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Hawaii Attorney General Challenges Unlawful Attempt to Limit Work Authorization for Immigrants

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a coalition of 14 attorneys general from around the nation in opposing a proposed Trump Administration rule that would virtually eliminate work authorization for nearly all immigrants who were released under orders of supervision. In a comment letter submitted to the U.S. Department of Homeland Security (DHS) the coalition argues that the proposed rule lacks reasoned justifications and would harm immigrant communities, small businesses, and states' economies. Moreover, the proposed rule — which impacts approximately 17,000 individuals and their families nationwide — would also violate federal law, increase the cost of publicly-funded social services, and further burden individuals and businesses that are already suffering from the economic fallout of the coronavirus disease 2019 (COVID-19) public health crisis.

“The proposed rule violates the law because it lacks the required justification,” said Attorney General Connors. “The adverse impacts are substantial, and include eliminating the ability of individuals to work and increasing reliance on social services.”

Immigrants under orders of supervision are already required to meet certain conditions to qualify for temporary release from DHS custody. Upon their release, the DHS has the authority to grant employment authorization documents that allow those under orders of supervision to legally work in the United States. The proposed rule seeks to virtually eliminate their work authorization eligibility — save for one narrow exception. For those relatively few individuals who fall under this exception, the DHS will require them to work for employers who are part of the E-Verify program — a program rife with so many issues that it has led to numerous employers refusing to take part in it. The proposed rule also introduces other changes that would further limit immigrants from securing the authorization they need to legally work in the United States.

In the comment letter — led by New York Attorney General Letitia James and California Attorney General Xavier Becerra — the multistate coalition urges the DHS to withdraw this proposed rule because, in addition to the hardship on these individuals and their families, the loss of their employment would also harm employers and the states' economies and tax bases, which would also cause an increase in expenditures on

publicly-funded social services. According to the DHS's own estimates, the financial damage from not allowing these immigrants to legally work in the U.S. will result in federal tax losses ranging from \$923,844,794 and \$2,251,612,274 from fiscal years 2020 to 2029. States will stand to lose tax revenue for the same reason.

The coalition further argues that the proposed rule is unlawful and would violate the Administrative Procedure Act (APA) in a magnitude of ways. The APA mandates that Federal agencies must "engage in reasoned decision-making" and consider "the advantages and the disadvantages of agency decisions" before taking action. However, the DHS failed to provide reasoned justifications for the significant changes set forth in the proposed rule, and the DHS also failed to adequately consider potential impacts to the affected immigrants, their families and employers, as well as the states.

Additionally, the coalition emphasizes that the proposed rule is contrary to law because Congress never gave the DHS the authority to categorically deny work authorization to immigrants under the Immigration and Nationality Act. Lastly, the purported acting secretary of Homeland Security, Chad Wolf, was not legally authorized to exercise the functions and duties of the secretary of Homeland Security position based on the Homeland Security Act, as the courts have already found.

Joining Attorneys General Connors, James, and Becerra in filing today's comment letter are the attorneys general of Connecticut, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, and Oregon.

A copy of the letter can be found [here](#).

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