



August 23, 2026

David Venturella, Acting Director  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street, SW  
Washington, DC 20536

**RE: Request for Reconsideration of March 2026 Form I-9 Enforcement Policy Changes**

Dear Director Venturella:

On behalf of our members—employers of all sizes and across every sector—the U.S. Chamber of Commerce respectfully raises concerns regarding ICE's March 2026 changes to the Form I-9 enforcement framework. These changes substantially alter the longstanding distinction between technical and substantive violations, effectively eliminate the statutory cure period for good-faith employers, and expand liability for clerical errors unrelated to employment authorization. These developments raise significant concerns regarding consistency with the statutory framework established by Congress in the Immigration Reform and Control Act (IRCA) and reaffirmed in the 1996 amendments to the Immigration and Nationality Act (INA).

For nearly three decades, employers, auditors, attorneys, special agents, and the courts have operated under agency guidance, implementing that framework while awaiting final regulations envisioned by Congress and repeatedly contemplated by the agency itself. The March 2026 revisions upend those settled expectations through a fact sheet rather than the long-anticipated rulemaking, creating significant uncertainty and calling into question compliance practices built in reliance on prior government guidance.

**DISCUSSION**

**I. STATUTORY FRAMEWORK AND LEGISLATIVE INTENT**

Congress enacted IRCA in 1986 to address illegal immigration by targeting its principal economic driver: unlawful employment. The statute makes it unlawful for employers to knowingly hire or continue to employ unauthorized workers and requires employers to verify the identity and employment authorization of all new hires through a standardized process documented on Form I-9. IRCA also imposed an ongoing

obligation for employers to reverify the renewed work authorization of employees whose work authorization is time-limited.

Critically, Congress did not design this system as a rigid paperwork enforcement regime. Rather, IRCA reflects a pragmatic recognition that the federal government cannot be present at every hiring decision. Instead, Congress enlisted employers as functional partners in the enforcement process, assigning them a front-line role in verifying identity and work authorization while reserving enforcement authority to the government.

This framework demonstrates a deliberate legislative balance: the Form I-9 requirement serves as a tool to facilitate compliance, while the core statutory prohibition focuses on the knowing employment of unauthorized individuals. Congress's intent was never to impose strict liability for administrative errors, but to deter unlawful employment practices while enabling good-faith employer participation.

## **II. THE SONNY BONO AMENDMENT OF 1996**

In 1996, Congress reaffirmed this balanced framework by adopting an amendment by Rep. Sonny Bono (R-CA) to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The "Sonny Bono Amendment," codified at INA §274A(b)(6), allows employers to correct "technical or procedural failure" on Form I-9 within 10 days of being notified by government auditors.

The legislative history confirms that Congress intended this provision to provide a meaningful opportunity to correct paperwork-related errors, recognizing both the complexity of the Form I-9 process and that inadvertent clerical mistakes do not equate to the unlawful employment of unauthorized workers. As Congressman Bono emphasized, it would be inequitable to penalize an employer who "in good faith ma[de] a mistake in a very complicated paperwork" system (statement at House hearing on H.R. 2202, 104th Cong. (1995).

Consistent with that purpose, INA §274A(b)(6) reflects Congress's judgment that employers acting in good faith should not face penalties for correctable documentation deficiencies. Although the statute provides a cure period for "technical or procedural" failures, it does not prescribe the specific classifications ultimately developed through agency guidance. Rather, Congress afforded the agency discretion in implementing that protection in a manner consistent with the statute's remedial purpose. As discussed below, the classifications reflected in the Virtue Memorandum and subsequent agency guidance represented one longstanding approach to implementing that authority. The March 2026 reinterpretation significantly narrows the practical availability of the cure provision by reclassifying numerous historically

correctable violations as substantive violations, thereby exposing employers to penalties for clerical errors that Congress intended to be remediable.

Accordingly, the 1996 amendments were not merely incremental changes. Rather, they were a deliberate reaffirmation of Congress's intent in IRCA to distinguish between administrative error and unlawful employment, and to ensure that enforcement remains focused on the latter rather than on technical paperwork defects.

### **III. AGENCY INTERPRETATION AND THE "VIRTUE MEMO"**

The former Immigration and Naturalization Service (INS) never promulgated formal regulations defining those terms. Indeed, Congress envisioned implementing regulations, and in April 1998 INS published proposed regulations to that end—but they were never finalized. In the interim, ICE continued to refine the framework through operational guidance, including a 2009 nationwide Operations Message directing field auditors to treat several violations as technical rather than substantive pending issuance of a final rule. For nearly three decades, employers structured compliance programs in reliance on that evolving guidance while awaiting the final regulations the agency itself repeatedly contemplated. The March 2026 revisions depart from that entire framework without ever completing the promised rulemaking.

In the absence of final regulations, the enforcement framework was shaped by sub-regulatory guidance. Most notably, the March 1997 memorandum issued by Acting INS Executive Commissioner Paul Virtue provided interim guidance implementing INA §274A(b)(6). The memorandum clarified that employers could be deemed compliant notwithstanding technical or procedural failures if they made a good-faith effort to comply, subject to an opportunity to correct such errors. See Memorandum from Paul W. Virtue, Acting Executive Associate Comm'r, INS, Interim Guidelines: Section 274A(b)(6) of the Immigration and Nationality Act Added by Section 411 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Mar. 6, 1997).

Over time, the "Virtue Memo" became the de facto governing standard relied upon by employers, enforcement personnel, and adjudicators. This framework provided clarity and predictability by distinguishing between:

- Substantive violations that implicate potential unlawful employment or failure to satisfy the statutorily prescribed minimum requirements of completing a Form I-9; and
- Technical or procedural errors that are clerical in nature and correctable.

The Virtue Memo's significance extends beyond historical agency guidance. The Justice Department's Office of the Chief Administrative Officer (OCAHO) repeatedly relied upon the framework when evaluating paperwork violations, most notably in *United States v. WSC Plumbing, Inc.*, 9 OCAHO No. 1071 (2001), where OCAHO concluded that the government was bound by guidance it had publicly disseminated and invited employers to rely upon such guidance. As a result, the distinction between substantive and technical violations became embedded in decades of administrative enforcement practice and employer compliance programs.

Notably, the Virtue Memo framework has provided comparatively little guidance regarding electronic Form I-9 systems, notwithstanding their widespread adoption. ICE has nonetheless increasingly treated electronic system deficiencies as substantive violations, creating significant compliance risks for employers, particularly smaller ones, that reasonably relied on commercial vendor solutions marketed as compliant. The March 2026 revisions expand substantive liability further in precisely those areas where formal agency guidance remains sparse.

#### **IV. ICE'S RECLASSIFICATION**

Earlier this year, ICE reclassified 11 Form I-9 violations that had long been treated as technical errors as substantive violations, effectively eliminating the Bono Amendment's cure period for a broad range of routine administrative mistakes and exposing employers to substantially more civil penalties. This marks a significant departure from decades of agency interpretation and enforcement practice. ICE implemented the change through an online fact sheet rather than formal rulemaking, with no prior public notice, stakeholder input, or employer outreach. Reports indicate that field personnel received limited training before applying the revised classifications, and that application has varied depending on whether auditors use the January or March 2026 date as the effective date—leaving employers with no advance notice that conduct historically treated as correctable would now carry immediate penalty exposure.

Under longstanding enforcement practice, technical violations were understood to be minor, correctable deficiencies unrelated to the employee's work authorization status. ICE's new approach expands the category of substantive violations to include omissions and clerical errors that do not undermine the verification process itself.

Particularly troubling is the abandonment of the longstanding principle that retention of legible document copies could mitigate the impact of a potential violation. Under prior guidance, failure to record document information could be treated as technical where legible copies were retained and available for inspection. The March

2026 reclassification eliminates that distinction, serving no apparent enforcement objective while increasing exposure for good-faith employers.

## V. LEGAL AND POLICY IMPLICATIONS

The reclassification of technical violations as substantive raises substantial legal and policy concerns. First, it undermines Congress's intent in enacting INA §274A(b)(6). By effectively eliminating the opportunity to correct technical errors, the policy diminishes or nullifies the statutory good-faith compliance defense that Congress created.

Second, it misaligns enforcement priorities. IRCA was designed to deter the knowing employment of unauthorized workers, not to penalize paperwork mistakes. Shifting enforcement focus towards clerical errors risks diverting resources away from the core statutory objective of preventing unlawful employment. Under the current regulatory framework, employers with 2,000 employees, and who have clerical mistakes on half of their Form I-9 paperwork, can incur a fine over \$2.8 million without a single allegation of illegal employment. Moreover, the revised framework undermines the incentive for voluntary self-auditing: if routine clerical errors carry the same enforcement consequences regardless of remediation, employers have little reason to invest in corrective action, contrary to the compliance-promoting purpose Congress intended.

Third, the policy disrupts three decades of employer reliance on the framework set forth in the Virtue Memo with no notice to employers. Employers have structured compliance programs around its interpretation, shaping expectations regarding enforcement risk and the availability of a cure period for good-faith errors. Indeed, the Virtue Memo reflects a long-settled interpretation on which regulated parties have depended. Abruptly departing from that framework, especially without formal rulemaking or adequate transition, raises serious administrative law concerns and warrants greater transparency and procedural safeguards.

Fourth, the March 2026 revisions fail to distinguish between deficiencies that materially affect verification and those with little or no bearing on identity, employment authorization, or the integrity of the verification process. Congress did not enact INA §274A(b)(6) to expose employers to penalties for harmless clerical mistakes that neither facilitate the employment of unauthorized workers nor impede government review.

Employers have long been advised that certain deficiencies are technical or procedural and subject to correction. Reclassifying those same deficiencies as substantive violations without formal rulemaking or advance guidance creates uncertainty regarding the conduct required to avoid penalties and undermines confidence in the predictability of the enforcement framework.

## RECOMMENDATIONS

In light of these concerns, the Chamber respectfully requests that ICE:

- Refocus worksite enforcement on knowing violations, fraud, and unlawful employment while prioritizing cases involving human trafficking, worker exploitation, and national security;
- Pause implementation of the March 2026 revisions pending stakeholder engagement and formal consideration of the issues discussed above;
- Restore a clear and meaningful distinction between technical and substantive violations that reflects the intent of INA §274A(b)(6), the Virtue Memo, and longstanding enforcement practice, and engage employer stakeholders before adopting any future revisions to that framework;
- Implement any significant revisions to the Form I-9 enforcement policy through formal notice-and-comment rulemaking with appropriate meaningful stakeholder engagement; and
- Maintain the longstanding treatment of document-information omissions where legible copies of the underlying documents are available.

## CONCLUSION

The statutory framework enacted by Congress in 1986 and reaffirmed in 1996 reflects a deliberate and balanced approach to worksite enforcement. Employers were intended to serve as partners in verification—not targets for punitive action based on minor administrative errors. The March 2026 policy changes disrupt that balance by expanding liability in ways that are inconsistent with the statute, its legislative history, and nearly three decades of established practice, all while the agency has yet to finalize the implementing regulations Congress envisioned.

We appreciate your consideration of these concerns and welcome the opportunity to engage further.

Sincerely,



Patrick Shen  
Vice President  
Immigration Policy