IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CASA DE MARYLAND, INC., *et al.*, Plaintiffs, – *versus* – CHAD F. WOLF, *et al.*, Defendants.	Case No. 8:20-cv-2118

PLAINTIFFS' MOTION FOR A STAY OF EFFECTIVE DATES UNDER 5 U.S.C. § 705 OR, IN THE ALTERNATIVE, PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

Pursuant to Local Rule 105, Plaintiffs CASA de Maryland, Inc., the Asylum Seeker Advocacy Project, Inc., Centro Legal de la Raza, Oasis Legal Services, and Pangea Legal Services, respectfully move this Court under 5 U.S.C. § 705 for a stay of the effective date of rules, or in the alternative, under Federal Rule of Civil Procedure 65 for preliminary injunctive relief.

This case challenges two rules issued by the Department of Homeland Security ("DHS") that make myriad changes to the regulatory regime under which applicants for asylum can apply for and obtain authorization to work in this country while their asylum claims are being adjudicated. *See generally* Compl. (ECF No. 1). The rules' announced effective dates are August 21 and 25, 2020, respectively. In support of this motion Plaintiffs submit the Memorandum of Law, Index of Exhibits, and Declaration of Geroline A. Castillo with twenty-six (26) exhibits.

Plaintiffs are seeking an order under 5 U.S.C. § 705 and/or Rule 65 before August 21, when the first rule is scheduled to take effect. Plaintiffs are non-profit organizations that provide a variety

of services to asylum seekers. The final rules will irreparably harm Plaintiffs and their members and clients.

Plaintiffs seek a stay pursuant to 5 U.S.C. § 705, or in the alternative a preliminary injunction, to prevent the rules from going into effect until the Court issues a final judgment on the merits. Plaintiffs are prepared to move the case expeditiously to resolution as the claims present pure questions of law. Although Plaintiffs will be seeking the production of the administrative record prior to moving for summary judgment on some of their claims, the record is unnecessary for the Court to resolve the preliminary motion. Plaintiffs further submit, as explained in the Memorandum of Law, at n.7, that some of the claims on which Plaintiffs seek preliminary relief could be fully resolved on the merits without the administrative record.

Plaintiffs have moved expeditiously to ensure that Defendants are aware of this case and Plaintiffs' plans. On the day this case was filed (July 21), Plaintiffs' counsel made contact (and remains in contact) with the U.S. Attorney's Office for the District of Maryland via telephone and email. As of that day, Defendants had actual notice of this lawsuit (including a courtesy copy of the complaint), Plaintiffs' intent to move for preliminary relief, and Plaintiffs' desire that their motion will be resolved prior to the first rule's effective date of August 21. On July 22, Plaintiffs arranged for personal service of process upon the U.S. Attorney's Office for the District of Maryland (proof of service forthcoming) and for service by certified mail on all others (Defendants are currently not accepting personal service due to the pandemic). Plaintiffs intend to follow the filing of this Motion with paper service and courtesy service by email of the filing to the U.S. Attorney's Office for the District of Maryland.

If it would aid the Court with regards to scheduling or otherwise, Plaintiffs' counsel will make themselves available for a telephonic conference at a time convenient for the Court, and can communicate with the U.S. Attorney's Office to request Defendants' appearance as well.

Dated: July 24, 2020

Respectfully submitted,

/s/
Mariko Hirose (*pro hac vice*)
Kathryn Austin (*pro hac vice*)
Geroline A. Castillo*
INTERNATIONAL REFUGEE ASSISTANCE PROJECT
One Battery Park Plaza, 4th Floor
New York, New York 10004
Tel: (516) 701-4620
Fax: (929) 999-8115
mhirose@refugeerights.org
kaustin@refugeerights.org
gcastillo@refugeerights.org

/s/
Justin B. Cox (Bar No. 17550)
(signed by Mariko Hirose
with permission of Justin B. Cox)
INTERNATIONAL REFUGEE ASSISTANCE PROJECT
PO Box 170208
Atlanta, GA 30317
Tel: (516) 701-4233
Fax: (929) 999-8115
jcox@refugeerights.org

Attorneys for Plaintiffs

* *Pro hac vice application pending*

Conchita Cruz (*pro hac vice*)
Zachary Manfredi (*pro hac vice*)
Dennise Moreno (Bar No. 21358)
ASYLUM SEEKER ADVOCACY PROJECT
228 Park Avenue S. #84810
New York, NY 10003-1502
Tel: (305) 484-9260
Fax: (646) 968-0279
conchita.cruz@asylumadvocacy.org
zachary.manfredi@asylumadvocacy.org
dennise.moreno@asylumadvocacy.org

Richard W. Mark (*pro hac vice*)
Joseph Evall (*pro hac vice*)
Katherine Marquart (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Tel: (212) 351-4000
Fax: (212) 351-4035
RMark@gibsondunn.com
JEvall@gibsondunn.com
KMarquart@gibsondunn.com

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A STAY OF EFFECTIVE DATES UNDER 5 U.S.C. § 705 OR, IN THE ALTERNATIVE, PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

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INTRODUCTION

This case challenges two final rules scheduled to go into effect August 21 and 25. The two rules threaten the ability of people who have fled persecution to live with dignity and in safety in the United States as they pursue their claims for asylum.

Because there is no system of federal public assistance for asylum seekers, work authorization in the form of an employment authorization document ("EAD") has been the primary means for asylum seekers to meet their material and legal needs while pursuing their claims. The new rules, which were issued by Defendant the Department of Homeland Security ("DHS") through Defendant Chad Wolf, the purported Acting DHS Secretary, will delay or eliminate work authorization for thousands of asylum seekers by dismantling important aspects of the well-established EAD application and adjudication system. *See* Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38,532 (June 26, 2020) ("Broader EAD Rule"); Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applicants, 85 Fed. Reg. 37,502 (June 22, 2020) ("Timeline Repeal Rule").[1] DHS issued these rules (together, "Asylum EAD Rules") without requisite authority and in disregard of law requiring agency accountability and reasoned decisionmaking.

Plaintiffs are five organizations that provide legal, social, and other services to asylum seekers. They respectfully request that this motion be resolved before August 21, the day the first rule would go into effect. Anticipating the rules, Plaintiffs have already begun to divert resources in a way that threatens their core missions. If the rules are permitted to go into effect, Plaintiffs

[1] These rule changes are summarized in Exhibit 1 to the Declaration of Geroline Castillo, dated July 23, 2020. The Timeline Repeal Rule is attached as Exhibit 2 to the Declaration and the Broader EAD Rule is attached as Exhibit 3. At the Court's direction, Plaintiffs would be happy to submit copies of other Federal Register documents cited in the brief for ease of reference.

will face new and acute demands for their services and simultaneously risk losing crucial revenue streams, threatening their operations. Asylum applicants who would have been on the brink of receiving work authorization—including Plaintiffs' members and clients—will face forced destitution for months, or even indefinitely, limiting their access to food, shelter, medical care, and legal counsel. Plaintiff Oasis Legal Services, for example, whose clients to date have been granted asylum in 99% of its decided cases, estimates that 80% of its clients will be provisionally or permanently barred from working while their asylum applications are pending, while the remainder will be without employment for at least one year after filing for asylum.[2]

W.L., a member of Plaintiff The Asylum Seeker Advocacy Project, is one of the thousands of people who will be harmed by the new rules. W.L. fled Guatemala after she was raped repeatedly, forced to have an abortion, and threatened with death by a prominent man who used his connections to government officials to evade arrest. W.L. applied for asylum in April and is living temporarily with her two young children in the home of a family member. W.L. hopes to hire an attorney to represent her in immigration court and secure protection for her family, but she cannot afford to do so without work authorization. Under the Asylum EAD Rules, W.L. will be barred from even applying for work authorization until next spring, with no assurances as to whether or when such authorization will be granted.[3]

Plaintiffs ask the Court to issue an order under 5 U.S.C. § 705 to postpone the effective date of the rules or, in the alternative, a preliminary injunction under Rule 65 while this case is being adjudicated. Plaintiffs are prepared to move the case expeditiously to resolution as the claims

[2] Ex. 7, Oasis Decl. ¶¶ 5, 9. This and other declarations from plaintiff organizations are attached as Exhibits 4-8 of the Castillo declaration. All other exhibits referenced in this brief are similarly attached to the Castillo declaration.
[3] Ex. 5, ASAP Decl. ¶¶ 22-25.

present pure questions of law; in fact, some of the claims presented below can be resolved now without the production of an administrative record.

In Part I, Plaintiffs show that they are likely to succeed on their claims that DHS violated the Administrative Procedure Act ("APA"), the Federal Vacancies Reform Act ("FVRA"), and/or the Homeland Security Act ("HSA"), and that the likelihood of succeeding on any one of those claims would be sufficient to stay the rules. Plaintiffs will suffer irreparable harm if the rules are permitted to go into effect (Part II), and the balance of equities and the public interest warrant the requested relief (Part III).

BACKGROUND

The Significance of Work Authorization Within the Asylum System

Consistent with this country's longstanding humanitarian commitments, for forty years Congress has permitted "[a]ny [person] who is physically present in the United States or who arrives in the United States"—"whether or not [they arrive] at a designated port of arrival" and "irrespective of [their] status"—to apply for asylum. 8 U.S.C. § 1158(a)(1); *see, e.g.*, Refugee Act of 1980, Pub. L. No. 96-212, § 101(a), 94 Stat. 102, 102 ("[I]t is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands[.]"). A person is eligible for asylum if they are a "refugee"—that is, if they are unable or unwilling to return to their home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1158(b)(1)(A); 8 U.S.C. § 1101(a)(42). Asylum is a first step toward making a new home in this country: the status provides a pathway to lawful permanent resident status (*i.e.*, a "green card"), *see* 8 U.S.C. § 1159(b), and, ultimately, U.S. citizenship, *see* 8 U.S.C. § 1427(a).

Unlike many other industrialized countries, the United States generally does not provide public assistance to the people it permits to remain here to pursue claims for asylum. *See* Ex. 20, State Att'ys Gen. Cmt. n.21, at 29. Instead, the federal government has historically authorized asylum applicants to work and earn income in this country so that they may meet their needs while pursuing their asylum cases. An EAD, *see* 8 C.F.R. § 274a.12(c)(8),[4] confers benefits beyond access to jobs: it is a critical form of identification that enables asylum applicants to apply for drivers' licenses, enroll in school, obtain basic utilities, and access banking. *See* Ex. 2, 85 Fed. Reg. at 37,527 (summarizing comments). Without an EAD, asylum applicants must rely on the support—if available—of states, localities, social services organizations, and family and friends for their basic survival needs, and/or risk exploitation by working off the books. *See id.*; Ex. 3, 85 Fed. Reg. at 38,591. The ability to access employment while an asylum application is pending is particularly important because the asylum process is complicated and lengthy. *See* Compl. ¶¶ 39-46. Asylum applicants are responsible for securing their own counsel to navigate the process, *see* 8 U.S.C. § 1229a(b)(4)(A), and having such counsel increases an applicant's likelihood of success by approximately fivefold. *See* Ex. 18, Nat'l Immigrant Just. Ctr. Timeline Cmt. at 5-6. And although the asylum laws require the government to reach an initial decision on an asylum application within 180 days of filing absent exceptional circumstances, *see* 8 U.S.C. § 1158(d)(5)(A)(iii), the government routinely fails to meet that deadline; most asylum applicants wait much longer. *See* Ex. 19, Immigr. Just. Network Cmt. at 6 & n.14.

Under the current regulations, which date to 1994 reforms, an asylum applicant whose case has not yet been decided may reliably secure work authorization 180 days after applying for

[4] Citations to the regulations are to the version in effect as of the filing of this motion, except where otherwise indicated.

asylum: once their underlying asylum application has been pending for 150 days, they may submit an EAD application, and the agency must adjudicate it within 30 days. *See* 8 C.F.R. § 208.7(a)(1). DHS must grant the application unless the applicant has been convicted of an aggravated felony or their asylum application has already been denied. *See id.*

The agency adopted the policy of staggering asylum and EAD applications after a previous policy of permitting simultaneous asylum and EAD applications yielded evidence that a substantial number of people were filing facially boilerplate asylum applications as hooks to quickly obtain EADs. *See* Ex. 10, David A. Martin, Making Asylum Policy: The 1994 Reforms, 70 Wash. L. Rev. 725, 734-37 (1995) (cited at Ex. 3, 85 Fed. Reg. at 38,544 n.30). In requiring a waiting period for EAD applications, the agency nonetheless took pains to minimize the hardship to asylum seekers: it based the waiting period on the time "beyond which it would not be appropriate to deny work authorization to a person whose claim ha[d] not been adjudicated"; committed to deciding EAD applications on a shortened, 30-day timeline; and sought to cut asylum processing times by more than half to minimize the number of people still waiting for decisions at the 180-day mark. *See* Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization ("Notice of 1994 Reforms"), 59 Fed. Reg. 14,779, 14,780, 14,788 (proposed Mar. 30, 1994). Congress later codified this system, requiring asylum applicants to wait at least 180 days to work absent an earlier decision on their asylum application, but continued DHS's authority to implement an EAD system for asylum applicants through its regulations. *See* 8 U.S.C. § 1158(d)(2).

The Administration's Efforts to Block Access to Asylum

In the fall of 2019, the Trump Administration proposed to severely restrict and, in many cases, eliminate asylum seekers' access to EADs. On September 9, 2019, DHS issued a notice of

proposed rulemaking ("Timeline Repeal Notice") that proposed in relevant part to repeal the requirement that its sub-agency U.S. Citizenship and Immigration Services ("USCIS") adjudicate on a priority basis, and within 30 days of filing, the initial EAD applications of people with pending asylum applications. *See* Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 84 Fed. Reg. 47,148. On November 14, 2019, six days after the close of the comment period for the Timeline Repeal Notice, DHS issued another notice proposing further changes to the EAD system. In addition to again proposing regulatory text that would repeal the 30-day adjudication timeline, this notice ("Broader EAD Notice") proposed to extend the waiting period before an asylum applicant could apply for an initial EAD and to restrict who might receive work authorization. *See* Asylum Application, Interview, and Employment Authorization for Applicants, 84 Fed. Reg. 62,374.

These rulemakings were part of a longer, scattershot series of rulemakings initiated by the Trump Administration to burden asylum seekers and block access to asylum.[5] Many were undertaken at the express, public direction of President Trump, and all are in line with his Administration's agenda of curtailing humanitarian immigration to the United States. *See* Ex. 9, Donald J. Trump, Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System (Apr. 29, 2019).

[5] *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (proposed Nov. 14, 2019) (charging asylum applicants fees to apply for asylum and EADs, raising fees in general, and eliminating fee exemptions and fee waivers); Procedures for Asylum and Bars to Asylum Eligibility, 84 Fed. Reg. 69,640 (proposed Dec. 19, 2019) (expanding bars to asylum); Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264 (proposed June 15, 2020) (among other things, making late payment of taxes or failure to report income a barrier to asylum; making it more difficult to pass a credible fear screening; making it easier to find an application frivolous; and dramatically heightening the legal standards applicants must meet to qualify as a refugee and therefore to be eligible for asylum).

Of these rulemakings, DHS has to date finalized and issued, under the purported authority of Defendant Wolf, the Asylum EAD Rules that are the subject of this challenge.[6] The Timeline Repeal Rule was published in the Federal Register on June 22, 2020 and is set to go into effect on August 21, 2020. *See* Ex. 2, 85 Fed. Reg. 37,502 (to be codified at 8 C.F.R. pt. 208). The Broader EAD Rule was published on June 26, 2020 and is set to go into effect on August 25, 2020. *See* Ex. 3, 85 Fed. Reg. 38,532 (to be codified at 8 C.F.R. pts. 208 & 274a).

As finalized, the Asylum EAD Rules restrict—and, in many cases, eliminate—the means through which asylum seekers may work and earn income to meet their basic needs while navigating the complex and often-lengthy asylum application process. Among other things, the Asylum EAD Rules more than double the waiting period before an asylum applicant may apply for work authorization from 150 to 365 days; eliminate the 30-day timelines on which the agency was previously required to make a decision whether to accept an asylum application as complete (and thereby start the EAD waiting period) and to adjudicate asylum applicants' initial EAD applications; render asylum applicants ineligible for EADs on new grounds, including entering the country without inspection, even though an asylum seeker is statutorily entitled to apply for asylum regardless of how they entered the United States; grant individual immigration officers discretion to deny EADs even to applicants who are eligible for such authorization; impose a new, duplicative biometrics requirement for EADs; and deny asylum applicants permission to work during periods of federal judicial review of asylum decisions. *See generally* Complaint ¶¶ 68-103; Castillo Decl.

[6] Plaintiffs exclude from the scope of their challenge the portion of the Timeline Repeal Rule that deletes regulatory language requiring people with pending asylum applications who seek to renew EADs to do so at least 90 days before the expiration of their EAD. This is a conforming amendment to account for a 2017 regulation that provides automatic, 180-day EAD extensions to asylum applicants who file EAD renewal applications *at any time* before the expiration of their EADs, *see* 8 C.F.R. § 274a.13(d)(1), and thus rendered the 90-day requirement superfluous. *See* Timeline Repeal Notice, 84 Fed. Reg. at 47,155 (characterizing the change as a "clarifying amendment").

Ex. 1 (summarizing rule changes). The agency advanced these changes with the supposed goals of increasing agency "flexibility" and deterring frivolous, fraudulent, and otherwise non-meritorious asylum applications at whatever cost. *See* Ex. 2, 85 Fed. Reg. at 37,509; Ex. 3, 85 Fed. Reg. at 38,543.

The Impact of the Rules

The policy changes embodied in the Asylum EAD Rules are devastating to asylum seekers, their families, and their communities. DHS itself estimates the costs of the Asylum EAD Rules to include billions of dollars in lost compensation to asylum seekers annually, not even counting lost compensation to several groups of asylum seekers whose numbers DHS claimed to be unable to estimate. Ex. 2, 85 Fed. Reg. at 37,505; Ex. 3, 85 Fed. Reg. at 38,538-41. DHS recognizes that absent authorization to work, many asylum seekers will be without any means of support: "Asylum seekers who are concerned about homelessness during the pendency of their employment authorization waiting period," it advises, "should become familiar with the homelessness resources provided by the state where they intend to reside." Ex. 3, 85 Fed. Reg. at 38,567, 38,591.

As DHS itself anticipated, organizations like Plaintiffs CASA de Maryland, Inc. ("CASA"), the Asylum Seeker Advocacy Project, Inc. ("ASAP"), Centro Legal de la Raza ("Centro Legal"), Oasis Legal Services ("Oasis"), and Pangea Legal Services ("Pangea"), which advocate for and serve asylum seekers and other noncitizens, will be strained as the Asylum EAD Rules prevent their clients and members from working. *See* Ex. 2, 85 Fed. Reg. at 37,505 (acknowledging burdens on non-profit organizations that support asylum seekers); Ex. 3, 85 Fed. Reg. at 38,542 (same). These irreparable harms are already occurring and will intensify if the Asylum EAD Rules are permitted to take effect. *See infra* Part II.

ARGUMENT

Plaintiffs request that the Court postpone the effective dates of the Asylum EAD Rules under the APA's express authorization to courts to preserve the status quo during the pendency of litigation. 5 U.S.C. § 705; *see Dist. of Columbia v. U.S. Dep't of Agric.*, __ F. Supp. 3d. __, No. CV 20-119 (BAH), 2020 WL 1236657, at *33-34 (D.D.C. Mar. 13, 2020), *appeal filed*, No. 20-5136 (D.C. Cir. filed May 15, 2020). In the alternative, Plaintiffs request that the Court grant a preliminary injunction to similarly stay the rules' effective dates. *See* Fed. R. Civ. P. 65; *Roe v. Dep't of Defense*, 947 F.3d 207, 234 (4th Cir. 2020). Plaintiffs meet the standards for both forms of relief because they are likely to succeed on the merits of their claims, they are experiencing irreparable harm that will grow without preliminary relief, and the balance of equities and the public interest weigh in favor of the relief. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *U.S. Dep't of Agric.*, 2020 WL 1236657, at *8 (applying preliminary injunction factors to issuance of a stay under 5 U.S.C. § 705).

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR CLAIMS

Plaintiffs are likely to succeed on the merits of their claims that the EAD Rules are unlawful because they violate the APA's requirements for rulemaking and reasoned decisionmaking and because they were issued without authority. Each of these reasons is sufficient to warrant postponing the Asylum EAD Rules' effective dates while this case proceeds to final judgment.[7]

[7] Plaintiffs submit that the legal arguments in Parts I.A.1 and I.B below are ripe for final resolution should the Court find it appropriate to convert this motion into a partial summary judgment motion. For the remainder of the claims in this motion and alleged in the complaint, Plaintiffs will seek the production of the administrative record prior to summary judgment.

A. DHS Violated the APA by Failing to Comply with Its Notice and Comment Requirements and by Failing to Engage in Reasoned Decisionmaking.

This Court should stay the Asylum EAD Rules because Plaintiffs are likely to succeed on the claim that the rules are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or that they were issued "without observance of procedure required by law" in violation of the APA. 5 U.S.C. § 706(2)(A), (D). These APA requirements include the obligation that the agency "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). When, as here, an agency issues substantive rules, the agency must also provide the public with notice of the proposed rules; "give interested persons an opportunity to participate in the rule making" in a manner that is meaningful; and issue alongside its final rules a "statement of their basis and purpose." 5 U.S.C. § 553; *see N.C. Growers' Ass'n, Inc. v. United Farm Workers*, 702 F.3d 755, 763 (4th Cir. 2012).

The Supreme Court warned recently in another APA challenge involving this Administration's rushed effort to curtail the rights of immigrants "that particularly when so much is at stake, . . . the Government should turn square corners in dealing with the people." *See DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1909 (2020) (internal quotation marks omitted) (holding DACA rescission arbitrary and capricious under the APA). DHS has again disregarded this mandate in at least the four ways described below—any one of which would be independently sufficient for the APA claim to succeed as to each or both of the Asylum EAD Rules.[8]

[8] The Challenged Rules violate the APA for other reasons as well, including reasons specific to the particular changes they encompass. *See* Compl. ¶¶ 211-73, ECF No. 1.

1. DHS Violated the APA with Respect to the Asylum EAD Rules by Impermissibly Restricting the Scope of Comments and of Its Analysis.

The Asylum EAD Rules are invalid because they violate the basic APA principles articulated by the Fourth Circuit in *United Farm Workers*, 702 F.3d 755. In that case, the Department of Labor had proposed to suspend an existing regulation and reinstate the prior one, but limited the comments it sought to those that related to the suspension itself and refused to consider comments on the merits of either of the rules. *See id.* at 760-61, 769-70. The Fourth Circuit held that the agency's content restriction violated the APA because it foreclosed comments on, and consideration of, issues that were "relevant and important" to the proposed action. *See id.* Such restrictions deprived the public of the opportunity to meaningfully comment on the proposed rules under 5 U.S.C. § 553(c); contravened the agency's obligation to identify and respond to relevant, significant issues and to reasonably explain its decision in a statement of basis and purpose, *see id.*; *Bedford Cnty. Mem'l Hosp. v. Health & Human Servs.*, 769 F.2d 1017, 1020 (4th Cir. 1985), and precluded the agency from considering important aspects of the problem, *see State Farm*, 463 U.S. at 43. *See United Farm Workers*, 702 F.3d at 769 (listing and relying on these APA principles to strike down the suspension due to unlawful content restriction).

DHS engaged in the very content restriction the Fourth Circuit condemned in *United Farm Workers* when it issued the Asylum EAD Rules. **First,** DHS artificially split up and sequenced rulemakings of an intradependent regulatory regime—the asylum EAD regulation in 8 C.F.R. § 208.7 and related provisions—in a manner that deprived the public of a meaningful opportunity to comment on "relevant and important" issues. *United Farm Workers*, 702 F.3d at 769. In particular, DHS isolated the proposal to repeal the 30-day timeline for adjudicating initial EAD applications into its own rulemaking in the Timeline Repeal Notice, even though that proposal was "relevant and important" to the Broader EAD Notice, and vice versa. Whether the agency would

take 30 days or an unregulated amount of time to adjudicate an application (per the Timeline Repeal Notice) was "relevant and important" to whether DHS should make other changes to the EAD application process proposed in the Broader EAD Notice, such as giving immigration officers additional discretion and lengthening the time before an asylum applicant could apply for an EAD. *See Office of Commc'n of United Church of Christ v. FCC*, 707 F.2d 1413, 1441 (D.C. Cir. 1983) (agency's decision to eliminate a means of oversight of broadcast radio licensees was "disturbing" in light of a "concurrent proceeding" that would make such oversight all the more important). In turn, the changes in the Broader EAD Notice, including substantially narrowing EAD eligibility, were "relevant and important" to assessing the volume of initial EAD applications the agency might expect, and thus to whether DHS should repeal the 30-day adjudication timeline. Despite this interrelatedness, DHS provided *no* overlapping comment period between the notices, erroneously asserted that "[t]he two rulemakings include distinct proposals[,]" and instructed that comments pertaining to the timeline repeal and comments pertaining to the remainder of the rule changes be submitted to the "correct docket," implying that comments that related to the other proposal would be considered misfiled. 84 Fed. Reg. at 47,148; *id.* at 62,375. Indeed, even though the agency embedded the proposal to repeal the 30-day adjudication timeline within the proposed regulatory text in the Broader EAD Notice, it explicitly declined to address that proposal in the notice, signaling that comments that related to the timeline repeal would not be considered in the context of the Broader EAD rulemaking. *See* 84 Fed. Reg. at 62,422 (proposing text that would eliminate the 30-day adjudication timeline); *id.* at 62,377 n.4 (explaining that it would not address processing time).

DHS's manner of segregating rulemaking on a single topic mirrors the content restriction found to be unlawful in *California ex rel. Becerra v. Department of the Interior*, 381 F. Supp. 3d

1153 (N.D. Cal. 2019), which relied on and closely followed *United Farm Workers*' reasoning. In that case, the agency had issued two simultaneous notices, one proposing to repeal the existing rule and another to solicit input on a proposed replacement rule. *See id.* at 1175-76. Even though the proposal to repeal the rule did not explicitly limit the scope of comments the agency would receive, the court held that the agency impermissibly imposed a de facto content restriction akin to the explicit content restriction in *United Farm Workers* by suggesting that substantive comments regarding the existing rule would be considered only in the rulemaking on the replacement rule—notwithstanding the relevance and importance of such comments to the question of repeal. *Id.* Similarly, in issuing the Asylum EAD Notices, DHS prevented the public from commenting on relevant and important issues by artificially directing comments to two separate rulemaking dockets. *See supra* at 11-12.

Second, to the extent the public submitted comments regarding the regulatory scheme as a whole, including the interaction of the two proposed rules, DHS further violated the APA when it refused to consider them, thereby contravening the agency's obligation to identify and respond to relevant, significant issues raised. *See Bedford Cnty. Mem'l Hosp.*, 769 F.2d at 1020; *United Farm Workers*, 702 F.3d at 769. In its preamble to the Timeline Repeal Rule, DHS labeled comments on the anticipated Broader EAD Rule and the aggregated costs and impact of the two proposed rules as "out of scope." Ex. 2, 85 Fed. Reg. at 37,530. Although DHS "recognize[d]" that the two rules "could have some interaction," it impermissibly deflected this issue, promising that it "w[ould] address such concerns if it finalize[d] the broader rule." *Id.* at 37,530-31. That deferral of relevant, significant issues to a parallel rulemaking violated the APA in itself. S*ee Becerra*, 381 F. Supp. 3d at 1176.

DHS made matters worse when it broke its promise to consider the interaction of the rules just a few days later: when issuing the Broader EAD Rule, it refused to respond to comments on the cumulative and compounding impact of the rules. It failed to even acknowledge comments urging the agency not to repeal the 30-day adjudication deadline given the aggregated impact of the two rules. *See, e.g.*, Ex. 22, 50 Members of Cong. Cmt. at 4-5; Ex. 21, N.Y.C. Cmt. at 5-8. In fact, in responding to criticism that DHS's cost-benefit analysis of the Broader EAD Rule failed to account for the Timeline Repeal Rule and aggregate impact, DHS admitted that it did not consider the Timeline Repeal Rule in analyzing the Broader EAD Rule, asserting that "incorporating such interactions in the impact assessments for this rule would be speculative as it assumes [the Timeline Repeal Rule] will be finalized, and without change." Ex. 3, 85 Fed. Reg. at 38,590. But DHS was simply wrong on this point: the Timeline Repeal Rule had already been finalized and published (without change) earlier in the week. *See* Ex. 2, 85 Fed. Reg. at 37,502.

Finally, the problems identified above predictably led DHS to another APA violation identified in *United Farm Workers*, 702 F.3d at 769: the "failure to consider . . . important aspect[s] of the problem," *State Farm*, 463 U.S. at 43; *Becerra*, 381 F. Supp. 3d at 1153. The D.C. Circuit has held that an agency violates this principle when it bases its decisions "on a premise the agency itself has already planned to disrupt," by ignoring impending related changes that are "clearly a 'relevant factor' or an 'important problem' that must be considered." *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187 (D.C. Cir. 2011) (quoting *State Farm*, 463 U.S. at 43). In *Portland Cement*, the agency had engaged in simultaneous, parallel rulemaking on two environmental standards that were relevant to each other. *See id.* at 184-86. As the court noted, "[i]nstead of treating the two rules as truly interdependent efforts and acknowledging their close correlations, [the agency] let each [rulemaking] run its own course regardless of the collateral impact." *Id.* at

185. The court held that this was arbitrary and capricious because the agency had an "obligation to acknowledge and account for a changed regulatory posture the agency creates–especially when the change impacts a contemporaneous and closely related rulemaking." *Id.* at 187; *see also United Church of Christ*, 707 F.2d at 1441-42 (finding it "seriously disturbing" and "almost beyond belief" that an agency would undertake rulemaking that undercuts another "concurrent" rulemaking process).

DHS acknowledged that the Asylum EAD Rules "could have some interaction," Ex. 2, 85 Fed. Reg. at 37,530-31, but like the agency in *Portland Cement*, it failed to consider this interaction in finalizing the rules, *see* 665 F.3d at 187. DHS repeatedly dismissed commenters' concerns regarding injuries that asylum applicants would suffer because of the Timeline Repeal Rule on the ground that "*this* rulemaking does not make changes to eligibility requirements or the process by which asylum seekers obtain employment authorization"—even as it had proposed to do those very things in the Broader EAD Notice. *See id.* at 37,511 (emphasis added).[9] And DHS rejected comments to the Timeline Repeal Notice suggesting the reasonable alternative of shortening the EAD application waiting period to offset the harms of repealing the 30-day adjudication provision, assuming that the resulting waiting period would be shorter than the existing 150-day period. *See id.* at 37,521-22. But that assumption, and therefore DHS's reasoning for rejecting this reasonable alternative, was flawed given that DHS was preparing to extend the baseline waiting period to 365 days through the Broader EAD Rule. *See Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1044 (D.C. Cir. 1987) (the notice and comment process is designed to ensure that the agency will have before it the relevant facts and information "as well as suggestions for alternative solutions").

[9] Some version of that refrain appears at least nine times in the preamble. *See* Ex. 2, 85 Fed. Reg. at 37,508, 37,511, 37,513, 37,514, 37,527, 37,528, 37,541; *see also, e.g.*, *id.* at 37,520 ("*this* rulemaking is not intended as a deterrent") (emphasis added)).

These flaws pervaded the Broader EAD Rule as well. Because it based the rulemaking on the mistaken premise that the repeal of the 30-day timeline was a distinct issue, *see supra* at 12, DHS failed to consider the magnifying impact that the Timeline Repeal Rule would have on the changes in the Broader EAD Rule. For example, DHS dismissed comments expressing concerns about how the new 365-day waiting period would affect asylum applicants by stating that it was not reasonable for asylum applicants to expect immediate employment given that the statute prohibits issuing an EAD prior to 180 days from the filing of an asylum application. *See* Ex. 3, 85 Fed. Reg. at 38,565-66. In doing so, DHS ignored the significant difference among a 180-day wait, a 365-day waiting period under the Broader EAD Rule, and the indefinite wait when accounting for the repeal of the 30-day adjudication timeline as well. As another example, DHS justified granting USCIS the discretion to deny EAD applications of asylum applicants by asserting that the existing system in which EADs are readily available is "too strong a draw for economic migrants from around the world," 85 Fed. Reg. 38,577, while willfully ignoring that it had just simultaneously altered that system dramatically, including by giving itself unfettered discretion to in the Timeline Repeal Rule to take as long as it desires to adjudicate EAD applications.

In addition to ignoring the interrelated impact of the rule changes in the Asylum EAD Rules, DHS contravened *State Farm* and the lessons of *Portland Cement* by ignoring other parallel rulemakings that are part of the package of reforms that the Trump Administration has ordered for the alleged purpose of "safeguard[ing] our system against rampant abuse of our asylum process." *Compare* Ex. 9, April 29, 2019 Memorandum § 3 (directing DHS to propose multiple regulations relating to the asylum system, including what became the Broader EAD Rule) *and* Ex. 3, 85 Fed. Reg. 38,544 (acknowledging that the Broader EAD rulemaking "is part of a series of reforms DHS is undertaking"), *with* Ex. 3, 85 Fed. Reg. at 38,590 (considering only the impact "of regulations

and policies in effect when establishing the baseline used for the rule's analysis"). For example, DHS is currently engaging in rulemaking that would significantly change the standards for, and process of, asylum eligibility. *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264 (proposed June 15, 2020). If adopted, these rule changes would further transform the landscape of the EAD system for asylum applicants, affecting at minimum the number of applicants for EADs. This rulemaking undermines DHS's stated rationale for the Timeline Repeal, which was allegedly based on adjusting to "current operational realities" (which will now drastically change), Ex. 2, 85 Fed. Reg. at 37,507-08, and for the Broader EAD Rule, which was allegedly based on a systemic need to reduce "frivolous and non-meritorious" asylum filings due to the lack of changes to the asylum system in recent years (which will now also change), Ex. 3, 85 Fed. Reg. at 38,623. At minimum, when an agency seeks to fundamentally alter the entire regulatory system on a topic at one time, as DHS is seeking to do here, it is arbitrary and capricious to ignore the interrelated impact of the rules and assess each change in a piecemeal manner without accounting for the overall "changed regulatory posture" that the agency is simultaneous creating. *Portland Cement Ass'n*, 665 F.3d at 187.[10]

2. DHS Violated the APA with Respect to the Asylum EAD Rules by Failing to Account for Harms to Bona Fide Asylum Seekers.

In addition to being the product of the fatal content restriction described above, the Asylum EAD Rules violate the APA because the agency failed to account for harms that the rule would

[10] As another example, at the same time that DHS was engaging in the rulemaking for the Asylum EAD Rules that would change the criminal bars to EADs, the agency proposed a rule change to the criminal bars to asylum eligibility in a parallel rulemaking. *See* 84 Fed. Reg. 69,640 (proposed Dec. 19, 2019) ("Asylum Criminal Bars Notice"). DHS then ultimately decided to align the criminal bars to EADs and to asylum eligibility. But because the revised criminal bars to asylum eligibility in the parallel rulemaking had not been finalized, the public was deprived of a meaningful opportunity to comment on whether the new ineligibility grounds that may be adopted as a result of the Asylum Criminal Bars Notice are also appropriate grounds for denying EADs. *See* Compl. ¶ 231.

inflict on bona fide asylum seekers. Congress created the U.S. asylum system to further longstanding U.S. policy of "respond[ing] to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, Pub. L. No. 96-212, § 101(a), 94 Stat. 102, 102. Since the asylum laws exist to serve people subject to persecution, the agency, in enforcing those laws, must respect and promote their interests. *See Judulang v. Holder*, 565 U.S. 42, 55 (2011) (agency action must reflect "the purposes of the immigration laws" or the "appropriate operation" of the system).

As an initial matter, excepting conclusory—and thus insufficient—assertions that its policy would not deter bona fide asylum seekers from seeking protection,[11] DHS failed to respond to the grave criticism that its proposed rules "w[ould] actually discourage and reduce legitimate claims for asylum." Ex. 3, 85 Fed. Reg. at 38,564-65; *see also* Ex. 2, 85 Fed. Reg. at 37,520 (summarizing comments expressing concern that the Timeline Repeal Rule would deter asylum seekers). Commenters explained, for example, how the expenses of pursuing an asylum application—including for printing, photocopying, transportation, gathering evidence, and hiring translators, interpreters, and counsel—could prove prohibitive absent work authorization, but the agency did not engage with them. *See e.g.*, Ex. 25, Refugee & Immigrant Ctr. For Educ. & Legal Servs. Cmt. at 2; Ex. 19, Ex. 18, Nat'l Immigr Just. Ctr. Timeline Cmt. at 5-6. DHS's assertions that there is no right to be granted asylum and that the rules do not, as a technical matter, bar anyone from seeking asylum or participating in the adjudication process are nonresponsive. *See* Ex. 3, 85 Fed.

[11] Ex. 3, 85 Fed. Reg. at 38,558 (asserting without citation that "this rule does not deter legitimate asylum seekers who are fleeing persecution from entering the United States," and that "[b]ona fide asylum-seekers urgently needing protection from persecution for whom the U.S. is the first country available in which to seek refuge will apply for asylum regardless of when they would receive work authorization"); *id.* at 38,555 (asserting without citation that the "final rule . . . [will] encourage[e] only legitimate asylum seekers . . . to seek asylum"); Ex. 2, 85 Fed. Reg. at 37,512 ("This rulemaking does not impede an alien's opportunity to seek asylum . . . ."); *id.* at 37,520 ("[T]his rulemaking is not intended as a deterrent and does not impede an aliens' opportunity to seek asylum in the United States").

Reg. at 38,555, 38,562, 38,591, 48,592; Ex. 2, 85 Fed. Reg. at 37,520. The agency did not address the criticism that the *practical effect* of its rules is to erect a de facto barrier to pursuing relief, and this failure to respond in a reasoned manner to a major criticism again violates notice and comment procedures and was arbitrary and capricious. *See Bedford Cnty. Mem'l Hosp.*, 769 F.2d at 1021.

Moreover, the agency's thesis, expressed repeatedly in the Broader EAD Rule—that its policy could somehow "result in decreased filings of frivolous, fraudulent, or non-meritorious asylum applications" without also deterring "bona fide" or "legitimate" asylum seekers—is simply irrational. Ex. 3, 85 Fed. Reg. at 38,583. For one, it is incoherent on its face: if the policy deters "non-meritorious" applications beyond those that are frivolous or fraudulent, it will necessarily deter some "bona fide" applications (*i.e.*, those "made in good faith"). *See id.* at 38,585 ("DHS is promulgating this rule . . . to reduce the number of non-meritorious asylum applications," including those filed "in good faith."); *see also Bona Fide*, Black's Law Dictionary (11th ed. 2019) ("bona fide" means "[m]ade in good faith").

But even construing "bona fide" asylum seeker to mean a person who will prevail on the merits, the agency's reasoning makes no sense. Which applicants will ultimately prevail on the merits is necessarily unknowable at the threshold of a case: it will depend on country conditions and personal circumstances, as well as where and by whom the case is tried and decided and if the applicant is represented by counsel. *See, e.g.*, *Gonahasa v. INS*, 181 F.3d 538, 540-43 (4th Cir. 1999) (concluding improved circumstances in the applicant's home country after the applicant fled warranted denial of asylum); *see also Grace v. Barr*, __F.3d __, No. 19-5013, 2020 WL 4032652, at *13 (D.C. Cir. July 17, 2020) (noting variation in asylum law across circuits); Ex. 26, McLaughlin Cmt. at 1 (describing 80% differences in grant rates between immigration judges); Ex. 18, Nat'l Immigr. Just. Ctr. Timeline Cmt. at 5-6, 6 n.19 (citing statistic that asylum seeker is

approximately five times as likely to prevail with representation). The Asylum EAD Rules have no mechanism for identifying and exempting those who will prevail on the merits and instead resort to burdening all asylum seekers, as the agency itself recognized. *See, e.g.*, Ex. 3, 85 Fed. Reg. at 38,549 ("DHS acknowledges that these reforms will also apply to [those] with meritorious asylum claims, and that these applicants may experience some degree of economic hardship as a result"). DHS's position that people who will ultimately win their cases—an unknowable group—would somehow resist the deterrent effects of the policy has no rational basis,[12] and was arbitrary and capricious in this way as well. *See, e.g.*, *State Farm*, 463 U.S. at 43 (explanation that runs counter to the evidence is arbitrary and capricious); *Judulang*, 565 U.S. at 55.

3. DHS Violated the APA with Respect to the Broader EAD Rule by Failing to Establish the Problem It Purported to Address.

The Broader EAD Rule is also arbitrary and capricious because DHS violated the fundamental APA requirement that an agency putting forward a regulatory solution establish that there is a problem to be solved. *See Home Box Office, Inc. v. FCC*, 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."). Explanatory statements that are "conclusory," *see Mayor of Balt. v. Azar*, 439 F. Supp. 3d 591, 609 (D. Md. 2020), *appeal filed*, No. 20-1215 (4th

[12] Professor David Martin, whose work was cited by the agency, *see infra* at 21, anticipated this problem for the agency: "If work authorization is now to be denied, any lawyer for the Department of Justice is bound to be asked in court how the government expects asylum seekers to survive during the months (and possibly years) until a final ruling is obtained on the application. Unless the government takes further steps to provide for such people during the pendency of the claim, the lawyer has no respectable answer. *Courts might easily conclude that the government was trying to starve people out of pursuing a congressionally mandated right. And they would surely point out that a no-work-authorization policy falls as heavily on bona fide refugees as on the abusers who are the ostensible targets*." *See* Ex. 12, David A. Martin, Reforming Asylum Adjudication: On Navigating the Coast of Bohemia, 138 U. Pa. L. Rev. 1247, 1374 (1990) (cited at Ex. 3, 85 Fed. Reg. at 38,544 n.32 *et al.*) (emphasis added).

Cir. filed Feb. 25, 2020), or based in mere "conjecture," *see Graphic Commc'ns Int'l Union, Local 554 v. Salem-Gravure Div. of World Color Press, Inc.*, 843 F.2d 1490, 1494 (D.C. Cir. 1988), are insufficient, and any explanation that "runs counter to the evidence before the agency" will necessarily fail, *State Farm*, 463 U.S. at 43.

In explaining the Broader EAD Rule, DHS failed to present any evidence that the EAD system must be "reformed" as the rule provides and instead relied on a record that contradicted its proposal. While DHS claimed to have identified EADs' "low eligibility threshold and nearly limitless renewals. . . as a driver for economic migrants who are ineligible for lawful status in the United States to file frivolous, fraudulent, and otherwise non-meritorious asylum applications," Ex. 3, 85 Fed. Reg. at 38,555; *see also id.* at 38,546, it provided no support for this statement and instead acknowledged that it "does not track cases that are frivolous, or fraudulent, or otherwise non-meritorious claims," *id.* at 38,590. Lacking the relevant data, DHS relied principally on decades-old work of Professor David Martin to irrationally claim that there are problems with the current EAD system. *See id.* at 38,544 n.30; *id.* at 38,546 & n.58;[13] *id.* at 38,555 & n.93. The cited articles discuss problems of the early 1990s that the current EAD system addressed; they do not conclude that the current system is in need of reform. If anything, they contradict the agency's position that the system requires or warrants further restriction. For example, reflecting in 2000 on the regulations promulgated in 1994, Martin explained that those reforms had successfully broken the psychological link that he believed had led people to file boilerplate asylum applications with an eye to work authorization, and that in the future, it might be prudent to make work authorization *more* freely available—not less—in the absence of direct government aid. *See* Ex. 11, David A.

[13] The agency's internal cross-references are incorrect, but the agency's references to Martin's work at "note 27" are evidently references to sources cited at note 30.

Martin, The 1995 Asylum Reforms, Ctr. for Immigr. Stud. (May 1, 2000) (cited at Ex. 3, 85 Fed. Reg. at 38,544 n.30 *et al.*).

Other data presented by the agency, and even the agency's own assertions, similarly undermined DHS's position that the EAD system, as structured, is a "driver" for so-called "economic migrants" to file non-meritorious asylum applications. For example, DHS elsewhere cited a 2018 USCIS Ombudsman report that notes that the USCIS "surmises" and "presumes" that a backlog of affirmative asylum cases has created an incentive to apply for asylum to obtain an EAD. *See* Ex. 3, 85 Fed. Reg. at 38,585 n.153; *id.* at 38,555; Ex. 13, Citizenship and Immigr. Serv. Ombudsman, Annual Report 2018, at 43-44 (June 28, 2018). Even if the agency's own conjecture were sufficient, this source blames agency backlogs in asylum processing, not the "low eligibility threshold" and "nearly unlimited renewal opportunit[ies]" for EADs. Ex. 3, 85 Fed. Reg. at 38,555.

In addition to failing to establish the existence of a problem, DHS conceded an utter lack of relationship between the problem that it was purporting to address—the alleged asylum "crisis" at the border, Ex. 3, 85 Fed. Reg. at 38,543—and its proposed solutions in the Broader EAD rules. DHS's own data between 2008 and 2019 showed that nearly 45 percent of people in removal proceedings after being detained at the border "did not file for asylum with an IJ," *id.* at 38,583, and therefore would not be eligible to obtain EADs under the current rules. *Id.* at 38,583. And strikingly, the agency itself responded to comments expressing concern about the reliance interests asylum applicants have in the EAD system by dismissing as "not reasonable" the notion that an asylum applicant would have "refrained from violating immigration laws requiring lawful entry or a timely-filed asylum application, or criminal laws proscribing public safety offenses, if he had known it would later render him ineligible for an ancillary, discretionary benefit." *Id.* at 38,587. This directly contradicts its premise that the rulemaking would shape asylum seekers' conduct.

See, e.g., *id.* at 38,562 ("This rulemaking addresses DHS' interest in deterring unlawful entry into the United States . . . ."); *id.* at 38,538 ("[P]rovisions seek . . . to disincentivize criminal behavior and illegal entry into the United States").

DHS's failure to explain the problem its regulation was intended to address was arbitrary and capricious for the additional reason that commenters brought this defect to the agency's attention and the agency did not address it. *See, e.g.*, Ex. 23, Lutheran Soc. Servs. of N.Y. Cmt. at 2-3 (pointing out unjustified reliance on articles by Prof. Martin); Ex. 24, Mich. Immigr. Rts. Ctr. Cmt. at 3 (pointing to lack of supporting evidence). In notice and comment rulemaking, an agency must respond to "significant comments," *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015), including "major criticisms of the information forming the basis for the [challenged] rule," *Bedford Cnty. Mem'l Hosp.*, 769 F.2d at 1021. The agency's failure to respond to major criticisms of the premise of its rulemaking, even beyond the defective reasoning, violated notice and comment procedures and was arbitrary and capricious. *See Action on Smoking & Health v. Civ. Aeronautics Bd.*, 699 F.2d 1209, 1215-17 (D.C. Cir. 1983) (agency action arbitrary and capricious for failure to respond sufficiently to comments in statement of basis and purpose).

4. DHS Violated the APA with Respect to the Timeline Repeal Rule by Failing to Explain Why It Declined to Hold Itself to Any Timeline.

With respect to the Timeline Repeal Rule, DHS acted in an arbitrary and capricious manner for the additional reason that it relied on a legally illegitimate explanation for its action: the desire to be free of any accountability. *See Action on Smoking & Health*, 699 F.2d at 1217 (rejecting an attempt by the agency to issue regulations based on a similar explanation). In issuing the Timeline Repeal Rule, DHS repeatedly—and insufficiently—purported to explain its decision to free itself of any adjudicatory deadline at all by pointing to the need for "flexibility." Ex. 2, 85 Fed. Reg. at 37,509 (stating that the 30-day timeframe did not provide "sufficient flexibility"); *id.* at 37,517

(rejecting alternative timelines to the 30 days by citing a desire for "greater flexibility"). But as the D.C. Circuit has held, an agency's decision cannot be based on a desire "to impose only a bare minimum of government control"—the agency must assess the "appropriate *degree* of regulation." *Action on Smoking & Health*, 699 F.2d at 1217 (emphasis added). Similarly, here, the agency could not justify its decision simply by pointing to a need for flexibility: it was required to explain why it believed that repealing the 30-day adjudication timeline and replacing it with nothing struck the appropriate balance between flexibility, accountability, and the humanitarian purposes of the statutory scheme it administers. *See also Judulang*, 565 U.S. at 55. Because the agency did not do so, its actions were arbitrary and capricious.

5. DHS Violated the APA with Respect to the Timeline Repeal Rule by Failing to Explain Why It No Longer Would Prioritize Deciding Initial EAD Applications Filed by Asylum Applicants.

Additionally, in issuing the Timeline Repeal Rule, DHS failed to reasonably explain its departure from its prior position that it should decide initial EAD applications from asylum applicants within 30 days. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009) (requiring "a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy"). Although DHS asserted that the rule "brings the regulatory scheme by which [initial asylum-applicant EAD] applications are processed in line with processing for other types of applications for employment authorization, [which do not impose a processing timeline,]" Ex. 2, 85 Fed. Reg. at 37,519-20, it failed to explain why this is reasonable when it had previously decided that initial asylum-applicant EADs should be treated differently because they are situated differently. As the agency recognized when creating the 30-day adjudication timeline, only asylum applicants are required to observe a waiting period to initially apply for an EAD.[14] In

[14] *See* Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization, 59 Fed. Reg. 62,284, 62,303 (Dec. 5, 1994)

addition, renewal EAD applicants do not face the same problems of delay as initial EAD applicants because many such applicants benefit from automatic, 180-day extensions that prevent gaps in employment.[15]

When an agency has "recognized . . . significant differences" in the past, an agency "must justify its failure to take account of circumstances that appear to warrant different treatment for different parties." *Petroleum Commc'ns, Inc. v. FCC*, 22 F.3d 1164, 1172-73 (D.C. Cir. 1994). Mere pronouncement of a belief that various parties should be treated the same is insufficient. *See Allied-Signal, Inc. v. U.S. Nuclear Reg. Comm'n*, 988 F.2d 146, 152 (D.C. Cir. 1993) (holding that the "conclusory statement" that the agency "believe[d] . . . the surcharge should be the same for all . . . licensees" was insufficient); *see also Grace*, 2020 WL 4032652, at *12 ("[H]owever the agency justifies its new position, what it may not do is gloss over or swerve from prior precedents without discussion[.]") (original alterations omitted) (citations omitted). The agency's insistence that asylum applicants applying for an initial EAD should be treated the same as all other EAD applicants, without accounting for differences that the agency previously recognized as material and weighty, is another way in which the rule is arbitrary and capricious. *See Fox Television*, 556 U.S. at 515-16.

(through amendments to 8 C.F.R. § 274a.13(d), setting an adjudication deadline of 90 days except in the case of asylum applicants initially applying for EADs); Notice of 1994 Reforms, 59 Fed. Reg. at 14,788 (requiring a 30-day adjudication timeline for asylum applicants who are "temporarily barred" from seeking employment authorization).

[15] *See* 8 C.F.R. § 274a.12(c); 8 C.F.R. § 274a.13(d); *see also* Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82,398, 82,458 (Nov. 18, 2016) (repealing the 90-day adjudication deadline for other EADs but mitigating the harm by providing for earlier filings and automatic, 180-day EAD extensions).

B. DHS Violated Applicable Laws When Defendant Chad Wolf, Who Was Not Lawfully the Acting DHS Secretary, Issued the Asylum EAD Rules.

Plaintiffs are likely to prevail on their claims that the Asylum EAD Rules are contrary to law for an additional, alternative reason: Defendant Wolf had no authority to issue them. He assumed and acts in the position of Acting DHS Secretary in violation of law.

Under President Trump's leadership, DHS has been without a properly nominated and confirmed Secretary since April 10, 2019 at the latest—in what appears to be the longest cabinet-level vacancy in history. The President has not submitted a nominee for the position since then and a revolving cast of officials has purported to be the Acting DHS Secretary. Defendant Wolf is not the only acting official in DHS operating without lawful authority. One court has already vacated a DHS policy because the Acting USCIS Director who enacted it was not lawfully installed in office. *See, e.g., L.M.-M. v. Cuccinelli*, No. CV 19-2676 (RDM), 2020 WL 985376, at *24 (D.D.C. Mar. 1, 2020).

Defendant Wolf's exercise of authority at DHS violates the laws governing Executive agencies. The Appointments Clause of the Constitution limits the President's power to select principal officers by requiring that the Senate provide Advice and Consent. *See* U.S. Const. art II, § 2, cl. 2. This is no mere technicality; the limit "serves both to curb Executive abuses of the appointment power . . . and to promote a judicious choice of persons for filling the offices of the union." *Edmond v. United States*, 520 U.S. 651, 659 (1997) (internal quotations marks and citations omitted). To prevent a President from employing temporary acting officials, who do not require Senate confirmation, to do their bidding, Congress passed the Federal Vacancies Reform Act ("FVRA"). The FVRA prevents the President from circumventing Senate oversight by limiting the time anyone in an acting capacity can fill a position that requires Senate confirmation when no nomination for that position is pending before the Senate. *See* 5 U.S.C. §§ 3346(a)(1), 3348(b)(1);

NLRB v. SW Gen., Inc., 137 S. Ct. 929, 936 (2017) (recognizing that Congress enacted the FVRA "[p]erceiving a threat to the Senate's advice and consent power"). The FVRA includes a default framework for who may temporarily fill vacant offices, but Congress explicitly left open the possibility of legislating a different order of succession for specific agencies. *See* 5 U.S.C. § 3347(a). For DHS, Congress did just that: in the Homeland Security Act ("HSA") it legislated an order of succession specifying who may serve as the temporary Acting DHS Secretary. *See* 6 U.S.C. § 113(a)(1)(A), (g)(1).

Defendant Wolf's service as Acting DHS Secretary violates both statutes. As a consequence, his issuance of the Asylum EAD Rules "shall have no force or effect" under the FVRA, 5 U.S.C. § 3348(d)(1), and independently, should be set aside under the APA as issued "not in accordance with law" (i.e., the FVRA and the HSA) and "in excess of statutory . . . authority, 5 U.S.C. § 706(2)(A), (C).

1. DHS Issued Both Asylum EAD Rules in Violation of the FVRA.

Defendant Wolf's service as Acting DHS Secretary violates the plain text of the FVRA, which states that a temporary official may serve "for no longer than 210 days beginning on the date the vacancy occurs,"[16] unless "a first or second nomination for the office is submitted to the Senate," in which case that person may serve while the nomination is pending. 5 U.S.C. § 3346(a); *see SW Gen.*, 137 S. Ct. at 942 (in analyzing another portion of the FVRA, holding that the plain text is dispositive in showing that an acting officer's continued service violated the FVRA). Because Secretary Nielsen, the last Senate-confirmed DHS Secretary, resigned on April 7 or 10,

[16] The statute provides some exceptions to the 210-day rule, but they are not relevant here. *See* 5 U.S.C. § 3346(a).

2019,[17] "the vacancy occur[red]" under the FVRA by April 10, 2019 at the latest. November 6, 2019 is 210 days from April 10, 2019. Thus, under the FVRA, no official has lawfully served as Acting DHS Secretary since November 6, 2019 at the latest, *see* 5 U.S.C. § 3346(a)(1); § 3348(b)(1).

Because Defendant Wolf's service began on November 13, 2019, seven days after the latest possible expiration of the 210-day period, the entirety of his tenure has been unlawful under the FVRA. Consequently, the Asylum EAD Rules, which were issued on June 22 and 26, 2020—more than a year after the start of the vacancy of the office of the Secretary—cannot have effect under the FVRA and must be set aside under the APA. *See, e.g., L.M.-M.*, 2020 WL 985376, at *24 (ordering a similar remedy of setting aside a policy enacted by the Acting USCIS Director because he held office in violation of both the FVRA and the APA).

2. DHS Issued Both Asylum EAD Rules in Violation of the HSA.

Defendant Wolf's succession to office also violated the HSA's requirements for who may serve as the Acting DHS Secretary if the DHS Secretary resigns. *See* 6 U.S.C. § 113(g). Under the HSA, the Deputy DHS Secretary is first in line, *see* 6 U.S.C § 113(a)(1)(A) (designating the Deputy Secretary as "first assistant" for purposes of succession under 5 U.S.C. § 3345 [the FVRA]), followed by the Under Secretary of Management, *see* 6 U.S.C. §§ 113(g)(1), 113(a)(1)(F) (designating the Under Secretary as the "first assistant" to the Deputy Secretary). The DHS Secretary has the authority to designate other officers "in further order of succession"—that is, to decide which officers are next in line, and in what order. 6 U.S.C. § 113(g)(2).

[17] As explained in more detail below, *see infra* at 29, Secretary Nielsen resigned effective April 7, 2019, but purported to continue exercising her authority until April 10. The distinction is immaterial for the purposes of the FVRA claim, and in this brief Plaintiffs use her latest possible date of service as the start of the FVRA's 210-day period.

Defendant Wolf's service as Acting DHS Secretary violates the HSA and the orders of succession promulgated pursuant to it because he was never lawfully the next in line to assume the role of Acting DHS Secretary. When Secretary Nielsen resigned in April 2019, she issued a resignation letter with the effective date of April 7, 2019. Ex. 14, Nielsen Resignation Ltr. Dated April 7, 2019. Under the existing DHS Order of Succession & Delegation, when Secretary Nielsen resigned, Claire Grady, who was serving as the Senate-confirmed Under Secretary of Management, became the Acting DHS Secretary by law. *See* Compl. ¶ 174. Nonetheless, former Secretary Nielsen purported to remain in office an additional three days, until April 10, 2019. *See id.* ¶ 172. On April 10, 2019, she purported to amend the DHS Orders of Succession & Delegation, but only changed the order of succession "in the event [she was] unavailable to act during a disaster or catastrophic emergency." *See* Ex. 15, DHS, DHS Orders of Succession and Delegation of Authorities for Named Positions (Dec. 15, 2016), *as amended* (Apr. 10, 2019).

Kevin McAleenan, then-Commissioner of U.S. Customs and Border Protection ("CBP"), purported to assume the office of Acting DHS Secretary on April 11, 2019. But this violated the HSA because, even assuming that former Secretary Nielsen left office on April 10, there were at least two offices with incumbents that were ahead of Commissioner McAleenan in the line of succession under the DHS Orders of Succession & Delegation (even assuming that the Nielsen amendments were valid and taking into account Under Secretary Grady's resignation on April 10, 2019). *See id.*; *see also* Ex. 16, Executive Order 13753 (making the Commissioner seventh in the order of succession behind, among others, the Under Secretary for National Protection and Programs and the Under Secretary for Intelligence and Analysis); Complaint ¶¶ 178-79.

From the time he assumed office, Commissioner McAleenan's tenure as Acting DHS Secretary violated the HSA and was thus unlawful. His tenure became doubly unlawful after

November 6, 2019, by operation of the FVRA, because 210 days had passed since the office of the Secretary had been vacated. *See supra* at 27-28. Simply put, McAleenan had no authority to act after November 6, 2019, for two independent reasons – the FVRA and HSA – and thus he had no authority on November 8, 2019 to purportedly amend further the DHS Orders of Succession & Delegation to place the Under Secretary for Strategy, Policy, and Plans fourth in the line of succession. *See* Ex. 17, DHS, *Amendment to the Order of Succession for the Secretary of Homeland Security* (Nov. 8, 2019). At the time of Commissioner McAleenan's resignation, all positions higher than the Under Secretary for Strategy, Policy, and Plans in the orders of succession were unoccupied. On November 13, Defendant Wolf, who had been serving as the Acting Under Secretary for Strategy, Policy, and Plans, was confirmed in that role, and Commissioner McAleenan resigned from DHS that same day. Commissioner McAleenan's resignation and his purported changes to the DHS Orders of Succession & Delegation thus paved the way for Defendant Wolf to immediately purport to assume the office of Acting DHS Secretary.

Defendant Wolf's succession was unlawful because it purported to take place under Commissioner McAleenan's amendments to the DHS Order of Succession & Delegation, which themselves were unlawful. Because Commissioner McAleenan's tenure as Acting DHS Secretary violated the HSA and the DHS Orders of Succession & Delegation, as well as the FVRA after November 6, 2019, Commissioner McAleenan could not lawfully exercise the authority of the Office of the Acting DHS Secretary to amend the DHS Orders of Succession & Delegation on November 8, 2019, and handpick his replacement. *See* 5 U.S.C. § 3348(d)(1) (providing that when an official without lawful authority performs a "function or duty of a vacant office" it "shall have no force or effect"); *L.M.-M.*, 2020 WL 985376, at *24. Thus, Defendant Wolf, too, assumed his position in violation of the HSA and the DHS Orders of Succession & Delegation, and was without

lawful authority to issue the Asylum EAD Rules. Plaintiffs are therefore also likely to succeed on the merits of their claim that the Defendants violated the HSA and the APA.

II. PLAINTIFFS WILL BE IRREPARABLY HARMED ABSENT PRELIMINARY RELIEF.

The Asylum EAD Rules have already inflicted irreparable harm on Plaintiffs, and those harms will only intensify once the rules begin to go into effect on August 21, 2020.

First, Defendants' Asylum EAD Rules are frustrating and will continue to frustrate Plaintiffs' core missions of advancing the rights of immigrant communities. *See HIAS, Inc. v. Trump*, 415 F. Supp. 3d 669, 685 (D. Md. 2020), (organizations irreparably harmed by being "diverted from their main purpose and mission" of providing supportive services to refugees), *appeal filed*, No. 20-1160 (4th Cir. filed Feb. 13, 2020); *CASA de Md., Inc. v. Trump*, 414 F. Supp. 3d 760, 785 (D. Md. 2019) (organization established irreparable harm from "frustration of its mission and diversion of its resources" from time-sensitive legislative advocacy), *appeal filed,* No. 19-2222 (4th Cir. filed Nov. 4, 2019); *E. Bay Sanctuary Covenant v. Barr*, No. 19-16487, 2020 WL 3637585, at *17 (9th Cir. July 6, 2020) (ongoing harm to organizational mission irreparable). Already, Plaintiffs have been forced to divert substantial resources from time-sensitive core advocacy as they analyze the Asylum EAD Rules and educate their staff and clients on the rules' impact. Plaintiff ASAP, for example, has been forced to shift resources away from providing assistance for emergency filings to prevent deportations. *See* Ex. 5, ASAP Decl. ¶¶ 33-35. Similarly, Plaintiff Centro Legal has been forced to deprioritize submitting guardianship petitions to support applications for Special Immigrant Juvenile Status for minor children who may soon age out of eligibility, *see* Ex. 6, Centro Legal Decl. ¶¶ 22-23, and Plaintiff Oasis has been forced to stop filing new citizenship and family-based petitions as a result of the Asylum EAD Rules, *see* Ex. 7, Oasis Decl. ¶ 41.

Once the rules go into effect, Plaintiffs' harms will be amplified. Plaintiffs will be forced to divert even more staff time and resources to EAD applications as eligibility criteria become more stringent and the application process becomes more complicated. *See* Ex. 6, Centro Legal Decl. ¶ 27 (estimating that it may take "more than twice as long" to prepare initial and renewal EAD applications under the new rules); *see also* Ex. 8, Pangea Decl. ¶¶ 23-32; Ex. 5, ASAP Decl. ¶¶ 37-39. The rules will also create significant additional burdens as Plaintiffs step in to provide asylum applicants with the financial and social supports they will need due to their inability to work lawfully. *See* Ex. 4, CASA Decl. ¶¶ 31-32 (explaining that once the Asylum EAD Rules go into effect, more of CASA's members will rely on the organization's in-house pandemic financial assistance program); Ex. 7, Oasis Decl. ¶ 47 (explaining that Oasis will be required to hire more staff to provide case management services to their clients); Ex. 5, ASAP Decl. ¶ 41 ("ASAP will also be forced to expend time and resources on connecting clients with social services that may offer support while our clients are unable to legally work.").

At the same time, the Asylum EAD Rules will diminish key revenue streams for some Plaintiffs, *see* Ex. 8, Pangea Decl. ¶ 38 ("The new EAD rules will also cause a loss in revenue to Pangea from client fees"); Ex. 4, CASA Decl. ¶ 33 (noting that the Asylum EAD Rules will make it difficult for CASA to meet the requirements of their funding contracts with local governments), and jeopardize others' ability to operate at all, *see* Ex. 7, Oasis Decl. ¶ 46 (explaining that a third of Plaintiff Oasis's budget comes from client revenue, which Oasis expects to decrease substantially if clients cannot obtain EADs). These injuries to Plaintiffs' operations and goodwill will be irreparable. *See Fed. Leasing, Inc. v. Underwriters at Lloyd's*, 650 F.2d 495, 500 (4th Cir. 1981) (deeming injuries threatening enterprise's very existence or loss of goodwill irreparable).

Second, as numerous courts have already recognized, the delay or denial of work authorization to asylum applicants like ASAP and CASA's members will inflict irreparable harm. *See, e.g.*, *Diaz v. INS*, 648 F. Supp. 638, 647-48 (E.D. Cal 1986); *Ramos v. Thornburgh*, 732 F. Supp. 696, 699-70 (E.D. Tex. 1989); *Grijalva v. Ilchert*, 815 F. Supp. 328, 331-32 (N.D. Cal. 1993). ASAP, for example, identifies two members who submitted their asylum applications in April of this year. Under the regulatory framework that existed when they applied for asylum, these members planned to apply for work authorization in August and September with an expectation of being permitted to work—and with promising chances of employment—in September or October. *See* Ex. 5, ASAP Decl. ¶¶ 22-29. If these new rules go into effect, however, both will be forced to wait until next spring before they are even potentially eligible to submit their work authorization applications, and then an indeterminate length of time before the government adjudicates the applications, with no certainty as to whether their applications will be granted even if they are eligible. *Id.* Similarly, CASA identifies three members who will not be able to file their EAD applications before the effective date, and therefore will either have to wait an indeterminate length of time for their EADs, or may be barred based on one of the ineligibility grounds. Ex. 4, CASA Decl. ¶¶ 23-28.

Unable to work lawfully, ASAP and CASA's members will suffer lost wages and face housing and food insecurity as a result. *See* Ex. 5, ASAP Decl. ¶¶ 23-29. To the extent they attempt to support themselves and their family by engaging in unauthorized work, they will be vulnerable to exploitation, wage theft, and discrimination. *See* Ex. 7, Oasis Decl. ¶ 13. Without EADs, they will also lack an important form of government-issued identification, preventing them from accessing resources housing, food, and health benefits. *See* Ex. 8, Pangea Decl. ¶ 13. These harms will only be more severe in the context of the current pandemic, which makes access to medical

care and stable housing especially vital. *See* Ex. 7, Oasis Decl. ¶¶ 14-16. Ultimately, the Asylum EAD Rules will threaten the members' ability to secure humanitarian relief. Without a means of support, they may be forced to abandon their claims. *See* Ex. 6, Centro Legal Decl. ¶ 15. And even if they do not, they will be unable to afford to hire attorneys to help them navigate the adversarial process, dramatically reducing the odds of winning their cases. *See* Ex. 5, ASAP Decl. ¶ 31.

All of these harms are irreparable because they "lack an adequate legal remedy." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). Many are intangible and cannot be compensated through money damages. *See Diaz*, 648 F. Supp. at 648 ("I am hard pressed to see how placing a refugee in a position where he or she must break the law to survive during the years it may take for a decision on a political asylum application *cannot* be considered an irreparable hardship."); *Ramos*, 732 F. Supp. at 699-70 (being forced to live in poverty and to risk one's asylum case are irreparable harms); *Grijalva*, 815 F. Supp. at 331-32 (same); *see also Christopher Phelps & Assocs., LLC v. Galloway*, 492 F.3d 532, 544 (4th Cir. 2007) (attributing irreparability to the intangible nature of the injury). And even if they were compensable, money damages will be unavailable here, rendering the harms nevertheless irreparable. *See Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 362 (4th Cir. 1991) (finding irreparable harm in § 1983 action that did not allow for recovery of monetary damages from the State defendant). Because both Plaintiffs and their members have already been and will continue to be irreparably harmed as a direct result of the Asylum EAD Rules, the need for preliminary relief is great and acute.

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WARRANT A REMEDY BEFORE AUGUST 21.

The balance of equities and the public interest, which merge in cases against the government, *see Nken v. Holder*, 556 U.S. 418, 435 (2009), support the issuance of the preliminary relief that Plaintiffs seek to preserve the status quo pending full adjudication on the merits. As described above,

plaintiff organizations and their members will suffer further irreparable harm once the rules are in effect. *See supra* Part II. In contrast, preliminary relief until adjudication on the merits will result in the government simply continuing to operate under the system that has been the status quo for over two decades. Moreover, given the likelihood of success, the issuance of a stay under 5 U.S.C. § 705 or a preliminary injunction "would serve the public's interest in maintaining a system of laws" where the Government must comply with its legal obligations. *O'Donnell Constr. Co. v. Dist. of Columbia*, 963 F.2d 420, 429 (D.C. Cir. 1992); *see also HIAS, Inc.*, 415 F. Supp. 3d at 686.

CONCLUSION

For all these reasons, Plaintiffs respectfully request that the Court grant a stay under 5 U.S.C. § 705 to postpone the effective dates of the Asylum EAD Rules until the resolution of this case, or in the alternative, a preliminary injunction under Rule 65 .

Dated: July 24, 2020

Respectfully submitted,

/s/
Mariko Hirose (*pro hac vice*)
Kathryn Austin (*pro hac vice*)
Geroline A. Castillo*
INTERNATIONAL REFUGEE ASSISTANCE PROJECT
One Battery Park Plaza, 4th Floor
New York, New York 10004
Tel: (516) 701-4620
Fax: (929) 999-8115
mhirose@refugeerights.org
kaustin@refugeerights.org
gcastillo@refugeerights.org

/s/
Justin B. Cox (Bar No. 17550)
(signed by Mariko Hirose
with permission of Justin B. Cox)
INTERNATIONAL REFUGEE ASSISTANCE PROJECT
PO Box 170208
Atlanta, GA 30317
Tel: (516) 701-4233
Fax: (929) 999-8115
jcox@refugeerights.org

Conchita Cruz (*pro hac vice*)
Zachary Manfredi (*pro hac vice*)
Dennise Moreno (Bar No. 21358)
ASYLUM SEEKER ADVOCACY PROJECT
228 Park Avenue S. #84810
New York, NY 10003-1502
Tel: (305) 484-9260
Fax: (646) 968-0279
conchita.cruz@asylumadvocacy.org
zachary.manfredi@asylumadvocacy.org
dennise.moreno@asylumadvocacy.org

Richard W. Mark (*pro hac vice*)
Joseph Evall (*pro hac vice*)
Katherine Marquart (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Tel: (212) 351-4000
Fax: (212) 351-4035
RMark@gibsondunn.com
JEvall@gibsondunn.com
KMarquart@gibsondunn.com

Attorneys for Plaintiffs

* *Pro hac vice application pending*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CASA DE MARYLAND, INC., *et al.*, Plaintiffs, *– versus –* CHAD F. WOLF, *et al.*, Defendants.	**Case No. 8:20-cv-2118**

INDEX OF EXHIBITS TO PLAINTIFFS' PLAINTIFFS' MOTION FOR A STAY OF EFFECTIVE DATES UNDER 5 U.S.C. § 705, OR, IN THE ALTERNATIVE, PRELIMINARY INJUNCTION

Exhibit	Document Title
	Declaration of Geroline A. Castillo in Support of Plaintiffs' Motion for a Stay of Effective Dates Under 5 U.S.C. § 705, or, in the Alternative, Preliminary Injunction
1	Table Summarizing the Rule Changes in the Asylum EAD Rules
2	Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applicants, 85 Fed. Reg. 37,502 (June 22, 2020) ("Timeline Repeal Rule")
3	Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38,532 (June 26, 2020) ("Broader EAD Rule")
4	Declaration of George Escobar, the Chief of Programs and Services of CASA De Maryland, Inc., dated July 22, 2020
5	Declaration of Swapna Reddy, the Co-Executive Director of the Asylum Seeker Advocacy Project, dated July 24, 2020
6	Declaration of Julia Hiatt-Shepp, the Immigrants' Rights Managing Attorney at Centro Legal de la Raza, dated July 23, 2020
7	Declaration of Caroline Kornfield Roberts, the Executive Director and Co-Founder of Oasis Legal Services, dated July 23, 2020

8	Declaration of Jehan Laner, the Co-Director of Pangea Legal Services, dated July 23, 2020
9	Donald J. Trump, Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System (Apr. 29, 2019)
10	David A. Martin, *Making Asylum Policy: The 1994 Reforms*, 70 Wash. L. Rev. 725 (1995)
11	David A. Martin, *The 1995 Asylum Reforms*, Center for Immigration Studies (May 1, 2000)
12	David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. Pa. L. Rev. 1247 (1990)
13	Citizenship and Immigration Services Ombudsman, Annual Report 2018 (June 28, 2018)
14	Secretary of the U.S. Department of Homeland Security Kirstjen M. Nielsen's Resignation Letter (April 7, 2019)
15	Department Homeland Security, DHS Orders of Succession and Delegations of Authorities for Named Positions (Dec. 15, 2016), *as amended* (Apr. 10, 2019)
16	Executive Order 13753 of December 9, 2016, Amending the Order of Succession in the Department of Homeland Security, 81 Fed. Reg. 90,667 (Dec. 14, 2016)
17	Department of Homeland Security, Amendment to the Order of Succession for the Secretary of Homeland Security (Nov. 8, 2019)
18	Comment of National Immigrant Justice Center to Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, USCIS-2018-0001 ("Timeline Repeal Notice"), dated November 8, 2019
19	Comment of Immigrant Justice Network to Asylum Application, Interview, and Employment Authorization for Applicants," USCIS-2019-0011 ("Broader EAD Notice"), dated January 14, 2020
20	Comment of State Attorneys General to the Broader EAD Notice, dated January 13, 2020
21	Comment of the City of New York to the Broader EAD Notice, dated January 13, 2020

22	Comment of 50 Members of Congress of the United States to the Broader EAD Notice, dated January 13, 2020
23	Comment of Lutheran Social Services of New York to the Broader EAD Notice, dated January 13, 2020
24	Comment of Michigan Immigrant Rights Center to the Broader EAD Notice, dated January 13, 2020
25	Comment of Refugee and Immigrant Center for Education and Legal Services to the Broader EAD Notice, dated January 14, 2020
26	Comment of Phoenix McLaughlin to the Broader EAD Notice, dated January 13, 2020

Exhibit 1

to Plaintiffs' Motion for a Stay of Effective Dates Under 5 U.S.C. § 705, Or, In The Alternative, Preliminary Injunction

Summary of Rule Changes in Asylum EAD Rules

Plaintiffs' Description of Rule Change in Complaint	**Defendants' Description of Rule Change** *See* Timeline Repeal Rule, 85 Reg. 37,505; Broader EAD Rule, 85 Fed. Reg. at 38,598-600	**Defendants' Description of Baseline (Previous Rule)** *See* Timeline Repeal Rule, 85 Reg. 37,505; Broader EAD Rule, 85 Fed. Reg. at 38,598-600
Timeline Repeal Rule Compl. ¶ 71	USCIS is eliminating the provision for the 30-day adjudication timeframe and issuance of initial EADs for pending asylum applicants.	USCIS has a 30-day initial EAD adjudication timeframe for applicants who have pending asylum applications.
365-Day Waiting Period Compl. ¶ 70	All [applicants] seeking a (c)(8) EAD based on a pending asylum application wait 365 calendar days from the receipt of their asylum application before they can file an application for employment authorization.	150-day waiting period plus applicant-caused delays that toll the 180-day Asylum EAD Clock.
One-Year Filing Bar Compl. ¶ 75	For [applicants] who file their asylum application on or after the effective date of this rule, exclude from (c)(8) EAD eligibility [noncitizens] who have failed to file for asylum for one year unless and until an asylum officer or IJ determines that an exception to the statutory requirement to file for asylum within one year applies.	No such restriction.
EWI Bar Compl. ¶ 76	Exclude from (c)(8) eligibility [applicants] who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry on or after the effective date of this rule, with limited exceptions	No such restriction.
EAD Criminal Bar Compl. ¶ 77	In addition to aggravated [felonies], also exclude[s] from (c)(8) eligibility [applicants] who have committed certain lesser criminal offenses on or after the effective date of this rule.	[Applicants with aggravated felonies] are not eligible.
Deem Complete Removal Compl. ¶ 84	Removing [] provision that application for asylum will automatically be deemed ''complete'' if USCIS fails to return the incomplete application to the [applicant] within a 30-day period.	Application for asylum is automatically deemed ''complete'' if USCIS fails to return the incomplete application to the [applicant] within a 30-day period.

Summary of Rule Changes in Asylum EAD Rules

Plaintiffs' Description of Rule Change in Complaint	**Defendants' Description of Rule Change** *See* Broader EAD Rule, 85 Fed. Reg. at 38,598-600	**Defendants' Description of Baseline (Previous Rule)** *See* Broader EAD Rule, 85 Fed. Reg. at 38,598-600
Applicant-Caused Delay Denial Compl. ¶ 87	Applicant-caused delays unresolved by the date the EAD application is filed result in denial of the application for employment authorization. Examples of applicant-caused delays include, but are not limited to the list below: 1. A request to amend a pending application for asylum or to supplement such an application if unresolved on the date the (c)(8) EAD application is adjudicated; 2. An applicant's failure to appear to receive and acknowledge receipt of the decision following an interview and a request for an extension to submit additional evidence, and; 3. Submitting additional documentary evidence fewer than 14 calendar days prior to asylum interview. An applicant's failure to appear for an asylum interview or biometrics services appointment may lead to the dismissal or referral of his or her asylum application and may be deemed an applicant-caused delay affecting employment authorization eligibility.	Applicant-caused delays toll the 180-day Asylum EAD clock. No regulatory restriction on how close to an asylum interview applicants can submit additional evidence. No such restriction.
Discretionary Denials Compl. ¶ 89	Provides USCIS discretion to grant (c)(8) EAD applications consistent with INA 208(d)(2).	Current regulations do not give the agency discretion to issue (c)(8) EADs. 8 CFR 274a.13(a)(1) currently states: The approval of applications filed under 8 CFR 274a.12(c), *except for 8 CFR 274a.12(c)(8)*, are within the discretion of USCIS.

Summary of Rule Changes in Asylum EAD Rules

Plaintiffs' Description of Rule Change in Complaint	**Defendants' Description of Rule Change** *See* Broader EAD Rule, 85 Fed. Reg. at 38,598-600	**Defendants' Description of Baseline (Previous Rule)***See* Broader EAD Rule, 85 Fed. Reg. at 38,598-600
Recommended Approval Removal Compl. ¶ 94	USCIS would no longer issue grants of recommended approvals as a preliminary decision for affirmative asylum adjudications. As such, [applicants] who previously could apply early for an EAD based on a recommended approval now will be required either to wait 365 days before they could apply for an EAD based on a pending application, or wait until they are granted asylum (if the asylum grant occurs earlier than 365 days).	[Applicants] who have received a notice of recommended approval are able to request employment authorization prior to the end of the waiting period for those with pending asylum applications.
Parolee EAD Removal Compl. ¶ 95	[Applicants] who have been paroled into the United States after being found to have credible fear or reasonable fear of persecution or torture may not apply for employment authorization under 8 CFR 274a.12(c)(11). They may, however, continue to apply for an EAD under 8 CFR 274a.12(c)(8) if their asylum application has been; pending for more than 365 days and they meet the remaining eligibility requirements.	DHS policy guidance since 2017 [] instructs that when DHS exercises its discretion to parole such [noncitizens], officers should endorse the Form I–94 with an express condition the employment authorization not be provided under 8 CFR 274a.12(c)(11).
Biometrics Requirement Compl. ¶ 97	Asylum applicants applying for (c)(8) employment authorization must submit biometrics at a scheduled biometrics services appointment.	No such requirement. However, there is a requirement to submit biometrics with an asylum application.
Limited EAD Validity Compl. ¶ 103	When a USCIS asylum officer denies or dismisses an [applicant's] request for asylum, the (c)(8) EAD would be terminated effective on the date the asylum application is denied. If a USCIS asylum officer refers the case to an IJ and places the [applicant] in removal proceedings, employment authorization will be available to the [applicant] while the IJ adjudicates the asylum application.	An asylum applicant's EAD terminates within 60 days after a USCIS asylum officer denies the application or on the date of the expiration of the EAD, whichever is longer. When an asylum officer refers an affirmative application to an IJ, the application remains pending and the associated EAD remains valid while the IJ adjudicates the application.

Summary of Rule Changes in Asylum EAD Rules

Plaintiffs' Description of Rule Change in Complaint	**Defendants' Description of Rule Change** *See* Broader EAD Rule, 85 Fed. Reg. at 38,598-600	**Defendants' Description of Baseline (Previous Rule)** *See* Broader EAD Rule, 85 Fed. Reg. at 38,598-600
Limited EAD Validity Compl. ¶ 103 (Cont'd)	If the IJ denies the asylum application, employment authorization would continue for 30 days after the date the IJ denies the application to allow for appeal to the BIA. If the [applicant] files a timely appeal of the denied asylum application with the BIA, employment authorization eligibility would continue through the BIA appeal.	8 C.F.R. 208.7(b)(2) provides that when an IJ denies an asylum application, the EAD terminates on the date the EAD expires, unless the asylum applicant seeks administrative or judicial review.
	Employment authorization would not be granted after the BIA affirms a denial of the asylum application and while the case is under review in Federal court, unless the case is remanded to DOJ-EOIR for a new decision.	Asylum applicants are currently allowed to renew their (c)(8) EADs while their cases are under review in Federal court.
	USCIS will, in its discretion, determine validity periods for initial and renewal EADs but such periods will not exceed two years. USCIS may set shorter validity periods.	No such restriction.
	For asylum applications denied, any EAD that was automatically expended [] based on a timely filed renewal application will automatically terminate on the date the asylum officer, the IJ, or BIA denies the asylum application, or on the date the automatic extension expires (which is up to 180 days), whichever is earlier.	For asylum applications denied, an EAD that was automatically extended [] will terminate at the expiration of the EAD or 60 days after the denial of asylum, whichever is longer.

Exhibit 4

to Plaintiffs' Motion for a Stay of Effective Dates Under 5 U.S.C. § 705, Or, In The Alternative, Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CASA DE MARYLAND, INC., ET AL. *Plaintiffs*, *– versus –* CHAD F. WOLF, ET AL. *Defendants*.	**Case No. 8:20-cv-02118-PX**

DECLARATION OF GEORGE ESCOBAR, CHIEF OF PROGRAMS AND SERVICES FOR CASA DE MARYLAND, INC.

Pursuant to Title 28 U.S.C. Section 1746, I, George Escobar, hereby declare and state as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein and am competent to testify thereto.

2. I am the Chief of Programs and Services at CASA de Maryland, Inc. ("CASA"). In this capacity, I oversee CASA's community-facing services departments, including its legal, health, and education services, and its immigrant integration and employment and workforce development programs. Together, these programs touch more than 7,000 community members every year in Maryland, Virginia, and Pennsylvania. An important part of my role is to understand the needs and experiences of our members so that I can work with my staff to design appropriate interventions to address those needs. I therefore speak frequently with members and receive feedback from my staff regarding CASA members' fears, concerns, and decisions.

Overview of CASA's Work and Mission

3. CASA is a non-profit 501(c)(3) membership organization headquartered in Langley Park, Maryland, with offices in Maryland, Virginia, and Pennsylvania. CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 100,000 members. Since its founding in 1985, CASA has been committed to assisting refugees and asylum seekers fleeing wars and civil strife and to working tirelessly to empower immigrant communities.

4. CASA's mission is to create a more just society by building power and improving the quality of life in low-income immigrant communities, including those seeking asylum. At CASA, we envision a future where we stand in our own power, our families live free from discrimination and fear, and our diverse communities thrive as we work with our partners to achieve human rights for all.

5. In furtherance of this mission, CASA offers a wide variety of social, health, job training, employment, and legal services to immigrant communities in Maryland, as well as the greater Washington DC metropolitan area, Virginia, and Pennsylvania. For example, CASA provides employment placement; workforce development and training; health education and services; citizenship and legal services; financial education and assistance; and language and literacy training. Most of CASA's services are offered only to members or at a reduced cost to members.

6. CASA is also a national leader in advocating for immigrant rights and social justice. Over the last three decades we have been a visible and vocal proponent for the communities that our members come from, demanding equal rights for immigrants at the local, state, and national level.

CASA's Membership

7. CASA's 100,000 members are integral to driving the organization's priorities and agenda. Some members of CASA have seats on the organization's board and participate in the organization's Leadership Council and other committees. In these roles, members provide ongoing input on, establish, and approve the organization's long-term strategic priorities and policies.

8. Members are also involved in the organization's efforts at the ground level, working with community organizers to advance CASA's issue-based campaigns, including advocating for increased access to government resources and services. CASA members pay a $35 to $40 annual membership fee, which gives them access to free legal services, language classes, and vocational training.

9. CASA's membership includes thousands of asylum seekers and asylees who have filed an Application for Asylum and for Withholding of Removal (Form I-589) with USCIS or in immigration court and who have filed or anticipate filing an Application for Employment Authorization (Form I-765) to obtain or renew work authorization (also called an Employment Authorization Document ("EAD")).

10. A large portion of CASA's members that have filed or will file for asylum do so defensively while in removal proceedings. Because our asylum-seeking members typically wait many months, and sometimes even years, before they obtain a decision on their asylum application, many of CASA's asylum-seeking members rely on EADs to support themselves and their families while they wait.

11. Many of CASA's members who are seeking asylum are families with young children who are fleeing Central America due to persecution from gang members or domestic

violence. Another large number of CASA's asylum-seeking members are from African countries, such as Cameroon and Togo.

The Importance of Work Authorization for CASA's Asylum-Seeking Members

12. Work authorization is essential to CASA's members as it allows them to work to support themselves and their families while they pursue their asylum claims. This, in turn, also gives them a better chance at success in their asylum cases because they can afford to hire an attorney to help them navigate the complicated legal process for seeking asylum.

13. Access to an EAD is also critical to enabling CASA's asylum-seeking members to access a broader array of stable, reliable, and long-term employment that pays fair wages. CASA has developed strong relationships with several worker unions in the geographic areas that CASA serves. Without an EAD, however, CASA's members are not eligible for these jobs, which deprives them of a long-term and safer employment opportunity

14. EADs are also a critical form of legal identification that CASA's asylum-seeking members rely upon to demonstrate eligibility for certain government programs and benefits. For example, many of our members need an official, government-issued identification to demonstrate eligibility for subsidized health programs.

15. An EAD may also be the only form of acceptable identification that many of CASA's asylum-seeking members possess. The practical ramifications of this are obvious—for example, in dealing with government agencies an EAD may be the exclusive means by which these members can prove their identity. Without this form of identification, CASA's asylum-seeking members are more vulnerable to abuse and exploitation.

16. One of the core components of CASA social service programs is its vocational training program, through which CASA partners with local community colleges to offer members

vocational courses and certification programs for a wide variety of jobs. For example, CASA's vocational training program provides training in electrical and building maintenance, computer repair, hospitality, security, and childcare. Once a CASA member completes the vocational training program, CASA helps to place them into a position in the field. However, many of these positions require work authorization, so CASA's members who do not possess an EAD are automatically disqualified from taking advantage of the opportunities created by CASA's vocational training program.

17. CASA also operates five workers centers throughout Maryland, which help match CASA's members with opportunities for day labor. Unfortunately, members who lack an EAD are typically unable to obtain more long-term and better paying positions.

18. CASA's members also seek assistance from CASA's health services program, which provides direct health navigation services and assists members with enrollment in various government health assistance, insurance, and subsidy programs. Asylum applicants can demonstrate eligibility for the Maryland Healthcare Exchange by presenting an EAD. To assist eligible asylum applicants with enrollment in the Exchange, CASA's staff typically submits the EAD on the electronic platform. If CASA's members are no longer able to access an EAD (or experience significant delays in obtaining and EAD), CASA's staff will have to spend significantly more time to obtain additional evidence and will have to reach out to a certifying official to advocate for a special authorization.

19. Additionally, many CASA asylum-seeking members who have applied for asylum but are still awaiting a decision on their EAD rely heavily on CASA's social services and financial assistance programs in order to support themselves and their families. For

example, CASA provides members who do not have EADs financial assistance during the COVID-19 pandemic through its "Solidarity Fund" described below.

Impact of the Asylum EAD Rules on CASA's Membership

20. CASA's members face serious harm if the Asylum EAD Rules are implemented. CASA anticipates that if the Asylum EAD Rules go into effect, many asylum-seeking members will suffer tremendously if they are unable to obtain an EAD while they are awaiting a decision on their asylum application. Under the Asylum EAD Rules, some of CASA's members may have to wait indefinite periods before receiving an EAD, if ever, and others may now find themselves suddenly ineligible for an EAD altogether.

21. As discussed above, when CASA members lack an EAD, they may be unable to access various public services and benefits to help support themselves and their families. The inability to access an EAD will also make CASA's asylum-seeking members more susceptible to exploitation in short-term, dangerous, and low-paying jobs.

22. For example, many of our members will have to wait a significant amount of time before being able to apply for employment authorization, and therefore would be without a job and a form of identification essential for public services and benefits. Some members will not have had their asylum applications pending for 150 days before the rules become final and so will have to wait until their applications have been pending for 365 days before seeking an EAD.

23. Because the Asylum EAD Rules narrow eligibility for work authorization, CASA further anticipates that many of its asylum-seeking members will be denied work authorization under the new Asylum EAD Rules. For example, CASA member H.V. arrived in the U.S. with her partner and four-year-old daughter in May 2019 after experiencing racial

discrimination and threats in her home country, Honduras. The trauma H.V. experienced combined with the difficulty of finding work without an EAD has made finding a lawyer and applying for asylum too difficult. Now, H.V. faces the one-year bar and will face even more difficulties obtaining asylum and an EAD.

24. In light of the Trump Administration's efforts to dismantle the current asylum and employment authorization process, we expect that our community members will be negatively impacted. We have observed this this impact in many CASA members. For example:

25. M.C. is a CASA member from Baltimore County, Maryland who fled Guatemala after receiving multiple threats to her life as a result of reporting a crime. She and her 11-year-old daughter entered the United States in December of 2017. M.C. settled in the United States with a man who she knew from Guatemala, who told her that if she fled from the men who were threatening her, he would protect her in the U.S. Soon after, he became abusive towards M.C. and her daughter. Due to this abuse, M.C. was not able to get the help she needed to apply for asylum previously.

26. CASA is currently providing pro se assistance to M.C. in filing her asylum application. Since M.C. will file her asylum application in the coming month, she will not be eligible to apply for an EAD before August 25, 2020. Once the Asylum EAD Rules begin to take effect, M.C. will be forced to wait an additional seven months before she can even apply for an EAD, and an indeterminate length of time for the government to process her application. This means that M.C. will continue to be unable to obtain lawful employment to support her family, including her young child, while she fights her removal case and awaits the adjudication of her asylum claim. As detailed above, M.C.

was unable to apply for asylum in a timely manner because of the abuse she faced at the hands of a man who held immense physical and economic power over her, placing her and her child in an extremely vulnerable position.

27. Currently, M.C. and her daughter are renting a room from a family that attends their church. They survive on food and gift cards from the church. M.C. had been offered a job at a hotel in housekeeping, which would have provided her with stable pay and a regular schedule, but she was unable to accept the offer because she lacks an EAD. The new Asylum EAD Rules will perpetuate her vulnerable status and place her at risk of again being subject to abuse.

28. A.O. recently became a member of CASA. She is a Venezuelan national who entered the United States in December of 2019 on a nonimmigrant visitors' visa. A.O. was a journalist in Venezuela, and her family has been extremely outspoken about their opposition to Venezuela's President, Nicolás Maduro. A.O. and her parents fled to the U.S. after being attacked by Maduro party officials, who tied them up and robbed their house after threatening them.

Impact on CASA's Mission and Resources Resulting from the Asylum EAD Rules

29. CASA has already had to divert resources and will be forced to continue to do so in order to respond to the Asylum EAD Rules, which will frustrate its mission.

30. CASA does not ordinarily provide pro se assistance to members in completing their asylum applications, due to the complexity of the law around asylum claims and the significant investment of resources required. However, recognizing that some of CASA's members will be irreparably harmed by the Asylum EAD Rule changes, CASA has shifted resources to assist pro se asylum-seeking members with filing their

applications before the deadlines imposed by the Rules take effect. This redirection of resources has reduced CASA's capacity to assist other members with legal services, including Deferred Action for Childhood Arrivals (DACA) and other immigration benefits.

31. Additionally, in response to the COVID-19 pandemic and the growing needs of its members, CASA was forced to shift much of its staff and resources to the financial education and assistance program. Because a Social Security Number was required to access the federal relief programs, many of CASA's members, including asylum-seeking members who have not yet obtained an EAD and the accompanying Social Security Number (because they are still in the pre-EAD application waiting period or are waiting for their application to be granted), were excluded from federal financial assistance under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Due to this exclusion, CASA has had to expend an exorbitant amount of resources on fundraising money to provide financial support to its members who are being economically impacted by COVID-19. With these donations, CASA established a "Solidarity Fund" to distribute money to directly impacted families. Administering this fund requires processing and screening applications, determining need, and distributing funds to its impacted members. Through this program, CASA has already distributed financial assistance totaling more than $740,000 to almost 2,000 of its members, which will only continue to grow as the pandemic persists.

32. CASA plans to operate this financial assistance program for as long as the pandemic and need of its members continue. If the Asylum EAD Rules are implemented, CASA anticipates that many more of its members will be denied EADs and will rely upon

CASA's financial assistance for basic life necessities, such as groceries, rent, and healthcare costs. This will therefore force CASA to divert even more of its resources and staff to growing and maintaining this financial assistance program.

33. Additionally, many of CASA's programs and services will risk loss of funding if the Asylum EAD Rules are put into effect. For instance, CASA's workforce programming receives a significant amount of support through competitive local government grants. To receive these grants, the local government requires certain deliverables, including that a certain percentage of the work placements made by CASA's worker centers involve work-authorized individuals being placed in long-term employment positions. If a significant number of CASA members are no longer able to obtain EADs for two-year increments or unable to obtain an EAD at all, CASA will be less able to place members in long-term employment positions and therefore meet its contract deliverables. In turn, without such support from these local government entities, CASA may be unable to continue operating Worker Centers, which will negatively impact CASA's ability to provide employment assistance to the rest of its membership.

34. CASA expects further frustration of its mission to provide its members with long-term and secure employment through its vocational training program. Again, as more of its members are left ineligible for an EAD or must wait longer for an EAD, CASA will be unable to place members in jobs that require an EAD. This will negatively impact CASA's partnerships with employers and unions that require EADs, which will lead to a smaller pool of placement options for other CASA members.

35. In anticipation of the Asylum EAD Rules, CASA expects to devote significant resources to training its staff members on the changes of EAD eligibility. CASA will have to

educate its staff members on the changes to the Asylum EAD Rules, which will require a significant investment of time and resources and take away from the staff members' time to provide direct social and health services. For example, because many members rely on an EAD to demonstrate eligibility for health assistance programs, CASA will need to provide additional training to its Health Services staff members to enable them to properly screen members for these services. CASA also expects that it will need to redirect its advocacy efforts from other important immigrant issues to access to healthcare, as this will become more urgent if CASA's asylum-seeking membership is denied access to care or is unable to afford it without employment.

36. The Asylum EAD Rules will make it even more difficult for CASA to provide vital legal and social services to its asylum-seeking members as well as their other immigrant community members.

37. For example, CASA had planned to significantly expand its vocational training programming to specifically target asylum-seeking youth who are considered over-age and under-credited and thus outside the capacity of the public-school system. CASA had planned to launch training programs in the healthcare and "green jobs" sectors as a bridge to apprenticeship and permanent job opportunities for this community of asylum seekers. The Asylum EAD Rules will delay or may altogether prevent these individuals from obtaining an EAD, rendering this program pointless and threatening CASA's potential funding sources, which often require job placement as a deliverable.

38. CASA expects to spend more time and resources on asylum-seeking members who are unable to obtain an EAD. For example, each staff member will need to spend more time per client or member in order to understand how the Asylum EAD Rules will impact their

particular situation, which will take time away from serving other members. Additionally, if the Asylum EAD Rules are implemented, CASA expects that they will need to develop a broad range of culturally proficient educational materials in English, Spanish, and French that address how the rules will impact CASA's provision of legal, health, social services, and employment assistance. Creating these materials for its asylum-seeking members will certainly divert resources from providing direct services to members, serving other members' needs, and developing relationships with new members.

39. Also, as the number of members in need grows and more of our social services programs are unable to assist members without EADs, CASA will need to develop new partnerships with other organizations and institutions that could offer members such services. Building and managing these relationships, and training our staff on their requirements, will require significant investments of staff time, beyond what CASA would otherwise have devoted to such efforts.

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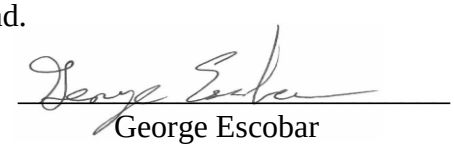
40. CASA anticipates that all these changes will take resources away from other vital CASA programming and advocacy efforts for its other immigrant community members. As we shift resources to financial assistance and health services programs to assist asylum-seeking members without EADs, CASA will experience reduced capacity for serving other members and the general community, as well as reduce the number of cases we are able to handle overall.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _22nd___ day of _July___, 2020 in Maryland.



George Escobar

Exhibit 5

to Plaintiffs' Motion for a Stay of Effective Dates Under 5 U.S.C. § 705, Or, In The Alternative, Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CASA DE MARYLAND, INC., ET AL. *Plaintiffs*, *– versus –* CHAD F. WOLF, ET AL. *Defendants*.	**Case No. 8:20-cv-02118-PX**

DECLARATION OF SWAPNA C. REDDY

I, Swapna Reddy, declare:

1. I am a Co-Executive Director of the Asylum Seeker Advocacy Project (ASAP).

2. I make this sworn statement based upon personal knowledge, files and documents of ASAP that I have reviewed such as case files, reports, and collected case metrics, as well as information supplied to me by employees of ASAP whom I believe to be reliable, including ASAP's management, attorneys, paralegals, and administrative staff. These files, documents, and information are of a type that is generated in the ordinary course of our business and that I would customarily rely upon in conducting ASAP business.

3. ASAP was founded in 2015 and is incorporated in New York with its primary address in New York City. ASAP employs staff working remotely in Colorado, Florida, Illinois, Massachusetts, New York, North Carolina, and Virginia.

4. ASAP's mission is to provide individuals who came to the Mexico-U.S. border seeking asylum with community support and legal services regardless of where they are located.

We implement our mission by providing emergency legal aid and other support to our members and other asylum seekers and by engaging in nationwide systemic reform on issues identified as important by our members.

5. Since its establishment, ASAP has provided over 4,000 members with critical legal information and successfully resolved more than 1,650 legal emergencies for clients, the vast majority of whom are members, using a remote legal assistance model.

ASAP's Members

6. ASAP members have arrived at the Mexico-U.S. border to seek asylum in the United States and have been placed in removal proceedings.

7. ASAP has over 4,000 members, the majority of whom are mothers who sought asylum at the Mexico-U.S. border, were detained by Customs and Border Protection (CBP) and/or Immigration and Customs Enforcement (ICE), and were then released and placed in removal proceedings. Many of the mothers arrived with one or more of their children.

8. New members are typically referred either by a nonprofit at the border working with asylum seekers who are being released from detention or by an existing member. These individuals are then screened and approved by ASAP staff before becoming members. ASAP is always growing its membership and adds an average of 70 new members per month.

9. ASAP's current members are Spanish speakers who live throughout the United States in over 40 U.S. states and the District of Columbia. A smaller number of our members are located in Mexico and have pending U.S. immigration court cases under the "Migrant Protection Protocols" program. Our members are in various stages of their immigration proceedings. For example, some members are still awaiting notice of a first hearing in immigration court, some have

pending immigration court cases, some have won asylum, and others have pending appeals. Some members become clients of ASAP, some secure immigration legal representation from non-ASAP attorneys, and others do not have immigration legal representation.

10. ASAP provides daily support to our members Monday through Friday. ASAP employees answer members' questions on asylum and the immigration court process, as well as questions related to work, access to health care, and education. ASAP staff also provide customized referrals to local legal service organizations, private attorneys, and social service organizations. In the last year, ASAP staff answered over 9,000 questions from members.

11. Members also have continuous access to ASAP-created information and resources shared online. For example, ASAP has created Spanish-language videos on topics such as how to complete an I-589, Application for Asylum and for Withholding of Removal ("asylum application"), what to expect at immigration court hearings, and how to apply for an Employment Authorization Document (EAD) based on a pending asylum application. ASAP has also created accessible infographics to explain key parts of the immigration process and developed over 100 pages of Frequently Asked Questions. At the same time, ASAP regularly writes up-to-date announcements to share with our members, including information and analysis on new regulations, federal court decisions, availability of COVID-related relief for asylum seekers, court and office closures, and more.

12. ASAP's members set the priorities and goals for our systemic reform and advocacy work. ASAP staff facilitate discussions among members about what advocacy goals are important to them and should be a priority for ASAP. For instance, ASAP's members expressed serious concern when the Department of Homeland Security (DHS) announced proposed changes to the EAD application process in 2019. DHS first announced that it intended to remove the 30-day

processing requirement for asylum seeker EAD applications on September 9, 2019. *See* Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 84 Fed. Reg. 47,148 (proposed September 9, 2019) ("30-day Processing Rule"). DHS then proposed a second rule on November 14, 2019 that would substantially limit asylum seekers' eligibility for work authorization. *See* Asylum Application, Interview, and Employment Authorization for Applicants, 84 Fed. Reg. 62374 (proposed November 14, 2019) ("Broader EAD Rule", collectively with 30-day Processing Rule, "EAD Rules").

13. After hearing the concerns of our members, ASAP staff worked to oppose these proposed rules, submitting formal comments in opposition to both. ASAP's comments detailed the devastating impact the proposed rule would have on its members.

ASAP's Clients

14. Many of ASAP's members and their families become clients of ASAP's legal emergency room, where ASAP's staff provides limited-scope emergency legal aid.

15. ASAP's legal emergency room provides legal services in moments of crisis to members and other asylum seekers who have little or no access to traditional legal service providers, often because they live in rural areas or in states with relatively few legal aid organizations. The members for whom ASAP provides emergency legal aid become clients during the period of time ASAP is providing this limited-scope legal assistance.

16. ASAP's legal services focus on preparing emergency motions and other legal filings to prevent deportations. For example, over the past year, ASAP's staff has helped over 100 asylum seekers meet their one-year filing deadline for their asylum applications; prepared Notices

of Appeal for dozens of asylum seekers to appeal negative decisions to the Board of Immigration Appeals (BIA); and prepared emergency Motions to Reopen for asylum seekers who received *in absentia* removal orders because they were unable to attend their hearings in immigration court either because they never received proper notice or because of other exceptional circumstances beyond their control, like medical emergencies. By preventing premature deportations, ASAP's legal services provide asylum seekers a more meaningful opportunity to pursue their claims for protection in the U.S.

17. When capacity has allowed, ASAP's staff has also provided limited-scope legal assistance for non-emergency filings, such as EAD applications or requests under the Freedom of Information Act (FOIA). In 2019, ASAP assisted in the preparation of over 50 EAD applications.

18. In all, ASAP's employees have provided limited-scope emergency legal aid to clients in over 35 immigration courts across the U.S. as part of our remote legal assistance practice.

19. ASAP also provides full-scope legal representation to a smaller subset of members and their families, as well as other asylum seekers referred to ASAP, both in asylum cases as well as monetary damages cases against the government and government contractors.

20. ASAP has represented many clients before the BIA, DHS, federal courts, and in administrative filings with United States Citizenship and Immigration Services (USCIS). As part of this full-scope representation, ASAP has also filed asylum applications and EAD applications on behalf of clients.

Impact of the EAD Rules on ASAP's Members and Clients

21. Many of our members and clients will be directly and seriously impacted by the EAD Rules if they are implemented. For example, many members will not have had their asylum

applications pending for 150 days – the required length of time before they can apply for an EAD under the current system – before the rules become effective. These members, who otherwise would likely have been eligible to receive an EAD after 180 days, will now have to wait more than twice as long to apply for an EAD under the new EAD Rules, plus an indeterminate length of time for the government to process their application. These members will therefore miss out on months' worth of lost wages, leaving them with no ability to provide stable housing, food, medical care, or other necessities for themselves or their families. They also will be left without an important – and for many asylum seekers, their only – means of identification, which could otherwise be used to apply for driver's licenses and other state-level benefits, such as healthcare.

22. For instance, one of ASAP's members, W.L., a single mother with an 8-year-old son and an 8-month-old U.S. citizen daughter, will face hardships as a result of the EAD Rules. W.L. fled Guatemala after being repeatedly raped, forced to have an abortion, and threatened with death by a prominent man who used his connections to government officials to evade arrest. She entered the U.S. in April 2019 and was given a Notice to Appear for immigration court proceedings.

23. W.L. depends on the support of a family member who allows her and her children to stay in his two-bedroom home rent-free. To be able to sustainably provide adequate food, medical care, and other basic necessities for her children, W.L. needs to be able to work and earn income. She has been offered employment opportunities by members of her church on several occasions that she would be able to accept if she had an EAD. W.L. also cannot receive a driver's license in her state without an EAD and has been forced to rely on others for transportation.

24. In her current situation, W.L. does not have the means to move out of her family member's home, where she shares a single room with her two children. She also does not have the

means to hire a private immigration attorney to help her bring her asylum claims. She believes that if she could obtain an EAD, she and her children would be able to find a better living situation and she would be able to arrange for a payment plan with an immigration attorney.

25. W.L. submitted her asylum application on April 3, 2020. Under the current rules, she would be able to apply for an EAD on August 31, 2020, and would likely receive a response from the government in approximately 30 days. However, once both of the new rules have taken effect on August 25, 2020, W.L. will be forced to wait an additional seven months before she can even apply for an EAD and an indeterminate length of time for the government to process her application. This additional delay will result in a significant loss of earnings for W.L. and will make it nearly impossible for her to pay for a private attorney to pursue her claims for protection in the U.S.

26. Similarly, another of ASAP's members, N.G., will be unable to apply for an EAD prior to the effective date of the new rules and will suffer additional months of housing and food instability as a result. N.G. fled Honduras with her young daughter because she and her family experienced severe targeted violence and death threats after defying a drug cartel. Because N.G. did not trust the Honduran police to protect her due to their corruption and collusion with drug traffickers, she came to the U.S. to seek protection in May 2019.

27. N.G. currently lives in a trailer with her 9-year-old daughter, a friend, and her friend's two children. N.G.'s daughter received pandemic-related food benefits from their state, which has helped them a great deal. However, those benefits will soon run out, and N.G. is worried about how she will make ends meet when they do. She has no money to hire a lawyer.

28. Neighbors who work at a local factory have offered to help N.G. get a job there once she has an EAD. These neighbors make over $500 a week at their jobs, and N.G. believes

such a salary would go a long way in helping her find more suitable housing and alleviating her family's food insecurity. She was also hoping to save extra money to hire a lawyer for her case.

29. N.G. filed her asylum application in April 2020. Under the current rules, she would have been able to apply for an EAD in September 2020. However, N.G. and her daughter will now face housing and food insecurity while N.G. is forced to wait, at a minimum, an additional 7 months to apply for and receive an EAD under the new rules.

30. Other members who file their asylum application past their one-year filing deadline due to exceptional circumstances, such as a medical emergency or the long-term effects of trauma, will face additional delays as a result of the EAD Rules. Under the EAD Rules, these members will not be able to file their EAD application until a judge determines that they qualify under an exception to the one-year filing deadline. It is likely that these members will have to wait years before a judge determines that they meet an exception to the deadline due to the long backlog in immigration courts. Even those members who file asylum applications one day after their one-year filing deadline will likely face such delays.

31. ASAP members whose EADs take longer to process or who become ineligible for an EAD as a result of the EAD Rules are also likely to have greater difficulty finding long-term legal representation because they will be less able to afford private immigration attorneys. This will negatively impact their ability to win asylum, live in safety from the violence and persecution they fled, and ultimately pursue a path to U.S. citizenship for themselves and their children. Studies have shown that having an attorney makes it significantly more likely for asylum seekers to win their cases, and numerous articles have reported on the murder of asylum seekers after their deportation to their country of origin.

32. Some of ASAP's clients will also be affected by the EAD Rules. For example, ASAP recently agreed to represent a family that includes two minor children who were separated from their mother and are not currently in removal proceedings. The two minor children have not yet filed their asylum applications and were already past the one-year deadline when they became our clients less than one month ago. We believe the children were designated as Unaccompanied Alien Children (UACs), which would exempt them from the one-year deadline to file their asylum applications. However, we cannot be certain of this designation because we have not yet received the records we requested from the government. Due to ongoing backlogs with FOIA requests, we do not expect to receive these records for several months. While we would normally wait to receive records from the government before counseling the family on their options and preparing their asylum applications, the family must now rush to decide whether these two minor children should file their affirmative asylum applications before the Broader EAD Rule goes into effect on August 25, 2020. On the one hand, if the children file asylum applications affirmatively before August 25, 2020, the government may require them to attend an interview with an asylum officer before their parents' asylum case is resolved, and the children could be subjected to the unnecessary stress of discussing the reasons why they fled their country, rather than have their parents do so for them. On the other hand, if they do not file their asylum application before August 25, 2020, the children will risk being found ineligible for EADs under the new rules for failing to apply for asylum before their one-year deadline. If they do choose to file, we will have to allocate substantial staff time to complete their asylum applications before August 25, 2020.

Impact of the EAD Rules on ASAP's Ability to Provide Emergency Legal Aid

33. ASAP has prioritized defending asylum seekers against the risk of deportation in order to ensure they have a meaningful opportunity to present their claims. For example, ASAP's legal emergency room staff help asylum seekers meet their one-year deadline for filing asylum applications; file Notices of Appeal to preserve their right to appeal a negative decision in their case; and pursue motions to reopen their case and rescind their *in absentia* removal orders.

34. Under the new EAD Rules, however, many of ASAP's members run the risk of waiting significantly longer periods of time before receiving EADs or becoming ineligible for EADs altogether. These changes would significantly hamper members' ability to meaningfully pursue their claims for protection in the United States, either because they will be unable to afford an attorney or because they and their children will face housing instability, food insecurity and other forms of economic distress with no form of income or support.

35. As a result of these changes, ASAP has begun to prioritize filing EAD applications before the new rules take effect, at the expense of our other programming. In fact, ASAP has already had to turn down requests for assistance from members with *in absentia* removal orders and members seeking to avoid such orders by petitioning to have their cases transferred to nearby, accessible courts. In addition, ASAP has been forced to create a running waitlist for members seeking assistance with their asylum applications.

36. ASAP has also expended, and will continue to expend, significant resources to train staff, outside attorneys, and asylum seekers on the new EAD Rules. Since the publication of the final rules on June 22, 2020 and June 26, 2020, ASAP has devoted substantial staff time to analyzing the impact of potential rules on asylum seeker eligibility for EADs. ASAP has spent more than 100 hours of staff time holding staff trainings and meetings and creating new resources for asylum seekers and attorneys regarding the changes imposed by the EAD Rules.

37. However, even more staff time and training will be required to address our members' needs as a result of the EAD Rules. For instance, ASAP's staff answers questions asked by our members regarding EAD eligibility and applications on a daily basis. ASAP's staff must now be retrained on how to answer questions related to EADs as a result of the EAD Rules. Furthermore, ASAP anticipates a significant increase in questions from community members related to EADs as a result of the new, more complicated process, and has already seen a spike in questions since the rules were announced. For example, ASAP's first announcement about the new EAD rules on June 24, 2020 received nearly 200 comments and questions requiring a staff response. ASAP staff will also need to re-make explanatory videos and other resources that they previously created to explain both the EAD and asylum application process, re-write dozens of responses to Frequently Asked Questions, and prepare extensive new announcements regarding the Rules' changes. Preparing these resources and answering these additional questions has already required significant staff time, and will likely require well over 100 hours of additional staff time moving forward.

38. The lack of clarity in certain provisions of the EAD Rules will cause ASAP to expend even more staff time to understand the rules' complexities and their effects on our members. For instance, the Broader EAD Rule replaces the Asylum EAD Clock currently used to determine asylum seekers' eligibility for an EAD with a provision that calls for EAD applications to be denied due to "applicant-caused delays." However, the Broader EAD Rule does not explain what may constitute an "applicant-caused delay" in immigration court proceedings, and instead only defines such delays for affirmative asylum cases. Due to this lack of clarity, ASAP staff will have to, at a minimum, reach out to court staff, including immigration court administrators, to

better understand the circumstances in which an asylum seeker could be found to have an "applicant-caused delay" based on their actions in immigration court.

39. The changes imposed by the EAD Rules will also significantly burden ASAP's model of short-term, limited-scope emergency assistance. Not only have the EAD Rules made EAD applications a greater priority for ASAP – thus, drawing resources away from other legal emergencies – but the complexity of the new rules will require ASAP to expend more time and resources on single cases. In many instances, filing applications under the new EAD Rules will likely require more time from trained immigration attorneys, whereas previously paralegals were able to play a larger role in providing this assistance. For instance, attorneys must assess a client's potential criminal record for disqualifying offenses. Attorneys will also be required to assess whether an applicant who entered the United States without inspection may be able to qualify for a good cause exemption. This change in particular would likely affect a portion of the EAD applications ASAP files in the future, as many asylum seekers are forced to enter without inspection because of months-long wait times at ports of entry and dangerous conditions at the border. Due to the lack of clarity in the rules, it is also likely that attorneys will have to make individualized arguments about why each asylum seeker should be found not to have an "applicant-caused delay."

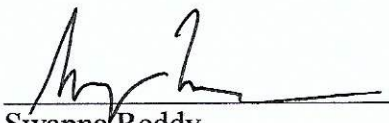
40. The $85 biometrics fee imposed by the EAD Rules will similarly result in individual EAD applications taking more staff time and resources to complete. The biometrics fee will likely be prohibitive for many of ASAP's members, especially before they have had the opportunity to work legally. As a result, ASAP's staff will be required to complete and attach an 11-page fee waiver form, requiring significant supporting documentation, to many of the EAD applications we prepare in the future.

41. At the same time, the EAD Rules will require ASAP to keep cases open with individual clients for a much longer period of time. Currently, when ASAP provides assistance with an EAD application, we are able to close the case once USCIS has made a final decision on the application – typically within approximately 30 days. However, under the new rules, EAD processing times will be much greater, and ASAP staff will have to continually follow up with clients and USCIS regarding the status of individual EAD applications. ASAP will also be forced to expend time and resources on connecting clients with social services that may offer support while our clients are unable to work legally.

42. Finally, the EAD Rules will lead a smaller percentage of ASAP's members to receive EADs, and members will require additional ASAP staff support due to their inability to work legally. Many of our members will either be ineligible for EADs or be forced to wait significantly longer before receiving an EAD. This will make it harder for ASAP's members to hire an immigration attorney or establish stable living conditions for their families. With fewer members able to afford private immigration representation, ASAP will have to allocate additional staff time to answer questions from unrepresented members and address their emergency legal needs in a limited-scope capacity. ASAP will also need to allocate additional time to refer members to a wide range of social services that may offer support while they are unable to work legally.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 24, 2020
Chicago, Illinois



Swapna Reddy
Co-Executive Director
Asylum Seeker Advocacy Project

Exhibit 6

to Plaintiffs' Motion for a Stay of Effective Dates Under 5 U.S.C. § 705, Or, In The Alternative, Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CASA DE MARYLAND, INC., ET AL. *Plaintiffs*, *– versus –* CHAD F. WOLF, ET AL. *Defendants*.	**Case No. 8:20-cv-02118-PX**

DECLARATION OF JULIA HIATT-SHEPP

Pursuant to 28 U.S.C. § 1746, I, Julia Hiatt-Shepp, declare under penalty of perjury as follows:

1. I have personal knowledge of the matters stated in this Declaration and they are true and correct.
2. I am a managing attorney with the Immigrants' Rights team at Centro Legal de la Raza ("Centro Legal"), a non-profit organization in Oakland, California. Centro Legal is a legal services agency that protects and advances the rights of low-income individuals through bilingual legal representation, education, and advocacy. By combining quality legal services with know-your-rights education and youth development programming, Centro Legal ensures access to justice for thousands of individuals throughout Northern and Central California. My focus is on managing our immigration deportation defense work, particularly asylum cases.

3. Centro Legal currently has over 2000 open asylum cases. A significant part of our representation in our clients' asylum cases is the submission of applications for category (c)(8) employment authorization for asylum applicants who become eligible to apply for an initial employment authorization document ("EAD") after their asylum application has been pending 150 days or who must renew their EAD when it is set to expire.
4. In 2019, Centro Legal's Immigrants' Rights team filed approximately 300 EAD applications on behalf of asylum seekers.
5. Due to the COVID-19 pandemic, our physical office has been closed to the public since March 16, 2020. Prior to the pandemic, Centro Legal's Immigrants' Rights team provided monthly in-person immigration consultations to the community in our "general immigration clinic." In each clinic, we provided know-your-rights education and consultations to approximately 100 – 125 asylum seekers. Since our physical office has closed, our attorneys and staff now conduct ongoing telephonic consults for dozens of asylum seekers and other immigrants in need of legal services.

The Asylum EAD Rules Will Harm Centro Legal's Clients

6. EADs are a lifeline that connects individuals to many resources, such as non-exploitative work opportunities and medical benefits.
7. Currently, our asylum-seeking clients typically receive their initial EADs within approximately 30 days. The Timeline Repeal Rule, which terminates the requirement that the government adjudicate initial EAD applications from asylum applicants within 30 days of receiving the application, will leave our clients waiting for months to receive their EADs. Centro Legal's experience with EAD renewal delays, which currently do not have the same processing time requirements as initial applications, confirms this. As of July 15,

2020, USCIS's website indicates that the Nebraska Service Center's processing time for a renewal category (c)(8) application is 3.5 to 5.5 months.

8. Many of our asylum-seeking clients have waited for more than five months for their EAD renewal applications to be adjudicated. One of our clients submitted an EAD renewal application in October 2019 that, as of July 20, 2020, remains pending. We therefore anticipate that if USCIS is not obligated to adjudicate initial (c)(8) EAD applications within 30 days, our clients will wait for many months to receive a work permit, once they are eligible.

9. Meanwhile, the Broader EAD Rule would double the eligibility time from six months to a year, and more than double the time our clients must wait to apply for their first EADs.

10. The Broader EAD Rule also restricts EAD eligibility for asylum applicants who did not file their I-589 application within one year of their last arrival to the United States. The government has failed to fully take into account that the Immigration and Nationality Act (the INA) has explicit exceptions for this requirement, including for applicants who faced "extraordinary circumstances" that prevented them from meeting the one-year deadline, such as serious illness or mental or physical disability. Despite the fact that an individual who files an asylum application beyond the one-year filing deadline may still ultimately win asylum, the rule would not permit these asylum applicants to apply for an initial EAD until the adjudicator (an immigration judge or asylum officer) determines that they meet one of these exceptions.

11. For asylum applicants in removal proceedings, immigration judges in our jurisdiction do not make decisions about the one-year filing deadline exception until the final merits hearing, which is typically at least two to three years after removal proceedings were

initiated. Similarly, the Asylum Office does not adjudicate whether an applicant merits an exception to the one-year filing deadline until the asylum interview. The Broader EAD Rule contains no mechanism to obtain a determination on an applicant's eligibility for an exception to the one-year filing deadline prior to the adjudication of their asylum petition. This rule would therefore pose a significant hardship to asylum applicants who are eligible for asylum but who will not be able to receive a decision by an immigration adjudicator for many years. For asylum seekers who would be eligible for a one-year filing deadline exception due to mental or physical illness, the inability to provide financially for themselves and their families will be an added stress that could cause further physical or mental harm.

12. Our asylum-seeking clients and potential clients have experienced tremendous economic insecurity in recent months. As the nation has sheltered in place and taken drastic measures to promote public health, our low-income clients express great fear that they will not be able to support their families if they are unable to work legally. These asylum seekers have already survived tremendous hardship and dangerous journeys to reach the United States. Now, as they await the adjudication of their asylum claims, our clients are experiencing increasing anxiety around their need to work lawfully.

13. Backlogs in the immigration court have caused many of Centro Legal's clients to wait for years to have their claims adjudicated. We represent clients whose petitions for asylum were filed as early as 2014, and who are still awaiting their individual asylum hearing. The Asylum Office is similarly delayed. We represent minors and affirmative asylum seekers whose cases have been pending before the Asylum Office since 2014. Clients

whose hearings were cancelled due to the COVID-19 pandemic have seen their hearings reset for dates as late as fall of 2023.

14. If the Timeline Repeal Rule and Broader EAD Rule are permitted to go into effect, many of our new clients can expect to wait well over 365 days without lawful permission to work: factoring in the delayed processing times, we expect it could be several months after these applicants become eligible at 365 days before they actually receive their EADs. Some of our clients, such as those who were not able to file their asylum applications before the one-year filing deadline, may not be eligible to work lawfully for many years as they wait for their cases to be adjudicated.

15. This significant delay will present a severe hardship for our clients. They will be forced to depend on family members who are able to work lawfully, who likely have limited means themselves. Some will continue to reside in dangerous living situations due to their inability to support themselves. Some will seek unauthorized work, desperate for income and independence, and will be vulnerable to exploitative and dangerous working conditions. Some will have no way to apply for drivers' licenses, which will severely restrict their ability to accomplish everyday responsibilities. Others may be forced to abandon their asylum cases entirely.

16. Our asylum clients are survivors of trauma, many with diagnosed Post Traumatic Stress Disorder and depression. Many of these clients' mental health will deteriorate as they struggle to provide for themselves and their families. When our clients are suffering from acute mental health crises, they are often unable to participate fully in their litigation. These mental health struggles will negatively impact Centro Legal's attorneys' ability to effectively represent our asylum-seeking clients.

For these and other reasons, Centro Legal's current and future clients will be grievously harmed by the new Asylum EAD Rules, and Centro Legal must act swiftly to file any and all EAD applications on behalf of clients who are newly eligible for work permits before these rules go into effect.

The Asylum EAD Rules' Will Make Centro Legal's EAD Clinics Infeasible

17. In my capacity as a managing attorney, I oversee Centro Legal's pro bono clinics. Centro Legal partners with local law firms to serve large numbers of clients in discrete applications in single-day workshops. These clinics allow Centro Legal to significantly expand our capacity to represent asylum seekers. Among other clinics, we host pro se asylum clinics to aid unrepresented asylum seekers in submitting their applications for asylum. When those same asylum seekers become eligible for work authorization, we sign limited scope retainers and host pro bono clinics to assist otherwise-unrepresented individuals to obtain their EADs.
18. In 2018, our pro bono EAD clinics served approximately 112 asylum seeking clients. In 2019, our pro bono EAD clinics served approximately 72 clients.
19. Our EAD clinic model is based on identifying applicants who meet straightforward eligibility requirements and whose applications can be completed in a half-day-clinic. We also regularly report back to partners about the number of applications that were successful and who received an EAD. The model we have developed over the course of several years allows us to host workshops with law firms on a regular basis.
20. Under the new rules, our pro bono program will no longer be able to regularly serve unrepresented asylum seekers who are eligible for initial EADs. If the new EAD rules are

implemented, our staff will be forced to devote significant time to revising our current systems.

21. Because the new rules severely limit which asylum seekers may be eligible for EADs, our pro bono staff will be required to invest significant additional time screening cases to ensure asylum seekers requesting our help are appropriate for our clinic model. For example, under our model, we have been able to serve applicants regardless of whether or not they entered the United States at a port of entry. However, not all those who entered lawfully have evidence of their manner of entry. Because the Broader EAD Rule prevents asylum seekers who entered between ports of entry from obtaining work authorization, we would have to conduct Freedom of Information Act ("FOIA") requests simply to screen potential clients for our EAD clinics. These FOIAs require an entirely separate form and take many months to be processed. This is not practicable under a clinic model, which seeks to efficiently streamline Centro Legal's capacity to serve asylum seekers.
22. The Broader EAD Rules' numerous restrictions on eligibility for (c)(8) EADs will mean that pro bono clinics are no longer an appropriate way for Centro Legal to serve a broader community of asylum seekers.

Centro Legal Has Already Strained Our Limited Resources to Address the Urgent Needs of Clients Who Would Otherwise be Impacted by the New Asylum EAD Rules

23. Centro Legal's Immigrants' Rights team has already been forced to shift our limited resources to make sure our EAD-eligible clients are not harmed by the Timeline Repeal Rule and Broader EAD Rule. Paralegals have had to put aside other tasks, such as preparing guardianship petitions for Special Immigrant Juvenile Status ("SIJS") cases for minor children, who may age out of eligibility for SIJS if their guardianship petitions and SIJS

applications are not filed soon. Attorneys have had to prioritize filing work permit applications over other needs, like opening new removal defense, humanitarian visa, and other forms of affirmative immigration relief cases, in order to ensure that our asylum-seeking clients who are eligible for initial EADs submit their applications prior to August 21, 2020.

24. Our pro bono team recently scheduled an additional pro bono EAD clinic in order to meet the needs of unrepresented asylum seekers before the new Asylum EAD Rules go into effect. Adding a new clinic to a busy month in which clinics were already scheduled has meant that other client work must be deprioritized. For example, the paralegal who is organizing this clinic had previously been preparing documents for a young SIJS petitioner, but has instead shifted her time to preparing for this additional, previously unplanned-for EAD clinic. Currently, applicants with approved SIJS petitions from Guatemala, where this client was born, are facing a wait time of over three years in order to submit an application for lawful permanent resident (LPR) status. With each passing day that we do not file this client's SIJS petition, the delay he faces before becoming an LPR stretches further. Our paralegal has also delayed other tasks, including developing the asylum declaration of an unaccompanied minor client and logging case information into our database.

25. Centro Legal does not charge clients for our legal services. We therefore have a limited budget for operational costs such as postage, printing and mailing supplies, and labor. However, given the urgency of filing EADs before the new regulations go into effect, we have had to allocate additional resources for expedited mailing and are on track to exceed our budget for mailing expenses. As a result, we have had to reallocate money from our

unrestricted funds, which we currently reserve for case expenses such as interpreters. This means that we will have fewer resources for the remainder of the year to help clients cover the costs of these other needed services that are critical to the development of their cases.

26. We estimate about 100 hours of additional work will have gone into making sure that we file EADs for clients and pro se litigants before August 21, 2020. Centro Legal will likely incur costs in the form of overtime compensation for non-salaried staff if they are unable to complete urgent EAD filings alongside their other casework within their workdays.

Centro Legal's Resources Will Be Stretched Further Once the Asylum EAD Rules, Which Make EAD Applications More Complex and Time-Consuming, Go Into Effect

27. These organizational strains on time and resources would only continue and worsen if the rules go into effect. Under the new rules, EAD applications would necessarily become more complicated and time-consuming. Currently, counseling EAD applicants through the application process takes an average of 60-90 minutes per applicant. We anticipate that the additional screening and document preparation required by the new rules would result in this client work taking more than twice as long. Staff may have to work overtime hours to appropriately prepare these application packets alongside their other pressing tasks. The overtime compensation required would further stretch Centro Legal's already tight budget.

28. For example, the Broader EAD Rule states that an applicant will be ineligible for an EAD if they submit evidence to an Asylum Office less than 14 days before their asylum interview. However, the San Francisco Asylum Office's policy is that an applicant is to submit evidence on the Monday of the week prior to the applicant's interview, and additional evidence can be accepted beyond that date. The Broader EAD Rule would perversely impose a deadline on evidence submission that is stricter than the deadline

imposed by the office that will actually process and adjudicate this evidence. Our attorneys will therefore have to rush to comply with these artificial deadlines, rather than preparing our clients' evidentiary packets according to the timeline set by our local Asylum Office.

29. Although entering the U.S. without inspection is not a bar to asylum, an asylum applicant who enters without inspection will be prohibited under the Broader EAD Rule from obtaining an EAD, with limited exceptions. Our attorneys will therefore be forced to spend time analyzing the details of our clients' entries into the U.S. and crafting legal arguments, simply for the purpose of helping them obtain a work permit.

30. The new rules would authorize USCIS to deny EAD applications based on an applicant's apparent criminal history and other factors. Currently, we screen our clients for prior criminal history and appropriately prepare arguments and supporting documentation regarding their asylum eligibility for asylum adjudicators, such as immigration judges and asylum officers. Under the Broader EAD Rule, we will be forced to gather this evidence and prepare these arguments for EAD adjudicators as well, and when EAD adjudicators erroneously deny our clients' I-765s based on their criminal history, we will be forced to divert resources to file administrative appeals or requests for reconsideration of these denials.

31. The Broader EAD Rule allows for case-by-case determinations of whether asylum seekers who have been charged with or arrested on suspicion of certain criminal activity merit a favorable exercise of discretion. For such clients, our staff would spend additional time counseling them about providing proof of positive equities and reviewing such evidence. Attorneys would likely need to include legal arguments in EAD applications, which is not

something we currently do in the vast majority of cases, to persuade EAD officers to grant the applications of our clients who have criminal convictions.

32. As discussed above, the new Asylum EAD Rules also make asylum seekers who file their asylum applications past the one-year deadline ineligible for work authorization unless they have been found to meet an exception to the deadline. To try and mitigate the harm of these changes, our attorneys would have to spend significantly more time developing and filing motions with the Immigration Court to request that immigration judges make a decision about whether our clients qualify for an exception to the one-year filing deadline, in advance of a final hearing. We anticipate this would take many hours of additional time that our attorneys would otherwise use to accept new cases for representation. Since we have not had to file these types of motions in the past, we cannot predict how promptly immigration judges will respond to them. Furthermore, there is no mechanism to seek such adjudication from the Asylum Office for affirmative asylum seekers.

33. USCIS policy currently provides EADs to asylum seekers that are valid for two years. The Broader EAD Rule would eliminate that requirement and allow USCIS discretion to issue EADs that are valid for less than two years. Centro Legal includes EAD applications as part of our representation (currently to approximately 2000 asylum seekers). If our clients' EADs expire more frequently, our internal resources will be strained as we are forced to devote additional staff time to renewal EAD applications.

34. Internal resources will be strained by the cumulative effects of other changes within the Broader EAD Rule. For example, the Broader EAD Rule's requirement that asylum seekers submit biometrics for work permit applications will force our staff to spend additional time tracking such requests administratively and informing clients. Asylum seekers are already

required to submit biometrics along with their petitions for asylum, so these additional appointments will be an unnecessary strain on our clients' limited time and resources as well.

35. The new Asylum EAD rules make the issuance of an EAD application for asylum applicants discretionary. We therefore anticipate that we will be forced to challenge discretionary denials of EADs for clients who otherwise meet the eligibility requirements. This will demand resources in the form of time spent counseling clients, preparing evidence packets demonstrating positive equities, and re-preparing and re-submitting applications.

36. The current Asylum EAD regulations allow our clients to apply for EADs after their asylum petitions have been pending for 150 days. These applications are routinely processed and usually granted within 30 days. Once our clients are in possession of EADs, they become more self-sufficient. They are more likely to be able to contribute to the litigation costs associated with their asylum representation, including fees for expert witnesses and psychological evaluations. If the Timeline Repeal Rule and Broader EAD Rule go into effect, these clients may lose access to the expert testimony they need to support their case.

37. Centro Legal proudly provides high quality, client-centered representation to every one of our clients. Our staff firmly believe that a client's economic status should have no bearing on the quality of legal representation they receive as they exercise their rights to due process and fight for the opportunity to reside safely in the United States. As zealous advocates, it is our professional responsibility to assist our clients in obtaining and reviewing all of the evidence and testimony they need in order to thoroughly present their case. Our clients' inability to work lawfully will impact their mental health and ability to

contribute to the preparation of their case and may force them to compromise in the quality of expert witnesses or evidence that they prepare and provide for trial. These unnecessary challenges will undermine Centro Legal's mission and frustrate our ability to do our jobs as attorneys and advocates.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 23, 2020, in Oakland, California.

Julia Hiatt-Shepp, J.D.
Immigrants' Rights Managing Attorney
Centro Legal de la Raza

Exhibit 7

to Plaintiffs' Motion for a Stay of Effective Dates Under 5 U.S.C. § 705, Or, In The Alternative, Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CASA DE MARYLAND, INC., ET AL. *Plaintiffs*, *– versus –* CHAD F. WOLF, ET AL. *Defendants*.	**Case No. 8:20-cv-02118-PX**

DECLARATION OF CAROLINE KORNFIELD ROBERTS

I, Caroline Kornfield Roberts, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am the Executive Director and co-founder of Oasis Legal Services, a Plaintiff in the above-captioned case. Oasis Legal Services ("Oasis") was founded in May 2017.

2. As Oasis' Executive Director, I oversee all of Oasis' operations and activities, including programming and development. I am in constant, regular communication with my staff who provide legal representation to LGBTQ+ immigrants and consult with pro bono attorneys and law students working on our cases. I coordinate partnerships with other non-profits who also provide legal and social services to the immigrant and LGBTQ+ communities. I have represented hundreds of asylum seekers before the United States Citizenship and Immigration Service ("USCIS") and Executive Office for Immigration Review ("EOIR").

Oasis's Mission and Clients

3. Oasis's mission is to provide direct legal services and holistic case management to LGBTQ+ asylum seekers living within the jurisdiction of the U.S. Citizenship and Immigration Services' (USCIS) San Francisco Asylum Office. Given California's proximity to Mexico and Central America, over 95% of our clients are Latinx. We also serve clients from Asia, Africa, the Middle East, and the Caribbean.

4. Oasis clients are undocumented immigrants, low-income people of color, and victims of hate crimes. All of our clients have endured horrific violence because of their sexual orientation, gender identity, and/or HIV+ status in their countries of origin. Our clients suffer from the psychological impact of trauma experienced – and the continued oppression faced – as undocumented LGBTQ+ immigrants. Many Oasis clients are also HIV+, making them even more vulnerable.

5. We have a 99% success rate in helping our clients win asylum in the United States. Because of our limited resources, we cannot take on every potential client that comes to us, and we carefully select our clients through a lengthy and in-depth intake process to make sure every case we represent has a very high chance of winning asylum. We also want to use our limited resources to make sure we are serving those who have suffered extreme persecution in their home countries due to their LGBTQ+ identities.

6. In addition to intake, case preparation, application submission, and representation in front of USCIS and EOIR, Oasis provides individualized case management services to our clients. We assist our clients in applying for social security numbers, Medi-Cal, Real IDs, and other benefits for which they are eligible and educate our clients on workplace, housing, and public benefits. We connect clients to newcomer programs for asylees, mental health services and support

groups, affordable health care, HIV treatment, emergency housing, cash assistance, job training, assistance with legal name and gender changes, and legal representation for employment discrimination.

7. Oasis regularly hosts Continuing Legal Education trainings for the legal community on the nuances of LGBTQ+ asylum, culturally sensitive representation, and working with traumatized populations. We also host trainings for other professionals supporting LGBTQ+ asylum seekers, including psychologists providing client evaluations.

8. In our office, Oasis staff attorneys and paralegals provide direct legal representation in collaboration with committed pro bono attorneys and interns. Each year, dozens of volunteer attorneys and law student interns receive training on representing LGBTQ+ asylum seekers and supporting clients throughout their cases. This allows our small staff to take on a high volume of cases.

9. Since its inception in May 2017, Oasis has filed over 500 affirmative asylum applications for clients and taken on the representation of over 400 other clients who had already filed for asylum but had not yet had their asylum interview. Almost 80% of the asylum clients we represent do not file their asylum case within one year after their last arrival to the United States because they meet the extraordinary circumstance exception to the one year filing deadline under the Immigration and Nationality Act.[1] We estimate that 20% of the asylum clients we represent have criminal convictions, including for driving under the influence, theft, prostitution, disorderly conduct, possession of controlled substances, and domestic violence related charges.

[1] INA § 208(a)(2)(D); *see also* 8 CFR §§ 208.4(a)(4),(5)

Over two-thirds of our clients entered the United States without inspection fleeing persecution related to their LGBTQ+ identity.

10. As of July 2020, Oasis has over 500 clients whose asylum cases are still pending with no decision; over half of these clients have been waiting more than three years to receive a decision in their case from USCIS. Some of our pending asylum clients have been waiting since 2014 for their asylum interview and decision. The long delay is not the attributable to our clients but is instead a result of USCIS's failure to hire sufficient asylum officers.[2]

Impacts of New Asylum EAD Rules on Oasis's Clients

11. The new Asylum EAD Rules will irreparably harm our clients by severely limiting, delaying, or even outright barring our clients from receiving work authorization while their asylum cases are pending.

12. Employment authorization documents (EADs) are integral to our clients' ability to access legal counsel, participate fully in their case, and financially support themselves – especially given the current processing delays. Once our clients have an EAD, they can apply for a social security number, a Real ID, and medical and mental health care as well as find stable jobs that pay at least the minimum wage.

13. Because they are not forced to work "under the table" or in underground economies, our clients also have the security to speak out about wage theft, exploitation, and discrimination they experience at their places of employment. As members of the LGBTQ+ community, Oasis

[2] In January 2018, USCIS changed its policy from "First In, First Out" ("FIFO") to "Last In, First Out" ("LIFO") with the aim of reducing the backlog by hearing all newly-filed cases within the requisite 45 days of filing. However, because USCIS did not increase the number of asylum officers available to hear cases, the "LIFO" policy has therefore created a second backlog of cases filed between January 2018 and the present date that are still waiting for interviews.

clients are often particularly vulnerable to these abuses because of their sexual orientation or gender identity.

14. EADs also allow our clients to apply for unemployment and disability benefits if the need arises. Our clients' ability to apply for unemployment has been lifesaving – especially during the COVID-19 pandemic and resulting economic downturn. In California, where the majority of our clients live, employment authorization and a social security number allow the recipient to apply for Medi-Cal health insurance and to receive both low-cost medical and mental health care. As survivors of severe and life-long trauma due to persecution in their home countries based on their sexual orientation and gender identities, our clients need to access affordable mental health treatment. This allows them to participate more fully in their asylum case, which leads to a greater chance of success.

15. Because housing prices in the jurisdiction of San Francisco Asylum Office have soared, work authorization allows our clients to live within this area and remain clients of Oasis. Affirmative asylum applicants fall under the jurisdiction of the Asylum Office assigned to their geographical area. If an applicant moves to a new jurisdiction, their case is automatically transferred to a different Asylum Office. As a small non-profit, we do not have the resources to travel to other Asylum Offices in order to represent our clients, and therefore we cannot represent clients who move. Additionally, much of our work is funded by grants that are connected to the counties where our clients live. If clients move away from these counties because they cannot afford rent, we can no longer represent them, and they will lose access to their legal counsel.

16. When clients cannot afford housing, they are forced to live with family members or friends or go to a homeless shelter. For LGBTQ+ asylum seekers, their LGBTQ+ identities often

cause estrangement from their families. This makes the possibility even higher that without access to EADs, they will have to live in homeless shelters while they wait for their asylum cases to be decided. We have at least four such clients currently who are not yet eligible to apply for an EAD, are not currently working or receiving any income, and are at risk of becoming homeless because they can no longer afford to pay for their current housing. Two of these clients are HIV positive; for them, living at a homeless shelter in the midst of the COVID-19 pandemic could be a death sentence because they are immunocompromised.

17. Under the new Asylum EAD Rules, current and future Oasis clients will be barred from receiving work authorization while their asylum case is pending. We currently have 21 potential clients scheduled for intake interviews in July and August who (based on what they have told us about their dates of entry) will be barred from receiving EADs while their asylum cases are pending because of the one-year filing bar.

18. We have at least 30 clients who filed for asylum on or after March 28, 2020 who, under the new rules, must wait 365 days to be eligible for employment authorization – more than twice as long as the previous 180 days under the old rules.

19. Delay in EAD eligibility harms our clients in all of the ways listed above.

Impact of One-Year EAD Filing Bar on Oasis's Clients with Disabilities

20. The new one-year filing bar is particularly harmful to our clients.

21. LGBTQ+ asylum seekers can face severe mental health challenges,[3] which affect their ability to apply for asylum. Years of trauma in their home countries and the unique challenges

[3] *See* "Mental health challenges of LGBT forced migrants," Ariel Shidlo and Joanne Ahola, *Forced Migration Review* (April 2013), *available at*: http://www.fmreview.org/sogi/shidlo-ahola.html; *see also* "The Gay Bar: The Effect of the One Year Filing Deadline on Lesbian, Gay,

faced by LGBTQ+ immigrants in the U.S. mean that Oasis clients experience high rates of mental health disorders like PTSD, recurrent depression, and anxiety and panic disorders.

22. Mental health disabilities have prevented approximately 80% of Oasis's clients from applying for asylum within one year of entering the U.S.

23. The INA currently allows people who file after one year to receive EADs. [4] This provision is especially crucial for people with mental disabilities like PTSD that impact an individual's ability to file for asylum in a timely manner through no fault of their own.

24. The new Asylum EAD Rules do not take the one-year filing deadline exceptions of the INA into account. A blanket prohibition on EADs for applicants who file after the one-year deadline will force individuals with disabilities and meritorious asylum cases to endure a years-long wait for a case outcome without means of financial support.

Additional Impacts on Oasis Clients

25. The bar on work authorization for individuals who enter without inspection (EWI) also has the potential to severely impact LGBTQ+ asylum seekers like our clients.

26. Long waits at ports of entry along our southern border mean that LGBTQ+ asylum seekers have to wait extended periods of time in Mexico in order to present themselves to immigration officers to ask for asylum. Mexico is a dangerous place to be LGBTQ+; indeed, our clients from Mexico are routinely granted asylum because USCIS believes they have a well-

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Bisexual, Transgender, and HIV-Positive Foreign Nationals Seeking Asylum or Withholding of Removal." Victoria Neilson & Aaron Morris, 8 N.Y. CITY L. REV. 233, 264 (2005).

[4] INA § 208(a)(2)(D); *see also* 8 CFR §§ 208.4(a)(4),(5)

founded fear of persecution if returned there. Prolonged waits at border crossings, therefore, endanger our clients.

27. Many choose to cross into the United States without inspection because it is too dangerous to wait in Mexico to present themselves at a Port of Entry.

28. Although the new rules allow for an individual to present themselves to a Customs and Border Patrol officer within 48 hours after entry into the United States without inspection and remain eligible for an EAD, this ignores the reality of how the trauma LGBTQ+ asylum seekers face impacts their ability to trust law enforcement and governmental authority. LGBTQ+ asylum seekers often face extreme persecution at the hands of police and government officers, including sexual abuse, extortion, and arrest. These rules would force LGBTQ+ asylum seekers to come out as LGBTQ+, perhaps for the first time, and talk about the persecution they experienced, to a CBP officer instead of to a trained asylum officer. It often takes our clients years of living in the United States to feel safe enough to begin to overcome the trauma they have suffered and come out of the closet. Under the new regulations, many of these clients who have entered the country without inspection and who have strong asylum claims will be barred from obtaining work authorization while they wait for their asylum case to be decided.

29. The Asylum EAD Rules will impose a $85 biometrics fee on all first-time EAD applications even though an applicant's biometrics are already taken and run when they initially apply for asylum. This $85 fee will be another prohibitive factor in our clients' ability to receive employment authorization because without an EAD, they have no legal way to earn the necessary income to afford this fee. As mentioned above, we have clients on the verge of homelessness because they cannot afford to pay for their housing. When these clients finally become eligible for an EAD, they will not be able to afford the $85 needed to apply.

30. The Asylum EAD Rules' elimination of an asylum officer's ability to grant "Recommended Approval" will harm our clients.

31. In the past, clients granted Recommended Approval – that is, clients who have appeared at their asylum interview and have been found to meet all the elements of asylum – less than six months after filing their asylum applications could immediately qualify for EADs. Approximately a quarter of our clients receive Recommended Approval after their asylum interviews.

32. Now, however, elimination of Recommended Approval means that all of these applicants will either have to wait a full 365 days to be EAD-eligible (unless they are granted asylum before that point) or be barred completely from receiving an EAD until they are granted asylum. The average time between receiving Recommended Approval and the final grant of asylum is about six months, but seven of our clients have waited over year between receiving Recommended Approval and their final grant of asylum, and one client has waited over three years.

33. This prolongs the amount of time asylum-eligible clients experience all of the harms detailed above, including the inability to work legally, apply for a social security number and a Real ID, or access benefits like medical and mental health care.

34. The elimination of Recommended Approval will also render the reason for the delay in the client's decision opaque. When a client receives Recommended Approval, they at least know that USCIS believes they qualify for asylum and that the delay is attributable to incomplete background checks. They do not have to live months or even years under the stress of not knowing how their asylum case will be decided or why a decision is delayed. Without Recommended Approval, clients whose background checks take longer to complete may be

forced to wait years without work authorization and without any way to know why the decision in their case has been delayed.

35. The elimination of the requirement that USCIS adjudicate initial EAD applications in 30 days will also harm our clients, as they will be forced to wait an indefinite amount of time to receive their EAD completely at the discretion of USCIS.

Impact of Asylum EAD Rules on Oasis

36. These new Asylum EAD Rules frustrate Oasis' mission, impose a significant burden on our work, and have already begun to cause us irreparable harm. We have had to divert and will continue to divert significant resources because of these new rules.

37. Since the new Asylum EAD Rules were published, Oasis staff have spent an extra one to two hours a day on the phone counseling clients who express fear about how the new rules will affect their ability to support themselves financially while waiting for a decision in their asylum case.

38. Our legal staff have been forced to spend time distilling the new rules into easily understandable talking points to distribute to all our clients. Before we did this, our single paralegal and receptionist spent hours of their workweeks answering the phones and fielding questions about the new rules and their effects on individuals' cases.

39. Once the new rules go into effect, we will have to retrain staff on how to determine whether someone is eligible for employment authorization while their asylum case is pending and rewrite the resources we give to clients with pending asylum cases on employment authorization, since a large majority of them will no longer be eligible. We will have to train staff on how to explain to clients why the eligibility for asylum as it relates to the one year filing

deadline and manner of entry into the United States is now different than the eligibility for receiving work authorization while the underlying asylum case is pending.

40. In the two months between when the second of the new Asylum EAD Rules ("Broader EAD Rule") was published on June 26, 2020 and its effective date of August 25, 2020, we will have shifted significant resources and staff time to prioritize filing cases for individuals who will be applying for asylum beyond the one-year filing deadline and who entered the United States without inspection. Before the Broader EAD Rule was published, we had planned to begin fourteen new asylum cases in July with the goal of filing them by August 31st. Instead, we now will have to file at least 41 new asylum applications in the period of June 26 to August 25 (and ultimately more like 62) in order to assure that every individual who we have accepted as a client and who will be subjected to the one-year filing, EWI, and criminal bars will have the ability to file for work authorization in the future. This is almost a 200% increase in staff time and organizational resources.

41. Because of this sudden and dramatic shift in priorities, we have currently stopped accepting and filing new citizenship and family petition cases and reduced the number of lawful permanent residency cases we can accept a month by 25%. This means our clients who have won asylum cannot receive our assistance in helping them petition for family members who are still out of the United States thereby extending family separation. Clients who are eligible to apply for a green card based on their asylum status will now have to wait longer before they are able to travel outside of the United States. and clients who are eligible to apply for citizenship will lose out on any chance of voting in the next election.

42. The shift in priorities also has forced us to cut back on the case management services we are providing during these two months. We can no longer meet individually with clients to assess

their needs and make individualized referrals. Instead, our attorney in charge of case management services is asking clients to fill out a form indicating what help they want and emailing or texting general resources.

43. This prioritization of cases also means that we have delayed starting cases for two of our clients who will not be subject to the bars outlined in the Asylum EAD rules. This means that their case start date has been pushed back at least two months, meaning at least two more months our clients will have to wait until their asylum application can be filed and at least two more months before they are able to apply for employment authorization.

44. Oasis functions on a low bono/pro bono model. We charge client fees using a sliding scale based on a client's income. Our fees for an asylum case range from $0 to $4000. We do not require clients to start paying fees until they tell us they are able to. This means that many clients first pay us after receiving employment authorization (either because they won asylum, had a case pending for 180 days, or were given Recommended Approval).

45. We are well known in the Latinx LGTBQ+ community; most of our clients come to us through word of mouth or through referrals from community health clinics, LGBTQ+ support groups, private immigration attorneys, and other non-profits. Because we don't anticipate our referral structure to change, it is unlikely that our client population will change, and we can expect that in the future it is likely that approximately 80% of our clients will be subject to at least one of the new bars instituted by the new rules.

46. If 80% of our clients are barred from receiving employment authorization while they wait for their asylum case to be decided and the other 20% are unable to receive employment authorization until at least 365 days after filing their asylum application, Oasis' ability to retain staff and stay open as an organization will be jeopardized. In 2019, client revenue made up over

a third of our total budget. The amount of client revenue we receive will surely decrease when the new rules go into place that restrict our clients' access to work authorization.

47. Oasis has one staff member who oversees client case management. They are currently able to refer clients with pending asylum cases who have EADs to a range of social services, including Medi-Cal, disability and unemployment benefits, job training, and housing services. The one-year filing, EWI, and criminal bars will mean that over 80% of our clients will never have access to these public benefits and social services while their asylum case is pending. The other 20% will face long delays in receiving these benefits since they will no longer have a guarantee of USCIS processing their EAD application quickly. This will force us to hire more staff to do case management work, as each case will be more time and resource intensive, because there are fewer organizations and benefits we are able to refer clients to if they don't have an EAD and social security number. Additionally, without the financial stability that comes with an EAD, our clients will face more financial, social, mental health, and criminal issues, which will require Oasis to devote even more staff time and organizational resources to case management.

48. The elimination of the 180-day Asylum EAD Clock imposes a significant burden on our work. We will have to rewrite the materials we provide our clients regarding when they are eligible to apply for an EAD. Additionally, we will have to retrain our staff members to correctly advise our clients about when they are eligible to apply for EADs and to correctly time the submission of initial EAD applications so that applications are not denied.

49. Under the 180-day Asylum EAD Clock structure, the calculation of when clients became eligible to apply for employment authorization has been simple. If a client has not yet been scheduled for an asylum interview or has gone to their asylum interview but received no

decision, our practice is to submit the EAD application 150 days after the date on the I-589 receipt. Because of the 30-day initial EAD adjudication requirement, we can rightly advise clients that they will get their employment authorization within 30 days of the application being received by USCIS.

50. The new rules are undefined and complicate this relatively straight-forward system. Retraining our staff to understand the new system will require additional staff time and organizational resources. The vagueness of the new rule as it relates to what may be considered an "applicant-caused delay" in the affirmative asylum context will require us to train our staff to determine whether such a delay exists at the time of filing an EAD application.

51. Additionally, the new rules grant an asylum officer discretion to grant extensions for submission of evidence that would otherwise be counted as an applicant-caused delay; in these cases our staff will not be able to submit EAD applications without the added burden and time of trying to communicate with the asylum officer adjudicating the client's case.

52. The new rules now dictate that any documentary evidence submitted less than 14 calendar days prior to the asylum interview may be considered an applicant-caused delay and grounds for denial of the EAD, overwriting the current system each Asylum Office has put in place. The 14-day rule ignores the reality that in many cases, applicant and counsel do not receive the interview notice 14 calendar days before the interview is scheduled. We routinely receive our clients' interview notices 7-10 calendar days before the asylum interview. It is difficult to submit evidence more than 14 days before an interview that we are not aware of. However, under this new system, our clients will not receive EADs if we submit evidence less than 14 days before the interview. This will force our clients to choose between *submitting crucial evidence for their asylum case* and *being able to apply for work authorization*.

53. The elimination of the 30-day requirement for adjudicating initial EAD applications will require our staff to spend more time communicating with clients and USCIS about the status of initial work permit applications and on completing information requests with USCIS in an effort to move the initial EAD application through the system.

Impact of the Effective Date of Asylum EAD Rules on Oasis and its Clients

54. The timing of the effective date of new Asylum EAD Rules in the midst of a worldwide pandemic is particularly burdensome and harmful to both Oasis and our clients.

55. We have explained above how the new rules increase the likelihood that our clients will have to resort to living in homeless shelters because of delaying or barring completely their ability to apply for EADs and how this could be deadly for them.

56. USCIS' response to COVID-19 and how the agency is choosing to conduct asylum interviews during the pandemic will only increase the affirmative asylum backlog forcing our clients to wait even longer for EADs and increasing the harm to Oasis and our clients that we outline above.

57. As of September 2019, the latest month USCIS has published data for, the San Francisco Asylum Office had a backlog of 31,354 pending asylum cases.[5] To our knowledge, office is currently holding one asylum interview a day. At this rate, it will take almost 90 years for the office to hear all its assigned cases, not taking into account the additional backlog that was created during the time the office was closed completely between March and June of this year.

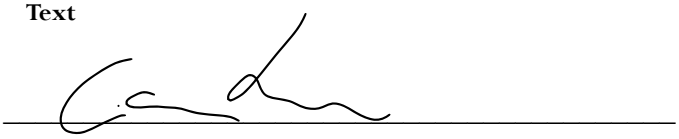
[5] USCIS, "Asylum Office Workload," September 2019, available at: https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PEDAffirmativeAsylumStatisticsFY2019.pdf

58. The San Francisco Asylum Office is hearing only one asylum case a day even though the actual testimony takes place remotely. Each party to the case – attorney, applicant, interpreter, and asylum officer – are all in separate rooms at the asylum office and appear by video while testimony is taken over the telephone. USCIS has not adequately explained why these interviews cannot be completed without the applicant, their legal representative, and interpreter all having to appear at the office in person which would allow the asylum office to hear more cases a day and speed up case processing. USCIS' mismanagement of their response to the COVID-19 pandemic will exacerbate the already harmful effects of the Asylum EAD Rules.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of July 2020 in Oakland, California.

Text



Caroline Kornfield Roberts
Executive Director
Oasis Legal Services

Exhibit 8

to Plaintiffs' Motion for a Stay of Effective Dates Under 5 U.S.C. § 705, Or, In The Alternative, Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CASA DE MARYLAND, INC., ET AL. *Plaintiffs*, *– versus –* CHAD F. WOLF, ET AL. *Defendants*.	**Case No. 8:20-cv-02118-PX**

DECLARATION OF JEHAN LANER

I, Jehan Laner, declare under the pains and penalty of perjury as follows:

1. I make this declaration based on my personal knowledge unless otherwise indicated.

2. I am an immigration attorney and Co-Director for Pangea Legal Services ("Pangea") in San Francisco, CA. Pangea is a nonprofit organization that offers low and no cost immigration legal services, as well as advocacy efforts on behalf of noncitizens. I have worked at Pangea since April 2017.

3. Pangea is a 501(c)(3) nonprofit corporation incorporated in San Francisco, California. Its main office is located at 350 Sansome St. Ste. 650, San Francisco, CA 94104. A second office is located at 855 Lenzen Avenue, San José, CA 95126.

4. Pangea's mission is to stand with immigrant communities and to provide services through legal representation, especially in the area of deportation defense. In addition to direct legal services, we are committed to advocating on behalf of noncitizens through policy advocacy, education, and legal empowerment efforts.

5. The direct legal services which Pangea provides include: conducting intake consultations and referrals for noncitizens who need attorneys; representing noncitizens in removal proceedings before immigration court; representing noncitizens in affirmative immigration applications; providing on-call same day legal assistance to noncitizens who are arrested by immigration enforcement in the Bay Area; and representing noncitizens in federal litigation, including in habeas corpus petitions and appeals. Pangea has developed expertise in representing asylum seekers who have been arrested or faced other criminal justice consequences. Many asylum seekers with arrests, pending charges, or convictions are referred to us from public defenders' offices and other immigration nonprofit organizations. We also conduct intake consultations with people detained in immigration custody, many of whom have had contact with the criminal justice system. These cases often require careful legal analysis and additional legal advocacy such as custody hearings, habeas corpus petitions, or post-conviction relief.

6. Pangea's community education efforts include, amongst others, providing Know-Your-Rights presentations to immigrant communities. We also help orient our clients to social services, including providing referrals to housing, healthcare, mental health, and rehabilitative programs.

7. Pangea participates in local and statewide advocacy for immigrants' rights. This includes partnering with coalitions to ensure that pro-immigrant legislation, which protects communities from detention and deportation, is enacted.

8. Pangea also provides training to other attorneys to equip them to provide further services to noncitizen communities.

9. Our direct legal services include assisting noncitizens who are filing applications for an Employment Authorization Document ("EAD"). For example, we file approximately five to ten EAD applications a month. The majority of Pangea's EAD clients are those with pending asylum applications who are eligible for work authorization under 8 C.F.R. § 274a.12(c)(8).

10. Pangea usually provides our services on a pro bono or low fee basis. When clients do not qualify for free services, often due to geographic restrictions on our grant funding, we charge low fees to cover the cost of attorney representation.

11. The two final rules issued by the Department of Homeland Security relating to work authorization for asylum seekers (Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 85 F.R. 37502 and Asylum Application, Interview, and Employment Authorization for Applicants, 85 F.R. 38532) have already had a negative impact on Pangea's work and frustrated our organization's mission and will continue to do so by imposing a significant financial and resource burden.

THE NEW RULES REQUIRE A SHIFT IN RESOURCES TO REVIEW EAD ELIGIBILITY

12. Since the changes to the rule were announced, Pangea has shifted organizational resources to reviewing our clients' eligibility for EADs under the new rules.

13. EADs are extremely important to our clients not only because they allow them to work, but also because they provide our clients with a form of government identification while they await their immigration case adjudication in the United States. EADs allow our clients to safely travel within the United States and access other resources such as

housing, food, and health benefits. Further, for many of our minor clients, EADs are their only form of valid photo identification, which makes it easier for them to enroll in school.

14. Given the importance of EADs in providing stability for our clients and an opportunity to contribute to their communities while they await their immigration proceedings, Pangea staff have already spent hours reviewing which clients should renew or apply for their EADs before the new rules severely limit and delay our clients' ability to obtain EADs.

15. These new rules introduce additional requirements and new standards to meet in order to receive an EAD. This means that Pangea attorneys and staff will have to spend more time collecting evidence and completing EAD applications to demonstrate that our clients are eligible for EADs.

16. The additional requirements will cause delays in the EAD application process, or result in EAD denials for our clients who were previously eligible for EADs. These changes threaten our clients' financial status and mental health. Changes to the EAD application mean that Pangea attorneys and clients will have to go through a burdensome, time-intensive, and often costly process to get copies of official records. This additional time spent reviewing clients' files and counseling clients on their EAD eligibility diverts resources that would otherwise be spent on other aspects of our mission, including preparing clients for their upcoming hearings in immigration court.

THE NEW RULES FRUSTRATE OUR MISSION OF PROVIDING HIGH-QUALITY LEGAL SERVICES TO ALL IMMIGRANTS, INCLUDING THOSE WITH CRIMINAL HISTORIES

17. The changes to EAD eligibility and the application process will also frustrate our mission of providing high-quality legal service to asylum seekers with pending charges or

convictions. Many of Pangea's clients will have difficulty meeting the new requirements or obtaining the documents necessary to show eligibility and therefore will be denied an EAD, harming these clients and limiting Pangea's ability to assist asylum applicants. For example, without EADs some of our clients will be unable to work, will suffer financially, and will no longer be able to afford our low-fee legal representation or obtain the evidence necessary to present their asylum case. For example, expert witnesses are often needed to educate immigration judges about country conditions in a client's country of origin. But since many experts charge a fee to cover the time spent preparing a declaration and testimony for the case, we ask that our clients cover these types of additional expenses. Without EADs, our clients will no longer be able to afford to pay for experts for their asylum cases. Pangea and our clients will be forced to go forward in court without this crucial evidence.

18. The new rules severely limit which asylum seekers are eligible for EADs based on arrest and conviction history. For the clients who remain eligible for EADs following an arrest or conviction, collecting criminal records can be time-intensive—including reaching out to multiple courts and law enforcement authorities—and financially burdensome—including paying fees for copies and certified copies. In some cases, gathering these court records is virtually impossible depending on a court's protocol for saving records, and clients will be unable to do so.

19. Pangea has current clients with pending criminal charges that are likely to have a disposition entered after August 25, 2020 that could make them ineligible for an EAD under the new rules. Pangea has also conducted initial consultations with potential clients

in this situation. It is also likely that we will continue to be referred cases and represent clients with convictions entered after the effective date of the rule.

20. For clients and potential clients who will no longer be eligible or able to document eligibility for an EAD based on the new rules, Pangea is limited in how we can help these clients continue stabilizing their lives. Some of our asylum-seeking clients have a history of substance abuse that is connected to their history of trauma and an attempt to self-medicate, which has resulted in controlled substance-related arrests and convictions. We often refer these clients to rehabilitative services, such as therapy. In order to qualify for therapy, however, clients will often need to show an EAD, which is accepted as a valid form of government identification. Additionally, these clients will not be able to support themselves financially, which can delay their ability to pay other government fees including court fees, which are often a condition of probation. Not being able to afford to pay these court fees may hinder their ability to obtain immigration relief or resolve their criminal record.

21. The new rules also require that asylum seekers pay $85 in order to have their biometrics (fingerprints for background checks) processed for their EADs. This will prove prohibitively costly for our asylum-seeking clients who are often recent arrivals and do not have the financial means to pay these fees. This new rule is also duplicative since asylum seekers are required to have their biometrics captured (for free) in advance of their asylum hearing. We believe that many of our clients will be unable to afford this fee, and as a result, will be unable to apply for an EAD.

22. Even where clients remain eligible for an EAD, the new requirements will require submission of more evidence, which will likely delay our clients' ability to apply for and

receive an EAD. This prevents our clients from getting jobs to support themselves and their families, causing stress and anxiety.

ADDITIONAL TIME AND RESOURCES TO PREPARE EAD APPLICATIONS

23. These changes to EAD eligibility and processing will force Pangea attorneys to spend more time and resources assisting clients with EAD applications.

24. At Pangea, eleven attorneys and three administrative staff currently work on deportation defense cases, which includes filing EAD applications. With the new rules, more staff time will be spent on filing EAD applications.

25. Prior to the recent revisions, an attorney could easily renew a previous EAD by making minor corrections to the Form I-765. However, with the new rules, attorneys need to start each renewal from scratch by assessing whether the client is eligible for a renewal under the new rules.

26. It will take attorneys an additional 1.5 hours on average to gather the new records to demonstrate that a (c)(8) applicant continues to be eligible for an EAD.

27. Pangea attorneys will also have to spend time making sure that we have evidence to prove that any delays in our clients' asylum cases were not caused by our clients. This will involve providing extra copies of court documents or preparing declarations for ourselves and our clients. This represents additional hours in staff time to review declaration facts with our clients and extra appointments to complete what was previously a straightforward application.

28. For clients with an arrest history, Pangea attorneys may have to spend time researching and drafting legal arguments to accompany EAD applications to explain why these

clients' convictions do not fall into the category of offenses which under the new rule make applicants ineligible for an EAD. The interplay between the many different federal and state criminal schemes under which our clients have been arrested or charged and the categories of crimes set forth by the new rule will require complicated and individualized analysis. On average, this extra analysis involves one to two hours of additional legal research for each arrest to determine if our clients are eligible for an EAD, and additional time drafting legal arguments. So, for example, if a client had five arrests, researching eligibility alone could take five to ten hours.

29. Additionally, the new EAD rules make EADs discretionary, meaning that attorneys will also have to gather evidence to establish that our clients merit a favorable exercise of discretion for a work permit. Our attorneys will need to spend additional attorney time brainstorming potential evidence and additional time helping our clients gather this evidence. The process of collecting evidence—which could include letters from family and friends, medical records, rehabilitation records, and other records—will take our clients weeks. In other situations where Pangea staff must present evidence of our clients' equities, such as custody hearings or cases in immigration court, Pangea attorneys spend more than ten hours per case sorting and compiling evidence to submit to court. The new discretionary process described in the rules would essentially require our attorneys to undergo a similar time-consuming process, usually reserved for preparing for court proceedings, in order to demonstrate that our clients should be granted an EAD.

30. After filing a client's EAD application, the client may receive a Request for Evidence ("RFE") from USCIS. Pangea must then assist the client with gathering any required additional evidence or reply to USCIS and explain why the additional evidence requested

does not exist. Before the changes, it took between 3-8 hours to respond to an RFE. But with new eligibility requirements, we expect that Pangea staff members will be required to expend more time collecting evidence and responding to RFEs.

31. The increase in paperwork will take up more attorney and staff time due to administrative tasks. For example, staff time will be spent scanning longer EAD applications to clients' files and submitting these larger applications adds to the time spent on EAD applications. Due to the increase in time required to comply with the new records requirements, Pangea's administrative staff will be required to routinely stay late at the office to assist with EAD scanning and mailing.

32. The increase in size of applications also forces Pangea to spend more money on paper, postage, envelopes, and other office supplies.

DIVERSION OF RESOURCES FROM OTHER WORK CRUCIAL TO OUR MISSION

33. DHS's revisions to the EAD process will force Pangea to divert resources from other necessary work in order to handle the increased time, staff, and monetary requirements to file the new Form I-765.

34. Pangea will have to expend time training its staff and attorneys on the new requirements in Form I-765.

35. Funding will need to be shifted from advocacy programs and direct legal representation programs to now servicing the increased requirements for EAD applications.

HARM TO PANGEA'S INCOME AND FINANCIAL STABILITY

36. With more time spent on existing clients, Pangea has less ability to take on new cases and serve other clients, which hurts Pangea financially since grant monies can be and are typically tied to deliverables other than EAD applications.

37. Pangea also expands its ability to serve low-income individuals by charging low fees to clients who do not qualify for grants to cover the cost of attorney representation, often due to grant deliverable geographic restrictions. A client's ability to obtain an EAD often meant that they were able to afford paying us some amount of fees to offset the resources spent on their representation. The new EAD rules will frustrate our mission to provide low-cost, high quality legal services to those who will no longer be able to pay, especially individuals in rural counties, where grant funding for deportation defense is often unavailable.

38. The new EAD rules will also cause a loss in revenue to Pangea from client fees we previously would have received. The new EAD rules make some of our clients no longer eligible to renew or apply for an initial EAD. We generally charge $200 for a category (c)(8) EAD initial application or renewal for a client who is not covered by grant funding. With fewer clients eligible for EADs, Pangea can no longer count on the same level of income from our fee-paying clients.

39. Additionally, as explained above, the $200 fee will no longer adequately compensate Pangea for the increased time and resources that must be spent to prepare and submit EAD applications. Furthermore, an increased fee will likely be out of reach for many of our low-income clients, and we will be unable to submit an EAD application on their behalf. In either case, the resulting reduction of EAD applications will frustrate our

mission of supporting our clients in achieving stability and self-sufficiency and will cause a loss of income to Pangea.

IMPACT OF THE COVID-19 PANDEMIC

40. Finally, the COVID-19 pandemic is proving to be especially burdensome for many of our asylum-seeking clients. In the San Francisco Bay Area, Latino and immigrant communities have been disproportionately affected by the virus.[1] The population of clients that we serve is majority Latino and low-income. Many of our clients without work authorization are forced to live with family members in multi-family households with individuals who are working outside of the home, which puts our clients at risk of contracting the virus. We also have clients who are living in congregate settings, such as shelters, who are also at greater risk of contracting the virus.[2] As explained above, the new rules will deny or delay our clients' ability to work, which means that these clients will not be able to move their families into safer housing situations during the pandemic.

41. As explained above, helping our clients achieve stability in their lives is important to ensuring a positive outcome in their immigration case. During the pandemic, our staff have spent extra time trying to connect our clients without work authorization to financial and housing resources. For example, our staff have assisted multiple clients in applying for the limited mutual aid funds available for immigrants without work authorization,

[1] *In San Francisco, Latinos account for 25% of coronavirus cases*, Los Angeles Times, April 20, 2020, https://www.latimes.com/california/story/2020-04-20/latinos-sf-coronavirus

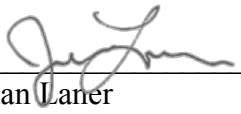
[2] *Major Outbreak in San Francisco Shelter Underlines Danger for the Homeless,* The New York Times, April 10, 2020, https://www.nytimes.com/2020/04/10/us/coronavirus-san-francisco-homeless-shelter.html

which has taken about 3-5 hours for each client. Although these mutual aid funds sprung up out of the recognition that immigrants without work authorization would be ineligible for stimulus checks, the funds are very limited, often providing no more than a few hundred dollars per family, and funds quickly ran out. Our staff spent hours calling around to different funds, checking to see which clients could apply, and helping clients apply for these funds. With the new rules and the consequent delays or inability in obtaining work authorization, the need for financial assistance will only increase and Pangea's staff will need to spend more time searching for available resources. This will divert our resources from other activities crucial to our mission.

42. Additionally, during the COVID-19 pandemic, Pangea has already seen delays in processing for EAD applications for asylum-seekers. Since our clients will no longer be able to rely on 30-day processing under the new rules, our clients' ability to provide for their families will be placed on hold, and cause our staff to spend extra time connecting our clients to temporary resources.

43. In sum, the changes to EAD processing and eligibility have and will harm Pangea and its clients in multiple ways.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of July 2020 in Berkeley, California.



Jehan Laner