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

On April 23, 2026

Ms. Samantha Deshommnes  
Division of Humanitarian Affairs  
Chief, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

**RE: ILRC Comment in Opposition to Notice of Proposed Rule Making - DHS Docket No. USCIS-2025-0370; CIS No. 2799-25; RIN 1615-AC67, Employment Authorization Reform for Asylum Applicants (“NPRM”)**

Dear Ms. Deshommnes,

The Immigrant Legal Resource Center (ILRC) submits this comment in strong opposition to the Department of Homeland Security (“DHS”) United States Citizenship and Immigration Services (“USCIS”) NPRM, DHS Docket No. USCIS-2025-0370; CIS No. 2799-25; RIN 1615-AC67, Employment Authorization Reform for Asylum Applicants, published on February 23, 2026. This rule if finalized will severely restrict asylum applicants’ longstanding access to an Employment Authorization Document (“EAD” or “work permit”).

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law and emerging issues, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations supporting in building their capacity to support immigrants and their families who depend on employment authorization to support themselves, secure housing, pay for transportation, and medical care, and participate in the workforce.

More specifically, the ILRC publishes advisories and manuals for legal practitioners in many areas of humanitarian immigration law, including asylum law, which also involve accompanying applications for EADs under the (c)(8) category. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by low-income immigrants of color seeking asylum and immigration benefits, including the employment authorization under the (c)(8) category. It is through this lens that we provide comment on the NPRM.

The NPRM if finalized will not only harm the communities we serve and our mission of advancing immigrant rights, but also undermines our national interest and humanitarian values—those declared decades ago in the Refugee Act of 1980 putting forth a “historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands” and “to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.”<sup>1</sup> The NPRM contravenes the Congressional intent behind the enactment of those laws. The NPRM coupled with current DHS policies and procedures, as further detailed below, effectively nullifies the promise of asylum by depriving applicants of any meaningful ability to survive while their claims are pending.

As such, the ILRC urges DHS to rescind the NPRM.

**I. The NPRM Would Implement Significant Barriers to Work Authorization Making It Extremely Difficult if not Impossible for Many Asylum Applicants to Live in the United States.**

The NPRM drastically changes the process by which asylum seekers access work authorization. A process which has existed for decades will now further limit asylum seekers’ access to work authorization while their asylum applications are pending. The NPRM layers a multitude of barriers that would make pursuing asylum economically untenable, deter applicants from seeking protection in the United States, worsen backlogs, and likely lead to arbitrary denials to work authorization.

**a. Prolonged adjudication timeline.**

Presently, asylum seekers are permitted to apply for an EAD 150 days after their application for asylum is received.<sup>2</sup> Within thirty days of receipt, USCIS must make a decision on the application.<sup>3</sup> The timeline itself demonstrates DHS’s longstanding acknowledgment that it would be unfitting to leave asylum seekers unable to access work authorization any longer than 180 days while the government processes and adjudicates their asylum application.<sup>4</sup>

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<sup>1</sup> Pub. L. No. 96-212, § 101(a), 94 Stat. 102, 102; *see also* 1952 Immigration and Nationality Act, ch. 477, § 243(h), 66 Stat. 163, 214 (1952) (allowing noncitizens to avoid persecution and apply for relief in the United States).

<sup>2</sup> *See* 8 CFR §§ 274a.12(c)(8); 208.7(a).

<sup>3</sup> *See Gonzalez Rosario v. USCIS*, 365 F. Supp. 3d 1156 (W.D. Wash. 2018) (enjoining USCIS from further failing to adhere to the thirty-day deadline for adjudicating EAD applications for asylum applicants).

<sup>4</sup> *Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization*, 59 Fed. Reg. 14,779, 14,780 (proposed Mar. 30, 1994) (describing 150 days “as the period beyond which it would not be appropriate to deny work authorization to a person whose [asylum] claim has not been adjudicated”).

The NPRM intends to extend the 150-day waiting period to 365 calendar days from the date of receipt by USCIS, and to increase the processing time of an initial EAD application from a mandatory 30-day period from receipt to a flexible period of 180 days that DHS can prolong further for “additional background checks or vetting” reasons.<sup>5</sup> The NPRM would effectively more than triple the current 180-day total wait period to at least 545 days for an initial asylum-based EAD. These changes, alone, would force asylum seekers to attempt to survive for a minimum of eighteen months without lawful employment while their asylum applications are pending—an intolerable burden that will force asylum seekers into destitution.

**b. Pause on initial work permits pending an asylum backlog.**

Additionally, the NPRM provides that USCIS would “pause” processing of initial work permits while average affirmative asylum processing times exceed 180 days. Processing would only resume after those averages fall to 180 days for a continued period. The NPRM explains that such a benchmark would take the agency between 14 and 173 years to meet—an extraordinary and delusional timeframe that underscores the unrealistic nature of the proposal.<sup>6</sup>

Requiring individuals to wait years—decades—for a work permit is untenable in a country where the average person’s duration of unemployment lasts anywhere from five to seven weeks.<sup>7</sup> The NPRM leaves vulnerable asylum seekers ineligible for federally-funded public benefits without work permits for extended periods of time and vulnerable to exploitation and risk of deportation to the very country they are being persecuted. This decade to over a century timeline is clearly in bad faith and demonstrates DHS’ intention to outright deter asylum seekers from applying.

**c. New barriers to eligibility.**

DHS also proposes new eligibility barriers and discretionary standards that would transform the work permit process into a partial adjudication of the underlying asylum claim and impose standards that are not required to win asylum for both initial and renewal asylum claims. Under the NPRM, an asylum applicant would not be eligible for an EAD if (a) they applied for asylum more than one year after entering the United States; (b) there is “reason to believe” a criminal bar to asylum applies; (c) the person entered or attempted to enter the United States without inspection; or (d) the person misses an asylum interview, court hearing, or biometrics appointment.<sup>8</sup> The first two criteria require a nuanced legal and factual analyses that usually occur during the adjudication of the asylum application; the second two criteria impose barriers unrelated to whether an applicant ultimately qualifies for asylum. The new criteria will unnecessarily slow down work permit processing and screen out applicants who have bona fide asylum claims. Additionally, these requirements override the scheme Congress envisioned in related legislation.

The proposed eligibility changes would also considerably increase the complexity of preparing and submitting work permit applications by asylum seekers. By introducing new and ultra vires eligibility restrictions and additional determinations tied to an applicant’s immigration history, the NPRM would

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<sup>5</sup> 91 Fed. Reg. at 8619–20, 8699 (“USCIS will have 180 days to adjudicate an initial application for employment authorization, except for those applications requiring additional review for background checks or vetting.”).

<sup>6</sup> *Id.* at 8618–19.

<sup>7</sup> U.S. Bureau of Labor Statistics, *Economic News Release: Table A-12. Unemployed people by duration of unemployment*, (last visited April 4, 2026) <https://www.bls.gov/news.release/empsit.t12.htm>.

<sup>8</sup> 91 Fed. Reg. at 1619-20, 8699. These provisions also provide for limited exceptions.

require applicants, attorneys, and support staff to gather and review substantially more documentation before filing a work permit application. The additional requirements increase the time and resources needed to prepare an application and place undue burdens on legal service providers and community organizations that assist asylum seekers. For organizations that conduct pro se work permit clinics, including the ILRC, the NPRM would make it significantly more difficult to help large numbers of applicants' complete applications in an accurate and efficient manner, because each application would require individualized review of facts and eligibility criteria that cannot easily be addressed through standardized clinic models. Altogether, this would also likely result in more incomplete or incorrectly filed applications, which will then elongate adjudication times and increase delays for both initial and renewal work permits.

These changes contradict DHS's stated goal of reducing backlogs by inserting new, complex adjudications into the work permit process. They are also contradictory to the purported goal of deterring the unsupported claim of frivolous or fraudulent applications. In fact, a recent study by the Brooklyn Law College determined after analyzing 500 asylum claims that asylum applicants are not filing frivolous or fraudulent claims, but rather "people seeking the protection of asylum as they are allowed to do under international and domestic law are being denied for legal technicalities and other reasons not having to do with their credibility."<sup>9</sup> Further, the study revealed that in the "vast majority of cases", "asylum applicants who were denied protection...were considered credible."<sup>10</sup>

**d. Complete discretion to deny even where eligibility criteria are met.**

In addition to the new barriers to eligibility, the NPRM would make the approval of both initial and renewal work permit applications discretionary. Under current regulations, if an asylum applicant meets the eligibility requirements, USCIS lacks discretion in granting work authorization.<sup>11</sup> Under the NPRM, however, USCIS could deny an application at its sole discretion, without identifying any specific factors guiding that discretion in denying an application.<sup>12</sup> The NPRM would thus require applicants to litigate elements of their asylum claims and prove compliance with unrelated requirements in the work permit process, while still permitting USCIS to deny work authorization for unspecified discretionary reasons. The NPRM does not explain how these determinations would work in practice or how applicants and adjudicators are expected to navigate this complex and opaque process.

**e. New reasons to reject asylees' filings and the elimination of the "deemed complete" safeguard.**

The NPRM also adds new technicalities as grounds for rejecting asylees' filings and abolishes the 30-day "application deemed complete" safeguard. The safeguard allows for an asylum application to be treated as filed if USCIS fails to issue a receipt within 30 days. Abolishing this safeguard leaves applicants waiting indefinitely to even start (or be forced to re-start) the 365-day wait before they can apply for a work permit.<sup>13</sup>

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<sup>9</sup> Richard Pietras, *Landmark Study by Anna O. Law Challenges Decision-Making System in U.S. Immigration Courts*, Dec. 17, 2024 (last visited April 9, 2026) <https://www.brooklyn.edu/bc-brief/landmark-study-by-anna-o-law-challenges-decision-making-system-in-u-s-immigration-courts/>.

<sup>10</sup> *Id.*

<sup>11</sup> See 8 CFR 274.a13(a)(1) ("The approval of applications filed under 8 CFR 274.a12(c), *except for 8 CFR 274.a.12(c)(8)*, are within the discretion of USCIS." (emphasis added)).

<sup>12</sup> 91 Fed. Reg. at 8619.

<sup>13</sup> *Id.*

The NPRM claims these changes will help “preserve finite government resources,”<sup>14</sup> but its elimination of the safeguard would only create additional procedural delays and uncertainties for applicants while increasing the number of repeated filings to USCIS as applicants and their attorneys attempt to comply with new technical rules, thereby exacerbating backlogs and processing times.

Moreover, if asylum processing delays are truly a function of limited agency resources, the government’s own budgetary choices call that explanation into question. While attributing backlogs to capacity constraints, DHS has directed approximately \$29 billion of its annual budget toward immigration enforcement through ICE,<sup>15</sup> even as it reduced USCIS’ budget by roughly 23 percent between FY 2024 and FY 2026.<sup>16</sup> At the same time, USCIS is now charging a \$100 fee to asylum applicants—individuals who are generally prohibited from working and lack any lawful means of income—while they wait for adjudication of their asylum application and eventual EAD application, which they may not see approved in their lifetime under this NPRM.<sup>17</sup> This juxtaposition underscores a policy framework that prioritizes enforcement over adjudication, effectively exacerbating delays at the will of DHS while placing additional financial burdens on those already unable to sustain themselves and underscores how USCIS is failing to carry out its core statutory function.

**f. Prompting denial of asylum applications when an asylum applicant applies for a work permit.**

Under the NPRM, USCIS would adjudicate an asylum application faster if the agency finds “derogatory information” in the person’s work permit application.<sup>18</sup> The NPRM never defines “derogatory information” or explains how adjudicators would identify or evaluate it. The NPRM claims this change will improve efficiency but does not explain how it would reduce the asylum backlog. Instead, this provision would divert adjudicatory resources toward cases the agency believes should be denied, leaving long-pending meritorious claims waiting even longer for adjudication.

The NPRM adds 15+ substantive changes to longstanding law and policy governing asylum seekers’ eligibility for work authorization all while making it extraordinarily difficult, if not impossible, for asylum seekers to obtain or maintain a work permit while their claims are pending – all while charging asylum seekers an annual fee for each year they are stuck in the morass of this administrative backlog. DHS claims these sweeping restrictions are necessary to deter fraud, protect national security, and relieve pressure on agency resources, but the NPRM does not substantiate those goals nor explain how curtailing work authorization would meaningfully advance those goals. Rather than reflect reasoned decision-making, the NPRM would instead create conditions so economically untenable that many people with meritorious

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<sup>14</sup> *Id.* at 8655.

<sup>15</sup> Bill Chappell, *How ICE grew to be the highest-funded U.S. law enforcement agency*, NPR, Jan. 21, 2026 (last visited April 9, 2026) [https://www.npr.org/2026/01/21/nx-s1-5674887/ice-budget-funding-congress-trump#:~:text=Immigration%20and%20Customs%20Enforcement%20\(ICE\)%20has%20seen,ICE%20to%20expand%20its%20immigration%20detention%20system](https://www.npr.org/2026/01/21/nx-s1-5674887/ice-budget-funding-congress-trump#:~:text=Immigration%20and%20Customs%20Enforcement%20(ICE)%20has%20seen,ICE%20to%20expand%20its%20immigration%20detention%20system).

<sup>16</sup> Lindsay Koshgarian, *Congress Doubled ICE & CBP Budgets and Cut Legal Immigration*, Institute for Policy Studies, Feb. 9, 2026 (last visited April 9, 2026) <https://ips-dc.org/congress-doubled-ice-cbp-budgets-and-cut-legal-immigration/#:~:text=The%20ICE%20and%20CBP%20budgets,across%20categories%20of%20legal%20immigrati>  
[on](#).

<sup>17</sup> U.S. Citizenship and Immigration Services, *USCIS Updates Fees Based on H.R. 1*, July 18, 2025 (last visited April 9, 2026) <https://www.uscis.gov/newsroom/alerts/uscis-updates-fees-based-on-hr-1>.

<sup>18</sup> 91 Fed. Reg. at 8618.

asylum claims will be deterred from pursuing protection in the United States altogether – which appears to be the main goal of this NPRM and other administration actions intended to curtail the legal right to seek asylum in the United States.

## **II. Asylum Seekers and their Families would Endure Severe Harms under this NPRM.**

For many asylum seekers, the NPRM would prevent asylum seekers from working while their asylum cases are pending. Already, asylum adjudications take years, and with this NPRM many people lawfully seeking protection and their children, including U.S. citizens, would be forced to try to survive without income for a prolonged period.

The NPRM acknowledges in passing that the NPRM would deter some bona fide asylum seekers from pursuing asylum and yet fails to meaningfully examine the nature and scope of the harm to those individuals. In reality, the NPRM would cause numerous predictable and devastating harms for asylum seekers, including: (a) losses in wages and widespread economic ripple effects; (b) impacts on health, well-being, and safety; (c) limited ability to obtain identification and licensing documents; (d) inability to pay for legal representation to prepare an asylum claim; and (e) increased vulnerability to exploitative labor markets, human trafficking, and unsafe living conditions.

### **a. The NPRM would deprive asylum seekers of tens of billions in wages per year and significantly harm the broader economy.**

The NPRM itself estimates that asylum seekers could lose an enormous amount in wages—between \$34.6 billion and \$126.6 billion each year—due to the NPRM’s restrictions on asylum seekers’ ability to work.<sup>19</sup> This estimate, which significantly understates the broader economic harm the NPRM would cause,<sup>20</sup> in itself, warrants rescission of the NPRM. The NPRM would force legally present workers out of lawful employment and deprive them—and the communities and employers that rely on them—of significant economic participation for years rather than conserving resources or improving efficiency. At the same time, the NPRM would also prevent the entry of new workers into the labor market, further constricting workforce supply in many essential industries.

### **b. The NPRM would substantially harm asylum seekers’ health, safety, and well-being.**

Without the ability to work, asylum seekers face heightened risks of housing instability, food insecurity, and inability to access health care, childcare, education, and other essential services. The NPRM would also cause or exacerbate mental health harms for individuals who have already fled persecution and experienced trauma and are attempting to rebuild their lives while awaiting protection in the United States.

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<sup>19</sup> 91 Fed Reg. at 8621.

<sup>20</sup> The NPRM’s economic analysis significantly understates the broader economic impact because it does not account for lost productivity in industries facing persistent labor shortages; costs to businesses that rely on asylum seekers as employees; costs to employers from hiring and training replacement workers; reduced tax contributions; or the broader economic ripple effects of removing workers from the lawful work force. The NPRM assumes that lost wages could simply transfer to other workers if replacement labor is available. But it does not analyze whether such replacement labor exists in sectors already experiencing labor shortages. The NPRM also fails to quantify the loss of tax revenue resulting from reduced employment, even while acknowledging that tax impacts are likely. The NPRM’s economic impact analysis also appears outdated, having been conducted in April and May 2025. *See* 91 Fed. Reg. at 8677–94.

These hardships will have an impact beyond asylum seekers themselves and directly impact children, many who are U.S. citizens. These economic pressures directly affect children's access to basic necessities, including adequate nutrition, healthcare, and educational support. Parents may be unable to afford school supplies, transportation, or childcare, limiting children's ability to fully participate in school and further their social development. In some cases, parents may also have no choice but to live apart from their children in order to secure temporary shelter or informal work opportunities, disrupting family unity and parental caregiving. Over time, these conditions can have serious and lasting developmental and emotional consequences. Prolonged financial instability and uncertainty are associated with increased stress, anxiety, and trauma for both parents and children, undermining family well-being and long-term outcomes.

**c. The NPRM would restrict access to government identification, driver's licenses, and professional licenses.**

Due to the potentially indefinite processing delay of work permits for asylum seekers, the NPRM would cut off many asylum seekers' access to government identification. Work permits are a primary form of government-issued identification for asylum seekers.<sup>21</sup> Without a valid EAD, asylum seekers may be unable to obtain or maintain basic identification needed for daily life and would face barriers to health care, banking services, social services, and local travel within the United States. These barriers are even more severe for children seeking asylum. Asylum seekers often cannot safely obtain government-issued identification from their country of origin, as doing so may require engagement with the authorities they fear and could undermine their claim by suggesting reliance on the government's protection.

The NPRM would also restrict access to driver's licenses, as many states require a valid work permit to obtain or renew a driver's license. As a result, asylum seekers without an initial or renewal work permit may also lose the ability to drive or travel legally, even when driving or travel is necessary to maintain employment, access medical care, or transport children to school and other essential activities. For the same reasons, the NPRM would also restrict qualified asylum seekers' access to occupational and professional licenses.

**d. The NPRM would greatly increase asylum seekers' vulnerability to exploitation, particularly, that of survivors of gender-based violence.**

The NPRM will also increase the likelihood that asylum seekers will face exploitation and abuse at work and at home. Individuals who are barred from lawful employment who are still responsible for supporting their families often face intense pressure to accept unsafe, unstable, or exploitative working or living conditions to provide for themselves and their dependents.

As a result, the NPRM risks driving many asylum seekers into informal or underground employment where labor protections are weaker and workers are more vulnerable to wage theft, coercion, unsafe working conditions, human trafficking, workplace violence and other forms of abuse. Likewise, the financial instability created by prolonged unemployment may force asylum seekers into unsafe housing arrangements

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<sup>21</sup> See *Obtaining an Employment Authorization Document*, Immigration Equality (last accessed Mar. 12, 2026), <https://immigrationequality.org/asylum/asylum-manual/obtaining-an-employment-authorization-document/> (“Many asylees still apply for and obtain EADs, however, because they are a good form of identification to have, and may be necessary in order to obtain other identification such as state issued drivers' licenses or identification cards.”).

or predatory relationships simply to meet basic needs. Rather than promoting integrity or security, the proposed restrictions expose already vulnerable individuals to greater risks of harm.

Moreover, DHS ignores the severe and disproportionate harm it would inflict on survivors of gender-based violence who rely on a work permit in its NPRM—not only for economic reasons, but for safety and survival. Approximately half of all asylum seekers are women and girls who are largely persecuted based on their gender.<sup>22</sup> Asylum seekers also include some of the most vulnerable populations in the world, including individuals who identify as LGBTQ+ and others who have suffered and are fleeing from gender-based violence in their countries of origin.<sup>23</sup>

DHS offers this NPRM seeking to allegedly “enhance...national security” while making it extremely difficult for survivors to access a route to safety. With a work permit, survivors will be more likely to seek justice and safety.<sup>24</sup> On the other hand, without a work permit, survivors will be more likely stay or return to a violent, abusive, or exploitative relationship.<sup>25</sup>

The NPRM fails to address the real issue and instead causes harm to asylum seeker. It claims that it enhances national security is flawed, as it provides no evidence that restricting access to asylum would achieve that goal. In fact, such measures are more likely to make everyone less safe rather than improve security. By further restricting access to employment authorization and identification documents, DHS is acting in bad faith and with apparent malicious intent, effectively forcing asylum seekers into undocumented status and continuing then to funnel them into the immigration enforcement to deportation pipeline.

**e. The NPRM would make it much harder for asylum seekers, including those with Limited English Proficiency (LEP), to obtain immigration counsel and pursue their claims for protection.**

By rendering asylum seekers unable to lawfully work, the NPRM would also severely undermine asylum seekers’ ability to obtain legal representation and pursue their claims.<sup>26</sup> Preparing an asylum claim is notoriously complex and costly, and many asylum seekers rely on lawful employment to afford counsel and gather and prepare the evidence necessary to support their cases.<sup>27</sup>

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<sup>22</sup> TRAC, *A Sober Assessment of the Growing U.S. Asylum Backlog* (Dec. 22, 2022), available at <https://tracreports.org/reports/705/#:~:text=Gender%20and%20Age,See%20Table%205.&text=%20All%20include%20190%2C254%20individuals%20where,persons%20whose%20gender%20was%20known>.

<sup>23</sup> See Migration Policy Institute, *The Missing Link: Connecting Eligible Asylees and Asylum Seekers to Benefits and Services* (2022) at 13, [https://www.migrationpolicy.org/sites/default/files/publications/mpi\\_asylee-asylum-seeker-benefits-2022\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi_asylee-asylum-seeker-benefits-2022_final.pdf).

<sup>24</sup> See Her Justice, *Stories from Immigrant Survivors of Gender-Based Violence: The Impact of Work Authorization* (2023) at 22, available at <https://herjustice.org/wp-content/uploads/2023/11/Her-Justice-Policy-Report-Impact-of-Work-Authorization.pdf>; Mary Ann Dutton, et al., Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal Policy and Implications, 7 GEO. J. ON POVERTY L. & POL’Y 245, 271 (2000).

<sup>25</sup> *Id.*

<sup>26</sup> See *Obtaining an Employment Authorization Document*, Immigr. Equal. (last accessed Mar. 12, 2026), <https://immigrationequality.org/asylum/asylum-manual/obtaining-an-employment-authorization-document/>.

<sup>27</sup> See, e.g., *CASA de Md., Inc.*, 486 F. Supp. 3d at 966 (“It is axiomatic that without being able to work, asylum applicants lack the resources to pursue their claims.”); *Grijalva v. Ilchert*, 815 F. Supp. 328, 332 (N.D. Cal. 1993) (noting that a noncitizen “who is wrongfully denied employment authorization is compelled to rely on friends and

Without income, many asylum seekers will be forced to navigate complex immigration proceedings without legal assistance. This is particularly concerning in asylum proceedings before immigration courts, where applicants must present legal arguments and evidence in an adversarial process against a government attorney and before an immigration judge.<sup>28</sup> In the current enforcement environment, the stakes are even higher: the consequences of losing such cases increasingly include not only deportation to a country where an individual fears persecution, but also removal to third countries where they have no ties and also face serious harm.<sup>29</sup> By making it far more difficult for asylum seekers to earn the income needed to secure legal counsel, the NPRM will predictably force many individuals to confront these life-or-death proceedings alone. The result will not merely be procedural disadvantage—it will be a dramatically increased risk that individuals with valid claims for protection will be removed to countries where they face persecution, torture, or other grave harm.

Further, if individuals with LEP, including non-English speaking and deaf and hard of hearing applicants, are unable to secure legal counsel, they will be required to complete a complex English-language asylum application or application for employment authorization by themselves or seek out a family or friend to interpret or translate. Family or friends may not understand the legal constructs of asylum or definitions to accurately translate legal terminology, thereby potentially creating incorrect interpretations which may impact applicants' claims, benefits, or cause erroneous findings of credibility.

DHS fails to meaningfully acknowledge or address these substantial harms the NPRM would impose on low-income asylum seekers and asylum seekers with LEP.

### **III. The NPRM Fails to Consider the NPRM's Interaction with Other New Policies Restricting Asylum Seekers' Ability to Work Lawfully.**

The NPRM proposes changes in isolation while disregarding the broader policy landscape. DHS does not meaningfully examine how this NPRM intersects with a series of recent immigration policies that already restrict asylum seekers' access to work authorization and asylum. Altogether, these policies make it

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relatives for support, to work illegally and risk deportation or adverse action on his asylum application, or, ultimately, to abandon his application for asylum”); *Ramos v. Thornburgh*, 732 F. Supp. 696, 700 (E.D. Tex. 1989) (“[T]he inability to work for the extended period . . . may compel an applicant to abandon his or her asylum application . . . [and] subject the applicant to even more severe persecution upon return to the country he or she has attempted to flee.”); *United States v. Bazargan*, 992 F.2d 844, 848 (8th Cir. 1993) (noting that an EAD application based on a pending asylum application “is granted routinely, to avoid creating a situation in which the [asylum seeker] must choose either to rely ‘on friends and relatives for support, to work illegally and risk deportation or adverse action on his asylum application, or, ultimately, to abandon his application for asylum’” (quoting *Ramos*, 732 F. Supp. at 699)); *cf. Nat’l Ctr. for Immigrants Rts., Inc. v. Immigr. and Naturalization Serv.*, 743 F.2d 1365, 1369 (9th Cir. 1984) (“The hardship [to immigrants] from being unable to work to support themselves and their dependents, . . . and to pay for legal representation is beyond question.”).

<sup>28</sup> See, e.g., Karen Berberich et al., *Advancing Universal Representation: A Toolkit Module 1: The Case for Universal Representation*, Vera Inst., at 2 (Dec. 2018), <https://vera-institute.files.svcdcdn.com/production/downloads/pdfdownloads/advancing-universal-representation-toolkit-mod1.pdf?dm=1613505619> (explaining the importance of access to counsel in removal proceedings and noting that “only 5 percent of those who won relief between 2007 and 2012 did so without an attorney”).

<sup>29</sup> See Lisa Fernandez, *Trump has a new deportation strategy: fast-tracking third-country removals*, FOX KTVU (Dec. 15, 2025), <https://www.ktvu.com/news/trump-deportation-third-country-removals>.

extraordinarily difficult, if not impossible, for asylum seekers to seek and maintain work authorization while their asylum claims are pending.<sup>30</sup> These recent policies include, but are not limited to:

- A pause on processing all pending asylum applications and all other immigration benefits (including renewals of asylum-based EADs) for individuals from so-called “high-risk” countries;<sup>31</sup>
- New and increased fees to apply for asylum and asylum-based work permits under HR 1, OBBBA, which are required for individuals regardless of their economic circumstances.<sup>32</sup>
- The new OBBBA annual asylum fee;<sup>33</sup>
- The interim final rule eliminating automatic work permit extensions;<sup>34</sup>
- Rules and policies that make it harder for asylum seekers to submit biometrics that are required for obtaining work authorization;<sup>35</sup> and
- Shortened duration of asylum seekers’ work permits from 5 years to 18 months despite policies that have exacerbated backlogs.<sup>36</sup>
- Pretermission of asylum claims based on Asylum Cooperative Agreements (ACAs) and insufficient claims or incomplete asylum applications.<sup>37</sup>

Moreover, the NPRM’s economic and policy analysis is outdated because it was conducted before the passage and implementation of the OBBBA.<sup>38</sup> The OBBBA imposed significant new fees on asylum

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<sup>30</sup> See *Casa de Md.*, 486 F. Supp. 3d at 965 (faulting USCIS for not addressing the economic harm to asylum seekers where a virtually identical set of “rules work[ed] together to erect a series of procedural and financial barriers that render nearly impossible pre-asylum work authorization”).

<sup>31</sup> 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).

<sup>32</sup> Applying for asylum now carries a \$100 initial fee and a further \$100 fee each year the applicant waits for an adjudication, and both fees are subject to an annual inflation adjustment and may not be waived. See 8 U.S.C. §§ 1802, 1808. Starting on July 22, 2025, it costs \$550 to apply for an initial work permit as an asylum seeker. See 8 U.S.C. § 1803(a). Before, there was no fee. In addition, starting on July 22, 2025, the cost for an asylum seeker to renew their work permit increased by \$275. *Id.* § 1810(a); U.S. Citizenship & Immigr. Servs., *G-1055, Fee Schedule, Select a Form for Fee Information: I-765, Application for Employment Authorization*, <https://www.uscis.gov/g-1055?form=i-765> (providing that asylum applicants must pay the following fees to renew their work permits: \$520 plus additional fee of \$275 for applications submitted by mail; and \$470 plus additional fee of \$275 for applications submitted online).

<sup>33</sup> See 8 U.S.C. § 1808.

<sup>34</sup> *Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed. Reg. 48,799 (Oct. 30, 2025).

<sup>35</sup> See, e.g., *Collection and Use of Biometrics by U.S. Citizenship and Immigration Services*, 90 Fed. Reg. 49,062 (Nov. 3, 2025) (expanded biometrics requirements); *Collection of Biometric Data From Aliens Upon Entry to and Departure From the United States*, 90 Fed. Reg. 48,604 (Oct. 27, 2025) (expanded entry/exit biometrics); U.S. Citizenship & Immigr. Servs., Policy Alert PA-2025-28: Clarifying Biometrics for Individuals in Custody (Dec. 5, 2025) (limits biometrics for detainees); U.S. Citizenship & Immigr. Servs., Policy Manual Update: Photo Validity Requirements (Dec. 12, 2025) (restricts photo reuse and self-taken photos).

<sup>36</sup> U.S. Citizenship & Immigr. Servs., Policy Alert PA-2025-27: *Updating Certain Employment Authorization Document Validity Periods* at 2 (Dec. 4, 2025) (“Updates the maximum validity period for initial and renewal EADs from 5 years to 18 months for those admitted as refugees, granted asylum, granted withholding of deportation or removal, for those with pending applications for asylum or withholding of removal[.]”).

<sup>37</sup> See 8 CFR § 1240.11(h); Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 63994, 63995 (Nov. 19, 2019); see also Sirce E. Owen, EOIR, Pretermission of Legally Insufficient Applications for Asylum (Apr. 11, 2025) <https://www.justice.gov/eoir/media/1396411/dl?inline>.

<sup>38</sup> See, e.g., 91 Fed. Reg. at 8677 & n.305 (acknowledging that the data DHS relied on to “support the economic impact estimates for this NPRM” only extend through March 2025); *id.* at 8693 (relying on unemployment and job openings data from April 2025); *id.* at 8678 (“source” for Table 8 analyzing impacted populations is dated April 2, 2025); *id.* at

seekers, including fees for asylum applications and initial work permits. Those provisions have only been in effect for a matter of months, yet DHS now proposes an additional sweeping overhaul of (c)(8) work authorization. DHS has not observed or evaluated the effects of these major statutory changes. It is difficult to overstate how large of an impact the OBBBA fees have already had on the ability of those fleeing persecution to apply for asylum, and consequently for a work permit. Proceeding with another major regulatory intervention before the impacts of OBBBA can be meaningfully analyzed risks intensifying barriers to protection based on an incomplete and outdated analysis.

#### **IV. The NPRM Would Disproportionately Harm Immigrants of Color.**

The U.S. asylum system overwhelmingly serves individuals fleeing persecution in Latin America, the Caribbean, Africa, the Middle East, and Asia.<sup>39</sup> By restricting access to asylum in this way, the NPRM disproportionately harms people of color. The rule’s foreseeable and disproportionate impact on immigrants of color, combined with its deterrent purpose, raises significant concerns that it operates to exclude or burden immigrants based on race and national origin in violation of equal protection principles.

The NPRM acknowledges that many of the individuals who would be affected by the extended waiting periods, pauses, and eligibility requirements (including the one-year deadline) for initial asylum-based work permits are not newly arrived asylum seekers, but people who have lived in the United States for years and previously held valid work authorization through parole programs (such as the Cuba, Haiti, Nicaragua, Venezuela (“CHNV”) Parole Program, CBP One, family reunification parole, or other forms of humanitarian parole), Temporary Protected Status (“TPS”), deferred action, or other lawful statuses.<sup>40</sup> Many of these programs—which are now being dismantled by the current administration—were the primary lawful pathways through which individuals entered or remained in the United States during prior administrations.<sup>41</sup> The NPRM appears designed to target these individuals who entered or remained in the United States through lawful humanitarian pathways in recent years, imposing punitive consequences for seeking asylum after those programs lapse in the hopes that they will depart the United States on their own.

Because these populations overwhelmingly originate from countries in Latin America, the Caribbean, and parts of Africa, the Middle East, and Asia—regions that account for a large share of recent asylum applicants—the rule’s practical effect is to disproportionately deny work authorization to Black, Latino, Middle Eastern, and Asian asylum seekers. This disproportionate burden on immigrants of color is in violation of the equal protection principles of the U.S. Constitution.

#### **V. Conclusion**

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8680–86 (impact estimation analyses for the NPRM, reflected in Tables 9, 10, 11, and 12, were conducted on May 23, 2025); *id.* at 8687–89 (Table 13 earning and net filing impact analysis was conducted on April 21, 2025); *id.* at 8690–92 (Table 14 estimated tax impacts analysis was conducted on April 7, 2025); *id.* at 8693 & n. 322 (using April 2025 unemployment and job openings data); *id.* at 8694 (using February 2025 estimates of U.S. labor force and 2025 General Services Administration mileage reimbursement rate).

<sup>39</sup> See, e.g., Jeanne Batalova, *Refugees and Asylees in the United States*, Migration Pol’y Inst. (Jan. 8, 2026), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states> (Top countries of origin for asylees in FY 2023 include: Afghanistan, China, Venezuela, El Salvador, India, Guatemala, Honduras, Russia, Turkey, and Colombia).

<sup>40</sup> See 91 Fed. Reg. at 8652–53 (acknowledging former TPS, CHNV parole, and Deferred Action for Childhood Arrivals holders often apply for asylum).

<sup>41</sup> TPS holders from El Salvador and Honduras, for example, in order to receive that status must have been present in the United State since 2001 and 1999 respectively.

The Trump Administration has made no secret of its animosity for immigrants and its desire to strip immigrant populations of lawful pathways to permanent immigration status. By erecting barriers that make it economically impossible for applicants to pursue protection, the NPRM restricts access to the asylum system itself, all but ensuring that eligible, vulnerable people will be placed in harm's way whether they decide to stay in the United States or not. The administration's assertion that these measures are necessary to ensure national security is unsupported, arbitrary and fueled by falsehoods and hate. This rule will do nothing to ensure the prosperity of the United States or keep anyone safer; rather it will de-stabilize communities and put asylum-seekers in the impossible position of abandoning their claims for protection or living without means to support themselves as they wait for resolution that could last decades. This is an impermissible and cruel use of the administration's authority and is contrary to both the spirit and stated Congressional intent in providing work authorization for asylum seekers.

For all of these reasons, DHS should withdraw the NPRM in its entirety and abandon this rule altogether.

Respectfully submitted,

The Immigrant Legal Resource Center

**RE: ILRC Comment in Opposition to Agency Information Collection Activities – OMB No. 1615-0067, USCIS Form I-589**

Dear Ms. Deshommes,

The Immigrant Legal Resource Center (ILRC) submits this comment in strong opposition to the United States Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activities – OMB No. 1615-0067, Form I-589 published on February 23, 2026. To the extent the OMB No. 1615-0067 incorporates or relies upon the Notice of Proposed Rulemaking (“NPRM”), DHS Docket No. USCIS-2025-0370; CIS No. 2799-25; RIN 1615-AC67, the ILRC’s comment in opposition to the NPRM is incorporated herein by reference into this comment and is expressly opposed for the same reasons.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law and emerging issues, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations supporting in building their capacity to support immigrants and their families, including asylum seekers.

The ILRC urges USCIS to withdraw the proposed changes to Form I-589 because they are in violation of the PRA, APA, and place a significant burden on the public.

**I. The proposal violates the PRA and the APA.**

The Paperwork Reduction Act (“PRA”) requires that USCIS provide the public notice about proposed information collections to ensure the public can comment on the influence of the collection upon them.<sup>42</sup> Specifically, the PRA provides that “[a]n agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—the agency has published a notice in the Federal Register—setting forth—notice that comments may be submitted to the agency and Director.”<sup>43</sup> However, with respect to OMB No. 1615-0067, USCIS failed to provide how and to whom the public can provide a comment.<sup>44</sup> It is unclear whether the Notice of Proposed Rulemaking, CIS No. 2799-25; DHS Docket No. USCIS—2025-0370 are inclusive of OMB No. 1615—0067. This omission violates the unequivocal language of the PRA and the APA by failing to provide the public with sufficient notice to provide informed comments on the proposed changes. Each proposed revision must have been accompanied by clear instructions for comment and allow the public full

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<sup>42</sup> 44 U.S.C.A. § 3507.

<sup>43</sup> 44 U.S.C.A. § 3507(a)(1)(D); *see also* 5 U.S.C.A. § 553(c) (The APA requires agencies “give interested persons an opportunity to participate in the rule making.”).

<sup>44</sup> 91 Fed. Reg. at 8697; *see also Citizens Telecommunications Co. of Minnesota, LLC v. Federal Commc’ns Comm’n*, 901 F.3d 991, 1015 (8<sup>th</sup> Cir. 2018) quoting *Small Ref. Lead Phase-Down Task Force v. U.S. E.P.A.*, 705 F.2d 506, 549 (D.C. Cir. 1983) (Agencies “cannot bootstrap notice from a comment.”).

opportunity to provide input. Instead, the rule was buried at the end of a NPRM overhauling the asylum system in the United States, without instructions as to submission, and in what seems to be an attempt to insulate the agency from public comment and scrutiny for the same.

**II. The proposal will place a significant burden on individuals applying for asylum and will negatively impact vulnerable community members.**

The proposed changes would significantly increase the complexity of the I-589, imposing additional burdens on asylum applicants, many of whom already face barriers due to language or accessibility, economic status, and access to counsel. This population includes survivors of persecution and trauma, women and girls, LGBTQ+ individuals, people with limited English proficiency (LEP), people with disabilities, and low-income applicants.

The proposed changes include the proposals included in the NPRM and impose the same burdens discussed in our earlier comment. The ILRC, however, emphasizes, again: adding time barriers for asylum seekers does not merely add administrative inconvenience—it creates real barriers to access and risks deterring eligible asylum seekers from seeking protection. Of particular concern, the proposed changes include conditioning access to employment authorization on the requirement that an asylum application be “properly filed” and that the applicant then wait for 365 days before becoming eligible for employment authorization<sup>45</sup>—that is, if USCIS is accepting applications (should the NPRM become final). This requirement is being embedded in an already extensive and ever-changing asylum law, which many asylum seekers may not understand or be able to navigate on their own. As such, legal service providers will be expected to interpret these requirements and ensure compliance—increasing the hours spent on the application and private counsel, passing the cost to unemployed asylum seekers. For many asylum applicants, the reality of the compounding burdens imposed by the proposed changes will likely force many to proceed without counsel, pretermission of their claims, or findings that their applications have been waived or abandoned,<sup>46</sup> as well as extending duration of ineligibility for work authorization. The proposed changes only undermine administrative efficiency, increase the burden on both the administration and the public, and will deprive eligible applicants of their statutory right to seek asylum.

As such, the ILRC urges USCIS to withdraw the proposed changes in their entirety.

Respectfully submitted,

The Immigrant Legal Resource Center

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<sup>45</sup> Red-Line of Instructions for Application for Asylum and for Withholding of Removal, Doc. Identification No. USCIS-2025-0370-0007, U.S. Citizenship & Immigration Services (2025) (last visited April 21, 2026), <https://www.regulations.gov/document/USCIS-2025-0370-0007>; *see also* Red-line of Application for Asylum for Withholding of Removal, Docket No. USCIS-2025-0370, U.S. Citizenship & Immigration Services (2025), (last visited April 21, 2026) <https://www.regulations.gov/document/USCIS-2025-0370-0009>.

<sup>46</sup> *See Matter of C-A-R-R-*, 29 I. & N. Dec. 13, 13 (BIA 2025) (Board of Immigration Appeals found that an Immigration Judge may find an asylum application abandoned or waived should they determine it be incomplete.)

**RE: ILRC Comment in Opposition to Agency Information Collection Activities – OMB No. 1615-0040, USCIS Form I-765**

Dear Ms. Deshommes,

The Immigrant Legal Resource Center (ILRC) submits this comment in strong opposition to the United States Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activities – OMB No. 1615-0040, Form I-765 published on February 23, 2026. To the extent the OMB No. 1615-0040 incorporates or relies upon the Notice of Proposed Rulemaking (“NPRM”), CIS No. 2799-25; DHS Docket No. USCIS-2025-0370 the ILRC’s comment in opposition to the NPRM are incorporated herein by reference into this comment and are expressly opposed for the same reasons.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law and emerging issues, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations supporting in building their capacity to support immigrants and their families, including asylum seekers.

The ILRC urges USCIS to withdraw the proposed changes to Form I-765 because they are in violation of the PRA, APA, and place a significant burden on the public.

**I. The proposal violates the PRA.**

The Paperwork Reduction Act (“PRA”) requires that USCIS provide the public notice about proposed information collections to ensure the public can comment on the influence of the collection upon them.<sup>47</sup> Specifically, the PRA provides that “[a]n agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—the agency has published a notice in the Federal Register—setting forth—notice that comments may be submitted to the agency and Director.”<sup>48</sup> However, with respect to OMB No. 1615-0040, USCIS failed to provide how and to whom the public can provide a comment.<sup>49</sup> It is unclear whether the Notice of Proposed Rulemaking, CIS No. 2799-25; DHS Docket No. USCIS—2025-0370 are inclusive of OMB No. 1615—0040. This omission violates the unequivocal language of the PRA and the APA by failing to provide the public with sufficient notice to provide informed comments on the proposed changes. Each proposed revision must have been accompanied by clear instructions for comment and allow the public full opportunity to provide input. Instead, the rule was buried at the end of a NPRM overhauling the asylum

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<sup>47</sup> 44 U.S.C.A. § 3507.

<sup>48</sup> 44 U.S.C.A. § 3507(a)(1)(D); *see also* 5 U.S.C.A. § 553(c) (The APA requires agencies “give interested persons an opportunity to participate in the rule making.”).

<sup>49</sup> 91 Fed. Reg. at 8697-8698; *see also Citizens Telecommunications Co. of Minnesota, LLC v. Federal Commc’ns Comm’n*, 901 F.3d 991, 1015 (8<sup>th</sup> Cir. 2018) quoting *Small Ref. Lead Phase-Down Task Force v. U.S. E.P.A.*, 705 F.2d 506, 549 (D.C. Cir. 1983) (Agencies “cannot bootstrap notice from a comment.”).

system in the United States, without instructions as to submission, and in what seems to be an attempt to insulate the agency from public comment and scrutiny for the same.

**II. The proposal will place a significant burden and negative impact on asylum seekers applying for an employment authorization document (EAD).**

The proposed changes to the USCIS I-765 form add several questions regarding asylum seekers' entry and how the asylum seeker presented or did not present themselves before DHS. USCIS further adds questions related to asylum seekers' criminal history from *any* country and requires documentation of the same. All of which further impose additional burdens on asylum applicants, many of whom already face barriers due to language or accessibility, economic status, and access to counsel. This population includes survivors of persecution and trauma, women and girls, LGBTQ+ individuals, people with limited English proficiency (LEP), deaf and hard of hearing individuals, and low-income applicants.

Moreover, expanding form requirements for asylum seekers does not merely add administrative inconvenience—it outright deters, if not stops, eligible asylum seekers from seeking protection. Of particular concern, the revisions appear to require applicants to obtain arrest or criminal records from their country of origin, a demand that, for some, can be insurmountable and unsafe. Individuals fleeing government persecution cannot reasonably be expected to request documentation from the very authorities responsible for their harm. The proposal further burdens asylum seekers by failing to provide clear exceptions for such circumstances and imposes an ultra vires secondary evidence or sworn statement requirement where records cannot be obtained.

Additionally, the proposed changes appear to require asylum applicants to consult USCIS's website to determine if they can apply at that time. For asylum seekers with limited internet access or limited digital literacy, language barriers, or disabilities, this reliance on external web guidance further restricts their access and risk of missed opportunities for relief. Overall, the proposed changes are inconsistent with the PRA's burden-minimization mandate and run contrary to the purpose of asylum. As such, the ILRC urges USCIS to withdraw the proposed changes in their entirety.

Respectfully submitted,

The Immigrant Legal Resource Center