the violation is knowing, a first time violation, or second violation. The revisions also more clearly delineate the additional penalties for violators who hold applicable contracts or grants with governmental entities. The suggestions concerning suspension and termination were noted but the recommendations are directly contrary to clear legislative intent and direction.

15 CSR 60-15.050 Notification by Federal Government that Individual is Not Authorized to Work

(1) Upon notification from the federal government to the Missouri Attorney General's Office that an individual is not authorized to work, and the employer participates in a federal work authorization program, the Missouri Attorney General's Office shall notify the employer to comply with section 285.535.6, RSMo Supp. 2008.

(A) The employer shall, through its legal representative as noted in subsection (1)(B) below, submit evidence of one (1) of the following within thirty (30) days:

1. The business entity has terminated the individual, or is attempting to terminate the individual and is being challenged in court or other administrative proceeding; or

2. The business entity, after acquiring additional information from the employee, has requested a secondary or additional verification by the federal government of the employee's authorization.

(B) The legal representative of the business entity shall submit a sworn affidavit to the Missouri Attorney General, PO Box 899, Jefferson City, MO 65102, stating the violation has ended and provide:

1. Evidence of the specific measures taken to end the violation, which shall, at a minimum, include a notarized affidavit, from the human resources director or other officer of the business entity whose duties include terminating the employment of employees, etc., describing the events surrounding the termination of employment;

2. The name, address, and all identifying information available to the business entity concerning the unauthorized alien(s) related to the complaint; and

3. Evidence that the business entity has enrolled in, and is currently participating in, E-Verify, a federal work authorization program, or any other equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA).

(2) Enforcement Actions by Attorney General if Business Entity Employs an Unauthorized Worker.

(A) If the federal government notifies the attorney general that a business entity has employed an unauthorized worker and the business entity has failed to correct the violation as set forth herein, the attorney general shall bring an action in the Circuit Court of Cole County if the attorney general reasonably believes the business entity knowingly employed or continued to employ an unauthorized worker in violation of section 285.530.1, RSMo Supp. 2008. In such action, the attorney general may ask the circuit court to direct any applicable state agency, political subdivision, and municipal or county governing body to suspend any business permits or license of the business entity until the entity complies with subsection 6. of 285.535, RSMo Supp. 2008.

(3) Additional Penalties for Business Entity Having a Contract or Grant with State, Political Subdivision, County, or Municipality.

(A) In addition to the penalties that may be assessed by a court for violation of the provisions of section 285.530.1, RSMo Supp. 2008, upon the first violation by any business entity awarded a contract or grant by the state, a political subdivision, municipality, or county or receiving a state-administered tax credit, tax abatement, or loan or loan guarantee from the state the business entity shall be deemed in breach of contract and the state, political subdivision, municipality, or county may terminate the contract. Upon such termination, the state, political subdivision, municipality, or county may withhold up to twenty-five percent (25%) of the total amount due to the business entity. The state, political subdivision, municipality, or county shall notify the attorney general of any such termination. Upon receipt of notice of such termination of a contract or grant or a violation of section 285.530.1, RSMo Supp. 2008, by the recipient of a state administered tax credit, tax abatement, or loan or loan guarantee from the state, the attorney general shall suspend or debar the business entity from doing business with any state, political subdivision, municipality, or county for a period of three (3) years.

(B) Upon the second or subsequent violation by any business entity awarded a contract or grant by the state, a political subdivision, municipality, or county or receiving a state-administered tax credit, tax abatement, or loan or loan guarantee from the state, the business entity shall be deemed in breach of contract and the state, political subdivision, municipality, or county may terminate the contract. Upon such termination, the state may withhold up to twenty-five percent (25%) of the total amount due to the business entity. Upon receipt by the attorney general of notice of a second or subsequent violation, the attorney general shall permanently suspend or debar the business entity from doing business with the state.

(4) The attorney general shall maintain on his website a list of all business entities suspended or debarred under this section.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Community and Public Health
Chapter 44—Emergency Response and Terrorism

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Health and Senior Services under section 44.105, RSMo Supp. 2008, the department adopts a rule as follows:

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS-EXAMPLES

Cases

Tipton

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-4102

United States of America, *
*
Appellee, *
*
v. *
*
Nicole Tipton, *
*
Appellant. *

No. 06-4134

United States of America, *
*
Appellee, *
*
v. *
*
Sadik Seferi, *
*
Appellant. *

Appeals from the United States District Court for the Northern District of Iowa.

Submitted: October 16, 2007
Filed: March 6, 2008

Before MURPHY, MELLOY, and COLLOTON, Circuit Judges.

COLLOTON, Circuit Judge.

Sadik Seferi and Nicole Tipton were convicted of hiring, harboring, and conspiring to hire and harbor unlawful aliens working at a restaurant owned by Tipton. The district court[1] sentenced Seferi to 30 months' imprisonment and Tipton to 27 months' imprisonment. Seferi and Tipton argue on appeal that there was insufficient evidence to support their convictions. Tipton also contends that the district court erred at sentencing when it calculated the advisory guidelines range. We affirm the judgments of the district court.

I.

We recite the evidence presented at trial in a light most favorable to the verdict. According to this evidence, Tipton purchased The Galley restaurant in Vinton, Iowa, on June 2, 2005. Tipton hired, supervised, and paid the wait staff. Seferi hired, supervised, and paid the kitchen staff. Tipton and Seferi split the restaurant's profits equally.

On March 6, 2006, acting on a tip from local police, agents of the Bureau of Immigration and Customs Enforcement (ICE) executed search warrants at The Galley and at an apartment used to house Galley workers. They discovered evidence that six undocumented aliens had worked in the restaurant's kitchen since September 2005.

The ICE agents found job applications, W-4 documents, and I-9 forms for every employee of the Galley, except for the six aliens. The personnel files for some of the aliens contained counterfeit identity documents. An ICE agent described one of these documents at trial as a "fantasy document." The six undocumented aliens were paid

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[1]The Honorable Linda R. Reade, United States District Judge for the Northern District of Iowa.

in cash and below the minimum wage, while all other employees were paid by check. The Galley withheld income tax and paid unemployment insurance premiums for all employees except for the six aliens.

The agents discovered that Tipton provided an apartment for the undocumented aliens. The apartment was in Tipton's name, and she paid the rent and utilities. At Tipton's request, the aliens later moved out of the apartment and rented a different place. Although one of the aliens signed the second lease, Tipton selected the apartment, completed the leasing documents, and paid the $375 deposit using her personal checking account.

On March 14, 2006, a grand jury indicted both defendants under 8 U.S.C. § 1324(a)(1)(A) for harboring illegal aliens, under 8 U.S.C. § 1324a(a)(1)(A) for hiring unauthorized aliens, and under 18 U.S.C. § 371 for conspiring to hire and harbor illegal aliens. After a joint trial, a jury found both defendants guilty on all three counts, and the district court sentenced Seferi to 30 months' imprisonment and Tipton to 27 months' imprisonment. In calculating the advisory guidelines range, the court applied a specific offense characteristic under USSG § 2L1.1(b)(2)(A) for harboring six or more unlawful aliens, and increased each defendant's offense level under USSG § 3B1.4 on the ground that the defendant used a minor to commit the offense.

II.

A.

In reviewing the appellants' challenge to the sufficiency of the evidence, we consider the record in the light most favorable to the verdict. We inquire whether a jury reasonably could find proof beyond a reasonable doubt of the charged offenses. *United States v. Red Bird*, 450 F.3d 789, 791 (8th Cir. 2006).

Tipton and Seferi argue that there was insufficient proof to show that they violated 8 U.S.C. § 1324a(a)(1)(A), which makes it unlawful to hire an alien for employment in the United States while knowing that the alien is an "unauthorized alien." An unauthorized alien is one who is not either lawfully admitted to the United States for permanent residence, or authorized by law to be employed in the United States. 8 U.S.C. § 1324a(h)(3).

We conclude that the evidence presented at trial was adequate to support the convictions of both defendants on this charge. There is no dispute that the six aliens were unauthorized within the meaning of the statute, and there was sufficient evidence from which a jury reasonably could infer that Tipton and Seferi knew that the aliens were unauthorized. Rather than hire these aliens based on a job application and interview, Seferi hired three of them at a truck stop without a job application, form of identification, or employment verification form. Tipton and Seferi treated the six aliens differently than they treated employees legally in the United States: they withheld no federal income tax from the aliens' wages, made no contribution to unemployment insurance on their behalf, and paid them in cash at a rate far below the minimum wage. Seferi drove the aliens to and from work from an apartment that Tipton maintained for them. These circumstances adequately support an inference that Tipton and Seferi knew the aliens were unauthorized.

We also conclude that the evidence is sufficient to support the appellants' convictions for harboring illegal aliens. The statute makes it unlawful to "harbor" an alien, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law. 8 U.S.C. § 1324(a)(1)(A)(iii). Harboring means any conduct that "substantially facilitate[s] an alien's remaining in the United States illegally." (R. Doc. 52, Jury Instruction 14); *United States v. Rubio-Gonzales*, 674 F.2d 1067, 1073 (5th Cir. 1982). A jury reasonably could conclude that Tipton and Seferi harbored these aliens by granting them employment, by providing the aliens a place to live, daily transportation, and money to purchase

necessities, and by maintaining counterfeit immigration papers for each alien. *See United States v. Sanchez*, 963 F.2d 152, 155 (8th Cir. 1992); *United States v. Kim*, 193 F.3d 567, 574-75 (2d Cir. 1999). The same evidence that supported a finding that Tipton and Seferi knew the aliens were unauthorized for employment also furnished an adequate basis for the jury to conclude that the appellants knew or recklessly disregarded the fact that the aliens were unlawfully in the country.

The government also presented sufficient evidence to support the conspiracy conviction. The offense of conspiracy as charged in this case requires that the defendants knowingly reached an agreement or understanding either to hire unauthorized aliens or to harbor them, and that at least one defendant took an act in furtherance of the conspiracy. *See* 18 U.S.C. § 371; *United States v. Bertling*, 510 F.3d 804, 808 (8th Cir. 2007). There was sufficient circumstantial evidence of an agreement or understanding between Tipton and Seferi. The Galley restaurant was run as a joint enterprise. Tipton and Seferi resided together, and divided equally the duties and profits of the restaurant. Tipton ran the dining room and kept the restaurant's books. Seferi hired, paid, and managed the kitchen staff, including the six aliens. Tipton maintained an apartment for the aliens from which Seferi transported them to work at the restaurant. A reasonable jury thus could have concluded that the two defendants had formed an agreement with respect to hiring and harboring the undocumented aliens. Once the jury found the requisite agreement, any of the several acts discussed above satisfied the element of an overt act in furtherance of the agreement.

B.

Tipton also appeals her sentence, arguing that the district court erroneously calculated the advisory guidelines range. In particular, she challenges the district court's application of a specific offense characteristic under USSG § 2L1.1(b)(2)(A)

for harboring six or more unlawful aliens, and the court's increase of her offense level under USSG § 3B1.4 for use of a minor to commit the offense.

A specific offense characteristic applies, resulting in an increase of three offense levels, where an offense involves the "harboring of six or more unlawful aliens." USSG § 2L1.1(b)(2). The district court found that Tipton harbored six unlawful aliens, and this finding was not clearly erroneous. Four unlawful aliens were living at the apartment that Tipton rented for use by Galley workers. Seferi identified two additional aliens who were detained at the apartment as workers in the Galley kitchen. All six aliens were paid in cash below minimum wage, with no taxes withheld, and with payment recorded on a separate log apparently reserved for unlawful aliens. This evidence was sufficient to support the district court's finding that Tipton intended to harbor six unlawful aliens.

The advisory sentencing guidelines also provide that the defendant's offense level shall be increased by two levels if she "used or attempted to use a person less than eighteen years of age to commit the offense." USSG § 3B1.4. The enhancement applies even if the defendant does not know that the persons used are minors. *United States v. Voegtlin*, 437 F.3d 741, 748 (8th Cir. 2006). In the district court, Tipton disputed the application of this provision on the ground that none of the six undocumented aliens was younger than eighteen years old. The district court found, however, that two of the aliens were minors, and we conclude that the finding was not clearly erroneous. One alien, J.L., testified at trial that he was only seventeen years old. At sentencing, an ICE agent testified that the statements and appearance of another alien who worked at the Galley established that this alien, R.V., was about fourteen years of age. This evidence was sufficient to support the district court's finding.

Tipton argues for the first time on appeal that § 3B1.4 does not apply, even if the aliens were minors, because Tipton did not "use" or "attempt to use" them in

committing the offense. The application note to § 3B1.4 states that "use or attempted use" of a minor includes "directing, commanding, encouraging, intimidating, counseling, training, procuring, recruiting, or soliciting." USSG § 3B1.4, comment. (n.1). Consistent with that listing, we have said that "the unambiguous legislative design of section 3B1.4 is to protect minors as a class from being 'solicited, procured, recruited, counseled, encouraged, trained, directed, commanded, intimidated, or otherwise used' to commit crime." *United States v. Paine*, 407 F.3d 958, 965 (8th Cir. 2005) (internal quotation omitted).

Tipton contends that there was "no particular advantage" in employing minors rather than adults, that the minors were not used as "a cover for employing illegal aliens," and that the minors were not used to escape apprehension for the offense. She relies on *United States v. Parker*, 241 F.3d 1114, 1120 (9th Cir. 2001), for the proposition that a minor's "mere participation" in a crime is not sufficient to trigger application of § 3B1.4, and that the government must show the defendant "acted affirmatively to involve the minor in the crime." This argument was not advanced at sentencing, and the district court did not address it. We thus review the claim on appeal under a plain error standard. *See United States v. Olano*, 507 U.S. 725 (1993).

We see no basis for relief. Tipton did act affirmatively to involve the minors in the offense. She hired them and harbored them. The plain language of the guideline encompasses use of a minor, regardless of special advantage to the defendant. The purpose of the enhancement – "to protect minors as a class" – is served by punishing the use of minors whether or not there was a comparative advantage in using minors rather than adults. It is not plain to us that these minor aliens were not "used" to commit the offense within the meaning of § 3B1.4, given that "use" includes recruitment, that the employees were necessary to commission of the offense, and that the minor aliens were hired by Tipton and Seferi for employment at the restaurant without legal authorization to work in the United States. Accordingly, we conclude that the district court made no plain error warranting relief.

* * *

For the foregoing reasons, we affirm the judgment of the district court.

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS-EXAMPLES

Cases

Commercial Cleaning

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2000

(Argued: November 1, 2000 Decided: November 15, 2001
Errata Filed: January 29, 2002)

Docket No. 00-7571

- X

COMMERCIAL CLEANING SERVICES, L.L.C.,

Plaintiff-Appellant,

v.

COLIN SERVICE SYSTEMS, INC.,

Defendant-Appellee.

- X

Before: KEARSE, LEVAL, and SOTOMAYOR, Circuit Judges.

Appeal from judgment of the United States District Court for the District of Connecticut (Droney, J.), dismissing plaintiff's civil RICO claim for damages caused by defendant business competitor's pattern of racketeering activity. The Court of Appeals (Leval, J.) vacates the judgment and remands for further proceedings on the grounds that plaintiff did not lack standing to bring an action based on the alleged RICO violations and that plaintiff's civil RICO case statement was not so insufficiently detailed as to warrant dismissal of the complaint without leave to amend.

HOWARD W. FOSTER, Johnson & Bell, Ltd., Chicago, IL (Clinton A. Krislov, Krislov & Associates, Ltd., Chicago, IL, Curtis V. Trinko, Law Offices of Curtis V. Trinko, New York, NY, on the brief) for Appellant.

C. WILLIAM PHILLIPS, Covington & Burling, New York, NY (David W. Haller, Aaron R. Marcu, Harry Sandick on the brief), for Appellee.

LEVAL, Circuit Judge:

Plaintiff-appellant Commercial Cleaning Services, L.L.C. (Commercial) appeals from the dismissal of its suit. Commercial brought this putative class-action suit for damages against a business competitor, defendant-appellee Colin Service Systems, Inc. (Colin), under the Racketeer Influenced and Corrupt Organizations statute (RICO), 18 U.S.C. § 1964(c) (2000). The complaint alleges that Colin engaged in a pattern of racketeering activity by hiring undocumented aliens for profit in violation of Section 274 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324(a), a RICO predicate offense. According to the complaint, Colin's illegal hiring practices enabled it to lower its variable costs and thereby underbid competing firms, which consequently lost contracts and customers to Colin. Colin moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. The district court granted Colin's motion and dismissed the complaint without leave to amend, granting judgment in Colin's favor, on the grounds that (i) Commercial had no standing to sue because it did not allege a direct injury proximately caused by Colin's illegal hiring, and (ii) Commercial failed to provide a sufficiently detailed RICO case statement as required by the Connecticut district court's Standing Order in Civil RICO Cases (Standing Order).

We agree with Commercial's contentions that its allegations satisfy the proximate cause requirement for civil RICO cases and that the deficiencies in its RICO case statement filed pursuant to

the district court's Standing Order did not justify the grant of judgment in defendant's favor. We therefore vacate the judgment.

BACKGROUND

A. The Complaint

For the purposes of reviewing the grant of Colin's motion to dismiss, we take as true the factual allegations of Commercial's complaint, as supplemented by the RICO case statement submitted pursuant to the district court's Standing Order. See McLaughlin v. Anderson, 962 F.2d 187, 189 (2d Cir. 1992).

1. The Parties

Commercial and Colin each provide janitorial services for commercial buildings. According to the complaint, Commercial is a small company that has bid against Colin for competitively awarded janitorial service contracts in the Hartford area. Colin operates throughout the Eastern seaboard and is described in the complaint as one of the nation's largest corporations engaged in the business of cleaning commercial facilities. The complaint was filed as a national class action on behalf of Colin's competitors.

2. The "Illegal Immigrant Hiring Scheme"

The complaint alleges that Commercial and the members of the plaintiff class are victims of Colin's pattern of racketeering activity in violation of 18 U.S.C. § 1962(c),[1] referred to as "the illegal immigrant hiring scheme." The theory of the case, succinctly stated, is that Colin obtained a significant business advantage over other firms in the "highly competitive" and price-sensitive cleaning services industry by knowingly hiring "hundreds of illegal immigrants at low wages." Colin's illegal immigrant hiring scheme allows it to employ large numbers of workers at lower costs than its competitors must bear when operating lawfully. Colin allegedly pays undocumented workers less than the prevailing wage, and does not withhold or pay their federal and state payroll taxes, or workers' compensation insurance fees. The complaint refers to Colin's prosecution in 1996 by the United States Department of Justice for, among other things, hiring at least 150 undocumented workers, continuing to employ aliens after their work authorizations had expired, and failing to prepare, complete, and update employment documents.

The allegations assert that Colin is part of an enterprise composed of entities associated-in-fact that includes employment placement services, labor contractors, newspapers in which Colin advertises for laborers, and "various immigrant networks that assist fellow illegal immigrants in obtaining employment, housing and illegal work permits." The complaint neither describes how the

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[1] Section 1962(c) provides:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

undocumented workers allegedly hired by Colin entered the country, nor claims that Colin had knowledge of how those workers came to the United States. It alleges that Colin's participation in the affairs of the enterprise through the illegal immigrant hiring scheme violates 8 U.S.C. § 1324(a), which prohibits hiring certain undocumented aliens, and which is a RICO predicate offense if committed for financial gain. See 18 U.S.C. § 1961(1)(F).

3. The Pratt & Whitney Contracts

What apparently led to this lawsuit was Commercial's loss of lucrative cleaning contracts to Colin. In 1994, Commercial obtained a contract to clean Pratt & Whitney's facility at Southington, Connecticut. After successfully performing on that contract for approximately one year, however, Commercial was underbid by Colin for cleaning contracts at other Pratt & Whitney facilities in the area. The complaint alleges that, through the illegal immigrant hiring scheme, Colin could offer Pratt & Whitney and other potential customers access to "a virtually limitless pool of workers on short notice" at significantly lower prices than other firms could offer by operating lawfully. As a result, Pratt & Whitney and other large contractors for cleaning services accepted Colin's lower bids over Commercial's.

B. Proceedings Below

Commercial's complaint requests class certification, an award of treble damages, and injunctive relief. Commercial submitted a RICO case statement with its complaint, as required by the District of Connecticut's Standing Order in Civil RICO Cases. Colin moved pursuant to Fed. R. Civ. P. 12(b)(6)

to dismiss the complaint for failure to state a claim. Before ruling on Commercial's request for class certification, the district court granted Colin's motion. The court dismissed the complaint primarily on the ground that Commercial had no standing to bring suit because its injury did not bear a "direct relation" to Colin's racketeering activity as required by Holmes v. Securities Investor Protection Corp., 503 U.S. 258, 268 (1992). The district court believed the perceived deficiency in Commercial's standing to bring suit was not curable. It therefore dismissed the complaint without leave to amend. The court also asserted, as an alternative justification for dismissal without leave to amend, that Commercial's RICO case statement, filed pursuant to the Standing Order, was so insufficiently detailed as to violate the intended purpose of giving the defendant basic factual information underlying the RICO claim.

This appeal followed.

DISCUSSION

I. Civil RICO Standing

A. Standard of Review

We review de novo a district court's dismissal of a complaint under Fed. R. Civ. P. 12(b)(6). See Stuto v. Fleishman, 164 F.3d 820, 824 (2d Cir. 1999). Dismissal of a civil RICO complaint for failure to state a claim is appropriate only when "it is clear that no relief could be granted under any set of facts that could be proved consistent with [plaintiff's] allegations." McLaughlin, 962 F.2d at 190 (internal quotation marks omitted) (quoting H.J., Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229,

249-50 (1989)). In applying this standard, a court must read all well pleaded allegations in the complaint in the light most favorable to the plaintiff. See id.; see also De Jesus v. Sears, Roebuck & Co., 87 F.3d 65, 69 (2d Cir. 1996).

B. Proximate Cause

RICO grants standing to pursue a civil damages remedy to "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962]." 18 U.S.C. § 1964(c). In order to bring suit under § 1964(c), a plaintiff must plead (1) the defendant's violation of § 1962, (2) an injury to the plaintiff's business or property, and (3) causation of the injury by the defendant's violation. See First Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 767 (2d Cir. 1994). Commercial's appeal turns in part on whether its complaint satisfies the causation requirement.

RICO's use of the clause "by reason of" has been held to limit standing to those plaintiffs who allege that the asserted RICO violation was the legal, or proximate, cause of their injury, as well as a logical, or "but for," cause. See Holmes, 503 U.S. at 268; see also Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 23 (2d Cir. 1990) ("By itself, factual causation . . . is not sufficient."). The requirement that a defendant's actions be the proximate cause of a plaintiff's harm represents a policy choice premised on recognition of the impracticality of asserting liability based on the almost infinite expanse of actions that are in some sense causally related to an injury. See Sperber v. Boesky, 849 F.2d 60, 63 (2d Cir. 1988). In marking that boundary, the Supreme Court has emphasized that a plaintiff cannot complain of harm so remotely caused by a defendant's actions that imposing legal liability would transgress our "ideas of what justice demands, or of what is administratively possible and

convenient." Holmes, 503 U.S. at 268 (internal quotation marks omitted) (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 41, at 264 (5th ed. 1984)).

C. "Direct Relation" Test

Colin contends that the chain of causation between its alleged hiring of undocumented workers and Pratt & Whitney's decision to award cleaning contracts to Colin instead of Commercial is too long and tenuous to meet the proximate cause test of Holmes. The defendants in Holmes were alleged to have participated in a conspiracy to manipulate the value of the stock of several companies. See Holmes, 503 U.S. at 262. Two broker-dealers who dealt in large amounts of the manipulated stock were put into liquidation when they experienced financial difficulties after the fraud was disclosed and the value of the manipulated stock precipitously declined. The Securities Investor Protection Corporation (SIPC) alleged that the defendants' securities and wire-fraud offenses amounted to a pattern of racketeering activity within the meaning of the RICO statute. It brought suit, based on a subrogation theory, on behalf of certain of the injured broker-dealer firms' customers who became unsecured creditors of the firms when the firms became insolvent. See id. at 270.

The Holmes Court applied a proximate cause test requiring a "direct relation between the injury asserted and the injurious conduct alleged." Id. at 268. The "direct relation" requirement generally precludes recovery by a "plaintiff who complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts." Id.; see also Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc., 191 F.3d 229, 235-36 (2d Cir. 1999) ("[T]he other traditional rules requiring that defendant's acts were a substantial cause of the injury, and that plaintiff's injury was reasonably

foreseeable, are additional elements, not substitutes for alleging (and ultimately, showing) a direct injury."). The Court found that the link between the customers' losses SIPC sought to recover and the defendants' stock manipulation was too remote

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to satisfy the direct relation test. It explained that "[t]he broker-dealers simply cannot pay their bills, and only that intervening insolvency connects the conspirators' acts to the losses suffered by the . . . customers." Holmes, 503 U.S. at 271. The Court noted in contrast that the liquidating trustees suing directly on behalf of the defunct broker-dealers would have been the proper plaintiffs. Id. at 273.

The Court stressed the difficulty of achieving precision in fashioning a test for determining whether a plaintiff's injury was sufficiently "direct" to permit standing under RICO. Id. at 272 n.20 ("[T]he infinite variety of claims that may arise make it virtually impossible to announce a black-letter rule that will dictate the result in every case." (internal quotation marks omitted)). It expressly warned against applying a mechanical test detached from the policy considerations associated with the proximate cause analysis at play in the case. See id. ("[O]ur use of the term 'direct' should merely be understood as a reference to the proximate-cause enquiry that is informed by the [policy] concerns set out in the [opinion]."). We have accordingly turned to those policy considerations explained in Holmes to guide any application of the Court's direct relation test. See Laborers, 191 F.3d at 239 n.4 ("[T]he outer limits of the direct injury test are described more by [the Holmes Court's policy] concerns than by any bright-line, verbal definition."); see also First Nationwide Bank, 27 F.3d at 770.

D. Evaluation of Plaintiff's Claim in Relation to the Proximate Cause Test

We conclude that Commercial's complaint, when evaluated in light of these considerations, adequately states a direct proximate relationship between its injury and Colin's pattern of racketeering activity. The Holmes Court gave three policy reasons for limiting RICO's civil damages action only to those plaintiffs who could allege a direct injury. First, the less direct an injury is, the more difficult it

becomes to determine what portion of the damages are attributable to the RICO violation as distinct from other, independent, factors. Holmes, 503 U.S. at 269, 273 (discussing the difficulty of determining whether customers' inability to collect from broker-dealers was the result of the defendants' stock manipulation as opposed to the broker-dealers' "poor business practices or their failures to anticipate developments in the financial markets"). Second, if recovery by indirectly injured plaintiffs were not barred, courts would be forced, in order to prevent multiple recovery, to develop complicated rules apportioning damages among groups of plaintiffs depending on how far each group was removed from the defendant's underlying RICO violation. Id. at 273. Third, there was no need to permit indirectly injured plaintiffs to sue, as directly injured victims could be counted on to vindicate the aims of the RICO statute, and their recovery would fix the injury to those harmed as the result of the injury they suffered. Id.

1. Difficulty of Determining Damages Attributable to the RICO Violation

The district court found plaintiff's claim deficient on the first Holmes factor, because a fact finder would be required to determine whether Commercial's lost business to Colin was the result of the illegal immigrant hiring scheme as opposed to independent business reasons, such as the comparative quality of the companies' services, their comparative business reputations, the fluctuations in demand for their services, or other reasons customers might have for selecting one cleaning company over another. The district court concluded that, even if a fact finder could make such a determination, the calculation of damages attributable to the illegal immigrant hiring

scheme would be "daunting, if not impossible."

The difficulty of proof identified in Holmes, however, was quite different from the circumstances of this case. Here, the plaintiffs bid against the defendant as direct competitors. The complaint asserts that Pratt & Whitney chose Colin because Colin submitted "significantly lower" bids in a "highly competitive" price-sensitive market. According to the complaint, Colin was able to underbid its competitors because its scheme to hire illegal immigrant workers permitted it to pay well below the prevailing wage for legal workers. Although we do not deny that there may be disputes as to whether the plaintiff class lost business because of defendant's violation of § 1324(a) or for other reasons, the plaintiff class was no less directly injured than the insolvent broker-dealers in Holmes, whose trustees, the Court indicated, would be proper plaintiffs. See Holmes, 503 U.S. at 273. If plaintiffs can substantiate their claims, the plaintiffs may well show that they lost contracts directly because of the cost savings defendant realized through its scheme to employ illegal workers.

This theory fits our suggestion in Sperber, 849 F.2d at 65, where we affirmed the dismissal on proximate causation grounds of a civil RICO complaint by investors whose share values declined in the wake of the defendant's guilty plea to insider trading. Although we found the causation chain offered by plaintiffs too remote, we distinguished a circumstance where a plaintiff was a direct competitor against a defendant. See id. We stated that the RICO statute would grant standing if plaintiff were a "head-to-head bidder against [defendant] who lost because of [defendant's] illegally-enhanced reputation or economic power." Id.[2] Where, as here, the parties have bid against each other, the

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[2] Colin argues that Sperber, a pre-Holmes decision of this court, has been overruled to the extent that it spoke of recovery for "damages caused only indirectly" by the defendant's activities. Sperber,

difference between the lowest and second lowest bid[3] is readily discoverable. If Commercial can prove that but for Colin's lower wage costs attributable to its illegal hiring scheme, Commercial would have won the contract and would have earned a profit on it, it will have shown a proximately caused injury, compensable under RICO.

Colin objects that any reduced labor costs were due to its alleged underpayment of workers and failure to pay other employment-related costs of doing business, not its participation in the illegal immigrant hiring scheme. In other words, Colin claims that Commercial complains of an injury caused by the low wages paid to Colin's workers--and not by their immigration status. Of course, paying workers less than the prevailing wage and failing to withhold payroll taxes are not RICO predicate acts. Nonetheless, the purpose of the alleged violation of 8 U.S.C. § 1324(a), the hiring of illegal alien workers, was to take advantage of their diminished bargaining position, so as to employ a cheaper labor force and compete unfairly on the basis of lower costs. By illegally hiring undocumented alien labor, Colin was able to hire cheaper labor and compete unfairly. The violation of § 1324(a) alleged by

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849 F.2d at 63. We do not see a conflict between Sperber and Holmes. First, the Holmes Court warned that by using the word "direct" it did not "necessarily use [the term] in the same sense as courts before [it] have." Holmes, 503 U.S. at 272 n.20. Second, the Sperber court recognized that "indirect injuries" could not be so "broad-ranging" as to violate proximate causation's "social policy decisions based on shared principles of justice." 849 F.2d at 64-65. The Sperber court rejected plaintiffs' argument that "the scope of liability is determined only by the foreseeability of injury." Id. Moreover, since Holmes was decided we have consistently concluded that our understanding of proximate causation described in Sperber comports with the Supreme Court's. See, e.g., In re American Express Co. Shareholder Litig., 39 F.3d 395, 399 (2d Cir. 1994) ("Holmes essentially endorsed a definition of proximate cause that we had earlier adopted." (citing Sperber)); First Nationwide Bank, 27 F.3d at 769-70.

[3] Commercial asserted at oral argument that it was the second bidder to Colin on at least one contract.

the complaint was a proximate cause of Colin's ability to underbid the plaintiffs and take business from them.

2. Difficulty of Apportioning Damages Among Injured Parties

The Holmes Court warned that if courts did not limit recovery to injuries directly related to the RICO violation, they would be forced to devise complicated rules apportioning damages among plaintiffs at different degrees of separation from the violative acts alleged. See Holmes, 503 U.S. at 273. The Court noted the difficulty of apportioning damages between the broker-dealers and customers who suffered losses when the broker-dealers became insolvent. Colin contends that its business competitors are not the only aggrieved parties who could recover under Commercial's theory and that the difficulty of apportioning damages among potential plaintiffs will be severe. Colin's response misses the point. The point made in Holmes was that, if damages are paid both to first tier plaintiffs--those directly injured by defendant's alleged acts--and to second tier plaintiffs--those injured by the injury to the first tier plaintiffs--then the payment of damages to the first tier plaintiffs would cure the harm to the second tier plaintiffs, and the payment of damages to the latter category would involve double compensation. Colin's answer is no answer to this point. If a defendant's illegal acts caused direct injury to more than one category of plaintiffs, the defendant may well be obligated to compensate different plaintiffs for different injuries. It does not follow that any plaintiff will have been twice benefitted, which was the concern in Holmes.

Unlike the situation in Holmes, Commercial and its fellow class members are not alleging an injury that was derivative of injury to others. Commercial does not seek to recover based on "the

misfortunes visited upon a third person by the defendant's acts." Holmes, 503 U.S. at 268; see also Laborers, 191 F.3d at 238-39 ("[T]he critical question posed by the direct injury test is whether the damages a plaintiff sustains are derivative of an injury to a third party. If so, then the injury is indirect; if not, it is direct."). It claims to have lost profits directly as the result of Colin's underbidding, which it achieved through its violation of § 1324(a). See Terminate Control Corp. v. Horowitz, 28 F.3d 1335, 1343 (2d Cir. 1994) (holding that the value of business opportunities lost due to defendant's RICO violations is compensable); Mid Altantic Telecom, Inc. v. Long Distance Servs., Inc., 18 F.3d 260, 264 (4th Cir. 1994) (noting that plaintiff was not seeking to vindicate claims of customers who accepted defendant's fraudulent, ostensibly lower rates, but rather alleged "distinct and independent injuries: lost customers and lost revenues"); see also Israel Travel Advisory Serv., Inc. v. Israel Identity Tours, Inc., 61 F.3d 1250, 1257 (7th Cir. 1995). We have stated a plaintiff has standing where the plaintiff is the direct target of the RICO violation. See Abrahams v. Young & Rubicam Inc., 79 F.3d 234, 238 (2d Cir. 1996); American Express, 39 F.3d at 400 (targets of RICO violations were competitive rivals not shareholders harmed by decrease in stock value upon exposure of scheme); see also Mid Atlantic Telecom, 18 F.3d at 263 (plaintiff has standing if it can show that it was a "direct target" of defendant's RICO violations). As discussed above, the theory of Commercial's claim is that Colin undertook the illegal immigrant hiring scheme in order to undercut its business rivals, thus qualifying them as direct targets of the RICO violation.

Colin raises the specter of a proliferation of civil RICO suits that would be permitted under Commercial's theory. It argues that a finding in Commercial's favor would mean that a dance club that failed to pay license fees on recordings it played, thereby decreasing its overhead costs and thereby

allowing it to decrease its admission charge, would be liable not only to the copyright holder but to all the infringer's business competitors. We do not find this hypothetical problematic. First, the hypothetical competitors would still be required to overcome the hurdle of showing that their loss of business was proximately caused by the infringer's decrease in admission fees. But more importantly, once again, the concern of Holmes was that a violator might be obligated to pay double compensation if required to compensate those directly injured and those injured by the injury to those directly injured. It was not that a violator might be obligated to compensate two or more different classes of plaintiffs, each of which suffered a different concrete injury, proximately caused by the violation. In Colin's hypothetical, the competitors and the copyright owners would have suffered entirely separate injuries. Although there may well be other reasons such plaintiffs would lack standing, they would not be barred from bringing a RICO action because of a concern for multiple recoveries. Compensating both would not overcompensate any plaintiff.

3. Ability of Other Parties to Vindicate Aims of the Statute

In relation to the third Holmes policy factor, the Supreme Court has observed that "[t]he existence of an identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in [RICO] enforcement diminishes the justification for allowing a more remote party . . . to perform the office of a private attorney general." Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 542 (1983), cited in Holmes, 503 U.S. at 270. Colin argues that this factor weighs against Commercial's standing, because other parties, such as state and federal authorities charged with collecting unpaid taxes and workers'

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compensation fees, may sue to vindicate the statute. Moreover, the INS, which enforces § 1324(a), has already obtained Colin's agreement to pay $1 million for violations of the immigration laws.

Once again, Colin misses the point. If the existence of a public authority that could prosecute a claim against putative RICO defendants meant that the plaintiff is too remote under Holmes, then no private cause of action could ever be maintained, for every RICO predicate offense, as well as the RICO enterprise itself, is separately prosecutable by the government. In Holmes, those directly injured could be expected to sue, and their recovery would redound to the benefit of the plaintiffs suing for indirect injury. Here, in contrast, suits by governmental authorities to recover lost taxes and fees would do nothing to alleviate the plaintiffs' loss of profits. There is no class of potential plaintiffs who have been more directly injured by the alleged RICO conspiracy than the defendant's business competitors, who have a greater incentive to ensure that a RICO violation does not go undetected or unremedied, and whose recovery would indirectly cure the loss suffered by these plaintiffs.

II. Violation of the Standing Order

The district court's alternative ground for dismissing the complaint was that Commercial had "grievously violated" the District of Connecticut's Standing Order in Civil RICO Cases. The Standing Order requires that a plaintiff in a civil RICO case submit a RICO Case Statement within 20 days of filing the complaint. The case statement must provide "in detail" information including, among other things, the names of the individuals, partnerships, or other legal entities constituting the RICO enterprise, the dates of the predicate acts with a description of the facts surrounding the predicate acts, and the identity of the alleged wrongdoers and victims.

The district court gave little explanation of this ground for dismissal. It is not clear whether the court understood the dismissal as justified by plaintiff's failure to furnish information relating to the claim required by a rule of law (as is the case when a court grants summary judgment because the plaintiff fails to show evidence capable of proving the elements of the claim, or grants a motion under Fed. R. Civ. P. 12(b)(6) because the facts pleaded would not constitute a violation of law), or as a sanction imposed because of plaintiff's failure to obey a court order (as might be appropriate if the plaintiff refused to appear for his deposition). See, e.g., Valentine v. Museum of Modern Art, 29 F.3d 47 (2d Cir. 1994) (dismissing action with prejudice for plaintiff's refusal to comply with order to appear for deposition). Although either theory can justify grant of judgment to the defendant in appropriate circumstances, the circumstances presented here could not justify the entry of judgment on either theory.

We consider first the theory of insufficient information. For at least two reasons, dismissal for insufficient information was not justified. First, the Standing Order calls for information far in excess of the essential elements of a RICO claim. On a motion for summary judgment, or for judgment as a matter of law at the time of trial, a defendant would not be entitled to judgment because the plaintiff's evidence failed to include all the "individuals, partnerships, corporations, associations, or other legal entities [that constitute] the RICO enterprise," or the identities of all "wrongdoers" and "victims." To the extent the Standing Order called for presentation of information going beyond what a plaintiff needs to present to establish a legally sufficient case, plaintiff's inability to produce it could not justify the grant of judgment to defendant.

A standing order of this nature may appropriately require a plaintiff to set forth the information it

possesses in helpfully categorized form, as an aide to the court and to the accused defendant. But it may not make the prosecution of the action dependent on the plaintiff's ability to furnish more information than is required, as a matter of law, to prove the essential elements of the claim.

Second, the district court gave the plaintiff no opportunity to conduct discovery so as to fill the deficiencies in the information it provided. Although Fed. R. Civ. P. 11(b) seeks to ensure, by imposing responsibility on attorneys, that claims are "warranted" and "likely to have evidentiary support after a reasonable opportunity for further investigation or discovery," it makes clear by the latter quoted phrase that a plaintiff is not required to know at the time of pleading all facts necessary to establish the claim. See O'Brien v. Alexander, 101 F.3d 1479, 1489 (2d Cir. 1996) (a sanction under Rule 11(b) may not be imposed for failure to make reasonable inquiry "unless a particular allegation is utterly lacking in support"). Similarly, Fed. R. Civ. P. 56(f) provides, as interpreted by court opinions, that when a party facing an adversary's motion for summary judgment reasonably advises the court that it needs discovery to be able to present facts needed to defend the motion, the court should defer decision of the motion until the party has had the opportunity to take discovery and rebut the motion. See Meloff v. New York Life Ins. Co., 51 F.3d 372, 375 (2d Cir. 1995) (holding that grant of judgment was premature where plaintiff submitted properly supported Rule 56(f) request for further discovery in opposition to defendant's motion for summary judgment); see also Hellstrom v. U.S. Dep't of Veteran's Affairs, 201 F.3d 94, 97 (2d Cir. 2000) ("The nonmoving party must have had the opportunity to discover information that is essential to [its] opposition to the motion for summary judgment. Only in the rarest of cases may summary judgment be granted against a plaintiff who has not been afforded the opportunity to conduct discovery." (internal quotation marks and citation omitted)).

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Here, the district judge construed the Standing Order to justify dismissal of the action by reason of the plaintiff's failure to possess every fact needed to prove the essential elements of the claim (and more) at the time of the complaint without any opportunity for discovery. We do not think the Standing Order can possibly be intended to impose such an obligation.

The district court might also have understood the entry of judgment as a sanction imposed by reason of the plaintiff's violation of a court order. We have observed that the grant of judgment as a sanction for violation of a court order is an extreme and harsh remedy. See Valentine, 29 F.3d at 49 ("Dismissal with prejudice is a harsh remedy to be used only in extreme situations . . . ." (alteration and internal quotation marks omitted)). In general, this extreme sanction is appropriately imposed only in cases of willfulness, bad faith, or reasonably serious fault. See Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 640 (1976); Bambu Sales, Inc. v. Ozak Trading Inc., 58 F.3d 849, 853-54 (2d Cir. 1995) (defendants' "deliberate obstruction" in failing to comply with court orders justified the "potent medicine" of the entry of judgment in plaintiff's favor); Minotti v. Lensink, 895 F.2d 100, 103 (2d Cir. 1990) (district court did not abuse discretion in dismissing action following plaintiff's failure to heed discovery orders on four separate occasions and the court's warning of the threat of dismissal). Plaintiff's failure on the first try to supply all the information called for by the Standing Order was not such an egregious, abusive disregard of a court order as would justify grant of judgment in the action.

We conclude that plaintiff's failure to furnish all the information required by the Standing Order, especially without opportunity for discovery, did not justify the grant of judgment to the defendant.

III. Pleading the Elements of the Predicate Offense

We agree with Colin that Commercial's complaint was deficient in one respect. While alleging that Colin has committed "well over 100 acts of knowingly hiring illegal aliens," it failed to allege an essential element of § 1324(a)[4]—that Colin had actual knowledge that the illegal aliens it hired were brought into the country in violation of the statute. See, e.g., Sys. Mgmt., Inc. v. Loiselle, 91 F. Supp. 2d 401, 408 (D. Mass. 2000) (dismissing civil RICO claim predicated on violation of § 1324(a) where plaintiff did not allege that "[defendant] had knowledge of how the aliens had been brought into the United States and that they were brought into the United States in violation of [§ 1324(a)]").

Although Commercial's complaint fails to allege an essential element of the RICO predicate offense, the flaw is not fatal, and can be cured by repleading.[5]

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[4] Section 1324(a)(3)(A) provides:

> Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under Title 18, or imprisoned for not more than 5 years, or both. (emphasis added).

Subparagraph (B) of the subsection describes:

> An alien described in this subparagraph is an alien who—
> (i) is an unauthorized alien . . . , and
>
> (ii) has been brought into the United States in violation of this subsection.

[5] At oral argument, Commercial asserted that it can allege Colin's knowledge of how the workers in question were brought into the country and that they were brought into the country in violation of § 1324(a).

CONCLUSION

The judgment of the district court is vacated, and the case is remanded for further proceedings consistent with this opinion.

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CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS-EXAMPLES

Cases

Zirkle Fruit Company

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OLIVIA MENDOZA, individually and on behalf of all others similarly situated; JUANA MENDIOLA, individually and on behalf of all others similarly situated,
Plaintiffs-Appellants,

v.

ZIRKLE FRUIT CO., a Washington corporation; MATSON FRUIT COMPANY, a Washington corporation; SELECTIVE EMPLOYMENT AGENCY, INC., a Washington corporation,
Defendants-Appellees.

No. 01-35276
D.C. No. CV-00-03024-FLVS
OPINION

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Argued and Submitted
June 7, 2002—Seattle, Washington

Filed September 3, 2002

Before: Melvin Brunetti, Stephen S. Trott, and
M. Margaret McKeown, Circuit Judges.

Opinion by Judge McKeown

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COUNSEL

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J. Jay Carroll, Brendan Victor Monahan, Velikanje, Moore & Shore, P.S., Yakima, Washington, for appellee Selective Employment Agency, Inc.

OPINION

McKEOWN, Circuit Judge:

This case arises from claims that two agricultural companies leveraged the hiring of undocumented immigrants in order to depress the wages of their legally documented employees. We are called upon to decide two significant issues. First, we must determine whether, under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, legally documented agricultural workers have standing to sue their employers, whom they allege depressed their salaries by conspiring to hire undocumented workers at below market wages. Second, we must consider

the constitutionality of supplemental subject matter jurisdiction involving a party over whom there is no independent basis for federal court jurisdiction. The district court resolved both questions in favor of the defendants and dismissed this lawsuit on the pleadings. We reverse.

BACKGROUND

Olivia Mendoza, Juana Mendiola, and the purported class ("employees") are agricultural laborers for Zirkle Fruit Company and Matson Fruit Company ("growers"), which operate fruit orchards and packing houses in Eastern Washington, the heart of Washington's fruit industry. According to the complaint,[1] the employees are "persons legally authorized to be employed in the United States." They worked for the growers "at wages that are substantially depressed because of the Illegal Immigrant Hiring Scheme." Pursuant to the scheme, Zirkle and Matson "knowingly hire workers of illegal status because the illegal workers are willing to accept wages that are significantly lower than wages would be in a labor market comprised solely of legally authorized workers." They do so "for the purpose of depressing employee wages below the levels they would otherwise be required to pay if they were unable to hire substantial numbers of illegal immigrants who, due to their economic situation and fear of asserting their rights due to their illegal status, can be easily exploited and who are therefore willing to work for depressed wages." The complaint provides substantial background and detail about the scope of the challenged scheme:

> Eastern Washington is the heart of Washington's famed apple and fruit industry. This area . . . is uniquely suited for growing fruit . . . .

[1]These facts, which are derived from the complaint, must be taken to be true because the case was dismissed on the pleadings for lack of jurisdiction and failure to state a claim. *United States v. One 1997 Mercedes E420*, 175 F.3d 1129, 1131 n.1 (9th Cir. 1999).

> In Washington state there are more than 15,000 fruit packers and 30,000 orchard pickers of fruit. Many operations require unskilled, low-wage laborers for harvesting and packing and other related tasks requiring manual labor. While the industry now generates over $1 billion, many of these workers live in poverty.
>
> Defendants Matson and Zirkle operate fruit orchards and packing houses. Matson and Zirkle are motivated to keep labor costs as low as possible and, due to a variety of complex social and economic factors, the industry's demand for low-skilled workers has attracted many workers of Mexican citizenship. Many of these Mexican nationals are illegal immigrants who have been smuggled into the U.S. and/or harbored in the U.S. by relatives, friends, and the employers. Matson and Zirkle . . . knowingly hire workers of illegal status because illegal workers are willing to accept wages that are significantly lower than wages would be in a labor market comprised solely of legally authorized workers.

The Immigration and Naturalization Service has conducted investigations finding that as much as half the growers' workforce is employed illegally, and the growers have been targeted for "raids and other law enforcement procedures."

According to the complaint, the scheme is facilitated by Selective Employment Agency, Inc., a separate company that employs the workers and then "loans" them to the growers. "Defendants Matson and Zirkle use Selective Employment as a 'front company' for the purpose of perpetrating this scheme with the hope that each will be thus shielded from charges that they violated federal law." Although Selective Employment was named only as an association-in-fact enterprise, not as a defendant, in the federal RICO claim, the complaint

alleged a state conspiracy claim that did name Selective Employment as a defendant.

The district court dismissed the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).[2] Although the district court held that the employees pled a direct injury because there was no intervening third party from whom their injury was derived, the court dismissed the complaint on grounds that the damages were too speculative and difficult to ascertain.[3]

The employees moved for reconsideration, proffering a proposed amended complaint that alleged a conspiracy broader than the named growers and included more specific causation allegations. The amended complaint states that the growers and unnamed conspirators "comprise a large percentage of the fruit orchards and packing houses in the area, and therefore affect wages throughout the labor market for apple pickers and fruit packers, [such that] competition with respect to wages is stifled and suppressed." The proffered complaint also adds six paragraphs explaining how the scheme injures the workers. Nonetheless, the district court denied the motion, clarifying that it was not dismissing merely for difficulty of proof, but for lack of concrete injury and proximate causation.

In addition, the district court, quite reluctantly, granted Selective Employment's motion to dismiss pursuant to Rule 12(b)(1). The district court determined that it was bound by *Ayala v. United States*, 550 F.2d 1196 (9th Cir. 1977), *cert.*

[2]The complaint also alleged a mail fraud RICO predicate in sending forms falsely verifying employment eligibility to the government. In a ruling that has not been appealed, the district court held that the mail fraud scheme did not provide an adequate RICO predicate act because the employees were not the party defrauded.

[3]The district court "remanded" the remaining state law claims against the growers. As the parties acknowledge, dismissal, not remand, was called for because this suit was originally brought in federal court. *See* 28 U.S.C. § 1447.

granted, 434 U.S. 814 (1977), *cert. dismissed*, 435 U.S. 982 (1978), which it characterized as holding pendent-party jurisdiction unconstitutional.

DISCUSSION

We note at the outset that the district court dismissed this case on the pleadings. Consequently, our review is de novo, and we may affirm the dismissal "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S. Ct. 992, 998 (2002) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). In the RICO context, "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *NOW v. Scheidler*, 510 U.S. 249, 256 (1994) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

The district court offered two bases for dismissal on the pleadings: RICO standing and supplemental jurisdiction. We discuss those issues below, but first we address one proffered alternative ground for affirming the dismissal for failure to state a claim, an argument that need not detain us long. RICO prohibits engaging in a pattern of "racketeering activity," defined as violating certain laws; as such, a predicate illegal act must be alleged. 18 U.S.C. §§ 1962(c), 1961(1)(F). The district court held that the "Illegal Immigrant Hiring Scheme" as pleaded involved a predicate RICO act, knowingly hiring undocumented workers in violation of Immigration and Naturalization Act § 274, 8 U.S.C. § 1324. We are unpersuaded by the growers' argument that the district court erred in this respect. Their argument rests on a hypertechnical reading of the complaint inconsistent with the generous notice pleading standard. *See Swierkiewicz*, 122 S. Ct. at 999. The complaint alleges that the defendants had knowledge of illegal harboring

"and/or" smuggling. Even if knowledge of smuggling were required by the statute, an issue about which we express no opinion, the complaint easily contains this allegation. We affirm the district court's analysis and reasoning on this issue, and turn to standing and supplemental jurisdiction.

I. STANDING

A. STATUTORY STANDING

[1] We turn first to the statutory standing requirements particular to RICO. Under RICO, "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court" for civil damages. 18 U.S.C. § 1964(c). This statute is quite similar to the antitrust statute granting standing to "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws," 15 U.S.C. § 15(a), and consequently the two have been interpreted in tandem. *Holmes v. Sec. Inv. Protection Corp.*, 503 U.S. 258, 268 (1992). The employees allege an injury to their property in the form of lost wages.[4] The key task is to determine whether this injury was "by reason of" the growers' alleged violations, a requirement the Supreme Court has interpreted to encompass proximate as well as factual causation.

[2] In a series of cases beginning in the antitrust context

[4]The growers suggest that the employees would have to show a "property right" in the lost wages, by showing that they were promised or contracted for higher wages. This argument is misplaced in the context of RICO. This case does not implicate procedural due process; rather, what is required is precisely what the employees allege here: a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes. 18 U.S.C. §§ 1962(c), 1961(1); *Dumas v. Major League Baseball Prop.*, 104 F. Supp. 2d 1220, 1222 (S.D. Cal. 2000), *aff'd sub nom. Chaset v. Fleer/Skybox Int'l, LP*, No. 00-56251, ___ F.3d ___, slip op. at 12236 (9th Cir. Aug. 20, 2002) (holding no "injury to property" under RICO).

and later extended to RICO, the Supreme Court clarified that potential plaintiffs who have suffered "passed-on" injury—that is, injury derived from a third party's direct injury—lack statutory standing. *Ill. Brick Co. v. Illinois*, 431 U.S. 720 (1977); *Assoc. Gen'l Contractors v. Calif. State Council of Carpenters*, 459 U.S. 519 (1983); *Holmes*, 503 U.S. at 268. *Illinois Brick* held that government consumers could not sue on a theory that high prices were passed on to them as a result of the defendants' illegal price-fixing scheme. 431 U.S. at 736. Similarly, in *Associated General Contractors*, unions lacked standing to sue a contractors' association for an illegal conspiracy to use nonunion subcontractors because such a conspiracy would directly victimize the union subcontractors, not the unions. 459 U.S. at 520-21. *Holmes* extended the requirement to RICO; nonpurchasing customers, forced to cover costs when brokers became insolvent as a result of an illegal stock manipulation scheme, could not sue for this derivative harm. 503 U.S. at 268.

[3] In this circuit, we focus on three nonexhaustive factors in considering causation, that is whether the injury is "too remote" to allow recovery:

> (1) whether there are more direct victims of the alleged wrongful conduct who can be counted on to vindicate the law as private attorneys general; (2) whether it will be difficult to ascertain the amount of the plaintiff's damages attributable to defendant's wrongful conduct; and (3) whether the courts will have to adopt complicated rules apportioning damages to obviate the risk of multiple recoveries.

Ass'n of Wash. Pub. Hosp. Dists. v. Philip Morris Inc., 241 F.3d 696, 701 (9th Cir.) (quoting *Oregon Laborers—Employers Health & Welfare Trust Fund v. Philip Morris, Inc.*, 185 F.3d 957, 963 (9th Cir. 1999)), *cert. denied*, 122 S. Ct. 207 (2001) ("*Wash. Pub. Hosp.*"). At this stage of the proceedings, we cannot say that there is "no set of facts that

could be proved," to satisfy these requirements. *Swierkiewicz*, 122 S. Ct. at 998.

Our analysis is guided by two key cases, both decided after the district court's original opinion. *See Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 987 (9th Cir. 2000); *Commercial Cleaning Servs. v. Colin Serv. Sys., Inc.*, 271 F.3d 374, 378 (2d Cir. 2001).

The relationships among the parties in this case bear a striking resemblance to those in *Knevelbaard Dairies*, an antitrust case in which we recently held that the plaintiffs had standing. There, milk producers sued defendant cheese producers, who illegally fixed the price of cheese, which in turn set the price of milk artificially low. 232 F.3d at 989. Applying classic antitrust standing principles, we looked "to the chain of causation between [plaintiff's] injury and the alleged restraint in the market." *Id.* at 989 (quoting *Am. Ad Mgmt. Inc. v. General Tel. Co.*, 190 F.3d 1051, 1058 (9th Cir. 1999)). We concluded that the milk producers' injury was sufficiently direct. Their allegations that they would "receive[ ] less for milk than they otherwise would have received in the absence of the defendants' unlawful conduct" were "disputed claims of causation and injury [that] cannot be decided on a Rule 12(b)(6) motion." *Id.* at 989. The employees here, like the milk producers in *Knevelbaard Dairies*, claim a direct market injury as a result of the alleged illegal hiring scheme (or in the case of *Knevelbaard Dairies*, as a result of the price fixing in the cheese market). In fact, the causation allegations here are more direct than *Knevelbaard Dairies*, as the employees allege a direct impact on the labor market, not the more attenuated claim of an impact on the cheese market, which in turn affected the milk prices.

The Second Circuit, the only circuit to have considered allegations of illegal immigrant hiring based on the same predicate act as that at issue here, held that the plaintiffs had standing to sue under RICO. In *Commercial Cleaning*, a com-

petitor alleged that the defendant janitorial service underbid it by relying on laborers that the defendant knew to be undocumented. 271 F.3d at 378. The injury was not derivative of an injury to a third party because "the theory of Commercial's claim is that Colin undertook the illegal immigrant hiring scheme in order to undercut its business rivals." *Id.* at 384. Similarly here, the employees allege that the illegal hiring scheme was divined in order to depress the normal labor market.

[4] Turning to the first factor, taking the allegations in the complaint as true, we are unable to discern a more direct victim of the illegal conduct. The documented employees here do not complain of a passed-on harm. They allege that the scheme had the purpose and direct result of depressing the wages paid to them by the growers. Thus, as the district court correctly determined, "plaintiffs have stated a claim that they are the direct victims of the illegal hiring scheme."

As in *Knevelbaard Dairies* and *Commercial Cleaning*, the scheme aims to gain an illegal commercial advantage—here, disproportionate bargaining power in employment contracts—in the growers' dealings with the employees. Neither the government nor the undocumented workers are an intervening third party in this scheme, despite the growers' arguments to the contrary. The claims here thus differ fundamentally from passed-on injury cases. *See Imagineering Inc. v. Kiewit Pac. Co.*, 976 F.2d 1303, 1312 (9th Cir. 1992) (holding that minority- and women-owned subcontractors could not sue general contractors under RICO for an illegal scheme to evade federally required quotas because the direct harm was to competitor general contractors who complied with the quotas); *Oregon Laborers*, 185 F.3d at 963-67 (holding that health care trust funds could not sue tobacco companies under RICO because their injury derived from the smokers' injury); *Wash. Pub. Hosp.*, 241 F.3d at 703 (same for health care providers). In contrast to these other cases, the alleged scheme here was intended to give the growers a contract advantage at

the expense of the documented workers, a direct rather than a pass-through injury.

We also note that the undocumented workers cannot "be counted on to bring suit for the law's vindication." *Holmes*, 503 U.S. at 273; *cf. Hoffman Plastic Compounds Inc. v. NLRB*, 122 S. Ct. 1275 (2002) (holding that undocumented workers are not entitled to backpay wrongfully withheld in a labor dispute). Although not dispositive, *see Oregon Laborers*, 185 F.3d 957, we heed the Supreme Court's example and consider this factor in our analysis. As the district court noted, the fact that RICO specifically provides that illegal hiring is a predicate offense indicates that Congress contemplated the enforcement of the immigration laws through lawsuits like this one. 18 U.S.C. § 1961(1)(F).

[5] The second concern to which we direct our attention is the speculative measure of harm. The district court noted that "intervening factors . . . could have interfered with the plaintiffs receiving higher pay absent the defendants' hiring of undocumented workers. These intervening factors include the wage paid by other orchards in the area, the skill and qualifications of each plaintiff, the profitability of the defendants' businesses without the undocumented workers, and the general availability of documented workers in the area." In other words, the district court dismissed the complaint based on the conclusion that factors other than the scheme coupled with the growers' power in the relevant labor market *could* account for the plaintiffs' depressed wages. The difficulty with this reasoning is that the employees allege that the growers singularly have the ability to define wages in this labor market, akin to monopsony or oligopsony power. *See* Phillip Areeda, et al., *Antitrust Law* ¶¶ 574, 1431 (1995). They further allege that it is the illegal scheme that has caused their injury. The proposed amended complaint lays to rest any remaining doubt about attributing the alleged harm to the scheme, by spelling out a broad conspiracy causing direct harm to the workers. For example, it makes clear that the scheme involves fruit

growers that "comprise a large percentage of the fruit orchards and packing houses in the area, and therefore affect wages throughout the labor market."

The district court's analysis focused primarily on cause-in-fact, not proximate cause, and it is inappropriate at this stage to substitute speculation for the complaint's allegations of causation. As we explained in *Knevelbaard Dairies* when we rejected the claim that milk prices might have been lower due to independent factors instead of the cheese price fixing: "Whether experts will be able to measure the difference between the allegedly restrained price for milk and the price that would have prevailed but for the antitrust violation remains to be seen; in deciding a Rule 12(b)(6) motion we are dealing only with the complaint's allegations, which in this instance do not make the claim speculative." 232 F.3d at 991.

[6] Similarly here, the workers must be allowed to make their case through presentation of evidence, including experts who will testify about the labor market, the geographic market, and the effects of the illegal scheme. Questions regarding the relevant labor market and the growers' power within that market are exceedingly complex and best addressed by economic experts and other evidence at a later stage in the proceedings. For now, it is sufficient that the employees have alleged market power—they must not be put to the test to prove this allegation at the pleading stage. *See Scheidler*, 510 U.S. at 256; *In re Warfarin Sodium Antitrust Litigation*, 214 F.3d 395, 398 (3d Cir. 2000) (reversing dismissal based on lack of antitrust standing because "the District Court considered facts gleaned from counsel's argument and from its own experience, factors not contemplated by the dictates of Rule 12(b)(6)").

Finally, it is important to distinguish between uncertainty in the fact of damage and in the amount of damage. *Knutson v. Daily Review, Inc.*, 548 F.2d 795, 811 (9th Cir. 1976) ("Different standards govern proof of the fact and proof of the

amount of damages."). That wages would be lower if, as alleged, the growers relied on a workforce consisting largely of undocumented workers, is a claim at least plausible enough to survive a motion to dismiss, whatever difficulty might arise in establishing how much lower the wages would be. *Cf. Oregon Laborers*, 185 F.3d at 964 (holding medical costs resulting from injury to smokers easily established).

[7] Turning to the final factor, the growers do not appear to argue that there is a significant risk of multiple recovery in this case. No other potential plaintiffs emerge with clarity. Also, as the Second Circuit reasoned, even if there are other classes of potential plaintiffs who could recover for the alleged illegal hiring scheme, such lawsuits would not threaten multiple recovery of passed-on harm. *Commercial Cleaning*, 271 F.3d at 383-84. This factor does not bar suit for "different classes of plaintiffs, each of which suffered a different concrete injury, proximately caused by the violation." *Id.* at 384. In sum, there is no difficulty avoiding multiple recovery here because this is not a suit for derivative or passed-on harm.

B. CONSTITUTIONAL STANDING

Because they are invoking federal jurisdiction, the employees must establish "the irreducible constitutional minimum of standing" in addition to meeting the statutory standing requirements. *Lujan*, 504 U.S at 560-61. This minimum or threshold consists of three factors: (1) injury in fact: "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical," *id.* at 560 (citations and internal quotations omitted); (2) causation: the injury must be fairly traceable to the defendant's challenged action, *id.*; and (3) redressability: "it must be likely as opposed to merely speculative that the injury will be redressed by a favorable decision," *id.* at 561 (internal quotations omitted).

Based on the complaint, the employees easily meet this test. First, they allege a concrete, actual injury in their lost wages. As discussed above, their causation allegations are sufficient at this stage. *See Scheidler*, 510 U.S. at 256 (rejecting a constitutional causation challenge in a RICO suit where the plaintiffs alleged that a conspiracy to threaten staff and patients "has injured the business and/or property interests of the [petitioners]"). Finally, because the award of money damages will redress the injury of lost wages, the third element is also met.

II. SUPPLEMENTAL PARTY JURISDICTION

[8] The employees sued Selective Employment solely under state law, precluding federal question jurisdiction, and all parties are Washington citizens, precluding diversity jurisdiction. *See* 28 U.S.C. §§ 1331 & 1332. In such a situation, absent an independent basis for federal subject matter jurisdiction, Congress has authorized the district court to exercise supplemental jurisdiction:

> [T]he district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1337(a).[5]

Prior to the passage of § 1337, supplemental jurisdiction

[5]The statute restricts supplemental jurisdiction in certain cases where the underlying basis for federal jurisdiction is diversity. 28 U.S.C. § 1337(b). This provision is not at issue in this case, which rests on federal question jurisdiction.

was more circumscribed and the addition of a party was one factor that barred jurisdiction over additional claims brought by plaintiffs. *See generally* Denis F. McLaughlin, *The Federal Supplemental Jurisdictional Statute—A Constitutional and Statutory Analysis*, 24 Ariz. St. L. J. 849, 859-89 (1992). In 1973, the Supreme Court expressed some skepticism about "pendent party jurisdiction"—jurisdiction over plaintiffs' claims requiring the addition of parties not involved in the main lawsuit. The Court characterized this issue as a "subtle and complex question with far-reaching implications." *Moor v. County of Alameda*, 411 U.S. 693, 715 (1973). Continuing this thread, in *Aldinger v. Howard*, 427 U.S. 1 (1976), the Court held that pendent party jurisdiction was impermissible as a matter of statutory construction under the particular circumstances of the case. Finally, in *Finley v. United States*, 490 U.S. 545, 549 (1989), the Court "assume[d], without deciding," that pendent party jurisdiction was constitutional, but cautioned that it requires an express statutory jurisdictional grant. In 1990, Congress enacted § 1367 to provide such an express grant. Pub. L. No. 101-650 § 310.

[9] The statutory grant of jurisdiction is, of course, limited by constitutional boundaries. Upon careful review, however, we are convinced that the controlling constitutional standard remains that articulated in *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966): The claims must form "but one constitutional 'case' " and "derive from a common nucleus of operative fact." We therefore decline Selective Employment's invitation to impose a per se constitutional bar on supplemental jurisdiction over claims against additional parties.

A. *AYALA v. UNITED STATES*

Selective Employment relies on *Ayala v. United States*, 550 F.2d 1196, 1199-1200 (9th Cir. 1979), where we held that federal courts were without power to exercise pendent party jurisdiction under the Federal Tort Claims Act. At that time,

neither of the key Supreme Court cases, *Moor* and *Aldinger*, had resolved the question, nor did we have the benefit of the explicit language of *Finley*, which came ten years later. Selective Employment, however, points to language that implied that, in addition to not being authorized under any statute, pendent party jurisdiction posed constitutional difficulties. *Id.* at 1199, 1200 n.8. These statements, however, are best read as flagging the necessity for caution due to potential constitutional problems that might arise with an unduly broad exercise of pendent jurisdiction.

Significantly, *Ayala* also came before intervening decisions that clarified that *Ayala*'s restrictive interpretation does not survive the 1990 passage of § 1367. We explained in *Galt G/S v. Hapag-Lloyd AG*, 60 F.3d 1370, 1374 (9th Cir. 1995), that *Finley* imposed two requirements for supplemental jurisdiction: (1) the claims must be "part of the same constitutional 'case' "; and (2) the jurisdiction must be expressly authorized by statute. We further observed that "28 U.S.C. § 1367 supercedes this second *Finley* requirement. . . ." *Id.* at 1374 n.3; *see also Yanez v. United States*, 989 F.2d 323, 327 n.3 (9th Cir. 1993) (holding that court lacked jurisdiction in pre-1990 suit, but noting that "Congress has now explicitly authorized pendent party jurisdiction" (citing 28 U.S.C. § 1367)).

B. CONSTITUTIONALITY OF SUPPLEMENTAL JURISDICTION UNDER § 1367

Any lingering doubt that *Ayala* establishes a binding constitutional rule is put to rest by the Supreme Court's recent decision in *Raygor v. Regents of the University of Minnesota*, 534 U.S. 533, 122 S. Ct. 999, 1004 (2002). Holding that a tolling provision was curtailed by the Eleventh Amendment, the Court discussed the history of supplemental jurisdiction:

> In *Mine Workers v. Gibbs*, this Court held that federal courts deciding claims within their federal-question subject matter jurisdiction, 28 U.S.C.

> § 1331, may decide state law claims not within their subject matter jurisdiction if the federal and state law claims "derive from a common nucleus of operative fact" and comprise "but one constitutional 'case.' " . . . This Court later made clear that *absent authorization from Congress*, a district court could not exercise pendent jurisdiction over claims involving parties who were not already parties to a claim independently within the court's subject matter jurisdiction. *See Finley v. United States*, 490 U.S. 545 (1989).

122 S. Ct. at 1004 (emphasis added; some citations omitted). The Court elaborated that § 1367 provided just such authorization, functioning as a "general grant of jurisdiction." *Id.* at 1005. As the Supreme Court explained in *Raygor*, Article III permits supplemental jurisdiction "if the federal and state law claims 'derive from a common nucleus of operative fact' and comprise 'but one constitutional case.' " *Id.* at 1004 (quoting *Gibbs*, 383 U.S. at 725) (some internal quotation marks omitted). Thus, any suggestion in *Ayala* that the Constitution imposes a bar on supplemental jurisdiction over additional parties independent of statutory authorization has been undermined by intervening Supreme Court authority. *See United States v. Gay*, 967 F.2d 322, 327 (9th Cir. 1992) (holding that a prior panel decision is not binding in such a situation).

Selective Employment provides no compelling rationale to restrict supplemental jurisdiction beyond the limitation imposed in *Gibbs*. Indeed, the district court suggested that it would hold otherwise but for the belief that its hands were tied by *Ayala*. The district court's instincts were vindicated by the Supreme Court's later ruling in *Raygor*. We acknowledge, of course, that federal courts are courts of limited jurisdiction. U.S. Const. Art. III, sec. 2; *Finley*, 490 U.S. at 550 (quoting *Gibbs*, 427 U.S. at 15). The *Gibbs* standard defines the minimum constitutional constraints, offering both Congress and the district courts flexibility to shape each case in a way that

is efficient for the courts, fair to the parties, and respectful of state sovereignty.

Finally, we note that none of our sister circuits has imposed a per se constitutional restriction on supplemental jurisdiction over additional parties. *See Hinson v. Norwest Financial S.C., Inc.*, 239 F.3d 611, 615 (4th Cir. 2001) (holding that district court did not abuse its discretion in joining plaintiffs who asserted only state law claims); *HB Gen'l Corp. v. Manchester Partners, L.P.*, 95 F.3d 1185, 1197-98 (3d Cir. 1996) (holding that nondiverse party could be joined for counterclaims); *Ammerman v. Sween*, 54 F.3d 423, 424 (7th Cir. 1995) (noting that only *Gibbs* now limits pendent party jurisdiction); *Palmer v. Hosp. Auth.*, 22 F.3d 1559, 1566-67 (11th Cir. 1994) (holding that district court had pendent party jurisdiction because claims involved the "same facts, occurrences, witnesses, and evidence").

[10] Thus, to avoid dismissal for lack of federal subject matter jurisdiction, the employees must show that the state conspiracy claims against Selective Employment constitute part of the same constitutional case as the federal RICO claims against the growers. Assuming that the claims meet the *Gibbs* standard, the district court has the power to exercise supplemental jurisdiction. The decision to exercise that jurisdiction remains discretionary with the district court. *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172-73 (1997) (holding that district courts may decline to exercise jurisdiction over supplemental state law claims in the interest of judicial economy, convenience, fairness, and comity). We therefore remand for the district court to determine, in the first instance, whether the application of the *Gibbs* standard permits the exercise of supplemental jurisdiction, and to exercise discretion over whether such jurisdiction would be appropriate in the context of this litigation.

REVERSED and REMANDED.

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Cases

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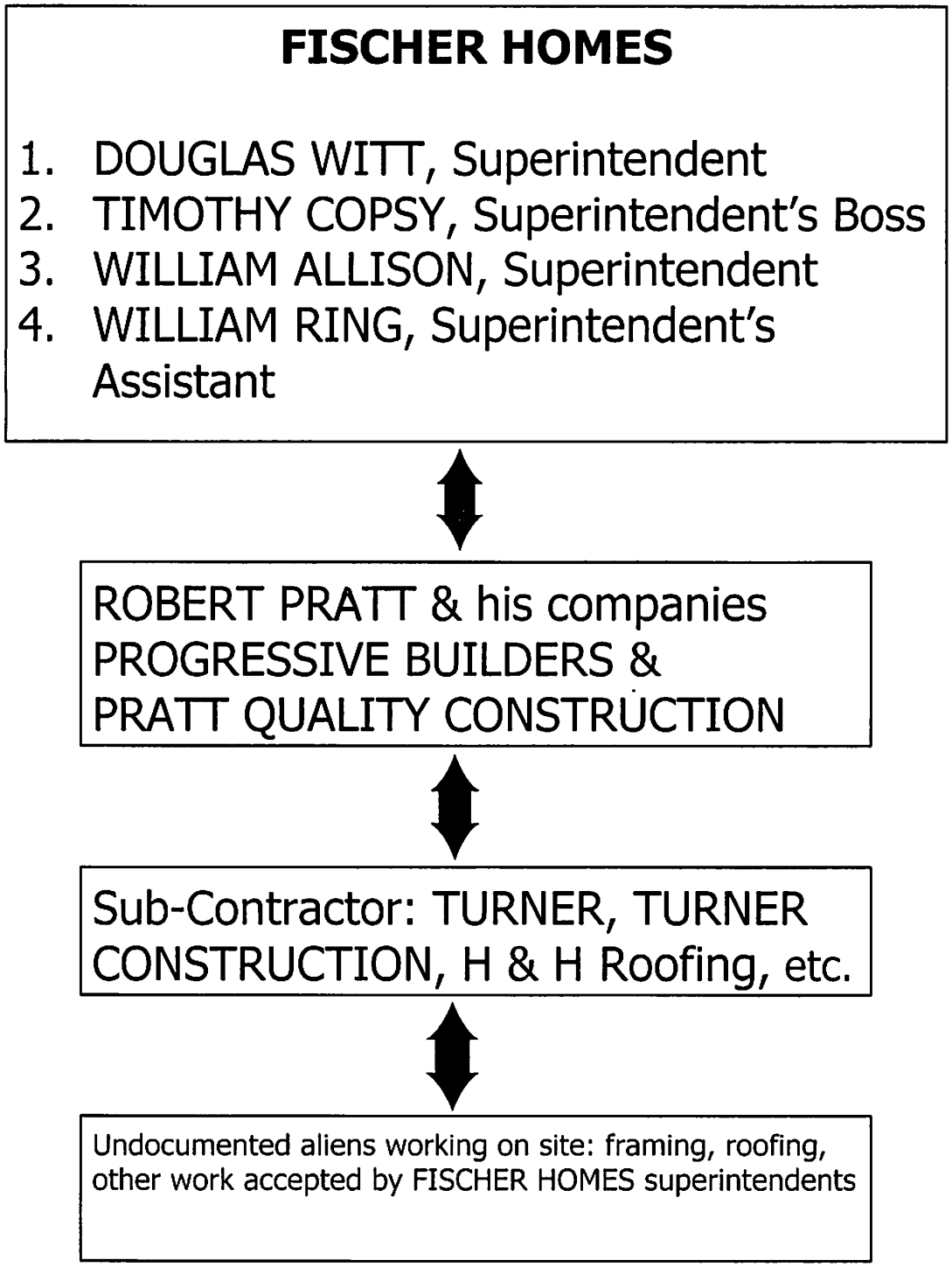

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United States District Court

EASTERN DISTRICT OF **COVINGTON** **KENTUCKY**

UNITED STATES OF AMERICA

V.

ROBERT PRATT
aka ROBERTO PRATT

CRIMINAL COMPLAINT

CASE NUMBER: 06- 2100m-1

I, James Bellamy, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

On or about January 24, 2006, in Boone County, in the Eastern District of Kentucky, the defendant did conceal, harbor, and shield aliens from detection in any place, that is, by providing them employment, in knowing and in reckless disregard of the fact that such aliens had come to, entered and remained in the United States in violation of law, for the purpose of commercial advantage and private financial gain, all in violation of 8 U.S.C. § 1324(a)(1)(A)(iii) and (a)(1)(B)(i).

I am a special agent with Immigration and Customs Enforcement, Department of Homeland Security, and that this complaint is based on the following facts:

Continued on attached sheet and made a part hereof: _X_ Yes __ No

Signature of Complainant

Sworn to before me and subscribed in my presence,

May 10, 2006 at Covington, Kentucky

Date **City and State**

J. Gregory Wehrman,
United States Magistrate Judge

Name and Title of Judicial Officer

Signature of Judicial Officer

PENALTIES

Not more than10 years, $250,000.00 fine, or both, and a term of supervised release of not more than 3 years.

In addition, the defendant must pay a mandatory Special Assessment $100.00 per felony.

I, James Bellamy, being first duly sworn, do hereby depose and state:

1. I am a Senior Special Agent (S/SA) with the Department of Homeland Security, Immigration and Customs Enforcement (ICE) office, Fort Mitchell, Kentucky and have been so employed since March 2003. Prior to that, I was employed as a Special Agent with the U.S. Custom Service for approximately 5 years. I am authorized to conduct investigations into federal violations to include violations of 8 U.S. C. §§ 1324 and 1324a relating to the unlawful harboring and employment of illegal aliens.

2. The information stated below is based on personal knowledge, training and experience I have acquired as a Special Agent and information provided to me by other law enforcement officers.

3. This affidavit concerns an investigation into the harboring, transporting, and the unlawful employment of undocumented alien workers and the promotion of this unlawful activity by the payment of wages to undocumented alien workers, to wit, money laundering. During the course of this investigation, I, and others have conducted interviews, physical surveillance, financial analyses, and other forms of inquiry in the United States.

4. The Department of Homeland Security, Immigration and Customs Enforcement (ICE) and other law enforcement agencies are conducting a criminal investigation related to undocumented aliens working as laborers at FISCHER HOMES, INC, (hereinafter referred to as FISCHER) work sites for Robert PRATT and his companies. The investigation of Robert PRATT has revealed that home builder FISCHER and their related companies initially employed Robert PRATT through his companies, PROGRESSIVE BUILDERS and PRATT'S QUALITY CONSTRUCTION, for home construction. Initially, Robert PRATT employed undocumented aliens to supervise work crews. These employees were later designated by Robert PRATT as sub-contractors. Through the subcontractors, some of who were also undocumented aliens, used undocumented aliens to work on various construction sites, including FISCHER construction sites. Robert PRATT also provided housing for the illegal aliens at various locations in Northern Kentucky. Surveillance conducted over the past two years has identified illegal aliens working on FISCHER job sites in Boone County, Kentucky.

5. FISCHER and its subsidiary corporations have construction site superintendents at each of the their construction sites. FISCHER superintendents coordinate all phases of new home construction on FISCHER sites. With regard to workers on site for Robert PRATT, they inspect, supervise and may approve or reject all work performed by workers or subcontractors. FISCHER site superintendents communicate directly with crew chiefs and workers on construction matters. FISCHER superintendents have a telephone number to reach Robert PRATT directly. This indicates that the FISCHER supervisors are aware of Robert PRATT's business structure. This is also an important indicator that FISCHER has knowledge that Robert PRATT and his construction companies are used to provide a layer between FISCHER and the illegal alien subcontractors and workers. Robert PRATT's designation of his workers as subcontractors and his practice of paying them as independent contractors is a common tactic used to conceal, harbor and shield undocumented alien workers.

6. On January 24, 2006, your affiant and Boone County Sheriff's Department Deputies visited, as part of the investigation, FISCHER subdivisions in Boone County, in the Eastern District of Kentucky, claiming to be looking for a Hispanic male wanted for murder out of Texas. Workers on site were found to be undocumented aliens and FISCHER supervisors revealed their knowledge of the fact that these workers were illegally in the United States. Undocumented alien works employed by Robert PRATT through his nominees were found working on FISCHER new home construction sites.

A. Affiant and Boone County Sheriff's Department Deputies spoke with FISCHER superintendent, William ALLISON and his assistant, Brian RACKE at the FISCHER Tree Top Subdivision, Hebron, Kentucky. We explained to ALLISON and RACKE that we were looking for a Hispanic male on murder warrant, and we requested his assistance in interviewing the work crews on the FISCHER sites. ALLISON was driving a light colored box truck bearing a Kentucky license plate registered to him. RACKE was driving a pickup truck bearing a Kentucky license plate, registered to Brian RACKE or Frank Racke. Both men advised that they had "Mexican crews" working in the subdivision. ALLISON accompanied affiant and Boone County Sheriff's Department Deputies to three residential subdivisions.

Undocumented aliens were found at each of the FISCHER subdivisions working on new home construction sites.

B. At FISCHER'S Tara Subdivision located in Plantation Pointe, Florence, Kentucky, affiant and Boone County Sheriff's Department Deputies met with FISCHER superintendent, Doug WITT, his boss, Timothy COPSY, and WITT's assistant, Bill RING. COPSY advised that the "Mexican workers" they had working for FISCHER were drywall hangers or finishers, framers and some brick layers. He advised that there were only framers on the job site this day. WITT said that Robert PRATT provided framers for FISCHER at this location.

C. At approximately 1:37 p.m., WITT, in the presence of your affiant, placed a phone call to Robert PRATT on his cellular phone. WITT gave the phone to his boss, Timothy COPSY and COPSY then spoke to Robert PRATT. After COPSY finished his telephone conversation, COPSY stated that he had just spoken with the owner of the framing company, Robert PRATT, for whom the framers onsite worked. In a conversation with Boone County Deputies, in the presence of affiant, FISCHER HOMES supervisor, COPSY acknowledged that the workers were not lawfully present in the United States. In the presence of WITT and RING, COPSY stated that approximately 50 percent of the workers on this FISCHER site were illegally in the United States.

D. WITT had the lead framer of the framing crew onsite come to our location. Prior to his arrival, COPSY advised that the lead framer did not speak a lot of English. The lead framer was identified as Alfredo MEDINA-MEJIA, aka: Alfredo MEDINA who spoke no English during the interview. When asked for identification, MEDINA-MEJIA provided a Mexican Identification Card. After the interview with MEDINA-MEJIA, law enforcement officers proceeded to interview the other workers. WITT advised that by having MEDINA-MEJIA accompany officers to talk with the other workers, the workers would be more at ease and would not think officers were looking for something else. MEDINA-MEJIA accompanied WITT and law enforcement officers to the work site where his framing crew was located.

E. In addition to the interview with lead framer, Juan ACOSTA-MARTINEZ, Jesus TRELLO-REYES, Cesar ELIAS, Alfredo GOMEZ, Elmer CHUN, and Fidel GOMEZ were interviewed in Spanish in the presence of WITT. Four workers stated that they were from Guatemala and were not lawfully present in the United States. They also stated that they worked for Alfredo MEDINA-MEJIA, aka: Alfredo MEDINA. WITT in the presence of RING was advised that the workers were from Guatemala. A record check through the immigration database revealed that with the exception of Juan ACOSTA-MARTINEZ, all these individuals were not lawfully present in the United States.

F. Two vehicles were identified at the FISCHER HOMES Tara work site. There was a Toyota pickup truck with a Kentucky license plate, registered to Timothy S. COPSY of Independence, Kentucky, and a van with a Kentucky license plate, registered to Alfredo MEDINA, aka: Alfredo MEDINA-MEJIA, Erlanger, Kentucky.

7. On January 27, 2006, your affiant drove through the FISCHER Tree Top Subdivision in Hebron, Kentucky, and Tara Subdivision in Florence, Kentucky, the same sites previously visited on January 24, 2006. Affiant sought to determine if FISCHER superintendents continued to use the same work crews on FISCHER job sites. At the FISCHER HOMES Tara subdivision located within Plantation Pointe, Florence, Kentucky, affiant observed six male workers sitting at a construction site located on Scarlett Way. A van bearing a Kentucky license plate, registered to Alfredo MEDINA, Erlanger, Kentucky, an illegal alien, was also observed. This van and its owner were present on January 24, 2006.

8. Based upon the information contained herein, there is probable cause to believe that Robert PRATT harbored illegal aliens for the purpose of commercial advantage or private financial gain in violation of 8 U.S.C. §§ 1324(a)(1)(A)(iii) and (a)(1)(B)(i).

JAMES BELLAMY

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS - EXAMPLES

Cases

Mohawk

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-13740

D.C. Docket No. 04-00003-CV-HLM-4

SHIRLEY WILLIAMS, GALE PELFREY,
BONNIE JONES, LORA SISSON,
individually and on behalf of a class,

Plaintiffs-Appellees,

versus

MOHAWK INDUSTRIES, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(September 27, 2006)

**ON REMAND FROM THE
UNITED STATES SUPREME COURT**

Before ANDERSON, HULL and GIBSON,* Circuit Judges.

PER CURIAM:

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*Honorable John R. Gibson, United States Circuit Judge for the Eighth Circuit, sitting by designation.

In this case, plaintiffs-appellees Shirley Williams, Gale Pelfrey, Bonnie Jones, and Lora Sisson are current or former hourly employees of defendant-appellant Mohawk Industries, Inc. ("Mohawk"). The plaintiffs filed this class-action complaint alleging that Mohawk's widespread and knowing employment and harboring of illegal workers allowed Mohawk to reduce labor costs by depressing wages for its legal hourly employees and discouraging worker's-compensation claims, in violation of federal and state RICO statutes. The plaintiffs also alleged that Mohawk was unjustly enriched by the lower wages it paid, as well as the reduced number of worker's-compensation claims it paid. The district court denied in part and granted in part Mohawk's 12(b)(6) motion, and this interlocutory appeal followed.

After review and oral argument, this Court affirmed in part and reversed in part. Williams v. Mohawk Indus., Inc., 411 F.3d 1252 (11th Cir. 2005). Appellant Mohawk then filed an application for writ of certiorari on two questions:

> 1. Whether a defendant corporation and its agents can constitute an "enterprise" under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), in light of the settled rule that a RICO defendant must "conduct" or "participate in" the affairs of some larger enterprise and not just its own affairs.

> 2. Whether plaintiffs state proximately caused injuries to business or property by alleging that the hourly wages they voluntarily accepted were too low.

The United States Supreme Court granted the appellant's petition for writ of certiorari "limited to Question 1 presented by the petition." Williams v. Mohawk Indus., Inc., 546 U.S. __, 126 S. Ct. 830 (2005).

After oral argument, however, the Supreme Court entered a summary, three-sentence order that (1) dismissed the writ as improvidently granted as to Question 1, and (2) vacated the judgment of our prior opinion and remanded the case to this Court "for further consideration in light of Anza v. Ideal Steel Supply Corp., ___ U.S., 126 S. Ct. 1991 (2006)." Williams v. Mohawk Industries, Inc., ___ U.S. ___, 126 S. Ct. 2016 (2006).

This case is now before the Court on remand from the Supreme Court. After the remand, this Court ordered supplemental briefing as to not only Anza, but also the intervening decision by the Georgia Supreme Court in Williams General Corp. v. Stone, 280 Ga. 631, 632 S.E.2d 376 (2006). After further consideration, this Court now reinstates its prior opinion in part and modifies it in part as follows.

I. BACKGROUND

Mohawk is the second largest carpet and rug manufacturer in the United States and has over 30,000 employees. According to the plaintiffs, Mohawk has conspired with recruiting agencies to hire and harbor illegal workers in an effort to keep labor costs as low as possible.[1] For example, according to the plaintiffs' complaint,

> Mohawk employees have traveled to the United States Border, including areas near Brownsville, Texas, to recruit undocumented aliens that recently have entered the United States in violation of federal law. These employees and other persons have transported undocumented aliens from these border towns to North Georgia so that those aliens may procure employment at Mohawk. Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors.

Furthermore, "[v]arious recruiters, including Mohawk employees, have provided housing to these illegal workers upon their arrival in North Georgia and have helped them find illegal employment with Mohawk." Additionally, Mohawk knowingly or recklessly accepts fraudulent documentation from the illegal aliens.

---

[1]At this point in the litigation, we must assume the facts set forth in the plaintiffs' complaint are true. See Anza, __ U.S. __, 126 S. Ct. at 1994 (stating that on a motion to dismiss, the court must "accept as true the factual allegations in the amended complaint"); Marsh v. Butler County, 268 F.3d 1014, 1023 (11th Cir. 2001) (en banc) (setting forth the facts in the case by "[a]ccepting all well-pleaded factual allegations (with reasonable inferences drawn favorably to Plaintiffs) in the complaint as true"). Because we must accept the allegations of plaintiffs' complaint as true, what we set out in this opinion as "the facts" for Rule 12(b)(6) purposes may not be the actual facts.

The plaintiffs further allege that Mohawk has concealed its efforts to hire and harbor illegal aliens by destroying documents and assisting illegal workers in evading detection by law enforcement. According to plaintiffs' complaint, Mohawk takes steps to shield those illegal aliens from detection by, among other things, helping them evade detection during law enforcement searches and inspections at Mohawk's facilities.

According to the complaint, Mohawk's widespread and knowing employment and harboring of illegal workers has permitted Mohawk to reduce labor costs. Mohawk has done so by reducing the number of legal workers it must hire and, thereby, increasing the labor pool of legal workers from which Mohawk hires. This practice permits Mohawk to depress the wages it pays its legal hourly workers.

Finally, the plaintiffs allege that Mohawk is "able to save substantial sums of money" by paying its workers reduced wages. Furthermore, Mohawk knows that illegal workers are less likely to file worker's-compensation claims, and, therefore, Mohawk is able to save additional monies. According to the plaintiffs, these benefits constitute unjust enrichment under state law.

Mohawk filed a Rule 12(b)(6) motion to dismiss the plaintiffs' complaint for failure to state a claim. The district court determined that the plaintiffs had

stated a claim under both federal and state RICO statutes, as well as a claim for unjust enrichment under state law for paying legal workers lower wages because of the illegal workers Mohawk employed. However, the district court dismissed the plaintiffs' unjust-enrichment claim insofar as it was based on the reduced number of worker's-compensation claims Mohawk was forced to pay.[2]

II. FEDERAL RICO CLAIMS

Pursuant to 18 U.S.C. § 1962(c), it is illegal "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ." 18 U.S.C. § 1962(c). Thus, in order to establish a federal civil RICO violation under § 1962(c), the plaintiffs "must satisfy four elements of proof: '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" Jones v. Childers, 18 F.3d 899, 910 (11th Cir. 1994) (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S. Ct. 3275, 3285 (1985)). These requirements apply whether the RICO claim is civil or criminal in nature.

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[2]This Court reviews the denial of a Rule 12(b)(6) motion "de novo, applying the same standard as the district court did." Hoffman-Pugh v. Ramsey, 312 F.3d 1222, 1225 (11th Cir. 2002). A complaint should not be dismissed pursuant to Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim." Beck v. Deloitte & Touche, 144 F.3d 732, 735 (11th Cir. 1998) (internal quotation marks and citation omitted).

In civil cases, however, RICO plaintiffs must also satisfy the requirements of 18 U.S.C. § 1964(c). Section 1964(c) states that "[a]ny person injured in his business or property by reason of" RICO's substantive provisions has the right to "recover threefold the damages he sustains . . . ." 18 U.S.C. § 1964(c). Thus, under § 1964(c), civil RICO claimants, such as the plaintiffs here, must show (1) the requisite injury to "business or property," and (2) that such injury was "by reason of" the substantive RICO violation. We discuss each of these requirements in turn.

A. Pattern of Racketeering Activity

As mentioned above, there are four requirements under § 1962(c). Because elements (3) and (4) – a pattern of racketeering activity – are easily met in this case (at least at the motion-to-dismiss stage), we address them first.

"A 'pattern of racketeering activity,' for purposes of the RICO Act, 'requires at least two acts of racketeering activity.'" Cox v. Adm'r U.S. Steel & Carnegie, 17 F.3d 1386, 1397 (11th Cir. 1994), modified on other grounds by 30 F.3d 1347 (11th Cir. 1994). "An act of racketeering is commonly referred to as a 'predicate act.' A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but related predicate acts." Maiz v. Virani, 253 F.3d 641, 671 (11th Cir. 2001) (quotation marks, citations, and brackets omitted). "If

distinct statutory violations are found, the predicate acts will be considered to be distinct irrespective of the circumstances under which they arose." Cox, 17 F.3d at 1397 (quotation marks, citations, and emphasis omitted).

According to 18 U.S.C. § 1961(1)(F), "'racketeering activity' means any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), . . . if the act indictable under such section of such Act was committed for the purpose of financial gain." In this case, the plaintiffs have alleged that the defendant has engaged in an open and ongoing pattern of violations of section 274 of the Immigration and Nationality Act. In particular, plaintiffs allege that Mohawk has violated and continues to violate: (1) 8 U.S.C. § 1324(a)(3)(A), which makes it a federal crime to "knowingly hire[] for employment at least 10 individuals with actual knowledge that the individuals are aliens" during a twelve-month period; (2) 8 U.S.C. § 1324(a)(1)(A)(iii), which makes it a federal crime to "conceal[], harbor[], or shield from detection, or attempt[] to conceal, harbor or shield from detection" aliens that have illegally entered the United States; and (3) 8 U.S.C. § 1324(a)(1)(A)(iv), which makes it a federal crime to "encourage[] or induce[] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law."

According to the plaintiffs' complaint, Mohawk has committed hundreds, even thousands, of violations of federal immigration laws. Consequently, we conclude that the plaintiffs have properly alleged a "pattern of racketeering activity."[3]

B. Conduct of an Enterprise

With regard to elements (1) and (2) of the four-part test under § 1962(c), the plaintiffs must establish "conduct of an enterprise" and that the enterprise had a common goal. See United States v. Turkette, 452 U.S. 576, 583, 101 S. Ct. 2524, 2528-29 (1981) ("The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."). Furthermore, Mohawk "must participate in the operation or management of the enterprise itself." Reves v. Ernst & Young, 507 U.S. 170, 185, 113 S. Ct. 1163, 1173 (1993).

An enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). As stated in United States v. Goldin Industries, Inc., 219 F.3d 1271, 1275 (11th Cir. 2000), "the

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[3]There is no dispute that these predicate acts, if they occurred, are related. See Pelletier v. Zweifel, 921 F.2d 1465, 1496-97 (11th Cir. 1991) ("Predicate acts are related if they have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." (internal quotation marks and citation omitted)).

existence of an enterprise is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." (internal quotation marks and citation omitted). Furthermore, "the definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity requisite to the RICO violation." Id.

In this case, the plaintiffs have alleged that Mohawk and third-party temp agencies/recruiters have conspired to violate federal immigration laws, destroy documentation, and harbor illegal workers. Specifically, the plaintiffs allege that

> [e]ach recruiter is paid a fee for each worker it supplies to Mohawk, and some of those recruiters work closely with Mohawk to meet its employment need by offering a pool of illegal workers who can be dispatched to a particular Mohawk facility on short notice as the need arises. Some recruiters find workers in the Brownsville, Texas area and transport them to Georgia. Others, like TPS, have relatively formal relationships with the company in which they employ illegal workers and then loan or otherwise provide them to Mohawk for a fee. These recruiters are sometimes assisted by Mohawk employees who carry a supply of social security cards for use when a prospective or existing employee needs to assume a new identity.

Given the Rule 12(b)(6) stage of the litigation, the plaintiffs' complaint must be taken as true, and it has sufficiently alleged an "enterprise" under RICO; that is an association-in-fact between Mohawk and third-party recruiters. This Court has

never required anything other than a "loose or informal" association of distinct entities. Mohawk and the third-party recruiters are distinct entities that, at least according to the complaint, are engaged in a conspiracy to bring illegal workers into this country for Mohawk's benefit. As such, the complaint sufficiently alleges an "enterprise" under RICO.

As for the common purpose, the plaintiffs' complaint alleges that "[t]he recruiters and Mohawk share the common purpose of obtaining illegal workers for employment by Mohawk." The complaint further alleges that "[e]ach recruiter is paid a fee for each worker it supplies to Mohawk" and that "Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors." Furthermore, "[t]he acts of racketeering activity committed by Mohawk have the same or similar objective: the reduction of wages paid to Mohawk's hourly workforce." What is clear from the complaint is that each member of the enterprise is allegedly reaping a large economic benefit from Mohawk's employment of illegal workers.

In United States v. Church, 955 F.2d 688, 698 (11th Cir. 1992), this Court concluded that the common purpose of making money was sufficient under RICO. Because the complaint clearly alleges that the members of the enterprise stand to gain sufficient financial benefits from Mohawk's widespread employment and

harboring of illegal workers, the plaintiffs have properly alleged a "common purpose" for the purposes of RICO.

Furthermore, Mohawk "must participate in the operation or management of the enterprise itself." Reves, 507 U.S. at 185, 113 S. Ct. at 1173. That is, Mohawk "must have some part in directing" the affairs of the enterprise. Id. at 179, 113 S. Ct. at 1170. However, the Supreme Court has cautioned that "RICO liability is not limited to those with primary responsibility for the enterprise's affairs . . . ." Id. In their complaint, the plaintiffs allege that "Mohawk participates in the operation and management of the affairs of the enterprise . . . ," which includes some direction over the recruiters. Whatever difficulties the plaintiffs may have in proving such an allegation, they have sufficiently alleged that Mohawk is engaged in the operation or management of the enterprise. Again, at this stage in the litigation, we simply cannot say whether the plaintiffs will be able to establish that Mohawk had "some part in directing" the affairs of the enterprise. However, they have alleged sufficient acts to survive a Rule 12(b)(6) motion.

Accordingly, we conclude that the plaintiffs' complaint states a claim that is cognizable under § 1962(c). In so doing, we note that the allegations in this case are similar to those in cases recently decided by the Second, Sixth, and Ninth

Circuits. See Trollinger v. Tyson Foods, 370 F.3d 602 (6th Cir. 2004) (former employees alleging employer used illegal immigrants in order to depress wages); Mendoza v. Zirkle Fruit Co., 301 F.3d 1163 (9th Cir. 2002) (legally documented workers alleging that employers leveraged hiring of undocumented workers in order to depress wages); Commercial Cleaning Servs., L.L.C. v. Colin Servs. Sys., Inc., 271 F.3d 374 (2d Cir. 2001) (company alleging competitor hired undocumented workers in order to underbid competing firms). In each of these decisions, the circuit court determined that, at the Rule 12(b)(6) stage, the plaintiffs had alleged sufficient damages to be permitted to pursue their RICO claims. Although none of the opinions specifically addressed § 1962(c)'s requirements, each of these cases has essentially the same factual basis for RICO liability as the complaint before this Court.

We recognize that the above conclusion puts our circuit in conflict with the Seventh Circuit's decision in Baker v. IBP, Inc., 357 F.3d 685 (7th Cir. 2004), cert. denied, 125 S. Ct. 412 (2004). In Baker, an employees' class-action lawsuit alleged that a meat-processing facility conspired with recruiters (and a Chinese aid group), and violated RICO by employing undocumented, illegal workers in an effort to drive down employee wages. The Seventh Circuit concluded that the employees' union was a necessary party to the lawsuit. Id. at 690-91.

However, the Seventh Circuit in Baker also concluded that there was "another fatal problem" with the complaint. Id. at 691. Although stating that an "enterprise" arguably existed, the Seventh Circuit determined that there was not a common purpose among the entities in the enterprise. Id. at 691. Specifically, the Seventh Circuit stated that the employer "wants to pay lower wages; the recruiters want to be paid more for services rendered (though [the employer] would like to pay them less); the Chinese Mutual Aid Association wants to assist members of its ethnic group. These are divergent goals." Id. at 691.

In our circuit, however, there has never been any requirement that the "common purpose" of the enterprise be the sole purpose of each and every member of the enterprise. In fact, it may often be the case that different members of a RICO enterprise will enjoy different benefits from the commission of predicate acts. This fact, however, is insufficient to defeat a civil RICO claim. Rather, all that is required is that the enterprise have a common purpose. In this case, the complaint alleges that Mohawk and the recruiters, under Mohawk's direction, worked together to recruit illegal workers to come to Georgia and that they had the common purpose of providing illegal workers to Mohawk so that Mohawk could reduce its labor costs and the recruiters could get paid. This commonality is all that this circuit's case law requires. See Church, 955 F.2d at

698. Again, while the plaintiffs may be unable to prove such allegations at trial, we cannot say at this 12(b)(6) stage of the litigation that they have failed to properly allege a common purpose.

We recognize that the Baker Court also concluded that there was no way to establish that the employer "operate[d] or manage[d] th[e] enterprise through a pattern of racketeering activity." Baker, 357 F.3d at 691 (emphasis omitted). However, as this Court has noted, "the Supreme Court has yet to delineate the exact boundaries of the operation or management test." United States v. Starrett, 55 F.3d 1525, 1546 (11th Cir. 1995). Although the exact boundaries have not been established, it is possible that the plaintiffs will be able to establish that Mohawk played some part in directing the affairs of the enterprise. Whether the plaintiffs ultimately establish sufficient evidence to meet the boundaries of the operation-or-management test is a question best answered at the summary-judgment stage or at trial. Accordingly, we conclude that the plaintiffs have sufficiently alleged conduct that may potentially satisfy the operation-or-management test. As such, the plaintiffs are entitled to continue with their claims at this juncture.

Having reviewed the four elements of § 1962(c), we turn to § 1964(c).

C. Injury to "Business or Property" Interest Under RICO

As indicated above, RICO's civil-suit provision states that "[a]ny person injured in his business or property by reason of" RICO's substantive provisions has the right to "recover threefold the damages he sustains . . . ." 18 U.S.C. § 1964(c). "The terms 'business or property' are, of course, words of limitation which preclude [certain forms of] recovery." Doe v. Roe, 958 F.2d 763, 767 (7th Cir. 1992). However, RICO is to be "liberally construed," Sedima, 473 U.S. at 497-98, 105 S. Ct. at 3285-86 (1985). Accordingly, we must determine whether the plaintiffs have a "business or property" interest that could be injured under RICO. We need not reach whether plaintiffs have a property interest because plaintiffs clearly have alleged a business interest affected by Mohawk's alleged RICO violations.

Indeed, this case is similar to the Ninth Circuit's Mendoza decision, where legally documented agricultural workers sued fruit growers under RICO alleging that the growers depressed wages by hiring illegal workers. In Mendoza, the defendant claimed that the employees would have to show a "'property right' in the lost wages[] by showing that they were promised or contracted for higher wages." Mendoza, 301 F.3d at 1168 n.4. The Ninth Circuit concluded that this argument was misplaced, pointing out that the plaintiffs' claim did not implicate procedural due process. Id. Rather, the Ninth Circuit concluded that "what is

required is precisely what the employees allege here: a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes." Id. (citations omitted). Given that a relationship clearly exists between plaintiff workers and their employer, Mohawk, we conclude that a similar business interest exists in this case, and that the employees' alleged injury to their business interests satisfies the business-interest requirement. Consequently, the plaintiffs have alleged a sufficient injury to a business interest to pursue their RICO claims.

D. "By Reason Of" the Substantive RICO Violations

We now turn to the "by reason of" requirement contained in § 1964(c). The "by reason of" requirement implicates two concepts: (1) a sufficiently direct injury so that a plaintiff has standing to sue; and (2) proximate cause. See Trollinger, 370 F.3d at 612 ("RICO's civil-suit provision imposes two distinct but overlapping limitations on claimants – standing and proximate cause."); Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292, 1307 (11th Cir. 2003), cert. denied, 124 S. Ct. 2094 (2004) ("[O]ne or more of the predicate acts [in a RICO claim] must not only be the 'but for' cause of the injury, but the proximate cause as well." (citations omitted)); Mendoza, 301 F.3d at 1168-72 (concluding that the plaintiffs had satisfied both "statutory" and "constitutional"

standing requirements of RICO). Despite some significant overlap, we address the proximate cause and standing concepts separately.[4]

(i) Proximate Cause

It is well-established that RICO plaintiffs must prove proximate causation in order to recover. Anza v. Ideal Steel Supply Corp., __ U.S. __, 126 S. Ct. 1991 (2006); Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 112 S. Ct. 1311 (1992); Cox, 17 F.3d at 1399 (citations omitted). Anza makes clear that courts should scrutinize proximate causation at the pleading stage and carefully evaluate whether the injury pled was proximately caused by the claimed RICO violations. See Anza, __ U.S. at __, 126 S. Ct. at 1997.

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[4]As the Sixth Circuit aptly explained,

> the two concepts overlap and that is particularly true in the context of civil RICO claims. As a general matter, they overlap because a plaintiff who lacks standing to vindicate a derivative injury also will be unable to show proximate cause. And as a matter of RICO law, the two concepts overlap because they both grow out of the "by reason of" limitation in RICO – namely, the requirement that claimants establish that their injury was "by reason of" a RICO predicate act violation. The "by reason of" limitation, in other words, bundles together a variety of "judicial tools," some of which are traditionally employed to decide causation questions and some of which are employed to decide standing questions. Holmes, 503 U.S. at 268, 112 S. Ct. [at 1318] ("Here we use 'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts. At bottom, the notion of proximate cause reflects ideas of what justice demands, or of what is administratively possible and convenient.") (quotation omitted) . . . .

Trollinger, 370 F.3d at 613.

More importantly, in Anza, the United States Supreme Court instructed that "[w]hen a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." Anza, __ U.S. at __, 126 S. Ct. at 1998. This central question stems from the Supreme Court's earlier decision in Holmes, which examined "the common-law foundations of the proximate-cause requirement" and specifically the "demand for some direct relation between the injury asserted and the injurious conduct alleged." Anza, __ U.S. at __, 126 S. Ct. at 1996 (quoting Holmes, 503 U.S. at 269, 112 S. Ct. at 1318). Although Anza does not require plaintiffs to show that the injurious conduct is the sole cause of the injury asserted, Anza does emphasize that in RICO cases there must be "some direct relation" between the injury alleged and the injurious conduct in order to show proximate cause. Id.[5]

In evaluating whether the requisite causal connection exists, Anza also instructs that courts should consider the "motivating principle[s]" behind the directness component of the proximate-cause standard in RICO cases. "One

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[5] Anza also explains that "Congress modeled § 1964(c) [in the RICO statute] on the civil-action provision of the federal antitrust laws, § 4 of the Clayton Act." __ U.S. at __, 126 S. Ct. at 1996 (quotation marks and citation omitted). In both federal RICO and federal antitrust cases, "proximate cause is not . . . the same thing as a sole cause," and it is enough for the plaintiff to plead and prove that the defendant's tortious or injurious conduct was a "substantial factor in the sequence of responsible causation." Cox v. Adm'r U.S. Steel & Carnegie, 17 F.3d 1386, 1399 (11th Cir. 1994) (RICO), modified on other grounds by 30 F.3d 1347 (11th Cir. 1994).

motivating principle is the difficulty that can arise when a court attempts to ascertain the damages caused by some remote action." Anza, __ U.S. at __, 126 S. Ct. at 1997. Stated another way, "the less direct an injury is, the more difficult it becomes to ascertain the amount of plaintiff's damages attributable to the violation, as distinct from other, independent factors." Holmes, 503 U.S. at 269, 112 S. Ct. at 1318. This remoteness concern is heightened when RICO suits are brought by economic competitors seeking damages for lost sales because those types of claims, "if left unchecked, could blur the line between RICO and the antitrust laws." Anza, __ U.S. at __, 126 S. Ct. at 1998.

Another consideration is the risk of duplicative recoveries. "The requirement of a direct causal connection is especially warranted where the immediate victims of an alleged RICO violation can be expected to vindicate the laws by pursuing their own claims." Anza, __ U.S. at __, 126 S. Ct. at 1998. As also aptly expressed in Holmes, "directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." Holmes, 503 U.S. at 269-70, 112 S. Ct. at 1318.

Turning back to this case, we conclude that the plaintiffs have alleged sufficient proximate cause to withstand defendant Mohawk's motion to dismiss.

According to their complaint, Mohawk has hired illegal workers "[i]n an effort to keep labor costs as low as possible." Furthermore, "Mohawk's employment and harboring of large numbers of illegal workers has enabled Mohawk to depress wages and thereby pay all of its hourly employees, including legally employed workers who are members of the class, wages that are lower than they would be if Mohawk did not engage in this illegal conduct." Again, the complaint alleges that "Mohawk's widespread employment and harboring of illegal workers has substantially and unlawfully increased the supply of workers from which Mohawk makes up its hourly workforce. This unlawful expansion of the labor pool has permitted Mohawk to depress the wages that it pays all its hourly employees . . . ." The plaintiffs also allege that "[o]ne purpose and intended effect of Mohawk's widespread employment and harboring of illegal workers is to deprive Mohawk's hourly workforce of any individual or collective bargaining power" and that they "were injured by direct and proximate reason of Mohawk's illegal conduct."

Given these allegations, which we must assume are true at this Rule 12(b)(6) stage of the litigation, it is clear that the plaintiffs have alleged a sufficiently direct relation between their claimed injury and the alleged RICO violations. In short, according to the complaint, Mohawk's widespread scheme of knowingly hiring and harboring illegal workers has the purpose and direct result

of depressing the wages paid to the plaintiffs. Simply put, wholesale illegal hiring depresses wages for the legal workers in north Georgia where Mohawk is located. According to plaintiffs, Mohawk's illegal conduct had a substantial and direct effect on wages that Mohawk pays to legal workers. See DeCanas v. Bica, 424 U.S. 351, 356-57, 96 S. Ct. 933, 937 (1976) (explaining that "acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens").[6] While DeCanas is not a RICO case, plaintiffs point out that the Supreme Court has already recognized a direct correlation between illegal hiring and lower wages.

In response, Mohawk asserts that other economic factors contribute to the plaintiffs' wages, that illegal hiring is just one of myriad factors affecting wages, and that therefore plaintiffs have not satisfied Anza's proximate-cause requirements. However, plaintiffs persuasively reply that Mohawk's argument ignores that Mohawk's conduct has grossly distorted those normal market forces by employing literally thousands of illegal, undocumented aliens at its

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[6]The Supreme Court quoted this same point in Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 892-93, 104 S. Ct. 2803, 2809 (1984) (quoting same, and adding that a "primary purpose in restricting immigration is to preserve jobs for American workers; immigrant aliens are therefore admitted to work in this country only if they 'will not adversely affect the wages and working conditions of the workers in the United States similarly employed.'" (citation omitted)).

manufacturing facilities in north Georgia, thus depriving plaintiffs of "business relations unhampered by schemes prohibited by the RICO predicate statutes." Plaintiffs submit that their complaint focuses on only what is happening in the particular narrow labor market that Mohawk dominates in north Georgia. We agree with plaintiffs that their complaint alleges a sufficiently direct injury to satisfy Anza and Holmes, especially given the recognition of a direct correlation between illegal hiring and lower wages.

More importantly, as plaintiffs point out, in both Holmes and Anza, the Supreme Court emphasized that dismissal was appropriate because a more direct victim could bring suit. For example, the Anza plaintiff alleged that National Steel Supply, a competitor, had stopped paying sales taxes to the New York tax authority, submitted fraudulent documents to the tax authority, and used its tax savings to lower prices. The plaintiff sued for treble damages for sales lost to National. The Supreme Court concluded that New York, which lost the tax revenue due to National's fraudulent conduct, was the direct victim who could bring suit and not the plaintiff. Anza, __ U.S. at __, 126 S. Ct. at 1997. Indeed, the state of New York could "be expected to pursue appropriate remedies." Id. at __, 126 S. Ct. at 1998. National's decision to lower prices to its customers and win sales from the plaintiff was "entirely distinct from the alleged RICO

violation" of mail and wire fraud as to taxes owed to the New York tax authority. Id. at __, 126 S. Ct. at 1997.

Likewise, in Holmes, the plaintiff's injury was merely derivative of a prior injury to third parties (broker dealers) who had filed their own suit. Holmes, 503 U.S. at 271, 273, 112 S. Ct. at 1319-20; see also Associated Contractors v. Cal. State Council of Carpenters, 459 U.S. 519, 541, 103 S. Ct. 897, 910 (1983) (identifying alternative plaintiffs with more direct claims).

The concerns expressed in Anza and Holmes are not present in this case. There is no more direct injured party who could bring suit. Mohawk posits the United States as the only other victim because of its interest in enforcing immigration laws. But as plaintiffs aptly point out, the United States is responsible for all federal criminal laws which includes RICO's other predicate acts. Under Mohawk's theory, the United States would arguably be the most direct victim of all RICO predicate, criminal acts. Congress, however, criminalized the employment of illegal workers in part to protect legal workers. It is consistent with civil RICO's purposes — to expand enforcement beyond federal prosecutors with limited public resources — to turn victims (here, Mohawk's legal workers) into prosecutors as private attorneys general seeking to eliminate illegal hiring activity by their own employer. See Rotella v. Wood, 528 U.S. 549, 557,

120 S. Ct. 1075, 1082 (2000) (acknowledging that the very "object of civil RICO is . . . to turn [victims] into prosecutors, private attorneys general dedicated to eliminating racketeering activity" (quotation marks and citation omitted)); see also Reiter v. Sonotone Corp., 442 U.S. 330, 344, 99 S. Ct. 2326, 2333 (1979) (private antitrust suits "provide a significant supplement to the limited resources available at the Department of Justice").

Anza's concern about speculative damages, "intricate, uncertain injuries," and unwieldy apportionment are not implicated in this case because plaintiffs allege an injury fundamentally different from that in Anza. The plaintiff in Anza was a competitor suing for damages for lost opportunity or lost sales. In contrast, plaintiffs are Mohawk's own employees who seek to recover the diminution in wages they receive directly from Mohawk. Further, Anza's concern about blurring the line between RICO and antitrust laws is wholly missing here.

We also recognize that Mohawk asserts that the cause of plaintiffs' alleged harms is a set of actions (paying lower wages) "entirely distinct" from the alleged RICO violation (hiring illegal workers). We disagree. As noted earlier, it has long been recognized that hiring illegal workers on substandard wage terms depresses the wage scales of legal workers. Moreover, plaintiffs are not suing about the hiring of illegal workers on the west coast depressing the wages of legal

workers on the east coast. Rather, plaintiffs' complaint is a narrow one about a single employer's – Mohawk's – hiring of thousands of illegal workers at its manufacturing facilities in north Georgia depressing the wages of legal workers of the same employer, Mohawk, at the same manufacturing facilities in the same limited geographical area. Accordingly, under the particular factual circumstances of this case, we conclude that plaintiffs' complaint satisfies the direct relationship requirement imposed by Holmes and Anza's interpretation of the "by reason of" language in the federal RICO statute.

Our conclusion is consistent with the two other circuits to have addressed this proximate cause issue in RICO decisions involving schemes to depress wages of legal workers by widespread hiring of illegal workers. See Trollinger, 370 F.3d at 619; Mendoza, 301 F.3d at 1171-72.

In Trollinger, the Sixth Circuit considered a situation in which former Tyson employees at a poultry processing plant sued their former employer under RICO, alleging that the use of illegal workers permitted the employer to lower wages via the collective-bargaining agreement with the union representing the employees. The Sixth Circuit, reviewing the district court's dismissal of the employees' complaint under Rule 12(b)(6), determined that "at this preliminary stage in the proceeding" it could not conclude that there was no likelihood of success on the

merits. Id. at 619. The Sixth Circuit explained that it remained possible that the legal-worker plaintiffs might prove the following allegations in their complaint:

> (1) that Tyson hired sufficient numbers of illegal aliens to impact the legal employees' wages; (2) that each additional illegal worker hired into the bargaining unit by Tyson has a measurable impact on the bargained-for wage-scale; (3) that the illegal immigrants allegedly brought into this country through Tyson's efforts allowed Tyson not to compete with other businesses for unskilled labor; and (4) that Tyson's legal workers did not "choose" to remain at Tyson for less money than other businesses offered, but had no choice in the matter given the hiring needs of the other businesses in the area and the influx of illegal immigrants at Tyson's facilities. While Tyson's proximate-cause argument may well carry the day at the summary-judgment stage, it requires more assistance than the complaint alone provides.
>
> One other circuit has reached the same result on somewhat similar facts . . . Mendoza . . . .

Trollinger, 370 F.3d at 619.[7]

Although the plaintiffs' evidence in this case may not ultimately prove the proximate-cause requirement, we conclude that the plaintiffs' complaint states a sufficiently direct relation between their alleged injury and Mohawk's alleged unlawful predicate acts to withstand Mohawk's motion to dismiss. Consequently, we join the Sixth and Ninth Circuits in concluding that employees such as the ones

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[7]As noted earlier, in Mendoza, the Ninth Circuit was faced with a similar suit in which legally documented agricultural workers sued fruit growers under RICO alleging that the growers depressed wages by hiring illegal-immigrant workers. 301 F.3d at 1166. Under almost the exact same legal theory as advanced in this case, the Mendoza Court concluded that the plaintiffs' "causation allegations are sufficient at this stage." Id. at 1172.

in this case have alleged sufficient proximate cause to proceed with their RICO claims.

(ii) Statutory Standing

Lastly, we address RICO's statutory standing limitation that also grows out of the "by reason of" limitation in § 1964(c). "[T]he test for RICO standing is whether the alleged injury was directly caused by the RICO violation, not whether such harm was reasonably foreseeable." Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc., 140 F.3d 898, 908 (11th Cir. 1998); see also Sedima, 473 U.S. at 496-97, 105 S. Ct. at 3285 ("[T]he plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation" and the plaintiff's damages must "flow from the commission of the predicate acts."); Green Leaf Nursery, 341 F.3d at 1307 (stating that plaintiffs must show a "direct relation between the injury asserted and the injurious conduct" and that we ask "whether the alleged conduct was 'aimed primarily' at a third party" (quotation marks and citations omitted)); Bivens, 140 F.3d at 906 (concluding that a party whose alleged injuries result from "the misfortunes visited upon a third person by the defendant's acts lacks standing to pursue a claim under RICO" (quotation marks and citation omitted)); Pelletier v. Zweifel, 921 F.2d 1465, 1497 (11th Cir. 1991) (stating that the plaintiff has

RICO standing if he shows "a causal connection between his injury and a predicate act").[8] Thus, we must evaluate whether the plaintiffs' injury is sufficiently direct to give plaintiffs standing to sue for Mohawk's alleged RICO violations.

Both the Sixth and Ninth Circuits have expressly concluded that legal workers have sufficiently direct injuries for RICO standing in similar cases. Trollinger, 370 F.3d at 615-18; Mendoza, 301 F.3d at 1170. The Ninth Circuit's Mendoza decision is particularly well-reasoned and instructive on the statutory standing issue.

As mentioned earlier, the Mendoza plaintiffs were legal workers who claimed that the purpose and result of the defendants' scheme of hiring undocumented immigrants was to depress the wages of legally documented employees. The Ninth Circuit concluded that the plaintiffs had statutory standing because "we are unable to discern a more direct victim of the illegal conduct." Mendoza, 301 F.3d at 1170. The Ninth Circuit explained:

> The documented employees here do not complain of a passed-on harm. They allege that the scheme had the purpose and direct result of

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[8]This Court has more often evaluated the "by reason of" requirement primarily as part of its proximate-cause analysis, as opposed to the distinct concept of standing. However, despite significant overlap, we must also examine whether the plaintiffs' injury is sufficiently direct to permit standing.

> depressing the wages paid to them by the growers. Thus, as the district court correctly determined, "plaintiffs have stated a claim that they are the direct victims of the illegal hiring scheme."
> . . .
> We also note that the undocumented workers cannot "be counted on to bring suit for the law's vindication." As the district court noted, the fact that RICO specifically provides that illegal hiring is a predicate offense indicates that Congress contemplated the enforcement of the immigration laws through lawsuits like this one.

Id. (internal citations omitted). The Ninth Circuit further stated that

> the workers must be allowed to make their case through presentation of evidence, including experts who will testify about the labor market, the geographic market, and the effects of the illegal scheme. Questions regarding the relevant labor market and the growers' power within that market are exceedingly complex and best addressed by economic experts and other evidence at a later stage in the proceedings.

Id. at 1171.

Plaintiffs' complaint clearly alleges that Mohawk has engaged in widespread and knowing hiring and harboring of illegal aliens with the express purpose and direct result of lowering the wages of legal workers. For example, the complaint alleges that "[o]ne purpose and intended effect of Mohawk's widespread employment and harboring of illegal workers is to deprive Mohawk's hourly workforce of any individual or collective bargaining power." The plaintiffs also allege that "[t]he acts of racketeering activity committed by Mohawk have the same or similar objective: the reduction of wages paid to Mohawk's hourly

workforce." Furthermore, the plaintiffs "were injured by direct and proximate reason of Mohawk's illegal conduct." Given this stage of the litigation, we conclude that the plaintiffs have sufficiently alleged that Mohawk's illegal conduct was aimed primarily at them. Consequently, the district court correctly denied Mohawk's 12(b)(6) motion as it relates to the plaintiffs' federal civil RICO claim.

III. STATE LAW RICO

Under the Georgia RICO statute, "[i]t is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money." O.C.G.A. 16-14-4(a). Unlike federal civil RICO, the Georgia RICO statute does not require proof of an "enterprise." Cobb County v. Jones Group, P.L.C., 460 S.E. 2d 516, 520-21 (Ga. Ct. App. 1995). Rather, under Georgia RICO, the plaintiffs need only establish racketeering activity; that is, "a plaintiff must show that the defendant committed predicate offenses (set forth in O.C.G.A. § 16-14-3(9)) at least twice." Id. at 521 (quotation marks and citation omitted).

With regard to their state-law RICO claim, the plaintiffs rely on 18 U.S.C. § 1546 (relating to the fraud and misuse of visas, permits, and other documents) for

their predicate offenses.[9] Despite being limited to § 1546, the plaintiffs have alleged sufficiently numerous violations to satisfy the racketeering activity requirement under Georgia state law. In fact, according to the complaint, "Mohawk has committed hundreds, probably thousands, of violations of . . . 18 U.S.C. § 1546 as part of its pattern of racketeering activity."

There are, however, two issues under the Georgia RICO statute that warrant further discussion: (1) whether a corporation is a "person" who may be sued for purposes of the Georgia RICO statute; and (2) whether the plaintiffs have sufficiently alleged proximate cause to have standing to bring a Georgia RICO suit.

A. Whether Corporations May be Sued Under Georgia RICO

The Georgia Supreme Court recently answered the precise question of whether a corporation may be sued under the Georgia RICO statute. See Williams Gen. Corp. v. Stone, 280 Ga. 631, 632 S.E.2d 376 (2006). The Georgia Supreme Court noted that the prohibitions in the Georgia RICO Act apply to "any person"

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[9]According to O.C.G.A. § 16-14-3(9)(A)(xxix), "racketeering activity" is defined as "conduct defined as 'racketeering activity' under 18 U.S.C. Section 1961(1)(A), (B), (C), and (D)." The only "racketeering activity" contained in 18 U.S.C. § 1961(1)(A), (B), (C), or (D) on which the plaintiffs rely is § 1546. To the extent the plaintiffs attempt to rely on § 1324, as they do with their federal civil RICO claims, such a claim is barred under the Georgia RICO statute because § 1324 is listed as a "racketeering offense" in 18 U.S.C. § 1961(1)(F), and not in subsections (A), (B), (C), or (D).

under O.C.G.A. § 16-14-4. Williams, 280 Ga. at 631, 632 S.E.2d at 377. The term "person," however, is not defined in the definition section of the Georgia RICO Act. See O.C.G.A. § 16-14-3 (definition section). The Georgia Supreme Court pointed out that, nonetheless, the Georgia legislature had "set forth the desired application of the term [person] in the definition section promulgated for use in the title [Title 16] which includes the Georgia RICO Act." Williams, 280 Ga. at 631, 632 S.E.2d at 377. The Georgia Supreme Court explained that the definition section for use in Title 16 of the Georgia Code is O.C.G.A. § 16-1-3(12). Id. The Georgia Supreme Court then quoted § 16-1-3(12), which provides that "person" includes an individual, a public or private corporation, an incorporated association, government, government agency, partnership, or unincorporated association. Id. at 632, 632 S.E.2d at 377. Additionally, the Georgia Supreme Court observed that "the definition section of the entire Georgia Code notes that 'person' includes a corporation," citing O.C.G.A. § 1-3-3(14). Id. at 632, 632 S.E.2d at 378 (quotation marks omitted). Accordingly, the Georgia Supreme Court concluded that a corporation is subject to and may be sued under Georgia's RICO Act. Id. at 631, 632 S.E.2d at 377.

The Georgia Supreme Court in Williams also expressly rejected the argument, which Mohawk makes here, that O.C.G.A. § 16-2-22, which places

limits on corporate criminal liability, should apply to civil suits which stem from criminal law violations. Id. at 632-33, 632 S.E.2d at 378. Instead, the Georgia Supreme Court expressly held that "O.C.G.A. § 16-2-22 does not pertain to civil suits brought under the Georgia civil RICO Act." Id. In light of Williams, we conclude that Mohawk, a corporation, may be sued under the Georgia RICO statute.[10] We now turn to the next question of standing.

B. Standing to Pursue State-Law RICO Claims

As with Federal RICO claims, under Georgia's RICO statute, "[a]ny person who is injured by reason of any violation of" Georgia's RICO statute "shall have a cause of action for three times the actual damages sustained . . . ." O.C.G.A. § 16-14-6(c) (emphasis added). "[B]ecause the state RICO act is modeled upon and closely analogous to the federal RICO statute," Georgia courts "look to federal authority" in determining RICO standing. Maddox v. So. Eng'g Co., 500 S.E. 2d 591, 594 (Ga. Ct. App. 1998) (quotation marks and citation omitted). We already have concluded that the plaintiffs have alleged sufficient injury to pursue their federal RICO claims, and accordingly, we conclude that they have alleged a sufficient injury to pursue their state RICO claims as well. Although under

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[10]In interpreting a state law, federal courts apply the decisions of that state's highest court. See CSX Transp., Inc. v. Trism Specialized Carriers, Inc., 182 F.3d 788, 789 (11th Cir. 1999).

Georgia law the plaintiffs are limited to predicate acts arising out of 18 U.S.C. § 1546, we conclude that the plaintiffs' allegations are neither indirect nor too remote to satisfy Georgia's proximate-cause requirement under state-law RICO. See Maddox, 500 S.E.2d at 594 ("In short, the language 'by reason of' imposes a proximate causation requirement on the plaintiff." (citation omitted)); id. (A plaintiff "must show a causal connection between his injury and a predicate act." (citation omitted)).[11]

IV. UNJUST ENRICHMENT

The plaintiffs' complaint claims that Mohawk's illegal conduct permits it "to reap substantial wage savings" because Mohawk pays plaintiffs lower wages than it would otherwise be forced to pay. Therefore, according to the plaintiffs' complaint, Mohawk has been unjustly enriched under state law. Plaintiffs also claim that Mohawk has been unjustly enriched because the hiring of illegal aliens has led to a reduced number of worker's-compensation claims. Both of plaintiffs' state-law unjust-enrichment claims fail.

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[11]Plaintiffs also seek injunctive relief under the Georgia RICO Act which allows any "aggrieved person" to sue for injunctive relief, without requiring an injury "by reason of" the illegal conduct. Compare O.C.G.A. § 16-14-6(b) with O.C.G.A. § 16-14-6(c). Thus, we need not discuss Anza and Mohawk's proximate-cause arguments as to plaintiffs' claims for injunctive relief under the Georgia RICO Act.

Here, the plaintiffs were all paid an agreed-upon wage. In essence, the plaintiffs have a contract to work for the defendant and were paid the agreed-upon wage. In Georgia, "[u]njust enrichment is an equitable concept and applies when as a matter of fact there is no legal contract . . . ." St. Paul Mercury Ins. Co. v. Meeks, 508 S.E. 2d 646, 648 (Ga. 1998) (quotation marks and citation omitted); see Bonem v. Golf Club of Ga., Inc., 591 S.E. 2d 462, 467-68 (Ga. Ct. App. 2003). In this case, there was a legal contract as a matter of fact (i.e., if the plaintiffs were not paid, they could sue for breach of the employment contract). See, e.g., SurgiJet, Inc. v. Hicks, 511 S.E. 2d 194, 195 (Ga. Ct. App. 1999); Brazzeal v. Commercial Cas. Ins. Co., 180 S.E. 853, 853 (Ga. Ct. App. 1935). Therefore, there can be no unjust enrichment. Consequently, the plaintiffs' unjust-enrichment claim as it related to Mohawk's purported savings from lower wages should have been dismissed.

As for plaintiffs' claims that hiring illegal workers resulted in fewer worker's-compensation claims, there is no reasonable allegation that this fact, even if true, is connected to the plaintiffs receiving lower wages. To put it another way, the fact that Mohawk may have increased profits by lowering the number of worker's-compensation claims it paid is not related to what wages Mohawk paid

the plaintiffs. Consequently, the district court correctly determined that the plaintiffs did not have standing to assert this claim.

V. CONCLUSION

For all the above reasons, we conclude that the district court properly denied Mohawk's Rule 12(b)(6) motion as it related to both the plaintiffs' federal and state RICO claims. Furthermore, the district court properly dismissed the plaintiffs' unjust-enrichment claim as it related to worker's compensation. However, the district court should have also dismissed the plaintiffs' unjust-enrichment claim as it related to the agreed-upon wages that plaintiffs received.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS-EXAMPLES

Cases

Elite Logistics

ZAMORA vs. ELITE LOGISTICS, INC.

Summary:	Elite Logistics, Inc., operator of a grocery warehouse in Kansas City, KS, received a tip about a forthcoming ICE raid. The employer checked social security numbers of all its 650 employees using two outside contractors (not the government's programs). Ramon Zamora was hired by Employer in 2001. At time of hiring, Zamora was a lawful permanent resident. The employer recorded on his I-9 that they viewed his Resident Alien card and a Social Security Card. There was a problem with the Plaintiff's, Ramon Zamora, SSN. Employer gave Zamora ten days to provide adequate documentation or be terminated. Plaintiff did not provide requested SSN documents. Employer suspended him indefinitely. Plaintiff brought back a document from SSA, and was asked to return to work. Plaintiff asked for apology in writing before he would consider coming back to work. The employer fired Plaintiff. Plaintiff sued for Title VII discrimination for suspension and firing because of race and national origin. No claims were brought under IRCA. District court granted summary judgement in 2004. 10th Circuit (divided panel) reversed in 2006. In 2007, 10th Circuit en banc was evenly divided and AFFIRMED summary judgment.	
Held:	Summary judgement AFFIRMED	
Title VII	Race Nationality National Origin	No claim
IRCA Immigration Reform and Control Act	Citizenship & Alienage	Plaintiff may have a claim under IRCA, but did not bring it.
IRCA	Document Abuse	Employer requested and/ or accepted/ recorded too many docs when Defendant was hired: Green Card AND SSN Card with I-9, Defendant did not bring this claim.

Mira's Comment: **Cost of Defense vs. Cost of Employer Immigration Compliance Plan/ Procedures/ Training**

Both times, the 10th circuit is sharply divided! Can go either way next time.

F I L E D
United States Court of Appeals
Tenth Circuit

February 26, 2007

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

RAMON ZAMORA,

Plaintiff - Appellant,

v.

ELITE LOGISTICS, INC.,

Defendant - Appellee.

KANSAS HISPANIC & LATINO AMERICAN AFFAIRS COMMISSION; HISPANIC MINISTRY FOR THE ARCHDIOCESE OF KANSAS CITY, KANSAS; EL CENTRO, INC.; APOYO TRABAJADOR DE LAWRENCE/MIGRANT WORKER SOLIDARITY OF LAWRENCE; HARVEST AMERICA CORPORATION; NATIONAL IMMIGRATION LAW CENTER, EL CENTRO, INC.; INTERFAITH WORKER JUSTICE; INTERNATIONAL BROTHERHOOD OF TEAMSTERS; KANSAS CITY WORKER JUSTICE PROJECT; LABORERS INTERNATIONAL UNION OF NORTH AMERICA; NATIONAL COUNCIL OF LA RAZA; SERVICE EMPLOYEES INTERNATIONAL UNION; UNITED FOOD AND COMMERCIAL WORKER'S UNION,

No. 04-3205

Amici Curiae.

Appeal from the United States District Court
for the District of Kansas
(D.C. No. 03-CV-2230-JWL)

Christopher Ho, The Legal Aid Society-Employment Law Center, San Francisco, California (William N. Nguyen and Sharon Terman, The Legal Aid Society-Employment Law Center, San Francisco, California, and Aldo Caller, Law Offices of Aldo C. Caller, Shawnee Mission, Kansas, with him on the briefs), for Plaintiff-Appellant Ramon Zamora.

Ryan B. Denk (Carl A. Gallagher, with him on the briefs), McAnany, Van Cleave & Phillips, P.A., Kansas City, Kansas, for Defendant-Appellee Elite Logistics, Inc.

Marielena Hincapie, National Immigration Law Center, Los Angeles, California, on the brief for Amici Curiae National Immigration Law Center; El Centro, Inc.; Harvest America Corporation; Interfaith Worker Justice; International Brotherhood of Teamsters; Kansas City Worker Justice Project; Laborers International Union of North America; National Council of La Raza; Service Employees International Union; United Food and Commercial Workers Union.

Before **TACHA**, Chief Judge, **HOLLOWAY**, **EBEL**, **KELLY**, **HENRY**, **BRISCOE**, **LUCERO**, **MURPHY**, **HARTZ**, **O'BRIEN**, **McCONNELL**, **TYMKOVICH**, **GORSUCH**, and **HOLMES**, Circuit Judges.

EBEL, Circuit Judge.

Plaintiff-Appellant Ramon Zamora sued his former employer, Defendant-Appellee Elite Logistics, Incorporated ("Elite"), under Title VII of the Civil Rights Act, alleging Elite discriminated against Zamora because of his race

and national origin 1) by suspending Zamora from work until he presented documentation establishing his right to work in the United States; and 2) then, after reinstating Zamora, firing him after he requested an apology. The district court granted Elite summary judgment on both claims. See Zamora v. Elite Logistics, Inc., 316 F. Supp. 2d 1107 (D. Kan. 2004). A divided panel of this court reversed that decision. See Zamora v. Elite Logistics, Inc., 449 F.3d 1106 (10th Cir. 2006). After rehearing this appeal en banc, this court VACATES the panel's decision. See 10th Cir. R. 35.6. As to Zamora's first claim involving Zamora's suspension, because the en banc court is evenly divided, we simply AFFIRM the district court's decision granting Elite summary judgment.[1] As to the second claim involving Zamora's termination, a majority of this court AFFIRMS summary judgment in Elite's favor.[2]

I. BACKGROUND

Viewing the evidence in the light most favorable to Zamora, see Metzler v. Fed. Home Loan Bank, 464 F.3d 1164, 1166 n.1 (10th Cir. 2006), the evidence in the record established the following: Elite operates a grocery warehouse in Kansas City, Kansas. In June 2000, Elite needed to hire an additional 300

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[1]Judges Tacha, Kelly, Hartz, O'Brien, McConnell, Tymkovich and Gorsuch vote to AFFIRM on the suspension claim. Judges Holloway, Ebel, Henry, Briscoe, Lucero, Murphy and Holmes vote to REVERSE.

[2]Judges Tacha, Ebel, Kelly, Hartz, O'Brien, McConnell, Tymkovich, Gorsuch and Holmes vote to AFFIRM on the termination claim.

workers in just a few weeks' time. In doing so, Elite failed to verify that all of its new employees were authorized to work in the United States.

A year later, in August 2001, Elite hired Zamora. At that time, Zamora was a Mexican citizen who had been a permanent legal resident of the United States since 1987. As part of the hiring process and in compliance with the Immigration Reform and Control Act of 1986 ("IRCA"), Zamora showed Elite his social security card, which he had had since 1980 or 1981, and his alien registration card. Zamora also filled out an I-9 form truthfully indicating that he was a Mexican citizen and a lawful permanent resident of the United States.

Four months after hiring Zamora, in December 2001, Elite received a tip that the Immigration and Naturalization Service (INS)[3] was going to investigate warehouses in the area. Elite was particularly concerned about such an investigation in light of its earlier hiring practices in June 2000. Elite, therefore, hired two independent contractors to check the social security numbers of all 650 Elite employees. This investigation indicated that someone other than Zamora had been using the same social security number that he was using.[4] The

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[3]The INS no longer exists. In March 2003, its duties were transferred to the Department of Homeland Security. Yerkovich v. Ashcroft, 381 F.3d 990, 991 n.2 (10th Cir. 2004).

[4]In January 2002, one of the independent contractors, Datasource, reported to Elite that a Manuel Dominguez, while working in California, had used the same social security number as Zamora. Elite then asked the second independent contractor, Verifications, Inc., to recheck Zamora's social security number. In

(continued...)

investigation turned up similar problems with thirty-five other employees' social security numbers.

On May 10, 2002, therefore, Elite's human resources manager, Larry Tucker, met specifically with Zamora and gave him an "Important Memorandum," written in Spanish and English, giving him ten days to produce adequate documentation of his right to work in the United States. Tucker followed this same procedure with the other thirty-five employees whose social security numbers raised concerns.[5] The memorandum Tucker gave Zamora and the other affected workers read:

> It is required by federal law that all employees produce documents, which establish their identity and/or employment eligibility to legally work in the United States when they are hired. This eligibility can be established with a US Passport, a Certificate of Citizenship or Naturalization; or with a combination of other documents, such as a state's driver's license, state or federal ID card, US Social Security card and/or a certified copy of a birth certificate, issued by a state of the United States.
>
> It has come to our attention that the documents you provided us previously are questionable. Therefore, we are asking that you obtain proper documentation, or you may not be permitted to continue working here. Please bring proper evidence of your identity and employment eligibility no later than 5:00 p.m. on Monday, May

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[4](...continued)
March 2002, Verifications, Inc. reported to Elite that a Manuel Dominguez had also used the same number to obtain credit.

[5]Most of these thirty-five employees, when asked for this documentation, just quit. Only Zamora eventually provided paperwork verifying his right to work in the United States.

> 20, 2002, to the Department of Human Resources, or you may be terminated.
>
> Thank you.

At the bottom of this memorandum there was a place where Zamora indicated that

> I understand and agree that until and if I provide documents, which establish my identity and/or employment eligibility to legally work in the United States, Elite Logistics may not be able to continue permitting me to work. I also understand and agree that I have until 5:00 p.m. on Monday, May 20, 2002, to produce this documentation.

Zamora signed and dated that section of the memorandum. Zamora testified in his deposition that he understood at that time that he needed to bring in a valid social security card and documents establishing that he had a right to work in the United States. Zamora continued working during this ten-day period.

Zamora did not present Elite with any of the requested documents by May 20, 2002. Therefore, Tucker again met with Zamora[6] and, according to Zamora, Tucker told him that he could not "come to work anymore until you got a different Social Security number." Zamora left Tucker's office and returned that same day with a document from the Social Security Administration showing wage earnings for the years 1978-85 for an "R. Zamora" under Zamora's social security number.[7] This document had been mailed to an address in Washington, which

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[6]Union steward Ray Puentes was at this meeting between Tucker and Zamora and acted as a translator between the two.

[7]Zamora testified at his deposition that he had had his social security number only since 1980 or 1981. Yet this earnings statement showed wages

(continued...)

Zamora had scratched out and replaced with his then-current Missouri address. More problematic, however, was that the date of birth for R. Zamora on this earnings statement was different than the date of birth Ramon Zamora had given Elite at the time Elite hired him. After reviewing the earnings statement, Tucker became concerned that yet a third individual had been using Zamora's social security number. Therefore, Tucker informed Zamora that this earnings statement was not "acceptable." Neither was an INS document Zamora showed Tucker that indicated that Zamora had previously applied to become a United States citizen.

At some point, Zamora also showed Tucker his naturalization certificate, indicating that Zamora had in fact become a naturalized citizen of the United States. But Tucker rejected that document as well.

The next day, May 23, Zamora brought Tucker a statement from the Social Security Administration indicating that the social security number Zamora had given Elite was in fact his number. Tucker then told Zamora that "[w]e will check this out ourselves. And if it checks out, you can come back to work." Tucker's assistant verified this document's authenticity and then called Zamora, asking him to return to work on May 29.

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[7](...continued)
earned beginning in 1978. At his deposition, Zamora acknowledged that this earnings information was incorrect, but explained that when he had obtained this earning statement a few years earlier, he had then contacted the Social Security Administration to correct this error.

On May 29, however, instead of returning to work, Zamora went to Tucker's office and handed him a letter stating that "[b]efore I could consider going back to work I need from you two things: 1) an apology in writing, and 2) a complete explanation of why I was terminated. Please send a response to my home." Tucker refused to apologize. Tucker may then have told Zamora to get out of Tucker's office or the building, or to "[j]ust get the hell out." According to Zamora, Tucker also told him he was fired.

Zamora sued Elite, alleging the company violated Title VII[8] by first suspending and then firing Zamora because of his race and national origin. See 42 U.S.C. § 2000e-2(a)(1). The district court granted Elite summary judgment on both claims. See Zamora, 316 F. Supp. 2d at 1119, 1121. Zamora appealed.

II. STANDARD OF REVIEW

This court reviews summary judgment decisions de novo, viewing the evidence in the light most favorable to the non-moving party; in this case, in Zamora's favor. See Metzler, 464 F.3d at 1166 n.1. Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

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[8]42 U.S.C. §§ 2000e to 2000e-17.

III. DISCUSSION

In alleging that Elite discriminated against him on the basis of his race and national origin, Zamora challenges two separate incidents: 1) Elite's suspending Zamora from work until he was able to produce documentation establishing his right to work in the United States; and 2) after Elite reinstated him, Elite's decision to fire Zamora after he requested an explanation and an apology. See Zamora, 316 F. Supp. 2d at 1114.

A. Suspension

The district court granted Elite summary judgment on the suspension claim, after applying McDonnell Douglas's burden-shifting analysis[9] and concluding that Zamora had established a prima facie discrimination claim, but that Elite had proffered a legitimate, nondiscriminatory reason for suspending Zamora, and Zamora had failed to create a triable issue of fact as to whether or not Elite's proffered justification was merely a pretext for discrimination. See Zamora, 316 F. Supp. 2d at 1116-21. A divided panel of this court reversed that decision, determining that Zamora had presented sufficient evidence to create a triable fact as to whether Elite's stated reason for requiring Zamora to produce this documentation–that Elite was trying to avoid INS sanctions–was merely a pretext for race and national origin discrimination. See Zamora, 449 F.3d at 1112-13.

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[9]McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973).

After rehearing en banc, this court is evenly divided on this issue. For that reason, we simply VACATE the earlier panel opinion and AFFIRM the district court's decision granting Elite summary judgment on this claim. See Peoples v. CCA Detention Ctrs., 449 F.3d 1097, 1099 (10th Cir.) (per curiam), cert. denied, 127 S. Ct. 664, 687 (2006); Zuni Pub. Sch. Dist. No. 89 v. United States Dep't of Educ., 437 F.3d 1289, 1290 (10th Cir.) (per curiam), cert. granted, 127 S. Ct. 36 (2006).

B. Termination

Zamora also alleged that Elite discriminated against him on the basis of his race and national origin when Elite fired Zamora after he requested an apology. See Zamora, 316 F. Supp. 2d at 1114, 1119. The district court granted summary judgment to Elite on this claim, after concluding that Zamora had established a prima facie discrimination claim, but that Elite had proffered a legitimate, nondiscriminatory reason to fire him, and that Zamora had failed to assert sufficient evidence to create a triable issue as to whether or not Elite's proffered reason was merely a pretext for discrimination. See id. at 1119-21. A majority of the en banc court agrees.

For purposes of his appeal, we assume that Zamora did establish a prima facie discrimination claim. See Annett v. Univ. of Kan., 371 F.3d 1233, 1235, 1237 (10th Cir. 2004) (assuming, without deciding, that plaintiff has established prima facie retaliation claim actionable under Title VII); see also McCowan v. All

Star Maintenance, Inc., 273 F.3d 917, 923 (10th Cir. 2001). Further, Zamora concedes that Elite asserted a legitimate, nondiscriminatory reason for firing Zamora–its human resources manager, Tucker, believed that Zamora would not return to work unless Tucker apologized, and Tucker refused to apologize. Elite's proffered justification was sufficient for Elite to meet its "exceedingly light" burden under McDonnell Douglas and shift the burden back to Zamora to show that Elite's proffered justification was merely a pretext for race and national origin discrimination. Goodwin v. Gen. Motors Corp., 275 F.3d 1005, 1013 (10th Cir. 2002). "A plaintiff demonstrates pretext by showing either that a discriminatory reason more likely motivated the employer or that the employer's proffered explanation is unworthy of credence." Stinnett v. Safeway, Inc., 337 F.3d 1213, 1218 (10th Cir. 2003) (quotation omitted).

Zamora argues that Elite's proffered reason for terminating Zamora was not worthy of belief because Tucker could not have reasonably believed that Zamora had actually conditioned his return to work on Zamora apologizing. "In determining whether the proffered reason for a decision was pretextual, we examine the facts as they appear to the person making the decision." Watts v. City of Norman, 270 F.3d 1288, 1295 (10th Cir. 2001) (emphasis added; quotations omitted); see also Kendrick v. Penske Transp. Servs., Inc., 220 F.3d 1220, 1231 (10th Cir. 2000). And the undisputed evidence in this case establishes that, although Elite informed Zamora he could return to work on May 29, Zamora

did not return to work but instead went to Tucker's office and gave him the letter. And that letter specifically stated that "[b]efore I could consider going back to work I need from you two things: 1) an apology in writing, and 2) a complete explanation of why I was terminated. Please send a response to my home." (Emphasis added). Further, because Zamora had asked that Tucker's written apology be sent to his home, Tucker could have reasonably believed that Zamora was not going to return to work on May 29, as Elite had requested. Based upon these undisputed facts known to Tucker, he could reasonably have believed that Zamora was not going to return to work unless Tucker apologized.[10] See Kendrick, 220 F.3d at 1230-32 (holding that, although there was a disputed issue of fact as to whether or not the terminated employee had actually pushed his supervisor, the terminated employee had failed to establish that this proffered reason for his firing was a pretext for discrimination where the decisionmaker had no evidence contradicting the report that the employee did push his supervisor);

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[10]At various places in the record, Zamora asserts that he would, and that he would not, have returned to work even without Tucker's apology. But Zamora's subjective intent is not relevant to the question of how the facts objectively appeared to Tucker, as the decisionmaker. See Watts, 270 F.3d at 1295. "The pertinent question in determining pretext is not whether the employer was right . . . but whether that belief was genuine or pretextual." Pastran v. K-Mart Corp., 210 F.3d 1201, 1206 (10th Cir. 2000). The district court actually disregarded Zamora's affidavit, filed after his deposition, indicating Zamora would have continued working even without an apology. See Zamora, 316 F. Supp. 2d at 1113 n.4. This affidavit contradicted Zamora's earlier deposition testimony that he would not have returned to work without an apology.

Gearhart v. Sears, Roebuck & Co., 27 F. Supp. 2d 1263, 1276-77 (D. Kan. 1998) (holding that, even if there was a disputed issue of fact as to whether or not the employee intended to resign, summary judgment for the employer was appropriate where the employer "reasonably believed that employee resigned, and employee failed otherwise to offer sufficient evidence that employer's asserted reason was pretextual), aff'd, 194 F.3d 1320 (Table) (10th Cir. 1999) (unpublished).

Zamora argues that Tucker's strong reaction to Zamora's request for a written apology and explanation indicates that his proffered reason for terminating Zamora was a pretext for his true discriminatory motive. Zamora testified that when he gave Tucker the letter requesting a written explanation and apology, Tucker grabbed it out of Zamora's hand and told Zamora he was fired "because [Tucker] was not apologizing to anybody." But there is simply no evidence in the record indicating that Tucker's reaction was because Zamora was a Mexican-born Hispanic. In fact, the evidence indicates just the opposite. Once Zamora provided Elite with documentation indicating that he was eligible to work in the United States, and that the social security number he was using was his, Tucker offered Zamora his job back. If Tucker was discriminating against Zamora based upon his race or national origin, Tucker would not have reinstated him. Cf. Antonio v. Sygma Network, Inc., 458 F.3d 1177, 1183 (10th Cir. 2006) (holding "where the employee was hired and fired by the same person within a relatively short time span, there is a strong inference that the employer's stated

reason for acting against the employee is not pretextual;" noting, however, that an employee can still "present countervailing evidence of pretext") (quotation, footnote omitted). There is nothing in the record to suggest that Tucker was not going to permit Zamora to return to work on May 29; in fact, the undisputed evidence indicates that Zamora could have returned to work that day. Under the facts of this case, then, Tucker's suspending Zamora and his later decision to terminate Zamora's employment must be viewed as discrete, separate events. Tucker did not terminate Zamora until Zamora requested a written explanation and apology as a condition for his returning to work. And even Zamora concedes that Elite had no legal obligation to apologize. We agree with that. Nor is there any suggestion that Tucker had ever treated similarly situated employees who were not Hispanic or Mexican-born any differently. See generally Kendrick, 220 F.3d at 1230 (noting that one way an employee might prove pretext is to show that the employer treated similarly situated employees differently). Because Zamora failed to present sufficient evidence establishing a genuinely disputed issue of fact as to whether or not Elite's proffered reason for firing Zamora was a pretext for discrimination, summary judgment for Elite was warranted on this claim.

IV. CONCLUSION

For the foregoing reasons, we VACATE the earlier panel decision, 449 F.3d 1106, and AFFIRM the district court's decision granting Elite summary judgment on both claims.

04-3205 - *Zamora v. Elite Logistics, Inc.*

HARTZ, Circuit Judge, concurring, joined by Tymkovich, Circuit Judge.

I join Judge Ebel's opinion. I continue to believe that we should not apply the framework of *McDonnell Douglas*, 411 U.S. 792 (1973), to review a summary judgment when the existence of a prima facie case is not disputed. *See Wells v. Colo. Dept. of Trans.*, 325 F.3d 1205, 1221-28 (10th Cir. 2003) (Hartz, J., concurring). Applying that framework is inconsistent with Supreme Court authority, adds unnecessary complexity to the analysis, and is too likely to cause us to reach a result contrary to what we would decide if we focused on "the ultimate question of discrimination *vel non*." *U. S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 714 (1983). Neither party, however, has suggested that we not apply the *McDonnell Douglas* framework, so this is not the appropriate case to address the issue.

Zamora v. Elite Logistics, 04-3205.

McCONNELL, Circuit Judge, concurring and concurring in the judgment, joined by **KELLY**, **O'BRIEN**, and **TYMKOVICH**, Circuit Judges, joined by **GORSUCH**, Circuit Judge, except for the last paragraph of Section III, and joined in Section V by **HOLMES**, Circuit Judge.

Plaintiff Ramon Zamora presents two claims of employment discrimination, both arising out of his employer's efforts to ensure that every member of its workforce was legally authorized to work in the United States. Mr. Zamora's first claim relates to his three-day suspension, which occurred after Mr. Zamora failed to respond to the employer's notice of apparent problems with his Social Security number ("SSN"). The suspension continued after he presented an additional Social Security document containing yet another discrepancy—a birth date different from the one he had earlier reported to the employer. Mr. Zamora's second claim relates to his dismissal, which occurred after he obtained and provided documentation from the Social Security Administration verifying his SSN, but also demanded an apology before returning to work. The majority of this Court holds that the second claim cannot survive summary judgment because Mr. Zamora failed to present any evidence suggesting the termination was motivated by his national origin. I believe the same reason compels affirmance of summary judgment on his suspension claim. I therefore concur in the result of the equally-divided Court regarding this claim and write separately to explain my reasons.

I.

Because this case arises on appeal from a grant of summary judgment, we must view the evidence in the light most favorable to the non-moving party, Mr. Zamora. That does not mean, however, that we may disregard undisputed evidence that favors the moving party. The dissenting opinion depicts a hapless employee repeatedly offering sound documentation of his work status, and just as often being senselessly (or invidiously) rebuffed. That is scarcely a fair description of what occurred.

In June 2000, Elite Logistics, Inc., ("Elite") confronted a worker strike that necessitated the rushed hiring of about three hundred replacement employees for its Kansas Avenue grocery warehouse in Kansas City, Kansas. In the course of this scramble, Elite failed to obtain from its new hires the employment eligibility documentation required by the Immigration Reform and Control Act of 1986 ("IRCA"). *See* 8 U.S.C. § 1324a(b). In August 2001, after the crisis had passed and normal hiring practices resumed, Elite hired Mr. Zamora, who presented Elite with his alien registration and Social Security cards and signed an I-9 Employment Eligibility Verification form, as required by IRCA. *Zamora v. Elite Logistics, Inc.*, 316 F.Supp.2d 1107, 1111 (D. Kan. 2004).

Four months later, in December 2001, Elite learned of a possible inspection of the Kansas Avenue facility by the Immigration and Naturalization Service ("INS"). Recognizing that its post-strike hiring frenzy might have compromised

Elite's IRCA compliance, the company's human resource manager, Larry Tucker, decided to verify the Social Security numbers of every worker at the facility, approximately 650 in total. Mr. Tucker hired two independent agencies to perform these verifications. Between January and March 2002, Elite received reports that 35 to 40 employees had problems with their SSNs. These employees included Mr. Zamora, whose proffered SSN had previously been used by a "Manuel Dominguez" for employment purposes in California in 1989, 1995, and 1997. Appellee's App. at 94, 96. Mr. Tucker resubmitted most or all the problematic SSNs to a second company for rechecking. Tucker Dep. at 32–33, 42–44.[1] In March 2002, this second company reported that Manuel Dominguez had used this number for credit purposes as recently as October, 2001. *Zamora*, 316 F.Supp.2d at 1111; Appellee's App. at 95, 97.

To each employee with a reported SSN problem, Elite issued a memorandum explaining that federal law requires "all employees produce documents, which establish their identity and/or employment eligibility to legally work in the United States." Appellant's Supp. App. at 87. The memorandum further explained that "[t]his eligibility can be established with a US Passport, a Certificate of Citizenship or Naturalization; or with a combination of other

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[1] Mr. Tucker's deposition is found in the Appellant's Supplemental Appendix at pages 45–82. Mr. Zamora's deposition is found in the same appendix at pages 30–44.

documents, such as a state driver's license, state or federal ID card, US Social Security card and/or a certified copy of a birth certificate, issued by a state of the United States." *Id.* The memorandum then informed each recipient that documents previously provided by the employee were "questionable" and requested that the employee provide "proper evidence of . . . identity and employment eligibility." *Id.* The memorandum issued to Mr. Zamora warned that such documentation must be provided by "5:00 p.m. on Monday, May 20, 2002 . . . or you may be terminated." *Id.* Mr. Tucker provided Mr. Zamora with this memorandum on May 10, 2002. Mr. Zamora signed the bottom portion of the memorandum, attesting that "I understand and agree that until and if I provide documents, which establish my identify and/or employment eligibility to legally work in the United States, Elite Logistics may not be able to continue permitting me to work." *Id.*

Mr. Tucker testified that of the thirty-five employees who received the memorandum, most simply disappeared. Tucker Dep. at 36, 55. None but Mr. Zamora ever attempted to provide documentation. *Id.* at 36–37, 54–55.

At first, even Mr. Zamora did not respond to the memorandum. On May 22, 2002—two days after the deadline specified for response—Mr. Tucker summoned Mr. Zamora, along with Mr. Zamora's union steward (who also served as a translator), to his office. At that meeting, Mr. Tucker informed Mr. Zamora that he had failed to produce the requested documentation and suspended him

from employment until such documentation was forthcoming. The union steward accused Mr. Tucker of picking on Hispanic employees, an assertion that both Mr. Tucker and the district court assumed the steward translated on Mr. Zamora's behalf. *Id.* at 58; *Zamora*, 316 F.Supp.2d at 1112.

What happened next is the subject of some dispute among the parties, but the district court characterized it as follows:

> On or about May 22, 2002, plaintiff brought Mr. Tucker a document from the INS showing he had applied for naturalization in 2001. Along with this document were earnings records from the Social Security Administration showing the use of plaintiff's SSN by someone named "R. Zamora" and whose date of birth was "2/1960." The document that plaintiff had provided to defendant when he was hired, however, showed his date of birth to be June 14, 1961. Mr. Tucker became even further concerned about plaintiff's SSN when he noticed the different birth dates. Mr. Tucker expressed these concerns to plaintiff and informed plaintiff that he would need to bring in further documentation to establish his right to work. The INS form provided a customer service number, but Mr. Tucker did not call that number.
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> Plaintiff testified in his deposition that on or about May 22, 2002, he presented Mr. Tucker with his naturalization certificate and told Mr. Tucker he was now a United States citizen. Mr. Tucker, however, did not accept this paperwork as adequate. He told plaintiff he did not care about this but instead wanted social security papers or another SSN. Mr. Tucker told plaintiff not to come to work until he got a different SSN. Plaintiff testified in his deposition that he also presented Mr. Tucker with his social security card, that Mr. Tucker told him his SSN was stolen from someone else, and that Mr. Tucker treated him rudely in rejecting his documentation.

Zamora, 316 F.Supp.2d at 1112–13.[2]

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[2] The dissent claims that Mr. Zamora presented his naturalization certificate (continued...)

Elite contends that the record does not support Mr. Zamora's claim that he presented Mr. Tucker with a naturalization certificate.[3] Elite points out that no such certificate appears in the record; the only document in the record regarding

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[2](...continued)
at a meeting separate and apart from the meeting at which he presented the questionable Social Security earnings report and naturalization interview notice. Dissenting Op. at 6. The dissent does not explain the evidentiary basis for this inference. Neither Mr. Zamora nor Mr. Tucker mentioned such a meeting in their depositions.

[3] Mr. Tucker denied receiving a naturalization certificate from Mr. Zamora. As he described the relevant events, he called Mr. Zamora into his office on May 22 to inform him that he could not continue working at Elite until he provided the documentation requested on May 10. When asked whether Mr. Zamora brought any documents at that time, Mr. Tucker responded: "Not right then." Tucker Dep. at 55.

Mr. Tucker explained that Mr. Zamora returned "either that day or the next," *id.* at 66, with (1) "documents that were issued by the Immigration and Naturalization Service" showing that Mr. Zamora had applied for naturalization, and (2) Social Security wage records which "had the same social security number, but it had a different birthdate than the one he was using," *id.* at 61. It thus appeared to Mr. Tucker "as if even a third employee or a third individual may have been using that number." *Id.* When asked whether Mr. Zamora brought any other documents during that visit, Mr. Tucker responded: "It is my recollection that this is all he presented me with." *Id.* at 66.

Mr. Tucker testified that his next interaction with Mr. Zamora occurred when the latter brought in a document stamped by the Social Security Administration (discussed *infra*). When asked whether Mr. Zamora "brought any additional documents" to that meeting, Mr. Tucker responded: "I do not recall." *Id.* at 69.

When Mr. Zamora's attorney directly questioned Mr. Tucker about the naturalization certificate, the following exchange ensued:

> Q. Okay. Do you recall if [Mr. Zamora] ever brought to you a certificate of naturalization?
>
> A. He did not.
>
> Q. You recall that he did not?
>
> A. Yes sir.

Id. at 90–91.

Mr. Zamora's naturalization, marked Exhibit 6, is an INS notice addressed to Mr. Zamora instructing him to attend a hearing on his application for naturalization. Appellant's Supp. App. at 88. Mr. Zamora did, however, testify in his deposition that he presented a naturalization certificate to Mr. Tucker. Zamora Dep. at 42. Because this Court must view the evidence in the light most favorable to the nonmoving party, and because a party's deposition testimony, even if uncorroborated by relevant documents, counts as evidence, we must assume for purposes of this appeal that Mr. Zamora presented a naturalization certificate to Mr. Tucker. However, nothing in the record suggests—and, therefore, we need not assume—that the naturalization certificate ameliorated Mr. Tucker's concerns about the problems with Mr. Zamora's SSN. Indeed, so far as the record reveals, Social Security numbers do not appear on naturalization certificates, and when asked whether his SSN appeared on the "citizenship papers" he presented to Mr. Tucker, Mr. Zamora responded: "I don't think so. I can't remember. No, I don't think so." *Id.* at 11–12.

Mr. Zamora returned the day following his suspension with a document from the Social Security Administration ("SSA"), dated May 23, 2002. This document stated that Mr. Zamora's SSN was assigned to an individual named "Ramon Zamora Farias," which corresponded with the name Mr. Zamora provided to Elite when originally hired. Mr. Tucker instructed his secretary to verify this documentation with the SSA and to summon Mr. Zamora back to work if it

checked out. The document did check out and, on May 25, Mr. Tucker's secretary called Mr. Zamora and asked him to return to work. *Zamora*, 316 F.Supp.2d 1113. The suspension thus lasted about three days.

On or about May 29, Mr. Zamora returned to Elite and handed Mr. Tucker a letter written in English and typed at the office of his attorney. Zamora Dep. at 13. It stated: "Before I could consider going back to work I need from you two things: 1) an apology in writing, and 2) a complete explanation of why I was terminated." Appellant's Supp. App. at 101. Mr. Tucker testified that he considered this a voluntary resignation. Tucker Dep. at 82. Mr. Zamora testified that Mr. Tucker grabbed the letter, stated that he would fire Mr. Zamora rather than give an explanation, and told Mr. Zamora he was fired. Zamora Dep. at 34–36. Mr. Tucker admitted that he might have told Mr. Zamora to "just get the hell out." Tucker Dep. at 96.

II.

Mr. Zamora has sued under Title VII of the Civil Rights Act of 1964, which makes it unlawful "for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Title VII cases are funneled through the oft-repeated *McDonnell Douglas* burden-shifting framework. *See McDonnell Douglas Corp. v. Green*,

411 U.S. 792 (1973).[4] Under this formula, a Title VII plaintiff first must establish a prima facie case of discrimination—a burden so light that only the most baseless of claims fails to satisfy it.[5] The heavy lifting of proving and defending a Title VII case occurs in the later stages of the *McDonnell Douglas* analysis.

After a plaintiff has established a prima facie case, the burden "shift[s] to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas*, 411 U.S. at 802. If the employer does so, the burden shifts back to the plaintiff to show that the proffered reason is

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[4] Judge Hartz offers arguments against employing the *McDonnell Douglas* framework in the summary judgment context. Those arguments were not made by any party and have not received the consideration of the *en banc* court. Nothing in the opinions in this case should be interpreted as precluding parties in future cases from litigating the issues Judge Hartz raises.

[5] In a discriminatory discharge case, all a plaintiff must show is: (1) he belongs to a protected class; (2) he was qualified for his job; (3) despite his qualifications, he was discharged; and, (4) the job was not eliminated after his discharge. *English v. Colo. Dept. of Corrections*, 248 F.3d 1002, 1008 (10th Cir. 2001). This Circuit has held that the requirements for a prima facie case in a discriminatory suspension case are different than those for a discriminatory discharge case, a difference that perhaps gives the first step of the *McDonnell Douglas* framework a bit more bite in the former context. A plaintiff attempting to prove discriminatory suspension must show that (1) he belongs to a protected class, (2) he suffered an adverse employment action, and (3) "the adverse employment action occurred under circumstances giving rise to an inference of discrimination." *Hysten v. Burlington N. & Santa Fe Ry. Co.*, 296 F.3d 1177, 1181 (10th Cir. 2002). Although the posture of this case demands that we analyze the evidence under the later stages of the *McDonnell Douglas* framework, with regard to Mr. Zamora's first claim, it is not clear that he presented enough evidence to pass even this first step.

pretextual. One way a plaintiff can do so is by demonstrating "'such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons.'" *Danville v. Reg'l Lab Corp.*, 292 F.3d 1246, 1250 (10th Cir. 2002) (quoting *Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1323 (10th Cir. 1997)). When analyzing this type of evidence, it must be kept in mind that the purpose of the *McDonnell Douglas* framework is to ferret out discrimination where direct evidence of such is lacking. The framework allows a factfinder to draw reasonable inferences from circumstantial evidence. As the Supreme Court has explained, "[i]n appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000). "Thus, a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Id.* at 148.

But not all evidence of pretext is sufficient to propel a case past a summary judgment challenge. Some circumstantial evidence simply does not provide enough proof to allow a reasonable factfinder to draw an inference of discrimination. As the *Reeves* Court cautioned:

> This is not to say that such a showing by the plaintiff will *always* be adequate to sustain a jury's finding of liability. Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant's explanation, no rational factfinder could conclude that the action was discriminatory. For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred . . . . To hold otherwise would be effectively to insulate an entire category of employment discrimination cases from review under Rule 50, and we have reiterated that trial courts should not treat discrimination differently from other ultimate questions of fact.

Id. at 148 (internal citations and quotation marks omitted). In other words, although the *McDonnell Douglas* framework aids in the analysis of a Title VII suit, it is not meant to alter the purpose of Title VII, nor does it insulate an insufficient case from summary judgment, nor does it change what a plaintiff is required to show in proving a violation of Title VII—namely, discrimination. As the Supreme Court stated in *McDonnell Douglas* itself, the purpose of Title VII is "to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens." *McDonnell Douglas Corp.*, 411 U.S. at 800. Title VII is not meant to protect an employee's job simply "'because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has

proscribed.'" *Id.* (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 430–31 (1971)). Thus, the *McDonnell Douglas* framework should not be applied in a manner that renders it nothing more than an empty pleading formula, allowing every allegation of employer discrimination to get to a jury. The touchstone of the inquiry is whether a reasonable jury could find discrimination. If not, the claim cannot survive a motion for summary judgment.

III.

Elite claims that its reason for demanding additional documentation from Mr. Zamora was a good faith—even if flawed—attempt to comply with the Immigration Reform and Control Act of 1986. IRCA is relevant here in two respects. First, the statute prohibits the knowing employment of unauthorized aliens and places affirmative burdens on employers to verify the identity and employment eligibility of employees, at the hiring stage, by examining certain documents specified by statute and regulation. *See* 8 U.S.C. §§ 1324a(a)(1)(A)–(B), 1324a(b); 8 C.F.R. § 274a.2(b)(1)(ii) & (v). The statute provides that, at the time of initial hiring, compliance "in good faith with the[se] requirements . . . with respect to the hiring . . . for employment of an alien in the United States . . . establish[es] an affirmative defense that [the employer] has not violated" the above provisions. 8 U.S.C. § 1324a(3). IRCA also makes it unlawful for an employer "to continue to employ [an] alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such

employment." *Id.* § 1324a(a)(2). It is this latter obligation—combined with the range of civil and criminal penalties that await employers who violate IRCA, *see id.* § 1324a(e)–(f)—that Elite claims prompted its actions in this case.

Second, IRCA has created employer incentives to protect against the significant disruption that may occur when immigration enforcement agents inspect a workplace and find workers out of compliance. As the then-Acting Deputy Director of United States Citizenship and Immigration Services ("USCIS") explained in recent congressional testimony:

> [O]ne of the primary reasons for a human resources manager to push participation in [a voluntary program for employee verification] was to avoid that moment when the INS would come in and raid the place and take away half the workers, and make it impossible to make any kind of production. That's the kind of event that gets the human resources manager fired, and that's the kind of event that they would try to plan against.[6]

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[6] Indeed, Mr. Tucker enunciated a concern very similar to this in explaining why he staggered distribution of the memoranda alerting employees of their reported SSN discrepancies:

> [W]e knew that once we started calling these people in, not only they but others that may have had social security numbers that checked out would leave the work force and that if we had a large group of warehouse employees leave at one time, it would have been disruptive. So we set up—originally I was going to call five individuals in each week. But the first week, the first five I called in, they and about five other guys just disappeared the next day. So we slowed the process down to where we were doing like two to three every other week or so.

Tucker Dep. at 37–38.

Immigrant Employment Verification and Small Business: Hearing Before the Subcomm. on Workforce, Empowerment, & Gov't Programs of the H. Comm. on Small Business, 109th Cong. (2006) [hereinafter *Verification Hearing*] (statement of Robert Divine, Acting Deputy Director, USCIS, Department of Homeland Security). As recent events around the country illustrate, this is not an obligation that employers can afford to take lightly.[7]

One of the principal methods of ensuring employee eligibility is verification of Social Security numbers. Indeed, this is the key feature of the federal government's Basic Pilot Program—a voluntary employment eligibility verification system created by Congress in 1997.[8] Employers who participate in

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[7] On December 12, 2006, Department of Homeland Security officials raided six meatpacking plants across the nation in search of illegally employed immigrants. The action resulted in the arrest of 1,282 workers—nearly ten percent of the targeted company's workforce. *See* Rachel L. Swarns, *Illegal Immigrants at Center of New ID Theft Crackdown*, N.Y. Times, Dec. 14, 2006, at A38. "The action targeted the use of legitimate Social Security numbers by illegal immigrants—what . . . [the] spokeswoman for Immigration and Customs Enforcement[] called 'a massive identity-theft scheme.'" Nicole Gaouette, *Six Meat Plants Are Raided in Massive I.D. Theft Case*, latimes.com, Dec. 13, 2006, at http://www.latimes.com/news/nationworld/nation/la-na-raid13dec13.0.5308699.story?track=rss. *See also* Swarns, *supra* (reporting the Secretary of Homeland Security's intention to "aggressively pursue document-theft rings and the illegal immigrant workers who use them," and reporting his statement that "'when we remove the illegal workers, there's going to be some kind of slowdown'").

[8] *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, §§ 401-404, 110 Stat. 3009, 3009-655 to 3009-665; U.S. Citizenship & Immigration Servs., U.S. Dep't of Homeland Sec., *Report to Congress on the Basic Pilot Program* (June 2004),

(continued...)

Basic Pilot electronically submit information from a newly hired employee's I-9 form—name, date of birth, SSN, citizenship status (if provided)—for comparison with information on the SSA's primary database, irrespective of the facially compliant documents provided by the employee to satisfy I-9 requirements. If the information submitted by the employer matches SSA data, the employer is notified of the employee's verified, eligible status. If the employer-submitted data and SSA records are inconsistent, or if SSA cannot issue verification for some other reason, the employer-submitted information is then checked by USCIS.[9] If eligibility still cannot be established, the government issues a "tentative nonconfirmation," and the employer must notify the employee of the finding. USCIS, U.S. Dep't of Homeland Sec., *Findings of the Basic Pilot*

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[8](...continued)
http://www.uscis.gov/files/nativedocuments/BasicFINALcongress0704.pdf [hereinafter, USCIS, Report to Congress]; Pilot Programs for Employment Eligibility Confirmation, 62 Fed. Reg. 48309, 48311 (Sept. 15, 1997) ("The Basic Pilot involves separate verification checks (if necessary) of the SSA and [USCIS] databases, using automated systems to verify Social Security account numbers . . . and alien registration numbers."). In 2006, the U.S. Senate and House of Representatives each passed differing versions of a bill that would have made the Basic Pilot Program mandatory for all U.S. employers. *See* Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2006); Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006).

[9] INS published the procedures for Basic Pilot in 1997. Subsequently, INS transferred from the Department of Justice to the Department of Homeland Security, where its functions are now carried out by USCIS. *See* 69 Fed. Reg. 75997, 75998 (Dec. 20, 2004). Thus, where the 1997 procedures refer to INS, this opinion substitutes USCIS.

Program Evaluation 42 (June 2002), at http://www.uscis.gov/files/article/4%5B1%5D.b%20C_II.pdf [hereinafter USCIS Findings]. Employees are given eight federal workdays to contact USCIS or SSA and resolve the problem. If the employee chooses not to contest the tentative nonconfirmation, it is considered a "final nonconfirmation" and the employer may terminate the employee. If the employee does choose to contact the relevant agency and the agency resolves the issue, the employee must notify his employer and the employer must confirm the new result through the Basic Pilot computer system. If eligibility is still not established after this period and no further verification instructions are provided by the SSA, the employer is authorized to discharge the employee. *See* USCIS Findings, *supra*, at 40–44; 62 Fed. Reg. 48309, 48312–13. *See also* USCIS, Report to Congress, *supra* note 8, at 2–3. If the employer chooses not to terminate an employee after issuance of a final nonconfirmation, it must notify USCIS. Failure to notify constitutes a violation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and may result in legal penalties. 62 Fed. Reg. 48309, 48313.

Compliance efforts have shifted to Social Security number verification because of the easy availability of forged documents and the prevalence of identity theft, which make other forms of documentation less reliable. At a House subcommittee hearing on proposed legislation to make participation in the Basic Pilot Program mandatory, the Chair of the House Subcommittee on Workforce,

Empowerment, & Government Programs explained that "the easy availability of counterfeit documents has made a mockery of [IRCA]. Fake documents are produced by the millions, and they can be bought very cheaply." *Verification Hearing*, *supra* (statement of Rep. Marilyn Musgrave, Chairman); *see also* USCIS Findings, *supra*, at 178, at http://www.uscis.gov/files/article/6%5B1%5D.a%20C_XI.pdf. ("Individuals without work authorization frequently obtain work by using counterfeit or altered documents."). An increasingly common method of circumventing IRCA involves flat-out identity theft, i.e., the "use [of] real documents belonging to another person. For example, individuals may borrow documents belonging to relatives or friends with similar characteristics." USCIS Findings, *supra*, at 179; *see also Verification Hearing*, *supra*, (statement of Jack Shandley, Senior Vice President, Swift & Co.) ("The underground market responded [to a crackdown on counterfeit documents] by replacing counterfeit documents with genuine identification documents obtained under fraudulent terms . . . ."). Reliance on data—SSN, name, birthdate, asserted citizenship status—rather than documents ameliorates this problem.

In his dissenting opinion, Judge Lucero writes at length about the anti-discrimination requirements contained within IRCA, 8 U.S.C. § 1324b(a), despite the fact that Mr. Zamora has not alleged a violation of those provisions. *See* Dissenting Op. at 11–15. Citing the text, legislative history, and implementing

regulations of the IRCA provisions, the dissent seems to imply that our interpretation of Title VII ought to be guided by these provisions. That suggestion is unfounded because—as the dissent acknowledges—the IRCA anti-discrimination provisions were intended to "'broaden[] the Title VII protections against national origin discrimination, while not broadening other Title VII protections.'" *Id.* at 12 (emphasis removed) (quoting H.R. Conf. Rep. No. 99-1000 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5840, 5842). This case arises under Title VII—not IRCA's anti-discrimination provisions—and the principles we interpret will apply across the board to all Title VII claims. It would be contrary to congressional intent for us to "broaden" Title VII by interpreting it to coincide with the IRCA anti-discrimination provisions. To confine our analysis to Title VII does not "go far in insulating employers from national origin discrimination claims," as the dissent charges. *Id.* at 14. It simply respects the different reach of the two different statutes.

IV.

Turning first to Mr. Zamora's suspension claim, I am at a loss to see how a reasonable factfinder could construe the sequence of events detailed above as discriminatory.

Through Mr. Zamora's suspension on or about May 22, and up to Mr. Tucker's rejection of Mr. Zamora's proffer of a naturalization certificate when he returned later that day or the next, Elite's actions are free of any taint of

discrimination. When the company learned of the impending INS inspection, Elite undertook an examination of the Social Security numbers of all of its employees, without regard to their race or national origin. When it learned that thirty-five employees had irregularities regarding their Social Security numbers, Elite contacted all thirty-five and asked all thirty-five for documentation that would clear up these issues. Although Mr. Zamora complains that the company put the burden on the employees to prove their identity and eligibility rather than contacting the relevant government agencies itself, this approach was lawful, and more importantly was applied to all affected employees without regard to their race or national origin. No one disputes that the company's outside contractors uncovered evidence of irregularities in Mr. Zamora's SSN. No one disputes that it was lawful for the company to ask Mr. Zamora to clear up the discrepancy. No one disputes that the company gave Mr. Zamora sufficient time—ten days—to do so. And no one disputes that, twelve days after receiving notice, Mr. Zamora had failed to do anything to clear up the problem. At the time when Mr. Zamora was suspended from employment on May 22, therefore, no reasonable juror could find that he had been treated differently from any other employee, on the basis of his national origin. *See Zamora*, 449 F.3d at 1118–19 (Ebel, J., dissenting).

The discriminatory suspension claim arises primarily from Mr. Zamora's allegation that he later presented Mr. Tucker with a certificate of naturalization, and that Mr. Tucker refused to accept it as sufficient resolution of his Social

Security number irregularities. Because Mr. Zamora was the only employee of the thirty-five problem cases to reach this juncture, one cannot determine whether he was treated differently from other employees. But one can examine the circumstances for evidence that would allow a reasonable factfinder to draw an inference of discrimination. I find none.

Mr. Zamora argues that once he produced his naturalization certificate, it should have been sufficient to clear the company of any possible liability under IRCA. Any further requests for documentation, he argues, were inconsistent with the company's stated rationale and thus evidence of pretext. Similarly, Mr. Zamora contends that because the memorandum handed to him on May 10 stated that "eligibility can be established with . . . a Certificate of Citizenship or Naturalization," Mr. Tucker's rejection of such a document is evidence of pretext. Lastly, Mr. Zamora argues that Mr. Tucker's personal demeanor is evidence of discrimination. I do not find these arguments convincing for several reasons.

A.

First, Mr. Zamora ignores the critical fact that in addition to presenting Mr. Tucker with his naturalization certificate he also presented him a Social Security document that displayed a birth date different from the one he had previously reported to Elite. *See* Appellant's Supp. App. at 89. This new development understandably heightened Mr. Tucker's suspicion regarding whether the SSN used by Mr. Zamora was legitimately his. The contemporaneous presentation of a

naturalization certificate, which would not contain Mr. Zamora's SSN, would not have resolved the issue. As Mr. Tucker explained:

> [M]y concern with Mr. Zamora was could I find a document or a couple of documents that had the birthdate he was using, the name he was using, and the social security number he was using that verified that this is truly his? And when he brought [in the document with the different birth date,] in addition to the other concern that had been raised with this different birthdate, it appeared to me as if now we had possibly three individuals using this same card.

Tucker Dep. at 64.

It may have been wrong, but it was not unreasonable for Mr. Tucker to believe that, under these circumstances, examination of the naturalization certificate would fail to bring the company into compliance with IRCA. IRCA makes it "unlawful for [an employer], after hiring an alien for employment in accordance with [IRCA's hiring procedures] to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment." 8 U.S.C. § 1324a(a)(2). Thus, Mr. Tucker may have reasonably believed that while examination of a facially valid naturalization certificate would satisfy Elite's statutory duties at the *hiring stage*, *see* 8 U.S.C. § 1324a(a)(3), once the company was confronted with a *specific* question about a worker's documentation, it was under a duty to investigate and resolve that specific concern.

Indeed, case law interpreting IRCA supports Elite in this view. The Ninth Circuit has held that 8 U.S.C. § 1324a(a)(2) adopts a "constructive knowledge

standard," whereby "a deliberate failure to investigate suspicious circumstances imputes knowledge" to an employer. *New El Ray Sausage Co. v. INS*, 925 F.2d 1153, 1157–58 (9th Cir. 1991) (citing *Mester Mfg. Co. v. INS*, 879 F.2d 561, 567 (9th Cir. 1989)). As that court explained, employers share "part of [the] burden" of "proving or disproving that a person is unauthorized to work." *Id.* Initial verification at the hiring stage is done through document inspection, but "[n]otice that these documents are incorrect places the employer in the position it would have been if the alien had failed to produce documents in the first place: it has failed to adequately ensure that the alien is authorized." *Id.* Moreover,

> [a]lthough compliance with the paperwork procedures establishes a good faith defense against a finding of unlawful hiring, 8 U.S.C. § 1324a(a)(3), it should provide no defense against a violation of section 1324a(a)(2). While the hiring can be considered in good faith since the false nature of the documents was unknown, the continuing employment is done with the knowledge that the document is false.

Id. at 1158 n.7.

Whether or not this Court ultimately agrees with the Ninth Circuit's interpretation—which we need not decide in this case—*New El Ray Sausage* demonstrates that Mr. Tucker's diligence in seeking resolution of all reported SSN discrepancies was within the bounds of reasonableness and, therefore, that his continued focus on resolving Mr. Zamora's SSN problem does not constitute strong evidence of pretext. *See Meltzer v. Fed. Home Loan Bank of Topeka*, 464 F.3d 1164, 1178 (10th Cir. 2006) ("'[A] mistaken

belief can be a legitimate reason for an employment decision and is not necessarily pretextual.'" (quoting *EEOC v. Flasher Co., Inc.*, 986 F.2d 1312, 1322 n.12 (10th Cir. 1992)); *Stover v. Martinez*, 382 F.3d 1064, 1076 (10th Cir. 2004) ("[I]n evaluating pretext, the relevant inquiry is not whether [the employer's] proffered reasons were wise, fair or correct, but whether [the employer] honestly believed those reasons and acted in good faith upon those beliefs.") (internal citations and quotation marks omitted); *Reynolds v. School Dist. No. 1, Denver*, 69 F.3d 1523, 1535 (10th Cir. 1995) ("[A]n employer's exercise of erroneous or even illogical business judgment does not constitute pretext."). *See also McKnight v. Kimberly Clark Corp.*, 149 F.3d 1125, 1129 (10th Cir. 1998) ("Summary judgment is not ordinarily appropriate for settling issues of intent or motivation . . . . However, in this case, McKnight has not shown that at the time of his termination there was any dispute or a genuine issue concerning the sincerity of defendants' proffered reason for his termination.").

Mr. Zamora's position appears to be that whenever an employer has "good" documents on file—that is, documents that facially comply with IRCA and for which questions have not been raised—the employer is barred from pursuing any suspicious circumstances that arise concerning other documents on file. As *New El Ray Sausage* demonstrates, IRCA does not necessarily read that way, and I do not believe an employer should be held

to have discriminated under Title VII for failing to adopt this somewhat surprising reading of its responsibilities. Indeed, if any action beyond facial examination of eligibility documents is discriminatory, then the entire Basic Pilot Program—which is designed to curb the growing problems of document fraud and identity theft—might be called into question, since it is premised on the examination of data discrepancies rather than documents.

In arguing that Elite's proffered reason is pretextual, the dissent rests heavily on a quotation from Mr. Tucker's deposition in which he affirmatively responded to the following question: "So, it wasn't really a concern about whether [Mr. Zamora] is entitled to work in this country, it was a concern about is he using the correct social security number?" Tucker Dep. at 87. The dissent interprets this as a "concession" that Mr. Tucker "was not concerned with Zamora's lawful right to work in this country as of May 22, 2002." Dissenting Op. at 18-19. The statement, however, must be understood in context:

(1) When asked what IRCA requires, Mr. Tucker stated: "Within three days of [an employee's] working for us we have to have documents that establish, one, their identity; and two, their eligibility to work in this country. Sometimes those documents can be one and the same." Tucker Dep. at 17.

(2) In explaining his concern over Mr. Zamora's file, Mr. Tucker stated: "My concern with Mr. Zamora was could I find a document or a couple of documents that had the birthdate he was using, the name he was using, and the social security number he was using that verified this is truly his?" *Id.* at 64.

(3) With this as background, Mr. Tucker was then asked: "So would it be fair to say that the problem with the social security number is that it points to a potential that, in fact, he is not entitled to work in this country?" *Id.* at 87. Mr. Tucker responded: "What I had was a social security number that indicated three different people may have used that number at three different points in time. I wanted to ascertain with certainty that that number belonged to Mr. Zamora." *Id.*

(4) Only then did Mr. Zamora's attorney ask: "So it wasn't really a concern whether he is entitled to work in this country, it was a concern about is he using the correct social security number?," whereupon Mr. Tucker responded, "Yes sir." *Id.*

Mr. Tucker never testified that he was unconcerned with IRCA compliance in general, only that his concern related to Mr. Zamora's SSN rather than any other issues surrounding "entitlement to work in this country." As already discussed, an increasingly common form of IRCA fraud entails the presentation of valid documents that belong to someone

else. Thus, while SSNs are initially used to confirm employment eligibility under IRCA (rather than identity), when an employer learns that a Social Security number has been used by multiple persons, the employer might reasonably be concerned that an employee is not who he purports to be—in other words, that the SSN the employee presents does not match the identity he presents. Consequently, the question relevant to this case is not really one of "eligibility" under IRCA, but rather of the match between identity and proof of eligibility. In Mr. Tucker's words: "What I had was a social security number that indicated three different people may have used that number at three different points in time. I wanted to ascertain with certainty that that number belonged to Mr. Zamora." *Id.* at 64.

The dissent misapprehends the nature of Mr. Tucker's concern, and therefore erroneously concludes that Mr. Tucker was not concerned with IRCA compliance—or more precisely, that Elite's professed concern about IRCA compliance must be a pretext for its real motive: discrimination against persons of Mexican nationality. Mr. Tucker repeatedly explained that he was concerned with Mr. Zamora's reported SSN discrepancy. As detailed above, a reasonable reading of IRCA suggests that when such problems are reported, an employer must resolve them. Read in context, Mr. Tucker's statements—including his "concession"—reflect a concern

with this aspect of IRCA compliance rather than an admission that Mr. Tucker was wholly unconcerned with IRCA.

The dissent objects that my interpretation of Mr. Tucker's remark relies on its "context." Dissenting Op. at 3 n.3, 20, 21 n.13. It asserts that consideration of "contextual hues" will "amount to impermissible inferences drawn in favor of Elite," and implies that on summary judgment a court must disregard such "arguments." *Id.* at 21. Such an approach would depart from well-established principles of Title VII law. As the Supreme Court recently explained:

> [T]he significance of any given act of [employment] retaliation will often depend upon the particular circumstances. *Context matters.* "The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed."

Burlington N. & Santa Fe Ry. Co. v. White, 126 S. Ct. 2405, 2415 (2006) (emphasis added) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81-82 (1998)). Accordingly, this Court frequently examines statements and events in context to determine their legal effect or whether they genuinely create a disputed question of material fact. *See, e.g.*, *Jones v. Barnhart*, 349 F.3d 1260, 1269 (10th Cir. 2003) (considering allegedly discriminatory acts and finding that, "[i]n context, these particular incidents do not appear to be founded in racial enmity"); *Rakity v. Dillon Companies,*

Inc., 302 F.3d 1152, 1163 (10th Cir. 2002) (noting the importance of viewing deposition testimony in its full context and concluding that comments from one portion of a deposition were clarified by comments in another portion and therefore did not raise a genuine issue of material fact); *Curtis v. Okla. City Pub. Sch. Bd. of Educ.*, 147 F.3d 1200, 1215 (10th Cir. 1998) (finding that deposition statements, "placed in context, [did] not support Plaintiff's claim that" his employer "terminated him for no reason" and concluding that he failed to "establish[] a genuine issue of material fact"); *Gross v. Burggraf Constr. Co.*, 53 F.3d 1531, 1538 (10th Cir. 1995) (viewing allegedly discriminatory comments by co-workers in "context" and affirming summary judgment for defendant); *Ingels v. Thiokol Corp.*, 42 F.3d 616, 623 n.4 (10th Cir. 1994) (viewing a human resource director's testimony "in context" to conclude that it did not constitute evidence of pretext in an age discrimination case), *abrogated on other grounds by Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *Ambus v. Granite Bd. of Educ.*, 975 F.2d 1555, 1565 (10th Cir. 1992) (finding that facially "disturbing" deposition testimony, "taken in context," did not constitute the showing of bias needed to support plaintiff's due process claim); *Mella v. Mapleton Pub. Sch.*, 152 Fed. App'x 717, 724–25 (10th Cir. 2005) (unpublished) (reading statements in context to conclude that "no reasonable jury could construe [them] as ageist"); *Shinwari v. Raytheon Aircraft Co.*,

No. 98-3324, 2000 WL 731782, at *10 (10th Cir. June 8, 2000) (Lucero, J.) (unpublished) ("Viewing the entirety of the evidence in context, we conclude that this single isolated inconsistency is not sufficient to undermine the sincerity of Raytheon's professed motive for taking adverse action . . . .") *abrogated on other grounds by Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 269 (2001); *Drake v. Colo. State Univ.*, Nos. 97-1076, 97-1077, 1998 WL 614474, at *5 (10th Cir. Sept. 8, 1998) (unpublished) (finding that, "[p]laced in context," an employer's statements did not constitute evidence of retaliatory motive sufficient to rebut the employer's proffered nondiscriminatory reason).

It would be error to do otherwise. The principle that a court must resolve disputed facts in favor of the nonmoving party does not license the court to disregard undisputed facts, even regarding "context," if those facts would preclude a reasonable jury from finding discrimination. In this case, the context makes clear—and no reasonable jury could find otherwise—that Mr. Tucker was concerned about Mr. Zamora's Social Security number issues as part of the company's IRCA compliance efforts. There is nothing in Mr. Tucker's statements, read in context, that would warrant an inference that his concerns about Mr. Zamora's SSN were a pretext for discrimination.

B.

Second, while we have held that pretext can be shown "with evidence that the defendant acted contrary to a written company policy prescribing the action to be taken by the defendant under the circumstances," *English*, 248 F.3d at 1009, and while it is true that the memorandum issued to Mr. Zamora stated that a naturalization certificate was an acceptable form of proof of identity and employment eligibility, the memorandum also stated that "the documents you provided us previously are questionable." Appellant's Supp. App. at 87. According to Mr. Tucker, when he handed the memo to Mr. Zamora, he "told him through the interpreter that it appeared as if his documentation might have a problem and that he would have ten days to try to resolve *the discrepancy*." Tucker Dep. at 52 (emphasis added). At his deposition, and in his complaint before the Equal Opportunity Employment Commission, Mr. Zamora admitted that "[o]n or about May 10, 2002, my manager asked me to bring again documents to prove *that I had a valid Social Security number* and the right to work in this country." Zamora Dep. at 21–22 (emphasis added). Additionally, the following exchange occurred at Mr. Zamora's deposition:

> Q. Okay. And is it fair to say that you knew you needed to bring a valid Social Security number and documents to prove the right to work in this country?
> A. Yes.
> Q. And you knew that on May 10th?

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A. Yeah.

Id. at 22. Thus, although the Elite memorandum, read in isolation, might suggest some sort of inconsistency, when read in context of what was said to Mr. Zamora—and what took place in this case—it does not get Mr. Zamora very far.

C.

Third, as discussed above, the Supreme Court has held that a showing by the plaintiff that the employer's asserted justification is false will not always be adequate to sustain a jury's finding of liability. *Reeves*, 530 U.S. at 148. The Court offered two examples of when this might be the case. One such example arises when "the plaintiff create[s] only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred." *Id.* As already noted, Mr. Zamora has, at best, created a weak issue of fact as to whether Mr. Tucker was really pursuing IRCA compliance: his attempt to resolve known SSN discrepancies was entirely reasonable under IRCA and relevant case law, and his continued insistence on resolving that problem was consistent with what Mr. Zamora was told about his need to resolve the SSN issue. But more importantly, there is a complete absence of any evidence that Elite harbored any animosity toward persons of Mexican extraction. Quite the contrary. The same employer

hired other employees of Mexican descent, hired Mr. Zamora knowing he was from Mexico, told Mr. Zamora he would be rehired if he could clear up the SSN problem, and offered to rehire him immediately after verifying his documentation, a mere three days after suspending him.[10] If these actions were a pretext for discriminating against persons of Mexican nationality, it was an exceedingly peculiar way to go about it. *Cf. Antonio v. Sygma Network, Inc.*, 458 F.3d 1177, 1183 (10th Cir. 2006) ("Most of the same individuals . . . who decided to terminate Antonio for job abandonment had also hired her twice, fully aware of her race and national origin. It makes little sense to deduce that these individuals terminated Antonio roughly ten months later because of her race and/or national origin.").

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[10] At his deposition, Mr. Zamora admitted that aside from the rejection of his papers, Mr. Tucker did nothing to suggest an animus toward Hispanics:

> Q. Okay. Did Mr. Tucker tell you that he did not like Hispanic people?
> A. No.
> Q. Did Mr. Tucker tell you that he did not like Mexican people?
> A. No.
> Q. Were there other people that worked in Elite Logistics who were from Mexico?
> A. Yes.
> . . .
> Q. And what are your reasons for believing that Elite discriminated against you because of your national origin? . . .
> A. Because he don't believe me that the papers that I give him was right or mine.

Zamora Dep. at 40–41.

The Supreme Court's second example of when evidence of inconsistency may not give rise to a finding of pretext occurs when "the record conclusively reveal[s] some other, nondiscriminatory reason for the employer's decision." *Reeves*, 530 U.S. at 148. Here, even if we were to assume that Mr. Tucker was not simply trying to satisfy what he believed were Elite's responsibilities under IRCA, the most that can be said of him is that he was fixated on ensuring that all of Elite's employees had valid SSNs on file and that all reported SSN problems were resolved. Mr. Tucker's actions throughout this process were consistent with this concern and this concern only. His first step was to check all employees' SSNs. When problems were discovered, he pursued each and every one of them to resolution. As soon as Mr. Zamora produced adequate proof of the validity of his SSN, Mr. Tucker asked him to return to work. As already explained, these actions could be consistent with a reasonable interpretation of IRCA. But, even if they were not, they at most reveal a mistaken preoccupation with ensuring that the reported SSN problems get resolved, not some sort of covert plan to target Mr. Zamora because of his ethnicity.

D.

Mr. Zamora also contends that Mr. Tucker's rudeness in reacting to the demand for an apology is indicative of a discriminatory motive. But the record contains no evidence that Mr. Tucker's reaction to Mr. Zamora's request was related to ethnicity. As Mr. Tucker stated in his deposition—explaining why *Mr. Zamora's translator* may have used strong language on Mr. Zamora's behalf—"[f]oul language is quite common [at the Elite] organization." Tucker Dep. at 56. "Title VII is not a general civility code for the American workplace." *Dick v. Phone Directories Co.*, 397 F.3d 1256, 1263 (10th Cir. 2005). Rudeness does not, standing alone, demonstrate discrimination, especially in a warehouse environment where top hats and tails are not the norm. And none of Mr. Tucker's purportedly rude behavior focused upon Mr. Zamora's ethnicity. Indeed, before he called Mr. Zamora into his office on May 10, Mr. Tucker had never met Mr. Zamora. Tucker Dep. at 12. Mr. Tucker summoned Mr. Zamora solely to reconcile a reported SSN discrepancy, and all of Mr. Tucker's conduct towards Mr. Zamora following that incident was based upon that discrepancy.

That Mr. Tucker suspected Mr. Zamora of some form of SSN fraud is scarcely evidence that he was bigoted against persons of Mexican ethnicity or nationality. Mr. Tucker had investigated thirty-four other employees with similar problems and none of them had been able to establish the

authenticity of their SSNs. Mr. Zamora was last on the list, and it was not unreasonable for Mr. Tucker to expect that he would follow the pattern. It turned out Mr. Zamora was the exception, but that does not mean Mr. Tucker's suspicions were a product of animus.

V.

Though I agree with Judge Ebel's analysis for the Court as to the dismissal claim, I write to spell out an additional reason why we should affirm the district court on this front. As I understand Mr. Zamora's theory—and that of Judge Lucero in dissent—the circumstances surrounding Mr. Zamora's suspension formed the context for his termination and "it is inappropriate to ignore the former event when analyzing the latter." Dissenting Op. at 2. In other words, if one accepts the theory that Mr. Tucker's previous actions with regard to Mr. Zamora's employment status were motivated by animus toward those of Mexican descent, one must also accept that Mr. Tucker's reaction to Mr. Zamora's demand for an apology was similarly motivated. Mr. Tucker fired Mr. Zamora, the theory goes, not as a reaction to the ultimatum (not even as a disproportionate or even unreasonable reaction), but rather because the demand finally gave Mr. Tucker the cover he needed to rid the company of an employee he disfavored because of his national origin.

The consequences of such a holding would be stark: essentially any victim of a discriminatory adverse employment action that fell short of termination could morph his grievance into a more lucrative wrongful termination claim by presenting his employer with an ultimatum. While appropriate means for opposing workplace discrimination exist—such as internal grievance processes, the Equal Opportunity Employment Commission, or the courts—employee-fashioned ultimatums are not among them. There are a multitude of valid reasons why an employer might not issue an apology on demand, not the least of which is a reluctance to admit legal liability or moral culpability before a claim has been fully reviewed through appropriate channels. If Mr. Zamora's theory holds, employers would face a daunting Catch-22: apologize and perhaps admit the previous violation of the discrimination laws, or fail to satisfy the ultimatum and face potentially increased liability for wrongful termination.[11] Title VII provides employees with a method of remedying acts of discrimination, not with a means of creating them.

Conclusion

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[11] Moreover, if the Court were to validate Mr. Zamora's theory, it might mean that an employee could unilaterally turn every claim of discrimination under 42 U.S.C. § 2000e-(2)(a)(1) into a retaliation claim under 42 U.S.C. §2000e-3(a), which makes it unlawful "for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice" under Title VII. 42 U.S.C. §2000e-(3)(a).

For these reasons—in addition to those enunciated in Judge Ebel's opinion, which I join—I would affirm the district court's disposition as to both claims.

04-3205, *Zamora v. Elite Logistics, Inc.*

GORSUCH, Circuit Judge, concurring.

I join Judge Ebel's opinion for the Court as well as Judge McConnell's concurrence, with the exception of the discussion in the last paragraph of Section III of the latter opinion regarding the interrelationship between IRCA's anti-discrimination provision and Title VII.

Judge Lucero and Judge McConnell engage in a perhaps unavoidable disagreement over many highly important issues in this difficult case. But on one issue at least, their dispute seems to me unnecessary. Judge Lucero and Judge McConnell debate in some detail whether and to what degree Title VII analysis should be informed by IRCA's anti-discrimination provision (8 U.S.C. § 1324b) and the policies and purposes that provision serves.[1] Yet, as Judge McConnell notes, the plaintiff in this case does not allege a violation of the IRCA anti-discrimination provision. *See* Concurring Op. at 17 (McConnell, J.). In fact, in his opening appellate brief, Mr. Zamora expressly declined to challenge the district court's ruling that IRCA's anti-discrimination provision applies only to "hiring, or

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[1] Notably, too, this debate is waged primarily with citations to competing snippets of legislative history. *But see Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) ("Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in looking over a crowd and picking out your friends." (internal quotation omitted)).

recruitment or referral for a fee" and not to decisions, such as in this case, regarding suspension or termination. *See* Appellant's Br. at 21.

Under these circumstances, it is unnecessary for us to address the impact of IRCA's anti-discrimination provision and its underlying policies on Title VII analysis, and I would leave open these matters for resolution another day when the parties before us have reason and opportunity to address them fully. *See generally Bowdry v. United Airlines, Inc.*, 58 F.3d 1483, 1490 (10th Cir. 1995) (citing, *inter alia*, *Headrick v. Rockwell Int'l Corp.*, 24 F.3d 1272, 1277-78 (10th Cir. 1994) (White, J.)). I find it noteworthy that the original panel opinion pursued much the same prudential course. *See Zamora v. Elite Logistics, Inc.*, 449 F.3d 1106, 1113 (10th Cir. 2006). Addressing such a novel legal question for the first time *en banc* and on our own motion – without the benefit of detailed briefing from the litigants affected by our decision, a panel decision on point, or prior opinions from our sister courts – runs the risk of an improvident or ill-advised result given our dependence as an Article III court on the traditions of the adversarial process for sharpening, developing, and testing the issues for our decision. This risk seems to me particularly serious here, where the question addressed is both highly complex and consequential and involves how we are to give proper respect to the directives we have received from Congress in two nuanced and related statutory regimes.

04-3205, Zamora v. Elite Logistics, Inc.

LUCERO, J., joined by Judges **HOLLOWAY**, **HENRY**, **BRISCOE**, and **MURPHY**, dissenting.

We granted en banc rehearing in this case to reconsider the panel opinion, Zamora v. Elite Logistics, Inc., 449 F.3d 1106 (10th Cir. 2006), which dealt with two fact-bound summary judgment issues. First, did Zamora, a United States citizen and apparent victim of identity theft, create a material dispute of fact regarding Elite's motive for Zamora's week-long unpaid suspension, given that, on the first day of his suspension, he produced a naturalization certificate consistent with information already in his employment file? Second, did Zamora create a material dispute of fact regarding Elite's motive for terminating Zamora following his demand for an apology for his suspension?

Anomalously, we are divided seven to seven on whether there is a material dispute of fact regarding the suspension, and thus reinstate the district court's opinion on that point. Notwithstanding that resulting disposition, a bare majority of our court determines that "[human resources manager Larry] Tucker's suspending Zamora and his later decision to terminate Zamora's employment must be viewed as discrete, separate events," although the two incidents happened just four days apart, and holds that Zamora's second claim

fails as a matter of law. (Maj. Op. 13.) From the majority's holding on the latter claim, I respectfully dissent.

The basis of my dissent is that neither the facts nor the law lend themselves to a surgical excision of the two issues in the manner espoused by the majority. Because Zamora's suspension and termination occurred just days apart and were imposed by the same supervisor, it is inappropriate to ignore the former event when analyzing the latter.

I continue to think it unnecessary to examine the suspension claim in detail because, under our circuit practice, we affirm the district court's decision without opinion when we evenly divide on the disposition of a claim. Nonetheless, because Judge McConnell's concurrence[2] chooses to discuss the issue at length, this dissent responds to the McConnell concurrence as well.

I

This appeal stems from a grant of summary judgment in favor of Elite on both Zamora's suspension and termination claims. "We review the district court's grant of summary judgment de novo, applying the same legal standard

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[2] Because we have split evenly on the disposition of Zamora's suspension claim, the court has issued no opinion to which a concurrence may properly be addressed, particularly so given that the "concurrence" is directly contrary to the vote on the suspension claim of the author of the majority opinion. I find no precedent for the issuance of a concurrence to an evenly divided en banc judgment. Notwithstanding disagreement with the characterization of Judge McConnell's discourse as a concurrence, this dissent refers to Judge McConnell's discussion of the suspension claim as "the concurrence."

as the court below." Munoz v. St. Mary-Corwin Hosp., 221 F.3d 1160, 1164 (10th Cir. 2000). Summary judgment is only appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). It is our obligation on appeal to view the evidence and draw reasonable inferences therefrom in the light most favorable to Zamora, the nonmoving party. Munoz, 221 F.3d at 1164. Making these inferences, the facts are as follows.[3]

In 1987 Zamora was granted legal permanent residency in the United States. In August 2001, he was hired by Elite. At that time, Zamora provided Elite with a copy of his social security card and his alien registration card, and

[3] The concurrence implicitly argues this dissent incorrectly portrays "a hapless employee repeatedly offering sound documentation of his work status, and just as often being senselessly (or invidiously) rebuffed." (Concurring Op. 2.) On the contention that this "is scarcely a fair description of what occurred," (id.), it then advances an alternative factual scenario. The concurrence depicts an employer attempting to comply with the Immigration Reform and Control Act of 1986 ("IRCA") and to maintain operations after it faced a worker strike which "necessitated the rushed hiring of about three hundred replacement employees," (id. at 2-5), and an employee who ignored the company's minimal requests.

For the most part, I do not disagree with the concurrence's description of the events leading up to Zamora's initial meeting with Tucker. We mainly differ, however, in our portrayal of the events after this meeting. Both find factual support in the record, but this dissent makes reasonable inferences as required by law, while the concurrence advances the defendant's view of the facts. Using the term "context," the concurrence discredits evidence that a reasonable juror could view as supporting Zamora. In my view, these contextual arguments are simply impermissible inferences.

completed an I-9 form attesting that he was a Mexican citizen and lawful permanent resident of the United States. While working for Elite, Zamora became a naturalized citizen.

In December 2001, after receiving a tip that the Immigration and Naturalization Service ("INS") might inspect its Kansas City location, Elite hired two independent contractors to check the social security numbers ("SSNs") of all employees at that location.[4] Tucker testified approximately thirty-five or so employees, including Zamora, were identified as having problems as a result of these investigations. A Datasource "Background Investigation Report" revealed that an individual in California had used Zamora's SSN. (Appellee App'x 94, 96.) A second contractor, Verifications, Inc., informed Elite that Zamora's SSN had "been used by someone else for credit purposes," and instructed Elite that "[v]erification through the Social Security Administration itself can only be done by the company that has hired the applicant, by calling 800-772-1213." (Id. at 97.) Tucker chose not to verify Zamora's social security status by calling this number at the time. Nor did he bother to look at Zamora's employment file, which contained Zamora's I-9 work authorization form and copies of his social security card and alien

[4] In response to a Summer 2000 worker strike, Elite hurriedly hired approximately 300 replacement employees. During this time, it operated under a "get a body in the door" policy that blatantly disregarded IRCA requirements.

registration card, at any point during the ensuing events. Instead, he presented Zamora with the following memorandum on May 10, 2002:

> It is required by federal law that all employees produce documents, which establish their identity and/or employment eligibility to legally work in the United States when they are hired. This eligibility can be established with a US Passport, a Certificate of Citizenship or Naturalization; or with a combination of other documents, such as a state driver's license, state or federal ID card, US Social Security card and/or a certified copy of a birth certificate, issued by a state of the United States.
>
> It has come to our attention that the documents you provided us previously are questionable. Therefore, we are asking that you obtain proper documentation, or you may not be permitted to continue working here. Please bring proper evidence of your identity and employment eligibility no later than 5:00 p.m. on Monday, May 20, 2002, to the Department of Human Resources, or you may be terminated.
>
> Thank you.
>
> (Appellant Supp. App'x 87.)

Under a part titled "Eligibility Documentation," the memorandum continued:

> I understand and agree that until and if I provide documents, which establish my identity and/or employment eligibility to legally work in the United States, Elite Logistics may not be able to continue permitting me to work. I also understand and agree that I have until 5:00 p.m. on Monday, May 20, 2002, to produce this documentation.
>
> (Id.)

Although Zamora did not provide the requested documentation by May 20, he attempted to comply with Elite's request immediately after Tucker

suspended him on May 22, thereafter presenting additional materials on numerous occasions.[5] On the day of his suspension, Zamora presented Tucker with a report of his earnings from the Social Security Administration ("SSA"), his social security card, and an INS document showing that he had applied to become a naturalized citizen in 2001. The INS form provided a customer service number, but Tucker did not call that number. The SSA earnings report issued for an "R. Zamora" listed a birth date of "2/1960," conflicting with the document plaintiff had provided to Elite when hired, showing a birth date of June 14, 1961. By Tucker's own admission, receipt of these documents alleviated his concern about Zamora's right to work in this country.

Nonetheless, Tucker chose not to end Zamora's suspension without pay and instead demanded more documentation, allegedly due to Tucker's concerns about the birth-date discrepancy between Zamora's SSA earnings record and Elite's files. Zamora returned to Elite once again with a copy of his naturalization certificate, a document that Elite had identified as sufficient to show lawful work status in its May 10 memorandum.[6] Tucker not only rejected

[5] The exact order of the following events is unclear from the record, but, as did the district court, this dissent assumes the order occurred in the light most favorable to Zamora.

[6] Tucker testified that he did not recall receiving this document; Zamora, however, vigorously asserts that he presented Tucker with a naturalization certificate. Because we view the facts in the light most favorable to Zamora, we assume that he did so. As required by statute, a naturalization certificate must

(continued...)

this certificate; he accused Zamora of stealing someone else's SSN and told Zamora to bring a different social security number than provided at hiring. Finally, Zamora brought in a letter from the SSA bearing the stamp of the agency and verifying that the SSN he provided was assigned to "Ramon Zamora Farias," the name Zamora had given Elite at hiring. Once again, Tucker was not satisfied. Only after Tucker had his secretary confirm the legitimacy of this letter by then placing a phone call to the SSA, did he allow Zamora to return to work.

On May 29, Zamora entered Tucker's office and handed him a letter that demanded both an apology and an explanation. Tucker described Zamora as "very polite" in tendering this letter. Although fully cognizant that Zamora had been lawfully entitled to work during his entire week-long suspension, Tucker refused to apologize, fired Zamora, then instructed him to "get the hell out." Later, Tucker testified that he was "shocked" that Zamora would request an apology and never bothered to consider why Zamora would desire an apology.

II

Congress enacted Title VII to "eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens." McDonnell Douglas Corp. v. Green, 411

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[6](...continued)
include a photograph and the age of the naturalized person. 8 U.S.C. § 1449.

U.S. 792, 800 (1973). Because it is so difficult to ferret out national origin bias, we must often rely on circumstantial evidence in deciding such claims. However, the persuasive value of such evidence cannot be discounted. "Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence." Rogers v. Mo. Pac. R., 352 U.S. 500, 508 n.17 (1957); see also Desert Palace, Inc. v. Costa, 539 U.S. 90, 100 (2003).

For both Zamora's suspension and termination claims, we follow the three-step framework set forth in McDonnell Douglas for summary judgment cases based on circumstantial evidence. A plaintiff must first plead a prima facie case of a discriminatory employment action. Thereafter, the burden shifts to the employer "to articulate some legitimate nondiscriminatory reason for the employee's rejection." Id. at 802. Once the employer does so, the plaintiff must offer evidence showing that the proffered reason is pretextual.

Although half of the members of this court agree that Zamora presented sufficient evidence of pretext as to his continued suspension, the majority opinion concludes that the record contains no evidence that Tucker terminated Zamora because Zamora was a "Mexican-born Hispanic." (Maj. Op. 13.) This ignores the events surrounding Zamora's suspension, which had ended a mere four days before. We have stated that "evidence of the employer's general discriminatory propensities may be relevant and admissible to prove

discrimination." Mendelsohn v. Sprint United Mgmt. Co., 466 F.3d 1223, 1226 (10th Cir. 2006). Moreover, "[e]vidence of pretext may include . . . prior treatment of plaintiff." Garrett v. Hewlett-Packard Co., 305 F.3d 1210, 1217 (10th Cir. 2002) (quotation omitted). I fail to understand how we can be evenly divided over whether Tucker was motivated by racial bias against Mexican-Americans on May 25, and yet issue a majority opinion concluding that Tucker had no racial motivations as a matter of law on May 29.

The majority cites our recent decision in Antonio v. Sygma Network, Inc., 458 F.3d 1177, 1183 (10th Cir. 2006), for the proposition that Tucker's decision to allow Zamora to return to work raises a "strong inference that the employer's stated reason for acting against the employee is not pretextual." (Maj. Op. 13.) From there, the majority jumps to the conclusion that "Tucker's suspending Zamora and his later decision to terminate Zamora's employment must be viewed as discrete, separate events." Id. At no point in Sygma Network did the court so hold. In fact, the guiding principals underlying the holding of Sygma Network are that an individual can be assumed to maintain the same views for a relatively short period in time, and that decisions proximate in time and made by the same person may be viewed to establish common context. Zamora's suspension, permission to return to work, and termination all took place within a span of days and were all decided by Tucker. Thus, notwithstanding the grant of permission to return to work, there

is no principled reason to view the suspension and termination as "discrete, separate events." Unlike the instant case, the plaintiff in Sygma Network offered no evidence that her employer engaged in arguably discriminatory conduct towards her just days before the termination.[6] When such evidence exists, Sygma Network offers no guidance.

Even more problematic is the majority's bald assumption, again purportedly underpinned by Sygma Network, that "[i]f Tucker was discriminating against Zamora based upon his race or national origin, Tucker would not have reinstated him." (Maj. Op. 13.) This statement is not only speculative, but also permits employers to easily insulate themselves against discriminatory termination claims. Under the majority's formulation, an employer who wished to fire an employee for invidious reasons could do so without fear of legal action simply by suspending and reinstating the employee before terminating him. To the extent that the majority holds that Tucker's grudging permission for Zamora to return to work cleans the slate of all

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[6] Although the plaintiff produced evidence that her supervisor made an arguably racial comment regarding the plaintiff's body odor ten months prior to termination, we held that this remark was an isolated comment too remote in time to overcome pretext. Sygma Network, 458 F.3d at 1184. In Zamora's case, the suspension without pay was more significant than an isolated comment with no adverse consequences and occurred just days before his termination.

evidence of discriminatory motive, including the circumstances surrounding Zamora's suspension, I disagree.[7]

III

Although the concurrence would hold that Zamora's suspension claim fails as a matter of law, in my view Zamora has presented sufficient evidence to survive summary judgment on this claim. The parties do not dispute that Zamora has satisfied the first step of McDonnell Douglas by pleading a prima facie case of discriminatory suspension. Therefore, the burden shifted to Elite to articulate a legitimate nondiscriminatory reason for its actions. Elite contends it was merely attempting to comply with IRCA in suspending Zamora for approximately a week without pay. This case is accordingly decided at the last step of McDonnell Douglas, in which Zamora must offer evidence showing that the proffered reason is pretextual.

A

Because Tucker effectively conceded that his actions were not driven by IRCA – he admitted he no longer had concerns about Zamora's right to work in

[7] The concurrence expresses concern that our approach would allow "essentially any victim of a discriminatory adverse employment action that fell short of termination [to] morph his grievance into a more lucrative wrongful termination claim by presenting his employer with an ultimatum." (Concurring Op. 36.) I share neither the concurrence's fear of the consequences of this dissent's suggested holding nor its jaundiced view of Title VII plaintiffs. In this case, Zamora was fired before he could resign. Had Zamora resigned, he could not have established a prima facie case of wrongful termination under Title VII.

this country as of May 22, 2002 – I see little merit in providing an in-depth discussion of the statute. Nevertheless, because I differ greatly from the concurrence in my view of IRCA's requirements and restrictions, I briefly outline my thoughts on this matter.

IRCA was designed to curb the influx of undocumented immigrants by creating a regime of sanctions against employers that hire them. Toward this end, the Act requires employers to verify the identity and eligibility of employees at the time of hiring by examining certain documents. 8 U.S.C. § 1324a(a)(1)(B), (b). Well-meaning employers are provided with significant legal protection at the hiring stage because they are allowed to assert "good faith" compliance with IRCA as an affirmative defense to liability. Id. § 1324a(a)(3). IRCA also declares that requesting "more or additional documents" at hiring than those specifically identified in the Act "shall be treated as an unfair immigration-related employment practice." Id. § 1324b(a)(6). After the employment relationship is established, IRCA makes it unlawful to "continue to employ [an] alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment." Id. § 1324a(a)(2).

Employer sanctions, however, represent only one side of the IRCA coin. When IRCA was initially debated, advocates and members of Congress voiced widespread concerns that the Act would become a tool of invidious

discrimination against Hispanic-Americans and other minorities. Although the original bill introducing IRCA did not contain strong anti-discrimination measures, the full House voted to include a significant anti-discrimination amendment. See H.R. Rep. No. 99-682(II) (1986), pt. 2, at 12 (1986), reprinted in 1986 U.S.C.C.A.N. 5757, 5761. Explaining its support for this amendment, the House Committee on Education and Labor stated:

> The [committee] strongly endorses [the anti-discrimination amendment] and . . . has consistently expressed its fear that the imposition of employer sanctions will give rise to employment discrimination against Hispanic Americans and other minority group members. It is the committee's view that if there is to be sanctions enforcement and liability there must be an equally strong and readily available remedy if resulting employment discrimination occurs.
> Id.

In adopting the House amendment to the bill, the Joint Senate and House Conference Committee ("Conference Committee") agreed "[t]he antidiscrimination provisions of this bill are a complement to the sanctions provisions, and must be considered in this context." H.R. Conf. Rep. No. 99-1000 (1986), reprinted in 1986 U.S.C.C.A.N. 5840, 5842. It went on to explain that the provisions "broaden[ ] the Title VII protections against national origin discrimination, while not broadening the other Title VII protections, because of the concern of some Members that people of 'foreign' appearance might be made more vulnerable by the imposition of sanctions." Id. (emphasis added).

Because members of Congress believed that IRCA might not in fact prompt employers to discriminate and the anti-discrimination provisions could thus be unnecessary, the Conference Committee adopted a clause providing, "[t]he antidiscrimination provisions would . . . be repealed in the event of a joint resolution approving a [General Accounting Office] finding that the sanctions had resulted in no significant discrimination." Id. at 5843; see 8 U.S.C. § 1324b(k)(2). In 1990, the General Accounting Office ("GAO") released a report to Congress, finding IRCA had indeed resulted in a "serious pattern" of national origin discrimination. GAO, Employer Sanctions and the Question of Discrimination 5 (1990) ("GAO estimates that 461,000 (or 10 percent) of the 4.6 million employers in the survey population nationwide began one or more practices that represent national origin discrimination."). Thus, IRCA – as enacted, and as it stands today – declares that "[i]t is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual . . . with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment . . . because of such individual's national origin."[8] 8 U.S.C. § 1324b(a)(1)(A).[9]

[8] Although the concurrence looks to numerous external sources, including the New York Times, to illuminate the purposes and effects of IRCA, it neglects to carefully consider the anti-discrimination provisions of IRCA itself. It maintains that because "Zamora has not pursued" the administrative procedures

(continued...)

The concurrence would go far in insulating employers from national origin discrimination claims. It suggests that because employers face sanctions for knowingly continuing to employ unauthorized aliens, employers should be given a virtual safe-harbor against Title VII claims for investigating an employee, so long as they cite IRCA to defend their actions. Assuredly, employers should undertake meaningful investigation if an employee's lawful work status is legitimately called into question. However, fear of sanction for "knowing" employment of unauthorized aliens cannot justify discriminatory precautionary measures. Indeed, regulations implementing IRCA expressly warn employers:

> Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in [the definition of knowing] should be interpreted as permitting an employer to request more or different documents than are required under section 274A(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

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[8](...continued)
set forth in § 1324b, "[t]hese provisions are thus not at issue in this case." (Concurring Op. 14, n.7.) IRCA expressly provides that these procedures apply only to claims that cannot be brought under Title VII. 8 U.S.C. § 1324b(a)(2)(B). Although I agree that the anti-discrimination provisions have not been directly placed at issue in this case, these provisions are indispensable in any serious discussion of the Act.

[9] I do not suggest that IRCA's anti-discrimination provisions necessarily guide our analysis. This dissent merely points out that allowing employers to cite IRCA concerns as a shield against Title VII claims is not contemplated by IRCA itself.

8 C.F.R. § 274a.1(1)(2).[10]

Adopting the concurrence's approach would undoubtedly narrow the scope of recovery for national origin discrimination claims. This result thwarts Congress's clear intent in passing IRCA to "broaden[ ] the Title VII protections against national origin discrimination" and to prescribe a "strong and readily available remedy" for such discrimination. H.R. Conf. Rep. No. 99-1000 (1986), reprinted in 1986 U.S.C.C.A.N. 5840, 5842; H.R. Rep. No. 99-682(II) (1986), pt. 2, at 12 (1986), reprinted in 1986 U.S.C.C.A.N. 5757, 5761. Due consideration of IRCA does not and should not preclude examination of whether Zamora presented evidence sufficient to reach a jury on his Title VII

[10] As the concurrence notes, some courts have held that employers violate § 1324a(a)(2) when they have "constructive knowledge" of an employee's unauthorized work status and yet continue to employ that individual. See, e.g, New El Ray Sausage Co., v. INS, 925 F.2d 1153, 1157-58 (9th Cir. 1991). However, no court has held that a credit check revealing only that an employee's SSN was used by another person constitutes "constructive knowledge" of a person's unauthorized work status. Nor do the government's actions under IRCA support this broader view of "constructive knowledge." The concurrence suggests that the government's adoption of social security verification in its Basic Pilot Program supports Elite's actions. (Concurring Op. 15-18.) To the contrary, this argument ignores significant differences between the government's Basic Pilot Program, which requires employers to verify employee SSNs with the federal government, and the ad hoc approach used by Elite. At no point before Zamora's suspension did Elite or anyone else attempt to verify Zamora's SSN by contacting the Social Security Administration ("SSA"). Instead, Elite hired independent contractors to run checks on his SSN information. Only the SSA can conclusively identify the proper holder of a given SSN – recognizing this, the independent contractor employed by Elite instructed the company to verify the number with the SSA and provided a telephone number for the agency.

claims.

B

As explained above, this case is decided at the last step of the McDonnell Douglas framework. At this stage we determine whether a plaintiff has produced sufficient evidence from which a jury could conclude that the employer's proffered reason for the adverse employment action is pretext."[11] Pretext may be established by showing "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997) (quotations and citations omitted). Although there is no standard method for proving pretext, plaintiffs generally rely on three types of evidence: (1) evidence that the defendant's proffered reason was false, (2) evidence that the defendant acted contrary to a written company policy prescribing the action to be taken by the defendant under the circumstances, or (3) evidence that the defendant acted contrary to an unwritten policy or

[11] Contrary to the concurrence's suggestion, a showing of pretext alone will generally suffice. See Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 148 (2000) ("[A] plaintiff's prima facie case, combined with sufficient evidence to find that the employer's justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated."); Randle v. City of Aurora, 69 F.3d 441, 451-53, 452 n.16 (10th Cir. 1995).

contrary to company practice when making the adverse employment decision affecting the plaintiff. Kendrick v. Penske Transp. Servs., Inc., 220 F.3d 1220, 1230 (10th Cir. 2000).

Zamora has consistently argued that Elite's proffered reason for his suspension – a desire to verify Zamora's right to work in the United States – is pretextual. In support of his allegation of pretext, he identifies four pieces of evidence. First, Zamora points to Tucker's own admission that concern over Zamora's right to work did not underlie his decision to continue Zamora's suspension. Zamora contends that this admission demonstrates that Tucker did not have a good faith belief in the proffered justification of IRCA compliance. Second, Zamora notes that Elite's May 10, 2002 written memorandum informed him that a naturalization certificate would be sufficient to clear up concerns over his work status. In rejecting Zamora's proffer of a naturalization certificate, Elite thus violated its own written policy. Third, although a neutral decisionmaker would realize the fact that someone else had used Zamora's SSN did not resolve whether Zamora was the perpetrator or the victim of identity theft, Zamora testified that Tucker accused him of stealing someone else's SSN despite Zamora's protestations to the contrary. Tucker's immediate conclusion that Zamora stole his SSN could reasonably support an inference of discriminatory intent on the part of Tucker. Finally, Zamora has shown that Elite has acted contrary to its alleged good-faith attempt to comply with IRCA,

even during the period of his suspension. After Zamora vigorously asserted that his original social security number was correct and true, Tucker instructed Zamora to return to him with a different SSN. Together this evidence demonstrates "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in Elite's proffered reason of IRCA compliance, such that a reasonable factfinder could find that reason "unworthy of credence." Morgan, 108 F.3d at 1323.

The concurrence ignores the last two showings in its discussion and seeks to discredit the first two pieces of evidence by interpreting them in "context." The concurrence first attempts to undermine Tucker's admission. On this point, Tucker testified:

> Q: And the reason [a document from the INS that shows Zamora applied for naturalization did not satisfy you] is because it does not explain away the concerns you had about his social security number?
>
> A: That is correct.
>
> Q: Okay. So would it be fair to say that the problem with the social security number is that it points to a potential that, in fact, [Zamora] is not entitled to work in this country?
>
> A: What I had was a social security number that indicated three different people may have used the number at three different points in time. I wanted to ascertain with certainty that that number belonged to Mr. Zamora.
>
> Q: Okay. So, it wasn't really a concern about whether [Zamora] is entitled to work in this country, it was a concern about is he using the correct social security number?

A: Yes, sir.

(Appellant Supp. App'x 67.) Making all reasonable inferences in favor of Zamora, this exchange may be reasonably interpreted as a concession by Tucker that he was not concerned with Zamora's lawful right to work in this country as of May 22, 2002. Tucker's answers to both the second and third questions demonstrate that he viewed his concern with Zamora's lawful work status as distinct from a concern with the validity of his SSN.[12] From this

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[12] Other evidence in the record corroborates that Tucker did not equate his concern about an incorrect SSN with concern over Zamora's showing of identity under IRCA. Tucker testified that an employee could establish identity for the purposes of IRCA by presenting a valid document with a photograph:

> Q: So if you have a driver's license or some other kind of approved document with your photograph on it, that might comply with the identification requirement, correct?
>
> A: That is correct.
>
> Q: But that would not necessarily comply with the right-to-work requirement?
>
> A: That is correct.
>
> Q: And for the right-to-work requirement, there are other documents set out in the I-9 form that are acceptable for an employer?
>
> A: Yes, sir.
>
> Q: And one of those is a social security card issued by the Social Security Administration?
>
> A: That's correct.

(continued...)

exchange, a reasonable factfinder could determine that Tucker was not concerned about Zamora's right to work when he prolonged Zamora's suspension.

Although it cannot escape Tucker's own admission, the concurrence appears to argue: (1) because Tucker had concerns about whether Zamora was using someone else's SSN, Tucker must have doubted Zamora was the person identified by his documents; and (2) because IRCA mandates an employer to confirm both identity and work eligibility, Tucker's SSN concern was equivalent to his concern over IRCA compliance. (Concurring Op. 25-29.) Both arguments are justified by the concurrence as providing "context." However, attributing this understanding to Tucker requires a tortured reading of his deposition testimony. It is true that IRCA necessarily concerns an

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[12](...continued)
(Appellant Supp. App'x 51.) Tucker later emphasized that he understood that identity theft did not implicate a person's right to work:

> Q: Okay. Would you agree with me that it was also possible that somebody else was illegally using Mr. Zamora's social security number.
>
> A: Yes, sir. It's entirely possible.
>
> Q: If that was the case, then that would not affect his right to work or should not affect his employment status at Elite at all, should it?
>
> A: That is correct.

(Appellant Supp. App'x 72.)

individual's identity, to the extent that an employee must establish that she is the person named in her work-authorization document. But unless Tucker believed that the work-authorization documents presented by Zamora on May 22, 2002 in fact identified Zamora, his concern over Zamora's right to work could not reasonably have been alleviated by those documents. Tucker clearly stated that as of May 22, 2002, he was not concerned about Zamora's right to work in this country but was concerned about Zamora's use of a correct SSN. To conflate these concerns ignores both Tucker's testimony and our obligations to the non-moving party at the summary judgment stage.

In addition, the concurrence also attempts to explain away the fact that Elite contravened written policy in rejecting Zamora's proffer of a naturalization certificate. It concedes that "the Elite memorandum, read in isolation, might suggest some sort of inconsistency," but proceeds to draw inferences and make arguments in favor of Elite. (Concurring Op. 30-31.) Because the memorandum noted that Zamora's documents were questionable, and because Zamora was told he needed to clear up the "discrepancy," the concurrence claims inconsistency between Tucker's actions and the memorandum should be overlooked.

The contextual hues lent by the concurrence amount to impermissible inferences drawn in favor of Elite.[13] Although these arguments may persuade a jury, our role as judges at the summary judgment stage requires us to accept Zamora's competing, plausible interpretations of the evidence. Because I differ with the concurrence in considering the facts in the light most favorable to Zamora, I conclude that a reasonable jury could find Elite's proffered reason of IRCA compliance is pretextual.

Judges Holloway, Henry, Briscoe, and Murphy join in this dissent.

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[13] I do not suggest that deposition statements should never be considered in context. In fact, the deposition testimony in footnote twelve of this dissent is cited to provide context for Tucker's statement admitting that he no longer had concerns over Zamora's right to work and drawing a distinction between that concern and the SSN issue. However, the concurrence improperly cites context to discredit showings of pretext that reasonably support the non-moving party, even in light of all the evidence.

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Press Releases

Agriprocessors

U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement

News Releases

January 11, 2010

Agriprocessors manager pleads guilty to document fraud conspiracy

CEDAR RAPIDS, Iowa - A former top manager at Agriprocessors Inc., in Postville, Iowa, pleaded guilty on Monday to conspiring to obtain fake documents for illegal aliens who worked at the plant. The plea is the result of an investigation led by U.S. Immigration and Customs Enforcement (ICE).

Brent Beebe, 52, of Postville, was convicted of conspiring to commit document fraud. His jury trial had been scheduled to begin Tuesday.

In the plea agreement, Beebe admitted he was one of two operations managers at Agriprocessors and that oversaw beef-side production at the facility. The week prior to ICE's May 12, 2008, worksite enforcement operation, Beebe conspired with an Agriprocessors vice president and others to help several employees obtain new fake identification documents.

Beebe obtained $4,500 in cash from the Agriprocessors vice president, which was to be loaned to about 19 beef production employees to pay for new fake documents. A line supervisor used the money to obtain fake documents and then delivered them to Agriprocessors on May 11, 2008. The documents were then used to complete new job application paperwork for several employees.

Sentencing before U.S. District Court Chief Judge Linda R. Reade will be set after a presentence report is prepared. Beebe remains free on bond pending sentencing. He faces a possible sentence of five years in prison, a $250,000 fine, and three years of supervised release.

In related court actions, Chief Judge Reade sentenced two former Agriprocessors human resources employees on Jan. 7. Former human resources manager Elizabeth Billmeyer was sentenced to one year and one day in prison, to be followed by two years of supervised release. Former human resources assistant Penny Hanson was sentenced to two years' probation.

Two fugitive defendants in the case remain to be prosecuted: Hosam Amara and Zeev Levi.

Assistant U.S. Attorneys Peter Deegan, C.J. Williams, and Matthew Cole are prosecuting this case. The investigation has been led by ICE with assistance from the FBI. Additional assistance was provided by the following agencies: U.S. Marshals Service, U.S. Postal Inspection Service, the Iowa Department of Public Safety, the Iowa Department of Transportation, Internal Revenue Service's Criminal Investigations, U.S.

Department of Labor, U.S. Public Health Service, U.S. Department of Agriculture, U.S. Environmental Protection Agency, the Iowa Department of Natural Resources, the Drug Enforcement Administration, the Waterloo Police Department, and the Postville Police Department.

-- ICE --

U.S. Immigration and Customs Enforcement (ICE) is the largest investigative arm of the Department of Homeland Security.

ICE comprises four integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities. For more information, visit www.ICE.gov. To report suspicious activity, call 1-866-347-2423.

Last Modified: Friday, January 15, 2010

News Releases

June 22, 2010
Cedar Rapids, IA

Sholom Rubashkin sentenced to 27 years in federal prison

CEDAR RAPIDS, Iowa - The former CEO of Agriprocessors Inc. was sentenced on Tuesday to 27 years in federal prison. This sentence resulted from a two-year investigation by U.S. Immigration and Customs Enforcement (ICE).

Sholom Rubashkin, 51, from Postville, Iowa, received his sentence after jury verdicts found him guilty of 86 counts of financial fraud and related offenses Nov. 12, 2009. Evidence at trial showed Rubashkin inflated Agriprocessors' sales to fraudulently obtain millions of dollars in bank loans that were not backed by any collateral.

Rubashkin also diverted millions of dollars in customer payments that were supposed to go to Agriprocessors' primary lender. He committed money laundering by running tens of millions of dollars through bank accounts at a Postville grocery store and a religious school. The trial evidence showed Rubashkin was personally involved in harboring hundreds of illegal aliens at Agriprocessors, and unlawfully delaying payments to Agriprocessors' cattle suppliers. He paid for fabricated identity documents for illegal aliens, and he personally inspected those documents. Evidence showed Rubashkin's fraud resulted in over $26 million in actual loss to Agriprocessors' lenders.

Over a two-year time period, when money was being fraudulently obtained from a lender, Rubashkin funneled about $1.5 million from Agriprocessors'accounts to his personal bank accounts. The money was used, in part, to pay for the following items:

- about $300,000 on his credit card bills,
- about $200,000 for a portion of the remodeling of his residence,
- about $76,000 for his personal state and federal income tax,
- about $41,000 for his mortgage payments on his personal residence,
- about $25,000 for jewelry,
- about $20,000 for sterling silver,
- $1,245 per month for life insurance,
- and $365 per month for his car payment.

"This prosecution and lengthy sentence resulted from an extensive two-year ICE worksite enforcement operation and follow-up investigation," said Claude Arnold, special agent in charge for the ICE office in Chicago which oversees Iowa. "This case serves as a warning to employers that, if you build your business on the backs of an illegal workforce, ICE and other federal resources are there to make you pay the price."

"Sholom Rubashkin expended enormous efforts to hide his many crimes from the public and law enforcement. On top of that, there have been orchestrated efforts to spread false information intended to elicit sympathy for him. It is a tragedy that many people were misled by this misinformation calculated to distract the public from the truth. The truth came out at trial and sentencing," said U.S. Attorney Stephanie M. Rose. "No one won anything today as the damage caused by Mr. Rubashkin cannot be fully tallied. However, today the house of cards he constructed finally was brought down. When something is built on lies, it should be no surprise when it collapses under the weight of those lies."

Rubashkin was sentenced in Cedar Rapids by U.S. District Court Chief Judge Linda R. Reade. His sentence was based, in part, on his leadership role in the crimes and his efforts to obstruct justice by testifying falsely at his trial. Rubashkin was sentenced to 324 months' imprisonment. Special assessments of $8,600 were imposed, and he was ordered to make $26,852,152.51 in restitution. He must also serve a five-year term of supervised release after the prison term. There is no parole in the federal system.

The U.S. Attorney's Office works to ensure victims are made whole as quickly as possible and is seeking the public's assistance in locating or identifying Rubashkin's assets. If anyone has information regarding Rubashkin's assets with a significant value, they are urged to call 319-731-4080.

Rubashkin is being held in U.S. Marshals custody until he can be transported to a federal prison.

The investigation began in October 2007 and continued after ICE executed search warrants at Agriprocessors on May 12, 2008.

The case was prosecuted by Assistant U.S. Attorneys Peter Deegan, C.J. Williams, and Matthew Cole. The investigation has been led by U.S. Immigration and Customs Enforcement and the FBI. Prior assistance was provided by the following agencies: U.S. Marshals Service, U.S. Postal Inspections Service, Iowa Department of Public Safety, Iowa Department of Transportation, Federal Protective Service, Internal Revenue Service's Criminal Investigations, U.S. Department of Labor, Public Health Service, U.S. Department of Agriculture, U.S. Environmental Protection Agency, Iowa Department of Natural Resources, Drug Enforcement Administration, Waterloo Police Department, and Postville Police Department.

Court file information is available at: https://ecf.iand.uscourts.gov/cgi-bin/login.pl. The case file number is CR 08-1324 LRR.

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CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Press Releases

Columbia Farms

U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement

News Releases

November 03, 2009

Columbia Farms to enter into deferred prosecution agreement

COLUMBIA, S.C. - The Greenville, S.C., poultry processing plant, Columbia Farms, Inc., and its affiliate companies with House of Raeford Farms, entered into a deferred prosecution and global settlement agreement with the federal government to resolve pending criminal charges, as well as any civil and administrative violations, regarding the companies' alleged hiring of undocumented workers.

The federal investigation into Columbia Farms' hiring practices began in December 2007, when U.S. Immigration and Customs Enforcement (ICE) agents began reviewing the company's employment eligibility forms and supporting employment documentation for suspected violations of hiring undocumented workers and their continued employment. That review, and an October 2008 search of the Greenville plant, resulted in the criminal prosecution of 21 supervisory employees who were hired with false documents as well as the administrative deportation of more than 300 employees who were likewise determined to be in the country illegally.

The agreement was filed today in federal court, just before jury selection was scheduled to begin in the criminal trial against Columbia Farms and two of its employees, Elaine Crump and Barry Cronic, on federal charges related to the alleged hiring of undocumented workers at the Greenville plant.

"Today's announcement demonstrates ICE's sustained effort to hold companies and employers accountable for their hiring practices," said Homeland Security Assistant Secretary for ICE John Morton. "We are committed to bringing employers into compliance with the law and will leverage all of our authorities to achieve that goal. Although voluntary compliance is our preferred outcome, ICE will use enforcement tools, civil and criminal, when appropriate to bring about compliance."

Under the terms of the agreement, the criminal case against Columbia Farms will be continued for 24 months, allowing the company and its affiliates to continue with ongoing efforts to institute internal hiring procedures and controls at each of its eight poultry processing facilities in South Carolina, North Carolina, and Louisiana.

The companies will adopt and maintain a compliance program during the 24-month period to ensure that its hiring practices comport with federal law. The companies' efforts will be subject to review by the court, the U.S. Attorney's Office and ICE. The remedial actions called for by the agreement include:

- use of the Department of Homeland Security's "E-Verify" employment eligibility verification program for all hiring;
- use of Spanish language services for the completion of I-9's, Employee Eligibility Verification Form, by Spanish-speaking job applicants;
- use of the Social Security Number Verification Service to ensure that job applicants and current employees hold a validly-assigned social security number;
- providing regular training to employees on hiring practices to ensure compliance with federal law; and
- use of an external auditor to conduct annual reviews of the companies' I-9 employment forms.

In addition, the company will pay $1.5 million dollars to the government to settle all criminal, civil or administrative claims that are pending, or could be brought as a result of the investigation. Provided the company and its affiliates successfully comply with the terms of the agreement, the criminal charges against Columbia Farms will be dismissed.

-- ICE --

U.S. Immigration and Customs Enforcement (ICE) is the largest investigative arm of the Department of Homeland Security.

ICE comprises four integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities. For more information, visit www.ICE.gov. To report suspicious activity, call 1-866-347-2423.

Last Modified: Thursday, November 5, 2009

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS-EXAMPLES

Press Releases

George's Processing Company

U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement

News Releases

September 15, 2009

Missouri poultry processing plant pays $450,000 fine for hiring illegal aliens

SPRINGFIELD, Mo. - A southwest Missouri poultry-processing plant where 136 illegal alien workers were arrested in 2007 paid a $450,000 administrative fine Friday as a result of a worksite enforcement investigation conducted by U.S. Immigration and Customs Enforcement (ICE).

George's Processing Inc. (George's) paid the fine on September 11 as part of a settlement agreement. George's was ordered to pay the fine within 30 days in federal court on Aug. 14, 2009. ICE will use the funds to promote future law enforcement programs and activities in worksite enforcement.

The settlement further directs George's to train its human resource managers and employees on how to avoid hiring illegal aliens, and to establish a compliance program to ensure that it's hiring and employment practices are in accordance with U.S. immigration laws. The fine paid by George's does not constitute any admission of wrongdoing by the company

"Significant fines help hold businesses accountable to ensure a legal workforce," said Homeland Security Assistant Secretary for ICE John Morton. "ICE works diligently to oversee corporate responsibility and to protect jobs for this country's lawful workers."

During a May 2007 enforcement action at the George's plant in Cassville, Mo., ICE agents administratively arrested 136 illegal alien workers from Mexico and Guatemala. Twenty-eight of those workers were criminally prosecuted for various immigration violations, including falsely claiming U.S. citizenship. Two of the company's hiring personnel were subsequently convicted of harboring illegal aliens and inducing illegal aliens to remain in the United States.

George's Processing Inc. is headquartered in Springdale, Ark., and employs 4,000 workers at its three poultry processing facilities in Arkansas, Missouri and Virginia.

This case was prosecuted by Supervisory Assistant U.S. Attorney Michael S. Oliver and Assistant U.S. Attorney Gary Milligan, Western District of Missouri. ICE was assisted in the investigation by the Social Security Administration's Office of Inspector General, the Missouri State Highway Patrol, the U.S. Marshals Service and the U.S. Department of Agriculture.

In April, ICE implemented a new, comprehensive strategy to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce. Under this strategy, ICE is focusing its resources on auditing and investigating employers suspected of cultivating illegal workplaces by knowingly employing illegal workers.

-- ICE --

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Last Modified: Wednesday, September 16, 2009

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Press Releases

Shipley Do-Nut

U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement

News Releases

August 7, 2009 SHARE

Houston-based doughnut company ordered to pay criminal fine and forfeit $1.334 million to ICE

HOUSTON - Shipley Do-Nut Flour and Supply Company Inc. was sentenced Friday to be under court supervision for a period of three years, pay a criminal fine of $250,000 and forfeit $1.334 million to U.S. Immigration and Customs Enforcement (ICE) for harboring illegal aliens. ICE Assistant Secretary John Morton and U.S. Attorney Tim Johnson made the announcement.

U.S. District Judge Ewing Werlein Jr. handed down the sentence in federal court in Houston August 7. The company, through its president Lawrence Shipley III, pleaded guilty to conspiring to harbor illegal aliens in September 2008.

"An effective immigration enforcement strategy must target the illicit labor market that fuels illegal immigration," said Morton. "ICE will hold employers and businesses accountable and will hit those who knowingly break the law where it hurts - their bottom line."

Shipley Do-Nut Flour and Supply Company, headquartered in Houston, is a corporation that supplies baking materials and logistical support to retail stores and to 200 franchises across Texas, Alabama, Arkansas, Louisiana, Mississippi and Tennessee.

As part of its plea agreement with the United States, the company undertook measures to revise its immigration compliance program and implemented new procedures to prevent future violations of federal immigration laws. The $1.334 million forfeited to the United States was paid in lieu of the United States forfeiting the company's interest in various company-owned residences where illegal alien employees were housed during the conspiracy.

Warehouse managers Jimmy Rivera and Julian Garcia, and warehouse supervisor Christopher Halsey, all who had authority to make managerial decisions including, but not limited to, hiring, job assignment and termination decisions for the company, also pleaded guilty to misdemeanor charges of hiring or continuing to hire illegal aliens. All three men were sentenced to six months probation and received fines in the amounts of $1,500, $2,000 and $1,000, respectively. Lawrence Shipley pleaded guilty Aug. 28, 2008 to continuing to hire illegal aliens and was sentenced to a similar probationary term and fined $6,000.

The charges against the company arise from a criminal investigation initiated by ICE in January 2008

which included interviews with former employees and a thorough review and analysis of I-9 forms and Social Security Administration (SSA) No-Match letters. I-9 forms require an employer to establish an employee's identity and verify their employment eligibility at the time they are hired. SSA No-Match letters are sent to employers when reported Social Security numbers on W-2 forms do not match known social security numbers.

During an April 2008 enforcement action at the Houston-based company's facilities, ICE agents administratively arrested 27 illegal aliens employed by the company, and who lived in company-provided housing located at or near the warehouse. ICE agents also recovered 42 No-Match letters sent by the SSA which placed the company on notice that the aliens did not have valid Social Security numbers.

This case was investigated by ICE and was prosecuted by Assistant U.S. Attorney Ryan D. McConnell, Southern District of Texas.

-- ICE --

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Last Modified: Friday, August 7, 2009

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS-EXAMPLES

Indictments

Applied Plastics

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs. Civil Action No.

APPLIED PLASTIC PRODUCTS,

Defendant.
_____/

COMPLAINT FOR CIVIL PENALTY

Plaintiff, the United States of America, by and through its attorneys, Terrence Berg, United States Attorney for the Eastern District of Michigan, and Jacqueline M. Hotz, Assistant United States Attorney, states its complaint to recover a civil penalty against Applied Plastic Products, as follows:

JURISDICTION AND VENUE

1. This civil action is brought on behalf of the United States of America to recover a civil penalty against defendant Applied Plastic Products.

2. This Court has jurisdiction pursuant to 28 U.S.C. §1345 and 28 U.S.C. §1355(a).

3. Venue is proper in this Court under 28 U.S.C. §1395(a) because the penalty accrued within this judicial district.

PARTIES

4. Plaintiff is the United States of America, suing on behalf of the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE).

5. Defendant Applied Plastic Products is an Michigan company doing business at 6024 Corporate Drive, Ira Township, Macomb County, Michigan.

BACKGROUND

6. In November 1986, the Immigration Reform and Control Act (IRCA) was signed into law which made it illegal for employers to hire or recruit unauthorized aliens, required employers to verify the identity and employment eligibility of their employees, and created criminal and civil sanctions for violations. Section 274A(b) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1324(a)(b), requires employers to verify the identity and employment eligibility of all individuals hired in the United States after November 6, 1986. 8 C.F.R. § 274a.2 designates the Employment Eligibility Verification Form I-9 (I-9) for this purpose and requires employers to (a) have employees complete Section 1 of the form at the time of hire; (b) complete Section 2 within three business days of hire; (c) re-verify that an individual is still authorized to work if his or her employment authorization expires; (d) retain the I-9 for at least three years from the date of hire or for one year after the employee is terminated, whichever is longer.

7. On March 17, 2009, ICE completed an audit of the I-9 forms maintained by Applied Plastic Products.

8. On March 25, 2009, ICE issued a Notice of Intent to Fine charging Applied Plastic Products with ninety four (94) violations of Section 274A(a)(1)(B) of the Immigration and

Nationality Act (INA) for failure to properly complete ninety four (94) Employment Eligibility Verification Forms I-9. This Notice was personally served on Gerald Ruggles, President of Applied Plastic Products, on April 3, 2009. By regulation, Applied Plastic Products had a thirty (30) day period from the date of service of the Notice to apply to the ICE Office of Chief Counsel to preserve its right to contest the proposed fine, or to seek a negotiated settlement, otherwise the fine becomes final. Failure to take action within the thirty (30) period results in the fine becoming final.

9. Applied Plastic Products failed, refused, or neglected to apply to the ICE Office of Chief Counsel on or before May 4, 2009. Accordingly, the amount and nature of the fine became final and nonreviewable.

10. On May 27, 2009, ICE issued a Final Order to Cease Violations and Pay Fine (Final Order) in the amount of $41,360.00. This Final Order was personally served on Gerald Ruggles, President of Applied Plastic Products on May 29, 2009. (See Exhibit A - Final Order).

COUNT I

11. The allegations of paragraphs 1 - 9 are fully incorporated herein.

12. Defendant is indebted to the United States in the amount of $41,360.00.

13. Plaintiff United States has made demand upon Defendant for payment, but Defendant has failed to pay.

14. Accordingly, the United States is entitled to a judgment against defendant in the amount of $41,360.00.

PRAYER FOR RELIEF

WHEREFORE, the United States requests judgment against defendant in the amount of $41,360.00 together with costs incurred herein, and any other relief the court may deem just and proper.

Respectfully submitted,

TERRENCE BERG
United States Attorney

s/Jacqueline M. Hotz
JACQUELINE M. HOTZ
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
Phone: (313) 226-9108
E-mail: Jackie.Hotz@usdoj.gov
(P35219)

Dated: November 9, 2009

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

FINAL ORDER TO CEASE VIOLATIONS AND PAY FINE

Pursuant to:

Section 274A of the Immigration and Nationality Act and Part 274a, Title 8, Code of Federal Regulations

or

Section 274C of the Immigration and Nationality Act and Part 270, Title 8, Code of Federal Regulations

United States of America	Office Address 333 Mt. Elliott, 2nd Floor Detroit, MI 48207
A-File Number N/A	Fines Case Number DT19NR07DT0004
In the Matter of (Respondent): Applied Plastic Products	
Address (Street Number and Name) 6024 Corporate Drive	
City, State, and ZIP Code Ira Township, MI 48023	

On April 3, 2009, a Notice of Intent to Fine (copy attached) was served upon you stating the allegation(s) and charge(s), and the penalty to be assessed against you.

The Notice of Intent to Fine advised you of your right to contest the fine by requesting a hearing before an administrative law judge within 30 days of the service of the Notice. The Notice also advised you that failure to request a hearing on a timely basis would result in the issuance of a final and unappealable order by U.S. Immigration and Customs Enforcement (ICE).

☒ ICE has not received on a timely basis a written request for a hearing before an administrative law judge.

☐ Your request for a hearing before an administrative law judge was withdrawn in writing pursuant to an agreement between the parties.

☐ The parties have agreed to settle this matter without an administrative hearing.

Therefore, it is ordered that you: Pay a fine in the amount of $ 41,360.00 and cease and desist from such violations (with the exception of Section 274A(a)(1)(b) violation(s)).

Payment must be in the form of a cashier's check, money order, or bank check made payable to "U.S. Immigration and Customs Enforcement." Payment must be submitted within 30 days of the receipt of this order to the following address:

Burlington Finance Center
Attn: Employer Sanctions
166 Sycamore Street
Williston, VT 05495

Signature of Issuing Officer	
Name of Issuing Officer	Brian M. Moskowitz
Title of Issuing Officer	Special Agent in Charge
Date	MAY 27 2009

ICE Form I-764 (Page 1 of 2) (05/08)

EXHIBIT A

- NOTICE -

Failure to comply with this final order may result in ICE filing suit in the appropriate district court to seek compliance with this order.

In the Matter of (Respondent):

Applied Plastic Products

Certificate of Service

Served by (print name)	Wayne Boudreaux Jr.
Date served	5/28/09
Method of service	In Person.
Person or entity served	Gerald Ruggles
Title of person served	owner/President
Place of service	Applied Plastic Products
Signature of employee or officer	
Name and title of employee or officer	GERALD J RUGGLES MEMBER

ICE Form I-764 (Page 2 of 2) (05/08)

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Press Releases

Howard Industries

U.S. Department of Justice

United States Attorney
Southern District of Mississippi

188 East Capitol Street, Suite 500 601-965-4480
Jackson, Mississippi 39201 FTS 490-4480

FOR IMMEDIATE RELEASE
May 7, 2009

HOWARD INDUSTRIES HUMAN RESOURCES MANAGER CHARGED WITH CONSPIRACY AND EMPLOYEE VERIFICATION FRAUD

STAN HARRIS, Acting United States Attorney for the Southern District of Mississippi, and Special Agent in Charge MICHAEL A. HOLT, Department of Homeland Security, U.S. Immigration and Customs Enforcement, announced the indictment of **JOSE HUMBERTO GONZÁLEZ**, Human Resources Manager for Howard Industries, Inc., in Laurel, Mississippi. **GONZÁLEZ** was charged in a 25-count indictment with conspiracy and employee verification fraud in connection with the employment of illegal aliens at the company's transformer manufacturing facility in Laurel. **GONZÁLEZ** made his initial appearance earlier today before the Honorable Michael T. Parker, United States Magistrate Judge, at the federal courthouse in Hattiesburg.

GONZÁLEZ's indictment follows an immigration sweep of the Laurel plant last August, during which 595 illegal aliens were subject to administrative arrest during the agency's largest workplace enforcement action. Of those arrested, nine were

charged criminally with aggravated identity theft and ultimately pled guilty to federal identity fraud charges.

"ICE aggressively targets employers who egregiously violate immigration laws by knowingly employing an illegal alien workforce," said MICHAEL A. HOLT, Special Agent-in-Charge of ICE's Office of Investigations in New Orleans. "This indictment demonstrates firsthand how ICE agents use our investigative tools to pursue those who take advantage of illegal labor for personal profit."

In the indictment unsealed today, **GONZÁLEZ** was charged with conspiring to commit multiple offenses against the United States, including encouraging illegal aliens to reside in the United States, attempting to conceal and harbor illegal aliens, and falsely attesting to the validity of employment-related documents. The indictment alleges that it was a part of the conspiracy that **GONZÁLEZ**, on behalf of Howard Industries, would routinely hire illegal aliens and in the process of such hiring would accept false identity documents, including alien registration receipt cards and Social Security cards. The indictment further states that, as part of the conspiracy, defendant **GONZÁLEZ** would submit Social Security numbers provided to him by applicants at the Laurel plant to the Social Security Administration to verify their numbers and, after being notified by the Social Security Administration that the

Social Security numbers of such applicants were not found to be valid, **GONZÁLEZ** would nonetheless hire and continue to employ such persons. As charged, it was also a part of the conspiracy that **GONZÁLEZ** would instruct employees to obtain alternative identity documents which he knew falsely represented their true identities. The indictment further charges that it was also a part of the conspiracy that **GONZÁLEZ** would assure Spanish-speaking foreign nationals working at the Laurel plant that they would be warned if immigration authorities were coming to the plant.

In addition to the conspiracy charge, **GONZÁLEZ** was charged with 24 counts of falsely certifying to the employment eligibility of job applicants and employees. The indictment charges that, on various dates, **GONZÁLEZ** falsely certified, under penalty of perjury, on Form I-9 Employment Eligibility Verifications that he had examined the documents listed on the Form I-9 and determined them to be genuine and that, to the best of his knowledge, the applicant was eligible to work in the United States, whereas in fact he had been notified by the Social Security Administration that the Social Security numbers of such applicants were not found to be valid.

Defendant **GONZÁLEZ** faces a maximum of five years of imprisonment on each count. In addition to possible

imprisonment, the defendant faces a maximum fine of $250,000, and three years of supervised release for each count.

Along with Acting United States Attorney STAN HARRIS, Assistant United States Attorney GAINES CLEVELAND and MIKE HURST are the prosecutors in charge of the case.

Mr. HARRIS praised the efforts of U.S. Immigration and Customs Enforcement for its diligent work in the investigation of this matter.

Acting United States Attorney HARRIS stressed that this indictment represents an accusation only and all defendants are entitled to a presumption of innocence.

# # #

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Announced Settlements

Pilgrim's Pride
ICE Version

U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement

News Releases

December 30, 2009 SHARE

Justice Department and ICE reach $4.5 million agreement with Pilgrim's Pride

BEAUMONT, Texas - The federal government and Pilgrim's Pride Corporation have reached a non-prosecution agreement to resolve an investigation involving the hiring and employment of unauthorized aliens at some of the company's Texas plants. The agreement was announced by U.S. Attorney John M. Bales, Eastern District of Texas; John Chakwin, special agent in charge of U.S. Immigration and Customs Enforcement's (ICE) Office of Investigations in Dallas; and Donald Jackson, Chief Executive Officer of Pilgrim's Pride Corporation.

Under the terms of the agreement, Pilgrim's Pride agrees to pay $4.5 million and adopt more stringent immigration compliance practices to ensure that its work force is composed of employees legally entitled to work in the United States. In return, the U. S. Attorney's Office agrees to conclude its immigration-related investigation of Pilgrim's Pride and any current or former employees.

In a factual statement accompanying the agreement, the parties acknowledge that at the beginning of the investigation, U.S. Immigration and Customs Enforcement (ICE) had reason to believe that a substantial number of unauthorized aliens were employed at several Pilgrim's Pride plants. As part of that investigation, twenty-five unauthorized aliens were arrested in the Eastern District of Texas in December 2007 and charged with misuse of a Social Security Account number. In early 2008, a number of worksite enforcement actions were conducted by ICE at five Pilgrim's Pride plants in Texas, Florida, West Virginia, Arkansas, and Tennessee, resulting in the apprehension of approximately 338 unauthorized aliens. Thirty-eight illegal aliens were convicted in the Eastern District of Texas for misuse of a Social Security Account number.

Throughout the investigation, Pilgrim's Pride cooperated with the U. S. Attorney's Office and law enforcement agencies. In addition, Pilgrim's Pride implemented various measures designed to ensure a legal work force. As a result of this agreement, Pilgrim's Pride will continue to strengthen its workplace compliance programs and adopt measures recommended by ICE to identify and avoid the employment of unauthorized aliens. In reaching this agreement, Pilgrim's Pride did not admit to any criminal or civil misconduct.

"This case demonstrates that the government and business, working together, can go a long way to resolving the issue of employment of illegal aliens," said U.S. Attorney Bales. "Pilgrim's Pride has

cooperated with the United States during this investigation and acknowledged the company's desire to implement rigorous standards to comply with immigration-related laws. With this agreement, Pilgrim's Pride sets itself up as an industry leader in adopting recommended immigration practices. I commend the thorough investigation by Immigration and Customs Enforcement, without which this agreement would not have been possible," Bales said.

"ICE's goal is to reduce the opportunity for illegal work in the United States," said John Morton, Department of Homeland Security Assistant Secretary for ICE. "This settlement acknowledges that Pilgrim's Pride is committed to adopting a rigorous immigration compliance program."

This case was investigated by U.S. Immigration and Customs Enforcement and the Department of Labor Office of Inspector General. District Criminal Chief Arnold Spencer and Assistant U.S. Attorney Alan R. Jackson represented the Eastern District of Texas.

-- ICE --

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Last Modified: Thursday, December 31, 2009

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Announced Settlements

Pilgrim's Pride
Company Version

News Release

Pilgrim's Pride Announces Settlement Agreement With U.S. Attorney's Office for Eastern District of Texas and U.S. Immigration and Customs Enforcement

PITTSBURG, Texas, Dec 30, 2009 /PRNewswire-FirstCall via COMTEX/ -- Pilgrim's Pride Corp. (NYSE: PPC) today announced that it has reached a settlement agreement with the U.S. Attorney's office for the Eastern District of Texas and U.S. Immigration and Customs Enforcement (ICE) in relation to a two-year investigation into identity theft and the employment of individuals who are not authorized to work in the United States.

Under the terms of the non-prosecution agreement, the company has agreed to pay the federal government a total of $4.5 million over the next three years. The agreement marks the completion of the government's investigation, which began in 2007. No civil or criminal charges were ever filed against the company during the course of the investigation, and both the U.S. Attorney's office and Pilgrim's Pride acknowledge that the settlement does not constitute any admission of civil or criminal misconduct on the part of Pilgrim's Pride or any of its directors, officers, management or other employees.

In 2007 and 2008, ICE conducted worksite enforcement and identify-theft investigations at five Pilgrim's Pride locations. As a result of these actions, a total of approximately 338 unauthorized workers were apprehended. Pilgrim's Pride cooperated fully with the U.S. Attorney's office and ICE throughout the course of the investigation.

As part of the settlement, Pilgrim's Pride recognizes that its voluntary compliance programs can be enhanced to more accurately identify unauthorized persons who seek or gain employment through identity fraud or other unlawful means.

Pilgrim's Pride shares the government's goal of eliminating the hiring or employment of unauthorized workers, and has stringent workplace verification programs in place. All of the company's U.S. locations voluntarily participate in E-Verify (formerly known as the Basic Pilot/Employment Eligibility Verification Program), which determines employment eligibility for all new hires. However, the E-Verify/Basic Pilot program is unable to detect identity theft situations.

Pilgrim's Pride has relied on the ICE Best Hiring Practices in designing its immigration compliance program. These practices include participation in E-Verify, prompt attention to Social Security No-Match letters, and retention of outside experts in immigration compliance to ensure that the company is doing all that it can to verify that its employees have work authorization. These practices also require that the company be sensitive to all applicable anti-discrimination laws.

Pilgrim's Pride continually audits and reviews its processes and procedures to assure continuing compliance with best hiring practices and existing employment law. The company provides education and training on proper hiring procedures, fraudulent document detection, use of the E-Verify/Basic Pilot Employment Verification Program, and anti-discrimination procedures. Pilgrim's Pride also conducts internal and third-party audits of I-9 forms and hiring practices on an ongoing basis, and fully investigates any reports of alleged identity theft.

About Pilgrim's Pride

Pilgrim's Pride Corporation employs approximately 41,000 people (including approximately 36,000 in the United States) and operates chicken processing plants and prepared-foods facilities in 12 states, Puerto Rico and Mexico. The Company's primary distribution is through retailers and foodservice distributors. For more information, please visit http://www.pilgrimspride.com.

Media Contact: Ray Atkinson
Director of Corporate Communications
(903) 434-1811
ray.atkinson@pilgrimspride.com

Investor Contact: Gary Rhodes
Vice President, Corporate Communications and Investor Relations
(903) 434-1495

SOURCE Pilgrim's Pride Corporation

http://www.pilgrimspride.com

Safe Harbor Statement:

Statements contained in this webcast that state the intentions, plans, hopes, beliefs, anticipations, expectations or predictions of the future of Pilgrim's Pride Corporation and its management, including as to business strategy, growth strategy and expected benefits of the acquisition of Gold Kist, are forward-looking statements. It is important to note that the actual results could differ materially from those projected in such forward-looking statements. Factors that could cause actual results to differ materially from those projected in such forward-looking statements include: matters affecting the poultry industry generally, including fluctuations in the commodity prices of feed ingredients, chicken and turkey; additional outbreaks of avian influenza or other diseases, either in our own flocks or elsewhere, affecting our ability to conduct our operations and/or demand for our poultry products; contamination of our products, which has in the past and can in the future lead to product liability claims and product recalls; exposure to risks related to product liability, product recalls, property damage and injuries to persons, for which insurance coverage is expensive, limited and potentially inadequate; changes in laws or regulations affecting our operations or the application thereof; competitive factors and pricing pressures or the loss of one or more of our largest customers; currency exchange rate fluctuations, trade barriers, exchange controls, expropriation and other risks associated with foreign operations; management of our cash resources, particularly in light of our

leverage, and restrictions imposed by and as a result of, our leverage; inability to effectively integrate Gold Kist's business or realize the associated cost savings and operating synergies currently anticipated; and the impact of uncertainties of litigation as well as other risks described under "Risk Factors" in our Annual Report on Form 10-K and subsequent filings with the Securities and Exchange Commission. Pilgrim's Pride Corporation undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise. This webcast does not constitute an offer to purchase any securities, nor a solicitation of a proxy, consent, authorization or agent designation with respect to a meeting of Company's stockholders.

CASES, PRESS RELEASES, INDICTMENTS, SETTLEMENTS- EXAMPLES

Press Release

Abercrombie & Fitch

News Releases

September 28, 2010

Detroit, MI

Abercrombie and Fitch fined after I-9 audit

DETROIT - U.S. Immigration and Customs Enforcement's (ICE) Office of Homeland Security Investigations (HSI) announced today a $1,047,110 fine settlement reached with the clothing retailer Abercrombie & Fitch for violations of the Immigration and Nationality Act related to an employer's obligation to verify the employment eligibility of its workers.

The settlement is the result of a November 2008 Form I-9 inspection of Abercrombie & Fitch's retail stores in Michigan. The audit uncovered numerous technology-related deficiencies in Abercrombie & Fitch's electronic I-9 verification system. The company was fully cooperative during the investigation and no instances of the knowing hire of unauthorized aliens were discovered. Since the initial inspection, Abercrombie & Fitch has taken measures to revise its immigration compliance program, and has begun to implement new procedures to prevent future violations of federal immigration laws.

"Employers are responsible not only for the people they hire but also for the internal systems they choose to utilize to manage their employment process and those systems must result in effective compliance," said Brian M. Moskowitz, special agent in charge of ICE HSI for Ohio and Michigan "We are pleased to see Abercrombie working diligently to complete the implementation of an effective compliance system; however, we know that there are other companies who are not doing so. This settlement should serve as a warning to other companies that may not yet take the employment verification process seriously or provide it the attention it warrants."

Employers are required to complete and retain a Form I-9 for each individual they hire for employment in the United States. This form requires employers to review and record the individual's identity and employment eligibility document(s) and determine whether the document(s) reasonably appear to be genuine and related to the individual. Additionally, an employer must ensure that the employee provides certain information regarding his or her eligibility to work on the Form I-9.

In 2009, ICE implemented a new, comprehensive strategy to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce. Under this strategy, ICE is focusing its resources on the auditing and investigation of employers suspected of cultivating illegal workplaces by knowingly employing illegal workers. In the last year, ICE has leveled a record number of civil and criminal penalties against employers who violate immigration laws.

You may also visit us on Facebook, Twitter and YouTube.

I-9 TOOLS

M-274 Handbook for Employers

Handbook for Employers

Guidance for Completing Form I-9 (Employment Eligibility Verification Form)

U.S. Citizenship and Immigration Services

M-274 (Rev. 01/22/17)

Obtaining Forms and Updates

You may get electronic copies of English and Spanish versions of Form I-9 from the U.S. Citizenship and Immigration Services (USCIS) website uscis.gov. To order Form I-9 by telephone, call the USCIS Forms Request Line toll-free at 800-870-3676.

Because immigration law and employment eligibility verification regulations can change over time, we encourage you to periodically check I-9 Central at uscis.gov/i-9-central for updated information.

Table of Contents

Part One

Why Employers Must Verify Employment Authorization and Identity of New Employees

In 1986, Congress reformed U.S. immigration laws. These reforms, the result of a bipartisan effort, preserved the tradition of legal immigration while seeking to close the door to illegal entry. The employer sanctions provisions, found in section 274A of the Immigration and Nationality Act (INA), were added by the Immigration Reform and Control Act of 1986 (IRCA). These provisions further changed with the passage of the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996.

Employment is often the magnet that attracts individuals to reside in the United States illegally. The purpose of the employer sanctions law is to remove this magnet by requiring employers to hire only individuals who may legally work here: U.S. citizens, noncitizen nationals, lawful permanent residents, and aliens authorized to work. To comply with the law, employers must verify the identity and employment authorization of each person they hire, complete and retain a Form I-9, Employment Eligibility Verification, for each employee, and refrain from discriminating against individuals on the basis of national origin or citizenship. At the same time that it created employer sanctions, Congress also prohibited employment discrimination based on citizenship, immigration status, and national origin. This part of the law is referred to as the anti-discrimination provisions. (See Part Four for more information on unlawful discrimination.)

This handbook provides guidance on how to properly complete Form I-9, which helps employers verify that individuals are authorized to work in the United States. Every employer must complete a Form I-9 for every new employee you hire after Nov. 6, 1986. This includes U. S. citizens and noncitizen nationals who are automatically eligible for employment in the United States.

Form I-9, instructions and this M-274 are available for download from the USCIS website at uscis.gov/i-9-central. Employers may also call the USCIS Forms Request Line toll-free at 800-870-3676 to get print versions of Form I-9 and instructions.

Employers must use the current version of Form I-9. A revision date with an "N" next to it indicates that all previous versions with earlier revision dates are no longer valid. You may also use subsequent versions that have a "Y" next to the revision date.

Form I-9 is available in English and Spanish. Employers in the United States and U.S. territories may use the Spanish version of Form I-9 as a translation guide for Spanish-speaking employees, but must complete and retain the English version. Employers in Puerto Rico may use either the Spanish or the English version of Form I-9 to verify new employees.

The Homeland Security Act

The Homeland Security Act of 2002 created an executive department combining numerous federal agencies with a mission dedicated to homeland security. On March 1, 2003, the authorities of the former Immigration and Naturalization Service (INS) were transferred to three new agencies in the U.S. Department of Homeland Security (DHS): U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). The two DHS immigration components most involved with the matters discussed in this handbook are USCIS and ICE. USCIS is responsible for most documentation of alien employment authorization, for Form I-9, and for the E-Verify employment eligibility verification program. ICE is responsible for enforcement of the penalty provisions of section 274A of the INA and for other immigration enforcement within the United States.

Under the Homeland Security Act, the U. S. Department of Justice (DOJ) retained certain important responsibilities related to Form I-9 as well. In particular, the Immigrant and Employee Rights Section (IER) in the Department of Justice's Civil Rights Division is responsible for enforcement of the anti-discrimination provision in section 274B of the INA, while the Executive Office for Immigration Review (EOIR) is responsible for the administrative adjudication of cases under sections 274A, 274B, and 274C (civil document fraud) of the INA.

Part Two
Completing Form I-9

You must complete Form I-9 each time you hire any person to perform labor or services in the United States in return for wages or other remuneration. Remuneration is anything of value given in exchange for labor or services, including food and lodging. The requirement to complete Form I-9 applies to new employees hired after Nov. 6, 1986. This requirement does not apply to employees hired on or before Nov. 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times.

Ensure that the employee completes Section 1 of Form I-9 at the time of hire. "Hire" means the beginning of employment in exchange for wages or other remuneration. The time of hire is noted on the form as the first day of employment. Employees may complete Section 1 before the time of hire, but no earlier than acceptance of the job offer. Review the employee's document(s) and fully complete Section 2 within three business days of the hire. For example, if the employee begins employment on Monday, you must complete Section 2 by Thursday.

If you hire a person for fewer than three business days, Sections 1 and 2 must be fully completed at the time of hire – in other words, by the first day employment for pay.

Do not complete a Form I-9 for employees who are:

1. Hired on or before Nov. 6, 1986, (or on or before Nov. 27, 2007 if employment is in the Commonwealth of the Northern Mariana Islands (CNMI)) who are continuing in their employment and have a reasonable expectation of employment at all times;

2. Employed for casual domestic work in a private home on a sporadic, irregular or intermittent basis;

3. Independent contractors;

4. Employed by a contractor providing contract services (such as employee leasing or temporary agencies) and are providing labor to you; or

5. Not physically working on U.S. soil.

NOTE: You cannot hire an individual who you know is not authorized to work in the United States.

Completing Section 1

Have the employee complete Section 1 at the time of hire (by the first day of their employment for pay) by filling in the correct information and signing and dating the form. If the employee enters the information by hand, ensure that the employee prints the information clearly.

A preparer and/or translator may help an employee complete Form I-9. The preparer and/or translator must read the form to the employee, assist them in completing Section 1, and have the employee sign or mark the form where appropriate. The preparer and/or translator must then complete the Preparer and/or Translator Certification block. If the employee used multiple preparers or translator, each subsequent preparer and/or translator must complete a separate Preparer/Translator Certification block on a Form I-9 Supplement and attach the Supplement to the employee's form.

You are responsible for reviewing and ensuring that your employee fully and properly completes Section 1.

NOTE: Employees may voluntarily provide their Social Security numbers on Form I-9 unless you participate in the E-Verify program. Employees must provide E-Verify employers with their Social Security numbers. Employees who can satisfy Form I-9 requirements may work while awaiting their Social Security numbers.

You may not ask employees to provide you a specific document with their Social Security number on it. To do so may constitute unlawful discrimination. For more information on E-Verify, see Part Six. For more information on unlawful discrimination, see Part Four. Providing an e-mail address or telephone number in Section 1 is voluntary.

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)*

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Other Last Names Used *(if any)*
Washington	George	A	N/A

Address *(Street Number and Name)*	Apt. Number	City or Town	State	ZIP Code
123 Star Spangled Way	1	Westmoreland	VA	20002

Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	Employee's E-mail Address	Employee's Telephone Number
02/02/1982	123-45-6789	gwashington@email.com	202-123-4567

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

- [X] 1. A citizen of the United States
- [ ] 2. A noncitizen national of the United States *(See instructions)*
- [ ] 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- [ ] 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____
  Some aliens may write "N/A" in the expiration date field. *(See instructions)*

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: _____
   OR
2. Form I-94 Admission Number: _____
   OR
3. Foreign Passport Number: _____
   Country of Issuance: _____

QR Code - Section 1
Do Not Write In This Space

Signature of Employee	Today's Date *(mm/dd/yyyy)*
George Washington	01/22/2017

Preparer and/or Translator Certification (check one):

- [ ] I did not use a preparer or translator.
- [X] A preparer(s) and/or translator(s) assisted the employee in completing Section 1.

(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator	Today's Date *(mm/dd/yyyy)*
Abigail Adams	01/22/2017

Last Name *(Family Name)*	First Name *(Given Name)*
Adams	Abigail

Address *(Street Number and Name)*	City or Town	State	ZIP Code
123 American Way	Weymouth	MA	20001

Figure 1: Completing Section 1: Employee Information and Attestation

1 Have the employee enter their full legal name and other last names that they have used in the past or present (such as a maiden name) if any.

- Have employees with two last names (family names) include both in the Last Name field. Employees who hyphenate their last names should include the hyphen (-) between the names. Employees with only one name should enter it in the Last Name field and enter "Unknown" in the First Name field. "Unknown" may not be entered in both the Last Name and the First Name fields.
- Employees with two first names (given names) should include both in the First Name field. Employees who hyphenate their first name should include the hyphen (-) between the names.
- Have the employee enter their middle initial in the Middle Initial Field. Enter "N/A" if the employee does not have a middle initial.

- Have the employee enter their maiden name or any other legal last name they may have used in the Other Last Names Used field. Enter "N/A" if the employee has not used other last names.

2 The employee should enter their home address, apt. number, city or town, state and ZIP Code. Employees who have no Apt. Number should enter "N/A" in that field. Employees who do not have a street address should enter a description of the location of their residence, such as "Two miles south of I-81, near the water tower."

3 Employees should enter their date of birth as a two-digit month, two-digit day, and four-digit year: (mm/dd/yyyy) in this field. For example January 8, 1980 should be entered as 01/08/1980. Employees may voluntarily provide a Social Security number unless the employer participates in E-Verify. If the employer participates in E-Verify and:

- The employee has been issued a Social Security number, they must provide it on Form I-9; or
- The employee has applied for, but has not yet received the Social Security number, have the employee leave this field blank. Employees who can satisfy Form I-9 requirements may work while awaiting their Social Security numbers.

It is optional for the employee to provide an email address and telephone number in Section 1. If the employee chooses to provide an email address, it should be entered in the name@site.domain format. Employees who do not wish to enter an e-mail address or telephone number should enter "N/A" in these fields.

4 Have the employee read the warning and attest to their citizenship or immigration status by checking one of the following boxes provided on the form:

- **A citizen of the United States**
- **A noncitizen national of the United States:** An individual born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.
- **A lawful permanent resident:** An individual who is not a U.S. citizen and who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. This term includes conditional residents. Asylees and refugees should not select this status, but should instead select "An alien authorized to work" below. Employees who select this box should enter their seven to nine-digit Alien Registration Number (A-Number) or USCIS Number in the space provided. The USCIS Number is the same as the A-Number without the "A" prefix.
- **An alien authorized to work**: An individual who is not a citizen or national of the United States, or a lawful permanent resident, but is authorized to work in the United States. For example, asylees, refugees, and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau should select this status.

5 Have the employee sign and date the form, entering the date in Section 1 as a two-digit month, two-digit day, and four-digit year (mm/dd/yyyy).

6 If the employee used a preparer and/or translator to complete the form, that person must certify that they assisted the employee by completing the Preparer and/or Translator Certification block. If the employee did not use a preparer and/or translator, have the employee check the box marked "I did not use a preparer or translator." If the employee used one or multiple preparers or translators and is completing the paper Form I-9, print out the Form I-9 Supplement, Section 1 Preparer and/or Translator Certification. If the employee used one or multiple preparers and/or translators and is completing Form I-9 using a computer, check the second box marked "A preparer(s) and/or translator(s) assisted the employee in completing Section 1" and select the number of preparers or translators the employee used in the drop down box next to "How Many?"

Failure to Complete Section 1

You must ensure that all parts of Form I-9 are properly completed; otherwise, you may be subject to penalties under federal law. Section 1 must be completed no later than the end of the employee's first day of employment. You may not ask an individual who has not accepted a job offer to complete Section 1. Before completing Section 2, you should review Section 1 to ensure the employee completed it properly. If you find any errors in Section 1, have the employee make any necessary corrections and initial and date them.

Completing Section 2

Within three business days of the date employment begins, the employee must present to you an original document or documents that show their identity and employment authorization. For example, if an employee begins employment on Monday, you must review the employee's documentation and complete Section 2 on or before Thursday of that week. However, if you hire an individual for less than three business days, you must complete Section 2 no later than the end of the first day of employment. The employee must be allowed to choose which document(s) they will present from the Form I-9 Lists of Acceptable Documents. You cannot specify which document(s) an employee will present from the list.

Physically examine each original document the employee presents to determine if the document reasonably appears to be genuine and relates to the person presenting it. Make sure the person who examines the documents is the same person who attests and signs Section 2.

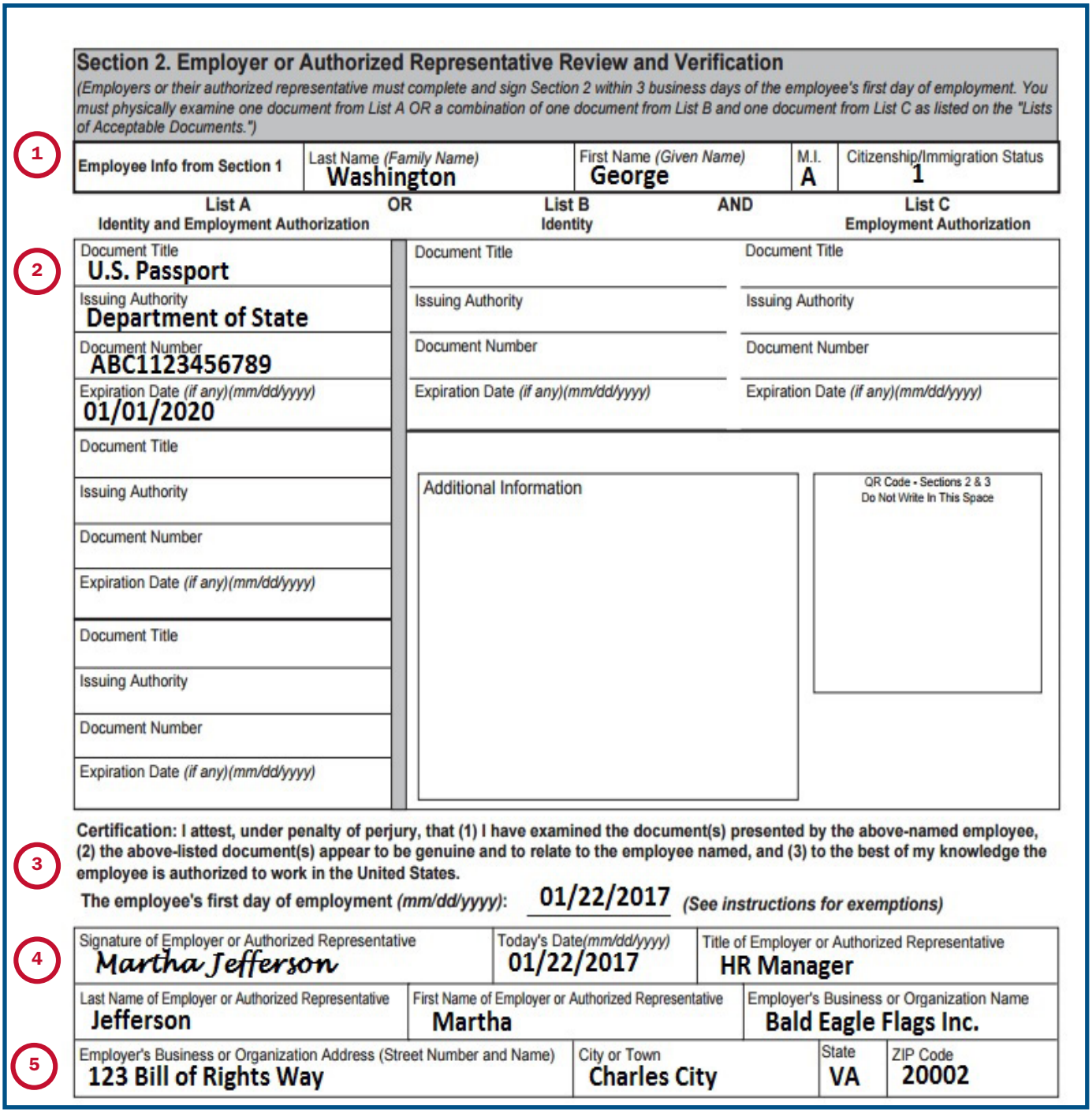
The employee must be physically present with the document examiner. Examine one selection from List A or a combination of one selection from List B and one selection from List C. If an employee presents a List A document, do not ask or require the employee to present List B or List C documents. If an employee presents List B and List C documents, do not ask or require the employee to present a List A document.

You must accept any document(s) from the Lists of Acceptable Documents that reasonably appear on their face to be genuine and relate to the person presenting them. You may not specify which document(s) the employee must present. Enter the document title, issuing authority, number, and expiration date (if any) in Section 2 from original documents supplied by employee. If you choose to make copies of the documents, do so for all employees, regardless of national origin or citizenship status, or you may be in violation of anti-discrimination laws. Return the original documents to your employee.

Fill in the date employment begins and information in the certification block. Sign and date Form I-9.

NOTE: If you participate in E-Verify, you may only accept List B documents that bear a photograph. For more information, visit uscis.gov/e-verify.

You may designate or contract with someone such as a personnel officer, foreman, agent, or anyone else acting on your behalf, including a notary public, to complete Section 2. Note that anyone else who completes Form I-9 on your behalf must carry out full Form I-9 responsibilities. It is not acceptable for the designated person to physically examine the employee's employment authorization and identity documents, and leave Section 2 for you to complete. You are liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on your behalf.



Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

1

Employee Info from Section 1	Last Name *(Family Name)*	First Name *(Given Name)*	M.I.	Citizenship/Immigration Status
	Washington	George	A	1

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization

2

List A	List B	List C
Document Title: U.S. Passport	Document Title:	Document Title:
Issuing Authority: Department of State	Issuing Authority:	Issuing Authority:
Document Number: ABC1123456789	Document Number:	Document Number:
Expiration Date *(if any)(mm/dd/yyyy)*: 01/01/2020	Expiration Date *(if any)(mm/dd/yyyy)*:	Expiration Date *(if any)(mm/dd/yyyy)*:
Document Title:		
Issuing Authority:		
Document Number:		
Expiration Date *(if any)(mm/dd/yyyy)*:		
Document Title:		
Issuing Authority:		
Document Number:		
Expiration Date *(if any)(mm/dd/yyyy)*:		

Additional Information

QR Code - Sections 2 & 3
Do Not Write In This Space

3 **Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.**

The employee's first day of employment *(mm/dd/yyyy)*: 01/22/2017 ***(See instructions for exemptions)***

4

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Employer or Authorized Representative
Martha Jefferson	01/22/2017	HR Manager

Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Employer's Business or Organization Name
Jefferson	Martha	Bald Eagle Flags Inc.

5

Employer's Business or Organization Address (Street Number and Name)	City or Town	State	ZIP Code
123 Bill of Rights Way	Charles City	VA	20002

Figure 2: Section 2: Employer or Authorized Representative Review and Verification

1 At the top of Section 2, enter the employee's last name, first name, and middle initial exactly as this information was entered in Section 1. Enter the number that correlates with the citizenship or immigration status box the employee selected in Section 1.

2 Enter the document title(s), issuing authority, document number, and the expiration date from original documents supplied by employee. You may use either common abbreviations for the document title or issuing authority, for example, "DL" for driver's license and "SSA" for Social Security Administration, or the suggestions in the form instructions.

The "Additional Information" space is for Form I-9 notes, such as:

- Notations that describe special circumstances such as employment authorization extensions for F-1 OPT STEM students, CAP-GAP, H-1B and H-2A employees continuing employment with the same employer or changing employers, and TPS, AC-21, 240-day, 180-day, and 120-day work authorization extensions, as required
- Information from additional documents that F-1 or J-1 nonimmigrant employees may present including the Student and Exchange Visitor (SEVIS) number and the program end date from Forms I-20, Certificate of Eligibility for Nonimmigrant Student Status, or DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, as required
- Employee termination dates and form retention dates
- E-Verify case verification number, which may also be entered in the margin or attached as a separate sheet per E-Verify requirements and your chosen business process
- Discrepancies that E-Verify employers must notate when participating in the IMAGE program
- Any other comments or notations necessary for the employer's business process

3 Enter the first day of employment for wages or other remuneration (such as date of hire) in the space for "The employee's first day of employment (mm/dd/yyyy)." Recruiters and referrers for a fee do not enter the employee's first day of employment.

Staffing agencies may choose to use either the date an employee is assigned to their first job or the date the new employee is entered into the assignment pool as the first day of employment.

4 Employer or authorized representative attests to physically examining the documents provided by completing the Last Name, First Name, Employer's Business or Organization Name and signing and dating the signature and date fields.

5 Enter the business's street address, city or town, state and ZIP code.

Sometimes, you must accept a receipt in lieu of a List A, List B, or a List C document if the employee presents one. New employees who choose to present a receipt(s) must do so within three business days of their first day of employment. Employees who choose to present a receipt for reverification must present it by the date their employment authorization expires. Receipts are not acceptable if employment lasts less than three business days.

Table 1 on the following page provides a list of acceptable receipts an employee can present. If an employee presents a receipt for the application to replace a lost, stolen or damaged document, the employee must present the replacement document to you within 90 days from the first day of work for pay, or in the case of reverification, within 90 days from the date the employee's employment authorization expired. Enter the word "Receipt" followed by the title of the document in Section 2 under the list that relates to the receipt. When completing the form using a computer, scroll down in the appropriate list to select the receipt presented. See Table 1 below for more information.

When your employee presents the original replacement document, cross out the word "Receipt," then enter the information from the new document into Section 2. Other receipts may be valid for longer or shorter periods. This includes the arrival portion of Form I-94/I-94A, Arrival Departure Record, containing a temporary I-551 stamp and a photograph of the individual. This receipt is valid until the expiration date of the temporary I-551 stamp or one year from the date of admission, if there is no expiration date.

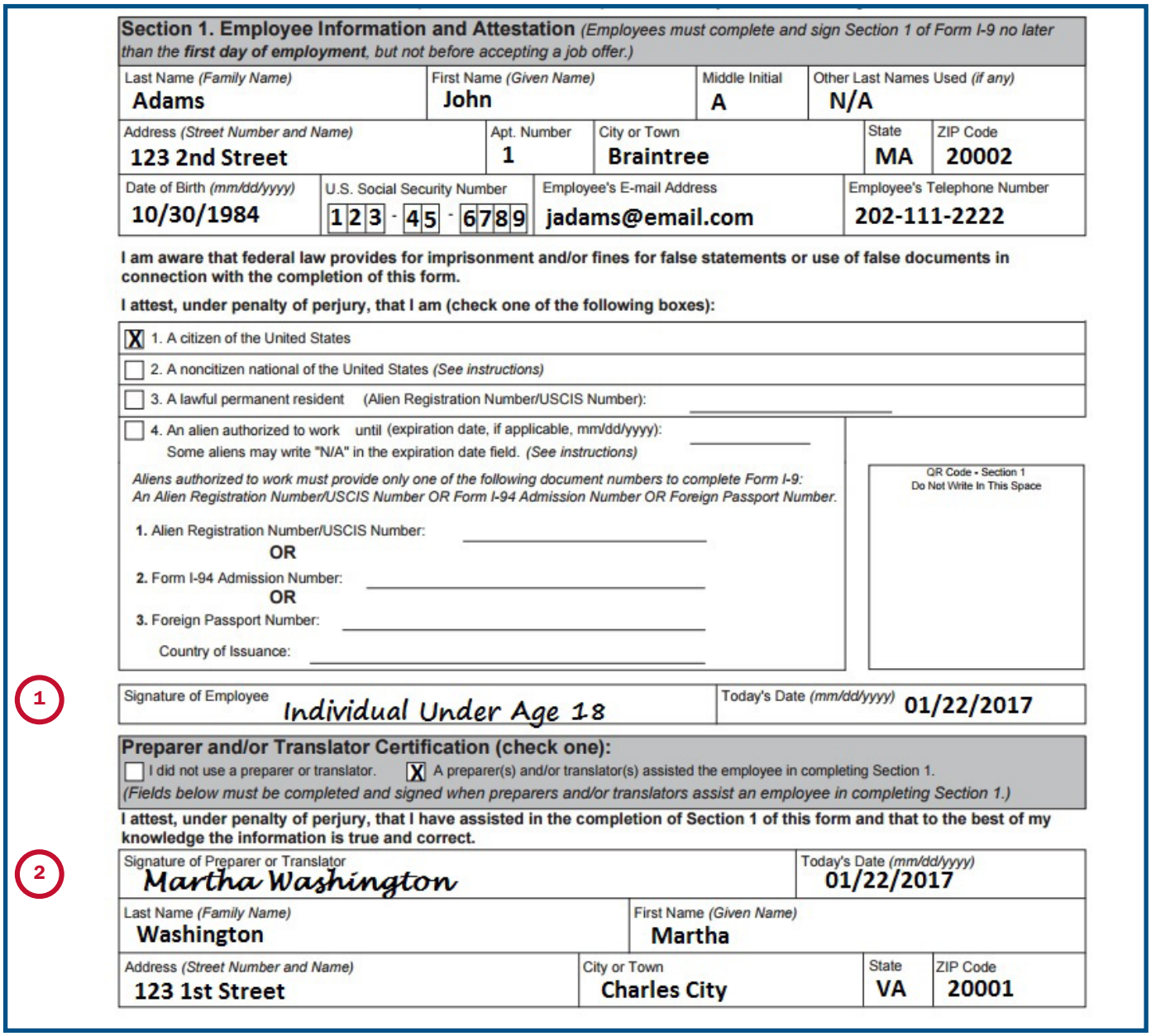
Table 1: Receipts

Receipt	Who may present this receipt?	Is this receipt proof of employment authorization and/or identity?	How long is this receipt valid?	What must the employee present at the end of the receipt validity period?
A receipt for a replacement of a lost, stolen, or damaged document	All employees	A receipt fulfills the verification requirements of the document for which the receipt was issued (can be List A, List B, or List C).	90 days from date of hire or, for reverification, 90 days from the date employment authorization expires.	The actual document for which the receipt was issued.
The arrival portion of the Form I-94 or I-94A containing a Temporary I-551 stamp and photograph	Lawful permanent residents	Employment authorization and identity (List A).	Until the expiration date of the Temporary I-551 stamp, or if no expiration date, one year from date of admission.	The actual Form I-551 (Permanent Resident Card, or "Green Card").
The departure portion of Form I-94 or I-94A with an unexpired refugee admission stamp	Refugees	Employment authorization and identity (List A).	90 days from date of hire or, for reverification, 90 days from the date employment authorization expires.	An unexpired EAD (Form I-766) or a combination of a valid List B document and an unrestricted Social Security card.

Minors (Individuals under Age 18)

If a person under the age of 18 is unable to present an identity document from List B, they may establish identity by completing Form I-9 as shown below. The minor must still provide a document from List C to establish work authorization.

If the minor's employer participates in E-Verify, the minor must present a List B identity document with a photograph.



Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)*

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Other Last Names Used *(if any)*
Adams	John	A	N/A

Address *(Street Number and Name)*	Apt. Number	City or Town	State	ZIP Code
123 2nd Street	1	Braintree	MA	20002

Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	Employee's E-mail Address	Employee's Telephone Number
10/30/1984	123-45-6789	jadams@email.com	202-111-2222

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

- [X] 1. A citizen of the United States
- [ ] 2. A noncitizen national of the United States *(See instructions)*
- [ ] 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- [ ] 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____
  Some aliens may write "N/A" in the expiration date field. *(See instructions)*

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: _____
   OR
2. Form I-94 Admission Number: _____
   OR
3. Foreign Passport Number: _____
   Country of Issuance: _____

QR Code - Section 1
Do Not Write In This Space

1

Signature of Employee	Today's Date *(mm/dd/yyyy)*
Individual Under Age 18	01/22/2017

Preparer and/or Translator Certification (check one):

- [ ] I did not use a preparer or translator.
- [X] A preparer(s) and/or translator(s) assisted the employee in completing Section 1.

(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

2

Signature of Preparer or Translator	Today's Date *(mm/dd/yyyy)*
Martha Washington	01/22/2017

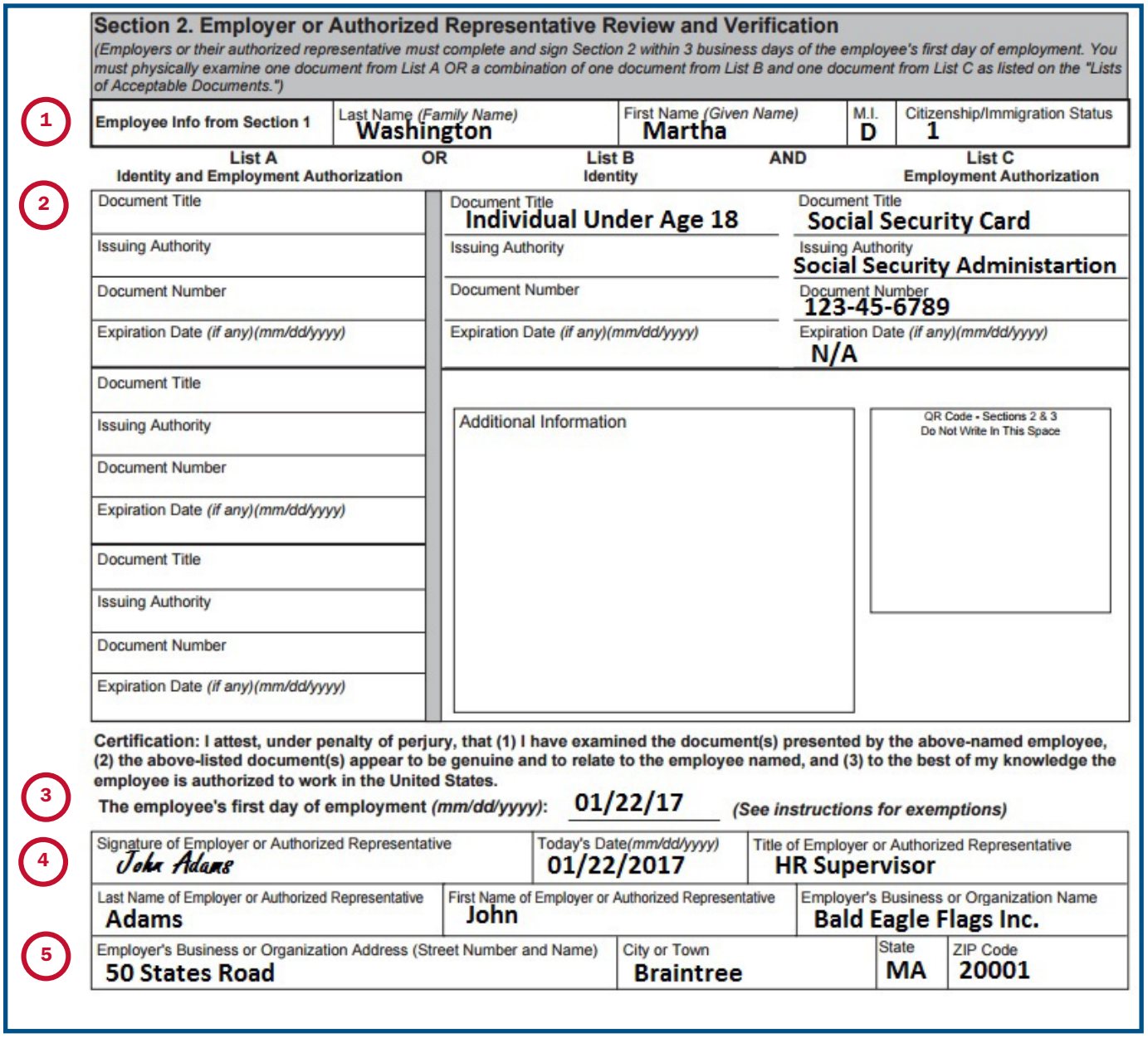
Last Name *(Family Name)*	First Name *(Given Name)*
Washington	Martha

Address *(Street Number and Name)*	City or Town	State	ZIP Code
123 1st Street	Charles City	VA	20001

Figure 3: Completing Section 1 of Form I-9 for minors without List B documents

1. The minor's parent or legal guardian completes Section 1 and enters "Individual under age 18" in the signature block.

2. The parent or legal guardian completes the Preparer and/or Translator Certification block.



Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

1	Employee Info from Section 1	Last Name *(Family Name)*	First Name *(Given Name)*	M.I.	Citizenship/Immigration Status
		Washington	Martha	D	1

2	List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
	Document Title		Document Title: Individual Under Age 18		Document Title: Social Security Card
	Issuing Authority		Issuing Authority		Issuing Authority: Social Security Administartion
	Document Number		Document Number		Document Number: 123-45-6789
	Expiration Date *(if any)(mm/dd/yyyy)*		Expiration Date *(if any)(mm/dd/yyyy)*		Expiration Date *(if any)(mm/dd/yyyy)*: N/A
	Document Title				
	Issuing Authority				
	Document Number				
	Expiration Date *(if any)(mm/dd/yyyy)*				
	Document Title				
	Issuing Authority				
	Document Number				
	Expiration Date *(if any)(mm/dd/yyyy)*				

Additional Information

QR Code - Sections 2 & 3
Do Not Write In This Space

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

3	The employee's first day of employment *(mm/dd/yyyy)*: 01/22/17	*(See instructions for exemptions)*

4	Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Employer or Authorized Representative
	John Adams	01/22/2017	HR Supervisor

	Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Employer's Business or Organization Name
	Adams	John	Bald Eagle Flags Inc.

5	Employer's Business or Organization Address (Street Number and Name)	City or Town	State	ZIP Code
	50 States Road	Braintree	MA	20001

Figure 4: Completing Section 2 of Form I-9 for minors without List B documents

1. At the top of Section 2, enter the employee's last name, first name, and middle initial exactly as this information was entered in Section 1. Enter the number that correlates with the citizenship or immigration status box selected for the employee in Section 1.

2. Enter "Individual under age 18" under List B and enter the List C document the minor presents. Enter the document title, issuing authority, document number, and the expiration date from the original List C document.

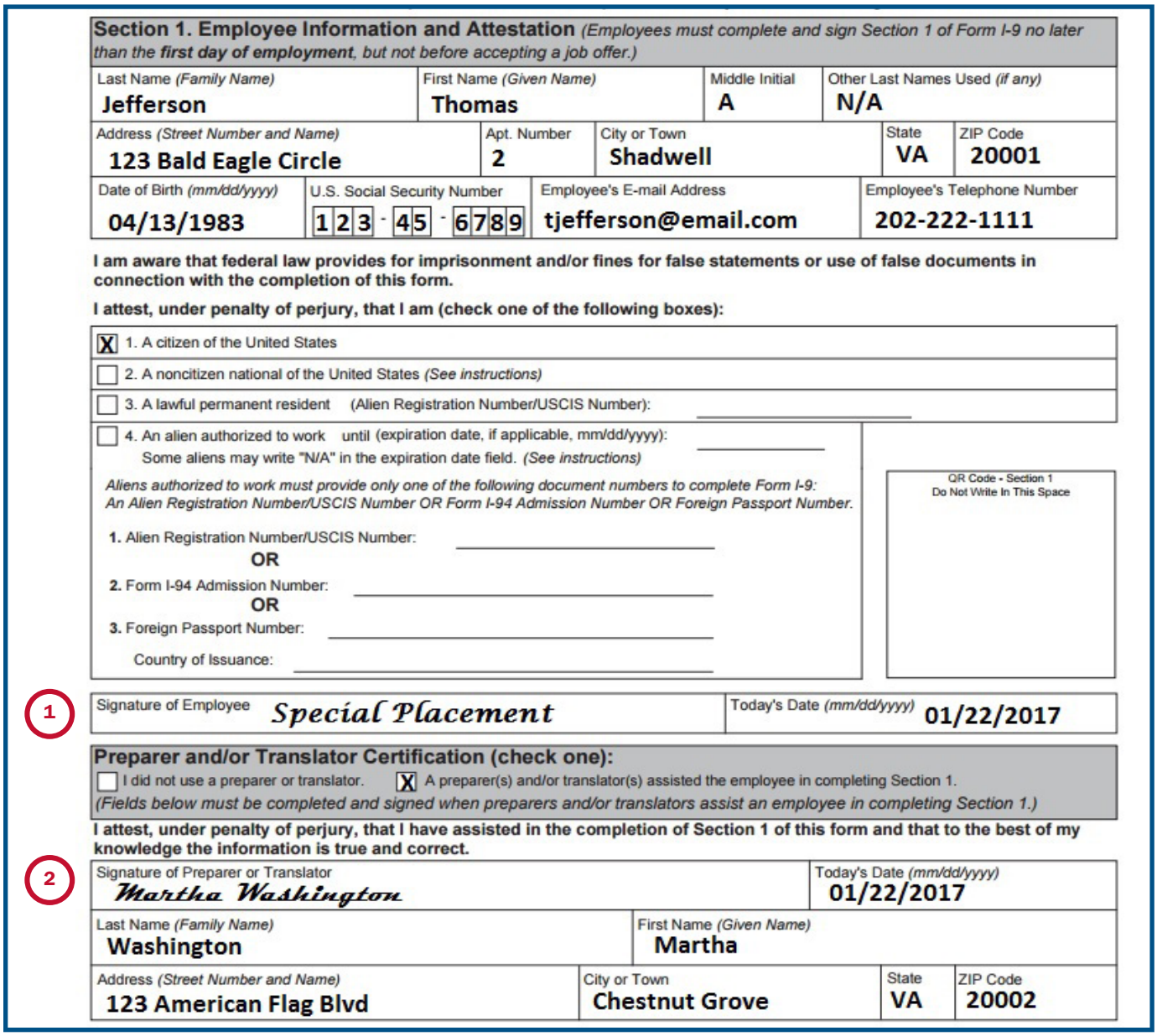
3. Enter the date employment began.

4. The employer or authorized representative attests to physically examining the documents provided by completing the Last Name, First Name, their Employer's Business or Organization Name and signing and dating the signature and date fields.

5. Enter the business's street address, city or town, state and ZIP code.

Employees with Disabilities (Special Placement)

Individuals who have a physical or mental impairment which substantially limits one or more of their major life activities and who are placed in jobs by a nonprofit organization, association or as part of a rehabilitation program may establish identity under List B by using procedures similar to those used by individuals under 18 years of age who are unable to produce a List B identity document and otherwise qualify to use these procedures. The individual will still be required to present an employment authorization document from List C. If the employer participates in E-Verify, the individual's List B identity document must contain a photograph. Complete Form I-9 as shown below.



Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)*

Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Other Last Names Used *(if any)*
Jefferson	Thomas	A	N/A

Address *(Street Number and Name)*	Apt. Number	City or Town	State	ZIP Code
123 Bald Eagle Circle	2	Shadwell	VA	20001

Date of Birth *(mm/dd/yyyy)*	U.S. Social Security Number	Employee's E-mail Address	Employee's Telephone Number
04/13/1983	123-45-6789	tjefferson@email.com	202-222-1111

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

- [X] 1. A citizen of the United States
- [ ] 2. A noncitizen national of the United States *(See instructions)*
- [ ] 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- [ ] 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____
  Some aliens may write "N/A" in the expiration date field. *(See instructions)*

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: _____
   OR
2. Form I-94 Admission Number: _____
   OR
3. Foreign Passport Number: _____

Country of Issuance: _____

QR Code - Section 1
Do Not Write In This Space

1

Signature of Employee	Today's Date *(mm/dd/yyyy)*
Special Placement	01/22/2017

Preparer and/or Translator Certification (check one):

- [ ] I did not use a preparer or translator.
- [X] A preparer(s) and/or translator(s) assisted the employee in completing Section 1.

(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

2

Signature of Preparer or Translator	Today's Date *(mm/dd/yyyy)*
Martha Washington	01/22/2017

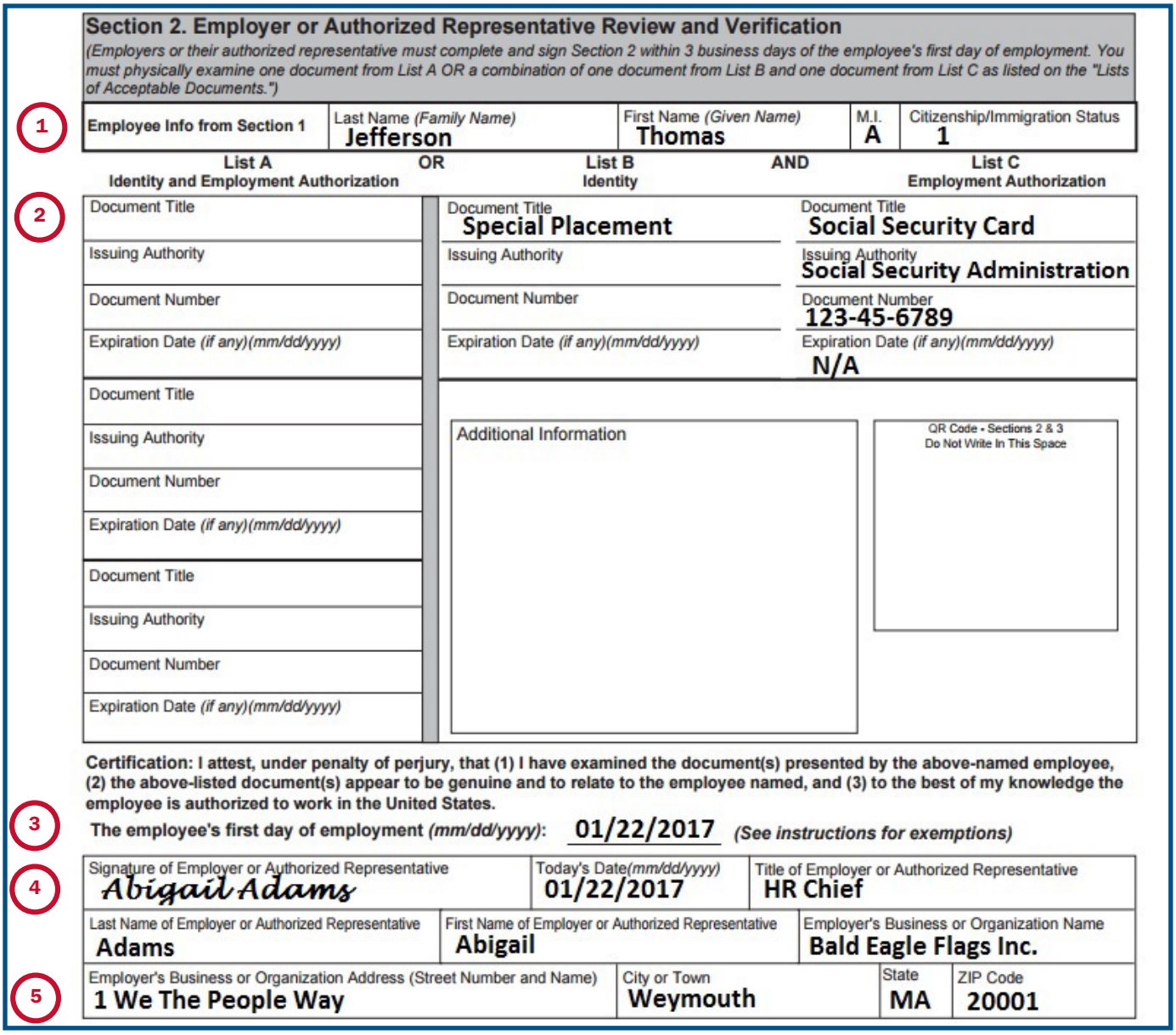
Last Name *(Family Name)*	First Name *(Given Name)*
Washington	Martha

Address *(Street Number and Name)*	City or Town	State	ZIP Code
123 American Flag Blvd	Chestnut Grove	VA	20002

Figure 5: Completing Section 1 of Form I-9 for employees with disabilities (special placement)

1 The representative of the nonprofit organization, association, rehabilitation program, parent or legal guardian of an individual with a disability completes Section 1 and enters, "Special Placement" in the Signature of Employee field and dates the form.

2 The representative, parent or legal guardian completes the Preparer and/or Translator Certification block.



Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

1	Employee Info from Section 1	Last Name *(Family Name)*	First Name *(Given Name)*	M.I.	Citizenship/Immigration Status
		Jefferson	Thomas	A	1

2	List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
	Document Title		Document Title: Special Placement		Document Title: Social Security Card
	Issuing Authority		Issuing Authority		Issuing Authority: Social Security Administration
	Document Number		Document Number		Document Number: 123-45-6789
	Expiration Date *(if any)(mm/dd/yyyy)*		Expiration Date *(if any)(mm/dd/yyyy)*		Expiration Date *(if any)(mm/dd/yyyy)*: N/A
	Document Title		Additional Information		QR Code - Sections 2 & 3 Do Not Write In This Space
	Issuing Authority				
	Document Number				
	Expiration Date *(if any)(mm/dd/yyyy)*				
	Document Title				
	Issuing Authority				
	Document Number				
	Expiration Date *(if any)(mm/dd/yyyy)*				

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

3 **The employee's first day of employment *(mm/dd/yyyy)*:** 01/22/2017 ***(See instructions for exemptions)***

4	Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Employer or Authorized Representative
	Abigail Adams	01/22/2017	HR Chief

Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Employer's Business or Organization Name
Adams	Abigail	Bald Eagle Flags Inc.

5	Employer's Business or Organization Address (Street Number and Name)	City or Town	State	ZIP Code
	1 We The People Way	Weymouth	MA	20001

Figure 6: Completing Section 2 of Form I-9 for employees with disabilities (special placement)

1. At the top of Section 2, enter the employee's last name, first name and middle initial exactly as this information was entered in Section 1. Enter the number that correlates with the citizenship or immigration status box selected for the employee in Section 1.

2. Enter "Special Placement" under List B and enter information about the List C document that the employee with a disability presents.

3. Enter the date employment began.

4. The employer or authorized representative attests to physically examining the documents provided by completing the Last Name, First Name, Employer's Business or Organization Name and signing and dating the signature and date fields.

5. Enter the business's street address, city or town, state and ZIP code.

Future Expiration Dates

Future expiration dates may appear on the employment authorization documents of individuals, including, among others, lawful permanent residents, asylees and refugees. USCIS includes expiration dates on some documents issued to individuals with permanent employment authorization. The existence of a future expiration date:

1. Does not preclude continuous employment authorization;
2. Does not mean that subsequent employment authorization will not be granted; and
3. Should not be considered in determining whether the individual is qualified for a particular position.

Considering a future employment authorization expiration date in determining whether an individual is qualified for a particular job may constitute employment discrimination. For more information on unlawful discrimination, see Part Four. However, as described below, you may need to reverify the employee's authorization to work when certain List A or List C documents expire. For example, the Employment Authorization Document (Form I-766) must be reverified on or before the expiration date.

Automatic Extensions of Employment Authorization Documents (EAD) in Certain Circumstances

Automatic Extensions Based on Timely Employment Authorization Document (Form I-766) Renewal Application

Foreign nationals in certain employment eligibility categories who file an EAD renewal application may receive automatic extensions of their expiring EAD for up to 180 days. The extension begins on the date the EAD expires and continues for up to 180 days unless the renewal application is denied. An automatic EAD extension depends on these requirements:

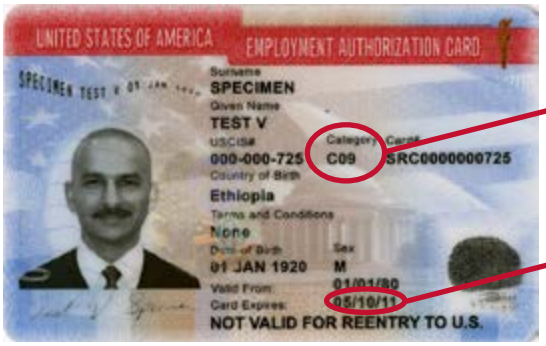
1. The employee must have timely filed an application to renew their EAD before it expires (except certain employees granted Temporary Protected Status (TPS)), and the application remains pending;
2. The eligibility category on the face of the EAD is the same eligibility category code on the Form I-797C, Notice of Action, the employee received from USCIS indicating USCIS's receipt of their renewal application (except employees with TPS who may have a C19/A12 combination); and
3. The eligibility category is listed on uscis.gov as eligible for EAD automatic extensions. As of the date of publication of this M-274, Handbook for Employers, eligibility categories codes for a 180-day automatic extension are A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31 and A12 or C19.

The employee's expired EAD in combination with the Form I-797C Notice of Action showing that the EAD renewal application was timely filed and showing the same qualifying eligibility category as that on the expired EAD is an acceptable document for Form I-9. This document combination is considered an unexpired Employment Authorization Document (Form I-766) under List A.

To find the eligibility category code on your employee's employment authorization document, see Figure 7 below:

Figure 7: Auto-Extended Employment Authorization Documents

Finding the Category Notation and Expiration Date on an EAD

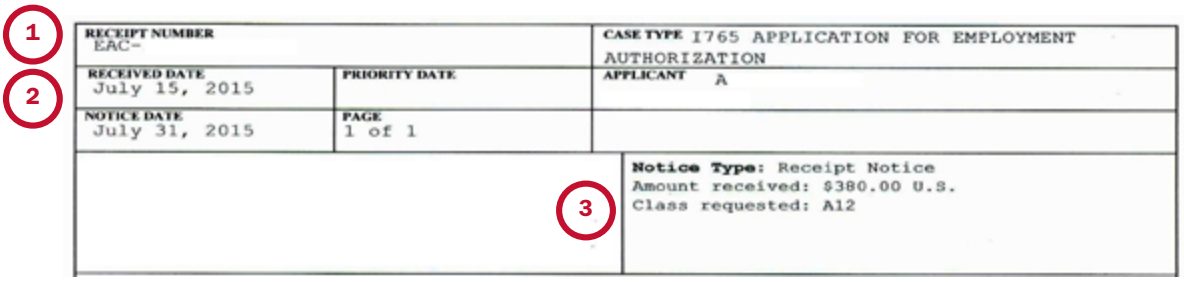


The category notation appears on the face of the Employment Authorization Document (Form I-766) under "Category."

The expiration date appears on the face of the Employment Authorization Document (I-766) to the right of "Card Expires."

Figure 7: Auto-Extended Employment Authorization Documents (Continued)

Finding the Auto-Extended EAD Expiration Date on the I-797C: Sample 1

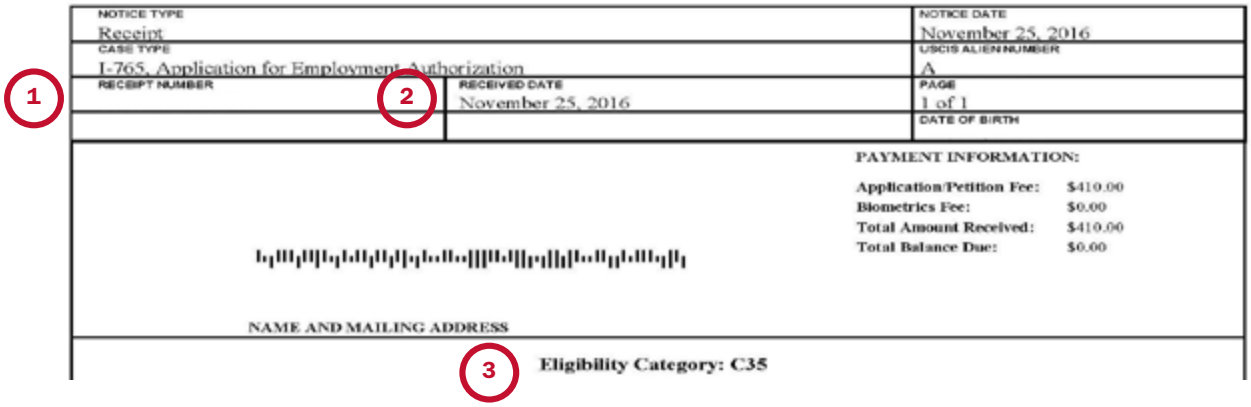


1 The receipt number appears on the face of the I-797C Notice of Action in the "Receipt Number" field.

2 The filing date is the date USCIS received the application and appears in the "Received Date" field. This date should be on or before the expiration date on the face of the Employment Authorization Document.

3 The category code may appear on the face of the I-797C Notice of Action in the "Class Requested" field. If you do not see this field, see Sample 2 below.

Finding the Auto-Extended EAD Expiration Date on the I-797C: Sample 2



1 The receipt number appears on the face of the I-797C Notice of Action in the "Receipt Number" field.

2 The filing date is the date USCIS received the application and appears in the "Received Date" field. This date should be on or before the expiration date on the face of the Employment Authorization Document.

3 The category code may appear on the face of the I-797C Notice of Action in the "Eligible Category" field. If you do not see this field, see Sample 1 above.

Automatic EAD Extensions for TPS Beneficiaries

Beneficiaries of TPS may present an Employment Authorization Document (Form I-766) that is expired on its face with a C19 eligibility code but a Form I-797C Notice of Action indicating the eligibility category code A12. Therefore, just for TPS beneficiaries, the eligibility category codes do not need to be the same, but can be either C19 or A12.

TPS beneficiaries may receive an automatic extension of their Employment Authorization Document (Form I-766) if they file their renewal application in accordance with the applicable *Federal Register* notice regarding procedures for renewing TPS-related employment documentation, which may or may not require that the application be filed prior to the expiration of the Employment Authorization Document (Form I-766).

TPS beneficiaries have other ways to receive an automatic extension of their EAD. In many circumstances, their EAD may be automatically extended under a notice published in the *Federal Register* based on an extension of the TPS country designation. In these instances, DHS will inform the public in the *Federal Register* notice that TPS status and employment authorization for TPS beneficiaries are being extended. You may not require employees to prove they are a national of a country that has been designated for TPS.

Guidance on Completing Form I-9

For a current employee, update Section 2 of Form I-9 with the new expiration date as follows:

1. Draw a line through the old expiration date and write the new expiration date in the margin of Section 2;
2. Write EAD EXT in Section 2;
3. Initial and date the correction.

The new expiration date to enter is the date 180 days from the date the card expires, which is the date on the face of the expired EAD. Employees whose employment authorization was automatically extended along with their EAD (such as adjustment of status applicants, but not asylees who are employment authorized incident to status) should cross out the "employment authorized until" date in Section 1, write the date that is 180 days from the date their current EAD expires, and initial and date the change.

New employees may present the expired EAD and Form I-797C Notice of Action indicating USCIS's receipt of the employee's timely filed renewal application. When completing Section 1, the employee should enter the date that is 180 days from the "card expires" date of their expired EAD in the "employment authorized until mm/dd/yyyy" field.

When completing Section 2, the employer should enter into the Expiration Date field the date the automatic extension period expires, not the expiration date on the face of the expired EAD. The automatic extension expiration date is the date 180 days from the "card expires" date on the EAD. Note that this expiration date may be cut short if the employee's renewal application is denied before the 180-day period expires. The employer should enter the receipt number from the I-797C Notice of Action as the document number on Form I-9.

Reverification

Reverification is required when the employee's automatic extension ends, no later than 180-days after the expiration date of the Employment Authorization Document (Form I-766). Reverification can also be done before the end of the180-day extended time period, upon receipt of any document that shows current employment authorization, such as any document from List A or List C.

Reverifying Employment Authorization for Current Employees

When an employee's EAD (Employment Authorization Document, Form I-766) expires, you must reverify their employment authorization no later than the date employment authorization expires. You may use Section 3 of Form I-9, or if Section 3 has already been used for a previous reverification or update, then use Section 3 of a new Form I-9. If you complete Form I-9 on paper, you must:

1. Enter the last name, first name and middle initial from the original Form I-9 at the top of Section 2 leaving the Citizenship/Immigration Status field blank (only for those using Section 3 of a new form);
2. Complete Section 3;
3. Keep only the second page of the new Form I-9 with the original.

When completing the Form I-9 using a computer, you must enter the last name, first name and middle initial from the original Form I-9 at the top of Section 3.

When you complete Section 3 on a computer and print, Sections 2 and 3 will appear on the same page. The employee must present a document that shows current employment authorization such as any document from List A or List C, including an unrestricted Social Security card. You cannot continue to employ an employee who cannot provide you with proof of current employment authorization.

NOTE: Reverification is never required for U.S. citizens and noncitizen nationals. Do not reverify the following documents after they expire: U.S. passports, U.S. passport cards, Alien Registration Receipt Cards/Permanent Resident Cards (Form I-551), and List B documents.

Employees whose immigration status, employment authorization or employment authorization documents expire should file the necessary application or petition well in advance to ensure they maintain continuous employment authorization and valid employment authorization documents. Certain employees, such as H-1B or L-1 nonimmigrants who are authorized to work for a specific employer and on whose behalf an application for an extension of stay has been filed may continue working for the same employer for up to 240 days from the date the authorized period of stay expires. See *Completing Form I-9 for Nonimmigrant Categories* below.

Employees in certain categories may be eligible for a 180-day automatic extension of their expired EAD. See *Automatic Extensions of Employment Authorization Document in Certain Circumstances* above for more information, including eligible categories.

NOTE: You must reverify an employee's employment authorization on Form I-9 no later than the date that the employee's employment authorization or EAD expires, whichever is sooner.

Evidence of Status for Certain Categories

Lawful Permanent Residents (LPR)

Employees must be allowed to choose which document(s) they will present from the Lists of Acceptable Documents. You cannot specify which document(s) an employee must present. Employees who attest to being an LPR in Section 1 may choose to present a List A document (such as a Permanent Resident Card, Form I-551) or a List B and List C document combination (such as a state-issued driver's license and unrestricted Social Security card). If the employee presents a List A document, do not ask or require the employee to present List B and List C documents. If an employee presents List B and List C documents, do not ask or require the employee to present a List A document.

There are different versions of Form I-551, Permanent Resident Card. Some Permanent Resident Cards may contain no expiration date, a 10-year expiration date, or a two-year expiration date. Cards that expire in 10 years or have no expiration date are issued to LPRs with no conditions on their status. All Permanent Resident Cards, whether they have an expiration date or no expiration date, are List A documents that should not be reverified.

LPRs and conditional residents may be issued temporary I-551 documents. These documents are acceptable for Form I-9 as follows:

1. The combination of an expired Permanent Resident Card and a Form I-797, Notice of Action, that indicates that the card is valid for an additional year, is an acceptable List C evidence of employment authorization for one year as indicated on Form I-797. At the end of the one-year period, you must reverify.

2. Reverification is necessary if an employee presents a foreign passport with either a temporary I-551 stamp or I-551 printed notation on a machine-readable immigrant visa (MRIV) when the stamp or MRIV expires, or one year after the admission date if the stamp or MRIV does not contain an expiration date.

   MRIVs are usually issued with the following language on the visa: "UPON ENDORSEMENT SERVES AS TEMPORARY I-551 EVIDENCING PERMANENT RESIDENCE FOR 1 YEAR." The one year time period begins on the date of admission. If, in the rare instance, an immigrant visa is issued without the statement "FOR 1 YEAR," employers should treat the MRIV as evidence of permanent residence status for one year from the date of admission.

   If the stamp in the passport is endorsed "CR-1" and is near but not on the immigrant visa, it is still a valid endorsement.

3. If an employee presents the arrival portion of Form I-94/Form I-94A Arrival Departure Record containing an unexpired temporary I-551 stamp and a photograph of the individual, this combination of documents is an acceptable List A receipt for the Permanent Resident Card. The employee must present their Permanent Resident Card to the employer no later than when the stamp expires, or one year after the issuance date of the Form I-94 if the stamp does not contain an expiration date.

NOTE: If USCIS has approved the employee's application to adjust status to that of a lawful permanent resident, but the employee has not yet received their initial Permanent Resident Card, they can get temporary evidence of permanent resident status at a local USCIS field office.

Native Americans

A Native American tribal document establishes both identity and employment authorization on Form I-9. If an employee presents a Native American tribal document, you do not need any other documents from the employee to complete Section 2. To be acceptable for Form I-9 purposes, a Native American tribal document must be issued by a tribe recognized by the U.S. federal government. Members of federally recognized tribes who are LPRs, aliens authorized to work, and noncitizen nationals may have a Native American tribal document issued by such tribes. Because federal recognition of tribes can change over time, you may check the Bureau of Indian Affairs website at bia.gov to determine if the tribe is federally recognized.

The following documents are not considered Native American tribal documents for Form I-9 purposes and cannot be used for either List B or List C:

- A tribal membership document issued by a Canadian First Nation such as a Canadian Indian tribe, rather than a U.S. Indian tribe, including a U.S. Indian tribe that grants membership and issues tribal membership documents to Canadian nationals
- A Certificate of Indian Status (commonly referred to as an "INAC card") issued by Aboriginal Affairs and Northern Development Canada (formerly known as Indian and Northern Affairs Canada, or "INAC")

While individuals who possess such documents might possibly qualify for employment authorization under INA § 289 (and, if applicable, 8 CFR § 289.2), their tribal membership cards issued by a Canadian First Nation, or INAC cards issued by the Government of Canada, cannot, by themselves, establish work authorization.

For E-Verify Employers:

Section 403 of the E-Verify authorizing statute requires that all List B documents must contain a photograph. This includes Native American tribal documents presented as a List B document. If the employee's Native American tribal document does not contain a photograph, you should request the employee provide a List B document with a photograph. The Native American tribal document is acceptable as the employee's List C document. Your employee may also choose to provide a List A document in place of a List B and List C document.

Refugees and Asylees

Refugees and asylees are authorized to work because of their immigration status. When completing Form I-9, the refugee or asylee should indicate "alien authorized to work" in Section 1 of Form I-9. Since refugees and asylees are authorized to work indefinitely because of their immigration status, a refugee or asylee should enter "N/A" on the expiration date line in Section 1.

Many refugees and asylees may choose to present an unexpired EAD (Employment Authorization Document, Form I-766). However, neither refugees nor asylees are required to present an EAD to meet Form I-9 requirements. They may present other acceptable documents for Form I-9, such as Form I-94/Form I-94A indicating refugee or asylee status. They may also present List B and List C combinations, such as a state-issued driver's license and an unrestricted Social Security card.

In addition, refugees and asylees may present an expired EAD with Form I-797C Notice of Action from USCIS for Form I-765, Application for Employment Authorization if Form I-797C lists the same employment authorization category as the expired EAD. This combination is considered an unexpired employment authorization and identity document (List A) and is valid for up to 180 days after the "card expires" date on the face of the EAD.

See *Automatic Extensions of Employment Authorization Document in Certain Circumstances* for more information about eligible categories and Form I-9 completion instructions for an employee who is a beneficiary of an employment authorization document auto-extension.

NOTE: The Social Security Administration issues unrestricted Social Security cards to refugees and asylees. These are List C documents for Form I-9 purposes and are not subject to reverification. Application procedures for Social Security cards can be found on the Social Security Administration's site at ssa.gov.

Refugees

Upon admission to the United States, DHS provides refugees with electronic or paper Forms I-94 (Arrival-Departure Record) that proves their status and employment authorization. The departure portion of a Form I-94 containing an unexpired refugee admission stamp or a Form I-94 computer-generated printout with an admission class of "RE" is an acceptable receipt establishing both employment authorization and identity for 90 days. During this time USCIS should be processing an EAD for the refugee.

At the end of the 90-day receipt period, the refugee must present either an EAD or a document from List B, such as a state- issued driver's license, with a document from List C, such as an unrestricted Social Security card.

Refugees may also present an expired EAD in combination with an I-797C Notice of Action from USCIS indicating timely filing of the renewal application for an EAD (provided the I-797C indicates the same employment authorization category as the expired employment authorization document). This combination is considered an unexpired employment authorization and identity document (List A) and is valid for up to 180 days after the "card expires" date on the face of the EAD.

See *Automatic Extensions of Employment Authorization Document in Certain Circumstances* for more information about eligible categories and Form I-9 completion instructions for an employee who is a beneficiary of a 180-day employment authorization document auto-extension.

Asylees

After being granted asylum in the United States, DHS issues asylees paper Forms I-94 that evidence their status and employment authorization with a stamp or notation indicating asylee status, such as "asylum granted indefinitely" or the appropriate provision of law (8 CFR 274a.12(a)(5) or INA 208). This document is considered a List C document that demonstrates employment authorization in the United States and does not expire. Asylees who choose to present this document will need to present a List B identity document, such as a state-issued driver's license or identification card.

USCIS also issues asylees EADs which are acceptable as List A documents. Decisions from immigration judges or the Board of Immigration Appeals (BIA) granting asylum are not acceptable List C documents because they are not issued by DHS.

Asylees may also present an expired Employment Authorization Document (Form I-766) in combination with an I-797C Notice of Action from USCIS indicating timely filing of the renewal application for an EAD (provided the I-797C lists the same employment authorization category as the expired EAD). This combination is considered an unexpired employment authorization and identity document (List A) and is valid for up to 180 days after the 'card expires' date on the face of the EAD.

See *Automatic Extensions of Employment Authorization Document in Certain Circumstances* for more information about eligible categories and Form I-9 completion instructions for employees who are beneficiaries of an employment authorization document auto-extension.

Exchange Visitors and Students

Each year, thousands of exchange visitors, international students, and their dependents come to the United States to study and work.

Exchange Visitors (J-1s)

The Department of State (DOS) administers the exchange visitor program and designates the sponsors. Responsible officers within the program issue Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. Exchange visitors come to the United States for a specific period of time to participate in a particular program or activity, as described on their Form DS-2019. Only J-1 exchange visitors may use Form DS-2019 for employment when such employment is part of their

program. Currently, DOS designates public and private entities to act as exchange sponsors for the following programs:

Table 2: Exchange Visitor Programs

EXCHANGE VISITOR PROGRAMS
SECONDARY STUDENT
ASSOCIATE DEGREE STUDENT
BACHELOR'S DEGREE STUDENT
MASTER'S DEGREE STUDENT
DOCTORAL STUDENT
NON-DEGREE STUDENT
STUDENT INTERN
TRAINEE (SPECIALTY)
TRAINEE (NON-SPECIALTY)
TEACHER
PROFESSOR
INTERNATIONAL VISITOR
PHYSICIAN
GOVERNMENT VISITOR
RESEARCH SCHOLAR
SHORT-TERM SCHOLAR
SPECIALIST
CAMP COUNSELOR
SUMMER WORK/TRAVEL
AU PAIR AND EDUCARE
TRAINEE
INTERN
Pilot Programs
Summer Work/Travel: Australia
Summer Work/Travel: New Zealand
Intern Work/Travel: Ireland
WEST (Work/English Study/Travel): South Korea

High school or secondary school students and international visitors are not authorized to work.

Other J-1 students may be authorized by their responsible officer for part-time on-campus employment according to the terms of a scholarship, fellowship or assistantship, or off-campus employment based on serious, urgent, unforeseen economic circumstances. J-1 students may also be authorized for a maximum of 18 months (or, for Ph.D. students, a maximum of 36 months) of practical training during or immediately after their studies. J-1 practical training includes paid off-campus employment and/or unpaid internships that are part of the student's program of study. Their responsible officer must authorize employment in writing for practical training. Special rules apply to student interns.

Employment for other J-1 exchange visitors is sometimes job- and site-specific or limited to a few months.

For more information about these categories and their employment authorization, contact the responsible officer whose name and telephone number are on Form DS-2019 or the DOS website at exchanges.state.gov.

USICS does not issue EADs (Employment Authorization Documents, Forms I-766) to J-1 exchange visitors. However, they are issued several other documents that, in combination are List A documents and are evidence of employment authorization for J-1 exchange visitors who are not students:

- Unexpired foreign passport;
- Form I-94/Form I-94A Arrival Departure Record indicating J-1 non-immigrant status; and
- Form DS-2019 with the responsible officer's endorsement.

J-1 students may present the documents above if they also have a letter from the responsible officer authorizing employment.

Or

List B and List C documents.

For example, the J-1student could present a List B document (such as a state driver's license) and under List C #8, a Form I-94 in combination with Form DS-2019 and a letter from a responsible officer. The documents by themselves do not qualify.

Some exchange visitors may extend their status. If you have questions about any exchange visitor's continued employment authorization, contact the responsible officer whose name and telephone number are on Form DS-2019.

Dependents of a J-1 exchange visitor are classified as J-2 nonimmigrants and are only authorized to work if USCIS has issued them an EAD. A J-2 nonimmigrant's foreign passport and Form I-94/Form I-94A are not evidence of identity and employment authorization for purposes of Form I-9.

F-1 and M-1 Nonimmigrant Students

Foreign students pursuing academic studies and/or language training programs are classified as F-1 nonimmigrants, while foreign students pursuing nonacademic or vocational studies are classified as M-1 nonimmigrants. Designated school officials (DSO) at certified schools issue Form I-20, Certificate of Eligibility for Nonimmigrant (F-1)/(M-1) Students.

F-1 nonimmigrant foreign students may be eligible to work under certain conditions. There are several types of employment authorization for students, including:

- On-campus employment,
- Curricular practical training,
- Off-campus employment based on severe economic hardship,
- Employment sponsored by an international organization, and
- Optional practical training.

Foreign students in F-1 nonimmigrant status may work on campus without the approval of a DSO or USCIS.

On-campus employment is authorized until the student completes their course of study. The F-1 nonimmigrant admission notation on Form I-94/I-94A Arrival Departure Record usually states "D/S" indicating duration of status. The F-1 student's Form I-20 bears the latest date they can complete their studies. Enter this date in Section 1 as the date employment authorization expires.

To complete Section 2, the combination of the F-1 student's unexpired foreign passport and Form I-94/94A Arrival Departure Record indicating F-1 nonimmigrant status is a List A document for on-campus employment. Employers are not required to record information from the student's Form I-20 in Section 2.

Foreign students in F-1 nonimmigrant status may work:

- On the school's premises, including on-location commercial firms that provide services for students on campus, such as the school bookstore or cafeteria
- At an off-campus location that is educationally affiliated with the school.

Employment that does not provide direct services to students is not on-campus employment. For example, an on-campus commercial firm, such as a construction company that builds a school building, does not provide direct student services. Guidelines for on-campus employment are available at ice.gov/sevis/employment.

On-campus employment is limited to 20 hours a week when school is in session. An exception to this limitation applies in cases of emergent circumstances announced by DHS in a notice published in the Federal Register.

Curricular practical training (CPT) allows students to accept paid alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. The curricular practical training program must be an integral part of the curriculum of the student's degree program. The DSO must authorize CPT on the student's Form I-20. The employment end date shown in the employment authorization section of the Form I-20 should be entered in Section 1 as the date employment authorization expires.

The following documents establish the student's identity and employment authorization for Form I-9 purposes and should be entered in Section 2:

List A documents include the combination of:

- Unexpired foreign passport;
- Form I-20 with the DSO endorsement for employment; and
- Form I-94/Form I-94A indicating F-1 nonimmigrant status.

Or

List B and List C documents. The F-1 student could present a List B document (such as a state driver's

license) and under List C #8, Form I-94 indicating F-1 nonimmigrant status with a properly endorsed Form I-20. The documents by themselves do not qualify.

An acceptable Form I-20 for CPT must have all employment authorization fields completed. These fields include employment status, employment type, start and end date of employment, and the employer's name and location.

For the other types of employment available to certain foreign students, such as optional practical training (OPT) employment authorization, STEM (Science, Technology, Engineering, and Mathematics), OPT extension, or off-campus employment based on severe economic hardship, employment authorization must be granted by USCIS and will be evidenced by an EAD issued by USCIS.

Border commuter students who enter the United States as an F-1 nonimmigrant may only work as part of their curricular practical training or post-completion optional practical training (OPT).

M-1 students may only accept employment if it is part of a practical training program after completion of their course of study.. USCIS will issue the EAD with authorization granted for a maximum period of six months of full-time practical training, depending on the length of the students' full-time study.

Dependents of F-1 and M-1 foreign students have an F-2 or M-2 status and are not eligible for employment authorization.

Optional Practical Training (OPT) for F-1 Students—EAD Required

OPT provides practical training experience that directly relates to an F-1 student's major area of study. An F-1 student authorized for OPT may work up to 20 hours per week while school is in session and full-time (20 or more hours per week) when school is not in session. After completing their course of study, students also may participate in OPT for work experience. USCIS may authorize an F-1 student to have up to 12 months of OPT upon completion of their degree program. Certain F-1 students may be eligible for an extension of their OPT, as described below.

The designated school official must update Form I-20 to indicate OPT recommendation or approval. OPT employment must be directly related to the student's field of study noted on Form I-20. The student must obtain an EAD from USCIS before they are authorized to work. The student may not begin employment until the date indicated on the EAD.

The EAD establishes the student's identity and employment authorization for Form I-9 purposes and the employer should record the card number and expiration date under List A in Section 2. When the student's EAD expires, the employer must reverify the student's employment authorization in Section 3.

F-1 STEM OPT Extension

An F-1 student who received a bachelor's, master's, or doctoral degree in science, technology, engineering, or mathematics (STEM) from an accredited and SEVP-certified school may apply for a 24-month extension of their optional practical training (OPT). Employment must be directly related to the student's major area of study. The employer must be enrolled in and be in good standing with E-Verify. The E-Verify company identification number is required for the student to apply to USCIS for the STEM extension using Form I-765, Application for Employment Authorization. A STEM student may change employers or work at a different hiring site for the same employer, but the new employer or new hiring site must be enrolled in and be in good standing with E-Verify before the student begins their STEM OPT with the new employer or hiring site.

The EAD issued to the F-1 STEM OPT student states "STU: STEM OPT ONLY." The following documents establish a student's identity and employment authorization for Form I-9:

- Unexpired EAD or
- For certain instances where students have timely-filed Forms I-765 pending, an expired EAD presented with Form I-20 endorsed by the student's designated school official recommending a STEM extension.

If the student presents an expired EAD and an endorsed Form I-20 recommending a STEM extension, the employer should enter the following information under

List A in Section 2:

- EAD document title;
- EAD document number;
- Date the EAD expired in the expiration date space; and
- "180-day ext." in the Additional Information field.

The expired EAD with an endorsed Form I-20 is acceptable until USCIS makes a decision on the student's application, but for not more than180 days from the date the student's initial OPT EAD expires. Employment authorization must be reverified after 180 days from the date the EAD expires to continue employment.

Acceptable Forms I-20 for STEM OPT students must have all Employment Authorization fields completed. These fields include: employment status, employment type, start and end date of employment, and the employer's name and location.

Employers have specific responsibilities when providing practical training opportunities to STEM OPT students. Some employer responsibilities include:

- Enrolling in E-Verify and remaining in good standing before employing an F-1 STEM OPT student.
- Implementing a formal training plan to augment the student's academic learning through practical experience.
- Completing the employer's portion and certifying Form I-983, Training Plan for STEM OPT Students.
- Reporting to the DSO and updating Form I-983 if there are any changes to or material deviations from the student's formal training plan.
- Reporting to the DSO when a student's employment is terminated for any reason before the end of the authorized extension period.

Additional employer requirements and information on an employer's responsibilities are available at studyinthestates.dhs.gov.

Cap-Gap

F-1 students who seek to change to H-1B status may be eligible for a cap-gap extension of status and employment authorization through September 30 of the calendar year for which the H-1B petition is being filed, but only if the H-1B status will begin on October 1. The term cap-gap refers to the period between the time a nonimmigrant's F-1 student status would ordinarily end and their H-1B status begins. If you employ an F-1 nonimmigrant student in OPT and you timely filed an H-1B petition for that student, they may be able to continue working beyond the expiration date on their OPT EAD (Employment Authorization Document, Form I-766) while waiting for the start date of an approved or pending H-1B petition.

There are two types of cap-gap extensions:

1. Extensions of F-1 status only (without OPT).

   If a student is in F-1 status when you file an H-1B petition with an October 1 start date, but the student is not currently participating in OPT, the student will receive a cap-gap extension of their F-1 status, but will not be authorized to work until USCIS approves the H-1B petition and the H-1B status begins on October 1.

2. Extensions of F-1 status and OPT.

   If a student is in F-1 status when you file an H-1B petition with an October 1 start date and is currently participating in post-completion OPT, they will receive an automatic cap-gap extension of both their F-1 student status and their authorized period of post-completion OPT. If the H-1B petition is selected and remains pending or is approved, the student will remain authorized to work as an F-1 student with OPT through September 30.

The following documents establish identity and employment authorization for Form I-9 purposes for students who have had their status and employment authorization extended through cap-gap:

- Expired EAD; and,
- Form I-20 endorsed by the student's DSO recommending the cap-gap extension.

These documents are acceptable through September 30 of the year in which the employer filed the H-1B petition unless the H-1B petition is rejected, not selected, denied, revoked or withdrawn before October 1.

To verify employment authorization in Section 2 or conduct reverification in Section 3 during the cap-gap

period, the employer should record:

- EAD document title;
- EAD document number;
- Date the EAD expired in the expiration date space; and "CAP-GAP" in the Additional Information field.

H-1B Specialty Occupations

U.S. businesses use the H-1B program to temporarily employ foreign workers in a specialty occupation that requires theoretical or technical expertise in a certain field, such as science, engineering or computer programming. As a U.S. employer, you may submit a Form I-129, Petition for a Nonimmigrant Worker, to USCIS for nonimmigrants who have certain skills, provided they meet established requirements. You must also include an approved Form ETA 9035, *Labor Condition Application*, with Form I-129 and other documentation.

A Newly Hired Employee With H-1B Classification

If USCIS approves your petition, you will receive Form I-797, Notice of Approval, from USCIS, which indicates that the foreign worker has been approved for H-1B classification. Once your employee begins working for you, you must both complete Form I-9.

H-1B Extensions

H-1B petitions can be approved for an initial period of up to three years, after which USCIS may grant extensions for up to an additional three years. Certain H-1B workers may be extended beyond the six-year ceiling.

For more information about H-1B extensions, please visit uscis.gov.

H-1B Continuing Employment With the Same Employer

For an H-1B worker to continue working for you beyond the expiration of their current H-1B status as indicated by the expiration date on their Form I-797 Notice of Action approval notice, you must request an extension of stay before their H-1B petition expires. Upon submitting a timely filed Form I-129 petition seeking an extension of the employee's status, the employee is authorized to continue to work while the petition is being processed for a period not to exceed 240 days, or until USCIS denies your petition, whichever comes first. When your employee's work authorization expires, you should write "240-Day Ext." and enter the date you submitted Form I-129 to USCIS in the Additional Information field in Section 2. Also your employee may update Section 1 by crossing out the expiration date of their employment authorization noted in the attestation. Write in the new date that the automatic extension of employment authorization ends. Initial and date this update in the margin of Section 1. You must reverify the employee's employment authorization in Section 3 once you receive a decision on the H-1B petition or by the end of the 240-day period, whichever comes first.

See *Completing Form I-9 for Nonimmigrant Categories when Requesting Extensions of Stay* below.

H-1B employees changing employers (porting)

An H-1B employee who is changing H-1B employers may begin working for the new employer as soon as the employer files a Form I-129 petition on behalf of the employee. The new petition must not be frivolous and must have been filed prior to the expiration of the individual's period of authorized stay. The new employer must complete a new Form I-9 for this newly hired employee. An H-1B employee's Form I-94/Form I-94A issued for employment with the previous employer, along with their foreign passport, would qualify as a List A document. The new employer should write "AC-21" and enter the date Form I-129 was submitted to USCIS in the Additional Information field in Section 2.

See *Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay* below.

For more information about employing H-1B workers, please visit uscis.gov.

Please go to uscis.gov/files/form/i-129instr.pdf for further instructions on filing extensions of stay

H-2A Temporary Agricultural Worker Program

The H-2A program allows U.S. employers to bring foreign workers to the United States to fill temporary or seasonal agricultural jobs usually lasting no longer than one year, for which U.S. workers are not available. Before filing a petition with USCIS, you must first obtain a valid temporary labor certification for H-2A workers from the U.S. Department of Labor (DOL). Once certified, you can include multiple workers when filing a Form I-129, Petition for a Nonimmigrant Worker, to request

H-2A classification from USCIS. If USCIS approves your petition, you can hire the foreign workers for which you petitioned to fill the temporary job.

A Newly Hired Employee in H-2A Classification

Complete a new Form I-9 for this employee as you would for any employee. An H-2A worker's unexpired Form I-94/Form I-94A Arrival Departure Record indicating their H-2A status, along with their foreign passport, would qualify as a List A document. Enter these documents in Section 2 under List A, along with the expiration date of your employee's H-2A status found on their Form I-94/ Form I-94A.

H-2A Continuing Employment With the Same Employer

You may extend your worker's H-2A status in increments of no longer than one year by timely filing with USCIS a new Form I-129 petition on behalf of the worker. In most cases, a new temporary labor certification from DOL is required before you can file Form I-129. To avoid disruption of employment, you should file a petition to extend the employee's employment authorization status well before it expires. When your H-2A employee's work authorization expires, you must update their Form I-9 by writing "240-Day Ext." and entering the date you submitted Form I-129 to USCIS in the Additional Information box in Section 2. USCIS may extend a single H-2A petition for up to two weeks without an additional approved labor certification under certain circumstances. In such a case, write "two-week extension" and enter the date you submitted Form I-129 to USCIS in the Additional Information box in Section 2.

Upon submitting a new Form I-129 petition to USCIS, the H-2A worker is authorized to continue to work while the petition is being processed for a period not to exceed 240 days, or until USCIS denies your petition, whichever comes first. You must reverify the employee's employment authorization in Section 3 once you receive a decision on the H-2A petition or by the end of the 240-day period, whichever comes first.

See *Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay* below.

H-2A Extension With a New Employer

In most cases, an H-2A worker may not begin working for a new employer until USCIS approves the petition requesting a change of employer. However, if you have enrolled in E-Verify, you may employ an H-2A worker as soon as you submit a new Form I-129 petition on their behalf. The H-2A worker is authorized to work while USCIS processes the petition for a period not to exceed 120 days, or until USCIS denies your petition, whichever comes first. You and your newly hired employee must complete Form I-9. The H-2A employee's unexpired Form I-94/Form I-94A indicating their H-2A status, along with their foreign passport, would qualify as a List A document. You should write "120-Day Ext." and enter the date you submitted Form I-129 to USCIS in the Additional Information box in Section 2.

If USCIS denies the new petition before the 120-day period expires, USCIS will automatically terminate the H-2A worker's employment authorization within 15 calendar days of its denial decision. USCIS may also terminate employment authorization if you fail to remain an E-Verify employer in good standing. You must reverify the employee's employment authorization in Section 3 either by the end of the 120-day period or once you receive a decision on the H-2A petition, whichever comes first. If your petition is denied, count 15 days from the date of the denial for the date the employee's employment authorization expires.

See *Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay* below.

For more information about employing H-2A workers, please visit uscis.gov.

Extensions of Stay for Other Nonimmigrant Categories

Other nonimmigrants also may receive extensions of stay if their employers file Form I-129, Petition for a Nonimmigrant Worker (or Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker for CW-nonimmigrants) with USCIS on their behalf, before their status expires. These employees are authorized to continue working while their petitions are being processed for a period not to exceed 240 days, or until USCIS denies the petition, whichever comes first. On these employees' Form I-9, write "240-day Ext." and the date Form I-129 was submitted to USCIS in the Additional Information box in Section 2. Also your employee may update Section 1 by crossing out the expiration date of their employment authorization noted in the attestation. Write in the new date that the automatic extension of

employment authorization ends. Initial and date this update in the margin of Section 1.

Other categories include: CW-1 H-1B, H-1B1, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, R-1, TN, A3, E-1, E-2, E-3, G-5, and I. Note that individuals in the E-1 and E-2 categories are employers.

Go to uscis.gov/files/form/i-129instr.pdf for further instructions on filing extensions of stay.

See *Completing Form I-9 for Nonimmigrant Categories when Requesting Extensions of Stay* below.

For more information about employing other types of nonimmigrant workers, please visit uscis.gov.

Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay

You must submit a timely filed Form I-129 (or I-129CW) petition to USCIS to request an extension of stay on behalf of an employee in one of the above categories. While the petition is pending, your existing employee is authorized to continue to work for you for 120 days, 240 days, or longer, depending on the category petitioned for, or until USCIS denies your petition, whichever comes first.

Keep the following documents with the employee's existing Form I-9 to show that you filed for an extension of stay on their behalf:

- A copy of the new Form I-129 or Form I-129CW;
- Proof of payment for filing a new Form I-129 or Form I-129CW
- Evidence that you mailed the new Form I-129 or Form I-129CW to USCIS.

After submitting Form I-129 or Form I-129CW to USCIS, you will receive a notice from USCIS acknowledging that your petition is pending; you should keep it with the employee's Form I-9. After you receive the I-797C, Notice of Action, which bears the amount of the filing fee submitted and acknowledges USCIS' receipt of the new Form I-129 petition, it is not necessary to maintain a copy of the Form I-129 application, proof of payment, and mailing receipt for Form I-9 purposes. You should retain the I-797C, Notice of Action to show that you filed for an extension of stay on the employee's behalf.

If USCIS approves the application/petition for an extension of stay, you will receive a Form I-797A, Notice of Action which includes an expiration date and an attached Form I-94A, Arrival/Departure Record. Enter the document title, number and expiration date listed on the notice in Section 3 of Form I-9. You must give your employee the Form I-94A, which is evidence of their employment-authorized nonimmigrant status.

Automatic Extensions of EADs in Certain Circumstances

DHS regulations provide for up to 180-day automatic extension of employment authorization of certain Form I-766, Employment Authorization Documents (EADs) for some individuals who have timely filed a renewal of their EADs. For qualifying individuals except TPS beneficiaries, timely filed means prior to the expiration of their most recent EAD. For TPS beneficiaries, timely filed means filing as instructed by the Federal Register notice announcing the TPS registration procedures. The TPS automatic extension will terminate early if USCIS denies the renewal application before the 180th day is reached. DHS has determined that 15 employment eligible categories can receive automatic renewal of their EADs. The following are the eligible category codes which can be found on the face of the expired EAD: A03, A05, A07, A08, A10, A12 or C19, C08, C09, C10, C16, C20, C22, C24, C31. For an updated list, visit uscis.gov. See Figure 7 for more information.

Documentation for Form I-9

The combination of an expired EAD noting a qualifying eligibility code, in combination with a Form I-797C, Notice of Action acknowledging receipt of an EAD renewal application and noting an eligibility category code that matches the expired EAD constitutes an unexpired EAD (Form I-766) under List A of Form I-9, so long as Form I-797C indicates that the renewal application was filed before the previous EAD expired. However, for TPS beneficiaries, the codes will be A-12 or C-19, but do not have to match, and the employer can consider the renewal application as timely filed if it was filed by the dates stated in the current TPS Federal Register notice applicable for the individual's country.

Therefore, when the expiration date on the automatically extended EAD is reached, the employer and the employee should update the employment authorization/EAD

expiration dates stated on the previously completed Form I-9 (Sections 1 and 2 or 3) to reflect the extended expiration date while the renewal application is pending. Cross out the dates and write the last date of the automatic extension period and initial the correction. Note that the employee must make and initial the correction if one is necessary in Section 1, while the employer must make and initial the correction in Section 2 or 3. If the automatically extended EAD is being presented by the individual to a new employer, then the expiration dates to be entered on Form I-9 should be the last date of the automatic extension. If the employer is retaining copies of documents with Form I-9, then both the expired EAD and the Form I-797 should be retained. At the end of the expiration date, you must reverify by updating Section 3. See Figure 7 for more information.

Failure of an Employee to Present Acceptable Documents

You may terminate an employee who fails to produce an acceptable document or documents, or an acceptable receipt for a document within three business days of the date employment begins. Employers that fail to properly complete Form I-9 risk violating section 274A of the INA and are subject to civil money penalties.

Completing Section 3

Recording Changes of Name and Other Identity Information for Current Employees

In the case of a rehire or reverification, if an employee has had a legal change of name, such as following marriage, record the employee's legal change of name in the space provided in Section 3. If you learn of a legal change of name at a time other than during a rehire or reverification, USCIS recommends that you update Form I-9 with the new name in the space provided in Section 3 of Form I-9 so that you maintain correct information on the form. In either situation, you should take steps to be reasonably assured of the employee's identity and the veracity of the employee's claim of a legal name change. These steps may include asking the employee for the reason for the legal change of name and to provide documentation of a legal change of name to keep with Form I-9, so that your actions are well-documented in the event of a Form I-9 inspection.

You may encounter situations other than a legal change of name where an employee informs you (or you have reason to believe) that their identity is different from that previously used to complete the Form I-9. For example, an employee may have been working under a false identity, has subsequently obtained a work authorized immigration status in their true identity, and wishes to regularize their employment records. In that case you should complete a new Form I-9. Write the original hire date in Section 2 and attach the new Form I-9 to the previously completed Form I-9 and include a written explanation.

In cases where an employee has worked for you using a false identity but is currently authorized to work, the I-9 rules do not require termination of employment.

In addition, there may be other laws, contractual obligations, or company policies that you should consider before taking action. For example, the INA prohibits discrimination based on citizenship or immigration status (see Part Four of this handbook for more information).

For E-Verify employers:

- USCIS recommends that you encourage your employees to record their legal name change with the Social Security Administration to avoid mismatches in E-Verify.
- If you complete a new Form I-9 in a new identity situation as described above, e.g., where a name change to Form I-9 information is not a legal name change, you should confirm the new Form I-9 information through E-Verify. If you do complete a new Form I-9, you should not create a new E-Verify case.
- Federal contractors who are subject to the Federal Acquisition Regulation (FAR) E-Verify clause and who choose to verify existing employees by updating an already-completed Form I-9 are subject to special rules regarding when they must complete a new Form I-9. Employers who choose to update Form I-9 for existing employees must complete a new Form I-9 when an employee changes their name. For more information, see the E-Verify Supplemental Guide for Federal Contractors, at uscis.gov/e-verify.

Note: If you need to reverify the employment authorization of an existing employee who completed an earlier version of Form I-9, the employee must provide any document(s) they choose from the Lists of Acceptable Documents for the most current versions of the Form I-9. Enter the new document(s) in Section 3 of the current version of Form I-9 and keep it with the previously completed Form I-9. Visit I-9 Central at uscis.gov/i-9-central for the most current version of the Form I-9.

Reverifying or Updating Employment Authorization for Rehired Employees

If you rehire an employee within three years from the date their Form I-9 was previously completed, you may either rely on the employee's previously executed Form I-9 or complete a new one. If you choose to rely on a previously completed Form I-9, follow these guidelines:

- If the employee remains employment authorized as indicated on the previous Form I-9, the employee does not need to provide any additional documentation. In Section 3, provide the employee's rehire date, any name changes, and sign and date the form.
- If the previous Form I-9 indicates that the employee's employment authorization has expired, you must reverify employment authorization in Section 3 in addition to providing the rehire date. If the previously executed Form I-9 is not the current version of the form, you must complete Section 3 on the current version of the form.
- If you already used Section 3 of the employee's previously completed Form I-9, but are rehiring the employee within three years of the original execution of Form I-9, you may complete Section 3 on a new Form I-9 and attach it to the previously completed form.

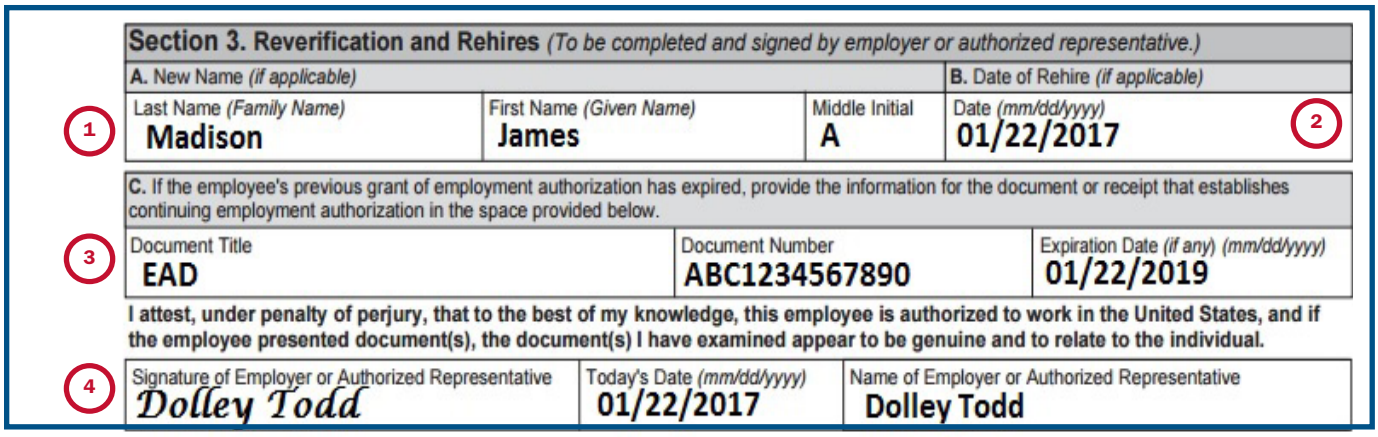
Employees rehired after three years of the original completion of the Form I-9 must complete a new Form I-9.

To reverify:

1. Enter the date of rehire in Block B of Section 3.
2. Enter the document title, number and expiration date (if any) of the document(s) the employee presents in Block C of Section 3.
3. Sign and date Section 3.
4. If you choose to use a new Form I-9, enter the employee's name at the top of page 2 of a new Form I-9 and complete Section 3 of the new Form I-9, retaining the new form with the previously completed one.
5. You must reverify the employee on a new Form I-9 if the version of the form you used for the previous verification is no longer valid. Please check uscis.gov/i-9 for the current Form I-9.

Updating an employee's name is optional. To update:

1. Enter the date of rehire in Block B and the employee's new name, if applicable, in Block A of Section 3.
2. Sign and date Section 3.
3. If you are updating on a new Form I-9, enter the employee's name at the top of page 2 and use Section 3 of the new Form I-9 to update. Keep the new Form I-9 with the previously completed one.



Section 3. Reverification and Rehires *(To be completed and signed by employer or authorized representative.)*

A. New Name *(if applicable)*			B. Date of Rehire *(if applicable)*
Last Name *(Family Name)*	First Name *(Given Name)*	Middle Initial	Date *(mm/dd/yyyy)*
Madison	James	A	01/22/2017

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date *(if any)* *(mm/dd/yyyy)*
EAD	ABC1234567890	01/22/2019

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Name of Employer or Authorized Representative
Dolley Todd	01/22/2017	Dolley Todd

1 2 3 4

Figure 8: Completing Section 3: Reverification and Rehires

1. Enter the employee's new name, if applicable, in block A.
2. Enter the employee's date of rehire, if applicable, in block B.
3. Enter the document title, number, and expiration date (if any) of document(s) presented in block C.
4. Sign and date Section 3.

Leaves of Absence, Layoffs, Corporate Mergers and Other Interruptions of Employment

You must complete a new Form I-9 when a hire takes place, unless you are rehiring an employee within three years of the date of their previous Form I-9. However, in certain situations, a hire is not considered to have taken place despite an interruption in employment. In case of an interruption in employment, you should determine whether the employee is continuing in their employment and has a reasonable expectation of employment at all times.

These situations constitute continuing employment:

- Approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer.
- Promotions, demotions or pay raises.
- Temporary layoff for lack of work.
- Strikes or labor disputes.
- Reinstatement after disciplinary suspension for wrongful termination found unjustified by any court, arbitrator or administrative body, or otherwise resolved through reinstatement or settlement.
- Transfer from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the employee's Form I-9 to the receiving unit.
- Seasonal employment.
- Continuing employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains, from the previous employer, records and Form I-9 where applicable. A related, successor or reorganized employer includes:
  - The same employer at another location;
  - An employer who continues to employ any employee of another employer's workforce, where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For these purposes, any agent designated to complete and maintain Form I-9 must enter the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association.

Employers who have acquired or merged with another company have two options:

- **Option A:** Treat all acquired employees as new hires and complete a new Form I-9 for every individual. Enter the effective date of acquisition or merger as the employee's first day of employment in Section 2 of the new Form I-9.

  If you choose Option A, avoid engaging in discrimination by completing a new Form I-9 for all of your acquired employees, without regard to actual or perceived citizenship status or national origin.

- **Option B:** Treat all acquired individuals as employees who are continuing in their uninterrupted employment status and retain the previous owner's Form I-9 for each acquired employee. Note that you are liable for any errors or omissions on the previously completed Form I-9.

  Employees hired on or before Nov. 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times are exempt from completing Form I-9 and cannot be verified in E-Verify. For help with making this determination, see 8 CFR 274a.2(b)(1)(viii) and 8 CFR 274a.7. If you determine that an employee hired on or before Nov. 6, 1986 is not continuing in their employment or does not have a reasonable expectation of employment at all times, the employee may be required to complete a Form I-9.

Federal contractors with the FAR E-Verify clause are subject to special rules regarding the verification of existing employees. For more information, see the *E-Verify Supplemental Guide for Federal Contractors* at uscis.gov/e-verify.

To determine whether an employee continuing in his or employment had a reasonable expectation of employment at all times, consider several factors, including, but not limited to:

- The individual was employed on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers similarly employed by the employer.
- The individual complied with the employer's established and published policy regarding their absence.
- The employer's past history of recalling absent employees for employment indicates the likelihood

that the individual in question will resume employment with the employer within a reasonable time in the future.

- The former position held by the individual has not been taken permanently by another worker.
- The individual has not sought or obtained benefits during their absence from employment with the employer that are inconsistent with an expectation of resuming employment within a reasonable time in the future.
- The financial condition of the employer indicates the ability of the employer to permit the individual in question to resume employment within a reasonable time in the future.
- The oral and/or written communication between employer, the employer's supervisory employees and the individual indicates that it is reasonably likely that the individual will resume employment within a reasonable time in the future.

Continue to maintain and store the previously completed Form I-9 as if there was no interruption in employment. Inspect the previously completed Form I-9 and, if necessary, update the form or conduct reverification.

If you determine that your employee was terminated and is now rehired, and the rehire occurs within three years from the date the original Form I-9 was completed, you have an option to complete a new form or rely on the original one.

Special Rules for Members of Employer Associations

Special rules apply for employers who are members of an association of two or more employers that have entered into a collective bargaining agreement with one or more employee organizations. An employer who is a member of the employer association will be deemed to have complied with the employment eligibility verification requirements for its employee if:

- The employee is a member of a collective-bargaining unit and is employed under a collective bargaining agreement between one or more employee organizations and an association of two or more employers by an employer that is a member of such association, and
- Another employer that is a member of the same employer association (or an agent of the employer association on behalf of the employer), has previously complied with the employment eligibility verification requirements for this individual within three years (or, if less, the period of time that the individual is authorized to be employed in the United States).

Penalties for employing aliens knowing they are unauthorized to work in the United States still apply.

Special Rules for State Employment Agencies

A state employment agency, sometimes known as a state workforce agency, may choose to verify the employment authorization and identity of an individual it refers for employment on Form I-9. In such a case, the agency must issue a certification to you so that you receive it within 21 business days of the date the referred individual is hired. If an agency refers a potential employee to you with a job order, other appropriate referral form or telephonically authorized referral, and the agency sends you a certification within 21 business days of the referral, you do not have to check documents or complete a Form I-9 if you hire that person. Before receiving the certification, you should retain the job order, referral form or annotation reflecting the telephonically authorized referral as you would Form I-9. When you receive the certification, you must review it to ensure that it relates to the person hired and observe the person sign the certification. You must also retain the certification as you would a Form I-9 and make it available for inspection, if requested. Check with your state employment agency to see if it provides this service and become familiar with its certification document.

Correcting Form I-9

If the employer, recruiter, or referrer for a fee ("employer") discovers an error in Section 1 of an employee's Form I-9, the employer should bring itself into compliance immediately and ask the employee to correct the error. Employers and/or their authorized representative may only correct errors made in Section 2 or Section 3 of Form I-9.

To correct the form is to:

- Draw a line through the incorrect information;
- Enter the correct information;
- Initial and date the correction.

Correcting Section 1

If the employer and/or their authorized representative discover information has been omitted in Section 1, the

employer should ask the employee to enter the missing information. If the employee is remotely located, the employer should develop the appropriate business process to allow the employee to enter the missing information in Section 1.

When correcting Section 1, the employee should:

- Enter the omitted information;
- Initial and date near the newly entered information.

The employer should attach a written explanation of what happened.

If the employee's employment has terminated, the employer should attach a written explanation to the Form I-9 explaining the error and place in the employee's file.

Corrections by a Preparer/Translator Assisting with Section 1

Upon discovering an error, the preparer and/or translator should:

- Make the correction or help the employee make the correction by drawing a line through the incorrect information and entering the correct information;
- Have the employee initial and date the correction;
- Initial and date the correction if the preparer/translator makes the correction.

If the preparer and/or translator who helps with the correction completed the Preparer and/or Translator Certification block when the employee initially completed Form I-9, they should not complete the certification block again. If the preparer and/or translator did not previously complete the preparer and/or translator certification block, they should

- Complete the certification block; or
- If the certification block was previously completed by a different preparer and/or translator, complete a new certification block.

Correcting Section 2 and Section 3

If the employer and/or their authorized representative discover information has been omitted in Section 2 or 3, the employer should enter the omitted information to the extent possible and initial and date in the same area. Also, it would be helpful to attach a written explanation of what happened to the Form I-9. If an employer failed to enter the date Section 2 and/or 3 was completed, the form should not be back dated. The employer should enter the current date and initial by the date field.

To correct multiple recording errors on the form, you may redo the section on a new Form I-9 and attach it to the old form. A new Form I-9 can be completed if major errors (such as entire sections were left blank or Section 2 was completed based on unacceptable documents) need to be corrected. A note should be attached to the employee's Form I-9 regarding the reason changes were made to an existing Form I-9 or a new Form I-9 was completed.

Do NOT conceal any changes made on the form. Doing so may lead to increased liability under federal immigration law.

If you have made changes on a Form I-9 using correction fluid, we recommend you attach a signed and dated note to the corrected Form I-9 explaining what happened. You can find guidance on making corrections to Form I-9 at uscis.gov/i-9-central.

Part Three
Photocopying and Retaining Form I-9

Employers must retain a Form I-9 for each person hired. This requirement applies from the date of hire, even if the employment ends shortly after hired, the hired employee never completes work for pay, or never finishes the Form I-9. Once the individual's employment has terminated, the employer must determine how long after termination the Form I-9 must be retained, either three years after the date of hire, or one year after the date employment is terminated, whichever is later. Form I-9 can be retained on paper, microform or electronically.

To store Form I-9 electronically, you may use any electronic recordkeeping, attestation, or retention system that complies with DHS standards, including most commercially available off-the-shelf computer programs and commercial automated data processing systems. However, the system must not be subject to any agreement that would restrict access to and use of it by an agency of the United States. (See *Electronic Retention of Form I-9* on the next page for additional requirements.)

NOTE: Insufficient or incomplete documentation is a violation of section 274A (a)(1)(B) of the INA (8 CFR Part 274a.2(f)(2)).

1. Enter date employee began work for pay: _____

Add three years to Line 1 A. _____

2. Termination date: _____

Add one year to Line 2 B. _____

Which date is later: A or B? Enter the later date here. C. _____

Store Form I-9 until this date.

Figure 9: Form I-9 Retention Calculator

Paper Retention of Form I-9

Form I-9 can be signed and stored in paper format with original handwritten signatures. Simply photocopy or print a blank Form I-9. Ensure the employee receives the instructions for completing the form. When copying or printing the paper Form I-9, you may photocopy the two-sided form by making either double-sided or single-sided copies.

Only the pages of the Form I-9 on which you or the employee enter data must be retained. You may retain completed paper forms on-site or at an off-site storage facility for the required retention period, as long as you are able to present the Form I-9 within three days of an inspection request from DHS, the Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER), or U.S. Department of Labor (DOL) officers.

Microform Retention of Form I-9

You may retain copies of an original signed Form I-9 on microfilm or microfiche. Only the pages of the Form I-9 on which you or the employees enter data must be retained. To do so, you should:

1. Select film stock that will preserve the image and allow its access and use for the entire retention period, which could be upward of 20 years, depending on the employee and your business.
2. Use well-maintained equipment to create and view microfilms and microfiche that provides clear viewing, and can reproduce legible paper copies. DHS officers must have access to clear, readable documents should they need to inspect

your forms.

3. Place indexes either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last microfiche or microfilm jacket of a series.

Electronic Retention of Form I-9

USCIS provides a Portable Document Format (.pdf) fillable-printable Form I-9 from its website, uscis.gov. In addition, you may generate and retain Form I-9 electronically as long as the employee receives instructions for completing the form and:

1. The resulting form is legible;
2. No change is made to the name, content, or sequence of the data elements and instructions;
3. No additional data elements or language are inserted; and
4. The standards specified in the regulations are met. (8 CFR Part 274a.2(e), (f), (g), (h) and (i) as applicable.)

You may use paper, electronic systems, or a combination of paper and electronic systems. You may complete or retain Form I-9 in an electronic generation or storage system that includes:

1. Reasonable controls to ensure the integrity, accuracy and reliability of the electronic generation or storage system;

2. Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored Form I-9, including the electronic signature, if used;

3. An inspection and quality assurance program that regularly evaluates the electronic generation or storage system, and includes periodic checks of electronically stored Form I-9, including the electronic signature, if used;

4. An indexing system that allows the identification and retrieval for viewing or reproducing of relevant documents and records maintained in an electronic storage system; and

5. The ability to reproduce legible and readable paper copies.

If you choose to complete or retain Form I-9 electronically, you may use one or more electronic generation or storage systems, as long as any Form I-9 retained in the system remains fully accessible and meets the regulations. You may change electronic storage systems as long as the systems meet the performance requirement of the regulations. For each electronic generation or storage system used, you must maintain and make available upon request complete descriptions of:

1. The electronic generation and storage system, including all procedures relating to its use.

2. The indexing system that allows the identification and retrieval of relevant documents and records maintained in an electronic storage system. You are not required to maintain separate indexing databases for each system if comparable results can be achieved without separate indexing databases.

Only the pages of the Form I-9 on which you or the employee enter data must be retained.

Documentation of Electronic Storage Systems

If you choose to complete or retain Form I-9 electronically, you must maintain and make available upon request documentation of the business processes that:

1. Created the retained Form I-9,

2. Modify and maintain the retained Form I-9, and

3. Establish the authenticity and integrity of the forms, such as audit trails.

Electronic Signature of Form I-9

You may choose to complete a paper Form I-9 and scan and upload the original signed form to retain it electronically. Once you have securely stored Form I-9 in electronic format, you may destroy the original paper

Form I-9.

If you complete Form I-9 electronically using an electronic signature, your system for capturing electronic signatures must allow signatories to acknowledge that they read the attestation and attach the electronic signature to an electronically completed Form I-9. The system must also:

1. Affix the electronic signature at the time of the transaction;
2. Create and preserve a record verifying the identity of the person producing the signature; and
3. Upon request of the employee, provide a printed confirmation of the transaction to the person providing the signature.

Employers who complete Form I-9 electronically must attest to the required information in Section 2 of Form I-9. The system used to capture the electronic signature should include a method to acknowledge that the attestation to be signed has been read by the signatory.

NOTE: If you choose to use an electronic signature to complete Form I-9, but do not comply with these standards, DHS will determine that you have not properly completed Form I-9, in violation of section 274A(a)(1)B) of the INA (8 CFR Part 274a.2(b)(2)).

Security

If you retain Form I-9 electronically, you must implement an effective records security program that:

1. Ensures that only authorized personnel have access to electronic records;
2. Provides for backup and recovery of records to protect against information loss;
3. Ensures that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records; and
4. Ensures that whenever an individual creates, completes, updates, modifies, alters, or corrects an electronic record, the system creates a secure and permanent record that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

NOTE: If your action or inaction results in the alteration, loss or erasure of electronic records, and you knew, or reasonably should have known, that the action or inaction could have that effect, then you are in violation of section 274A(b)(3) of the INA (8 CFR Part 274a.2(g)(2)).

Retaining Copies of Form I-9 Documentation

You may choose to copy or scan documents an employee presents when completing Form I-9, which you may retain with their Form I-9. Making photocopies of an employee's document(s) does not take the place of completing Form I-9. Even if you retain copies of documentation, you are still required to fully complete and retain Form I-9. If you choose to retain copies of an employee's documents, you must do so for all employees, regardless of actual or perceived national origin or citizenship status, or you may be in violation of anti-discrimination laws.

Copies or electronic images of presented documents must be retrievable consistent with DHS's standards on electronic retention, documentation, security, and electronic signatures for employers and employees, as specified in 8 CFR Part 274a.2(b)(3).

If you make copies or electronic images of the employee's documents, they must be either retained with the corresponding Form I-9 or stored with the employee's records in accordance with the standards for electronic records retention as specified in 8 CFR 274a.2(b)(3). However, if copies or electronic images of the employee's documents are made, they must be made available at the time of a Form I-9 inspection by DHS or another federal government agency.

Inspection

The INA specifically authorizes DHS, IER and DOL to inspect Form I-9, including any copies of employees' documents retained with the corresponding Form I-9. DHS, IER, and DOL provide employers a minimum of three days' notice before inspecting a retained Form I-9. The employer must make Form I-9 available upon request at the location where DHS, IER or DOL requests to see them. Form I-9 and supporting documentation may also be sent to the agency in electronic format or hard copy if requested.

If you store Form I-9 records at an off-site location, inform the inspecting officer of the location where you store them and make arrangements for the inspection. The inspecting officers may perform an inspection at an office of an authorized agency of the United States if previous arrangements are made. Recruiters or referrers for a fee who designate an employer to complete employment verification procedures may present photocopies or

printed electronic images of Form I-9 at an inspection. If you refuse or delay an inspection, you will be in violation of DHS retention requirements.

At the time of an inspection, you must:

1. Retrieve and reproduce only the Form I-9 electronically retained in the electronic storage system and supporting documentation specifically requested by the inspecting officer. Supporting documentation includes photocopies of Form I-9 documents stored with Form I-9 and associated audit trails that show the actions performed within or on the system during a given period of time.

2. Provide the inspecting officer with appropriate hardware and software, personnel, and documentation necessary to locate, retrieve, read, and reproduce any electronically stored Form I-9, any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records.

3. Provide the inspecting officer, if requested, any reasonably available or obtainable electronic summary file(s), such as spreadsheets, containing all of the information fields on any electronically stored Form I-9.

NOTE: E-Verify employers should provide E-Verify Case Detail Pages in addition to Form I-9 when they receive a request for inspection.

Part Four

Unlawful Discrimination and Penalties for Prohibited Practices

Unlawful Discrimination

Discriminating in the Form I-9 and E-Verify verification processes can violate federal law. This section describes prohibited discrimination and how to prevent prohibited discrimination in verifying an individual's employment authorization.

Overview of Discrimination Laws

The anti-discrimination provision of the Immigration and Nationality Act (INA), as amended, prohibits four types of unlawful conduct:

1. Unfair documentary practices during the Form I-9 and E-Verify process);
2. Citizenship or immigration status discrimination;
3. National origin discrimination;
4. Retaliation or intimidation

The Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER), enforces this law.

Title VII of the Civil Rights Act of 1964 (Title VII) and other federal laws prohibit employment discrimination based on race, color, national origin, religion, sex, age, disability and genetic information. The U.S. Equal Employment Opportunity Commission (EEOC) enforces these laws.

Types of Employment Discrimination Prohibited Under the INA

Unfair Documentary Practices

The INA prohibits discriminatory documentary practices related to verifying the employment authorization and identity of employees during the employment eligibility verification process (generally, the Form I-9 and E-Verify processes). Unfair documentary practices generally occur when employers treat individuals differently on the basis of national origin or citizenship or immigration status in the Form I-9 or E-Verify processes, or any other process an employer may use that verifies employment eligibility. Unfair documentary practices can be broadly categorized into four types of conduct:

1. Requesting that an individual produce more or different documents than are required by Form I-9 to establish the individual's identity and employment authorization;
2. Requesting that individuals present a particular document, such as a "Green Card," to establish identity and/or employment authorization;
3. Rejecting documents that reasonably appear to be genuine and to relate to the individuals presenting them; and
4. Treating groups of individuals differently when verifying employment eligibility, such as requiring certain groups of individuals who look or sound "foreign" to present particular documents the employer does not require other individuals to present.

These practices may constitute unfair documentary practices if they are committed based on citizenship or immigration status, or national origin, and should be avoided when verifying employment authorization. All employment-authorized individuals are protected against this type of discrimination. The INA's provision against unfair documentary practices covers employers with four or more employees.

Citizenship Status Discrimination

Citizenship or immigration status discrimination occurs when an employer treats individuals differently based on their real or perceived citizenship or immigration status with respect to hiring, firing, recruitment, or referral for a fee. U.S. citizens, recent permanent residents, asylees, and refugees are protected from this type of discrimination. The INA's provision against citizenship or immigration status discrimination covers employers with four or more employees.

National Origin Discrimination

National origin discrimination under the INA occurs when an employer treats individuals differently based on their national origin with respect to hiring, firing, recruitment, or referral for a fee. An individual's national origin relates to the individual's place of birth, country of origin, ethnicity, ancestry, native language, accent, or the perception that they look or sound "foreign." The INA's national origin discrimination prohibition generally covers employers with more than three and less than 15 employees and covers all employment-authorized individuals. EEOC has jurisdiction over national origin claims involving employers with 15 or more employees, regardless of the work authorization status of the discrimination victims.

Retaliation

An employer or other covered entity cannot intimidate, threaten, coerce, or otherwise retaliate against an individual because the individual has filed an immigration-related employment discrimination charge or complaint; has testified or participated in any IER investigation, proceeding, or hearing; or otherwise asserts his, her, or other's rights under the INA's anti-discrimination provision.

Types of Discrimination Prohibited by Title VII and Other Federal Anti-discrimination Laws

As noted above, Title VII and other federal laws also prohibit employment discrimination on the basis of national origin, as well as race, color, religion, sex, age, disability and genetic information. These laws also protect workers from retaliation. EEOC has jurisdiction over employers that employ 15 or more employees for 20 or more weeks in the preceding or current calendar year, and prohibits discrimination in any aspect of employment, including: hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and leave; or other terms and conditions of employment.

IER and EEOC share jurisdiction over national origin discrimination charges. EEOC investigates national origin discrimination claims against employers with 15 or more employees, and IER investigates national origin discrimination claims against smaller employers with more than three and less than 15 employees.

Avoiding Discrimination in Recruiting, Hiring, and the Form I-9 Process

In practice, you should treat individuals equally when recruiting and hiring, and when verifying employment authorization and identity during the Form I-9 process.

You should not:

1. Have different rules or requirements for individuals because of their national origin, citizenship, or immigration status. For example, you cannot demand that non-U.S. citizens present DHS issued documents. Each individual must be allowed to choose the documents that they will present from the lists of acceptable Form I-9 documents. For example, both citizens and employment-authorized individuals may present a driver's license (List B) and an unrestricted Social Security card (List C) to establish identity and employment authorization. However, you must reject documents that do not reasonably appear to be genuine or to relate to the individual presenting them.
2. Request to see employment eligibility verification documents before hire and completion of Form I-9 because an individual looks or sounds "foreign," or because the individual states that they are not a U.S. citizen.
3. Refuse to accept a document, or refuse to hire an individual, because a document has a future expiration date.
4. Request specific documents from individuals to run an E-Verify case or based on an E-Verify tentative nonconfirmation.
5. Request that an individual run a Self Check case and/or present documents showing the individual cleared Self Check.
6. Request that an employee who presented an unexpired Permanent Resident Card present a new document when the Permanent Resident Card expires.
7. Request that, during reverification, an employee present a new unexpired Employment Authorization Document (Form I-766) if they presented one during initial verification. For

reverification, each employee must be free to choose to present any document either from List A or from List C.

8. Limit jobs to U.S. citizens unless U.S. citizenship is required for the specific position by law; regulation; executive order; or federal, state, or local government contract.

Employers Prohibited From Retaliating Against Employees

You cannot take retaliatory action against a person who has filed a charge of discrimination with IER or EEOC, was a witness or otherwise participated in the investigation or prosecution of a discrimination complaint, or otherwise asserts rights under the INA's anti-discrimination provision and/or Title VII. Such retaliatory action may constitute a violation of the INA's anti-discrimination provision, Title VII, and other federal anti-discrimination law. Retaliation violates federal law.

Procedures for Filing Charges of Employment Discrimination

IER

Discrimination charges may be filed by an individual, a person acting on behalf of such an individual, or a DHS officer who has reason to believe that discrimination has occurred.
Discrimination charges must be filed with IER within 180 days of the alleged discriminatory act.

Upon receipt of a complete discrimination charge, IER will notify you within 10 days that a charge has been filed against you and start its investigation. If you refuse to cooperate with IER's investigation, IER can obtain a subpoena to compel you to produce the information and documents requested or to appear for an investigative interview.

If IER has not filed a complaint with an administrative law judge within 120 days of receiving a charge of discrimination, it will notify the charging party (other than a DHS officer) of their right to file a complaint with an administrative law judge within 90 days after receiving the notice.

Additionally, IER may also file a complaint. If a complaint is filed, the administrative law judge will conduct a hearing and issue a decision. IER may also attempt to settle a charge, or the parties may enter into a settlement agreement resolving the charge.

EEOC

A charge must be filed with EEOC within 180 days from the date of the alleged violation to protect the charging party's rights. This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law.

Penalties for Prohibited Practices

Unlawful Employment

Civil Penalties

DHS or an administrative law judge may impose penalties if an investigation reveals that you knowingly hired or knowingly continued to employ an unauthorized alien, or failed to comply with the employment eligibility verification requirements with respect to employees hired after Nov. 6, 1986.

DHS will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties. If you receive an NIF, you may request a hearing before an administrative law judge. If your request for a hearing is not received within 30 days, DHS will impose the penalty and issue a Final Order, which cannot be appealed.

Hiring or Continuing to Employ Unauthorized Aliens

If DHS or an administrative law judge determines that you have knowingly hired unauthorized aliens (or are continuing to employ aliens knowing that they are or have become unauthorized to work in the United States), you may be ordered to cease and desist from such activity and pay a civil money penalty for each offense.

You will be considered to have knowingly hired an unauthorized alien if, after Nov. 6, 1986, you use a contract, subcontract or exchange, entered into, renegotiated or extended, to obtain the labor of an alien and know the alien is not authorized to work in the United States. You will be subject to the penalties above.

Failing to Comply With Form I-9 Requirements

If you fail to properly complete, retain, and/or make Form I-9 available for inspection as required by law, you may face civil money penalties for each violation. In

determining the amount of the penalty, DHS considers:

1. The size of the business of the employer being charged;
2. The good faith of the employer;
3. The seriousness of the violation;
4. Whether or not the individual was an unauthorized alien; and
5. The history of previous violations of the employer.

Enjoining Pattern or Practice Violations

If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment or referral in violation of section 274A (a)(1)(A) or (2) of the INA (found at 8 U.S.C. 1324a (a)(1)(A) or (2)), the Attorney General may bring civil action in the appropriate U.S. District Court requesting relief, including a permanent or temporary injunction, restraining order or other order against the person or entity, as the Attorney General deems necessary.

Requiring Indemnification

Employers found to have required a bond or indemnity from an employee against liability under the employer sanctions laws may be ordered to pay a civil money penalty for each violation and to make restitution, either to the person who was required to pay the indemnity, or, if that person cannot be located, to the U.S. Treasury.

Good Faith Defense

If you can show that you have, in good faith, complied with Form I-9 requirements, then you may have established a "good faith" defense with respect to a charge of knowingly hiring an unauthorized alien, unless the government can show that you had actual knowledge of the unauthorized status of the employee.

A good faith attempt to comply with the paperwork requirements of section 274A(b) of the INA may be adequate notwithstanding a technical or procedural failure to comply, unless you fail to correct a violation within 10 days after notice from DHS.

Criminal Penalties

Engaging in a Pattern or Practice of Knowingly Hiring or Continuing to Employ Unauthorized Aliens

Persons or entities who are convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens (or continuing to employ aliens knowing that they are or have become unauthorized to work in the United States) after Nov. 6, 1986, may face fines and/or six months imprisonment.

Engaging in Fraud or False Statements, or Otherwise Misusing Visas, Immigration Permits, and Identity Documents

Persons who use fraudulent identification or employment authorization documents or documents that were lawfully issued to another person, or who make a false statement or attestation to satisfy the employment eligibility verification requirements, may be fined, or imprisoned for up to five years, or both. Other federal criminal statutes may provide higher penalties in certain fraud cases.

Unlawful Discrimination

If an investigation reveals that you engaged in unfair immigration-related employment practices under the INA, IER may file a lawsuit. Settlements or lawsuits may result in one or more corrective steps, including:

1. Hiring or reinstating, with or without back pay, individuals directly injured by the discrimination;
2. Posting notices to employees about their rights and about employers' obligations; and/or
3. Educating all personnel involved in hiring about complying with anti-discrimination laws.

The court may award attorneys' fees to prevailing parties, other than the United States, if it determines that the losing parties' argument is without foundation in law and fact.

Employers that violate the anti-discrimination provision of the INA may also be ordered to pay a civil money penalty. For more information on civil penalties, contact IER.

If you are found to have committed national origin or other prohibited discrimination under Title VII or other federal law, you may be ordered to stop the prohibited practice and to take one or more corrective steps,

including:

1. Hiring, reinstating or promoting with back pay, benefits, and retroactive seniority;
2. Posting notices to employees about their rights and about the employer's obligations; and/or
3. Removing incorrect information, such as a false warning, from an employee's personnel file.

Under Title VII, compensatory damages may also be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages may be available if you acted with malice or reckless indifference.

You may also be required to pay attorneys' fees, expert witness fees, and court costs.

Civil Document Fraud

If a DHS investigation reveals that an individual has knowingly committed or participated in acts relating to document fraud, DHS may take action. DHS will issue an NIF when it intends to impose penalties. Persons who receive an NIF may request a hearing before an administrative law judge. If DHS does not receive a request for a hearing within 30 days, it will impose the penalty and issue a Final Order, which is final and cannot be appealed.

Individuals found by DHS or an administrative law judge to have violated section 274C of the INA may be ordered to cease and desist from such behavior and to pay a civil money penalty.

Additional Information

For more information relating to discrimination based upon national origin and citizenship or immigration status, and discrimination during the Form I-9 and E-Verify processes, contact IER at 1-800-255-8155 (employer hotline) or 1-800-237-2515 (TTY for the deaf or hard of hearing); or visit their website at justice.gov/ier.

For more information on Title VII and EEOC policies and procedures, call 1-800-669-4000, or 1-800-669-6820 (TTY for the deaf or hard of hearing), or visit EEOC's website at eeoc.gov.

Part Five
Instructions for Recruiters and Referrers for a Fee

Under the INA, it is unlawful for an agricultural association, agricultural employer, or farm labor contractor to hire, recruit, or refer for a fee an individual for employment in the United States without complying with employment eligibility verification requirements.This provision applies to those agricultural associations, agricultural employers, and farm labor contractors who recruit persons for a fee, and those who refer persons or provide documents or information about persons to employers in return for a fee.

Note: "Recruiter or Referrer for a Fee" is limited to agricultural associations, agricultural employers, or farm labor contractors as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Public Law 97-470 (29 U.S.C. 1802).

This limited class of recruiters and referrers for a fee must complete Form I-9 when a person they refer is hired. Form I-9 must be fully completed within three business days of the date employment begins, or, in the case of an individual hired for fewer than three business days, at the time employment begins.

Recruiters and referrers for a fee may designate agents, such as national associations or employers, to complete the verification procedures on their behalf. If the employer is designated as the agent, the employer should provide the recruiter or referrer with a photocopy of Form I-9. However, recruiters and referrers for a fee are still responsible for compliance with the law and may be found liable for violations of the law.

Recruiters and referrers for a fee must retain Form I-9 for three years after the date the referred individual was hired by the employer. They must also make Form I-9 available for inspection by a DHS, DOL, or IER officer.

NOTE: This does not preclude DHS or DOL from obtaining warrants based on probable cause for entry onto the premises of suspected violators without advance notice.

The penalties for failing to comply with Form I-9 requirements and for requiring indemnification apply to this limited class of recruiters and referrers for a fee.

NOTE: All recruiters and referrers for a fee are still liable for knowingly recruiting or referring for a fee aliens not authorized to work in the United States.

Part Six
E-Verify: The Web-Based Verification Companion to Form I-9

Since verification of the employment authorization and identity of new hires became law in 1986, Form I-9 has been the foundation of the verification process. To improve the accuracy and integrity of this process, USCIS operates an electronic employment confirmation system called E-Verify.

E-Verify is a system that provides access to federal databases to help employers confirm the employment authorization of new hires. E-Verify is free and can be used by employers in all 50 states, as well as the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Employers who participate in E-Verify must complete Form I-9 for each newly hired employee in the United States. E-Verify employers may accept any document or combination of documents on Form I-9, but if the employee chooses to present a List B and C combination, the List B (identity only) document must have a photograph.

After completing a Form I-9 for your new employee, create a case in E-Verify that includes information from Sections 1 and 2 of Form I-9. After creating the case, you will receive a response from E-Verify regarding the employment authorization of the employee. In some cases, E-Verify will provide a response indicating a tentative nonconfirmation of the employee's employment authorization. This does not necessarily mean that the employee is unauthorized to work in the United States. Rather, it means that E-Verify is unable to immediately confirm the employee's authorization to work. In the case of a tentative nonconfirmation, you must notify the employee, and an employee who wishes to contest a tentative nonconfirmation result should contact the appropriate agency (DHS or the Social Security Administration) within the prescribed time periods.

You must also follow certain procedures when using E-Verify that were designed to protect employees from unfair employment actions. You must use E-Verify for all new hires, both U.S. citizens and noncitizens, and may not use the system selectively. You may not use E-Verify to prescreen applicants for employment, check employees hired before the company became a participant in E-Verify (except contractors with a federal contract that requires use of E-Verify), or reverify employees who have temporary employment authorization. You may not terminate or take other adverse action against an employee based on a tentative nonconfirmation.

E-Verify strengthens the Form I-9 employment eligibility verification process that all employers, by law, must follow. By adding E-Verify to the existing Form I-9 process, employers can benefit from knowing that it has taken an additional constructive step toward maintaining a legal workforce.

You can enroll in E-Verify at uscis.gov/e-verify, which provides instructions for completing the enrollment process. For more information, contact E-Verify at 888-464-4218, or visit the website listed above.

Federal Contractors

On Nov. 14, 2008, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued a final rule amending the Federal Acquisition Regulation (FAR) (FAR case 2007-013, Employment Eligibility Verification). This regulation was originally scheduled to be effective on Jan. 15, 2009, but the effective date was delayed until Sept. 8, 2009. The regulation requires contractors with a federal contract that contains a FAR E-Verify clause to use E-Verify for their new hires and all employees (existing and new) assigned to the contract. Federal contracts issued on or after Sept. 8, 2009, as well as older contracts that have been modified may contain the FAR E-Verify clause.

Federal contractors who have a federal contract that contains the FAR E-Verify clause must follow special rules when completing and updating Form I-9. For more information, please see the E-Verify Supplemental Guide for Federal Contractors available at uscis.gov/e-verify.

Part Seven

Some Questions You May Have About Form I-9

Employers should read these questions and answers carefully. They contain valuable information that, in some cases, is not found elsewhere in this handbook.

For more information on Form I-9, employers and employees can also visit I-9 Central at uscis.gov/i-9-central.

Questions about the Verification Process

1. Q. Do citizens and noncitizen nationals of the United States need to complete Form I-9?

A. Yes. While citizens and noncitizen nationals of the United States are automatically eligible for employment, they too must present the required documents and complete a Form I-9. U.S. citizens include persons born in the United States, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. U.S. noncitizen nationals are persons who owe permanent allegiance to the United States, which include those born in American Samoa, including Swains Island.

NOTE: Citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) are not noncitizen nationals, however they are eligible to work in the U.S.

2. Q. Do I need to complete Form I-9 for employees working in the CNMI?

A. Yes. You need to complete Form I-9 for employees hired for employment in the CNMI on or after Nov. 27, 2011. Employers in CNMI should have used Form I-9 CNMI between Nov. 28, 2009 and Nov. 27, 2011. If the employer did not complete Form I-9 CNMI as required during this period the employer should complete a new Form I-9 as soon as the employer discovers the omission. You should not complete Form I-9 for any employees already working for you on Nov. 27, 2009, even if you assign them new job responsibilities within your company. For more information on federal immigration law in the CNMI, go to uscis.gov/CNMI.

3. Q. Do I need to complete Form I-9 for independent contractors or their employees?

A. No. For example, if you contract with a construction company to perform renovations on your building, you do not have to complete Form I-9 for that company's employees. The construction company is responsible for completing Form I-9 for its own employees. However, you may not use a contract, subcontract or exchange to obtain the labor or services of an employee knowing that the employee is unauthorized to work.

4. Q. May I fire an employee who fails to produce the required documents within three business days of their start date?

A. Yes. You may terminate an employee who fails to produce the required document or documents, or an acceptable receipt for a document, within three business days of the date employment begins.

5. Q. What happens if I properly complete and retain a Form I-9 and DHS discovers that my employee is not actually authorized to work?

A. You cannot be charged with a verification violation. You will also have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized individual, unless the government can show you had knowledge of the unauthorized status of the employee.

Questions about Documents

6. Q. May I specify which documents I will accept for verification?

A. No. The employee may choose which document(s) they want to present from the Lists of Acceptable Documents. You must accept

any document (from List A) or combination of documents (one from List B and one from List C) listed on Form I-9 and found in Part Eight of this handbook that reasonably appear on their face to be genuine and to relate to the person presenting them. To do otherwise could be an unfair immigration-related employment practice in violation of the anti-discrimination provision in the INA. Individuals who look and/or sound foreign must not be treated differently in the recruiting, hiring, or verification process. Please see Part Eight of this handbook for more information on acceptable documents.

For more information relating to discrimination during the Form I-9 process, contact IER at 1-800-255-8155 (employers) or 1-800-237-2515 (TDD) or visit IER's website at justice.gov/ier.

NOTE: An employer participating in E-Verify can only accept a List B document with a photograph.

7. Q. What is my responsibility concerning the authenticity of document(s) presented to me?

A. You must physically examine the document(s), and if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If the document(s) do not reasonably appear on their face to be genuine or to relate to the person presenting them, you must not accept them.

However, you must provide the employee with an opportunity to present other documents from the Lists of Acceptable Documents.

8. Q. My employee has presented a U.S. passport card. Is this an acceptable document?

A. Yes. The passport card is a wallet-size document issued by the U.S. Department of State. While its permissible uses for international travel are more limited than the U.S. passport book, the passport card is a fully valid passport that attests to the U.S. citizenship and identity of the bearer. As such, the passport card is considered a "passport" for purposes of Form I-9 and has been included on List A of the Lists of Acceptable Documents on Form I-9.

9. Q. Why was documentation for citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) added to the Lists of Acceptable Documents on Form I-9?

A. Under the Compacts of Free Association between the United States and FSM and RMI, most citizens of FSM and RMI are eligible to reside and work in the United States as nonimmigrants. An amendment to the Compacts eliminated the need for citizens of these two countries to obtain Employment Authorization Documents (Forms I-766) to work in the United States. However, FSM and RMI citizens may also apply for Employment Authorization Documents (Forms I-766) if they wish, or present a combination of List B and List C documents. The List A document specific to FSM and RMI citizens is a valid FSM or RMI passport with a Form I-94/Form I-94A indicating nonimmigrant admission under one of the Compacts.

10. Q. How do I know whether a Native American tribal document issued by a U.S. tribe presented by my employee is acceptable for Form I-9 purposes?

A. In order to be acceptable, a Native American tribal document should be issued by a tribe recognized by the U.S. federal government. Because federal recognition of tribes can change over time, to determine if the tribe is federally recognized, please check the Bureau of Indian Affairs website at bia.gov.

11. Q. Can the Certificate of Indian Status, commonly referred to as the status card or INAC card, be used as a Native American tribal document for Form I-9 purposes?

A. No. This card is not a Native American tribal document. It is issued by Indian and Northern Affairs Canada (INAC), which is a part of the Canadian government.

12. Q. May I accept an expired document?

A. No. Expired documents are no longer acceptable for Form I-9. However, you may accept Employment Authorization Documents (Forms I-766) and Permanent Resident Cards (Forms I-551) that appear to be expired on their face, but have been extended by USCIS.

For example, Temporary Protected Status (TPS) beneficiaries whose Employment Authorization Documents (Forms I-766) appear to be expired may be automatically extended in a Federal Register notice or, if the employee timely filed for a new Employment Authorization Document (Form I-766) the corresponding I-797C from USCIS indicating timely filing may be presented with the expired EAD to the employer as a List A document. These individuals may continue to work based on their expired Employment Authorization Documents (Forms I-766) during the automatic extension period. When the automatic extension of the Employment Authorization Document (Form I-766) expires, you must reverify the employee's employment authorization.

Please see *Automatic Extensions of Employment Authorization Document in Certain Circumstances* for more information.

NOTE: Some documents, such as birth certificates and Social Security cards, do not contain an expiration date and should be treated as unexpired.

13. Q. How can I tell if a DHS-issued document has expired? If it has expired, should I reverify the employee?

A. Some INS-issued documents, such as older versions of the Alien Registration Receipt Card (Form I-551), do not have expiration dates, and are still acceptable for Form I-9 purposes. However, all subsequent DHS-issued Permanent Resident Cards (Forms I-551) contain two-year or 10-year expiration dates. You should not reverify an expired Alien Registration Receipt Card/Permanent Resident Card (Form I-551). Other DHS-issued documents, such as the Employment Authorization Document (Form I-766) also have expiration dates. These dates can be found on the face of the document. Generally, Employment Authorization Documents (Forms I-766) must be reverified upon expiration.

14. Q. May I accept a photocopy of a document presented by an employee?

A. No. Employees must present original documents. The only exception is that an employee may present a certified copy of a birth certificate.

15. Q. I noticed on Form I-9 that under List A there are three spaces for document numbers and expiration dates. Does this mean I have to see three List A documents.

A. No. Form I-9 (Rev. 11/14/16 N) includes an expanded document entry area in Section 2. The additional spaces are provided in case an employee presents a List A document that is really a combination of more than one document. For example, an F-1 student in curricular practical training may present, under List A, a foreign passport, Form I-94/Form I-94A and Form I-20 that specifies that you

are their approved employer. Form I-9 provides space for you to enter the document number and expiration date for all three documents. Another instance where an employer may need to enter document information for three documents is for J-1 exchange visitors. If an employee provides you with one document from List A (such as a U.S. passport), or a combination of two documents (such as a foreign passport and Form I-94/94A), you do not need to fill out any unused space(s) under List A.

16. Q. When I review an employee's identity and employment authorization documents, should I make copies of them?

A. If you participate in E-Verify and the employee presents a document used as part of Photo Matching, currently the U.S. passport and passport card, Permanent Resident Card (Form I-551) and the Employment Authorization Document (Form I-766), you must retain a photocopy of the document they present. Other documents may be added to Photo Matching in the future. If you do not participate in E-Verify, you are not required to make photocopies of documents. However, if you wish to make photocopies of documents other than those used in E-Verify, you must do so for all employees. Photocopies must not be used for any other purpose. Photocopying documents does not relieve you of your obligation to fully complete Section 2 of Form I-9, nor is it an acceptable substitute for proper completion of Form I-9 in general.

17. Q. When can employees present receipts for documents in lieu of actual documents from the Lists of Acceptable Documents?

A. The "receipt rule" is designed to cover situations in which an employee is authorized to work at the time of initial hire or reverification, but they are not in possession of a document listed on the Lists of Acceptable Documents accompanying Form I-9. Receipts showing that a person has applied for an initial grant of employment authorization are not acceptable.

An individual may present a receipt in lieu of a document listed on Form I-9 to complete Section 2 or Section 3 of Form I-9. The receipt is valid for a temporary period. There are three different documents that qualify as receipts under the rule:

1. A receipt for a replacement document when the document has been lost, stolen, or damaged. The receipt is valid for 90 days, after which the individual must present the replacement document to complete Form I-9.
2. Form I-94/I-94A containing a temporary I-551 stamp and a photograph. The individual must present the actual Form I-551 by the expiration date of the temporary I-551 stamp or within one year from the date of issuance of Form I-94/Form I-94A if the I-551 stamp does not contain an expiration date.
3. A Form I-94/Form I-94A containing an unexpired refugee admission stamp. This is considered a receipt for either an Employment Authorization Document (Form I-766) or a combination of an unrestricted Social Security card and List B document. The employee must present an Employment Authorization Document (Form I-766) or an unrestricted Social Security card in combination with a List B document to complete Form I-9 within 90 days after the date of hire or, in the case of reverification, the date employment authorization expires. For more information on receipts, see Table 1 in Part Two.

18. Q. My nonimmigrant employee has presented a foreign passport with a Form I-94/Form I-94A (List A, Item 5). How do I know if this employee is authorized to work?

A. You, as the employer, likely have submitted a petition to USCIS on the nonimmigrant employee's behalf. However, there are some exceptions to this rule:

1. You made an offer of employment to a Canadian passport holder who entered the United States under the North American Free Trade Agreement (NAFTA) with an offer letter from your company. This nonimmigrant worker will have a Form I-94/Form I-94A indicating a TN immigration status, and may choose to

present it with their passport under List A. The employee may also present Form I-94/ Form I-94A indicating a TN immigration status as a List C document, in which case your employee will need to present a List B document (such as a Canadian driver's license) to satisfy Section 2 of Form I-9.

2. A student working in on-campus employment or participating in curricular practical training (See Part Two.)

3. A J-1 exchange visitor. (See Part Two.)

Most employees who present a foreign passport in combination with a Form I-94 or I-94A (List A, Item 5) are restricted to work only for the employer who petitioned on their behalf. If you did not submit a petition for an employee who presents such documentation, then that non- immigrant worker is not usually authorized to work for you. See Part Two for more information on nonimmigrant employees.

19. Q. My new employee presented two documents to complete Form I-9, each containing a different last name. One document matches the name she entered in Section 1. The employee explained that she had just gotten married and changed her last name, but had not yet changed the name on the other document. Can I accept the document with the different name?

A. You may accept a document with a different name than the name entered in Section 1 provided that you resolve the question of whether the document reasonably relates to the employee. You also may wish to attach a brief memo to Form I-9 stating the reason for the name discrepancy, along with any supporting documentation the employee provides. An employee may provide documentation to support their name change, but is not required to do so. If, however, you determine that the document with a different name does not reasonably appear to be genuine and to relate to her, you may ask her to provide other documents from the Lists of Acceptable Documents on Form I-9.

20. Q. My employee entered a compound last name in Section 1 of Form I-9. The documents she presented contain only one of these names. Can I accept this document?

A. DHS does not require employees to use any specific naming standard for Form I-9. If a new employee enters more than one last name in Section 1, but presents a document that contains only one of those last names, the document they present for Section 2 is acceptable as long as you are satisfied that the document reasonably appears to be genuine and to relate to the employee. It is helpful for individuals attesting to lawful permanent resident status who have more than one name to enter their name on Form I-9 as it appears on their Permanent Resident Card (Form I-551).

21. Q. The name on the document my employee presented to me is spelled slightly differently than the name they entered in Section 1 of Form I-9. Can I accept this document?

A. If the document contains a slight spelling variation, and the employee has a reasonable explanation for the variation, the document is acceptable as long as you are satisfied that the document otherwise reasonably appears to be genuine and to relate to the employee.

22. Q. My employee's Employment Authorization Document (Form I-766) expired and the employee now wants to show me a Social Security card. Do I need to see a current DHS document?

A. No. During reverification, an employee must be allowed to choose what documentation to present from either List A or List C. If an employee presents an unrestricted Social Security card upon reverification, the employee does not also need to present a current DHS document. However, if an employee presents a restricted Social Security card upon reverification, you must reject the restricted Social Security card, since it is not an acceptable Form I-9 document, and ask the employee to

choose different documentation from List A or List C of Form I-9.

23. Q. My employee presented me with a document issued by INS rather than DHS. Can I accept it?

A. Yes, you can accept a document issued by INS if the document is unexpired and reasonably appears to be genuine and to relate to the individual presenting it. Effective March 1, 2003, the functions of the former INS were transferred to three agencies within the new DHS: USCIS, CBP, and ICE. Most immigration documents acceptable for Form I-9 use are issued by USCIS. Some documents issued by the former INS before March 1, 2003, such as Permanent Resident Cards or Forms I-94 noting asylee status, may still be within their period of validity. If otherwise acceptable, a document should not be rejected because it was issued by INS rather than DHS. It should also be noted that INS documents may bear dates of issuance after March 1, 2003, as it took some time in 2003 to modify document forms to reflect the new USCIS identity.

Questions about Completing and Retaining Form I-9

24. Q. Can an employee leave any part of Section 1 on Form I-9 blank?

A. Employees must complete every applicable field in Section 1 of Form I-9 with the exception of the Social Security number field. However, employees must enter their Social Security number in this field if you participate in E-Verify. The e-mail address and telephone number fields are optional but if an employee chooses not to provide this information, they must enter "N/A." Do not leave these fields blank.

NOTE: Not all employees who attest to being an Alien Authorized to Work will have an expiration date for their employment authorization. However, refugees and asylees who present an Employment Authorization Document (Form I-766) have employment authorization that does not expire. These individuals should put "N/A" where Section 1 asks for an expiration date.

25. Q. How do I correct a mistake on an employee's Form I-9?

A. If you find a mistake on an employee's Form I-9, you must have the employee correct errors in Section 1. Employers must make corrections in Section 2. The best way to correct Form I-9 is to line through the portions of the form that contain incorrect information and then enter the correct information. Initial and date your correction. If you have previously made changes on Form I-9 using correction fluid, USCIS recommends that you attach a note to the corrected Form I-9 explaining what happened. Be sure to sign and date the note.

26. Q. What should I do if I need to reverify an employee who filled out an earlier version of Form I-9?

A. If you used a version of Form I-9 when you originally verified the employee that is no longer valid, and you are now reverifying the employment authorization of that employee, the employee must provide any document(s) they choose from the current Lists of Acceptable Documents. Enter this new document(s) in Section 3 of the current version of Form I-9 and retain it with the previously completed Form I-9. To see if your form is an acceptable version of Form I-9, go to uscis.gov/i-9.

For more information on reverification, please see Part Two.

27. Q. Do I need to complete a new Form I-9 when one of my employees is promoted within my company or transfers to another company office at a different location?

A. No. You do not need to complete a new Form I-9 for employees who have been promoted or transferred.

28. Q. What do I do when an employee's employment authorization expires?

A. To continue to employ an individual whose employment authorization has expired, you will need to reverify the employee in Section 3

of Form I-9. Reverification must occur no later than the date that employment authorization expires. The employee must present a document from either List A or List C that shows either an extension of their initial employment authorization or new employment authorization. You must review this document and, if it reasonably appears on its face to be genuine and to relate to the person presenting it, enter the document title, number, and expiration date (if any), in the Reverification and Rehires section (Section 3), and sign in the appropriate space.

If the version of Form I-9 that you used for the employee's original verification is no longer valid, you must complete Section 3 of the current Form I-9 upon reverification and attach it to the original Form I-9.

You may want to establish a calendar notification system for employees whose employment authorization will expire and provide the employee with at least 90 days' notice prior to the expiration date of the employment authorization.

You may not reverify an expired U.S. passport or passport card, an Alien Registration Receipt Card/Permanent Resident Card (Form I-551), or a List B document that has expired.

Some workers are eligible for an automatic extension of their Employment Authorization Document for 180 days, in certain circumstances. If your employee presents an expired Employment Authorization Document (Form I-766) in combination with an I-797C Notice of Action from USCIS indicating both timely filing for a renewal of their Employment Authorization document and eligibility for a 180-day automatic extension of their Employment Authorization Document (Form I-766), you should not reverify the employee based on the expiration date on the face of the Employment Authorization Document (Form I-766); instead, update Section 2 of Form I-9 at that time. When the automatic extension of the Employment Authorization Document (Form I-766) expires (180 days after the expiration date on the face of the Employment Authorization Document (Form I-766)), you must reverify the employee's employment authorization. Please see *Automatic Extensions of Employment Authorization Document in Certain Circumstances* for eligible categories and additional information.

NOTE: You cannot refuse to accept a document because it has a future expiration date. You must accept any document (from List A or List C) listed on Form I-9 that on its face reasonably appears to be genuine and to relate to the person presenting it. To do otherwise could be an unfair immigration-related employment practice in violation of the anti-discrimination provision of the INA.

29. Q. Can I avoid reverifying an employee on Form I-9 by not hiring persons whose employment authorization has an expiration date?

A. No. You cannot refuse to hire persons solely because their employment authorization is temporary. The existence of a future expiration date does not preclude continuous employment authorization for an employee and does not mean that subsequent employment authorization will not be granted. In addition, consideration of a future employment authorization expiration date in determining whether an individual is qualified for a particular job may be an unfair immigration-related employment practice in violation of the anti-discrimination provision of the INA.

30. Q. Can I contract with someone to complete Form I-9 for my business?

A. Yes. You can contract with another person or business to verify employees' identities and employment authorization and to complete Form I-9 for you. However, you are still responsible for the contractor's actions and are liable for any violations of the employer sanctions laws.

31. Q. How does the Immigrant and Employee Rights Section in the Department of Justice's Civil Rights Division (IER) obtain the necessary information to determine whether an employer has committed an unfair immigration-related employment practice

under the anti-discrimination provision of the INA?

A. IER will notify you in writing to initiate an investigation, request information and documents, and interview your employees. If you refuse to cooperate, IER can obtain a subpoena to compel you to produce the information requested or to appear for an investigative interview.

32. Q. Do I have to complete Form I-9 for Canadians or Mexicans who entered the United States under the North American Free Trade Agreement (NAFTA)?

A. Yes. You must complete Form I-9 for all employees. NAFTA entrants must show identity and employment authorization documents just like all other employees.

33. Q. If I am a recruiter or referrer for a fee, do I have to fill out Form I-9 on individuals that I recruit or refer?

A. No, with three exceptions: Agricultural associations, agricultural employers, and farm labor contractors must complete Form I-9 on all individuals who are recruited or referred for a fee. However, all recruiters and referrers for a fee must complete Form I-9 for their own employees hired after Nov. 6, 1986. Also, all recruiters and referrers for a fee are liable for knowingly recruiting or referring for a fee individuals not authorized to work in the United States and must comply with federal anti-discrimination laws.

34. Q. If I am self-employed, do I have to fill out a Form I-9 on myself?

A. A self-employed person does not need to complete a Form I-9 on their own behalf unless the person is an employee of a separate business entity, such as a corporation or partnership. If the person is an employee of a separate business entity, he or she, and any other employees, will have to complete Form I-9.

35. Q. I have heard that some state employment agencies, commonly known as state workforce agencies, can certify that people they refer are authorized to work. Is that true?

A. Yes. A state employment agency may choose to verify the employment authorization and identity of an individual it refers for employment on Form I-9. In such a case, the agency must issue a certification to you so that you receive it within 21 business days from the date the referred individual is hired. If an agency refers a potential employee to you with a job order, other appropriate referral form, or telephonically authorized referral, and the agency sends you a certification within 21 business days of the referral, you do not have to check documents or complete a Form I-9 if you hire that person. Before receiving the certification, you must retain the job order, referral form, or annotation reflecting the telephonically authorized referral as you would Form I-9. When you receive the certification, you must review the certification to ensure that it relates to the person hired and observe the person sign the certification. You must also retain the certification as you would a Form I-9 and make it available for inspection, if requested. You should check with your state employment agency to see if it provides this service and become familiar with its certification document.

Questions about Avoiding Discrimination

36. Q. What is the INA's Anti-Discrimination Provision?

A. The Immigration and Nationality Act's (INA) anti-discrimination provision, codified at 8 U.S.C. § 1324b, is a law that prohibits four types of discriminatory unfair employment practices:

- Citizenship or immigration status discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with four or more workers, subject to certain exceptions. Employers may not treat individuals differently because they are or are not U.S. citizens or because of their work-authorized immigration status. U.S. citizens, U.S. nationals, recent lawful permanent residents, asylees, and refugees are protected from citizenship status discrimination. An employer may restrict hiring to U.S. citizens

only when required to do so by law, regulation, executive order, or government contract.

- National origin discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with four to 14 workers. Employers may not treat individuals differently because of their place of birth, country of origin, ancestry, native language, accent or because they are perceived as looking or sounding "foreign." All work-authorized individuals are protected from national origin discrimination. The Equal Employment Opportunity Commission has jurisdiction over national origin discrimination claims against employers with 15 or more workers, regardless of the work authorization status of the discrimination victims.

- Unfair documentary practices related to verifying the employment eligibility of employees during the I-9 or E-Verify processes. Employers may not, on the basis of citizenship, immigration status, or national origin, request more or different documents than are required to verify employment eligibility and identity, reject reasonably genuine-looking documents, or specify certain documents over others. All work-authorized individuals are protected from unfair documentary practices.

- Intimidation or Retaliation. Employers may not intimidate, threaten, coerce, or retaliate against individuals who file charges with IER, who cooperate with an IER investigation, who contest an action that may constitute unfair documentary practices or discrimination based upon citizenship, immigration status, or national origin, or who otherwise assert their rights under the INA's anti-discrimination provision.

37. Q. Can I limit hiring only to U.S. citizens?

A. Employers cannot limit positions to U.S. citizens only unless they are required to do so by a law, executive order, regulation, or government contract that requires specific positions to be filled only by U.S. citizens. If a job applicant is discouraged or rejected from employment based on citizenship status, the employer may be committing citizenship status discrimination in violation of the anti-discrimination provision of the INA.

38. Q. Can I refuse to hire someone based on national origin?

A. Failure to hire an individual based on the person's national origin may violate the anti-discrimination provision of the INA if the employer employs between four and 14 employees, or may violate Title VII of the Civil Rights Act (enforced by the Equal Employment Opportunity Commission (EEOC)) if the employer has 15 or more employees. If a small employer has rejected your employment application based on your national origin, contact IER to determine whether IER or the EEOC has jurisdiction to assist you.

39. Q. Can I ask an employee to show a specific document for the Form I-9?

A. No. For employment eligibility verification, an employee must be allowed to choose which documents to show from the Form I-9 Lists of Acceptable Documents. If the documentation reasonably appears to be genuine and to relate to the employee, the employer must accept it. An employer may be violating the anti-discrimination provision of the INA if the employer requires an employee to show specific documents or more documents than required based on the employee's citizenship, immigration status or national origin.

40. Q. Can I refuse to accept an employee's documentation if I would prefer to see another type of documentation?

A. No. For employment eligibility verification, an employee must be allowed to choose which documents to show from the Form I-9 Lists of Acceptable Documents. If the documentation reasonably appears to be genuine and to relate to the employee, the employer must accept it. An employer may be violating the anti-discrimination provision of the INA if the employer rejects the valid documentation an employee presents based on the employee's citizenship, immigration status or national origin.

41. Q. Can I ask my employee to show the same type of document for reverification as the employee showed to complete Section 2?

A. No. For reverification, an employee may choose which unexpired List A or List C document to present. An employer may be violating the anti-discrimination provision of the INA if the employer requires an employee to show specific documents for reverification based on the employee's citizenship, immigration status or national origin.

For more information on these or any other discrimination-related questions, call IER's employer hotline at 1-800-255-8155 or 1-800-237-2515 (TTY). You can also visit IER's website at justice.gov/ier.

For more information on avoiding discrimination in the Form I-9 and E-Verify processes, visit justice.gov/ier.

Questions about Different Versions of Form I-9

42. Q. Is Form I-9 available in different languages?

A. Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may use the Spanish version to meet the verification and retention requirements of the law. Employers in the United States and other U.S. territories may use the Spanish version as a translation guide for Spanish-speaking employees, but the English version must be completed and retained in the employer's records. Employees may also use or ask for a preparer and/or translator to assist them in completing the form.

43. Q. Are employers in Puerto Rico required to use the Spanish version of Form I-9?

A. No. Employers in Puerto Rico may use either the Spanish or the English version of Form I-9 to verify new employees.

44. Q. May I continue to use earlier versions of Form I-9?

A. No, employers must use the current version of Form I-9. A revision date with an "N" next to it indicates that all previous versions with earlier revision dates, in English or Spanish, are no longer valid. You may also use subsequent versions that have a "Y" next to the revision date. If in doubt, go to uscis.gov/i-9 to view or download the most current form.

45. Q. Where do I get the Spanish version of Form I-9?

A. You may download the Spanish version of this form from the USCIS website at uscis.gov/i-9. For employers without internet access, you may call the USCIS Forms Request Line toll-free at 800-870-3676.

For more questions and answers on Form I-9 topics, go to uscis.gov/i-9-central and select I-9 Central Questions & Answers.

Part Eight

Acceptable Documents for Verifying Employment Authorization and Identity

The following documents are acceptable for Form I-9 to establish an employee's employment authorization and identity. The comprehensive Lists of Acceptable Documents can be found on the next pages of this handbook and on the last page of Form I-9. Samples of many of the acceptable documents appear on the following pages.

To establish both identity and employment authorization, a person must present to their employer a document or combination of documents from List A, which shows both identity and employment authorization; or one document from List B, which shows identity and one document from List C, which shows employment authorization.

If a person is unable to present the required document(s) within three business days of the date work for pay begins, they must present an acceptable receipt within that time. If they present a receipt, the person must present the actual document when the receipt validity period ends. They must have indicated on or before the time employment began, by having checked an appropriate box in Section 1, that they are already authorized to be employed in the United States.

Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. Receipts are also not acceptable if employment is for fewer than three business days. For a list of acceptable receipts for Form I-9, see Table 1 in Part Two. For more examples of acceptable documents, including List C #8, please visit uscis.gov/i-9-central. Note that a Form I-797C acknowledging receipt of an EAD renewal application presented with an expired EAD is considered an unexpired EAD in certain circumstances. Please refer to Part Two for further information.

The following pages show the most recent versions and representative images of some of the various acceptable documents on the list. These images can assist you in your review of the document presented to you. These pages are not, however, comprehensive. In some cases, many variations of a particular document exist and new versions may be published subsequent to the publication date of this handbook. Keep in mind that USCIS does not expect you to be a document expert. You are expected to accept documents that reasonably appear to be genuine and to relate to the person presenting them.

LIST A: Documents That Establish Both Identity and Employment Authorization

All documents must be unexpired.

1. U.S. Passport or U.S. Passport Card
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)
4. Employment Authorization Document (Card) that contains a photograph (Form I-766) (including expired EADs in conjunction with Forms I-797 based on an EAD automatic extension in certain circumstances; see page 13)
5. For a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI

LIST B: Documents That Establish Identity

All documents must be unexpired.

For individuals 18 years of age or older:

1. Driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic, doctor, or hospital record
12. Day-care or nursery school record

LIST C: Documents That Establish Employment Authorization

All documents must be unexpired.

1. A Social Security Account Number card unless the card includes one of the following restrictions:

   (1) NOT VALID FOR EMPLOYMENT

   (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION

   (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION

2. Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545)
3. Certification of Report of Birth issued by the U.S. Department of State (Form DS-1350)
4. Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying territory of the United States bearing an official seal
5. Native American tribal document
6. U.S. Citizen Identification Card (Form I-197)
7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
8. Employment authorization document issued by the Department of Homeland Security. For examples, please visit uscis.gov/i-9-central.

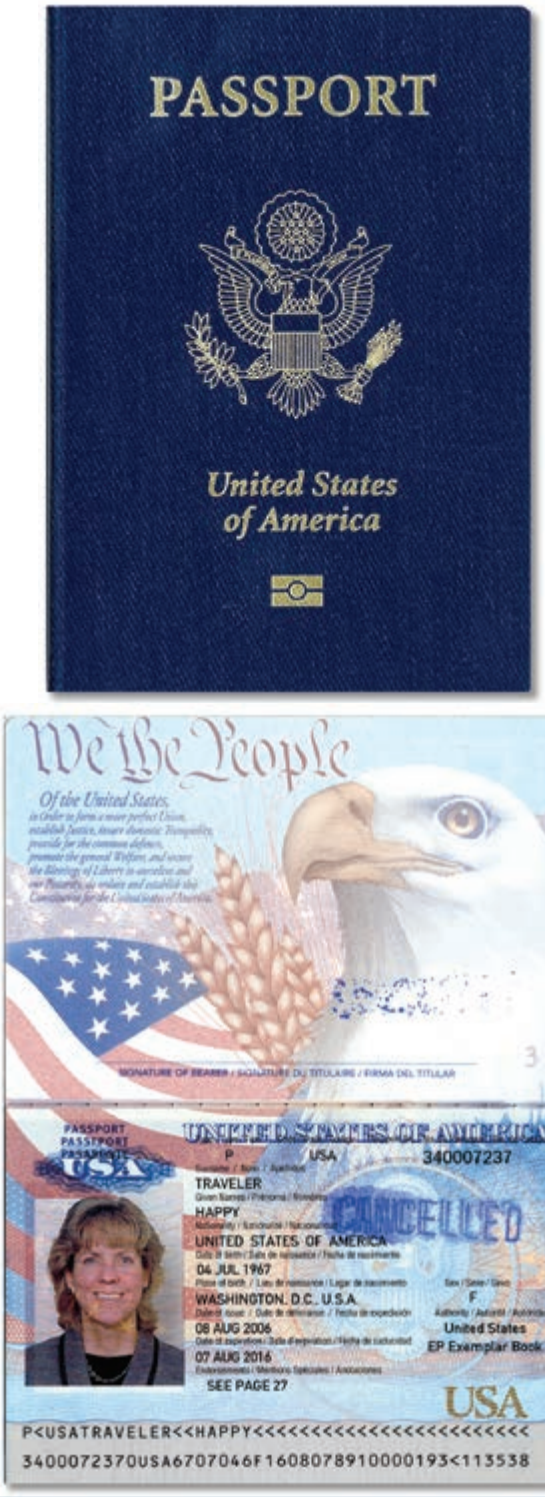
List A—Documents That Establish Both Identity and Employment Authorization

U.S. Passport

The U.S. Department of State issues the U.S. passport to U.S. citizens and noncitizen nationals. There are a small number of versions still in circulation that may differ from the main versions shown here.

The illustrations in this Handbook do not necessarily reflect the actual size of the documents.

Current U.S. Passport cover and open



Older U.S. Passport cover and open

U.S. Passport Card

The U.S. Department of State began producing the passport card in July 2008. The passport card is a wallet-size card that can only be used for land and sea travel between the United States and Canada, Mexico, the Caribbean, and Bermuda.

Passport Card front and back

Permanent Resident Card (Form I-551)

On May 11, 2010, USCIS began issuing the newly re-designed Permanent Resident Card, also known as the Green Card, which is now green in keeping with its long-standing nickname. The card is personalized with the bearer's photo, name, USCIS number, alien registration number, date of birth, and laser-engraved fingerprint, as well as the card expiration date.

Note that on the new card, shown below, the lawful permanent resident's alien registration number, commonly known as the A number, is found under the USCIS # heading. The A number is also located on the back of the card.

These cards may or may not contain a signature. A signature is not required for the card to be acceptable for Form I-9 purposes.

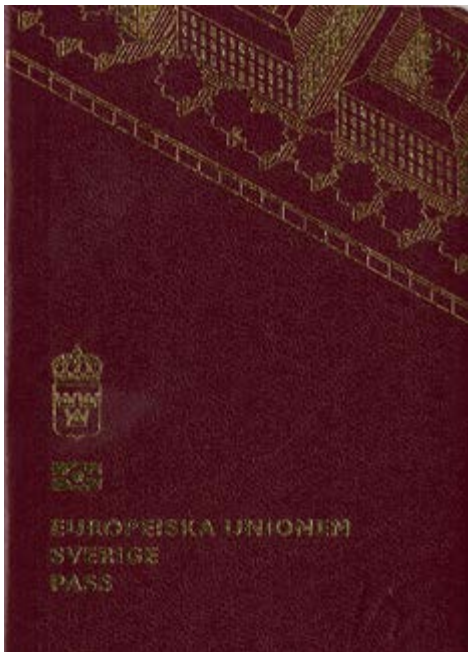
Current Permanent Resident Card (Form I-551) front and back

This most recent older version of the Permanent Resident Card shows the DHS seal and contains a detailed hologram on the front of the card. Each card is personalized with an etching showing the bearer's photo, name, fingerprint, date of birth, alien registration number, card expiration date, and card number.

Also in circulation are older Resident Alien cards, issued by the U.S. Department of Justice, Immigration and Naturalization Service, which do not have expiration dates and are valid indefinitely. These cards are peach in color and contain the bearer's fingerprint and photograph.

Older version Permanent Resident Card (Form I-551) front and back

Foreign Passport with I-551 Stamp or MRIV



Unexpired Foreign Passport with I-551 Stamp

USCIS uses either an I-551 stamp or a temporary I-551 printed notation on a machine-readable immigrant visa (MRIV) to denote temporary evidence of lawful permanent residence. Sometimes, if no foreign passport is available, USCIS will place the I-551 stamp on a Form I-94 and affix a photograph of the bearer to the form. This document is considered a receipt.

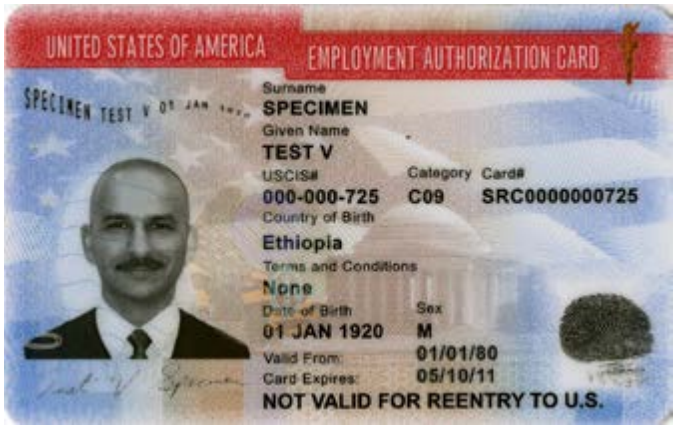
I-551 Stamp

The temporary Form I-551 MRIV is evidence of permanent resident status for one year from the date of admission.

Temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)

Employment Authorization Document (Form I-766)

USCIS issues the Employment Authorization Document (Form I-766) to individuals granted temporary employment authorization in the United States. The card contains the bearer's photograph, fingerprint, card number, Alien number, birth date, and signature, along with a holographic film and the DHS seal. The expiration date is located at the bottom of the card. Cards may contain one of the following notations above the expiration date: "Not Valid for Reentry to U.S.", "Valid for Reentry to U.S." or "Serves as I-512 Advance Parole."



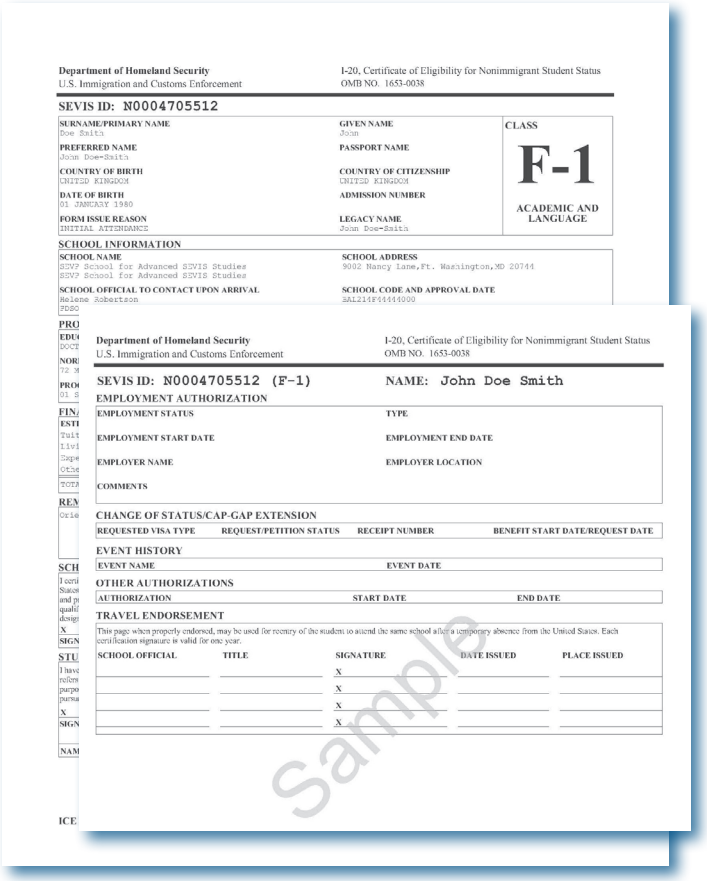
Employment Authorization Document (Form I-766) with notation "NOT VALID FOR REENTRY TO U.S."

Back of EAD card

Form I-20 Accompanied by Form I-94 or Form I-94A

Form I-94 or Form I-94A for F-1 nonimmigrant students must be accompanied by a Form I-20, *Certificate of Eligibility for Nonimmigrant Students*, endorsed with employment authorization by the designated school official for curricular practical training. USCIS will issue an Employment Authorization Document (Form I-766) to all students (F-1 and M-1) authorized for optional practical training (OPT).

(See Form I-94 on next page.)



Department of Homeland Security
U.S. Immigration and Customs Enforcement

I-20, Certificate of Eligibility for Nonimmigrant Student Status
OMB NO. 1653-0038

SEVIS ID: N0004705512

SURNAME/PRIMARY NAME: Doe Smith
GIVEN NAME: John
CLASS: F-1
PREFERRED NAME: John Doe-Smith
PASSPORT NAME
COUNTRY OF BIRTH: UNITED KINGDOM
COUNTRY OF CITIZENSHIP: UNITED KINGDOM
DATE OF BIRTH: 01 JANUARY 1980
ADMISSION NUMBER
FORM ISSUE REASON: INITIAL ATTENDANCE
LEGACY NAME: John Doe-Smith
ACADEMIC AND LANGUAGE

SCHOOL INFORMATION

SCHOOL NAME: SEVP School for Advanced SEVIS Studies
SEVP School for Advanced SEVIS Studies
SCHOOL ADDRESS: 9002 Nancy Lane,Ft. Washington,MD 20744
SCHOOL OFFICIAL TO CONTACT UPON ARRIVAL: Helene Robertson PDSO
SCHOOL CODE AND APPROVAL DATE: SAI214F04440000

Department of Homeland Security
U.S. Immigration and Customs Enforcement

I-20, Certificate of Eligibility for Nonimmigrant Student Status
OMB NO. 1653-0038

SEVIS ID: N0004705512 (F-1) NAME: John Doe Smith

EMPLOYMENT AUTHORIZATION

EMPLOYMENT STATUS
TYPE
EMPLOYMENT START DATE
EMPLOYMENT END DATE
EMPLOYER NAME
EMPLOYER LOCATION
COMMENTS

CHANGE OF STATUS/CAP-GAP EXTENSION

REQUESTED VISA TYPE | REQUEST/PETITION STATUS | RECEIPT NUMBER | BENEFIT START DATE/REQUEST DATE

EVENT HISTORY

EVENT NAME | EVENT DATE

OTHER AUTHORIZATIONS

AUTHORIZATION | START DATE | END DATE

TRAVEL ENDORSEMENT

This page when properly endorsed, may be used for reentry of the student to attend the same school after a temporary absence from the United States. Each certification signature is valid for one year.

SCHOOL OFFICIAL | TITLE | SIGNATURE | DATE ISSUED | PLACE ISSUED

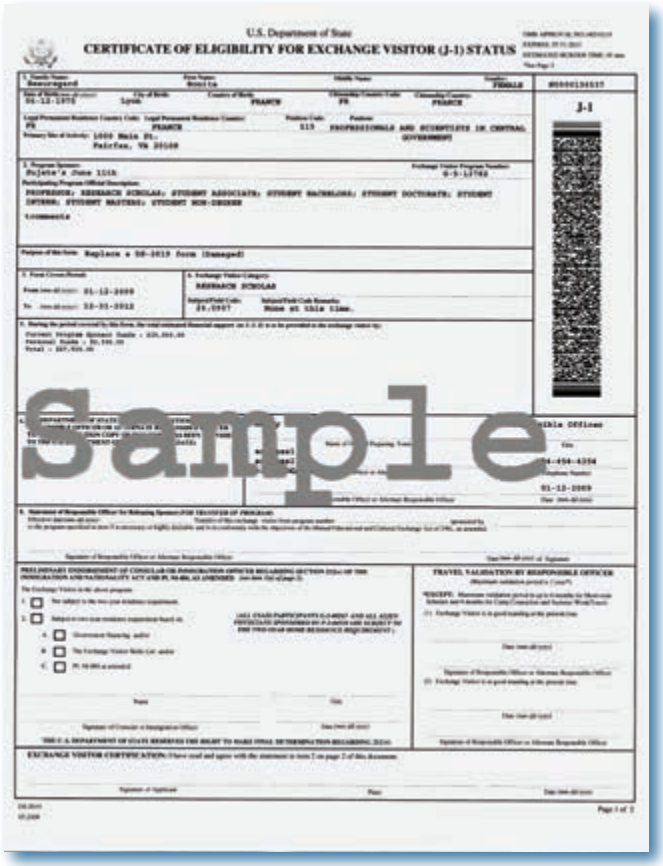
Sample

Form I-20 Accompanied by Form I-94 or Form I-94A

Form DS-2019 Accompanied by Form I-94 or Form I-94A

Nonimmigrant exchange visitors (J-1) must have a Form I-94 or Form I-94A accompanied by an unexpired Form DS-2019, *Certificate of Eligibility for Exchange Visitor (J-1) Status*, issued by the U.S. Department of State, that specifies the sponsor. J-1 exchange students also need a letter from their responsible officer authorizing their employment.

(See Form I-94 on next page.)



U.S. Department of State

CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS

J-1

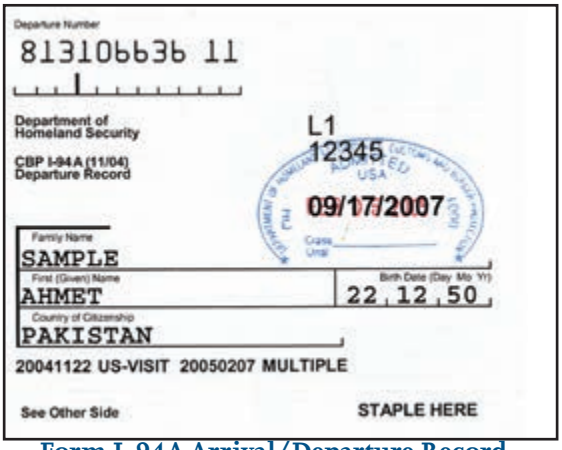
Sample

Form DS-2019 Accompanied by Form I-94 or Form I-94A

Form I-94 or Form I-94A Arrival/Departure Record

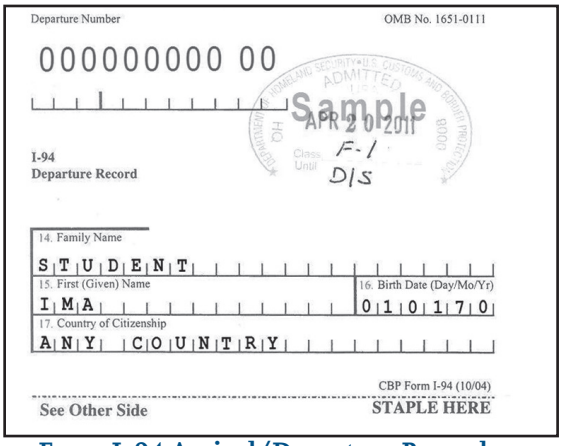
CBP and sometimes USCIS issue arrival-departure records to nonimmigrants. This document indicates the bearer's immigration status, the date that the status was granted, and when the status expires. The immigration status notation within the stamp on the card varies according to the status granted, for example, L-1, F-1, J-1. Form I-94 can contain a handwritten date and status or be computer-generated. Form I-94A has a computer-generated date and status. Both may be presented with documents that Form I-9 specifies are valid only when Form I-94 or Form I-94A also is presented, such as the foreign passport, Form DS-2019, or Form I-20.

Form I-9 provides space for you to record the document number and expiration date for both the passport and Form I-94 or Form I-94A.



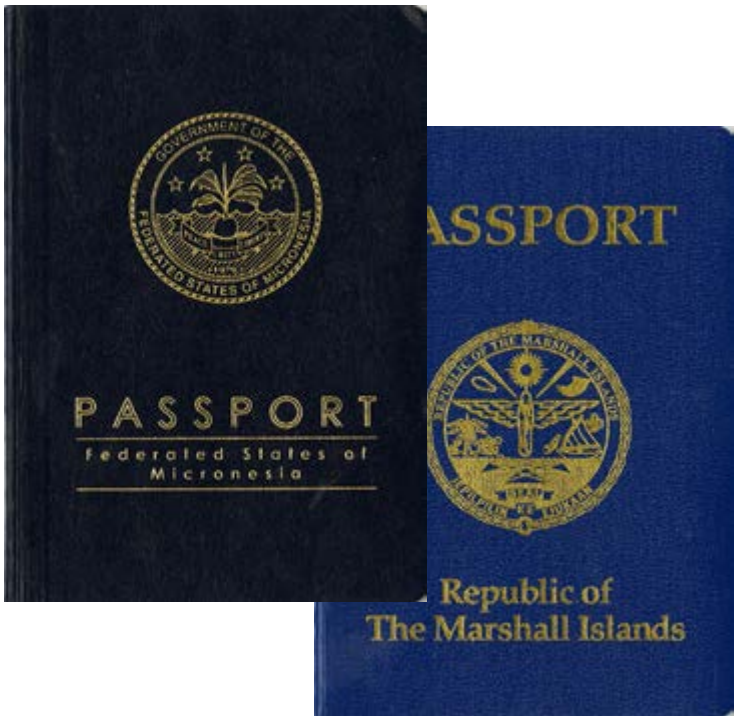
Form I-94A Arrival/Departure Record

Electronic Form I-94 Arrival/ Departure Record



Form I-94 Arrival/Departure Record

Passports of the Federated States of Micronesia and the Republic of the Marshall Islands



In 2003, Compacts of Free Association (CFA) between the United States and the Federated States of Micronesia (FSM) and Republic of the Marshall Islands (RMI) were amended to allow citizens of these countries to work in the United States without obtaining an Employment Authorization Document (Form I-766).

For Form I-9 purposes, citizens of these countries may present FSM or RMI passports accompanied by a Form I-94 or Form I-94A indicating nonimmigrant admission under the CFA, which are acceptable documents under List A. The exact notation on Form I-94 or Form I-94A may vary and is subject to change. The notation on Form I-94 or Form I-94A typically states "CFA/FSM" for an FSM citizen and "CFA/MIS" for an RMI citizen.

Passports from the Federated States of Micronesia and the Republic of the Marshall Islands

List B—Documents That Establish Identity Only

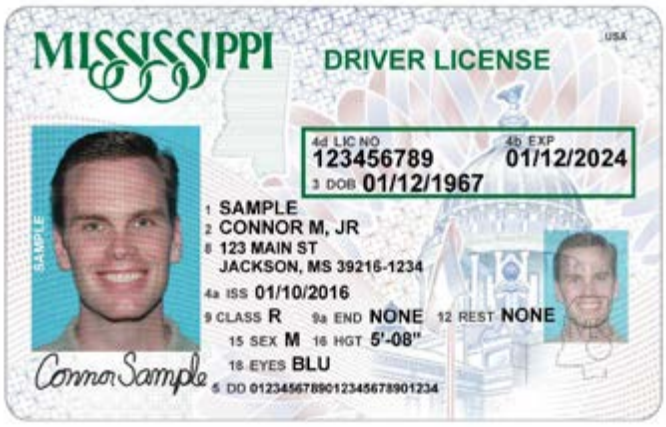
State-issued Driver's License

A driver's license can be issued by any state or territory of the United States (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) or by a Canadian government authority, and is acceptable if it contains a photograph or other identifying information such as name, date of birth, gender, height, eye color, and address.

Some states may place restrictive notations on their drivers' licenses. For Form I-9 purposes, these drivers' licenses may be acceptable.

State-issued drivers' licenses vary from state to state.

The illustrations below do not necessarily reflect the actual size of the documents.

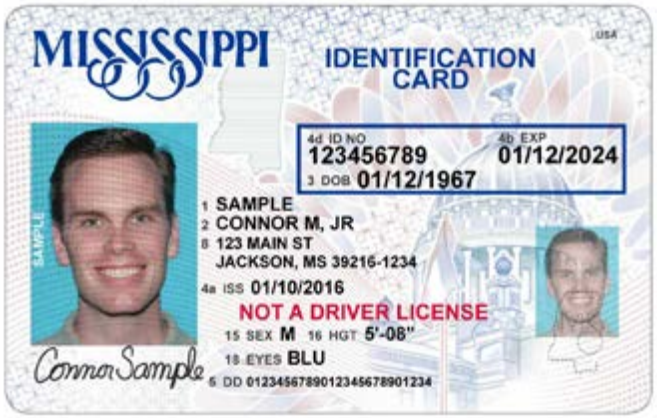


Driver's License from Mississippi

State-issued ID Card

An ID card can be issued by any state (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) or by a local government, and is acceptable if it contains a photograph or other identifying information such as name, date of birth, gender, height, eye color, and address.

Some states may place restrictive notations on their ID cards. For Form I-9 purposes, these cards may be acceptable.



Identification card from Mississippi

List C — Documents That Establish Employment Authorization Only

The following illustrations in this Handbook do not necessarily reflect the actual size of the documents.

U.S. Social Security Account Number Card

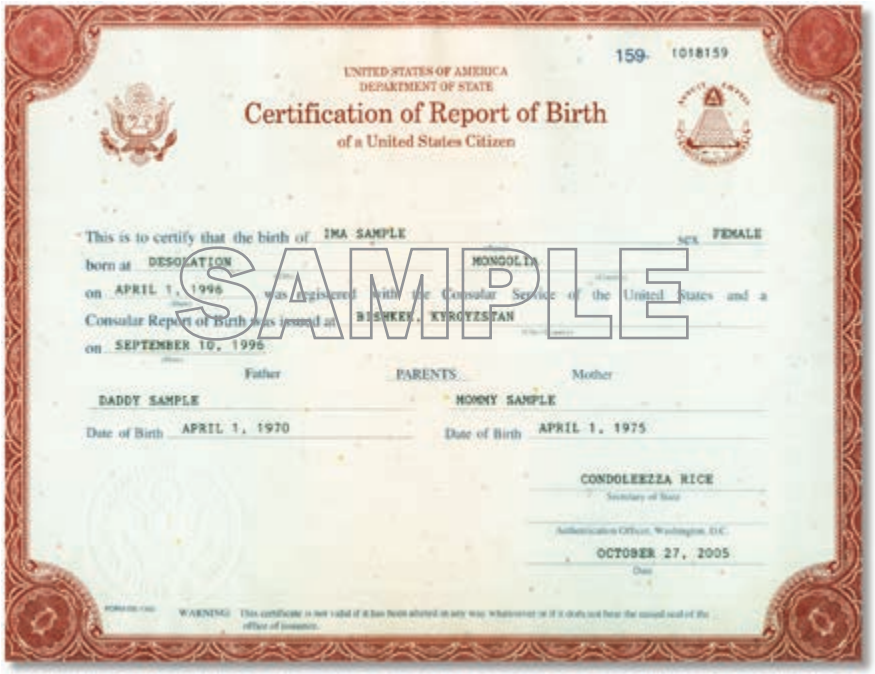
The U.S. Social Security account number card is issued by the Social Security Administration (older versions were issued by the U.S. Department of Health and Human Services), and can be presented as a List C document un- less the card specifies that it does not authorize employment in the United States. Metal or plastic reproductions are not acceptable.

U.S. Social Security Card

Certifications of Birth Issued by the U.S. Department of State

These documents may vary in color and paper used. All will include a raised seal of the office that issued the document, and may contain a watermark and raised printing.

Certification of Birth Abroad Issued by the U.S. Department of State (FS-545)



Certification of Report of Birth Issued by the U.S. Department of State (DS-1350)

Birth Certificate

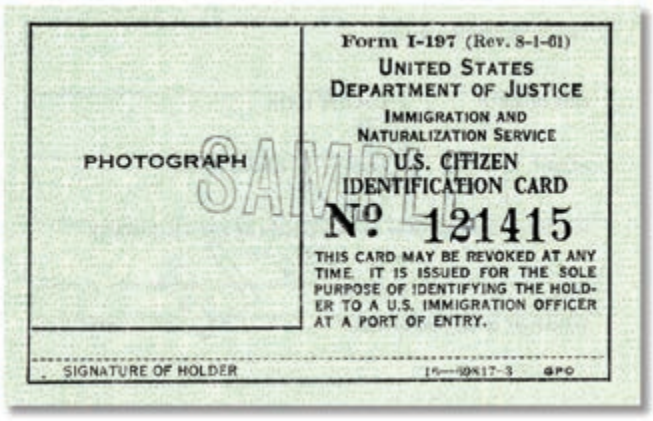
Only an original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States that bears an official seal is acceptable. Versions will vary by state and year of birth.

Beginning October 31, 2010, only Puerto Rico birth certificates issued on or after July 1, 2010 are valid. Please check uscis.gov for guidance on the validity of Puerto Rico birth certificates for Form I-9 purposes.

Birth Certificate

U.S. Citizen Identification Card (Form I-197)

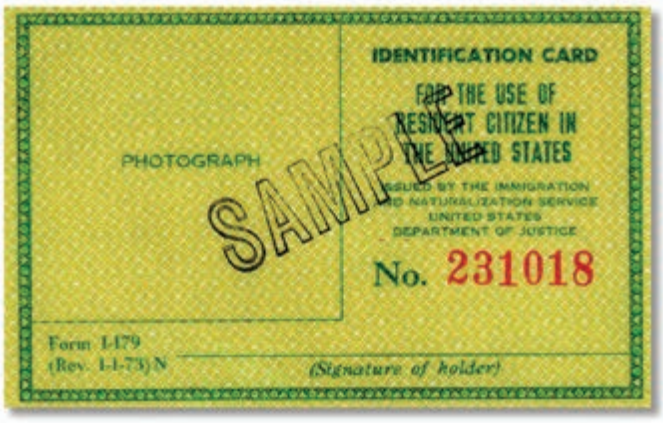
Form I-197 was issued by the former Immigration and Naturalization Service (INS) to naturalized U.S. citizens. Although this card is no longer issued, it is valid indefinitely.



U.S. Citizen Identification Card (Form I-197)

Identification Card for Use of Resident Citizen in the United States (Form I-179)

Form I-179 was issued by INS to U.S. citizens who are residents of the United States. Although this card is no longer issued, it is valid indefinitely.



Identification Card for Use of Resident Citizen in the United States (Form I-179)

REMEMBER:

1. Hiring employees without complying with the employment eligibility verification requirements is a violation of the employer sanctions laws.

2. This law requires employees hired after Nov. 6,1986, to present documentation that establishes identity and employment authorization. Employers must record this information on Form I-9.

3. Employers may not discriminate against employees on the basis of national origin or citizenship status.

U.S. Citizenship and Immigration Services

www.uscis.gov ◆ 1 800 375 5283

I-9 TOOLS

Look at the Facts
Not at the Faces.

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices

Look At The Facts Not At The Faces.

Your Guide To Fair Employment.

Introduction

This guide is designed to help you, the employer, understand and comply with the Immigration and Nationality Act (INA). In short, INA requires you to hire and/or retain only those persons authorized to work in the United States. It also requires you to protect workers against discrimination on the basis of immigration status, nationality, accent, or appearance. This guide provides the steps for both verifying employees' work eligibility and for ensuring that their civil rights are not violated—when you are making hiring decisions.

First, the guide defines INA fully. It describes how the law affects you and explains how to avoid immigration-related employment discrimination. It outlines easy-to-follow procedures for hiring employees and explains the "Employment Eligibility Verification Process" (Form I-9). The guide includes a list of documents that are acceptable in determining employment eligibility. Finally, it provides you with questions and answers to "tricky" hypothetical situations.

If you have further questions about how to comply with INA, please contact the Office of Special Counsel (OSC) for Immigration-Related Unfair Employment Practices of the U.S. Department of Justice. Another excellent source of information on this topic is The Handbook for Employers published by the Immigration and Naturalization Service (INS). To obtain a copy of the Handbook, please contact the INS.

Staying in compliance with INA's antidiscrimination provisions—and avoiding costly penalties and fines—is a simple matter. Just "look at the facts, not at the faces" when making hiring decisions, and follow these three basic rules:

- Fill out an "Employment Eligibility Verification" form (INS Form I-9) for every new employee, including U.S. citizens.
- Allow your employees to show you documents of their choice—as long as the documents prove identity and work eligibility and appear on INS' list of acceptable documents. You may not ask for specific documents.
- Do not ask for more documents than required.

For more information on INA's antidiscrimination provisions, please contact OSC at the Civil Rights Division, U.S. Department of Justice, P.O. Box 27728, Washington, DC 20038-7728 or call 1-800-255-8155. The TDD number for the hearing impaired is 1-800-362-2735.

For a copy of the Handbook for Employers, please contact the U.S. Immigration and Naturalization Service at 425 Eye Street, Washington, DC 20536.

Contents

What is INA?

The Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA) was the first Federal law making it illegal for employers to knowingly hire persons who are not authorized to work in the United States. The law was an attempt to reduce the stream of undocumented workers entering this country in search of jobs.

INA requires that you, as an employer, check documents to confirm the identity and work eligibility of all persons hired after November 1986. To remain in compliance, you must—

- Hire only those persons authorized to work in the United States.
- Ask all new employees to show documents that establish both identity and work authorization.
- Complete the INS Employment Eligibility Verification Form I-9 for every new employee—U.S. citizens and noncitizens.

Noncompliance with the Form I-9 requirements may result in sanctions against employers.

Congress also recognized that these employer sanctions might discourage you from hiring certain eligible workers if they looked or sounded foreign. Therefore, the law also prohibits discrimination in hiring and firing on the basis of citizenship status or national origin. Employers who discriminate may be required to pay fines and penalties, to hire or rehire the employee, and to pay back wages.

3

How Does INA Affect You?

As an employer:

- INA makes it unlawful for an employer to knowingly hire, recruit, or refer for a fee any individual who is not authorized to work in the United States. It is also unlawful to continue to employ an undocumented worker or one who loses authorization to work. (Those hired before November 6, 1986, do not fall within this category.)

- You may hire anyone whose documents prove identity and work authorization in accordance with the I-9 requirements. There are many documents and combinations of documents that are acceptable, as long as they appear to be reasonably genuine. (For a list of acceptable documents, see the back of the I-9 form.)

- You must treat all job applicants and employees equally—whether they are U.S. citizens or noncitizens. This means you may not discriminate in hiring, firing, recruiting, or referring for a fee, nor are you permitted to retaliate against an employee who has filed a discrimination charge or participated in an investigation.

Types of Immigration-Related Employment Discrimination:

- Citizenship status discrimination refers to unequal treatment because of citizenship or immigration status.

- National origin discrimination refers to unequal treatment because of nationality, which includes place of birth, appearance, accent, and can include language.

- The Office of Special Counsel (OSC) enforces the provisions against discrimination. OSC covers all cases of discrimination based on citizenship status by employers of four or more employees. It covers national origin discrimination with employers of four to fourteen employees. The Equal Employment Opportunity Commission has jurisdiction over employers of 15 or more.

What Are INA's I-9 Requirements?

"I-9" is short for Form I-9, the "Employment Eligibility Verification" form developed by INS as a way for employers to document the fact that they are hiring only persons who are authorized to work in the United States. Over time, the term "I-9 requirements" has come to describe the entire process of verifying worker eligibility outlined out in INA.

As an employer, to comply with INA's I-9 requirements, you must—

- Complete the I-9 form and keep it on file for at least 3 years from the date of employment or for 1 year after the employee leaves the job, whichever is later. You must also make the forms available for government inspection upon request.

- Verify, on the I-9 form, that you have seen documents establishing identity and work authorization for all your new employees—U.S. citizens and noncitizens alike—hired after November 6, 1986.

- Accept any valid documents presented to you by your employee. You may not ask for more documents than those required and may not demand to see specific documents, such as a "green card."

- Remember that work authorization documents must be renewed on or before their expiration date and the I-9 form must be updated—this is also called "reverification." At this time, you must accept any valid documents your employee chooses to present, whether or not they are the same documents provided initially. (Note: You don't need to see an identity document when the I-9 is updated.)

Remember, you are free to hire anyone who can show documents establishing his or her identity and authorization to work. Any of the documents (or combination of documents) listed on the back of Form I-9 are acceptable as long as they appear to be reasonably genuine.

5

How Can You Avoid Immigration-Related Employment Discrimination?

As an employer, to comply with INA's antidiscrimination provisions, you should—

- Let the employee choose which documents to present, as long as they prove identity and work authorization and are included in the acceptable list on the back of the I-9 form.
- Accept documents that appear to be genuine.

As an employer, to avoid employment discrimination based on nationality or citizenship status, you must—

- Treat all people the same in announcing the job, taking applications, interviewing, offering the job, verifying eligibility to work, hiring, and firing.
- Remember that U.S. citizenship, or nationality, belongs to all individuals born of a U.S. citizen and all persons born in Puerto Rico, Guam, the Virgin Islands, Northern Mariana Islands, American Samoa, and Swains Island. Citizenship is granted to legal immigrants after they complete the naturalization process.
- Avoid "citizens only" hiring policies or requiring that applicants have a particular immigration status. In most cases, these practices are illegal.
- Give out the same job information over the telephone, and use the same application form for all applicants.
- Base all decisions about firing on job performance and/or behavior, not on appearance, accent, name, or citizenship status of your employees.

6

What Would You Do?

Read each of the cases below. Circle "Yes" or "No." Answers are given below.

1. Saving Time

Your crew boss catches you before you start interviewing people for a job. He says, "Find out if those two near the door have their 'green cards' before you waste your time."

Did you discriminate in hiring?

Yes No

2. The Cooperative Executive

You are president of a company. After hearing about INA's penalties for hiring undocumented workers, you issue a memo stating, "Let's go along with the government on this one. Please be careful when hiring people who look like they crossed the border illegally."

Have you committed national origin discrimination?

Yes No

How about citizenship status discrimination?

Yes No

3. On the Way Out

The rainy spring caused your lettuce harvest to be less abundant than usual. You need fewer farm workers than you hired for the season. In deciding between Héctor Fernández and José González, you keep Héctor because he is a legal permanent resident and José, an asylee, only has a temporary work permit.

Have you committed citizenship status discrimination?

Yes No

4. A Stitch in Time

You gladly hire Lily Chou because she told you how she beaded sweaters in Taiwan. You are surprised when she hands you a California driver's license and an unrestricted Social Security card for the I-9 form. (Note: Some Social Security cards are restricted and bear the inscription "Valid Only with INS Authorization" or "Not Valid for Employment.") "Miss Chou," you say, "I must see a card from the INS."

Does Lily Chou have a case against you?

Yes No

5. Hire American

You manufacture precision cast parts. Ordinarily, any one of your 12 employees knows someone who can fill an open position. You tell them unofficially that you prefer that they bring applicants who are U.S. citizens—and you fill out the I-9 form for everyone they bring.

Are you in compliance with INA?

Yes No

6. Temporary Workers

You hire Billy, John, Paul, and Sam just for a weekend to clean windows in your office building. You would have hired Ngo except that he looked too "foreign."

Are you violating the antidiscrimination provisions?

Yes No

7

7. **Frenchman With a Fault**

Three men **apply to** manage **the** front **desk of** your four-**star hotel.** One **has** more **experience than the other two,** but **you** refuse **to** hire **him because all he has** for **the** I-9 form **is an** unexpired **French** passport **with an** unexpired **work authorization** stamp. You **ask** him for "**a** driver's **license, anything." The** next **person has only a** temporary **resident card that** expires in nine **days. That's too close** for **comfort.** So, you **hire the** third **applicant,** who **has a** valid Canadian driver's **license.**

Are you discrimina**ting?**

Yes No

8. Useless Regret

The person you **chose to** run your jacquard **loom** was unable **to show** documentation for **the** I-9 form. **She** said **she** would send for **it,** but you turned **her** down **because** you didn't want **to** get **into as** much paperwork **as Martha** required **the** last **time.** You **hired** your **second choice, a** woman **with** less experience but valid papers in **hand.**

Did you vio**late INA?**

Yes No

8

Answers

1. Saving Time

Yes. First of all, it is recommended that you wait until you hire an individual before asking him/her for papers to verify his/her identity and work authorization. However, if you ask for papers ahead of time only from people who appear to be "foreign," you are discriminating on the basis of national origin. You must treat all applicants equally, and, when you review their papers, you cannot insist on seeing particular documents if they have already shown you valid documents. Otherwise, you are engaging in document abuse.

2. The Cooperative Executive

Yes, you are engaging in both types of discrimination (national origin and citizenship status). When you ask new hires to fill out the I-9, you must do so for all new hires. Also, you must treat all new hires in the same way when verifying work eligibility, regardless of whether they are immigrants or members of a particular nationality.

3. On the Way Out

Yes. This is definitely citizenship status discrimination. You cannot fire a protected individual under INA because he/she has a temporary work permit as opposed to legal permanent residency. A protected individual is a U.S. citizen, national, permanent resident, temporary resident, refugee, or an asylee. In any event, your firing decision cannot be based on this factor. Otherwise, your actions will be considered discriminatory by OSC.

4. A Stitch in Time

Yes. Lily Chou has a very strong case against you. You should have let her choose which valid documents to present as proof of her identity and work authorization. A California driver's license proves identity and a unrestricted Social Security card proves work authorization. Your insistence on seeing an INS card is called document abuse, and this is a discriminatory practice.

5. Hire American

No, you are not in compliance with INA. Unless otherwise required by law, you cannot have "citizens only" hiring policies. If you insist on doing so, you are engaging in citizenship status discrimination.

6. Temporary Workers

Yes. You cannot deny work to individuals because they looked too "foreign." This is national origin discrimination. And, if you wrongly assumed that Ngo was unauthorized to work, you have also committed citizenship status discrimination.

7. Frenchman with a Fault

Yes, you are discriminating. The unexpired French passport, with an unexpired work authorization attached, is sufficient documentation to show that the applicant is work authorized. So is the person with the temporary resident card. When the card expires in nine days, you can ask him/her to reverify work authorization in Section 3 of the I-9 form. The third applicant did not show sufficient documents to establish work authorization. A Canadian driver's license is a permissible document to establish identity, but it does not establish authorization to work in the United States. Therefore, the applicant would also need to show you a document from List C.

Remember, for reverification purposes, the individual again has the right to show the valid documents of his/her choice. These documents don't have to be the same ones that he/she presented initially. If you insist on seeing the same documents, you are engaging in document abuse.

8. Useless Regret

Probably. Although you may choose not to allow applicants 3 days to present valid documents, you must treat all applicants equally. The paperwork requirements are the same for citizens and noncitizens alike.

E-VERIFY AND FAR E-VERIFY GUIDES

MOU: Sample E-Verify
Memorandum of Understanding

Company ID Number:

THE E-VERIFY
MEMORANDUM OF UNDERSTANDING
FOR EMPLOYERS

ARTICLE I
PURPOSE AND AUTHORITY

The parties to this agreement are the Department of Homeland Security (DHS) and the _____ (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

ARTICLE II
RESPONSIBILITIES

A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:

   a. Notice of E-Verify Participation

   b. Notice of Right to Work

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.

3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.

4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.

a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.

6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.

Note: Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.

7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures.

a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between $550 and $1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly

employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status

(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at E-Verify@dhs.gov. Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon

reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that E-Verify trademarks and logos may be used only under license by DHS/USCIS (see M-795 (Web)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,

ii. The employee's work authorization has not expired, and

iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

i. The Employer cannot determine that Form I-9 complies with Article II.A.6,

ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or

iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with

Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.

2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.

4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:

a. Automated verification checks on alien employees by electronic means, and

b. Photo verification checks (when available) on employees.

2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.

4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.

5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.

7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.

8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.

9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify

case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.

4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the

employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:

a. Scanning and uploading the document, or

b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).

7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

ARTICLE IV
SERVICE PROVISIONS

A. NO SERVICE FEES

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V
MODIFICATION AND TERMINATION

A. MODIFICATION

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.

2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.

B. TERMINATION

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.

2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.

3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

ARTICLE VI
PARTIES

A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.

D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to,

Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.

Company ID Number:

Approved by:

Employer	
Name (Please Type or Print)	Title
Signature	Date
Department of Homeland Security – Verification Division	
Name (Please Type or Print)	Title
Signature	Date

Company ID Number:

Information Required for the E-Verify Program **Information relating to your Company:**	
Company Name	
Company Facility Address	
Company Alternate Address	
County or Parish	
Employer Identification Number	
North American Industry Classification Systems Code	
Parent Company	
Number of Employees	
Number of Sites Verified for	

Company ID Number:

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

Company ID Number:

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Company ID Number:

E-VERIFY AND FAR E-VERIFY GUIDES

E-Verify User Manual

User Manual

August 2016

U.S. Citizenship and Immigration Services

TABLE OF CONTENTS

1.0 INTRODUCTION

Welcome to the 'E-Verify User Manual.' This manual provides guidance on E-Verify processes and outlines the rules and responsibilities for employers and E-Verify employer agents enrolled in E-Verify. All users must follow the guidelines set forth in the 'E-Verify Memorandum of Understanding for Employers (MOU)' and the rules and responsibilities outlined in this manual.

For purposes of this manual, the term 'employer' means any person, company, or other entity that is required to complete Form I-9, Employment Eligibility Verification (Form I-9) including any individual with an E-Verify user account. The term 'E-Verify employer agent' means any person, company, or other entity that is providing the service of verifying employees as a third party to 'clients' (employers) through the use of E-Verify.

This section provides a background and overview and an introduction to basic website navigation, participation, user roles, rules and responsibilities, and the privacy and security guidelines of E-Verify.

1.1 BACKGROUND AND OVERVIEW

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which required the Social Security Administration (SSA) and U.S. Citizenship and Immigration Services (USCIS), formerly the Immigration and Naturalization Service, to conduct an employment verification pilot program. Under the U.S. Department of Homeland Security (DHS), USCIS operates the E-Verify program, previously referred to as the Basic Pilot program. E-Verify is an internet-based system that implements the requirements of IIRIRA by allowing any U.S. employer to electronically verify the employment eligibility of its newly hired employees.

E-Verify is a voluntary program for most employers, but mandatory for some, such as employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause.

NOTE: E-Verify cannot provide guidance on state or local laws that require employer participation in E-Verify. For help, contact the appropriate state officials, or a local Chamber of Commerce.

Apart from any state or local law that requires participation in E-Verify, employers are fully responsible for complying with sections 274A (which addresses the requirements of the Form I-9 process) and 274B (which addresses unfair immigration-related employment practices) of the Immigration and Nationality Act. Employers who fail to comply with either section, may be subject to penalties.

E-Verify works by electronically comparing the information from an employee's Form I-9 with records available to SSA and/or DHS to verify the identity and employment eligibility of each newly hired employee and/or employee assigned to a covered federal contract.

Employers can verify the employment eligibility of only one person at a time within E-Verify. Cases for all employees must be created individually.

E-Verify is free and the best means available to confirm the employment eligibility of new hires. E-Verify is available in all 50 states, the District of Columbia, Puerto Rico,

Guam and the U.S. Virgin Islands and Commonwealth of the Northern Mariana Islands.

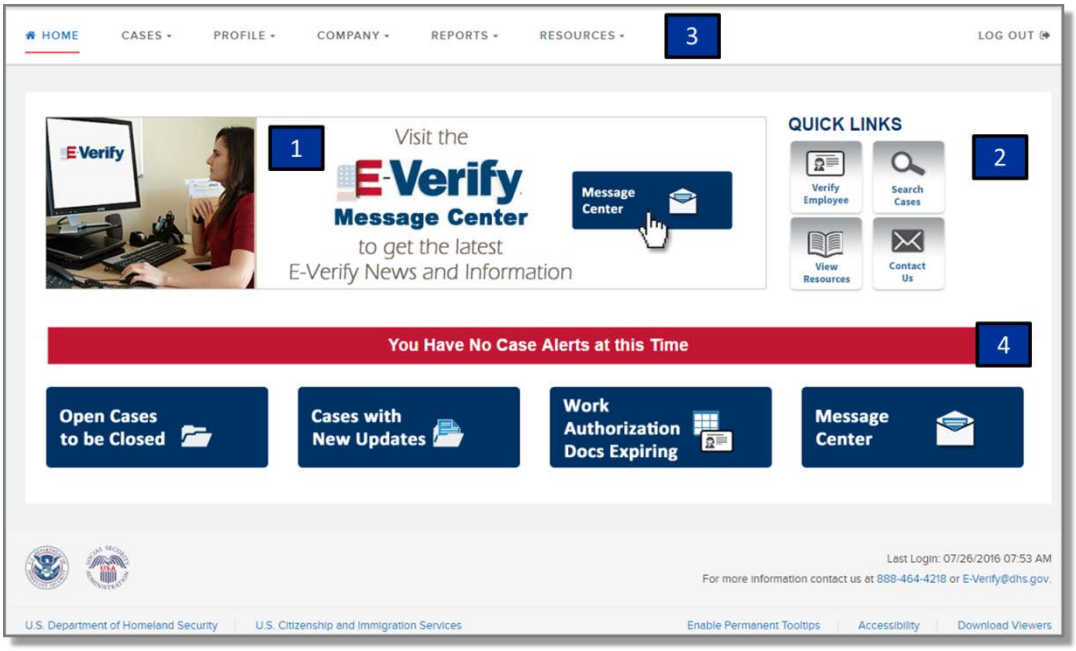
NOTE: E-Verify Self Check, referred to as Self Check, is a free, fast, secure and voluntary online service that allows individuals to perform employment eligibility checks on themselves. Employers may not ask current or prospective employees to use Self Check to prove employment eligibility. The service is designed to provide visibility into government records, and if necessary, guidance on how to correct those records. Self Check is separate from the E-Verify user interface. For more information and specific rules visit www.uscis.gov/E-Verifyselfcheck.

Use of Self Check does not satisfy or supersede the requirements of federal contractors subject to the FAR E-Verify clause, or any other employers, to use E-Verify.

For more information on E-Verify procedures, rules and responsibilities for federal contractors with the FAR E-Verify clause, refer to the 'E-Verify Supplemental Guide for Federal Contractors.'

1.2 BASIC WEBSITE NAVIGATION

All E-Verify users need to be familiar with the website navigation links. The figure below provides a screen shot of the employer user Web page. The navigation links within each area vary depending upon the type of user. For more information on navigation links for E-Verify Employer Agents, refer for to the 'Supplemental Guide for E-Verify Employer Agents'.



Area 1 displays the E-Verify 'Message Center' which includes important updates on E-Verify, information affecting employment verification, best practices and current events.

Area 2 contains 'Quick Links' which includes links to our contact information and to search cases. Area 2 also includes a quick shortcut to create an E-Verify case. Clicking the 'Verify Employee' button will begin the verification process.

Area 3 contains E-Verify navigation options which are identified in the 'Area 3 Navigation Overview.' Selecting a navigation menu link is the first step in accessing a task or function in E-Verify. Choosing an option displays the first active page where a user enters information. Menu options are tailored based on assigned user roles. For more information on user roles, see Section 1.4.

AREA 3 NAVIGATION OVERVIEW

LINK	INFORMATION
Cases	▸ New Case ▸ View Cases ▸ Search Cases
Profile	▸ Edit Profile ▸ Change Password ▸ Change Security Questions
Company (Only program administrators have these options)	▸ Edit Company Profile ▸ Add New User ▸ View Existing Users ▸ Close Company Account
Reports	▸ View Reports
Resources	▸ View Essential Resources ▸ Take Tutorial ▸ View User Manual ▸ Share Ideas ▸ Contact Us

Area 4 displays 'Case Alerts' for cases requiring action. Case alerts inform employers when an action is required. For more information on case alerts, see Section 4.3.

ESSENTIAL RESOURCES

'View Essential Resources' under 'Resources' contains links to important documents and tools for employers that participate in E-Verify. The 'Essential Resources Overview' provides specific information on the resources available to users.

ESSENTIAL RESOURCES OVERVIEW

LINK	INFORMATION
E-Verify Posters	▸ E-Verify Participation Poster ▸ Right to Work Poster
Manuals and Guides	▸ E-Verify User Manual ▸ E-Verify Quick Reference Guides
E-Verify Further Action Notices	▸ Sample DHS TNC Further Action Notice and SSA TNC Further Action Notice available in

LINK	INFORMATION
	several foreign languages
Document Reference Library	▸ Guidance on select state-issued driver's licenses and state ID cards
Form I-9 Resources	▸ The latest version of Form I-9 in English and Spanish ▸ The 'Handbook for Employers: Guidance for Completing Form I-9 (M-274)'
Memorandums of Understanding (MOU)	▸ Sample copies of the most recent version of the MOU
Other Resources	▸ Websites and links to Web pages of interest to employers participating in E-Verify

1.3 E-VERIFY PARTICIPATION: ENROLLMENT VS. REGISTRATION

There are significant differences between enrollment and registration which are outlined in the 'Enrollment vs. Registration Overview.' For additional information on enrollment, visit www.dhs.gov/E-Verify.

Employers who wish to check their enrollment status should contact:

E-Verify Customer Support Monday through Friday 8 a.m. – 5 p.m. local time
Telephone: 888-464-4218 Email: E-Verify@dhs.gov

Employers who have enrolled and need information about registering additional users or about their functions, should see Section 6.0.

ENROLLMENT VS. REGISTRATION OVERVIEW

	ENROLLMENT	REGISTRATION
Who	Employers enroll in E-Verify to participate in the program.	Program administrators register new users in E-Verify who are then able to create cases.
How	Visit the E-Verify enrollment website at https://e-verify.uscis.gov/enroll	Program administrators may register general users and additional program administrators at any time after completing the E-Verify tutorial and passing the knowledge test. For more information on adding new users, see Section 7.1.
Why	Employers enroll to use E-Verify to confirm employment eligibility of employees.	Enrolled employers register users to create cases in E-Verify. There is no limit on the number of users an enrolled employer can register.

To participate in E-Verify, employers must enroll online via any Internet-capable computer using a Web browser of Internet Explorer version 9 and above

(recommended version 11 and above), Google Chrome version 38 and above (recommended version 44 and above), Mozilla version 34 and above (recommended version 38.1 and above), Opera version 25 and above (recommended version 30 and above) and Safari version 7 and above (recommended version 8 or above)

REMINDER

- If you are using a non-current Web browser, the browser version must support TLS version 1.2
- Internet Explorer versions 11 and below have TLS 1.2 disabled by default and will need to enable it in Internet Options

To enroll, employers must accept and electronically sign the 'E-Verify Memorandum of Understanding for Employers (MOU)' which details the responsibilities of the SSA, the DHS and the employer. In addition, all E-Verify users must agree to and follow the guidelines and user responsibilities outlined in the MOU and this manual. Employers should ensure that users are prepared and capable of using E-Verify properly. Misuse of E-Verify may lead to legal liability for both employers and users.

To enroll in E-Verify, employers should visit the enrollment website which guides employers through the enrollment process. Additional information regarding enrollment is found at www.dhs.gov/E-Verify.

Participating employers use E-Verify through an access method that is determined during the enrollment process. Access methods are types of E-Verify accounts that offer different features for specific types of organizations. The four access methods include: employer, E-Verify employer agent, corporate administrator and Web services.

The access methods are explained in the 'Access Method Overview.' For more information, visit the Getting Started section at www.dhs.gov/E-Verify.

ACCESS METHOD OVERVIEW

ACCESS METHOD	EXPLANATION
Employer Access	**Employer plans to use E-Verify to verify its employees.** Most E-Verify participants, regardless of their business size or structure, are enrolled under the employer access method. This access method allows an employer to create cases in E-Verify for its newly hired employees and/or employees assigned to a covered federal contract.
E-Verify Employer Agent Access	**Employer agent plans to use E-Verify on behalf of its clients to verify their clients' employees.** The E-Verify employer agent access method allows an individual or company to act on behalf of other employers to create cases in E-Verify for other employers' newly hired employees and/or employees assigned to a covered federal contract.
Corporate Administrator Access	**Employer has a central office that needs to manage E-Verify use for all of its locations that access E-Verify.** Corporate administrator access is used only to manage multiple employer accounts and does not allow corporate administrator users to create and

ACCESS METHOD	EXPLANATION
	manage E-Verify cases.
Web Services Access for Employers **-or-** **Web Services Access for E-Verify Employer Agents**	**Employer plans to develop its own software to access E-Verify.** The Web services access method requires an employer to develop software that interfaces with E-Verify to verify the employment eligibility of newly hired employees and/or employees assigned to a covered federal contract. The employer's software will extract data from its existing system or an electronic Form I-9 and transmit the information to E-Verify. If a company chooses this option, it is sent the Web services Interface Control Document. The Interface Control Document contains the information used to develop and test the software interface. Both employers and E-Verify employer agents are eligible to use this access method.

REMINDER

- Follow E-Verify procedures for ALL new hires while enrolled in E-Verify.

1.4 OVERVIEW OF USER ROLES

Enrolled employers can provide their users with access to E-Verify by assigning them a user role. Permissions and functions in E-Verify granted to the user depend upon the user role. There are two types of users: general users and program administrators. Review the permissions of each user role in the 'User Role Overview' below.

General users and program administrators must successfully complete the online E-Verify tutorial before they can create or manage cases. For more information on the specific functions of each user role, see Section 6.1.

USER ROLE OVERVIEW

USER ROLE	PERMISSIONS
Program Administrator (at least one required)	Every E-Verify account must have at least one program administrator. The program administrator is responsible for following all E-Verify program rules and staying informed of changes to E-Verify policies and procedures. The program administrator role includes functions of a general user. Permissions include: • Registering new users • Creating user accounts for other program administrators and general users • Creating and managing cases • Viewing reports • Updating profile information for other program administrators and general users • Unlocking user accounts • Closing company and user accounts
General User (optional)	Employers can have as many or no general users as they desire. The general user is responsible for following all E-Verify program rules and staying informed of changes to E-Verify policies and procedures. Permissions include: • Creating and managing own cases • Viewing reports • Updating his/her own user profile

1.5 USER RULES AND RESPONSIBILITIES

All E-Verify users are bound by the guidelines in the MOU and the rules and responsibilities outlined in this manual.

To ensure proper use of E-Verify and protection of employee workplace rights, employers should periodically review all of the program rules and employer responsibilities with their users.

For information on E-Verify rules and responsibilities for federal contractors with the FAR E-Verify clause, refer to the 'E-Verify Supplemental Guide for Federal Contractors.'

All E-Verify users must follow the guidelines specified in the 'Rules and Responsibilities Overview.'

RULES AND RESPONSIBLITIES OVERVIEW
Employers who participate in E-Verify **MUST**: ✓ Follow E-Verify procedures for each newly hired employee while enrolled and participating in E-Verify. ✓ Notify each job applicant of E-Verify participation. ✓ Clearly display the 'Notice of E-Verify Participation' and the 'Right to Work' posters in English and Spanish and may also display the posters in other languages provided by DHS.

RULES AND RESPONSIBLITIES OVERVIEW
✓ Complete Form I-9 for each newly hired employee before creating a case in E-Verify.
✓ Obtain a Social Security number (SSN) from each newly hired employee on Form I-9.
✓ Ensure that Form I-9 'List B' identity documents have a photo (Section 2.1).
✓ Create a case for each newly hired employee no later than the third business day after he or she starts work for pay.
✓ Provide each employee with notice of and the opportunity to contest a Tentative Nonconfirmation (TNC).
✓ Ensure that all personally identifiable information is safeguarded.
✓ Enter the employee's e-mail address in E-Verify if it was provided on his or her Form I-9.
Employers participating in E-Verify **MUST NOT:**
✗ Use E-Verify to pre-screen an applicant for employment.
✗ Create an E-Verify case for an employee who was hired before the employer signed the E-Verify MOU.
✗ Take adverse action against an employee based on a case result unless E-Verify issues a Final Nonconfirmation.
✗ Terminate an employee during the E-Verify verification process, because he or she receives a TNC.
✗ Specify or request which Form I-9 documentation a newly hired employee must use.
✗ Use E-Verify to discriminate against ANY job applicant or new hire on the basis of his or her national origin, citizenship or immigration status.
✗ Selectively verify the employment eligibility of a newly hired employee.
✗ Share any user ID and/or password.

Upon enrollment, employers are required to clearly display the 'Notice of E-Verify Participation' and 'Right to Work' posters in English and Spanish; both appear below. Employers may also display the posters in other languages provided by DHS. Display the posters in a prominent place that is clearly visible to prospective employees and all employees that will have their employment eligibility verified with E-Verify. After logging in to E-Verify, the posters are found under 'View Essential Resources.' In addition, E-Verify recommends providing a copy of these posters with job application materials, either online or in hard copy.

E-VERIFY PARTICIPATION ENROLLMENT NOTIFICATION

Notice of E-Verify Participation	Right to Work Poster
 Provided by DHS	 *Issued by Department of Justice, the Office of Special Counsel for Immigration-Related Unfair Employment Practices*

1.6 PRIVACY AND SECURITY STATEMENT

The use of E-Verify requires the collection of personally identifiable information. Employers must protect the privacy of employees who submit information to be processed through E-Verify and ensure that all personal information collected is safeguarded and used only for the purposes outlined in the MOU.

Failure to properly protect employee information can result in identity theft or fraud and can cause considerable inconvenience, harm or embarrassment to the employees or employer affected.

At a minimum, follow the steps in the 'Privacy Guidelines Overview' to protect personal information and comply with the appropriate requirements.

PRIVACY GUIDELINES OVERVIEW
▶ **Allow ONLY authorized users to use E-Verify.** Ensure that only appropriate users handle information and create cases.
▶ **SECURE access to E-Verify.** Protect passwords used to access E-Verify and ensure that unauthorized persons do not gain access to E-Verify.
▶ **PROTECT and STORE employee information properly.** Ensure that employee information is stored in a safe and secure location and that only authorized users have access to this information.
▶ **Discuss E-Verify results in PRIVATE.** Ensure that all case results including Tentative Nonconfirmations (TNC) and Final Nonconfirmations are discussed in private with the employee.

REMINDER

- Ensure that all personally identifiable information is safeguarded.

1.7 STATE WORKFORCE AGENCIES

State workforce agencies that participate in E-Verify must adhere to specific guidelines in addition to the E-Verify rules and responsibilities, see section 1.5. State workforce agencies:

- Must complete Form I-9, Employment Eligibility Verification (Form I-9) with the referred worker, before creating an E-Verify case.
- Must verify the referred worker's employment eligibility through E-Verify while they are present in the state workforce agency's office.
- Must provide the DHS-supplied 'Notice to Employer of Referred Workers' to each employer to whom the agency refers a worker.

It is important that you comply with all of the requirements you agreed to when you enrolled in E-Verify. If you fail to do so or you wrongly terminate, suspend or unlawfully discriminate against a worker, you may be subject to civil legal action against you or your agency. Your agency's participation in E-Verify may also be terminated.

2.0 INITIAL VERIFICATION

The E-Verify process begins with a completed Form I-9. E-Verify confirms employment eligibility by comparing the employee's Form I-9 information entered in E-Verify by the employer, with the information in records available to SSA and/or DHS.

When E-Verify checks the employee's information with records available to SSA and/or DHS, a case result is provided. Case result statuses can be 'initial' 'interim' or 'final.' Proper use of E-Verify requires users to close all cases when they receive final case results.

This section outlines the steps required to create a case in E-Verify and the initial case results provided by E-Verify. For additional guidance specific to E-Verify employer agents, see the 'Supplemental Guide for E-Verify Employer Agents.'

2.1 FORM I-9 AND E-VERIFY

Employers are required to timely and properly complete and retain Form I-9 for each employee they hire. The hire date means the first day of employment in exchange for wages or other remuneration. These Form I-9 requirements also apply to E-Verify employers. With the goal of ensuring a legal workforce, employers enrolled in E-Verify have chosen to take the additional step of electronically confirming that information their employees provide match government records.

To view or download Form I-9, go to the following website:

http://www.uscis.gov/I-9

For more information on Form I-9 procedures, refer to the 'View Essential Resources' link on the navigation menu and locate the 'Handbook for Employers: Guidance for Completing Form I-9 (M-274).'

To view or download the 'Handbook for Employers: Guidance for Completing Form I-9 (M-274),' go to the following website:

http://www.uscis.gov/files/form/m-274.pdf

For additional assistance on Form I-9, contact E-Verify Customer Support Monday through Friday 8 a.m. – 5 p.m. at 888-464-4218.

Newly hired employees must complete Section 1 of Form I-9 in its entirety on the first day of work for pay. They may complete Section 1 before this date, but only after acceptance of their offer of employment. Under general Form I-9 practice, employees can voluntarily provide their Social Security numbers (SSN) on Form I-9. However, because SSNs are required for employers to create E-Verify cases, all newly hired employees, including seasonal, temporary and rehired, of E-Verify employers MUST provide their SSN.

If a newly hired employee has applied for, but has not yet received an SSN (e.g., the employee is a newly arrived immigrant), attach an explanation to the employee's Form I-9 and set it aside. Allow the employee to continue to work and create a case in E-Verify using the employee's SSN as soon as it is available. If the case was not created by the third business day after the employee started work for pay, indicate the reason for this delay. Employers may choose a reason from the drop-down list or state a specific reason in the field provided.

Employers must complete Section 2 of Form I-9 in its entirety within three days of the employee's date of hire. To complete Section 2, examine documents presented by the employee that establish his or her identity and employment authorization. Do not specify which documents from the "List of Acceptable Documents" on Form I-9 the employee must present. Employers may reject a document if it does not reasonably appear to be genuine or to relate to the person presenting it.

Documents from List A establish both identity and employment eligibility. Documents from List B establish identity only and documents from List C establish employment eligibility only. Employers must accept either one document from List A, or a combination of one document from List B and one document from List C.

Any List B document presented to employers participating in E-Verify MUST contain a photo. However, if an employee objects to providing a photo document for religious reasons, call E-Verify at 888-464-4218. If the employee presents a U.S. Passport, Passport Card, a Permanent Resident Card (Form I-551) or an Employment Authorization Document (Form I-766), the employer must obtain a copy of it and retain it with Form I-9. For more information on Form I-9 retention guidelines, refer to the 'Handbook for Employers: Guidance for Completing Form I-9 (M-274).'

RECEIPTS

If the employee presents an acceptable receipt for Form I-9 showing that he or she applied to replace a document that was lost, stolen or damaged, the employer must set aside this employee's Form I-9 and wait to create a case in E-Verify. When the employee provides the actual document for which the receipt was presented, the employer must update the employee's Form I-9 and then create a case in E-Verify for the employee.

However, employers must create a case in E-Verify by the third business day after the employee is hired if the employee presents one of the following documents which are also considered receipts:

- The arrival portion of Form I-94/I-94A with a temporary I-551 stamp and a photograph of the individual.
- The departure portion of Form I-94 with a refugee admission stamp or computer-generated printout of Form I-94 with admission code "RE."

For more information on acceptable receipts, see the 'Handbook for Employers: Guidance for Completing Form I-9 (M-274)' or visit www.uscis.gov/i-9central.

REHIRES

Employers must use E-Verify for rehired employees However, E-Verify has special rules for rehired employees who previously provided a U.S. Passport, U.S. Passport Card, Permanent Resident Card, Alien Registration Receipt Card (Form I-551), Driver's License or State ID card for Form I-9 and the document is now expired. In these situations, there are two options:

- If an E-Verify case was never created for this employee, have the employee complete a new Form I-9 and create a case in E-Verify.
- If an E-Verify case was previously created for this employee and received an employment authorized result, complete Section 3 of the employee's previous Form I-9 and do not create a new case for the employee in E-Verify. Alternatively, employers may choose to complete a new Form I-9 and create a case for the employee in E-Verify. If an E-Verify case was previously

created, but did not receive an employment authorized result, have the employee complete a new Form I-9 and create a case in E-Verify.

REMINDER

- All newly hired employees must provide a SSN.
- Do NOT specify or request which document a newly hired employee must use for Form I-9.
- A List B document MUST contain a photo (see exception above).
- If the employee presents a U.S. Passport, Passport Card, a Permanent Resident Card (Form I-551) or an Employment Authorization Document (Form I-766), make a copy of the document and retain it with Form I-9.

2.2 CREATE A CASE

After Form I-9 is complete, the next step is to create a case in E-Verify using the information that the employee completed on his or her Form I-9. E-Verify cases must be created no later than the third business day after the employee starts work for pay. Employers who learn that they inadvertently failed to create a case by the third business day after the employee started work for pay should bring themselves into compliance immediately by creating a case for the employee.

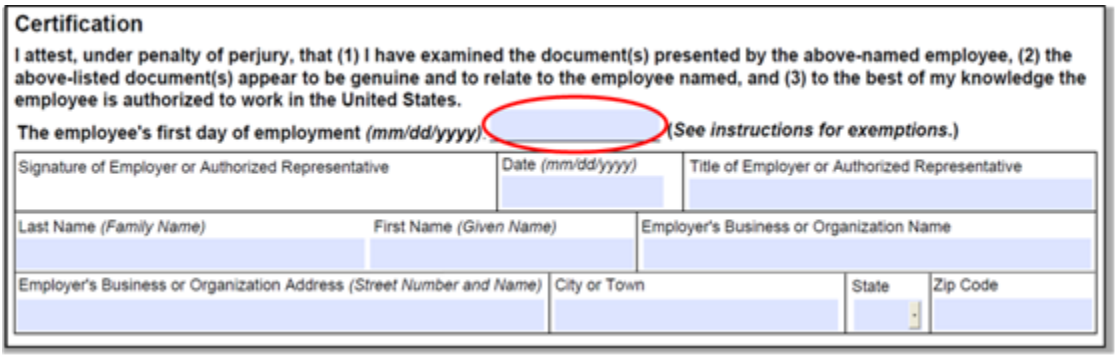
Do not create a case for an employee hired before the effective date of the employer's MOU.

For more information on E-Verify procedures for federal contractors with the FAR E-Verify clause, refer to the 'E-Verify Supplemental Guide for Federal Contractors.'

In some cases E-Verify prompts employers to check the information provided or create a new case before it can provide a case result. This section reviews each of these scenarios in detail.

HIRE DATE

The hire date is the first day of employment in exchange for wages or other remuneration (or "work for pay"). This was previously referred to as the date on which the employee began employment. For the hire date in E-Verify, enter the 'employee's first day of employment' date from the 'Certification' in Section 2 of the employee's Form I-9, circled below.



Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: *(See instructions for exemptions.)*

Signature of Employer or Authorized Representative	Date *(mm/dd/yyyy)*	Title of Employer or Authorized Representative

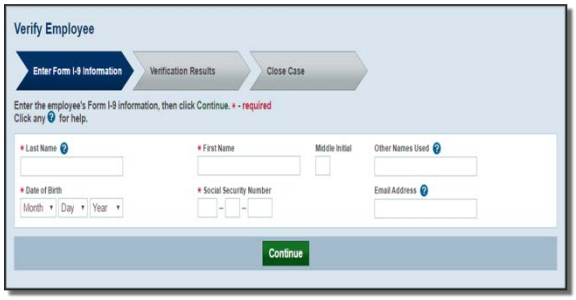
Last Name *(Family Name)*	First Name *(Given Name)*	Employer's Business or Organization Name

Employer's Business or Organization Address *(Street Number and Name)*	City or Town	State	Zip Code

If Form I-9 is completed after the employee accepts the offer of employment, but before the actual start of work for pay, it is possible that the hire date recorded on Form I-9 will change after the employer created the case in E-Verify. If this happens, no additional action is required in E-Verify as the hire date cannot be changed once the case has been created. However, employers should correct the Section 2 'Certification' date on the employee's Form I-9 if the employee's hire date changes. Consult the 'Handbook for Employers: Guidance for Completing Form I-9 (M-274)' or visit www.uscis.gov/i-9central for more information.

Employees hired on or before November 6, 1986 are not subject to Form I-9. Therefore, employers may not create E-Verify cases for these employees based on this employment. Individuals hired for employment in the Commonwealth of the Northern Mariana Islands (CNMI) on or before November 27, 2009 are also not subject to Form I-9 and their employers may not create cases in E-Verify for them based on this employment.

Information used to create an E-Verify case comes from the employee's completed Form I-9. After logging in to E-Verify with their assigned user ID and password, users should follow the steps outlined below in the 'How to Create a Case – Process Overview.'

HOW TO CREATE A CASE – PROCESS OVERVIEW		
1	From the E-Verify Welcome page find 'Cases' and click: ▸ **New Case**	
2	Enter the employee's Form I-9 information. A red asterisk (*) in E-Verify indicates a required field. Using information from Section 1 of Form I-9, enter all required information into each field. When the employee provides an email address on Form I-9, you must enter it into E-Verify because E-Verify may send the employee email notifications with information about his or her E-Verify case. Click 'Continue.'	

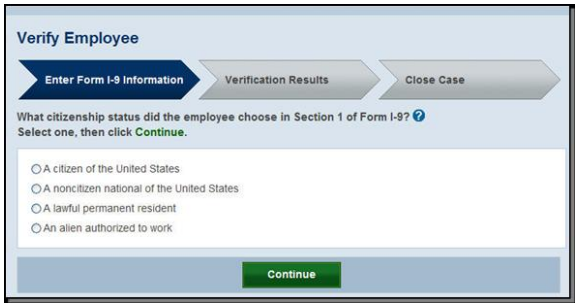
HOW TO CREATE A CASE – PROCESS OVERVIEW

3

From Section 1 of the employee's Form I-9, choose the appropriate option.

- **A citizen of the United States**
- **A noncitizen national of the United States**
- **A lawful permanent resident**
- **An alien authorized to work**

Click 'Continue.'



4

Indicate which documents were provided in Section 2 of the employee's Form I-9. Make the appropriate selection and click 'Continue.'

If you select 'List B and C documents,' E-Verify prompts you to select both documents presented by the employee in Section 2 of Form I-9.

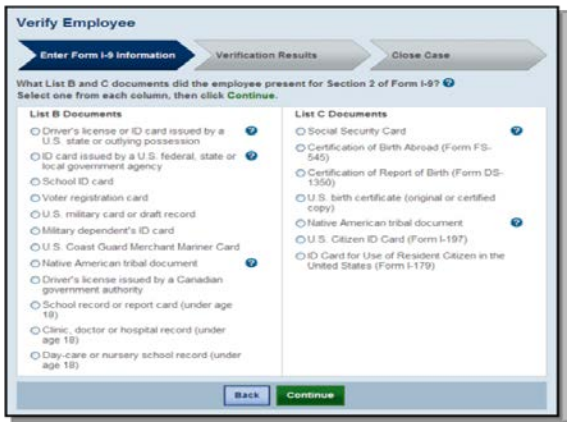
Click 'Continue.'

IMPORTANT: If you select driver's license or ID card, E-Verify will prompt you to select the document name and state. Make the appropriate selection and click 'Continue.'

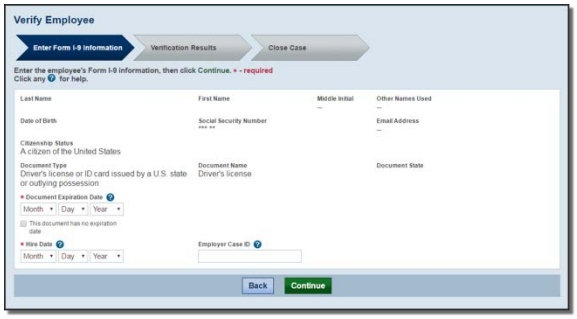
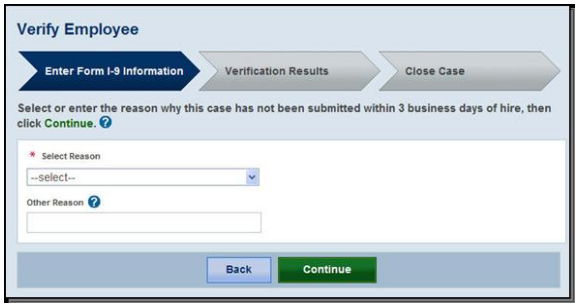
IMPORTANT: If you select **'**An alien authorized to work' you may also be required to indicate that you are entering either the Alien number or I-94 number from the employee's Form I-9.

Click 'Continue.'

Employer Case ID is an optional field for users who wish to assign an internal tracking code to a case.



HOW TO CREATE A CASE – PROCESS OVERVIEW

5	Using information from Section 2 of Form I-9, enter all required information into each field. Click 'Continue.'	
6	If an E-Verify case is not created by the third business day after the employee begins work for pay, indicate the reason for the delay. Select from one of the following reasons: • **Awaiting Social Security number** • **Technical Problems** • **Audit Revealed that New Hire Was Not Run** • **Other** If you select "Other," enter a specific reason in the field provided. Click 'Continue'	

Each screen provides additional information simply by clicking any help text symbol.

REMINDER

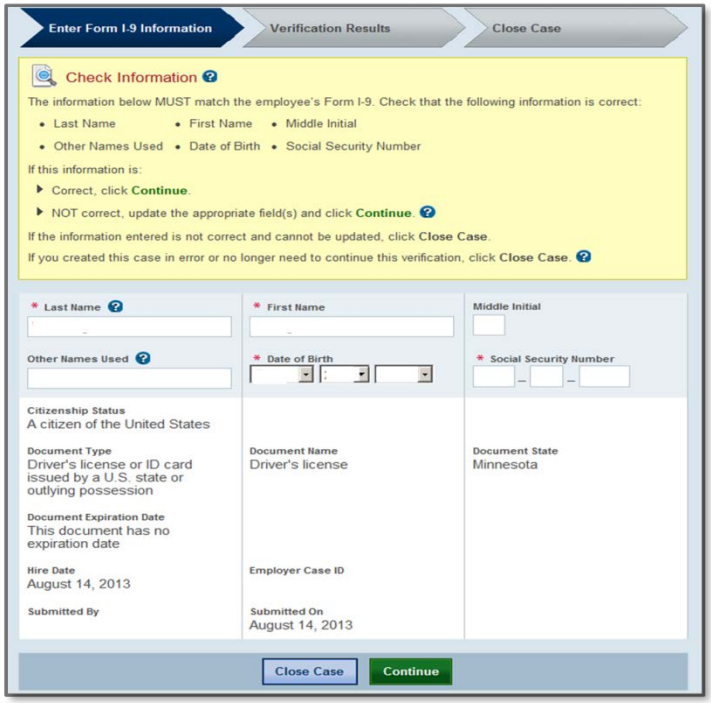
- Complete Form I-9 before creating a case in E-Verify.
- Enter the employee's email address if provided on Form I-9.
- Create cases for all newly hired employees no later than the third business day after the employee starts work for pay.

CHECK INFORMATION

If the information entered does not immediately match SSA and/or DHS records, the 'Check Information' screen appears so the user can confirm that the information was entered correctly. The user may either confirm that the information matches Form I-9 or change the information in certain fields if the information was entered incorrectly. Follow the steps in the 'Check Information – Process Overview.'

CHECK INFORMATION - PROCESS OVERVIEW

- E-Verify prompts you to review and confirm that the information entered into E-Verify is correct.



- Confirm that the information matches Form I-9 or make changes, if needed, and click 'Continue.'
- Some fields cannot be updated. If the information entered is not correct and the information cannot be updated, close the case by clicking 'Close Case.' Select the case closure statement: 'The case is invalid because data entered is incorrect' and create a new case in E-Verify with the correct information.

NOTE: If you do not click 'Continue' or 'Close Case,' the case will receive a status of 'Case Incomplete.' To search for a case, see Section 4.3 'Case Alerts.'

ERROR: UNEXPIRED DOCUMENT REQUIRED

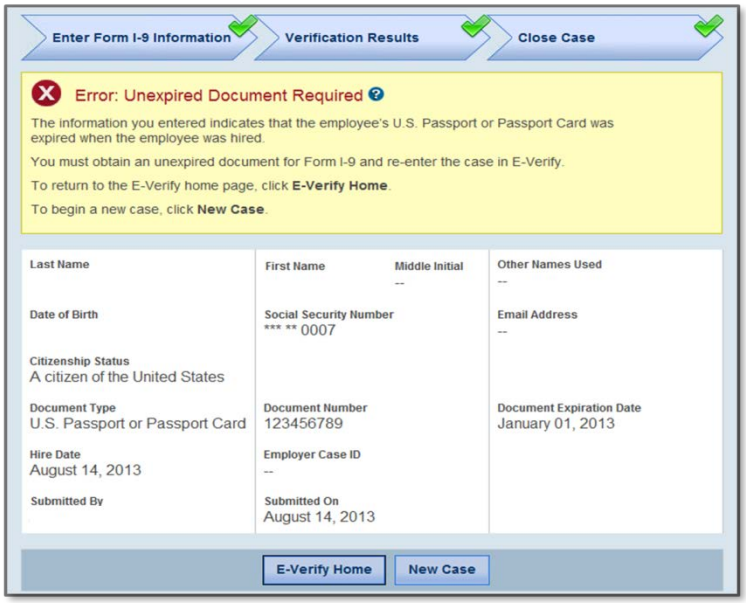
Employees must present unexpired documents for Form I-9 verification (see exception below). If the document entered into E-Verify is expired, E-Verify will reject the document information and not create a case. The employee will need to present acceptable unexpired document(s) and employers will need to update Form I-9 before they can create a case in E-Verify.

Just because the employee presented an expired document does not mean that the employee is not authorized to work. E-Verify can confirm the employment eligibility of this employee once the case is created with unexpired documentation.

EXCEPTIONS: In limited situations, employers may accept a document that appears expired on its face for Form I-9 verification. When a Temporary Protected Status (TPS) designation for a particular country is extended, DHS sometimes automatically extends the expiration date of Employment Authorization Documents (EAD, Form I-766) issued to affected TPS beneficiaries via notice published in the Federal Register. In this situation, the published notice will state the date to which the EAD has been extended. When such a document is presented for Form I-9 verification, the expiration date is the extended date that appears in the Federal Register Notice. DHS also sometimes extends two-year Permanent Resident Cards (Form I-551) via Notice of Action Form (Form I-797). The Permanent Resident Card with Form I-797 noting the extension can be presented as a List C document for Form I-9. In all other instances, the document presented with Form I-9 must be unexpired at the time the employee is hired.

ERROR: UNEXPIRED DOCUMENT REQUIRED – PROCESS OVERVIEW

- E-Verify prompts an 'Error: Unexpired Document Required' case result.



- Obtain an unexpired document from the employee for Form I-9.
- Click 'New Case' and enter the employee's unexpired Form I-9 document information.

IMPORTANT: An expired document presented for Form I-9 does NOT always mean that the employee is not authorized to work in the United States. Obtain an unexpired document and re-enter the case in E-Verify so the system can provide a case result for this employee.

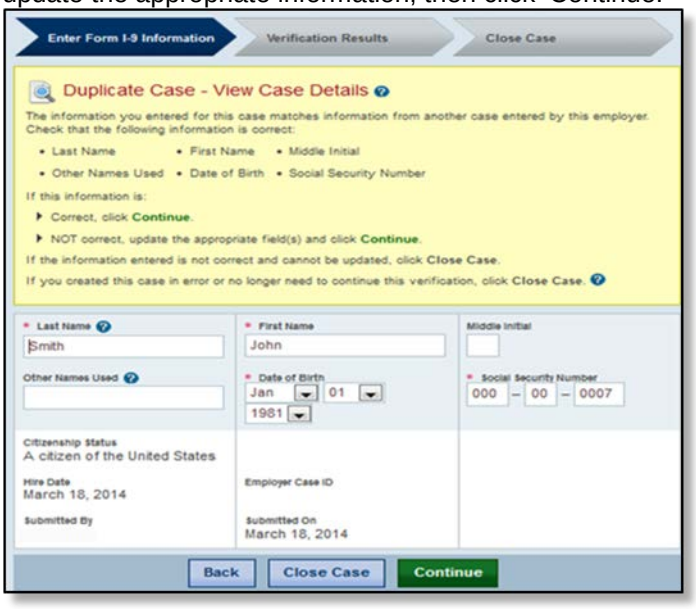
DUPLICATE CASE ALERT

A duplicate case alert appears for a case that contains the same Social Security number of a previous case entered for the same employer account. A duplicate case alert can occur for several reasons. Receiving a duplicate case alert does not necessarily mean that the new case should be closed. There may be instances when the employer must create a new case for the same employee, such as in the case of a rehire or if the previous case contains incorrect information. Review the situation and decide whether to continue with the case. Follow the steps in the 'Duplicate Case Alert – Process Overview.'

DUPLICATE CASE ALERT – PROCESS OVERVIEW

- E-Verify prompts you to review the case information and determine whether you will continue with the case. You may need to contact the user that created the previous case.

- Click 'View Case Details' to review the case information. If the information is incorrect, update the appropriate information, then click 'Continue.'



- If you determine that you need to continue with the case, click 'Continue.' You will need to select a reason from the options presented in E-Verify.
- If you think the case is truly a duplicate and you no longer need to continue the verification process, you can close the case by clicking 'Close Case.'

E-VERIFY PHOTO MATCHING

If an employee presented one of four List A documents for Form I-9 verification, photo matching will prompt the E-Verify user to compare the employee's photo document with a photo displayed during creation of the E-Verify case. This helps ensure that the document the employee provided matches records available to DHS.

The four List A documents that will trigger photo matching are the U.S. Passport, Passport Card, Permanent Resident Card (Form I-551) and Employment Authorization Document (Form I-766). When the employee presents one of these documents, employers must copy the document and retain it with Form I-9. If the employee's Form I-9 information matches records available to DHS, E-Verify displays the employee's photo from the document presented.

To match photos, compare the photo displayed by E-Verify to the photo on the employee's actual document or a copy of the employee's document and determine if the photos are reasonably identical. The photos should be identical with only minor variations in shading and detail based upon the age and wear of the employee's document and the quality of your computer monitor.

Note that a watermark has been added to the photo displayed in E-Verify to prevent unauthorized use. The photo on the document presented by the employee will not have a watermark. Absence of a watermark on the photo from the employee's document does not mean that the document is not genuine.

Do not compare the photo displayed by E-Verify to the actual employee. Employers should have directly compared the document to the employee during Form I-9 completion and prior to creating the E-Verify case. 'Photo Matching - Process Overview' provides a summary.

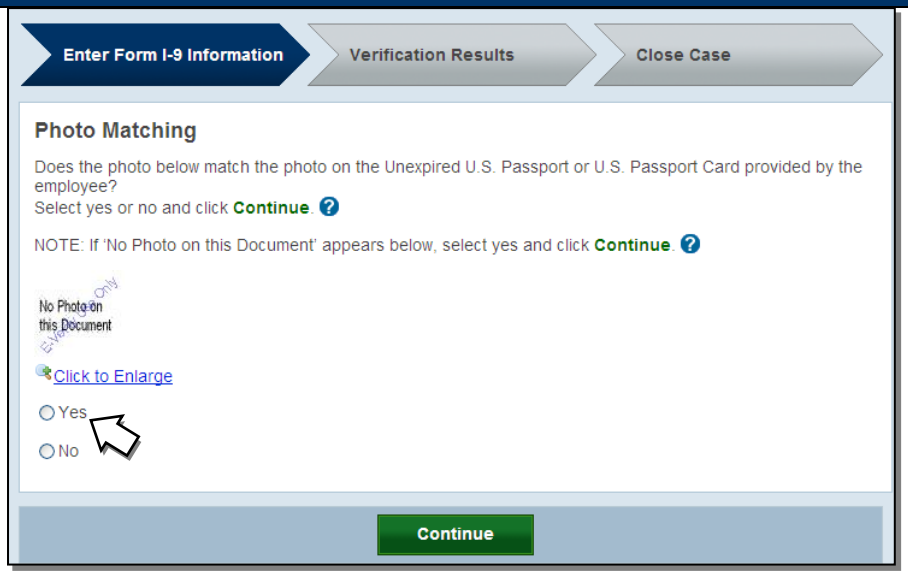
PHOTO MATCHING – PROCESS OVERVIEW

- E-Verify prompts you to compare a photo displayed in E-Verify with the employee's Form I-9 photo document. You must obtain a copy of the employee's document and retain it with Form I-9.
- Account for minor variations in shading and detail between the two photos and select Yes or No.

- Yes – the photo on the employee's actual document or a copy matches the photo displayed by E-Verify. Clothing, hair style, facing direction and appearance on the card should be identical to the photo displayed by E-Verify.
- No – the photo on the employee's actual document or a copy does not match the photo displayed in E-Verify.

NOTE: If 'No Photo on this Document' appears, select Yes.

PHOTO MATCHING – PROCESS OVERVIEW



- Click 'Continue.'

NOTE: If you do not make a selection and click 'Continue,' the case will receive a status of 'Photo Matching Required.' To search for a case, see Section 4.3 'Case Alerts.'

IMPORTANT: Compare the photo displayed in E-Verify with the employee's Form I-9 photo document, not to the actual employee.

After a selection is made, one of the following case results will appear:

- EMPLOYMENT AUTHORIZED, Section 2.4
- DHS TENTATIVE NONCONFIRMATION (TNC), Section 3.3

Each case result requires different actions or steps to continue or close the case. These actions are outlined in each case result section throughout this manual.

REMINDER

- Employees always have a choice of which acceptable documents to present for Form I-9; employers may NOT require workers to present documents that activate photo matching.
- Make a copy of all U.S. Passports, Passport Cards, Permanent Resident Cards (Form I-551) and Employment Authorization Documents (Form I-766) presented by employees and retain them with Form I-9.
- The photo will display automatically in E-Verify during the verification process.
- Only compare the employee's Form I-9 photo document to the photo displayed in E-Verify.

2.3 INITIAL CASE RESULTS

E-Verify checks information entered by the employer against records available to SSA and/or DHS. Once a case is created, a result is displayed. Initial case results are displayed in the 'Initial Case Results – Overview.' If the employer makes a mistake after creating a case, the case must be closed (see Section 4.2).

INITIAL CASE RESULTS – OVERVIEW	
Employment Authorized	The employee's information matched records available to SSA and/or DHS.
SSA or DHS Tentative Nonconfirmation (TNC)	Information does not initially match records available to SSA and/or DHS. Additional action is required. For more information, see Section 3.0 'Interim Case Results.'
DHS Verification In Process	This case is referred to DHS for further verification.

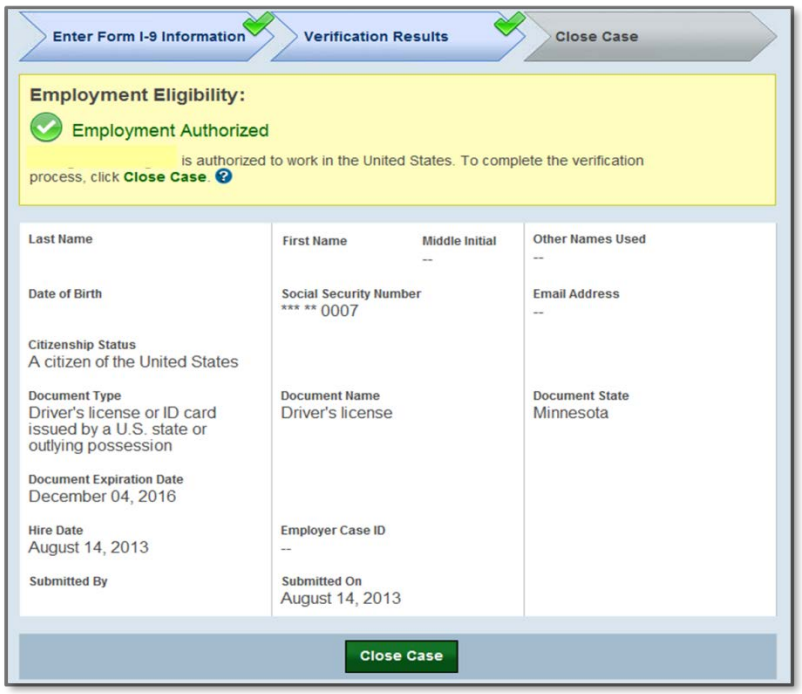
2.4 EMPLOYMENT AUTHORIZED

An initial case result of 'Employment Authorized' is the most common and simple case result in E-Verify. 'Employment Authorized' means that the information entered into E-Verify matched records available to SSA and/or DHS and that E-Verify confirmed the employment eligibility of the employee whose information was entered. However, a case that is 'Employment Authorized' is still considered incomplete until it is closed.

Follow the steps outlined in the 'Employment Authorized - Process Overview.'

EMPLOYMENT AUTHORIZED – PROCESS OVERVIEW

- Receive case result 'Employment Authorized.'



- Check the information in E-Verify against the employee's Form I-9.
- Close Case.

A case result of 'Employment Authorized' requires the important step of closing the case. Employers must close each case; this does not happen automatically. Closing

the case removes it from the active cases list or the 'Open Cases to be Closed' list. To close each case, follow the steps outlined in Section 4.2 'Close Case.'

EMPLOYMENT AUTHORIZED SUMMARY

EMPLOYER ACTION

- Enter Form I-9 information into E-Verify
- Receive 'Employment Authorized' case result
- Ensure that the information displayed in E-Verify matches the employee's Form I-9
- Close case

EMPLOYEE ACTION

- NONE

REQUEST NAME REVIEW

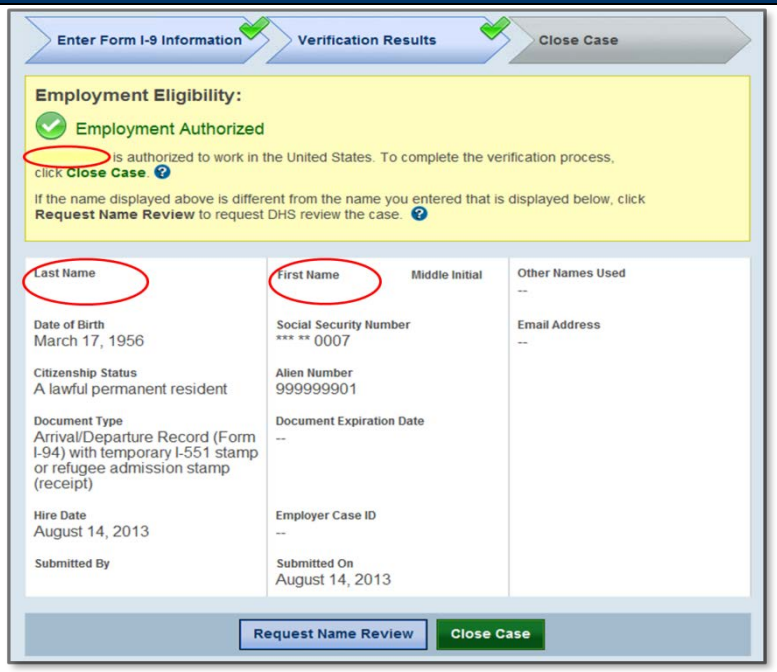
In some cases E-Verify issues a case result of 'Employment Authorized,' but the name returned in E-Verify does not match exactly the name on Form I-9. This happens when the information matches, but there are name variations in DHS records. In this case, request a review of the employee's name so E-Verify can issue a final case result. To request a name review, follow the steps outlined in the 'Request Name Review - Process Overview.'

IMPORTANT: Do not use this functionality in a discriminatory manner (e.g., based on an individual's race, national origin or ethnicity).

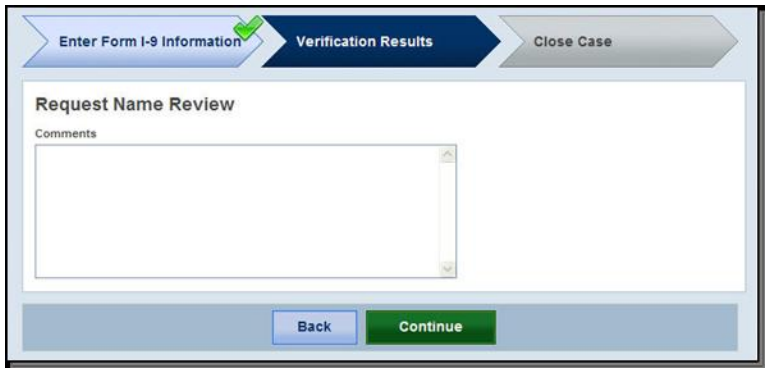
REQUEST NAME REVIEW – PROCESS OVERVIEW

- Compare the name displayed in the yellow box with the name you entered which is shown in the white box.
- If the names match, click 'Close Case.'
- If the names do not match, request DHS review of the case by clicking 'Request Name Review.'

REQUEST NAME REVIEW – PROCESS OVERVIEW



- Enter the specific reason for the name review request into the 'Comments' field.



- Click 'Continue.'

A case sent to DHS for name review will be updated with one of the following results:

- EMPLOYMENT AUTHORIZED, Section 2.4
- DHS TENTATIVE NONCONFIRMATION (TNC), Section 3.3

Each case result requires different actions or steps to continue or close the case. These actions are outlined in the case result sections throughout this manual.

REQUEST NAME REVIEW SUMMARY

EMPLOYER ACTION

- Determine if a name review is required (if not required, close case)
- Click 'Continue'
- Input reason for name review request in 'Comments' field
- Click 'Continue'

- Follow steps outlined in 'DHS Verification in Process'

EMPLOYEE ACTION

- NONE

TENTATIVE NONCONFIRMATION (TNC)

A TNC case result means that the information entered into E-Verify from Form I-9 differs from records available to SSA and/or DHS. E-Verify identifies the agency associated with the mismatch when the TNC result is provided.

An SSA TNC means that the information entered into E-Verify does not match SSA records. Section 3.0 outlines the specific steps required when this case result is received. Included are descriptions of additional interim case results from SSA, and actions the employee will need to take to resolve the TNC.

A DHS TNC means that the information entered into E-Verify does not match records available to DHS. Section 3.0 outlines the specific steps required when this case result is received. Included are descriptions of additional interim case results from DHS, and actions the employee will need to take to resolve the TNC.

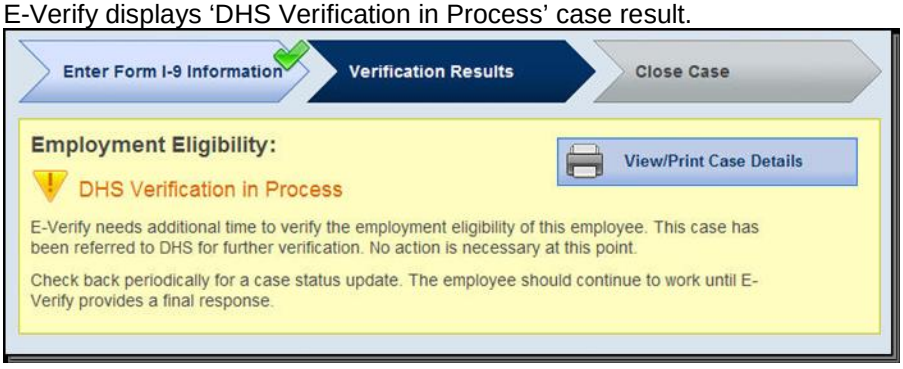
2.5 DHS VERIFICATION IN PROCESS

A case result of 'DHS Verification in Process' means that the information did not match records available to DHS. The case is automatically referred to DHS for further verification. DHS will respond to most of these cases within 24 hours, although some responses may take up to three Federal Government working days. No action is required by either the employer or employee at this time, but employers can check E-Verify daily for a response. See 'DHS Verification in Process – Process Overview.'

IMPORTANT: Federal law prohibits employers from taking any adverse action against an employee because his or her case receives a 'DHS Verification in Process' case result.

DHS VERIFICATION IN PROCESS – PROCESS OVERVIEW

- E-Verify displays 'DHS Verification in Process' case result.



- Check E-Verify for changes to case results.
- DHS may take three Federal Government working days to respond.
- Follow the next step based on the case result provided.

After the 3 Federal Government working days, a 'DHS Verification in Process' case result will provide one of the following case results:

- EMPLOYMENT AUTHORIZED, Section 2.4

- DHS TENTATIVE NONCONFIRMATION (TNC), Section 3.3
- DHS CASE IN CONTINUANCE, Section 3.4

Each case result requires its own actions or steps to continue or close the case. These actions are outlined in the case result sections throughout this manual.

DHS VERIFICATION IN PROCESS SUMMARY

EMPLOYER ACTION

- Check E-Verify for case result updates
- Follow next steps based on case result provided

EMPLOYEE ACTION

- NONE

3.0 INTERIM CASE RESULTS

Cases in an interim case result require additional action before E-Verify can complete the verification process. The different interim case results are listed in the 'Interim Case Results – Overview.'

INTERIM CASE RESULTS - OVERVIEW	
SSA or DHS Tentative Nonconfirmation (TNC)	Information did not match records available to SSA and/or DHS. Additional action is required.
Review and Update Employee Data	Review, update and resubmit the employee's Form I-9 information.
DHS Verification In Process	This case is referred to DHS for further verification. See Section 2.5 for more information.
SSA or DHS Case in Continuance	The employee has visited an SSA field office or contacted DHS, but more time is needed to determine a final case result.

IMPORTANT: Federal law prohibits employers from terminating an employee because of an interim case result until the TNC becomes a Final Nonconfirmation.

3.1 SSA TENTATIVE NONCONFIRMATION (TNC)

A case will have an 'SSA Tentative Nonconfirmation (TNC)' result when the information submitted in E-Verify does not initially match SSA records. This does not necessarily mean that the employee is not authorized to work in the United States; however, it does mean that additional action is required.

Reasons a case may get an SSA TNC case result include the following:

- Employee's citizenship or immigration status was not updated with SSA
- Employee's name change was not reported to SSA
- Employee's name, Social Security number or date of birth is incorrect in SSA records
- SSA records contain another type of mismatch
- Employer did not enter employee's information correctly

The employee must be notified of this result as soon as possible by following the steps in 'Notify Employee of SSA TNC – Process Overview.'

NOTIFY EMPLOYEE OF SSA TNC

Employers must promptly notify the employee of the SSA TNC and discuss the TNC with the employee in a private setting.

The employee chooses whether to contest the case result and acknowledges his or her decision on the SSA TNC Further Action Notice. Employees who choose to contest an SSA TNC are required to visit an SSA field office within eight Federal Government working days to resolve the TNC. Employees should present the SSA TNC Further

Action Notice and applicable original documents listed on Page 2 of the SSA TNC Further Action Notice at the SSA field office.

IMPORTANT: Employers may not terminate, suspend, delay training, withhold or lower pay, or take any other adverse action against an employee because the employee received a TNC until the TNC becomes a Final Nonconfirmation.

If the employee chooses not to contest the SSA TNC, the employer may terminate employment with no civil or criminal liability as noted in "Responsibilities of the Employer," Article II, Section A paragraph 8 of the MOU.

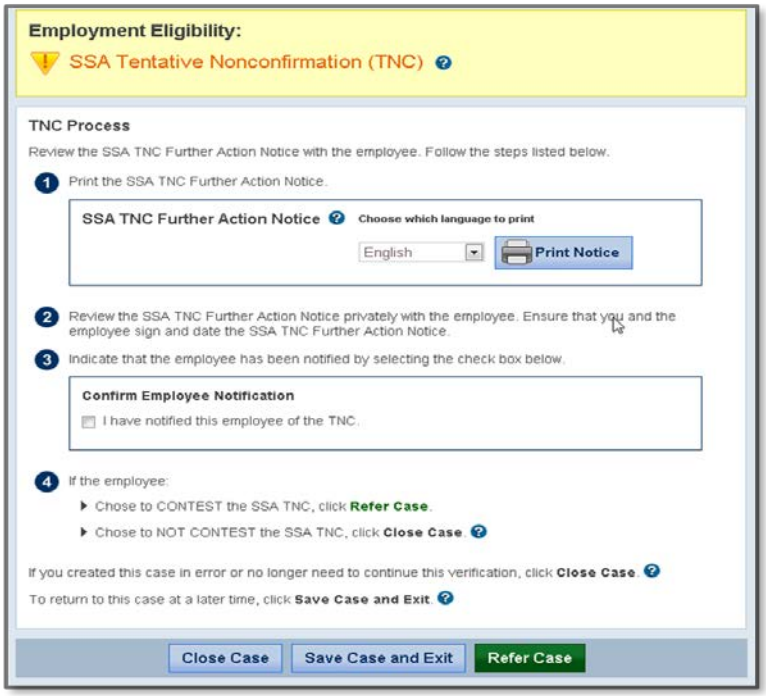
If the employee chooses not to contest the SSA TNC, the case can be treated as a Final Nonconfirmation and the employer should close the case in E-Verify. For more information, see Section 4.2 'Close Case.'

To notify an employee of the SSA TNC case result, follow the steps outlined in the 'Notify Employee of SSA TNC - Process Overview.'

NOTIFY EMPLOYEE OF SSA TNC – PROCESS OVERVIEW

- Receive SSA TNC case result.

- Click 'Continue.'



- Select either English or Spanish and print the SSA TNC Further Action Notice.
- Confirm that all information listed at the top of the SSA TNC Further Action Notice is correct. If information is incorrect, close the case and create a new case for the employee. When you close the original case, select the case closure statement, 'The case is invalid because the data entered is incorrect.'
- If the information is correct, review the SSA TNC Further Action Notice with the employee in private and follow the instructions on Page 1 of the SSA TNC Further Action Notice.

If the employee cannot read, you must read the SSA TNC Further Action Notice to the employee. If the employee does not speak English as his or her primary language and has a

NOTIFY EMPLOYEE OF SSA TNC – PROCESS OVERVIEW

limited ability to read or understand the English language, provide the employee with a translated version of the Further Action Notice in the appropriate language, which is available in 'View Essential Resources.'

IMPORTANT: You may provide the SSA TNC Further Action Notice to the employee in person, by fax, email, overnight or next-day delivery service, as long as you take proper precautions to ensure the employee's information is protected.

- Indicate that the employee has been notified by selecting the box 'Confirm Employee Notification.'

Confirm whether the employee decided to contest the SSA TNC by following the steps in the 'Confirm Employee Decision – Process Overview.'

NOTIFY EMPLOYEE OF SSA TNC SUMMARY

EMPLOYER ACTION

- Privately notify employee of the SSA TNC
- Print, review, sign and date the SSA TNC Further Action Notice

EMPLOYEE ACTION

- Confirm that the information on the SSA TNC Further Action Notice is correct

CONFIRM EMPLOYEE DECISION

After being notified of the 'SSA Tentative Nonconfirmation (TNC)' and choosing whether to contest the case result, the employee acknowledges his or her decision on the SSA TNC Further Action Notice. Employees who choose to contest an SSA TNC are referred to the SSA. Follow the steps outlined in the 'Confirm Employee Decision – Process Overview.'

CONFIRM EMPLOYEE DECISION – PROCESS OVERVIEW

- Instruct the employee to indicate on the SSA TNC Further Action Notice whether he or she will contest the SSA TNC and to sign and date Page 2.
- Sign and date Page 1 of the SSA TNC Further Action Notice as the employer.
- Provide the employee a copy of the signed SSA TNC Further Action Notice in English (and a translated version, if appropriate).
- Attach the original signed SSA TNC Further Action Notice to the employee's Form I-9.
- Take next action in E-Verify based on employee decision to contest or not contest SSA TNC.

CONFIRM EMPLOYEE DECISION SUMMARY

EMPLOYER ACTION

- Instruct the employee to indicate his or her decision to contest or not contest and sign and date the SSA TNC Further Action Notice, then sign and date as the employer
- Provide to the employee a copy of the signed SSA TNC Further Action Notice in English (and a translated version, if appropriate)
- Keep the original signed SSA TNC Further Action Notice on file with Form I-9
- Take the next action based on the employee's decision to contest or not contest the SSA TNC

EMPLOYEE ACTION

- Decide to contest or not contest and indicate choice on the SSA TNC Further Action

Notice
- Acknowledge the SSA TNC case result by signing and dating SSA TNC Further Action Notice
- Take next action based on decision to contest or not to contest

REFER EMPLOYEE TO SSA

An employee who chooses to contest the SSA TNC must visit an SSA field office within eight Federal Government working days to begin resolving the TNC. Give the employee the Referral Date Confirmation from E-Verify. The Referral Date Confirmation provides the date by which the employee must visit SSA. The employee must bring the SSA TNC Further Action Notice when he or she visits an SSA field office. Federal Government working days are Monday through Friday except for federal holidays.

Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any other adverse action against an employee because of the employee's decision to contest an SSA TNC until the TNC becomes a Final Nonconfirmation.

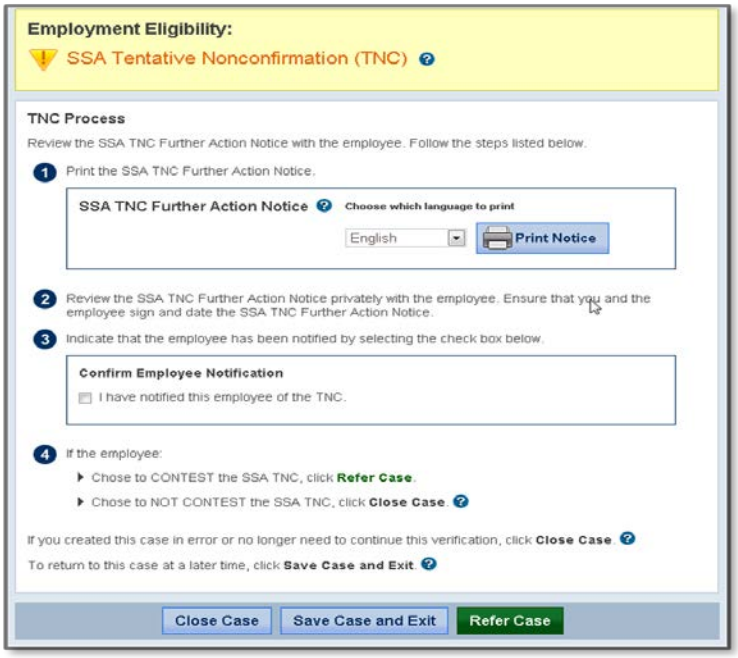
Follow the steps outlined in the 'Refer Employee to SSA – Process Overview' to complete the TNC process.

REFER EMPLOYEE TO SSA – PROCESS OVERVIEW

- If the employee chooses to contest the SSA TNC, click 'Refer Case.'

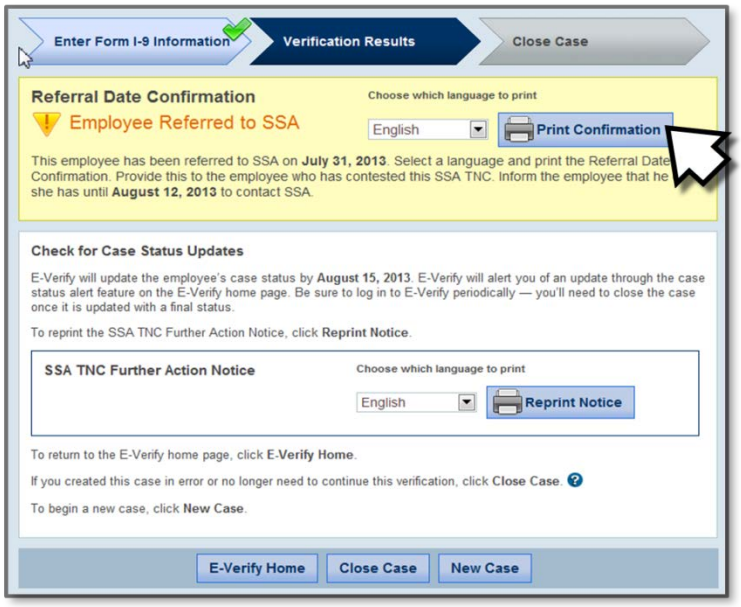
  NOTE: The employee's obligation to visit an SSA field office within eight Federal Government working days begins when you click 'Refer Case.'

- If the employee chooses not to contest, click 'Close Case' and follow steps in Section 4.2 'Close Case.'



- Select the Referral Date Confirmation in either English or Spanish and click 'Print Confirmation.'

REFER EMPLOYEE TO SSA – PROCESS OVERVIEW



- Provide the Referral Date Confirmation to the employee.

  If the employee cannot read, you must read the Referral Date Confirmation to the employee. If the employee does not speak English as his or her primary language and has a limited ability to read or understand the English language, provide the employee with a translated version of this confirmation in the appropriate language, which is available in 'View Essential Resources.'

- Attach a copy of the Referral Date Confirmation to the employee's Form I-9.
- Check E-Verify for case updates and follow steps based on next case result.

IMPORTANT: Close the case ONLY when E-Verify provides a final case result or if you no longer need to continue to verify the employment eligibility of the employee.

SSA has ten Federal Government working days to update the case result in E-Verify. Check E-Verify periodically for an update in the case result. A case referred to SSA is updated with one the following results:

- EMPLOYMENT AUTHORIZED, Section 2.4
- SSA FINAL NONCONFIRMATION, Section 4.1
- SSA CASE IN CONTINUANCE, Section 3.4
- DHS VERIFICATION IN PROCESS, Section 2.5
- REVIEW AND UPDATE EMPLOYEE DATA, Section 3.2

Each case result requires different actions or steps to continue or close the case. These actions are outlined in the case result sections throughout this manual.

REFER EMPLOYEE TO SSA SUMMARY

EMPLOYER ACTION

- Print the Referral Date Confirmation, provide it to the employee and attach a copy to the employee's Form I-9
- Check E-Verify for case result updates and follow steps based on case result provided

EMPLOYEE ACTION

- Visit an SSA field office within eight Federal Government working days and present the SSA TNC Further Action Notice and applicable original documents listed on Page 2 of the SSA TNC Further Action Notice
- SSA instructs employee of next steps

3.2 REVIEW AND UPDATE EMPLOYEE DATA

If a case result of 'Review and Update Employee Data' occurs, E-Verify will issue a prompt for the employer to review and update the employee's information. This means that SSA found a discrepancy in the information it received in the E-Verify referral.

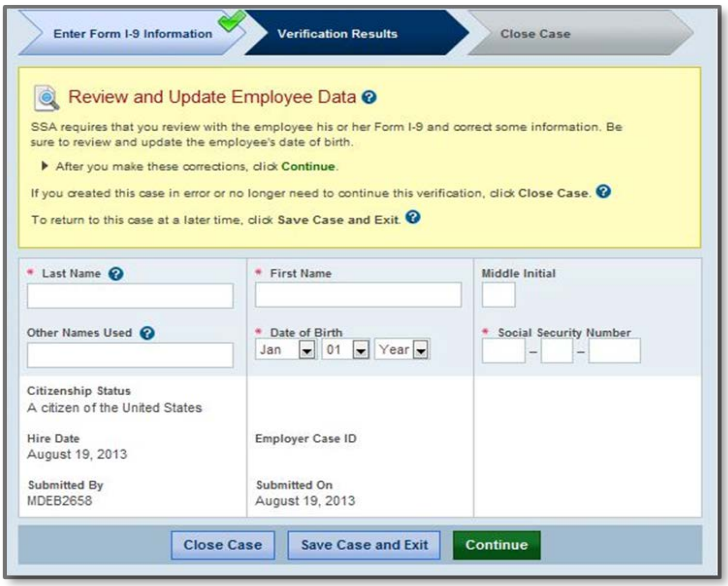
A 'Review and Update Employee Data' case result occurs for reasons including typographical errors and/or incorrect information provided on Form I-9. This case result does not mean that the employee is not authorized to work.

This requires the employer to review Form I-9 with the employee, correct the information and update the case by following the steps provided in 'Review and Update Employee Data - Process Overview.'

REVIEW AND UPDATE EMPLOYEE DATA – PROCESS OVERVIEW

- Review the accuracy of the information provided on Form I-9 with the employee. Have the employee correct any mistakes made on Form I-9.
- If necessary, update the employee's information in the E-Verify fields provided.

IMPORTANT: You may only update a case once. Ensure that the changes are correct before updating the case.



- Click 'Continue.'
- Follow next steps based on the case result provided.

A case that is resubmitted to SSA will have one of the following case results:

- EMPLOYMENT AUTHORIZED, Section 2.4

- DHS VERIFICATION IN PROCESS, Section 2.5
- DHS TENTATIVE NONCONFIRMATION (TNC), Section 3.3
- SSA FINAL NONCONFIRMATION, Section 4.1

Each case result requires its own actions or steps to continue the case. These actions are outlined in the case result sections throughout this manual.

REVIEW AND UPDATE EMPLOYEE DATA SUMMARY

EMPLOYER ACTION

- Review the information on Form I-9 and E-Verify with the employee for accuracy
- Access the employee's case
- If necessary, update the employee's information in the fields provided
- Click 'Continue'
- Follow steps based on case result provided

EMPLOYEE ACTION

- Ensure that the information provided on Form I-9 is accurate

3.3 DHS TENTATIVE NONCONFIRMATION (TNC)

When the information submitted in E-Verify does not initially match records available to DHS, the case will result in a 'DHS Tentative Nonconfirmation (TNC).' A DHS TNC result does not necessarily mean that the employee is not authorized to work in the United States; however, additional action is required to resolve the TNC.

A case can result in a DHS TNC because the employee's:

- Name, Alien number, I-94 number and/or foreign passport number are incorrect in DHS records
- U.S. Passport, Passport Card, driver's license, foreign passport or state ID card information could not be verified
- Information was not updated in the employee's DHS records
- Citizenship or immigration status changed
- Record contains another type of error
- Information was not entered correctly by the employer

The employee must be notified of this result as soon as possible by following the steps in 'Notify Employee of DHS TNC – Process Overview.'

NOTIFY EMPLOYEE OF DHS TNC

The employer must promptly notify the employee of the 'DHS Tentative Nonconfirmation (TNC)' case result and discuss the results with the employee in a private setting.

The employer must allow the employee to choose whether to contest the case result. In either case, the employee acknowledges his or her decision on the DHS TNC Further Action Notice. Employees who choose to contest a DHS TNC are responsible for contacting DHS within eight Federal Government working days.

IMPORTANT: An employer may not terminate, suspend, delay training, withhold or lower pay, or take any other adverse action against an employee because the employee received a TNC until the TNC becomes a Final Nonconfirmation.

If the employee chooses not to contest the DHS TNC, the employer may terminate employment with no civil or criminal liability as noted in "Responsibilities of the Employer," Article II, Section A, paragraph 8 of the MOU. If the employee chooses not to contest the DHS TNC, the case automatically becomes a Final Nonconfirmation, the employer may close the case in E-Verify and the employer can terminate employment without penalty. For more information, see Section 4.2 'Close Case.'

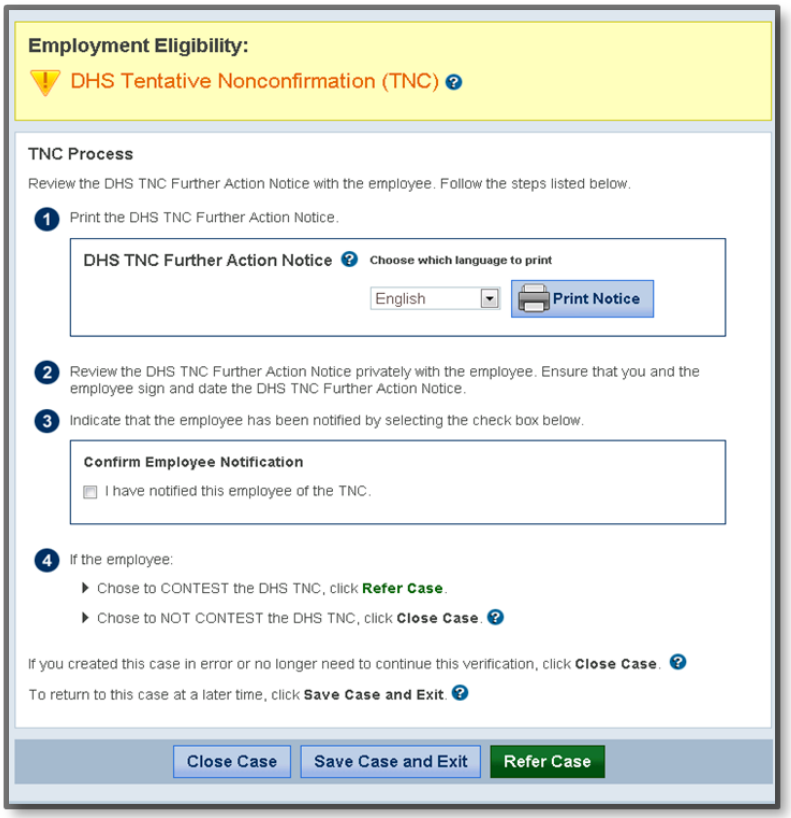
To notify an employee of the DHS TNC case result, follow the steps outlined in the 'Notify Employee of DHS TNC - Process Overview.'

NOTIFY EMPLOYEE OF DHS TNC – PROCESS OVERVIEW

- Receive DHS TNC case result.

- Click 'Continue.'

NOTIFY EMPLOYEE OF DHS TNC – PROCESS OVERVIEW



- Select either English or Spanish and print the DHS TNC Further Action Notice.
- Confirm that all information listed on the top of the DHS TNC Further Action Notice is correct. If information is incorrect, close the case and create a new case for the employee. When you close the original case, select the case closure statement 'The case is invalid because the data entered is incorrect.'
- Review the DHS TNC Further Action Notice with the employee in private and follow the instructions found on Page 1 of the DHS TNC Further Action Notice.

  Read the DHS TNC Further Action Notice to the employee if he or she cannot read. If the employee does not speak English as his or her primary language or has a limited ability to read or understand the English language, provide the employee with a translated version of the Further Action Notice in the appropriate language, which is available in 'View Essential Resources.'

  IMPORTANT: You may provide the DHS TNC Further Action Notice to the employee in person, by fax, email, overnight or next-day delivery service, as long as you take proper precautions to ensure the employee's information is protected.
- Indicate that the employee has been notified by selecting the 'Confirm Employee Notification' box.

The employer must confirm whether the employee decided to contest or not contest the DHS TNC by following the steps in the 'Confirm Employee Decision – Process Overview.'

NOTIFY EMPLOYEE OF DHS TNC SUMMARY

EMPLOYER ACTION

- Privately notify employee of the DHS TNC
- Print, review, sign and date DHS TNC Further Action Notice

EMPLOYEE ACTION

- Confirm that the information on the DHS TNC Further Action Notice is correct

CONFIRM EMPLOYEE DECISION

After being notified of the 'DHS Tentative Nonconfirmation (TNC),' the employee chooses whether to contest the case result and acknowledges his or her decision on the DHS TNC Further Action Notice. An employee who chooses to contest a DHS TNC is referred to DHS. Follow the steps outlined in the 'Confirm Employee Decision – Process Overview.'

CONFIRM EMPLOYEE DECISION – PROCESS OVERVIEW

- Instruct the employee to indicate on the DHS TNC Further Action Notice whether he or she will contest the DHS TNC by signing and dating Page 2.
- Sign and date Page 1 of the DHS TNC Further Action Notice as the employer.
- Provide the employee a copy of the signed DHS TNC Further Action Notice in English (and a translated version, if appropriate).
- Attach the original signed DHS TNC Further Action Notice to the employee's Form I-9.
- Take next action in E-Verify based on employee decision to contest or not contest DHS TNC.

CONFIRM EMPLOYEE DECISION SUMMARY

EMPLOYER ACTION

- Instruct the employee to indicate his or her decision to contest or not contest, sign and date DHS TNC Further Action Notice, then sign and date as the employer
- Provide to the employee a copy of signed DHS TNC Further Action Notice in English (and a translated version, if appropriate)
- Keep the original signed DHS TNC Further Action Notice on file with Form I-9
- Take next action based on the employee's decision to contest or not contest DHS TNC

EMPLOYEE ACTION

- Decide to contest or not contest and indicate choice on signed DHS TNC Further Action Notice
- Acknowledge DHS TNC case result by signing and dating DHS TNC Further Action Notice
- Take next action based on decision to contest or not to contest

REFER EMPLOYEE TO DHS

An employee who chooses to contest the DHS TNC must contact DHS within eight Federal Government working days to begin resolving the TNC. The employer must

provide the Referral Date Confirmation from E-Verify to the employee. The Referral Date Confirmation provides the date by which the employee must call DHS. The employee must have the DHS TNC Further Action Notice when he or she calls DHS. Federal Government working days are Monday through Friday except for federal holidays.

If the employer fails to match photos during E-Verify photo matching, a photo mismatch TNC may result. A photo mismatch TNC requires the employer to take an additional step but follows the same requirements of any TNC. If the employee chooses to contest the photo mismatch TNC, the employer must refer the employee to DHS and send a copy of the Form I-9 photo document to E-Verify.

Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any other adverse action against an employee because of the employee's decision to contest a TNC until the TNC becomes a Final Nonconfirmation.

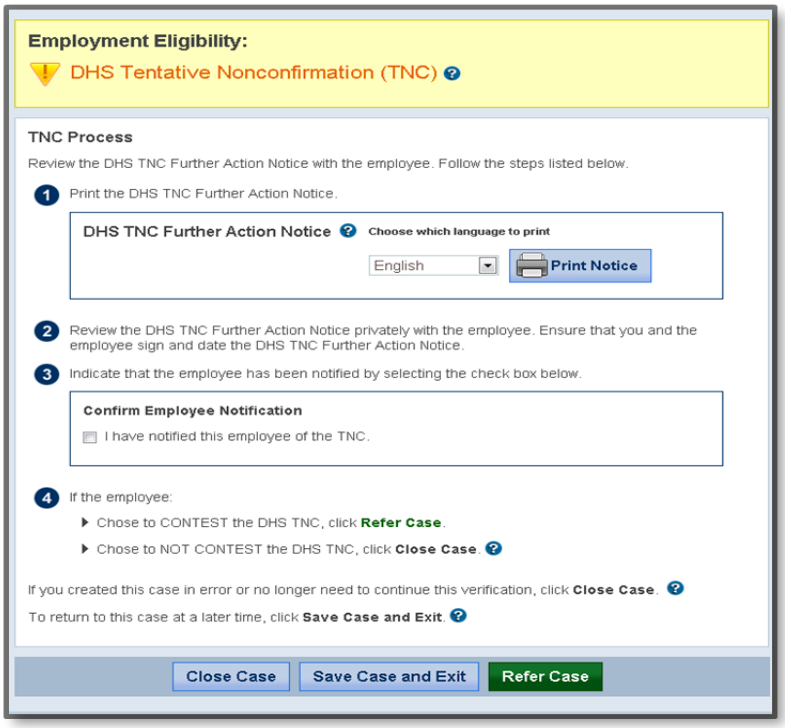
Follow the steps outlined in 'Refer Employee to DHS – Process Overview' to complete the TNC process.

REFER EMPLOYEE TO DHS – PROCESS OVERVIEW

- If the employee chooses to contest the DHS TNC, click 'Refer Case.'

NOTE: The employee's obligation to call DHS within eight Federal Government working days begins when you click 'Refer Case.'

- If the employee chooses not to contest, click 'Close Case' and follow steps in Section 4.2 'Close Case.'



In some cases, E-Verify prompts you to submit a copy of the employee's photo document to DHS. Follow the steps below to complete this step when prompted.

- First, obtain a copy of the employee's Form I-9 photo document.
- Then determine how you will submit a copy of this document to DHS. You may submit an

REFER EMPLOYEE TO DHS – PROCESS OVERVIEW

electronic copy or send a paper copy by selecting one of the following:

- Scan and attach copy of Employee's Photo Document

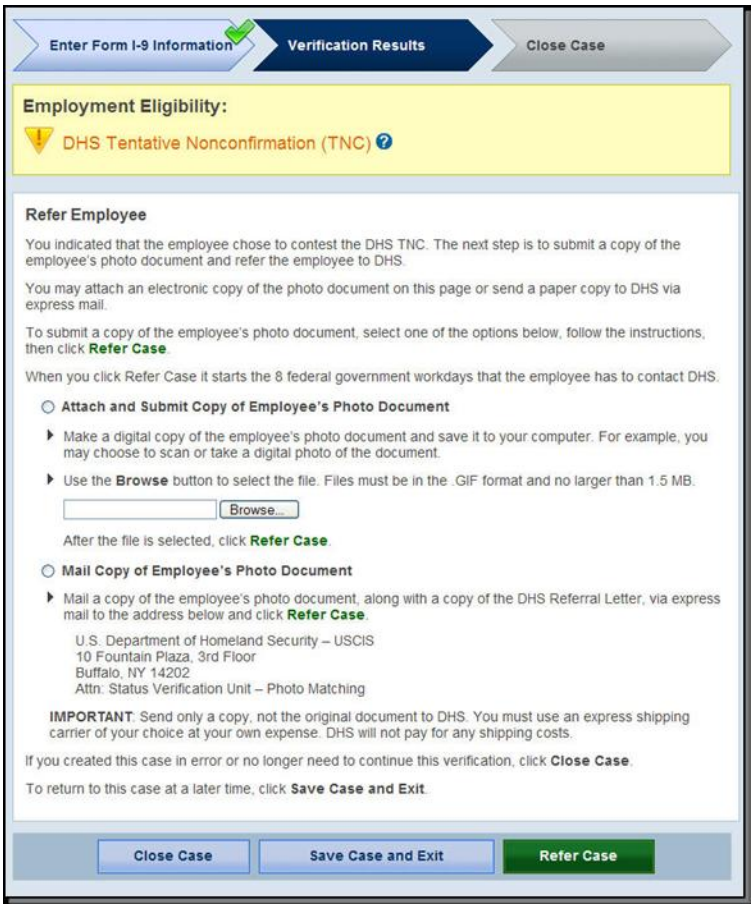
OR

- Mail copy of Employee's Photo Document

If you chose to mail a paper copy, send it through express mail to the address below:

U.S. Department of Homeland Security (USCIS)
10 Fountain Plaza, 3rd Floor
Buffalo, NY 14202 Attn: Status Verification Unit – Photo Matching

DHS will not pay for any shipping costs. Participants are free to choose an express shipping carrier at their own expense. Inform all hiring sites of the DHS shipping information.

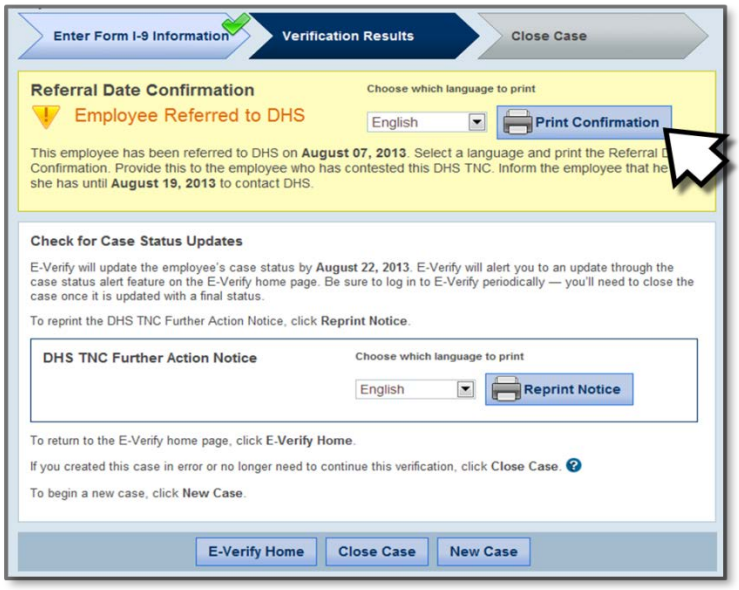


- Select the Referral Date Confirmation in either English or Spanish and Click 'Print Confirmation.'
- Provide the Referral Date Confirmation to the employee.

If the employee cannot read, you must read the Referral Date Confirmation to the employee. If the employee does not speak English as his or her primary language and has a limited ability to read or understand the English language, provide the employee with a translated version of this confirmation in the appropriate language, which is available in View Essential Resources.

- Attach a copy of the Referral Date Confirmation to the employee's Form I-9.

REFER EMPLOYEE TO DHS – PROCESS OVERVIEW



- Check E-Verify for case updates and follow steps based on next case result.

IMPORTANT: You should ONLY close the case when E-Verify provides a final case result or if you no longer need to continue to verify the employment eligibility of the employee.

After ten Federal Government working days, E-Verify will provide one of the following case results:

- EMPLOYMENT AUTHORIZED, Section 2.4
- DHS FINAL NONCONFIRMATION, Section 4.1
- DHS CASE IN CONTINUANCE, Section 3.4
- DHS NO SHOW, Section 4.1

Each case result requires different actions or steps to continue or close the case. These actions are outlined in the case result sections throughout this manual.

REFER EMPLOYEE TO DHS SUMMARY

EMPLOYER ACTION

- Refer the employee to DHS if he or she decides to contest or close the case
- If the employee decides to contest:
  - Attach and submit or express mail a copy of employee's photo document to DHS if the TNC is due to photo mismatch
  - Print Referral Date Confirmation, provide it to the employee and attach a copy to the employee's Form I-9
  - Check E-Verify for case result updates and follow steps based on case result provided

EMPLOYEE ACTION

- Contact DHS within eight Federal Government working days
- Follow DHS instructions for the next steps

3.4 SSA CASE IN CONTINUANCE AND DHS CASE IN CONTINUANCE

An 'SSA or DHS Case in Continuance' status indicates that the employee has visited an SSA field office and/or contacted DHS, but more time is needed to determine a final case result. The reason SSA or DHS needs more time varies with each situation. Employers should check E-Verify periodically for case result updates. The employer may not terminate or take adverse action against an employee because of the TNC while SSA or DHS is reviewing the employee's case.

Once SSA or DHS has updated E-Verify, the case will have one of the following results:

For DHS CASE IN CONTINUANCE:

- EMPLOYMENT AUTHORIZED, Section 2.4
- DHS FINAL NONCONFIRMATION, Section 4.1

For SSA CASE IN CONTINUANCE:

- EMPLOYMENT AUTHORIZED, Section 2.4
- SSA FINAL NONCONFIRMATION, Section 4.1
- REVIEW AND UPDATE EMPLOYEE DATA, Section 3.2
- DHS VERIFICATION IN PROCESS, Section 2.5

Each case result requires its own actions or steps for employers to continue or close the case. These actions are outlined in each case result section throughout this manual.

NOTE: If a case has had a 'SSA or DHS Case in Continuance' result for more than 60 Federal Government working days, contact E-Verify Customer Support at 888-464-4218 or E-Verify@dhs.gov.

CASE IN CONTINUANCE SUMMARY

EMPLOYER ACTION

- Check E-Verify for case result updates and follow steps based on case result provided

EMPLOYEE ACTION

- NONE

4.0 FINAL CASE RESOLUTION

To complete the E-Verify process, every case must receive a final case result and then be closed. Closing a case is easy. E-Verify guides you through the process after you receive a final case result.

4.1 FINAL CASE RESULTS

Final case results are displayed in the 'Final Case Results – Overview.'

FINAL CASE RESULTS – OVERVIEW	
Employment Authorized	The employee's information matched records available to SSA and/or DHS. See Section 2.4.
SSA or DHS Final Nonconfirmation	E-Verify cannot confirm an employee's employment eligibility after the employee visited SSA or contacted DHS.
DHS No Show	The employee did not contact DHS within eight Federal Government working days.
Error: Close Case and Resubmit	This case cannot continue because the expiration date entered for the employee's U.S. Passport, Passport Card or driver's license is incorrect. A new case must be created in E-Verify.

SSA FINAL NONCONFIRMATION AND DHS FINAL NONCONFIRMATION

An 'SSA or DHS Final Nonconfirmation' case result is received when E-Verify cannot verify an employee's employment eligibility after an employee has visited a SSA field office or contacted DHS during the TNC referral process. Employers must close the case once an 'SSA or DHS Final Nonconfirmation' has been provided.

The employer may terminate employment based on a case result of 'SSA or DHS Final Nonconfirmation' with no civil or criminal liability as noted in "Responsibilities of the Employer," Article II, Section A, paragraph 8 of the MOU.

SSA/DHS FINAL NONCONFIRMATION SUMMARY

EMPLOYER ACTION

- Receive 'SSA or DHS Final Nonconfirmation' case result
- Close case

EMPLOYEE ACTION

- NONE

DHS NO SHOW

A 'DHS No Show' case result indicates that the employee did not contact DHS within eight Federal Government working days and is considered a Final Nonconfirmation. Employers must close E-Verify cases when they receive a Final Nonconfirmation.

Employers may terminate employment based on a case result of 'DHS No Show' with no civil or criminal liability as noted in "Responsibilities of the Employer," Article II, Section A, paragraph 8 in the MOU.

DHS NO SHOW SUMMARY

EMPLOYER ACTION

- Receive 'DHS No Show' case result
- Close case

EMPLOYEE ACTION

- NONE

ERROR: CLOSE CASE AND RESUBMIT

If the expiration date entered for the employee's U.S. Passport, Passport Card or driver's license is incorrect, E-Verify prompts an 'Error: Close Case and Resubmit' case result and processing of the case cannot continue.

Because document information for a case that has already been submitted cannot be changed, the case must be closed and a new case created with correct information. The employer should select the closure statement option: 'The case is invalid because the data entered is incorrect' and close this case. Now the employer can create a new case for this employee using the correct document expiration date.

IMPORTANT: This does not mean that the employee is not authorized to work. E-Verify can confirm the employment eligibility of this employee once the new case is created and the correct document expiration date has been entered.

ERROR: CLOSE CASE AND RESUBMIT SUMMARY

EMPLOYER ACTION

- Receive 'Error: Close Case and Resubmit' case result
- Close case using closure statement option: 'The case is invalid because the data entered is incorrect'
- Resubmit case using the correct document expiration date for the U.S. Passport, Passport Card or driver's license

EMPLOYEE ACTION

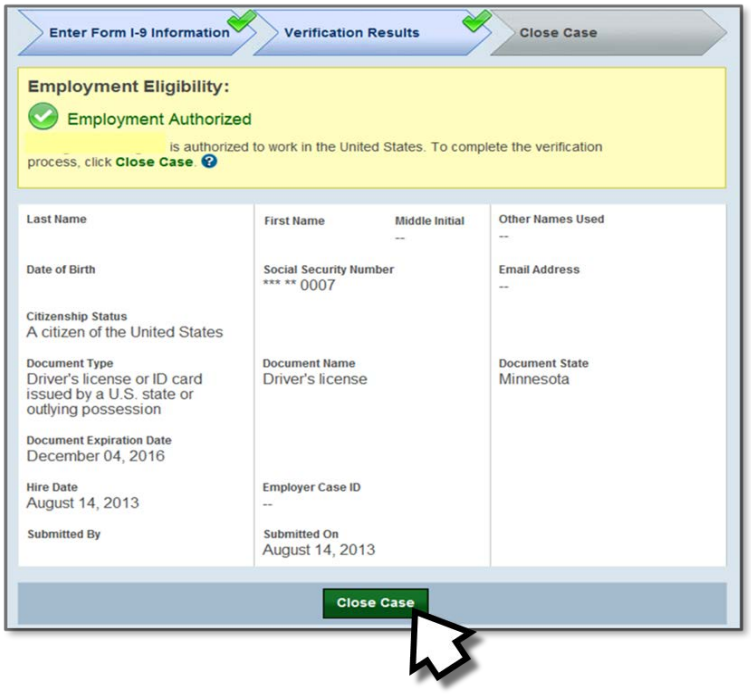
- If necessary, provide employer with unexpired U.S. Passport, Passport Card or driver's license

4.2 CLOSE CASE

To properly complete the E-Verify process, employers must close EVERY case they create. There are 11 case closure statements. To assist employers in making the correct choice and to reduce the number of options, E-Verify requires employers to state whether the employee is still employed. To close a case, employers follow the steps outlined in the 'Close Case – Process Overview.'

CLOSE CASE – PROCESS OVERVIEW

- Click 'Close Case.'

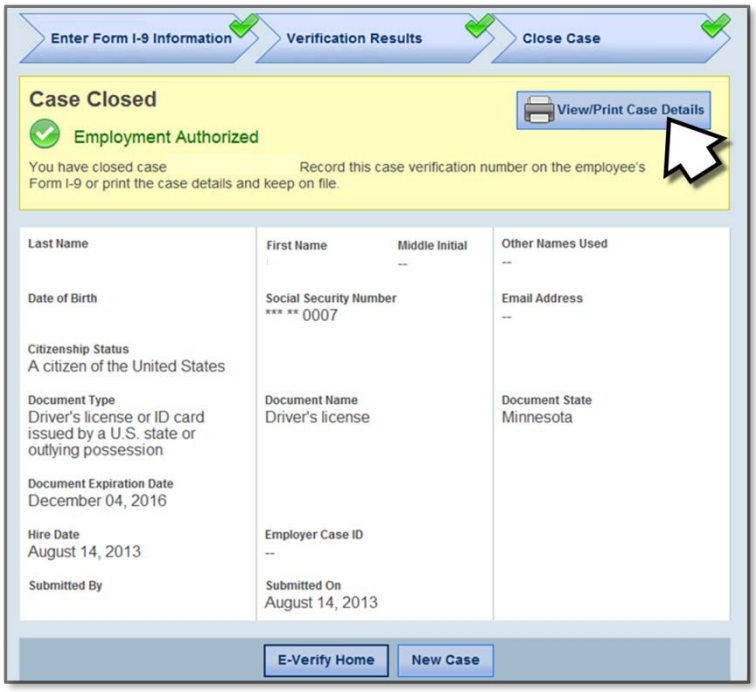


- Next, indicate whether the employee is still employed. Select yes or no and click 'Continue.' Your response to the question: "Is (employee's name) currently employed with this company?" will determine which case closure statement options will appear on the next screen.

- Next, select the most appropriate statement and click 'Continue.'

CLOSE CASE – PROCESS OVERVIEW

- Record the case verification number on the employee's Form I-9, or print the case details and file it with the employee's Form I-9.



- This completes the E-Verify verification process.

Every case created in E-Verify MUST be closed. To close a case, select one of the case closure statements. E-Verify will present only the statements that are relevant to each case because not all of the case closure statements apply to every situation.

NOTE – CLOSE CASE

When answering the question, "Is the employee currently employed with this company?" it is important to consider the following:

- If the employee did not contest a Tentative Nonconfirmation (TNC) or received a Final Nonconfirmation or 'DHS No Show,' the employer will decide if the employee will continue working. If :
  - Employee's employment is continued, select 'Yes.'
  - Employee's employment is to be terminated, select 'No.'

- If the employee has accepted a job offer, but has not yet started work and received a TNC but decided not to contest, or received a Final Nonconfirmation, the employer

should decide whether to allow the employee to start work. If the employer decides to:

- Allow the employee to start work as planned, select 'Yes.'
- Terminate the employee's employment offer, select 'No.'

CASE CLOSURE STATEMENTS

- **The employee continues to work for the employer after receiving an Employment Authorized result.**

  E-Verify has verified that the employee is eligible to work in the United States and the employee continues to work for the employer.

- **The employee continues to work for the employer after receiving a Final Nonconfirmation result.**

  E-Verify cannot verify that this employee is authorized to work in the United States. The employee had contested the tentative nonconfirmation (TNC), but was unable to resolve it. The employer chooses to exercise its legal right to allow the employee to continue to work.

- **The employee continues to work for the employer after receiving a No Show result.**

  E-Verify cannot verify that this employee is authorized to work in the United States. The employee had contested the tentative nonconfirmation (TNC), but did not take action to resolve it. The employer chooses to exercise its legal right to allow the employee to continue to work.

- **The employee continues to work for the employer after choosing not to contest a Tentative Nonconfirmation.**

  E-Verify cannot verify that this employee is authorized to work in the United States. The employee chose not to contest the tentative nonconfirmation. The employer chooses to exercise its legal right to allow the employee to continue to work.

- **The employee was terminated by the employer for receiving a Final Nonconfirmation result.**

  E-Verify cannot verify that this employee is authorized to work in the United States. The employee had contested the tentative nonconfirmation, but was unable to resolve it. The employer terminated the employee because of the final nonconfirmation result.

- **The employee was terminated by the employer for receiving a No Show result.**

  E-Verify cannot verify that this employee is authorized to work in the United States. The employee had contested the tentative nonconfirmation (TNC), but did not take action to resolve it. The employer terminated the employee because of the 'no show' result.

- **The employee was terminated by the employer for choosing not to contest a Tentative Nonconfirmation.**

  E-Verify cannot verify that this employee is authorized to work in the United States. The employee chose not to contest the tentative nonconfirmation (TNC). The employer terminated the employee because the employee chose not to contest the TNC.

- **The employee voluntarily quit working for the employer.**

  The employee chose to stop working for the employer.

- **The employee was terminated by the employer for reasons other than E-Verify.**

  The employer terminated the employee for reasons unrelated to E-Verify.

- **This case is being closed because of technical issues with E-Verify.**

  This case is being closed because of technical issues with E-Verify. E-Verify was unable to process this case due to a technical issue. The employer is closing this case and needs to create a new case.

- **The case is invalid because another case with the same data already exists.**

  An E-Verify case with the same data was already created for this employee. This is a duplicate case.

NOTE: If a case is closed as invalid, it does not void the case or change the case result. A case closed as invalid will still display the last case result even though it has been closed.

- **The case is invalid because the data entered is incorrect.**

  The data entered for this employee was not correct.

NOTE: If a case is closed as invalid, it does not void the case or change the case result. A case closed as invalid will still display the last case result even though it has been closed

CLOSE CASE SUMMARY

EMPLOYER ACTION

- Click 'Close Case'
- Indicate whether the employee is still employed
- Select the appropriate case closure statement
- Record case verification number on Form I-9 or print screen and file it with Form I-9
- The E-Verify process is now completed

EMPLOYEE ACTION

- NONE

4.3 CASE ALERTS

Case alerts are found at the bottom of the home page which is available when a user logs in to E-Verify. The purpose of this feature is to bring attention to cases that need action and provide the following information:

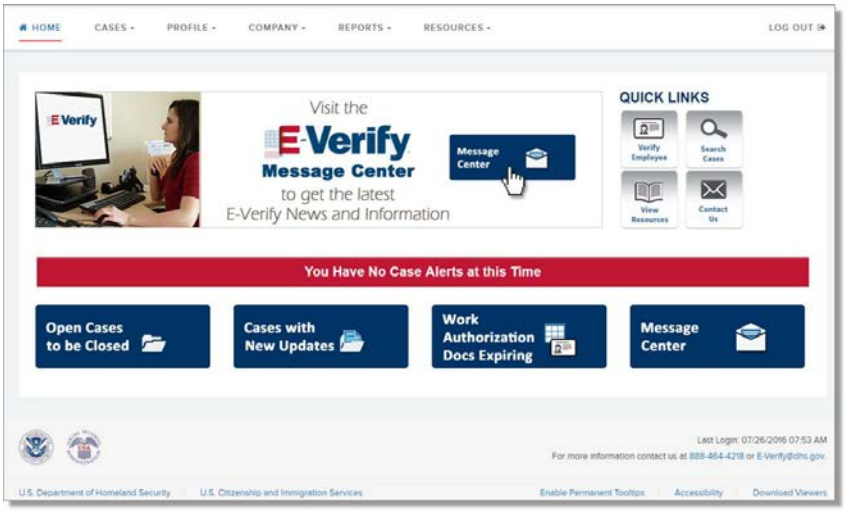
- Open Cases to be Closed
- Cases with New Updates
- Work Authorization Documents Expiring

The E-Verify home page indicates the number of cases that require attention by a number in a red circle on the alert. Each case alert can be accessed by clicking on the alert. Cases can also be accessed through 'View Cases' and 'Search Cases' from

the navigation menu in E-Verify. Follow the steps outlined in the ‘Case Alerts-Process Overview’ to use the case alerts feature.

CASE ALERTS – PROCESS OVERVIEW

- E-Verify user home page display with no case alerts.



- E-Verify user home page display with case alerts.

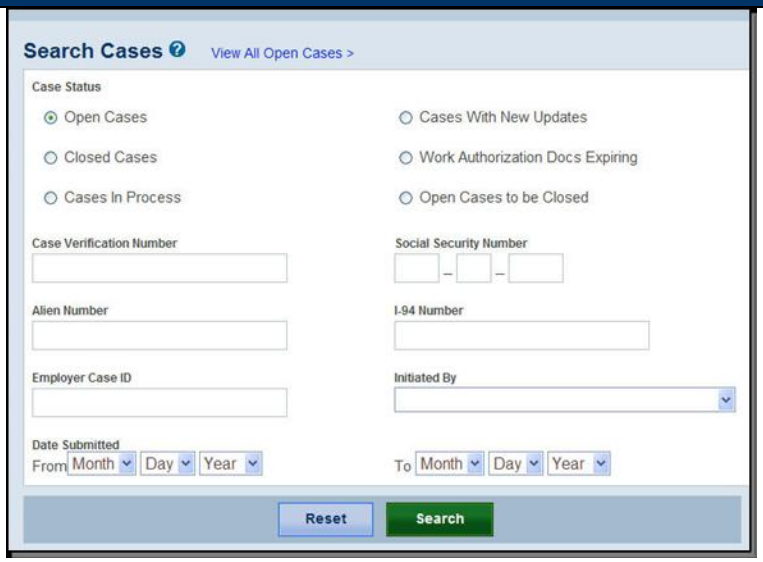
- Click on the alert requiring your attention to access your case alert(s).

Case alerts can also be accessed:

- From 'Cases,' select 'Search Cases.'

- Determine your search criteria and click 'Search.'

CASE ALERTS – PROCESS OVERVIEW



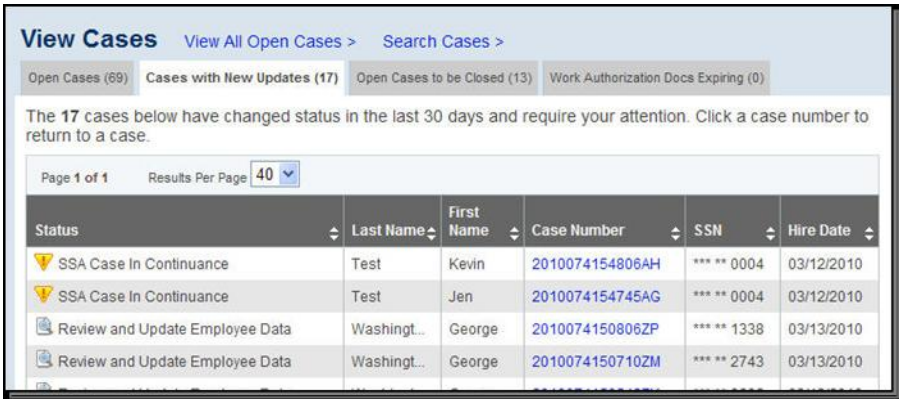
OPEN CASES TO BE CLOSED

Any case created in E-Verify and assigned a case verification number must be closed. The 'Open Cases to be Closed' case alert provides quick access to all cases that need to be closed. Features of this tab include:

- Sort cases by: status, last name, first name, case number or hire date
- A quick link to each case by clicking on the case number

CASES WITH NEW UPDATES

The 'Cases with New Updates' case alert is a quick link to all cases that have had a change in case result. This case alert is an easy way to manage these cases.



WORK AUTHORIZATION DOCUMENTS EXPIRING

The 'Work Authorization Docs Expiring' case alert is a notification that an employee's Employment Authorization Document (Form I-766) or an Arrival-Departure Record (Form I-94) document is expiring. This alert is intended as a reminder to reverify the employee by completing Section 3 of Form I-9. However, E-Verify should not be used for reverification, so do not use E-Verify to create a new case.

Because this is simply a reminder, no action is required or permitted in E-Verify. You may dismiss each alert by clicking 'Dismiss Alert.'

This alert will only appear if the document the employee presented for the original E-Verify case was either an Employment Authorization Document (Form I-766) or an Arrival-Departure Record (Form I-94). Also, the alert only appears the first time the document expires—subsequent expiration dates will not activate this case alert.

5.0 CASE REPORTS

There are five types of case reports available in E-Verify for persons or entities who are enrolled as employers. These include: 'Corporate Overview of Pilot Usage,' 'Duplicate Case Report, ' 'Quick Audit Report,' 'User Audit Report,' and 'User Report.' This section provides information on these reports and how to create them in E-Verify.

NOTE: All reports display only the last four digits of an employee's Social Security number for added security and to protect employees' privacy.

A description of each report is provided in the 'Reports – Overview.'

REPORTS – OVERVIEW

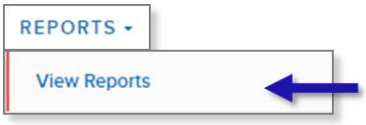
REPORT	DESCRIPTION
Corporate Overview of Pilot Usage	This report displays the number of cases created by the employer within a federal government fiscal year, which begins October 1 and ends September 30 of the following calendar year. If the employer has not created any cases during the fiscal year, a report will appear with a total of zero. The report is available to corporate administrators and program administrators, but not general users
Duplicate Case Report	This report displays cases that were determined to be a duplicate of cases created in E-Verify with the same Social Security number. If your company has not created any duplicate cases, a report will appear with no rows. This report is available to corporate administrators and program administrators.
Quick Audit Report	This report provides case data about each case that matches the user-entered search criteria in Excel format. The case data includes basic company and case identifiers and case resolution information. The case data does not include sensitive employee information such as SSNs, or document numbers. This report was designed to satisfy the requirement of employers to report their E-Verify activity to Federal, State, or local government entities. Users should note that this report may contain up to 5000 rows and is populated with the city and state that is associated with their account.
User Audit Report	This report provides summary case information about each case that matches the user criteria entered. The case information includes the case verification number, the date the case was submitted, the last four digits of the employee's SSN, alien number, I-94 number, last name, first name, case result, referral information and case closure statement. The report is available to program administrators and general users.

REPORT	DESCRIPTION
User Report	This report displays a detailed list of the employer's users. It includes each user's name, user role, contact telephone number and the last date he or she logged in to E-Verify. The report is available to program administrators and general users, but a general user cannot view user information for other users.

To create a Report,' see 'Report Process Overview.'

REPORTS PROCESS OVERVIEW

- Select 'View Reports' from Reports.



- Select the report you want to create from the options available. A description of the report is provided on the "Select a report" screen.

- Click 'Next.'
- Determine your search criteria and click 'Run Report.'
- Use report as needed.

6.0 ACCOUNT ADMINISTRATION

User account administration provides individual users specific functions and permissions to update their accounts, change their passwords and perform other functions explained in this section.

It is important to distinguish that the user account functions are different for each user role.

6.1 USER ROLES

Permissions and functions in E-Verify granted to the user differ for each user role. There are two user roles: program administrator and general user.

Every employer account must have at least one program administrator who provides support for the general user and manages the company profile. Employers can choose to have general users who will only be able to create and manage their own cases. General users and program administrators must successfully complete the online E-Verify tutorial before they can create or manage cases.

The 'User Role Functions Overview' provides an explanation of the functions of each user role.

USER ROLE FUNCTIONS - OVERVIEW

ROLE	ADD USERS	VIEW CASES	UPDATE CASES	UNLOCK USERS	CREATE CASES
Program Administrator *(at least one required)*	X	x	x	x	x
General User *(optional)*		x	x		x

6.2 USER ID AND PASSWORD CREATION

Program administrator can add users in E-Verify. All users are assigned a user ID and initial password. Upon being initially registered by the program administrator, users receive an email with a user ID and password. E-Verify will prompt users to change the initial password for security purposes. Do not share a password with other users. Each user must have his or her own user ID and password.

Passwords are case-sensitive and must be between 8-14 characters, different from the assigned user ID, changed every 90 days and have the following characteristics:

- At least one uppercase or lowercase letter
- At least one number and at least one special character - special characters include: ! @ $ % * ( ) < > ? : ; { } + - ~
- Contain no more than two identical and consecutive characters in any position from the previous password
- Contain a non-numeric in the first and last positions

- Not identical to the user ID

Additionally, password policy recommends that passwords should not:

- Contain any dictionary word
- Contain any proper noun or the name of any person, pet, child or fictional character, nor any employee ID number, Social Security number, birth date, phone number or any information that could be readily guessed about the creator of the password
- Contain any simple pattern of letters or numbers, such as 'qwerty' or 'xyz123'
- Contain any word, noun or name spelled backwards

An example of an acceptable password is found in the 'Password Example.'

PASSWORD EXAMPLE

This is an acceptable password:

IL!keH2o

At least 8 characters in length

An uppercase letter

A lowercase letter

A special character

A number

E-Verify automatically prompts users to create a new password every 90 days. However, users who think their password has been compromised should change it immediately. After creating a new password, E-Verify will prompt the user to confirm or update his or her email address and phone number.

If a user attempts to log in with an incorrect password three consecutive times, the user is locked out of E-Verify. Password help contact information is listed in the information box.

If you are locked out of your user account, first try to reset your password using the '**Forgot your password?**' link.

If you forget your user ID, you may retrieve it by using the '**Forgot your User ID?**' link and providing your email address and phone number when prompted. However, if you have more than one user ID associated with your email address and phone number, you must contact E-Verify Customer Support at 888-464-4218 for assistance.

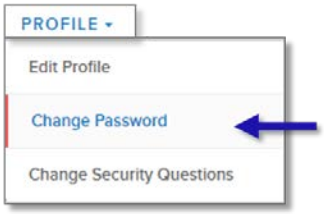
If you are unsuccessful at resetting your password with the automatic system, contact your program administrator. If your program administrator is not available contact E-Verify Customer Support at 888-464-4218.

CHANGE YOUR PASSWORD

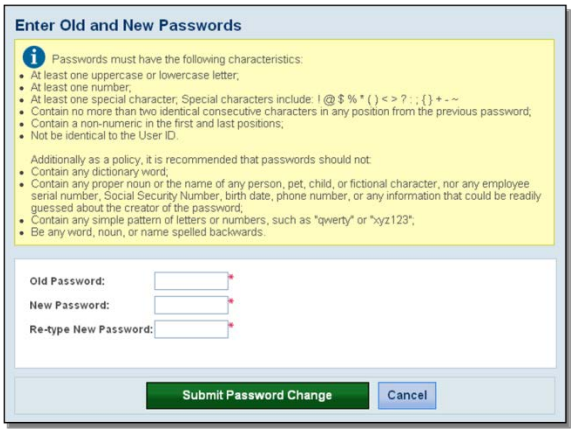
Users who suspect their password was compromised should change it immediately. To change a password, follow the steps in the 'Change Password – Process Overview.'

CHANGE PASSWORD – PROCESS OVERVIEW

- From 'Profile,' select 'Change Password.'



- 'Enter Old and New Passwords' page will display.
- Type current password in the 'Old Password' field.
- Type new password in the 'New Password' field.
- Retype new password in the 'Re-Type New Password' field. The new password cannot be the same as any of the last six passwords.
- Enter password challenge questions and answers.



- Click 'Submit Password Change.'

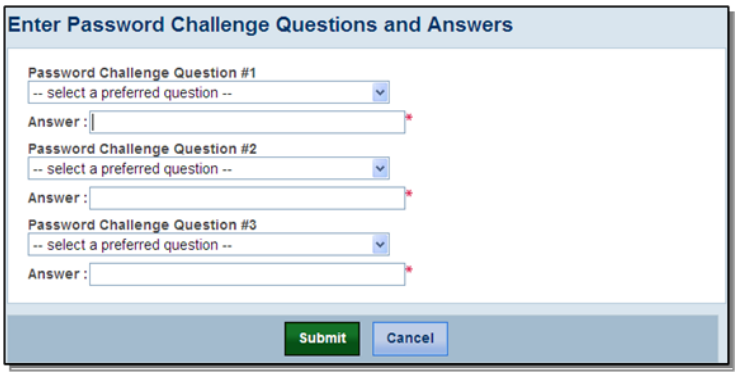
CHANGE SECURITY QUESTIONS

Users can set security questions to allow them to reset their passwords. When a user logs into his or her E-Verify account for the first time, E-Verify will automatically prompt the user to complete these questions. Users who need to change their security questions should follow the steps in 'Change Security Questions – Process Overview.'

CHANGE SECURITY QUESTIONS – PROCESS OVERVIEW

- From 'Profile,' select 'Change Security Questions.'

- Select a question from the drop down list and enter the answer in the field below. Fields with a red asterisk (*) are required fields.



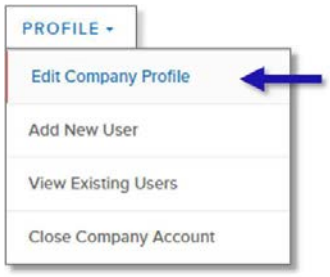
- Click 'Submit.' A confirmation message will be displayed.

6.3 UPDATE USER PROFILE INFORMATION

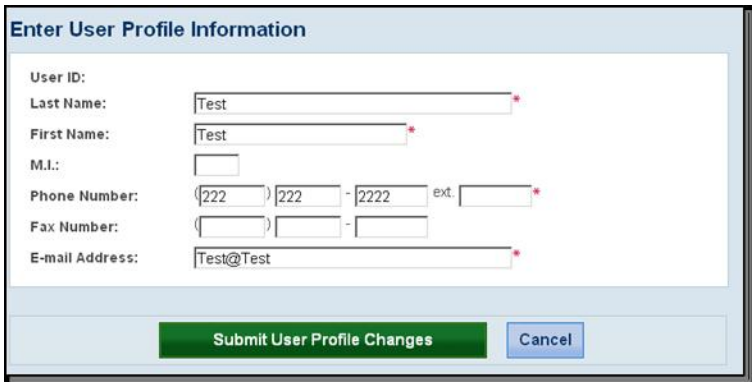
Every E-Verify user has a profile that includes his or her name, telephone number, fax number and email address. Users should update this information whenever necessary using the 'Edit Profile' link. To update this information follow the steps outlined in the 'Edit Profile – Process Overview.'

EDIT PROFILE – PROCESS OVERVIEW

- From 'Profile,' select 'Edit Profile.'



- Add information or edit fields as necessary. Fields with a red asterisk (*) are required fields.
- Click 'Submit User Profile Changes.' A confirmation message and the user's profile information will be displayed.



- Review the confirmation message to see whether the request for profile updates was successful. If E-Verify is unable to process the user profile updates, try again later.

7.0 COMPANY – PROGRAM ADMINISTRATORS

Program administrators also manage the site administration of their E-Verify employer agent account. Program administrators use the 'Company' menu to:

- Add general users
- Add other program administrators
- Change or update company profile information
- Terminate participation in E-Verify

7.1 ADD NEW USER

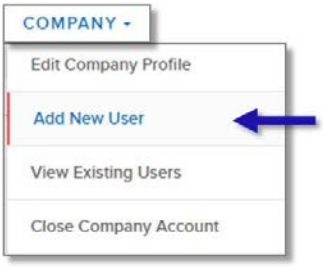
Only program administrators can add E-Verify users. To add an additional user, the program administrator must provide the user's name, phone number, fax number (optional) and email address.

If a user leaves the employer or no longer needs access to E-Verify, a program administrator must delete the user's account. To delete a user's account, see 'Delete User Account – Process Overview' in Section 7.2.

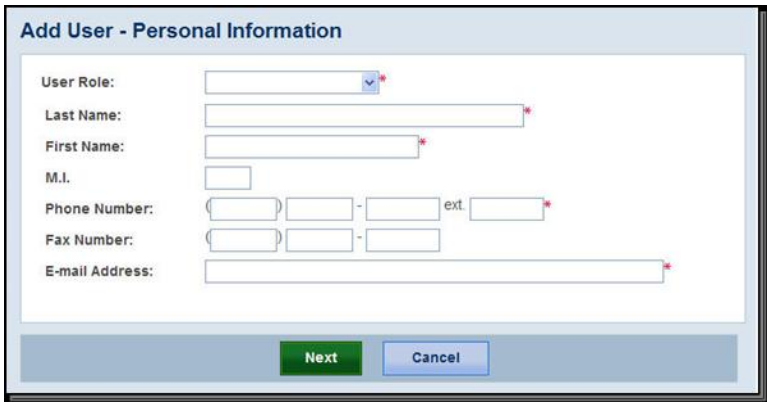
Program administrators who need to add a new E-Verify user should see 'Add New User - Process Overview.'

ADD NEW USER – PROCESS OVERVIEW

- From 'Company,' select 'Add New User.'

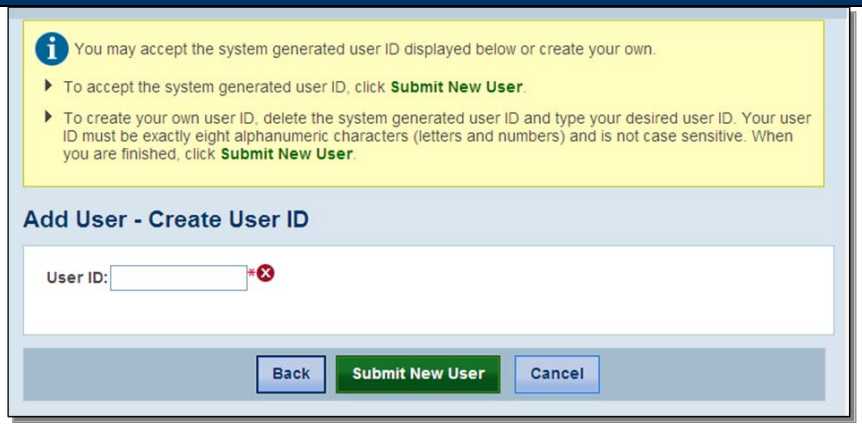


- Choose general user or program administrator and provide the person's name, phone number, fax number (optional) and email address and click 'Next.'



- Accept the system-generated user ID or create a new user ID.

ADD NEW USER – PROCESS OVERVIEW



- Review the information submitted and then click 'Submit New User.'
- The new user will receive his or her user ID and password by email.

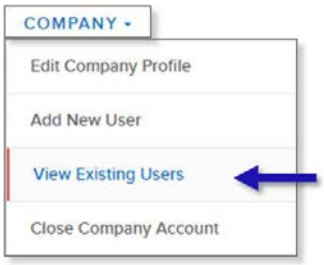
NOTE: Most people receive a confirmation email from E-Verify within a few minutes. Instruct the new user to check his or her email inbox as well as spam or junk mail folders. If the email is not received within 48 hours, call E-Verify Customer Support at 888-464-4218 for assistance.

7.2 VIEW EXISTING USERS

Only program administrators can view user information and reset passwords. 'View Existing Users' allows program administrators to view, search and maintain the general users and program administrators assigned to the company, as demonstrated in the 'View Existing Users – Process Overview.'

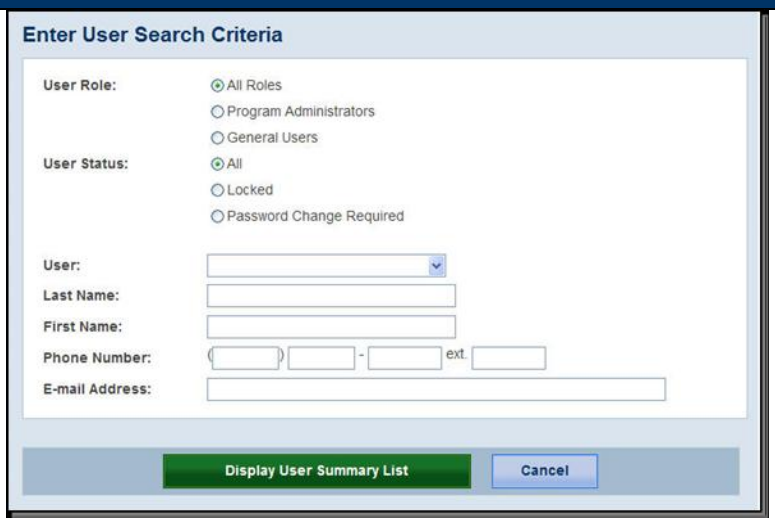
VIEW EXISTING USERS – PROCESS OVERVIEW

- From, 'Company,' select 'View Existing Users.'

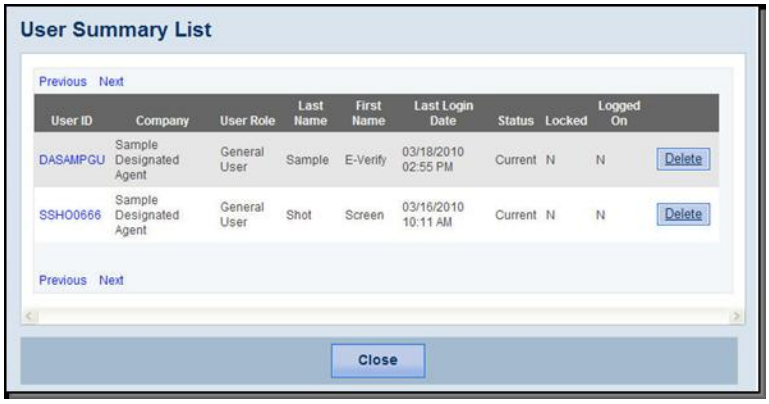


- Search for a user using the criteria displayed in each field. You can enter a partial name and a percent sign (%) as a wildcard character.

VIEW EXISTING USERS – PROCESS OVERVIEW



- Click 'Display User Summary List.'
- This displays a list of user accounts. You can view or modify a user account by selecting the user ID.



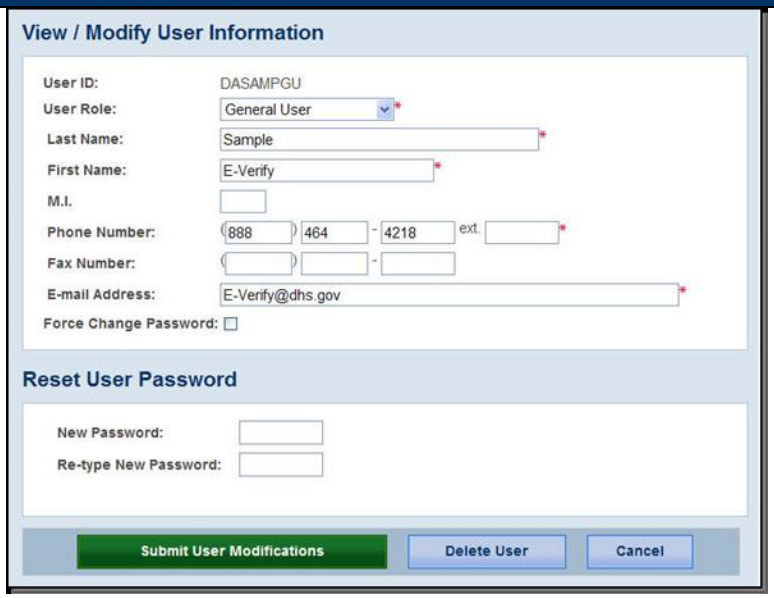
RESET USER'S PASSWORD

To reset a user's password, follow the steps outlined in 'Reset User's Password – Process Overview.'

RESET USER'S PASSWORD – PROCESS OVERVIEW

- Follow the steps in 'View Existing Users – Process Overview' to find the user who needs his or her password changed.
- Select the appropriate user by selecting his or her user ID.

RESET USER'S PASSWORD – PROCESS OVERVIEW



- Assign a temporary password by completing both fields under 'Reset User Password.'
- Click 'Submit User Modifications.'

DELETE USER ACCOUNT

Program administrators may delete user accounts by following the steps in the 'Delete Users – Process Overview.'

DELETE USERS – PROCESS OVERVIEW

- First, follow the steps in 'View Existing Users – Process Overview' above to find the user who needs to be deleted.
- Click 'Delete' in the row of the user's account you wish to delete on the 'User Summary List' page.

OR

- Click 'Delete User' on the 'View/Modify User Information' page.

In both instances, the 'User Deletion Information' page will open, displaying the information for the user whom you want to delete. Click 'Delete User' to delete the user's account.

After you click 'Delete User,' changes will be permanent.

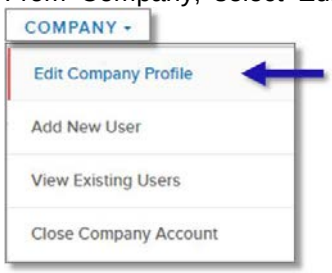
7.3 EDIT COMPANY PROFILE

To update employer information in E-Verify, complete the steps in the 'Edit Company Profile – Process Overview.' Users may also view the MOU between E-Verify and the employer.

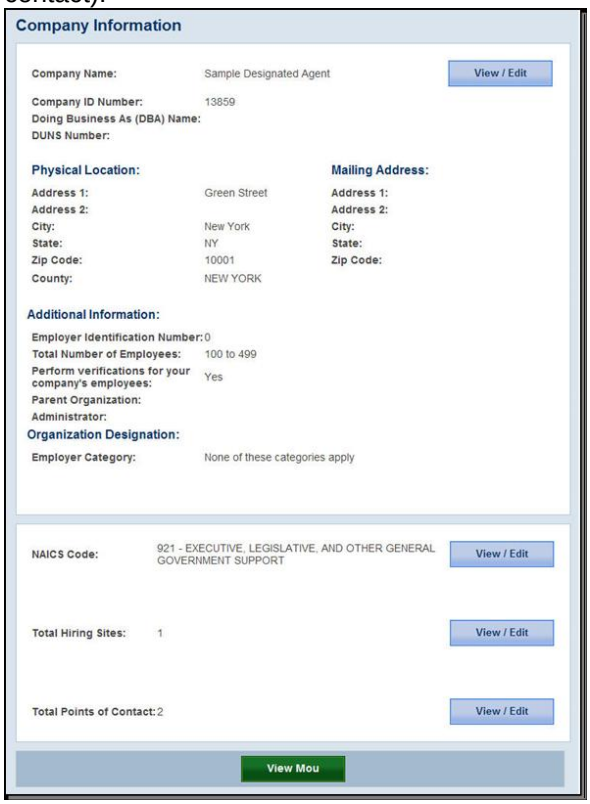
Once a program administrator has updated the employer's profile, he or she will be subject to the rules and requirements associated with the profile and have access to all online resources specific to the profile.

EDIT COMPANY PROFILE – PROCESS OVERVIEW

- From 'Company,' select 'Edit Company Profile.'



- To modify any section of the 'Company Information' page, click 'View/Edit' in the section you want to modify (e.g., company name and physical location, points of contact, North American Industry Classification System (NAICS) code, total hiring sites and total points of contact).



- Make the required changes and click 'Submit.'
- Click 'View MOU' to view the MOU between E-Verify and the employer. If you have trouble viewing your MOU, make sure you have disabled any pop-up blockers and are using the latest version of your PDF viewer software.

IMPORTANT: After clicking 'Submit,' the program administrator cannot undo any changes that have been entered without manually re-entering the original information.

The E-Verify company ID number is located at top of the 'Company Information' page.

COMPANY INFORMATION FIELDS

Many fields can be updated in the 'Company Information' page. Employers should keep their company information page up-to-date. If E-Verify ever needs to contact the employer, it will be helpful to have current contact information. For additional information on each field, see the 'Company Information – Overview.'

NOTE: The information on the E-Verify MOU cannot be changed after the enrollment process is complete. Any company information updated in E-Verify will not change the employer's original electronically signed MOU.

COMPANY INFORMATION – OVERVIEW

FIELD NAME	DESCRIPTION
Company Name	Name of employer enrolled in E-Verify.
Physical Location	Location where the employer creates E-Verify cases.
Mailing Address	Employer's mailing address. If this address is different from the physical location.
Additional Information	Additional information about the size of the employer and any associated corporate parent company information, if applicable.
Employer Identification Number	Also known as federal tax identification number. Generally, most employers are required to have an employer identification number and any employer that has employees is required to have one for wage and tax reporting purposes.
Parent Organization	An organization that owns or controls other organizations (sometimes called subsidiaries). For corporations, a parent corporation is often defined as a corporation that owns more than 50 percent of another corporation.
Administrator	Employers may link their employer accounts to a corporate administrator account (also called an E-Verify corporate account). This gives the employer's corporate administrator access to its employer or E-Verify employer agent account profile, user administration and reports that contain case information. Link the account only if you have been instructed to do so by your corporate administrator.
Organization Designation	The category that identifies the employer as a Federal, State or local government organization or a federal contractor with the FAR E-Verify clause in their federal contract, if applicable.

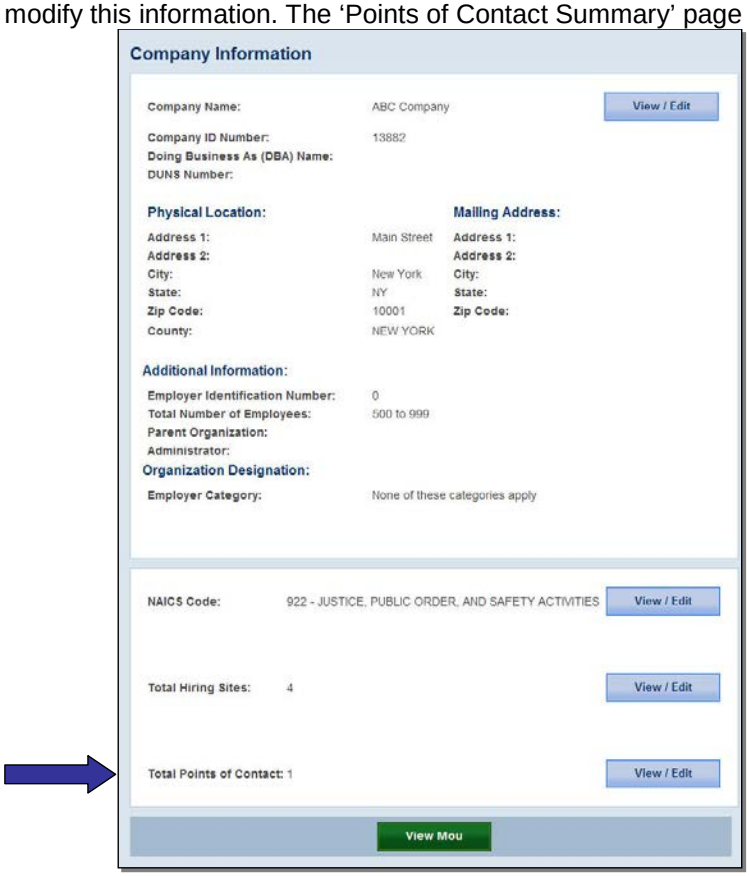
UPDATE POINTS OF CONTACT

Every employer must have at least one person assigned as a point of contact for E-Verify issues. Program administrators added during account enrollment are automatically assigned as points of contact. To update the point of contact, see the 'Update Points of Contact – Process Overview.'

UPDATE POINTS OF CONTACT – PROCESS OVERVIEW

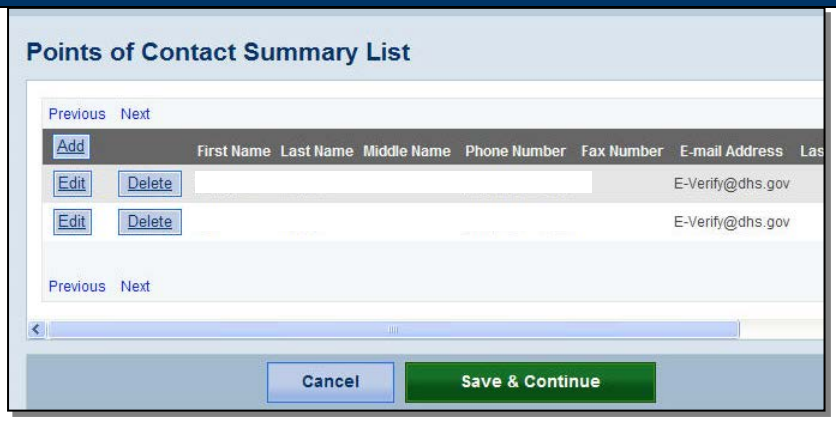
- From 'Company,' select 'Edit Company Profile.'

- Click 'View/Edit' in the 'Total Points of Contact' section of the 'Company Information' page to modify this information. The 'Points of Contact Summary' page opens.



- Click 'Add' to add a new point of contact.
- Click 'Edit' after adding the new point of contact's information or modifying an existing point of contact's information. The updated 'Points of Contact Summary List' page will appear.
- Click 'Delete' to delete a point of contact. The updated 'Points of Contact Summary List' page will appear.

UPDATE POINTS OF CONTACT – PROCESS OVERVIEW



- Click 'Save and Continue' when finished updating the point(s) of contact. This brings the program administrator back to the 'Company Information' page.

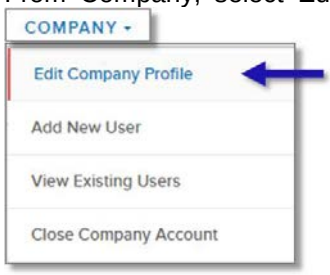
UPDATE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) INFORMATION

The NAICS code classifies employers by industry. During enrollment the employer selects the NAICS code. If the employer's industry classification has changed, this should be updated in the E-Verify company profile.

To update the NAICS code, follow the 'Update NAICS Code - Process Overview.'

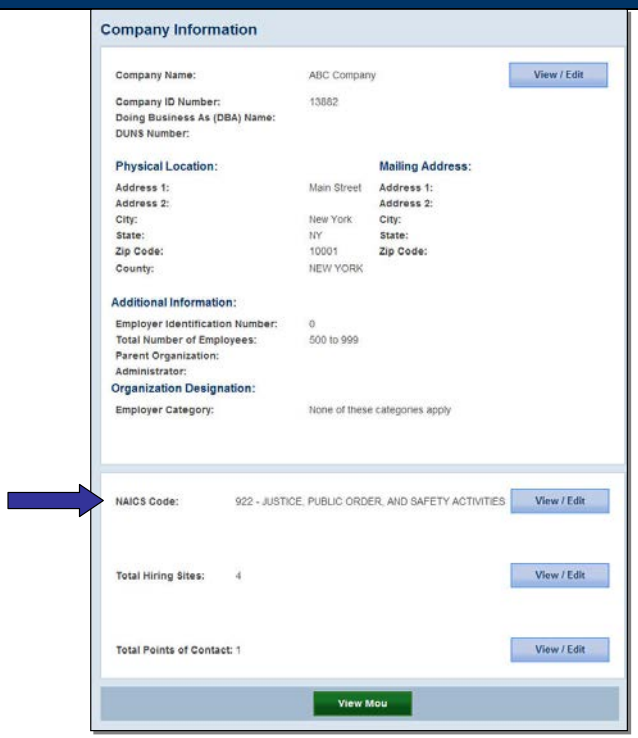
UPDATE NAICS CODE – PROCESS OVERVIEW

- From 'Company,' select 'Edit Company Profile.'

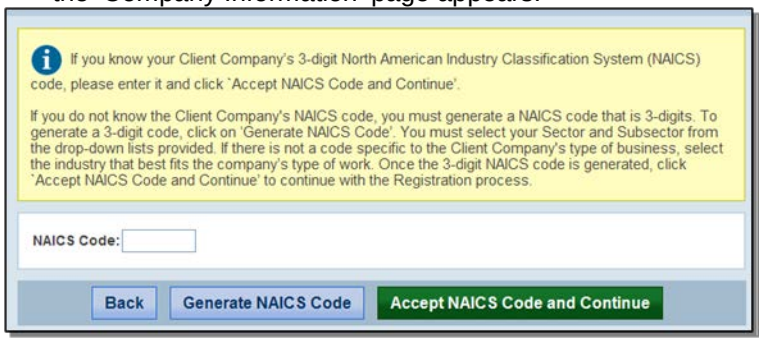


- Click 'View/Edit' in the NAICS section of the 'Company Information' page.

UPDATE NAICS CODE – PROCESS OVERVIEW



- The 'NAICS Code' page displays the NAICS code entered when your employer enrolled in E-Verify.
  To modify the 'NAICS Code' field:
  - Enter the new three digit NAICS code. If the new number is not known, a program administrator can search available codes.
    To determine the employer's NAICS code:
  - Click 'Generate NAICS Code.'
  - Select the appropriate sector and subsector from the drop-down list. As the program administrator proceeds from page to page, the corresponding NAICS code appears in the 'NAICS Code' field.
  - Select the appropriate category for the employer from each list that appears.
  - Click 'Accept NAICS Code and Continue.' Once you have accepted the final subsector, the 'Company Information' page appears.



ADD NEW HIRING SITE(S)

A hiring site is the location where employees are hired and they complete Form I-9. Program administrators can modify the number of hiring sites that participate in E-Verify in each state. A participating hiring site means that an employer will create

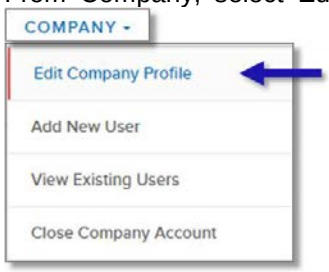
an E-Verify case for every newly hired employee who is hired and completes a Form I-9 at that site.

The 'Company Hiring Sites' page shows the states where the employer has hiring sites and the number of hiring sites for each state. Program administrators have the option to add hiring sites for a new state, edit the number of hiring sites in a state where the employer currently has participating hiring sites, or delete a state from the hiring site list.

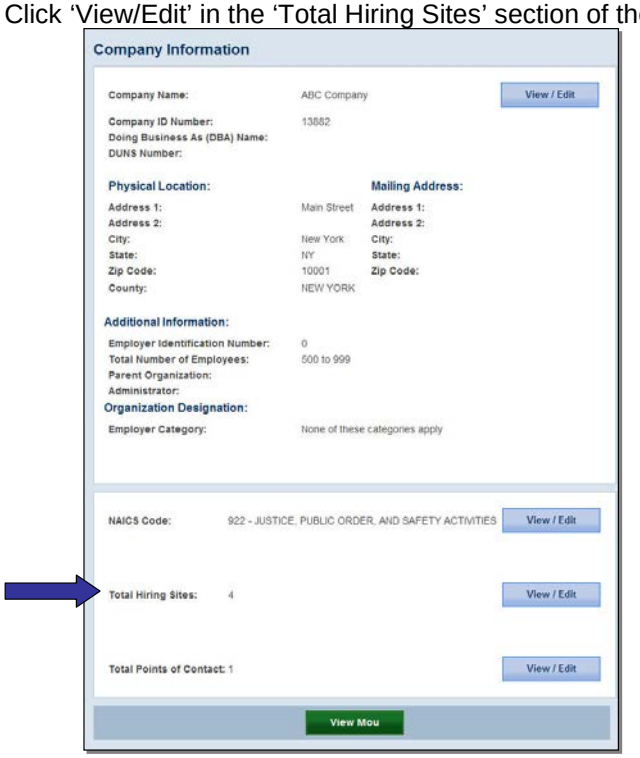
To add a new state where the employer will have participating hiring sites, see the 'Add New State Hiring Site - Process Overview.'

ADD NEW STATE HIRING SITE – PROCESS OVERVIEW

- From 'Company,' select 'Edit Company Profile.'



- Click 'View/Edit' in the 'Total Hiring Sites' section of the 'Company Information' page.



- Click 'Add' to add participating hiring sites for a new state. Select the state from the drop-down list. Enter the number of hiring sites, then click 'Update.'
- To edit the number of participating hiring sites in a state where the employer currently has hiring sites, click 'Edit' next to the state whose number of hiring sites you wish to edit. Change the number of hiring sites, and then click 'Update.'
- To delete a state from the company's hiring site list, click 'Delete' next to the state you want to remove. Confirm that you want to remove the state and all of its hiring sites by selecting 'Delete Site.'

ADD NEW STATE HIRING SITE – PROCESS OVERVIEW

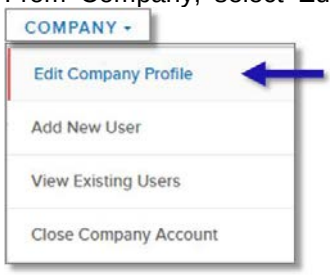
- Click 'Next' to submit modifications and return to the 'Company Information' page.

VIEW MEMORANDUM OF UNDERSTANDING (MOU)

Program administrators may view the MOU between E-Verify and the employer. To view the MOU, follow the steps outlined in the 'View MOU - Process Overview.'

VIEW MOU – PROCESS OVERVIEW

- From 'Company,' select 'Edit Company Profile.'



- From the 'Company Information' page, click 'View MOU' at the bottom of the screen.

- The MOU that was electronically signed for that employer will appear in a new window. If the MOU does not load, ensure that your pop-up blocker is disabled.

IMPORTANT: Once the MOU is submitted during enrollment, the information that appears on the MOU cannot be changed. However, employers can update their information in E-Verify to reflect any changes. Employers who need to provide proof of their enrollment in E-Verify may print a copy of their company's information page as proof of their updated information.

REMINDER

- Employers should update their E-Verify account information to reflect any changes.

7.4 TERMINATE COMPANY PARTICIPATION

Participation in E-Verify may be terminated voluntarily by employers. To terminate participation, a program administrator, corporate administrator, the signatory of the MOU, or an authorized employer representative must submit a termination request no later than 30 days in advance of the date the employer would like to close its account. Employers may request termination electronically through E-Verify (see 'Terminate Company Account – Process Overview') or by submitting a written termination notice by email to E-Verify@dhs.gov. E-Verify employer agents should review the 'Supplemental Guide for E-Verify Employer Agents' for more information on company account termination.

In accordance with the MOU, Employers must continue to use E-Verify during this 30 day period or until they receive an email confirming that the account is terminated, whichever is sooner. Employers are required to close all open E-Verify cases, even after the request to terminate the E-Verify account is made.

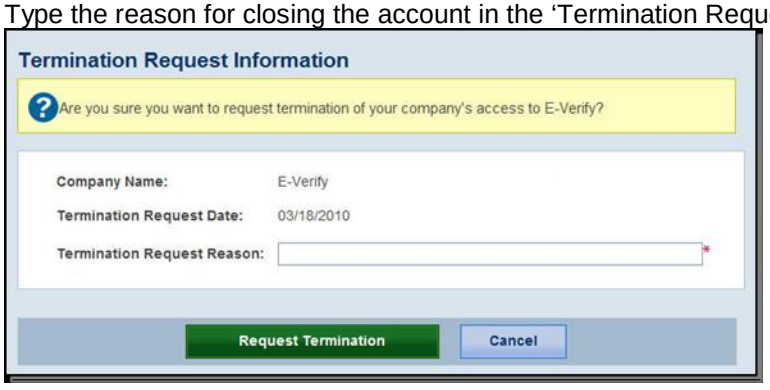
IMPORTANT: Once an account is terminated, all access to the account and its associated records is lost. To preserve the records from an E-Verify account, see Section 5.0 to create and retain a user audit report before the account is terminated. E-Verify case information and documentation must be retained for your employees for the same length of time as their Forms I-9.

To request termination of employer participation in E-Verify, perform the steps outlined in 'Terminate Company Account – Process Overview.'

TERMINATE COMPANY PARTICIPATION – PROCESS OVERVIEW

- From 'Company,' select 'Close Company Account.'

- Type the reason for closing the account in the 'Termination Request Reason' field.



- Click 'Request Termination.'
- A message will appear informing you that E-Verify will be notified of your request to terminate participation in the program.
- You will receive an email confirming that the client's account is terminated.

REMINDER

- If the employer has more than one E-Verify employer account and wishes that all accounts be terminated, the employer must make separate requests to terminate each employer account before they will all be closed.

Employers who submitted a termination request by mistake should contact E-Verify Customer Support at 888-464-4218 for assistance.

8.0 RESOURCE AND CONTACT INFORMATION

The E-Verify public website is the primary resource for all E-Verify information, but do not hesitate to contact us via phone or email. For easy access to online resources, USCIS suggests that employers bookmark or save the websites as 'favorites' for easy access to them in the future.

E-VERIFY RESOURCES	URL
E-Verify Public Website • General information about E-Verify • Program information and statistics • Frequently asked questions • E-Verify user manuals • E-Verify quick reference guides • Information about employee rights and employer obligations	www.dhs.gov/E-Verify
E-Verify Enrollment Application • Website for initial employer enrollment	https://e-verify.uscis.gov/enroll
E-Verify Access for Employers and Corporate Administrators • User access to E-Verify	https://e-verify.uscis.gov/emp
E-Verify Access for E-Verify Employer Agents • User access to E-Verify	https://e-verify.uscis.gov/esp

E-VERIFY CONTACT INFORMATION	
E-Verify Customer Support E-Verify Customer Support is available to assist you with using E-Verify, password resets, cases and technical support. We can also answer your questions about E-Verify policies and procedures, Form I-9 and employment eligibility. We are available Monday through Friday, from 8 a.m. Eastern Time to 5 p.m. Pacific Time, except on federal holidays	
For E-Verify Employer Agents:	888-464-4218 877-875-6028 (TTY) E-VerifyEmployerAgent@dhs.gov

E-VERIFY CONTACT INFORMATION	
For Clients:	888-464-4218 877-875-6028 (TTY) E-Verify@dhs.gov
For Employees:	888-897-7781 877-875-6028 (TTY) E-Verify@dhs.gov

E-VERIFY CONTACT INFORMATION	
Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) OSC is available to answer your questions about immigration-related employment discrimination, including discrimination based on citizenship status, immigration status or national origin in the Form I-9 and E-Verify processes.	
Employer Hotline:	800-255-8155 800-362-2735 (TTY)
Employee Hotline:	800-255-7688 800-237-2515 (TTY)
Website:	www.justice.gov/crt/about/osc

APPENDIX A: ACRONYMS

Acronym	Definition
DHS	U.S. Department of Homeland Security
DOS	U.S. Department of State
FAR	Federal Acquisition Regulation
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
INA	Immigration and Nationality Act of 1952
IRCA	Immigration Reform and Control Act of 1986
MOU	Memorandum of Understanding
NAICS	North American Industry Classification System
OSC	Office of Special Counsel for Immigration Related Unfair Employment Practices
PDF	Portable Document Format
SSA	Social Security Administration
SSN	Social Security number
TNC	Tentative Nonconfirmation
USCIS	U.S. Citizenship and Immigration Services

APPENDIX B: GLOSSARY

A

Acceptable Documents for Verifying Identity and Employment Eligibility
Documents designated for determining employment eligibility and identity under the Immigration and Nationality Act (INA) are listed on Form I-9 and in the 'Handbook for Employers: Guidance for Completing Form I-9 (M-274)' found at http://www.uscis.gov/files/form/m-274.pdf. Employees have the right to choose which document or combination of documents to present. Any 'List B' document presented to an employer participating in E-Verify must contain a photograph.

Admission Number or I-94 Number
An 11-digit number that is found on the Arrival-Departure Record (Form I-94 or Form I-94A).

Alien (Noncitizen)
An individual who is not a citizen or national of the United States.

Alien Authorized to Work
A noncitizen who is allowed to work because of his or her immigration status or a noncitizen who is granted work authorization by U.S. Citizenship and Immigration Services.

Alien Registration Number or Alien Number (A-number)
A unique seven-, eight- or nine-digit number assigned to a noncitizen at the time his or her A-file is created. The nine-digit U.S. Citizenship and Immigration Services number listed on the front of Permanent Resident Cards (Form I-551) issued after May 10, 2010, is the same as the Alien Registration Number. The A-number can also be found on the back of the Permanent Resident Card.

Anti-Discrimination Notice
The anti-discrimination notice is published by the Office of Special Counsel for Immigration-Related Unfair Employment Practices, Department of Justice (OSC), and provides information to employees concerning discrimination in the workplace. The E-Verify memorandum of understanding (MOU) requires participating employers to clearly display the notice in English and Spanish. Employers may also display the posters in other languages provided by DHS. This notice is available in the 'Essential Resources' section of E-Verify. For questions about discrimination during the employment eligibility verification process, employers may contact OSC at 800-255-8155 or 800-237-2515 (TTY) or visit OSC's website at http://www.justice.gov/crt/about/osc.

Arrival/Departure Record (Form I-94 or I-94A)
A document issued to some noncitizens admitted to the United States. Some of these forms are stamped to indicate work-authorized status. Form I-94 or I-94A contains an 11-digit admission number that may be used as part of the initial E-Verify case if the noncitizen employee does not have an Alien Registration Number.

B

C

Case in Continuance
This response is given if the Social Security Administration (SSA) or the U.S. Department of Homeland Security (DHS) needs more than ten Federal Government working days to provide a final case result. The employee continues to work until a final case result is provided in E-Verify from SSA or DHS.

Case Incomplete
This response is given if the user abandons a case after the 'Check Information' screen or the photo matching screen appears. The user will need to continue the case or close the case.

Case Verification Number
A unique number assigned to each E-Verify case that is created when an employer submits an initial verification. Employers participating in E-Verify are required to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

Client
An individual or employer that hires an E-Verify employer agent to create E-Verify cases on its behalf.

Close Case
The step in the verification process when either a final result has been provided or the user no longer needs to continue the verification and the case is ready to be closed.

Company ID Number
The E-Verify company ID number consists of 4 to 6 numerical characters and is located on the first page of the memorandum of understanding (MOU), directly below the E-Verify logo. Program administrators may also obtain the company ID number from the Company Information page in E-Verify under 'Edit Company Profile.'

Corporate Administrator
This is a type of user who can only use E-Verify to manage multiple employer accounts. Corporate administrators cannot create and manage E-Verify cases.

D

DHS No Show

When an employee decides to contest a Tentative Nonconfirmation (TNC), once the employer refers the case in E-Verify, the employee has eight Federal Government working days to contact DHS and resolve the mismatch. If the employee does not contact DHS, E-Verify will automatically change the employee's case status to 'DHS No Show' after ten Federal Government working days have passed since the case was referred.

"DHS No Show" is the E-Verify case result when the employee did not contact the U.S. Department of Homeland Security (DHS) to resolve his or her case and ten

Federal Government working days have passed since the date of referral. The 'DHS No Show' result is considered a Final Nonconfirmation.

DHS Verification in Process
A case result of 'DHS Verification in Process' means that the employee's information did not match U.S. Department of Homeland Security (DHS) records. The case is automatically referred to DHS for further verification. DHS responds to most of these cases within 24 hours, but has up to three Federal Government working days to respond. Employers should check E-Verify periodically for a response.

Document Type
Type of document(s) presented by a newly hired employee to verify identity and employment eligibility.

E

Employment Authorized
This is a case result received in E-Verify when the information entered for an employee matches records available to the Social Security Administration (SSA) and/or the U.S. Department of Homeland Security (DHS). This case result indicates that employment eligibility has been confirmed.

Employment Authorization Document (Form I-766)
A document issued to noncitizens who are authorized to work in the United States. The most recent version of the Employment Authorization Document (Form I-766) has been issued since January 1997.

Form I-9, Employment Eligibility Verification
The form employers and employees are required to complete when a new employee is hired to perform labor or services in return for wages or other remuneration. This requirement applies to all employees hired after November 6, 1986. For employers in the Commonwealth of the Northern Mariana Islands (CNMI), this requirement applies to all employees hired after Nov. 27, 2009. In the CNMI, employers had to complete Form I-9 CNMI for every employee hired for employment from November 28, 2009 to November 27, 2011 and use the standard Form I-9 for employees hired on or after November 28, 2011.

E-Verify Employer Agent
An individual or entity that creates E-Verify cases on behalf of employers, formerly referred to as a designated agent.

E-Verify
E-Verify is an Internet-based program which electronically confirms the employment eligibility of newly hired employees and existing employees assigned to a covered federal contract after Form I-9 has been completed. This involves separate verification checks of records available to the Social Security Administration (SSA) and/or the U.S. Department of Homeland Security (DHS).

E-Verify Participation Notice
The E-Verify Participation Notice informs prospective employees that an employer is participating in E-Verify. The memorandum of understanding (MOU) requires participating employers to display the notice in a prominent place that is clearly

visible to prospective employees and all employees who are to be verified with E-Verify.

F

Final Nonconfirmation
If an employee's employment eligibility cannot be verified, the employer will receive a Final Nonconfirmation case result in E-Verify. An employer receiving an 'SSA or DHS Final Nonconfirmation' response may terminate the employee and will not be civilly or criminally liable under any law for the termination, as long as the action was taken in good faith reliance on the information provided through E-Verify as noted in in "Responsibilities of the Employer," Article II, Section A paragraph 8 of the MOU.

Further Action Notice
A notice generated from E-Verify that the employer must give to an employee after his or her E-Verify case receives an SSA or DHS Tentative Nonconfirmation (TNC). If an employee decides to contest the TNC, he or she must contact or visit the appropriate agency within eight Federal Government working days with this notice to initiate resolution of the E-Verify case.

G

General Users
This user type creates cases, views reports and can update his or her user profile.

H

Handbook for Employers: Guidance for Completing Form I-9 (M-274)
Provides detailed instructions on how to complete and retain Form I-9, Employment Eligibility Verification.

Hire Date
The hire date is the first day of employment in exchange for wages or other remuneration, previously referred to as the date on which the employee began employment. For the hire date in E-Verify, enter the 'employee's first day of employment' date from the 'Certification' in Section 2 of the employee's Form I-9. If you rehired an employee within three years of the date that his or her previous Form I-9 was completed and have completed Section 3 of Form I-9, enter the 'Date of Rehire' from Section 3 of the employee's Form I-9 as the hire date in E-Verify.

Hiring Site

A hiring site is the location where employees are hired and they complete Form I-9. If cases are created in E-Verify at the same location, it is a verification location AND a hiring site.

I

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
Public Law 104-208 enacted on September 30, 1996 required the Immigration and Naturalization Service to conduct three types of employment authorization

verification pilot programs. The 'basic pilot program' was one of the three programs and is the only program still in existence. The 'basic pilot program' exists today as E-Verify.

Immigration and Nationality Act of 1952 (INA)
Public Law 82-414 enacted on June 27, 1952 which, along with other immigration laws, treaties and conventions of the United States, relates to the immigration, temporary admission, naturalization and removal of noncitizens.

Immigration Reform and Control Act of 1986 (IRCA)
Public Law 99-603 enacted on November 6, 1986 sought to eliminate employment opportunity as a key incentive for illegal migration to the United States. IRCA mandates that all U.S. employers verify the employment eligibility and identity of all new hires through completion of Form I-9. It provides remedies to employees and sanctions against employers who knowingly hire unauthorized workers or discriminate against employees based on citizenship or immigration status or based on national origin.

Initial Case Result
The results displayed in E-Verify once an employee's information has been submitted as part of a verification case. Initial case results include 'Employment Authorized,' 'Tentative Nonconfirmation (TNC)' and 'DHS Verification in Process.'

Interim Case Status
Certain initial E-Verify results that require additional action before E-Verify can provide a final case result. Interim case results include 'SSA or DHS Tentative Nonconfirmation,' 'Review and Update Employee Data,' 'DHS Verification in Process,' 'SSA or DHS Case in Continuance.'

J

K

L

Lawful Permanent Resident
A noncitizen or alien who has been lawfully granted the privilege of residing and working permanently in the United States.

M

Memorandum of Understanding (MOU)
A legal document describing a bilateral or multilateral agreement between/among parties. It constitutes a legally binding contract when properly executed (i.e., signed) by all the parties. Employers who participate in E-Verify must sign the E-Verify MOU between the employer, the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA).

N

Noncitizen National of the United States
Persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands who relinquished their U.S. citizenship acquired under section 301 of Public Law 94-241 (establishing the Commonwealth of the Northern Mariana Islands) by executing a declaration before an appropriate court that they intended to be noncitizen nationals rather than U.S. citizens, and certain children of noncitizen nationals born abroad. Generally, noncitizen nationals are American Samoans.

O

Office of Special Counsel (OSC)
Created by the Immigration Reform and Control Act of 1986 (IRCA), the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) is part of the Civil Rights Division of the U.S. Department of Justice and enforces the anti-discrimination provision of the Immigration and Nationality Act, 8 USC 1324b, which prohibits discrimination in hiring and discharging based upon citizenship or immigration status and national origin and discrimination during the employment eligibility verification process, which includes Form I-9 and E-Verify.

P

Passport (Foreign)
Any travel document issued by a competent authority showing the bearer's origin, identity and nationality, if any, which is valid for the entry of the bearer into a foreign country.

Passport (United States)
Document issued by the U.S. Department of State to U.S. citizens and noncitizen nationals.

Password
A unique identifier that allows registered E-Verify users access to E-Verify.

Permanent Resident or Lawful Permanent Resident
A noncitizen who has been lawfully granted the privilege of residing and working permanently in the United States.

Permanent Resident Card (Form I-551)
First issued by the former Immigration and Naturalization Service beginning in December 1997 and now issued by U.S. Citizenship and Immigration Services (USCIS), this card is the current version of the document given to permanent residents. The document is issued for either two years or ten years. In the current version of the Permanent Resident Card (Form I-551), the name of the document was changed from Resident Alien Card to Permanent Resident Card.

Photo Matching
During the verification process, employers match the photos on certain documents provided by employees when completing Form I-9 with the photo that appears in E-Verify. Photo matching is activated only when an employee provided a U.S.

Passport, Passport Card, Permanent Resident Card (Form I-551) or an Employment Authorization Document (Form I-766) as his or her Form I-9 document.

Photo Match
The photo on the employee's document matches the photo supplied by E-Verify. The photo transmitted by E-Verify should be the same (identical) photo that appears on an employee's U.S. Department of Homeland Security (DHS) issued document. Employers should be able to determine whether the photos match.

Photo Mismatch
The photo on the employee's document does not match the photo supplied by E-Verify. The photo transmitted by E-Verify should be the same (identical) photo that appears on an employee's U.S. Department of Homeland Security (DHS) issued document. If the employer determines that it does not match, a 'DHS Tentative Nonconfirmation (TNC)' case result is issued and the employee must be given the opportunity to contest.

Point of Contact
An individual assigned by the employer who can be contacted about E-Verify issues. This person does not have to be one of the two user types.

Pre-screening
The prohibited practice of creating a case in E-Verify before a job offer has been accepted.

Program Administrator
This user type can create user accounts, view reports, create cases, update account information and unlock user accounts.

Q

R

Referral Date Confirmation
A one-page document provided to an employee who has chosen to contest an SSA or DHS Tentative Nonconfirmation (TNC) when the case is referred in E-Verify. This document provides the employee with the date by which he or she must visit SSA or contact DHS.

Request Name Review
In some cases E-Verify returns a case result of 'Employment Authorized,' but the name shown as authorized does not match exactly the name entered into E-Verify from the employee's Form I-9. This can happen because of name variations in records available to the U.S. Department of Homeland Security (DHS).

If the names do not match, the case must be sent to DHS for review. Taking this step ensures that the record associated with the 'Employment Authorized' case result belongs to the employee whose information was entered into E-Verify.

Review and Update Employee Data
In some instances, a case status of 'Review and Update Employee Data' may occur. This means that the Social Security Administration (SSA) found a discrepancy in the information it received in the E-Verify referral. This may occur because of

typographical errors and/or incorrect information on Form I-9. Form I-9 will need to be reviewed with the employee, the information corrected as applicable and then the case may be resubmitted.

S

Social Security Administration (SSA)
The federal government agency that administers a national program of contributory social insurance. SSA and the U.S. Department of Homeland Security (DHS) jointly manage the E-Verify program.

Social Security Administration (SSA) Referral
After an employee is advised of an 'SSA Tentative Nonconfirmation (TNC)' and has signed the SSA TNC Further Action Notice, the employee is referred to SSA to resolve the TNC.

T

Tentative Nonconfirmation (TNC)
The employee information was compared to government records and could not be verified. This does not necessarily mean that the employee is not authorized to work, or that the information provided was incorrect. The employee must either visit the Social Security Administration (SSA) or contact the U.S. Department of Homeland Security (DHS) to resolve the discrepancy and continue employment.

U

U.S. Department of State (DOS)
The federal government department that is responsible for international relations. DOS issues U.S. Passports and Passport Cards. U.S. Passport and Passport Card records are available to the U.S. Department of Homeland Security (DHS) for confirmation of employment eligibility with E-Verify.

USCIS Number
A nine-digit number listed on the front of Permanent Resident Cards (Form I-551) issued after May 10, 2010 that is the same as the Alien number (A-number). The A-number can also be found on the back of these Permanent Resident Cards.

User
An individual with a corporate administrator, program administrator or general user account assign to them for use of E-Verify.

User ID
The user ID is an assigned identifier with letters and numbers that identifies the user of a computer system or network. All users who create cases in E-Verify must have their own user IDs. The user ID must be eight characters and may be letters, numbers or a combination of both. A user ID is not case sensitive.

V

Verification location
A verification location is where E-Verify users take the information from an employee's Form I-9 to create a case in E-Verify.

W, X, Y, Z

WORK VISAS

I-129 Form

Instructions for Petition for Nonimmigrant Worker

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

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The Purpose of Form I-129

This form is used by an employer to petition U.S. Citizenship and Immigration Services (USCIS) for an alien beneficiary to come temporarily to the United States as a nonimmigrant to perform services or labor, or to receive training.

Form I-129 consists of the:

1. Basic petition;
2. Individual supplements relating to specific classifications; and
3. H-1B Data Collection and Filing Fee Exemption Supplement (required for H-1B and H-1B1 classifications only).

These instructions are divided into two parts:

Part 1: Classifications that always require a petition.

E-2 CNMI -- treaty investor exclusively in the Commonwealth of the Northern Mariana Islands (CNMI).

H-1B -- specialty occupation worker; an alien coming to perform services of an exceptional nature that relate to a U.S. Department of Defense-administered project; or a fashion model of distinguished merit and ability.

H-2A -- temporary agricultural worker.

H-2B -- temporary nonagricultural worker.

H-3 -- trainee.

L-1 -- intracompany transferee.

O-1 -- alien of extraordinary ability in arts, science, education, business, or athletics.

O-2 -- accompanying alien who is coming to the United States to assist in the artistic or athletic performance of an O-1 artist or athlete.

P-1 -- major league sports.

P-1 -- internationally recognized athlete/entertainment group.

P-1S -- essential support personnel for a P-1.

P-2 -- artist/entertainer in reciprocal exchange program.

P-2S -- essential support personnel for a P-2.

P-3 -- artist/entertainer coming to the United States to perform, teach, or coach under a program that is culturally unique.

P-3S -- essential support personnel for a P-3.

Q-1 -- alien coming temporarily to participate in an international cultural exchange program.

R-1 -- religious worker.

Part 2: Classifications that require a petition only if the beneficiary is already in the United States and requesting an extension of stay or a change of status:

E-1 -- treaty trader.

E-2 -- treaty investor (not including E-2 CNMI treaty investors).

E-3 -- Free Trade Agreement professionals from Australia.

Free Trade Nonimmigrants -- H-1B1 specialty occupation workers from Chile or Singapore and TN professionals from Canada or Mexico.

Who May File Form I-129?

General. A U.S. employer may file this form and applicable supplements to classify an alien in any nonimmigrant classification listed in **Part 1.** or **Part 2.** of these instructions. A foreign employer, U.S. agent, or association of U.S. agricultural employers may file for certain classifications as indicated in the specific instructions.

Agents. A U.S. individual or company in business as an agent may file a petition for workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A petition filed by an agent must include a complete itinerary of services or engagements, including dates, names, and addresses of the actual employers, and the locations where the services will be performed. A petition filed by a U.S. agent must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

Including more than one alien in a petition. You may include on the same petition multiple aliens who seek admission in the H-2A, H-2B, H-3, P-1, P-2, P-3, P-1S, P-2S, P-3S, O-2, or Q-1 classifications provided all will:

1. Be employed for the same period of time; and
2. Perform the same services, receive the same training, or participate in the same international cultural exchange program.

NOTE: Employers must file a separate Form I-129 to petition for O and P essential support personnel apart from any petition they file for O or P principal aliens or P group or team. All essential-support beneficiaries listed on this petition must establish prior essentiality to the principal O or P aliens.

Exception: It is recommended that H-2A and H-2B petitions for workers from countries not listed on the respective "Eligible Countries List" be filed separately. See **www.uscis.gov** for the list of H-2A and H-2B participating countries.

Multiple locations. A petition for aliens to perform services or labor or receive training in more than one location must include an itinerary with the dates and locations where the services or training will take place.

Naming beneficiaries. Allbeneficiaries in a petition must be named except for an H-2A agricultural worker or an H-2B temporary nonagricultural worker.

Exceptions for H-2A/H-2B temporary workers: You must provide the name, date of birth, country of birth, and country of nationality of all H-2A and H-2B workers when **(1)** the petition is filed for a worker who is a national of a country not designated by the Secretary of Homeland Security as eligible to participate in the H-2A or H-2B program; or **(2)** the beneficiary is in the United States. In addition, USCIS may require the petitioner to name H-2B beneficiaries where the name is needed to establish eligibility for H-2B nonimmigrant status.

Where some or all of the beneficiaries are not named, specify the total number of unnamed beneficiaries and total number of beneficiaries in the petition.

General Filing Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which can be downloaded for free at **http://get.adobe.com/reader/**.

Each petition must be properly signed and filed. A photocopy of a signed petition or a typewritten name in place of a signature is not acceptable.

Each petition must be accompanied by the appropriate filing fees. (See the **What Is the Filing Fee** section of these instructions.)

Evidence. You must submit all required initial evidence along with all the supporting documentation with your petition at the time of filing.

Biometrics Services Appointment for Certain Beneficiaries Who Will be Working in the CNMI. After receiving your petition and ensuring completeness, USCIS will inform you in writing when the beneficiary needs to go to his/her local USCIS Application Support Center (ASC) for his/her biometrics services appointment. Failure to attend the biometrics services appointment may result in denial of your petition.

Form I-94, Arrival - Departure Record. If U.S. Customs and Border Protection (CBP) or USCIS issued the beneficiary a Form I-94, Arrival-Departure Record, provide his/her I-94 admission number and date that his/her authorized period of stay expires or expired (as shown on the Form I-94). The I-94 admission number also is known as the Departure Number on some versions of Form I-94.

NOTE: If the beneficiary was admitted to the United States by CBP at an airport or seaport after April 30, 2013, he/she may have been issued an electronic Form I-94 by CBP, instead of a paper Form I-94. He/she may visit the CBP website at **www.cbp.gov/I94** to obtain a paper version of the electronic Form I-94. CBP does not charge a fee for this service. Some travelers admitted to the United States at a land border, or air or sea port, after April 30, 2013 with a passport or travel document, who were issued a paper Form I-94 by CBP, may also be able to obtain a replacement Form I-94 for the CBP website without charge. If Form I-94 cannot be obtained from the CBP website, it may be obtained by filing Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, with USCIS. USCIS does charge a fee for this service. Form I-102 may be filed together with this Form I-129.

Copies. You may submit a legible photocopy of any document requested, unless the instructions specifically state that you must submit an original document. Original documents submitted when not required may remain a part of the record, and will not be automatically returned to you.

Translations. Any document you submit to USCIS information in a foreign language must have a full English language translation. The translator must certify that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English.

How to Fill Out Form I-129

1. Type or print legibly in black ink.
2. Complete the basic form and any relating supplements.
3. If you need extra space to complete any item, go to **Part 9.**, **Additional Information About Your Petition for Nonimmigrant Worker**, indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers, and date and sign each sheet.
4. Answer all questions fully and accurately. If an item is not applicable or the answer is "none," type or print "N/A".
5. Submit a duplicate copy of the petition and all supporting documentation. **Failure to do so may result in delays in processing this petition or in visa processing abroad.**

Petitioner Information

Complete the **"Legal Name of Petitioner"** field (if the petitioner is an individual person or a company or organization). For mailing address, list the address of the **petitioner's primary office** within the United States. This address will determine the filing jurisdiction if the beneficiary will be providing services or completing training in multiple locations.

Basis for Classification

The following explains the choices listed in **Part 2.**, **Item Number 2.**, of the Form I-129.

A. New employment. Check this box if the beneficiary:

(1) Is outside the United States and holds no classification;

(2) Will begin employment for a new U.S. employer in a different nonimmigrant classification than the beneficiary currently holds; **or**

(3) Will work for the same employer but in a different nonimmigrant classification.

NOTE: Do not check this box if the beneficiary will work for the same employer in the same classification but there is a material change in the terms and conditions of employment, training, or the beneficiary's eligibility as specified in the original approved petition. Check the box for **Item f., Amended Petition,** instead.

B. Continuation of previously approved employment without change with the same employer. Check this box if you are applying to continue the employment of the beneficiary in the same nonimmigrant classification the beneficiary currently holds and there has been no change to the employment.

C. Change in previously approved employment. Check this box if you are notifying USCIS of a non-material change to the previously approved employment such as a change in job title without a material change in job duties.

D. New concurrent employment. Check this box if you are applying for a beneficiary to begin new employment with an additional employer in the same nonimmigrant classification the beneficiary currently holds while the beneficiary will continue working for his or her current employer in the same classification.

E. Change of employer. Check this box if you are applying for a beneficiary to begin employment working for a new employer in the same nonimmigrant classification that the beneficiary currently holds.

F. Amended petition. Check this box if you are applying to notify USCIS of a material change in the terms or conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. Additionally, petitioners requesting H-2A or H-2B substitutions should check this box.

Requested Action

The following explains the kinds of action petitioners/employers may choose for **Part 2., Information About This Petitioner, Item Number 4.** of Form I-129. Choose only one action.

A. Notify the office listed in Part 4. so the beneficiary(ies) can seek a visa or admission. Check this box if the beneficiary is outside of the United States, or, if the beneficiary is currently in the United States, but he or she will leave the United States to obtain a visa/admission abroad.

B. Change the status and extend the stay of beneficiaries who are now in the United States in another status. Check this box if the beneficiary is currently in the United States in a different nonimmigrant classification and is applying to change to a new, nonimmigrant status.

Exception: If the beneficiary seeks to change status to H-1B1 Chile/Singapore or TN classification, see **Item f.** below.

C. Extend the stay of each beneficiary who now holds this status. Check this box if the beneficiary is currently in the United States in a nonimmigrant classification and is requesting an extension of his or her stay in the same nonimmigrant classification.

Exception: If the beneficiary seeks to extend his/her stay in H1B1 Chile/Singapore or TN classification, see **Item e.** below.

D. Amend the stay of each beneficiary who now holds this status. Check this box if the beneficiary is currently in the United States in the same nonimmigrant classification and you are notifying USCIS of any material changes in the terms and conditions of employment, training or the beneficiary's eligibility as specified in the original approved petition.

E. Extend the status of a nonimmigrant classification that is based on a Free Trade Agreement. Check this box if the beneficiary is currently in the United States based on a Free Trade Agreement (H-1B1 Chile/Singapore or TN classification) and is requesting an extension of his or her stay in that same classification.

F. Change status to a nonimmigrant classification that is based on a Free Trade Agreement. Check this box if the beneficiary is currently in the United States in a different nonimmigrant classification and is applying to change to a nonimmigrant classification based on a Free Trade Agreement (H-1B1 Chile/Singapore or TN classification).

Certification Pertaining to the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

U.S. Export Controls on Release of Controlled Technology or Technical Data to Foreign Persons. The Export Administration Regulations (EAR) (15 CFR Parts 770-774) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) require U.S. persons to seek and receive authorization from the U.S. Government before releasing to foreign persons in the United States controlled technology or technical data. Under both the EAR and the ITAR, release of controlled technology or technical data to foreign persons in the United States--even by an employer--is deemed to be an export to that person's country or countries of nationality. One implication of this rule is that a U.S. company must seek and receive a license from the U.S. Government before it releases controlled technology or technical data to its nonimmigrant workers employed as H-1B, H-1B1, L-1, or O-1A beneficiaries.

Requirement to Certify Compliance with U.S. Export Control Regulations. The U.S. Government requires each company or other entity that files a Form I-129 to certify that to the best of its knowledge at the time of filing it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and determined whether it will require a U.S. Government export license to release controlled technology or technical data to the beneficiary.

If an export license is required, the company or other entity must further certify that it will not release or otherwise provide access to controlled technology or technical data to the beneficiary until it has received the required authorization from the U.S. Government.

The petitioner must indicate whether or not a license is required in **Part 6., Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States,** of Form I-129.

Controlled Technology and Technical Data. The licensing requirements described above will affect only a small percentage of petitioners because most types of technology are not controlled for export or release to foreign persons. The technology and technical data that are, however, controlled for release to foreign persons are identified on the EAR's Commerce Control List (CCL) and the ITAR's U.S. Munitions List (USML). The CCL is found at 15 CFF Part 774, Supp. 1. See **http://www.access.gpo.gov/bis/ear/ear_data.html#ccl**. The USML is at 22 CFR 121.1. See **http://www.pmddtc.state.gov/regulations_laws/itar.html**. The EAR-controlled technology on the CCL generally pertains to that which is for the production, development, or use of what are generally known as "dual-use" items. The ITAR-controlled technical data on the USML generally pertains to that which is directly related to defense articles.

The U.S. Department of Commerce's Bureau of Industry and Security administers the CCL and is responsible for issuing licenses for the release to foreign persons of technology controlled under the EAR. The U.S. Department of State's Directorate of Defense Trade Controls (DDTC) administers the USML and is responsible for issuing licenses for the release to foreign persons of technical data controlled under the ITAR. Information about the EAR and how to apply for a license from BIS are at **www.bis.doc.gov**. Specific information about EAR's requirements pertaining to the release of controlled technology to foreign persons is at **www.bis.doc.gov/index.php.policy-guidance/deemed-exports**. Information about the ITAR and how to apply for a license from DDTC are at **www.pmddtc.state.gov**.

Classification - Initial Evidence

For all classifications, if a beneficiary is seeking a **change of status** or **extension of stay**, evidence of maintenance of status must be included with the new petition. If the beneficiary is employed in the United States, the petitioner may submit copies of the beneficiary's last 2 pay stubs, Form W-2, and other relevant evidence, as well as a copy of the beneficiary's Form I-94, passport, travel document, or I-797.

The beneficiary's dependent family members (generally, spouses and children under 21) should use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for a change of status or extension of stay.

A nonimmigrant, who must have a passport to be admitted, generally must maintain a valid passport during his or her entire stay.

The following nonimmigrants are not eligible to change status:

1. An alien admitted under a visa waiver program;
2. An alien is transit (C) or in transit without a visa (TWOV);
3. A crewman (D);
4. A fiancé(e) (K-1) or his or her dependent (K-2);
5. A spouse of a U.S. citizen (K-3) or his or her dependent (K-4);
6. A J-1 exchange visitor who was admitted in J-1 status for the purpose of receiving graduate medical training;
7. A J-1 exchange visitor subject to the foreign residence requirement who has not received a waiver of that requirement; and
8. An M-1 student to an H classification, if training received as an M-1 helped him or her qualify for H classification.

Part 1. Petition Always Required

The following classifications always require a petition.

The initial evidence listed below and the initial evidence listed under the instructions for a change of status or extension of stay must be included with a petition for a new or concurrent employment or for an extension where there is a change in previously approved employment.

However, a petition for extension based on unchanged, previously approved employment should only be filed with the initial evidence required in the extension of stay instructions.

E-2 CNMI

An E-2 CNMI investor is an alien who seeks to enter or remain in the Commonwealth of the Northern Mariana Islands (CNMI) in order to maintain an investment in the CNMI that was approved by the CNMI government prior to November 28, 2009. An E-2 CNMI investor classification is specifically limited to an alien investor who has previously been granted a qualifying long term investor status under the laws of the CNMI. This classification allows an eligible alien to be lawfully present in the CNMI in order to maintain the investment during the transition period from CNMI to Federal immigration law. An investor's nationality is not a qualifying factor in the issuance of an E-2 CNMI investor classification.

This classification expires on December 31, 2019

A petition for the initial issuance of an E-2 CNMI investor classification must be filed within 2 years of the date the E-2 CNMI investor classification became available, which was January 18, 2011. Petitions for the initial issuance of the E-2 CNMI filed after January 18, 2013 will be rejected.

Requests for extension of the E-2 CNMI investor classification may be granted, in increments of not more than 2 years, until December 31, 2019.

Applications for the dependents of E-2 CNMI investors must be filed on Form I-539, Application to Extend/Change Nonimmigrant Status.

Write **E-2C** in the classification block.

The petition must be filed with documentary evidence of:

1. Continuous maintenance of the terms and conditions of E-2 CNMI investor nonimmigrant status;
2. Physical presence in the CNMI at the time of filing of the extension of stay request; and
3. The fact that the beneficiary will not leave during the pendency of the extension of stay request.

H-1B Nonimmigrants (Three Types)

The H-1B classification is for aliens coming to the United States temporarily to perform services in a specialty occupation.

Write **H-1B** in the classification block.

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The petition must be filed by a U.S. employer or a U.S. agent and must be filed with:

1. Evidence that a labor condition application (LCA) has been certified by the U.S. Department of Labor;
2. Evidence showing that the proposed employment qualifies as a specialty occupation;
3. Evidence showing that the beneficiary has the required degree by submitting either:
   - **A.** A copy of the beneficiary's U.S. bachelor's or higher degree as required by the specialty occupation;
   - **B.** A copy of a foreign degree and evidence that it is equivalent to the U.S. degree; or
   - **C.** Evidence of education, specialized training, and/or progressively responsible experience that is equivalent to the required U.S. degree.

4. A copy of any required license or other official permission to practice the occupation in the state of intended employment; and
5. A copy of any written contract between the petitioner and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed.
6. **Off-site Assignment of H-1B Beneficiaries:** Petitioners seeking to place the H-1B beneficiary off-site at a location other than their own location must answer general questions regarding this assignment in **Part 5., Basic Information About the Proposed Employment and Employer.** Petitioners should advise the H-1B beneficiary of the off-site work placement.

   Additionally, petitioner should submit an itinerary that shows the dates and places of assignment if the beneficiary will be providing services at more than one location.

The H-1B classification is also for aliens coming to the United States to perform services of an exceptional nature relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD).

Write **H-1B2** in the classification requested block.

A U.S. employer or U.S. agent may file the petition.

The petition must be filed with:

1. A description of the proposed employment;
2. Evidence that the services and project meet the above conditions;
3. A statement listing the names of aliens who are currently or have been employed on the project within the past year, along with their dates of employment;
4. Evidence that the beneficiary holds a bachelor's or higher degree or its equivalent in the field of employment; and
5. A verification letter from the DOD project manager. Details about the specific project are not required.

The H-1B classification is also for aliens of distinguished merit and ability in the field of fashion modeling.

Write **H-1B3** in the classification block.

The petition must be filed by a U.S. employer or U.S. agent. The petitioner must submit evidence that establishes the beneficiary will perform services at events or productions of a distinguished reputation. Such evidence includes:

1. Documentary evidence (such as certifications, affidavits, and reviews) to establish the beneficiary is a fashion model of distinguished merit and ability. Any affidavits submitted by present or former employers or recognized experts must set forth their expertise of the affiant and the manner in which the affiant acquired such information; and
2. Copies of any written contracts between the petitioner and the beneficiary or, if there is no written agreement, a summary of the terms of the oral agreement under which the beneficiary will be employed.

General H-1B Requirements

Three relevant laws impacting the filing of H-1B and/or L visa petitions; include:

1. The **American Competitiveness and Workforce Improvement Act (ACWIA),** Public Law 105-277 (signed into law on October 21, 1998);
2. The **H-1B Visa Reform Act of 2004** (signed into law on December 8, 2004); and
3. Public Law 114-113 (signed into law on December 18, 2005).

Because of ACWIA, H-1B and H-1B1 free trade nonimmigrant petitioners must complete the H-1B Data Collection and Filing Fee Exemption Supplement, which is part of this petition. We use this supplement (formerly issued separately as Form I-129W) to collect additional information about the H-1B nonimmigrant workers and the H-1B petitioners, and to determine the applicability of fees mandated by ACWIA (INA section 214(c)(9)), the H-1B1 Visa Reform Act of 2004 (INA section 214(c)(12)), and Public Law 114-113.

A petitioner seeking initial approval of H-1B or L nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B or L nonimmigrant currently working for another employer, must submit an additional **$500** Fraud Prevention and Detection fee. This fee does not apply to H-1B1 petitions. The Form I-129 will serve as the vehicle for collection of the **$500** fee.

Those petitioners required to submit the $500 Fraud Prevention and Detection fee are also required to submit either an additional $4,000 (H-1B) or $4,500 (L-1) fee mandated by Public Law 114-113, **if**:

1. The petitioner employs 50 or more individuals in the United States;

2. More than 50 percent of those employees are in H-1B or L-1A or L-1B nonimmigrant status; **and**

3. The petition is filed on or after December 18, 2015.

The Fraud Prevention and Detection Fee and Public Law 114-113 Fee, when applicable, may not be waived. Each fee should be submitted by separate check or money order.

To determine if they are subject to any of these fees, petitioners must complete the H-1B and H1B1 Data Collection and Filing Fee Exemption Supplement discussed below.

H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement

A U.S. employer or U.S. agent who seek to place a beneficiary in H-1B classification (including H-1B1 classification for free trade aliens from Chile and Singapore) must file this supplement.

The supplement is used to:

1. Collect additional information about the H-1B employer and beneficiary; and

2. Determine the appropriate American Competitiveness and Workforce Improvement Act (ACWIA) fee. The ACWIA Fee is a training fee meant to fund the training of U.S. workers. But if the employer has 25 or fewer full-time employees, they must pay only one-half of the required fee at INA 214(c)(9)(B). This supplement also helps to determine whether the beneficiary is subject to the H-1B numerical limitation (also known as the H-1B Cap). Please note that the ACWIA fee may not be assessed to the beneficiary.

Who is required to submit this supplement?

A U.S. employer or U.S. agent seeking to classify a beneficiary as an H-1B or H-1B1 Free Trade Nonimmigrant worker must file this supplement with the Form I-129 and the appropriate fee. (See **What is the Filing Fee**, for more information about the appropriate fee.)

Completing Section 1. of the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement Form

All petitioners who seek to classify a beneficiary as an H-1B or H-1B1 free trade nonimmigrant worker must answer every question in **Item Number 1.** of **Section 1., General Information**. Guidance on how to answer these questions follows.

1. H-1B dependent employer. An "H-1B dependent employer" is an employer that:

- **A.** Has 25 or fewer full-time-equivalent employees who are employed in the United States and employs more than seven H-1B nonimmigrants;
- **B.** Has at least 26 but not more than 50 full-time-equivalent employees who are employed in the United States and employs more than 12 H-1B nonimmigrants; or
- **C.** Has at least 51 full-time equivalent employees who are employed in the United States and employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time-equivalent employees.

2. Willful violators. A willful violator is an employer whom the U.S. Secretary of Labor has found, after notice and opportunity for a hearing, to have willfully failed to meet a condition of the labor condition application described in section 212(n) of the Immigration and Nationality Act.

3. Exempt H-1B nonimmigrant. An "exempt H-1B nonimmigrant" is an H-1B nonimmigrant who:

- **A.** Receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000; or
- **B.** Has attained a master's degree or higher (or its equivalent) in a specialty related to the intended employment.

4. **Highest level of formal education.** In **Item Number 2.** of **Section 1.**, place an "X" in the appropriate box that most closely reflects the highest level of formal education the beneficiary has attained.

5. **Major/primary field of study.** Use the beneficiary's degree transcripts to determine the primary field of study. **DO NOT** consider work experience to determine the beneficiary's major field of study.

6. **Master's or higher degree from a U.S. institution of higher education.** Indicate whether or not the beneficiary has earned a master's or higher degree from a U.S. institution of higher education, as defined in 20 U.S.C. section 1001(a).

7. **Rate of pay per year.** The "rate of pay" is the salary or wages paid to the beneficiary. Salary or wages must be expressed in an annual full-time amount and do not include non-cash compensation or benefits. For example, an H-1B worker is to be paid $6,500 per month for a 4-month period and also provided separately a health benefits package and transportation during the 4-month period. The yearly rate of pay if he or she were working for a full year would be 12 times the monthly rate, or $78,000. This amount does not include health benefits or transportation costs. The figure $78,000 should be entered on this form as the rate of pay.

8. **DOT Code.** The DOT Code is a three-digit occupational group for professional, technical, and managerial occupations and fashion models that can be obtained from the Dictionary of Occupational Titles. A reference chart can be found on our website at **www.uscis.gov**.

9. **NAICS Code.** This is the North American Industry Classification System (NAICS) Code. This code can be obtained from the U.S. Department of Commerce, Census Bureau (**www.census.gov/epcd/www/naics.htm**). Enter the code from left to right, one digit in each of the six boxes. If you use a code with fewer than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes.

   For example, the code sequence 33466 would be entered as: | 3 | 3 | 4 | 6 | 6 | 0 | [Each number inside a separate box]

   For example, the code sequence 5133 would be entered as: | 5 | 1 | 3 | 3 | 0 | 0 | [Each number inside a separate box]

Completing Section 2. of the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplemental Form

Petitioners must complete **Section 2., Fee Exemption and/or Determination,** to determine whether they must pay the ACWIA fee. This fee is either $1,500 or $750, depending on the number of workers the petitioner employs. The petitioner is exempt from payment of the ACWIA fee if at least one of the following conditions apply:

1. The employer is an institution of higher education as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. 1001(a);

2. The employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education as defined in 20 U.S.C. 1001(a). Such nonprofit organizations or entities include, but are not limited to, hospitals and medical research institutions;

   NOTE: "Related to" or "affiliated with" means the entity is:

   A. Connected to or associated with the institution of higher education through shared ownership or control by the same board or federation; or

   B. Operated by the institution of higher education; or

   C. Attached to the institution of higher education as a member, branch, cooperative, or subsidiary; or

   D. A nonprofit entity that has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

3. The employer is a nonprofit research organization or governmental research organization that is primarily engaged in basic research and/or applied research;

   NOTE: The term "governmental research organization" is defined at 8 CFR 214.2(h)(19)(iii)(C) as "a federal, state, or local entity whose primary mission is the performance or promotion of basic research and/or applied research."

   NOTE: "Nonprofit organization or entity" means the organization or entity is:

A. Defined as a tax-exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (codified at 26 U.S.C. 501(c)(3), (c)(4), or (c)(6)); and

B. Has been approved as a tax-exempt organization for research or educational purposes by the Internal Revenue Service.

4. This petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the **$1,500** or **$750** filing fee was paid on the initial petition or the first extension of stay;

5. This petition is an amended petition that does not contain any requests for extension of stay;

6. This petition is being filed to correct a USCIS error;

7. The employer is a primary or secondary education institution;

8. The employer is a nonprofit entity which engages in an established curriculum-related clinical training for students registered at the institution of higher education.

What evidence is required under Section 2.?

Petitioners claiming an exemption from the $1,500 or $750 filing fee must submit evidence showing the organization or entity is exempt from the filing fee.

Completing Section 3. of the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplemental Form

All petitioners must complete **Section 3., Numerical Limitation Information,** to determine whether the beneficiary is subject to the H-1B cap.

Public Law 110-229 provides that nonimmigrant workers admitted to Guam or CNMI are exempt from the statutory caps for the H visa programs through December 31, 2019.

The Form I-129 H Classification Supplement and H-1B Data Collection and Filing Fee Exemption Worksheet require employers to indicate the specific reason for any claimed cap exemption. Please select, in Section 3 of the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement, the reason(s) this petition is exempt from the numerical limitation for H-1B classification:

1. The employer is an institution of higher education as defined in 20 U.S.C. 1001(a);

2. The employer is a nonprofit entity related to or affiliated with an institution of higher education as defined in 8 CFR 214.2(h)(8)(ii)(F)(2);

3. The employer is a nonprofit research organization or governmental research organization that is primarily engaged in basic research and/or applied research as defined in 8 CFR 214.2(h)(8)(ii)(F)(3);

NOTE: To determine if you qualify for exemption from the H-1B cap as an institution of higher education, nonprofit entity related to or affiliated with an institution of higher education, nonprofit research organization or governmental research organization, please refer to the definitions of those terms in the section above ("Completing Section 2. of the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplemental Form").

4. The beneficiary will spend the majority of his or her work time performing job duties at a qualifying institution, organization, or entity and those job duties directly and predominantly further the essential purpose, mission, objectives, or functions of the qualifying institution, organization, or entity, namely, either higher education, nonprofit research, or governmental research;

NOTE: The burden is on the H-1B petitioner to establish that there is a nexus between the duties to be performed by the H-1B alien and the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity.

5. The beneficiary is currently employed at a cap-exempt institution, entity, or organization and you seek to concurrently employ the H-1B beneficiary;

6. The beneficiary is a J-1 nonimmigrant physician who has received a waiver based on section 214(l) of the Act;

7. The beneficiary of this petition has been counted against the regular H-1B cap or masters cap exemption; and

A. This petition is an amended petition without an extension of stay request;

B. You are applying to extend or obtain H-1B classification for time remaining (including through recapture) on the beneficiary's full period of authorized admission; or

C. You are seeking an extension beyond the 6-year period of authorized admission limitation based on sections 104(c) or 106(a) and 106(b) of the American Competitiveness in the Twenty-first Century Act (AC21); or

8. The petitioner is an employer eligible for the Guam-CNMI cap exemption pursuant to Public Law 110-229.

H-2A Nonimmigrants

The H-2A classification is for aliens coming to the United States temporarily to perform agricultural labor or services of a temporary or seasonal nature.

Write **H-2A** in the classification block.

The petition may be filed by:

1. The employer listed on the temporary labor certification;

2. The employer's agent; or

3. The association of U.S. agricultural producers named as a joint employer on the temporary labor certification.

The petitioner, employer (if different from the petitioner), and each joint employer must complete and sign the relevant sections of the H Classification Supplement.

Additionally, the petitioner must submit:

1. A single valid temporary labor certification from the U.S. Department of Labor;* and

2. Evidence showing that each named beneficiary meets the minimum job requirements stated in the temporary labor certification at the time the certification application was filed.

* Under certain emergent circumstances, as determined by USCIS, petitions requesting a continuation of employment with the same employer for 2 weeks or less are exempt from the temporary labor certification requirement. See 8 CFR 214.2(h)(5)(x).

E-Verify and H-2A Petitions

In certain cases, H-2A workers may start work immediately after a petitioner files a Form I-129 on their behalf. This may happen only if:

1. The petitioner is a participant in good standing in the E-Verify program; and

2. The requested workers are currently in the United States in a lawful nonimmigrant status, and either:

A. Changing status to H-2A, or

B. Extending their stay in H-2A status by changing employers.

If the petitioner and the requested H-2A workers meet these criteria, provide the E-Verify Company ID or Client Company ID in **Section 2., Complete This Section If Filing For H-3 Classification,** of the H Classification Supplement. See 8 CFR 274a.12(b)(21) for more information.

H-2B Nonimmigrants

The H-2B classification is for aliens coming to the United States temporarily to engage in nonagricultural services or labor that is based on the employer's seasonal, intermittent, peak load, or one-time need.

Write **H-2B** in the classification block.

The petition must be filed by a U.S. employer, a U.S. agent, or a foreign employer filing through a U.S. agent. The petitioner and employer (if different from the petitioner) must complete and sign the relevant sections of the H Classification Supplement.

Additionally, the petitioner must submit:

1. An approved temporary labor certification from the U.S. Department of Labor (or the Governor of Guam, if the employment will occur in Guam);** and
2. Evidence showing that each named beneficiary meets the minimum job requirements, if any, stated on the temporary labor certification.

** Petitions filed on behalf of Canadian musicians who will be performing for 1 month or less within 50 miles of the U.S. - Canadian border do not require a temporary labor certification. Petitions which require work in the jurisdictions of both the U.S. and Guam Departments of Labor must submit an approved temporary labor certification from each agency.

H-2B Start Date

A petition for H-2B workers must request an employment start date that matches the start date approved by the Department of Labor on the temporary labor certification. Petitions without matching start dates may be denied. This does not apply to amended petitions which request to substitute H-2B workers using the same temporary labor certificate.

Additional Information Regarding H-2A and H-2B Petitions

Naming Beneficiaries

Generally, you may request unnamed workers as beneficiaries of an H-2A or H-2B petition. You may also request some named and some unnamed workers, as long as you are requesting the same action for each worker. However, the total number of workers you request on the petition must not exceed the number of workers approved by the Department of Labor or Guam Department of Labor, if required, on the temporary labor certification.

Workers must be named if you request workers who:

1. Are currently in the United States;
2. Are nationals of countries that are not on the eligible countries list (see link and information below); or
3. Must meet minimum job requirements described on the temporary labor certification.

Eligible Countries List

H-2A and H-2B petitions may generally only be approved for nationals of countries that the Secretary of Homeland Security has designated, with the concurrence of the Secretary of State, as eligible to participate in the H-2 program. The current list of eligible countries is located at **www.uscis.gov/h-2a** and **www.uscis.gov/h-2b**.

Nationals of countries that are not eligible to participate in the H-2 program may still be named as beneficiaries on an H-2A or H-2B petition. To do so, you must:

1. Name each beneficiary who is not from an eligible country; and
2. Provide evidence to show that it is in the U.S. interest for the alien to be the beneficiary of such a petition.

USCIS' determination of what constitutes U.S. interest takes into account certain factors, including but not limited to:

1. Evidence demonstrating that a worker with the required skills is not available from among foreign workers from a country currently on the eligible countries list;

   NOTE: Also, for H-2A petitions only, the petitioner must submit evidence demonstrating that a *U.S. worker* with the required skills is not available.
2. Evidence that the beneficiary has been admitted to the United States previously in H-2A or H-2B status;
3. The potential for abuse, fraud, or other harm to the integrity of the H-2A or H-2B visa program through the potential admission of a beneficiary from a country not currently on the eligible countries list; and
4. Such other factors as may serve the U.S. interest.

Prohibited Fees

As a condition of approval of an H-2A or H-2B petition, no job placement fee or other compensation (either direct or indirect) may be collected at any time from a beneficiary of an H-2A or H-2B petition. This includes collection by a petitioner, agent, facilitator, recruiter, or similar employment service, as a condition of employment, whether before or after the filing or approval of a petition. Unless the payment of such fees by a worker is prohibited under law, the only exceptions to this are:

1. The lower of the actual cost or fair market value of transportation to the offered employment; and
2. Any government-mandated passport, visa, or inspection fees.

If USCIS determines any of the following have occurred, the petition will be denied or revoked. The only exceptions to a mandatory denial or revocation are found at 8 CFR 214.2(h)(5)(xi)(A)(4) and 8 CFR 214.2(h)(6)(i)(B)(4):

1. You collected, or entered into an agreement to collect, prohibited fees as described above;
2. You knew, or should have known, at the time of filing the petition that the beneficiary paid, or agreed to pay, any agent, facilitator, recruiter, or similar employment service as a condition of employment;
3. The beneficiary paid you prohibited fees or compensation as a condition of employment after the petition was filed; or
4. You knew, or had reason to know, that the beneficiary paid, or agreed to pay, the agent, facilitator, recruiter, or similar employment service prohibited fees after the petition was filed.

The petition should be filed with evidence that indicates the beneficiaries have not paid, and will not pay, prohibited fees to the best of your knowledge.

Interrupted Stays

Interrupted stays are certain periods of time that a worker spends outside the United States during an authorized period of stay in H-2A or H-2B status. An interrupted stay does not count toward the worker's maximum 3-year limit in the classification.

An H-2A or H-2B worker may qualify for an interrupted stay under the following conditions:

If the worker was in the United States in H-2 status for an aggregate period of:	Then H-2 time is interrupted if he or she is outside the United States for:
18 months or less	At least 45 days, but less than 3 months
More than 18 months, but less than 3 years	At least 2 months

Time in H-2A or H-2B status is not automatically interrupted if the worker departs the United States. It is considered interrupted only if the guidelines in the above chart are met. For more on interrupted stays, see **www.uscis.gov**.

Notification Requirements

By filing an H-2A or H-2B petition, you agree to notify USCIS within 2 work days if an H-2A or H-2B worker:

1. Fails to report to work within 5 workdays after the employment start date stated on the petition or within 5 workdays after the start date as established by the H-2A employer, whichever is later;
2. Completes the labor or services more than 30 days earlier than the employment end date stated on the petition;
3. Absconds from the worksite; or
4. Is terminated prior to the completion of the services or labor.

Failure to comply with this agreement may result in penalties. See **www.uscis.gov** for more information.

Filing Multiple Petitions

You generally may file one petition to request all of your H-2A or H-2B workers associated with one temporary labor certification. In cases where filing a separate petition is not required, it may be advantageous to file more than one H-2A or H-2B petition instead. This can occur when you petition for multiple workers, some of whom may not qualify for part or all of the validity period you request. This most frequently occurs when:

1. Some of the workers you request are not nationals of a country on the eligible countries list;
2. You request interrupted stays for workers; or
3. At least one worker is nearing the 3-year maximum stay limit.

If we request additional evidence because of these situations, it may delay petition processing. Filing separate petitions for workers who are not affected by these scenarios may enable you to quickly obtain some workers, if they are otherwise eligible, in the event that the petition for your other workers is delayed.

If you decide to file more than one petition with the same temporary labor certification, you may do so if:

1. One petition is accompanied by the original temporary labor certification;
2. The total number of beneficiaries on your petitions does not exceed the total number of workers approved by the U.S. Department of Labor on the temporary labor certification; and
3. The other petitions are accompanied by copies of the same temporary labor certification, along with an attachment explaining why the original was not submitted.

H-3 Nonimmigrants (Two Types)

The H-3 classification is for aliens coming to the United States temporarily to participate in a special education exchange visitor program in the education of children with physical, mental, or emotional disabilities.

Write **H-3** in the classification block.

Any custodial care of the children must be incidental to the training program. The petition must be filed by a U.S. employer, which must be a facility which has professionally trained staff and a structured program for providing education to children with disabilities and training and hands-on experience to participants in the special education exchange visitor program. The petition must be filed with:

1. A description of the training, staff, and facilities; evidence that the program meets the above conditions; and details of the beneficiary's participation in the program; and
2. Evidence showing that the beneficiary is nearing completion of a baccalaureate degree in special education, or already holds such a degree, or has extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

The H-3 classification is also for aliens coming to the United States temporarily to receive training from an employer in any field other than graduate medical education or training.

Write **H-3** in the classification block.

The petition must be filed with:

1. A detailed description of the structured training program, including the number of classroom hours per week and the number of hours of on-the-job training per week;
2. A summary of the prior training and experience of each beneficiary in the petition; and
3. An explanation stating why the training is required, whether similar training is available in the beneficiary's country, how the training will benefit the beneficiary in pursuing a career abroad, the source of any remuneration the trainee will receive and any benefit the petitioner will obtain by providing the training.

L-1 Nonimmigrants (Two Types)

The L-1A classification is for aliens coming to the United States temporarily to perform services in a managerial or executive capacity for the same employer (or for the parent, branch, subsidiary, or affiliate of the employer) that employed the alien abroad in a capacity that was managerial or executive in nature, or one that required specialized knowledge, for at least 1 continuous year within the last 3 years. In the case of an L-1A beneficiary who is coming to the United States to set up a new office, the 1 year of experience abroad must have been in an executive or managerial capacity.

Write **L-1A** in the classification block.

Either a U.S. employer or foreign employer may file the petition, but the foreign employer must have a legal business entity in the United States.

The L-1B classification is for aliens coming to the United States temporarily to perform services that require specialized knowledge for the same employer (or for the parent, branch, subsidiary, or affiliate of the employer) that employed the alien abroad in a capacity that was managerial or executive in nature, or one that required specialized knowledge for at least 1 continuous year within the last 3 years.*** **Specialized knowledge** is either: (a) special knowledge of the petitioning employer's product, service research, equipment, techniques, management, or other interests and its application in international markets or (b) an advanced level of knowledge or expertise in the employing organization's processes or procedures.

*** In the case of blanket petitions, the L-1B must be a specialized knowledge professional. There is no requirement, however, that the person have acted in a "professional capacity" while abroad for purposes of meeting the one-year requirement.

Write **L-1B** in the classification block.

General L Classification Requirements

Either a U.S. or foreign employer may file the petition.

The petition must be filed with:

1. Evidence establishing the existence of the qualifying relationship between the U.S. and foreign employer based on ownership and control, such as: an annual report, articles of incorporation, financial statements, or copies of stock certificates. **Note:** Whether such evidence will be sufficient to meet the petitioner's burden of establishing such a qualifying relationship will depend on the quality and probative value of the evidence submitted.
2. Evidence of the beneficiary's employment for the required one year abroad in, as applicable, a managerial, executive, or specialized knowledge capacity. Such evidence may include, but is not limited to, a letter from the beneficiary's foreign qualifying employer detailing his or her dates of employment, job duties, and qualifications, along with supporting documentary evidence; and
3. A description of the proposed job duties and qualifications, and evidence showing that the proposed employment is in an executive, managerial, or specialized knowledge capacity.

Evidence for a New Office

In addition to the evidence required under the **General L Classification Requirements** section above, if the beneficiary is coming to the United States to open or to be employed in a new office in the United States, the petitioner must submit evidence to show the following:

For managerial or executive capacity (L-1A):

1. Sufficient physical premises to house the new office have been secured;
2. The beneficiary has been employed for 1 continuous year in the 3-year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
3. The intended U.S. operation, within 1 year of approval, will support an executive or managerial position. This statement should be supported by information regarding:
   - **A.** The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
   - **B.** The size of the United States investment and the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States; and
   - **C.** The organizational structure of the foreign entity.

For specialized knowledge capacity (L-1B):

1. Sufficient physical premises to house the new office have been secured; and
2. The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

NOTE: There are additional fees associated with certain L-1A and L1B petitions. Please see the **"What is the Filing Fee"** section of these forms instructions for further information about these fees.

O-1A Nonimmigrants

The O-1A classification is for aliens coming to the United States temporarily who have extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion picture, or television industry). The extraordinary ability must be demonstrated by sustained national or international acclaim.

Write **O-1A** in the classification block.

The petition must be filed with:

1. A written consultation from a peer group or labor and/or management organization with expertise in the field (which could include a person or persons with expertise in the field (see **General Evidence**);
2. A copy of any written contract between the employer and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed;
3. An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events and activities; and
4. Evidence of the beneficiary's extraordinary ability, such as receipt of major nationally or internationally recognized awards or prizes for excellence in the field, documentation of the beneficiary's membership in associations in the field which require outstanding achievements of their members, published material relating to the beneficiary's work, evidence of the beneficiary's original scholarly work or, contributions of major significance to the field, evidence of the beneficiary's high salary within the field, evidence that the beneficiary participated individually on a panel that judges the work of others in the field, or evidence of the beneficiary's prior employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

NOTE: If the preceding forms of evidence do not readily apply to the beneficiary's field of endeavor, you may submit other comparable evidence.

O-1B Nonimmigrants

The O-1B classification is for aliens coming to the United States temporarily who have extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry.

Write **O-1B** in the classification block.

The petition must be filed with:

1. A written consultation from a peer group (which could be a person with expertise in the beneficiary's field), a labor, and/or a management organization (see **General Evidence**). If the petition is based on the beneficiary's extraordinary achievement in the motion picture or television industry, separate consultations are required from the relevant labor and management organizations;
2. A copy of any written contract between the employer and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed;
3. Evidence that the beneficiary has received or been nominated for significant national or international awards or prizes in the field, such as an Academy Award, Emmy, Grammy, or Director's Guild Award, or at least **three** of the following:
   - **A.** Evidence that the beneficiary has performed and will perform as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;
   - **B.** Evidence that the beneficiary has achieved national or international recognition for achievements in the field as evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
   - **C.** Evidence that the beneficiary has a record of major commercial or critically acclaimed successes, as evidenced by title, rating, standing in the field, box office receipts, and other occupational achievements reported in publications;
   - **D.** Evidence that the beneficiary has received significant recognition from organizations, critics, government agencies, or other recognized experts;

E. Evidence that the beneficiary commands or will command a high salary or other remuneration for services in relation to others in the field; or

F. Evidence that the beneficiary has performed and will perform in a lead or starring role for organizations that have a distinguished reputation.

NOTE: If you are applying for O-1B in the Arts and the preceding forms of evidence do not readily apply to the beneficiary's field of endeavor, you may submit other comparable evidence.

O-2 Nonimmigrants

The O-2 classification is for aliens coming to the United States temporarily and solely to assist in the performance of an O-1 artist or athlete because he or she performs support services that are integral to the successful performance of the O-1. No test of the U.S. labor market is required. The alien must have critical skills and experience with the O-1 which must not be of a general nature or possessed by U.S. workers.

Write **O-2** in the classification block.

This form must be filed in conjunction with an O-1 petition and filed with:

1. A written consultation (see **General Evidence**);

A. If it is for support of an athlete or an alien with extraordinary ability in the arts, the consultation must be from an appropriate labor organization; or

B. If it is for support of an alien with extraordinary achievement in motion pictures or television, the consultation must be from an appropriate labor organization and management organization.

2. Evidence of the current essentiality, critical skills, and experience of the O-2 with the O-1 and evidence that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien. In the case of a specific motion picture or television production, the evidence must establish that significant production has taken place outside the United States, and will take place inside the United States, and that the continuing participation of the alien is essential to the successful completion of the production.

P-1A or P-1 Major League Sports

The P-1A classification is for aliens coming to the United States temporarily to perform at a specific athletic competition as an individual or as part of a group or team participating at an internationally recognized level of performance.

P-1 Major League Sports classification is for an association of teams or clubs that compete chiefly among themselves which include major league athletes, minor league sports, and any affiliates associated with the major leagues including but not limited to baseball, hockey, soccer, basketball, and football. Support personnel for Major League Sports include coaches, trainers, broadcasters, referees, linesmen, umpires, and interpreters.

Write **P-1A** in the classification block.

The petition must be filed with:

1. A written consultation (see **General Evidence**);

2. A copy of the contract with a major U.S. sports league or team or a contract in an individual sport commensurate with national or international recognition in the sport, if such contracts are normally utilized in the sport; and

3. Evidence of at least **two** of the following:

A. Significant participation in a prior season with a major U.S. sports league;

B. Significant participation in a prior season for a U.S. college or university in intercollegiate competition;

C. Participation in international competition with a national team;

D. A written statement from a member of the sports media or a recognized expert in the sport which details how the beneficiary or team is internationally recognized;

E. A written statement from an official of a major U.S. sports league or official of the governing body for a sport that details how the beneficiary or team is internationally recognized;

F. That the beneficiary or team is ranked, if the sport has international rankings; or

G. That the beneficiary or team has received a significant honor or award in the sport.

P-1B Entertainer or Entertainment Group

The P-1B classification is for aliens coming to the United States temporarily to perform as a member of an entertainment group that has been recognized internationally as outstanding in the discipline for a substantial period of time, and who has had a sustained relationship with the group (ordinarily for at least 1 year).

Write **P-1B** in the classification block.

The petition must be filed with:

1. A written consultation (see **General Evidence**);

2. Evidence that the beneficiary or group is internationally recognized in the discipline as demonstrated by the submission of evidence of the group's receipt of or nomination for significant international awards or prizes for outstanding achievement, or evidence of at least **two** of the following:

A. The beneficiary or group has performed, and will perform as a starring or leading group in productions or events with a distinguished reputation;

B. The beneficiary or group has achieved international recognition and acclaim for outstanding achievement in the field;

C. The group has performed, and will perform, services as a star or leading group for organizations and establishments that have a distinguished reputation;

D. The beneficiary or group has a record of major commercial or critically acclaimed success;

E. The beneficiary or group has received significant recognition for achievements from critics, organizations, government agencies, or other recognized experts in the field; or

F. The beneficiary or group commands a high salary or other substantial remuneration for services compared to other similarly situated in the field.

3. Evidence that 75 percent of the members of the group have had a sustained and substantial relationship with the group for at least 1 year. Provide a list of the alien's functions which are integral to the group's performance.

By filing for a P-1 group, the petitioner certifies that at least 75 percent of the group members have been performing regularly together for at least 1 year. The 1-year requirement does not apply to circus groups coming to perform with nationally recognized circuses.

Attach a separate statement to the form to request a waiver of:

1. The 1-year relationship requirement due to exigent circumstances; or

2. The international recognition requirement **(1)** due to emergent circumstances, or **(2)** because the group has been nationally recognized as outstanding in its discipline for a sustained and substantial period of time.

P-2 Nonimmigrants

The P-2 classification is for aliens coming to the United States temporarily to perform as an artist or entertainer, individually or as part of a group, under a reciprocal exchange program between an organization in the United States and an organization in another country.

Write **P-2** in the classification block.

The petition must be filed by the sponsoring organization or U.S. employer with:

1. A written consultation (see **General Evidence**);

2. A copy of the reciprocal exchange program agreement;

3. A statement from the sponsoring organization describing the reciprocal agreement as it relates to the petition;

4. Evidence that the beneficiary and the U.S. artist or group have comparable skills and that the terms of employment are similar; and
5. Evidence that an appropriate labor organization in the United States was involved in negotiating or concurred with the exchange.

P-3 Nonimmigrants

The P-3 classification is for aliens coming to the United States temporarily to perform, teach, or coach, individually or as part of a group, in the arts or entertainment fields in a program that is culturally unique and which will further the understanding or development of the art form.

Write **P-3** in the classification block.

The petition must be filed with:

1. A written consultation (see **General Evidence**);
2. Evidence that all performances will be culturally unique events; and **either**
   - **A.** Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the beneficiary's or group's skills in performing, presenting, coaching, or teaching art forms; **or**
   - **B.** Documentation that the performance of the beneficiary or group is culturally unique as evidenced by actual reviews in newspapers, journals, or other published material.

Essential Support Personnel

The P-1S, P-2S, or P-3S classification are for aliens coming to the United States temporarily as essential and integral parts of the competition or performance of a principal P-1 athlete, athletic team or entertainment group, P-2, or P-3 entertainer or entertainment group, because they perform support services which cannot be readily performed by a U.S. worker and which are essential to the successful performance or services of the principal P-1, P-2, or P-3. The accompanying personnel must have appropriate qualifications, prior experience and critical knowledge of the specific services to be performed by the principal P-1, P-2, or P-3 petition.

Write **P-1S, P-2S,** or **P-3S** as appropriate in the classification block.

The petition must be filed with:

1. A written consultation (see **General Evidence**);
2. Evidence of the beneficiary's qualifications to perform the services, if any;
3. A statement describing the beneficiary's critical knowledge of the specific services to be performed and prior experience with the principal P-1, P-2, or P-3;
4. Statements or affidavits from persons with first-hand knowledge that the beneficiary has had experience performing the critical skills and essential support services for the principal P-1, P-2, or P-3; and
5. A copy of any written contract between the employer and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed.

Q-1 Nonimmigrants

The Q-1 classification is for aliens coming to the United States temporarily to participate in an international cultural exchange program for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality.

The culture sharing must take place in a school, museum, business, or other establishment where the public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program.

The work component of the program may not be independent of the cultural component, but must serve as the vehicle to achieve the objectives of the cultural component. An employer (U.S. or foreign firm, corporation, nonprofit organization, or other legal entity) or its designated agent may file the petition. If a designated agent is filing the petition, that agent must be employed by the qualified employer on a permanent basis in an executive or managerial capacity and must be either a U.S. citizen or lawful permanent resident.

Write **Q-1** in the classification block on the petition.

The petition must be filed with evidence showing that the employer:

1. Maintains an established international cultural exchange program;

2. Has designated a qualified employee to administer the program and serve as a liaison with USCIS;

3. Is actively doing business in the United States;

4. Will offer the beneficiary wages and working conditions comparable to those accorded local domestic workers similarly employed; and

5. Has the financial ability to remunerate the participants.

To demonstrate that the petitioner has an established international cultural exchange program, submit program documentation, such as catalogs, brochures, or other types of material.

To demonstrate financial ability to remunerate the participants, submit your organization's most recent annual report, business income tax return, or other form of certified accountant's report.

If the proposed dates of employment are within the same calendar year of a previously approved Q-1 petition filed for the same international cultural exchange program, a copy of the approval notice for that prior petition may be submitted in lieu of the required evidence about the program described above.

R-1 Nonimmigrants

The R-1 classification is for aliens coming to the United States temporarily to be employed at least part time (average of at least 20 hours per week) by a bona fide nonprofit religious organization in the United States (or a bona fide organization that is affiliated with the religious denomination in the United States) to work:

1. Solely as a minister;

2. In a religious vocation; or

3. In a religious occupation.

To qualify, the alien must have been a member of a religious denomination that has a bona fide nonprofit religious organization in the United States, for at least 2 years immediately preceding the filing of the petition.

Write **R-1** in the classification block.

The petition must be filed by a U.S. employer with:

1. Evidence relating to the petitioning organization:

- **a.** Currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- **b.** For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax exempt; or
- **c.** For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986, or any subsequent amendments or equivalent sections of prior enactments of the IRC, as something other than a religious organization
  - **(1)** A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
  - **(2)** Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
  - **(3)** Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
  - **(4)** Religious Denomination Certification, which is part of the R-1 Classification Supplement to Form I-129, completed, signed, and dated by the religious organization certifying that the petitioning organization is affiliated with the religious denomination.

2. Employer Attestation, which is part of the R-1 Classification Supplement to Form I-129, completed, signed, and dated by an authorized official of the petitioner;
3. Verifiable evidence of how the petitioner intends to compensate the beneficiary, including salaried or non-salaried compensation;
4. If the beneficiary will be self-supporting, the petitioner must submit documentation establishing that the position the beneficiary will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination;
5. Evidence that the beneficiary has been a member in the religious denomination during at least the 2 years immediately preceding the filing of the petition; and
6. Evidence to establish the beneficiary is qualified to perform the duties of the offered position.

Part 2. Petition Only Required for an Alien in the United States to Change Status or Extend Stay

The following classifications listed in this **Part 2.** do not require a petition for new employment if the alien is outside the United States.

Use this Form I-129 when the beneficiary is physically present in the United States and a change of status, concurrent employment, or an extension of stay is needed. **Note:** The beneficiary must be maintaining lawful status in the United States to remain eligible for the benefit sought.

E-1 Nonimmigrants

The E-1 classification is for aliens who are nationals of a country with which the United States maintains a qualifying treaty or an international agreement, or which has been deemed a qualifying country by legislation, and who are coming to the United States to carry on substantial trade principally between the United States and the alien's country of nationality. The Department of State maintains a list of countries with qualifying treaties. See https://travel.state.gov/content/visas/en/fees/treaty.html for a list of qualifying countries.

Write **E-1** in the classification block.

Qualifying trade involves the commercial exchange of goods or services in the international market place. **Substantial trade** is an amount of trade sufficient to ensure continuous flow of international trade items between the United States and the treaty country. **Principal trade** exists when more than 50 percent of the E-1's total volume of international trade is conducted between United States and the treaty country.

An employee of an E-1 treaty trader who possesses the same nationality as the E-1 employer may also be classified as E-1. The employee must principally and primarily perform executive or supervisory duties or possess special qualifications that are essential to the successful or efficient operation of the enterprise. The E-1 employee may perform work for the parent treaty organization or enterprise, or any subsidiary of the parent organization or enterprise.

The petition must be filed with evidence of:

1. **Ownership and Nationality of the E-1 treaty trader.** Such evidence may include, but is not limited to, lists of investors with current status and nationality, stock certificates, certificate of ownership issued by the commercial section of a foreign embassy, and reports from a certified personal accountant;
2. **Substantial Trade.** Evidence of substantial trade may include, but is not limited to, copies of three or more of the following: bills of lading, customs receipts, letter of credit, trade brochures, purchase orders, insurance papers, documenting commodities imported, carrier inventories, and/or sales contracts, or other probative documentation establishing the requisite substantial trade; and
3. **For E-1 employees only:** Executive or Supervisory Duties or special qualification essential to the enterprise. Evidence of such duties or qualifications may include, but is not limited to, certificates, diplomas or transcripts, letters from employers describing job titles, duties, operators' manuals, and the required level of education and knowledge.

E-2 Nonimmigrants

The E-2 classification is for aliens who are nationals of a country with which the United States maintains a qualifying treaty or an international agreement, or which has been deemed a qualifying country by legislation, and who are coming to the United States to develop and direct the operations of an enterprise in which the alien has invested or is actively in the process of investing a substantial amount of capital. The Department of State maintains a list of countries with qualifying treaties. See https://travel.state.gov/content/visas/en/fees/treaty.html for a list of qualifying countries.

Write **E-2** in the classification block.

An E-2 must demonstrate possession and control of capital and the ability to develop and direct the investment enterprise and the ability to develop and direct the investment enterprise. Capital in the process of being invested or that has been invested must be placed at risk and be irrevocably committed to the enterprise. The enterprise must be a real, active, and operating commercial or entrepreneurial undertaking that produces services or goods for profit. The investment must be substantial and the funds must not have been obtained, directly or indirectly, from criminal activity. The enterprise must be more than marginal.

An employee of an E-2 who possesses the same nationality as the E-2 employer may also be classified as E-2. The employee must principally and primarily perform executive or supervisory duties or possess special qualifications that are essential to the successful or efficient operation of the enterprise.

The petition must be filed with evidence of:

1. **Ownership and Nationality of the E-2 treaty investor.** Such evidence may include, but is not limited to, lists of investors with current status and nationality, stock certificates, certificate of ownership issued by the commercial section of a foreign embassy, and reports from a certified personal accountant;
2. **Substantial investment.** Such evidence may include, but is not limited to, copies of partnership agreements (with a statement on proportionate ownership), articles of incorporation, payments for the rental of business premises or office equipment, business licenses, stock certificates, office inventories (goods and equipment purchased for the business), insurance appraisals, annual reports, net worth statements from certified profession accountants, advertising invoices, business bank accounts containing funds for routine operations, funds held in escrow; and
3. **For E-2 employees only:** Executive or Supervisory Duties or special qualifications essential to the enterprise. Evidence of such duties or qualifications may include, but is not limited to, certificates, diplomas or transcripts, letters from employers describing job titles, duties, operators' manuals, and the required level of education and knowledge.

Advice on E-1 and E-2 petitions

You must obtain approval from USCIS when substantive changes occur in the terms or conditions of the status of the treaty trader, investor, or E employee. To do this, file Form I-129 and E-1/E-2 Classification Supplement, with fee, and request an extension of stay.

You may seek advice from USCIS to determine whether changes in the terms or conditions in E status are substantive. To obtain advice, file Form I-129 and E-1/E-2 Classification Supplement, with fee. Answer "Yes" to the question on the Supplement which asks whether you are seeking advice.

Free Trade Nonimmigrants (H-1B1 and TNs)

The Free Trade Nonimmigrant classifications (H-1B1 and TN) are temporary nonimmigrant classifications based on the provisions of a Free Trade Agreement between the United States and the alien's country of citizenship. Currently there are two stand-alone Free Trade Nonimmigrant classifications available: TN and H-1B1.

The TN nonimmigrant classification is for aliens who are citizens of Canada or Mexico covered by the North American Free Trade Agreement coming to the United States to engage temporarily in business activities at a professional level. Depending on the specific type of business activity, a TN must at least have a bachelor's degree or, in certain limited instances, other appropriate credentials which demonstrate status as a professional. The acceptable types of TN business activities at a professional level are listed at 8 CFR 214.6(c).

Write **TN** in the classification block.

Documentary evidence must be submitted if the applicant is a citizen of Canada and is currently outside the United States **OR** if the applicant is a citizen of Canada or Mexico and is requesting a **"Change of Status"** to TN. The applicant must submit evidence demonstrating that he or she will be engaged in business activities at a professional level and that the applicant possesses the requisite professional qualifications. Acceptable evidence may include, but is not limited to, the following:

1. A letter from the employer stating the activity the beneficiary will be engaged in, the anticipated length of stay, and the arrangements for remuneration;
2. A copy of the beneficiary's last two pay stubs and W-2 if employed in the United States; and
3. Evidence the beneficiary meets the educational and/or licensing requirements for the profession or occupation.

NOTE: While a petition is not required, citizens of Canada who are outside the United States may use this form to apply for TN status.

If the applicant is a citizen of Canada or Mexico and is requesting an **"Extension of Stay"** in TN classification, submit evidence, such as a letter, describing the continuing employment and evidence of the beneficiary's continued valid licensing (if required by the profession and/or the state).

The H-1B1 classification is for aliens from Chile or Singapore coming to the United States temporarily to perform services in a specialty occupation. See the instructions for H-1B nonimmigrants for the definition of "specialty occupation."

Write **H-1B1** in the classification block.

Submit all evidence listed in the H Classification Supplement to Form I-129 under **Section 1., Complete This Section If Filing for H-1B Classification,** as well as evidence listed in the section of the instructions for H-1B specialty occupation classification. The following supplements must be filed with the petition:

1. Nonimmigrant Classification Based on a Trade Agreement Supplement; and
2. H Classification Supplement; and
3. H-1B Data Collection and Filing Fee Exemption Supplement.

If requesting an **"Extension of Stay,"** submit evidence, such as a letter describing the continuing employment, as well as evidence of the beneficiary's continued valid licensing (if required by the profession and/or the state). Also, if this extension is the 6th consecutive extension requested for this beneficiary, a statement to that effect should be provided.

Change of Status

A petition for change of status to one of the classifications described in this section must be submitted with the initial evidence detailed above and with the initial evidence required by the separate instructions for all petitions involving change of status.

Extension of Stay

A petition requesting an extension of stay for an employee in the United States must be filed with a copy of the beneficiary's Form I-94, Nonimmigrant Arrival/Departure Record, and a letter from the petitioner explaining the reasons for the extension. Consult the regulations that relate to the specific nonimmigrant classification sought.

NOTE: Dependent family members should use Form I-539 to file for an extension of stay.

A nonimmigrant who must have a passport to be admitted must maintain a valid passport during his or her entire stay. If a required passport is not valid, include a full explanation with your petition. A petition requesting an extension must be filed with:

1. The appropriate supplements for the classification;
2. A letter describing the proffered employment;
3. A copy of the beneficiary's last 2 pay stubs and most recent W-2, if applicable;
4. Evidence the beneficiary continues to meet the licensing requirements for the profession or occupation, if applicable;
5. If requesting an extension of H-1B status (including H1B1 Chile/Singapore), evidence that the Department of Labor has certified a labor condition application for the specialty occupation which is valid for the period of time requested;

6. If requesting H-2A status, submit a U.S. Department of Labor approved temporary labor certification valid for the dates of the extension, unless it is based on a continuation of previously approved employment due to exigent circumstances and the extension will last no longer than 2 weeks;

7. If requesting H-2B status, submit a U.S. Department of Labor approved temporary labor certification valid for the dates of extension.

Special Considerations for Beneficiaries Residing in CNMI

An alien who was admitted to the CNMI prior to November 28, 2009 may not currently hold a Federal nonimmigrant classification that permits a change of status. However, in certain situations, a petitioner may request that the beneficiary be granted initial status in the CNMI. This will allow certain beneficiaries who were present in the CNMI prior to the transition date and are currently lawfully present in the CNMI with a valid unexpired CNMI status to be granted an initial status without having to depart the CNMI. Additionally, an alien who is currently in parole status in the CNMI may also be granted an initial status in the CNMI.

The E-2 CNMI investor regulations permit a petitioner to request that the alien be granted an initial E-2 CNMI investor status in the CNMI. In addition to the classification requirements, the petitioner must submit documentation that the beneficiary is currently lawfully present in the CNMI.

The regulations indicate that if the beneficiary is lawfully present in the CNMI the beneficiary may apply for a change of status with this form without having to seek consular processing. In addition to the classification requirements, the petitioner must submit documentation that the beneficiary is currently lawfully present in the CNMI.

A petition for a grant of initial status for a beneficiary currently in the CNMI with a CNMI issued permit must have been filed on or before November 27, 2011.

Written Consultation for O and P Nonimmigrants

Written consultation. Certain classifications require a written consultation with a recognized peer group, labor, and/ or management organization regarding the nature of the work to be done and the beneficiary's qualifications before USCIS can approve the petition.

To obtain timely adjudication of a petition, you should obtain a written advisory opinion from an appropriate peer group, labor, and/or management organization and submit it with the petition.

If you file a petition without the advisory opinion, you will need to send a copy of the petition and all supporting documents to the appropriate organization when you file the petition with USCIS, and name that organization in the petition. Explain to the organization that USCIS will contact them for an advisory opinion.

If you do not know the name of an appropriate organization with which to consult, indicate that on the petition. However, a petition filed without the actual advisory opinion will require substantially longer processing time.

Liability for Return Transportation

The Immigration and Nationality Act makes a petitioner liable for the reasonable cost of return transportation for an H-1B, H-2B, O, and P beneficiary who is dismissed before the end of the period of authorized admission.

What Is the Filing Fee

The base filing fee for Form I-129 is **$460**.

American Competitiveness and Workforce Improvement Act (ACWIA) fee for certain H-1B and H-1B1 Petitions

A petitioner filing Form I-129 for an H-1B nonimmigrant or for a Chile or Singapore H-1B1 Free Trade Nonimmigrant must submit the **$460** petition filing fee and, unless exempt under **Section 2.** of the H-1B Data Collection and Filing Fee Exemption Supplement, an additional fee of either **$1,500** or **$750**. To determine which ACWIA fee to pay, complete **Section 2.,** of the H-1B Data Collection and Filing Fee Exemption Supplement.

A petitioner filing Form I-129 who is required to pay the ACWIA fee may make the payment in the form of a single check or money order for the total amount due or as two checks or money orders, one for the ACWIA fee and one for the petition fee.

Additional fees for H-1B, L-1, and H-2B Petitions

A petitioner seeking initial approval of H-1B or L nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B or L nonimmigrant currently working for another petitioner, must submit a **$500** Fraud Prevention and Detection fee. Petitioners for Chile or Singapore H-1B1 Free Trade Nonimmigrants do not have to pay the **$500** fee.

Those petitioners required to submit the $500 Fraud Prevention and Detection fee are also required to submit either an additional **$4,000** (H-1B) or **$4,500** (L-1) fee mandated by Public Law 114-113, **if:**

1. The petitioner employs 50 or more individuals in the United States;
2. More than 50 percent of those employees are in H-1B, L-1A, or L-1B nonimmigrant status; **and**
3. The petition is filed on or after December 18, 2015.

Employers filing H-2B petitions must submit an additional fee of **$150**.

You must include payment of the fees with your submission of this form. Failure to submit the fees when required will result in rejection or denial of your submission.

NOTE: The Fraud Prevention and Detection fee and Public Law 114-113 fee, when applicable, may not be waived. Each fee should be submitted in a separate check or money order.

Biometrics Services fee for certain beneficiaries in the CNMI

An additional biometrics services fee as described in 8 CFR 103.7(b) is required if the alien is lawfully present in the CNMI when applying for an initial grant of any federal nonimmigrant status. After submission of the form, USCIS will notify you about when and where to go for biometric services.

NOTE: The filing fee and biometric services fee are not refundable, regardless of any action USCIS takes on this petition. **DO NOT MAIL CASH.** You must submit all fees in the exact amounts.

Use the following guidelines when you prepare your checks or money orders for the Form I-129 filing fee:

1. The check and money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the checks or money orders payable to **U.S. Department of Homeland Security**.

   NOTE: Spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

Notice to Those Making Payment by Check. If you send us a check, USCIS will convert it into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and your bank will show it on your regular account statement.

You will not receive your original check back. We will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize us to process the copy in place of your original check. If your check is returned as unpayable, USCIS will re-submit the payment to the financial institution one time. If the check is returned as unpayable a second time, we will reject your application and charge you a returned check fee.

How to Check If the Fees Are Correct

Form I-129's filing fee and biometrics services fee are current as of the edition date in the lower left corner of this page. However, because USCIS fees change periodically, you can verify that the fees are correct by following one of the steps below.

1. Visit the USCIS website at **www.uscis.gov**, select "FORMS," and check the appropriate fee; or
2. Call the USCIS National Customer Service Center at **1-800-375-5283** and ask for fee information. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

When To File?

Generally, a Form I-129 petition may not be filed more than 6 months prior to the date employment is scheduled to begin. Petitioners should review the appropriate regulatory provisions in 8 CFR that relate to the nonimmigrant classification sought.

Where To File?

Regular Processing:

Please see our website at **www.uscis.gov/I-129** or call the USCIS National Customer Service Center at **1-800-375-5283** for the most current information about where to file this benefit request. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Premium Processing:

If you are requesting Premium Processing Services for a Form I-129, you must also file a Form I-907, Request for Premium Processing Services with the applicable fee. Before you file the I-129/I-907 package, check the USCIS website at **www.uscis.gov** to ensure that the requested classification is eligible for premium processing. For more information about Premium Processing, see our Web page at **www.uscis.gov/i-907** or call our National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Processing Information

Acceptance

Any petition that is not signed or accompanied by the correct fee will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition. A petition is not considered properly filed until accepted by USCIS.

Initial Processing

Once USCIS accepts your application, the agency will check it for completeness. If you do not completely fill out the form, you will not establish a basis for eligibility, and we may deny your petition.

Service Processing Information

Our goal at USCIS is to process all petitions fairly. The processing time will vary, depending on the specific circumstances of each case. We may reject an incomplete petition. We may deny your petition if you do not give us the requested information.

Requests for More Information or Interview

We may request more information or evidence from you or we may request that you appear at a USCIS office for an interview. We may also request that you provide the originals of any copies you submit. We will return these originals when they are no longer required.

After you file your petition, you may be notified to appear at a USCIS office to answer questions about the petition. You will be required to answer these questions under oath or affirmation.

Decision

USCIS' decision on Form I-129 involves a determination of whether you have established eligibility for the requested benefit. You will be notified of the decision in writing.

USCIS Forms and Information

To ensure you are using the latest version of this form, visit the USCIS website at **www.uscis.gov** where you can obtain the latest USCIS forms and immigration-related information. If you do not have internet access, you may order USCIS forms by calling our toll-free number at **1-800-870-3676**. You may also obtain forms and information by calling the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through the USCIS Internet-based system, **InfoPass**. To access the system, visit the USCIS website at **www.infopass.uscis.gov**. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-129, we will deny your Form I-129 and any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

USCIS Privacy Act Statement

AUTHORITIES: 8 U.S.C. sections 1154, 1184, and 1258 authorize USCIS to collect the information and the associated evidence for this benefit application.

PURPOSE: The primary purpose for providing the requested information on this form is to petition USCIS for an alien beneficiary to come temporarily to the United States to perform services or labor or to receive training. USCIS will use the information you provide to grant or deny the employment benefit you seek on behalf of the listed beneficiary.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision or result in denial of your benefit request.

ROUTINE USES: The information you provide on this form may be shared with other Federal, State, local, and foreign government agencies and authorized organizations following approved routine uses described in the associated published system of records notices [DHS-USCIS-007 - Benefits Information System which can be found at **www.dhs.gov/privacy**]. The information may also be made available, as appropriate, for law enforcement purposes or in the interest of national security.

USCIS Compliance Review and Monitoring

By signing this form, you have stated under penalty of perjury (28 U.S.C. section 1746) that all information and documentation submitted with this form is true and correct. You have also authorized the release of any information from your records that USCIS may need to determine eligibility for the benefit you are seeking and consented to USCIS' verification of such information.

The Department of Homeland Security has the legal authority to verify any information you submit to establish eligibility for the immigration benefit you are seeking at any time. USCIS' legal authority to verify this information is in 8 U.S.C. Sections 1103, 1154, and 1155, and 8 CFR Parts 103, 204, and 205. To ensure compliance with applicable laws and authorities, USCIS may verify information before or after your case has been decided. Agency verification methods may include, but are not limited to: review of public records and information; contact via written correspondence, the Internet, facsimile, or other electronic transmission, or telephone; unannounced physical site inspections of residences and places of employment; and interviews. Information obtained through verification will be used to assess your compliance with the laws and to determine your eligibility for the benefit sought.

Subject to the restrictions under 8 CFR section 103.2(b) (16), you will be provided an opportunity to address any adverse or derogatory information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on your case or after the agency has initiated an adverse action that may result in revocation or termination of an approval.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at Form I-129 at 2.26 hours; E-1/E-2 Classification at .67 hours; Trade Agreement Supplement at .67 hours; H Classification Supplement at 2 hours; H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement at 1 hour; L Classification Supplement to Form I-129 at 1.34 hours; P Classifications Supplement to Form I-129 at 1 hour; Q-1 Classification Supplement at .34 hours; R-1 Classification Supplement at 2.34 hours; and Form I-129 ATT at .33 hours, including the time for reviewing instructions, gathering the required documentation and completing and submitting the request. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No 1615-0009. **Do not mail your completed Form I-129 to this address.**

Petition for a Nonimmigrant Worker

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

For USCIS Use Only	Receipt	Partial Approval (explain)	Action Block
Class: _____ No. of Workers: _____ Job Code: _____ Validity Dates: _____ From: _____ To: _____	☐ **Classification Approved** ☐ Consulate/POE/PFI Notified At: _____ ☐ Extension Granted ☐ COS/Extension Granted		

► **START HERE - Type or print in black ink.**

Part 1. Petitioner Information

If you are an individual filing this petition, complete **Item Number 1. If you are a company or an organization filing this petition,** complete **Item Number 2**.

1. Legal Name of Individual Petitioner

Family Name (Last Name) | Given Name (First Name) | Middle Name

2. Company or Organization Name

3. Mailing Address of Individual, Company or Organization

In Care Of Name

Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ Number

City or Town | State | ZIP Code

Province | Postal Code | Country

4. Contact Information

Daytime Telephone Number | Mobile Telephone Number | Email Address (if any)

5. Other Information

Federal Employer Identification Number (FEIN) ► | Individual IRS Tax Number ► | U.S. Social Security Number (if any) ►

Part 2. Information About This Petition (See instructions for fee information)

1. **Requested Nonimmigrant Classification** (Write classification symbol):

2. **Basis for Classification** (select **only one** box)**:**

- ☐ **a.** New employment.
- ☐ **b.** Continuation of previously approved employment without change with the same employer.
- ☐ **c.** Change in previously approved employment.
- ☐ **d.** New concurrent employment.
- ☐ **e.** Change of employer.
- ☐ **f.** Amended petition.

3. **Provide the most recent petition/application receipt number for the beneficiary. If none exists, indicate "None."** ▶

4. **Requested Action** (select **only one** box)**:**

- ☐ **a.** Notify the office in **Part 4.** so each beneficiary can obtain a visa or be admitted. (**NOTE:** A petition is not required for E-1, E-2, E-3, H-1B1 Chile/Singapore, or TN visa beneficiaries.)
- ☐ **b.** Change the status and extend the stay of each beneficiary because the beneficiary(ies) is/are now in the United States in another status (see instructions for limitations). This is available only when you check "New Employment" in **Item Number 2.**, above.
- ☐ **c.** Extend the stay of each beneficiary because the beneficiary(ies) now hold(s) this status.
- ☐ **d.** Amend the stay of each beneficiary because the beneficiary(ies) now hold(s) this status.
- ☐ **e.** Extend the status of a nonimmigrant classification based on a free trade agreement. (See Trade Agreement Supplement to Form I-129 for TN and H-1B1.)
- ☐ **f.** Change status to a nonimmigrant classification based on a free trade agreement. (See Trade Agreement Supplement to Form I-129 for TN and H-1B1.)

5. **Total number of workers included in this petition.** (See instructions relating to when more than one worker can be included.) ▶

Part 3. Beneficiary Information (Information about the beneficiary/beneficiaries you are filing for. Complete the blocks below. Use the Attachment-1 sheet to name each beneficiary included in this petition.)

1. **If an Entertainment Group, Provide the Group Name**

2. **Provide Name of Beneficiary**

Family Name (Last Name)	Given Name (First Name)	Middle Name

3. **Provide all other names the beneficiary has used.** Include nicknames, aliases, maiden name, and names from all previous marriages**.**

Family Name (Last Name)	Given Name (First Name)	Middle Name

4. **Other Information**

Date of birth (mm/dd/yyyy)

Gender ☐ Male ☐ Female

U.S. Social Security Number (if any) ▶

Part 3. Beneficiary Information (Information about the beneficiary/beneficiaries you are filing for. Complete the blocks below. Use the Attachment-1 sheet to name each beneficiary included in this petition.) (continued)

Alien Registration Number (A-Number)
► A-

Country of Birth

Province of Birth

Country of Citizenship or Nationality

5. If the beneficiary is in the United States, complete the following:

Date of Last Arrival (mm/dd/yyyy)

I-94 Arrival-Departure Record Number
►

Passport or Travel Document Number

Date Passport or Travel Document Issued (mm/dd/yyyy)

Date Passport or Travel Document Expires (mm/dd/yyyy)

Passport or Travel Document Country of Issuance

Current Nonimmigrant Status

Date Status Expires or D/S (mm/dd/yyyy)

Student and Exchange Visitor Information System (SEVIS) Number (if any)

Employment Authorization Document (EAD) Number (if any)

6. Current Residential U.S. Address (if applicable) (do not list a P.O. Box)

Street Number and Name

Apt. Ste. Flr. ☐ ☐ ☐ Number

City or Town

State

ZIP Code

Part 4. Processing Information

1. If a beneficiary or beneficiaries named in **Part 3.** is/are outside the United States, or a requested extension of stay or change of status cannot be granted, state the U.S. Consulate or inspection facility you want notified if this petition is approved.

a. Type of Office (select only one box)**:** ☐ Consulate ☐ Pre-flight inspection ☐ Port of Entry

b. Office Address (City)

c. U.S. State or Foreign Country

d. Beneficiary's Foreign Address

Street Number and Name

Apt. Ste. Flr. ☐ ☐ ☐ Number

City or Town

State

Province

Postal Code

Country

2. Does each person in this petition have a valid passport? ☐ Yes ☐ No. If no, go to **Part 9.** and type or print your explanation.

Part 4. Processing Information (continued)

3. Are you filing any other petitions with this one?

☐ Yes. If yes, how many? ▶ ☐ No

4. Are you filing any applications for replacement/initial I-94, Arrival-Departure Records with this petition? Note that if the beneficiary was issued an electronic Form I-94 by CBP when he/she was admitted to the United States at an air or sea port, he/she may be able to obtain the Form I-94 from the CBP Website at **www.cbp.gov/i94** instead of filing an application for a replacement/initial I-94.

☐ Yes. If yes, how many? ▶ ☐ No

5. Are you filing any applications for dependents with this petition?

☐ Yes. If yes, how many? ▶ ☐ No

6. Is any beneficiary in this petition in removal proceedings?

☐ Yes. If yes, proceed to **Part 9.** and list the beneficiary's(ies) name(s). ☐ No

7. Have you ever filed an immigrant petition for any beneficiary in this petition?

☐ Yes. If yes, how many? ▶ ☐ No

8. Did you indicate you were filing a new petition in **Part 2.**?

☐ Yes. If yes, answer the questions below. ☐ No. If no, proceed to **Item Number 9.**

a. Has any beneficiary in this petition ever been given the classification you are now requesting within the last seven years?

☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☐ No

b. Has any beneficiary in this petition ever been denied the classification you are now requesting within the last seven years?

☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☐ No

9. Have you ever previously filed a nonimmigrant petition for this beneficiary?

☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☐ No

10. If you are filing for an entertainment group, has any beneficiary in this petition not been with the group for at least one year?

☐ Yes. If yes, proceed to **Part 9.** and type or print your explanation. ☐ No

11.a. Has any beneficiary in this petition ever been a J-1 exchange visitor or J-2 dependent of a J-1 exchange visitor?

☐ Yes. If yes, proceed to **Item Number 11.b.** ☐ No

11.b. If you checked yes in **Item Number 11.a.**, provide the dates the beneficiary maintained status as a J-1 exchange visitor or J-2 dependent. Also, provide evidence of this status by attaching a copy of either a DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, a Form IAP-66, or a copy of the passport that includes the J visa stamp.

Part 5. Basic Information About the Proposed Employment and Employer

Attach the Form I-129 supplement relevant to the classification of the worker(s) you are requesting.

1. Job Title

2. LCA or ETA Case Number

Part 5. Basic Information About the Proposed Employment and Employer (continued)

3. Address where the beneficiary(ies) will work if different from address in **Part 1.**

Street Number and Name | Apt. Ste. Flr. | Number

City or Town | State | ZIP Code

4. Did you include an itinerary with the petition? ☐ Yes ☐ No

5. Will the beneficiary(ies) work for you off-site at another company or organization's location? ☐ Yes ☐ No

6. Will the beneficiary(ies) work exclusively in the Commonwealth of the Northern Mariana Islands (CNMI)? ☐ Yes ☐ No

7. Is this a full-time position? ☐ Yes ☐ No

8. If the answer to **Item Number 7.** is no, how many hours per week for the position? ►

9. Wages: **$** per (Specify hour, week, month, or year) ►

10. Other Compensation (Explain)

11. Dates of intended employment From: (mm/dd/yyyy) To: (mm/dd/yyyy)

12. Type of Business **13.** Year Established

14. Current Number of Employees in the United States **15.** Gross Annual Income **16.** Net Annual Income

Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(This section of the form is required only for H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions. It is not required for any other classifications. Please review the Form I-129 General Filing Instructions before completing this section.)

Select Item Number 1. or Item Number 2. as appropriate. DO NOT select both boxes.

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

1. ☐ A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

2. ☐ A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

Part 7. Declaration, Signature, and Contact Information of Petitioner or Authorized Signatory (Read the information on penalties in the instructions before completing this section.)

Copies of any documents submitted are exact photocopies of unaltered, original documents, and I understand that, as the petitioner, I may be required to submit original documents to U.S. Citizenship and Immigration Services (USCIS) at a later date.

I authorize the release of any information from my records, or from the petitioning organization's records that USCIS needs to determine eligibility for the immigration benefit sought. I recognize the authority of USCIS to conduct audits of this petition using publicly available open source information. I also recognize that any supporting evidence submitted in support of this petition may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

If filing this petition on behalf of an organization, I certify that I am authorized to do so by the organization.

I certify, under penalty of perjury, that I have reviewed this petition and that all of the information contained in the petition, including all responses to specific questions, and in the supporting documents, is complete, true, and correct.

1. Name and Title of Authorized Signatory

Family Name (Last Name)

Given Name (First Name)

Title

2. Signature and Date

Signature of Authorized Signatory

➡

Date of Signature (mm/dd/yyyy)

3. Signatory's Contact Information

Daytime Telephone Number

Email Address (if any)

NOTE: If you do not fully complete this form or fail to submit the required documents listed in the instructions, a final decision on your petition may be delayed or the petition may be denied.

Part 8. Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Petitioner

Provide the following information concerning the preparer:

1. Name of Preparer

Family Name (Last Name)

Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

(If applicable, provide the name of your accredited organization recognized by the Board of Immigration Appeals (BIA).)

Part 8. Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Petitioner (continued)

3. Preparer's Mailing Address

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

Province | Postal Code | Country

4. Preparer's Contact Information

Daytime Telephone Number | Fax Number | Email Address (if any)

Preparer's Declaration

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner or authorized signatory. The petitioner has reviewed this completed petition as prepared by me and informed me that all of the information in the form and in the supporting documents, is complete, true, and correct.

5. Signature and Date

Signature of Preparer | Date of Signature (mm/dd/yyyy)

Part 9. Additional Information About Your Petition For Nonimmigrant Worker

If you require more space to provide any additional information within this petition, use the space below. If you require more space than what is provided to complete this petition, you may make a copy of **Part 9.** to complete and file with this petition. In order to assist us in reviewing your response, you must identify the **Page Number, Part Number and Item Number** corresponding to the additional information.

1. A-Number ► **A-**

2. **Page Number** **Part Number** **Item Number**

3. **Page Number** **Part Number** **Item Number**

4. **Page Number** **Part Number** **Item Number**

E-1/E-2 Classification Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

2. Name of the Beneficiary

Family Name (Last Name) | Given Name (First Name) | Middle Name

3. Classification sought (select **only one** box):

☐ E-1 Treaty Trader ☐ E-2 Treaty Investor ☐ E-2 CNMI Investor

4. Name of country signatory to treaty with the United States

5. Are you seeking advice from USCIS to determine whether changes in the terms or conditions of E status for one or more employees are substantive? ☐ Yes ☐ No

Section 1. Information About the Employer Outside the United States (if any)

1. Employer's Name

2. Total Number of Employees

3. Employer's Address

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

City or Town | State | ZIP Code

Province | Postal Code | Country

4. Principal Product, Merchandise or Service

5. Employee's Position - Title, duties and number of years employed

Section 2. Additional Information About the U.S. Employer

1. How is the U.S. company related to the company abroad? (select **only one** box)

☐ Parent ☐ Branch ☐ Subsidiary ☐ Affiliate ☐ Joint Venture

2.a. Place of Incorporation or Establishment in the United States

2.b. Date of incorporation or establishment (mm/dd/yyyy)

3. Nationality of Ownership (Individual or Corporate)

Name (First/MI/Last)	Nationality	Immigration Status	Percent of Ownership

4. Assets

5. Net Worth

6. Net Annual Income

7. Staff in the United States

a. How many executive and managerial employees does the petitioner have who are nationals of the treaty country in either E, L, or H nonimmigrant status?

b. How many persons with special qualifications does the petitioner employ who are in either E, L, or H nonimmigrant status?

c. Provide the total number of employees in executive and managerial positions in the United States.

d. Provide the total number of positions in the United States that require persons with special qualifications.

8. If the petitioner is attempting to qualify the employee as an executive or manager, provide the total number of employees he or she will supervise. Or, if the petitioner is attempting to qualify the employee based on special qualifications, explain why the special qualifications are essential to the successful or efficient operation of the treaty enterprise.

Section 3. Complete If Filing for an E-1 Treaty Trader

1. Total Annual Gross Trade/Business of the U.S. company

2. For Year Ending (yyyy)

3. Percent of total gross trade between the United States and the treaty trader country.

Section 4. Complete If Filing for an E-2 Treaty Investor

Total Investment: Cash Equipment Other

Inventory Premises Total

Trade Agreement Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

2. Name of the Beneficiary

3. Employer is a (select **only one** box):

☐ U.S. Employer ☐ Foreign Employer

4. If Foreign Employer, Name the Foreign Country

Section 1. Information About Requested Extension or Change (See instructions attached to this form.)

1. This is a request for Free Trade status based on (select **only one** box):

☐ **a.** Free Trade, Canada (TN1)
☐ **b.** Free Trade, Mexico (TN2)
☐ **c.** Free Trade, Chile (H-1B1)
☐ **d.** Free Trade, Singapore (H-1B1)
☐ **e.** Free Trade, Other
☐ **f.** A sixth consecutive request for Free Trade, Chile or Singapore (H-1B1)

Section 2. Petitioner's Declaration, Signature, and Contact Information (Read the information on penalties in the instructions before completing this section.)

Copies of any documents submitted are exact photocopies of unaltered, original documents, and I understand that, as the petitioner, I may be required to submit original documents to U.S. Citizenship and Immigration Services (USCIS) at a later date.

I authorize the release of any information from my records, or from the petitioning organization's records that USCIS needs to determine eligibility for the immigration benefit sought. I recognize the authority of USCIS to conduct audits of this petition using publicly available open source information. I also recognize that any supporting evidence submitted in support of this petition may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

I certify, under penalty of perjury, that I have reviewed this petition and that all of the information contained on the petition, including all responses to specific questions, and in the supporting documents, is complete, true, and correct.

I am filing this petition on behalf of an organization and I certify that I am authorized to do so by the organization.

1. Name of Petitioner

Family Name (Last Name)

Given Name (First Name)

2. Signature and Date

Signature of Petitioner

Date of Signature (mm/dd/yyyy)

3. Petitioner's Contact Information

Daytime Telephone Number

Mobile Telephone Number

Email Address (if any)

Section 3. Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Petitioner

Provide the following information concerning the preparer:

1. Name of Preparer

Family Name (Last Name) | Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

(If applicable, provide the name of your accredited organization recognized by the Board of Immigration Appeals (BIA)).

3. Preparer's Mailing Address

Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ | Number

City or Town | State | ZIP Code

Province | Postal Code | Country

4. Preparer's Contact Information

Daytime Telephone Number | Fax Number | Email Address (if any)

Preparer's Declaration

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner or authorized signatory. The petitioner has reviewed this completed petition as prepared by me and informed me that all of the information in the form and in the supporting documents, is complete, true, and correct.

5. Signature and Date

Signature of Preparer | Date of Signature (mm/dd/yyyy)

H Classification Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

Name of the beneficiary or if this petition includes multiple beneficiaries, the total number of beneficiaries

2.a. Name of the Beneficiary

OR

2.b. Provide the total number of beneficiaries

3. List each beneficiary's prior periods of stay in H or L classification in the United States for the last six years (beneficiaries requesting H-2A or H-2B classification need only list the last three years). Be sure to only list those periods in which each beneficiary was actually in the United States in an H or L classification. Do not include periods in which the beneficiary was in a dependent status, for example, H-4 or L-2 status.

NOTE: Submit photocopies of Forms I-94, I-797, and/or other USCIS issued documents noting these periods of stay in the H or L classification. (If more space is needed, attach an additional sheet.)

Subject's Name	Period of Stay (mm/dd/yyyy) From	To

4. Classification sought (select **only one** box):

- ☐ **a.** H-1B Specialty Occupation
- ☐ **b.** H-1B1 Chile and Singapore
- ☐ **c.** H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD)
- ☐ **d.** H-1B3 Fashion model of distinguished merit and ability
- ☐ **e.** H-2A Agricultural worker
- ☐ **f.** H-2B Non-agricultural worker
- ☐ **g.** H-3 Trainee
- ☐ **h.** H-3 Special education exchange visitor program

5. Are you filing this petition on behalf of a beneficiary subject to the Guam-CNMI cap exemption under Public Law 110-229?

☐ Yes ☐ No

6. Are you requesting a change of employer and was the beneficiary previously subject to the Guam-CNMI cap exemption under Public Law 110-229?

☐ Yes ☐ No

7.a. Does any beneficiary in this petition have ownership interest in the petitioning organization?

☐ Yes. If yes, please explain in **Item Number 7.b.** ☐ No

7.b. Explanation

Section 1. Complete This Section If Filing for H-1B Classification

1. Describe the proposed duties.

2. Describe the beneficiary's present occupation and summary of prior work experience.

Statement for H-1B Specialty Occupations and H-1B1 Chile and Singapore

By filing this petition, I agree to, and will abide by, the terms of the labor condition application (LCA) for the duration of the beneficiary's authorized period of stay for H-1B employment. I certify that I will maintain a valid employer-employee relationship with the beneficiary at all times. If the beneficiary is assigned to a position in a new location, I will obtain and post an LCA for that site prior to reassignment.

I further understand that I cannot charge the beneficiary the ACWIA fee, and that any other required reimbursement will be considered an offset against wages and benefits paid relative to the LCA.

Signature of Petitioner	**Name of Petitioner**	**Date** (mm/dd/yyyy)
➡		

Statement for H-1B Specialty Occupations and U.S. Department of Defense (DOD) Projects

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.

Signature of Authorized Official of Employer	**Name of Authorized Official of Employer**	**Date** (mm/dd/yyyy)

Statement for H-1B U.S. Department of Defense Projects Only

I certify that the beneficiary will be working on a cooperative research and development project or a co-production project under a reciprocal government-to-government agreement administered by the U.S. Department of Defense.

Signature of DOD Project Manager	**Name of DOD Project Manager**	**Date** (mm/dd/yyyy)

Section 2. Complete This Section If Filing for H-2A or H-2B Classification

1. Employment is: (select **only one** box)

☐ **a.** Seasonal ☐ **b.** Peak load ☐ **c.** Intermittent ☐ **d.** One-time occurrence

2. Temporary need is: (select **only one** box)

☐ **a.** Unpredictable ☐ **b.** Periodic ☐ **c.** Recurrent annually

Section 2. Complete This Section If Filing for H-2A or H-2B Classification (continued)

3. Explain your temporary need for the workers' services (Attach a separate sheet if additional space is needed).

4. List the countries of citizenship for the H-2A or H-2B workers you plan to hire.

a.	**d.**
b.	**e.**
c.	**f.**

5.a. You must provide all of the requested information for **Item Numbers 5.a. - 6.** for each H-2A or H-2B worker you plan to hire who is not from a country that has been designated as a participating country in accordance with 8 CFR 214.2(h)(5)(i)(F)(1) or 214.2(h)(6)(i)(E)(1). See **www.uscis.gov** for the list of participating countries. (Attach a separate sheet if additional space is needed.)

Family Name (Last Name) | Given Name (First Name) | Middle Name

5.b. Provide all other name(s) used

Family Name (Last Name) | Given Name (First Name) | Middle Name

5.c. Date of Birth (mm/dd/yyyy) **5.d.** Country of Birth

5.e. Country of Citizenship or Nationality

6.a. Have any of the workers listed in **Item Number 5.** above ever been admitted to the United States previously in H-2A/H-2B status?

☐ Yes. If yes, go to **Part 9.** of Form I-129 and write your explanation. ☐ No

6.b. Visa Classification (H-2A or H-2B):

NOTE: If any of the H-2A or H-2B workers you are requesting are nationals of a country that is not on the eligible countries list, you must also provide evidence showing: **(1)** that workers with the required skills are not available from a country currently on the eligible countries list*; **(2)** whether the beneficiaries have been admitted previously to the United States in H-2A or H-2B status; **(3)** that there is no potential for abuse, fraud, or other harm to the integrity of the H-2A or H-2B visa programs through the potential admission of the intended workers; and **(4)** any other factors that may serve the United States interest.

* For H-2A petitions only: You must also show that workers with the required skills are not available from among United States workers.

7.a. Did you or do you plan to use a staffing, recruiting, or similar placement service or agent to locate the H-2A/H-2B workers that you intend to hire by filing this petition?

☐ Yes ☐ No

If yes, list the name and address of service or agent used below. Please use **Part 9.** of Form I-129 if you need to include the name and address of more than one service or agent.

7.b. Name

Section 2. Complete This Section If Filing for H-2A or H-2B Classification (continued)

7.c. Address

Street Number and Name | Apt. Ste. Flr. | Number

City or Town | State | ZIP Code

8.a. Did any of the H-2A/H-2B workers that you are requesting pay you, or an agent, a job placement fee or other form of compensation (either direct or indirect) as a condition of the employment, or do they have an agreement to pay you or the service such fees at a later date? The phrase "fees or other compensation" includes, but is not limited to, petition fees, attorney fees, recruitment costs, and any other fees that are a condition of a beneficiary's employment that the employer is prohibited from passing to the H-2A or H-2B worker under law under U.S. Department of Labor rules. This phrase does not include reasonable travel expenses and certain government-mandated fees (such as passport fees) that are not prohibited from being passed to the H-2A or H-2B worker by statute, regulations, or any laws. ☐ Yes ☐ No

8.b. If yes, list the types and amounts of fees that the worker(s) paid or will pay.

8.c. If the workers paid any fee or compensation, were they reimbursed? ☐ Yes ☐ No

8.d. If the workers agreed to pay a fee that they have not yet been paid, has their agreement been terminated before the workers paid the fee? (Submit evidence of termination or reimbursement with this petition.) ☐ Yes ☐ No

9. Have you made reasonable inquiries to determine that to the best of your knowledge the recruiter, facilitator, or similar employment service that you used has not collected, and will not collect, directly or indirectly, any fees or other compensation from the H-2 workers of this petition as a condition of the H-2 workers' employment? ☐ Yes ☐ No

NOTE: If USCIS determines that you knew, or should have known, that the workers requested in connection with this petition paid any fees or other compensation at any time as a condition of employment, your petition may be denied or revoked. ☐ Yes ☐ No

10.a. Have you ever had an H-2A or H-2B petition denied or revoked because an employee paid a job placement fee or other similar compensation as a condition of the job offer or employment? ☐ Yes ☐ No

10.a.1 If yes, when?

10.a.2 Receipt Number: ►

10.b. Were the workers reimbursed for such fees and compensation? (Submit evidence of reimbursement.) If you answered no because you were unable to locate the workers, include evidence of your efforts to locate the workers. ☐ Yes ☐ No

11. Have any of the workers you are requesting experienced an interrupted stay associated with their entry as an H-2A or H-2B? (See form instructions for more information on interrupted stays.) ☐ Yes ☐ No

If yes, document the workers' periods of stay in the table on the first page of this supplement. Submit evidence of each entry and each exit, with the petition, as evidence of the interrupted stays.

12.a. If you are an H-2A petitioner, are you a participant in the E-Verify program? ☐ Yes ☐ No

12.b. If yes, provide the E-Verify Company ID or Client Company ID.

Section 2. Complete This Section If Filing for H-2A or H-2B Classification (continued)

The H-2A/H-2B petitioner and each employer consent to allow Government access to the site where the labor is being performed for the purpose of determining compliance with H-2A/H-2B requirements. The petitioner further agrees to notify DHS beginning on a date and in a manner specified in a notice published in the Federal Register within 2 workdays if: an H-2A/H-2B worker fails to report for work within 5 workdays after the employment start date stated on the petition or, applicable to H-2A petitioners only, within 5 workdays of the start date established by the petitioner, whichever is later; the agricultural labor or services for which H-2A/H-2B workers were hired is completed more than 30 days early; or the H-2A/H-2B worker absconds from the worksite or is terminated prior to the completion of agricultural labor or services for which he or she was hired. The petitioner agrees to retain evidence of such notification and make it available for inspection by DHS officers for a one-year period. "Workday" means the period between the time on any particular day when such employee commences his or her principal activity and the time on that day at which he or she ceases such principal activity or activities.

For H-2A petitioners only: The petitioner agrees to pay $10 in liquidated damages for each instance where it cannot demonstrate it is in compliance with the notification requirement.

The petitioner must execute **Part A.** If the petitioner is the employer's agent, the employer must execute **Part B.** If there are joint employers, they must each execute **Part C.**

Part A. Petitioner

By filing this petition, I agree to the conditions of H-2A/H-2B employment and agree to the notification requirements. For H-2A petitioners: I also agree to the liquidated damages requirements defined in 8 CFR 214.2(h)(5)(vi)(B)(3).

Signature of Petitioner	**Name of Petitioner**	**Date** (mm/dd/yyyy)
➡		

Part B. Employer who is not the petitioner

I certify that I have authorized the party filing this petition to act as my agent in this regard. I assume full responsibility for all representations made by this agent on my behalf and agree to the conditions of H-2A/H-2B eligibility.

Signature of Employer	**Name of Employer**	**Date** (mm/dd/yyyy)

Part C. Joint Employers

I agree to the conditions of H-2A eligibility.

Signature of Joint Employer	**Name of Joint Employer**	**Date** (mm/dd/yyyy)
Signature of Joint Employer	**Name of Joint Employer**	**Date** (mm/dd/yyyy)
Signature of Joint Employer	**Name of Joint Employer**	**Date** (mm/dd/yyyy)
Signature of Joint Employer	**Name of Joint Employer**	**Date** (mm/dd/yyyy)

Section 3. Complete This Section If Filing for H-3 Classification

If you answer yes to any of the following questions, attach a full explanation.

1. Is the training you intend to provide, or similar training, available in the beneficiary's country? ☐ Yes ☐ No

2. Will the training benefit the beneficiary in pursuing a career abroad? ☐ Yes ☐ No

3. Does the training involve productive employment incidental to the training? If yes, explain the amount of compensation employment versus the classroom in **Part 9. of Form I-129.** ☐ Yes ☐ No

4. Does the beneficiary already have skills related to the training? ☐ Yes ☐ No

5. Is this training an effort to overcome a labor shortage? ☐ Yes ☐ No

6. Do you intend to employ the beneficiary abroad at the end of this training? ☐ Yes ☐ No

7. If you do not intend to employ the beneficiary abroad at the end of this training, explain why you wish to incur the cost of providing this training and your expected return from this training.

H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

2. Name of the Beneficiary

Section 1. General Information

1. Employer Information - (select all items that apply)

a. Is the petitioner an H-1B dependent employer? ☐ Yes ☐ No

b. Has the petitioner ever been found to be a willful violator? ☐ Yes ☐ No

c. Is the beneficiary an H-1B nonimmigrant exempt from the Department of Labor attestation requirements? ☐ Yes ☐ No

c.1. If yes, is it because the beneficiary's annual rate of pay is equal to at least $60,000? ☐ Yes ☐ No

c.2. Or is it because the beneficiary has a master's degree or higher degree in a specialty related to the employment? ☐ Yes ☐ No

d. Does the petitioner employ 50 or more individuals in the United States? ☐ Yes ☐ No

d.1. If yes, are more than 50 percent of those employees in H-1B, L-1A, or L-1B nonimmigrant status? ☐ Yes ☐ No

2. Beneficiary's Highest Level of Education (select **only one** box)

☐ **a.** NO DIPLOMA

☐ **b.** HIGH SCHOOL GRADUATE DIPLOMA or the equivalent (for example: GED)

☐ **c.** Some college credit, but less than 1 year

☐ **d.** One or more years of college, no degree

☐ **e.** Associate's degree (for example: AA, AS)

☐ **f.** Bachelor's degree (for example: BA, AB, BS)

☐ **g.** Master's degree (for example: MA, MS, MEng, MEd, MSW, MBA)

☐ **h.** Professional degree (for example: MD, DDS, DVM, LLB, JD)

☐ **i.** Doctorate degree (for example: PhD, EdD)

3. Major/Primary Field of Study

4. Rate of Pay Per Year

5. DOT Code

6. NAICS Code

Section 2. Fee Exemption and/or Determination

In order for USCIS to determine if you must pay the additional **$1,500** or **$750** American Competitiveness and Workforce Improvement Act (ACWIA) fee, answer all of the following questions:

1. Are you an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965, 20 U.S.C. 1001(a)? ☐ Yes ☐ No

2. Are you a nonprofit organization or entity related to or affiliated with an institution of higher education, as defined in 8 CFR 214.2(h)(19)(iii)(B)? ☐ Yes ☐ No

Section 2. Fee Exemption and/or Determination (continued)

3. Are you a nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)? ☐ Yes ☐ No

4. Is this the second or subsequent request for an extension of stay that this petitioner has filed for this alien? ☐ Yes ☐ No

5. Is this an amended petition that does not contain any request for extensions of stay? ☐ Yes ☐ No

6. Are you filing this petition to correct a USCIS error? ☐ Yes ☐ No

7. Is the petitioner a primary or secondary education institution? ☐ Yes ☐ No

8. Is the petitioner a nonprofit entity that engages in an established curriculum-related clinical training of students registered at such an institution? ☐ Yes ☐ No

If you answered yes to any of the questions above, you are not required to submit the ACWIA fee for your H-1B Form I-129 petition. If you answered no to all questions, answer **Item Number 9.** below.

9. Do you currently employ a total of 25 or fewer full-time equivalent employees in the United States, including all affiliates or subsidiaries of this company/organization? ☐ Yes ☐ No

If you answered yes, to **Item Number 9.** above, you are required to pay an additional ACWIA fee of **$750**. If you answered no, then you are required to pay an additional ACWIA fee of **$1,500**.

NOTE: A petitioner seeking initial approval of H-1B nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B nonimmigrant currently working for another employer, must submit an additional **$500** Fraud Prevention and Detection fee. For petitions filed on or after December 18, 2015, an additional fee of **$4,000** must be submitted if you responded yes to **Item Numbers 1.d. and 1.d.1. of Section 1.** of this supplement. This **$4,000** fee was mandated by the provisions of Public Law 114-113.

The Fraud Prevention and Detection Fee and Public Law 114-113 fee do not apply to H-1B1 petitions. **These fees, when applicable, may not be waived.** You must include payment of the fees when you submit this form. Failure to submit the fees when required will result in rejection or denial of your submission. Each of these fees should be paid by separate checks or money orders.

Section 3. Numerical Limitation Information

1. Specify the type of H-1B petition you are filing. (select **only one** box):

☐ **a.** CAP H-1B Bachelor's Degree

☐ **b.** CAP H-1B U.S. Master's Degree or Higher

☐ **c.** CAP H-1B1 Chile/Singapore

☐ **d.** CAP Exempt

2. If you answered **Item Number 1.b. "CAP H-1B U.S. Master's Degree or Higher**," provide the following information regarding the master's or higher degree the beneficiary has earned from a U.S. institution as defined in 20 U.S.C. 1001(a):

a. Name of the United States Institution of Higher Education

b. Date Degree Awarded

c. Type of United States Degree

d. Address of the United States institution of higher education

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

Section 3. Numerical Limitation Information (continued)

3. If you answered **Item Number 1.d. "CAP Exempt**," you must specify the reason(s) this petition is exempt from the numerical limitation for H-1B classification:

- ☐ **a.** The petitioner is an institution of higher education as defined in section 101(a) of the Higher Education Act, of 1965, 20 U.S.C. 1001(a).
- ☐ **b.** The petitioner is a nonprofit entity related to or affiliated with an institution of higher education as defined in 8 CFR 214.2(h)(8)(ii)(F)(2).
- ☐ **c.** The petitioner is a nonprofit research organization or a governmental research organization as defined in 8 CFR 214.2(h)(8)(ii)(F)(3).
- ☐ **d.** The beneficiary will be employed at a qualifying cap exempt institution, organization or entity pursuant to 8 CFR 214.2(h)(8)(ii)(F)(4).
- ☐ **e.** The petitioner is requesting an amendment to or extension of stay for the beneficiary's current H-1B classification.
- ☐ **f.** The beneficiary of this petition is a J-1 nonimmigrant physician who has received a waiver based on section 214(l) of the Act.
- ☐ **g.** The beneficiary of this petition has been counted against the cap and **(1)** is applying for the remaining portion of the 6 year period of admission, or **(2)** is seeking an extension beyond the 6-year limitation based upon sections 104(c) or 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21).
- ☐ **h.** The petitioner is an employer subject to the Guam-CNMI cap exemption pursuant to Public Law 110-229.

Section 4. Off-Site Assignment of H-1B Beneficiaries

1. The beneficiary of this petition will be assigned to work at an off-site location for all or part of the period for which H-1B classification sought. ☐ Yes ☐ No

If no, do not complete **Item Numbers 2.** and **3**.

2. Placement of the beneficiary off-site during the period of employment will comply with the statutory and regulatory requirements of the H-1B nonimmigrant classification. ☐ Yes ☐ No

3. The beneficiary will be paid the higher of the prevailing or actual wage at any and all off-site locations. ☐ Yes ☐ No

L Classification Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

2. Name of the Beneficiary

3. This petition is (select **only one** box): ☐ **a.** An individual petition ☐ **b.** A blanket petition

4.a. Does the petitioner employ 50 or more individuals in the U.S.? ☐ Yes ☐ No

4.b. If yes, are more than 50 percent of those employee in H-1B, L-1A, or L-1B nonimmigrant status? ☐ Yes ☐ No

Section 1. Complete This Section If Filing For An Individual Petition

1. Classification sought (select **only one** box): ☐ **a.** L-1A manager or executive ☐ **b.** L-1B specialized knowledge

2. List the beneficiary's and any dependent family member's prior periods of stay in an H or L classification in the United States for the last seven years. Be sure to list only those periods in which the beneficiary and/or family members were physically present in the U.S. in an H or L classification. Do not include periods in which the beneficiary was in a dependent status, for example, H-4 or L-2 status. If more space is needed, go to **Part 9. of Form I-129**.

NOTE: Submit photocopies of Forms I-94, I-797, and/or other USCIS issued documents noting these periods of stay in the H or L classification. (If more space is needed, attach an additional sheet.)

Subject's Name	**Period of Stay** (mm/dd/yyyy) **From**	**To**

3. Name of Employer Abroad

4. Address of Employer Abroad

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Section 1. Complete This Section If Filing For An Individual Petition (continued)

5. Dates of beneficiary's employment with this employer. Explain any interruptions in employment.

Dates of Employment (mm/dd/yyyy) From	To	Explanation of Interruptions

6. Describe the beneficiary's duties abroad for the 3 years preceding the filing of the petition. (If the beneficiary is currently inside the United States, describe the beneficiary's duties abroad for the 3 years preceding the beneficiary's admission to the United States.)

7. Describe the beneficiary's proposed duties in the United States.

8. Summarize the beneficiary's education and work experience.

9. How is the U.S. company related to the company abroad? (select **only one** box)

☐ **a.** Parent ☐ **b.** Branch ☐ **c.** Subsidiary ☐ **d.** Affiliate ☐ **e.** Joint Venture

Section 1. Complete This Section If Filing For An Individual Petition (continued)

10. Describe the percentage of stock ownership and managerial control of each company that has a qualifying relationship. Provide the Federal Employer Identification Number for each U.S. company that has a qualifying relationship.

Percentage of company stock ownership and managerial control of each company that has a qualifying relationship.	**Federal Employer Identification Number for each U.S. company that has a qualifying relationship**

11. Do the companies currently have the same qualifying relationship as they did during the one-year period of the alien's employment with the company abroad?

☐ Yes ☐ No. If no, provide an explanation in **Part 9. of Form I-129** that the U.S. company has and will have a qualifying relationship with another foreign entity during the full period of the requested period of stay.

12. Is the beneficiary coming to the United States to open a new office?

☐ Yes ☐ No (attach explanation)

If you are seeking L-1B specialized knowledge status for an individual, answer the following question:

13.a. Will the beneficiary be stationed primarily offsite (at the worksite of an employer other than the petitioner or its affiliate, subsidiary, or parent)?

☐ Yes ☐ No

13.b. If you answered yes to the preceding question, describe how and by whom the beneficiary's work will be controlled and supervised. Include a description of the amount of time each supervisor is expected to control and supervise the work. If you need additional space to respond to this question, proceed to **Part 9.** of the Form I-129, and type or print your explanation.

13.c. If you answered yes to the preceding question, describe the reasons why placement at another worksite outside the petitioner, subsidiary, affiliate, or parent is needed. Include a description of how the beneficiary's duties at another worksite relate to the need for the specialized knowledge he or she possesses. If you need additional space to respond to this question, proceed to **Part 9.** of the Form I-129, and type or print your explanation.

Section 2. Complete This Section If Filing A Blanket Petition

List all U.S. and foreign parent, branches, subsidiaries, and affiliates included in this petition. (Attach separate sheets of paper if additional space is needed.)

Name and Address	Relationship

Section 3. Additional Fees

NOTE: A petitioner that seeks initial approval of L nonimmigrant status for a beneficiary, or seeks approval to employ an L nonimmigrant currently working for another employer, must submit an additional **$500** Fraud Prevention and Detection fee. For petitions filed on or after December 18, 2015, you must submit an additional fee of **$4,500** if you responded yes to both questions in **Item Numbers 4.a.** and **4.b.** on the first page of this L Classification Supplement. This **$4,500** fee is mandated by the provisions of Public Law 114-113.

These fees, when applicable, may not be waived. You must include payment of the fees with your submission of this form. Failure to submit the fees when required will result in rejection or denial of your submission. Each of these fees should be paid by separate checks or money orders.

O and P Classifications Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

Section 1. Complete This Section if Filing for O or P Classification

1. Name of the Petitioner

Name of the Beneficiary or if this petition includes multiple beneficiaries, the total number of beneficiaries included.

2.a. Name of the Beneficiary

OR

2.b. Provide the total number of beneficiaries:

3. **Classification sought** (select **only one** box)

- ☐ **a.** O-1A Alien of extraordinary ability in sciences, education, business or athletics (not including the arts, motion picture or television industry)
- ☐ **b.** O-1B Alien of extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry
- ☐ **c.** O-2 Accompanying alien who is coming to the United States to assist in the performance of the O-1
- ☐ **d.** P-1 Major League Sports
- ☐ **e.** P-1 Athlete or Athletic/Entertainment Group (includes minor league sports not affiliated with Major League Sports)
- ☐ **f.** P-1S Essential Support Personnel for P-1
- ☐ **g.** P-2 Artist or entertainer for reciprocal exchange program
- ☐ **h.** P-2S Essential Support Personnel for P-2
- ☐ **i.** P-3 Artist/Entertainer coming to the United States to perform, teach, or coach under a program that is culturally unique
- ☐ **j.** P-3S Essential Support Personnel for P-3

4. Explain the nature of the event.

5. Describe the duties to be performed.

6. If filing for an O-2 or P support classification, list dates of the beneficiary's prior work experience under the principal O-1 or P alien.

7.a. Does any beneficiary in this petition have ownership interest in the petitioning organization?

☐ Yes. If yes, please explain in **Item Number 7.b.** ☐ No.

Section 1. Complete This Section if Filing for O or P Classification (continued)

7.b. Explanation

8. Does an appropriate labor organization exist for the petition?
☐ Yes ☐ No. If no, proceed to **Part 9.** and type or print your explanation.

9. Is the required consultation or written advisory opinion being submitted with this petition?
☐ Yes ☐ No - copy of request attached ☐ N/A

If no, provide the following information about the organization(s) to which you have sent a duplicate of this petition.

O-1 Extraordinary Ability

10.a. Name of Recognized Peer/Peer Group or Labor Organization

10.b. Physical Address

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

10.c. Date Sent (mm/dd/yyyy)

10.d. Daytime Telephone Number

O-1 Extraordinary achievement in motion pictures or television

11.a. Name of Labor Organization

11.b. Complete Address

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

11.c. Date Sent (mm/dd/yyyy)

11.d. Daytime Telephone Number

12.a. Name of Management Organization

12.b. Physical Address

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

12.c. Date Sent (mm/dd/yyyy)

12.d. Daytime Telephone Number

Section 1. Complete This Section if Filing for O or P Classification (continued)

O-2 or P alien

13.a. Name of Labor Organization

13.b. Complete Address

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

City or Town | State | ZIP Code

13.c. Date Sent (mm/dd/yyyy)

13.d. Daytime Telephone Number

Section 2. Statement by the Petitioner

I certify that I, the petitioner, and the employer whose offer of employment formed the basis of status (if different from the petitioner) will be jointly and severally liable for the reasonable costs of return transportation of the beneficiary abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.

1. Name of Petitioner

Family Name (Last Name) | Given Name (First Name) | Middle Name

2. Signature and Date

Signature of Petitioner | Date of Signature (mm/dd/yyyy)

3. Petitioner's Contact Information

Daytime Telephone Number | Email Address (if any)

Q-1 Classification Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

2. Name of the Beneficiary

Section 1. Complete if you are filing for a Q-1 International Cultural Exchange Alien

I hereby certify that the participant(s) in the international cultural exchange program:

a. Is at least 18 years of age,

b. Is qualified to perform the service or labor or receive the type of training stated in the petition,

c. Has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public, and

d. Has resided and been physically present outside the United States for the immediate prior year. (Applies only if the participant was previously admitted as a Q-1).

I also certify that I will offer the alien(s) the same wages and working conditions comparable to those accorded local domestic workers similarly employed.

1. Name of Petitioner

Family Name (Last Name) | Given Name (First Name) | Middle Name

2. Signature and Date

Signature of Petitioner | Date of Signature (mm/dd/yyyy)

3. Petitioner's Contact Information

Daytime Telephone Number | Email Address (if any)

R-1 Classification Supplement to Form I-129

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

1. Name of the Petitioner

2. Name of the Beneficiary

Section 1. Complete This Section If You Are Filing For An R-1 Religious Worker

Employer Attestation

Provide the following information about the petitioner:

1.a. Number of members of the petitioner**'s** religious organization?

1.b. Number of employees working at the same location where the beneficiary will be employed?

1.c. Number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years?

1.d. Number of special immigrant religious worker petition(s) (I-360) and nonimmigrant religious worker petition(s) (I-129) filed by the petitioner within the past five years?

2. Has the beneficiary or any of the beneficiary's dependent family members previously been admitted to the United States for a period of stay in the R visa classification in the last five years? ☐ Yes ☐ No

If yes, complete the spaces below. List the beneficiary and any dependent family member's prior periods of stay in the R visa classification in the United States in the last five years. Please be sure to list only those periods in which the beneficiary and/or family members were actually in the United States in an R classification.

NOTE: Submit photocopies of Forms I-94 (Arrival-Departure Record), I-797 (Notice of Action), and/or other USCIS documents identifying these periods of stay in the R visa classification(s). If more space is needed, provide the information in **Part 9. of Form I-129**.

Alien or Dependent Family Member's Name	**Period of Stay (mm/dd/yyyy)** **From**	**To**

Section 1. Complete This Section If You Are Filing For An R-1 Religious Worker (continued)

3. Provide a summary of the type of responsibilities of those employees who work at the same location where the beneficiary will be employed. If additional space is needed, provide the information on additional sheet(s) of paper.

Position	Summary of the Type of Responsibilities for That Position

4. Describe the relationship, if any, between the religious organization in the United States and the organization abroad of which the beneficiary is a member.

Provide the following information about the prospective employment:

5.a. Title of position offered.

5.b. Detailed description of the beneficiary's proposed daily duties.

5.c. Description of the beneficiary's qualifications for position offered.

5.d. Description of the proposed salaried compensation or non-salaried compensation. If the beneficiary will be self-supporting, the petitioner must submit documentation establishing that the position the beneficiary will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

Section 1. Complete This Section If You Are Filing For An R-1 Religious Worker (continued)

5.e. List of the address(es) or location(s) where the beneficiary will be working.

Petitioner Attestations

Does the petitioner attest to all of the requirements described in Item Numbers 6. - 12. below?

6. The petitioner is a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination and is tax-exempt as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code. If the petitioner is affiliated with the religious denomination, complete the Religious Denomination Certification included in this supplement.

☐ Yes ☐ No. If no, type or print your explanation below and if needed, go to **Part 9. of Form I-129**.

7. The petitioner is willing and able to provide salaried or non-salaried compensation to the beneficiary. If the beneficiary will be self-supporting, the petitioner must submit documentation establishing that the position the beneficiary will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

☐ Yes ☐ No. If no, type or print your explanation below and if needed, go to **Part 9. of Form I-129**.

8. If the beneficiary worked in the United States in an R-1 status during the 2 years immediately before the petition was filed, the beneficiary received verifiable salaried or non-salaried compensation, or provided uncompensated self-support.

☐ Yes ☐ No. If no, type or print your explanation below and if needed, go to **Part 9. of Form I-129**.

9. If the position is not a religious vocation, the beneficiary will not engage in secular employment, and the petitioner will provide salaried or non-salaried compensation. If the position is a traditionally uncompensated and not a religious vocation, the beneficiary will not engage in secular employment, and the beneficiary will provide self-support.

☐ Yes ☐ No. If no, type or print your explanation below and if needed, go to **Part 9. of Form I-129**.

Section 1. Complete This Section If You Are Filing For An R-1 Religious Worker (continued)

10. The offered position requires at least 20 hours of work per week. If the offered position at the petitioning organization requires fewer than 20 hours per week, the compensated service for another religious organization and the compensated service at the petitioning organization will total 20 hours per week. If the beneficiary will be self-supporting, the petitioner must submit documentation establishing that the position the beneficiary will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

☐ Yes ☐ No. If no, type or print your explanation below and if needed, go to **Part 9. of Form I-129**.

11. The beneficiary has been a member of the petitioner's denomination for at least two years immediately before Form I-129 was filed and is otherwise qualified to perform the duties of the offered position.

☐ Yes ☐ No. If no, type or print your explanation below and if needed, go to **Part 9. of Form I-129**.

12. The petitioner will notify USCIS within 14 days if an R-1 alien is working less than the required number of hours or has been released from or has otherwise terminated employment before the expiration of a period of authorized R-1 stay.

☐ Yes ☐ No. If no, type or print your explanation below and if needed, go to **Part 9. of Form I-129**.

Attestation

I certify, under penalty of perjury, that the contents of this attestation and the evidence submitted with it are true and correct.

Name of Petitioner

Title

Signature of Petitioner

Date (mm/dd/yyyy)

Employer or Organization Name

Section 1. Complete This Section If You Are Filing For An R-1 Religious Worker (continued)

Employer or Organization Address (do not use a post office or private mail box)

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

Employer or Organization's Contact Information

Daytime Telephone Number | Fax Number | Email Address (if any)

Section 2. This Section Is Required For Petitioners Affiliated With The Religious Denomination

Religious Denomination Certification

I certify, under penalty of perjury, that:

Name of Employing Organization

is affiliated with:

Name of Religious Denomination

and that the attesting organization within the religious denomination is tax-exempt as described in section 501(c)(3) of the Internal Revenue Code of 1986 (codified at 26 U.S.C. 501(c)(3)), any subsequent amendment(s), subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code. The contents of this certification are true and correct to the best of my knowledge.

Name of Authorized Representative of Attesting Organization | Title

Signature of Authorized Representative of Attesting Organization | Date (mm/dd/yyyy)

Attesting Organization Name and Address (do not use a post office or private mail box)

Attesting Organization Name

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ | Number

City or Town | State | ZIP Code

Attesting Organization's Contact Information

Daytime Telephone Number | Fax Number | Email Address (if any)

Attachment-1

Attach to Form I-129 when more than one person is included in the petition. (List each person separately. Do not include the person you named on the Form I-129.)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Date of birth (mm/dd/yyyy) | Gender ☐ Male ☐ Female | U.S. Social Security Number (if any) ▶ | A-Number (if any) **A-**

All Other Names Used (include aliases, maiden name and names from previous marriages)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Address in the United States Where You Intend to Live (Complete Address)

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

City or Town | State | ZIP Code

Foreign Address (Complete Address)

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Country of Birth | Country of Citizenship or Nationality

IF IN THE UNITED STATES:

Date of Last Arrival (mm/dd/yyyy) | I-94 Arrival-Departure Record Number | Passport or Travel Document Number

Date Passport or Travel Document Issued (mm/dd/yyyy) | Date Passport or Travel Document Expires (mm/dd/yyyy) | Country of Issuance for Passport or Travel Document

Current Nonimmigrant Status | Date Status Expires or D/S (mm/dd/yyyy)

Student and Exchange Visitor Information System (SEVIS) Number (if any) | Employment Authorization Document (EAD) Number (if any)

Attachment-1

Attach to Form I-129 when more than one person is included in the petition. (List each person separately. Do not include the person you named on the Form I-129.)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Date of birth (mm/dd/yyyy) | Gender ☐ Male ☐ Female | U.S. Social Security Number (if any) ▶ | A-Number (if any) **A-**

All Other Names Used (include aliases, maiden name and names from previous Marriages)

Family Name (Last Name) | Given Name (First Name) | Middle Name

Address in the United States Where You Intend to Live (Complete Address)

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

City or Town | State | ZIP Code

Foreign Address (Complete Address)

Street Number and Name | Apt. ☐ Ste. ☐ Flr. ☐ Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Country of Birth | Country of Citizenship or Nationality

IF IN THE UNITED STATES:

Date of Last Arrival (mm/dd/yyyy) | I-94 Arrival-Departure Record Number | Passport or Travel Document Number

Date Passport or Travel Document Issued (mm/dd/yyyy) | Date Passport or Travel Document Expires (mm/dd/yyyy) | Country of Issuance for Passport or Travel Document

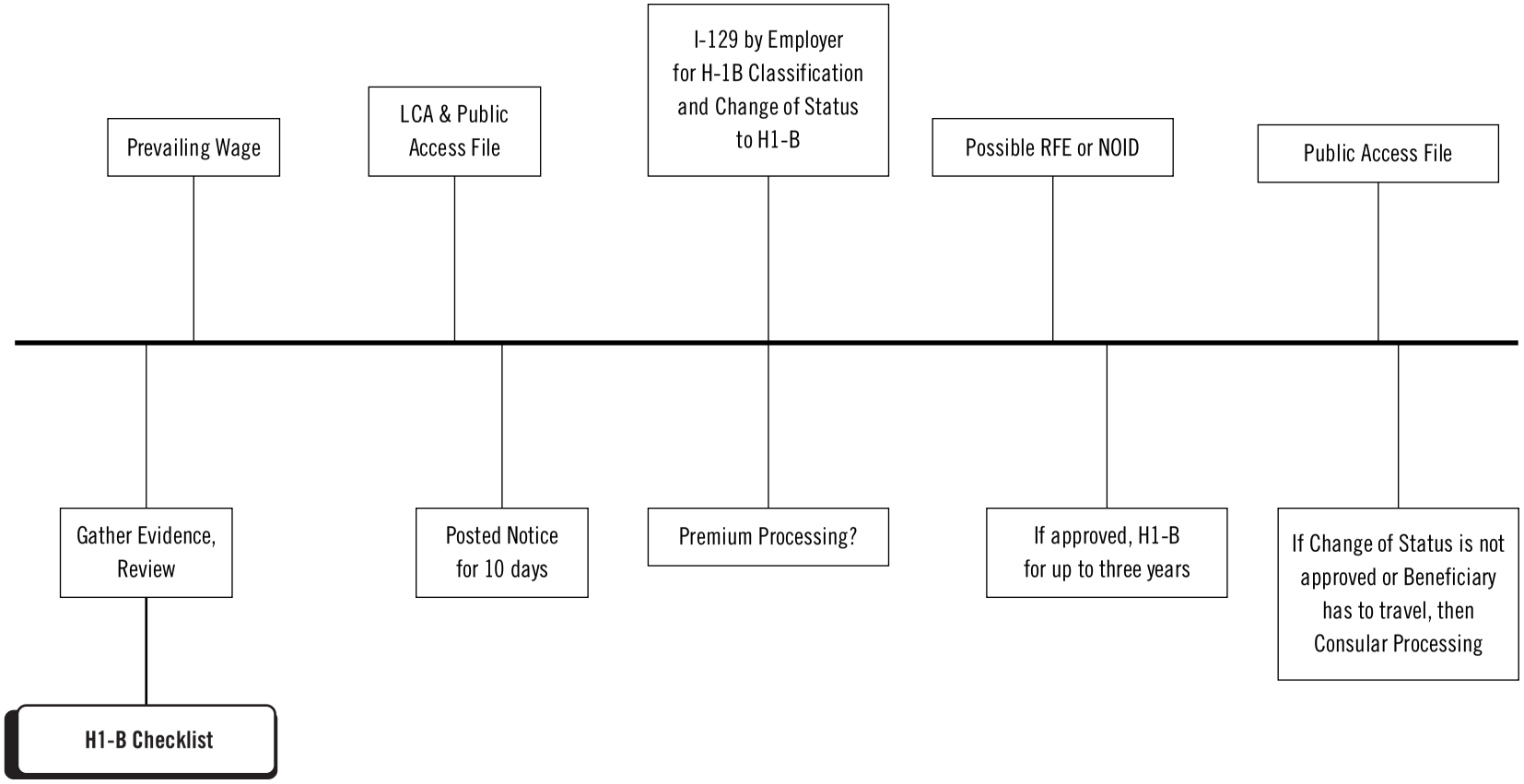
Current Nonimmigrant Status | Date Status Expires or D/S (mm/dd/yyyy)

Student and Exchange Visitor Information System (SEVIS) Number (if any) | Employment Authorization Document (EAD) Number (if any)

WORK VISAS

H-1B Timeline

H-1B TIMELINE

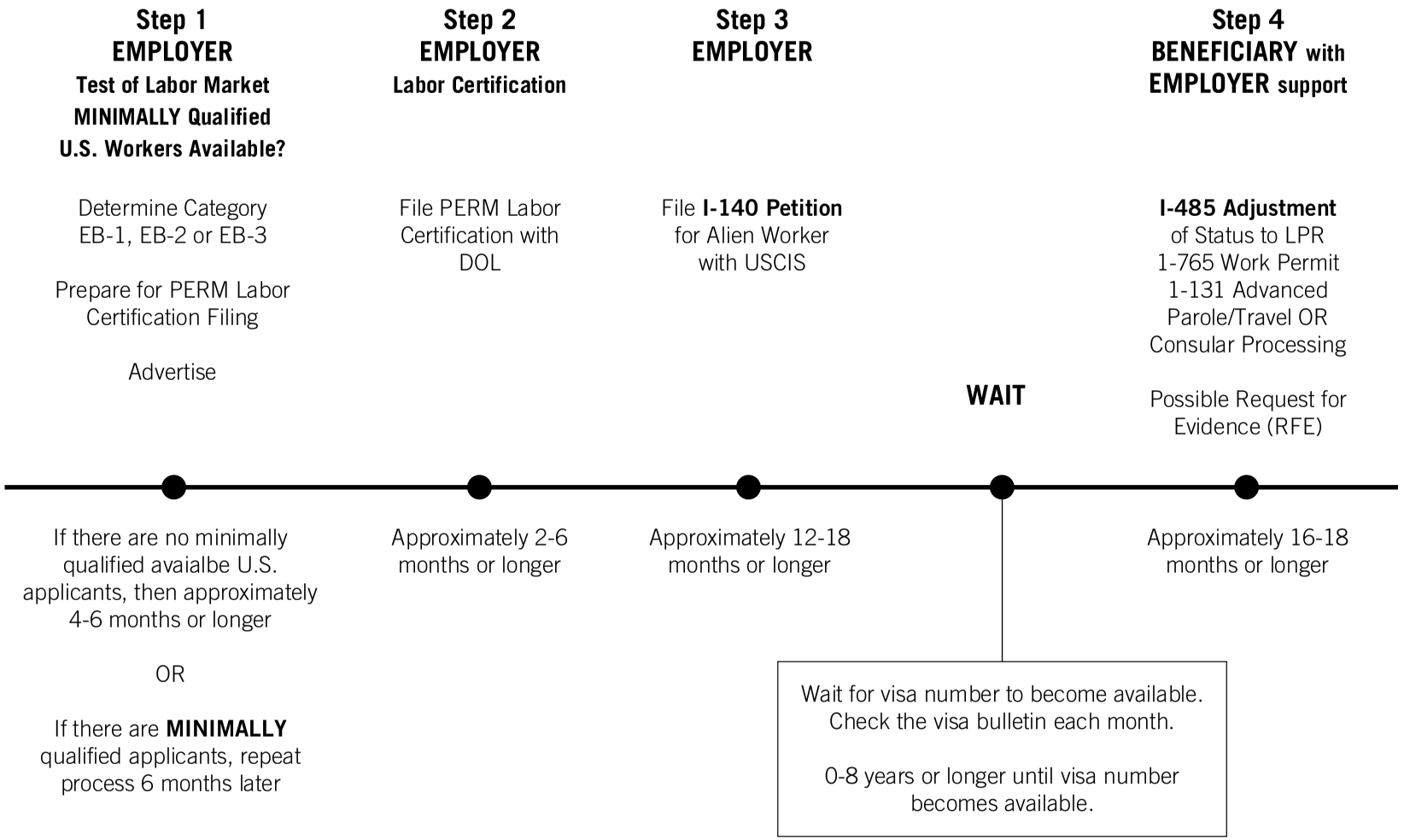


WORK VISAS

Greencard Timelines

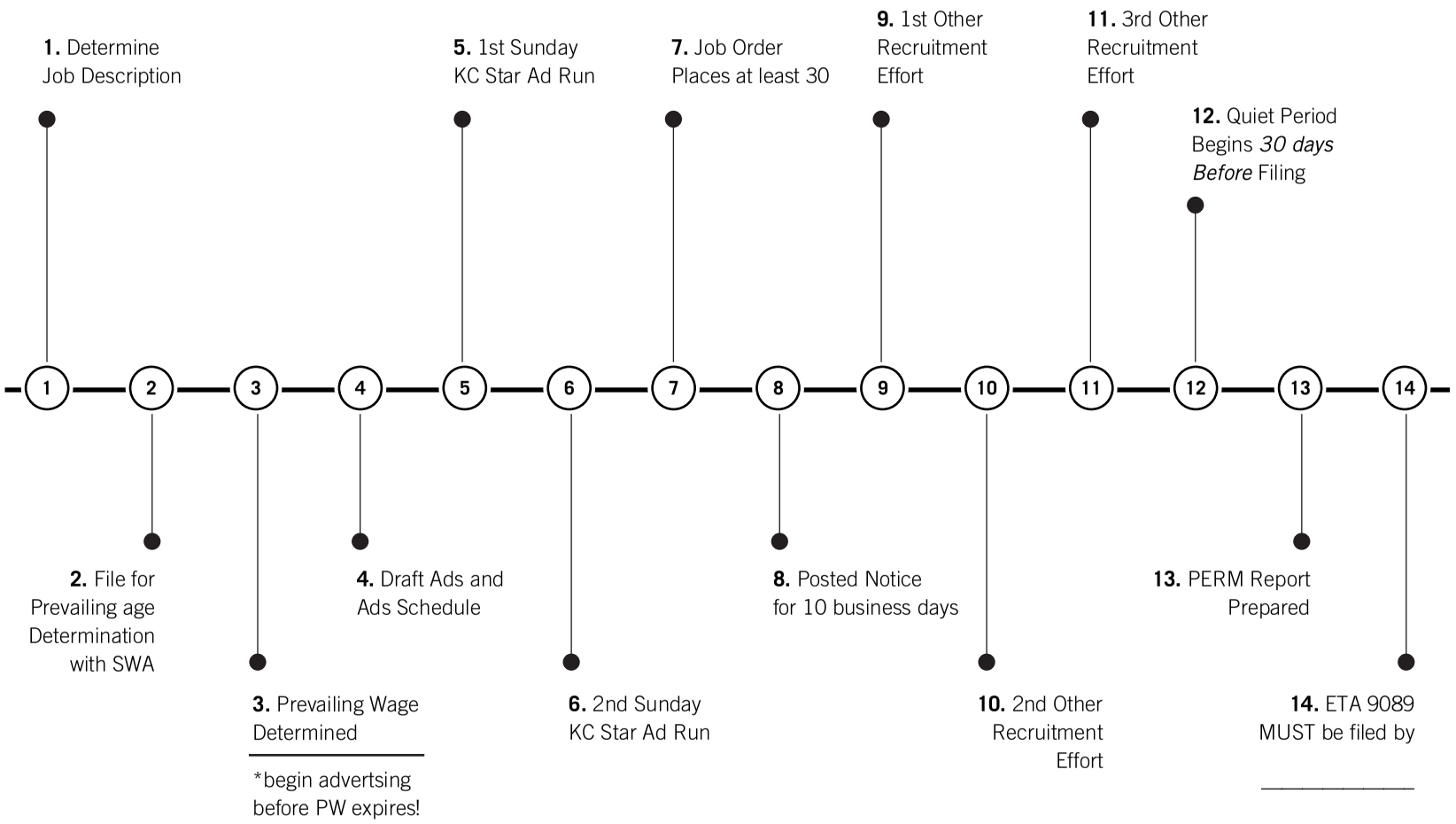
MDIVANI LABOR-CERTIFICATION-BASED GREEN CARD TIMELINE

Questions? Call Mira at 913.317.6200 or mmdivani@uslegalimmigration.com



MDIVANI © PERM TIMELINE

Questions? Call Mira at 913.317.6200 or mmdivani@uslegalimmigration.com



FILE WITHIN 180 DAYS OF THE FIRST AD AS SOON AS QUIET PERIOD IS OVER