

January 2009

U.S. Chamber of Commerce Challenges Legality of E-Verify Requirement for Federal Contractors

On December 23, 2008, the U.S. Chamber of Commerce and other associations filed a lawsuit against the Department of Homeland Security (DHS) challenging the recently-published final rule requiring federal contractors to enroll in and use the E-Verify system. The lawsuit, filed in federal court in Maryland, requests that the rule be declared invalid and that the court enjoin it from going into effect.

The lawsuit, *Chamber of Commerce of the United States of America, et al. v. Chertoff, et al.*, alleges that the final rule exceeds the authority granted by Congress to the executive branch when the E-Verify program was created. The lawsuit points out that the regulations require certain contractors to verify work authorization of their new hires through enrollment in and use of the E-Verify system; however, when Congress established the program that is now known as "E-Verify," it explicitly stated that no employer could be required to participate in such a program.

The rule also requires contractors to verify the employment eligibility of any current employee assigned by the contractor to perform work within the United States on the federal contract, but such "reverification" of current employees is barred by statute, according to the plaintiffs.

On January 7, 2009, the plaintiffs succeeded in negotiating a suspension of the final rule, pushing back its implementation from January 15, 2009 until February 20th. The government published notice of the delayed implementation of the final rule in the Federal Register on January 14, 2009. This notice is available at <http://edocket.access.gpo.gov/2009/pdf/E9-651.pdf>.

Meanwhile, on January 8, 2009, USCIS issued a press release announcing that the 100,000th employer has enrolled in the E-Verify program, meaning approximately 98.3% of all U.S. employers remain to be enrolled. The January 8 press release can be found at http://www.uscis.gov/files/article/e-verify100K_8jan09.pdf. CIS has also recently issued a Fact Sheet on E-Verify, available at http://www.uscis.gov/files/article/everify_fact_sheet8Jan09.pdf.

For more information on the lawsuit, please see the Firm's Client Alerts, "Federal Contractor E-Verify Requirement Challenged in Court" (December 24, 2008), available at <http://www.klaskolaw.com/client-alerts.php?action=view&id=186>, and "Government Delays Imposition of Federal Contractor E-Verify Requirement" (January 9, 2009), available at <http://www.klaskolaw.com/client-alerts.php?action=view&id=197>. Additionally, the complaint filed by the plaintiffs is available at <http://www.ilw.com/immigdaily/cases/2008,1229-chamberofcommerce.pdf>.