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*FAIR is a nonprofit public interest organization working to end illegal immigration and to set levels of legal immigration that are consistent with the national interest.*



FEDERATION FOR AMERICAN IMMIGRATION REFORM

December 27, 2021

Oscar Lujan

Associate Chief for Policy and Guidance, Verification Division  
Immigration Records and Identity Services Directorate  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
5900 Capital Gateway Drive,  
Camp Springs, MD 20746

RE: DHS Docket No. USCIS-2021-0022, Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input

Dear Associate Chief Lujan,

The Federation for American Immigration Reform (“FAIR”) respectfully submits the following public comment to the Department of Homeland Security (“DHS”) in response to the Department’s request for information regarding Remote Document Examination policy, as published in the Federal Register on October 26, 2021. *See Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input* (DHS Docket No. USCIS-2021-0022).

FAIR is a national, nonprofit, public-interest organization comprised of millions of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. Our organization, which employs both remote and in-person staff, examines trends and effects, educates the public on the impacts of sustained high volume immigration, and advocates for sensible solutions that enhance America’s environmental, societal, and economic interests today, and into the future.

## I. Background

Section 274A(a)(1)(B) of the Immigration and Nationality Act (“INA”) requires employers to verify the employment authorization of any individual they hire to work in the United States, primarily by completing a Form I-9 and examining documents establishing both employment authorization and the



identity of the individual. 8 C.F.R. § 274a.2(b)(1)(ii)(A) requires that every employer “[p]hysically examine” and then attest that the documents appear to be genuine and relate to the person presenting them. If the individual submits a document that does not reasonably appear to be genuine or to relate to him or her, the employer must reject that document and may then request that the individual present other acceptable documents to satisfy the requirements of Form I-9.

The individual must also attest, under penalty of perjury on the Form I-9, that they are a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under the INA or by the Attorney General to be hired, recruited, or referred for employment.<sup>1</sup> Employers are required to retain the completed Form I-9 and make it available for inspection by DHS or the U.S. Department of Labor (“DOL”) for up to three years after the date of the individual’s hiring or one year after the date the individual’s employment is terminated, whichever is later.<sup>2</sup>

After COVID-19 was declared a National Emergency on March 13, 2020, DHS announced that it would defer the in-person inspection requirements associated with the Form I-9 verification process.<sup>3</sup> DHS permitted employers with employees working remotely due to COVID-19 to examine their employees’ identity and employment eligibility documents remotely rather than in-person (i.e., using video link, fax, or email, etc.). The DHS policy would have required that, within three business days after the termination of the National Emergency, employers would be required to obtain, inspect, and retain copies of the documents and enter “COVID-19” in Section 2 of the form as the reason for the physical inspection delay. Until April 1, 2021, these flexibilities were only extended to businesses operating exclusively remotely.

Since March 31, 2021, however, DHS has only required employers to physically inspect a new hire’s documents in person if that individual will physically report to work at a company location on any regular, consistent, or predictable basis.<sup>4</sup> Additionally, DHS temporarily exempted all employees hired on or after April 1, 2021, who work exclusively in a remote setting due to COVID-19-related precautions, from the physical inspection requirements until they resume non-remote employment on a regular, consistent, or predictable basis, or the extension of the flexibilities related to such requirements is terminated, whichever is earlier. DHS also made clear that these flexibilities do not preclude employers from requiring, in their discretion, the in-person verification of identity and employment eligibility documentation for employees who were hired on or after March 20, 2020, and presented such documents for remote

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<sup>1</sup> INA § 274A(b)(2).

<sup>2</sup> INA § 274A(b)(3).

<sup>3</sup> U.S. Immigration and Customs Enforcement, *DHS announces flexibility in requirements related to Form I-9 compliance* (Mar. 2020), available at <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>.

<sup>4</sup> *Id.*

inspection in reliance on the flexibilities first announced in March 2020. These flexibilities have been extended until December 31, 2021.<sup>5</sup>

## II. Remote Document Examination

**What are the unique challenges faced by small employers with this process and these flexibilities? What kinds of alternatives should be provided for small employers in adopting these flexibilities?**

Most small employers are not trained to verify the authenticity of government issued identification or work authorization documents, and must generally accept documents as valid when presented to them by recent hires. After the initial inspection, an incredibly few completed Form I-9's are ever revisited for audit compliance. This means that the I-9 verification process is vulnerable to fraud and abuse by both unauthorized workers and unscrupulous employers intending to exploit unauthorized labor. Remote document examination increases these vulnerabilities by increasing the likelihood that an employee will present fraudulent documents to support their claim of work authorization. Equally troubling, the remote verification flexibilities will give bad-acting employers additional cover to knowingly hire unauthorized workers in violation of statute.

While FAIR supports modernizing the verification process to reduce administrative burdens on businesses seeking to comply with federal law, we do not believe that updates to the work authorization process should be made at the expense of the interests of American workers –including work-authorized aliens – the very people for which Congress passed laws to protect. This end, however, can be effectively and efficiently accomplished to satisfy both interests by requiring mandatory use of E-Verify.

The E-Verify system provides employers with an easy, simple way to verify the work authorization of new hires.<sup>6</sup> The process requires employers to enter information provided by applicants on Form I-9. Regardless of whether an employer participates in E-Verify, federal law already requires all employees to complete Form I-9 within three days of beginning employment, and employers are required to retain a copy of this document.<sup>7</sup> This information is entered into the E-Verify system through DHS's free online portal. The program then validates applicant details by comparing it them against millions of federal and state government identification, social security, and immigration records. The

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<sup>5</sup> U.S. Immigration and Customs Enforcement, *ICE announces extension to new employee guidance to I-9 compliance flexibility* (Aug. 2021), available at <https://www.ice.gov/news/releases/ice-announces-extension-new-employee-guidance-i-9-compliance-flexibility-1>.

<sup>6</sup> U.S. Department of Homeland Security, *What is E-Verify* (Dec. 2020), available at <https://www.e-verify.gov/about-e-verify/what-is-e-verify>.

<sup>7</sup> INA § 247A(a)(1)(B).

system typically provides a result within five seconds.<sup>8</sup> The result will either say “employment authorized,” or “DHS/SSA Tentative Nonconfirmation (“TNC”).”

If an employee receives a TNC, the individual can contest the result with the Social Security Administration (SSA) or contact DHS within eight federal working days.<sup>9</sup> Employers who use the system according to the applicable rules are generally protected from civil and criminal penalties regarding the hiring of an unauthorized worker who has been screened through E-Verify.<sup>10</sup>

By requiring employers to use E-Verify to confirm the work authorization of their new hires, small employers with limited resources will be able to quickly and easily confirm that the documents provided by a new hire have not been altered, belong to the individual presenting the documents, and otherwise match DHS records or other government data systems. As discussed in further detail below, data reported by the U.S. Citizenship and Immigration Services (“USCIS”) revealed a 98.41 percent accuracy rate.<sup>11</sup> Further, E-Verify is effective in stopping nearly 100 percent of all Social Security Number (“SSN”)-only, job-related identity theft because full name, SSN, date of birth, gender and photographic identification must all match. If the information input into E-Verify does not match, E-Verify will return a tentative non-confirmation message.

E-Verify is also one of the federal government’s highest rated programs. According to the 2020 American Customer Satisfaction Index (“ACSI”), E-Verify received a user satisfaction score of 87 out of 100.<sup>12</sup> In fact, the E-Verify approval rating far exceeds the national average ACSI score, of just 74, which includes both public and private sector programs.<sup>13</sup> ACSI reports two percent of new enrollees and just 1.5% percent of existing users contacted Technical Assistance in the past six months.<sup>14</sup> Additionally, the ACSI indicated that E-Verify received score of 90 out of 100 for user’s likelihood to recommend, 93 out of 100 for user confidence in accuracy, and 95 out of 100 for continued user participation.<sup>15</sup>

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<sup>8</sup> U.S. Citizenship and Immigration Services, *E-Verify OVERVIEW* (Apr. 2018), available at <https://www.e-verify.gov/employees/e-verify-overview>.

<sup>9</sup> U.S. Department of Homeland Security, *EMPLOYEE RIGHTS AND RESPONSIBILITIES* (Apr. 2018), available at <https://www.e-verify.gov/employees/employee-rights-and-responsibilities>.

<sup>10</sup> U.S. Citizenship and Immigration Services, *E-Verify User Manual for Employers* (Apr. 2018), available at [https://www.uscis.gov/sites/default/files/files/nativedocuments/E-Verify\\_Manual.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/E-Verify_Manual.pdf).

<sup>11</sup> U.S. Department of Homeland Security, *E-Verify Performance* (Jul. 2021), available at <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance>.

<sup>12</sup> Annual Customer Satisfaction Survey 2019, *E-Verify, Final Report* (Jun. 2020), available at <https://www.e-verify.gov/sites/default/files/everify/data/EVerifyCustomerSatisfactionSurvey2019.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Mandatory E-Verify participation is a common sense method to ensure employers comply with federal law. FAIR strongly urges DHS to condition any future remote document examination on E-Verify use in order to protect employers and U.S. workers alike.

**What would be the costs or benefits associated with making enrollment in E-Verify a condition of flexibilities for you, as an employer?**

FAIR believes the benefits and ease of using E-Verify far outweigh the negligible administrative costs associated with participation. FAIR is an E-Verify employer and employs staff who report to FAIR's place of business as well as a portion who work remotely. Additionally, FAIR has analyzed data related to administrative costs to confirm that use of the web-based program imposes few tangible costs to employers, like us.

**A. E-Verify Use Saves Employers Time, Money, and Heartburn**

The cost of running an employee through the E-Verify system is miniscule. The primary costs E-Verify imposes upon businesses are primarily associated with inputting a newly hired employee's information into the web-based system. Based on FAIR's estimations, it typically takes between two and five minutes to complete this process. Since using the E-Verify system itself is free, and there is no risk of legal recourse for using it properly, the personnel costs associated with data-entry would be the only burden on businesses.

FAIR surveyed the salaries of human resource associates and generalists from seven major metro areas, and found the median salaries to approximate \$51,000 a year for associates and \$55,000 a year for generalists.<sup>16</sup> Using a \$53,000 annual administrative salary as a base, FAIR estimates that verifying an employee's identity and work authorization through E-Verify would cost a business no more than \$2.10, excluding costs related to obtaining internet service.

When compared to the civil and criminal penalties may employers face for engaging in the knowing employment of unauthorized workers, document fraud, tax fraud, social security fraud, conspiracy, or other immigration and labor-related offenses, as well as operational costs businesses may incur by the sudden loss of needed employees, FAIR believes using E-Verify provides participating employers with exceptional insurance by verifying employers hire an authorized workforce.

According to U.S. Immigration and Customs Enforcement ("ICE"), the "Knowing Hire / Continuing to Employ Fine Schedule" begins at \$548 for a first offense, so long as less

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<sup>16</sup> Indeed, *Human Resource Salaries in the United States* (May 2018), available at <https://www.indeed.com/salaries/Human-Resource-Salaries>.

than 10 percent of a company's employees were unlawfully hired.<sup>17</sup> That fine goes up to \$3,726 if more than 50 percent of employees were illegally hired. Second offenses range from \$4,384 to \$10,026, and third or subsequent offenses can be as high as \$19,242.<sup>18</sup> A business could run approximately 260 employees through E-Verify for the cost of a first-offense fine relating to a single unlawful hire, or nearly 5,500 employees for what three fines would cost. Based on cost, convenience and reduction of potential liability, FAIR strongly believes E-Verify use is a smart and obligatory business decision.

### **B. Data Does Not Suggest E-Verify Use Will Pose A Significant Burden on U.S. Employers**

FAIR strongly disagrees with comments that suggest compulsory E-Verify use would impose unreasonable red tape or administrative costs to businesses of any size because of the potential for system error. Some individuals, when run through E-Verify, will trigger a Tentative Non-Confirmation ("TNC") or Final Non-Confirmation ("FNC") notice. A non-confirmation is determination that a particular applicant cannot be verified as eligible to work in the United States.

A TNC results when the information submitted in E-Verify does not initially match the information in the SSA, DHS, or DOS records. A TNC does not necessarily mean that the employee is not authorized to work in the United States. Rather, a TNC result merely indicates that if the employee believes he or she is authorized to work in the U.S., the employee must contest the TNC finding by providing documentation demonstrating their work authorization. A FNC results when an individual receives a TNC and either fails to contest it or the Social Security Administration and the Department of Homeland Security cannot verify that an applicant is authorized to work in the United States.

Concerns that E-Verify will erroneously report authorized workers as ineligible, however, are unfounded. In the first half of fiscal year 2021, USCIS reported that E-Verify processed more than 16 million cases to confirm employment eligibility and flagged only 1.59 percent of cases with a TNC.<sup>19</sup> Of the 1.59 percent of cases not initially confirmed as work authorized, just 0.13 percent of these cases were determined to be inaccurately flagged and were later confirmed as work authorized after contesting the mismatch and resubmitting documentation to support their claim.<sup>20</sup>

Given the remarkably low inaccuracy rate, FAIR determines that the alleged cost and inconvenience associated with E-Verify errors are too low to be reasonably calculated. A

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<sup>17</sup> U.S. Immigration and Customs Enforcement, *Form I-9 Inspection* (Nov. 2021), available at <https://www.ice.gov/factsheets/i9-inspection#fineSchedule>.

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Department of Homeland Security, *E-Verify Performance* (Jul. 2021), available at <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance>.

<sup>20</sup> *Id.*

brief period of uncertainty for the small percentage of cases that are initially flagged as TNC is, for many businesses, is an relatively insignificant price to pay to ensure a business does not hire an unauthorized worker who could be in the country illegally, committing identity theft, and, as a result, making payments under a fraudulently obtained Social Security number that the business will incur costs to resolve.

**If employers were allowed a permanent option for remote document examination, what types of employers and/or employees do you anticipate would be interested in participating or not interested in participating?**

If DHS were to implement a permanent option for remote document examination conditioned on the use of E-Verify to onboard their workforce, any employer who to intends to comply with federal law and employ a legal workforce would benefit from the update, including employers who intend to hire staff to work remotely or staff who are otherwise unable to physically report to a business location.

As explained in detail above, E-Verify imposes negligible burdens to participating employers. Extra personnel should not be required to conduct this function because federal law already requires work authorization verification to be conducted regardless of participation in the program.

At the same time, E-Verify usage provides significant benefits to participating employers. E-Verify is the best means available to verify employment authorization of newly hired employees because it virtually eliminates Social Security mismatch letters, improves wage and tax reporting accuracy, helps employers maintain a legal workforce, thereby protecting U.S. workers from unfair employment competition.<sup>21</sup> Further, E-Verify use provides employers with a rebuttable presumption of that the employer hasn't knowingly employed an unauthorized worker.<sup>22</sup>

Given the negligible administrative costs associated with E-Verify use and the benefits associated with participation, it is difficult to imagine an employer objecting to a mandate unless an employer purposefully violates or intends to violate 8 U.S.C. § 1324a, or otherwise discriminate against applicants on the basis of citizenship or immigration status in violation of 8 U.S.C. § 1324b.

**How might participation requirements as a condition of these flexibilities, such as required enrollment in E-Verify, document or image quality or retention requirements, or required completion of training offered by DHS, impact an employer's desire or ability to utilize such a flexibility?**

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<sup>21</sup> U.S. Department of Homeland Security, *E-Verify IS BUSINESS FRIENDLY* (Apr. 2018), available at <https://www.e-verify.gov/about-e-verify/what-is-e-verify/e-verify-is-business-friendly>.

<sup>22</sup> INA § 274A(a)(1)(A).

FAIR strongly supports requiring enrollment in E-Verify to minimize fraud and abuse in the work authorization verification process. As explained in detail above, the benefits of participating in E-Verify far outweigh the marginal administrative costs of operation for businesses of all sizes

Further, FAIR believes that the imposition of a training requirement would bolster employers confidence in adjusting to the online verification system but may marginally increase the administrative costs associated with the verification process. Nevertheless, the benefits to both law-abiding employers and U.S. workers, including work-authorized aliens, far outweigh the negligible administrative costs DHS-offered training would impose.

**Are there solutions that would enable employers to verify that documents that are examined remotely appear to be genuine and to relate to the individual presenting them? What actions by DHS would encourage the commercial development of such solutions?**

DHS must expand E-Verify capabilities to perform automated photo matching. Federal law requires employers to verify individuals' identity during employment verification.<sup>23</sup> Currently, however, the E-Verify system does not perform automated photo-matching. Instead, the program requires employers to manually inspect the photo provided to confirm individuals' identities. According to USCIS's E-Verify User Manual, employers may accept a photo as a match if the employer determines that the photo in the individual's document and the photo provided by E-Verify are "reasonably identical." This process, however, is subjective and may permit an employer who intends to knowingly employ an unauthorized worker to accept a sub-standard match. Further, the condition of the photo document provided may have deteriorated such that an employer may have difficulty determining whether a true match exists. Finally, DHS does not have any mechanisms or execute any audits to determine whether employers are adequately performing the manual photo-matching requirements.

DHS must also expand its access to state driver's license and identification card data systems in order to effectively verify that a new hire is not misrepresenting their identity to an employer. Over 80% of employees present a driver's license or state-issued identification card as proof of identity.<sup>24</sup> E-Verify, however, only receives data from 41

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<sup>23</sup> INA § 274A(b)(1)(B).

<sup>24</sup>U.S. Department of Homeland Security, *Driver's License and State-Issued Identification Card Verification in E-Verify*, (Mar. 2019) available at <https://www.e-verify.gov/employers/verification-process/drivers-license-verification>.



states, the District of Columbia, and Puerto Rico through the National Law Enforcement Telecommunications System.<sup>25</sup>

FAIR acknowledges that DHS is not able to unilaterally access these data sources or force states to provide access. DHS should, however, collaborate with states to enter into adequate memoranda of agreements to obtain access. Ensuring access to all states' driver's license and identification card data systems, or through the National Law Enforcement Telecommunications System, is critical to ensuring E-Verify is effective in verifying the identity of individuals seeking employment in the United States.

**Should DHS consider changes to the current lists of acceptable documents on the Form I-9, in the context of remote document examination? What would be the costs and benefits of such changes?**

DHS should only allow employers to accept driver's licenses and identification cards from states that provide DHS access to data sources that will allow them to validate the authenticity of the document. Making such a policy change will encourage more states to join the Records and Information from DMVs for E-Verify ("RIDE") program or otherwise provide DHS access to their driver's license and identification card data sources for verification purposes. RIDE helps to reduce document and employment eligibility verification fraud in E-Verify.<sup>26</sup> Expanding participation would ensure DHS is able to weed out, penalize, and discourage document fraud and identity theft through E-Verify use.

**Are there any other factors DHS should consider related to remote document examination?**

In addition to requiring employers who engage in remote document examination to use E-Verify, ICE must resume worksite audits and enforcement in addition to increasing penalties for immigration and labor law violators. Widespread E-Verify use coupled with vigorous worksite enforcement are two of the most effective tools DHS has to address both labor conditions in the United States and the root causes of illegal immigration to the United States.<sup>27</sup> Accordingly, FAIR urges DHS to rescind its October 12, 2021 policy

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<sup>25</sup> Office of Inspector General, U.S. Department of Homeland Security, *USCIS Needs to Improve Its Electronic Employment Eligibility Verification Process* (Aug. 2021), available at <https://www.oig.dhs.gov/sites/default/files/assets/2021-08/OIG-21-56-Aug21.pdf>.

<sup>26</sup> U.S. Department of Homeland Security, *Records and Information from DMVs for E-Verify (RIDE) program*, available at [https://www.e-verify.gov/sites/default/files/everify/RIDE\\_Tips.pdf](https://www.e-verify.gov/sites/default/files/everify/RIDE_Tips.pdf).

<sup>27</sup> In 2021, the Migration Policy Institute found that approximately 92 percent of individuals surveyed from El Salvador, Guatemala and Honduras who expressed a desire to migrate internationally cited economic reasons such as unemployment, the lack of money for food and basic necessities, the desire to send remittances and the need for a better job, salary or working conditions. Ariel G. Ruiz Soto et al., Migration Policy Institute, *Charting a New Regional Course of Action* 18-19 (Nov. 2021), available at

memorandum, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*,<sup>28</sup> and resume widespread worksite enforcement audits to ensure compliance with federal immigration and labor laws.

#### **A. E-Verify Coupled With Worksite Enforcement Will Protect Labor Conditions in the United States**

Employers who hire unauthorized workers are often violating other employment and labor laws, including those related to antidiscrimination, health, and safety. As DHS acknowledged in the October 12 Memorandum, “These employers engage in illegal acts ranging from the payment of substandard wages to imposing unsafe working conditions and facilitating human trafficking and child exploitation. Their culpability compels the intense focus of our enforcement resources.”<sup>29</sup> Additionally important, unchecked unauthorized labor causes substantial economic hardship to U.S. workers who must face unfair competition and wage suppression as a result of contending against an unregulated labor market. Worksite enforcement is necessary to investigate, charge, and prosecute employers in the United States who have ignored the law and hired aliens who are not authorized to work in this country, to the detriment of U.S. and work-authorized aliens alike.

With mandatory E-Verify in place, the administration’s purported aims in issuing the October 12 Memorandum become moot and the non-enforcement policy is unjustifiable. Employers who misuse E-Verify to hire unauthorized workers are subject to significant civil and criminal penalties, severely reducing the potential that an employer would subject its unauthorized employees to retaliation by calling its illegal workforce to ICE’s attention. Civil and criminal penalties include, but not limited to:

- Civil penalties for knowingly hiring unauthorized workers;<sup>30</sup>
- Criminal penalties for making a materially false, fictitious, or fraudulent statements or representation or false document knowing to contain any materially false, fictitious, or fraudulent statements to the federal government;<sup>31</sup>

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[https://www.migrationpolicy.org/sites/default/files/publications/mpi-wfp-mit\\_migration-motivations-costs\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi-wfp-mit_migration-motivations-costs_final.pdf).

<sup>28</sup> Memorandum for Tae Johnson, Acting Director, U.S. Customs and Immigration Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual (October 12, 2021).

<sup>29</sup> *Id.*

<sup>30</sup> 8 U.S.C. § 1324a(e)(4).

<sup>31</sup> 18 U.S.C. § 1001(a).

- Criminal penalties for knowingly possessing identification documents with the intent to defraud the United States;<sup>32</sup>
- Criminal penalties for using, obtaining, accepting, receiving, any document prescribed by statute for the regulation for employment in the United States knowing it to be forged, counterfeit, altered, falsely made, or procured by fraud or unlawfully obtains;<sup>33</sup>
- Criminal penalties related to Social Security Fraud;<sup>34</sup>
- Criminal penalties related to tax fraud;<sup>35</sup> and
- Criminal penalties for conspiracy offenses.<sup>36</sup>

Large-scale criminal E-Verify use is significantly easier to demonstrate than unlawful Form I-9 practices. In the Form I-9 verification context, employers are only required to inspect documents which they are not trained nor required to properly authenticate through official channels.

**B. Mandating E-Verify Use and Widespread Worksite Enforcement Operations Will Eliminate the Primary Pull-Factor for Illegal Immigration to the United States**

The benefits of requiring employers to use E-Verify will only be compounded by resuming widespread worksite enforcement actions. Worksite enforcement is necessary to maintain the integrity and functioning of the immigration system as a whole and it creates a chilling effect for labor law violators.

Eradicating unauthorized employment is essential to enforcing the immigration laws as a whole and eliminating pull factors for future illegal immigration into the United States. As Barbara Jordan, chairwoman of the Clinton administration's Commission on Immigration Reform and civil rights activist, explained in 1994, "As long as U.S. businesses benefit from the hiring of unauthorized workers, control of unlawful immigration will be impossible."<sup>37</sup> For that reason, the Commission concluded that "both employer sanctions and enhanced labor standards enforcement are essential components of a strategy to reduce the job magnet."<sup>38</sup>

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<sup>32</sup> 18 U.S.C. § 1028.

<sup>33</sup> 18 U.S.C. § 1546.

<sup>34</sup> 42 U.S.C. § 408.

<sup>35</sup> 26 U.S.C. § 7206(1).

<sup>36</sup> 18 U.S.C. § 371.

<sup>37</sup> Testimony of Barbara Jordan, Chair, U.S. Commission on Immigration Reform Before the U.S. Senate Committee on the Judiciary Subcommittee on Immigration and Refugee Affairs, August 3, 1994.

<sup>38</sup> *Id.*

Without engaging in widespread audits and enforcement actions, unscrupulous employers will be emboldened to maintain unlawful employment practices, drawing migrants to enter the United States illegally, and creating a foreign workforce in the United States that far exceeds the limits set by Congress to protect U.S. workers.

By reducing incentives to enter or remain in the United States illegally, effective worksite enforcement likewise allows ICE to focus its resources on its stated enforcement priorities: criminal aliens and aliens who pose border security, national security, or threats overall.<sup>39</sup>

Indeed, the Biden administration has recognized the economic pull for illegal immigration and has prioritized propping up the economies of Northern Triangle countries to reduce this magnet. FAIR urges DHS to instead strengthen the work authorization verification process through mandatory E-Verify and prioritize worksite enforcement to ensure that employers who knowingly intend to employ unauthorized workers face the consequences Congress created to protect Americans.

### **III. Conclusion**

FAIR strongly urges DHS to require E-Verify participation in conjunction with any update to the I-9 verification process. E-Verify usage does not impose a significant financial or time burden on businesses. On the contrary, it is a minimal investment that insulates employers from significant fines, potential debarment from government contracts and, in some instances, criminal liability.

Furthermore, mandating the use of E-Verify by all employers in the United States would provide the federal government with the means to systematically conduct effective worksite enforcement operations – protecting American workers from unfair competition and illegal alien laborers from unscrupulous exploitation.

Sincerely,



Dan Stein  
President  
Federation for American Immigration Reform (FAIR)

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<sup>39</sup> Memorandum for Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021).