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April 24, 2026

The Honorable Markwayne Mullin
Secretary
U.S. Department of Homeland Security
2801 Nebraska Avenue NW
Washington, D.C. 20528

RE: RIN 1615-AC97, or DHS Docket No. USCIS-2025-0370; CIS No. 2799-25; (91 FR 8616), Employment Authorization Reform for Asylum Applicants

The Catholic Legal Immigration Network, Inc. (CLINIC), and the United States Conference of Catholic Bishops (USCCB) submit this joint comment regarding the United States Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM), "Employment Authorization Reform for Asylum Applicants," published on Feb. 23, 2026, at 91 FR 8616.[1]

Embracing the Gospel value of welcoming the stranger, CLINIC has, since its founding in 1988, promoted the dignity and protected the rights of immigrants through a nationwide network of nonprofit legal services providers (LSPs). What began as a network of 17 programs has grown to approximately 391 diocesan and community-based organizations across 48 states and the District of Columbia. These programs collectively serve hundreds of thousands of low-income immigrants each year, including a disproportionately high number of asylum seekers, refugees, and other individuals seeking humanitarian protection. Through direct representation, training and technical assistance, and national advocacy, CLINIC brings deep, practice-based expertise on how immigration policies operate in real-world conditions.

The USCCB is a nonprofit corporation whose members are the active Catholic bishops of the United States, representing nearly 200 autonomous dioceses in all 50 states and the U.S. Virgin Islands. Throughout its history, the USCCB has advanced the Church's concern for the life and dignity of immigrants, refugees, victims of trafficking, and others on the move through direct-service programs, advocacy, and outreach. This work is guided by the USCCB's Committee on Migration and supported by the USCCB's Subcommittee on Pastoral Care of Migrants, Refugees and Travelers, which promotes pastoral outreach to newcomers and itinerant persons throughout the country.

[1] Employment Authorization Reform for Asylum Applicants, 91 Fed. Reg. 8616 (proposed Feb. 23, 2026), at https://www.federalregister.gov/documents/2026/02/23/2026-03595/employment-authorization-reform-for-asylum-applicants#h-68.

The NPRM proposes changes that would undermine the rights of displaced people seeking asylum in the United States by excluding them from work in the mainstream economy, limiting not only their ability to access counsel and pay the fees now required to pursue asylum, but their ability to support themselves and their families in safety and dignity. The proposed changes would further expose traumatized individuals and families to risk of exploitation or poverty, increasing burdens on social services and inflicting economic harms, not only for individual asylum seekers but also for their families, employers, and communities. The NPRM would also remove a regulatory provision that currently deems complete any asylum application that USCIS does not reject within 30 days. This would undermine asylum seekers' reliance on the government's acceptance of their applications as evidence that they have satisfied the one-year filing requirement, have initiated the waiting period to apply for employment authorization, and will have an opportunity to pursue the merits of their asylum claim. In the context of increased efforts to pretermit asylum seekers' claims without a hearing on the merits, the elimination of the "deemed complete" provision belies the intent of the entire NPRM. Because these proposed rules would undermine the right to seek asylum and the basic human dignity of asylum seekers, our organizations urge DHS to rescind the NPRM.

I. Introduction and Background

The United States has a moral imperative to consider the claims of asylum seekers, as well as an obligation under domestic and international laws. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, the United States agreed to consider the asylum applications of migrants who seek protection. Enacted in 1980, the Refugee Act establishes the core principles of domestic asylum laws, in line with U.S. treaty obligations.

Asylum seekers can apply for and obtain an employment authorization document (EAD) pursuant to 8 C.F.R. 274a.12(c)(8).[2] Until 1994, asylum seekers could file an application for asylum and work authorization concurrently.[3] In 1994, the regulations were amended to state that "an asylum applicant [would] not be eligible to apply for employment authorization based on his or her asylum application until 150 days after the date on which the asylum application [was] filed."[4] This new language created the EAD asylum clock.[5] Upon filing a complete application for asylum, the clock would begin to run.[6]

In 1996, Congress amended the Immigration and Nationality Act (INA), incorporating language similar to the regulations into the statute.[7] Under the INA as amended, DHS may not issue an EAD to an asylum seeker whose application is pending until 180 days have passed from the date the asylum application is filed.[8] Current regulations require asylum seekers to wait 150 days from the time their I-589 (Application for Asylum and Withholding of Removal) is received by USCIS

[2] Hereafter "(c)(8) EAD."
[3] *See*, 59 Fed. Reg. 14780 (Mar. 30, 1994) ("Such applications, submitted on Forms I-765, often accompany asylum applications.").
[4] 59 Fed. Reg. 62284, 62290 (Dec. 5, 1994) (codified as amended 8 CFR § 208.7) The amendments to 8 CFR § 208.7 were first proposed in 59 Fed. Reg. 14,779 (Mar. 30, 1994).
[5] 59 Fed. Reg. 62284, 62291.
[6] David A. Martin, *Making Asylum Policy: the 1994 Reforms*, 70 WASH. L. REV. 725, 737-38, 754 (1995).
[7] See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 604, 110 Stat. 3009, 115 (1996) (codified as amended INA § 208).
[8] INA § 208 (d)(2).

before they can file an initial request for employment authorization.[9] USCIS officers generally approve an EAD application if a corresponding asylum application has been pending for 150 days and the asylum applicant does not have an “aggravated felony” conviction, did not file the asylum application before Jan. 4, 1995, or does not have a recommended approval.[10] Adjudications of (c)(8) EADs are not discretionary.[11]

The NPRM proposes to require asylum seekers to wait 365 days after filing an asylum application to apply for an initial EAD,[12] and would simultaneously extend USCIS’ regulatory timeframe to adjudicate initial (c)(8) EAD applications from 30 to 180 days.[13] It would also impose an indefinite “pause” on acceptance of initial (c)(8) EAD applications that would, in practice, end the availability of initial (c)(8) EADs for many years, and possibly lifetimes.[14] This NPRM would therefore significantly extend the timeframe asylum applicants would wait for work authorization, *if initial EAD applications are accepted at all*.[15] The NPRM would severely restrict availability of initial *and renewal* (c)(8) EADs based on: premature assessments of asylum eligibility criteria that are generally considered in complex merits adjudications by specially-trained asylum officers on a fully developed record; rigid scheduling adherence for biometrics appointments; or on discretionary factors that do not currently apply in (c)(8) EAD adjudications.[16] It would also eliminate regulatory language to “deem complete” asylum applications that USCIS accepts and does not return within 30 days, undermining applicants’ reliance interests that their applications will be heard on the merits and support eventual (c)(8) EAD eligibility.[17]

Taken as a whole, the proposed rule represents a fundamental restructuring of access to employment authorization for asylum seekers. It would operate not as a neutral administrative reform, but as a coercive barrier to the asylum system itself. By delaying, restricting, and in many cases eliminating access to lawful work while applications are pending, the regulatory provisions in the NPRM would make it materially more difficult for individuals with meritorious claims to pursue asylum. The proposed rule’s cumulative changes function together to condition access to asylum adjudications on individuals’ ability to navigate an increasingly restrictive system without lawful means of support. In practice, this framework would pressure asylum seekers, particularly those with limited resources, to abandon valid claims.

The proposed changes conflict with the United States’ obligations under domestic and international law to ensure that individuals fleeing persecution have a meaningful opportunity to seek protection. Policies that effectively deter or prevent access to the asylum process are incompatible with these obligations.

The potential impacts of the NPRM are not only legal and economic but also raise profound moral concerns. Catholic social teaching affirms the inherent dignity of every human person and the right of individuals to support themselves and their families through work. Policies that deny asylum

[9] 8 CFR § 208.7(a)(1).
[10] *Id.*
[11] 8 CFR 274a.13(a)(1).
[12] *Id*. at 8617.
[13] *Id.* at 8618.
[14] 91 Fed. Reg. at 8617-18.
[15] *Id.*
[16] *Id*, at 8617-19.
[17] *Id*. at 8618.

seekers the ability to meet their basic needs while pursuing protection effectively force individuals into destitution, exploitation, or abandonment of lawful claims. Such outcomes are incompatible with the Gospel's call to welcome the stranger and with longstanding principles of solidarity and the preferential option for the poor.

The NPRM is also inconsistent with the Administrative Procedure Act (APA). DHS fails to adequately consider the serious reliance interests created by the existing regulatory framework, does not meaningfully engage with less harmful alternatives, and advances sweeping changes that are not rationally connected to its stated goals. The rule is not narrowly tailored to address fraud or efficiency concerns; instead, it imposes broad, punitive restrictions on all asylum seekers regardless of the merits of their claims. In doing so, DHS adopts an unsupported "fraud-first" approach that lacks evidentiary grounding and is likely to exacerbate, rather than alleviate, existing adjudicatory delays and system inefficiencies.

For these reasons, CLINIC and the USCCB respectfully urge DHS to withdraw the NPRM in its entirety.

II. THE PROPOSED CHANGES WOULD APPLY COERCIVE PRESSURE ON ASYLUM SEEKERS AND ERODE THE RIGHT TO SEEK ASYLUM

Asylum seekers are individuals and families who have fled untenable homes to escape actual or imminent harm. They have often had to do this with extremely limited resources, and in some cases with nothing more than the clothes on their backs. In the United States, they are faced with not only navigating a complex legal system to prove their eligibility for asylum, but also with rebuilding their lives and livelihoods from scratch. These individuals and families are generally ineligible for government safety-net programs and must rely on their own labor to support themselves, consistent with the U.S. government's expectation of self-sufficiency.[18] In order to survive while their asylum cases pend — often for years — asylum seekers depend on access to (c)(8) EADs that the NPRM proposes to restrict or eliminate. Without a way to meet their own shelter, food, clothing, and basic health needs, asylum seekers would be effectively prevented from pursuing their rights to seek asylum. The NPRM would impose economically coercive policies, forcing asylum seekers to abandon their applications and starving them out of the United States.

Notably, the NPRM's move to restrict or eliminate EAD access for asylum seekers coincides with the first-ever fees to apply for asylum and other humanitarian protections following the passage of H.R. 1.[19] After an initial fee to file their asylum application, asylum seekers must now pay annually to keep a pending application valid.[20] In addition to harming asylum seekers' abilities to meet basic survival needs while their cases pend, then, the NPRM may in practice directly prevent them from filing or pursuing asylum in the United States.

DHS asserts that that the purpose of the proposed changes of the NPRM are "to enhance the benefit integrity of requests for asylum and [(c)(8) EADs], address national security and public safety

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[18] *See* 8 U.S.C. 1601(2)(A).

[19] Pub. L. No. 119-21, 139 Stat. 72 (2025) [hereinafter H.R. 1].

[20] Currently, the initial fee to apply for asylum is $100, with a recurring $102 Annual Asylum Fee (AAF) due every year that an application remains pending. The amount of the AAF is subject to inflationary increase. *See* U.S. Dep't of Just., Exec. Off. for Immigr. Rev., *Forms & Fees*, https://www.justice.gov/eoir/eoir-forms (last visited Mar. 26, 2026).

concerns, and mitigate undue strains on DHS's operational resources."[21] The agency purports that the NPRM would achieve these purposes "by reducing the incentive for [applicants] to file frivolous, fraudulent, or otherwise meritless asylum applications as a means to obtain employment authorization, and thereby facilitating faster and more efficient adjudications of meritorious asylum claims and pending asylum employment authorization applications."[22] However, the proposed changes are not tailored to affect a subset of asylum applicants who would file bad faith applications, but instead would broadly impact all asylum seekers, with a disproportionate harmful impact on those who are most vulnerable and least connected to resources. DHS asserts without concrete support that the asylum system *requires* "a reform that decouples employment authorization from the filing of an asylum application," without ever seriously grappling with the concrete harms such a reform would inevitably inflict on the people the asylum system is designed to protect.[23]

Viewed individually and cumulatively, the changes proposed in this NPRM would not serve their purported purpose but would apply coercive economic pressure and erode the rights of asylum seekers to pursue protections in the United States.

a. INDEFINITELY SUSPENDING INITIAL EAD REQUESTS BASED ON USCIS PROCESSING TIMES FOR ASYLUM APPLICATIONS IS COERCIVE AND ARBITRARILY PUNITIVE

The NPRM proposes to "pause" the acceptance of initial (c)(8) EAD applications whenever the average processing time for affirmative asylum applications over a consecutive period of 90 days exceeds 180 days.[24] Acceptance of initial (c)(8) EAD applications would only resume after the average processing times for affirmative asylum applications over a consecutive period of 90 days is 180 days or fewer.[25] DHS acknowledges in the NPRM that USCIS' current affirmative asylum processing time of 1,287 days is "significantly greater than 180 days."[26] USCIS expects to initiate this pause 90 days after implementation of the rule, and that the pause is likely to last "for an extended time, possibly many years…it may take between 14 and 173 years to reach a 180-day processing time" to resume acceptance of initial (c)(8) EAD applications for asylum seekers, depending on other factors.[27] What DHS calls a "pause," then, based on their own projections, is most likely an *elimination* of initial EAD availability, possibly extending beyond the lifetimes of multiple generations of asylum seekers.

DHS' proposal to link the availability of initial (c)(8) EADs to USCIS' processing times for affirmative asylum applications is arbitrary, and is not reasonably connected to the stated goals of

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[21] 91 Fed. Reg. at 8617.
[22] *Id.*
[23] *Id.* at 8650; and *see id.* at 8629, noting that "DHS has seriously considered the harm to [asylum seekers who would be economically unable to pursue claims under the proposed rule], and, while these interests are relevant and justified, DHS has determined that they are outweighed by the needs of the Federal Government to protect U.S. national security, public safety, and the overall integrity of the asylum program, as well as sustain an operationally efficient immigration system." DHS does not provide details about this consideration, including alternatives considered or data supporting their justification of the acknowledged harms.
[24] 91 Fed. Reg. 8616, at 8618, https://www.federalregister.gov/documents/2026/02/23/2026-03595/employment-authorization-reform-for-asylum-applicants#p-149.
[25] *Id.*
[26] *Id.* at 8658. USCIS offers projections based its on "cycle time" metric to assert that it expects processing for new affirmative asylum applications for FY 2025 Q1 to take over 63 years, and for Q2 to take more than 46 years. *Id.* at 8650.
[27] *Id.* at 8650, 8658.

the NPRM related to fraud, frivolousness, national security and DHS operational efficiency.[28] Broadly and indefinitely eliminating access to work authorization for all new asylum seekers would apply coercive, punitive pressure to applicants with potentially meritorious claims. If the policy effectively dissuades some individuals from filing asylum applications for the sole purpose of obtaining an EAD, it would simultaneously render it economically impossible for many others to pursue their meritorious claims at all. To the extent that it may reduce strain on DHS's operational resources by reducing the number of applicants who are financially able to pursue asylum applications, the policy would disproportionately deter those most marginalized with access to fewest resources, regardless of the merits of their claims, rather than targeting the frivolous or fraudulent applications with which DHS is concerned.

Ultimately, this proposed change would categorically punish asylum seekers by effectively ending their access to initial EADs based on a factor that is outside of the control of any of the affected individuals. DHS acknowledges that this proposed change would apply equally to affirmative and defensive asylum seekers and their families, even though it is based on processing times only for affirmative asylum seekers' underlying asylum applications.[29] USCIS itself — not individual asylum seekers or asylum applicants as a class — is accountable for maintaining efficient, effective processes for accurate and timely adjudications. Shifting the onus of reducing agency strain to individual asylum seekers through coercive policies that deter them from seeking protection is arbitrary and capricious.

b. DELAYING INITIAL EAD ACCESS FOR ONE YEAR AND EXTENDING TIME FOR USCIS TO PROCESS INITIAL REQUESTS IS COERCIVE AND ARBITRARY

Even as DHS proposes to indefinitely "pause" acceptance of initial (c)(8) EAD applications at all, the NPRM would additionally impose significant delays on access to initial (c)(8) EADs by extending both the waiting period to file applications and USCIS' regulatory timeframe for processing them.[30] Currently, asylum applicants must wait 150 days after filing their asylum application to apply for a (c)(8) EAD, which can only be approved after their underlying asylum application has been pending for 180 days.[31] By regulation, USCIS must process the initial (c)(8) EAD request in 30 days.[32] The NPRM would extend asylum seekers' waiting period to apply for initial (c)(8) EADs to 365 days — a full year — after they file their asylum application.[33] It would simultaneously amend regulatory language to increase USCIS' processing timeframe for initial (c)(8) EAD applications to 180 days.[34] This means that under the NPRM, in the unlikely event that

[28] 91 Fed. Reg. at 8617.

[29] 91 Fed. Reg. at 8619.

[30] *Id.*

[31] 91 Fed. Reg. at 8647. Under current rules, the "Asylum EAD Clock" can stop and restart progress toward the 180-day initial EAD eligibility timeline based on processing actions in the underlying asylum case, depending on whether there have been any "[applicant]-caused" delays. The NPRM would eliminate the Asylum EAD Clock as "complicated and overly burdensome on both the [applicant] and USCIS." *Id.* at 8653. Our organizations agree that the Asylum EAD Clock policy is unnecessarily complicated and burdensome and should be eliminated. It is also unnecessarily punitive of applicants who may need time to effectively present their claims for protection-based relief for legitimate, unavoidable reasons. Our organizations would support eliminating the Asylum EAD Clock *without* further delaying access to EADs.

[32] *Id.*

[33] 91 Fed. Reg. at 8619.

[34] *Id.*

USCIS accepts initial (c)(8) EAD applications at all, asylum seekers must wait at least a year, and up to a year and a half or more after filing an asylum application to obtain an initial (c)(8) EAD.

If the NPRM's proposal to delay initial (c)(8) EAD eligibility and access for over a year after filing an application for asylum functions is "to dissuade an [applicant] from filing an asylum application for the sole purpose of obtaining employment authorization,"[35] it would also function to prevent applicants with meritorious claims from pursuing their rights to seek protection. Without offering statistics or data to support its "deduction" that there are "many" frivolous, fraudulent, or "otherwise meritless" asylum applications, DHS seems to assume that it is worthwhile to trade away the rights and dignity of all asylum seekers — to pursue their claims for protection, to work for their own subsistence and that of their families — in order to prevent some unknown subset of would-be applicants from obtaining an EAD in bad faith.[36] It is not. The inherent human dignity of all people, and our legal and moral obligations to support the rights of asylum seekers to pursue protection, mean that it is a greater harm to economically coerce good faith applicants from pursuing their claims.

c. Denying Applications Where an Applicant has Missed a Biometrics Appointment is Unnecessarily Rigid and Punitive

With the NPRM, DHS proposes a separate biometrics appointment for every (c)(8) EAD application, including renewals, and to deny any application if the applicant fails to appear for the appointment as scheduled.[37] This would impose an unnecessarily rigid rule, allowing USCIS to deny applications and retain any application fees where applicants were unable to attend an appointment as scheduled even for reasons beyond their control. Applicants may receive short notice for biometrics appointments, occasionally on the day-of or even after the appointment has passed, due to scheduling practices or U.S. Postal Service delays. Notices are sent in English, and language or literacy barriers mean that the meaning of such notices may not be immediately obvious. Low-income asylum applicants may lack transportation with short notice, especially those who might have to travel significant distances to attend their appointments. Applicants may lack technology or service access to receive notice of these appointments electronically. As DHS increases its use of detention, this is particularly problematic for asylum seekers who may be detained, as USCIS has recently updated its policies to state that it will not collect biometrics from detained individuals and has no interdepartmental agreement to facilitate biometrics collections.[38]

This proposed change fails to account for the lived realities of many low-income asylum seekers, and the barriers they face. There is no reason to impose unnecessarily rigid denial policies without exploring alternatives, such as facilitating accessible rescheduling policies, and establishing a process for detained individuals to comply with requests. By fostering circumstances where it is impossible for reasonably diligent applicants to pursue their applications for work authorization or other benefits, either due to practical realities outside their control or the prohibitive conditions of detention created by DHS itself, the agency would apply undue coercive pressure to prevent individuals from pursuing their right to seek asylum protections.

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[35] 91 Fed. Reg. at 8658.
[36] 91 Fed. Reg. at 8650.
[37] 91 Fed. Reg. at 8628.
[38] U.S. Citizenship & Immigr. Servs., Policy Alert, PA-2025-28, Biometrics Collection for Aliens in Custody (Dec. 5, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251205-BiometricsCollection.pdf.

d. EXCLUDING CERTAIN APPLICANTS FROM WORK ELIGIBILITY WHILE BASED ON ASYLUM MERITS ISSUES INAPPROPRIATELY SHIFTS MERITS ADJUDICATION TO EAD ADJUDICATION

With this NPRM, DHS proposes to generally exclude from (c)(8) EAD eligibility any applicant who entered or attempted to enter the United States without inspection (unless they expressed to an immigration officer an intent to file for asylum or a fear of persecution or torture within 48 hours of entry, establish "good cause," or were an unaccompanied alien child (UAC) at the time of entry),[39] filed their asylum application more than one year after their entry to the United States (unless they meet an exception under 8 U.S.C. 1158(a)(2)(D), or were a UAC at the time of filing),[40] or about whom USCIS has "reason to believe" they may have a criminal history that bars asylum protections (note that this vague exclusion would not require a record of conviction).[41] DHS proposes these presumptive exclusions from (c)(8) EAD eligibility as a means to limit the asylum adjudication backlog, by dissuading applicants who may be barred from ultimate relief from applying for asylum. However, the proposed changes risk over-simplifying a complex statutory and regulatory scheme by moving asylum bar application and exception determinations to the (c)(8) EAD adjudication context, where the applicant may not have secured resources to hire counsel, the record is not fully developed, and most adjudicators do not have the time and specialized training to accurately adjudicate complex asylum issues.

These proposed changes would improperly combine adjudications related to the merits of an individual's asylum case, which are complex and fact-specific adjudications conducted by officers who have specialized training, with routine adjudications for (c)(8) EAD applications which allow asylum seekers to support themselves and their families while they await adjudication of their claims on the merits. This would predictably result in (c)(8) EAD denials for applicants who should not in fact be barred from protection-based relief, applying economically coercive conditions to deter them from pursuing their applications. It would also shift resources currently expended in asylum adjudications into EAD adjudications, furthering backlogs[42] and, under the proposed rule, any "pause" on acceptance of initial (c)(8) EAD applications.

e. MAKING (C)(8) EAD CATEGORY DISCRETIONARY IS INAPPROPRIATE AND PUNITIVE

Under current regulations, adjudications of (c)(8) EAD applications are not discretionary.[43] With this NPRM, DHS proposes to make (c)(8) EAD eligibility discretionary, which would predictably result in increased denials of asylum seekers' EAD applications across the board based on factors outside the individuals' control. Notably, making (c)(8) EADs a discretionary benefit would allow adjudicators to use country-specific discretionary factors to deny EAD applications based on an applicant's country of nationality, particularly for those from countries affected by the travel ban

[39] 91 Fed. Reg. at 8618.
[40] 91 Fed. Reg. at 8618, 8659.
[41] 91 Fed. Reg. at 8618, 8659-60.
[42] 91 Fed. Reg. at 8658 (DHS "acknowledges that requiring EAD adjudicators to consider new eligibility requirements that are also analyzed in the asylum interview will likely increase the time needed to process (c)(8) employment authorization applications and could be viewed as contradictory to stated efficiency goals," but dismisses this concern with the unsupported expectation that it would contribute to long-term processing efficiency.)
[43] 8 CFR 274a.13(a)(1).

imposed by Presidential Proclamations 10949 and 10998 and subsequent actions.[44] Asylum seekers cannot avail themselves of the protection of their countries of origin, and are specifically fleeing those countries due to past or feared-future harms. Making (c)(8) EAD adjudications discretionary would risk not only arbitrary and potentially biased denials for asylum seekers in a context of "fraud-first" assumptions about asylum seekers, but it would also risk *punishing* asylum seekers for their affiliation with the very country they have fled, from which they are seeking the United States' protection.

The proposal to make (c)(8) EAD adjudications discretionary would broaden the circumstances under which USCIS could deny authorized work access for asylum seekers, applying unreasonably punitive and economically coercive pressure to abandon potentially meritorious claims.

f. DHS' Narrow, Fraud-First Focus on Dissuading Meritless Applicants Fails to Uphold the Agency's Core Role and Purpose in Adjudicating Asylum Claims

The NPRM's coercive policies would directly and dramatically erode the right to seek asylum, and are inconsistent with U.S. and international law. In the NPRM itself, DHS acknowledges that:

> [T]his rule may negatively impact potentially meritorious asylum applicants who may decide not to file for asylum because they cannot afford to wait the extended period before applying for employment authorization. These [applicants] may have family responsibilities, medical, or other financial burdens, that make it extremely difficult for them to wait 365 calendar days, or potentially many years due to the pause and restart provisions of this rule, to file for [a (c)(8) EAD]. DHS also recognizes that extending the processing time for employment authorization may also factor into a potentially meritorious applicant's decision-making process before applying for asylum. Due to this rule and the increased waiting periods before an [applicant] may receive employment authorization, there may be [applicants] with potentially meritorious asylum claims who instead return to a country where they may fear harm.[45]

This outcome is contrary to U.S. obligations in international law, and to the foundational principle of *non-refoulement*. Creating a wealth test for refugees and asylees is tantamount to shirking our obligations in international law, and to denying our shared humanity with those most in need of protection. Indeed, by restricting asylum seekers' access to employment in the mainstream economy, DHS' proposed rule would expose asylum seekers who have fled harms to increased risk of harms and exploitation here in the United States. Delaying, restricting, and indefinitely suspending access to EADs for asylum seekers would create a coercive chilling effect for asylum seekers with meritorious claims.

III. Severely Restricting Access to Authorized Work Would Undermine Access to Counsel and Due Process

Due process of law is a fundamental value of our Constitution. Although immigration proceedings are civil in nature, individuals facing removal are entitled to fundamentally fair proceedings under

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[44] U.S. Citizenship & Immigr. Servs., *Policy Alert* PA-2025-26, *Restricting the Entry of Foreign Nationals To Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats* (Nov. 27, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251127-Discretion.pdf.

[45] 91 Fed. Reg. at 8629.

the Fifth Amendment. The Supreme Court has long recognized that noncitizens in removal proceedings are entitled to due process protections, including a meaningful opportunity to be heard.[46]

Congress has also recognized the importance of representation in immigration proceedings by expressly providing that individuals in removal proceedings may be represented by counsel of their choosing, at no expense to the government.[47] Access to employment authorization is therefore not merely an economic issue; it directly affects asylum seekers' ability to meaningfully exercise their statutory right to counsel and to participate in the adjudication of their claims.

The proposed rule would significantly restrict asylum seekers' ability to obtain lawful employment authorization while their claims are pending. By delaying or denying access to lawful work authorization, the proposed rule would undermine asylum seekers' ability to obtain legal representation, gather evidence, and meaningfully participate in asylum adjudication. In doing so, the proposed rule threatens the fundamental fairness of asylum proceedings and risks depriving asylum seekers of meaningful access to the legal process.

a. The Proposed Rule Undermines Asylum Seekers' Access to Process

Asylum seekers must navigate an extraordinarily complex legal process while often facing profound economic hardship. Individuals fleeing persecution frequently arrive in the United States with few financial resources, limited English proficiency, and significant trauma. Yet under existing law, asylum seekers must comply with numerous procedural requirements, including filing a detailed asylum application, gathering supporting documentation, responding to requests for evidence, attending biometrics appointments, and appearing for interviews and court hearings. The proposed rule would substantially delay asylum seekers' ability to obtain lawful employment authorization while other policy changes have simultaneously increased the costs associated with seeking immigration relief.[48] Asylum seekers would therefore be expected to navigate complex legal processes while lacking the ability to support themselves lawfully. This creates a substantial barrier to participation in the asylum process.

Economic instability directly affects an individual's ability to comply with procedural requirements. Without lawful employment, asylum seekers may struggle to secure stable housing, reliable transportation, or access to communication channels necessary to receive government correspondence and attend required appointments. The proposed rule would therefore increase the likelihood that asylum seekers miss biometrics appointments, fail to receive notices, or otherwise become unable to comply with procedural requirements — circumstances that could lead to denial of their claims or removal orders.

Due process requires that individuals have a meaningful opportunity to present their claims.[49] Policies that create structural barriers preventing individuals from accessing the adjudicatory process undermine this fundamental requirement.

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[46] *Landon v. Plasencia,* 459 U.S. 21, 32–33 (1982); *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903); *Bridges v. Wixon,* 326 U.S. 135, 154 (1945).
[47] INA § 292, 8 U.S.C. § 1362.
[48] See H.R. 1, *supra* note 19 (imposing new or increased filing fees for certain humanitarian protection requests, including asylum and related applications, thereby increasing the financial barriers for individuals seeking protection in the United States).
[49] *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

b. The Proposed Rule Undermines Asylum Seekers' Ability to Access Counsel

Access to counsel is one of the most important factors affecting the fairness and accuracy of immigration proceedings. Immigration law has repeatedly been described by the Supreme Court as complex and difficult to navigate.[50] Asylum claims in particular require extensive factual documentation, legal analysis, and procedural compliance. Although individuals in removal proceedings have a statutory right to be represented by counsel, the government does not provide appointed counsel.[51] As a result, access to legal representation often depends on an individual's ability to pay for legal services or obtain assistance from nonprofit legal services providers (LSPs).

Empirical research consistently demonstrates that access to legal representation is one of the most significant predictors of success in immigration proceedings. Recent analyses of immigration court data show that individuals with counsel are significantly less likely to be ordered removed and substantially more likely to obtain relief, including asylum.[52] Restricting asylum seekers' ability to work, and therefore their ability to retain counsel, would directly undermine their ability to meaningfully participate in their proceedings and fairly present their claims.

Many nonprofit LSPs charge nominal, subsidized fees to support operating costs. Because nonprofit LSPs operate with limited resources, many asylum seekers rely on private attorneys who require higher fees for their services. Restricting asylum seekers' ability to work lawfully therefore directly undermines their ability to retain counsel. Without lawful employment authorization, asylum seekers may be unable to pay for legal representation, even when their claims are meritorious. The proposed rule would therefore increase the number of asylum seekers forced to proceed without counsel in complex immigration proceedings.

This outcome would not promote efficiency or integrity in the asylum system. Rather, it would likely increase adjudication delays and administrative burdens. Immigration courts and policy analysts have repeatedly noted that access to counsel improves the efficiency of immigration proceedings and can help reduce case backlogs, in part because represented individuals are better able to navigate procedural requirements and submit complete filings.[53] Policies that reduce access to counsel therefore risk exacerbating existing backlogs rather than alleviating them.

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[50] *See, e.g.*, *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (describing immigration law as "complex").

[51] INA § 292, 8 U.S.C. § 1362.

[52] See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1 (2015); American Immigration Council, *Where Can You Win in Immigration Court?* (2025) (analyzing FY 2019–2024 EOIR data and finding that 61.8% of unrepresented respondents were ordered removed compared to 26.9% of those with representation); Vera Institute of Justice, *Immigration Court Legal Representation Dashboard* (2024) (finding that approximately three-quarters of individuals ordered removed lacked legal representation); Transactional Records Access Clearinghouse (TRAC), *Immigrants Received Legal Help in Court* (2024) (reporting that only about one-third of individuals in immigration court have legal representation); Docketwise, *2025 State of Immigration Report* (2025) (finding that represented asylum applicants were significantly more likely to obtain protection than unrepresented applicants).

[53] See National Immigrant Justice Center, *Why Immigrants Need Access to Legal Counsel* (2024) (noting that expanding access to counsel can improve the efficiency of immigration proceedings and help reduce court backlogs); New York City Comptroller, *Economic Benefits of Immigration Legal Services* (2024) (finding that legal representation helps immigration proceedings run more efficiently and alleviates case backlog pressures).

c. THE PROPOSAL TO REMOVE LANGUAGE IN 8 CFR 208.3(C)(3) UNDERMINES ASYLUM SEEKERS' ABILITY TO RELY ON THE GOVERNMENT'S ACCEPTANCE OF THEIR APPLICATIONS, CREATING UNREASONABLE UNCERTAINTY

The proposed rule would also remove language in 8 C.F.R. § 208.3(c)(3) providing that an asylum application will be deemed complete if USCIS fails to return the application within 30 days for correction of deficiencies. This provision currently serves an important accountability function by ensuring that asylum applicants receive timely notice if their applications are incomplete.

Eliminating this safeguard would undermine asylum seekers' ability to rely on the government's acceptance of their applications as evidence that they have satisfied key procedural requirements. Under current practice, applicants reasonably rely on USCIS's acceptance of a filing to confirm that the application has been properly submitted and that the statutory timelines associated with asylum, including the one-year filing deadline and employment authorization eligibility timelines, have been triggered.

Administrative agencies must consider the utility and purpose of existing policies when proposing regulatory changes. By removing the "deemed complete" provision, the proposed rule would create substantial uncertainty for asylum applicants attempting to comply with complex procedural requirements. Applicants who submit applications in good faith may later face claims that their applications were deficient, potentially jeopardizing their eligibility for asylum or employment authorization. This infuses the lengthy asylum process with unreasonable uncertainty by creating the risk that DHS could reject an application not just at initial submission, but at any time after a subagency has accepted an application, no matter how long an asylum seeker has relied on that acceptance as evidence of procedural compliance. This policy risks arbitrary and capricious rejection determinations across time and undermines the fundamental fairness of the asylum process.

This change would therefore harm applicants who are attempting to follow legal processes by weakening procedural safeguards designed to promote fairness of, and confidence in, the asylum system.

d. THE PROPOSED CHANGES ARE INCONSISTENT WITH THE UNITED STATES' OBLIGATIONS IN INTERNATIONAL LAW

The proposed restrictions must be considered in light of the United States' international legal obligations toward individuals seeking protection. The United States is a party to the 1967 Protocol Relating to the Status of Refugees, which incorporates the core protections of the 1951 Refugee Convention, including the principle of *non-refoulement* — the obligation not to return individuals to territories where they face persecution.[54] Congress incorporated these obligations into domestic law through the Refugee Act of 1980, which established the modern U.S. asylum system.[55]

Asylum procedures exist to ensure that individuals with legitimate protection claims have a meaningful opportunity to present their cases before the United States government. Policies that significantly undermine asylum seekers' ability to pursue their claims risk eroding the effectiveness of these protection mechanisms. DHS acknowledges as much in the NPRM, without

[54] 1967 Protocol Relating to the Status of Refugees, art. 33 (*non-refoulement*).
[55] Refugee Act of 1980, Pub. L. No. 96-212.

adequately grappling with the fact that its proposals are inconsistent with the United States' obligations.[56]

When the stakes in asylum adjudications include potential return to persecution, torture, or death, procedural barriers that undermine meaningful access to the asylum process raise serious humanitarian and legal concerns. For these reasons, DHS should not adopt regulatory changes that weaken access to the asylum system and jeopardize asylum seekers' ability to fully present their claims.

IV. The NPRM Would Inflict Broad Economic Harm, Burdening Service Providers, Employers, and Entire Communities

Beyond the economic harm the NPRM would cause for individual asylum seekers, DHS risks imposing broad economic harms on entire communities by pushing thousands of individuals out of the mainstream economy.[57] The NPRM's proposal to restrict access to employment authorization would increase reliance on already overburdened charitable services programs, disrupt access to driver's licenses, increase vulnerability to labor exploitation, and significantly harm employers and local economies.

Current regulations rightfully allow asylum seekers to support themselves while their claims are adjudicated.[58] The NPRM would reverse expectations by effectively preventing lawful employment, forcing individuals into poverty and informal labor economies. Again, this shift would be harmful for individual asylum seekers and their families, sending a ripple effect of economic harm affecting LSPs, other charitable organizations, employers, and entire communities.

a. The NPRM Would Harm Legal Services Providers Like Those That Make Up CLINIC's Network

The NPRM proposes changing the 150-day waiting period to 365 days from the date an asylum application is receipted. The NPRM also proposes to increase the processing time from a mandatory 30-day period to a flexible 180-day period.[59] Catastrophically, the NPRM proposes that USCIS would pause initial work permit processing when average affirmative asylum processing times exceed 180 days and would resume only when the average drops to 180 days for a sustained period. DHS acknowledges meeting that metric would take the agency from 14 to 173 *years***.**[60] The NPRM, then, effectively *eliminates* access to work authorization for new asylum seekers, and drastically restricts it for renewal applicants.

This NPRM directly harms the vulnerable populations served by CLINIC's network. CLINIC's network consists of 391 Affiliates; the majority are small organizations that have fewer than 6 staff members. These Affiliates are overburdened and face consistent funding and capacity challenges. The NPRM would create an immense demand for low bono and pro bono legal services, which would quickly overwhelm CLINIC's network and similar LSPs. CLINIC Affiliates routinely

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[56] 91 Fed. Reg. at 8626, 8629.
[57] The extraordinary breadth of the authority over local economies DHS is exerting with this rule change, coupled with the economic significance of this assertion, highlights that this rule may be arbitrary and capricious due to major question doctrine concerns. *See West Virginia v. EPA*, 142 S. Ct. 2587 (2022).
[58] *See* 8 CFR §§ 274a.12(c)(8); 208.7(a).
[59] 91 Fed. Reg. at 8619–20, 8699 ("USCIS will have 180 days to adjudicate an initial application for employment authorization, except for those applications requiring additional review for background checks or vetting.").
[60] *Id*. at 8618–19.

provide preliminary asylum application assistance to support asylum seekers in preserving their claims, with the expectation that their pending applications will allow them to obtain (c)(8) EADs and earn income to retain private counsel for representation when their claims are adjudicated on the merits. This NPRM eliminates that expectation completely. If implemented as written, the NPRM would leave LSPs overburdened, upend already-underfunded service models, and make it even more economically untenable to provide accessible legal services for vulnerable populations of asylum seekers who already have suffered in their home countries.

LSPs are already facing declining access to federal and state funding and increasingly rely on private donations and very modest client fees.[61] By rendering asylum seekers unable to afford private attorneys, the NPRM would increase demand for LSP services, while at the same time undermining asylum seekers' ability to pay even nominal fees to help sustain LSPs. DHS failed to consider this dual impact of greater demand and diminished financial sustainability on LSPs like those that make up CLINIC's network.

The eligibility changes would also significantly increase the complexity of preparing and submitting (c)(8) EAD applications. By introducing new eligibility restrictions and additional determinations tied to an applicant's immigration history, the NPRM would require applicants, attorneys, and support staff to gather and review substantially more documentation before they can file a (c)(8) EAD application. These added requirements would increase the time and resources needed to prepare each application and place new burdens on LSPs and community organizations that assist asylum seekers. For organizations that conduct pro se EAD clinics, the NPRM would make it far more difficult to help large numbers of applicants complete applications accurately and efficiently, because each application would require individualized review of facts and eligibility criteria that cannot easily be addressed through standardized clinic models. The increased complexity could result in more incomplete or incorrectly filed applications, which in turn would contribute to longer adjudication times and increased delays for both initial and renewal work permits.

Finally, the NPRM would cause economic instability that would directly affect case preparation and efficiency. Individuals unable to work are more likely to experience housing insecurity, transportation barriers, and food insecurity. This complicates communication with LSPs, delays case development, and burdens LSPs with case management tasks such as referral to other charitable services. The implications of this policy underscore the need to carefully consider its effects on particularly vulnerable populations and the wider community.

b. THE NPRM WOULD HARM EMPLOYERS AND COMMUNITY ECONOMIES

The proposed changes would also inflict significant harm on employers and local economies. Asylum seekers often arrive in the United States after forced displacement without established support networks, and must navigate cultural and language barriers, caregiving responsibilities, and the impacts of trauma. Asylum seekers do not have access to the vast majority of state and

[61] Protecting the American People Against Invasion, Exec. Order No.14159, 90 Fed. Reg. 9443 (Jan. 29, 2025); OMB Memorandum M-25-13, "Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs" (Jan. 27, 2025) (known as the "federal funding freeze" paused funding for programs that that may not be aligned with the Administration's priorities; following the initiation of litigation, the Administration rescinded the memo but confirmed it would still review and seek to pause or terminate awards that were inconsistent with its priorities).

federal benefits,[62] and rely on informal, private, or charitable support, at least until they are able to obtain an EAD. Federal policy has emphasized repeatedly that immigrants need to be self-sufficient.[63] The NPRM appears to abandon that principle, placing asylum seekers' ability to even apply for a (c)(8) EAD in limbo for anywhere from 14 to 173 *years*, or longer.[64]

Preventing asylum seekers from working would not eliminate the need for asylum application fees and legal support, for food, housing, childcare, medical care, or transportation. Instead, it shifts those costs to local economies via charitable organizations and mutual aid groups. DHS estimates that asylum seekers would lose an enormous amount in wages, between $34.6 billion and $126.6 billion each year due to the NPRM's proposed changes.[65] This data alone should be sufficient to rescind this NPRM. The NPRM does not meaningfully address the consequences for asylum seekers, their employers, and the economy. Asylum seekers contribute to the workforce in large numbers, as DHS clearly understands based on its estimations in the NPRM. Asylum seekers labor force participation rate is 72%, higher than the U.S. average of 63% in 2025. [66] The NPRM would force individuals out of lawful employment, deprive employers and communities of workers and economic participation, and burden charitable organizations. By also preventing the entry of new lawful workers into the labor force, the NPRM would further reduce workforce supply in industries that already face labor shortages.[67] This policy is inconsistent with the needs of the U.S. economy.

Finally, the policy creates an environment that increases the vulnerability of lawfully present immigrants to labor trafficking and other forms of exploitation. Individuals who would be excluded from the mainstream economy under the proposed policy may find themselves in precarious situations, and unscrupulous or predatory people may exploit their desperate need to support themselves and their families. As these individuals experience lengthy delays for (c)(8) EAD access or lack an avenue to apply for a (c)(8) EAD at all, they may be compelled to accept exploitative working conditions because they are ineligible for public assistance. Charitable organizations may not be able to meet all their basic needs, thereby increasing their risk of exposure to abuse. This public safety risk is entirely unnecessary and avoidable, underscoring the need for DHS to rescind this NPRM.

V. THE NPRM RELIES ON FLAWED REASONING THAT IS NOT CONSISTENT WITH THE ADMINISTRATIVE PROCEDURE ACT

The NPRM and its stated rationale are so unreasoned as to be arbitrary and capricious. The APA requires that agency action as it relates to agency rulemaking be reasonable and reasonably

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[62] Church World Serv., *How the One Big Beautiful Bill Will Impact You* (Aug. 2025), https://cwsglobal.org/wp-content/uploads/2025/08/OBBB-082025v2.pdf (last visited Apr. 6, 2026).

[63] U.S. Dep't of State, *Immigrant Visa Processing Updates for Nationalities at High Risk of U.S. Public Benefits Reliance* (Feb. 2, 2026), https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-processing-updates-for-nationalities-at-high-risk-of-public-benefits-usage.html (last visited Apr. 6, 2026).

[64] 91 Fed. Reg. at 8658.

[65] 91 Fed. Reg. at 8621.

[66] FWD.us, *People Seeking Asylum Are Contributing to the Workforce* (Jan. 31, 2026), https://www.fwd.us/news/people-seeking-asylum-are-contributing-to-the-workforce/.

[67] *See* Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 90 Fed. Reg. 47,914 (Oct. 2, 2025), https://www.federalregister.gov/d/2025-19365 (In which the U.S. Department of Labor states that farm labor shortages, largely due to immigration enforcement, "agricultural employers will be unable to maintain operations, and the nation's food supply will be at risk," without swift action).

explained.[68] When an agency proposes a rule that has the ability to negatively impact hundreds of thousands of people — in this case, asylum seekers, their employers and communities, LSPs and other charitable organizations — federal agencies must not make bold and conclusory assertions without providing a rational basis for their decisions. In failing to reasonably justify its decision making, an agency rule can be found to be arbitrary and capricious. The Supreme Court reminds us that:

> Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[69]

The proposed rule relies on conclusory assertions about fraud reduction, without providing a reasoned justification for its sweeping provisions. Rather than provide evidence-based data to support its reasoning in practically eliminating (c)(8) EADs, DHS instead dangerously asserts a series of assumptions and its "deduction" based on decades-old information in proposing this rule.[70] The agency proclaims that almost an entire class of people are submitting frivolous filings or committing EAD fraud, but does not provide current evidence to support these allegations. The agency failed to connect the dots between placing a moratorium on work permits for an unreasonable, indefinite period of time and its intended improvements to the efficiency of the asylum process. Instead, what the NPRM is guaranteed to do is prevent asylum seekers with pending applications from earning a living to sustain themselves during the process. DHS's proposed rule to place a ban on work permits for law abiding asylum seekers is not a neutral policy proposal; it is a callous decision to cause more harm and additional trauma to relevant stakeholders.

The proposed rule indicates that asylum applicants are not 'entitled' to work authorization, and that Congress granted the Secretary discretion to make employment authorization available to asylum applicants by regulation.[71] While it is true that DHS has broad authority to establish and modify regulations to help administer and enforce immigration laws, through this proposed rule DHS is promoting a significant reduction in work authorization as though it is fulling *Congress'* agenda. DHS must ensure that its own comfort with the predictable and devastating impacts of the NPRM does not cloud its consideration of what Congress actually intended when it gave the agency broad authority. The Supreme Court has stated that "an order may not stand if the agency has misconceived the law;"[72] the Circuit Court for the District of Columbia follows in reasoning that "[a]n agency decision cannot be sustained…where it is based not on the agency's own judgment but on an erroneous view of the law."[73] Here, DHS has acknowledged that the catastrophic harms the NPRM would impose include undermining access to the asylum process for even applicants with meritorious claims.[74] Still, DHS has offered no logical mechanism or

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[68] *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021).
[69] *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983) (quoting *Burlington Truck Lines, Inc. v. United States,* 371 U. S. 156, 371 U. S. 168 (1962)).
[70] 91 Fed. Reg. at 8658.
[71] 91 Fed. Reg. at 8641, 8647.
[72] *SEC v. Chenery Corp.*, 318 U.S. at 94.(Chenery I).
[73] *Prill v. NLRB*, 755 F.2d 941, 947 (D.C. Cir. 1985); *see, e.g.*, *United States v. Ross*, 848 F.3d 1129, 1134 (D.C. Cir. 2017); *Safe Air for Everyone v. EPA*, 488 F.3d 1088, 1101 (9th Cir. 2007).
[74] 91 Fed. Reg. at 8629 ("DHS acknowledges that this rule may negatively impact potentially meritorious asylum

policy solution to offset those harms. The agency's breadth in authority to administer and enforce immigration laws does not include the authority to disregard the fact that its NPRM effectively cuts off access to the asylum process as codified by Congress in the Refugee Act of 1980, and that it is inconsistent with U.S. obligations under international law.

If DHS decides to finalize this rule it has the potential to lead to severe and foreseeable harm. DHS failed to justify the consequences it would impose on thousands of asylum seekers. For that reason alone, DHS should rescind the NPRM.

a. DHS HAS FAILED TO CONSIDER REASONABLE ALTERNATIVES

The NPRM includes proposed changes which, if finalized, would inevitably dismantle any real possibility for many who fear persecution to access asylum.[75] Instead, DHS must consider other reasonable alternatives to meet necessary objectives. An agency is not required to consider *all* policy alternatives; however, "[a]n agency is required to consider *responsible* alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives," so long as they are both "significant and viable."[76] The NPRM's provisions would introduce insurmountable hurdles to many, if not most, asylum seekers attempting to navigate the asylum system.

DHS should consider implementing real solutions to the issues it identifies in agency efficiency and resource management, instead of punishing the people that the system was designed to protect. USCIS has been behind the ball in introducing moderate solutions to improve case adjudication. Making substantive changes to asylum processing should first begin with effective allocation of resources and potentially seeking funding from Congress to assist in making reasonable agency policies that would help maintain a functional asylum system. A surge in DHS resources could help assist in hiring and training adjudicators to fairly, accurately, and efficiently process cases. It could also help to provide technology upgrades to establish a more streamlined digital process for filings and rehire experienced immigration judges who are knowledgeable in the nuances of immigration law. These investments in a functioning asylum system are a reasonable alternative to short-sighted, quick-fix measures that would cause harm and undermine the very asylum system that they purport to improve.

b. THE PROPOSED POLICY WOULD FAIL TO ADDRESS THE PROBLEMS DHS IDENTIFIES, AND IS NOT TAILORED TO PREVENT COLLATERAL HARMS

The DHS has not reasonably or logically crafted the NPRM to address the identified purpose of improving "national security, public safety, and the overall integrity of the asylum program."[77] In

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applicants who may decide not to file for asylum because they cannot afford to wait the extended period before applying for employment authorization. These [applicants] may have family responsibilities, medical, or other financial burdens, that make it extremely difficult for them to wait 365 calendar days, or potentially many years due to the pause and restart provisions of this rule, to file for [a (c)(8) EAD]. DHS also recognizes that extending the processing time for employment authorization may also factor into a potentially meritorious applicant's decision-making process before applying for asylum. Due to this rule and the increased waiting periods before an [applicant] may receive employment authorization, there may be [applicants] with potentially meritorious asylum claims who instead return to a country where they may fear harm." This is contrary to the U.S. obligations of *non-refoulement* in international law.).

[75] 91 Fed. Reg. at 8629.

[76] *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 242 (D.C. Cir. 2008) (internal quotations omitted, emphasis added); *see also* Daniel T. Deacon, *Responding to Alternatives*, 122 Mich. L. Rev. 671 (2024)).

[77] 91 Fed. Reg. at 8629.

fact, it would only undermine the integrity of the asylum program by adding burdensome complexity to adjudications for EAD applications, and by fostering economically coercive harms to asylum seekers that would prevent them from pursuing meritorious claims.[78] The agency's approach is fundamentally flawed and would drive asylum seekers into poverty to the point where they may feel forced to seek unauthorized work. It would create an asylum system that is designed to fail asylum seekers. To put it plainly, "removing work authorization for individuals who are being continuously vetted and are living in the U.S. legally while going through a complex court process would push people into the informal economy, where labor protections are minimal. They would be more vulnerable to exploitation or wage theft, which in turn could depress wages, suppress labor protections, and disadvantage American workers at large."[79] With this NPRM, DHS fails to address the problems it identifies and in fact would cause irreparable harm. This approach is illogical at best and will only further burden asylum seekers and add to existing processing delays, as DHS itself acknowledges.[80]

c. DHS Inappropriately Proposes to Relieve Its Administrative Inefficiencies at the Expense of Asylum Seekers

Even if the NPRM's policies were tailored to address the identified objectives, DHS cannot offload its obligation to effectively and efficiently administer laws onto asylum seekers. Nor is it appropriate to penalize and punish all asylum seekers as a means of reducing backlogs and minimizing purported fraudulent applications. The burdens of good governance and effective administration belong to the administrative agency, and not to individual asylum seekers. In order to make DHS' role easier, the NPRM proposes a policy that is so restrictive in nature that it would figuratively *and literally* starve asylum seekers out of the United States. DHS, then, seeks to relieve its own burdens in administering asylum laws by making it impossible for asylum seekers to avail themselves of the humanitarian protections those laws are designed to offer. At its core, the NPRM would push vulnerable people into destitution, exploitation, and/or *refoulement* contrary to law. Asylum exists to protect refugees who have fled harm. It is a means to protect the most vulnerable among us. If the system that was designed to protect now inflicts harm, where are the vulnerable supposed to turn?

VI. The Proposed Changes Would Undermine the Common Good and Increase Opportunities for Exploitation

The changes proposed in this NPRM would undermine the common good by disregarding the dignity of work, as well as the right of noncitizens to provide for themselves and for their families in a dignified way, subjecting them to an increased risk of exploitation. They would also limit asylum seekers' ability to contribute their God-given gifts and talents for the benefit of the community as a whole. In a 2024 Labor Day statement, Archbishop Borys Gudziak and Bishop Mark Seitz explained that "[d]ignified work reflects that our humanity has given us an active role in cultivating the world around us. Through work, we exercise dominion over how we provide the

[78] 91 Fed. Reg. at 8629, 8658. (In which DHS acknowledges that its proposed changes may actually increase processing times and apply economically coercive pressure on asylum seekers to abandon otherwise meritorious claims.).
[79] Fwd.us *Ending Work Authorization for Aylum Seekers Will Cost Billions* (March 4, 2026), https://www.fwd.us/news/asylum-work-permit-rule/.
[80] 91 Fed. Reg. 8629.

material needs for ourselves and our families."[81] Legal work authorization allows noncitizens the opportunity to seek dignified, lawful, and gainful employment. The Catholic Church has long proclaimed the important role that labor plays in helping individuals live out their human dignity.[82] Our faith teaches that labor is more than just a way to make a living; it is a form of continuing participation in God's creation. As Catholics, we are called upon to pray and advocate for protections that allow all laborers to thrive, not just survive. We also believe that all people have a right and a duty to participate in society, seeking together the common good and well-being of all, especially the poor and vulnerable. In this same vein, the Church has been a prominent voice speaking out against human trafficking and other forms of exploitation.

This NPRM would at least double the time before asylum seekers could legally seek employment while their applications are pending. Restricting access to employment authorization in this way would undoubtedly force many to turn to unregulated forms of work — making them more susceptible to situations of human trafficking, abuse, and exploitation — simply to be able to afford basic living expenses. This proposal would deprive individuals of the freedom to choose dignified work. It would compel many within this already vulnerable population to accept exploitative work conditions because they are ineligible for public assistance, and charitable organizations may not be able to meet all their basic needs. It would create opportunities for unscrupulous employers and predatory actors to exploit those who are desperate to support themselves and provide for their loved ones while navigating the asylum process.

While the U.S. Department of Labor recognizes this vulnerability,[83] USCIS fails to adequately consider how the NPRM would exacerbate it for noncitizens and their families, instead citing "national security, public safety, and the overall integrity of the asylum program" as broad justifications for the proposed changes.[84] Beyond that, the agency threatens, as a possible alternative to the current proposal, entirely eliminating eligibility for employment authorization on the basis of a pending asylum applications.[85] As a result, we are very concerned that the agency does not fully appreciate the human impacts of this proposal and, at the same time, exaggerates its anticipated "benefits" without offering sufficient evidence.

VII. Conclusion

While CLINIC and the USCCB share DHS' interest in the integrity and efficiency of immigration processes, the proposed changes are misguided and would not support a more effective immigration system consistent with our moral and legal obligations. The NPRM would undermine the humanitarian goals of our asylum system and would harm the dignity of the most vulnerable among us. Our organizations' shared embrace of the Gospel value of welcoming the stranger lead us to urge DHS to rescind the NPRM.

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[81] Statement of Archbishop Borys Gudziak and Bishop Mark Seitz (Sept. 2, 2024), https://www.usccb.org/sites/default/files/2024-08/Labor%20Day%20Statement%202024_0.pdf.

[82] *See generally* Pope Leo XIII, *Rerum Novarum* (May 15, 1891), https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html.

[83] *The Department of Labor's Approach to Human Trafficking*, Dep't of Labor, https://www.dol.gov/agencies/oasp/resources/trafficking/dols-approach (last accessed Mar. 30, 2026) (including "those who lack legal authorization to work in the United States" as among those with a heightened risk of being exploited).

[84] 91 Fed. Reg. at 8629.

[85] 91 Fed. Reg. at 8645–6.

In addition to these comments, our organizations endorse those submitted by Catholic Charities USA (CCUSA), in response to this NPRM.

Thank you for your consideration of these comments. Please do not hesitate to contact Karen Sullivan, Director of Advocacy, at ksullivan@cliniclegal.org, with any questions or concerns about our recommendations.

Respectfully,

Anna Gallagher
Executive Director
Catholic Legal Immigration Network, Inc.

William Quinn
General Counsel
U.S. Conference of Catholic Bishops