

# Congress of the United States

Washington, DC 20515

October 19, 2023

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Ave NW  
Washington, DC 20016

The Honorable Ur Jaddou  
Director  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

Dear President Biden, Secretary Mayorkas, and Director Jaddou:

We write to urge the Department of Homeland Security (DHS) to issue an interim final rule that authorizes a renewed 540-day, or longer, automatic work authorization extension period for immigrants who apply to renew their Employment Authorization Document (“EAD”) with U.S. Citizenship and Immigration Services (USCIS). If DHS does not swiftly act, hundreds of thousands of immigrants are likely to lose their jobs far sooner than is practical or expected, putting a strain on immigrant families, cities and states, and the American economy as a whole.

We applaud your administration’s previous effort to prevent immigrants from experiencing a sizeable gap in employment eligibility in the period between applying to renew their work authorization and awaiting a final determination on this application from USCIS. In particular, on May 4, 2022, DHS issued a Temporary Final Rule which temporarily increased the automatic work authorization extension period that key types of EAD renewal applicants receive from USCIS while their application is pending from 180 days to 540 days.<sup>1</sup> Intended as a pragmatic response to the ongoing processing delays for EAD renewals at USCIS, this longer, 540-day automatic extension period prevented an estimated 420,000 immigrants’ work authorizations from lapsing while their EAD renewal applications were still with USCIS.<sup>2</sup> However, after the soon-upcoming date of October 26, 2023, this temporary 540-day automatic extension rule will expire, and USCIS will revert to issuing only 180-day automatic extensions for immigrants with pending EAD renewal applications.<sup>3</sup> Without further action from USCIS, after October 26<sup>th</sup>, **hundreds of thousands of immigrants will be at risk of losing their work authorization, and as a result, their jobs.**

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<sup>1</sup> Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26614 (May 4, 2022), <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation#footnote-51-p26618>.

<sup>2</sup> See Michelle Hackman, *Immigrants to Get Extension for Expiring or Expired U.S. Work Permits*, Wall St. J. (May 3, 2022), <https://www.wsj.com/articles/immigrants-to-get-extension-for-expiring-or-expired-u-s-work-permits-11651579201>.

<sup>3</sup> See 87 Fed. Reg. 26614.

At the time of the administration’s May 2022 Temporary Final Rule, the median processing time for EAD renewal applicants was 5.4 months, which made the 180-day automatic renewal period highly troublesome and impractical for applicants.<sup>4</sup> Over the past year, the agency’s *median* processing time for EAD renewals has been lowered to about three months,<sup>5</sup> but there is still highly troubling data indicating that the agency’s overall *average* processing time is significantly higher than this; in particular, USCIS recently informed our offices that, through October 16, 2023, there were approximately 260,000 immigrants who had applied to renew their EADs that had been waiting for USCIS to process their renewal applications for 180 days or longer.<sup>6</sup> Given the hundreds of thousands of immigrants that remain subject to USCIS’s continued delays, it is highly unlikely that, as of October 26, 2023, USCIS will be able to adjudicate all or nearly all renewal applications before the shorter, 180-day automatic extension period expires—which will inevitably cause applicants to lose their work authorizations before receiving a new EAD. Importantly, these exact concerns were also noted in the USCIS Ombudsman’s 2022 Annual Report. While that report commended USCIS’s May 2022 Temporary Final Rule, the first overall recommendation in the report read as follows:

*USCIS should consider developing a regulation that permanently implements a longer automatic extension period, beyond 180 days, so that delays in adjudicating EAD applications do not interrupt businesses or lead to job losses. Even if USCIS ultimately meets its stated goal for processing EADs in 3 months by the end of FY 2023, backlogs may occur again in the future, as historically they have done since the agency was created.*<sup>7</sup>

As Members of Congress, we write to express our concerns about the impact of widespread job losses if DHS does not issue a permanent, automatic extension period for work authorization renewal applicants of longer than 180 days to address the continued backlog in USCIS processing times for these types of applications. Instead, we strongly feel that an interim final rule with a longer automatic extension period—such as the 540-day extension period authorized by the current Temporary Final Rule—would allow immigrants to continue supporting themselves and their families without the fear of losing their work authorizations solely due to processing delays. Overall, without a longer automatic extension period, immigrants will lose their jobs, their driver’s licenses, and stable access to housing, medical care, and other essential services.

As your administration is aware, many cities and states are already struggling to welcome large numbers of asylum seekers. If DHS does not act swiftly on this issue, cities and states will be facing an even larger crisis, as asylum seekers and other immigrants who have already integrated

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<sup>4</sup> *See id.* at 26618.

<sup>5</sup> Median data provided includes both ordinary EAD applications and EAD renewal applications. *See* U.S. Citizenship and Immigration Services, Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year (September 30, 2023), <https://egov.uscis.gov/processing-times/historic-pt>.

<sup>6</sup> This “as of October 16, 2023” figure of “approximately 260,000,000” applicants was provided to Rep. Espaillat’s office by USCIS on October 18, 2023. This figure was also in line with USCIS’s prior reporting as of June 30, 2023. *See* U.S. Citizenship and Immigration Services, I-765, Application for Employment Authorization Counts of Pending Petitions by Days Pending for All Eligibility Categories and (c)(8) Pending Asylum Category (June 30, 2023), [https://www.uscis.gov/sites/default/files/document/data/i765\\_p\\_allcat\\_c08\\_fy2023q3.pdf](https://www.uscis.gov/sites/default/files/document/data/i765_p_allcat_c08_fy2023q3.pdf).

<sup>7</sup> U.S. Citizen and Immigration Services Ombudsman, *Annual Report 2022* (June 30, 2022), [https://www.dhs.gov/sites/default/files/2022-06/CIS\\_Ombudsman\\_2022\\_Annual\\_Report\\_0.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS_Ombudsman_2022_Annual_Report_0.pdf).

into these communities will lose their jobs and be forced to rely on state and local shelters once again to house themselves and their families. Conversely, an interim final rule to make the current 540-day automatic extension period for work reauthorization applicants permanent would enable immigrants to continue to provide for themselves and their families, lessening the strain on cities and states that are already overburdened.

We also believe that DHS's issuance of this proposed interim final rule is critical for businesses in our communities, as it will prevent immigrant workers from experiencing a gap in their work authorization and therefore avoid serious disruptions to many businesses' ordinary operations. Right now, U.S. businesses are experiencing acute labor shortages<sup>8</sup>; fortunately, immigrants are helping to fill these shortages, especially in key sectors such as construction, medicine, and technology.<sup>9</sup> A gap in work authorizations for many of these immigrants could prove catastrophic for many of these important U.S. industries. Furthermore, in the event that USCIS opts to issue an interim final rule to allow for an automatic extension period of 540 days or longer for EAD renewal applicants, this could allow USCIS to reallocate its scarce resources towards processing much-needed initial employment authorizations for new TPS recipients, parolees, and asylum seekers—providing a boon to U.S. businesses that are in critical need of additional workers.

Lastly, we thank the administration for its recent September 20, 2023 announcement that USCIS would be lengthening the “maximum validity period” for newly-issued and renewed EADs from between one to two years to up to five years for asylum applicants, refugees, and other certain categories of immigrants.<sup>10</sup> However, this new five-year maximum validity period applies only to final determinations on the length of individualized EAD initial applications and EAD renewal applications once those applications are fully processed by USCIS—it has no bearing on the automatic extension period that *all* EAD reapplicants currently receive up until the time when USCIS completes processing and makes a determination. Thus, this September 2023 announcement will not solve the impending crisis related to the ongoing processing delays at USCIS for work permit renewal applications, especially since many of these renewal applications still take USCIS longer than 180 days to process. In other words, individuals who received 2-year EADs before this September 20<sup>th</sup> announcement and who apply to renew their EADs after October 26<sup>th</sup> will still be in need of an automatic extension period of longer than 180 days in order to be assured of not having their work authorizations lapse due to no fault of their own.

In closing, we urge DHS to consider issuing an interim final rule to allow the automatic extension period for work reauthorization applications to remain at no less than 540 days,

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<sup>8</sup> According to the latest data from the U.S. Department of Labor, there are still more open jobs than available workers. *See, e.g.*, U.S. Department of Labor, Bureau of Labor Statistics, Job Openings and Labor Turnover - August 2023 (Oct. 3, 2023), <https://www.bls.gov/news.release/jolts.nr0.htm>; *see also* Jasmine Garsd, *There's a Labor Shortage in the U.S. Why Is It So Hard for Migrants to Legally Work?*, NPR (Aug. 29, 2023), <https://www.npr.org/2023/08/26/1195670024/theres-a-labor-shortage-in-the-u-s-why-is-it-so-hard-for-migrants-to-legally-work#:~:text=Weekend%20Edition%20Saturday>.

<sup>9</sup> Catherine Rampell, *The Missing Immigrant Workers*, Wash. Post (Nov. 22, 2021, 6:49 PM), <https://www.washingtonpost.com/opinions/2021/11/22/legal-immigrant-workers-paperwork-renewal-backlog/>; Julia Preston, *Migrants Desperate for Jobs Trapped in Asylum Maze*, The Marshall Project (Sept. 8, 2023, 5:00 AM), <https://www.themarshallproject.org/2023/09/08/migrants-work-permits-adams-asylum>.

<sup>10</sup> U.S. Department of Homeland Security, Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act (Sept. 20, 2023), <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>.

consistent with the current Temporary Final Rule. As Members of Congress, it is our strong belief that such action would prevent hundreds of thousands of immigrants from losing their jobs, while also providing much-needed stability to immigrant families, U.S. businesses, and U.S. cities that are welcoming new asylum seekers.

We thank your administration for its past actions that have prioritized immigrants and their families, and we look forward to your prompt response on this pressing matter.

Sincerely,



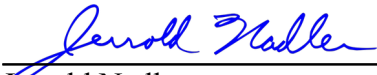
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Adriano Espaillat  
Member of Congress



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Jamaal Bowman  
Member of Congress



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Jerrold Nadler  
Member of Congress



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Jasmine Crockett  
Member of Congress



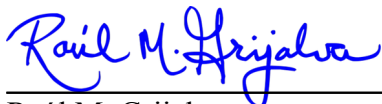
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Eleanor Holmes Norton  
Member of Congress



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Marcy Kaptur  
Member of Congress



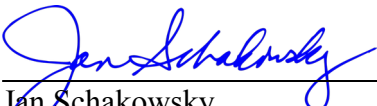
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Raúl M. Grijalva  
Member of Congress



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Rashida Tlaib  
Member of Congress



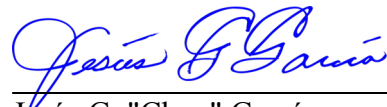
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Jan Schakowsky  
Member of Congress



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Eric Swalwell  
Member of Congress



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Jesús G. "Chuy" García  
Member of Congress



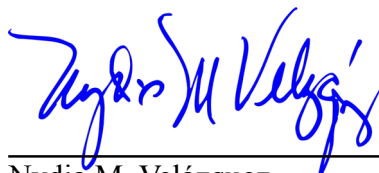
James P. McGovern  
Member of Congress



Bonnie Watson Coleman  
Member of Congress



Donald S. Beyer Jr.  
Member of Congress



Nydia M. Velázquez  
Member of Congress



Ilhan Omar  
Member of Congress



Henry C. "Hank" Johnson, Jr.  
Member of Congress



Emanuel Cleaver, II  
Member of Congress



Ayanna Pressley  
Member of Congress



Raja Krishnamoorthi  
Member of Congress



Dan Goldman  
Member of Congress



Barbara Lee  
Member of Congress



Greg Casar  
Member of Congress



Melanie Stansbury  
Member of Congress



Chellie Pingree  
Member of Congress



David J. Trone  
Member of Congress



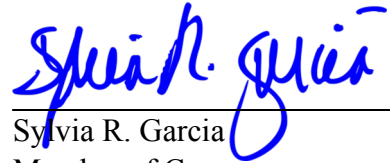
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Katie Porter  
Member of Congress



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Pramila Jayapal  
Member of Congress



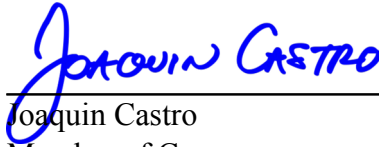
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Sylvia R. Garcia  
Member of Congress



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Ritchie Torres  
Member of Congress



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Joaquin Castro  
Member of Congress



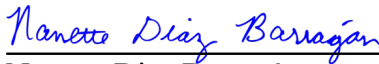
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Yvette D. Clarke  
Member of Congress



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André Carson  
Member of Congress



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Nanette Diaz Barragán  
Member of Congress



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Veronica Escobar  
Member of Congress