



State of California
Office of the Attorney General

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Submitted via Federal Rulemaking Portal

The Honorable Markwayne Mullin
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable Joseph Edlow
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: Comment Regarding Notice of Proposed Rulemaking, *Employment Authorization Reform for Asylum Applicants*, 91 Fed. Reg. 8,616 (Feb. 23, 2026), DHS Docket No. USCIS-2025-0370, RIN 1615-AC97

Dear Secretary Mullin and Director Edlow:

We, the Attorneys General of California, Colorado, Connecticut, Delaware, District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Virginia (the “States”) submit these comments to oppose the Department of Homeland Security’s (“DHS” or “Department”) Notice of Proposed Rulemaking: *Employment Authorization Reform for Asylum Applicants* (“Proposed Rule” or “Rule”), 91 Fed. Reg. 8,616 (Feb. 23, 2026), DHS Docket No. USCIS-2025-0370, RIN 1615-AC97.

The Proposed Rule would make several material changes to the processing of initial Employment Authorization Document (“EAD”) applications (Form I-765). Those changes include, but are not limited to, the following. First, the Proposed Rule would increase the waiting period for asylum seekers to apply for initial EADs from six months to one year. 91 Fed. Reg. at 8,617, 8,698. Second, the Rule would extend the time for USCIS to adjudicate initial EAD

applications from one month to six months. *Id.* at 8,617, 8,699. Third, the Rule would pause acceptance of initial EAD applications from asylum seekers during periods when the 90-day average processing time for asylum applications by U.S. Citizenship and Immigration Services (“USCIS”) exceeds 180 days. *Id.* at 8,617, 8,699. The pause would remain until the 90-day average processing time for affirmative asylum applications dips below 180 days, which the Department estimates will occur in approximately 14 to 173 years. *Id.* at 8,618, 8,699.

The Department’s proposal would, as a practical matter, eliminate work authorization entirely for initial applicants and severely restrict the availability of EADs for asylum seekers who are renewing their work authorization. Several courts have already considered and found unlawful similar provisions previously proposed. *See, e.g., Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11, 26 (D.D.C. 2022) (vacating rule removing 30-day EAD processing provision); *CASA de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 970-974 (D. Md. 2020) (enjoining 365-day waiting period for EAD applications and repeal of 30-day EAD processing provision).

DHS justifies the Proposed Rule by asserting that the asylum system is overwhelmed, federal adjudications resources are strained, “and the affirmative asylum application backlog serves as a magnet pulling aliens into the U.S. illegally.” *Id.* at 8,620. DHS also claims the Rule will give it “sufficient time to address national security, public safety, or fraud concerns,” in addition to maintaining “technological advances” in processing applications. *Id.* at 8,620, 8,664. Rather than sufficiently considering alternatives, the Department merely concedes that regulatory changes require a “significant amount of work,” and they do not want to risk a years-long effort just to be stopped by court action. *Id.* at 8,645.

DHS admits it “cannot currently quantify all of the potential benefits of this proposed rule.” *Id.* at 8,620. Purportedly speaking on behalf of States, DHS claims the rule would undermine “a magnet for illegal immigration [that would] generate costs to localities, states, the national economy, and strain resources.” *Id.* at 8,620, 8,664. But DHS believes some impacts will be “indirect” and “unquantifiable.” *Id.* at 8,620. While acknowledging that companies may incur costs by having to choose “the next best alternative to immediately filling the job the asylum applicant would have filled,” USCIS concedes it does not know what those alternatives would be. *Id.* at 8,621. Finally, USCIS estimates that the lost compensation to asylum seekers would be \$34.6 billion to \$126.6 billion, annually, for which “[t]here could be tax impacts.” *Id.*

As set forth below, the Rule is arbitrary and capricious in violation of the Administrative Procedure Act (“APA”). First, the Department has not sufficiently considered the harmful effects on States’ residents who are asylum seekers and EAD applicants. The Department fails to sufficiently appreciate that the primary impact of the Rule would be asylum seekers’ indefinite inability to work lawfully and indefinite lapses in work authorization for many current EAD holders that would inevitably lead to countless problems, including general economic instability (insurance, housing, and food insecurity), strains on health (limited access to insurance, avoiding

preventative care, worsening health), and forcing many into a “shadow” economy of unauthorized workers.

Second, the Rule would also injure the States’ economies by undermining tax revenue and the significant spending power of many of its residents who support employers in vital industries. The Rule would also increase healthcare costs for the States, require their greater support for nonprofits, and diminish vital law enforcement abilities.

Third, the Department’s justifications for the Proposed Rule are unreasonable. The Department’s justifications include its aim to deter asylum applications and increase the number of asylum seekers subject to removal. Further, the Department’s stated justifications are not adequately supported by its reference to 1994 regulatory reforms. Justifications for specific portions of the Proposed Rule are also insufficiently supported.

Fourth, the Department’s explanations in support of its justifications for the Proposed Rule are contrary to the available evidence.

Fifth, and finally, the Department has insufficiently and inadequately considered alternatives.

Because the Department ultimately fails to sufficiently consider the Proposed Rule’s harmful effects, the Proposed Rule is unreasonable and contrary to available evidence, and the Department has failed to adequately consider alternatives, it should forego the proposed rulemaking.

I. Background

DHS asserts initial applications for employment authorization from asylum seekers under 8 C.F.R. § 274a.12(c)(8), “have reached a historic high and USCIS’ adjudicative resources are strained.” 91 Fed. Reg. at 8,617. The Department notes that the affirmative asylum pending caseload is approximately 1.45 million and the defensive asylum application pending caseload is over 2.37 million.¹ *Id.* at 8,654. DHS asserts there is “significant incentive” for some noncitizens to file for asylum to obtain employment authorization, even if their cases will ultimately be denied on the merits. *Id.*

A. Waiting Period

Under the Proposed Rule, after the effective date, asylum seekers would be required to wait one year after applying for asylum before applying for an initial EAD. *Id.* at 8,623. The waiting period would be an increase from the current six-month waiting period. *Id.* DHS claims

¹ The Department alleges that recipients of Temporary Protected Status (TPS) programs, parole programs, and Deferred Action (DACA) contribute to the asylum backlog. *Id.* at 8,652-53.

the benefit of extending the waiting period and increasing the processing time would allow it to devote more resources to adjudicating the underlying asylum applications, which may obviate the need to adjudicate an EAD application. *Id.*

B. Processing Timeframe

The Department also proposes increasing the processing timeframe for USCIS to adjudicate initial EAD application from 30 days to 180 days, after the one-year waiting period elapses. *Id.* The 180-day Asylum EAD Clock (150-day waiting period and 30-day processing timeframe), originally expanded from 150 days to encourage the Immigration and Naturalization Service (now USCIS) to adjudicate asylum claims promptly “to avoid having to separately adjudicate the work authorization applications.” *Id.* at 8,631.

C. Pause and Re-start of Processing EAD Applications

Perhaps most consequentially, under the Proposed Rule, USCIS would stop accepting any initial EAD applications from asylum seekers for an indefinite period – that is, until the processing time for affirmative asylum applications dips below 180 days (for 90 consecutive days). *Id.* at 8,624-25, 8,650, 8,699. USCIS would resume acceptance of initial EAD applications when the average processing time for affirmative asylum adjudications over a consecutive period of 90 days is less than or equal to 180 days. *Id.* at 8,624-25, 8,650, 8,699. The proposal would, in effect, indefinitely halt the processing of initial EAD applications for asylum seekers.

D. Additional Proposals

The Department proposes additional provisions that would apply to both initial EAD applications and renewal applications “to further insulate the employment authorization and asylum processes from fraud and abuse.” *Id.* at 8,619. The provisions would require the forfeiture of an EAD if an applicant fails to appear for an asylum interview or biometrics appointment. *Id.* at 8,619. Also, the Department would mandate additional vetting, thereby purporting to enhance public safety and strengthen national security. *Id.* Mandating reapplications has become a means for the administration to further limit eligibility to achieve its policy objective of restricting benefits to as many immigrants as possible.² Notably, restrictions

² See, e.g., Humeyra Pamuk, *Exclusive: Trump Administration Orders Enhanced Vetting for Applicants of H-1B Visa*, Reuters (Dec. 4, 2025), <https://www.reuters.com/world/us/trump-administration-orders-enhanced-vetting-applicants-h-1b-visa-2025-12-04/>; 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*

on EAD renewals would likely have a significant impact on States' economies in the near term because they would take existing workers out of the work force.

II. The Proposed Rule is Arbitrary and Capricious, in Violation of the APA

A. Introduction

An agency must ordinarily consider “the advantages *and* the disadvantages of agency decisions” to produce a reasonable regulation. *Michigan v. EPA*, 576 U.S. 743, 753 (2015) (emphasis in the original). When an agency changes longstanding policies, it must “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009). Additionally, agencies are required to explain the available evidence and offer a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983) (citation omitted).

The Proposed 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 Department’s justifications for the Proposed Rule are also unreasonable. *Fox Television Stations*, 556 U.S. at 515. Finally, the Department’s reasoning is contrary to the available evidence. *State Farm*, 463 U.S. at 52. The Proposed Rule, therefore, is arbitrary and capricious and should be withdrawn.

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

1. Overview

The Proposed Rule would be arbitrary and capricious because the Department has failed to consider important aspects of the problem. *See Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005) (citing *State Farm*, 463 U.S. at 43). The Department claims the Rule would “generate substantial benefits,” such as obtaining “sustainable case processing times for initial EAD applications for asylum applicants,” and allowing “sufficient time to address national security, public safety, or fraud concerns.” *Id.* at 8,620, 8,664. The Department, however, has not sufficiently considered how the Proposed Rule would lead to significant unemployment and lost wages, further limit access to legal services, compound housing and food insecurity, negatively impact access to insurance and overall health, and push unauthorized workers into a dangerous shadow economy with minimal protections.

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>.

The Department acknowledged that pausing the acceptance of initial EAD applications would create a “potentially significant hardship” for asylum applicants. *Id.* at 8,650. It also recognized that some with “potentially meritorious filings” may be deterred from filing. *Id.* at 8,652. Although the Department claims it “seriously considered” these “relevant and justified” harms, and that there may be “unknown impacts,” it ultimately determined those harms were “outweighed by the needs of the Federal Government.” *Id.* at 8,629, 8,644. Still, the Department allows that many of the benefits would be “indirect,” “unquantifiable,” and “beyond the scope of this analysis.” *Id.* at 8,620, 8,664.

2. The Rule would lead to significant unemployment and lost wages

The primary effect of the Rule would be lost earnings for asylum seekers – both the potential wages for first-time applicants and existing wages for EAD renewal applicants. *Id.* at 8,677. The Department projects the Proposed Rule would first affect between 266,386 and 937,824 initial EAD filers, which would represent approximately 0.35 percent of the U.S. labor force as of February 2025. *Id.* at 8,694. It estimates the Rule would ultimately affect up to 938,000 EAD applicants, of which over 83 percent would have otherwise been approved for EADs. *Id.* at 8,678 (Table 8). The Department estimates that lost wages would be \$34.6 billion to \$126.6 billion, annually. *Id.* at 8,621, 8,665, 8,696. The impact of the lost wages on States’ tax revenue is discussed below.

DHS breaks down the impact from individual parts of the Proposed Rule. The Department estimates that the increased waiting period and processing time would affect approximately 224,000 defensive cases. *Id.* at 8,623, 8,666. Consequently, there would be a loss of \$6.3 billion in earnings and \$66 million in federal taxes. *Id.* at 8,623, 8,667. The change to eligibility bars could affect 96,000 applicants, resulting in lost wages of \$15.1 billion and \$1.6 billion in lost federal taxes. *Id.* at 8,624, 8,667. The impact of changes to the EAD filing and processing times would be a loss of up to \$13 billion in earnings and up to \$1.3 billion in lost tax revenue. *Id.* at 8,686 (Table 12). Over a five-year span, the total impact for ending EADs early, the eligibility bars, and the EAD clock (increasing filing time and process time, filing costs), would constitute a loss of up to \$202 billion in earnings. *Id.* at 8,687 (Table 13). The resulting loss in tax revenue would be up to \$21 billion. *Id.* at 8,690 (Table 14).

The pause of the issuance of EADs alone would affect 503,000 people, resulting in the loss of \$70.4 billion in earnings and \$7.4 billion in lost federal taxes. *Id.* at 8,624-25 (Table 1). Over the five years that an EAD would have been valid, the asylum seekers affected by the pause would have earned \$173 to \$633 billion and paid \$18 to \$67 billion in federal taxes. *Id.* at 8,681 (Table 10), 8,683. In return, the government would have “gained” a cost savings of \$160 to \$583 million, equating to a de minimis .1 percent of the lost tax revenue, thus undermining any financial justification for the proposal. *Id.* at 8,681 (Table 10).

Although the Department acknowledges asylum seekers could suffer “in the form of lost opportunity to earn compensation (wages and benefits),” it provides cold comfort that “a portion of the impact” of lost compensation to asylum seekers “might be” mitigated by the transfer to others employed in the labor force, in the form of overtime pay or additional hours. *Id.* at 8,621. DHS provides no basis for this claim.

DHS also minimizes the financial burdens on those without EADs because they “may have existing support networks of family, friends, and community members” who “may” be able to alleviate the financial burdens. *Id.* at 8,629. Again, the Department fails to explain how any hypothetical support for over 900,000 asylum seekers would compensate for over \$100 billion in wages lost. Instead, the Department reveals its expectation for the Rule – that many with potentially meritorious asylum claims may instead “return to a country where they may fear harm.” *Id.* at 8,629, 8,644.

3. The Rule would exacerbate limited access to legal services

The Rule’s new restrictions on EADs would also undermine asylum seekers’ ability to obtain sufficient legal protection because many applicants would be unable to afford attorneys. Some may find it difficult to merely pay new annual asylum fees of \$102 now that fee waivers are no longer available.³ Most will find it even more difficult to pay the typical range of \$1,500 to \$5,000 for an immigration attorney.⁴ In April 2025, about half of all asylum applicants had no lawyer.⁵ From 2013 to 2024, immigrants with counsel were 4.6 times more likely to remain in the United States through grants of asylum or a termination of their removal cases than those without counsel (14 percent versus 64 percent).⁶ In 2017 alone, 90 percent of those without legal

³ See The Asylum Seeker Advoc. Project (ASAP), *There Are New Fees for Asylum Applications and Work Permits* (updated Mar. 26, 2026), <https://asaptogether.org/en/new-fees/#court-annual-fee>.

⁴ See, e.g., Rebecca Black Immigration Law, *How Much Does an Asylum Lawyer Cost and What Are the Associated Costs?* (Jan. 29, 2025), <https://www.rebeccablacklaw.com/how-much-does-an-asylum-lawyer-cost-and-what-are-the-associated-costs/>; Law Office of Abhisha Parikh, *How Much Does an Asylum Immigration Lawyer Really Cost?* (Oct. 9, 2025), <https://immigrationvision.com/how-much-does-an-asylum-immigration-lawyer-really-cost/#:~:text=Hiring%20an%20expert%20asylum%20lawyer,brief%20or%20specialized%20legal%20duties>; see also Diana Roy, *How the U.S. Asylum Process Works*, Council on Foreign Rel. (Feb. 19, 2025), <https://www.cfr.org/backgrounders/how-us-asylum-process-works> (describing the challenge and complexity of asylum cases).

⁵ See Miriam Jordan, *Trump Administration Directs Judges to Deny Asylum Without Hearings*, N.Y. Times (Apr. 16, 2025), <https://www.nytimes.com/2025/04/16/us/immigration-asylum-judges-policy.html>.

⁶ 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://www.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).

representation were denied asylum in immigration court while only 54 percent of those with legal representation were denied.⁷ In many cases, applicants were unable to simply draft a complete application outlining the merits of their asylum claims.⁸ The difference could also 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.⁹ Unrepresented individuals are also more likely to be affected by appeals, delays in their claims, and more unreliable adjudications.¹⁰ Ultimately, the absence of counsel "can literally make the difference between life or death."¹¹

Representation by pro bono counsel is not a feasible option. In 2022, only two percent of representation in immigration court was pro bono counsel,¹² when there were over 435,000 proceedings in immigration court for the fiscal year¹³. The number of immigration proceedings doubled to 959,00 in fiscal year 2025,¹⁴ making access to available pro bono counsel a near impossibility. Even attorneys for hire are stretched thin, unavailable, or wary of retaliation.¹⁵

⁷ See 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/>.

⁸ See Jordan, *supra* note 5.

⁹ See Benson, *supra* note 6 at 2.

¹⁰ 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.

¹¹ See Jordan, *supra* note 5.

¹² 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/>.

¹³ TRAC Immigr., *Outcomes of Immigration Court Proceedings* (through Feb. 2026), <https://tracreports.org/phptools/immigration/closure/>.

¹⁴ *Id.*

¹⁵ See, e.g., Bridgit Bowden, *Wisconsin Immigration Attorneys Struggle to Keep Up with Trump Policy Changes*, Wis. Pub. Radio (Dec. 8, 2025), <https://www.wpr.org/news/wisconsin-immigration-attorneys-trump-policy-changes>; Abigail Luca, *With Few Lawyers, Immigrants in Upstate New York Face Challenges Finding Legal Defense*, Spectrum News (Oct. 15, 2025), <https://spectrumlocalnews.com/nys/central-ny/news/2025/10/15/legal-inaccessibility-for-ny-immigrants>; 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/>.

Without authorization to work, most asylum seekers would be unable to afford the few available attorneys, and many meritorious cases may be denied.

4. The Rule would lead to housing and food insecurity

From 2022 to 2024, there was a 43 percent increase in the homeless shelter population nationwide, driven in large part by asylum seekers (59 to 62 percent of the increase).¹⁶ Asylum seekers would only face more severe housing and financial insecurity while they wait for work authorization, especially because they are ineligible for federal assistance.¹⁷ Despite DHS's suggestion that unemployed asylum seekers "may" rely on friends and family for support (*id.* at 8,629), such support is not generally available to new arrivals who may become homeless without work authorization.¹⁸ Making their transition more difficult, they can also have a difficult time adjusting to homeless shelters due to linguistic and other barriers.¹⁹ 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."²⁰ And underscoring the cruelty, unstable housing would push more unaccompanied children into exploitative work.²¹

Even with employment, immigrants are at a higher risk of food insecurity.²² The risk is especially acute during periods of economic uncertainty and limited eligibility for safety net and federal nutrition programs.²³ Displaced populations worldwide are among the most vulnerable to food insecurity when their access to employment is limited.²⁴ Studies only underscore the

¹⁶ Bruce D. Meyer et al., *Asylum Seekers and the Rise in Homelessness*, J. of Pub. Econ. (Feb. 26, 2026), <https://www.sciencedirect.com/science/article/pii/S0047272726000137>.

¹⁷ 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/>.

¹⁸ *Id.*

¹⁹ 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 Nat'l Coal. for the Homeless, *Vulnerable to Hate: A Survey of Bias-Motivated Violence Against People Experiencing Homelessness in 2016-2017*, 9 (May 2024), https://nationalhomeless.org/wp-content/uploads/2018/12/hate-crimes-2016-17-final_for-web.pdf (recognizing intensified perils for non-English-speaking immigrants).

²⁰ The Ctrs. for Disease Control and Prevention (CDC), *Homelessness as a Public Health Law Issue: Selected Resources* (July 10, 2024), https://www.cdc.gov/php/php/publications/homelessness.html?CDC_AAref_Val=https://www.cdc.gov/php/publications/topic/resources/resources-homelessness.html.

²¹ Stephanie L. Canizales, *How Housing Insecurity Drives Latino Immigrant Children's Labor in California*, UCLA Latino Pol'y & Pol. Inst. (June 26, 2025), <https://latino.ucla.edu/research/how-housing-insecurity-drives-latino-immigrant-childrens-labor-in-ca/>.

²² Nasser Sharareh et al., *Food Insecurity Disparities Among Immigrants in the U.S.*, 2 AJPM Focus 3 2 n.9-11 (Sept. 2023), <https://www.ajpmfocus.org/action/showPdf?pii=S2773-0654%2823%2900050-0>.

²³ *Id.* at 2.

²⁴ Glob. Network Against Food Crises, *2024 Global Report on Food Crises* 19

common sense conclusion that immigrants with limited or no income suffer more hunger, which the Rule would only exacerbate.²⁵

5. The Rule would further limit access to insurance and negatively impact residents' health

Unemployment caused by the Rule would prevent many lawfully present asylum seekers from maintaining health insurance, paying for insurance, or paying for preventative measures. Consequently, many would suffer adverse physical health consequences. In 2023, 18 percent of lawfully present immigrant adults were uninsured.²⁶ Provisions in the 2025 tax and budget law further limited health coverage eligibility for many lawfully present immigrants.²⁷ Without employment and access to employer-sponsored healthcare, many more would be unable to obtain or afford health insurance, which directly correlates with detrimental health outcomes.²⁸

Stress and environmental factors stemming from poverty predictably have a negative impact on health.²⁹ The food insecurity resulting from interrupted employment is also a key contributor to hypertension, asthma, obesity, and diabetes.³⁰ 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.³¹ More distressing, children in poor families are more than four times as likely to be

(Apr. 24, 2024), <https://www.fightfoodcrises.net/sites/default/files/resources/files/GRFC2024-full.pdf>.

²⁵ 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, 5, 6 (May 17, 2019), <https://bmcpublikehealth.biomedcentral.com/counter/pdf/10.1186/s12889-019-6827-9.pdf> (citing studies regarding the United States).

²⁶ Kaiser Fam. Found. (KFF), *Key Facts on Health Coverage of Immigrants* (Sept. 30, 2025), <https://www.kff.org/racial-equity-and-health-policy/key-facts-on-health-coverage-of-immigrants/>.

²⁷ *Id.*; KFF, *Potential Impacts of 2025 Budget Reconciliation on Health Coverage for Immigrant Families* (Sept. 10, 2025), <https://www.kff.org/racial-equity-and-health-policy/potential-impacts-of-2025-budget-reconciliation-on-health-coverage-for-immigrant-families/>.

²⁸ 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>.

²⁹ 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>.

³⁰ *Id.*; see also Sharareh et al., *supra* note 22, at 2 n.3-7.

³¹ *Id.*

in less than very good health than children in affluent families.³² And the health consequences of childhood poverty can last a lifetime.³³

The administration's restrictive policies in general have already led to deepening anxiety and fear among immigrants of all statuses, including 50 percent of lawfully present immigrants.³⁴ Forty to forty-seven percent of all immigrant adults say they have experienced negative health impacts since January 2025 due to immigration-related concerns.³⁵ Twenty-three percent of lawfully present immigrants say at least one child expressed immigration-related concerns, and twenty-six percent say a child has skipped or delayed health care in the past year due to immigration-related fears or lack of insurance.³⁶ The Rule would make these issues worse because financial stability from unemployment is intrinsically related to mental health.

An inability to work can take a "physical and emotional toll" on a person.³⁷ Immigrants' physical pain, worry, sadness, stress, and anger is exacerbated by unemployment and prolonged food insecurity.³⁸ Long-term unemployment also leads to greater incidences of mental illness, especially depression and anxiety disorders.³⁹ Unemployment, job insecurity, and financial hardship can ultimately lead to suicidal behaviors.⁴⁰ Conversely, having more income increases

³² Robert Wood Johnson Found., *Overcoming Obstacles to Health in 2013 and Beyond 20* (2013), <http://www.rwjf.org/content/dam/farm/reports/reports/2013/rwjf406474>.

³³ *Id.*

³⁴ See KFF, *Immigrants Report Rising Fear, Negative Economic and Health Impacts, and Changing Political Views During the First Year of President Trump's Second Term* (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/>; see also 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>.

³⁵ KFF, *supra*, note 34 (reporting 40 percent); see also Drishti Pillai et al., *Health and Health Care Experiences of Immigrant Parents and Their Children During the Second Trump Term*, KFF (Mar. 2, 2026) (reporting 47 percent).

³⁶ Pillai et al., *supra*, note 35.

³⁷ Hum. Rts. Watch, "At Least Let Them Work" *The Denial of Work Authorization and Assistance for Asylum Seekers in the United States* (Nov. 12, 2013), <https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united>.

³⁸ 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>.

³⁹ Olivera Batic-Mujanovic et al., *Influence of Unemployment on Mental Health of the Working Age Population*, *Mater Sociomed*, U.S. Nat'l Libr. of Med., Nat'l Inst. of Health (June 29, 2017), <https://pubmed.ncbi.nlm.nih.gov/articles/PMC5544462/pdf/MSM-29-92.pdf>.

⁴⁰ 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 5, 2022), <https://www.frontiersin.org/journals/public->

access to nutritious food and services that can reduce the stress of everyday challenges.⁴¹ 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.⁴²

Many who migrate to the United States have already faced significant traumatic experiences. Asylees, by definition, 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. § 1158. The Center for Victims of Torture previously estimated that 44 percent of asylum seekers, asylees, and refugees in the United States were survivors of torture.⁴³ Sadly, the Center warns that many in immigration detention in the United States may also be subjected to torture and other ill-treatment.⁴⁴ Further, recent reports confirm that, as of March 18, 2026, 46 people have died in ICE custody since January 2025, the highest in over two decades.⁴⁵ Even those who remain out of detention are at high risk of developing mental illness and anxiety from

[health/articles/10.3389/fpubh.2022.907052/full](https://www.forbes.com/sites/brettwhysel/2018/06/27/3-vicious-cycles/#79edc7bb540d); 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).

⁴¹ Robert Wood Johnson Found., *supra* note 32, at 4.

⁴² See Debbie C. Hocking et al., *Mental Disorders in Asylum Seekers: The Role of the Refugee Determination Process and Employment* [Abstract], 203(1) *J. Nervous & Mental Disorders* 28-32 (Jan. 2015), https://journals.lww.com/jonmd/abstract/2015/01000/mental_disorders_in_asylum_seekers_the_role_of.7.aspx.

⁴³ Craig Higson-Smith, *Updating the Estimate of Refugees Resettled in the United States Who Have Suffered Torture*, Ctr. for Victims of Torture 4 (Sept. 2015), https://www.cvt.org/wp-content/uploads/SurvivorNumberMetaAnalysis_Sept2015_0.pdf.

⁴⁴ Ctr. for Victims of Torture, *Immigration Detention May Constitute Torture & Ill-Treatment*, (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 Amnesty Int., *USA: New Findings Reveal Human Rights Violations at Florida's "Alligator Alcatraz" and Krome Detention Centers* (Dec. 4, 2025), <https://www.amnesty.org/en/latest/news/2025/12/estados-unidos-nuevas-investigaciones-revelan-violaciones-de-derechos-humanos-en-los-centros-de-detencion-de-alligator-alcatraz-y-krome-en-florida/>; 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/r/2024/01/14/torture-by-dhs-and-ice-officers-detention-centers-running-afoul-in-california-and-new-mexico/>.

⁴⁵ Akash Pillai et al., *Deaths and Health Care Issues in ICE Detention Centers Under the Second Trump Administration*, KFF (Mar. 25, 2026), https://www.kff.org/racial-equity-and-health-policy/deaths-and-health-care-issues-in-ice-detention-centers-under-the-second-trump-administration/?utm_campaign=KFF-Racial-Equity-Health-Policy&utm_medium=email&hsenc=p2ANqtz-9vtu-OwUqgc7tWz0J1yKxI10DDr5v0pJqCAs5nlNkr_8rf8QTQWPcm61xOiQt1UmVdN1Qb7Fs8mMBKFnCBlbZPOXgmJA&_hsmi=410525916&utm_content=410525916&utm_source=hs_email.

past trauma and the fear of potential consequences of immigration enforcement within the United States.⁴⁶

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.”⁴⁷ These effects would be exacerbated if employment is prohibited.⁴⁸

6. The Rule would push more unauthorized workers into dangerous and exploitative employment

Without authorization to work lawfully, many asylum seekers without processed EADs would seek work in an underground “shadow” economy.⁴⁹ Many would seek work in exploitative low-paying jobs that lack wage and safety protections and include violence by

⁴⁶ Piyal Sen, *The Mental Health Needs of Asylum Seekers and Refugees – Challenges and Solutions*, 13 BJPsych Intl. 2, 30-31 (May 2016), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/8C1356EF223782C32424FC60A6E3B0C7/S205647400001069a.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 289–308, 292-93, 295-96 (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, post-traumatic stress disorder, and substance use).

⁴⁷ Aleena Shahzad et al., *The Psychological Impact of Spending a Prolonged Time Awaiting Asylum*, 16 Eur. J. of Psychotraumatology 1, Art. 2506189, 1 (June 10, 2025), <https://www.tandfonline.com/doi/epdf/10.1080/20008066.2025.2506189?needAccess=true>.

⁴⁸ See *id.* at 2; see also B. Shaw Drake, *In the Balance Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems* Hum. Rts. First 13 (Apr. 2016), <https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-In-The-Balance.pdf> (“extended delays in adjudicating claims—and the resulting uncertainty in asylum seekers’ futures—are associated with psychological distress ‘above and beyond the impact of traumatic events.’”).

⁴⁹ See Nick Lichtenberg, *Trump Crackdown Drives 80% Plunge in Immigrant Employment, Reshaping Labor Market, Goldman Says*, Fortune (Feb. 17, 2026), <https://fortune.com/2026/02/17/trump-immigration-unemployment-jobs-productivity-impact-on-labor-market-goldman-sachs/> (immigration crackdown creating a “shadow workforce”); 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).

supervisors and payroll irregularities, all without legal protections.⁵⁰ Unauthorized employees are already more likely to endure labor abuses, including wage theft and retaliation.⁵¹ They now have little incentive to report abuses as USCIS recently ended a program that protected whistleblowers.⁵²

According to a landmark study on labor abuses, 84.9 percent of unauthorized immigrant workers reported not being paid time-and-a-half for their overtime hours, and 37.1 percent of unauthorized immigrant workers reported they were victims of minimum-wage violations in the week prior to their being surveyed.⁵³ By comparison, 24 percent of surveyed immigrant workers with work authorization reported being victims of wage violations.⁵⁴

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 in 85 percent of the 77 times garment factories were investigated in Los Angeles and determined \$1.3 million in unpaid wages.⁵⁵

Furthermore, employers of unauthorized workers often do not carry workers' compensation insurance, leaving employees to pay for their own treatment of workplace injuries. For example, 41 percent of undocumented workers in Illinois paid the cost of their workplace injuries.⁵⁶ Even when employers carry coverage, insurance companies often deny unauthorized

⁵⁰ APA Task Force on Immigr. and Health, Am. Psych. Ass'n., *Psychological Science and Immigration Today* 18 (Aug. 2024), <https://www.apa.org/pubs/reports/psychological-science-immigration-today.pdf>.

⁵¹ Daniel Costa, *California Leads the Way: A Look at California Laws that Help Protect Labor Standards for Unauthorized Immigrant Workers*, Econ. Pol'y Inst. (Mar. 22, 2018) <https://www.epi.org/publication/california-immigrant-labor-laws/>.

⁵² 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>.

⁵³ Costa, *supra*, note 51.

⁵⁴ 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 Emp. L. Project (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/>.

⁵⁵ Susan Ferris et al., *Wage Theft Hits Immigrants - Hard*, Ctr. for Pub. Integrity (Oct. 14, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/garment-immigrant-workers-wage-theft/>.

⁵⁶ 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.

workers' claims.⁵⁷ In some cases, insurance companies report unauthorized workers to ICE or refer them for prosecution under state laws.⁵⁸

As set forth above, the Rule would harm asylum seekers in myriad ways across many facets of their lives – too many to even fully recount here. Indeed, as just one other example, asylum seekers' access to domestic air travel will be curtailed due to the Rule, as EADs serve as valid forms of identification at TSA checkpoints.⁵⁹

C. The Rule Would Harm the States

1. Overview

In addition to all the harms discussed above, the Department further failed to sufficiently consider the Rule's impact on the States. In doing so, the Department violated Executive Order 13132, which requires an agency to consult with State and local officials to ensure "meaningful and timely input" in the development of regulatory policies that have substantial direct effects on States. Exec. Order No. 13132 ("Federalism"), 64 Fed. Reg. 43,255, 43,256, 43,257 (Aug. 10, 1999). Instead, the Department summarily concluded that the Rule "would 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." 91 Fed. Reg. at 8,696.

The Department nonetheless purports to speak on the States' behalf, claiming the Proposed Rule would reduce asylum and EAD applications that "generate costs to localities, states, the national economy, and strain resources." *Id.* at 8,620. According to DHS, the Rule "would potentially mitigate" States' public assistance and other resources. *Id.* at 8,620. To the contrary, from 1994 to 2023, the immigrant population generated nearly \$10.6 trillion more in taxes than immigrants received in benefits.⁶⁰ Further, immigrants would remain "fiscally positive" as long as they create at least average revenue, which would be less likely for unemployed asylum seekers.⁶¹ The libertarian Cato Institute summarized its findings simply:

⁵⁷ 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>.

⁵⁸ *Id.*

⁵⁹ Transp. Sec. Admin. (TSA), *Acceptable Identification at the TSA Checkpoint*, [https://www.tsa.gov/travel/security-screening/identification#:~:text=The%20Transportation%20Security%20Administration%20\(TSA\)%20accepts%20the,Credential%20*%20Veteran%20Health%20Identification%20Card%20\(VHIC\)](https://www.tsa.gov/travel/security-screening/identification#:~:text=The%20Transportation%20Security%20Administration%20(TSA)%20accepts%20the,Credential%20*%20Veteran%20Health%20Identification%20Card%20(VHIC)) (last visited Apr. 15, 2026).

⁶⁰ David J. Bier et al., *Immigrants' Recent Effects on Government Budgets: 1994–2023*, Cato Inst. (Feb. 3, 2026), <https://www.cato.org/white-paper/immigrants-recent-effects-government-budgets-1994-2023>.

⁶¹ *Id.*

For years, nativists in Congress and the administration have wrongly claimed that immigrants are behind the growth in debt and that the US immigration system allows foreigners to take advantage of Americans' generosity. Our data completely repudiates this view. Immigrants are subsidizing the US government.⁶²

In failing to analyze these impacts or to consult with the States prior to proposing the Rule, the Department has not only disregarded the Executive Order 13132 requirements but has also ignored that the Rule would undermine the States' policies and programs and impose substantial costs on State governments. Further, the Department's assumptions about the States' interests are incorrect, as the experience of the under-signed States demonstrates.

First, unemployment resulting from the Rule would cost the States billions of dollars in lost tax revenue and diminished economic growth. Second, the resulting delays in processing EAD applications would lead to increased healthcare costs shouldered by the States. Third, the Rule would burden the States' other social service providers, including state-funded non-profits. Fourth, and finally, the Rule would drive more workers into the underground economy, making it more difficult for the States to enforce laws designed to protect workers from unfair and abusive employment conditions.

2. The Rule would deprive the states of important streams of revenue

The Department understates that "[t]here could be tax impacts" resulting from the proposed changes to EAD processing for asylum seekers. *Id.* at 8,621, 8,665. Contrary to empirical evidence, DHS hypothesizes that any reduced strain on State resources resulting from an overall decrease in immigration "could counterbalance some or all of the tax losses." *Id.* at 8,621. Alternatively, DHS suggests, "if the earnings are transferred to American workers, there may be no loss of taxes." *Id.* Ultimately, the Department cannot quantify tax transfer payments applicable to State and local taxes. *See id.* at 8,676. Certainly, the numbers do not compute because the labor force participation rate for native-born workers fell in the fall of 2025, and continues to remain lower than expected, despite a reduction in net international migration by

⁶² David J. Bier, *Cato Study: Immigrants Reduced Deficits by \$14.5 Trillion Since 1994*, Cato Inst., Cato at Liberty (Feb. 3, 2026), <https://www.cato.org/blog/cato-study-immigrants-reduced-deficits-145-trillion-1994>; see also David J. Bier, *Manhattan Institute's Criticisms Vindicate Cato's Report on Fiscal Effect of Immigrants: Part 1*, Cato Inst., Cato at Liberty (Mar. 3, 2026) (responding to Manhattan Institute's flawed criticism), <https://www.cato.org/blog/manhattan-institutes-false-criticisms-vindicate-catos-immigration-report-part-1>; David J. Bier, *Manhattan Institute's Criticisms Vindicate Cato's Report on Fiscal Effect of Immigrants: Part 2*, Cato Inst., Cato at Liberty (Mar. 3, 2026) (noting Manhattan Institute's concession that immigrants reduce deficits; noting unemployed immigrants "are fiscal drags"), <https://www.cato.org/blog/manhattan-institutes-false-criticisms-vindicate-catos-immigration-report-part-2>.

over half.⁶³ On the other hand, although unauthorized workers also pay taxes, tax revenue increases when immigrants can work legally. Undocumented immigrants residing in the States, for example, paid approximately \$37 billion in state and local taxes in 2022, but those tax contributions would increase by over \$7 billion if they had legal work authorization.⁶⁴ Further, immigrants contributed \$14.5 trillion towards a fiscal surplus from 1994 to 2023, and the absence of immigrants would have created a deficit of \$4.8 trillion in 2023 alone, such that the Federal Government's public debt would have been at least 205 percent of Gross Domestic Product (GDP) and would have likely triggered a debt crisis.⁶⁵

The Department attempts to point to ineffectiveness of the "prior administration" as partial justification for the Proposed Rule (*see id.* at 8,628), but empirical data of taxes paid by undocumented immigrants and asylum seekers who entered during President Biden's administration shows they would reduce the federal debt by \$1.2 trillion over 10 years, and \$167 billion annually thereafter.⁶⁶ By contrast, the Department's current enforcement actions will increase the debt by \$500 billion over the next 10 years.⁶⁷ The Proposed Rule also comes at a time when the CBO has found that other immigration changes under President Trump will "slow the growth of the labor force" and "dampen[] growth in potential output."⁶⁸ As a result, the CBO retracted its previous projection of a \$8.9 trillion boost to the GDP through 2034 because immigration is no longer projected to increase the population by 10 million and compensate for the aging American population.⁶⁹

⁶³ Sara Estep & Kennedy Andara, *Immigrants Make the Labor Market Great: Analysis of the February 2026 Jobs Day Release*, Cntr. for Am. Progress (Mar. 6, 2026), <https://www.americanprogress.org/article/immigrants-make-the-labor-market-great/> (noting decrease in net international migration in the U.S. from 2.7 million in July 2024 to 1.3 million in June 2025).

⁶⁴ 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/>; *see also* Miriam Jordan & Andrew Duehren, *Immigrants Are Scared to File Taxes. It Could Cost the U.S. Billions.*, N.Y. Times (Apr. 14, 2026), <https://www.nytimes.com/2026/04/14/us/undocumented-immigrants-ice-tax-returns-irs.html> (noting that immigrants' fear of filing may result in \$300 billion in lost tax revenue over a decade); Ben D'Avanzo & Sarah Krieger, *Will Fear Keep Many Immigrants from Filing Their Taxes This Year?*, Nat'l Immigr. L. Ctr. (Mar. 18, 2026), <https://www.nilc.org/articles/will-fear-keep-many-immigrants-from-filing-their-taxes-this-year/> (noting that the Internal Revenue Service sharing taxpayer addresses with DHS may lead to fewer immigrants filing their taxes this year and hurt investment in local economies).

⁶⁵ Bier et al., *supra*, note 60.

⁶⁶ Cong. Budget Off. (CBO), *Effects of the Immigration Surge on the Federal Budget and the Economy*, (Table 1) (Jul. 2024), <https://www.cbo.gov/publication/60569>.

⁶⁷ CBO, *The Budget and Economic Outlook: 2026 to 2036*, 102-03 (Box 5-1) (Feb. 2026), <https://www.cbo.gov/system/files/2026-02/61882-Outlook-2026.pdf>.

⁶⁸ *Id.* at 29.

⁶⁹ *Id.* at 32 (Box 2-2).

Immigrant entrepreneurs, who create jobs by starting businesses, constituted 23.6 percent of all entrepreneurs in the United States in 2023 and generated over \$116 billion in business income.⁷⁰ As of 2023, the over 10.6 million immigrant residents – including 880,900 entrepreneurs – generated \$168 billion in taxes and had spending power of over \$404 billion.⁷¹ In New York, immigrants are 34.3 percent of the state’s entrepreneurs.⁷² In New York, refugees contribute approximately \$2 billion in taxes annually.⁷³ In Massachusetts, immigrants are 27 percent of entrepreneurs, 29.3 percent of STEM workers, and 38.6 percent of health aides.⁷⁴ Massachusetts immigrants contribute \$20.4 billion in state and federal taxes.⁷⁵ The Proposed Rule threatens to undermine these guaranteed sources of revenue.

Substantial data also shows that immigrants are disproportionately employed in discrete sectors in the States and employers are likely to face costs and difficulties trying to find labor substitutes. Foreign-born workers, including undocumented immigrants, constituted 19.2 percent of the U.S. labor force in 2024.⁷⁶ These same workers were more likely than native-born workers to be employed in service, construction, and maintenance occupations.⁷⁷ Importantly, for the U.S. economy to grow, it will need immigrant workers.⁷⁸ Immigrants currently represent 15.9

⁷⁰ Am. Immigr. Council, *New Americans in the United States* (2023), <https://map.americanimmigrationcouncil.org/locations/national/#> (last visited Apr. 20, 2026); see also Rob Wile, *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-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.”)

⁷¹ Am. Immigr. Council, *Immigrants in California*, <https://map.americanimmigrationcouncil.org/locations/california/> (last visited Mar. 20, 2026).

⁷² Am. Immigr. Council, *Immigrants in New York*, <https://map.americanimmigrationcouncil.org/locations/new-york/> (summarizing 2023 data on likely refugees) (last visited Mar. 20, 2026).

⁷³ *Id.*

⁷⁴ Am. Immigr. Council, *Immigrants in Massachusetts*, <https://map.americanimmigrationcouncil.org/locations/massachusetts/> (last visited Apr. 17, 2026).

⁷⁵ *Id.*

⁷⁶ U.S. Bureau of Lab. Stat., *Labor Force Characteristics of Foreign-Born Workers Summary* (May 20, 2025), <https://www.bls.gov/news.release/forbrn.nr0.htm>.

⁷⁷ *Id.*

⁷⁸ 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/>; see also Pia Orrenius et al., *Unprecedented U.S. Immigration Surge Boosts Job Growth, Output*, Fed. Rsrv. Bank of Dall. (July 2, 2024), <https://www.dallasfed.org/research/economics/2024/0702> (recognizing that higher immigration has boosted payroll and GDP growth).

percent of all nurses and 28.4 percent of all health aides.⁷⁹ States will need more immigrants to help fill the expected shortage of 134,940 healthcare providers by 2036.⁸⁰

Scarce immigrant farm labor is also causing farmers to struggle to maintain competitive production levels.⁸¹ Approximately 66 percent of all agricultural workers are noncitizens.⁸² Those numbers, of course, will decrease if EADs become more difficult to obtain. Indeed, the Department pushes the Proposed Rule despite the Department of Agriculture’s recognition that “[t]he farm economy is in a difficult situation” and the Department of Labor’s warning that the difficulty in replacing seasonal farmworkers with Americans threatens food production and prices.⁸³

Immigrants similarly constituted nearly 30 percent of all construction workers nationwide and more than 40 percent of construction labor in California.⁸⁴ The construction industry is desperate to fill a projected national shortage of an estimated 349,000 new workers in 2026, and 456,000 in 2027.⁸⁵ In fact, 92 percent of construction firms reported having difficulties finding construction workers to hire as of August 2025.⁸⁶ Twenty-eight percent of those firms report

⁷⁹ Am. Immigr. Council, *Immigrants in the United States*, <https://map.americanimmigrationcouncil.org/locations/national/#> (last visited Apr. 20, 2026).

⁸⁰ 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/>.

⁸¹ Econ. Rsch. Serv., U.S. Dep’t of Agric., *Farm Labor* (Nov. 18, 2025), <https://www.ers.usda.gov/topics/farm-economy/farm-labor>; see also AgAmerica, *Infographic: The U.S. Farm Labor Shortage* (Mar. 24, 2025), <https://agamerica.com/blog/the-impact-of-the-farm-labor-shortage/> (“Lack of access to reliable and affordable farm labor is causing U.S. farm operators to lose their competitive advantage in the global market.”).

⁸² Akash Pillai et al., *Potential Implications of Immigration Restrictions on the U.S. Agricultural Workforce*, KFF (Apr. 25, 2025), <https://www.kff.org/racial-equity-and-health-policy/potential-implications-of-immigration-restrictions-on-the-u-s-agricultural-workforce/>.

⁸³ Linda Qiu, *To Address Farm Labor Shortage, Trump Administration Turns to Migrant Workers*, N.Y. Times (Mar. 15, 2026), <https://www.nytimes.com/2026/03/15/us/politics/farm-labor-trump-migrant-workers-h2a.html>.

⁸⁴ Am. Bus. Immigr. Coal., *Construction: Securing the Workforce Behind America’s Growth* (Sept. 10, 2025), <https://abic.us/construction-securing-the-workforce-behind-americas-growth/#:~:text=Immigrants%20make%20up%20nearly%2030,Census%20data%20and%20labor%20surveys>; see also Nat’l Ass’n of Home Builders, *The States and Construction Trades Most Reliant on Immigrant Workers* (Apr. 10, 2026), <https://www.nahb.org/blog/2026/04/Which-States-and-Construction-Trades-Depend-the-Most-on-Immigrant-Workers> (recognizing that immigrants comprise 42.1 percent of the construction workforce in California).

⁸⁵ Associated Builders and Contractors (ABC), *ABC: Construction Industry Must Attract 349,000 Workers in 2026 Despite Macroeconomic Headwinds* (Jan. 15, 2026), <https://www.abc.org/News-Media/News-Releases/abc-construction-industry-must-attract-349000-workers-in-2026-despite-macroeconomic-headwinds>.

⁸⁶ Associated Gen. Contractors of Am., *Construction Workforce Shortages Are Leading Cause of Project Delays as Immigration Enforcement Affects Nearly 1/3 of Firms*,

direct or indirect effects from immigration enforcement.⁸⁷ To compound the issue, just as unemployment leads to immigrants' housing insecurity and fewer houses built, it likewise interrupts immigrants' stimulation of new home construction through their own purchasing power.⁸⁸

Immigrants also represent 46 percent of the health aides in California and over 43 percent of the state's workers in manufacturing.⁸⁹ In New York, immigrants are 26.6 percent of its STEM workers and 59.5 percent of the state's health aides.⁹⁰ Businesses and industries that would be disproportionately affected by the Proposed Rule may have a difficult time filling positions.

Although the labor of immigrant workers is one of the major engines currently powering the U.S. economy, the administration's actions on immigration "not only harm our immigrant neighbors, they threaten to undermine job growth and pay for all workers."⁹¹ In fact, increases in immigration and the availability of immigrant labor are necessary to sustain economic growth in the United States as population growth "will become entirely dependent on immigration by 2040."⁹²

The Department admits that employers unable to hire asylum seekers that would otherwise have EADs "could incur a cost to productivity and potential profit." *Id.* at 8,621, 8,665. While acknowledging that companies may incur costs by having to choose "the next best alternative to immediately filling the job the asylum applicant would have filled," USCIS does not know what those alternatives would be. *Id.* at 8,621, 8,665. DHS posits "if" employers can hire American workers to fill the jobs the asylum applicants would otherwise hold, it would constitute a benefit to American workers and "potentially" pose no productivity loss or costs to employers. *Id.* at 8,620, 8,664. Otherwise, lost productivity and profits would be approximately \$70.44 billion, from which the Federal Government would lose approximately \$7.43 billion in employment taxes (i.e. Medicare and Social Security). *Id.* at 8,692. Finally, it bears repeating

(Aug. 28, 2025), <https://www.agc.org/news/2025/08/28/construction-workforce-shortages-are-leading-cause-project-delays-immigration-enforcement-affects>.

⁸⁷ *Id.*

⁸⁸ Am. Immigr. Council, *How 40 Million Immigrants Create Housing Wealth and Stabilize Communities*, <https://www.americanimmigrationcouncil.org/housing/> (last visited Apr. 21, 2026).

⁸⁹ Am. Immigr. Council, *supra* note 71.

⁹⁰ Am. Immigr. Council, *supra* note 72 (summarizing data from 2023).

⁹¹ Nat'l Emp. L. Project, *March Jobs Report: Immigrant Workers Power a Steady Economy, Full Impact of Trump Policies Yet to Come* (Apr. 4, 2025), <https://www.nelp.org/march-jobs-report-immigrant-workers-power-a-steady-economy-full-impact-of-trump-policies-yet-to-come/>.

⁹² Pia Orrenius et al., *Unprecedented U.S. Immigration Surge Boosts Job Growth, Output*, Fed. Rsrv. Bank of Dall. (July 2, 2024), <https://www.dallasfed.org/research/economics/2024/0702>.

that the losses would not be theoretical because the Rule would also remove currently authorized workers from the workforce when they are unable to renew existing EADs.

3. The Rule would increase States' healthcare costs

Changes in immigration policy under the prior Trump administration contributed to an increase in the uninsured rate starting in 2017.⁹³ New policy changes would further increase the uninsured rate. In 2023, nearly one-third of noncitizen immigrants were uninsured.⁹⁴ Making matters worse, almost all asylum seekers recently lost complete access to Medicare due to the Budget Reconciliation Law of 2025.⁹⁵ They will also lose access to the Affordable Care Act Marketplace beginning on January 1, 2027.⁹⁶ These restrictions to healthcare access were already expected to increase the number of lawfully residing immigrants who will go without health coverage, without factoring in the limited access to lawful employment that would result from the Rule.⁹⁷ As a result, States would 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.⁹⁸ Meanwhile, due to state budget constraints, several states, including California, will end or pause new enrollment for individuals without lawful status (such as individuals who are undocumented but have pending asylum applications) other than pregnant mothers and children.⁹⁹

Employed immigrants are already less likely to have access to jobs with employer-sponsored health insurance and would be completely without the opportunity when

⁹³ 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>.

⁹⁴ *Id.*

⁹⁵ 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, subsidized Marketplace coverage, and Medicare for all lawfully present noncitizens except legal permanent residents, Cuban/Haitian entrants, and citizens of the Marshall Islands, Micronesia, and Palau).

⁹⁶ ASAP, *Health Care for Asylum Seekers* (Oct. 10, 2025), <https://asaptogether.org/en/health-care/>.

⁹⁷ See Tolbert et al., *supra* note 93.

⁹⁸ 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. 1, 2, 6 (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>.

⁹⁹ Tanya Broder et al., *Overview of Immigrant Eligibility for Federal Programs*, Nat'l Immigr. L. Ctr. (Jan. 1, 2026), <https://www.nilc.org/resources/overview-immeligfedprograms/>.

unemployed.¹⁰⁰ Notably, in addition to the obvious harm to those who would not be able to obtain health insurance, the States would also suffer because employed immigrants subsidize the U.S. health care system and offset costs incurred by citizens.¹⁰¹

Without private insurance, immigrants would have to rely in greater degree on the seven States that, as of September 2025, provide fully state-funded coverage to some income-eligible adults regardless of status, and 14 that provide fully state-funded coverage for income-eligible children regardless of immigration status.¹⁰²

Understandably, individuals without insurance are far more likely to skip the preventative care that keeps them healthy.¹⁰³ In fact, in 2023, uninsured adults were nearly three times more likely to say they have not sought health care compared to publicly insured adults and four times more likely than privately insured adults.¹⁰⁴ In November 2025, 40 percent of uninsured adults reported experienced difficulties paying for prescription drug costs in the preceding year.¹⁰⁵ In 2023, 20 percent of immigrant adults with insurance reported having difficulty paying for health care in the preceding year, with more skipping or postponing care.¹⁰⁶ For immigrants without insurance, the percentage of those foregoing care jumped 16 percent.¹⁰⁷ Even for those fortunate to reside in a state with a moderately expansive coverage policy, the cost still forced immigrant

¹⁰⁰ See KFF, *supra* note 27 (noting that most noncitizen immigrants are working but “tend to be employed in industries and jobs that are less likely to offer employer-sponsored health coverage and face eligibility restrictions for federally funded health coverage.”)

¹⁰¹ Mark J. Ommerborn et al., *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>.

¹⁰² 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/>.

¹⁰³ 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>.

¹⁰⁴ Tolbert et al., *supra* note 93.

¹⁰⁵ 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/>.

¹⁰⁶ 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/>.

¹⁰⁷ *Id.*

adults to skip or postpone medical care 13 percent of the time in the preceding year.¹⁰⁸ Of all those who skipped or postponed care, 69 percent confirmed they did so because of the cost or lack of health insurance.¹⁰⁹ Unsurprisingly, 40 percent of those same adults acknowledged their health consequently worsened.¹¹⁰

Lack of health insurance for more lawfully present immigrants would also worsen the overall public health. Case in point, the uninsured are less likely to receive vaccinations that prevent the spread of infectious diseases throughout the community.¹¹¹ From 2023 to 2024, 49.4 percent of insured adults received the flu shot, but only 18.8 percent of uninsured adults did.¹¹² Inoculation helps prevent the spread of the flu, which caused between 23,000 and 78,000 deaths nationwide from October 1, 2025, through April 11, 2026.¹¹³ Many of those deaths could have been easily avoided.

4. The Rule would burden nonprofits in the States

The States fund many nonprofits that assist immigrants. An indefinite pause in EAD processing would require additional resources from these providers. For example, with the increasing lack of access to health insurance, and the difficulty paying costs for available insurance, unemployed immigrants would increasingly rely on nonprofit community health centers (CHCs) that provide free or low-cost care to low income and uninsured populations.¹¹⁴ 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 percent who attribute this treatment to their insurance status or ability to pay.¹¹⁵ Worse, the administration is directing CHCs to restrict access to undocumented

¹⁰⁸ Pillai et al., *supra* note 102.

¹⁰⁹ Pillai et al., *supra* note 106.

¹¹⁰ *Id.*

¹¹¹ 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>.

¹¹² U.S. Dep't of Health & Hum. Servs., *Increase the Proportion of People Who Get the Flu Vaccine Every Year*, <https://odphp.health.gov/healthypeople/objectives-and-data/browse-objectives/vaccination/increase-proportion-people-who-get-flu-vaccine-every-year-iid-09/infographic> (last visited Apr. 20, 2026).

¹¹³ CDC, *Preliminary Estimated Flu Disease Burden 2025-2026 Flu Season* (Nov. 21, 2025), <https://www.cdc.gov/flu-burden/php/php/data-vis/2025-2026.html> (last visited on Apr. 21, 2026).

¹¹⁴ See Pillai et al, *supra* note 102 (“Immigrants in states with less expansive policies are somewhat more likely to say they use a CHC (33% vs. 28%) and somewhat less likely to say they use a private doctor’s office (39% vs. 44%).”).

¹¹⁵ Pillai et al., *supra* note 106.

immigrants.¹¹⁶ The strain on CHCs and the resultant mistreatment of immigrant patients would only grow if unemployed asylum seekers 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 II.B. Immigrants would look to the States to further fill the gaps. Currently, California has allocated nearly \$37 million for nonprofit organizations to provide immigration services through 2026.¹¹⁷ California also provides grants for nonprofits and others to assist new immigrant students, the aged, blind, or disabled legal immigrants.¹¹⁸ States would be hamstrung to sufficiently support service providers by the administration's continued restrictions on benefits and federal grants to support immigrant services.¹¹⁹

Even with state and local funding, nonprofits recognize that the administration's policy changes can impact funding, staffing, and general operations of critical services.¹²⁰ For example, freezing federal funds for refugees in 2025 caused nonprofits to scramble to provide services.¹²¹ Even after the freeze was temporarily blocked, the administration's actions caused nonprofits to face continued confusion and obstacles to receiving funds, leading many to stop programs and furlough employees.¹²²

¹¹⁶ Maya Goldman, *Community Clinics Squeezed by Immigration Checks*, Axios (July 17, 2025), <https://www.axios.com/2025/07/17/clinics-cutoff-undocumented-immigrants>.

¹¹⁷ Cal. Dep't. of Soc. Servs. (CDSS), *Immigration Services Funding (ISF) Program* (2023-26), <https://www.cdss.ca.gov/inforesources/immigration/immigration-services-funding> (last visited Mar. 20, 2026).

¹¹⁸ CDSS, *Cash Assistance Program for Immigrants (CAPI)*, <https://www.cdss.ca.gov/capi> (last visited Mar. 20, 2026); CDSS, *Trafficking and Crime Victims Assistance Program*, <https://www.cdss.ca.gov/inforesources/TCVAP> (last visited Mar. 20, 2026); CDSS, *California Newcomer Education and Well-Being*, <https://www.cdss.ca.gov/inforesources/refugees/programs-and-info/youth-initiatives/calnew> (last visited Mar. 20, 2026).

¹¹⁹ *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).

¹²⁰ *See* Nat'l Council of Nonprofits (NCN), *The Impacts of the Recent Executive Orders on Nonprofits* (2026), <https://www.councilofnonprofits.org/impacts-recent-executive-orders-nonprofits> (last visited Mar. 23, 2026).

¹²¹ Ximena Bustillo, *Nonprofits Scramble to Provide Refugee Services After Administration Freezes Funding*, NPR (updated Feb. 13, 2025), <https://www.npr.org/2025/02/13/nx-s1-5294465/nonprofits-scramble-to-provide-refugee-services-after-administration-freezes-funding>.

¹²² 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>.

The Proposed Rule would produce more unemployed immigrants in need of services, which would cause scarce resources to be stretched thinner. In response, the Department only seeks to pacify social networks, support networks, and public entities facing increased demand for assistance with the cold assurance that they may soon have fewer clients to serve when DHS reduces overall immigration. *Id.* at 8,620, 8,664.

5. The Rule would adversely impact States' ability to enforce their laws

The Rule would also interfere with the States' ability to enforce their labor and civil rights laws. As described above, unauthorized workers would increasingly enter the underground economy and become less likely to report labor and civil rights violations. *See supra* Section II. B. 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.¹²³ These laws are enforced without respect to immigration status, but effective enforcement relies on residents' 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 them from reporting such violations.¹²⁴ 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.¹²⁵ 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.¹²⁶ Many 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.¹²⁷ Similarly, a study in Chicago found that, of the immigrant workers who have suffered a

¹²³ *See, e.g., generally*, Cal. Gov. Code §§ 12900-12996 (West 2026) (Cal. Fair Emp. and Hous. Act); Cal. Bus. & Prof. Code § 17200 *et seq.* (West 2026) (Unfair Competition Act); Cal. Lab. Code §§ 200-1207 (West 2026) (Compensation; Working Hours; Privileges and Immunities; Agricultural Labor Relations; Employees); 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) (McKinney 2026); N.Y. Workers' Comp. Law § 17 (workers compensation for noncitizens) (McKinney 2026).

¹²⁴ Hum. Rts. Watch, *supra* note 37; Costa, *supra* note 51.

¹²⁵ Hum. Rts. Watch, *supra* note 37.

¹²⁶ 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>.

¹²⁷ *Id.*

workplace injury and report it to their employer, 23 percent reported being either immediately fired or threatened with deportation.¹²⁸

If asylum seekers fear reporting labor violations because they do not have work authorization, it would be harder for the States' agencies to enforce civil rights and labor laws. Furthermore, without work authorization, immigrants would feel less comfortable making claims with the States' agencies and consequently would endure exploitative and discriminatory employment practices for a longer period. Indeed, many claims could become stale or fall outside of the statute of limitations before asylum seekers would feel secure enough to make them. Given the high rates of exploitation, therefore, the Proposed Rule would discourage timely reporting of violations, interfering with the States' abilities to enforce their laws.

D. The Department's Justifications for the Proposed Rule are Unreasonable

1. The Department obscures its primary aim

Through the Proposed Rule, DHS aims to address national security concerns and mitigate strains on resources by "reducing the incentive" for "frivolous, fraudulent, or otherwise meritless" asylum claims. 91 Fed. Reg. at 8,617. The Department claims its "ultimate goal," is to strengthen the "integrity" of the asylum process by reducing the backlog of asylum cases. *Id.* at 8,644, 8,650. DHS acknowledges that the "primary impact" of the Proposed Rule would result from the pause in accepting all initial EADs applications. *Id.* at 8,665. As such, it beggars belief that the Department's true aim is to benefit asylum seekers rather than create more obstacles. In fact, rather than tailoring the Rule to address its specific concerns, DHS instead unreasonably constructs the Rule to both deter the number of all asylum applications and increase the number of asylum seekers subject to removal.

First, the Department ignores the inconvenient truth that noncitizens are entitled to apply for asylum. *See* 8 U.S.C. §1158(a). Congress's uniform asylum policy, reflected in Section 1158, was a "fundamental belief that the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process." *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1213 (S.D. Cal. 2019) (citation omitted). To deter asylum seekers, therefore, is "plausibly inconsistent with and violative of the scheme Congress enacted." *Id.* at 1214 (finding possible violation where alleged policy sought to deter asylum seekers "through false assertions of lack of capacity"). Likewise, the federal government is not authorized to limit the number of noncitizens who may seek asylum. *Id.* (comparing 8 U.S.C. §1157(a)(2), which may limit the number of refugees); *see also id.* at 1215 (citing *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 774 (9th Cir. 2018) (noting that the federal

¹²⁸ Theodore, *supra* note 56, at 18.

government cannot amend the INA “through executive action to establish a procedure at variance with the scheme Congress chose.”)).

Second, as discussed above, many asylum seekers will be forced to work in the “shadow economy” while adjudication of their EAD applications is paused, which will put them at predictable risk of undermining their asylum applications. The Department is quick to warn asylum seekers that working without a valid EAD “may render them removable and ineligible for future benefits such as adjustment of status.” 91 Fed. Reg. at 8,619, 8,644. As such, it appears the Department knows the Rule will reduce both the number of asylum applicants and that many asylum seekers who remain in the United States will work unlawfully and become subject to removal before their asylum claims can be adjudicated. *See id.* at 8,643.

The Department claims the pending affirmative asylum caseload “weakens the integrity of the system,” by “obstructing” the agency from identifying concerns until the cases are adjudicated. *Id.* at 8,629. As such, the Department confoundingly argues asylum seekers are “obstructing” the Department’s ability to adjudicate asylum applications for the benefit of asylum seekers. More accurately, the Department seeks to obscure that the primary justification of the Proposed Rule is to deter or remove asylum seekers.

2. The Department’s stated justification is not supported

The Department seeks to justify limitations on the availability of EADs in the Proposed Rule by drawing parallels to 1994 regulatory reforms that imposed a 150-day waiting period for asylum seekers to apply for employment authorization. 91 Fed. Reg. at 8,641 (citing 59 Fed. Reg. 14,779 (Mar. 30, 1994); 59 Fed. Reg. 62,284 (Dec. 5, 1994)). The Department notes that the 1994 reforms “had an unmistakable impact on asylum program integrity,” including “curtailing meritless claims and delivering fair and timely decisions on asylum cases.” *Id.* at 8,632, 8,664. After codification of the 1994 reforms in 1996, DHS achieved an 80 percent decrease in asylum applications and increased the approval rate from 15 to 39 percent in 1999. *Id.* at 8,650. The Department claims it can somehow achieve similar results by incorporating 1994 justifications to 2026 conditions. *Id.* at 8,650 (“Because the proposals in this rulemaking are designed to have a similar effect to those reforms implemented by the INS in 1994, DHS expects this rulemaking will eventually achieve similar results to those achieved by the INS.”) DHS admits, however, that in 1994, unlike now, it expected all applicants would have work authorization within 180 days unless their claims had been denied. *Id.* at 8,631, 8,643 (citing 59 Fed. Reg. at 62,290-91).¹²⁹ Indeed, the intent of the 1994 reforms was to encourage the adjudication of the underlying asylum claims within the 150-day waiting period to avoid

¹²⁹ DHS also points to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that mirrored the 1994 regulatory reforms and established new asylum procedures, codified in 8 U.S.C. § 1158(d)(1), providing that asylum applications “shall” be completed within 180 days. 91 Fed. Reg. at 8,631-32.

separately adjudicating work authorization applications, and thereafter provide work authorization in 30 days “*regardless of the merits* of the underlying asylum claim.” 59 Fed. Reg. at 14,780 (emphasis added). The 1994 reforms did not support the Department’s current argument that the intent was to decouple asylum and EAD processing. In fact, the Department limited the waiting period to 150 days because, if it were any longer, “it would not be appropriate to deny work authorization.” 59 Fed. Reg. at 14,780.¹³⁰ DHS fails to explain why a longer denial would now be appropriate. Instead, the Department proposes to maintain the staffing levels of fiscal year 2024, add no additional resources, and keep its fingers crossed that 80 percent of asylum seekers disappear. *See* 91 Fed. Reg. at 8,651.

Further, although DHS “understands that asylum applicants may be fleeing past persecution or may have a well-founded fear of future persecution,” they are quick to note that they are not obligated to provide these individuals the ability to work and support themselves. *Id.* at 8,652 (“However, there is nothing in the statute that requires an EAD for aliens applying for asylum, rather this is a purely discretionary EAD category.”) Instead, DHS contends, without support, that employment authorization for asylum seekers is intended to be “exceptional and unusual.” *See id.* at 8,652. The Department’s apparent justification for the Proposed Rule is, at its essence, “we won’t help asylum seekers maintain livelihoods in the United States because we don’t have to.”

3. Waiting Period

The Proposed Rule increases the period an individual must wait to apply for an EAD from the current six-month waiting period, nominally to one year. In fact, the total wait period would become 545 days, because noncitizens “may not apply until 365 days after their asylum application is received,” which when coupled with the 180-day adjudication timeframe, “could increase the total waiting period for an EAD to 545 days.” *Id.* at 8,654.

According to DHS, the current mechanism “will be simplified” by conversion to a 365-calendar day calculation.¹³¹ *Id.* at 8,620 n. 4. DHS claims the waiting period “may” reduce or limit fraudulent asylum applications. *Id.* at 8,623. Without evidence, its only justification is that “the 180-day waiting period is no longer providing a deterrence.” *Id.* at 8,653-54. In truth, as discussed above, the Department is motivated to deny all asylum seekers the ability to work during the pendency of their claims under the guise of ensuring that only those with approved

¹³⁰ The Department also acknowledges that the *Rosario* court ordered adjudication of applications for work authorization within 30 days of receipt by focusing on the intent of the 1994 rule. *Id.* at 8,634 (citing *Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1160 (W.D. Wash. 2018)).

¹³¹ The proposed change would supersede the settlement in *Garcia Perez v. DHS*, 2:22-cv-806 (W.D. Wash. 2022), which allowed class members to obtain information about their 180-day Asylum EAD Clock and challenge the reason for any stops to the clock. *See* 91 Fed. Reg. at 8,620 n.4.

asylum applications can work within one year. *See id.* at 8,654 (explaining intent to “decrease the incentives for aliens who do not have meritorious asylum claims”).

Relatedly, DHS claims the elimination of the 180-day Asylum EAD Clock, with its “starts and stops,” would “simplify” the determination of the eligibility date. *Id.* at 8,654. The Department provides no explanation for how “simplicity” outweighs the resulting harm to asylum seekers, how “resources on clock calculations” are so “complex and time-consuming,” or why “customer service” support for those with questions about any miscalculations justifies its elimination. *Id.* at 8,654.

4. Processing Timeframe

The Department further proposes that, after the new waiting period elapses, USCIS could take 180 days to adjudicate initial EAD applications for asylum seekers under the Proposed Rule, an increase from the 30 days currently required pursuant to a court order. *Id.* at 8,656 (discussing *Rosario*, 365 F. Supp. at 1160).¹³² The Department posits that the current 30-day processing timeframe “creates an obvious strain on finite operational resources.” *Id.* at 8,656. Notably, DHS does not concede that it cannot comply within 30 days – as indeed it currently does – but only that it “necessitates cross-training, utilizing overtime, and pulling resources from other workloads.” *Id.*

The Department’s historic position has been that it can complete sufficient investigations promptly, given sufficient resources. During the first Trump administration, the Department first suggested that the increase in asylum applications and the backlog overwhelmed USCIS Service Center Operations resources to adjudicate EADs.¹³³ But the Department admitted in 2020, “the time an officer spends on the actual [EAD] adjudication may take ‘mere minutes’ on applications without eligibility or fraud concerns.” 85 Fed. Reg. at 37,520. The Department also made several changes aimed at accomplishing many of the same goals at which it currently aims. *Id.* at 37,509 (“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.”).¹³⁴ Like its current actions, the Department chose in 2020 to interrupt work authorizations rather than devote more resources to processing applications. *See id.* at 37,522 (noting decision to forego staffing decision because “simply hiring more people does not provide a short[-]term fix”).¹³⁵ The Department sought an “immediate solution” rather than take the time

¹³² The 30-day processing timeframe was subsequently preserved in *Asylumworks*, 590 F. Supp. 3d at 21-22.

¹³³ *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).

¹³⁴ Specifically, the Department created the Application Support Centers (“ASCs”) and USCIS’s Office of Fraud Detection and National Security (“FDNS”). 85 Fed. Reg. at 37,509.

¹³⁵ The Department ignores that “resource allocation is not a talisman that an agency may invoke to escape judicial review.” *Coinbase, Inc. v. Sec. & Exch. Comm’n*, 126 F.4th 175, 201 (3d Cir. 2025).

to hire additional staff. *Id.* Indeed, the Department has actively worsened conditions by firing USCIS employees.¹³⁶

Still, the Department previously stated it does not fail to conduct appropriate vetting of initial EAD applications within 30 days. *Id.* at 37,517. And the Department does not claim it fails to clear red flags before processing those initial EAD applications.¹³⁷ In fact, because it is more efficient to resolve red flags upon initial screening, it does not defer assessment of derogatory information.¹³⁸ Even so, rather than indefinitely pause initial EAD application processing and delay work authorization, the Department was aware it could refer any ongoing concerns for a potential investigation.¹³⁹ Even now, the Department acknowledges it can refer applications to ICE if derogatory information is discovered during the vetting of EAD applicants. 91 Fed. Reg. at 8,657. At bottom, the Department cannot credibly claim that it cannot continue to adjudicate initial EAD applications within 30 days.

Although resource allocation is entitled to a high level of deference, it still must be sufficiently reasoned and cannot serve as a “blanket exception to APA review.” *Id.* (citation omitted).

¹³⁶ 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[.]”)

¹³⁷ 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).

¹³⁸ 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 applicants to receive a decision far more quickly than if any point of concern was routed outside of typical processing for additional scrutiny.”)

¹³⁹ 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[.]

5. Pause and Re-start

Although the Department proposes what it describes as a conditional “pause” of accepting any initial EAD applications, the net effect would be an imminent and indefinite end to initial EAD application processing. *See id.* at 8,650. DHS admits it anticipates the pause would begin 90 days after the Rule goes into effect. *Id.* at 8,620 (noting USCIS anticipates pause after mandatory review due to current processing times). Although the pause could theoretically be re-started after application processing times are sufficiently reduced, DHS estimates that will take between 14 and 173 years. *Id.* at 8,618. The lower estimate of 14 years is dependent on an 80 percent decrease in asylum applications, as occurred after implementation of the 1994 reforms (*id.* at 8,650) and, as discussed above, is not plausible under today’s conditions.

Making a further reference to the 1994 reforms, the Department misleadingly notes that the intent has always been to decide an asylum claim “in a timely manner” to avoid having to first adjudicate an employment authorization document. *Id.* at 8,649. Unlike in 1994, underlying asylum claims are not currently adjudicated in a “timely manner” when EAD applicants could usually receive work authorization incident to their approved asylum claim within 90 days. 59 Fed. Reg. at 62,290. In fact, the Department now proposes to change how it processes older applications, which would increase the processing time for asylum claims from the first two quarters of fiscal year 2025 to at least 46 to 63 years. 91 Fed. Reg. at 8,650. Asylum seekers, therefore, can no longer depend on obtaining work authorization incident to their asylum claim. And yet, as the Department recognized in 1994, if the underlying asylum claim has not been adjudicated within 150 days, “it would not be appropriate to deny work authorization.” 59 Fed. Reg. at 14,780.

6. Additional proposals

a. Biometrics

The Proposed Rule would also require noncitizens to submit biometrics collections for both initial EAD applications and renewal requests, which “would enable DHS to vet an alien’s biometrics against government databases to determine if he or she matched any criminal activity on file, to verify the alien’s identity, and to facilitate card production.” 91 Fed. Reg. at 8,621. The Department suggests it would require biometrics for both initial EAD applications and renewal requests to confirm that individuals are not utilizing multiple identities. *Id.* at 8,664. The Department acknowledges that an added biometrics collection “may again increase employment authorization application processing times,” but DHS claims that any harm would be outweighed by benefits to national security and public safety. 91 Fed. Reg. at 8,633. The Department does not explain how an additional requirement improves existing requirements or whether it could lead to additional findings of derogatory information. In practice, by requiring EAD applicants to schedule biometrics collection at an ASC (*id.*), the Department can justify stopping the processing of an EAD application if an applicant fails to appear at the appointment (*id.* at 8,647).

More consequential, and the more rational explanation for the additional requirement, is that the Department could deny the EAD application if the applicant fails to appear (*see id.* at 8,622, 8,694, 8,699) or possibly delay EAD processing by prolonging the scheduling of appointments or arrest and detain applicants who do appear.

b. Filing requirements

Understated but still significant is a proposed change to filing requirements for asylum applications. Under the Proposed Rule, an application would no longer be deemed complete if USCIS failed to return an incomplete application within 30 days. *Id.* at 8,655. DHS therefore has no incentive to timely review applications and could justify sitting on an incomplete application indefinitely before informing an applicant that the application is “incomplete.” EAD processing would then be further delayed because the waiting period would not start again until after the application is reviewed, rejected, sent back, and then “resubmitted, accepted, and receipted.” *Id.* at 8,655.

c. EAD eligibility requirements

The Department also proposes to exclude initial EAD eligibility if there is reason to believe a noncitizen “may” be subject to a criminal bar to asylum. *Id.* at 8,618. An EAD applicant would also be rejected if the EAD applicant’s underlying asylum application is denied within the waiting period. *Id.*

The Department would also deny EADs to anyone who enters or attempts to enter the United States at a place and time other than lawfully through a U.S. port of entry, within limited exceptions. *Id.* at 8,661.¹⁴⁰ As such, without justification other than disincentivizing immigration, the Rule could permanently preclude work authorization for over 43 percent of all asylum seekers in the United States.¹⁴¹ The Department’s ill-conceived plan to deter their entry,

¹⁴⁰ The restriction would apply unless the individual demonstrates that he or she, without delay but no later than 48 hours after the entry or attempted entry, stated their intent to apply for asylum or expressed to an immigration officer a fear of persecution or torture; or otherwise had good cause for the illegal entry or attempted entry. 91 Fed. Reg. at 8,661.

¹⁴¹ See Holly Straut-Eppsteiner, *Asylum Process in Immigration Courts and Selected Trends*, Congress.gov (Dec. 10, 2025), https://www.congress.gov/crs-product/R47504#_Toc216449090 (noting that defensive asylum applications in fiscal year 2025, which includes noncitizens in removal proceedings for illegal entries, represented 95 percent of the applications received by immigration judges); *see also* Noah Schofield & Amanda Yap, *Asylees: 2023*, Off. of Homeland Stat., U.S. Dept. of Homeland Sec. 5 (Oct. 2024), https://ohss.dhs.gov/sites/default/files/2024-10/2024_1002_ohss_asylees_fy2023.pdf (recognizing that, in fiscal year 2023, 636,380 noncitizens applied for affirmative asylum, whereas 488,620 applied for defensive asylum, which included those who are unlawfully present, are in violation of their status, or were apprehended while attempting to enter the United States and are placed in removal proceedings).

therefore, would be useless. Instead, the Department would guarantee that lawful asylum seekers present in the United States would be unable to work lawfully, without an articulable rationale.

Other applicants would only be eligible for an EAD if they applied for asylum within one year of arrival in U.S. unless an exception applies (*see* 8 U.S.C. §1158(a)(2)(D)) or the applicant is an unaccompanied child. *Id.* at 8,699. Notably, these exceptions do not include materially changed or extraordinary circumstances, despite these being exceptions for the bar’s applicability to the underlying asylum application. *Id.* at 8,659. Again, the Department fails to explain how this proposed change addresses concerns about national security, public safety, or program integrity other than just deterring asylum applications.

E. The Department’s Justifications are Contrary to Evidence

An agency’s 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*, 395 F.3d at 1026.

By frequently referencing its concern for “benefit integrity” (*see, e.g.*, 91 Fed. Reg. at 8,617), DHS suggests that fraud is a major concern and factor underscoring the proposed changes to EAD processing. But available evidence underscores that the Department’s concern about fraud is at best overblown, and at worst pretextual. Additionally, the Department fails to provide evidence that asylum seekers present a sufficient national security or public safety threat, much less that such concerns justify the proposed changes.

1. Allegations of fraud

The Department tellingly does not claim the Proposed Rule would reduce *actual* fraud but rather reduce “opportunities for fraud” (*id.* at 8,628) or prevent “potential fraudulent cases” (*id.* at 8,664). And for good reason, as data provided in the Proposed Rule demonstrates that actual instances of fraud in the EAD program are very limited. To justify the proposed changes, the Department must gloss over that USCIS’s FDNS only “identified 8,392 aliens who filed an asylum application and also had a ‘Fraud Found’ [Statement of Findings (SOF)] relating to that alien.” *Id.* at 8,637. The Department does not indicate whether its cited data pertains to a specific year or a range of years, or whether the applications were limited to affirmative or defensive asylum applications.¹⁴² Even assuming the data concerned potential fraud limited to all 874,106 asylum applications filed in fiscal year 2025, it would still constitute less than one percent of the applications filed.¹⁴³ Further underscoring the low likelihood of fraud by asylum seekers

¹⁴² The Department references “FDNS analysis of NexGen data, May 22, 2025,” (91 Fed. Reg. at 8,637 n. 108), but the lack of public access to NexGen data prevents verification or clarification of cited data.

¹⁴³ Exec. Off. of Immigr. Rev. (EOIR), *Workload and Adjudication Statistics: Asylum (Total Asylum Applications)* (generated Jan. 26, 2026), <https://www.justice.gov/eoir/media/1344871/dl?inline>.

themselves, the Department concedes that “occasionally attorneys and representatives are the source of asylum fraud.” *Id.*

In addition, the Department consistently conflates “fraudulent” applications with those that are merely “meritless,” further undermining any concern about fraud as justification for the proposed changes. *See, e.g., id.* at 8,636. The Department acknowledges that meritless cases “are simply cases that have no value or, possibly, that do not meet the substantive requirements for asylum,” but nonetheless provide eligibility for initial EAD applications. *Id.* at 8,638. Yet the Department points to valid EADs for asylum seekers whose claims are ultimately meritless as “evidence that current asylum processing is not functioning properly.” *Id.* at 8,640. But asylum seekers with valid claims may be ultimately unsuccessful not because of fraud, but because they are unable to obtain or produce sufficient evidence, or, in many cases, merely miss the one-year deadline.¹⁴⁴

The Department also ignores the fact that it recently began systematically denying more asylum cases, thus producing more “meritless” cases without any finding of fraud. In fiscal year 2025, the denial rate for asylum cases more than doubled from the previous year, increasing from 14.3 percent to 30.8 percent.¹⁴⁵ Perhaps more consequential will be the recent directive that immigration judges now consider dropping “legally deficient” asylum cases without holding a merits hearing in which asylum applicants can present their claims in detail.¹⁴⁶ By lumping together “fraudulent” cases with any case in which asylum is not ultimately granted, DHS therefore conflates the issues unfairly to support its extreme restriction.

The Department also repeatedly claims the Rule aims to address and dissuade the filing of frivolous asylum applicants (*see, e.g., id.* at 8,617), but it offers no data or analysis of the number of frivolous asylum applicants filed or how it determines a claim is frivolous before the merits of a claim are assessed.

Moreover, the Department does not explain why the Proposed Rule is necessary to deter fraud when noncitizens who file fraudulent, frivolous, or meritless asylum claims already suffer significant consequences. *See, e.g.,* INA § 208(d)(6), 8 U.S.C. § 1158(d)(6) (permanent ineligibility for immigration benefits for filing a frivolous asylum claim); INA § 235(b)(1), 8 U.S.C. § 1225(b)(1) (expedited removal for those who tried to procure admission through fraud or misrepresentation); INA §§ 236, 237, 8 U.S.C. §§ 1226, 1227 (detention and removal for related criminal offenses). The Department fails to explain why *all* asylum seekers should be

¹⁴⁴ *See* Jordan, *supra* note 5 (finding applicants can be unsuccessful because of inability to obtain or produce sufficient evidence); *see also* Am. Immigr. Council, *Fact Sheet: Asylum in the United States* (May 9, 2025), <https://www.americanimmigrationcouncil.org/fact-sheet/asylum-united-states/#:~:text=In%20many%20cases%2C%20missing%20the, filing%20deadline%20is%20automatically%20satisfied> (recognizing that many claims are unsuccessful merely because applicants miss a deadline).

¹⁴⁵ *See* Straut-Eppsteiner, *supra*, note 141.

¹⁴⁶ *See* Jordan, *supra* note 5.

harshly impacted by the Proposed Rule, especially when significant deterrents to fraudulent behavior already exist.

2. Allegations of national security and public safety threats

Similarly, DHS bases the Proposed Rule on “concerns” that individuals crossing the border illegally raise threats to national security and public safety, but DHS does not provide data supporting this justification. 91 Fed. Reg. at 8,628. Even if many people “believe” migrants entering the country leads to more crime,¹⁴⁷ the concern cannot overcome indisputable and consistent factual findings that immigrants are less likely to commit crimes than native-born citizens¹⁴⁸. Indeed, the crime rate has in fact declined as immigration has increased.¹⁴⁹

The only means by which the Department can attempt to paint asylum seekers as a national security concern is to mention them in the same sentence as Foreign Terrorist Organizations (FTOs), while ignoring that smuggled migrants are the victims who face significant dangers where criminal organizations operate. *Id.* at 8,629.¹⁵⁰ In fact, the Department’s policies to deter unauthorized entry only push migrants to more isolated and dangerous routes of “intensified vulnerability,” at the mercy of organized crime.¹⁵¹ Further

¹⁴⁷ Pew Rsch. Ctr., *How Americans View the Situation at the U.S.-Mexico Border, Its Causes and Consequences* 5 (Feb. 15, 2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/02/PP_2024.2.15_US-Mexico-border_REPORT.pdf (57 percent of Americans recently said they believe the large number of migrants seeking to enter the country leads to more crime).

¹⁴⁸ Ran Abramitzky et al., *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-Born, 1870–2020* 1 (NBER, 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).

¹⁴⁹ Hannah Boyke & Yared Avalos Iniguez, *Immigrants Do Not Commit More Crimes in the US, Despite Fearmongering*, Am. Immigr. Council (Oct. 17, 2024), <https://www.americanimmigrationcouncil.org/blog/immigrants-do-not-commit-more-crimes-in-the-us-despite-fearmongering/#:~:text=Between%2017%20and%202022%2C%20the.incarcerated%20than%20U.S.%2Dborn%20individuals.>

¹⁵⁰ *See* Oscar Contreras-Velasco, *When Elephants Fight, It's the Grass that Suffers: Organized Crime Violence and Risks for Migrants at the U.S.-Mexico Border*, Social Forces 8-12 (Dec. 4, 2025), <https://academic.oup.com/sf/advance-article/doi/10.1093/sf/soaf202/8365278?searchresult=1&login=false> (finding higher risks for migrants who cross border through territories controlled by organized crime).

¹⁵¹ *Id.* at 3.

unrecognized is that the resulting danger generally occurs to migrants *in Mexico*.¹⁵² And when smugglers are in the United States, the danger remains on the migrants, who are extorted, raped, and held in deadly conditions.¹⁵³ As a result, migrants are blamed for both the cause and effect of their victimization, when the Department would be better served reconsidering “enforcement strategies that prioritize militarization, the decapitation of cartel leadership, and the aggressive disruption of criminal networks.”¹⁵⁴ To make matters worse, migrants deported to Mexico are further endangered by cartels when returned home.¹⁵⁵

Unfortunately, the Department’s misguided effort to paint all immigration with a national security brush “clouds the picture of who and what pose a threat,” which results in a focus on “the extremely low threat posed by people seeking asylum.”¹⁵⁶ To the contrary, the Department’s elimination of programs for humanitarian parolees and juveniles without regard to dangerousness undermines its purported concern for national security.¹⁵⁷ Equally baffling is that the Department implicitly assumes pausing asylum seekers’ ability to work would lead to improved public safety when common sense and empirical evidence provides the opposite is true.¹⁵⁸

¹⁵² See, e.g., Emily Green, *Held for Ransom in Animal Pens, Migrants Face Mass Kidnappings as U.S. and Mexico Ramp Up Enforcement*, ProPublica (Nov. 1, 2024), <https://www.propublica.org/article/immigration-mexico-us-migrants-mass-kidnappings-cartels-border>; Julian Resendiz, *Cartels Abduct More Than 1,200 Migrants, Police Chief Says*, Border Report (Aug. 13, 2024), <https://www.borderreport.com/hot-topics/immigration/cartels-abduct-more-than-1200-migrants-police-chief-says/>; Linda Pressly, *Extortion and Kidnap - a Deadly Journey Across Mexico*, BBC (Apr. 18, 2024), <https://www.bbc.com/news/world-us-canada-68816029>.

¹⁵³ Miriam Jordan, *Smuggling Migrants at the Border Now a Billion-Dollar Business*, N.Y. Times (July 22, 2022), <https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html>.

¹⁵⁴ *Id.* at 16.

¹⁵⁵ Steve Fisher & Kate Linthicum, *Deported to Danger: Returning Migrants Discover a Mexico Transformed by Cartels*, L.A. Times (Jan. 18, 2026), <https://www.latimes.com/world-nation/story/2026-01-18/returning-migrants-find-mexico-transformed-by-drug-cartels-violence>.

¹⁵⁶ Amy Pope, *Immigration and U.S. National Security*, Migration Pol’y Inst. 1, 35 (Apr. 2000), https://www.migrationpolicy.org/sites/default/files/publications/Immigration-NatlSecurity_Final.pdf.

¹⁵⁷ 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.)

¹⁵⁸ 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”); Jeff Grabmeier, *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), https://inequality.stanford.edu/sites/default/files/media/_media/pdf/Reference%20Media/Gould,%20Wein

3. Suggestion of mutual interests and existing correlate

Next, DHS suggests its goals mirror many of the interests of those who will be negatively impacted by the Rule – including meritorious asylum seekers and employers – but the evidence makes clear that the proposed changes will work *against* those interests. *Id.* at 8,630. As discussed above, rather than making the asylum process more efficient, the Proposed Rule would harm *all* asylum seekers, even those whose claims would eventually be deemed meritorious, by making it so they cannot work during the pendency of their claims – which, according to the Department, could take more than 46 to 63 years. *Id.* at 8,650.

DHS also adds a cynical strawman justification for the Rule by declaring “[e]mployers who rely on employment-authorized aliens for a labor pool are unlikely to prefer aliens with criminal arrests and convictions, aliens who pose national security threats, or aliens who committed fraud during the immigration process.” *Id.* at 8,630. Similarly, DHS argues that States “have an interest in protecting their communities from national security threats, aggravated felons, and other criminal and fraud risks,” which should outweigh their economic interests. *Id.* Again, DHS provides a disingenuous choice by starting with an unproven premise that many EAD holders pose a significant security threat. The Department notably fails to point out any data showing how many EAD holders were found to be security threats, if any.

Finally, although the Department claims “it is in no way equating asylum applicants with temporary nonagricultural workers,” it does, in fact, equate asylum applicants with temporary nonagricultural workers by drawing parallels to employment-based visas that must not “displace qualified, available American workers” or “adversely affect the wages and working conditions of workers in the United States.” *Id.* at 8,641 (citing 8 U.S.C. § 1101(a)(15)(H)(ii)(b)); *see also* 8 C.F.R. § 214.2(h)(6)(i)). While claiming to distance itself from the comparison, the Department points to a 1974 change in foreign student employment policy that considered the effect on job opportunities for American workers. *Id.* Far from serving as evidence in support of the proposed changes, the comparison is misleading: DHS provides the example as apparent precedent for considering American workers but provides no context of the employment opportunities in the summer of 1974, why such considerations would justify denying asylum seekers the ability to work today, or whether American workers are even seeking the same jobs as EAD holders. *Id.* Instead, the Department compares the hypothetical displacement of American workers by 154,580 F-1 visa students in 1974 to the “possible” displacement of American workers by over 1.6 million EAD applicants in 2024. *Id.* Even if the 1974 policy change would justify DHS’s consideration, DHS fails to make such a consideration and simply leaves an open-ended question as a substitute for analysis. *Id.*

[berg,%20and%20Mustard%202002%20Crime%20and%20the%20Legal%20System.pdf](#)); 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>.

F. The Department’s Consideration of Alternatives Was Insufficient and Inadequate

The Department claims it considered alternatives to the Proposed Rule, including limiting the Rule to only imposing additional application fees, which it ultimately decided was insufficient to “dissuade” meritless asylum claims. *Id.* at 8,644. Also, the Department decided not to propose eliminating the 30-day EAD processing timeframe because a court recently determined that policy was arbitrary and capricious. *Id.* at 8,645 n.167 (citing *CASA de Maryland, Inc.*, 486 F.Supp.3d at 961-63). DHS concedes that regulatory changes require a “significant amount of work” and they would “rather not risk another years [-]long effort” just to be stopped by a court action. *Id.* at 8,645. Still, DHS elected to propose an indefinite pause, which is simply another way to achieve “removing the timeframe altogether.” *Id.*

The Department also considered extending the EAD waiting period to four or five years but determined that the change “would likely lead to strong opposition from immigration advocates and asylum applicants who may view this fixed and lengthy change in the waiting period as unduly harsh.” *Id.* Yet they somehow do not foresee the same opposition for an indefinite pause. They argue their solution is better because “that pause can be lifted.” *Id.* In theory, perhaps, but a pause of 14 to 173 years is obviously quite a bit longer than a waiting period of four or five years. *See id.* at 8,618, 8,650.

The Department also considered ending employment authorization altogether for asylum seekers but says it decided against it “at this time,” because they are attempting to claim their primary concern is “processing of the volume of cases.” *Id.* at 8,645-46. Apparently, DHS would have elected to end all authorizations if they could have identified data to support their elimination. *Id.* at 8,646 (decrying “it is not clear at this time whether data exists to support such a change.”). Also, they “anticipated public comments that did not support such a change.” *Id.* Ultimately, DHS says the proposed pause would achieve the same impact as terminating the authorization altogether, “but through less severe means.” *Id.* But to be clear, they threaten ending all EADs if the Proposed Rule is legally blocked. *See id.* (“Should this rule prove ineffective or be enjoined, DHS will likely re-evaluate one or more of these alternative options.”)

Instead, the Department should consider allocating additional resources to alleviate its asylum application backlog. And rather than increasing the time to adjudicate EAD applications, the Department should consider improving and expediting the EAD application process to make it simpler and more efficient. Such improvements could include the elimination of clock-stopping calculations. Remarkably, rather than speeding up the processing, the Department is proposing to further complicate the EAD process by imposing eligibility bars that would be time consuming for adjudicators to assess.

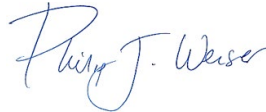
III. Conclusion

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

Sincerely,



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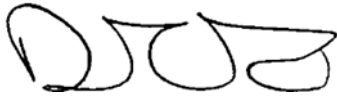
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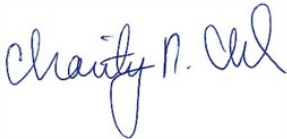
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