LEGAL AND POLICY REASONS TO EXPAND CATEGORIES OF NONCITIZENS ELIGIBLE FOR EMPLOYMENT AUTHORIZATION

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INTRODUCTION

Only certain noncitizens are eligible to apply for work authorization concurrently with their application for relief or benefits, and some groups of noncitizens permitted to remain in the U.S. are nevertheless also ineligible to work. Work authorization eligibility, which is linked to immigration status, is currently established by legislation or regulatory promulgation.[1] A close review of the categories of noncitizens currently eligible for work authorization or an employment authorization document (EAD) reveals that similarly situated persons are not treated equally and that several Department of Homeland Security (DHS) initiatives and other federal policies may be undermined by this discrepancy. To create better equality among applicants and claimants and to further DHS's overall policy agenda as well as broad federal labor and social policies, DHS's U.S. Citizenship and Immigration Services (USCIS) should use its authority to expand the classes of noncitizens eligible for an EAD so as to include the following groups:

(1) Violence Against Women Act (VAWA) self-petitioners;[2]
(2) applicants for T and U status; [3]
(3) applicants for Deferred Action and humanitarian parole;
(4) beneficiaries of forms of prosecutorial discretion for which there is no current EAD eligibility category; and
(5) persons obligated to remain in removal proceedings for a protracted period of time while challenging the constitutionality of a statute, regulation, or agency practice or the basis for their removal or for other legitimate factors.

These five groups represent noncitizens who frequently merit humanitarian assistance or who must wait long or indefinite periods of time for an adjudication of their claims, cases, or applications. Most often individuals in these categories must put forth evidence, generally

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[1] *See generally* 8 C.F.R. § 274.a12.

[2] Under the current agency guidance, VAWA self-petitioners can apply for EAD only after their petition has been approved. *See* Memorandum, from USCIS on Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen, PM-602-0046 (Aug. 30, 2011), *available at* http://www.uscis.gov/USCIS/Laws/Memoranda/2011/August/VAWA-Elder-Abuse.pdf .

[3] In some cases, applicants for T status may obtain an EAD but only after a determination of Continued Presence has been made. *See* 22 U.S.C. § 7105(c)(3)(A)(i); 8 C.F.R. § 274a.12(c)(25); 28 C.F.R. 1100.35. Also, in theory at least, noncitizens with a "pending, bona fide application for nonimmigrant status under section 101(a)(15)(U)" may be granted work authorization. 8 U.S.C. § 1184(p)(3)(B). However, USCIS has not issued guidelines promised in 2008 to implement this statute. *See* Memorandum from Michael Aytes, Acting Deputy Director, USCIS, Response to Recommendation 39, Improving the Process for Victims of Trafficking and Certain Criminal Activity: The T and U Visas, 4 (May 22, 2009), *available at* http://www.dhs.gov/xlibrary/assets/uscis_response_cisomb_rec_39.pdf. At a minimum, the promised guidelines should be issued promptly to establish work authorization for this subgroup.

corroborated, of compelling circumstances that warrant the requested relief.[4] Applicants for VAWA and U and T status must show that they are victims of domestic violence, sexual assault, trafficking, or other horrific crimes.[5] Deferred Action applicants must demonstrate extraordinarily sympathetic factors that would render removal unconscionable[6] or illustrate a harsh and inhumane enforcement of the statute, or prove that the immigration violation is doubtful or trivial.[7] Humanitarian parole applicants must put forth emergency reasons or evidence that establishes a significant public benefit[8], as humanitarian parole, though not defined specifically in any regulation, is meant to be granted in exceptional circumstances presenting significant humanitarian concerns.[9] Regardless of these heightened requirements, these applicants must wait until their applications or claims are resolved, or at least until a preliminary determination is rendered, before they can qualify for an EAD.[10] Under current regulations, no applicant for these forms of humanitarian relief is eligible for an EAD by virtue of his or her status as an applicant, regardless of merit or need.[11]

Current regulations similarly exclude most persons in removal proceedings from EAD eligibility, even though they may be beneficiaries of prosecutorial discretion for sound policy reasons or remain in protracted removal proceedings. Before the 1983 revisions to 8 C.F.R. § 103, noncitizens in deportation proceedings *were* allowed to work unless the Regional Commissioner imposed a bar on employment.[12] Today, however, there is no authority for persons in removal proceedings to obtain EADs solely on this basis, even on a discretionary basis, and this is so regardless of how long their proceedings may last, the reasons for the delay, or the strength of their humanitarian equities.[13]

Expanding work authorization eligibility to include the five above-described groups will promote greater equality of treatment among similarly situated persons and will better reflect the legislative intent behind the creation of the T, U, and VAWA statuses and the agency/policy goals behind creation of the statuses established administratively. It will also limit the imposition of unnecessary hardship on noncitizens while they remain dependent on agency processing of their cases, claims, requests, and applications as well as reduce the economic need

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[4] For example, noncitizens seeking U or T status must submit a Form I-918, Supplement B signed by a law enforcement officer who can certify that the noncitizen was a victim of crime and assisted the government in its investigation and/or prosecution of that crime.

[5] To qualify for U status, the applicant must put forth evidence that he or she has been a victim of at least one of the serious crimes listed in 8 U.S.C. § 1101(a)(15)(U)(iii), which include rape, incest, torture, and female genital mutilation, among other crimes.

[6] STEPHEN H. LEGOMSKY & CHRISTINA M. RODRIGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 630 (5th ed. 2009).

[7] 6 CHARLES GORDON, STANLEY MAILMAN, & STEPHEN YALE-LOEHR, IMMIGRATION LAW AND PROCEDURE § 72.03[2][a] (2011).

[8] 8 C.F.R. § 212.5.

[9] GORDON, *supra* note 8 at § 62.03.

[10] *See supra* text accompanying notes 2 and 3 and *infra* text accompanying note 13.

[11] *See* 8 C.F.R. § 274a.12.

[12] *See* 48 Fed. Reg. 51,142; 48 Fed. Reg. 51,144 (1983); *see generally* Charles D. Brown, *Imposition of No-Work Conditions On Bonds In Deportation Proceedings*, 52 FORDHAM L. REV. 1009 (1984), *available at* http://ir.lawnet.fordham.edu/flr/vol52/iss5/11.

[13] There are narrow exceptions for persons granted a stay of removal or an order of supervision. *See* 8 C.F.R. § 274a.12(c)(18); 8 U.S.C. § 1227(d)(1).

that may drive many of those in these categories into unlawful employment as a matter of survival.

I. The designation of categories of noncitizens eligible for an EAD should promote equal treatment of similarly situated groups.

The Administrative Procedures Act sets forth the governing legal principle that administrative regulations and policies should not be arbitrary and capricious.[14] There is little discernible reason why applicants for adjustment of status or suspension or cancellation of removal can apply concurrently for relief and an EAD while Deferred Action, humanitarian parole, U and T status applicants and VAWA self-petitioners must wait until the relief is granted or approved or until a preliminary determination is made before they can apply for an EAD.[15] Applicants for these forms of humanitarian relief are often in circumstances similar to, if not more dire than, those of applicants for adjustment of status or suspension or cancellation of removal; and they may have equally or more compelling need to work. For example, a U applicant must have "suffered a substantial physical or mental abuse as a result of being a victim of criminal activity," among them rape, torture, trafficking, and domestic violence and must have demonstrated the courage to assist law enforcement with the investigation or prosecution of the crime.[16] Victims of human trafficking have often survived horrific situations which have left them suffering from trauma-related symptoms. Allowing such applicants to apply for employment authorization concurrently can reduce such stressors as well as financial hardships, avoiding further psychological trauma and/or re-victimization.

An additional group of persons who would benefit from obtaining an EAD are those in removal proceedings who have been granted a favorable exercise of DHS's prosecutorial discretion. Using such discretion, DHS may grant noncitizens in removal proceedings several different remedies, including administrative closure, termination of the proceedings, or a stay of removal, among other alternatives.[17] Although DHS uses similar processes and criteria for making all decisions about prosecutorial discretion, noncitizens granted a stay of removal may qualify for an EAD, while those granted administrative closure or termination of proceedings do not. Since prosecutorial discretion is exercised for the same underlying factors regardless of the form it takes, permitting only some beneficiaries to work and build self-sufficient lives while denying the same opportunity to other beneficiaries creates uneven and potentially unfair treatment among prosecutorial discretion beneficiaries.

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[14] 5 U.S.C. § 706.2(A).
[15] *See* 8 C.F.R. § 274A.12(c)(9),(10); *see also* notes 2 and 3, *supra*.
[16] Immigration and Nationality Act (INA) § 101(a)(15)(U)(i), (iii).
[17] Policy memos list a number of removal actions subject to prosecutorial discretion with the ultimate goal of removing those who pose a danger to national security or public safety. Prosecutorial discretion extends to the decision to issue or cancel a notice of detainer; the decision to issue, reissue, serve, file, or cancel a Notice to Appear; the decision of whom to detain or to release on bond, supervision, personal recognizance, or other condition; the settling or dismissal of a proceeding; the grant of Deferred Action, parole, or staying of a final order of removal; the pursuit of an appeal; execution of a removal order; and considering joining in a motion to grant relief or a benefit. *See* Memorandum from John Morton, Director, ICE, on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens 2-3 (June 17, 2011), *available at* http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.

Finally, noncitizens obligated to remain in protracted removal proceedings in order to resolve legitimate constitutional challenges to the validity of a statute, regulation, or agency practice, or while challenging the factual or legal basis for removal, and those who assert other legal rights that must be resolved in proceedings are similarly situated to applicants for relief such as adjustment, suspension, cancellation, and other remedies – who *are* allowed to apply concurrently for EADs while in proceedings. Like such applicants these claimants are defending themselves from removal on legal grounds that merit review, and they should not be penalized with a bar on employment while asserting their rights. The backlog of cases before the Executive Office for Immigration Review (EOIR) and the complexity of these types of claims, moreover, mean that noncitizens must often wait significant periods of time before they receive a final decision concerning these claims. Allowing this group to apply for an EAD not only provides parity among respondents before EOIR but also promotes the exercise of legal rights and protections by noncitizens who might otherwise forfeit their rights simply because they cannot survive while in proceedings.

The above-described discrepancies among applicants for relief and among categories of other claimants may also be at odds with USCIS overall policy objectives of "consistency, integrity, transparency and efficiency."[18] Allowing EADs for some but not all similarly situated groups, as described above, potentially compromises these goals, especially in the absence of articulated rationales for treating groups differently despite their seemingly similar situations. An expansion of work authorization eligibility, therefore, strengthens DHS's policies, initiatives and reputation with the public by providing the necessary parity among similarly situated applicants.

II. Expanding the categories of noncitizens eligible for EADs is in line with the agency's humanitarian and fairness objectives.

A. Humanitarian protection, an underlying purpose for U and T status and VAWA self-petitioning relief, is compromised if applicants cannot work during the pendency of their applications.

Congress's purpose in passing the Victims of Trafficking and Violence Protection Act of 2000, which created T and U status, was to protect victims of crime.[19] When discussing trafficking victims, U.S. Immigration Customs and Enforcement ("ICE") officials stated that ICE's "primary concern is your safety and ensuring that you and others like you are not victimized again."[20] Similarly, Congress enacted provisions of the Violence Against Women Act (VAWA) of 1994 to allow victims of domestic violence to file for adjustment of status

[18] Press Release, USCIS Announces First Ten Areas of Focus for Agency-wide Policy Review: Public Survey Informs Selection (July 26, 2011), http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3205d06dcebf9210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD .

[19] Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101.

[20] ICE, INFORMATION FOR VICTIMS OF HUMAN TRAFFICKING 2 (Apr. 2010), *available at* http://www.dhs.gov/xlibrary/assets/ht_ice_victim_assistance_program.pdf.

independent of an abusive partner or family member.[21] Time and again, Congress has demonstrated its commitment to protecting victims from abuse and to removing barriers to living independently and free from abuse.[22]

In light of the fact that the U.S. is one of only forty-five countries worldwide with any legislation protecting women against domestic violence,[23] the hardship-prevention goals are clearly paramount. However, victims of abuse, trafficking and other crimes may not seek this invaluable relief if they are unable to work and live financially independent from their abuser for long periods of time. For VAWA beneficiaries, a policy decision was made early on to provide "*prima facie*" letters that conferred eligibility for certain safety net benefits.[24] Not allowing these victims to file for an EAD concurrently with their application for relief actually creates an obstacle to leaving dangerous, abusive situations by undermining their ability to live independently.[25] Victims who do escape domestic violence and manage to apply for relief typically suffer great emotional stress and hardship[26] and face the prospect of even greater hardship if unable to work from the inception of their application period throughout its entirety. Currently, USCIS estimates processing times for U applications to be more than eight months and more than seven months for T applications.[27] Delays may hamper these victims' recovery from the emotional and physical trauma they experienced, and any added economic stressors may even lead them to return to the abusive situations.[28]

Congress's purpose of protecting victims of domestic violence[29] is thwarted if victims of domestic violence remain in abusive situations and do not apply for relief because of financial barriers. Thus, expanding employment authorization for these groups of victim-applicants would be consistent with Congress's protective goals. Additionally, approval rates for these forms of relief are so high that denying applicants a means of livelihood during the application process makes such hardship gratuitous. For example, in 2009, U status applicants had an 89.5%

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[21] *See* 8 U.S.C. § 1255.
[22] NAT'L NETWORK TO END DOMESTIC VIOLENCE, THE VIOLENCE AGAINST WOMEN ACT OF 2005: SUMMARY OF PROVISIONS, *available at* http://nnedv.org/docs/Policy/VAWA2005FactSheet.pdf.
[23] TAHIRIH JUSTICE CTR., DOMESTIC AND INTIMATE PARTNER VIOLENCE, *available at* *http://www.tahirih.org/mission/the-issues/domestic-and-intimate-partner-violence/*
[24] *See generally*, Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 Fed. Reg. 65,285 (Dec. 11, 1997).
[25] *See* TAHIRIH, *supra* note 23; *see also* Susan Girardo Roy, *Restoring Hope or Tolerating Abuse?*, 9 GEO. IMMIGR. L. J. 263, 271 (1995). *see also* Susan Girardo Roy, *Restoring Hope or Tolerating Abuse?*, 9 GEO. IMMIGR. L. J. 263, 271 (1995).
[26] *See supra* notes 23-26.
[27] USCIS, USCIS Processing Time Information for Our Vermont Service Center, Oct. 18, 2011, https://egov.uscis.gov/cris/processTimesDisplayInit.do
[28] *See* Felicia E. Franco, *Unconditional Safety for Conditional Immigrant Women*, 11 BERKELEY WOMEN'S L. J. 99 (1997); Michelle J. Anderson, *A License to Abuse*, 102 YALE L. J. 1401, 1403 (1993). Significant percentages of homeless women throughout the U.S. list domestic violence as the immediate cause of their homelessness. For example, approximately 50% of families in Washington DC's homeless shelter system have experienced domestic violence, and in Chicago in 2003, 56% of women in homeless shelters reported domestic abuse in their previous relationship. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, SOME FACTS ON HOMELESSNESS, HOUSING, AND VIOLENCE AGAINST WOMEN, *available at* http://www.nlchp.org/content/pubs/Some%20Facts%20on%20Homeless%20and%20DV.pdf.
[29] GORDON, *supra* note 8 at § 41.05(1), (2).

approval rate; T applicants had an 80% approval rate, and VAWA applicants had a 79.5% approval rate.[30]

Furthermore, U and T statuses were created in part as a tool to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, human trafficking, and other crimes by offering protection to victims of such crimes, who can assist with criminal investigations and prosecutions. The expansion of EAD eligibility to applicants for U and T status is consistent with DHS' recent efforts to combat trafficking by removing the hurdles that prevent victims from coming forward and prosecuting their abusers.[31] To better encourage victims to leave dangerous situations and allow them to recover and become self-sufficient, DHS should allow these groups to request an EAD concurrently with their applications.

B. Expansion of EAD eligibility to applicants for Deferred Action and humanitarian parole is consistent with the compassionate values underlying the establishment of these remedies.

Deferred Action and humanitarian parole were created in large part to provide relief to noncitizens who have no other legal means to remain in the United States but were placed in extraordinary or humanitarian crisis or in other dangerous situations where it was in the public's interest to grant them relief. Historically, compelling humanitarian factors such as medical hardship and U.S. ties have guided Deferred Action decisions; and the intent of humanitarian parole is to serve similarly humanitarian goals.[32] Yet, despite such lofty goals, denying an applicant an EAD during the application process may exacerbate the very emergency conditions that led to the need for relief. Refusing to allowing applicants to lawfully work diminishes the utility of the agency's discretion to grant Deferred Action or humanitarian parole especially in cases in which economic self-sufficiency and workforce integration can alleviate the conditions that led the agency to consider a grant of such relief.

Agency policy created Deferred Action as "an act of administrative convenience to the government which gives some cases lower priority."[33] In other words, the deportation proceeding involved is withheld or cancelled.[34] Operating Instructions were withdrawn in 1997, but the relief remains available and has been further developed in subsequent agency policy memoranda, most recently in June 2011.[35] In deciding when to grant Deferred Action, the agency has

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[30] Agenda, USCIS National Stakeholder Meeting, Jan. 26, 2010, *available at* http://www.uscis.gov/USCIS/Resources/Public%20Engagement/National%20Event%20Pages/2010%20Events/January%202010/Jan%202010%20Agenda%20FINAL.pdf

[31] DEP'T OF HOMELAND SECURITY, FACT SHEET: DHS BLUE CAMPAIGN, Apr. 8, 2011, http://www.dhs.gov/ynews/gc_1279809595502.shtm.

[32] GORDON, *supra* note 8 *at* § 72.03(2)(h); *see also* LEGOMSKY *supra* note 7 at 252.

[33] Memorandum from Prakash Khatri, CIS Ombudsman, Recommendation from the CIS Ombudsman to the Director USCIS (Apr. 6, 2007), *available at* http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf.

[34] GORDON, *supra* note 8 at § 72.03[2][a].

[35] Memorandum from John Morton, Director, ICE, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens 5 (June 17, 2011), *available at* http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf; *see*

historically looked to "[t]he presence of sympathetic factors" that would likely trigger "a large amount of adverse publicity."[36]

Additionally, because these decisions often take a long time to make and because there are no published guidelines or processing times explaining how requests are reviewed (especially for Deferred Action),[37] failure to provide for employment authorization may exacerbate the circumstances and prolong the hardship that gave rise to the need for relief.[38] As an illustration of the uncertain and bleak situation in which many such applicants find themselves, one can consider the 800 Haitians who filed Deferred Action requests after the January 2010 earthquake because they were evacuated from Haiti too late to be eligible for TPS, until the recent re-designation. For months, the status of these requests remained in limbo[39]despite the urgency of the earthquake refugee crisis and the fact that Haitians, as both black and foreign-born non-U.S. citizens, were disproportionately likely to face poverty.[40] The inability of these applicants to obtain legal work caused prolonged hardship rather than fulfilling the humanitarian and fairness purposes of the relief.

ICE Director John Morton recently confirmed the humanitarian foundations of these remedies when he articulated the relevant factors guiding the decision about whether to exercise favorable prosecutorial discretion – including Deferred Action.[41] These factors, similar to those that form the basis for applications for humanitarian parole,[42] illuminate the federal policy imperative of addressing unique humanitarian and other compelling circumstances at the margins of the letter of the law and the imperative to protect those who are rendered vulnerable by such conditions.[43] Failure to provide EADS to applicants with such exceptional humanitarian equities undermines the core federal policy values that have traditionally humanized immigration law and

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also Memorandum from Donald Neufeld, Acting Associate Director, Office of Domestic Operations, USCIS, Guidance Regarding Surviving Spouses of Deceased US Citizens and Their Children (June 15, 2009), *available at* http://www.uscis.gov/USCIS/Laws/Memoranda/2009/June%202009/surviving-spouses-deferred-action-guidance.pdf; Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Liberians Provided Deterred Enforced Departure, 76 Fed. Reg. 53,145 (Aug. 25, 2011).

[36] Former INS Operating Instruction § 242.1(a)(22).

[37] There have been significant delays on processing Deferred Action requests for Haitians, for example. USCIS, Questions and Answers: Quarterly National Stakeholder Engagement 6, Feb. 24, 2011, *available at* http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pages/2011%20Events/February%202011/QA%20-%20Quarterly%20National%20Stakeholder%20Meeting.pdf. *See also* Khatri Memorandum at note 33 *supra*.

[38] USCIS has refused to post general information such as statistics and other information about Deferred Action on the USCIS website. *See* Memorandum from Dr. Emilio T. Gonzalez, Director, USCIS, Response to Recommendation 32, Deferred Action 1 (Aug. 7, 2007), *available at* http://www.dhs.gov/xlibrary/assets/cisombudsman_rr_32_o_deferred_action_uscis_response_08-07-07.pdf .

[39] Letter from Consortium to Promote Economic Recovery in Haiti to January Contreras, CIS Ombudsman, Follow Up to February 18, 2011, Conference Call Regarding Relief for Haitians and Haitian Immigrants, Feb. 24, 2011 (copy on file with MLRI). *See also* Khatri Memorandum and USCIS Questions and Answers at note 37 *supra*.

[40] KAISER FAMILY FOUND., MASSACHUSETTS: POVERTY RATE BY RACE/ETHNICITY 2008-2009, http://www.statehealthfacts.org/profileind.jsp?ind=14&cat=1&rgn=23.

[41] Memorandum from John Morton, *supra* note 18.

[42] 8 C.F.R. § 212(a)(5); *see also* GORDON, *supra* note 8 at 72.03[2][a] 630 (2011).

[43] *See* Recommendation from CIS Ombudsman, *supra* note 38.

made such relief an essential remedy of last resort for both vulnerable noncitizens and immigration authorities.

III. Expansion of EAD eligibility to the above-described categories of noncitizens would further federal goals that promote employment as a cure for poverty and an avenue to self-sufficiency.

The U.S. Department of Labor's mission encompasses "advanc[ing] opportunities for profitable employment."[44] Department of Labor programs also recognize that employment is a pathway to escaping poverty.[45] These antipoverty goals would be well served by expanding EADs to noncitizens in the applicant status groups and other above-described categories so that they can meet their survival needs while asserting their legal rights. With more individuals qualified for employment, the pool of authorized workers would also grow – thus helping to diminish the incentive for employers to hire unauthorized workers, while expanding opportunities for the types of profitable employment that ultimately move low-income people out of poverty. Policies that drive noncitizens into the sorts of unauthorized employment that individuals without EADs typically obtain, i.e., low-skilled and poorly paid,[46] by contrast, interfere with the federal policy objective of advancing profitable employment opportunities.

With EAD eligibility, individuals in the proposed expansion categories and their dependent family members need not be forced into poverty before their applications or claims are resolved.[47] Rather, federal expansion of employability among this population would augment the opportunities to reduce poverty overall by increasing self-sufficiency since many of those in currently excluded groups categorically lack access to financial resources with which to overcome poverty, absent employment. For example, victims of abusive domestic situations are often denied control of their own money and are subjected to other forms of economic abuse by their partners.[48] More generally, foreign-born workers who are unable to obtain EADs are far more likely to experience violations of minimum wage and overtime laws, particularly if they are women.[49] Since abuse of undocumented workers arguably drives down the wages of all workers,

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[44] DEP'T OF LABOR, OUR MISSION, http://www.dol.gov/opa/aboutdol/mission.htm (last visited Sept. 27, 2011).
[45] In a new program called "Pathways Out of Poverty," the Department has created training grants for "green" jobs. *See* Press Release, US Department of Labor Announces $150 Million in 'Pathways Out of Poverty' Training Grants for Green Jobs (Jan. 13, 2010), *available at* http://www.dol.gov/opa/media/press/eta/eta20100039.htm.
[46] Adam Davidson, Q. & A.: Illegal Immigrants and the US Economy, N.P.R., Mar. 30, 2006, *available at* http://www.npr.org/templates/story/story.php?storyId=5312900.
[47] Public resources may also be conserved to the extent that work-ineligible noncitizens are obligated to turn to costly emergency safety net programs for their citizen dependents. It is also worth noting that once they are EAD-authorized, applicants for status would have an increased ability to pay immigration fees on other applications and on EAD renewals and would no longer have to rely on fee waivers. This promotes USCIS administrative adjudication goals overall given that 90% of its budget comes from fees that applicants and petitioners pay.
[48] ACLU, DOMESTIC VIOLENCE AND HOMELESSNESS, http://www.aclu.org/FilesPDFs/housing%20paper.4.pdf (last visited Sept. 27, 2011).
[49] NAT'L EMPLOYMENT LAW PROJECT, WORKPLACE VIOLATIONS, IMMIGRATION STATUS, AND GENDER: SUMMARY OF FINDINGS FROM THE 2008 UNREGULATED WORK SURVEY, Aug. 2011, *available at* http://www.nelp.org/page/-/Justice/2011/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf?nocdn=1.

reducing such abuses improves labor conditions overall.[50] Thus, expansion of EAD eligibility as proposed here furthers DHS' and other federal initiatives to curtail unlawful employment by giving more noncitizens an option to financially support themselves while improving labor and wage conditions for all.

CONCLUSION

As USCIS strives for consistency and integrity, it should seek to create greater parity of treatment in access to EADs since individuals in all categories may share the same compelling social and economic circumstances warranting a chance to earn a living. To a victim of crime or domestic violence, who may not understand the nuances and complexities of immigration law, the distinctions between who can and cannot work while an application for relief is pending simply does not make sense. These and other perceived discrepancies in EAD access may contribute to public perceptions that federal employment authorization policies are arbitrary and capricious and may fuel general public mistrust. Because of the resulting hardship imposed upon applicants and other categories of noncitizens currently ineligible for EADs, as well as the overwhelming federal policy objectives that militate against such ineligibility and the legislative intent and agency policy objectives that underlie the forms of relief sought by noncitizens in the currently excluded categories, USCIS should strongly consider expanding the employment authorization eligibility of these five groups. At a minimum, consistent with the eligibility criteria established for some categories of noncitizens under current regulations, EADs should be available on a case by case basis to persons in any one of the currently ineligible categories if they establish an economic need to work.[51]

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[50] *See* Press Release, The White House, Remarks By the President After Meeting With Members of Congress to Discuss Immigration, June 25, 2009, *available at* http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-after-meeting-with-members-of-Congress-to-discuss-immigration/ (including a statement from President Obama that some employers are "using illegal workers in order to drive down wages").

[51] *See, e.g.*, 8 C.F.R. § 274a.12(c)(3)(iii)(14), (18).