NATIONAL IMMIGRATION PROJECT
Lawyers for the Movement

Submitted via www.regulations.gov

June 22, 2026

Markwayne Mullin
Secretary of Homeland Security

Submitted via www.regulations.gov

Re: Increasing the Fee for Certain Aliens Ordered Removed in Absentia as Established by the HR-1 Reconciliation Bill Docket No: ICEB-2026-0034, RIN: 1653-AA98

Dear Secretary Mullin:

The National Immigration Project submits the following comment in opposition to the Department of Homeland Security's (DHS) notice of proposed rulemaking (NPRM) which seeks to increase the fee imposed on noncitizens with in absentia removal orders who are arrested by Immigration and Customs Enforcement (ICE) to $18,000. The National Immigration Project strongly opposes this draconian rule and urges DHS to rescind it in its entirety.

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 dignity and due process for immigrants and their families through federal litigation, advocacy, and community organizing. We frequently provide representation and training on motions to rescind and reopen in absentia removal orders. We further monitor trends at the Executive Office for Immigration Review (EOIR) and have been alarmed by the increase in in absentia removal orders since the start of the second Trump administration. This rule would impose a fee that significantly exceeds the partial reimbursement Congress intended, and is, instead designed to punish noncitizens at the same time that DHS and EOIR implement measures designed to increase in absentia removal orders.

I. The Proposed Rule Contravenes the Clear Language of the Statute and Is Unlawful

When Congress enacted H.R.-1, it established and raised fees for numerous immigration-related applications. It also created, for the first time, a fee for noncitizens removed in absentia who are later arrested by ICE. 8 USC § 1814(a). Pursuant to 8 USC § 1814(b)(1) for fiscal year 2025, the base fee was $5000, 8 USC § 1814(b)(1)(A), or "such amount as the Secretary of Homeland Security may establish, by rule." 8 USC § 1814(b)(1)(B). However, fiscal year 2025 fiscal year

ran from October 1, 2024-September 30, 2025.[1] Therefore, Congress only authorized DHS to issue regulations in any other amount, which could be higher or lower than $5000, if DHS engaged in rulemaking prior to September 30, 2025. *See* USC § 1814(b)(1)(A). DHS did not issue rulemaking on the in absentia fee until May 20, 2026, when it issued the current NPRM—more than seven months after the conclusion of Fiscal Year 2025. *See* 91 Federal Register 29380 (May 20, 2026).

Other than the rulemaking Congress authorized to take place during Fiscal Year 2025, the only additional fee allowed by 8 USC § 1814(b)(2) is for annual adjustments for inflation. In its entirety, that provision reads:

> (2) Annual adjustments for inflation
> During fiscal year 2026, and during each subsequent fiscal year, the amount specified in this section shall be equal to the sum of-
>
> (A) the amount of the fee required under this subsection for the most recently concluded fiscal year; and
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> (B) the product resulting from the multiplication of the amount referred to in subparagraph (A) by the percentage (if any) by which the Consumer Price Index for All Urban Consumers for the month of July preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the preceding calendar year, rounded to the next lowest multiple of $10.

This proposed rule is *ultra vires.* The statutory language clearly states that the fee for each year subsequent to Fiscal Year 2025's fee is calculated by taking the fee from the prior fiscal year and multiplying it by the Consumer Price Index. DHS did not issue any rulemaking increasing the Fiscal Year 2025 fee; thus, for Fiscal Year 2026 and subsequent fiscal years, DHS can only raise the in absentia fee a small percentage based on the Consumer Price Index. On November 21, 2025, DHS issued a 30-day notice in the federal register, increasing certain fees for Fiscal Year 2026 by 2.7 percent, subject to rounding as provided by H.R.-1. *See* 90 Federal Register 52693, 52694 (Nov. 21, 2025). Following that federal register notice, the NPRM states that the current in absentia arrest fee is $5,130.[2] Therefore, Congress authorized DHS to increase the in absentia fee only by 2.7 percent, the Consumer Price Index amount, not by the $13,000 it seeks to impose through this unlawful rulemaking.

As such, a plain reading of the statute proves that this proposed rule is unlawful.

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[1] *See* U.S. Government Bookstore, Fiscal Year 2025 Budget, https://bookstore.gpo.gov/catalog/fiscal-year-2025-budget. ("Each year, the Office of Management and Budget (OMB) prepares the President's proposed Federal Government budget for the upcoming Federal fiscal year, which runs from October 1 through September 30 of the following year.").

[2] The NPRM cites the November 21 Federal Register notice as having authorized DHS's increase of the $5,000 fee to $5,130. S*ee* 91 Fed. Reg. 29382, ("On November 20, 2025, ICE adjusted the fee for inflation from $5,000 to $5,130 for FY 2026, effective December 1, 2025. 90 FR 52425 (Nov. 20, 2025)). That rulemaking does not mention the in absentia fee and is signed by Joseph B. Edlow, Director of United States Citizenship and Immigration Services. It is therefore unclear whether the increase from $5000 to $5130 payable to ICE was even properly authorized.

I. The Proposed Rule Further Violates the Clear Language of the Statute, Which Only Authorizes a Partial Reimbursement of DHS's Apprehension Cost

The plain language of 8 USC § 1814(a) makes clear that Congress did not intend to require the noncitizen to pay all, or most, of the cost of arrest. Instead, Congress chose to impose a fee "[a]s *partial reimbursement* for the cost of arresting [a noncitizen] described in this section" (emphasis added). It is logical that Congress chose not to authorize full, or nearly full, reimbursement, given that, through H.R.-1, Congress also gave ICE $75 billion for arrest and detention of noncitizens over a four-year period.[3] Furthermore, through this same provision of the act, 8 USC § 1814(d), Congress only authorized 50 percent of the fee to be retained by ICE. If Congress had intended the in absentia fee to be a significant funding source for ICE, it could have authorized the full fee to be disbursed to ICE; Congress did not choose to disburse the fee in this way.

In the preamble of the NPRM, DHS estimates that its actual cost of arrest and detention of a noncitizen who has been ordered removed in absentia is $18,042. 91 Fed. Reg. 29382. In other words, ICE is seeking a "partial" reimbursement of 99.76 percent of its claimed cost of apprehension. If Congress had intended for ICE to recover all but 00.24 percent of its cost of apprehension, it would have chosen different language, such as "most" or "nearly all" rather than "partial" reimbursement.

Additionally, Congress authorized "partial reimbursement for the cost of arresting *an* alien."[4] 8 USC § 1814(a) (emphasis added). By using the singular indefinite article "an" Congress is not authorizing DHS to raise the cost of the in absentia fee beyond the cost of apprehending a specific noncitizen.[5] Since ICE itself refers to the $18,042 as an "average," 91 Fed. Reg. 29383, there must be a considerable percentage of noncitizens with in absentia removal orders for whom the costs of arrest by ICE are significantly less than $18,000. Congress did not authorize ICE to charge noncitizens an apprehension fee that exceeds the cost that ICE incurs—it only authorized a "partial reimbursement" for the cost of arresting a noncitizen.

Moreover, in reaching its figure of $18,042, DHS lays out its costs in a chart. That chart includes columns for costs characterized as: "Identify; Arrest; Detain; Process; and Remove." 91 Fed. Reg. 29383. Again, returning to the plain language of the statute, Congress authorized ICE to charge a fee as "partial reimbursement for the cost *of arresting*" a noncitizen (emphasis added). 8 USC § 1814(a). The clear language of the statute allows ICE partial reimbursement for the act "of arresting" the noncitizen. The statute simply does not authorize ICE to reimburse itself for identifying, detaining, processing or removing noncitizens. Indeed, H.R.-1 specifically allocated $45 billion for ICE detention. H.1.- Sec. 90003. If Congress had intended for noncitizens to reimburse detention costs, it could have specified this intent in the detention section of the bill, not here in a section authorizing an arrest fee.

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[3] Brennan Center for Justice, *Big Budget Act Creates a "Deportation-Industrial Complex"* (Aug. 13, 2025), https://www.brennancenter.org/our-work/analysis-opinion/big-budget-act-creates-deportation-industrial-complex.

[4] While National Immigration Project generally changes the word "alien" to "noncitizen" we are leaving the original language here to emphasize the singular use of "an."

[5] *See, Niz-Chavez v. Garland*, 593 U.S. 155, 167 (2021) (discussing the significance of Congress's choice of the word "a" in describing the charging document initiating removal proceedings.)

II. The Proposed Rule Coincides with EOIR and ICE Policies Designed to Increase in Absentia Removal Orders

Since the start of the second Trump administration, immigration agencies have prioritized increasing deportations over principles of fairness and family unity, which have prevailed under prior administrations. As relevant here, EOIR and ICE have implemented specific policies to increase the likelihood of in absentia removal orders.

Shortly after taking office, the Trump administration terminated nearly all services under the Unaccompanied Children Program on March 21, 2025, immediately stripping thousands of children of legal representation in immigration court.[6] On April 3, 2025, the Department of Justice sent the Acacia Center for Justice a "notice of termination for convenience," discontinuing several federally-funded programs described as "no longer needed," including the National Qualified Representative Program ("NQRP"), which appoints government paid counsel to detained immigrants deemed unfit to represent themselves in immigration court due to serious mental health needs or cognitive disabilities.[7] Cancelling legal service funding and other support for the most vulnerable noncitizens facing removal undoubtedly, and foreseeably, led to increased in absentia orders.

In the spring of 2025, ICE officers, armed, masked, and often numbering in the dozens, began appearing in immigration courts and arresting noncitizens with pending cases.[8] Unsurprisingly, as noncitizens feared being arrested, detained, and likely transferred to distant states, simply for complying with the law and seeking relief in immigration court proceedings, the number of in absentia removal orders soared.[9] At the same time, immigration judges (IJs), started adopting policies of not allowing noncitizens to appear for master calendar hearings via WebEx, relying in part on EOIR leadership's memorandum disingenuously questioning why courthouse detentions would lead to noncitizens not appearing in court.[10]

A New York federal district court judge recently found these arrests unlawful and ordered ICE to stop the practice in New York immigration courts.[11] Even so, there have still been some arrests

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[6] Laura Romero, *Trump Administration Halts Funding for Legal Aid for Migrant Children*, ABC News, March 21, 2025, https://abcnews.com/US/trump-administration-halts-funding-legal-aid-migrant-children/story?id=120033078.

[7] Suzanne Gamboa, *Trump Cuts Off Most Help for Immigrants with Mental Illness or Cognitive Disabilities*, NBC News, May 6, 2025, https://www.nbcnews.com/news/latino/trump-immigrants-program-court-mental-illness-rcna205072.

[8] Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations*, THE NEW YORK TIMES, June 12, 2025, https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html.

[9] Ximena Bustillo and Rahul Mukherjee, *NPR Analysis Shows Skyrocketing Number of 'No-Shows' in Immigration Court,* NPR, Dec. 22, 2025, https://www.npr.org/2025/12/22/nx-s1-5583971/trump-ice-immigration-arrests-deportation-no-shows.

[10] Sirce Owen, EOIR, *Cancellation of Operating Policies and Procedures Memorandum*, 23-01(Jan. 28, 2025) https://www.justice.gov/eoir/media/1387301/dl?inline. (Questioning why "permitting DHS enforcement actions in or near OCIJ space would have some sort of vague, unspecified 'chilling effect'" noncitizens.)

[11] *Afr. Communities Together v. Lyons*, No. 25-CV-6366 (PKC), 2026 WL 1382944, at *7 (S.D.N.Y. May 18, 2026) ("To further its mission, The Door must find a way to advise a noncitizen member facing this dilemma, whose first choice is to attend the master calendar hearing, have his or her case proceed to resolution, and abide by the outcome, whether favorable or unfavorable. The alternative available to the member advised by The Door is to not attend and

in other districts, and even in New York, defying the court order.[12] The effect of the practice has had a lasting impact on noncitizens who now fear detention for attending routine court dates.

Additionally, EOIR has implemented policies that increase the likelihood of in absentia removal orders. EOIR has fired immigration judges in record numbers[13] and replaced them with brand new IJs, who are often unfamiliar with immigration law.[14] As a result, of these firings and newly seated IJs, EOIR has engaged in extreme "docket shuffling" with cases that have already been scheduled for individual hearings a year or two in the future, suddenly being advanced with little or no notice.[15] Noncitizens from specific countries, such as Somalia, have been singled out for "rocket dockets," meaning that attorneys who work with a specific community and their clients, are at particular risk of missing a rescheduled hearing where they receive little to no notice. One attorney who works largely with Somali clients reported having 63 out of 73 pending Somali asylum cases have their hearings advanced with little notice and another noted, "It's just impossible to keep track of my schedule by just looking at these notices that I receive electronically, because there's just too many."[16] With experienced attorneys finding it difficult to keep up with EOIR's erratic case scheduling, even noncitizens who have counsel, are more likely to receive in absentia removal orders than in the past. And pro se noncitizens are at extreme risk for missing hearings or not understanding why the hearing date an IJ confirmed with them in court, would suddenly being changed.

In recent weeks, EOIR has also started scheduling respondents for "mega-masters," which have no apparent purpose other than to force noncitizens to appear in court and complete EOIR-33, change of address forms, even when they have not changed their residence, and even when they already have an individual hearing scheduled. In some courthouses, these mega-masters have led to long lines to get into the building, and in some cases, respondents have had to wait on a different floor from the IJ because the courtroom is unable to hold all of the respondents scheduled for the docket. It has also been common for noncitizens to have to proceed without an

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face the prospect of removal by default. Placing the member and its advisor, The Door, in this dilemma is a harm that cannot be recompensed for money damages.").

[12] Jonah E. Bromwich and Benjamin Weiser, *ICE Makes Courthouse Arrest Despite Judge's Order,* THE NEW YORK TIMES, May 19, 2026, https://www.nytimes.com/2026/05/19/nyregion/ice-courthouse-arrest-nyc.html.

[13] Ximena Bustillo and Scott Simon, *The Trump Administration Fired Nearly 100 Immigration Judges in 2025. What's Next*?, NPR, Jan. 10, 2026, https://www.npr.org/2026/01/10/nx-s1-5672386/the-trump-administration-fired-nearly-100-immigration-judges-in-2025-whats-next.

[14] EOIR, *EOIR Announces 77 Immigration Judges and 5 Temporary Immigration Judges* (May 21, 2026) https://www.justice.gov/opa/pr/eoir-announces-77-immigration-judges-and-5-temporary-immigration-judges. (Noting that this is "the largest class of new adjudicators in EOIR's history, growing the total immigration judge corps to nearly 700. EOIR has hired 153 permanent immigration judges this fiscal year, the most in any single year in the agency's history.") While the new IJs do include former ICE attorneys, according to their EOIR biographies, many newly hired IJs have no background in immigration law.

[15] The author of this comment has personally heard from attorneys who received no new notices of hearing, and no emails from the EOIR Courts and Appeals System (ECAS). Some attorneys learn of rescheduled hearings by checking the calendar on ECAS daily and others have learned of the rescheduled hearing only be receiving an in absentia removal order.

[16] Anshu Patel and Nicolas Scibelli, *'We Just Want a Fair Trial': How the 'Somali Rocket Docket' Is Upending the Asylum Process,* Sahan Journal, March 19, 2026, https://sahanjournal.com/immigration/somali-asylum-seekers-expedited-cases/.

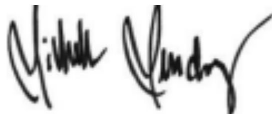
interpreter who speaks their language.[17] Respondents receive very limited notice of the proceedings, with the entire process being "shrouded in . . . secrecy."[18] Every time EOIR schedules a new hearing, that scheduling process increases the risk for error by someone involved in the process: court staff, building staff managing mail, U.S. postal service staff, and guards directing noncitizens to courtrooms, liable to make mistakes. So, it is completely foreseeable that respondents will not receive notice of the unnecessary hearing or receive late notice. While the mega-master tactic is relatively new, even early analysis of data has shown that over 39 percent of respondents on mega-master calendars were ordered removed in absentia.[19]

III. Conclusion

In closing, the National Immigration Project strongly opposes this NPRM which would impose excessive fines on noncitizens. The rule is *ultra vires* to the statute, based on questionable reasoning, and designed to punish noncitizens who are ordered removed because of EOIR choices which lead to increased in absentia removal orders. DHS should rescind the proposed rule in its entirety.

Please do not hesitate to contact Michelle Mendez, michelle@nipnlg.org if you have any questions or need any further information.[20] Thank you for your consideration.

Respectfully,



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[17] The author of this comment has personally heard of these issues through listservs and conversations with other attorneys. Likewise, A National Immigration Project member attorney reported that the respondent did not receive the notice of hearing in the case until more than a week after having received an in absentia removal order.

[18] Jazmine Ulloa and Hamed Aleaziz, *As Trump Pushes Deportations, a Skyrocketing Caseload Strains Immigration Courts*, THE NEW YORK TIMES, June 6, 2026, https://www.nytimes.com/2026/06/06/us/politics/immigration-courts-deportation.html. ("The fast-tracking, which is also intended to increase the pace of deportations, started without any formal notification or announcement from the Trump administration, according to immigration lawyers and court officials interviewed by The New York Times. But a surge of cases has been apparent in numerous courts around the country. Some judges have seen their caseloads double and triple, prompting worries that cases are being rushed through, violating due process rights.").

[19] Joseph Gunther and Brandon Marrow, *Mega Master Hearings*, bklg.org, (June 16, 2026), https://bklg.org/blog/mega-master-hearings/?utm_source=bento&utm_medium=email&utm_campaign=broadcast&bento_uuid=55b5429c-39fe-4128-9b54-ae29e74344c3.

[20] Thank you to Victoria Neilson, Supervising Attorney, for her contribution to this comment.