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April 23, 2026

Division of Humanitarian Affairs
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: U.S. Citizenship and Immigration Services Notice of Proposed Rulemaking, DHS Docket No. USCIS-2025-0370,¹ Employment Authorization Reform for Asylum Applicants

To whom it may concern:

The National Immigration Project² submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS) request for comment on a proposed rule that will essentially eliminate employment authorization documents (EADs) for asylum seekers while their applications for asylum are pending. The proposed rule contravenes congressional intent to allow asylum seekers to work, punishes them for backlogs that are within the agency's control, and will hurt the U.S. economy.

The National Immigration Project is a national nonprofit membership organization that provides support, referrals, and legal and technical assistance to attorneys, community organizations, families, and advocates seeking to advance the rights of noncitizens. The National Immigration Project fights for fairness and transparency in immigration adjudication systems and believes that all noncitizens should be afforded the right to fair adjudications of their claims to remain in the United States. The right to work is fundamental and this right is especially important for marginalized noncitizens who may be forced into dangerous jobs if they are not authorized to work lawfully. The proposed rule is just the latest effort by the current administration to punish noncitizens, especially asylum seekers, and it should be rescinded in its entirety.

¹ The NPRM lists multiple docket identifying numbers, including DHS Docket No. USCIS-2025-0370, CIS No. 2799-25, DHS Docket No. 2025-0370, and RIN 1615-AC97. We understand that the correct docket number is DHS Docket No. USCIS-2025-0370, but have included all numbers to ensure that the correct notice is cited.

² The author of this comment is National Immigration Project supervising attorney, Victoria Neilson with input from National Immigration Project director of advocacy, Caitlin Bellis.

The “pause” on processing EAD applications for asylum seekers is unreasonable

The proposed rule 8 CFR § 208.7(a)(2) will “pause” adjudication of *all* initial asylum-pending EAD applications if “the average USCIS processing time for adjudicating affirmative asylum applications is greater than 180 days for all applications for asylum currently pending before USCIS.” This section of the proposed rule is not really a “pause” but actually will cause a complete end to asylum-pending EAD eligibility for years to come (at least 14 years by USCIS’s own calculation.) 91 Federal Register 8616, 8650 (Feb. 23, 2026). While the affirmative asylum backlog is the alleged justification for this “pause,” the preamble acknowledges that even defensive asylum seekers who seek asylum before the immigration court will not be able to seek initial asylum-pending EADs until USCIS meets its manufactured processing goal. 91 Fed. Reg. 8619.

This section of the proposed rule uses the asylum backlog of USCIS’s own making as an irrational pretext to punish asylum seekers and thwart congressional intent in authorizing EADs while asylum applications are pending. Moreover, it is clear that the actual intent of this proposed rule is to inflict maximum pain on asylum seekers to force them to give up their claims rather than engaging in any legitimate backlog reduction that preserves the unique humanitarian purpose of asylum. The White House has lauded the lower number of asylum grants in immigration court as “**Asylum grant rates have collapsed:** Under President Trump, asylum is now granted in just 7% of cases — a historic low, (emphasis in original),” measuring the immigration courts’ success through its denial of cases.³ Immigration courts, which are supposed to fairly adjudicate cases, now feature posters encouraging litigants to “self-deport.”⁴

In accordance with this administration’s articulated goals of denying asylum and speeding removals, the proposed rule provides a disincentive for USCIS to address its affirmative backlog through fair and expeditious adjudication of the cases pending there; the longer it takes to tackle the backlog, the longer asylum seekers will go without the ability to work, increasing the challenges of surviving in the United States long enough to get a result on their applications. Last year, through the so-called One Big Beautiful Bill Act, Congress raised fees on most applications, including EAD applications. Yet, in spite of the increased fees, USCIS has not prioritized fast and fair adjudication of asylum applications and has only timely processed those EAD applications subject to a litigation settlement.⁵

The preamble makes the preposterous statement that achieving USCIS’s 180-day processing goal for affirmative asylum adjudications may take between 14-173 years. 91 Fed. Reg. 8650. This statement alone is ample proof of the arbitrary and capricious nature of this proposed rule. First, the agency itself clearly has no meaningful way to calculate its own backlog. Second, USCIS is essentially admitting that it has no plans to resume processing initial EAD applications for at

³ White House, *Era of Amnesty Is Over: President Trump Restores Rule of Law to Immigration Courts* (Apr. 9, 2026) <https://www.whitehouse.gov/releases/2026/04/era-of-amnesty-is-over-president-trump-restores-rule-of-law-to-immigration-courts/>.

⁴ Alisa Reznick, *Lawyers say posters suggesting migrants 'self-deport' are now appearing in court, detention*, KJZZ (March 25, 2025) <https://www.kjzz.org/fronteras-desk/2025-05-25/lawyers-say-posters-suggesting-migrants-self-deport-are-now-appearing-in-court-detention>.

⁵ USCIS, *Rosario Class Action*, <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-agreements/rosario-class-action>.

least 14 years. It is irrational to punish new asylum seekers for inefficiencies in the asylum system that long predated their application, and that are the direct result of the Department's own priorities and distribution of resources. The power to reduce the backlog has always lain with USCIS, but de facto eliminating a congressionally-mandated immigration benefit to reduce their workload is not an appropriate means of addressing the problem. USCIS does not offer any more rational or more closely tailored solutions to address the backlog, such as hiring more asylum officers, or reducing the length of asylum interviews.⁶ Asylum seekers leave their countries in fear of their lives. Removing their ability to work while waiting years for USCIS to schedule an interview will not reduce the backlog, it will only hurt asylum seekers and the U.S. economy.

The waiting times under the proposed rule are unreasonable

If the “pause” discussed above goes into effect, the rest of the changes proposed in the rule will also be “paused” since there will be no initial asylum-pending application adjudications for years. USCIS seems to anticipate the likelihood that the “pause” will be found unlawful and has added further proposed changes to make it more difficult for asylum seekers to ever receive an EAD, even if the “pause” is somehow lifted.

Under Immigration and Nationality Act (INA) § 208(d)(2), asylum seekers may be issued employment authorization while their applications are pending. While the INA imposes a minimal wait time of 180 days to receive the initial EAD, it does not require any further waiting period. Thus, for decades, regulations have authorized the Immigration and Naturalization Service and then USCIS to allow asylum seekers to apply for an initial EAD 150 days after filing for asylum, and for the agency to process the EAD application within 30 days of receipt.⁷

Proposed 8 CFR § 208.3(c)(3) would force asylum seekers to wait a full 365 days from filing for asylum before they could submit an EAD application and will allow USCIS an additional 180 days to process the application, *or more* if it determines that “additional . . .vetting” is required.⁸ The preamble does not discuss who might be subject to this additional vetting or what that additional vetting might entail.

The preamble to the rule claims that “[b]y extending the 30-day (c)(8) EAD adjudications timeframe to 180-day, USCIS would be able to shift resources from the (c)(8) workload to adjudications with backlogs.” 91 Fed. Reg. 8667. But that justification makes no sense when the personnel who adjudicate EADs are entirely separate from those who adjudicate the merits of

⁶ For suggested improvements to the asylum adjudication system *see*, American Immigration Lawyers Association, A Better Way on Immigration Modernizing America’ Asylum System (Mar. 16, 2026) (suggesting greater reliance on asylum officers and expanded access to legal counsel to increase adjudication efficiency). <https://www.aila.org/aila-files/45F18A61-A01B-44B2-89B9-6804FC92F558/26031600.pdf>.

⁷ 8 CFR §§ 274a.12(c)(8); 208.7(a).

⁸ According to the preamble of the proposed rule, USCIS can take even longer than 180 days if it determines that “additional. . .vetting” is required. 91 Fed. Reg. at 8619–20, 8699.

asylum applications. INA § 235(b)(1)(E) defines asylum officers as:

an immigration officer who-

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 208 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

There are no similar asylum training requirements for officers who adjudicate EADs, thus there is no rational way to shift workloads between asylum officer specialists and EAD processing generalists.

The proposed rule will turn EAD adjudications into mini-asylum adjudications

The proposed rule will force EAD adjudicators to make complex determinations about the potential applicability of asylum bars long before the asylum application is adjudicated and with limited information. In order to assess potential criminal, one year filing deadline, or newly-imposed unauthorized entry restrictions, EAD applicants will have to submit voluminous documentation with their EAD applications. Thus, the proposed rule will significantly increase the work load of EAD adjudicators, likely including increased issuances of Requests for Evidence, and make every EAD adjudication. Further, since current EAD application forms and instructions do not require asylum seekers to submit much of the evidence that EAD adjudicators will have to evaluate, USCIS will have to either amend the I-765 form and instructions, or USCIS or the immigration court will have to share the underlying asylum application with the EAD adjudicator. Again these added processes will significantly increase EAD adjudication times.

Under the proposed rule, asylum-pending EAD applications will be denied if the USCIS officer makes certain determinations about the *merits* of the asylum application. Proposed 8 CFR § 208.7(a)(1)(iv)(A) says that asylum seekers are ineligible for an asylum-pending EAD if “[t]here is reason to believe that the applicant may be barred from a grant of asylum due to the applicability of one of the criminal bars to asylum under sections 208(b)(2)(A)(ii)–(iii).” Those sections of the INA are the particularly serious crime bar to asylum and the serious reason to believe the noncitizen committed a serious nonpolitical crime outside the United States bar.

Determining whether either of these bars applies involves a complex analysis which is entirely inappropriate for a USCIS officer adjudicating an EAD application to attempt to make. For example, “immigration adjudicators may consider a respondent’s mental health in determining whether” the particularly serious crime bar applies. *See Matter of B-Z-R-*, 28 I&N Dec. 563, 567 (A.G. 2022). Similarly, to determine whether the “serious nonpolitical crime” bar applies, an adjudicator must make a determination as to whether there is probable cause to believe that the crime was committed. *Matter of W-E-R-B-*, 27 I&N Dec. 795, 796 (2020). The adjudicator must also decide whether the crime was “serious” and whether it was “nonpolitical.” *Matter of E-A-*, 26 I&N Dec. 1 (BIA 2012). These complex legal conclusions are generally reached only after extensive legal briefing, testimony by the asylum seeker, and potentially analysis of external

evidence. Under proposed 8 CFR § 208.7(a)(1)(iv)'s "reason to believe" standard, it is likely that asylum seekers with any convictions or pending charges will have their EAD applications summarily denied, even though in some instances it is false charges abroad that form the basis of the asylum seeker's persecution. Since the EAD adjudicator will only have court dispositions, they will not be in a position to make the complex legal determination whether the asylum seeker would be barred by either of those INA provisions. As discussed above, INA § 235(b)(1)(E) requires asylum officers to receive specialized training and to be supervised by other asylum officers with "substantial experience adjudicating asylum applications." Nonetheless, this rule will require non-asylum officers to engage in a preliminary, mini-asylum adjudication to process the EAD application.

Similarly, proposed 8 CFR § 208.7(a)(1)(iv)(C) will require EAD adjudicators to deny asylum-pending EADs for noncitizens who file their asylum application more than one year after their entry into the United States, unless they are an unaccompanied child § 208.7(a)(1)(iv)(C)(2) or an asylum officer or immigration judge determined they met an exception to the one year filing deadline § 208.7(a)(1)(iv)(C)(1). But, of course, the latter exception provides no relief to asylum seekers seeking an asylum-pending EAD because, by definition, they have not yet had their application adjudicated by an asylum officer or an immigration judge.

There are myriad exceptions to the one year filing deadline codified at 8 CFR § 208.4(a)(4)-(5), including but not limited to: changed country conditions, changes in the individual's circumstances, a change in eligibility for former derivative applicants, serious illness or disability, ineffective assistance of counsel, maintaining lawful status, and having the application returned to make a correction. Under the proposed rule, however, there would be no opportunity for an asylum seeker who files more than one year after arriving in the United States to obtain employment authorization while their application is pending. One result of this proposed change may be to increase the affirmative asylum backlog because individuals who are maintaining lawful status will no longer feel confident waiting to file for asylum until their temporary status is coming to an end. For example, a student whose country has just experienced a political coup, may no longer be able to wait until they are close to graduation to determine whether it is safe to return to their home country or whether to file for asylum; unless they file for asylum within one year of entry into the United States they will be unable to obtain an EAD. It is irrational for the proposed rule to punish asylum seekers who file more than one year after their entry when another section of the regulations (and INA § 208(a)(2)(D)) explicitly excuses their late filing in many circumstances.

Finally, proposed 8 CFR § 208.7(a)(1)(iv)(D) will render most asylum seekers who enter between ports of entry ineligible for asylum-pending EADs. This rule imposes a new barrier on asylum-pending EADs that, unlike the other two proposed rules discussed in this section extends beyond any existing bar to asylum eligibility. INA § 208(a)(1) allows "Any [noncitizen] who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival. . .)" to seek asylum. Yet the proposed rule will prevent asylum seekers who did not enter at a port of entry from obtaining an asylum-pending EAD unless they meet newly imposed exceptions to the new rule. Those exceptions include demonstrating that they expressed an intent to apply for asylum to an immigration officer within 48 hours of entry or that they had other "good cause for the illegal entry." 8 CFR § 208.7(a)(1)(iv)(1)-(2). Again, EAD

adjudicators have not previously had to make this type of substantive determination about complex issues such as “good cause.” The preamble explains that “good cause” may include requiring immediate medical attention or fleeing imminent serious harm. 91 Fed. Reg. 8661. The proposed rule will thus require EAD adjudicators to make substantive decisions about why asylum seekers entered the U.S. in the manner they did, including potentially evaluating what constitutes “imminent serious harm.” While asylum officers have been trained to make similar determinations, requiring this level of substantive analysis by a generalist officer adjudicating EADs who does not interview the asylum seeker is unprecedented.

The proposed rule will hurt the U.S. economy

Allowing noncitizens to work lawfully, and pay taxes, is not only good for the noncitizens themselves, it also benefits the U.S. economy, which has grown as a direct result of increased immigration.⁹ “[N]early all economists agree that immigration boosts the U.S. economy,” mitigating the effects of having an aging population, and paying more money into safety net systems than they take out.¹⁰ In 2024, nearly 20 percent of the U.S. workforce was comprised of immigrants.¹¹ Yet recent immigration crackdowns have led to a worker crisis in the hotel and restaurant industries with over 900,000 reported job vacancies.¹² There are likewise shortages in cattle and crawfish industries.¹³ Further, this administration’s focus on mass deportations and information sharing among agencies has led to some noncitizens choosing not to file their taxes out of fear of repercussions.¹⁴

The preamble to the proposed rule states that in fiscal year 2024 USCIS received 422,457 asylum applications. 91 Fed. Reg. 8651. If the proposed rule goes into effect, asylum seekers who file affirmative applications would not be eligible for employment authorization while their cases are pending at USCIS. Thus, rather than adding potentially hundreds of thousands of asylum seekers to the workforce, filling critical job openings and paying taxes into federal and state coffers, asylum seekers will be forced to rely on assistance from family members, faith organizations and food pantries.

⁹ Rachel Siegel, et al, *The Economy Is Roaring. Immigration Is a Key Reason*. THE WASHINGTON POST, Feb. 27, 2024, <https://www.washingtonpost.com/business/2024/02/27/economy-immigration-border-biden/>. (Finding that 50 percent of the labor market’s recent growth came from foreign-born workers between January 2023 and January 2024.)

¹⁰ Brookings, *The impact of immigrants on the US economy* (Mar. 30, 2026) <https://www.brookings.edu/articles/the-impact-of-immigrants-on-the-us-economy/>; Catherine Rampell, *You Don’t Want Immigrants? Then Tell Grandma She Can Never Retire*. THE WASHINGTON POST, Apr. 23, 2024, <https://www.washingtonpost.com/opinions/2024/04/23/immigration-jobs-economy/>.

¹¹ Kevin Appleby, *The Importance of Immigrant Labor to the US Economy*, Center for Migration Studies (Sep. 2, 2024) <https://cmsny.org/importance-of-immigrant-labor-to-us-economy/>.

¹² *America’s worker shortage is now a crisis*, THE WASHINGTON POST, Apr. 14, 2026, <https://www.washingtonpost.com/opinions/2026/04/14/immigration-crackdown-causes-massive-shortages-unskilled-labor/>.

¹³ *Id.*

¹⁴ Miriam Jordan and Andrew Duehren, *Immigrants Are Scared to File Taxes. It Could Cost the U.S. Billions*, THE NEW YORK TIMES, Apr. 14, 2026, <https://www.nytimes.com/2026/04/14/us/undocumented-immigrants-ice-tax-returns-irs.html?searchResultPosition=1>.

It does not make economic sense to prevent noncitizens who are pursuing lawful status here from working at the same time that there are critical worker shortages. As with many of the changes wrought to lawful immigration by this administration, the proposed rule seems designed to make asylum seekers give up their claims because they will not be able to afford to remain in the United States.

Conclusion

In closing, the National Immigration Project urges USCIS to rescind this rule in its entirety. Please do not hesitate to contact Victoria Neilson at victoria@nipnlg.org if you have any questions or need any further information. Thank you for your consideration.

Respectfully,



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