

Congress of the United States

Washington, DC 20515

March 29, 2024

The Honorable Joseph R. Biden Jr.
President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue 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 you today as concerned Members of the U.S. Senate and House of Representatives, to urge the Department of Homeland Security (DHS) to swiftly promulgate a rule that would lengthen the automatic extension period for Employment Authorization Documents (EADs or “work permits”) from 180 days to a minimum of 540 days. This longer extension is critical to prevent the impending loss of employment authorization for hundreds of thousands of immigrants as a result of ongoing delays at U.S. Citizenship and Immigration Services (USCIS). Already, DHS has prepared a new rule to lengthen the automatic extension period. In our view, DHS should enact this change via an interim final rule without a sunset date, or alternatively, via a temporary final rule that leaves the benefit in place for at least three years. Furthermore, we understand the new rule is currently under review by the White House, and we encourage the administration to complete its review and publish the rule as soon as possible. Without a new rule, immigrants and asylum seekers who have recently applied to renew their EADs will begin to lose their work authorizations beginning on April 24, 2024, purely due to continued processing delays at USCIS. In the meantime, workers and employers face grave uncertainty. As such, we strongly recommend that DHS issue a new rule well in advance of April 24, 2024.

EADs are typically valid for 180 days after their set expiration date.¹ In May 2022, USCIS issued a temporary final rule that extended this grace period to 540 days, because USCIS faced significant delays in processing EAD renewal applications.² However, that benefit ended on

¹ 8 C.F.R. § 274a.13(d).

² Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26614 (May 4, 2022) (8 C.F.R. § 274), <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>.

October 26, 2023. Since that date, individuals who have applied to renew their EADs have had their expiring EADs extended for only 180 days.³

Though the 540-day grace period expired in October 2023, the need for it still remains. When implementing the 540-day grace period in May 2022, USCIS explained that the new rule was critical because the number of people waiting longer than the 180-day extension for EAD renewals had skyrocketed from just 3,300 in December 2020 to around 66,000 as of December 2021; thus, the agency needed time to permanently correct its EAD renewal backlog.⁴ By April 2023, the number of EAD renewal applications pending for longer than 180 days had reached over 263,000,⁵ and continued rising to over 279,000 by September 2023.⁶ As of the date of this letter, USCIS takes up to 16 months to process 80% of EAD renewal applications for asylum seekers.⁷ This means that, without additional action from USCIS, thousands of immigrants who applied to renew their respective EADs after October 26, 2023, may soon see their work permits lapse beginning on April 24, 2024, purely due to ongoing backlogs.

Indeed, after the 180-day period is exhausted, individuals who are still awaiting approval of their EAD renewal applications cannot work legally.⁸ Many lose their jobs, income, and access to driver's licenses because of bureaucratic delays outside of their control. This severely limits their ability to pay rent, buy food, and support themselves and their families. If they continue to work without authorization, they can also become removable from the United States, and their employers can be subject to civil penalties.⁹

Last fall, over 40 members of the House and Senate raised this issue in multiple letters to DHS and USCIS.¹⁰ Similarly, dozens of mayors and county executives and over 100 civil society

³ U.S. Citizenship and Immigration Services, *Certain Renewal Applicants for Employment Authorization to Receive Automatic 180 Day Extension* (Oct. 27, 2023), <https://www.uscis.gov/newsroom/alerts/certain-renewal-applicants-for-employment-authorization-to-receive-automatic-180-day-extension>.

⁴ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26614 (May 4, 2022) (8 C.F.R. § 274), <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>.

⁵ 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 (Apr. 1, 2023), https://www.uscis.gov/sites/default/files/document/data/I765_P_AllCat_C08_FY2023Q2.pdf.

⁶ 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 (Sept. 30, 2023), https://www.uscis.gov/sites/default/files/document/data/i765_p_allcat_c08_fy2023q4.pdf

⁷ U.S. Citizenship and Immigration Services, Case Processing Times (for I-765 applications based on a pending asylum application – renewal/replacement) (last accessed Mar. 15, 2024), <https://egov.uscis.gov/processing-times/>.

⁸ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26614 (May 4, 2022) (8 C.F.R. § 274), <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>.

⁹ *Id.*

¹⁰ Letter from U.S. Representative Espaillat, Bowman, “Chuy” García, and 32 other Members of Congress to Secretary Mayorkas and Director Jaddou (Oct. 19, 2023), https://espaillat.house.gov/sites/evo-subsites/espaillat.house.gov/files/evo-media-document/updated-final-2023_10_19-congressional-letter-to-prevent-immigrant-eads-from-lapsing.pdf; Letter from Senator Warren and 7 U.S. Senators to Secretary Mayorkas and Director Jaddou (Nov. 2, 2023), [https://www.warren.senate.gov/imo/media/doc/Letter%20to%20DHS%20on%20EADs%20\(signed\).pdf](https://www.warren.senate.gov/imo/media/doc/Letter%20to%20DHS%20on%20EADs%20(signed).pdf).

organizations have urgently requested that DHS address this issue.¹¹ We now write once again to urge the administration to lengthen the automatic extension period for EAD renewals from 180 days to at least 540 days.¹² We strongly recommend that USCIS do so as soon as possible, through an interim final rule without an effective end date, rather than via a temporary rule. Making this change permanent would provide immigrants and their employers much-needed certainty and job stability going forward, in light of USCIS's continued delays in processing EAD renewals.

Alternatively, we believe that DHS should issue a temporary final rule that provides 540-day extensions to any eligible individual who applies for an EAD renewal within the next three years (or longer). The previous temporary rule gave 540-day extensions only to beneficiaries who applied within 18 months of the rule's effective date.¹³ However, this 18-month period proved insufficient for USCIS to meaningfully reduce its backlog. Since then, the backlog has only worsened. Thus, any new temporary final rule should remain in effect for long enough to allow renewal applicants to access this benefit for at least the next three years. Otherwise, hundreds of thousands of immigrants and employers will soon face the same uncertainty with their EADs once again — at no fault of their own.

We understand that DHS has prepared a rule to address this problem by temporarily increasing the 180-day automatic extension period. On March 1, 2024, that rule was submitted to the White House's Office of Information and Regulatory Affairs (OIRA) for review.¹⁴ While OIRA has up to 90 days to review the proposed rule,¹⁵ it is critical that the administration finalize and publish the rule as soon as possible. Employers in our states cannot afford to wait until mid- or late-April to know whether their employees will be able to continue working legally. As immigrant workers who remain in the EAD renewal queue approach the end of the 180-day automatic extension period, they face increasing pressure to demonstrate their continued work authorization, while employers face greater uncertainty about their staffing needs. These employers need to be able to plan and operate knowing that their workforce will not be disrupted by abrupt changes in work authorization status. We therefore urge the administration to issue this rule promptly.

We appreciate the steps your administration has already taken to address the work authorization challenges faced by immigrant communities and to improve EAD processing delays over the

¹¹ Letter from New York City Mayor Eric Adams and 42 other U.S. Mayors and County Executives to Secretary Mayorkas and Director Jaddou (Feb. 12, 2024), https://assets.nationbuilder.com/citiesforaction/pages/528/attachments/original/1707511194/C4A_Advocacy_Letter_re_Auto-Extension_of_EADs_%282%29.pdf?1707511194; Letter from Asylum Seekers Advocacy Project (ASAP) and over 100 other civil society organizations to Secretary Mayorkas and Director Jaddou (Sept. 26, 2023), <https://www.asylumadvocacy.org/wp-content/uploads/2023/10/2023.09.26-Letter-Supporting-an-Expanded-Work-Permit-Automatic-Extension-1.pdf>.

¹² 8 C.F.R. § 274a.13(d).

¹³ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, *supra* note 6.

¹⁴ Pending Executive Order No. 12866 Regulatory Review, Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal, RIN 1615-AC78 (received on Mar. 1, 2024), <https://www.reginfo.gov/public/do/eoDetails?rrid=426713>.

¹⁵ Executive Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 190 (Sept. 30, 1993), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

past calendar year.¹⁶ However, the current situation demands further action to prevent extensive job losses and economic disruption. Once again, we strongly urge DHS to act swiftly to issue an interim final rule that lengthens the automatic work authorization extension to at least 540 days indefinitely, or alternatively, to issue another temporary final rule that leaves that benefit in place for at least three years. Doing so will protect immigrant workers, strengthen the economy, and benefit local host communities around the country.¹⁷

Thank you for your attention to this critical matter.

Sincerely,



Elizabeth Warren
United States Senator



Adriano Espaillat
Member of Congress



Kirsten Gillibrand
United States Senator



Jamaal Bowman, Ed.D.
Member of Congress



Richard J. Durbin
United States Senator



Jesús G. "Chuy" García
Member of Congress

¹⁶ U.S. Citizenship and Immigration Services, USCIS Increases Employment Authorization Document Validity Period for Certain Categories (Sept. 27, 2023), <https://www.uscis.gov/newsroom/alerts/uscis-increases-employment-authorization-document-validity-period-for-certain-categories>; Adriel Orozco, *USCIS Reduces Its Backlog for the First Time in Years*, Immigration Impact (Feb. 16, 2024), <https://immigrationimpact.com/2024/02/16/uscis-reduces-backlog-for-first-time-in-years>.

¹⁷ See Lydia DePillis, *The U.S. Economy Is Surpassing Expectations. Immigration Is One Reason.*, N.Y. Times (Feb. 29, 2024), <https://www.nytimes.com/2024/02/29/business/economy/immigrants-labor.html>.

Ben Ray Lujan

Ben Ray Lujan
United States Senator

Raúl M. Grijalva

Raúl M. Grijalva
Member of Congress

Tammy Duckworth

Tammy Duckworth
United States Senator

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André Carson
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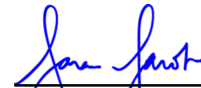
Jacky Rosen
United States Senator



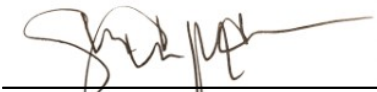
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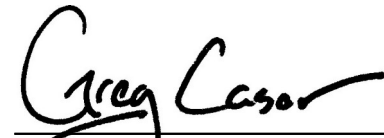
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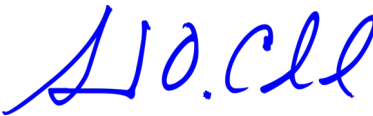
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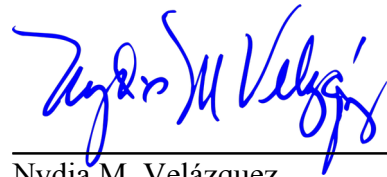
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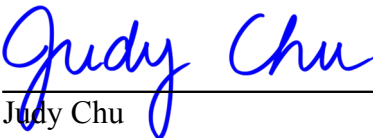
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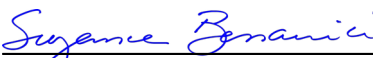
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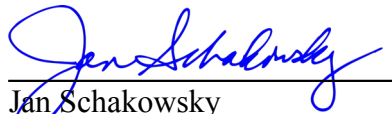
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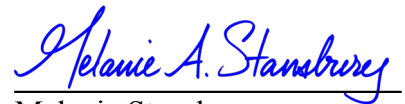



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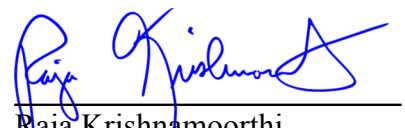

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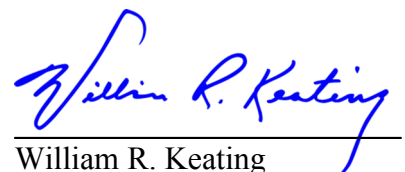

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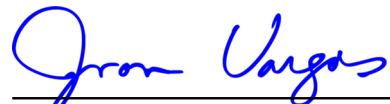
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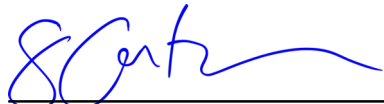
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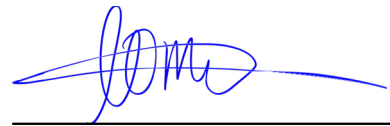
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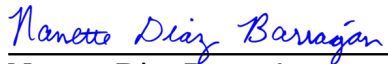
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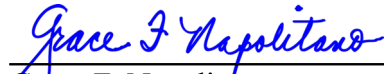
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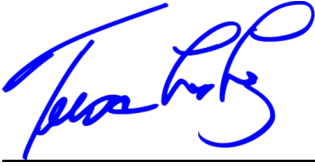
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