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Management Directorate
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

**Re: CIS No. 2853-26; DHS Docket No. USCIS-2026-0232 (RIN 1615-AD19)
Mandatory Electronic Filing (e-Filing) Interim Final Rule**

To Whom It May Concern:

The National Immigration Project submits the following comment in opposition to the U.S. Citizenship and Immigration Services (USCIS) Interim Final Rule (IFR) titled “Mandatory Electronic Filing.” The IFR will make it impossible for many noncitizens to file their applications for benefits with USCIS. Many noncitizens do not have access to computers and the internet and will have difficulty navigating complex online filing. For detained noncitizens who must file certain applications with USCIS, the IFR may completely foreclose their ability to file applications for benefits for which they may be eligible because detainees are routinely denied access to computers or the internet. The e-filing requirement will also make it more difficult for volunteers to assist with “pro se plus” filings which will now require volunteers to have access to computers and the internet in order to comply with the IFR. While the IFR claims that there is a waiver to the rule, navigating the waiver is also needlessly cumbersome, requiring a separate filing for the waiver and the form, as well as requiring payment of a waiver fee; these impediments render this waiver largely unavailable to noncitizens who need it.

The National Immigration Project’s work on behalf of noncitizens informs our position on this IFR. 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. We are a national nonprofit membership organization of members who include attorneys, community organizations, families, and advocates seeking to advance the rights of noncitizens. We provide mentorship and technical assistance to our attorney members who practice before USCIS, in immigration court, before the Board of Immigration Appeals (BIA), and in federal court. We believe that this rule creates significant impediments to noncitizens’ ability to apply for benefits to which they may be entitled. The National Immigration Project urges the Department of Homeland Security (DHS) to withdraw this rule in its entirety.

I. The National Immigration Project Objects to DHS's Procedure in Issuing This IFR

A. The National Immigration Project Objects to DHS Issuing This Rule as an IFR Instead of Through Notice and Comment Rulemaking

DHS's decision to issue this rule, which requires noncitizens to file most applications for benefits online rather than allowing the option to file on paper, as an IFR is improper. The purpose of notice and comment is to allow the public a meaningful opportunity to comment. In general, the Administrative Procedure Act (APA) § 553 requires that the public as "interested parties" be afforded "a reasonable opportunity to participate in the rulemaking process."¹ Courts have found that to comply with this participation requirement, the agencies must offer a comment period that is "adequate" to provide a "meaningful opportunity" to participate in the process.² Given the importance of the public's participation in the rulemaking process, Executive Order 12866 specifies that rulemaking "in most cases should include a comment period of not less than 60 days."³ Likewise, Executive Order 13563 explicitly states, "[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days."⁴ DHS's offering of this limited opportunity to respond to changes *after* they have already been implemented contradicts these Executive Orders and makes it less likely that the agencies will consider or implement feedback on the change.

Here, DHS has published this rule as an IFR rather than through a Notice of Proposed Rulemaking (NPRM) process, even though the rule has extraordinary significance and will affect the rights of hundreds of thousands of applicants for USCIS benefits. DHS claims that this rule is exempt from the NPRM process because it is a "procedural rule" exempted from notice-and-comment rulemaking under the APA.⁵ The IFR claims that the fact "[t]hat a requestor must possess, obtain, or find the tools and technology to file online beyond what is required to complete a form by hand and mail it, does not mean the rule is not procedural."⁶ However, the IFR fails to account for the realities of noncitizens who must file forms. A rule cannot be said to be merely procedural if the likely outcome of the rule is to foreclose thousands of its users from being able to use the forms designed for them.

For the reasons discussed below, the IFR will alter substantive rights—potentially shutting out significant numbers of noncitizens from being able to seek important benefits such as asylum, adjustment of status, and naturalization.

¹ *Forester v. CPSC*, 559 F.2d 774, 787 (D.C. Cir. 1977).

² *N.C. Growers' Ass'n v. UFW*, 702 F.3d 755, 770 (4th Cir. 2012) [internal citations omitted].

³ See Exec. Order No. 12866, § 6(a)(1), 58 Fed. Reg. 51735, 51740 (Oct. 4, 1993).

⁴ Exec. Order No. 13563, § 2 (b), 76 Fed. Reg. 3821, 3821–22 (Jan. 21, 2011),

<https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review>.

⁵ 91 Federal Register 51924, 51948 (Aug. 11, 2026).

⁶ *Id.*

B. The IFR Fails to Adequately Consider Alternatives as Required by Executive Order 13563

Executive Order 13563 requires agencies to consider alternative options to the rule.⁷ However, DHS fails to provide the most obvious alternative to this rule—maintaining the status quo, whereby noncitizens can continue to file many applications online, often with USCIS charging lower costs for such filings, but not taking this draconian step of eliminating paper filing altogether.

The alternatives DHS did consider are narrow. The IFR weighs only two kinds of choices. The first is what should trigger a mandate: a fixed period of online availability, or a benchmark of voluntary e-filing. The second is how to structure the waiver: whether it can be filed with the application, whether it needs its own form, and whether it should carry a fee.⁸ Every option on that list assumes paper filing will end; none asks whether it should. DHS dismisses a voluntary online filing system in a single sentence, predicting that the transition “will languish” unless it is mandatory.⁹ DHS’s own data points the other way. Without any mandate, the e-filed share of USCIS receipts grew from 9 percent in FY 2016 to 43 percent in FY 2025.¹⁰ DHS also concedes that limits in its current system help explain why many filers, especially in complex cases, still choose paper. These limits include file size restrictions and the inability to submit related forms together.¹¹ Fixing those problems is a far less drastic step than eliminating paper filing, yet the IFR never considers it. Nor does it explain why allowing noncitizens the continued choice of paper filing cannot meet DHS’s goals, even though Executive Order 13563 directs agencies to consider approaches that reduce burdens while preserving the public’s flexibility and freedom of choice.¹² The APA likewise requires an agency to consider reasonable alternatives and explain why it rejected them.¹³

The IFR also ignores several middle ground options that would capture most of the savings DHS identifies while keeping paper filing available. Much of the cost DHS describes comes from moving and storing paper: nearly \$11 million in postage in FY 2025 and 8.7 million file transfers.¹⁴ But the Lockbox already scans paper filings and sends their data electronically, and DHS reports that most adjudication already relies on scanned documents.¹⁵ DHS could digitize every paper filing upon arrival and adjudicate it electronically from that point on, yet the IFR does not explain why that alternative option would not address its shipping and storage concerns. Similarly, USCIS already lets paper filers request email or text notice of acceptance through Form G-1145, though DHS calls the process burdensome.¹⁶ Rather than eliminating paper filing,

⁷ Exec. Order No. 13563, § 1(b)(3), (5), 76 Fed. Reg. at 3821.

⁸ Mandatory Electronic Filing (e-Filing), 91 Fed. Reg. 51924, 51967 (Aug. 11, 2026) (interim final rule).

⁹ *Id.* at 51934.

¹⁰ *Id.* at 51955–56 & tbl.11.

¹¹ *Id.* at 51965; see also *Id.* at 51926.

¹² Exec. Order No. 13563, § 4, 76 Fed. Reg. 3821, 3822 (Jan. 21, 2011).

¹³ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48–51 (1983); *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987).

¹⁴ 91 Fed. Reg. at 51930, 51936.

¹⁵ *Id.* at 51929, 51936.

¹⁶ *Id.* at 51942.

DHS could let paper filers connect their filing to an online account and receive receipts, requests for evidence, and other notices there.

DHS likewise overlooks more targeted ways to reduce rejections. USCIS rejected more than one million paper filings in FY 2025, and roughly a quarter were rejected solely because of fee problems, and therefore not because the filings were on paper.¹⁷ Clearer fee instructions and better intake review would address much of this without forcing every applicant online.

Finally, DHS acknowledges that some populations will find e-filing harder. It states that USCIS may consider the characteristics of a form's filers before mandating e-filing for that form, and it recognizes that survivors of domestic violence, trafficking, and other crimes have heightened confidentiality needs.¹⁸ Yet, the IFR never considers exempting categories of filers or forms outright, such as humanitarian applications, unrepresented applicants, or detained noncitizens. Instead, as discussed in detail below, each person must request a discretionary, fee-bearing waiver, one form at a time.¹⁹

C. The IFR Mistakenly States That the Rule Does Not Affect Small Entities

The IFR states that DHS is not required to consider the effect of the rule on small entities because it is an IFR and not an NPRM.²⁰ Yet, the recently issued IFR titled, "Affirmative Asylum Referrals Without Interview" did consider the effect of that rule on small entities.²¹ Here the IFR acknowledges that the rule may impact nonprofit legal service providers who will have to assist noncitizens to create online accounts and navigate electronic filing. The IFR says, "Where such assistance is provided without additional compensation, these entities may face higher staff time or resource demands during the transition to mandatory e-filing."²² But beyond acknowledging the toll the new rule may take on nonprofit legal service providers, it does not explain why this effect on small entities does not matter. Further, the IFR discusses the critical role that public libraries will have to play in assisting noncitizens to access technology, without accounting for the costs to the libraries, or the fact that many noncitizens are not fluent English speakers and would need to rely on multi-lingual librarians or otherwise engage in oral discussions in a non-confidential library setting about how to complete their forms.

II. The National Immigration Project Strongly Opposes the Substance of This Rule

A. The Rule Creates Obstacles to Asylum Seekers' Ability to File Their Applications

The IFR includes no analysis of how mandatory e-filing will affect people seeking asylum, even though Form I-589 is among the most demanding applications USCIS accepts. By DHS's own estimate, the asylum application takes longer to complete than any other form in its analysis: 12

¹⁷ *Id.* at 51937, 51941.

¹⁸ *Id.* at 51939, 51943.

¹⁹ *Id.* at 51945–46.

²⁰ *Id.* at 51969.

²¹ 91 Federal Register 47101, 47115–16 (July 28, 2026).

²² 91 Fed. Reg. at 51965.

hours on paper and 11 hours online.²³ The stakes of an incomplete application are also unusually high. An asylum seeker generally must file within one year of arrival, and an application that leaves out key facts can lead to denial and removal to the very harm the applicant fled. Many asylum seekers face these stakes without a lawyer. DHS's own data show that roughly half of the paper asylum applications filed in FY 2025 were filed without a Form G-28.²⁴ Representation matters; the Government Accountability Office found that applicants with counsel were generally about twice as likely to be granted asylum.²⁵ Unrepresented asylum seekers will bear the heaviest burden of the e-filing mandate, and the IFR does not account for the effect of this rule on them.

1) Many noncitizens lack access to computers or the internet at home

DHS's conclusion that most requestors can e-file rests on nationwide household data, including figures showing that 95 percent of U.S. households have a computer and 90 percent have broadband access.²⁶ DHS concedes, however, that it has no internet access data specific to the people who file with USCIS.²⁷ Asylum seekers differ greatly from the general population DHS describes. Many arrive in the United States with few resources, and they cannot apply for work authorization until their asylum application has been pending for 150 days. The application that opens the path to lawful work must therefore be completed before most applicants can earn the income needed for a computer, a scanner, or a reliable internet connection.

DHS points to smartphones as a substitute for computers, noting that about 11 percent of households reach the internet only through a cellular data plan and that phones can photograph and scan documents.²⁸ However, photographing a document is very different from completing a lengthy application built around detailed written answers about past persecution, feared harm, and possible bars to eligibility. Applicants must also assemble supporting evidence and certified English translations of every foreign language document. Online accounts also require a working email address and a phone or email that can receive a verification code at every login. This requirement may be an insurmountable barrier for applicants who share a phone or lack a stable number. DHS's experience with the Biden administration's CBP One app should have prompted caution here. Many asylum seekers could not use CBP One because of poor connectivity, outdated phones, and language barriers, and the app's questions were far simpler than the questions on the I-589.²⁹ The IFR does overlooks that experience.

²³ 91 Fed. Reg. at 51960 tbl. 13.

²⁴ 91 Fed. Reg. at 51962 tbl. 15. In FY 2025, 51 percent of paper filed I-589s were filed with a Form G-28, meaning 49 percent were not.

²⁵ U.S. Gov't Accountability Off., GAO-08-940, U.S. Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges 30 (2008). While this study addresses asylum grants in immigration court, it is logical to assume that represented asylum seekers likewise have a higher grant rate before USCIS.

²⁶ 91 Fed. Reg. at 51942.

²⁷ *Id.* at 51943.

²⁸ *Id.*

²⁹ Ctr. for Gender & Refugee Stud., Comment Letter on Proposed Rule on Circumvention of Lawful Pathways, 88 Fed. Reg. 11, 704, at 33-35 (Mar. 27, 2023) (submitted as Exhibit A to Ctr. for Gender & Refugee Stud., Comment Letter on Final Rule on Circumvention of Lawful Pathways, 88 Fed. Reg. 31, 314 (June 14, 2023)), <https://www.regulations.gov/comment/USCIS-2022-0016-51965>.

2) The IFR's conclusion that noncitizens can complete complex applications in public libraries does not account for the realities of public library settings

DHS relies heavily on the potential of public libraries to serve as access points for noncitizens to file their USCIS applications. It notes that most libraries offer free Wi-Fi and digital literacy training, that nearly all help patrons with government forms, and that people without home internet can at least create their USCIS accounts at a library.³⁰ That reliance does not hold up for asylum applications, however. The first problem is the length of time it takes to complete the form. DHS estimates the online I-589 takes 11 hours, yet libraries ration computer access. The New York Public Library, for example, allows each cardholder one computer session per day, first come, first served.³¹ Additionally, rural libraries also offer far fewer public computers than libraries overall.³²

The second problem is cost and language. Printing and scanning at libraries often cost money. Most asylum seekers also need an interpreter to complete the form, which requires extended conversation which are not appropriate in a studious library environment. Even where a library allows two people to share a computer, it does so only if they are not disruptive to others.³³ DHS itself acknowledges that the mandate will increase demand for library computers, printing, scanning, and staff time, shifting costs onto local institutions. It then dismisses that impact as not substantial while admitting it lacks the data to measure the impact.³⁴

Third, and most importantly, there is little privacy in a public library. An asylum application contains an applicant's most sensitive information, and federal regulations protect its confidentiality.³⁵ DHS's own regulations require asylum interviews to take place apart from the general public.³⁶ Yet the IFR expects applicants to write their accounts of persecution on a public terminal in an open room on a shared network. Trauma survivors commonly cope by avoiding the people, places, and conversations that remind them of what happened, and a lack of privacy can itself bring back traumatic memories.³⁷ Researchers have also found that many asylum seekers fear that information they share online could be used against them by the government.³⁸ DHS cites the heightened confidentiality needs of survivors of domestic violence and trafficking as a reason to favor online accounts.³⁹ It never considers that the public setting it proposes as the

³⁰ 91 Fed. Reg. at 51941, 51944.

³¹ *Id.* at 51960 tbl. 13; N.Y. Pub. Libr., PC Use Policy, <https://www.nypl.org/help/services/computers-internet-and-wireless-access/pc-use-policy> (last visited Oct. 13, 2026)

³² Brian Real & R. Norman Rose, Am. Libr. Ass'n Off. for Info. Tech. Pol'y, Rural Libraries in the United States: Recent Strides, Future Possibilities, and Meeting Community Needs 5 (2017).

³³ See N.Y. Pub. Libr., *supra* n. 31.

³⁴ 91 Fed. Reg. at 51951–52 tbl. 9, 51967.

³⁵ 8 C.F.R. § 208.6(a)–(b).

³⁶ *Id.* §§ 208.9(b), 208.30(d), 208.31(c).

³⁷ Substantive Abuse & Mental Health Servs. Admin., U.S. Dep't of Health & Hum. Servs., HHS Pub. No. (SMA) 14–4816, Trauma-Informed Care in Behavioral Health Services 45, 61, 73 (Treatment Improvement Protocol Series No. 57, 2014).

³⁸ Aparajita Bhandari et al., Multi-stakeholder Perspectives on Digital Tools for U.S. Asylum Applicants Seeking Healthcare and Legal Information, 6 Proc. ACM on Hum.-Comput. Interaction, no. CSCW2, art. 529, at 529:4, 529:10 (2022).

³⁹ 91 Fed. Reg. at 51939.

alternative to home access undermines that same confidentiality. Library staff, however willing, are not trained in asylum law or trauma-informed interviewing, cannot serve as interpreters, and have their own duties to perform.

3) The IFR will make it more difficult for clinics to assist noncitizens with filing applications

As the need for immigration legal representation has outstripped the capacity of nonprofit providers, many nonprofits and local governments have created clinic models to assist noncitizens in completing forms. For example, New York City has run locally funded asylum clinics.⁴⁰ Nonprofits and bar associations also frequently use clinics as a means to maximize participation by trained legal professionals.⁴¹ These clinics often involve meeting with pre-screened noncitizens, in large spaces, and assisting them to complete paper applications which the noncitizen can later file on their own. DHS recognizes that clinics and community events where volunteers help applicants complete forms typically focus on filling out and mailing paper forms in person.⁴² Rather than treating this as a reason for caution, DHS cites it as a reason to make e-filing mandatory. However, having to schedule such clinics in settings with internet access and having to provide access to computers for all volunteers, is likely to decrease the availability of clinics.

Furthermore, even for organizations that can overcome the logistical hurdles of electronic filing, if there is a question that the noncitizen cannot answer on the spot (such as the date of birth of a relative or the exact date of entry into the United States), the noncitizen can be instructed to fill in the missing information on a paper form prior to mailing in their application. With e-filing, however, the application cannot be completed without all of the information being inputted online. This translates into a delay in filing, which for asylum applications is detrimental given the one-year filing deadline. Moreover, even if the form allows the noncitizen to save information, the noncitizen will have to again find a way to access the internet and navigate on their own to the portion of the form that needs completion.

Finally, when applicants must depend on others to reach the technology required to file, they also become more vulnerable to *notarios* and others who exploit immigrants seeking help. USCIS itself warns the public about these schemes.⁴³

B. The IFR Does Not Consider the Obstacles It Creates for Detained Noncitizens

The IFR does not once mention the effect of the IFR on people held in immigration detention. There are numerous applications over which USCIS has exclusive jurisdiction and even when noncitizens are in removal proceedings, they must pursue relief with USCIS simultaneously.

⁴⁰ NYC Mayor's Office of Immigrant Affairs, NYC Announces the Creation of the Asylum Seeker Legal Assistance Network, Investing \$5 Million in its Efforts, <https://www.nyc.gov/site/immigrants/about/press-releases/nyc-announces-creation-of-asylum-seeker-legal-assistance-network.page>.

⁴¹ See for example, American Immigration Lawyers Association, Citizenship Day 2026, <https://www.aila.org/citizenship-day>.

⁴² *Id.* at 51934 n.33.

⁴³ See U.S. Citizenship & Immigr. Servs., Avoid Scams, <https://www.uscis.gov/avoid-scams> (last updated Aug. 4, 2026).

These applications include but are not limited to applications for: U visas, T visa, Special Immigrant Juvenile Status, and adjustment of status for arriving noncitizens.

Detainees have already seen that even after the Executive Office for Immigration Review (EOIR) launched a respondent access portal to allow noncitizens access to online immigration court records, that portal has been largely unavailable to detained noncitizens.⁴⁴ Although detainees are supposed to have access to a legal law library, in reality, detainees are often not able to access the internet while detained.⁴⁵ As the number of noncitizens detained by the federal government has grown, detainees are often held in facilities other than dedicated ICE facilities, such as local jails, holding cells, and hotels, which are even less likely to have access to law libraries or the internet.⁴⁶

Detained individuals generally cannot access the internet. Without internet access, a detained person cannot create a USCIS online account, receive the verification code USCIS requires at every login, upload evidence, or even pay a fee online. Having a lawyer does not solve the problem. DHS explains that an online filing must be signed through the signer's own online account,⁴⁷ so even a represented detained person would have to log in personally to sign the form. Yet DHS also states that people with legal representation generally will not qualify for a waiver of online filing, with the reason that attorneys and accredited representatives have available internet access.⁴⁸ Under the IFR, a detained individual with legal representation may be unable to sign an online filing and is also presumed ineligible to file on paper.

The IFR further does not consider how electronic filing will discourage legal service providers from assisting detained noncitizens to file USCIS forms through a pro se plus model. While counsel may be able to have limited meetings with detained noncitizens to assist them with completing paper forms, there are not generally visitation options through which counsel could meet with a detainee in a facility law library (if one exists) to assist a detainee to file a USCIS form pro se. As a result, fewer detained noncitizens are likely to receive even limited legal assistance in completing USCIS applications.

The waiver process is also unworkable from detention. A detained person would need to mail Form I-936, Request for Waiver of E-Filing Requirement, with a fee and supporting documents, wait for USCIS to mail back an approval notice and a paper form, and then make sure the completed application reaches USCIS within 33 days of approval.⁴⁹ Postal mail moves slowly in and out of detention facilities, and ICE often transfers people between facilities, so an approval

⁴⁴ See Amica Center, *New Policy Leaves Immigrants in Detention in the Dark* (July 10, 2024) <https://amicacenter.org/press-releases/new-policy-provides-access-to-immigration-court-records-for-some-immigrants-but-leaves-immigrants-in-detention-in-the-dark/>.

⁴⁵ See ACLU, *ACLU Seeks Public Records Regarding Access to Critical Legal Resources in ICE Detention* (Mar. 30, 2023) <https://www.aclu.org/press-releases/aclu-seeks-public-records-regarding-access-to-critical-legal-resources-in-ice-detention> (“Although ICE standards require facilities to ensure detained people have access to comprehensive legal materials, including an electronic law library, to protect their rights, detained people frequently complain of barriers to legal resources.”).

⁴⁶ Vera Institute, *ICE Detention Trends* (updated Aug. 26, 2026).

⁴⁷ 91 Fed. Reg. at 51940.

⁴⁸ *Id.* at 51943-5.

⁴⁹ *Id.* at 51945-46.

notice may arrive late, not at all, or at an outdated location. If the paper filing is rejected, it must be resubmitted within the same window, or the person must start the waiver process over.⁵⁰ The current rate of incorrect USCIS rejections of various applications leaves little faith that detained noncitizens' applications will not suffer the same fate.

The immigration court system that DHS holds up as a model requires electronic filing only from attorneys, accredited representatives, and DHS itself.⁵¹ The IFR offers no comparable accommodation for unrepresented individuals and does not explain why none is needed, especially those who are detained. An agency acts arbitrarily when it entirely fails to consider an important aspect of the problem,⁵² and this rule's effect on detained individuals is exactly that kind of omission.

C. The Waiver Process Is Inadequate

DHS presents the waiver as a safeguard for people who cannot e-file. It relies on the waiver to satisfy federal laws requiring agencies to keep a non-digital option for people who cannot use online services,⁵³ but the waiver cannot carry that weight.

First, the regulation itself does not establish a standard for adjudication of the waiver. It says only that USCIS, "in its discretion, may waive mandatory e-filing."⁵⁴ The criteria appear only in the preamble, and they are strict; for example, a requestor must show undue hardship. Someone without personal internet access must explain why they cannot access the internet through a library, community center, friend, or family member. Unfamiliarity with the e-filing system or not having an online account will "generally not be enough," and people with legal representation are generally expected not to qualify for a waiver.⁵⁵ These standards turn away the people who most need a paper option, such as those who could theoretically reach the internet somewhere but cannot realistically complete a long, complex application online. Telling applicants to rely on friends or family also ignores the reality that asylum, VAWA, U and T filings contain information applicants may need to keep from the people around them. DHS itself recognizes this confidentiality concern elsewhere in the IFR yet fails to recognize that concern in this obvious context.⁵⁶

Second, DHS's own explanation shows the waiver was not designed primarily to protect access to filing for those without internet access. DHS states that it adopted the waiver process to "encourage greater participation in e-filing" and to give USCIS visibility into expected paper filings.⁵⁷ It set the \$25 fee partly to "encourage adoption of e-filing" and to deter frivolous requests to file on paper.⁵⁸ A safeguard built to discourage its own use is not a meaningful alternative.

⁵⁰ *Id.* at 51947.

⁵¹ *Id.* at 51936.

⁵² *State Farm*, 463 U.S. at 43.

⁵³ 91 Fed. Reg. at 51945.

⁵⁴ *Id.* at 51971.

⁵⁵ *Id.* at 51945.

⁵⁶ *Id.* at 51939.

⁵⁷ *Id.* at 51945.

⁵⁸ *Id.* at 51946.

Third, the process multiplies burdens. Each waiver request may cover only one form, and every individual must get a separate approval, including dependents whose filings depend on a principal applicant's.⁵⁹ The fee may be waived only where the law requires fee waivers for the underlying form.⁶⁰ Hypothetically, a family of four, each needing two forms, would need eight separate waiver requests and \$200 in waiver fees before submitting a single application. Because forms with different filing windows cannot be waived together, applicants may also have to repeat the process. DHS's own example is an asylum applicant who cannot get a waiver for a work permit application at the same time as the asylum application.⁶¹ Requiring USCIS to adjudicate multiple waivers for different forms is inefficient and thus at odds with one of the stated purposes of the IFR. It is logical if a parent cannot file via internet for herself, she also cannot do so for her child. Likewise, it is logical if an asylum seeker cannot access the internet to file for asylum they would not be able to access it several months later to seek employment authorization. The illogical barriers to using the waiver are further indication that the waiver itself is designed to prevent noncitizens from paper filing.

Fourth, the timing puts filing deadlines at risk. A waiver request does not preserve a filing date, and DHS warns that applicants "must consider" the added mailing and processing time.⁶² Yet, the IFR sets no deadline for USCIS to decide a waiver request. Once a waiver is granted, the paper application must reach USCIS within 33 days. If it is rejected for any reason, the applicant must resubmit within the same window or start over. For an asylum seeker facing the one-year filing deadline, or anyone else with a time-sensitive filing, a delay in USCIS's processing of the waiver could cost them their eligibility entirely.

Finally, DHS underestimates how many people will need a waiver. It predicts that only 4 percent of requestors will seek one; however, that figure is based on the share of requestors who needed a waiver after USCIS stopped accepting checks and money orders for fees.⁶³ Paying a fee online is far simpler than completing an entire application, uploading evidence, and signing through an online account, and DHS has given no reason to treat the two as comparable.

III. Conclusion

This rule which claims to increase efficiency at USCIS is likely to make it impossible for many noncitizens to file any application at all. USCIS already permits noncitizens to file forms online and in many instances provides financial incentives to do so. This rule is punitive and will prevent noncitizens from filing applications that they are eligible to file. DHS should withdraw this rule in its entirety.

⁵⁹ *Id.*

⁶⁰ *Id.* at 51946–47, 51971.

⁶¹ *Id.* at 51946.

⁶² *Id.* at 51947.

⁶³ *Id.* at 51963 & n. 151.

Please do not hesitate to contact Michelle N. Méndez at michelle@nipnlg.org if you have any questions or need any further information.⁶⁴

Respectfully,



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⁶⁴ Victoria Neilson, Managing Attorney, and Karla Galiano Herrera, New York Law School, anticipated graduation May 2027, authored this comment with contributions from Michelle N. Méndez, Legal Director.