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Submitted via Federal eRulemaking Portal

The Honorable Kristi Noem, Secretary of Homeland Security
The Honorable Joseph Edlow, Director of U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: Comment Regarding Notice of Interim Final Rule, *Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed. Reg. 48,799 (Oct. 30, 2025), DHS Docket No. USCIS-2025-0271, RIN 1615-AD05

Dear Secretary Noem and Director Edlow:

We, the Attorneys General of California, Illinois, New York, Colorado, Connecticut, Delaware, Hawai‘i, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, Vermont, Washington, and the District of Columbia (the “States”) submit these comments to oppose the Department of Homeland Security’s (“DHS” or “Department”) Interim Final Rule: *Removal of the Automatic Extension of Employment Authorization Documents* (“Interim Rule”), 90 Fed. Reg. 48,799 (Oct. 30, 2025), DHS Docket No. USCIS-2025-0271, RIN 1615-AD05.

The Interim Rule, which became final upon its publication on October 30, 2025, ends DHS’s policy of automatically extending employment authorization for up to 540 days for many categories of immigrants, such as those with pending asylum applications, who timely file Employment Authorization Document (“EAD”) renewal applications (Form I-765). 90 Fed. Reg. at 48,799. These applicants will no longer receive an automatic extension while the renewal application is pending and, when their EAD expires, will not be authorized to work until U.S. Citizenship and Immigration Services (“USCIS”) issues them a new EAD. While immigrants may apply to renew their EADs 180 days before the expiration date, USCIS continues to face significant backlogs processing Form I-765s, and this reality will harm immigrants and the States.

The Interim Rule also violates the Administrative Procedure Act (APA). First, the Interim Rule was improperly promulgated without notice and comment. The “good cause” and “foreign affairs” exceptions to notice and comment regulations clearly do not apply here.

Second, the Interim Rule is arbitrary and capricious. The Department’s national security justifications for the Interim Rule are unreasonable and the Interim Rule instead functions only to increase the number of individuals subject to removal. The Department relies on faulty logic and tenuous reasoning when it asserts contradictory claims about its capacity to timely process applications and fails to consider alternatives such as increasing staffing.

Finally, the Department has not sufficiently considered the harmful effects on EAD holders and full impacts on States’ residents. The Department fails to sufficiently appreciate that the primary impact of the Interim Rule will be prolonged lapses in work authorization renewals for many of the States’ residents due to bureaucratic delay within USCIS. Moreover, the affected residents are either legally present immigrants or seeking lawful status through the appropriate administrative channels. The lapses will inevitably lead to countless problems for the States’ residents caused by unnecessary and prolonged unemployment, which inevitably leads to general economic instability (insurance, housing and food instability), strains on health (limited access to insurance, avoiding preventative care, worsening health), and forcing many into a “shadow” economy of unauthorized workers.

The Interim Rule also injures the State economies by undermining tax revenue and the significant spending power of many of its residents who support vital industries. The Interim Rule will also increase healthcare costs for the States, require their greater support for nonprofits, and diminish vital law enforcement abilities. Because the Department’s arbitrary and capricious action is both unreasonable and premised on tenuous logic, the Department should withdraw the Interim Rule.

I. Background

In 2016, USCIS established an automatic EAD extension of 180 days to address chronic processing backlogs. *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 81 Fed. Reg. 82,398 (Nov. 18, 2016). Extensions for timely filed renewals were subsequently expanded to 540 days, due to the exacerbated backlogs caused by the Covid pandemic, a USCIS hiring freeze, and an increase in filings. *Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 101,208, 101,216 (Dec. 13, 2024).

Under the Interim Rule, noncitizens who file to renew their EAD no longer receive an automatic extension. 90 Fed. Reg. at 48,800. The Interim Rule eliminates the automatic extension that was previously available to refugees, asylees, those with pending applications for

asylum or adjustment of status, certain Temporary Protected Status (“TPS”) grantees and applicants, H-4 spouses, H-1B visa holders, and Violence Against Women Act (“VAWA”) self-petitioners, among others. *See id.* at 48,803-04.¹ There are limited exceptions to this Interim Rule, including extensions provided by law or through a Federal Register notice for employment authorization related to TPS or by law, such as STEM Optional Practical Training (OPT) EAD renewals filed by F-1 students. *See id.* at 48,800.

USCIS recommends all EAD holders—including those authorized to work incident to status—file renewal applications up to 180 days before their EAD expires, warning that they may experience a temporary lapse in their employment authorization or documentation. 90 Fed. Reg. 48,802. Before a renewal is granted, DHS will conduct background investigations to complete “adjudicative review and related vetting, including resolution of derogatory information identified during the vetting process.” *Id.* at 48,806. According to the Interim Rule, because the screening might not be completed before the initial expiration of an EAD, an automatic extension “poses a security vulnerability that could allow bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public.” *Id.* USCIS will thus review the applicant’s background to purportedly deter fraud and detect noncitizens “with potentially harmful intent” so they can be processed for removal. *Id.* at 48,808.

DHS claims that due to factors “contributing to a high degree of uncertainty,” it cannot estimate the number of renewal EAD applicants who will be affected by the Interim Rule. *Id.* at 48,816.

II. The Interim Rule Violates the Administrative Procedure Act (APA)

A. The Interim Rule was Improperly Promulgated Without Notice and Comment

The Department published the Interim Rule on October 30, 2025, and made it effective immediately. 90 Fed. Reg. at 48,799. This promulgation violates the APA’s procedural requirements of notice and comment and the 30-day waiting period as required by 5 U.S.C. §§ 553(c), (d). The notice and comment procedures “ensure public participation in rulemaking.” *Paulsen v. Daniels*, 413 F.3d 999, 1005 (9th Cir. 2005) (internal citations omitted); *see also United States v. Reynolds*, 710 F.3d 498, 517 (3d Cir. 2013) (explaining that “among the purposes [of notice and comment rulemaking] are (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give

¹ U.S. Citizenship and Immigr. Serv. (USCIS), *Employment Authorization Document*, [https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document#:~:text=Your%20Green%20Card%20\(Form%20I,O%2C%20or%20P%20nonimmigrant](https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document#:~:text=Your%20Green%20Card%20(Form%20I,O%2C%20or%20P%20nonimmigrant) (last visited Nov. 14, 2025).

affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review”) (internal citations omitted). The “due deliberation” of agency regulations will also “foster the fairness and deliberation that should underlie a pronouncement of such force.” *E. Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1251 (9th Cir. 2018) (internal citations and quotation marks omitted). Allowing comments after the Interim Rule becomes effective does not satisfy the notice and comment requirements. *See* 90 Fed. Reg. at 48,799 (allowing the submission of public comments before December 1, 2025, 30 days after the Interim Rule’s effective date on October 30, 2025). In fact, it is “antithetical to the structure and purpose of the APA for an agency to implement a rule first, then seek comment later.” *United States v. Valverde*, 628 F.3d 1159, 1164 (9th Cir. 2010) (citation omitted). Where an interim rule fails to comply with notice and comment, the error is not harmless “if there is any uncertainty at all as to the effect of that failure.” *United States v. Ross*, 848 F.3d 1129, 1133 (D.C. Cir. 2017) (citations omitted). Indeed, “if brute persistence alone could cure a failure to invite comment,” agencies would have no use for the APA and “would have a perverse incentive to disregard the comments they received once they got around to allowing them.” *Id.* (citing *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 95 (D.C. Cir. 2012)).

The Department argues that the Interim Rule is subject to the “good cause” and “foreign affairs” exceptions to notice and comment, 5 U.S.C. §§ 553(b)(B), (d)(3). 90 Fed. Reg. at 48,812. As discussed below, the insufficient rationales the Department provides to justify these exceptions are similar, if not identical, to the arbitrary and capricious justifications and reasoning they posit for the Interim Rule itself. *See infra* Section II.B.

Concerning the good cause exception, the Department states that the automatic extension “poses a security vulnerability that could allow bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public,” but the Department points to a singular “attack by an alien against peaceful demonstrators in Boulder, Colorado,” as support for that argument. *See id.* at 48,813. The Department improperly casts an overly broad net to implicate the good cause exemption, in contravention of case law.² To properly invoke the good cause exemption, the claimed harm must be “demonstrable and immediate--like war, health crisis, or economic collapse.”³ The Department likewise recognizes that “good cause” has been limited to quantifiable threats, such as in the aftermath of the 9/11 attacks (*id.* at 48,812 n.124) or hurricanes (*id.* at 48,812 n.127). One anecdote is insufficient evidence of “demonstrable and immediate” harm at the scale of economic collapse. Further, the Department provides no evidence that the attack would not have occurred in the absence of automatic renewals, or that it would have been detected or prevented

² Miriam R. Stiefel, *Invalid Harms: Improper Use of the Administrative Procedure Act’s Good Cause Exemption*, 94 Wash. L. Rev. 927, 944 (2019), <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=5072&context=wlr> (citing *U.S. Steel Corp. v. U.S. E.P.A.*, 595 F.2d 207, 213 (5th Cir. 1979)).

³ *Id.* (citing *U.S. Steel Corp.*, 595 F.2d at 214).

with additional USCIS vetting. The Department also fails to overcome indisputable evidence that immigrants are less likely to commit crimes than native-born citizens.⁴

In further support of its argument that the good cause exception applies here, the Department claims it is not possible to review and resolve derogatory information flagged during an EAD applicant's background check before an EAD expires. 90 Fed. Reg. at 48,813. As also discussed below, however, the Department has consistently contradicted itself regarding its investigative limitations and available resources. *See infra*, Section II.B.2. EAD applicants undergo vetting at the initial application stage. The Department does not state how often derogatory information is later flagged at the renewal stage, or how many EAD holders who were granted an automatic extension ultimately posed "an imminent threat to the American public." *See* 90 Fed. Reg. at 48,813. Regardless, the "good cause" exception should be "narrowly construed and only reluctantly countenanced." *Ross*, 848 F.3d at 1132 (citations omitted).

Similarly, the Department argues the Interim Rule implicates the foreign affairs exception because an EAD "is inherent to the control of an alien's status, and affects the transfer of goods, including money, across the U.S. border," consistent with the Secretary of State's conclusory Determination that the federal government's control of "the status, entry, and exit" of people and goods across the borders of the United States, "constitutes a foreign affairs function of the United States under the APA, 5 U.S.C. [§] 553." 90 Fed. Reg. at 48,814.⁵ The Secretary's broad Determination that the control of EADs implicates foreign affairs is not sufficient grounds for the exception to apply, as the exception would "become distended" if applied to Homeland Security actions generally, "even though immigration matters typically implicate foreign affairs." *Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980) (citing *Hou Ching Chow v. Attorney General*, 362 F. Supp. 1288 (D.D.C. 1973)). Instead, the requirement is that notice and comment provisions "should provoke definitely undesirable international consequences." *Id.* (emphasis added) (citing S. Rep. No. 752, 79th Cong., 1st Sess. 13 (1945)). The Department does not explain how, or cite anything to substantiate, its allegation that the comment period would disrupt foreign affairs, other than reiterate the bald allegation that the issuance of automatic extensions "has created a migration and national security crisis as demonstrated by the recent events in Boulder, Colorado." 90 Fed. Reg. at 48,814. Again, without explanation of any correlation or legal justification for the exception, the Department blithely concludes that the

⁴ Ran Abramitzky et al., *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-Born, 1870–2020* 1 (Nat. Bureau of Econ. Rsch., Working Paper No. 31440, Mar. 2024), https://www.nber.org/system/files/working_papers/w31440/w31440.pdf (finding immigrants are 30-60% less likely to be incarcerated than people born in the U.S.); *see also* Terry Collins, *No, Immigrants Aren't More Likely to Commit Crimes Than US-Born, Despite Trump's Border Speech*, USA Today (Mar. 1, 2024), <https://www.usatoday.com/story/news/politics/elections/2024/03/01/undocumented-immigrant-crime-rate-not-higher/72788637007> (quoting researchers from Cato Institute, University of Wisconsin, and Stanford University).

⁵ Citing *Determination: Foreign Affairs Functions of the United States*, 90 Fed. Reg. 12,200, 2025 WL 800943 (Mar. 14, 2025).

termination of automatic extensions of EADs “is an important piece in the administration’s effort to restore safety and security for the American people and to bring DHS’ practice into conformity with the President’s foreign policy related to immigration.” *Id.* These speculative and vague claims cannot support a foreign affairs exception.

The Department’s failure to engage in pre-rule notice-and-comment procedures as required by the APA deprived the States of the ability to influence the agencies’ decision. As discussed below, the States have unique interests and perspectives to contribute on issues of national importance and widespread impact, particularly when such policies will cause substantial, and enduring harm to the States’ economies and residents. *See infra* Section IV. If the States had been provided with an opportunity to comment on the Interim Rule before it was promulgated, they would have raised the myriad harmful impacts and unlawful aspects of the Interim Rule before it took effect.

B. The Interim Rule is Arbitrary and Capricious

Agencies are required to engage in “reasoned decision making” under the APA. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983). When an agency changes longstanding policies, it must “show that there are good reasons for the new policy” and it must provide a “detailed justification” for adopting its proposed policy. *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009). To that end, the agency must consider “the advantages and the disadvantages of agency decisions” before acting. *Michigan v. EPA*, 576 U.S. 743, 753 (2015) (emphasis in the original).

The Department’s justifications for the Interim Rule are unreasonable. *State Farm*, 463 U.S. at 52. Also, the Department relies on faulty logic and tenuous reasoning. Finally, the Interim Rule is arbitrary and capricious because the Department has neither fully considered its harmful effects, nor analyzed the full scope of its impact. *Michigan*, 576 U.S. at 753. The Interim Rule, therefore, is arbitrary and capricious and should be withdrawn immediately.

1. The Department’s Justifications for the Interim Rule are Unreasonable

The Department repeatedly cites purported national security concerns for justification of the Interim Rule’s termination of automatic renewals, without explaining how forcing temporary lapses of employment authorization will do anything to protect communities. *See, e.g.*, 90 Fed. Reg. at 48,800. Cynical overuse of the justification without sufficient support, however, undermines its force.

Underemphasized and yet explicit is another motivation for the Interim Rule: a reduction in EAD filings overall. 90 Fed. Reg. at 48,809. Mandating reapplications has become an increasing and universal means for the administration to achieve its main policy objective to

remove as many immigrants as possible.⁶ Notably, the Department is also concerned with eliminating humanitarian parolees and juveniles without regard to dangerousness, thus undermining its purported justification of national security concerns.⁷

Rather than being tailored to address specific national security concerns, the Interim Rule instead weaponizes the bureaucratic backlog and uses it as a means to increase the number of individuals subject to removal. The Department is cognizant of the potential for the Interim Rule to result in lapses in work authorization, during which EAD applicants may not legally work. 90 Fed. Reg. at 48,802-03. But the resulting vulnerability is a feature rather than a bug, as the Department notes twice that any unauthorized employment during such lapses can turn a lawfully present immigrant into a removable alien, and bar them from adjusting their status. *Id.* at 48,803 (“If an alien engages in unauthorized employment, such activity may render the alien removable, render the alien ineligible for future benefits such as adjustment of status, and/or subject the employer to civil and/or criminal penalties.”); 48,817 n.167 (similar). Such thinly veiled threats are meant to deter immigration generally and asylum seekers specifically, as the administration continues to look for any means possible to eliminate them.⁸

As further evidence of the Department’s true aim of reducing the number of present immigrants regardless of national security concerns, the Interim Rule functions as a means to undermine and frustrate those with legally mandated work authorization. By law, refugees and asylees are authorized to be employed without restriction in the United States incident to their status. 8 C.F.R. § 274a.12. Still, the Interim Rule unreasonably produces obstacles to their legal right by manufacturing potential lapses in their best evidence of work authorization.

⁶ See e.g., Grace Yarrow, *Trump Administration Will Require SNAP Participants to Reapply for Benefits*, Politico (Nov. 14, 2025), <https://www.politico.com/news/2025/11/14/trump-usda-snap-participants-reapply-benefits-00651874>; Rebecca Carballo, *Trump Administration Plans to Limit How Long Foreign Students Can Study in the US*, Politico (Aug. 27, 2025), <https://www.politico.com/news/2025/08/27/dhs-aims-to-limit-how-long-foreign-students-can-study-in-the-u-s-00532433> (discussing proposed rule requiring DHS assessment of applications for extensions student visas beyond four-year durations of status); Nahal Toosi, *Trump Team Pauses New Student Visa Interviews As It Weighs Expanding Social Media Vetting*, Politico (May 27, 2025), <https://www.politico.com/news/2025/05/27/trump-team-orders-stop-to-new-student-visa-interviews-as-it-weighs-expanding-social-media-vetting-00370501>.

⁷ See 90 Fed. Reg. at 48,809 n.110 (acknowledging elimination of humanitarian parole programs for immigrants from Cuba, Haiti, Nicaragua, and Venezuela; Temporary Protected Status for Venezuelans; and deferred action for Special Immigration Juveniles, in response to administration policy demands.)

⁸ See *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 18,8333, 2025 WL 315839 (Jan. 20, 2025) (identifying asylum seekers seeking entry at the southern border as an “invasion” against which the states need “protection”), *invalidated by Refugee & Immigr. Ctr. for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d 19 (D.D.C. 2025); see also, Thomas Graham, *US Asylum Seekers in Despair After Trump Cancels CBP One App: ‘Start From Zero Again’*, The Guardian (Jan. 23, 2025), <https://www.theguardian.com/us-news/2025/jan/23/trump-cbp-one-app-cancelled-mexico>.

Under the Interim Rule, the Department notes that “[g]enerally,” those who are required to apply for work authorization must obtain a renewal before the EAD expiration date “or they will lose their eligibility to work in the United States.” 90 Fed. Reg. 48,802. The Interim Rule further provides that those who are authorized to work incident to their status, including asylees and refugees “may have immigration status that confers employment authorization that continues past the expiration date stated on their EADs,” but may nevertheless “wish to renew their EAD to have acceptable evidence of their continuous employment authorization.” *Id.* (emphasis added). The Department warns that even for refugees and asylees, “[f]ailure to renew their EADs prior to the expiration date may result in job loss if such aliens do not have or cannot present unexpired alternate acceptable evidence of employment authorization to show their employers.” *Id.*

The Interim Rule unnecessarily complicates their status further by providing that the Department “will inform other agencies that renewal EAD applicants will no longer receive an automatic extension of their EAD,” and that agencies “should generally no longer consider as valid any unexpired EADs that bear a date that demonstrates that the EAD is expired.” *Id.* at 48,810. In so warning, the Department ignores that the expiration date on an EAD is of no consequence to its validity for refugees and asylees. Indeed, the relevant regulation confirms that the expiration date on an asylee’s EAD “reflects only that the document must be renewed, and not that the bearer’s work authorization has expired.” 8 C.F.R. § 274a.12(a)(5). For its part, the Department claims it is ending the practice of automatically renewing EADs for refugees and asylees to take a “uniform approach” and avoid “the potential for confusion” of employers. 90 Fed. Reg. at 48,807. The Department does not quantify the potential confusion or justify why it cannot at least provide automatic renewals for refugees and asylees, who are authorized to work incident to their status. More telling is the Department’s stated rationale that its goal is to provide a “comprehensive policy solution.” *Id.* The clearest explanation is the Department’s policy is to unnecessarily confuse employers, frustrate immigrants’ ability to work, and push more into dire straits.

2. The Department Relies on Faulty Logic and Tenuous Reasoning

An agency decision is arbitrary and capricious if the explanation for the decision is contrary to the evidence, or its decision is so implausible that it could not be ascribed to a difference in view or be the product of agency expertise.” *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005). Here, the Department’s reasoning is both self-contradicting and implausible. As noted above, the Department claims it cannot review and resolve derogatory information flagged during an EAD applicant’s background check before an EAD expires. 90 Fed. Reg. at 48,813. The Department claims that, as a result of its termination of immigration policies of the prior administration, however, it expects EAD applications to “substantially decline” and does not anticipate that USCIS will be overwhelmed by either initial or renewal

EAD applications. 90 Fed. Reg. 48,809. The Department touts this conclusion as assurance that more adjudicative resources will reduce EAD renewal processing times but ignores that those same resources will be available at the initial stage to address any red flags. The Department's purported need for fuller investigations at the renewal stage, therefore, will be even less necessary moving forward.

The claim also cannot be reconciled with the Department's historic position that it can complete sufficient investigations promptly, given sufficient resources. During the first Trump administration, the Department suggested that the increase in asylum applications and the backlog overwhelmed USCIS Service Center Operations resources.⁹ But the Department admitted in 2020, "the time an officer spends on the actual adjudication may take 'mere minutes' on applications without eligibility or fraud concerns." *Id.* at 37,520. Nonetheless, the Department argued it could not timely process EAD applications because of changes to the agency's vetting procedures and increased background check in the aftermath of the 9/11 terror attacks. 80 Fed. Reg. at 37,508-09. In response, the Department made several changes "to enhance the coverage of security checks, detect applicants who pose risks to national security and public safety, deter benefits fraud, and ensure that benefits are granted only to eligible applicants." *Id.* at 37,509. The Department also created the Application Support Centers "to collect applicant fingerprints, interagency systems checks for all applications and FBI name check screening." *Id.* Additionally, the Department created USCIS's Office of Fraud Detection and National Security (FDNS) "to provide centralized support and policy guidance for security checks and anti-fraud operations." *Id.* The FDNS was subsequently promoted to a Directorate within USCIS's organizational structure, bringing operational improvements. *Id.* at n.22.

Since 9/11, USCIS has collected biographic and biometric information prior to producing EADs and first verifies the identity of the applicant to "determine whether any criminal, national security, or fraud concerns exist." *Id.* As the Department noted in 2020, the instituted changes to biographic and biometric information "improve USCIS's ability to carry out these functions." *Id.* When an adjudicator finds a criminal, national security, or fraud concern during the vetting process, the case is forwarded to the Background Check Unit (BCU) or Center Fraud Detection Office (CFDO) for additional vetting. *Id.* The adjudicator uses information provided from the BCU and CFDO to determine whether an applicant is eligible to receive an EAD, "[o]nce vetting is completed and a finding is made." *Id.* Indeed, immigration laws and regulations "preclude USCIS from granting immigration benefits to aliens with certain criminal or administrative violations." *Id.* at n.24 (citing, e.g., 8 CFR 208.7(a)(1) (aggravated felony bar to employment authorization for asylum applicants)).

In 2020, the administration sought to eliminate the 30-day adjudication timeframe to purportedly avoid having to reduce or eliminate vetting procedures. *Id.* Like its current actions,

⁹ *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, 85 Fed. Reg. 37,502, 37,508 (June 22, 2020).

the Department chose in 2020 to interrupt work authorizations rather than devote more resources to USCIS vetting processes. Instead, the Department sought to eliminate a regulatory deadline because it “believes USCIS requires the flexibility to devote its resources where they are needed to meet seasonal demands, filing surges, and DHS priorities . . .” *Id.* at 37,522. The Department sought an “immediate solution” rather than take the time to hire additional staff. *Id.* Still, the Department acknowledged that, although it preferred not to, maintaining appropriate vetting of initial EAD applications within 30 days timeframe was tenable by diverting significant resources. 85 Fed. Reg. at 37,516. Five years later, instead of hiring more adjudicators, USCIS is firing employees as “non-mission critical personnel” to exacerbate the demands on its vetting ability.¹⁰ In so doing, the Department illustrates that it never seriously considered devoting more resources to vetting processes in 2020, nor does it intend to do so now.

The administration was ultimately unsuccessful in eliminating the 30-day adjudication timeframe. *See Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11, 17 (D.D.C. 2022). Still, the Department has never claimed it is unable to properly vet EAD applicants when processing their initial EAD applications.¹¹ Indeed, the Department strongly pushed back on the suggestion of temporary work permits subject to cancellation if red flags were found during further screening, preferring instead to complete the vetting at the time of initial filing. 85 Fed. Reg. at 37,523. The Department also does not claim it processes initial EAD applications without clearing any red flags.¹² In fact, because it is more efficient to resolve red flags upon initial screening, it does not defer assessment of derogatory information.¹³ Consequently, it cannot quantify outstanding red

¹⁰ Nicole Sganga & Camilo Montoya-Galvez, *Trump Administration Fires Over 400 DHS Employees as Mass Firings Continue*, CBS News (Feb. 16, 2025), <https://www.cbsnews.com/news/trump-administration-fires-over-400-dhs-employees/> (“The cuts include nearly 50 workers at USCIS, which processes a broad class of applications for immigration benefits, including requests for citizenship, green cards, asylum and work permits.”)

¹¹ *See* 85 Fed. Reg. at 37,516 (conceding that, although challenging, necessary vetting for initial EAD processing had been accomplished, albeit in longer than 30 days).

¹² *See* 85 Fed. Reg. at 37,524:

The agency initially scans specifically for indicators of national security concerns and those concerns are vetted immediately without respect to the 30-day adjudication timeframe. The vetting process, when a concern is identified, can be lengthy and sometimes requires consultation with or referral to outside agencies which cannot be completed within the 30-day timeline. Additional vetting also occurs during adjudication, which may warrant investigative action or require additional information[.]

See also, id. at 37,517 (“USCIS processes *all* EAD applications for asylum applicants as quickly as possible, including a careful review of those applications for aliens who may be flagged for additional scrutiny due to national security concerns.”) (emphasis added).

¹³ *See* 85 Fed. Reg. at 37,517 (At the time of initial EAD processing, “officers are able to assess accurately whether a derogatory piece of information actually relates to the applicant, which allows

flags that require further vetting at the time of renewals, thus undermining its primary justification for the Interim Rule.¹⁴ Even so, rather than wait for an EAD renewal application and delay work authorization, any ongoing concerns could be referred to the BCU or CFDO for additional vetting, or to Immigration and Customs Enforcement (ICE) for a potential investigation.¹⁵ The Department does not acknowledge this possibility or suggest that any outstanding red flags exist.

Instead of seeking more resources for initial EAD background checks, the Department opts to leave EAD applicants without a means to support their presence while the vetting process is ongoing. 90 Fed. Reg. at 48,813. The Department justifies this draconian measure as necessary to prevent “bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public.” *Id.* Importantly, the Department fails to define “bad,” “potentially,” “nefarious,” or “imminent,” substituting ambiguity for evidence. Nowhere does the Department address how many EAD holders commit serious crimes, how that rate compares to the general public, or how automatic EAD renewal increases the likelihood of such crimes. Just as astounding is that the Department implicitly assumes that unemployment is the antidote to potential crime when common sense and empirical evidence provides the opposite is true.¹⁶

applicants to receive a decision far more quickly than if any point of concern was routed outside of typical processing for additional scrutiny.”

¹⁴ See 90 Fed. Reg. 48,808 n.98 (acknowledging that in fiscal year 2023, USCIS received over 3.5 million EAD application and completed over 3.4 million applications) (citing https://www.uscis.gov/sites/default/files/document/reports/fy2023_annual_statistical_report.pdf).

¹⁵ See 85 Fed. Reg. at 37,517:

The agency is attempting to move away from these “point in time” checks, but that is something we continue to work toward. These checks, during the adjudication process, allow for referral to the Background Check Unit (BCU) or Center Fraud Detection Office (CFDO) for additional vetting where significant concerns are identified, as well as potential investigation by ICE[.]

¹⁶ See Fredj Jawadi et al., *Does Higher Unemployment Lead to Greater Criminality? Revisiting the Debate Over the Business Cycle*, 182 J. of Econ. Behav. & Org. 448-71 (abstract only) (Feb. 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0167268119301027?via%3Dihub> (establishing empirical evidence of “a robust connection between unemployment and crime”); *Higher Crime Rate Linked to Low Wages and Unemployment, Study Finds*, Ohio State News (Apr. 9, 2002), <https://news.osu.edu/higher-crime-rate-linked-to-low-wages-and-unemployment-study-finds/> (“A new study provides some of the best evidence to date that low wages and unemployment make less-educated men more likely to turn to crime.”) (citing Eric D. Gould et al., *Crime Rates and Local Labor Market Opportunities in the United States: 1979-1997*, 84 Rev. of Econ. and Stat. 1 (Feb. 2002)); Steven Raphael & Rudolf Winter-Ebmer, *Identifying the Effect of Unemployment on Crime*, 44 J. of L. & Econ. 1 (Apr. 2001) (finding “significantly positive effects of unemployment on property crime rates that are stable across model specifications”) <https://www.jstor.org/stable/10.1086/320275?seq=1>;

III. The Department Has Not Sufficiently Considered the Harmful Effects and Full Impact on States' Residents

The Interim Rule will create “an increased risk of loss of work authorization” for applicants and employers despite the Department’s acknowledgement of the importance of employment authorization for the applicants’ livelihoods and their employers’ “continuity of operations and financial health.” 90 Fed. Reg. at 48,817. The obvious result, therefore, is that the removal of legal employees from the workforce will harm States’ residents in numerous ways that the Department has failed to sufficiently consider. The Interim Rule is therefore also arbitrary and capricious because the agency has failed to consider important aspects of the problem. *See Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005) (citing *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43).

A. The Interim Rule will Lead to Rampant Unemployment During Prolonged Processing of EAD Renewal Applications

The Interim Rule will result in extended periods of unemployment for immigrants who await the processing of their EAD renewals. Forty-one percent (approximately 260,000) of those EAD applicants have filed applications for asylum and withholding of deportation or removal.¹⁷ The asylum seekers will not have authorized employment incident to status until after asylum is granted. 8 C.F.R. § 274a.12(a)(5). As of the end of fiscal year 2024, there were 3.6 million pending asylum cases.¹⁸ During this same period, the average wait for an asylum hearing was 1,424 days, about one month short of four years.¹⁹ In 2024, the Department’s Inspector General projected the asylum backlog could double by the end of the decade, which will only delay asylum hearings further.²⁰ Asylum seekers, therefore, will be more dependent on the renewal of their EADs and less able to count on relief from grants of asylum.

Currently, USCIS processes an initial EAD application for asylum seekers in one month because the U.S. District Court for the Western District of Washington enjoined the Department from ignoring the 30-day EAD application processing requirement. *Gonzalez Rosario v. United States Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018).²¹ USCIS, however, currently takes 6.5 months to process 80% of the renewal or replacement EADs for

¹⁷ 89 Fed. Reg. at 24,644 n. 167.

¹⁸ *FY2024 EOIR Immigration Court Data: Caseloads and the Pending Cases Backlog*, Cong. Rsch. Serv. (Jan. 24, 2025), <https://www.congress.gov/crs-product/IN12492>.

¹⁹ *Immigration Court Asylum Backlog*, Transactional Rec. Access Clearinghouse (TRAC) Immigration (Dec. 2023), <https://tracereports.org/phptools/immigration/asylumbl/>.

²⁰ Eric Katz, *The Asylum Backlog Could Double by the End of the Decade Without a DHS Staffing Surge*, Gov’t Exec. (July 8, 2024), <https://www.govexec.com/workforce/2024/07/asylum-backlog-could-double-end-decade-without-dhs-staffing-surge/397886/>.

²¹ *See also Case Processing Times*, USCIS, <https://egov.uscis.gov/processing-times/> (last visited Nov. 14, 2025).

those same applicants—which means that at least one in five asylum seekers will experience an interruption in work authorization during the renewal process, through no fault of their own if the submit their renewal applications 180 days before its expiration date.²² The processing time for 80% of many non-asylum-seekers who seek EAD renewals is already seven to 12 months, all of whom will lose their jobs the moment their EAD expires.²³ At the low end, the Department estimates between 306,000 and 468,000 individuals with EAD renewals would have lapsed in 2024 if not for the rule authorizing automatic renewals and may represent the number that will be affected by the Interim Rule now. 90 Fed. Reg. at 48,816 n.159. There is also a mushroom cloud on the horizon.

From September 27, 2023, until the Interim Rule's effective date on October 30, 2025, many initial and renewal EAD applications for refugees, asylees, recipients of withholding of removal, and applicants for related relief, could be valid for up to five years.²⁴ In fiscal year 2023, which ended on September 30, 2023, USCIS received approximately 633,000 renewal EAD applications for those eligible for automatic five-year extension.²⁵ For those who obtained their initial EAD or renewal between September 27, 2023 and October 25, 2025, therefore, the impact of the Interim Rule will not be fully realized until at least September 27, 2028. The number of renewal applicants after that time, therefore, will skyrocket. Consequently, EAD renewal processing times and the resulting periods of unemployment of renewal applicants will continue to grow.

B. The Interim Rule will Exacerbate Limited Access to Legal Services

By injecting unnecessary delays into the EAD renewal process, the Interim Rule both undermines work authorization and seekers' ability to obtain legal protections. For example, work authorization lapses will result in fewer asylum seekers with the financial resources to hire legal counsel to navigate an increasingly hostile immigration bureaucracy.²⁶ From 2013 to 2024, immigrants with counsel were 4.6 times more likely to remain in the United States through

²² *Id.*

²³ *Id.* (reflecting seven months for those with pending applications for adjustment of status and TPS holders from El Salvador, and 12 months for H-1B visa holders.)

²⁴ *Some EADS Can be Valid for Up to 5 Years*, USCIS, <https://www.uscis.gov/save/current-user-agencies/news-alerts/some-eads-can-be-valid-for-up-to-5-years#:~:text=SAVE%20Contact%20Us-,SAVE,11/16/2023> (last visited Nov. 14, 2025).

²⁵ *Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 24,628, 24,644 n.168 (Apr. 8, 2024).

²⁶ Diana Roy, *How the U.S. Asylum Process Works*, Council on Foreign Rel. (Feb. 19, 2025), <https://www.cfr.org/backgrounder/how-us-asylum-process-works> (describing the challenge and complexity of asylum cases); see also Philip Bump, *Most Migration to the U.S. Costs Money. There's a Reason Asylum Doesn't*, Wash. Post (Apr. 30, 2019), <https://www.washingtonpost.com/politics/2019/04/30/most-migration-us-costs-money-theres-reason-asylum-doesnt/>.

grants of asylum or a termination of their removal cases than those without counsel (14% versus 64%).²⁷ By contrast, in 2017, 90% of those without legal representation were denied asylum in immigration court while only 54% of those with legal representation were denied.²⁸ The difference could be as routine as being unaware of the one-year deadline for filing an asylum, and having an attorney that is familiar with exceptions to the deadline in order to preserve an asylum seeker's eligibility.²⁹ Unrepresented individuals are also more likely to be affected by appeals, delays in their claims, and more unreliable adjudications.³⁰ Access to counsel will only become more difficult for those unable to work and pay for representation.

Representation by pro bono counsel is not a feasible option. In 2022, only 2% of representation in immigration court was pro bono counsel,³¹ when there were 435,000 proceedings in immigration court.³² The number of immigration proceedings has since more than doubled,³³ making access to available pro bono counsel a near impossibility. Even counsels for hire are stretched thin, unavailable, or wary of retaliation.³⁴ Without the ability to work, many will be unable to afford the few available counsel, and many meritorious cases may be denied.

²⁷ Ingrid V. Eagly et al., *Access to Counsel in Immigration Court, Revisited*, 111 Iowa L. Rev. 1, 44-45 (2025), https://ilr.law.uiowa.edu/sites/ilr.law.uiowa.edu/files/2025-11/A1_Eagly_0.pdf; see also Lenni B. Benson et al., *Legal Representation in Immigration Courts: The Impact of Randomly Assigned Observers* (July 27, 2025), <https://wwws.law.northwestern.edu/research-faculty/events/colloquium/law-economics/documents/immigration-project-model.pdf> (finding those with legal representation are 3 to 8 times more likely to be granted permission to remain in the United States).

²⁸ Bump, *supra* note 26.

²⁹ See Benson, *supra* note 27, at 2.

³⁰ Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 Univ. of Pa. L. Rev. 1, 47-75 (Dec. 2015), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review.

³¹ Atenas Burrola Estrada, *Finding a Pro Bono Immigration Attorney is Harder Than Ever*, Am. Immigr. Council (May 19, 2023), <https://www.americanimmigrationcouncil.org/blog/find-pro-bono-immigration-attorney/>.

³² *Outcomes of Immigration Court Proceedings*, TRAC Immigr. (through Aug. 2025); <https://tracreports.org/phptools/immigration/closure/>.

³³ *Id.* (showing 916,000 in fiscal year 2024; and 880,000 in fiscal year 2025, up through August 2025).

³⁴ See, e.g., Alice Finno, *As Cases Surge, the Few Immigration Attorneys in Vermont Struggle to Keep Pace*, VTdigger (Aug. 5, 2025), <https://vtdigger.org/2025/08/05/as-immigration-cases-surge-the-few-immigration-attorneys-in-vermont-struggle-to-keep-pace/>; Mary Sanchez, *In Kansas City, Most Immigrants Facing Deportation Receive No Legal Counsel*, The Beacon (July 3, 2025), <https://thebeaconnews.org/stories/2025/07/03/immigration-court-kansas-city-deportation-legal-counsel/>; Mike Spector et al., *How Trump's Crackdown on Law Firms is Undermining Legal Defenses for the Vulnerable*, Reuters (July 31, 2025), <https://www.reuters.com/investigations/trumps-war-big-law-leads-firms-retreat-pro-bono-work-underdogs-2025-07-31/>.

C. The Interim Rule will Lead to Housing and Food Insecurity

Unemployed immigrants without a steady paycheck face rising housing costs that can lead to housing insecurity.³⁵ Asylum seekers, in particular, often face severe housing and financial insecurity while they wait for work authorization.³⁶ Many asylum seekers who cannot lean on the support of family or friends in a new country may become homeless without work authorization.³⁷ They can also have a difficult time adjusting to homeless shelters due to linguistic and other barriers.³⁸ Generally speaking, homelessness “is closely connected to declines in physical and mental health; homeless persons experience high rates of health problems such as HIV infection, alcohol and drug abuse, mental illness, tuberculosis, and other conditions.”³⁹ And with ironic cruelty, unstable housing will push more unaccompanied children into the workforce.⁴⁰

Immigrants are generally at a higher risk of food insecurity.⁴¹ The risk is especially acute during periods of economic uncertainty and limited eligibility for safety net and federal nutrition programs.⁴² Displaced populations worldwide are among the most vulnerable to food insecurity when their access to employment is limited.⁴³ Studies only underscore the common sense conclusion that immigrants with limited or no income suffer more hunger, which the Rule will only exacerbate.⁴⁴

³⁵ *Stranded Without Help: LA’s Homeless Migrants*, Weingart Ctr. (Sept. 25, 2023), <https://www.weingart.org/weingart-blog/stranded-without-help-las-homeless-migrants>.

³⁶ Human Rts. First, *Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families* (Apr. 29, 2019) <https://humanrightsfirst.org/library/callous-and-calculated-longer-work-authorization-bar-endangers-lives-of-asylum-seekers-and-their-families/>.

³⁷ *Id.*

³⁸ Ted Hesson, *Why So Many Asylum Seekers Come to America and Wind Up Homeless*, Vice (May 12, 2016), <https://www.vice.com/en/article/why-so-many-asylum-seekers-end-up-homeless/>; see also *Vulnerable to Hate: A Survey of Bias-Motivated Violence Against People Experiencing Homelessness in 2016-2017*, Nat’l Coal. for the Homeless, 9 (Dec. 2018), *hate-crimes-2016-17-final_for-web2.pdf* (recognizing intensified perils for non-English-speaking immigrants).

³⁹ *Homelessness as a Public Health Law Issue: Selected Resources*, The Ctrs. for Disease Control and Prevention (CDC) (July 10, 2024), https://www.cdc.gov/phlp/php/publications/homelessness.html?CDC_AAref_Val=https://www.cdc.gov/phlp/publications/topic/resources/resources-homelessness.html.

⁴⁰ *Id.*

⁴¹ Nasser Sharareh et al., *Food Insecurity Disparities Among Immigrants in the U.S.*, 2 AJPM Focus 3, Sept. 2023, at 2 n.9-11, [https://www.ajpmfocus.org/article/S2773-0654\(23\)00050-0/fulltext](https://www.ajpmfocus.org/article/S2773-0654(23)00050-0/fulltext).

⁴² *Id.* at 2.

⁴³ Glob. Network Against Food Crises, *2024 Global Report on Food Crises* 19 (Apr. 24, 2024), <https://www.fsinplatform.org/sites/default/files/resources/files/GRFC2024-full.pdf>.

⁴⁴ Sigrun Henjum et al., “*I Worry If I Will Have Food Tomorrow*”: A Study on Food Insecurity Among Asylum Seekers Living in Norway, 19 BioMed Cent. (BMC) Pub. Health 592 (May 17, 2019),

D. The Interim Rule will Further Limit Access to Insurance and Negatively Impact Residents' Health

Lapses in employment caused by the Interim Rule will prevent many from keeping health insurance, paying for insurance, or simply paying for preventative measures. Consequently, many will suffer adverse physical health consequences. In 2023, 18% of lawfully present immigrant adults were uninsured.⁴⁵ Provisions in the 2025 tax and budget law will further limit health coverage eligibility for many lawfully present immigrants.⁴⁶ Without employment and employer-sponsored healthcare, many more will be unable to access or afford health insurance, which directly correlates with health outcomes.⁴⁷

Stress and environmental factors stemming from poverty have a negative impact on health.⁴⁸ The food insecurity resulting from interrupted employment is also a key contributor to hypertension, asthma, obesity, and diabetes.⁴⁹ Poor adults are five times as likely as those with incomes above 400 percent of the federal poverty level to report being in poor or fair health.⁵⁰ More distressing, children in poor families are more than four times as likely to be in less than very good health than children in affluent families.⁵¹ And the health consequences of childhood poverty can last a lifetime.⁵²

Mental health will also suffer because of the Rule. The administration's restrictive policies in general have led to deepening anxiety and fear among immigrants of all statuses,

<https://bmcpublichealth.biomedcentral.com/counter/pdf/10.1186/s12889-019-6827-9.pdf> (citing studies regarding the United States).

⁴⁵ *Key Facts on Health Coverage of Immigrants*, Kaiser Fam. Found. (KFF) (Sept. 30, 2025), <https://www.kff.org/racial-equity-and-health-policy/key-facts-on-health-coverage-of-immigrants/>

⁴⁶ *Id.*; *Potential Impacts of 2025 Budget Reconciliation on Health Coverage for Immigrant Families*, KFF (Sept. 10, 2025), <https://www.kff.org/racial-equity-and-health-policy/potential-impacts-of-2025-budget-reconciliation-on-health-coverage-for-immigrant-families/>.

⁴⁷ See Karen Feldscher, *Health Insurance Saves Lives, Studies Suggest*, Harv. T.H. Chan Sch. of Pub. Health (Nov. 12, 2025), <https://hsph.harvard.edu/news/health-insurance-saves-lives-studies-suggest/>; Jacob Goldin et al., *Health Insurance and Mortality: Experimental Evidence from Taxpayer Outreach*, Nat'l Bureau of Econ. Rsch. (NBER) Working Paper No. 26533 (Dec. 2019), <https://www.nber.org/papers/w26533>; Steffie Woolhandler, MD & David U. Himmelstein, *The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly?*, *Annals of Internal Med.* (June 27, 2017), <https://www.acpjournals.org/doi/10.7326/M17-1403>.

⁴⁸ Dheuv Khullar & Dave A. Chokshi, *Health, Income, & Poverty: Where We Are & What Could Help*, *Health Aff.* (Oct. 4, 2018), <https://www.healthaffairs.org/content/briefs/health-income-poverty-we-could-help>.

⁴⁹ *Id.*; see also Sharareh et al., *supra* note 41, at 2 n.3–7.

⁵⁰ *Id.*

⁵¹ *Overcoming Obstacles to Health in 2013 and Beyond*, Robert Wood Johnson Found., 20 (2013), <http://www.rwjf.org/content/dam/farm/reports/reports/2013/rwjf406474>.

⁵² *Id.*

including 50% of lawfully present immigrants.⁵³ Forty percent of all immigrant adults say they have experienced negative health impacts since January 2025 due to immigration-related concerns.⁵⁴ Families face chronic stress related to “legal uncertainty, limited access to services, and fear of immigration enforcement.”⁵⁵ The Interim Rule will make these issues worse because financial stability and employment are intrinsically related to mental health.

The inability to work can take a “physical and emotional toll” on a person.⁵⁶ Immigrants’ physical pain, worry, sadness, stress, and anger is exacerbated by unemployment and prolonged food insecurity.⁵⁷ Long-term unemployment also leads to greater incidences of mental illness, especially depression and anxiety disorders.⁵⁸ Unemployment, job insecurity, and financial hardship can ultimately lead to suicidal behaviors.⁵⁹ Conversely, having more income increases access to nutritious food and services that can reduce the stress of everyday challenges.⁶⁰ And for asylum seekers especially, employment can ameliorate psychiatric symptoms, serve a protective function, reduce stress and anxiety, and “increase a sense of self-agency.”⁶¹

⁵³ See *Immigrants Report Rising Fear, Negative Economic and Health Impacts, and Changing Political Views During the First Year of President Trump’s Second Term*, KFF (Nov. 18, 2025), <https://www.kff.org/racial-equity-and-health-policy/immigrants-report-rising-fear-negative-economic-and-health-impacts-and-changing-political-views-during-the-first-year-of-president-trumps-second-term/>.

⁵⁴ *Id.*

⁵⁵ Lisa Fortuna et al., *Special Report: U.S. Immigration Policy and the Mental Health of Children and Families*, 60 Psych. News 8 (July 25, 2025), <https://www.psychiatryonline.org/doi/epub/10.1176/appi.pn.2025.08.8.19>.

⁵⁶ “At Least Let Them Work” *The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, Hum. Rts. Watch, (Nov. 12, 2013), <https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united>.

⁵⁷ Nan Dou et al., *Food Insecurity and Mental Well-Being in Immigrants: A Global Analysis*, 63 Am. J. of Preventative Med. 2, at 302 (2022), <https://www.sciencedirect.com/science/article/pii/S0749379722001234#bib0012>.

⁵⁸ Olivera Batic-Mujanovic et al., *Influence of Unemployment on Mental Health of the Working Age Population*, Mater Sociomed, U.S. Nat’l Lib. of Med., Nat’l Inst. of Health (June 29, 2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5544462/pdf/MSM-29-92.pdf>.

⁵⁹ Sharna Mathieu et al., *The Role of Unemployment, Financial Hardship, and Economic Recession on Suicidal Behaviors and Interventions to Mitigate Their Impact: A Review*, 10 Frontiers in Pub. Health, Art. 907052 (July 6, 2022), <https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2022.907052/full>; see also Brett Whysel, 3 *Vicious Cycles: Links Among Financial, Physical and Mental Health*, Forbes (June 27, 2018), <https://www.forbes.com/sites/brettwhysel/2018/06/27/3-vicious-cycles/#79edc7bb540d> (finding financial stress is the second most common cause of suicide).

⁶⁰ Robert Wood Johnson Found., *supra* note 51, at 4.

⁶¹ Debbie C. Hocking et al., *Mental Disorders in Asylum Seekers: The Role of the Refugee Determination Process and Employment*, 203 J. Nerv. Ment. Dis. 1, 28–32 (Jan. 2015), https://journals.lww.com/jonmd/abstract/2015/01000/mental_disorders_in_asylum_seekers__the_role_of.7.aspx.

Many who migrate to the United States have already faced significant traumatic experiences. Indeed, refugees and asylees have suffered extreme harm that rises to the level of persecution in their home country or live under the threat of such persecution in the future. *See* 8 U.S.C. §§ 1101(a)(42), 1158. The Center for Victims of Torture previously estimated that 44% of asylum seekers, asylees, and refugees in the United States were survivors of torture.⁶² Sadly, the Center warns that many in immigration detention in the United States may also be subjected to torture and other ill-treatment.⁶³ In any event, immigrants are at high risk of developing mental illness and anxiety from past trauma and from fear of potential consequences of immigration enforcement within the United States.⁶⁴

Additionally, prolonged periods awaiting approval of asylum claims already result in elevated risks of mental disorders, diminished psychological well-being, and reduced quality of life.⁶⁵ These effects can be exacerbated when employment is prohibited.⁶⁶ For those without work authorization during those prolonged waiting periods, mental health is at serious risk.

⁶² Craig Higson-Smith, *Updating the Estimate of Refugees Resettled in the United States Who Have Suffered Torture*, Ctr. for Victims of Torture (Sept. 2015), https://www.cvt.org/wp-content/uploads/SurvivorNumberMetaAnalysis_Sept2015_0.pdf; *Services for Survivors of Torture*, Dep't of Hum. Serv., Off. of Refugee Resettlement (Dec. 11, 2023), <https://acf.gov/orr/programs/refugees/services-survivors-torture>.

⁶³ *Immigration Detention May Constitute Torture & Ill-Treatment*, Ctr. for Victims of Torture (July 21, 2023), <https://www.cvt.org/what-we-do/project-archive/immigration-detention-must-end/immigration-detention-may-constitute-torture-ill-treatment/>; *see also* Valerie Michelle Garcia, *Torture by DHS and ICE Officers: Detention Centers Running Afoul in California and New Mexico*, *Immigr. & Hum. Rts. L. Rev.* (Jan. 14, 2024), <https://lawblogs.uc.edu/ihr/2024/01/14/torture-by-dhs-and-ice-officers-detention-centers-running-afoul-in-california-and-new-mexico/>.

⁶⁴ Piyal Sen, *The Mental Health Needs of Asylum Seekers and Refugees – Challenges and Solutions*, 13 *BJPsych Intl.* 2 (May 1, 2016), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/8C1356EF223782C32424FC60A6E3B0C7/S2056474000001069a.pdf/the-mental-health-needs-of-asylum-seekers-and-refugees-challenges-and-solutions.pdf>; *see also* Myriam Vidal Valero, *U.S. Immigration Policy: Mental Health Impacts of Increased Detentions and Deportations*, 56 *Am. Psych. Ass'n.* 6 (Sept. 1, 2025), <https://www.apa.org/monitor/2025/09/mental-health-immigration-enforcement> (noting psychological toll of fear of detention and deportation compounding lingering effects during migration); India J. Ornelas et al., *The Health of Undocumented Latinx Immigrants: What We Know and Future Directions*, 41 *Ann. Rev. of Pub. Health*, 41, 289–308 (2020), <https://www.annualreviews.org/docserver/fulltext/publhealth/41/1/annurev-publhealth-040119-094211.pdf?expires=1763506139&id=id&accname=guest&checksum=6B335C674CE56A622D146CE44925CC8C> (noting restrictive and punitive immigration policies are associated with increased rates of depression, anxiety, posttraumatic stress disorder (PTSD), and substance use.)

⁶⁵ Aleena Shahzad et al., *The Psychological Impact of Spending a Prolonged Time Awaiting Asylum*, 16 *Eur. J. of Psychotraumatology* 1, Art. 2506189 (June 10, 2025), <https://www.tandfonline.com/doi/epdf/10.1080/20008066.2025.2506189?needAccess=true>.

⁶⁶ *Id.* at 2; *see also* B. Shaw Drake, Hum. Rts. First, *In the Balance Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems* 13 (Apr. 2016) <https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-In-The-Balance.pdf> (extended delays in adjudicating claims—and the

E. The Interim Rule will Push More Unauthorized Workers into Dangerous and Exploitative Employment

Denied an avenue to work lawfully, many immigrants without work authorization will seek work in an underground “shadow” economy.⁶⁷ For survival, many will seek work in exploitative low-paying jobs that lack of safety protections and include violence by supervisors, and payroll irregularities, all without legal protections.⁶⁸ Unauthorized employees were already more likely to endure labor abuses, including harassment and violence.⁶⁹ They now have little incentive to report abuses as USCIS recently ended a program that protected whistleblowers.⁷⁰

In a landmark study on labor abuses, 84.9% of unauthorized immigrant workers reported not being paid time-and-a-half for their overtime hours, and 37.1% of unauthorized immigrant workers had been victims of minimum-wage violations in the week prior to their being surveyed.⁷¹ By comparison, 21.3% of surveyed immigrant workers with work authorization reported being victims of wage violations.⁷²

Despite the general reluctance to report abuses, several have been documented. For example, in California’s garment industry, which includes some of America’s “lowest-paying, arduous jobs” and includes those most victimized by employers, labor officials found violations

resulting uncertainty in asylum seekers’ futures—are associated with psychological distress ‘above and beyond the impact of traumatic events.’”).

⁶⁷ See Leslie Berestein Rojas, *Immigrants a Largely Hidden Segment of L.A.’s Homeless Population*, KQED (Sept. 23, 2016), <https://www.kqed.org/news/11100554/immigrants-a-largely-hidden-segment-of-l-a-s-homeless-population> (nonprofit workers encounter homeless immigrants as a “shadow” population within Los Angeles’ growing homeless ranks).

⁶⁸ *Psychological Science and Immigration Today*, Am. Psych. Ass’n, APA Task Force on Immigr. and Health (Aug. 2024); <https://www.apa.org/pubs/reports/psychological-science-immigration-today.pdf>; Luz Garcini et al., *Lessons Learned from Undocumented Latinx Immigrants: How to Build Resilience and Overcome Distress in the Face of Adversity*, Am. Psych. Ass’n, Psych. Serv. 19, 62–71 (2022), <https://psycnet.apa.org/manuscript/2022-05629-001.pdf>.

⁶⁹ Daniel Costa, *California Leads the Way*, Econ. Pol’y Inst. (Mar. 22, 2018) <https://www.epi.org/publication/california-immigrant-labor-laws/>.

⁷⁰ Elias Schisgall, *USCIS Quietly Ends Program to Shield Workers Reporting Abuse*, Bloomberg L. (July 17, 2025), <https://news.bloomberglaw.com/daily-labor-report/uscis-quietly-ends-program-to-shield-workers-reporting-abuse>.

⁷¹ *Id.*

⁷² Leo Gertner, *Fact Sheet: Billions Are Lost to Wage Theft Every Year—New Jersey Must Act to Protect Workers’ Paychecks and Level Playing Field for Employers*, Nat’l Empl. Law Proj. (Mar. 18, 2019) <https://www.nelp.org/insights-research/billions-are-lost-to-wage-theft-every-year-new-jersey-must-act-to-protect-workers-paychecks/>.

in 85% of the 77 garment factories investigated in Los Angeles and \$1.3 million in unpaid wages.⁷³

Furthermore, employers of unauthorized workers often do not carry workers' compensation insurance, leaving workers to pay for their own treatment of workplace injuries. For example, 41% of undocumented workers in Illinois paid the cost of their workplace injuries.⁷⁴ Even when employers carry coverage, insurance companies often deny unauthorized workers' claims.⁷⁵ In some cases, insurance companies even report unauthorized workers to ICE or refer them for prosecution under state laws.⁷⁶

IV. The Interim Rule Harms the States

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that has substantial direct effects on States, imposes substantial direct compliance costs on State and local governments, or has other federalism implications. Exec. Order No. 13132, 64 Fed. Reg. 43,255 (Aug. 10, 1999). These requirements include "consult[ing] with appropriate State and local officials in developing [national] standards" and having "an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies." *Id.* at 43,256, 43,257. Here, the Department failed to comply with these requirements. Instead, it summarily concluded that the Interim Rule "will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government," and concluding the Interim Rule "does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement." 90 Fed. Reg. at 48,819. To the contrary, the Interim Rule will significantly undermine the States' policies and programs and will impose substantial costs on state governments. In failing to analyze these impacts, and to consult with the States prior to the implementation of the Interim Rule, the Department has disregarded the requirements imposed by Executive Order 13132.

First, unemployment resulting from the Interim Rule will cost the States millions of dollars in lost tax revenue and diminished economic growth. Second, the resulting delays and

⁷³ Susan Ferris et al., *Wage Theft Hits Immigrants - Hard*, The Ctr. for Pub. Integrity (Oct. 14, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/garment-immigrant-workers-wage-theft/>.

⁷⁴ Nik Theodore et al., *Unregulated Work in Chicago: The Breakdown of Workplace Protections In the Low-Wage Labor Market*, Ctr. for Urb. Econ. Dev., Univ. of Ill. Chicago, 18 (Apr. 2010), https://www.researchgate.net/publication/259184011_Unregulated_Work_in_Chicago_The_Breakdown_of_Workplace_Protections_in_the_Low-Wage_Labor_Market.

⁷⁵ Michael Grabell et al., *They Got Hurt at Work — Then They Got Deported*, Nat'l Pub. Radio (NPR) (Aug. 16, 2017), <https://www.npr.org/2017/08/16/543650270/they-got-hurt-at-work-then-they-got-deported>.

⁷⁶ *Id.*

denials of EAD renewals will lead to increased healthcare costs shouldered by the States. Third, the Interim Rule will burden the States' other social service providers, including state-funded non-profits. Fourth, and finally, the Interim Rule will make it more difficult for the States to enforce their own laws, particularly those designed to protect workers from unfair and abusive conditions of employment.

A. The Interim Rule will Deprive the States of Important Streams of Revenue

The Interim Rule will significantly lower the tax revenue that the States receive from authorized immigrant workers. The Department underappreciates the scope of the potential loss and provides no projections, allowing only that "[i]t is challenging to quantify Federal and State income tax impacts of employment lapses." 90 Fed. Reg. at 48,817. Although unauthorized workers also pay taxes, tax revenue increases when immigrants can legally work. Undocumented immigrants residing in the States, for example, paid approximately \$37.3 billion in state and local taxes in 2022, but those tax contributions would increase by \$7.1 billion if they had legal work authorization.⁷⁷

Immigrant entrepreneurs, who create jobs by starting businesses, constituted 23.6% of all entrepreneurs in the United States in 2023 and generated over \$116 billion in business income.⁷⁸ As of 2023, the 6.6 million immigrants who form a part of California's workforce - including 880,000 entrepreneurs - generated \$168 billion in taxes and had spending power of over \$404 billion.⁷⁹ In New York, immigrants are 34.3% of the state's entrepreneurs.⁸⁰ Of the 7,597 refugees in California as of 2023, 96.4% were employed and paid \$9.5 billion in taxes.⁸¹ In New York, refugees contribute approximately \$2 billion in taxes annually.⁸² The Interim Rule threatens to undermine these guaranteed sources of revenue.

The Interim Rule will also significantly reduce the spending power of legally working immigrants, weakening the States' economies.⁸³ Curtailing work authorization for asylum

⁷⁷ Carl Davis et al., *Tax Payments by Undocumented Immigrants*, Inst. on Tax'n and Econ. Pol'y (July 30, 2024), <https://itep.org/undocumented-immigrants-taxes-2024/>.

⁷⁸ Am. Immigr. Council, *New Americans in the United States* (2023), <https://map.americanimmigrationcouncil.org/locations/national/#>.

⁷⁹ Am. Immigr. Council, *Immigrants in California*, <https://map.americanimmigrationcouncil.org/locations/california/> (last visited Nov. 17, 2025).

⁸⁰ Am. Immigr. Council, *Immigrants in New York*, <https://map.americanimmigrationcouncil.org/locations/new-york/> (summarizing 2023 data on likely refugees) (last visited Nov. 24, 2025).

⁸¹ Am. Immigr. Council, *supra* note 79.

⁸² Am. Immigr. Council, *supra* note 80.

⁸³ Immigr. Council, *supra* note 80; *How Immigrants Are Helping Boost the U.S. Job Market Without Affecting Inflation*, NBC News (Apr. 7, 2024), <https://www.nbcnews.com/business/economy/immigrants->

seekers or cutting others off from EADs prematurely will result in lost wages and money that does not flow to the States' businesses and economies. Immigrants exercise billions in spending power each year, including \$1.7 trillion in 2023.⁸⁴ The Department does not provide an estimate of the impact of this lost revenue, but only projects with unsubstantiated hope that some employers can transfer compensation to replacement workers, while ignoring the shortfalls in labor pools of the most affected industries. *See* 90 Fed. Reg. at 48,817. Substantial data shows that States disproportionately employ immigrants in discrete sectors and employers are likely to face costs and difficulties trying to find labor substitutes.

Foreign-born workers, including undocumented immigrants, constituted 19.2% of the U.S. labor force in 2024.⁸⁵ These same workers were more likely than native-born workers to be employed in service, construction, and maintenance occupations.⁸⁶ Importantly, for the U.S. economy to grow, it will need immigrant workers.⁸⁷ In particular, immigrants will need to help fill the expected shortage of 134,940 healthcare providers by 2036, where they currently represent 15.9% of all nurses and 28.4% of all health aides.⁸⁸ Scarce immigrant farm labor is also causing farmers to struggle to maintain production levels.⁸⁹

Immigrants constituted 25% of all construction workers in 2022.⁹⁰ The construction industry is desperate for more immigrants to fill the projected shortage of 454,000 workers in

are-helping-us-job-market-grow-without-affecting-inflation-rcna146570 (immigrants authorized to work increase “the demand for goods and services, and helping supply labor.”)

⁸⁴ *Map the Impact*, Am. Immigr. Council (last visited Nov. 18, 2025), <https://data.americanimmigrationcouncil.org/map-the-impact/>.

⁸⁵ *Labor Force Characteristics of Foreign-Born Workers Summary*, U.S. Bureau of Lab. Stat. (May 20, 2025), <https://www.bls.gov/news.release/forbrn.nr0.htm>.

⁸⁶ *Id.*

⁸⁷ Kevin Appleby, *The Importance of Immigrant Labor to the US Economy*, Ctr. for Migration Stud. (Sept. 2, 2024), <https://cmsny.org/importance-of-immigrant-labor-to-us-economy/>; Pia Orrenius et al., *Unprecedented U.S. Immigration Surge Boosts Job Growth, Output*, Fed. Rsrv. Bank of Dallas (July 2, 2024), <https://www.dallasfed.org/research/economics/2024/0702> (recognizing that higher immigration has boosted payroll and GDP growth).

⁸⁸ *Immigrants Are Key to Filling US Labor Shortages, New Data Finds*, Am. Immigr. Council (July 2, 2024), <https://www.americanimmigrationcouncil.org/blog/immigrants-fill-us-labor-shortages-map-the-impact/>; *Immigrants in the United States*, Am. Immigr. Council (last accessed Nov. 18, 2025), <https://map.americanimmigrationcouncil.org/locations/national/#>.

⁸⁹ Anna Shepperson, *Immigrants Are Key to Filling US Labor Shortages, New Data Finds*, Am. Immigr. Council (July 2, 2024), <https://www.americanimmigrationcouncil.org/blog/immigrants-fill-us-labor-shortages-map-the-impact/>; *Farm Labor*, U.S. Dep’t of Agric. Econ. Rsch. Serv. (Nov. 18, 2025), <https://www.ers.usda.gov/topics/farm-economy/farm-labor>.

⁹⁰ *The Home Builders Institute (HBI) Construction Labor Market Report*, Home Builders Inst., 33 (Fall 2025), <https://hbi.org/wp-content/uploads/2025/10/Fall-2025-Final-Construction-Labor-Market-Report-Update.pdf>.

2025.⁹¹ Ironically, just as interrupted employment leads to immigrants' housing insecurity and fewer houses built, it likewise interrupts immigrants' stimulation of new home construction through their own purchasing power.⁹² The Interim Rule will harm these sectors by depleting their labor forces.

Immigrants fill over 62% of the jobs in California's agricultural sector, over 46% of its health aides, over 43% of those in manufacturing, and more than 41% of construction jobs.⁹³ In New York, immigrants are 34.3% of the state's entrepreneurs, 26.6% of its STEM workers, and 59.5% of the state's health aides.⁹⁴ Businesses and industries that will be disproportionately affected by the Interim Rule will have to replace employees with any prolonged loss of access to immigrants without work authorization during the renewal process.

The Congressional Budget Office (CBO) projects that economic output will increase, but only if immigration rates continue to surge at the 2022 rate in order offset a decline in labor force participation due in part to the aging population.⁹⁵ The high rates of immigration through 2026 would support an average of approximately 0.2 percentage points to the annual growth rate of real Gross Domestic Product (GDP) through 2034.⁹⁶ Relatedly, the continued removal of immigrants from the U.S. workforce could lower the GDP by 7.4% and employment by 7% by 2028.⁹⁷ Although the labor of immigrant workers is one of the major engines currently powering the U.S. economy, the administration's actions "not only harm our immigrant neighbors, they threaten to undermine job growth and pay for all workers."⁹⁸ In fact, increases in immigration, including asylum approval rates, is necessary to sustain economic growth in the United States as population growth "will become entirely dependent on immigration by 2040."⁹⁹

⁹¹ *ABC: 2024 Construction Workforce Shortage Tops Half a Million*, Assoc. Builders and Contractors (ABC) (Jan. 31, 2024), <https://www.abc.org/News-Media/News-Releases/abc-2024-construction-workforce-shortage-tops-half-a-million>.

⁹² *The Budget and Economic Outlook: 2024 to 2034*, Cong. Budget Off. (CBO), 53 (Feb. 2024), <https://www.cbo.gov/system/files/2024-02/59710-Outlook-2024.pdf>.

⁹³ Am. Immigr. Council, *supra* note 79.

⁹⁴ Am. Immigr. Council, *supra* note 80 (summarizing data from 2023).

⁹⁵ CBO, *supra* note 92, at 7.

⁹⁶ *Id.* at 43.

⁹⁷ Anjali V. Bhatt, *Mass Deportations Would Harm the US Economy*, Peterson Inst. for Int'l Econ. (Sept. 26, 2024), <https://www.piie.com/blogs/realtime-economics/2024/mass-deportations-would-harm-us-economy>.

⁹⁸ *March Jobs Report: Immigrant Workers Power a Steady Economy, Full Impact of Trump Policies Yet to Come*, Nat'l Emp. L. Project (Apr. 4, 2025), <https://www.nelp.org/march-jobs-report-immigrant-workers-power-a-steady-economy-full-impact-of-trump-policies-yet-to-come/>.

⁹⁹ Pia Orrenius et al., *Unprecedented U.S. Immigration Surge Boosts Job Growth, Output*, Fed. Rsrv. Bank of Dallas (July 2, 2024), <https://www.dallasfed.org/research/economics/2024/0702>.

B. The Interim Rule will Increase States' Healthcare Costs

Changes in immigration policy under the prior Trump administration contributed to an increase in the uninsured rate starting in 2017.¹⁰⁰ New policy changes will make matters worse. In 2023, one-third of noncitizen immigrants were uninsured.¹⁰¹ Currently, many immigrants, including asylum seekers, are generally ineligible for federally funded Medicaid. *See* 8 U.S.C. § 1641(b). But all asylum seekers, in addition to asylees, refugees, and other visa holders, will soon lose all access to Medicaid and the Affordable Care Act Marketplace due to the Budget Reconciliation Law of 2025.¹⁰² Needless to say, the number of lawfully residing immigrants without health coverage is expected to increase when these changes take effect.¹⁰³ As a result, States will bear the brunt of covering the resulting increase of nearly \$280 billion in uncompensated care costs for the uninsured, including \$100 billion in California alone.¹⁰⁴ Adding more unnecessarily to the unemployment rolls will only exacerbate those costs.

Some employed immigrants with work authorization have access to employer-sponsored health insurance, and those who do rely on employer-sponsored health insurance for themselves and their family will be immediately impacted by lapses in work authorization created by the Interim Rule.¹⁰⁵ Notably, in addition to the obvious harm to those immigrants who lose health insurance, the States will also suffer because employed immigrants have in fact been found to subsidize the U.S. health care system and offset costs incurred by citizens.¹⁰⁶

Without private insurance, immigrants will have to rely in greater degree on the seven states plus the District of Columbia that, as of September 2025, provide fully state-funded coverage to some income-eligible adults regardless of status, and 14 states plus the District of

¹⁰⁰ Jennifer Tolbert et al., *The Uninsured Population and Health Coverage*, KFF (Oct. 8, 2025), <https://www.kff.org/uninsured/health-policy-101-the-uninsured-population-and-health-coverage/?entry=table-of-contents-trends-in-the-uninsured-rate>.

¹⁰¹ *Id.*

¹⁰² *See* Kelly Whitener, *New Immigrant Eligibility Restrictions Coming to Federally-Funded Health Coverage*, Geo. Univ. McCourt Sch. of Pub. Pol'y (Oct. 1, 2025), <https://ccf.georgetown.edu/2025/10/01/new-immigrant-eligibility-restrictions-coming-to-federally-funded-health-coverage/> (noting loss of access to Medicaid by October 1, 2026, and the Marketplace on January 1, 2027).

¹⁰³ *See* Tolbert et al., *supra* note 100.

¹⁰⁴ Fredric Blavin & Michael Simpson, *State-Level Estimates of Health Care Spending and Uncompensated Care Changes Under the Reconciliation Bill and Expiration of Enhanced Subsidies*, Urban Inst. (June 2025), <https://www.urban.org/sites/default/files/2025-06/State-Level-Estimates-of-Health-Care-Spending-and-Uncompensated-Care-Changes-under-the-Reconciliation-Bill-and-Expiration-of-Enhanced-Subsidies.pdf>.

¹⁰⁵ *See* KFF, *supra* note 45.

¹⁰⁶ *Id.*; Mark J. Ommerborn, *Assessment of Immigrants' Premium and Tax Payments for Health Care and the Costs of Their Care*, J. of the Am. Med. Ass'n (JAMA), 5 JAMA Network Open 11 (Nov. 9, 2022), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2798221>.

Columbia that provide fully state-funded coverage for income-eligible children regardless of immigration status.¹⁰⁷

Individuals without insurance are far more likely to skip the preventative care that keeps them healthy.¹⁰⁸ In fact, uninsured adults are over three times more likely to say they have not sought health care in the preceding year.¹⁰⁹ Over the past year, 40% of uninsured adults have also experienced difficulties paying for prescription drug costs.¹¹⁰ In 2023, 20% of immigrant adults with insurance reported having difficulty paying for health care in the preceding year, with more skipping or postponing care.¹¹¹ For immigrants without insurance, the percentage of those foregoing care jumped 16%.¹¹² Even for those fortunate to reside in a state with a moderately expansive coverage policy, the cost still forced immigrant adults to skip or postpone medical care 13% of the time in the preceding year.¹¹³ Of those who skipped or postponed care, 69% confirmed they did so because of the cost or lack of health insurance.¹¹⁴ Unsurprisingly, 40% of those same adults acknowledged their health consequently worsened.¹¹⁵

Lack of health insurance will also worsen the overall public health. Case in point, the uninsured are less likely to receive vaccinations that prevent the spread of infectious diseases

¹⁰⁷ Akash Pillai et al., *State Health Coverage for Immigrants and Implications for Health Coverage and Care*, KFF (May 29, 2025), <https://www.kff.org/racial-equity-and-health-policy/state-health-coverage-for-immigrants-and-implications-for-health-coverage-and-care/>.

¹⁰⁸ Stacey McMorro et al., *Determinants of Receipt of Recommended Preventive Services: Implications for the Affordable Care Act*, 104 Am. J. Pub. Health 12, 2392–93 (Nov. 12, 2014), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2013.301569>; Jennifer E. DeVoe et al., *Receipt of Preventive Care Among Adults: Insurance Status and Usual Source of Care*, 93 Am. J. Pub. Health 5, 786–791. (Oct. 10, 2011), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.93.5.786?HITS=10&sortspec=relevance&andorexacttitleabs=and&title=receipt+of+preventive+care&resourcetype=HWCIT&hits=10&andorexactfulltext=and&searchid=1&andorexacttitle=and&maxtoshow=&FIRSTINDEX=0&RESULTFORMAT=1>.

¹⁰⁹ Tolbert et al., *supra* note 100.

¹¹⁰ Alex Montero et al., *KFF Health Tracking Poll: Prescription Drug Costs, Views on Trump Administration Actions, and GLP-1 Use*, KFF (Nov. 14, 2025), <https://www.kff.org/public-opinion/kff-health-tracking-poll-prescription-drug-costs-views-on-trump-administration-actions-and-glp-1-use/>.

¹¹¹ Drishti Pillai et al., *Health and Health Care Experiences of Immigrants: The 2023 KFF/LA Times Survey of Immigrants*, KFF (Sept. 17, 2023), <https://www.kff.org/racial-equity-and-health-policy/health-and-health-care-experiences-of-immigrants-the-2023-kff-la-times-survey-of-immigrants/>.

¹¹² *Id.*

¹¹³ Pillai et al., *supra* note 107.

¹¹⁴ *See* Pillai et al., *supra* note 111.

¹¹⁵ *Id.*

throughout the community.¹¹⁶ According to one study, while 44 percent of insured adults received the flu shot, only 14 percent of uninsured adults did.¹¹⁷ Inoculation helps prevent the spread of the flu, which resulted in 27,000 to 130,000 deaths nationwide from October 1, 2024, through May 17, 2025.¹¹⁸ Many of those deaths could be easily avoided.

C. The Interim Rule will Burden Nonprofits in the States

The States fund nonprofits that assist immigrants. With immigrants facing lapses in employment authorization, these providers will require additional resources. For example, with the increasing lack of access to health insurance, and the difficulty paying costs for available insurance when unemployed, immigrants will increasingly rely on nonprofit community health centers (CHCs) that provide free or low-cost care to low income and uninsured populations.¹¹⁹ Already, nearly one in three immigrants rely primarily on CHCs, and one in four immigrant adults who have received care in the United States say they have been treated unfairly by a health care provider, including 16% who attribute this treatment to their insurance status or ability to pay.¹²⁰ Worse, the administration is directing CHCs to restrict access to undocumented immigrants.¹²¹ The strain on CHCs and the resultant mistreatment of immigrant patients will only grow as unemployed EAD renewal applicants face greater challenges to pay for health insurance.

In addition, as discussed above, there are already astronomical demands on pro bono legal services for those who cannot afford private counsel. *See supra* Section III.B. Immigrants will look to the States to further fill the gaps. Currently, California has allocated \$36.8 million for nonprofit organizations to provide immigration services through 2026.¹²² California also provides grants for nonprofits and others to assist new immigrant students, the aged, blind, or disabled legal immigrants.¹²³ States will be hamstrung to sufficiently support service providers

¹¹⁶ CDC, *Vaccination Coverage Among Adults in the United States, National Health Interview Survey, 2022* (Oct. 4, 2024); <https://www.cdc.gov/adultvaxview/publications-resources/adult-vaccination-coverage-2022.html>.

¹¹⁷ Peng-jun Lu et al, *Impact of health insurance status on vaccination coverage among adult populations*, 48 Am. J. Preventative Med. 647–61 (April 15, 2015), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5826635/>.

¹¹⁸ CDC, *Preliminary Estimated Flu Disease Burden 2024-2025 Flu Season* (May 9, 2025), <https://www.cdc.gov/flu-burden/php/data-vis/2024-2025.html>.

¹¹⁹ See Pillai et al, *supra* note 107.

¹²⁰ Pillai et al., *supra* note 111.

¹²¹ Maya Goldman, *Community Clinics Squeezed by Immigration Checks*, Axios (July 17, 2025), <https://www.axios.com/2025/07/17/clinics-cutoff-undocumented-immigrants>.

¹²² Cal. Dep't. of Soc. Servs. (CDSS), *Immigration Services Funding (ISF) Program* (2025), <https://www.cdss.ca.gov/inforesources/immigration/immigration-services-funding>.

¹²³ CDSS, *Cash Assistance Program for Immigrants (CAPI)*, <https://www.cdss.ca.gov/capi>

by the administration's continued restrictions on benefits and federal grants to support immigrant services.¹²⁴

Even with state and local funding, nonprofits recognize that the administration's policy changes can impact funding, staffing, and general operations of critical services.¹²⁵ For example, freezing federal funds for refugees earlier this year caused nonprofits to scramble to provide services.¹²⁶ The administration's actions have also caused nonprofits to face continued confusion and obstacles to receiving funds, which has caused many to stop programs and furlough employees.¹²⁷ The Interim Rule will produce more unemployed immigrants in need of services, which will cause scarce resources to be stretched even thinner and require additional resources.

D. The Interim Rule will Adversely Impact States' Ability to Enforce their Laws

The Interim Rule also interferes with the States' ability to enforce their labor and civil rights laws. As described above, legal workers with lapses in work authorization will increasingly enter the underground economy and will become less likely to report labor and civil rights violations. *See supra* Section III.E. The States have a fundamental interest in being able to enforce their own laws. *Alaska v. U.S. Dept. of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989). When rulemaking impinges on that ability, the States suffer an injury. *New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Through labor and civil rights laws, the States protect their residents from wage theft, exploitation, and discrimination at work.¹²⁸ These laws are enforced without respect to

(last visited Nov. 19, 2025); CDSS, *Trafficking and Crime Victims Assistance Program*, <https://www.cdss.ca.gov/inforesources/TCVAP> (last visited Nov. 25, 2025); *California Newcomer Education and Well-Being*, CDSS, <https://www.cdss.ca.gov/inforesources/refugees/programs-and-info/youth-initiatives/calnew> (last visited Nov. 16, 2025).

¹²⁴ *See, e.g.*, Ximena Bustillo, *Trump Administration Rule Could Further Penalize Immigrants for Using Benefits*, NPR (Nov. 18, 2025), <https://www.npr.org/2025/11/18/g-s1-96806/trump-public-charge-rule>; Tanya Broder & Ben D'Avanzo, *What New Federal Notices Mean for Immigrants' Program Eligibility*, Nat. Immigr. L. Ctr. (July 23, 2025), <https://www.nilc.org/articles/what-new-federal-notices-mean-for-immigrants-program-eligibility> (outlining several policy measures threatening to impose immigration restrictions on essential benefits and services).

¹²⁵ *See* Nat'l Council of Nonprofits (NCN), *The Impacts of the Recent Executive Orders on Nonprofits* (2025), <https://www.councilofnonprofits.org/impacts-recent-executive-orders-nonprofits>.

¹²⁶ Ximena Bustillo, *Nonprofits Scramble to Provide Refugee Services After Administration Freezes Funding*, NPR (Feb. 13, 2025), <https://www.npr.org/2025/02/13/nx-s1-5294465/nonprofits-scramble-to-provide-refugee-services-after-administration-freezes-funding>.

¹²⁷ Diane Yentel, *Why We Filed a Lawsuit Against the Administration*, NCN (Feb. 10, 2025), <https://www.councilofnonprofits.org/articles/why-we-filed-lawsuit-against-administration>.

¹²⁸ *See generally*, Cal. Gov. Code §§ 12900-12996 (2024) (Cal. Fair Emp. and Hous. Act); Cal. Bus. & Prof. Code § 17200 *et seq.* (2024) (Unfair Competition Act); Cal. Lab. Code §§ 200-1207 (Payment of

immigration status, but effective enforcement relies on employees' ability and willingness to report violations. Despite the significant labor and civil rights abuses that befall unauthorized workers, fear of reprisal and deportation often inhibits unauthorized workers from reporting such violations.¹²⁹ Asylum seekers in particular have reportedly failed to report labor violations—including working weeks without pay and physical abuse at work—because they fear immigration consequences.¹³⁰ In California, most young farmworkers are the children of immigrants, as young as 12, in a vital industry where the enforcement of child labor laws is negligible.¹³¹ All farmworkers, including the children, face extreme heat and exposure to toxic pesticides but are afraid to complain out of fear of being singled out as troublemakers and losing their jobs.¹³² A study in Chicago found that, of the immigrant workers who have suffered a workplace injury and report it to their employer, 23 percent reported being either immediately fired or threatened with deportation.¹³³

If immigrants, even those lawfully present, fear reporting labor violations because they have lapsed work authorization, it will be harder for the States' agencies to enforce civil rights and labor laws. Furthermore, without work authorization, immigrants will feel less comfortable making claims with the States' agencies, and consequently will endure exploitative and discriminatory employment practices for a longer period. Indeed, many claims may become stale or fall outside of the statute of limitations before asylum seekers feel secure enough to make them. Given the high rates of exploitation, the Interim Rule will discourage timely reporting of violations, interfering with the States' abilities to enforce their laws.

Wages; Wages, Hours and Working Conditions); N.Y. Labor Law Articles 5 (hours of labor), 6 (payment of wages), 19 (minimum wage standards), and 19-A (minimum wage standards for farm workers); N.Y. Workers' Comp. Law § 17.

¹²⁹ Hum. Rts. Watch, *supra* note 56; Costa, *supra* note 69.

¹³⁰ Hum. Rts. Watch, *supra* note 56.

¹³¹ Robert J. Lopez, *California's Child Farmworkers: Exhausted, Underpaid and Toiling in Toxic Fields*, L.A. Times (Nov. 20, 2025), <https://www.latimes.com/california/story/2025-11-20/children-farmworkers-california-little-oversight-from-state>.

¹³² *Id.*

¹³³ Theodore, *supra* note 74, at 18.

V. Conclusion

We urge the Department to acknowledge that the Interim Rule is arbitrary and capricious. The Department presents insufficient justifications and reasoning for the Interim Rule and fails to demonstrate that it adequately considered the impact on the States. For all the above reasons, we urge the Department to withdraw the Interim Rule.

Sincerely,



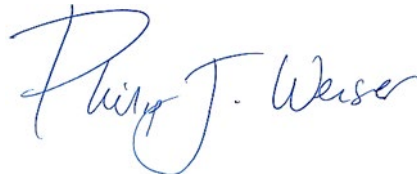
ROB BONTA
California Attorney General



KWAME RAOUL
Illinois Attorney General



LETITIA JAMES
New York Attorney General



PHILIP J. WEISER
Colorado Attorney General



WILLIAM TONG
Connecticut Attorney General



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Delaware Attorney General



ANNE E. LOPEZ
Hawai'i Attorney General



AARON M. FREY
Maine Attorney General

A handwritten signature in black ink, appearing to read "A.G. Brown".

ANTHONY G. BROWN
Maryland Attorney General

A handwritten signature in black ink, appearing to read "AJ Campbell".

ANDREA JOY CAMPBELL
Massachusetts Attorney General

A handwritten signature in blue ink, appearing to read "Dana Nessel".

DANA NESSEL
Michigan Attorney General

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KEITH ELLISON
Minnesota Attorney General

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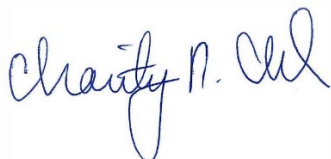
AARON D. FORD
Nevada Attorney General

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MATTHEW J. PLATKIN
New Jersey Attorney General

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DAN RAYFIELD
Oregon Attorney General

A handwritten signature in blue ink, appearing to read "Charity R. Clark".

CHARITY R. CLARK
Vermont Attorney General

A handwritten signature in black ink, appearing to read "N.W. Brown".

NICHOLAS W. BROWN
Washington Attorney General

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BRIAN SCHWALB
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