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**Re: DHS Docket No. USCIS-2025-0271, Removal of the Automatic Extension of Employment Authorization Documents**

Dear Chief Buono,

The Asylum Seeker Advocacy Project ("ASAP") respectfully submits the following comment categorically opposing the interim final rule ("IFR"), *Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed. Reg. 48,799 (Oct. 30, 2025) (DHS Docket No. USCIS-2025-0271; CIS No. 2826-25) ("the IFR" or "the Rule"), which terminates automatic extensions of Employment Authorization Documents ("EADs" or "work permits"). For the following reasons, the Department of Homeland Security ("DHS") must rescind the IFR in its entirety.

**I. Summary of the Argument**

ASAP urges DHS to rescind the IFR and reinstate the permanent 540-day automatic extension to comply with the Administrative Procedure Act ("APA") and protect the rights, stability, and fair treatment of immigrants who depend on uninterrupted work authorization.

First, the IFR fails to meaningfully consider the severe and wide-ranging harms ending automatic extensions will inflict on asylum seekers and other immigrants. As ASAP members explain, losing automatic extensions will cause sudden job loss, wage and housing instability, food insecurity, loss of healthcare and identification documents, and the reduced ability to retain legal counsel. Many will be forced into extreme hardship or exploitative situations, rendering them unable to provide for their families, pursue immigration relief, or ensure their own safety.

Second, the IFR disregards the significant collateral impacts on employers, unions, state and local governments, community service providers, and federal agencies. Employers will face staffing gaps, higher recruitment and training costs, and deepening worker shortages. Unions will struggle to maintain membership and enforce workplace standards. State and local governments will lose tax revenue and face increased demand for social services, while service providers and non-profits absorb greater community needs. Federal agencies, such as the Internal Revenue Service ("IRS") and the Department of Labor ("DOL"), will experience reduced tax revenue and heightened enforcement burdens.

Third, DHS's sole security-based justification for eliminating automatic extensions is unsupported by evidence, contradicted by its own prior findings, internally inconsistent, and constitutionally suspect. The IFR cites no data showing that automatic extensions pose security risks, relying instead on a single anecdote that bears no logical connection to the policy. This security theory conflicts with DHS's longstanding conclusion that automatic extensions are needed and that they apply only to already-vetted renewal applicants. The IFR's emphasis on assessing applicants' "hostile attitudes" toward the United States also raises serious First Amendment concerns. The absence of a reasoned explanation suggests the IFR may have been motivated by unconstitutional animus, particularly given the broader context of statements made and immigration measures enacted by the administration.

Fourth, the IFR unlawfully reverses nearly a decade of DHS policy without reasoned explanation. DHS had repeatedly concluded that automatic extensions are essential to preventing harmful employment gaps and protecting economic stability. Yet the IFR abandons these conclusions without new analysis, while ignoring persistent processing backlogs and the substantial reliance interests of immigrants, employers, and the communities that rely on the stability automatic extensions provide.

Fifth, the IFR fails to meaningfully consider reasonable and less burdensome alternatives. DHS briefly lists two options and dismisses them in a single paragraph. Further, DHS ignores numerous obvious solutions, such as faster adjudications of work permits, backlog analysis, consecutive EADs, modernized tracking systems, employer education, and secure receipt notices, that could address administrative or security concerns without causing widespread lapses in work authorization.

Sixth, DHS improperly bypassed notice-and-comment requirements, invoking the APA's "good cause" and "foreign affairs function" exceptions even though the IFR addresses domestic employment authorization and presents no emergency, imminent threat, or foreign-policy implications. These procedural violations deprive the public of the transparency and participation the APA requires.

Seventh, DHS's English-only comment requirement excludes many directly affected asylum seekers and other immigrants from meaningfully participating in the rulemaking process,

undermining the APA's commitment to equitable public engagement and depriving DHS of essential lived-experience input.

## **II. ASAP's Interest in the IFR**

ASAP is a national voluntary membership organization of asylum seekers in the United States. ASAP has over 700,000 members who come from over 175 countries and reside in all 50 states and U.S. territories. As explained below, the elimination of automatic extensions threatens asylum seekers' ability to work and, consequently, their ability to afford their most basic needs.

ASAP works with our members to build a more welcoming United States, including a more fair and functional immigration system based on our members' priorities. ASAP provides its members with legal information and support, including resources about automatic extensions; legal information and how-to guides, including how to apply for initial and renewal work permits; and opportunities for members to advocate for member priorities, including timely access to employment authorization. ASAP also routinely works with other stakeholders, such as employers, state and local governments, unions, and service providers, among others, to answer questions and provide guidance on work authorization for immigrants, including asylum seekers. We are nonpartisan, and we believe all asylum seekers deserve to live in safety.

As the largest membership organization of asylum seekers in the United States, ASAP is uniquely positioned to offer insights about the IFR and the importance of automatic work permit extensions for asylum seekers based on member feedback. Indeed, by creating self-help resources and answering legal questions, ASAP has provided critical information to asylum seekers applying for work permits, renewing their existing work permits, and accessing automatic work permit extensions. Furthermore, ASAP members have routinely identified prompt processing of and access to work permits as ranking among their top advocacy priorities.<sup>1</sup> In line with those priorities, ASAP and its members previously filed a lawsuit because adjudication times for (c)(8) EAD renewals for asylum seekers were exceeding the 180-day automatic extension period then in effect.<sup>2</sup>

The following comments from ASAP members highlight the importance of work permits to our membership and their concern over the ongoing work permit renewal backlog:

"Work permits are very crucial to asylum seekers because it gives relief and access to jobs, not just any jobs but to your profession. Work permits keep you going and make you proud you are contributing to the economy."

–ASAP Member from Nigeria who works in inventory management

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<sup>1</sup> See *5 Ways to Change the Asylum Process*, ASYLUM SEEKER ADVOC. PROJECT (last accessed Nov. 26, 2025), <https://asaptogether.org/en/5-ways-to-change-the-asylum-process/>.

<sup>2</sup> See generally *Tony N. v. U.S. Citizenship & Servs.*, No. 21-cv-08742 (N.D. Cal.).

"I am the main breadwinner for my family, and without my work permit I wouldn't be able to work, which would have negative economic consequences. I wouldn't be able to put food on the table, I wouldn't be able to pay for my children's education, I wouldn't have a driver's license, and I wouldn't be able to pay my bills. My work permit gives me the opportunity to thrive in the right way in this country."

–ASAP Member from Venezuela who works in drilling (translated from Spanish)

"Work permit delays aggravate the current labor shortage because, without a valid work permit, you cannot continue your job even though they want to keep you."

–ASAP Member from Haiti who works as a nurse

ASAP members (and ASAP as an organization) have a strong interest in preventing unnecessary lapses in work authorization, which the IFR will cause. ASAP members depend on uninterrupted work authorization to support themselves and their families; pay for housing, food, medical care, and transportation; renew their drivers' licenses and other forms of identification; and contribute to the U.S. economy. Therefore, ASAP members and ASAP as a membership organization have a vested interest in ensuring asylum seekers do not fall out of the workforce through the termination of automatic work permit extensions.

### **III. The IFR Fails to Meaningfully Consider the Negative Impacts on Asylum Seekers**

The APA requires that DHS meaningfully consider the negative impacts the IFR will have on asylum seekers and other immigrants.<sup>3</sup> DHS has failed to do so. DHS's consideration of the harms asylum seekers will face is limited to one sentence relegated to a footnote that does not

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<sup>3</sup> Courts may set aside agency action as arbitrary and capricious if the agency has "entirely failed to consider an important aspect of the problem," *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), which includes harms to immigrants and asylum seekers, see, e.g., *CASA de Md., Inc. v. Wolf*, 486 F. Supp. 3d 928, 965 (D. Md. 2020) (in APA challenge to EAD rules, "consideration of the effects on bona fide asylum seekers is of paramount importance"); *N.W. Immigr. Rts. Project v. U.S. Citizenship and Immigr. Servs.*, 496 F. Supp. 3d 31, 76–78 (D.D.C. 2020) (granting injunctive relief in APA challenge to United States Citizenship and Immigration Services ("USCIS") fee increases because DHS did not sufficiently consider the burden the fees would impose on immigrants); *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 541 (N.D. Cal. 2020) (same).

satisfy the APA.<sup>4</sup> This sentence does not amount to meaningful consideration; rather, at most, it amounts to mere “lip service.”<sup>5</sup>

DHS should consider all the ways in which the IFR will profoundly destabilize the lives of immigrants and their children, many of whom are U.S. citizens. Below, we outline the adverse consequences of the IFR on impacted asylum seekers and other immigrants, as well as their families, including: (A) lost employment and wages; (B) impacts on health, safety, and well-being; (C) limited access to forms of identification and driver’s licenses; and (D) increased difficulty in obtaining counsel and pursuing immigration relief.

### **A. Lost Wages and Employment**

The IFR will create prolonged lapses in work authorization for immigrant workers. Immigrants with pending work permit renewal applications will lose authorization to work on the day their EADs expire—unless their renewal application has been approved. But timely approvals are exceedingly unlikely.

ASAP members routinely wait over a year for adjudication. DHS’s latest data reported over 165,000 EAD renewals pending for more than 180 days, including 47,000 applications from asylum seekers in the (c)(8) category.<sup>6</sup> According to DHS, there were 827,354 total work permit renewal applications pending as of June 30, 2025, with 269,451 in the (c)(8) category alone.<sup>7</sup> These lengthy backlogs make it clear that renewals will not be processed before workers’ EADs expire, even when applicants have timely filed for renewal.<sup>8</sup> As a result, thousands of workers will inevitably experience months-long or even year-long lapses in work authorization without automatic work permit extensions. And even short gaps will push immigrant workers out of their

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<sup>4</sup> 90 Fed. Reg. at 48,809 n.111 (“DHS acknowledges that the loss of employment authorization for asylum applicants may pose additional challenges given that they may be in a precarious financial situation due to circumstances such as fleeing persecution in their home country.”).

<sup>5</sup> See *CASA de Md., Inc.*, 486 F. Supp. 3d at 966 (enjoining an EAD rule because “DHS simply paid lip service to” the harm the rule would inflict on asylum seekers).

<sup>6</sup> See *I-765, Application for Employment Authorization, Counts of Pending Petitions by Days Pending for All Eligibility Categories and (c)(8) Pending Asylum Category as of June 30, 2025*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data>; see also Andrew Kreighbaum, *DHS to End Automatic Extension of Immigrants’ Work Permits*, BLOOMBERG L. (Oct. 29, 2025), <https://news.bloomberglaw.com/daily-labor-report/dhs-plans-to-end-automatic-extension-of-immigrants-work-permits> (“As of June 30, more than 47,000 renewal applications were pending six months or more for asylum applicants and more than 165,000 renewals were pending for all work permit holders.”).

<sup>7</sup> See *I-765, Application for Employment Authorization, Counts of Pending Petitions by Days Pending for All Eligibility Categories and (c)(8) Pending Asylum Category as of June 30, 2025*, *supra* note 6.

<sup>8</sup> See *I-765, Application for Employment Authorization*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (last updated Oct. 28, 2025), <https://www.uscis.gov/i-765> (recommending that renewal applicants apply within 180 days of their EAD’s expiration date).

jobs and the authorized workforce, causing lost wages, interrupted income, loss of professional licensing, and destabilized employment relationships.<sup>9</sup>

ASAP members have expressed the importance of automatic work permit extensions, and how eliminating these extensions could negatively impact them personally, as well as other asylum seekers and immigrants.

“Automatic renewals allow us to continue to work, generate employment, and keep the economy moving in a positive way for the entire country. I am responsible for my household and my young son; without this work permit automatic extension, we wouldn’t be able to manage.”

–ASAP Member from Peru who works in the food industry (translated)

“I work for a lumber company and this would hurt me because the work permit processing takes a long time, and I would lose my job while I wait for my application to be processed.”

–ASAP Member from Colombia who works for a lumber company (translated)

“Automatic work permit extensions are essential because renewal delays could leave asylum seekers like me unable to work legally or provide for our families. Even a short gap in coverage can lead to job loss and financial hardship. By ending these extensions, the government is putting countless asylum seekers at risk through no fault of their own.”

–ASAP Member from Russia who works as a truck driver

These very real concerns have not been addressed in the IFR.

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<sup>9</sup> See, e.g., Sarah Betancourt, *Feds end the automatic renewals of most immigrants’ work permits*, WGBH (Oct. 29, 2025), <https://www.wgbh.org/news/local/2025-10-29/feds-end-the-automatic-renewals-of-most-immigrants-work-permits> (“Some immigrants in certain industries might not be able to get their employer to hold their position while they’re waiting for the renewed permit, including those in the service or hospitality industries.”); Kate Goettel, *Failure to Reauthorize Employment Harms Asylum Seekers and the U.S. Economy*, AM. IMMIGR. COUNCIL (Nov. 12, 2021), <https://www.americanimmigrationcouncil.org/blog/employment-delays-asylum-seekers-economy/> (“[L]ack of work authorization acutely affects these asylum seekers’ ability to support themselves and their families, putting them in financial peril.”); Priscilla Alvarez, *‘Quite disruptive’: Months-long processing delays leave people out of work amid nationwide labor shortage*, CNN (Nov. 26, 2021), <https://www.cnn.com/2021/11/26/politics/immigration-biden-work-permit-processing-delays> (noting that an asylum seeker was worried about losing her license to practice medicine because of delays in the adjudication of her work permit renewal application).

The IFR also does not address the impacts on immigrants who are authorized to work incident to status. Since employers are more likely to be familiar with work permits and the automatic extensions, individuals who are authorized to work incident to status—including asylees<sup>10</sup>—still apply for work permits and have relied on the automatic work permit extension.<sup>11</sup> That means that even those immigrants who are authorized to work incident to status could face employer confusion and lose their jobs as a result of the IFR.<sup>12</sup>

## **B. Impacts on Health, Safety, and Well-Being**

Any lapse in work authorization and subsequent loss of income has serious implications for immigrant families' health, safety, and well-being. In particular, asylum seekers and other immigrants will be more likely to suffer from: financial instability; exploitation or abuse; loss of access to health care; and serious mental health issues. Additionally, the children of immigrants, including U.S. citizens, are likely to suffer as a result of their parents' lapse of work authorization.

Interrupted work authorization affects immigrant workers' ability to afford food and housing.<sup>13</sup> This gap in employment can quickly lead to food insecurity as households are forced to choose between paying for groceries, utilities, or other essential expenses. Instead, immigrants could be forced to rely on local food pantries and other local charities and community support, despite wanting to work and having an employer who wants to maintain their employment. At the same time, the loss of income heightens the risk of housing instability and

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<sup>10</sup> An asylee is an individual who has been granted asylum. After one year of being granted asylum, asylees may apply for lawful permanent residency.

<sup>11</sup> See 90 Fed. Reg. at 48,802 ("Other [noncitizens] authorized to work incident to status, such as asylees . . . , may have immigration status that confers employment authorization that continues past the expiration date stated on their EADs. Nevertheless, such [noncitizens] may wish to renew their EAD to have acceptable evidence of their continuous employment authorization for various purposes, such as presenting evidence of employment authorization and identity to their employers for completion of Form I-9, Employment Eligibility Verification. Failure to renew their EADs prior to the expiration date may result in job loss if such [noncitizens] do not have or cannot present unexpired alternate acceptable evidence of employment authorization to show their employers."); *Obtaining an Employment Authorization Document*, IMMIGR. EQUAL. (last accessed Nov. 26, 2025), <https://immigrationequality.org/asylum/asylum-manual/obtaining-an-employment-authorization-document/> ("Many asylees still apply for and obtain EADs.").

<sup>12</sup> See *supra* note 11.

<sup>13</sup> See *At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, HUM. RTS. WATCH, at 31–33 (Nov. 12, 2013), <https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united> ("It is often very difficult for asylum seekers who are barred from work authorization to find accommodation because they cannot legally make enough money to pay for housing and transportation. . . . Asylum seekers who are barred from work authorization and not assisted by friends, families, or organizations are often unable to purchase food.").

homelessness, because asylum seekers and other immigrants may not have the necessary funds to pay their rent, mortgage, or other housing costs.

A lapse in work authorization may subject immigrants to abusive employment and living conditions.<sup>14</sup> When immigrants and asylum seekers lose their ability to work legally they may feel pressured to accept under-the-table jobs that offer minimal labor protections, lower wages, and abusive conditions.<sup>15</sup> At the same time, losing access to the authorized workforce can force immigrants into overcrowded, unsafe, or unstable housing arrangements where landlords or other actors may take advantage of their limited options.<sup>16</sup> Immigrants with expired work permits will also likely be more afraid to report abusive labor practices or physical or sexual abuse.<sup>17</sup> As a result, ending automatic EAD extensions effectively exposes asylum seekers and other immigrants to heightened risks of abuse and harm.

Losing work authorization also means that immigrants could lose access to health insurance, including employer-sponsored health insurance and private health insurance.<sup>18</sup> Without health care, immigrants may lose care for chronic health conditions or be more likely to seek health care in emergency rooms and urgent cares, which could lead to significant medical debt.<sup>19</sup> As a result, the IFR is likely to negatively impact the health outcomes of asylum seekers and other immigrants.

Lapses in work authorization also take a toll on the mental health of immigrants and asylum seekers, many of whom are already coping with trauma, depression, and other mental health issues.<sup>20</sup> Losing the ability to work creates intense anxiety about meeting basic needs,

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<sup>14</sup> See *At Least Let Them Work*, *supra* note 13 at 33–35 (“Forcing asylum seekers to rely on others for subsistence permits, and even encourages abusive and exploitive relationships.”).

<sup>15</sup> See *At Least Let Them Work*, *supra* note 13 at 24 (“Because [asylum seekers without work authorization] cannot support themselves and are also denied access to public benefits, . . . they must work illegally.”).

<sup>16</sup> See *At Least Let Them Work*, *supra* note 13 at 24 (detailing the stories of two asylum seekers who were forced into exploitative living conditions without work authorization).

<sup>17</sup> See, e.g., Xóchitl Bada, *The fear of deportation hangs over unauthorized workers trying to fight exploitation, but all workers in the US have rights*, THE CONVERSATION (Mar. 10, 2025), <https://theconversation.com/the-fear-of-deportation-hangs-over-unauthorized-workers-trying-to-fight-exploitation-but-all-workers-in-the-us-have-rights-246865>.

<sup>18</sup> See Goettel, *supra* note 9 (“[Asylum seekers who lack work authorization] lose employment-based benefits like health insurance.”); *At Least Let Them Work*, *supra* note 13 at 15 (“[Lack of work authorization] prevents asylum seekers from accessing affordable health care.”).

<sup>19</sup> See, e.g., Dana Ferguson & Laura Fitzgerald, *These Democratic governors are trying to curb health care for unauthorized immigrants*, NPR (May 18, 2025), <https://www.npr.org/2025/05/18/nx-s1-5402202/medicaid-undocumented-immigrants-democrats-states> (“[Immigrants] without health insurance often seek care in emergency rooms.”).

<sup>20</sup> See Goettel, *supra* note 9 (“[For asylum seekers,] losing their work authorization has resulted in anxiety, loss of sleep, and depression, and has interrupted necessary treatment to address mental health challenges that are common for survivors of persecution.”); *At Least Let Them Work*, *supra* note 13 at 28 (“One of the most profoundly troubling effects of the lack of work authorization is the mental and



supporting family members, and maintaining stability. The fear of falling into poverty, losing housing, having to depend on others, or being forced into unsafe working conditions compounds feelings of helplessness and isolation. This insecurity can exacerbate depression, heighten stress levels, and trigger symptoms of post-traumatic stress for immigrants—especially asylum seekers—who have already fled violence or persecution.

Loss of parents' work authorization also harms children of immigrants, including U.S. citizen children. When parents lose the ability to work legally, household income can drop overnight, disrupting children's access to consistent food, safe housing, healthcare, and educational opportunities.<sup>21</sup> As a result, children whose parents lack work authorization are more likely to suffer from poor overall health, and have a higher likelihood of hospitalizations, school absenteeism, and disciplinary issues, among others.<sup>22</sup>

Asylum seekers may be more likely to experience acute adverse consequences because they have already endured significant trauma, threats to survival, and persecution in their country of origin that led them to apply for asylum in the first place.<sup>23</sup> ASAP members have expressed fear and concern about how doing away with automatic work permit extensions will impact their lives:

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emotional toll it takes on asylum seekers. . . . asylum seekers . . . said that they felt depressed because being denied the ability to work rendered them completely helpless and reliant upon others. One asylum seeker was put on medication to treat his depression. Another asylum seeker visited a psychologist at the organizational home in which he was staying seventeen times to treat his depression.”).

<sup>21</sup> See *Impact of Delayed Work Permits on Early Childhood Development*, INST. OF CHILD SUCCESS & ASYLUM SEEKER ADVOC. PROJECT, at 3 (Nov. 2023), [https://asaptogether.org/media/6SDxt30aWk689Cpb3TPeoo/2023.11\\_Impact\\_of\\_Delayed\\_Work\\_Permit\\_s\\_on\\_Early\\_Childhood\\_Development.pdf](https://asaptogether.org/media/6SDxt30aWk689Cpb3TPeoo/2023.11_Impact_of_Delayed_Work_Permit_s_on_Early_Childhood_Development.pdf).

<sup>22</sup> *Impact of Delayed Work Permits on Early Childhood Development*, *supra* note 21 at 3.

<sup>23</sup> See, e.g., Angela Nickerson et al., *Trauma and Mental Health in Forcibly Displaced Populations: An International Society for Traumatic Stress Studies Briefing Paper*, INT'L SOC'Y OF TRAUMATIC STRESS STUD., at 3, [https://istss.org/wp-content/uploads/2024/09/Displaced-Populations-Briefing-Paper\\_Final.pdf](https://istss.org/wp-content/uploads/2024/09/Displaced-Populations-Briefing-Paper_Final.pdf) (“In addition, refugees face numerous daily challenges . . . in the post-migration environment, including those related to lack of resources, family separation, social isolation and discrimination, socioeconomic factors, and immigration and refugee policies. These stressors negatively impact mental health over and above the traumatic events experienced in the context of persecution. Accordingly, refugees and asylum-seekers experience elevated rates of psychological disorders compared to the broader community in host countries.”).

"Automatic work permit extensions are essential for my stability while I wait for my asylum decision. Without them, I could lose my job and my only source of income, making it impossible to pay rent, bills, or even basic necessities. The government's decision puts thousands of asylum seekers at risk and leaves us unprotected during long waiting periods. We are working hard and trying to live with dignity, and this decision makes that much harder."

–ASAP Member from Morocco who works as a retail store manager

"Without the automatic extension of work permits, a person would lose their job, so how could they cover their own expenses or pay for their family's expenses? How could they survive?"

–ASAP Member from Cuba who works in higher education (translated from Spanish)

"It is definitely a very arbitrary decision, because it practically forces those who have a job, who fulfill their duties correctly as immigrants, to work perhaps illegally to support their families; it is extremely unfair!"

–ASAP Member from Venezuela who works in international shipping (translated from Spanish)

"Labor exploitation will increase because every time a company hires an undocumented person, it will obviously pay them far less than what is fair."

–ASAP Member from Colombia who works as a tax preparer (translated from Spanish)

"The government's decision to cut the automatic work permit extension feels like having the ground pulled from under my feet. I'm scared of losing not just my income, but my sense of stability and belonging. I've done everything right, yet now I'm left waiting in fear, unsure how to survive. This change makes me feel invisible in the country I've come to call home."

–ASAP Member from Peru who works as a warehouse assistant and martial arts instructor

### C. Limited Access to Forms of Identification and Driver's Licenses

Work permits are a primary form of identification for asylum seekers' and other immigrants.<sup>24</sup> This is particularly true for asylum seekers who are children and may not otherwise be eligible for other forms of identification.<sup>25</sup> Without the automatic extension, immigrants will be more likely to have expired work permits, which will limit their ability to identify themselves, travel within the United States, access banking and healthcare, and seek social services. And even if some immigrants have been able to obtain alternative forms of identification, such as driver's licenses and state-issued IDs, expired work permits will hinder their ability to renew those forms of identification.<sup>26</sup>

The inability to access or renew driver's licenses is an issue of particular importance to asylum seekers and other immigrants.<sup>27</sup> Many states require a valid work permit in order to obtain or renew a driver's license.<sup>28</sup> Asylum seekers and other immigrants need driver's licenses to work in industries such as truck driving, rideshare, and delivery services. Furthermore, hundreds of thousands of immigrants live in areas across the country without adequate public transportation and, as a result, depend on driver's licenses for transportation. Without this crucial form of identification, immigrants may be pushed to drive without driver's licenses, which compromises road safety for drivers and passengers.

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<sup>24</sup> Cf. *Obtaining an Employment Authorization Document*, *supra* note 11 ("Many asylees still apply for and obtain EADs, however, because they are a good form of identification to have, and may be necessary in order to obtain other identification such as state issued drivers' licenses or identification cards.").

<sup>25</sup> See, e.g., Alisa Reznick, *Without automatic work authorization renewals, immigrant children could lose their only ID*, KJZZ PHX. (Nov. 11, 2025), <https://www.kjzz.org/fronteras-desk/2025-11-11/without-automatic-work-authorization-renewals-immigrant-children-could-lose-their-only-id> ("Jennifer Podkul, chief of global policy and advocacy at Kids in Need of Defense, or KIND, says unaccompanied immigrant children may use that authorization as their main form of ID."); *All About Employment Authorization Documents FAQs for Legal Practitioners*, CATH. LEGAL IMMIGR. NETWORK, at 15 (last updated Nov. 12, 2024), <https://www.cliniclegal.org/resources/asylum-and-refugee-law/employment-authorization-documents/all-about-employment> ("Minors often obtain an EAD for identification purposes.").

<sup>26</sup> See, e.g., *Driver's Licenses for Asylum Seekers*, ASYLUM SEEKER ADVOC. PROJECT (last accessed Nov. 26, 2025), <https://asaptogether.org/en/drivers-licenses/> (outlining the requirements asylum seekers must meet to be eligible for driver's licenses in all fifty states and noting that a valid work permit is required in many states); Goettel, *supra* note 9 ("[An EAD] is a prerequisite to receiving driver's licenses.").

<sup>27</sup> See Catalina Amuedo-Dorantes, Esther Arenas-Arroyo, & Almudena Sevilla, *Labor market impacts of states issuing of driver's licenses to undocumented immigrants*, SCIENTEDIRECT (Apr. 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0927537120300117> ("[Undocumented immigrants'] labor supply, assimilation and ability to contribute to the U.S. economy is likely to depend on their ability to drive. Spatially decentralized urban and suburban areas make the United States one of the top motor-vehicle dependent countries in the world. For many low-skilled workers living further away from high-density job areas having access to a car is a necessity to get to work. . . . Access to a driver's license can significantly lower the commuting costs of many undocumented immigrants.").

<sup>28</sup> See *supra* note 26 and accompanying text.

#### D. Difficulty Obtaining Immigration Counsel and Pursuing Relief

The natural consequence of the IFR is that asylum seekers and other immigrants will experience lapses in work authorization, making it less likely they will be able to afford immigration counsel or pursue their immigration claims.<sup>29</sup>

A lapse in work authorization will make it more likely that immigrants will not be able to afford access to counsel. Courts have regularly concluded that, in the absence of work authorization, many asylum seekers do not have the resources to pursue their claims.<sup>30</sup> Access to counsel is particularly important in the defensive asylum context, in which applicants face the possibility of receiving a deportation order if they cannot successfully navigate an adversarial proceeding against a government attorney and adjudicated by an immigration judge.<sup>31</sup>

More broadly, a lapse in work authorization will make it harder to pursue immigration relief. There are many costs associated with pursuing asylum and other forms of immigration relief beyond attorney's fees. For example, immigrants must pay application fees (including a new annual asylum fee), translation services, and costs related to gathering evidence for their immigration case. For asylum seekers, including ASAP members, work authorization is crucial to affording these myriad costs, and lapses in work authorization compromise their ability to seek asylum in the United States, despite having meritorious claims. DHS itself claims working during

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<sup>29</sup> See *At Least Let Them Work*, *supra* note 13 at 35–38.

<sup>30</sup> See, e.g., *CASA de Md., Inc.*, 486 F. Supp. 3d at 966 (“It is axiomatic that without being able to work, asylum applicants lack the resources to pursue their claims.”); *Grijalva v. Ilchert*, 815 F. Supp. 328, 332 (N.D. Cal. 1993) (noting that a noncitizen “who is wrongfully denied employment authorization is compelled to rely on friends and relatives for support, to work illegally and risk deportation or adverse action on his asylum application, or, ultimately, to abandon his application for asylum”); *Ramos v. Thornburgh*, 732 F. Supp. 696, 700 (E.D. Tex. 1989) (“[T]he inability to work for the extended period . . . may compel an applicant to abandon his or her asylum application . . . [and] subject the applicant to even more severe persecution upon return to the country he or she has attempted to flee.”); *United States v. Bazargan*, 992 F.2d 844, 848 (8th Cir. 1993) (noting that an EAD application based on a pending asylum application “is granted routinely, to avoid creating a situation in which the applicant [] must choose either to rely ‘on friends and relatives for support, to work illegally and risk deportation or adverse action on his asylum application, or, ultimately, to abandon his application for asylum’” (quoting *Ramos*, 732 F. Supp. at 699)); cf. *Nat’l Ctr. for Immigrants Rts., Inc. v. Immigr. and Naturalization Serv.*, 743 F.2d 1365, 1369 (9th Cir. 1984) (“The hardship [to immigrants] from being unable to work to support themselves and their dependents, . . . and to pay for legal representation is beyond question.”).

<sup>31</sup> See, e.g., Karen Berberich et al., *Advancing Universal Representation: A Toolkit Module 1: The Case for Universal Representation*, VERA INST., at 2 (Dec. 2018), <https://vera-institute.files.svdcdn.com/production/downloads/pdfdownloads/advancing-universal-representation-toolkit-mod1.pdf?dm=1613505619> (explaining the importance of access to counsel in removal proceedings and noting that “only 5 percent of those who won relief between 2007 and 2012 did so without an attorney”).

a lapse in employment authorization could have negative consequences on some individuals' ability to qualify for other relief in the future.<sup>32</sup>

ASAP members provided their own perspectives on how the loss of automatic work permit extensions affects their ability to access counsel and pursue their immigration cases:

"Cancelling the 540-day extension period for work permits will make me lose my job and be unable to pay my legal fees due to the long process of having a court case. This makes life challenging for me."

–ASAP member from Cameroon who works in home healthcare

"Without the automatic renewal of my work permit, we wouldn't have the necessary funds to cover the legal fees for the attorney handling our asylum case and related immigration procedures."

–ASAP member from Cuba who works in home repair and construction  
(translated from Spanish)

#### **IV. The IFR Fails to Meaningfully Consider Negative Impacts on Other Stakeholders**

DHS failed to consider the impact of the IFR on stakeholders beyond immigrants. But doing away with automatic work permit extensions from now on will impact a number of stakeholders, including: (A) employers and businesses; (B) unions and other workers; (C) state and local governments; (D) local communities and service providers; and (E) other federal agencies. Although the APA requires DHS to also consider the negative impacts to these stakeholders,<sup>33</sup> the IFR does not do so and, therefore, violates the APA.

##### **A. Employers and Business Community**

Employers and businesses will experience adverse consequences as a result of the IFR. DHS itself recognizes that many immigrant workers could fall out of the authorized workforce, and that employers and businesses will experience many harms.<sup>34</sup> However, DHS's

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<sup>32</sup> 90 Fed. Reg. at 48,803.

<sup>33</sup> See, e.g., *Texas v. United States*, 40 F.4th 205, 226–28 (5th Cir. 2022) (denying stay of lower court injunction of DHS's enforcement priorities because the agency failed to adequately consider costs to the states); *Brnovich v. Biden*, 630 F. Supp. 3d 1157, 1176–77 (D. Ariz. 2022) (concluding that parole policy was arbitrary and capricious because DHS failed to consider Arizona's costs); *Immigrant Legal Res. Ctr.*, 491 F. Supp. 3d at 543 (enjoining USCIS fee increases because DHS failed to consider that immigrant rights non-profits had structured their service models around accessible fees and access to fee waivers).

<sup>34</sup> See, e.g., 90 Fed. Reg. at 48,817 ("Employment lapses could result in cost and transfer impacts such as . . . transfers between workers losing their work authorizations to replacement workers, employers' lost productivity when they are not able to quickly replace employees with lapses, and turnover costs for employers to find replacement employees.").

acknowledgment of these harms is not accompanied by any attempt to mitigate, justify, quantify, or meaningfully engage with these consequences—some of which are listed below.

First, lapses in work authorization for immigrants will inevitably create gaps in staffing and impact employers across a wide range of industries. Second, employers will be forced to absorb higher recruitment and training costs as they search for and train temporary replacements each time an employee's work authorization expires pending renewal. Third, many employers already must contend with labor shortages and will have trouble finding employees to replace immigrant workers who experience a lapse in work authorization due to processing backlogs.

Importantly, many immigrants—including asylum seekers—fill essential positions<sup>35</sup> that employers in the United States cannot fill otherwise.<sup>36</sup> In practice, this means negative impacts will be most acutely felt in industries facing chronic labor shortages or specialized skill demands.<sup>37</sup> This is notable because *nowhere in the IFR* does DHS even mention America's chronic labor shortages, especially in industries like transportation, healthcare, and construction where immigrants make up a large portion of the workforce.<sup>38</sup>

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<sup>35</sup> See, e.g., *People seeking asylum are contributing to the workforce*, FWD.US (Oct. 21, 2025), <https://www.fwd.us/news/people-seeking-asylum-are-contributing-to-the-workforce/> ("Of the more than 3 million people seeking asylum in the United States toward the end of 2024, roughly 1.4 million adults are already working, helping to fill essential roles in industries facing widespread labor shortages.").

<sup>36</sup> See Bruce Crumley, *How a Work Permit Renewal Change Threatens Companies and Employees With Legal Troubles*, INC. (Oct. 31, 2025), <https://www.inc.com/bruce-crumley/how-a-work-permit-renewal-change-threatens-companies-and-employees-with-legal-troubles/91258342> ("In the meantime, those short-handed companies may have a hard time finding U.S. workers to take up the slack. After all, when employers originally recruited to fill those hard, frequently low-paying jobs in construction, hospitality, health care, and agriculture, they often wound up hiring immigrant candidates after few Americans were interested in doing the work.").

<sup>37</sup> See, e.g., *Health Care Workforce Shortages*, NIHCM (Mar. 2025), <https://nihcm.org/newsletter/rising-healthcare-workforce-shortage>; Jason Dzubow, *USCIS Restricts Work Permits for Asylum Seekers*, THE ASYLUMIST (Nov. 5, 2025), <https://www.asylumist.com/2025/11/05/uscis-restricts-work-permits-for-asylum-seekers/>; Lew Sichelman, *Construction Worker Shortage Persists*, NAT'L MORTG. PRO. (July 25, 2025), <https://nationalmortgageprofessional.com/news/construction-worker-shortage-persists>; Arturo Castellano-Canales, *Addressing the U.S. Truck Driver Shortage: The Role of Foreign-Born Drivers, Visa Policy, and Supply Chain Impacts*, NAT'L IMMIGR. F. (Oct. 17, 2025), <https://forumtogether.org/article/addressing-the-u-s-truck-driver-shortage-the-role-of-foreign-born-drivers-visa-policy-and-supply-chain-impacts/>.

<sup>38</sup> *Which industries employ the most immigrant workers?*, USA FACTS (last updated Nov. 6, 2025), <https://usafacts.org/articles/which-industries-employ-the-most-immigrant-workers/> (noting that the educational and health services industry employs approximately 5.6 million immigrants; the construction industry approximately 3.5 million; and the transportation and utilities industry approximately 2.4 million).

## B. Unions and Other Workers

The IFR increases the likelihood that immigrant workers, many of whom are union members,<sup>39</sup> will experience gaps in employment authorization, forcing them out of their union jobs even when they have filed work permit renewals on time. This disrupts workforce stability, weakens unions' overall membership, and makes already-vulnerable workers more susceptible to exploitation.<sup>40</sup> With more workers at risk of sudden job loss, unions will have challenges enforcing workplace standards. What will result is unions needing to devote more resources to protecting vulnerable workers and mitigating the instability created by the policy change.

Lapses in work authorization caused by the IFR will hurt other workers indirectly,<sup>41</sup> including U.S. citizen workers. Colleagues and coworkers of immigrants who are forced out of the workforce will, in turn, need to shoulder additional employment duties while their employers find replacement labor.<sup>42</sup> DHS failed to consider the negative impact of the IFR on other workers.

## C. State and Local Governments

The IFR will also negatively impact state and local governments—both as employers and beyond.

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<sup>39</sup> See, e.g., Mitchell Hartman, *Many unions were once wary of immigrants. Now they march alongside them*, MARKETPLACE (June 12, 2025), <https://www.marketplace.org/story/2025/06/12/how-union-and-immigrant-solidarity-evolved-over-the-years> (noting that 15.4% of union workers are foreign-born); Andrew Lyubarsky, Am. Fed'n of Lab. and Cong. of Indus. Orgs, Public Comment at 1 (July 7, 2024), <https://www.regulations.gov/comment/USCIS-2024-0002-0137> (noting that AFL-CIO has union members "with all types of immigration status, including undocumented workers, [Deferred Action for Childhood Arrivals ('DACA')] and [Temporary Protected Status ('TPS')] recipients, guestworkers, lawful permanent residents, refugees, and citizens").

<sup>40</sup> See generally Brief for Amici Am. Fed'n of Lab. and Cong. of Indus. Orgs et al., *Noem v. Svitlana Doe*, 145 S. Ct. 1524 (2025) (No. 24A1079), <https://aflcio.org/sites/default/files/2025-05/CHNV%20Brief%20FINAL.pdf> (detailing the harms to unions from the termination of work authorization of Cuban, Haitian, Nicaraguan, and Venezuelan ("CHNV") parolees).

<sup>41</sup> See, e.g., Andrea Hsu, *Factories from GE to Kraft Heinz lose immigrant workers, stressing those who remain*, NPR (Aug. 11, 2025), <https://www.npr.org/2025/08/11/nx-s1-5496335/trump-immigration-workers-parole-tps> (explaining how the termination of parole and TPS programs impacted other union members).

<sup>42</sup> See Brief for Amici Am. Fed'n of Lab. and Cong. of Indus. Orgs et al. at 7–8, *supra* note 40 ("[A]mici's other members—U.S. citizens, lawful permanent residents, or non-citizens with non-CHNV-related work authorization—prepared for punishing work conditions including excessive mandatory overtime on the one hand, and, on the other, the potential for layoffs if employers were no longer able to meet consumer demand as a result of a sudden reduction in staffing.").

First, lapses in work authorization resulting from the IFR will cause a significant reduction in state and local tax revenues.<sup>43</sup> DHS itself recognized last year that automatic extensions “[p]revent a reduction in State and local tax revenue.”<sup>44</sup>

Second, DHS acknowledged last year that if noncitizens fall out of the workforce, their families may temporarily become dependent on state- or locally-administered social service programs,<sup>45</sup> such as food assistance, public health care programs, emergency room medical care, and housing support, among others. One such program is Emergency Medicaid, a program that provides emergency medical services regardless of immigration status.<sup>46</sup> Without work authorization, noncitizens may be forced to rely on programs like Emergency Medicaid for their emergency healthcare needs. Reliance on such services could shift costs to state and local governments that are often already budget constrained.

#### **D. Local Communities and Service Providers**

Local communities and service providers will also experience harmful consequences that DHS entirely ignores in the IFR. Under the new rule, individuals filing work permit renewals on or after the effective date will likely experience prolonged lapses in work authorization and abrupt job loss. These sudden job losses will ripple through entire communities: families, neighbors, faith communities, and friends will be called on to help their loved ones. At the same time, local charities, including food banks, shelters, and non-profit legal providers will see rising demand.<sup>47</sup>

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<sup>43</sup> See, e.g., Carl Davis, et al., *Tax Payments by Undocumented Immigrants*, INST. ON TAX’N AND ECON. POL’Y (July 30, 2024), <https://itep.org/undocumented-immigrants-taxes-2024/> (“Six states raised more than \$1 billion each in tax revenue from undocumented immigrants living within their borders. Those states are California (\$8.5 billion), Texas (\$4.9 billion), New York (\$3.1 billion), Florida (\$1.8 billion), Illinois (\$1.5 billion), and New Jersey (\$1.3 billion). In a large majority of states (40), undocumented immigrants pay higher state and local tax rates than the top 1 percent of households living within their borders.”).

<sup>44</sup> *Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 101,208, 101,249 (Dec. 13, 2024).

<sup>45</sup> 89 Fed. Reg. at 101,249.

<sup>46</sup> See *The Basics of Emergency Medicaid*, FREEDOMCARE (last accessed Nov. 26, 2025), <https://freedomcare.com/emergency-medicaid/>.

<sup>47</sup> See *At Least Let Them Work*, *supra* note 13 at 24 (“Because [asylum seekers without work authorization] cannot support themselves and are also denied access to public benefits, . . . they must rely on others—family, friends, fellow refugees, charities, and other organizations—for support.”); *id.* at 36 (noting that “[a]ttorneys often add pro bono cases on top of full . . . caseloads”); *id.* at 38 (“Asylum seekers lucky enough to obtain pro bono counsel or assistance from immigration law clinics must work with attorneys whose own schedules or caseloads may require requesting extensions from the courts.”).



## E. Other Federal Agencies

The IFR will also have serious negative effects on federal agencies, which DHS did not mention, let alone meaningfully consider. For example, the IFR will have significant negative consequences for the IRS. By pushing noncitizens, including asylum seekers, into prolonged lapses in employment authorization, the Rule will reduce the amount of taxable income reported to the IRS, thereby diminishing federal revenue and complicating federal fiscal projections.<sup>48</sup> The DOL, too, will experience significant negative consequences as a result of the IFR. Cutting off work authorization for individuals awaiting renewal will push thousands of workers into unauthorized employment or out of the workforce entirely and consequently increase DOL's investigatory burdens.<sup>49</sup>

## V. DHS's Sole Rationale Does Not Justify Adopting the Rule

DHS offered only one deeply flawed rationale for eliminating automatic extensions related to vetting and U.S. security.<sup>50</sup> This rationale does not justify adopting the IFR because it is (A) unsupported by any evidence; (B) contradicted by DHS's own recent findings; (C) internally inconsistent; and (D) constitutionally suspect. As a result, the IFR cannot satisfy the APA's requirement of reasoned decisionmaking and must be set aside.

### A. There Is No Evidence that Automatic Extensions Compromise Security

DHS offers no data, statistics, or analysis that individuals working on automatic work permit extensions compromise U.S. security interests. The absence of any such evidence demonstrates that having individuals work on automatic work permit extensions does not compromise U.S. security and the purported problem DHS identified does not exist.<sup>51</sup>

Immigrants have worked on automatic extensions for many years without reported security issues. Automatic extensions were first created in 2016<sup>52</sup> and interim work permits were available before then, starting in 1987.<sup>53</sup> Across these almost forty years, millions of work permit

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<sup>48</sup> See Davis, *supra* note 43 ("Undocumented immigrants paid \$96.7 billion in federal, state, and local taxes in 2022. Most of that amount, \$59.4 billion, was paid to the federal government.").

<sup>49</sup> See *supra* notes 14–17 and accompanying text.

<sup>50</sup> See 90 Fed. Reg. at 48,799–800, 48,803, 48,806–17, 48,819.

<sup>51</sup> Courts may set aside agency action as arbitrary and capricious if the agency, in putting forth a regulatory solution, does not establish there is a problem to be solved. See, e.g., *Home Box Off., Inc. v. Fed. Commc'ns Comm'n*, 567 F.2d 9, 36 (D.C. Cir. 1977) ("[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist." (citation and internal quotation marks omitted)); *District of Columbia v. U.S. Dep't of Agric.*, 444 F. Supp. 3d 1, 27 (D.D.C. 2020) ("Professing that an agency action ameliorates a real problem but then citing no evidence demonstrating that there is in fact a problem is not reasoned decisionmaking." (cleaned up)).

<sup>52</sup> See *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 81 Fed. Reg. 82,398 (Nov. 18, 2016).

<sup>53</sup> See *Control of Employment of Aliens*, 52 Fed. Reg. 16,216, 16,220 (May 1, 1987).

renewal applicants have worked on automatic extensions and interim work permits while waiting for the government to process their renewal applications. If such applicants had in fact at any time compromised U.S. security by virtue of an automatic work permit extension or interim work permit, DHS could have put forth evidence of security issues.<sup>54</sup>

The only “evidence” that DHS offers in support of its security rationale is a single incident involving a noncitizen who attacked demonstrators earlier this year in Boulder, Colorado.<sup>55</sup> But this single incident cannot justify the IFR.

First, it is not clear whether the individual had received an automatic work permit extension. While DHS claims that the noncitizen at issue had an automatically extended work permit,<sup>56</sup> the source it cites for that assertion only states that the noncitizen’s work permit had expired—not that the individual had filed a renewal application and received the automatic work permit extension.<sup>57</sup>

Second, even if the noncitizen had received the automatic work permit extension at the time of the incident, the IFR does not connect the automatic work permit extension to a security issue. DHS does not explain how the automatic work permit extension caused or precipitated the incident, nor how eliminating automatic extensions would have prevented the incident. To be sure, with or without the ability to work legally in the United States, the noncitizen would have been authorized to be physically present in the United States.

Even if DHS had presented any logical connection between this tragic incident and automatic extensions (it did not), this single anecdote cannot justify the wholesale reversal of the automatic extension policy. Indeed, DHS itself claims that the actions of the Biden administration “resulted in the filing of over 3 million EAD applications.”<sup>58</sup> Assuming that is true, the noncitizen involved in this incident accounts for less than 0.0001% of those work permit applicants. Accordingly, weighed against the millions of noncitizens who have benefited from automatic work permit extensions (or functional equivalents) for four decades without any risks to U.S. security, this one anecdote cannot warrant completely rolling back the automatic extension policy.

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<sup>54</sup> For example, DHS could have put forward the percentage of work permit renewal applications that were eventually denied for security-related reasons.

<sup>55</sup> 90 Fed. Reg. at 48,808.

<sup>56</sup> 90 Fed. Reg. at 48,808.

<sup>57</sup> 90 Fed. Reg. at 48,808 n.103; Colleen Slevin & Eric Tucker, *US immigration authorities detain family of Colorado Molotov attack suspect*, NBC WASH. (June 3, 2025), [https://www.nbcwashington.com/news/national-international/colorado-attack-backed-off-zionist-scared/3927308/?os=io...sxj9oul93fno\\_journeysttrue&ref=app&noamp=mobile](https://www.nbcwashington.com/news/national-international/colorado-attack-backed-off-zionist-scared/3927308/?os=io...sxj9oul93fno_journeysttrue&ref=app&noamp=mobile) (“[DHS Assistant Secretary Tricia McLaughlin] said [the noncitizen] filed for asylum in September 2022 and was granted a work authorization in March 2023, but that it also expired.”).

<sup>58</sup> 90 Fed. Reg. at 48,808.

## B. DHS's Security Rationale Is Contradicted by Its Prior Rules and Findings

DHS's recent findings in prior rulemaking contradict the IFR's security rationale. The IFR completely ignores DHS's own prior findings and states—without any evidence or logic—that renewal applicants compromise U.S. security. Such shallow reasoning violates the APA.

DHS has not identified any concrete security concerns in all its prior rulemaking around automatic work permit extensions.<sup>59</sup> To the contrary, DHS has repeatedly concluded that its strict eligibility requirements “reasonably assured” the agency that the applicant remained eligible for employment authorization and “protect[ed] the employment authorization program from abuse.”<sup>60</sup> It is only now, in this IFR, that DHS makes an unexplained and sharp deviation from its past rulemaking and analysis.

However, the IFR does not explain why prior eligibility requirements are now insufficient. In prior rulemaking, DHS imposed strict eligibility requirements on automatic work permit extensions to safeguard the system from abuse. Of the over fifty EAD categories, only eighteen were eligible for automatic extensions,<sup>61</sup> which were specifically selected because the noncitizens in these work permit categories either (1) continue to be employment authorized incident to status beyond the work permit's expiration, or (2) are applying for a renewal in a category that does not first require adjudication of a separate, underlying application, petition, or request.<sup>62</sup> This limitation specifically reassured DHS “that only individuals eligible for employment authorization [would be] able to extend their employment authorization” through automatic extensions.<sup>63</sup>

Work permit renewal applicants are among the least likely to pose security risks. Immigrants who benefit from automatic work permit extensions have already submitted

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<sup>59</sup> See generally *Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 101,208 (Dec. 13, 2024); *Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 24,628 (Apr. 8, 2024); *Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 87 Fed. Reg. 26,614 (May 4, 2022); *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 81 Fed. Reg. 82,398 (Nov. 18, 2016); *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 80 Fed. Reg. 81,900 (Dec. 31, 2015).

<sup>60</sup> See 80 Fed. Reg. at 81,927–28; see also 89 Fed. Reg. at 101,234.

<sup>61</sup> Compare *Employment Authorization*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (last updated Sept. 6, 2023), <https://www.uscis.gov/employment-authorization> (listing over fifty EAD categories), with *Automatic Employment Authorization Document (EAD) Extension*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (last updated Oct. 29, 2025), <https://www.uscis.gov/archive/automatic-employment-authorization-document-ead-extension> (listing only eighteen categories eligible for automatic extension).

<sup>62</sup> See 81 Fed. Reg. at 82,455–56; 80 Fed. Reg. at 81,927–28.

<sup>63</sup> See, e.g., 80 Fed. Reg. at 81,928.

extensive biographic and biometric information to the government, been previously vetted (including through background checks) and approved to work (sometimes more than once),<sup>64</sup> and established lives, families, and employment in the United States. DHS does not address these realities, nor does it refute them.

### C. DHS's Security Rationale Is Internally Inconsistent

DHS's stated rationale for the IFR is internally inconsistent and therefore arbitrary and capricious. The IFR rests on two contradictory claims. First, DHS asserts that it must eliminate automatic work permit extensions because it cannot complete security vetting before a noncitizen's current work permit expires, allowing "unvetted" individuals to continue working.<sup>65</sup> Second, DHS repeatedly states throughout the IFR that it believes its other policies targeting parole and TPS beneficiaries will eliminate the work permit renewal backlog, significantly reduce processing times, and ensure timely adjudication.<sup>66</sup>

These assertions cannot both be true. If DHS has indeed eliminated backlogs and ensured timely adjudications, then the stated purpose of the IFR collapses: there would be no need to eliminate automatic work permit extensions because renewal applications would be adjudicated before work permits expire. Conversely, if DHS is concerned about individuals working based on the automatic work permit extension, its repeated claims of clearing the work permit processing backlog and ensuring timely adjudication are false. The IFR offers no explanation for this contradiction.

This inconsistency also undermines DHS's claim of "good cause" to bypass notice-and-comment procedures, which is further discussed below. DHS cannot claim an urgent need to prevent reliance on automatic work permit extensions while simultaneously asserting that it anticipates such reliance will be unnecessary. Because the IFR's justification depends on mutually incompatible factual premises, it is arbitrary, capricious, and procedurally improper.

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<sup>64</sup> See, e.g., Kreighbaum, *supra* note 6 ("Immigrants with pending renewal claims have already been screened at least once—and sometimes multiple times—by the government if they've previously renewed work permits."); Betancourt, *supra* note 9 ("The immigrants affected by the [termination of automatic extensions] have all already gone through a background check process to get their initial work permit."); Dan Gooding & Billal Rahman, *Trump Admin Makes Abrupt Change to Thousands of Immigrant Work Permits*, NEWSWEEK (Oct. 29, 2025), <https://www.newsweek.com/uscis-ending-work-authorization-ead-automatic-extensions-10958565> (same).

<sup>65</sup> 90 Fed. Reg. at 48,806–07, 48,814, 48,817.

<sup>66</sup> See 90 Fed. Reg. at 48,809, 48,813 n.136, 48,816, 48,818. However, as discussed *infra* in Section VI.B, DHS's claims that EAD renewal filings will decrease and backlogs will be eliminated are entirely unsupported.

#### D. The Lack of Reasoned Justification Implies Other, Unconstitutional Motivations

Because DHS's sole justification is unsubstantiated, internally inconsistent, and belied by the agency's own findings, it suggests that the agency may have other, pretextual motivations for the rule change. One ASAP member articulates their own feeling that one such motivation is animus toward them and their community:

"The increased renewal costs already clearly demonstrate the barriers the Administration places on immigrants; the elimination of automatic extensions further highlights the desire to restrict their ability to achieve a basic standard of living within the country. I continue to insist that immigrants have increasingly fewer opportunities to rebuild their lives in the U.S., and this only demonstrates the contempt shown towards the immigrant community."

–ASAP Member from Colombia who works as a tax preparer (translated from Spanish)

Considering the administration's disparaging rhetoric about immigrants of certain races, ethnicities, and countries of origin,<sup>67</sup> and its pattern of punitive measures directed at these communities,<sup>68</sup> the IFR can be understood as yet another such targeted policy. Indeed, the IFR disproportionately affects asylum seekers, who make up almost a third of all pending EAD renewal applications and many of whom belong to these same groups.<sup>69</sup>

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<sup>67</sup> See, e.g., Maggie Haberman, *Trump, at high-dollar fund-raiser, says he wants immigrants from 'nice' countries*, N.Y. TIMES (Apr. 7, 2024), <https://www.nytimes.com/2024/04/07/us/politics/trump-immigrants-nice-countries.html> (In April 2024, President Trump stated that "people were not immigrating to the United States from 'nice' countries like 'Denmark'" as well as Switzerland and Norway, while repeatedly disparaging immigrants from other regions like Latin America, the Caribbean, the Middle East, Africa, and Asia); *Meet the Press – February 2, 2025*, CBS NEWS (Feb. 2, 2025), <https://www.nbcnews.com/meet-the-press/meet-press-february-2-2025-n1311457> (In February 2025, Kristi Noem incorrectly stated that "folks from Venezuela that have come into this country are members of [Tren de Aragua]. And remember, Venezuela purposely emptied out their prisons, emptied out their mental health facilities and sent them to the United States of America").

<sup>68</sup> See Laurence Benenson & Nicci Matthey, *The First 100 Days of the Second Trump Administration: Key Immigration-Related Actions and Developments*, NAT'L IMMIGR. F. (Apr. 28, 2025), <https://forumtogether.org/article/the-first-100-days-of-the-second-trump-administration-key-immigration-related-actions-and-developments/> (outlining the immigration policies enacted within the first 100 days of President Trump's second administration).

<sup>69</sup> See Form I-765, *Application for Employment Authorization: All Receipts, Approvals, Denials, Pending Grouped by Eligibility Category and Filing Type, April 1, 2025 – June 30, 2025*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (showing that, out of the total 797,351 EAD renewal applications pending, 259,459 applications are in the (c)(8) EAD category, which is for people who have applied for asylum).

It is also reasonable to infer unconstitutional animus is a motivating factor because the IFR itself raises independent constitutional concerns. The Rule suggests that DHS must vet work permit renewal applicants to assess whether they hold “hostile attitudes” toward the United States, including the “citizens, culture, government, institutions, or founding principles” of the United States.<sup>70</sup> This rationale directly implicates noncitizens’ First Amendment rights and is constitutionally suspect. To the extent any unconstitutional motivations were at play in enacting the IFR, that is reason alone to rescind the IFR.<sup>71</sup>

## **VI. The IFR Unlawfully Reverses DHS Policy Without Reasoned Explanation**

DHS does not explain why it is deviating from its prior position or reasoning in creating and extending automatic work permit extensions. When an agency reverses course, it must provide a reasoned explanation for abandoning earlier conclusions, especially when those conclusions rested on robust empirical data as automatic extensions did.<sup>72</sup> The IFR offers none.

The IFR is arbitrary and capricious because it: (A) provides no economic analysis of the IFR’s impact; (B) disregards evidence of persistent backlogs and ongoing demand for work permits; (C) relies on speculative or unsupported assertions; and (D) ignores serious reliance interests.

### **A. DHS Does Not Analyze the Economic Impact of the IFR or Address Its Prior Position that Automatic Extensions Benefit the Economy**

The IFR contains *no substantive economic analysis* of how eliminating automatic extensions will affect employers, workers, or the broader economy. Moreover, DHS fails to reconcile its prior findings with its new position. These failures violate the APA’s requirement of reasoned decisionmaking.

DHS claims it cannot estimate the number of affected applicants, predict future processing times, or quantify economic impacts.<sup>73</sup> But less than a year ago, DHS conducted a detailed analysis showing that automatic extensions generated billions of dollars in stabilized earnings, employer savings, and tax revenue.<sup>74</sup>

DHS neither acknowledges these prior findings nor explains why it now disregards them. This omission is especially significant given DHS’s longstanding recognition that automatic work permit extensions prevent harmful employment gaps and further the agency’s statutory

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<sup>70</sup> 90 Fed. Reg. at 48,807.

<sup>71</sup> See, e.g., 5 U.S.C. § 706(2)(B) (“The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . contrary to constitutional right, power, privilege, or immunity.”).

<sup>72</sup> See *Fed. Comm’n Comm’n v. Fox Television Studios, Inc.*, 556 U.S. 502, 515–16 (2009).

<sup>73</sup> 90 Fed. Reg. at 48,816–18.

<sup>74</sup> For example, through its previous analysis, DHS found that automatic extensions have resulted in approximately \$10 billion in stabilized earnings, \$3.5 billion in employer savings, and \$1.1 billion in tax revenue. 89 Fed. Reg. at 101,210.

obligation to protect U.S. economic security. Eliminating extensions without evaluating these consequences is unjustified.

DHS's claim that it is "not able to quantify" the impacts of the IFR is implausible given its own recent analysis.<sup>75</sup> And if DHS did lack the information or expertise to quantify the impact of the rule, ordinary notice-and-comment procedures would have allowed employers, economists, and other stakeholders to supply it.<sup>76</sup> Instead, DHS issued an interim final rule without economic analysis or public input.

## **B. DHS Ignores Persistent Backlogs and Demand for Work Authorization**

The IFR asserts that terminating certain parole programs and TPS designations will reduce renewal filings and "eliminate" backlogs.<sup>77</sup> This claim is unsupported and contrary to DHS's data.

Work permit processing delays remain severe. Over 165,000 work permit renewal applications have been pending for more than 180 days, including more than 47,000 from asylum applicants.<sup>78</sup> Many applicants have faced waits of over a year before receiving their work permit renewal. DHS provides no basis for assuming these delays will disappear.

Moreover, DHS's theory that ending parole and TPS programs will reduce renewal demand is flawed. These program terminations are under active litigation, and could be overturned.<sup>79</sup> And even if the terminations are upheld, many affected individuals have applied for or will apply for other forms of immigration relief—meaning their renewal applications will simply shift into different work permit categories rather than vanish.<sup>80</sup> The IFR does not acknowledge either of these realities.

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<sup>75</sup> 90 Fed. Reg. at 48,817.

<sup>76</sup> DHS could have also looked to the broad swath of existing economic reports showing the substantial contributions immigrants, including asylum seekers, make to the U.S. economy. See, e.g., Michael A. Clemens, *The economic and fiscal effects on the United States from reduced numbers of refugees and asylum seekers*, OXFORD REV. OF ECON. POL'Y (Sept. 15, 2022), <https://academic.oup.com/oxrep/article-abstract/38/3/449/6701682?redirectedFrom=fulltext>.

<sup>77</sup> 90 Fed. Reg. at 48,816.

<sup>78</sup> See *supra* note 6 and accompanying text.

<sup>79</sup> See, e.g., *CASA, Inc. v. Noem*, No. 25-cv-1484 (D. Md.) (Afghanistan and Cameroon TPS); *CASA, Inc. v. Noem*, No. 25-cv-525 (D. Md.) (Venezuela TPS); *Nat'l TPS All. v. Noem*, No. 25-cv-1766 (N.D. Cal.) (Venezuela TPS); *Nat'l TPS All. v. Noem*, No. 25-cv-5687 (N.D. Cal.) (Honduras, Nepal, and Nicaragua TPS); *Haitian-Ams. United Inc. v. Trump*, No. 25-cv-10498 (D. Mass.) (Haiti and Venezuela TPS); *Dahlia Doe v. Noem*, No. 25-cv-8686 (S.D.N.Y.) (Syria TPS); *Haitian Evangelical Clergy Ass'n v. Trump*, No. 25-cv-1464 (E.D.N.Y.) (Haiti TPS); *Lesly Miot v. Trump*, No. 25-cv-02471 (D.D.C.) (Haiti TPS); *Svitlana Doe v. Noem*, No. 25-cv-10495 (D. Mass.) (Central American Minors Parole; Family Reunification Parole; Military Parole-in-Place; Uniting for Ukraine; Operations Allies Welcome; and CHNV Humanitarian Parole); *Sileiri Doe v. U.S. Dep't of Homeland Sec.*, No. 25-cv-12245 (D. Mass.) (CBP One Parole).

<sup>80</sup> See, e.g., Ukraine and CHNV Parolee Immigrant Benefit Tracking, *Svitlana Doe v. Noem*, No. 25-cv-10495 (D. Mass. June 16, 2025), ECF No. 128-3 (showing receipts, approvals, and pending applications



DHS's own data undermines the claim that there will be fewer work permit renewal applications, and consequently an alleviation of work permit backlogs at USCIS. First, the number of pending work permit renewal applications across all categories has increased throughout this calendar year.<sup>81</sup> Second, DHS itself highlights that under the Biden administration, over 3 million work permit applications were filed,<sup>82</sup> which means many more immigrants will likely be applying to renew work permit applications in coming years. There is no reason to believe that USCIS will receive significantly fewer work permit renewal applications in the coming months and years.

Every available data point shows that renewal backlogs will persist. The IFR ignores these operational realities and instead assumes—without evidence—that backlogs will simply dissipate.

### C. DHS Relies on Unsupported Claims About “Proper Planning”

DHS also asserts that automatic extensions are unnecessary because applicants who engage in “proper planning” and file early will not experience lapses in work authorization.<sup>83</sup> This claim is unsubstantiated and contradicted by DHS's own guidance and data.

USCIS advises applicants not to file more than 180 days before their work permit's expiration date,<sup>84</sup> yet over 165,000 work permit renewal applications have been pending longer than 180 days as of June 30, 2025.<sup>85</sup> Applicants who follow the agency's own instructions therefore face unavoidable employment gaps.

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filed by parolees of different parole programs); *Asylum & Temporary Protected Status: Should I apply for One or the Other or Both?*, NAT'L IMMIGR. JUST. CTR. (last visited Nov. 26, 2025), <https://immigrantjustice.org/for-immigrants/know-your-rights/asylum-temporary-protected-status-should-i-apply-one-or-other-or-both/> (“It is usually necessary to apply for asylum within one year of when you arrive in the United States. However, people who have other protection – like TPS – may qualify for an exception to the one-year filing rule if they file promptly for asylum after their TPS status comes to an end. People who choose to seek TPS now and wish to consider asylum in the future may be able to apply for asylum when TPS ends.”).

<sup>81</sup> Compare Form I-765, Application for Employment Authorization: All Receipts, Approvals, Denials, Pending Grouped by Eligibility Category and Filing Type, January 1, 2025 - March 31, 2025, U.S. CITIZENSHIP AND IMMIGR. SERVS., [https://www.uscis.gov/sites/default/files/document/data/i765\\_application\\_for\\_employment\\_fy2025\\_q2.xlsx](https://www.uscis.gov/sites/default/files/document/data/i765_application_for_employment_fy2025_q2.xlsx) (showing a total of 740,034 pending EAD renewals in March 2025), with Form I-765, Application for Employment Authorization: All Receipts, Approvals, Denials, Pending Grouped by Eligibility Category and Filing Type, April 1, 2025 – June 30, 2025, *supra* note 69 (showing a total of 797,351 pending EAD renewals in June 2025).

<sup>82</sup> 90 Fed. Reg. at 48,808.

<sup>83</sup> 90 Fed. Reg. at 48,810, 48,819.

<sup>84</sup> See I-765, Application for Employment Authorization, *supra* note 8.

<sup>85</sup> See *supra* note 6 and accompanying text.



The IFR also ignores the practical and financial barriers to filing earlier and earlier, including overlapping validity periods that shorten the usable lifespan of the card and force workers into increasingly frequent renewal cycles.<sup>86</sup> This is particularly relevant now that the fee to apply for a work permit renewal has gone up to \$745–\$795.<sup>87</sup>

#### **D. DHS Fails to Consider Significant Reliance Interests of Immigrants and Other Stakeholders**

Automatic work permit extensions have been in place since 2016 and were reaffirmed by DHS less than a year ago. As a result, millions of immigrant workers, families, employers, state agencies, and local communities have structured decisions and investments around uninterrupted work authorization.

The IFR does not sufficiently consider the reliance interests of immigrant workers and employers. Immigrants have built careers, pursued education, secured housing, taken on debt such as mortgages, and planned families based on the stability provided by automatic extensions. Employers have structured business decisions, hiring, staffing, payroll planning, and employee retention around the existence of automatic extensions. DHS now reverses course by not just shortening the automatic work permit extension—but eliminating it altogether, while barely acknowledging these reliance interests.

The IFR also fails to consider the reliance interests of broader stakeholders—state and local governments, service providers, regional economies, and federal agencies—who depend on stable workforces. DHS does not even mention these additional stakeholders in the IFR, let alone consider their reliance interests.

While the IFR identified some of these concerns, DHS failed to provide meaningful analysis or mitigation to address these serious reliance interests.<sup>88</sup> The APA requires agencies to meaningfully consider serious reliance interests before reversing policy.<sup>89</sup> DHS did not do so.

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<sup>86</sup> See *I-765, Application for Employment Authorization*, *supra* note 8 (noting that USCIS “generally do[es] not backdate or postdate the renewal EAD in relation to your current EAD’s validity period”).

<sup>87</sup> See *G-1055, Fee Schedule*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (last updated Nov. 18, 2025), <https://www.uscis.gov/g-1055?form=i-765> (noting that paper (c)(8) EAD renewal applications have a \$795 fee, whereas online (c)(8) EAD renewal applications have a \$745).

<sup>88</sup> The IFR’s discussion of the specific reliance interests at stake amounts to two sentences that identify some reliance interests but offer no recourse: “[Noncitizens], their families, and employers may have relied on the automatic extensions to maintain the [noncitizen’s] continuous employment authorization and/or EADs and to avoid lapses in employment authorization that may be detrimental to the [noncitizen], their family’s finances, and their employer’s operations. Some [noncitizens] may have also relied on the automatic extension of their EAD to obtain other forms of identification, such as driver’s licenses.” 90 Fed. Reg. at 48,809. These two sentences do not constitute meaningful consideration for purposes of the APA.

<sup>89</sup> See *Fox Television Studios, Inc.*, 556 U.S. at 515–16.

## **VII. The IFR Fails to Meaningfully Consider Less Burdensome Alternatives**

DHS was required to meaningfully consider reasonable, less burdensome alternatives,<sup>90</sup> yet the IFR notably includes no such consideration. Compounding this error, the IFR fails to consider other readily identifiable and less burdensome alternatives. This violates the APA.

### **A. The IFR Raises Non-Viable Alternatives and Fails to Meaningfully Consider Them**

DHS raises non-viable alternatives in a cursory fashion. The IFR lists two non-viable alternatives previously implemented by DHS: (1) returning to a 180-day automatic work permit extension period, and (2) issuing interim EAD cards.

Neither is a reasonable alternative. First, without evidence or analysis demonstrating a significant decrease in work permit processing backlogs, it is likely a 180-day automatic work permit extension period would still cause significant lapses in work authorization.<sup>91</sup> As a result, this alternative proposal would still adversely impact immigrant workers and other stakeholders. Second, considering interim EAD cards would not help to alleviate work permit processing times, and would also likely lead to lapses in work authorization.

DHS also raises these alternatives in a superficial and cursory way, thereby failing to meaningfully engage and consider them. First, DHS discussed these alternatives as a unit and did not separately analyze their individual pros and cons.<sup>92</sup> Second, the IFR's entire "analysis" of alternatives amounts to a singular paragraph that includes no data, statistics, analysis, caselaw, or anecdotes that supported its rejection of these alternatives.<sup>93</sup> Last, DHS relied on flawed and unsupported reasoning regarding "security risks" in rejecting these alternatives.<sup>94</sup> Rejecting these alternatives without substantive analysis and based upon unsubstantiated risks to national security does not satisfy the APA's requirement of meaningful consideration of alternatives.<sup>95</sup>

### **B. The IFR Failed to Consider Other Obvious Alternatives**

The IFR failed to consider other obvious alternatives to wholesale reversal of the automatic extension policy. While not exhaustive, there are less burdensome alternatives that DHS should have considered including: (1) processing work permits faster; (2) analyzing backlogs before changing automatic extensions; (3) issuing consecutive EADs; (4) updating USCIS's data tracking system; (5) engaging in a more concerted effort to explain automatic extensions to employers; and (6) issuing automatic extensions on secure paper.

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<sup>90</sup> *Dep't of Homeland Sec. v. Regents of the Uni. of Cal.*, 591 U.S. 1, 30 (2020) (noting that such a failure "alone" renders agency action arbitrary and capricious).

<sup>91</sup> See 89 Fed. Reg. at 101,232, 101,265 (noting that, even with the 540-day automatic extension, 46,000 renewal applicants could still experience a lapse in employment authorization).

<sup>92</sup> 90 Fed. Reg. at 48,810.

<sup>93</sup> 90 Fed. Reg. at 48,810.

<sup>94</sup> 90 Fed. Reg. at 48,810.

<sup>95</sup> See *Regents of the Uni. of Cal.*, 591 U.S. at 30.

### 1. Processing Work Permits Faster

An intuitive alternative that DHS could have considered but did not is processing work permits faster to ensure that no one needs an automatic work permit extension to remain work authorized. Faster work permit processing is in the best interest of immigrant workers and other stakeholders. The government is the only actor that has the power to control processing times. If DHS is concerned about unvetted noncitizens working on the automatic extension, the agency simply could have allocated more resources to work permit renewal adjudications. In light of new mandatory fees enacted by the One Big Beautiful Bill Act,<sup>96</sup> USCIS arguably has even more funding that it could use to shorten processing times and ensure renewal applications are adjudicated before existing EADs expire.

### 2. Analyzing Backlogs Before Changing Automatic Extensions

DHS could have provided analysis and projections of its backlog of EAD renewal applications before making changes to automatic work permit extensions. However, DHS states that it is unable to estimate the population impacted by the Rule or accurately project future processing times.<sup>97</sup> Throughout the IFR, DHS instead “assumes” that its actions terminating various parole programs and TPS designations will lead to a “reduced workload on USCIS” that “could potentially eliminate the EAD backlog.”<sup>98</sup> This assumption, however, is *not supported by any data or analysis*. In fact, DHS contradicts its own claim that work permit backlogs are under control in the IFR, admitting that ending automatic work permit extensions will cause noncitizens to fall out of the workforce because USCIS may be unable to timely adjudicate renewal applications.<sup>99</sup>

### 3. Issuing Consecutive EADs

Another reasonable, less burdensome alternative that DHS failed to consider is the implementation of consecutive EADs. Consecutive EADs is a well-documented proposal that the public previously raised to DHS in rulemaking.<sup>100</sup> It would allow for immigrant workers to file far

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<sup>96</sup> See *USCIS Updates Fees Based on H.R. 1*, U.S. CITIZENSHIP & IMMIGR. SERVS. (last updated Nov. 7, 2025), <https://www.uscis.gov/newsroom/alerts/uscis-updates-fees-based-on-hr-1>.

<sup>97</sup> 90 Fed. Reg. at 48,816–18.

<sup>98</sup> 90 Fed. Reg. at 48,816.

<sup>99</sup> 90 Fed. Reg. at 48,816–17. Indeed, DHS most recently reported that there are 827,354 renewal applications pending, with 269,451 of those applications being in the (c)(8) EAD category alone. See *I-765, Application for Employment Authorization, Counts of Pending Petitions by Days Pending for All Eligibility Categories and (c)(8) Pending Asylum Category as of June 30, 2025*, *supra* note 6. These historically high numbers mean that renewal backlogs for asylum seekers and other immigrants persist and will continue to.

<sup>100</sup> See 89 Fed. Reg. at 101,233–34 (in the 2024 Final Rule making the 540-day automatic extension permanent, “[c]ommenters also urged DHS to grant consecutive renewal grants . . . so that the new . . . EAD issuance begins on the date the prior issuance expired, rather than the date where USCIS approved the request”).

in advance of the expiration date of their EAD. Right now, when a work permit renewal applicant files far in advance of their EAD's expiration date, the new EAD's validity period typically overlaps with the prior EAD's validity period. This is because USCIS does not issue consecutive EADs.<sup>101</sup> In practice, this means that early filers lose usable and valuable work-authorization time, while being forced to apply (and pay new higher \$745–\$795 fees from the One Big Beautiful Bill Act)<sup>102</sup> earlier and earlier if they wish to avoid lapses in work authorization. If USCIS were to issue consecutive EADs, renewal applicants could file much earlier, giving USCIS a longer window to adjudicate, preserving the applicant's full period of authorized employment, and potentially lessening the need for lengthy automatic extensions.

#### 4. Updating USCIS's Data Tracking System

As another alternative, DHS could have considered updating USCIS's internal systems so that it can track work permit expiration dates and prioritize adjudicating renewal applications for individuals whose work permits will imminently expire. Just last year, DHS recognized that "there is currently no system-based way to assign work based on expiring employment authorization."<sup>103</sup> Such a system would benefit not just noncitizens previously eligible for automatic extensions, but all EAD renewal applicants and other stakeholders who depend on their contributions in the workforce. A system that prioritizes the applications of noncitizens with imminently expiring EADs would help ensure that all applicants are vetted and their applications adjudicated before their EADs expire in the first place.

#### 5. Engaging in More Efforts to Explain Automatic Work Permit Extensions to Employers

As automatic extensions have existed for nearly a decade, employers are widely familiar with them and how they function. Nevertheless, DHS states—without support—that automatic extensions may cause confusion among employers and expose them to civil and criminal penalties if they employ unauthorized noncitizens.<sup>104</sup> Assuming for a moment that there is some confusion among employers, an obvious alternative to ending the policy of automatic work permit extensions would be to make a more concerted effort to explain the 540-day automatic extension to employers who may be confused. DHS could do so by (1) conducting outreach and public engagements with employers, unions, and associations of human resources staff to explain the extensions; (2) posting about the extensions on its websites or social media platforms; and (3) creating fact sheets, FAQs, and other materials that explain the extensions in accessible

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<sup>101</sup> See *I-765, Application for Employment Authorization*, *supra* note 8.

<sup>102</sup> Before the One Big Beautiful Bill Act, paper (c)(8) EAD renewal applications had a \$520 fee and online (c)(8) EAD renewal applications had a \$470 fee. See *Comparison Chart of the Immigration-Related Fee Changes Brought by H.R.1 The So-Called One Big Beautiful Bill Act*, NAT'L IMMIGR. PROJECT OF THE NAT'L LAWS. GUILD, at 3 (last updated Sept. 16, 2025), <https://nipnlg.org/sites/default/files/2025-07/Final-Fee-Increases-HR1.pdf>.

<sup>103</sup> 89 Fed. Reg. at 24,643.

<sup>104</sup> 90 Fed. Reg. at 48,807.

language. Moreover, DHS’s “concern” about confusion among employers rings hollow, where the agency does not even acknowledge that ceasing to issue automatic work permit extensions will itself likely cause confusion among employers who have relied on automatic extensions of some length since 2016.

#### 6. Issuing Automatic Extensions on Secure Paper

Finally, DHS raises the concern that employers must assess whether noncitizens are eligible for automatic extensions based upon receipt notices that are printed on “non-secure” or “plain” paper.<sup>105</sup> DHS could easily address this concern by printing receipts on secure paper.

### VIII. **The IFR Unlawfully Bypasses Notice and Comment**

DHS made the IFR immediately effective by invoking the APA’s “good cause” and “foreign affairs function” exceptions—two narrow, rarely applicable carve-outs to the APA’s fundamental promise of transparency and public participation. DHS’s invocation of both exceptions is legally unsound. As a result, DHS deprived the public, including hundreds of thousands of immigrant workers and employers, of the notice and meaningful opportunity to comment that the APA guarantees.

#### A. **DHS’s Invocation of the Good Cause Exception Is Unlawful**

DHS argues that automatic extensions pose an urgent security threat because work permit renewal applicants could continue working “without proper vetting.” That claim collapses upon scrutiny.

The good cause exception is intentionally “meticulous and demanding,” reserved for genuine emergencies where public safety would be jeopardized by delay.<sup>106</sup> DHS invoked the good cause exception’s “impracticable” and “contrary to the public interest” prongs, but neither applies here. Instead, DHS relies on broad assertions that are contradicted by its own data, its own prior findings, and observable reality.

#### 1. Notice and Comment Was Not Impracticable

There is no emergency that makes going through the notice and comment process “impracticable.” Courts hold that notice and comment is “impracticable” only in true emergencies—situations involving an immediate threat to safety or where delaying a rule would directly endanger the public.<sup>107</sup> Nothing remotely like that exists here. Automatic extensions do not endanger lives, public safety, or property; they simply allow previously vetted noncitizens to keep working and contributing to the economy while their work permit renewals are pending.

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<sup>105</sup> 90 Fed. Reg. at 48,809–10, 48,817.

<sup>106</sup> *State of N.J., Dep’t of Env’t Prot. v. U.S. Env’t Prot. Agency*, 626 F.2d 1038, 1046 (D.C. Cir. 1980).

<sup>107</sup> *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 114 (2d Cir. 2018).

DHS's argument for why notice and comment was impracticable is not sufficient. The reason given by DHS amounts to an alleged "security vulnerability," allowing renewal applicants—who DHS itself previously vetted—to work "without proper vetting" and "potentially finance nefarious activities."<sup>108</sup> This generalized and unsubstantiated security theory does not meet the high bar necessary to lawfully invoke the "impracticable" prong.

First, DHS's rationale ignores that all work permit renewal applicants have already passed background checks and been approved for work authorization—often multiple times,<sup>109</sup> especially asylum applicants with long-pending cases.<sup>110</sup> Refreshing security checks on individuals the agency has already vetted is not an emergency. DHS points to no evidence of new or emerging threats from allowing these immigrants to continue working. The only "new" vetting DHS identifies is an ideological test of applicants' attitudes toward U.S. culture and institutions, which raises serious First Amendment concerns and cannot justify emergency rulemaking.

Second, DHS disregards its own prior finding that automatic extensions for timely, same-category filers "reasonably assured" ongoing eligibility and protected the program from abuse.<sup>111</sup> The IFR does not acknowledge this longstanding conclusion, much less explain DHS's reversal.

Third, DHS's claimed "emergency" contradicts its own assertions elsewhere in the IFR. DHS argues that terminating certain parole and TPS programs will eliminate the renewal backlog. If true, all renewals would be processed before expiration, no one would rely on automatic extensions, and the supposed security risk would disappear entirely.

Finally, as discussed above, DHS provides no factual basis for its security concerns. The agency cites only one incident in Colorado and does not show that the individual had an automatic work permit extension or that eliminating automatic work permit extensions would have prevented the event. Courts consistently reject good-cause claims based on speculation unsupported by evidence.<sup>112</sup>

In short, DHS offers no evidence of an emergency and no basis for sidestepping the APA's notice-and-comment requirements.

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<sup>108</sup> 90 Fed. Reg. at 48,806, 48,813.

<sup>109</sup> See *supra* note 64 and accompanying text.

<sup>110</sup> See *Explainer: Asylum Backlogs*, NAT'L IMMIGR. F. (Jan. 23, 2024), <https://forumtogether.org/article/explainer-asylum-backlogs/> (noting that, because of significant asylum backlogs, the estimated wait time for affirmative asylum seekers is more than six years and the average wait for defensive asylum seekers is more than four years).

<sup>111</sup> See 80 Fed. Reg. at 81,927–28; see also 89 Fed. Reg. at 101,234.

<sup>112</sup> See *Sorenson Commc'ns Inc. v. Fed. Commc'ns Comm'n*, 755 F.3d 702, 706–07 (D.C. Cir. 2014) (rejecting invocation of the "impracticable" prong where "there were no factual findings supporting the reality of the threat" because "something more than an unsupported assertion is required").

## 2. Notice and Comment Was Not Contrary to the Public Interest

DHS fails to justify how giving advance notice of the rule would be “contrary to the public interest” or defeat the purpose of a rule.<sup>113</sup> DHS’s sole justification is its claim that providing notice would cause noncitizens to “rush” to file EAD renewal applications, thereby increasing the number of individuals allegedly working without updated vetting.<sup>114</sup> This rationale fails for three independent reasons explained below.

First, DHS’s prediction is based on an unfounded premise. DHS assumes that work permit renewal applicants pose security risks. The agency provides no evidence for this assumption, and the long history of automatic work permit extensions reveals none. Work permit renewal applicants are already vetted immigrant workers, and DHS cites no instance in which automatic work permit extensions created a security threat.

Second, a surge in renewal applications is unlikely given USCIS’s own rules and practical realities. USCIS instructs applicants *not* to file more than 180 days before their current EAD expires.<sup>115</sup> Presumably, most applicants follow this instruction. The new \$745–\$795 work permit renewal fees make rapid, unplanned filings even less feasible.<sup>116</sup> And many immigrant workers are not nearing the expiration of their work permit, and so would have no urgent reason to file for renewal in the face of a Notice of Proposed Rulemaking (“NPRM”). These facts directly undermine DHS’s claim that meaningful advance notice would cause a rush to file.

Third, DHS offers no evidence—none—that advance notice has ever triggered surges in EAD filings. DHS does not point to any data showing that previous NPRMs involving work permit restrictions or other restrictions of immigration benefits caused spikes in applications. Courts consistently reject good-cause arguments based on speculation rather than empirical evidence.<sup>117</sup>

DHS provides no factual basis for concluding that notice and comment would harm the public interest. On the contrary, notice and comment would have allowed affected noncitizens, employers, and communities to share information essential to sound policymaking. Instead, the agency relies on conjecture, not evidence, contradicting the APA’s central requirement of transparent, informed, and participatory rulemaking. For this reason, invocation of this exception is unlawful.

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<sup>113</sup> See *Mack Trucks, Inc. v. Env’t Prot. Agency*, 682 F.3d 87, 95 (D.C. Cir. 2012).

<sup>114</sup> 90 Fed. Reg. at 48,813.

<sup>115</sup> See *I-765, Application for Employment Authorization*, *supra* note 8.

<sup>116</sup> See *G-1055, Fee Schedule*, *supra* note 87.

<sup>117</sup> See, e.g., *Cap. Area Immigrants’ Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 46 (D.D.C. 2020) (good cause exception not satisfied where agencies only provided a single example of potential adverse consequences and “offer[ed] no other data or information that persuasively supports their prediction of a surge” in border crossings before rule took effect).

## B. DHS Unlawfully Invoked the APA's Foreign Affairs Function Exception

DHS also unlawfully invoked the APA's foreign affairs function exception to bypass notice and comment. This exception is narrowly construed, applies only in limited circumstances, and requires a direct and significant connection to foreign affairs.<sup>118</sup> DHS's invocation for this rule does not satisfy this demanding standard given that the IFR is a regulation of domestic employment authorization.

### 1. The IFR Regulates Domestic Employment Authorization, Not Foreign Affairs

The IFR does not address questions of foreign affairs. Courts apply the foreign affairs function exception only when an agency action clearly implicates foreign relations or when notice and comment would definitely provoke "undesirable international consequences."<sup>119</sup> The IFR does neither. It only regulates when noncitizens inside the United States may continue working in the United States while their EAD renewal applications remain pending.

### 2. DHS's Justifications Are Unsupported and Overbroad

DHS's justifications for invoking the foreign affairs function exception are both unsupported and overbroad. The agency first relies on a recent notice from the Secretary of State claiming that virtually all border-related activities constitute "foreign affairs."<sup>120</sup> That notice has no legal effect. Agencies cannot define the scope of the APA or its exceptions.<sup>121</sup> And courts have repeatedly warned that expanding this exception in the immigration context would effectively eliminate public participation across an entire area of administrative law.<sup>122</sup>

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<sup>118</sup> See, e.g., *City of New York v. Permanent Mission of India to the United Nations*, 618 F.3d 172, 201 (2d Cir. 2010) (noting that the foreign affairs function exception is "narrowly construed and only reluctantly countenanced"); *Cap. Area Immigrants' Rts. Coal.*, 471 F. Supp. 3d at 55 (noting that the exception has a "high bar").

<sup>119</sup> See, e.g., *Humana of S.C., Inc. v. Califano*, 590 F.2d 1070, 1082 (D.C. Cir. 1978) (exception applies if foreign affairs are "clearly and directly" involved); *Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980) ("For the exception to apply, the public rulemaking provisions should provoke definitely undesirable international consequences.").

<sup>120</sup> See 90 Fed. Reg. at 48,814; see also *Determination: Foreign Affairs Functions of the United States*, 90 Fed. Reg. 12,200 (Mar. 14, 2025).

<sup>121</sup> See *Sorenson Commc'ns Inc.*, 755 F.3d at 706 (noting that agencies have "no interpretive authority over the APA"); *Cap. Area Immigrants' Rts. Coal.*, 471 F. Supp. 3d at 57 (noting that an agency's interpretation of "the scope of the exception" is not "entitled to deference").

<sup>122</sup> See, e.g., *Permanent Mission of India to the United Nations*, 618 F.3d at 202 (warning against "[t]he dangers of an expansive reading of the foreign affairs exception" in the immigration context, where inevitable "incidental foreign affairs effects" would "eliminate[] public participation in this entire area of administrative law"); *Yassini*, 618 F.2d at 1360 n.4 ("The foreign affairs exception would become distended if applied to [immigration] actions generally, even though immigration matters typically implicate foreign affairs.").



DHS next argues that ending automatic extensions could reduce remittances and thereby upset foreign governments.<sup>123</sup> This rationale misunderstands the foreign affairs exception. DHS never explains why giving notice and an opportunity to comment—as opposed to making the rule immediately effective—would alter remittance patterns or avoid any supposed international consequences.<sup>124</sup> Accepting this argument would also allow DHS to invoke the foreign affairs exception for almost any immigration rule.

The agency also speculates that remittances could be used by criminals or terrorist organizations.<sup>125</sup> DHS offers no examples or evidence connecting automatic extensions to such abuses. Unsupported assertions cannot satisfy the foreign affairs function exception’s high bar.<sup>126</sup>

Finally, DHS contends that notice and comment might require disclosure of “sensitive intelligence” about vetting practices.<sup>127</sup> That claim is illogical. All work permit renewal applicants undergo the same vetting regardless of nationality, and prior notice-and-comment rulemakings on work permit policies have never required disclosure of sensitive information. DHS offers no reason to believe this rule would be any different.

## **IX. Requiring Comments in English Limits Asylum Seekers’ Ability to Meaningfully Comment on the IFR**

DHS’s requirement that comments be submitted in English also deprives many asylum seekers and other immigrants of their right to comment on the IFR.<sup>128</sup>

Many asylum seekers, including many ASAP members, come from countries where English is not the primary language<sup>129</sup> and, as such, may not have the ability and resources to prepare comments in English. Accordingly, this English-only requirement effectively limits immigrants’ ability to engage in the rulemaking process and to provide input grounded in their own lived experiences. Furthermore, by conditioning participation on English proficiency, DHS disproportionately excludes the stakeholders whose rights and interests are most directly at stake with the termination of the 540-day automatic extension. This restriction conflicts with the spirit

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<sup>123</sup> 90 Fed. Reg. at 48,814–15.

<sup>124</sup> *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 776 (9th Cir. 2018) (noting that the appropriate inquiry is “how immediate *publication* of the Rule, instead of *announcement* of a proposed rule followed by a thirty-day period of notice and comment,” would avoid international consequences).

<sup>125</sup> 90 Fed. Reg. at 48,815.

<sup>126</sup> See *E. Bay Sanctuary Covenant*, 932 F.3d at 776 (rejecting agency’s invocation of the exception because “the connection between negotiations with Mexico and the immediate implementation of the Rule is not apparent on this record”).

<sup>127</sup> 90 Fed. Reg. at 48,815.

<sup>128</sup> 90 Fed. Reg. at 48,799.

<sup>129</sup> See *The Impact of Nationality, Language, Gender and Age on Asylum Success*, TRAC IMMIGR. (Dec. 7, 2021), <https://tracreports.org/immigration/reports/668/> (noting that English was listed as the preferred language of only 10% of all defensive asylum seekers).

and purpose of the APA, which is intended to ensure meaningful public participation from all affected parties.


DHS should therefore take steps to ensure equitable and accessible participation, such as accepting comments in other widely spoken languages, providing or suggesting official translation services, and explicitly encouraging directly impacted communities to participate. Such steps would significantly benefit DHS's rulemaking process and ensure the agency receives a more complete and diverse set of perspectives.

## **X. Conclusion**

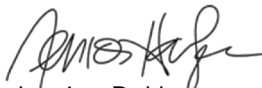
For all of the reasons stated above, the IFR is both unlawful and profoundly harmful to asylum seekers and other immigrants, employers, unions and other workers, state and local governments, service providers, local communities, and the broader public. DHS has failed to meaningfully assess the sweeping consequences of eliminating automatic work permit extensions. Instead, DHS relied on an unsupported and internally inconsistent security rationale, disregarded longstanding reliance interests, ignored reasonable and less burdensome alternatives, and improperly bypassed the APA's notice-and-comment requirements. The Rule reverses nearly a decade of established policy without reasoned explanation and undermines the agency's own prior findings that automatic extensions are essential to preventing widespread employment disruptions and maintaining economic and administrative stability.

Accordingly, ASAP respectfully urges DHS to rescind the IFR in its entirety and reinstate the permanent 540-day automatic extension. Restoring the 540-day automatic extension is necessary to ensure compliance with the APA, protect the rights and well-being of immigrant workers and their families, safeguard communities and employers who depend on their contributions, and uphold the fairness, continuity, and integrity of the nation's immigration and employment-authorization system.

Respectfully submitted,



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