



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

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Office of Policy and Strategy
U.S. Citizenship and Immigration Service 5900 Capital Gateway Drive
Camp Springs, MD 20746

Submitted via <http://www.regulations.gov>

Re: Mandatory Electronic Filing (e-Filing) (Docket No. USCIS-2026-0232)

To Whom it May Concern:

The American Immigration Lawyers Association (AILA) submits this comment in response to the interim final rule (IFR), *Mandatory Electronic Filing (e-Filing)*, published in the Federal Register on August 11, 2026, by U.S. Citizenship and Immigration Services (USCIS).¹

Established in 1946, AILA is a voluntary bar association of more than 18,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We believe that our members' collective expertise and experience make us particularly well-qualified to offer views on this matter.

I. USCIS's Current E-Filing Systems Are Not Sufficiently Reliable to Support Mandatory E-Filing

AILA supports USCIS's efforts to modernize the immigration-benefits system and recognizes that a well-designed electronic filing system can reduce mailing burdens, improve access to case information, and facilitate more efficient adjudication. An electronic filing system should be considered ready for mandatory use only if it can reliably accept and capture complete benefit requests, including all required forms, fees, signatures, and supporting evidence, and automatically preserve filing dates when system failures prevent timely submission. The IFR would allow USCIS to mandate e-filing after a form has been electronically available for 180 days. That standard is not a reliable measure of readiness. USCIS currently uses materially different electronic workflows, including guided online filing and PDF Upload, that do not offer uniform functionality across forms and account types. AILA members' experiences demonstrate that availability alone is not a meaningful measure of operational readiness, because the user

¹ 91 Fed. Reg. 51924 (Aug. 11, 2026).

experience and system capabilities vary. As a result, the availability of a form online does not necessarily mean that the electronic filing process is fully functional, reliable, or equivalent to paper filing.

a. Case-Management System Integration Must Precede Mandatory Electronic Filing

USCIS should not mandate electronic filing until it provides meaningful, workable, and effective integration with the case-management systems used by law firms and other high-volume filers. Requiring exclusive use of USCIS's existing online filing platforms would impose substantial operational burdens and could materially interfere with applicants' ability to exercise their right to be represented by counsel and to have their attorneys prepare and file applications and petitions on their behalf. The Internal Revenue Service has successfully developed systems that allow tax professionals and high-volume filers to submit filings electronically through compatible third-party software. USCIS should be capable of creating a comparable integration and should do so before making electronic filing mandatory.

b. The Current Systems Reject or Distort Legally Correct Filings

USCIS's electronic systems continue to generate false validation errors that experienced practitioners cannot predict or reliably correct. In one Form I-129 matter reported by an AILA member, PDF Upload reported that the beneficiary's name did not match across the related forms. Counsel reviewed the forms, made changes, and confirmed that no discrepancy existed. Nevertheless, the error persisted through at least fifteen attempts using multiple devices, accounts, and locations. The repeated failure across different environments strongly indicates that the obstacle was not user error, but a defect in the system's validation process.

PERM-based Form I-140 filings reveal similar problems. AILA members have reported that PDF Upload rejected valid, government-generated ETA-9089 materials because pages were allegedly out of order, names or DOL case numbers supposedly did not match, documents were "unrecognized," or the labor certification was purportedly expired when its certification period remained valid. In one matter, the system rejected an original DOL-generated PDF, a scanned signed version, and separately uploaded signature pages—producing inconsistent error messages depending on which version was used. In another, the system initially marked the forms and evidence "complete," but then produced a series of unexplained errors at the final review stage and disabled the submission button. Practitioners tried different browsers, file sizes, scanners, formats, and document configurations without success and ultimately filed the same materials on paper.

Guided online filing presents a related risk: the system may distort correct information during form generation. In one H-1B matter, counsel completed the guided workflow and the client reviewed and approved the information. Yet the forms generated in the USCIS attorney portal afterwards contained blanks in required fields, and the system provided no means to populate those fields. Counsel withdrew the electronic filing rather than risk submitting an incomplete petition that could result in rejection or denial. In another matter, correctly entered information generated a Form G-28 identifying the filing as one submitted by an "applicant" rather than a "petitioner." These examples undermine the IFR's reliance on elapsed time as a proxy for readiness. A system can be

online for 180 days and still be unable to recognize valid documents, preserve accurately entered information, or accommodate legally permissible filing structures.

c. Electronic Filing Failures Can Jeopardize Status, Eligibility, and Filing Deadlines

These defects are not ordinary website inconveniences because the filing or inability to file is connected to substantive immigration outcomes. In immigration practice, the filing date can determine whether an individual maintains lawful status, remains eligible for employment authorization, preserves a lengthy and expensive labor certification process, or qualifies for an immigration benefit. In one I-129 attempted submission, an AILA member began the filing process within the applicable extension window. Repeated system errors, however, prevented submission before that window closed. Counsel therefore had to submit the petition on paper using premium processing and requested that USCIS use its discretion to excuse the late filing under 8 CFR § 214.1(c)(4). Counsel also contacted the USCIS customer service line and opened a service inquiry, but no timely response was received. A filing effort initiated within the permitted period was thus converted into a request for discretionary late-filing relief solely because the government's filing system would not accept correct information.

In another H-1B matter, the filer completed the required steps and submitted payment while the filing remained timely, but the portal repeatedly returned the filer to an earlier stage of the draft rather than submitting the petition. Despite dozens of attempts, the technical problem continued until the deadline passed. The filer opened a technical support ticket but could not submit another ticket because the account permitted only one open request. When USCIS eventually responded, it stated that it could not resolve the problem. The consequence was not merely administrative inconvenience; the system failure effectively deprived the petitioner and beneficiary of access to a statutory and regulatory immigration benefit despite diligent efforts to comply with all filing requirements.

Time-sensitive I-140 cases present the same concern. In one PERM-based I-140 matter, the beneficiary was approaching the H-1B maximum period of stay and an approved I-140 was needed to support a reported AC21 extension strategy. Counsel attempted to file electronically, but the system falsely identified page-order and name discrepancies in the certified labor-certification materials, forcing resort to paper filing and consuming critical time within the remaining eligibility window. AILA members reported repeated system failures preventing submission of the complete filings during the certification window with no responses from USCIS for technical assistance. In one case, to preserve the I-140 filing opportunity, counsel removed evidence the system would not accept so that the petition could be submitted. The petition then disappeared from the attorney's submitted-cases view; the first meaningful confirmation of filing was an RFE requesting the very evidence that the portal had prevented counsel from uploading.

These examples demonstrate the risk of mandating electronic filing simply based on how long e-filing has been available. Rather a determination about whether e-filing is mandated, should be consider system accuracy and user adoption rates, considering factors such as high user adoption, a completion rate equal or higher to paper filings, a high successful submission rate and low abandonment rate, a minimal technical failure rate, an excellent system uptime, a fully compliant accessibility option, and an exception process. If the government's exclusive filing

channel fails, requestors may lose status, work authorization, or eligibility for an immigration benefit. USCIS should not impose that risk unless it can reliably accept timely submissions or preserve the filing date of a documented, timely filing attempt.

d. USCIS Lacks an Effective Remedy When Its Own System Fails

The most serious readiness problem is not that technical errors occur; errors will occur in any system. The problem is that USCIS has not established a remedy capable of protecting a filing while the error is investigated. Members report technical inquiries that received only an automated acknowledgment, responses arriving after the filing need had passed, and cases in which USCIS ultimately stated that it could not resolve the problem. USCIS's public support process states that requests are processed in the order received and cautions users not to submit duplicate inquiries. That model is inadequate where an immigration deadline may expire before the request reaches a technical specialist.

The reported one-open-ticket restriction compounds the risk. In addition to the H-1B matter that missed the June 30 deadline, another practitioner could not report additional PDF Upload problems because an earlier inquiry remained pending, while a third was blocked from opening a new request even though the prior issue had already been resolved. A representative or institutional account may manage numerous unrelated filings at the same time. USCIS cannot reasonably require such an account to wait for resolution of one technical problem before reporting another potentially deadline-sensitive failure, particularly in a high-volume practice. USCIS must provide escalation avenues for time-sensitive cases.

AILA members have had to pursue extraordinary escalation because the ordinary support process was wholly ineffective. One unexplained I-129 rejection posted the filing fees even though the submission was not accepted. Counsel sent technical assistance emails, provided follow-up information, contacted an ombudsman, and called the finance center. The benefit request was ultimately resolved through a new filing, but the fee problem remained unresolved. In an I-751 matter, account roles were corrupted, notices were misdirected, a client's name appeared on unrelated matters, and the case disappeared from the account. The problem was corrected only after congressional intervention over a period of months. A mandatory federal filing system cannot depend on access to an ombudsman, a specialized operational unit, or a congressional office to restore basic account functionality.

Paper filing presently serves as the practical safety valve when these failures occur. Members used paper after false name mismatches, rejection of DOL-generated documents, unexplained page-order errors, evidence-upload failures, fee problems, and unresolved support requests. Under mandatory e-filing, that remedy would disappear. The IFR's advance hardship-waiver process does not address an unexpected technical failure encountered at the submission stage, and the rule expressly provides that the waiver request itself does not preserve the filing date. USCIS therefore proposes to remove the existing fallback without replacing it with a real-time escalation mechanism, an alternative submission channel, or a filing-date safe harbor.

e. Represented and Institutional Workflows Remain Unreliable

USCIS also has not demonstrated that its systems can reliably support represented and institutional filings. Members have reported petitions disappearing from the attorney's account

while remaining visible in the employer's account. In two H-1B matters reported by AILA members, petitions disappeared before an approval or RFE was issued. Counsel could not obtain the electronic approval notice in one case and had to contact the premium-processing unit for the RFE in the other, followed by a paper RFE response; neither petition was restored to counsel's portal.

Members also report that PDF Upload organizational accounts cannot reliably accommodate affiliated corporate entities, even where a single organization account works for those entities in direct online H-1B filings. The reported PDF Upload workflow accepted only the entity used to establish the account, which would require separate organizational accounts and email addresses for affiliated entities and team members. Other filings encountered G-28 errors based on capitalization, punctuation, or the use of the same address by in-house counsel and the petitioning organization. Before e-filing becomes exclusive, counsel must be able to maintain visibility into filed matters, receive notices, preserve the attorney-client relationship, and manage lawful, high-volume corporate filing structures without relying on improvised workarounds.

For these reasons, AILA urges USCIS not to mandate a form merely because an electronic option has been available for 180 days. USCIS should preserve paper filing until the relevant electronic workflow has demonstrated reliable performance; establish real-time escalation for deadline-sensitive failures; permit multiple concurrent technical tickets for representative and organizational accounts; provide an alternative submission channel during system failures; and adopt a technical-failure safe harbor preserving the filing date of a documented, timely attempt. USCIS should not eliminate the existing paper fallback until it can both accept legally sufficient filings consistently and protect requestors from adverse immigration consequences when its own systems prevent timely submission.

II. The Process for Obtaining a Waiver for Applicants who Cannot Electronically File is Unclear at Best, and May Be Unworkable

- a. The Proposed Waiver Process is Unclear and Lacks Essential Procedural Safeguards, Creating Risks in Denying Access to Immigration Benefits

AILA is concerned that the IFR appears to attempt to create a waiver process without establishing the basic procedural safeguards necessary to ensure meaningful access to the immigration system. Most notably, the IFR contains what appears to be a regulatory drafting error. The preamble states, "Requestors may seek a waiver of the e-filing requirement by submitting Form I-936, Request for Waiver of E-Filing Requirement, before submitting a paper filing. See 8 CFR § 103.2(a)(1)(iii)."² The regulatory language in 8 CFR § 103.2(a)(1)(iii) states, "USCIS, in its discretion, may waive mandatory e-filing. Benefit requestors may request a waiver of mandatory e-filing by submitting a Request for Waiver of E-Filing Requirement." Notably, the language in the regulation does not match the sequencing explained in the preamble stating that requestors must first submit the waiver before submitting a paper filing. As a result, it is uncertain whether requestors must obtain a waiver before submitting a paper filing. Compounding this lack of transparency, the IFR

² 91 Fed. Reg. 51945.

fails to provide an adjudication timeframe for Form I-936, Request for Waiver of E-Filing Requirement.³

The IFR creates an waiver process that lacks an operation sequence process for requesting the waiver. If waiver approval is required before an applicant may submit the underlying benefit request, delays in adjudicating the waiver could effectively prevent timely filing of applications, petitions, and requests, even where the applicant has acted diligently.⁴ The consequences could be severe, including loss of eligibility for a benefit, inability to extend or maintain employment authorization, expiration of lawful status, or missed statutory and regulatory filing deadlines. The IFR does not address the timeline for waiver adjudication, nor does it address the impact to applications that must be timely filed and that require the online filing waiver. A process intended to preserve access to immigration benefits should not itself become a barrier to obtaining them.

b. USCIS Should Permit Concurrent Filing of Form I-936 and the Underlying Benefit Request

To ensure timely filed applications for those requiring the e-filing waiver, the IFR should clarify the procedural relationship between Form I-936 and the underlying filing. Specifically, USCIS should state whether applicants must obtain approval of Form I-936 before filing the underlying benefit request or whether the waiver request and underlying filing may be submitted concurrently. Given the time-sensitive nature of many immigration benefits, including applications for employment authorization, extensions and changes of status, adjustment of status filings, and humanitarian benefits, AILA strongly recommends that USCIS permit concurrent filing. USCIS could hold the underlying filing in abeyance while adjudicating the waiver request and proceed with adjudication if the waiver is granted. Requiring advance approval would create an unnecessary risk that applicants could lose eligibility solely because a waiver request remains pending.

c. USCIS Should Establish Processing Timeframes and Toll Applicable Filing Deadlines

If USCIS designates a form for mandatory e-filing, the agency should establish a defined adjudication timeframe for Form I-936. AILA recommends, at most, a 30-day processing standard to provide applicants and practitioners with necessary predictability. In addition, USCIS should expressly toll any filing deadline associated with the underlying benefit request upon the timely submission of Form I-936 and continue that tolling until the waiver request is adjudicated. Without these protections, applicants could find themselves in the untenable position of being unable to file a paper application without an approved waiver while simultaneously being unable to obtain a waiver before the relevant filing deadline passes.

d. USCIS Should Permit Paper Filing of Form I-936

AILA also urges USCIS to permit Form I-936 itself to be filed on paper. The IFR and proposed form instructions do not make clear whether Form I-936 will be allowed to be paper filed. Requiring individuals who are claiming an inability to use or access the electronic filing system to electronically

³ 91 Fed. Reg. 51924, 51945-51948.

request relief from that requirement is inherently contradictory. The individuals most likely to require a waiver may face obstacles relating to technology access, digital literacy, disability accommodations, language barriers, geographic limitations, or other circumstances that make electronic filing impracticable. A paper filing option for the waiver request is therefore essential to ensuring that the waiver process remains accessible to those it is intended to serve.

e. USCIS Should Provide Examples of Circumstances That Constitute Undue Hardship

Finally, USCIS should provide a non-exhaustive list of examples illustrating what does and does not constitute "undue hardship." As drafted, the IFR provides little guidance regarding the evidentiary standard applicants must satisfy, creating uncertainty for applicants and adjudicators alike. Clear examples would promote consistency, improve adjudicative efficiency, and reduce unnecessary waiver requests. Such guidance could include examples involving limited or unreliable internet access, disabilities affecting the ability to use online systems, inability to obtain necessary technology, significant language or literacy barriers, or institutional restrictions on access to electronic tools. At the same time, USCIS could identify circumstances that generally would not qualify while preserving discretion to evaluate the totality of the circumstances in individual cases. Together, these improvements would create a waiver process that is transparent, predictable, and workable, while still advancing USCIS's objective of expanding electronic filing.

III. USCIS Must Address and Resolve Technical Issues and Problems with E-Filing Before Making It Mandatory

AILA's recommendations below identify specific safeguards USCIS should implement before exercising its authority to mandate e-filing to address concerns about accessibility, implementation, and operational safeguards. As currently structured, the rule risks disadvantaging applicants who lack reliable internet access, face language or disability barriers, or are otherwise unable to navigate a purely electronic process. The rule also risks disadvantaging law firms and other enterprise filers who depend on the e-filing system functioning reliably at scale: chronic technical issues, absent a dedicated technical support channel to resolve them, can disrupt filing operations for hundreds of matters at once and are not adequately addressed by the current framework. We recommend that USCIS adopt the modifications below, including measures to ensure system reliability and establish dedicated technical support, before mandating e-filing for any specific form.

a. *Basic Systems Reliability Issues; Digital-Divide Access*

Limit initial mandates to narrow categories until system reliability is demonstrated. Law firms and other enterprise filers report chronic, unresolved technical problems with USCIS's e-filing systems, including intermittent outages, upload failures, and account/case-linking errors, which are magnified at enterprise scale, where a single firm may be responsible for hundreds of concurrent filings. DHS itself acknowledges the risk of "service disruptions or system downtime" and has budgeted IT and contingency-planning costs specifically to mitigate it, while also noting that only about six percent of attorneys and accredited representatives have voluntarily adopted e-filing where it is already available, compared to 43 percent of individual requestors, a gap DHS attributes

to habit, but which is actually more consistent with law firms' direct experience with system instability.⁵

Rather than mandating e-filing across an entire form, USCIS should exercise its existing authority to mandate e-filing only for narrow, discrete categories within a form, for example, requiring e-filing only for L-1A classification requests under Form I-129, rather than all the categories that use the form as a whole, and expand the mandate to additional categories only after demonstrating sustained system stability and reliability for enterprise-scale filing volumes.⁶

Establish objective readiness criteria before mandating e-filing. The IFR gives USCIS broad discretion to determine when a particular form is ready for mandatory e-filing, but it does not establish objective performance benchmarks that must be met before such a mandate takes effect. USCIS should publish measurable readiness criteria, including system availability, upload-success rates, error rates, processing reliability, and demonstrated performance under anticipated filing volumes. A mandatory e-filing designation should not become effective unless USCIS can demonstrate that the platform has consistently met those benchmarks over a sustained period. Requiring objective and transparent readiness standards would improve confidence in the system and help ensure that mandatory e-filing is implemented only after the technology has demonstrated that it is capable of supporting the affected filing population.

Conduct pilot testing before mandatory implementation. To test performance benchmarks before making any form subject to mandatory e-filing, USCIS should conduct a pilot period involving attorneys, accredited representatives, nonprofit legal service providers, enterprise filers, and self-represented applicants. Pilot testing should evaluate not only whether submissions can technically be completed, but whether the system functions effectively under real-world conditions and filing volumes. USCIS should publicly describe significant issues identified during the pilot process and confirm that those issues have been addressed before eliminating the paper-filing option. Meaningful testing with actual users is one of the most effective ways to identify operational deficiencies before they affect thousands of applicants and representatives.

Build in autosaving and session recovery. The IFR does not address session preservation or recovery from interrupted online sessions. Given that a requestor “cannot submit an electronic benefit request until” completing the entire form, signing, and then paying all fees, USCIS should build in autosave and session-recovery functionality so that a system failure, lost connection, timeout, or device failure does not require an applicant to restart a lengthy form from the beginning, a risk that falls hardest on applicants relying on public terminals or unstable mobile connections.⁷

Replicate real-world filing workflows before mandating e-filing. Building on the case-management and enterprise-filing concerns discussed in Section I.a, USCIS should ensure that mandatory e-filing platforms support the core functions practitioners, including paralegals and other authorized support staff, use every day.

Ensure full mobile and low-bandwidth functionality. DHS's own data show that 11 percent of households access the internet only through a cellular data plan on a smartphone or other mobile

⁵ 91 FR 51924

⁶ See Section IV.B.1, “Required Form Types,” 91 Fed. Reg. at 51939–40; Section V.B.5, “Alternatives Considered,” 91 Fed. Reg. at 51967; Section V.B.4.b, “Unquantifiable Impact,” 91 Fed. Reg. at 51966.

⁷ See Section IV.B.6, “Receipts and Completeness,” 91 Fed. Reg. at 51942.

device.⁸ The online filing portal should be *fully functional* on mobile devices and low-bandwidth connections to serve this population, not merely “accessible” on mobile as a secondary use case.

Expand free public filing terminals. USCIS's own analysis relies significantly on public libraries to fill gaps in home internet access, noting that “nearly all libraries offered assistance in completing electronic government forms” and that DHS expects requestors without home access to use libraries “at a minimum.”⁹ Given this reliance, USCIS should also expand free public-access terminals for benefit-request filing at its own field offices and Application Support Centers and publicize their availability alongside the mandatory e-filing notice.

b. Technical Support and Error Handling

Establish a dedicated e-filing help line. USCIS's accessibility analysis relies heavily on library staff to assist filers “confused by any aspects of the technology,”¹⁰ but does not describe a dedicated USCIS-operated channel for e-filing technical support. Additionally, current users of e-filing systems continue to report delayed responses and lack of assistance from USCIS when experiencing technical systems issues, which the agency fails to address in the rule. USCIS should adequately prepare for technical inquiries and should staff its own dedicated e-filing technical support line, separate from the general Contact Center, with published and reasonable wait-time targets, rather than relying on outside institutions.

Make error messages explanatory, not just flags. The IFR states that the guided online filing platform will “prevent the requestor from submitting the request and identify the data field(s) or data element(s) preventing submission.”¹¹ USCIS should ensure this identification goes further to explain what is wrong and how to correct it, rather than simply flagging the field, to reduce confusion and repeat submission failures.

Preserve filing dates when submission is prevented by USCIS-controlled technical failures. Under the IFR, USCIS records the receipt date of an online submission as “the actual date of receipt of the online submission.”¹² In addition to a documented grace-period policy, USCIS should provide that a filing date will be preserved when a filer makes a timely good-faith attempt to submit a benefit request but is prevented from doing so because of a USCIS-controlled technical issue, including system outages, upload failures, payment-processing errors, or other platform malfunctions. In such circumstances, the filing date should relate back to the date of the attempted submission upon the filer's demonstration of the technical issue through screenshots, confirmation records, error messages, or other reasonable evidence. Applicants should not lose eligibility, immigration status, or employment authorization benefits because of technical failures outside their control.

c. The Form I-936 Waiver Process

Broaden the I-936 fee waiver beyond specific humanitarian categories. In addition to the concerns noted above regarding the I-936, the IFR limits the availability of a fee waiver for the \$25

⁸ See Section IV.B.7.a, “Individuals,” 91 Fed. Reg. at 51942–43.

⁹ See Section IV.B.7.d, “Available Assistance,” 91 Fed. Reg. at 51944–45.

¹⁰ See Section IV.B.7.d, “Available Assistance,” 91 Fed. Reg. at 51944–45.

¹¹ See Section IV.B.2, “Required Fields,” 91 Fed. Reg. at 51940.

¹² See Section IV.B.6, “Receipts and Completeness,” 91 Fed. Reg. at 51942; 8 CFR 103.2(a)(7)(i).

Form I-936 fee to specific statutorily designated categories, including VAWA self-petitioners, T and U nonimmigrant status applicants, certain battered spouses, and TPS applicants, and DHS states it has deliberately declined to permit fee waivers for Form I-936 filings outside categories where a fee waiver is required by law.¹³ This approach excludes many requestors who are equally low-income but fall outside the listed categories, even though the I-936 process exists specifically to accommodate requestors without financial means to access the internet or comparable resources. We recommend USCIS extend fee-waiver eligibility for Form I-936 to any requestor who separately qualifies for a fee waiver under USCIS's general indigency-based fee waiver criteria.

Allow durable waivers for ongoing barriers. Under the IFR, a waiver approval is valid only for the specific form and 30-day filing window listed in the approval notice, and a requestor must submit a new Form I-936, with a new \$25 fee, absent a qualifying humanitarian category, for each subsequent benefit request.¹⁴ For requestors with an ongoing, documented barrier to e-filing (for example, a permanent disability or lack of infrastructure in a remote area), USCIS should allow a single approved waiver to cover a defined category of future filings for a defined period of time rather than requiring a new Form I-936 each time.

d. Notice and Phase-In of Mandatory Forms

Extend notice periods for high-stakes and humanitarian forms. While the IFR sets a 60-day minimum notice period, USCIS should extend this to 120 days for high-volume or humanitarian-sensitive forms (for example, family-based petitions, asylum-related filings, and other forms disproportionately filed by low-resource applicants), given the greater time such applicants may need to arrange technology access or secure representation.¹⁵ For any form designated for mandatory e-filing, the notice period should not begin until all required functionality for that form is fully operational in the production environment and available for public use.

Use multiple notice channels, not only the USCIS website. The IFR provides that USCIS will give notice “by publishing instruction on the official USCIS website.”¹⁶ USCIS should supplement website notice with direct outreach, email and text alerts to existing online account holders, bulletins to attorneys and accredited representatives, and coordinated notice through community-based and legal services organizations, because a website posting alone is unlikely to reach affected filers before a deadline passes.

Sequence the phase-in to protect the most vulnerable filers. The IFR states that, before mandating e-filing of a particular form, USCIS “will also consider characteristics of the filing population, socioeconomic conditions, [and] the availability of public technology resources.”¹⁷ We recommend USCIS commit to applying these considerations to sequence which form types first become mandatory, moving forms filed predominantly by detained individuals, rural applicants, elderly applicants, and humanitarian filers to mandatory status only after the e-filing process has been tested and refined on higher-resourced filer populations.

¹³ See Section IV.C.3, “Fee Required to Waive e-Filing Requirement,” 91 Fed. Reg. at 51946–47; 8 CFR 106.2(a)(64); 8 CFR 106.3(a)(3)(ii)(H), (a)(3)(iii).

¹⁴ See Section IV.C.4, “Waiver Validity Period and Filing Date Preservation,” 91 Fed. Reg. at 51946–47.

¹⁵ See Section IV.B.1, “Required Form Types,” 91 Fed. Reg. at 51939).

¹⁶ See Section IV.B.1, “Required Form Types,” 91 Fed. Reg. at 51939; 8 CFR 103.2(a)(1)(ii).

¹⁷ See Section IV.B.1, “Required Form Types,” 91 Fed. Reg. at 51939–40.

e. Accessibility and Language Access

Ensure accessibility for applicants with disabilities. DHS states that its e-filing system complies with sections 504 and 508 of the Rehabilitation Act.¹⁸ USCIS should confirm and, where necessary, update this compliance specifically for Form I-936 and the online account system as e-filing becomes mandatory for a larger share of filers, including compatibility with screen readers and other assistive technology.

Provide meaningful language access. The IFR does not change the existing requirement that any non-English supporting document be submitted with a certified English translation, and DHS states it has determined that automated translation tools do not yet meet its accuracy requirements.¹⁹ Consistent with that determination, USCIS should ensure that the filing interface and accompanying instructions are available in the languages in which USCIS already publishes its forms and guidance.

f. Employment Eligibility Verification

Clarify that digital approval notices, together with identity verification, may serve as evidence of employment authorization. The IFR defines "e-file" to include not only benefit requests but also "notices and communication in a manner made available and approved by USCIS," and separately emphasizes that online accounts give requestors secure, authenticated access to their notices.²⁰ However, the rule does not address how a digital notice interacts with employers' Form I-9 and E-Verify obligations, where a physical paper notice has traditionally served as acceptable evidence of employment authorization. As USCIS moves toward digital-only notices for a growing share of filers, employers and employees alike need clarity that a digital approval, accessed through a requestor's authenticated online account and paired with evidence of the individual's identity, is equally acceptable evidence of employment authorization for Form I-9 and E-Verify purposes. We recommend USCIS add an express statement to digital approval notices to this effect (e.g., "This digital approval notice, when accompanied by appropriate evidence of identity, may serve as evidence of employment authorization for Form I-9 purposes.") in coordination with DHS's Employment Verification program.

g. Transparency and Post-Implementation Review

Conduct a post-implementation review. The IFR states that "an e-filing mandate is not necessarily irreversible; if a mandate results in a great number of requests for waiver of the e-filing requirement or a sizeable decrease in filings of the request, USCIS may consider why that is occurring and whether additional actions are needed."²¹ Should a form meet functional reliability standards to mandate e-filing, we recommend USCIS formalize this into a committed post-implementation review, including opportunity for public comment and, ideally, GAO or DHS Office of Inspector General input — after the first year of mandatory e-filing for any form.

Publish waiver adjudication data. The IFR states that "USCIS will record data on the volume and adjudication time of e-filing waiver requests after this rule takes effect," and that DHS may revisit the

¹⁸ See Section IV.B.7.e, "Rehabilitation Act Compliance," 91 Fed. Reg. at 51945.

¹⁹ See Section IV.B.4, "Supporting Documents," 91 Fed. Reg. at 51941; 8 CFR 103.2(b)(3).

²⁰ See Section IV.A, "Definition of e-Filing," 91 Fed. Reg. at 51939; Section III.D.3, "Enhanced Security," 91 Fed. Reg. at 51939 (discussing authenticated online-account access to notices)

²¹ See Section IV.B.1, "Required Form Types," 91 Fed. Reg. at 51939–40.

Form I-936 fee based on that data.²² USCIS should also publicly report Form I-936 approval and denial data, by form and, where feasible, by demographic or geographic category, to allow the public and oversight bodies to assess whether the waiver process is functioning equitably.

IV. Conclusion

We support USCIS's objective of modernizing its filing systems, and we recognize the potential benefits of electronic filing for processing efficiency and data accuracy. We urge USCIS to adopt the recommendations above to ensure that mandatory e-filing is implemented only when the technology can support a seamless filing of high-volume petitions and applications; and that the transition to mandatory e-filing does not come at the cost of access for applicants who are least equipped to navigate an online-only system. We appreciate the opportunity to comment and welcome the opportunity to discuss these recommendations further.

Respectfully submitted,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

²² See Section IV.C.3, "Fee Required To Waive e-Filing Requirement," 91 Fed. Reg. at 51946.