May 29, 2026

Submitted via [*www.regulations.gov*](http://www.regulations.gov)

Office of Policy and Strategy
United States Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2026-0133, USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill

To Whom It May Concern:

The 84 undersigned immigration legal services and advocacy organizations submit this comment strongly opposing the U.S. Citizenship and Immigration Services ("USCIS") interim final rule, USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill (the "IFR" or "rule"). The rule creates severe and unlawful consequences for failure to pay the annual asylum fee ("AAF") and threatens Temporary Protected Status ("TPS") holders' ability to work by making it essentially impossible for them to maintain facially valid work permits.[1]

As discussed below, the IFR effectively operates as a mechanism to terminate asylum claims and work authorization without adjudication; threatens TPS holders' ability to maintain lawful employment; disregards longstanding reliance interests and ignores the severe harms it will cause; fails to consider less disruptive alternatives; and unlawfully bypasses notice-and-comment procedures. DHS must withdraw the IFR in full or, at a minimum, withdraw the AAF and TPS provisions.

I. The IFR's Punitive Fee Regime Functions as a De Facto Mechanism to Extinguish Asylum Claims Without Adjudication and Immediately Terminate Work Authorization

The IFR uses the annual asylum fee as a mechanism to summarily deprive asylum seekers of their pending claims and work authorization. Under the IFR, asylum applicants—including individuals who have lived and worked lawfully in the United States for years while awaiting adjudication in the asylum backlog[2]—could immediately lose both the ability to seek asylum and their corresponding authorization to work upon nonpayment of the AAF each time it comes due. The rule purports to authorize these severe consequences within 30 days of a notice asylum applicants may never receive, and without any grace period or meaningful opportunity to appeal. Congress did not authorize these consequences.

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[1] *See* USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill, 91 Fed. Reg. 22,952 (Apr. 29, 2026). The IFR also codifies a new Form I-94 fee. This comment does not address the Form I-94 fee provisions.

[2] *See All USCIS Application and Petition Form Types (Fiscal Year 2025, Quarter 4)*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (last accessed May 21, 2026), https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data (backlog in the affirmative asylum system was 1,435,560 applications pending between July 1, 2025 and Sept. 30, 2025, the last quarterly reporting period available); *see also Transactional Records Access Clearinghouse, New Proposed DHS Rule Effectively Ends Work Authorization for Asylum Applicants*, TRAC IMMIGR., n.2 (Apr. 2026), https://tracreports.org/reports/772/ (according to a February 23, 2026 proposed rule, the average processing time for affirmative asylum cases was 35.5 months in FY 2023 and 25.0 months in FY 2024).

AILA Doc. No. 26062509. (Posted 6/25/26)

The IFR creates a framework to effectively terminate asylum claims without adjudication by: (1) ***rejecting*** asylum applications that USCIS has already accepted for processing; (2) failing to provide adequate notice to applicants; (3) leaving affected applicants at risk of being denied asylum under the one-year filing deadline; (4) depriving asylum seekers of asylum-based work authorization immediately and permanently; (5) exposing asylum seekers to detention and removal proceedings; and (6) retaining applicants' annual fees even after their applications are rejected.

First, the IFR will cause countless asylum claims to be erroneously and unlawfully "rejected." Under the IFR, failure to pay the AAF within 30 days of notice results in rejection of a pending Form I-589 and termination of any related work authorization, with no grace period or right to appeal.[3]

The rule's use of "rejection" is both nonsensical and unlawful. "Rejection" is a legal mechanism reserved for filings USCIS refuses to accept at intake and has never been applied to asylum applications the agency has already accepted and kept pending for years. Existing regulations unsurprisingly treat a rejection as an intake determination rather than an adjudicative decision, leaving asylum applicants with virtually no recourse to challenge rejections of their long-pending asylum claims under the IFR.[4]

Second, asylum seekers will face a high risk of incurring the "rejection" of their asylum application through no fault of their own because they may not receive adequate notice that the fee is due—or may never receive notice at all. Since USCIS began implementing the AAF in September 2025, applicants have repeatedly reported missing notices; notices sent to the wrong address; and notices sent to attorneys or representatives no longer connected to the case, even where applicants and attorneys strictly followed procedures for updating address information.[5] The problem is compounded by USCIS's lack of clarity regarding how or when it will issue notices, and its refusal to accept early payment of the AAF. Unlike EOIR, USCIS does not allow applicants to proactively pay the AAF until the 30-day window begins, forcing applicants to constantly monitor the AAF Questionnaire portal to check whether they are able to pay.[6] Any applicant whose AAF is now due filed their asylum application before the One Big Beautiful Bill Act's ("OBBBA") enactment, were not subject to any fee obligation for applying, and could not have known at the time that they would be subject to the AAF in the future. Despite all of these issues, the IFR reflects no consideration of how notice issues—including the agency's track record of inadequate or failed notice in this exact context—could lead many asylum seekers to face consequences for nonpayment.

Third, the rule sets asylum applicants up to lose their ability to seek asylum altogether by rejecting long-pending applications only after the one-year asylum filing deadline has passed. The

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[3] 91 Fed. Reg. at 22,953, 22,972.

[4] *See* 8 C.F.R. § 103.2(a)(7)(iii) ("rejection" of a filing with USCIS is not appealable).

[5] USCIS has been on notice of these issues due to litigation against the agency challenging its implementation of the annual asylum fee. *See, e.g.*, *Asylum Seeker Advoc. Project v. U.S. Citizenship and Immigr. Servs*., No. SAG-25-03299 (D. Md.), ECF No. 45-1 ¶¶ 17–18 (detailing instances where USCIS's AAF notice has gone to the wrong person or place, including old addresses that have since been updated with USCIS and where applicants never received notice of the AAF from USCIS and only learned they were able to pay the fee because they proactively checked their online portal); *id.* ECF No. 45-15 ¶ 13 (AAF notices were sent to the firm's prior address despite the firm updating its address with USCIS; although the firm's proactive mail forwarding ensured receipt, notices arrived several days late); *id.* ECF No. 72 ¶ 43 (asylum applicant had received no AAF notice from USCIS but when his information was entered into the AAF Questionnaire it indicated his payment was due).

[6] *Id.*; *see also* U.S. Citizenship & Immigr. Servs., *Annual Asylum Fee Questionnaire*, https://my.uscis.gov/accounts/annual-asylum-fee/questionnaire (last visited May 21, 2026).

AILA Doc. No. 26062509. (Posted 6/25/26)

IFR's suggestion that affected applicants may re-file after rejection[7] is illusory on its face. Any applicant subject to the annual asylum fee is an individual whose asylum application has already been pending for at least one year. Thus, the applicants exposed to rejection under the IFR are precisely those who will contend with potential impacts of the statutory one-year bar to filing for asylum if forced to submit a new asylum application after rejection.[8] The rule therefore manufactures a potential procedural dead end: USCIS may reject a long-pending application for nonpayment of the AAF, then point the applicant toward refiling even though the passage of time—attributable to the government's own adjudicatory delay—has already placed that applicant outside the statutory filing window. In practical effect, the IFR converts what it labels a procedural "rejection" into a mechanism for permanently extinguishing asylum claims without adjudication on the merits.

Fourth, the IFR imposes the extraordinary penalty of immediate and potentially permanent termination of asylum-based work authorization. Under the rule, once an asylum application is rejected for nonpayment of the AAF, any employment authorization based on that application terminates immediately, and any pending work-authorization application must likewise be rejected or denied because the asylum application is no longer pending.[9] In practice, this means that each year that passes while asylum applicants wait for USCIS to adjudicate their claims, applicants can abruptly lose the ability to support themselves and their families—not because their claims were denied, but because of a recurring fee-triggered intake disposition. The severity of that consequence is particularly arbitrary given the absence of any grace period, meaningful appeal mechanism, or assurance that the applicant received notice before termination of work authorization occurs. And because applicants whose claims are rejected for nonpayment of the AAF will already have exceeded the one-year asylum filing deadline, the resulting loss of asylum-based work authorization may effectively become permanent under a separate proposed rule barring employment authorization for untimely asylum applications.[10]

Ordinarily, an asylum applicant's employment authorization does not immediately terminate merely because USCIS denies the application or refers the case to immigration court for further adjudication. For purposes of work authorization, then, the IFR makes nonpayment of a $100 fee after 30 days more punitive than a denial of asylum on the merits.

Fifth, the IFR escalates a fee-related "rejection" into a trigger for some of the harshest consequences in the immigration system. The rule's preamble states that once an asylum application is rejected for nonpayment of the AAF, USCIS may place applicants who otherwise lack lawful status into expedited removal or regular removal proceedings.[11] No one who has lived in the United States for over a year and affirmatively applied for asylum should suddenly be subjected to expedited removal, and the few

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[7] *See* 91 Fed. Reg. at 22,957 ("DHS codifies in this rule that, following individualized notice and a 30-day window for online payment, failure to pay the AAF results in rejection of the pending Form I–589. . . . If the [noncitizen] wishes to reapply for asylum, he or she will need to file a new Form I–589, including a new mandatory filing fee as required by 8 U.S.C. 1802.").

[8] *See* 8 U.S.C. § 1158(a)(2)(B) (to apply for asylum, applicant must "demonstrate[] by clear and convincing evidence that the application has been filed within 1 year after the date of the [noncitizen's] arrival in the United States").

[9] *See* 91 Fed. Reg. at 22,957–59.

[10] Another proposed rule would further penalize applicants who apply for asylum outside the one-year filing deadline by barring those applicants from asylum-based work authorization, a compounded harm the IFR fails to consider or justify. *See* Employment Authorization Reform for Asylum Applicants, 91 Fed. Reg. 8,616, 8,618, 8,658–59 (Feb. 23, 2026).

[11] 91 Fed. Reg. at 22,957.

AILA Doc. No. 26062509. (Posted 6/25/26)

courts to have considered the issue agree.[12] Still, DHS is threatening this action and suggesting it will detain everyone placed in expedited removal.[13]

Even where expedited removal is not initiated, the consequences are severe. Applicants would lose their pending affirmative asylum applications entirely and enter removal proceedings with no application for relief pending before the immigration court. Instead of continuing in the non-adversarial affirmative asylum system they voluntarily entered, applicants would be forced to start over in a defensive process against government counsel, often while facing detention and the threat of removal. Because these applicants' asylum cases had already been pending for more than one year before rejection, they would also face the one-year filing deadline when attempting to reapply for asylum in removal proceedings—a result created by the IFR's unlawful use of an intake-based "rejection" mechanism that treats long-pending applications as though they were never filed in the first place. Combined, these procedural infirmities constitute an unconstitutional deprivation of asylum seekers' due process rights.

Sixth, the IFR's fee retention provision is unnecessarily punitive. The IFR applies an intake-based "rejection" framework to asylum applications that USCIS accepted and kept pending for years, while also requiring applicants to repeatedly pay fees simply to maintain their place in line. Applicants have no control over how long USCIS takes to adjudicate their cases, meaning an applicant could pay hundreds of dollars in recurring fees and still lose their case (and their payments) without adjudication.[14] Retaining the initial asylum fee after "rejecting" the underlying application adds an unnecessary financial penalty on top of the IFR's other severe consequences.

II. The IFR Threatens TPS Holders' Ability to Work

The IFR imperils TPS holders' livelihoods and economic contributions by making it difficult, if not impossible, for TPS holders to maintain facially valid Employment Authorization Documents ("EADs") in at least three ways.

First, the IFR fails to reconcile the OBBBA's one-year limit on TPS EAD cards with the TPS statute's guarantee that work authorization remain "effective throughout the period" of TPS.[15] Although the OBBBA limited the maximum validity period of individual EAD cards to 12 months, it did not purport to amend or repeal the TPS statute's protections ensuring work authorization throughout a

[12] *See Make the Rd. New York v. Noem*, No. 25-5320, 2025 WL 3563313, at *25–29 (D.C. Cir. Nov. 22, 2025) (holding that the government's recent attempt to expand the geographical and temporal reach of expedited removal to all persons encountered anywhere in the United States who cannot prove continuous presence for the preceding two years likely violates the Due Process Clause of the Fifth Amendment); *see also E-C-R- v. Noem*, No. 3:25-CV-1230-SI, 2026 WL 821799, at *11 (D. Or. Mar. 25, 2026) (rejecting the government's argument that an asylum seeker "continued to remain in expedited removal" where she entered the United States and was released with a Form I-860 Notice and Order of Expedited Removal and the government did not act on that notice, reasoning that the government's delay was "inconsistent with the statutory framework and purpose of expedited removal").

[13] 91 Fed. Reg. at 22,964 ("The government may incur costs associated with expedited removal proceedings, including mandatory detention of affected [noncitizens] placed in expedited removal and transportation costs.").

[14] The lengthy affirmative asylum backlog and adjudication delays, *see supra* note 2, are made worse by USCIS's recent efforts to pause adjudication of affirmative asylum applications, *see* U.S. Citizenship & Immigr. Servs., PM-602-0192, *Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries* (Dec. 2, 2025). This creates a troubling result: under the IFR, an asylum seeker whose application USCIS has indefinitely chosen not to adjudicate as a policy matter may nonetheless be required to pay hundreds of dollars in annual asylum fees, and, if they miss the 30-day payment deadline, their case may be "rejected" and their work authorization terminated.

[15] 8 U.S.C. § 1254a(a)(2).

AILA Doc. No. 26062509. (Posted 6/25/26)

designation, which has most commonly proceeded in 18-month increments.[16] Indeed, DHS itself acknowledges in the IFR that, "[s]ince the inception of TPS, DHS has treated both TPS beneficiaries and prima facie-eligible TPS applicants as employment authorized continuously during the designation."[17]

Nevertheless, the IFR creates a renewal system that will make it impossible for TPS holders to maintain facially valid EADs for the duration of an 18-month TPS period given USCIS's processing delays. The rule requires TPS holders in 18-month TPS periods to obtain a 12-month EAD and then renew it for the remaining TPS period,[18] even though TPS-related EAD renewals currently take 9–12 months or longer to process.[19] As a result, TPS holders would effectively need to renew their work permits before USCIS even issues them—yet that is not possible as USCIS requires applicants to submit a copy of the current EAD they are trying to renew.

Second, the IFR relies on flawed premises to justify these changes. The IFR claims these changes are needed to prevent TPS holders from retaining valid work permits after TPS ends, but this premise is flawed because TPS-based EADs have historically expired concurrently with the underlying TPS designation.[20]

The IFR also rests on the incorrect premise that current TPS timelines do not create risks of work authorization gaps. In reality, thousands of TPS holders from El Salvador, Ukraine, and Sudan could imminently face challenges establishing their work authorization beginning July 22, 2026, even though their TPS designations remain valid beyond that date. This looming crisis is the result of severe EAD renewal delays and USCIS's recent website update suggesting that 540-day automatic EAD extensions issued for TPS EAD renewals pending on July 22, 2025 could be considered invalid as of July 22, 2026,[21] in violation of 8 C.F.R. § 274a.13(d), which expressly preserved the validity of 540-day automatic extension for TPS EAD renewals filed before October 30, 2025. Many TPS holders filed timely renewal applications more than a year ago but still have not received updated EADs. USCIS's announcement has created confusion amongst TPS holders and their employers as to whether they can rely on their automatic extensions after July 22, 2026, which may lead to devastating gaps in employment authorization in violation of the TPS statute's guarantee of employment authorization "effective throughout" the TPS period.[22]

Third, the IFR goes beyond what OBBBA requires by eliminating any flexibility over how long a TPS EAD can be valid. The OBBBA's "no waiver" language applies only to the new TPS fees; Congress did not similarly prohibit DHS from exercising flexibility in how it implements the one-year EAD

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[16] *See id.* § 1254a(b)(2)(B) (initial designation period may last between 6 and 18 months); *id.* § 1254a(b)(3)(C) (extension periods may be 6, 12, or 18 months); *see generally* Jill H. Wilson, Cong. Rsch. Serv., RS20844, *Temporary Protected Status and Deferred Enforced Departure* 8–30 (Aug. 28, 2025) (describing history of TPS designations).

[17] 91 Fed. Reg. at 22,960.

[18] *Id.* at 22,961.

[19] *See Case Processing Times for Form I-765 Application for Employment Authorization Based on TPS for El Salvador [(c)(19), (a)(12)]*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (last accessed May 21, 2026), https://egov.uscis.gov/processing-times (reporting that 80% of EAD applications for El Salvadoran TPS holders are adjudicated within 12 months).

[20] *Compare* 91 Fed. Reg. at 22,961 (the IFR "helps ensure" TPS holders "do not possess facially-valid EADs based on TPS when the underlying TPS designations no longer exist"), *with, e.g.*, Extension of the Designation of El Salvador for Temporary Protected Status, 90 Fed. Reg. 5,953, 5,954 (Jan. 17, 2025) (explaining that EADs issued pursuant to extension of El Salvador's TPS designation "will be valid through" the end of the extension period).

[21] *See Temporary Protected Status: Employment Authorization Document (EAD) Extension*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (last accessed May 21, 2026), https://www.uscis.gov/humanitarian/temporary-protected-status.

[22] 8 U.S.C. § 1254a(a)(2).

AILA Doc. No. 26062509. (Posted 6/25/26)

validity limit. Yet the IFR treats the one-year limit as an inflexible rule and creates a system that predictably causes work authorization gaps for people with valid TPS status, abandoning decades of practice that allowed TPS holders to maintain EADs valid for the duration of a TPS period.

In short, OBBBA limited the duration of TPS EAD documents—not TPS holders' underlying right to work authorization "effective throughout the period" of the country's TPS designation.[23] By implementing the law in a way that predictably creates renewal barriers, work authorization gaps, and employment instability, the IFR threatens the TPS statute's guarantee of employment authorization for the duration of TPS and departs from decades of TPS practice without adequate justification.

III. The IFR Will Disrupt Settled Reliance Interests and Cause Severe Humanitarian, Economic, and Community Harms

For asylum seekers, TPS holders, and their families and communities, the IFR will destabilize longstanding reliance interests and impose sweeping humanitarian, economic, and community harms.

The IFR upends longstanding reliance interests of asylum seekers, TPS holders, their families, employers, and local communities across the United States. For years, asylum seekers and TPS holders have structured their lives around long-standing regulations, policies, and practices governing access to humanitarian protection and lawful employment. Employers, unions, and local communities have similarly relied on the continued participation of these workers in the U.S. economy. Yet the IFR introduces new procedural hurdles that threaten continued access to humanitarian protection and stable work authorization for both asylum seekers and TPS holders. For asylum seekers in particular, many of whom have had applications pending for years, the IFR attaches harsh consequences to an entirely new recurring fee obligation in a system where asylum applications historically carried no filing fee at all. Yet DHS failed to meaningfully consider applicants' lack of familiarity with such requirements before attaching severe consequences like application "rejection," loss of work authorization, and exposure to removal proceedings.

The economic consequences of these disruptions will be substantial, yet DHS failed to conduct any economic analysis. Asylum seekers and TPS holders who are work-authorized contribute tens of billions of dollars to the U.S. economy each year—contributions the IFR directly jeopardizes. Indeed, conservative estimates associate the arrival of approximately 760,000 working-age asylum seekers between 2021 and 2023 with roughly $200 billion in additional GDP per year—approximately $263,000 per asylum seeker.[24] This wealth flows directly into U.S. cities, business, workers, and consumers. DHS itself has previously recognized that restricting asylum-based work authorization alone could cost tens of billions of dollars in lost annual wages.[25] TPS holders also make major contributions to the U.S. economy: as of January 2025, nearly 1.3 million TPS holders generate about $29 billion in economic activity and pay an estimated $7.8 billion in taxes each year, while approximately 830,000 TPS holders work in key industries

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[23] *Id.*

[24] *See* Michael A. Clemens, Amy Marmer Nice & Natalia Rigol, Comment Letter on Proposed Rule, Employment Authorization Reform for Asylum Applicants at 2–3 (Apr. 7, 2026), https://downloads regulations.gov/USCIS-2025-0370-2638/attachment 1.pdf; *Higher Wages, Increased Employment: The Economic Impact of Asylum Applicants on U.S. Citizen Workers*, WORKPERMITS.US (Apr. 2026), https://data.workpermits.us/economic-effects/; *see also* Phillip Connor, *2+ Million Workers, $100+ Billion Impact: Counting the Overlooked Economic Contributions of Asylum Applicants*, WORKPERMITS.US (Mar. 2026), https://data.workpermits.us/asylum-workforce-report/ (noting that asylum seekers contribute "$33 billion in combined total taxes each year, including $19 billion in federal and payroll taxes and $14 billion in state and local taxes"); *Ending Work Authorization for Asylum Seekers Will Cost Billions*, FWD.US (Apr. 25, 2026), https://www fwd.us/news/asylum-work-permit-rule/ ("People with temporary status, including those with an active asylum claim, pay an estimated $25.7 billion each year in federal, state, and local taxes.").

[25] *See* 91 Fed. Reg. at 8,621.

AILA Doc. No. 26062509. (Posted 6/25/26)

including construction, retail, hospitality, transportation, and manufacturing.[26] Employers across these sectors have long relied on TPS holders and asylum seekers to fill essential workforce needs, particularly in industries already facing persistent labor shortages.[27] Yet DHS failed to conduct any meaningful economic impact analysis before implementing the IFR, claiming—falsely—that its policy merely codifies the OBBBA and does nothing more.[28]

The IFR will also create substantial ripple effects for employers, industries, and local communities nationwide. The IFR will cause employers to lose experienced workers with little warning and incur significant retraining and operational costs, while labor unions will lose members and weaken their ability to enforce workplace standards for all workers, including U.S. citizens.[29] States and local communities will also face increased burdens related to housing instability, emergency healthcare, shelters, and social services as previously self-sufficient workers lose stable access to lawful employment.

The human consequences for impacted individuals and families will be immediate and severe. Many asylum seekers and TPS holders have lived and worked lawfully in the United States for years—often decades—while building careers, raising families, purchasing homes, and integrating into their communities in reliance on longstanding DHS policies and practices governing work authorization and humanitarian protection. The IFR abruptly destabilizes those settled expectations. For asylum seekers, these harms may result from "rejections" unrelated to the merits of their claims, effectively stripping applicants of pending status, work authorization, and access to the affirmative asylum process after years of waiting for adjudication. For TPS holders, they may result from shortened EAD validity periods, renewal delays, and disruptions to longstanding protections. Work authorization interruptions may jeopardize professional licenses and force workers into informal or exploitative labor conditions simply to survive.[30] These harms

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[26] *See Temporary Protected Status protects families while also boosting the U.S. economy*, FWD.US (Apr. 21, 2026), https://www.fwd.us/news/temporary-protected-status-report/.

[27] *See, e.g.*, *People seeking asylum are contributing to the workforce*, FWD.US (Jan. 31, 2026), https://www.fwd.us/news/people-seeking-asylum-are-contributing-to-the-workforce/ ("Of the some 4.5 million people seeking asylum in the United States as of the middle of 2025, roughly 2.3 million adults are already working, helping to fill essential roles in industries facing widespread labor shortages."); *Temporary Protected Status protects families while also boosting the U.S. economy*, FWD.US (Apr. 21, 2026), https://www.fwd.us/news/temporary-protected-status-report/ (at the start of 2025, approximately 830,000 TPS holders were working in the U.S., including 130,000 in construction; 130,000 in wholesale and retail; 120,000 in leisure and hospitality; 110,000 in transportation, warehousing and utilities; 110,000 in business services; and 85,000 in manufacturing).

[28] 91 Fed. Reg. at 22,953 ("Because the rule codifies statutory mandates or procedural processes, DHS estimates minimal incremental cost beyond those imposed by Congress."). The IFR acknowledges in passing that certain asylum seekers who fail to pay the AAF and TPS holders whose work permit validity periods are shortened "may lose wages" and certain employers "may lose productivity," *id.* at 22,964, but it fails to meaningfully examine the nature and scope of these and other likely harms to asylum seekers and TPS holders. *See CASA de Md., Inc. v. Wolf*, 486 F. Supp. 3d 928, 966 (D. Md. 2020) (enjoining certain provisions of rules limiting asylum seekers' access to employment authorization because "DHS simply paid lip service to" the harm the rules would inflict on asylum seekers).

[29] *See, e.g.*, Sasha Rogelberg, *Trump's immigration crackdown is backfiring by hurting the U.S.-born workers it was meant to help, data shows*, FORTUNE (Mar. 10, 2026), https://fortune.com/2026/03/10/trump-immigration-crackdown-backfiring-no-new-jobs-us-born-workers/ (noting that "[t]he data is raising huge red flags that we are losing immigrants of all types that otherwise would be advancing America's economy," and "[a] company unable to find the workers it needs for some roles could shut down operations rather than continuing"); Brief for Am. Fed'n of Lab. & Cong. of Indus. Orgs. et al. as Amici Curiae Supporting Respondents, *Noem v. Svitlana Doe*, 145 S. Ct. 1524 (2025) (No. 24A1079) (detailing the harms to unions from the termination of employment-authorized workers).

[30] *See At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, HUM. RTS. WATCH, at 33–35 (Nov. 12, 2013),

AILA Doc. No. 26062509. (Posted 6/25/26)

will extend to hundreds of thousands of U.S. citizen children and family members who depend on affected workers' income and stability.[31]

Survivors of gender-based violence face heightened risk of harm under this rule. Individuals escaping domestic violence, sexual violence, or human trafficking are disproportionately likely to face housing insecurity—whether they have fled an abusive relationship, relocated to a confidential shelter, or moved repeatedly for their safety.[32] These survivors are therefore more likely to miss time-sensitive notices, and risk losing access to asylum protections they are eligible for and work authorization, both of which are key to establishing safety and security. The IFR fails to account for this housing instability that abusers create and thus penalizes survivors for fleeing harm.

The IFR's unnecessarily punitive approach is especially damaging in its immediate termination of work authorization, the loss of which can unravel a survivor's entire path to safety. For survivors, timely and consistent access to employment authorization is essential: it enables stable housing, medical and mental-health care, legal representation, and the financial independence needed to safely leave abusive or exploitative relationships.

For many asylum seekers, the IFR may ultimately result in return to persecution or removal to unfamiliar third countries. By treating long-pending asylum applications as though they were never filed and forcing applicants into expedited removal or removal proceedings with no pending application for relief, the IFR will prevent many bona fide asylum seekers from ever obtaining adjudication of their claims. DHS does not meaningfully acknowledge this consequence. Although some individuals may still seek withholding of removal or protection under the Convention Against Torture, those forms of relief are narrower and more limited than asylum and do not provide the same stability or pathway to long-term protection in the United States. Under the government's expanding use of third-country removal agreements, some individuals may also be removed to countries where they have no ties or familiarity.

IV. The IFR Fails to Consider Feasible, Less Disruptive Alternatives

DHS failed to seriously consider obvious, less harmful alternatives to the IFR's changes for both asylum seekers and TPS holders, in violation of the APA.[33] For asylum seekers, the agency chose the

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https://www.hrw.org/sites/default/files/reports/us1113_asylum_forUPload.pdf ("Forcing asylum seekers to rely on others for subsistence permits, and even encourages, abusive exploitative relationships.").

[31] Due to backlogs, people seeking asylum have lived in the U.S. for many years before the adjudication of their applications. During these years, many have U.S. citizen children. See Jennifer Van Hook, Michael Fix & Julia Gelatt, *Repealing Birthright Citizenship Would Significantly Increase the Size of the U.S. Unauthorized Population*, MIGRATION POL'Y INST. (May 2025), https://www.migrationpolicy.org/news/birthright-citizenship-repeal-projections. And through their employment, TPS holders support approximately 390,000 U.S. citizen children and 410,000 U.S. citizen adult members of their households. *See Temporary Protected Status protects families while also boosting the U.S. economy*, FWD.US (Apr. 21, 2026), https://www.fwd.us/news/temporary-protected-status-report/.

[32] Domestic and sexual violence as well as human trafficking can be drivers and consequences of housing instability. *See Housing Policy*, Nat'l Network to End Domestic Violence, https://nnedv.org/content/housing-policy/ (last visited May 24, 2026); *Five Facts About Domestic & Sexual Violence and Homelessness*, American Bar Association, https://www.americanbar.org/groups/domestic_violence/Initiatives/five-for-five/five-facts-homelessness/ (last visited May 24, 2026) (finding 38% of all domestic violence victims become homeless at some point in their lifetime, while 64% of trafficking survivors report having experiencing housing instability).

[33] *See Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1511 (D.C. Cir. 1984) ("It is well established that an agency has a duty to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives." (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 47–53 (1983)).

AILA Doc. No. 26062509. (Posted 6/25/26)

harshest possible fee-enforcement approach: rejecting applications, terminating work authorization, and exposing people to removal consequences over missed payments for which they may not have received notice. Although DHS briefly considered alternatives such as denying applications rather than "rejecting" them or holding applications in abeyance pending payment, it rejected those options largely *because* they would preserve greater procedural protections and continued work authorization.[34] For TPS holders, DHS likewise adopted a disruptive approach to work authorization that risks unnecessary gaps in lawful employment and departs from longstanding continuity protections. In doing so, the IFR considered no specific alternatives to the rule it adopted, stating instead that "this rule largely serves to codify the changes that Congress dictated by the passage of [OBBBA]."[35]

In addition to its failure to consider alternatives, DHS also ignored simpler, more reasonable options. For asylum seekers, it could have used late-payment notices, grace periods, requests for missing evidence, notices of intent to deny, or opportunities to cure before rejecting applications or ending work authorization—mechanisms the agency already uses in similar contexts.[36] For TPS holders, DHS could have reconciled the tension between the OBBBA's 12-month EAD rule and the TPS statute's guarantee of employment authorization by committing to processing TPS-related EAD applications within 30 days; issuing Federal Register Notices automatically extending work authorization for TPS holders for the duration of a designation whenever processing delays prevent timely issuance of EADs (including for current TPS holders from El Salvador, Sudan, and Ukraine); and clarifying that existing 540-day automatic extensions remain valid for the full extension period for applicants who filed before October 30, 2025. The agency never meaningfully explains why these less harmful approaches would not work, or why the IFR's destabilizing consequences are necessary.

V. The IFR Unlawfully Bypasses Notice and Comment

DHS unlawfully invoked the APA's narrow "good cause" exception to make the IFR effective immediately without prior notice and comment.[37] That exception is reserved for genuine emergencies where notice-and-comment would be impracticable or contrary to the public interest, not ordinary policy implementation.[38] Yet DHS waited nearly ten months after enactment of the OBBBA to issue the IFR before suddenly claiming that immediate implementation was necessary. An agency cannot create its own urgency through delay and then rely on that manufactured urgency to bypass the APA.

Nor is notice and comment "unnecessary," as DHS claims.[39] The IFR does far more than simply implement statutory fee and EAD duration provisions.[40] In the asylum fee context, USCIS was already collecting the OBBBA-mandated asylum fees well before issuance of the IFR.[41] The rule instead creates sweeping new consequences for nonpayment, including rejection of long-pending asylum applications,

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[34] *See* 91 Fed. Reg. at 22,959 ("a denial in lieu of a rejection could trigger motions processes . . . adding layers of procedure and delay").

[35] *Id*. at 22,969.

[36] *See, e.g.*, 8 C.F.R. § 103.2(a)(8)(ii)–(iv) (asylum applications filed without required evidence may be denied, or alternatively, addressed through a Request for Evidence or Notice of Intent to Deny that gives the applicant an opportunity to respond before adverse action is taken).

[37] *See* 91 Fed. Reg. at 22,953.

[38] *See Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014).

[39] 91 Fed. Reg. at 22,962.

[40] *Cf. id.* (contending, incorrectly, that the IFR merely restates the OBBBA).

[41] *See USCIS Updates Fees Based on H.R. 1*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (released July 18, 2025; last updated Feb. 4, 2026), https://www.uscis.gov/newsroom/alerts/uscis-updates-fees-based-on-hr-1.

AILA Doc. No. 26062509. (Posted 6/25/26)

termination of work authorization, exposure to removal proceedings, and barriers to refiling asylum claims. And in the TPS context, the IFR fails to reconcile the TPS statute guaranteeing "effective" work authorization "throughout the period" of a designation with OBBBA's one-year work authorization cap provisions by establishing a workable system for TPS holders to obtain EADs "effective throughout" any 18-month designation period.[42] This is precisely the kind of complex question that notice-and-comment rulemaking exists to illuminate.

In both contexts, the IFR makes discretionary policy choices with enormous consequences for asylum seekers, TPS holders, and the communities that rely on them—not ministerial statutory updates exempt from public participation. The APA required DHS to provide meaningful notice and an opportunity for public comment before imposing these changes.[43]

IV. Conclusion

For all of these reasons, DHS should withdraw the IFR in its entirety or, at a minimum, withdraw the AAF and TPS provisions.

Respectfully submitted,

Asylum Seeker Advocacy Project (ASAP)
National TPS Alliance (NTPSA)
Advocates for Basic Legal Equality (ABLE)
African Communities Together
Al Otro Lado
Alianza Americas
Alianza Sacramento
American Friends Service Committee (AFSC)
American Immigration Council
Arab American Heritage Council
Asian Americans Advancing Justice-Atlanta
Beyond Survival
Building Skills Partnership
California Healthy Nail Salon Collaborative
California Immigrant Policy Center
Center for Family Representation
Center for Gender & Refugee Studies
Center for Law and Social Policy (CLASP)
Church World Service
Coalition to Abolish Slavery and Trafficking
Communities United for Status & Protection (CUSP)

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[42] *Compare* 8 U.S.C. § 1254a(a)(2) (TPS statute) (providing that employment authorization is "*effective throughout the period* the [noncitizen] is in temporary protected status") (emphasis added), *with* 8 U.S.C. §§ 1803(c)(1), 1811(a) (OBBBA) (not overriding or amending section 1254a(a)(2) but instead providing that any TPS-related "employment authorization . . . shall be *valid*" for a period of no longer than one year, or the duration of the applicant's TPS status, whichever is shorter).

[43] *See* 5 U.S.C. §§ 553(b), 706(2)(D).

AILA Doc. No. 26062509. (Posted 6/25/26)

Dream Project
Florence Immigrant and Refugee Rights Project
Freedom Network USA
Frontera Federation
Grantmakers Concerned with Immigrants and Refugees
Greater Baton Rouge Physical Therapy Clinic
Haitian Bridge Alliance
Hands United
Hope Acts
Houston Immigration Legal Services Collaborative
Human Rights First
Human Trafficking Legal Center
Immigrant Defenders Law Center (ImmDef)
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center (ILRC)
Immigration Appellate Advocacy Clinic, Wayne State University Law School
Immigration Equality
Immigration Equality Action Fund
Innovation Law Lab
International Refugee Assistance Project
Jesuit Refugee Service USA
Justice at Work
Justice for Migrant Women
Labor Council for Latin American Advancement (LCLAA)
Lawyers for Good Government
Legal Services for Children
Louisiana Organization for Refugees and Immigrants
Maine Immigrants' Rights Coalition
Make the Road New York
Massachusetts Immigrant and Refugee Advocacy Coalition
Mobile Pathways
Muslim Advocates
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project
National Partnership for New Americans
NETWORK Lobby for Catholic Social Justice
Northwest Immigrant Rights Project
Oasis Legal Services
Ortiz Law Office, PLLC
Rainbow Railroad
Refugee Advocacy Lab
Refugees International
SAMI Southwest Asylum & Migration Institute
Service Employees International Union (SEIU)
Sisters of Mercy of the Americas – Justice Team

AILA Doc. No. 26062509. (Posted 6/25/26)

South Asian American Justice Collaborative (SAAJCO)
South Asian Network
Tahirih Justice Center
The Advocates for Human Rights
The American Immigration Lawyers Association
The Door - A Center of Alternatives, Inc.
The Workers Circle
U.S. Committee for Refugees and Immigrants
UnidosUS
Unified Asian Communities
Unitarian Universalist Association
Unitarian Universalist Service Committee
Unitarian Universalists for Social Justice
VECINA
We are CASA
We of Action Virginia - Indivisible Arlington
Witness at the Border

AILA Doc. No. 26062509. (Posted 6/25/26)