



State of California
Office of the Attorney General

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ATTORNEY GENERAL

September 28, 2026

Submitted via Federal Rulemaking Portal

The Honorable Markwayne Mullin
Secretary, U.S. Department of Homeland Security
2707 Martin Luther King, Jr. Ave. SE
Washington, DC 20528

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

RE: Comment Regarding Interim Final Rule: *Affirmative Asylum Referrals Without Interview*, 91 Fed. Reg. 47,101 (July 28, 2026), CIS No. 2851-26; DHS Docket No. USCIS-2026-0199

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, Virginia, and Washington (the "States") submit these comments to oppose the Department of Homeland Security's ("DHS" or "Department") Interim Final Rule: *Affirmative Asylum Referrals Without Interview*, 91 Fed. Reg. 47,101 (proposed July 28, 2026) (to be codified at 40 C.F.R. pt. 208), CIS No. 2851-26; DHS Docket No. USCIS-2026-0199 ("Interim Rule," "Rule").

The Department is amending regulatory language to permit U.S. Citizenship and Immigration Services ("USCIS") asylum officers to refer certain affirmative asylum applicants directly to removal proceedings before an immigration judge employed by the U.S. Department of Justice's Executive Office for Immigration Review ("EOIR"), without an interview. *Id.* at 47,102. In so doing, the Department is eliminating regulatory language that indicates an affirmative asylum applicant has a right to an interview. *Id.* Under the Rule, an asylum officer may refer the case directly after reviewing the application, supporting evidence, and other information in the records, and determining that the applicant is barred from applying for

asylum, barred from receiving asylum, does not merit asylum as a matter of discretion, or is otherwise ineligible on the merits. *Id.* at 47,103. The Rule also eliminates the requirement that an asylum officer's letter memorializing the basis for the referral include an assessment of an applicant's credibility. *Id.* at 47,102.

As set forth below, this Rule was issued in violation of the Administrative Procedure Act ("APA") because it is arbitrary and capricious, not in accordance with the law, and did not go through notice and comment rulemaking. There are several reasons why the Rule is arbitrary and capricious, but at the most basic level, the Department failed to appropriately justify its departure from its long-standing policy to conduct asylum interviews – which have enormous evidentiary value – and also failed to weigh the profound impact the Rule will have on asylum seekers, their families, their communities, and the States they call home. Nor does the Department analyze any alternatives to this radical and deeply impactful change in policy. Additionally, the Department produced the Rule contrary to Congress's intent to maintain unaccompanied children within the jurisdiction of USCIS for interviews and the initial adjudication of their asylum applications. Finally, the Rule was improperly promulgated in violation of the APA's required notice and comment procedures, which deprived the States of the ability to comment on this harmful policy change.

I. Background

The Rule makes several changes to the regulations governing affirmative asylum applications, including the following. First, the Rule eliminates applicants' longstanding regulatory "right" to an interview and review of their claim by an asylum officer. *Id.* at 47,103. Second, the Rule allows an asylum officer to refer an asylum application to EOIR – effectively treating it as denied – without an interview or eligibility determination. *Id.* Third, the Rule denies applicants an opportunity to address record-based reasons for the denial. *Id.* The Rule is a de facto dismantling of the procedural protections and due process safeguards of the affirmative asylum process. By creating a paper-based screening mechanism, the new process places applicants in an arguably less advantageous position than had they been subject to expedited removal at the border and claimed a fear of return, in which case they would benefit from an asylum officer interview. *See* Immigration and Nationality Act ("INA") § 235(b); 8 U.S.C. § 1225(b).

II. The Interim Rule Violates the APA Because it is Arbitrary and Capricious

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 Rule is arbitrary and capricious because the Department did not adequately consider the importance of the asylum interview and justify its departure from its longstanding policy of providing one, the Department also did not sufficiently consider the harmful effects the Rule will impose on the States' residents or the States themselves, and the Department failed to consider reasonable alternatives.

A. DHS Failed to Adequately Consider the Evidentiary Importance of the Asylum Interview and Justify Departure from Longstanding Policy

Currently, asylum interviews serve as the only opportunity for people fleeing persecution to explain to an asylum officer why they cannot return home safely.¹ The opportunity to clarify information on asylum applications in person can help overcome limited English proficiency, minimal understanding of the legal system, limited access to legal representation, and difficulty completing a written application.² Eliminating this opportunity risks sending applicants with meritorious claims into an overburdened immigration court system that is “more adversarial, more complex, and often far more difficult to navigate.”³ Asylum officers receive specialized training to conduct interviews, during which they can assess credibility and develop more facts in a non-adversarial setting.⁴ Rather than arguing against an applicant, an asylum officer is uniquely positioned as a factfinder to determine whether asylum is justified.⁵ The courts have recognized the significance of the asylum officer interview and the importance of proper training required pursuant to 8 U.S.C. § 1157(f). *See, e.g., Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 14 (D.D.C. 2020). In particular, asylum officers receive professional training in country conditions, asylum and international human rights law, and non-adversarial interview techniques. *Id.* (citing 8 U.S.C. § 1225(b)(1)(E)(i), 8 C.F.R. § 208.1(b)). Further, a less adversarial system is more sensitive to the special needs of unaccompanied children “who do not know how to navigate an immigration system designed for adults.” *J.O.P. v. U.S. Dep’t of Homeland Sec.*, 409 F. Supp. 3d 367, 373 (D. Md. 2019). USCIS officers are also trained to apply “child-sensitive and trauma-informed interview techniques.” *Id.*

Despite the evidentiary importance of the asylum officer interview, especially for children, the Department seeks to throw out the baby with the bathwater. The Department first seeks to justify the Rule with frequent references to its concern for “system integrity.” *See, e.g.*, 91 Fed. Reg. at 47,103, 47,117, 47,120, 47,124. The Department fails to clearly define “integrity,” but claims the Rule will strengthen it “by limiting opportunities for strategic delay of

¹ Hebrew Immigrant Aid Society (HIAS), *HIAS Statement on New Lawsuit Challenging Interim Final Rule on Asylum Referrals to Immigration Court Without Interview* (Aug. 19, 2026), <https://perma.cc/Q2D8-CFU5>.

² *Id.*

³ Adriel Orozco, *New USCIS Asylum Interview Rule Could Speed Up Deportations of Asylum Seekers*, Am. Immigr. Council (Aug. 5, 2026), <https://perma.cc/8G6J-T6BY>.

⁴ *Id.* (citing USCIS, *Interviewing – Introduction to the Non-Adversarial Interview* (Dec. 13, 2024), <https://perma.cc/X5C2-DLJY>).

⁵ *Id.*

removal proceedings.” *Id.* at 47,103. The Department does not claim, however, that “strategic delay” is indicative of fraud by applicants with unmeritorious claims. For good reason. Data previously identified by DHS demonstrated that evidence of fraudulent asylum claims is very limited.⁶ The Department also fails to explain how the Rule addresses system integrity better than the current policy, especially when, by the agency’s own admission, many meritorious claims will now be sent directly to immigration court. 91 Fed. Reg. at 47,104, 47,117, 47,125. Moreover, the Department does not explain why the Rule is necessary when noncitizens who file fraudulent, frivolous, or meritless asylum claims already suffer significant consequences.⁷

Next, the Department states that reducing the affirmative asylum backlog by permitting direct referrals will safeguard national security and public safety. 91 Fed. Reg. at 47,102, 47,104, 47,108, 47,109, 47,115, 47,117, 47,118, 47,124. Without evidence, the Department concludes the Rule will enable it to “more quickly” identify applicants who pose a danger to public safety or national security. *Id.* at 47,102-03. The Department claims that the existing process for referring potentially dangerous applicants to ICE “is insufficient to address the public safety concerns motivating this rule.” *Id.* at 47,110. Rather than add resources to address the backlog,⁸ the Department has actively worsened conditions by firing USCIS employees and diverting resources to other priorities⁹. The Department nonetheless claims it will more quickly identify applicants with “the most serious derogatory information” by referring an asylum applicant to immigration court without an interview. 91 Fed. Reg. at 47,110. The Department does not explain how the absence of an interview will be more effective in identifying derogatory information or make the current process less “insufficient.” Nor has the Department identified a manner or mechanism to identify such threats, as it only refers to future USCIS policy guidance

⁶ See *Employment Authorization Reform for Asylum Applicants*, 91 Fed. Reg. 8,616, 8,637 (proposed Feb. 23, 2026) (identifying 8,392 asylum applications in 2025 for which the Fraud Detection and National Security made a finding of fraud); EOIR, *Workload and Adjudication Statistics: Asylum (Total Asylum Applications)*, <https://perma.cc/T2NW-XFQ3> (generated July 24, 2026) (identifying 879,603 total asylum applications filed in fiscal year 2025).

⁷ 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 §§ 236, 237, 8 U.S.C. §§ 1226, 1227 (detention and removal for related criminal offenses).

⁸ The Department previously made several changes to EAD application processing to target the backlog of asylum applications and address similar concerns but has consistently elected short-term fixes rather than devote more resources to processing asylum applications. See *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, 85 Fed. Reg. 37,502, 37,522 (June 22, 2020) (noting decision to forego staffing decision because “simply hiring more people does not provide a short[-]term fix”).

⁹ Nicole Sganga & Camilo Montoya-Galvez, *Trump Administration Fires Over 400 DHS Employees as Mass Firings Continue*, CBS News (Feb. 16, 2025), <https://perma.cc/97A4-3KXJ/> (“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[.]”); Ali Swenson, *Administration’s Focus on Noncitizen Voting Has Led to 160 Arrests. Experts Say That Shows It’s Rare*, ABC News (Sept. 22, 2026), <https://perma.cc/C5AF-5KDV> (“DHS in August ordered a group of U.S. Citizenship and Immigration Services staff to pivot to a full-time manual investigation of state voter rolls”).

that will purportedly address the issue. *Id.* at 47,103, 47,109, 47,110, 47,117, 47,124. At a minimum, this lack of guidance and clarity about this process does not effectively provide proper basis for notice and comment of the proposed change. Still, the Department promises that the undefined future policy will be better than existing guidance. *Id.* at 47,124. Until then, asylum officers will be guided only by their amorphous “discretion” without having to include credibility assessments in their referrals. *See, e.g., id.* at 47,104, 47,124 The Department also fails to provide evidence of credible threats to national security and public safety by asylum seekers that would be ameliorated by the rule and cannot overcome indisputable and consistent factual findings that immigrants are less likely to commit crimes than native-born citizens.¹⁰ 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.”¹¹ This bias could inform how asylum officers exercise their discretion in the absence of clear standards or procedures informing how they will identify and address safety concerns.

Finally, the Department states that referrals of affirmative asylum claims without interviews will improve “operational efficiency” and allow USCIS to more efficiently manage its affirmative asylum backlog.” 91 Fed. Reg. at 47,103, 47,108, 47,117, 47,123. By the Department’s own admission, however, the Rule will not result in more efficiency because it will increase the volume of USCIS referrals to EOIR, which will increase EOIR’s pending cases backlog. *Id.* at 47,103, 47,117. In fact, DHS acknowledges that the Rule “may shift system-wide efficiency rather than improve it for every agency involved,” thus increasing operational demands for EOIR. *Id.* at 47,125. Additionally, EOIR could incur new costs to develop a case during removal proceedings because they will not have the benefit of a USCIS interview. *Id.* at 47,104, 47,125. Instead, the Department likely equates “efficiency” to eliminating interviews and moving quickly to remove applicants. *See id.* at 47,103 (“A primary benefit of no longer interviewing all applicants prior to the referral of an affirmative asylum application to EOIR is the increased operational efficiency of the affirmative asylum process within USCIS.”); *see also id.* at 47,117, 47,123 (same). Currently, an applicant has an opportunity to present useful information to an asylum officer, outside of an adversarial hearing, to explain, for example why a one-year filing deadline (OYFD) was not met. *See id.* at 47,113 (citing 8 C.F.R. § 208.4(a)). With disregard of the merit of claims, the Department is content with the risk that applicants who qualify for an exception to the OYFD could be erroneously referred to removal proceedings without an asylum officer interview. *See id.* The prompt referral of “ineligible” applicants, the Department explains, is nonetheless “efficient” because it will facilitate their quicker removal – ignoring that they may have a meritorious claim. *Id.* at 47,109.

¹⁰ Ran Abramitzky et al., *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-Born, 1870–2020*, Nat’l Bureau of Econ. Rsch. (NBER) Working Paper No. 31440, at 3 (Mar. 2024), <https://perma.cc/TUX7-XC97> (finding immigrant men are 30-60 percent less likely to be incarcerated than men 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://perma.cc/W638-JHDB> (quoting researchers from Cato Institute, University of Wisconsin, and Stanford University).

¹¹ Amy Pope, *Immigration and U.S. National Security*, Migration Pol’y Inst. 1, 35 (Apr. 2000), <https://perma.cc/Z5ER-9LEU>.

B. The Department Has Not Sufficiently Considered the Harmful Effects of the Rule and Its Full Impact on States' Residents

The Rule is arbitrary and capricious because the Department 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 has failed to account for the harm that will be caused by the Rule's likely effect of subjecting more asylum seekers to detention and removal, leaving many stuck in indefinite legal limbo, increasing their need for legal services, and creating greater economic and health setbacks for them and their families.

1. Placement in EOIR Proceedings Will Spell Detention and Summary Removal for Many

The Rule presents “a sweeping change . . . that could lead to the deportations of thousands of asylum seekers” and more detentions.¹² Indeed, the Department itself justifies the Rule with this reason – per the Department, the Rule can lead to the quicker detention and removal of asylum applicants because immediate referrals will permit immigration judges to quickly review an applicant's undefined “security profile,” thus “enabling earlier consideration of . . . detention where warranted.” 91 Fed. Reg. at 47,124.

Although USCIS states that applicants will still have an opportunity to present their claims to an immigration judge, “over the past year, the administration has made that process faster, including by expanding the summary dismissal, or pretermission, of asylum applications before applicants can fully present their claims.”¹³ During this time, the administration has pressured immigration judges to resolve cases more quickly, “by dangling the threat of firing over them; rapidly rescheduling large numbers of hearings into one ‘mega-master’ hearing aimed at catching noncitizens off-guard and ordering them removed in their absence.”¹⁴ The administration has already fired more than 100 immigration judges and replaced them with new

¹² Andrea Castillo, *New Federal Rule Sends Asylum Cases to Immigration Courts, Pushing Migrants Toward Deportation*, L.A. Times (July 27, 2026), <https://www.latimes.com/politics/story/2026-07-27/new-federal-rule-sends-hundreds-of-thousands-of-asylum-cases-to-immigration-courts>; see also Maria Sacchetti, *Asylum Seekers Could be Sent Directly to Deportation Court Under New Rule*, Wash. Post (July 28, 2026), <https://www.washingtonpost.com/immigration/2026/07/28/asylum-seekers-could-be-sent-directly-deportation-under-new-federal-rule/> (“Trump officials have empowered judges to dismiss certain cases without a hearing, so attorneys say it is possible that many asylum seekers will be deported without a chance to be heard.” One attorney who represented Haitians with Temporary Protected Status at the Supreme Court warned, “At a 30,000-foot level it sure looks like a deportation machine.”)

¹³ Orozco, *supra* note 3; see also Immigr. Direct, *Asylum Application Timeline and Processing Time*, <https://perma.cc/KS7M-A224> (last updated Nov. 17, 2025) (noting that wait times for USCIS interviews were otherwise conducted within one to 12 months, as opposed to three to five years for EOIR merits hearings).

¹⁴ *Id.*

officials who have approved a “dwindling percentage of asylum claims” as they “face pressure to approve more deportations.”¹⁵

The referred applicants are also thrust upon an immigration court system “that is already struggling under a massive backlog and has fewer due process protections,” which increases the number of applications that immigration judges are pretermittting without reaching the merits of the underlying asylum claim.¹⁶ Notably, more referrals to an immigration judge may lead to quick removals because immigration agents have begun arresting people in courthouses, which makes many immigrants wary of showing up for court proceedings and “has aided the increase in removal orders.”¹⁷ According to Doris Meissner, former Commissioner of the Immigration and Naturalization Service, “The ultimate impact of making this change certainly seems to be to try to deny as many cases as possible, without regard to the fairness of the determination.”¹⁸

Asylum seekers immediately placed in removal proceedings are further targeted by the administration’s attorneys who quickly move to dismiss asylum claims without a hearing and remove the applicants to third countries pursuant to proliferating “Asylum Cooperative Agreements.”¹⁹ Appeals are increasingly unavailing because the Board of Immigration Appeals (“BIA”) said immigration judges should first weigh a removal to a third country where they may be subjected to human rights abuses.²⁰

The Department claims it is a benefit for applicants to be placed more quickly in removal proceedings, not because it will be more effective or improve the integrity of the system, but because it will shorten the “total time before they obtain a final decision,” such that it “reduces unnecessary stress and provides a more predictable timeline.” 91 Fed. Reg. at 47,123. Chillingly, the Department cloaks an adverse decision as a benefit to asylum seekers because, at least, the rejection comes sooner. *See id.* (“[Noncitizens] with both meritorious and non-meritorious cases may also experience reduced wait times, shortening the time spent in legal and personal uncertainty.”). Of course, the Department fails to compare the benefit of a quick but erroneous denial to the delayed approval of a meritorious claim.

In this regard, the Rule is consistent with the administration’s policy of “reducing opportunities for individualized review while emphasizing speedy negative outcomes and

¹⁵ Castillo, *supra* note 12.

¹⁶ Orozco, *supra* note 3.

¹⁷ Castillo, *supra* note 12.

¹⁸ *Id.*

¹⁹ Myah Ward & Eric Bazail-Eimil, *The Trump Administration’s Plan to Close a ‘Huge Loophole’ in Legal Immigration*, Politico (Dec. 29, 2025), <https://perma.cc/9S6P-5JD9>.

²⁰ *Id.* (discussing BIA directive); Emily Bregal, *U.S. Deportees Assaulted, Threatened at Gunpoint in Equatorial Guinea, Three Say*, Ariz. Daily Star (Aug. 8, 2026), <https://perma.cc/47JD-JEHF>; Megha Rajagopalan & Pranav Baskar, *A Central African Hotel Has Become a Nightmare Prison for U.S. Deportees*, N.Y. Times (Sept. 18, 2026); <https://www.nytimes.com/2026/09/18/world/africa/us-deportation-hotel-equatorial-guinea.html>.

ultimate removal.”²¹ Indeed, the administration has made clear that its true aim is plummeting asylum grant rates.²² Immigration judges have been directed to consider dropping “legally deficient” asylum cases without holding a merits hearing in which asylum applicants can present their claims in detail.²³ 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.²⁴ With additional efforts, the administration has almost accomplished its goal of undermining *all* asylum claims as a shocking 94 percent of asylum cases were denied in June 2026.²⁵

2. Some Asylum Seekers Could Be Stuck in Limbo for Years

Those individuals who do not face a swift denial of their claims may see long delays in their resolution. *Id.* at 47,104, 47,117, 47,125. As discussed above (*see supra*, Section II.A), USCIS referrals will increase EOIR’s backlog (*id.* at 47,103, 47,117) and its operational demands (*id.* at 47,125). Wait times for case dispositions in immigration court have already increased to approximately 30 months on average, a jump of over 50 percent from 2025 to 2026.²⁶ Disposition times will only increase with additional removal hearings.²⁷ Consequently, under the Rule there could be people who would otherwise have asylee status granted by USCIS and be on the path to a green card, who will instead spend years without a permanent, stable status. Beyond the psychological damage that living in this perpetual limbo could create, these individuals also cannot travel, cannot benefit from critical social safety programs, and will have to rely on their EADs to work lawfully.

There is a serious risk that employment for these individuals will be disrupted due to historically high delays in the EAD renewal process due to USCIS recently eliminated the 540-day automatic extension rule.²⁸ USCIS has also decreased EAD validity periods for asylum seekers from five years to 18 months, which forces asylum seekers to enter the renewal cycle more frequently.²⁹ USCIS only allows applicants to file a renewal 180 days before their current

²¹ Orozco, *supra* note 3.

²² *Id.* (citing The White House, *Era of Amnesty Is Over: President Trump Restores Rule of Law to Immigration Courts* (Apr. 6, 2026), <https://perma.cc/NH6K-M4DE>).

²³ 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>.

²⁴ See Holly Straut, Cong. Rsch. Serv., *Asylum Process in Immigration Courts and Selected Trends*, 10 (Dec. 10, 2025), <https://perma.cc/EUX6-5F74>.

²⁵ Transactional Rec. Access Clearinghouse (TRAC) Immigr., *Asylum Denials Rise to 94% Amid the Remaking of the Immigration Court* (Aug. 31, 2026), <https://perma.cc/Q84Z-3276>.

²⁶ TRAC Immigr., *Rising Completion Times in Immigration Court Despite Record Deportations* (Sept. 11, 2026), <https://perma.cc/WF4S-YVCB>.

²⁷ *Id.*

²⁸ Immigr. Fleet, *USCIS EAD Renewal 2026: Automatic Extensions Ended — What Every Work Permit Holder Must Know Before Your Card Expires* (2026), <https://perma.cc/M2RN-PV66>.

²⁹ Luisa Koidl, *Major Changes to Employment Authorization Document Processing Will Impact U.S. Employers*, Squire Patton Boggs (Dec. 15, 2025), <https://perma.cc/U9U9-BLZZ>.

card expires.³⁰ Because nearly 70 percent of renewals already take longer than 180 days to process, a work disruption is certain to occur for most renewal applicants.³¹ The direct consequence is that those applicants who manage to remain out of detention and avoid removal will be required to file EAD renewals every 18 months while their asylum claims are pending.³² The Rule, therefore, will increase the time during which applicants are at the mercy of EAD renewal adjudication periods, resulting in frequent gaps in employment authorization.

3. The Rule Will Exacerbate Asylum Seekers' Limited Access to Legal Services

While legal counsel is important in all immigration proceedings, it is particularly needed in removal proceedings where the risk of removal is especially high, and applications are opposed by a prosecuting ICE attorney. As such, asylum seekers' need for legal services, and the complexity of those legal services, will increase with the Rule.

In April 2025, about half of all asylum applicants had no lawyer.³³ 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).³⁴ In 2017 alone, 90 percent of those without legal representation were denied asylum in immigration court while only 54 percent of those with legal representation were denied.³⁵ In many cases, applicants were unable to simply draft a complete application outlining the merits of their asylum claims.³⁶ The difference could also be as routine as being unaware of the OYFD for filing for asylum.³⁷ Unrepresented individuals are also more likely to be affected by appeals, delays in their claims, and unreliable adjudications.³⁸ Ultimately, the absence of counsel "can literally make the difference between life or death."³⁹

³⁰ U.S. Citizenship and Immigr. Servs. (USCIS), *Employment Authorization Document* (Oct. 30, 2025), <https://perma.cc/QF4W-BTDH>.

³¹ Alicja, *Most Work Permits Now Wait 6+ Months: File Your EAD Renewal Early*, Immiva (June 18, 2026), <https://perma.cc/YAC5-DJ32>.

³² Am. Immigr. Council, *Curtailing the Ability to Work* (Aug. 6, 2026), <https://perma.cc/GN98-EJ6U>.

³³ See Jordan, *supra* note 23.

³⁴ Ingrid V. Eagly et al., *Access to Counsel in Immigration Court, Revisited*, 111 Iowa L. Rev. 1, 44-45 (2025), <https://perma.cc/S9PM-QVAD>; see also Lenni B. Benson et al., *Legal Representation in Immigration Courts: The Impact of Randomly Assigned Observers 2* (July 27, 2025), <https://perma.cc/B3LC-BGAY> (finding those with legal representation are 3 to 8 times more likely to be granted permission to remain in the United States).

³⁵ 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/>.

³⁶ See Jordan, *supra* note 23.

³⁷ See Benson, *supra* note 34, at 8.

³⁸ Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 47-75 (2015), <https://perma.cc/5U6B-2ZLV>.

³⁹ See Jordan, *supra* note 23.

Whereas affirmative asylum cases could typically range from \$3,000 to over \$8,000 for attorney's fees, asylum cases in removal proceedings can run from \$5,000 to over \$12,000.⁴⁰ Many applicants already find it difficult to pay new annual asylum fees of \$102 now that fee waivers are no longer available – adding thousands of dollars for legal representation is likely untenable for a large portion of the applicants.⁴¹

Representation by pro bono counsel is not a feasible option. In 2022, only two percent of representation in immigration court was pro bono counsel.⁴² For that fiscal year, there were over 435,000 proceedings in immigration court.⁴³ By comparison, for fiscal years 2023-26, there has been an average of over 800,000 immigration proceedings annually, making access to available pro bono counsel a near impossibility, especially after the administration stopped funding for legal service providers and nonprofit organizations that helped individuals handle legal paperwork and navigate immigration court proceedings.⁴⁴ Even attorneys for hire are stretched thin, unavailable, or wary of retaliation.⁴⁵ With the detention of many asylum seekers, or disruptions in employment authorization, their families will be unable to afford the few available attorneys, and many meritorious cases may be denied.

⁴⁰ See, e.g., Diane Claxton, *How Much Does an Immigration Attorney Cost in 2026? An Honest Cost Guide*, Claxton Law (May 15, 2026), <https://perma.cc/H895-QTS9>; see also Alonso & Alonso, *Immigration Lawyer Fees 2025: Cost Guide & Tips*, <https://perma.cc/EW3X-TY3K> (last updated Aug. 19, 2026) (recognizing that complex matters involving asylum applications in immigration court could cost \$15,000 or more); Diana Roy, *How the U.S. Asylum Process Works*, Council on Foreign Rel. (Aug. 3, 2026), <https://perma.cc/6CWP-R4CW> (describing the challenge and complexity of asylum cases).

⁴¹ See The Asylum Seeker Advoc. Project (ASAP), *The Annual Asylum Fee*, <https://perma.cc/4JPQ-F62F> (updated Sept. 10, 2026).

⁴² Atenas Burrola Estrada, *Finding a Pro Bono Immigration Attorney is Harder Than Ever*, Am. Immigr. Council (May 19, 2023), <https://perma.cc/BC5C-FX9E>.

⁴³ TRAC Immigr., *Outcomes of Immigration Court Proceedings* (through Aug. 2026), <https://perma.cc/3324-LRZY>.

⁴⁴ See *id.*; Laura Romero, *DOJ Orders Federally Funded Legal Service Providers to Stop Providing Support at Immigration Courts*, ABC News (Jan. 23, 2025), <https://perma.cc/4S76-DM99>; Sarah N. Lynch, *Work Inside a Small DOJ Office That Helps Indigent Immigrants Get Legal Aid Stalls After Personnel Shuffle*, CBS News (Apr. 23, 2026), <https://perma.cc/8ZE6-8XUD>.

⁴⁵ See, e.g., Bridgit Bowden, *Wisconsin Immigration Attorneys Struggle to Keep Up with Trump Policy Changes*, Wis. Pub. Radio (Dec. 8, 2025), <https://perma.cc/99GZ-CFRJ>; Abigail Luca, *With Few Lawyers, Immigrants in Upstate New York Face Challenges Finding Legal Defense*, Spectrum News (Oct. 15, 2025), <https://perma.cc/L8BH-YAT8>; Alice Finno, *As Cases Surge, the Few Immigration Attorneys in Vermont Struggle to Keep Pace*, VTdigger (Aug. 5, 2025), <https://perma.cc/D8R8-VLG6>; Mary Sanchez, *In Kansas City, Most Immigrants Facing Deportation Receive No Legal Counsel*, The Beacon (July 3, 2025), <https://perma.cc/7AE5-3MKW>; Mike Spector et al., *How Trump's Crackdown on Law Firms is Undermining Legal Defenses for the Vulnerable*, Reuters (July 31, 2025), <https://perma.cc/CQ3N-V8P4>.

4. Asylum Seekers' Mental Health Will Decline Dramatically

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.⁴⁶

Asylum seekers' trauma will be exacerbated by the Rule. At the outset, the hearing process itself could be traumatic and "prevent the applicants from testifying about their past experiences in a way that aligns with the criteria [immigration judges] look to in support of an applicant's credibility."⁴⁷ The trauma is especially acute for children, for whom removal proceedings can compound their "toxic stress."⁴⁸ Additionally, placement in detention comes with significant risks of increased mental health concerns and other mistreatment.⁴⁹ Per the American Psychological Association, "[d]etention introduces a new layer of trauma – marked by isolation, uncertainty, and often dehumanizing conditions – that can severely worsen existing mental health challenges."⁵⁰ Shockingly, 57 people have died in ICE custody between January 2025 and August 13, 2026, the highest in over two decades.⁵¹ Even those who remain out of detention, however, are at high risk of developing mental illness and anxiety from past trauma and the fear of potential consequences of immigration enforcement within the United States.⁵²

⁴⁶ 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://perma.cc/RPG3-XENE>.

⁴⁷ Johanna Selberg, *Truth and Trauma: Exploring the Merits of Non-Adversarial Asylum Hearings*, 35 Geo. Immigr. L. J. 929, 933 (2021), <https://perma.cc/L6EY-AFB5>.

⁴⁸ Nickole Miller, *Accommodating Childhood in Immigration Removal Proceedings*, 2026 U. Ill. L. Rev. 1003, 1018 (2026), <https://perma.cc/D3XU-UK3R>.

⁴⁹ *See, e.g.*, Cal. Dep't of Just., *Immigration Detention in California: A Review of Conditions of Confinement* (last revised June 2026), <https://perma.cc/FDR5-6HYG>; *see also* Amnesty Int'l, *USA: New Findings Reveal Human Rights Violations at Florida's "Alligator Alcatraz" and Krome Detention Centers* (Dec. 4, 2025), <https://perma.cc/KJ67-UN3X>; 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://perma.cc/VF3M-Z7E9>.

⁵⁰ Myriam Vidal Valero, *U.S. Immigration Policy: Mental Health Impacts of Increased Detentions and Deportations*, Am. Psych. Ass'n (Sept. 1, 2025), <https://perma.cc/4SVZ-TKS4>.

⁵¹ Aanika Eragam, *Tracking the Record High Deaths in ICE Custody*, U.S. News & World Rep. (Aug. 13, 2026), <https://www.usnews.com/news/national-news/articles/2026-08-13/tracking-the-record-high-deaths-in-ice-custody>; *see also* Akash Pillai et al., *Deaths and Health Care Issues in ICE Detention Centers Under the Second Trump Administration*, Kaiser Family Foundation (KFF) (Mar. 25, 2026), <https://perma.cc/2KME-8NGD>.

⁵² Piyal Sen, *The Mental Health Needs of Asylum Seekers and Refugees – Challenges and Solutions*, 13 BJPsych Int'l 30, 30-31 (May 2016), <https://perma.cc/V845-QBFP>; *see also* Valero, *supra* note 50 (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. Pub. Health 289, 292-93, 295-96 (2020), <https://perma.cc/MVX4->

Prolonged periods awaiting approval of underlying asylum claims already result in “elevated risks of mental disorders, diminished psychological well-being, and reduced quality of life.”⁵³ At least one third of undocumented migrants and asylum seekers subjected to indefinite waiting experience PTSD or an anxiety disorder, and about half experience depression.⁵⁴

5. Asylum Seekers’ Families Will Be Harmed in Myriad Ways

Despite DHS’s dismissive conclusion that it has no data that indicates the Rule has any impact on family well-being (*id.* at 47,127), the impact the Rule’s increased detentions and removals will have on asylum seekers and the families they leave behind cannot be understated – loved ones’ health will suffer and financial instability will increase. For those who are not swiftly deported, but rather stuck at the mercy of EOIR for many years while their claims play out, lapses in EADs will also create financial instability for their families.⁵⁵

The increased detention of asylum seekers has been the source of “deep pain and uncertainty” for asylum seekers’ separated families and children, which include U.S. citizens.⁵⁶ In 2018, an estimated 4.4 million children lived with at least one parent who was at risk of removal.⁵⁷ The families of those detained and in removal proceedings also face a frightening and uncertain future where return to a home country risks threats and violence.⁵⁸ Children who lose a parent to detention and/or deportation are more prone to depression, anxiety, and academic withdrawal.⁵⁹ For these children there are also higher rates of suicidal thought, alcohol use, and PTSD.⁶⁰ The deportation and forced separation of immigrants from their families also gives rise to a public health crisis that can affect entire communities.⁶¹ In particular, families with loved

MYCK (noting restrictive and punitive immigration policies are associated with increased rates of depression, anxiety, post-traumatic stress disorder, and substance use).

⁵³ Aleena Shahzad et al., *The Psychological Impact of Spending a Prolonged Time Awaiting Asylum*, 16 Eur. J. of Psychotraumatology 1, Art. 2506189, 1 (2025), <https://www.tandfonline.com/doi/epdf/10.1080/20008066.2025.2506189?needAccess=true>.

⁵⁴ Marianne Côté-Olijnyk et al., *The Mental Health of Migrants Living in Limbo: A Mixed-Methods Systematic Review with Meta-Analysis*, 337 Psychiatry Resch 115931, at 10 (2024), <https://perma.cc/AE9S-CFT7>.

⁵⁵ Hum. Rts. First, *Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families* (Apr. 29, 2019), <https://perma.cc/3P7T-P54B>.

⁵⁶ Gisela Salomon, *Trump Administration Separates Thousands of Migrant Families in the U.S.*, PBS News (Dec. 11, 2025), <https://perma.cc/8GX3-APHV>.

⁵⁷ Am. Immigr. Council, *The Impact of Family Separation on Children* (Feb. 19, 2025), <https://perma.cc/UZT2-CEZE> (finding 4.4 million U.S. children lived with at least one undocumented parent); see also U. Ill., Chi., *Effects of Deportation, Forced Separation Extend Beyond Individuals, Families*, (Aug. 1, 2018), <https://perma.cc/2NUH-NGW6>.

⁵⁸ Salomon, *supra* note 56.

⁵⁹ U. Ill., Chi., *supra* note 57; see also Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement* (June 24, 2021), <https://perma.cc/4GHD-24C2>.

⁶⁰ Am. Immigr. Council, *supra* note 59.

⁶¹ Rod Harris, *The Impact of Mass Detention and Deportation Efforts on the Mental Health of Immigrant Families*, U. Ill. Coll. of Med. (Oct. 17, 2025), <https://perma.cc/EV3Y-N3NC>.

ones who face detention, removal, or lapsed employment may consequently suffer by, for example, losing adequate health insurance,⁶² falling into poverty, and suffering from food insecurity⁶³ and increased homelessness⁶⁴ -- all of which have serious health impacts⁶⁵. The Rule will only create more of these setbacks to asylum seekers and their families.

C. The Department Has Not Sufficiently Considered the Harmful Effects of the Rule on the States

The Department also failed to consider the Rule's impact on the States. The Department claims the Rule would accelerate adjudication of affirmative asylum applications by "potentially dangerous individuals," thereby reducing "potential victimization risks" and "minimizing harm to the community." *Id.* at 47,124. But the Department does not quantify the danger or harm, or how the Rule would mitigate them. And, critically, the Department does not address the many benefits that immigrants bring to our States that could be lost because of the Rule. In failing to consider the impact on the States, the agency ignores the following: (1) immigrants, including those likely impacted the Rule, play an essential role in the States' workforce, especially in important fields; (2) immigrants also spur economic growth and contribute greatly to the States'

⁶² See Karen Feldscher, *Health Insurance Saves Lives, Studies Suggest*, Harv. T.H. Chan Sch. of Pub. Health (Nov. 12, 2025), <https://perma.cc/SMS8-8CD5>; Jacob Goldin et al., *Health Insurance and Mortality: Experimental Evidence from Taxpayer Outreach*, NBER (Dec. 2019), <https://perma.cc/G47W-UW3D>; Steffie Woolhandler & 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>.

⁶³ Nasser Sharareh et al., *Food Insecurity Disparities Among Immigrants in the U.S.*, 2 *AJPM Focus* 1, 2 n.9-11 (Sept. 2023), <https://perma.cc/2CV4-68TV>; see also, 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://perma.cc/KX6X-HZ97> (citing studies regarding the United States).

⁶⁴ Bruce D. Meyer et al., *Asylum Seekers and the Rise in Homelessness*, 255 *J. Pub. Econ.* 10-5577 (Feb. 6, 2026), <https://perma.cc/X5WE-QRHK>; Ted Hesson, *Why So Many Asylum Seekers Come to America and Wind Up Homeless*, *Vice* (May 12, 2016), <https://perma.cc/6UC5-LPX6>; 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 (Dec. 2018), <https://perma.cc/GDB4-J7TG> (recognizing intensified perils for non-English-speaking immigrants); Stephanie L. Canizales, *How Housing Insecurity Drives Latino Immigrant Children's Labor in California*, *UCLA Latino Pol'y & Pol. Inst.* (June 26, 2025), <https://perma.cc/FC2D-V9A9> (reporting how unstable housing pushes more unaccompanied children into exploitative work).

⁶⁵ Dhruv Khullar & Dave A. Chokshi, *Health, Income, & Poverty: Where We Are & What Could Help*, *Health Aff.* (Oct. 4, 2018), <https://perma.cc/GYE8-T6SM>; see also Robert Wood Johnson Found., *Overcoming Obstacles to Health in 2013 and Beyond* 20 (2013), <https://perma.cc/WY8P-DV5V> (finding children in poor families are more than four times as likely to be in less than very good health than children in affluent families); Ctrs. for Disease Control & Prevention (CDC), *Homelessness as a Public Health Law Issue: Selected Resources* (July 10, 2024), <https://perma.cc/YZG8-HE82> (connecting homelessness to declines in physical and mental health).

revenue; and, (3) State-funded agencies and nonprofits will be burdened and their missions will be further frustrated by the Rule.

1. Immigrants are a Critical Portion of the Workforce in Important Industries

Immigrant workers help the U.S. economy grow.⁶⁶ Foreign-born workers, including undocumented immigrants, constituted 19.1 percent of the U.S. labor force in 2025.⁶⁷ The availability of immigrant labor is necessary to sustain economic growth in the United States as population growth “will become entirely dependent on immigration by 2040.”⁶⁸ As a result, substantial data shows that the loss of immigrants “threaten[s] to undermine job growth and pay for all workers.”⁶⁹

Noncitizens’ contributions to the American workforce are especially clear in agriculture, construction, and healthcare – all fields with significant labor shortages – where the removal, detention, or lapsed EADs of asylum seekers will be felt. To be sure, 66 percent of all agriculture workers are noncitizens, including over 29 percent in Arizona.⁷⁰ Scarce farm labor is already causing farmers to struggle to maintain competitive production levels,⁷¹ as the Department of Agriculture recognized that “[t]he farm economy is in a difficult situation” and the Department of Labor warned that the difficulty in replacing seasonal farmworkers with Americans threatens food production and prices.⁷² Immigrants are similarly critical to the construction industry, constituting nearly 30 percent of construction workers nationwide and more than 40 percent of construction labor in California.⁷³ The construction industry is desperate to fill a projected

⁶⁶ Kevin Appleby, *The Importance of Immigrant Labor to the US Economy*, Ctr. for Migration Stud. (Sept. 2, 2024), <https://perma.cc/V23X-VSRD>; see also Pia Orrenius et al., *Unprecedented U.S. Immigration Surge Boosts Job Growth, Output*, Fed. Rsrv. Bank of Dall. (July 2, 2024), <https://perma.cc/MVD5-YFSE> (recognizing that higher immigration has boosted payroll and GDP growth).

⁶⁷ U.S. Bureau of Lab. Stat., *Labor Force Characteristics of Foreign-Born Workers Summary* (May 19, 2026), <https://perma.cc/M3CQ-JP55>.

⁶⁸ See Orrenius et al., *supra* note 66.

⁶⁹ 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://perma.cc/E7H9-6EGG>.

⁷⁰ Akash Pillai et al., *Potential Implications of Immigration Restrictions on the U.S. Agricultural Workforce*, KFF (Apr. 25, 2025), <https://perma.cc/LP9Q-38C4>; Am. Immigr. Council, *Immigrants in Arizona*, <https://perma.cc/FZN4-GBVH>.

⁷¹ Econ. Rsch. Serv., U.S. Dep’t of Agric., *Farm Labor*, <https://perma.cc/5VXR-CH9Q>; see also AgAmerica, *Infographic: The U.S. Farm Labor Shortage* (Mar. 24, 2025), <https://perma.cc/NZN5-DBS4> (“Lack of access to reliable and affordable farm labor is causing U.S. farm operators to lose their competitive advantage in the global market.”).

⁷² 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>.

⁷³ Am. Bus. Immigr. Coal., *Construction: Securing the Workforce Behind America’s Growth*, <https://perma.cc/3NY3-TLTN> (updated Sept. 10, 2025); see also Nat’l Ass’n of Home Builders, *The*

national shortage of an estimated 349,000 new workers in 2026, and 456,000 in 2027.⁷⁴ And finally, as of 2023, immigrants constituted a large percentage of the health aides in many states, including New York (59.5 percent),⁷⁵ California (46.1 percent),⁷⁶ and Washington (33.2).⁷⁷ In Massachusetts, 40 percent of the front-line staff in nursing homes are foreign born; they include nursing assistants, licensed nurses, and those working in housekeeping and dining services.⁷⁸ The loss of these workers will directly impact everyone's health because States will need more immigrants to help fill the expected shortage of 134,940 healthcare providers by 2036.⁷⁹

2. The Rule Will Undermine Tax Revenue and Business Income

The Rule will also adversely impact the States by diminishing tax revenue and undermining employees' purchasing power. As of 2023, the over 10.6 million immigrant residents in California generated \$168 billion in taxes.⁸⁰ In New York, immigrants contribute approximately \$74.8 billion in taxes annually.⁸¹ The States benefit greatly from these contributions. From 1994 to 2023, the immigrant population generated nearly \$10.6 trillion more in taxes than immigrants received in benefits.⁸² The Cato Institute summarized its findings simply:

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.⁸³

States and Construction Trades Most Reliant on Immigrant Workers (Apr. 10, 2026), <https://perma.cc/NUH6-GC34> (recognizing that immigrants comprise 42.1 percent of the construction workforce in California).

⁷⁴ Associated Builders & Contractors (ABC), *ABC: Construction Industry Must Attract 349,000 Workers in 2026 Despite Macroeconomic Headwinds* (Jan. 15, 2026), <https://perma.cc/G3WT-RBQW>; see also Associated Gen. Contractors of Am., *Construction Workforce Shortages Are Leading Cause of Project Delays as Immigration Enforcement Affects Nearly 1/3 of Firms*, (Aug. 28, 2025), <https://perma.cc/6J7P-SLT6> (92 percent of construction firms reported having difficulties finding construction workers to hire as of August 2025).

⁷⁵ Am. Immigr. Council, *Immigrants in New York*, <https://perma.cc/PC7C-9HX9>.

⁷⁶ Am. Immigr. Council, *Immigrants in California*, <https://perma.cc/T877-5K28>.

⁷⁷ Am. Immigr. Council, *Immigrants in Washington*, <https://perma.cc/BP98-SCC8>.

⁷⁸ Kay Lazar, *Looming Deportations of Haitian Immigrants Could Cripple US Healthcare, Leaders Warn*, Bos. Globe (Jan. 22, 2026), <https://www.bostonglobe.com/2026/01/22/metro/immigrants-deportation-haitians-nursing-homes/>.

⁷⁹ Anna Shepperson, *Immigrants Are Key to Filling US Labor Shortages, New Data Finds*, Am. Immigr. Council (July 2, 2024), <https://perma.cc/Y2GR-7WWG>.

⁸⁰ Am. Immigr. Council, *supra* note 76.

⁸¹ Am. Immigr. Council, *supra* note 75.

⁸² David J. Bier et al., *Immigrants' Recent Effects on Government Budgets: 1994–2023*, Cato Inst. (Feb. 3, 2026), <https://perma.cc/HN9R-5MNA>.

⁸³ David J. Bier, *Cato Study: Immigrants Reduced Deficits by \$14.5 Trillion Since 1994*, Cato Inst., Cato at Liberty (Feb. 3, 2026), <https://perma.cc/7NWL-NLUT>; see also David J. Bier, *Manhattan Institute's*

Data of taxes paid by undocumented immigrants and asylum seekers who entered during the last administration shows they would reduce the federal debt by \$1.2 trillion over 10 years, after which it will grow to \$167 billion.⁸⁴ By contrast, the Department's current enforcement actions will increase the debt by \$500 billion over the next 10 years.⁸⁵ The Rule also comes at a time when the CBO has found that other immigration changes will "slow the growth of the labor force" and "dampen[] growth in potential output."⁸⁶ 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.⁸⁷

With additional arrests and removals of workers, there will be a "cascade of job loss," beginning with those who are detained and lose their jobs directly, others who may have work authorization but stay home upon experiencing a chilling effect, and U.S.-born workers who will lose jobs from the shrinking consumer base and impact on local businesses.⁸⁸ Indeed, for every 1,000 immigrants arrested, there is a corresponding .54 percent decline in employment of U.S.-born men in that area.⁸⁹ In California, the arrest of one percent of the most at risk population would lead to the removal of 15,600 immigrant men from their jobs, the loss of employment of an additional 615,000 immigrant men, and job losses for 466,000 U.S.-born men in California.⁹⁰

Removals also affect business income and the workers that immigrants employ. 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.⁹¹ As of 2023, the over 10.6 million immigrant residents – including 880,900 entrepreneurs – had

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://perma.cc/N9PK-9LSG>; 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://perma.cc/N4VP-KV2D>.

⁸⁴ Cong. Budget Off. (CBO), *Effects of the Immigration Surge on the Federal Budget and the Economy* (July 2024), <https://perma.cc/D8TL-FVHR>.

⁸⁵ CBO, *The Budget and Economic Outlook: 2026 to 2036*, 102-03 (Box 5-1) (Feb. 2026), <https://perma.cc/CQR3-FSUA>.

⁸⁶ *Id.* at 29.

⁸⁷ *Id.* at 32 (Box 2-2).

⁸⁸ Chloe East et al., *ICE Arrests Result in a Decline in Employment: State-Level Projections*, Immigr. Rsch. Initiative (July 27, 2026), <https://perma.cc/9DJ9-XX95>, see also Elizabeth Cox & Chloe N. East, *Labor Market Impacts of ICE Activity in Trump 2.0*, Nat'l Bureau of Econ. Rsch. (June 2026), <https://perma.cc/NRS5-UANY>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Am. Immigr. Council, *Immigrants in the United States* (2023), <https://perma.cc/CY5U-VCN2>; see also Rob Wile, *How Immigrants Are Helping Boost the U.S. Job Market Without Affecting Inflation*, NBC News (Apr. 7, 2024), <https://perma.cc/UCV3-4P38> (immigrants authorized to work increase "the demand for goods and services, and helping supply labor.")

spending power of over \$404 billion in California alone.⁹² In New York, immigrants are 34.3 percent of the state's entrepreneurs.⁹³ In Massachusetts, immigrants are 27 percent of entrepreneurs and 29.3 percent of STEM workers.⁹⁴ The Rule threatens to undermine these guaranteed sources of revenue.

3. The Rule Will Burden State Funded Programs, Non-Profits, and Agencies

The Rule will increase burdens on State agencies and State-funded organizations in several ways, including: (1) exhausting the resources of State-funded legal service providers; (2) increasing the need for State-funded services for traumatized children and asylum seekers; (3) increasing reliance on community health clinics and State-funded healthcare services; (4) frustrating the mission of agencies that work to integrate asylees into our communities; (5) increasing administrative burdens on public employers that hire impacted individuals; and (6) undermining law enforcement interests.

First, as noted above (*see supra* at Section II.B.3), the additional asylum seekers placed in removal proceedings because of the Rule will require more legal assistance, which will directly affect the costs to State-funded services. Previously, California allocated nearly \$37 million for nonprofit organizations to provide free immigration services funding through 2026.⁹⁵ In response to the increased need, however, California's latest budget added \$100 million for immigration legal services.⁹⁶ The funds will help California fund legal counsel for certain noncitizen immigrant youth.⁹⁷

Second, the States will need to further fund services to meet the mental health needs of asylum seekers who will endure abuse and trauma because of the Rule. *See supra* at Section II.B.4). In California, for example, the California Newcomer Education and Well-Being ("CalNEW") program already provides funding for mental health resources and services for immigrant families through its Office of Immigrant Youth.⁹⁸ The States and local jurisdictions will need to allocate additional resources to identify, assess, and treat these asylum seekers, including children. The States may also face increased expenditures for their public schools that

⁹² Am. Immigr. Council, *supra* note 76.

⁹³ Am. Immigr. Council *supra* note 75.

⁹⁴ Am. Immigr. Council, *Immigrants in Massachusetts*, <https://perma.cc/DGJ5-ZXWX>.

⁹⁵ Cal. Dep't. of Soc. Servs. (CDSS), *Immigration Services Funding (ISF) Program*, <https://perma.cc/EJ5X-4LPZ>.

⁹⁶ Cal. Immigrant Pol'y Ctr., *California Budget Delays Worst Medi-Cal Cuts for Immigrants— But Gaps Remain and the Fight Continues* (June 30, 2026), <https://perma.cc/3KW4-TNHK>.

⁹⁷ Akash Pillai et al., *Recent State Actions Related to Immigrants' Access to Services and Immigration Enforcement*, KFF (June 16, 2026), <https://perma.cc/VFT6-WJYL>.

⁹⁸ CDSS, *California Newcomer Education and Well-Being*, <https://perma.cc/N3AP-ZLUA>.

are required by law to offer mental health and early intervention services to students who are facing serious mental health conditions due to family separation or trauma.⁹⁹

Third, State agencies and State-funded organizations may be required to provide greater health services to asylum seekers' families and dependents due to the Rule. For example, with increased detentions and removals of asylum seekers who provide for their families, their dependents may increasingly rely on nonprofit community health centers ("CHCs") that provide free or low-cost care to low-income and uninsured populations¹⁰⁰ despite increasing demands for services and pressures to restrict access¹⁰¹. Likewise, several States that fully fund coverage for some adults and children regardless of immigration status may have to fill the gap for families and children whose loved ones are detained, removed, or without work authorization due to the Rule.¹⁰² The States' costs may also increase in response to the public health consequences caused by those who are likely to skip the preventative care that keeps them healthy, such as those without health insurance or those fearful of immigration enforcement.¹⁰³

Fourth, the States may dedicate resources for the integration and well-being of asylum seekers, and these efforts that will be frustrated by the Rule. For example, California's Immigrant Service Bureau, within the California Department of Social Services, provides supportive services aimed at facilitated immigrants' integration into our communities.¹⁰⁴ These programs will need to adjust to contend with the increased detentions and removals, which will impair family members' integration into the community, as well as the prolonged adjudications under the Rule that will make it difficult for the asylum seekers themselves to fully integrate into

⁹⁹ See 20 U.S.C. § 1411 (requiring States to provide special education services to students with learning or emotional disabilities); see also, e.g., Julien Lafortune & Brett Guinan, *Financing California's Public Schools*, Pub. Pol'y Inst. of Cal. (Nov. 2025), <https://perma.cc/65GY-6V8M> (noting 60% of funding for California public schools came from state sources from 2021-25).

¹⁰⁰ Akash Pillai et al., *State Health Coverage for Immigrants and Implications for Health Coverage and Care*, KFF (May 19, 2026), <https://perma.cc/U9T9-9NSM>.

¹⁰¹ Maya Goldman, *Community Clinics Squeezed by Immigration Checks*, Axios (July 17, 2025), <https://www.axios.com/2025/07/17/clinics-cutoff-undocumented-immigrants>.

¹⁰² See Pillai et al, *supra* note 100; see also Drishti Pillai et al., *Health and Health Care Experiences of Immigrants: The 2023 KFF/LA Times Survey of Immigrants*, KFF (Sept. 17, 2023), <https://perma.cc/BE5L-JGCV> (noting that nearly one in three immigrants already rely primarily on CHCs).

¹⁰³ See 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 (2014), <https://perma.cc/ZK95-NX2B>; see also 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. (2011), <https://perma.cc/7YTB-YMNV>.

¹⁰⁴ See, e.g., CDSS, *Cash Assistance Program for Immigrants (CAPI)* (2026), <https://perma.cc/3XB4-QKQ3>; CDSS, *Trafficking and Crime Victim Assistance Program (TCVAP)* (2026), <https://perma.cc/B2K9-3LB6>.

our communities. Many entities and organizations that serve these purposes have already been hamstrung by the administration’s restrictions on federal grants.¹⁰⁵

Fifth, as addressed above (*see supra* at Section II.B.2), when EAD renewal applications must be filed more frequently – which will be the case for many referred to EOIR under this Rule – it “increases both the overall filing volume and associated costs” of employers, including public employers.¹⁰⁶ State agencies that hire impacted individuals will be at the mercy of systems that generate errors while adding administrative complexity.¹⁰⁷ Specifically, the Rule will require additional State resources for comparing an employee’s employment authorization status through USCIS’s E-Verify¹⁰⁸ and Systematic Alien Verification for Entitlements (“SAVE”) systems¹⁰⁹. DHS recently began requiring employers to generate a “Status Change Report” through its E-Verify system when asylum seekers’ EADs expire.¹¹⁰ Employers now must also review all change reports every two weeks, which, for employers with large workforces like the States, will be “a significant lift.”¹¹¹ Additionally, when an asylum applicant is routed to immigration court or when an EAD expires, E-Verify queries routinely indicate a Tentative Non-Confirmation (“TNC”) due to mismatched case records with SAVE.¹¹² Resolving database errors “requires time, staff capacity, documentation, and navigation of bureaucratic processes.”¹¹³ A TNC will require a State agency to request manual verification, which will take approximately 14 federal workdays, and potentially a third-step verification by submitting photocopies of the applicant’s

¹⁰⁵ See, e.g., Nat’l Council of Nonprofits (NCN), *The Impacts of the Recent Executive Orders on Nonprofits* (2026), <https://perma.cc/8V4J-9K2H>; Tanya Broder & Ben D’Avanzo, *What New Federal Notices Mean for Immigrants’ Program Eligibility*, Nat. Immigr. L. Ctr. (July 23, 2025), <https://perma.cc/GJ62-Z5FM> (outlining several policy measures threatening to impose immigration restrictions on essential benefits and services); Ximena Bustillo, *Nonprofits Scramble to Provide Refugee Services After Administration Freezes Funding*, NPR (updated Feb. 13, 2025), <https://perma.cc/D4KZ-U6GB>.

¹⁰⁶ See Koidl, *supra* note 29; see also FWD.us, *Ending Automatic Work Authorization Extensions Will Cost Billions* (Apr. 9, 2026), <https://perma.cc/2ULH-JKTU> (recognizing that the Rule will require States to reprocess tens of thousands of unnecessary employer verifications).

¹⁰⁷ Micaela McConnell et al., *E-Verify: Widening Use, Lingering Challenges*, Am. Immigr. Council (Apr. 15, 2026), <https://perma.cc/8EBA-DZ9V>.

¹⁰⁸ E-Verify, *About E-Verify*, <https://perma.cc/AQ2C-9976>.

¹⁰⁹ USCIS, *About SAVE*, <https://perma.cc/GYF7-CFUE>.

¹¹⁰ E-Verify, *Status Change Report Now Includes TPS and Asylum-related Employment Authorization Documents*, <https://perma.cc/RJ5H-YGV2>.

¹¹¹ E-Verify, *Guidance for E-Verify Employers on Invalidated EADs*, <https://perma.cc/E7DP-XBWG>; John Shofi, *E-Verify Status Change Reports: What Employers Need to Know About Expanded EAD Revocation Monitoring in 2026*, Guidepost (Aug. 13, 2026), <https://perma.cc/UP8R-MQ5R>.

¹¹² USCIS, *SAVE Improves Responses for Individuals with Pending Asylum and Approved Employment Authorization*, <https://perma.cc/S47X-VDJ5> (noting conflicts arise due to an employee’s change of status); E-Verify, *Tentative Nonconfirmations (Mismatches)*, <https://perma.cc/FUP5-CBFT> (“A case can result in a mismatch with DHS because the employee’s . . . immigration status changed”).

¹¹³ McConnell et al., *supra* note 107.

relevant immigration documents, which will take an additional three to five federal working days for each affected employee.¹¹⁴

The States finally note that labor, civil rights, and criminal law enforcement could be undermined by the Rule's likely effect of pushing more people into the shadows and without lawful status. *See Alaska v. U.S. Dept. of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) (discussing preemption of States' sovereign interest in enforcing state law). As more asylum seekers are subject to removal proceedings, and more have prolonged waits at EOIR with EADs that could lapse, some asylum seekers may move to the "shadow" economy where they are more likely to suffer abuses and less likely to report civil and criminal violations, making it more difficult the States to enforce those laws.¹¹⁵

D. DHS Failed to Adequately Consider Reasonable Alternatives

The Department considered and rejected maintaining pre-existing policies because they would not decrease the backlog of affirmative asylum applications. *See* 91 Fed. Reg. at 47,125. The Department drew its conclusion, however, without considering reasonable alternatives, including limiting the Rule to prospective applicants and maintaining interviews for unaccompanied children. Or, most obviously, hiring more – and more qualified – asylum officers.¹¹⁶ Administration policies have downgraded the position of asylum officers – who previously often had graduate or law degrees – by lowering the pay scale from GS-12 (starting salary of \$75,000) to GS-07 (starting salary of \$43,000).¹¹⁷ The Department can begin by not deterring good candidates, then turn to hiring more asylum officers.

III. The Interim Rule is Not in Accordance with the Law

Under the APA, agency action should be set aside if it is "not in accordance with law," is "in excess of statutory jurisdiction," or is "without observance of procedure required by law."

¹¹⁴ Am. Immigr. Council, *The Systematic Alien Verification for Entitlements (SAVE) Program: A Fact Sheet* (Apr. 3, 2026), <https://perma.cc/46LE-TDJK>.

¹¹⁵ *See* Nick Lichtenberg, *Trump Crackdown Drives 80% Plunge in Immigrant Employment, Reshaping Labor Market*, *Goldman Says*, *Fortune* (Feb. 17, 2026), <https://perma.cc/P86G-UTDY> (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://perma.cc/VSV9-JBN8> (nonprofit workers encounter homeless immigrants as a "shadow" population within Los Angeles' growing homeless ranks).

¹¹⁶ *See, e.g.*, Greg Chen & Heather Hogan, *Policy Brief: Modernizing America's Asylum System*, Am. Immigr. Law. Ass'n (Mar. 16, 2026), <https://perma.cc/AW9E-3Q8R> ("USCIS should hire more asylum officers while maintaining high-level qualification requirements, pay grades, and training programs"); Nat'l Immgr. Forum, *Adjudication by USCIS Asylum Officers: Explainer* (Apr. 22, 2024), <https://perma.cc/9S2T-EN37> ("Congress must invest sufficient resources to ensure USCIS and the Department of Justice (DOJ) can hire the appropriate number of personnel and have the right infrastructure to efficiently process individuals under an asylum officer adjudication process.").

¹¹⁷ *See* Chen & Hogan, *supra* note 116.

Kalispel Tribe of Indians v. U.S. Dep't of the Interior, 999 F.3d 683, 688 (9th Cir. 2021) (citing 5 U.S.C. § 706(2)(A), (C)-(D)). An agency “is not free simply to disregard statutory responsibilities[.]” *New York v. Kennedy*, 789 F. Supp. 3d 174, 209-10 (D.R.I. 2025) (quoting *Lincoln v. Vigil*, 508 U.S. 182, 193, (1993)). Further, an agency may not confer power upon itself and must operate “within the bounds authoritatively prescribed by Congress.” *Am. Fed'n of State Cnty. & Mun. Emps., AFL-CIO v. United States Off. of Mgmt. & Budget*, 807 F. Supp. 3d 1004, 1038 (N.D. Cal. 2025) (citations omitted). The Department has violated the APA because the Rule is contrary to Congress’s intent to maintain unaccompanied children within the jurisdiction of USCIS and provide an interview by asylum officers.

Congress extended legal protections to “unaccompanied alien children” through the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), Pub. L. No. 110-457 § 235(d), 122 Stat. 5044, 5074, codified at 8 U.S.C. §§ 1158, 1232(d).¹¹⁸ The TVPRA effectively requires that an unaccompanied child be given a non-adversarial interview with a trained asylum officer.¹¹⁹ Specifically, the TVPRA provides that “USCIS, not an immigration court,” has initial jurisdiction over an unaccompanied child’s asylum application. *See J.O.P.*, 409 F. Supp. 3d at 373 (citing 8 U.S.C. § 1158(b)(3)(c)). Even when an unaccompanied child is placed in removal proceedings, the child remains under the jurisdiction of USCIS, and not EOIR. *See* TVPRA § 235(d)(7); 8 U.S.C. § 1158(b)(3)(C).

As noted above (*supra*, Section II.A), the asylum process with USCIS is less adversarial and more sensitive to the special needs of children. *J.O.P.*, 409 F. Supp. 3d at 373. Congress also delegated authority to federal agencies to enact “regulations which take into account the specialized needs of [unaccompanied children] and which address both procedural and substantive aspects of handling [their] cases.” *Id.* (quoting 8 U.S.C. § 1232(d)(8)). Notably, in structuring the TVPRA, Congress characterized legal protections for unaccompanied children, including provisions on asylum, as “permanent.” *See* TVPRA § 235(d); 8 U.S.C. § 1232(d) (“Permanent protection for certain at-risk children.”). Asserting that asylum officers can nonetheless refer unaccompanied children without an interview to removal proceedings is a failure to apply the TVPRA fully and is not in accordance with law. *See id.*

IV. The Interim Rule was Improperly Promulgated Prior to Notice and Comment

The Department published the Interim Rule on July 28, 2026, and made it effective immediately. 91 Fed. Reg. at 47,101. Promulgation of the Rule violates the APA’s procedural requirements of notice and comment and the 30-day waiting period as required by 5 U.S.C. §§ 553(c), (d). The notice and comment procedures ensure fairness and public participation in

¹¹⁸ The TVPRA draws on a prior statutory definition under which an “unaccompanied alien child” (hereinafter referenced as “unaccompanied child”) is one whom the federal government determines to be without lawful immigration status, under the age of 18, and without a parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

¹¹⁹ Nat’l Immigr. Forum, *Trafficking Victims Protection Reauthorization Act Safeguards Children* (May 23, 2018), <https://perma.cc/6CM4-TDXF>.

rulemaking. *United States v. Reynolds*, 710 F.3d 498, 517 (3d Cir. 2013); *Paulsen v. Daniels*, 413 F.3d 999, 1004-05 (9th Cir. 2005). Allowing comments after the Rule becomes effective does not satisfy the notice and comment requirements. *See* 91 Fed. Reg. at 47,101 (allowing the submission of public comments before September 28, 2026, 60 days after the Interim Rule's effective date). In fact, it is "antithetical to the structure and purpose of the APA for an agency to implement a rule first, then seek comment later." *United States v. Valverde*, 628 F.3d 1159, 1164 (9th Cir. 2010) (citation omitted).

The Department claims it can forgo notice and comment because the Rule is subject to the procedural rule exception. 91 Fed. Reg. at 47,115 (citing 5 U.S.C. § 553(b)(A)). The Department argues the Rule is procedural because it is "primarily directed toward improving the efficient and effective operations of an agency." *Id.* (citations omitted). The Department contrasts the Rule with substantive rules for which a court must look to its "effect on those interests ultimately at stake in the agency proceeding." *Id.* (citing *Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629, 637 (D.C. Cir. 1984)). The Department claims the elimination of a mandated interview does not alter the interests of asylum applicants. *Id.* at 47,116. Its position is hard to square in light of the recent 94 percent denial rate of asylum claims in immigration court.¹²⁰ Further, the Department hangs its hat on the assurance that the procedural exception "embraces such cases where there are considerations such as 'effectiveness, efficiency, expedition and reduction in expense.'" *Id.* (citing *EM Broad. Co. v. FCC*, 22 F.3d 320, 327 (D.C. Cir. 1994)). But the Department considers the Rule to be efficient not because it will make interviews quicker or less expensive,¹²¹ but rather because it eliminates interviews altogether. *See id.* at 47,103, 47,117, 47,123. As discussed at length above, however, the Department's definition of "efficiency" is inapposite to that anticipated by the exception. *See supra* at Section II.A; *see also AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (explaining the exception is limited to "internal house-keeping measures organizing agency activities" and must be "narrowly construed.") (citations omitted).

The Department also argues that the Rule is subject to the "foreign affairs" exception to notice and comment. 91 Fed. Reg. at 47,116 (citing 5 U.S.C. § 553(a)(1)). As support, the Department points only to the Secretary of State's conclusory statement that all federal agency efforts to "control the status" or "entry and exit of people" across the borders of the United States, "constitutes a foreign affairs function of the United States." *Id.* (citing 90 Fed. Reg. 12,200 (Mar. 14, 2025)). As a preliminary point, DHS's domestic exercise of its primary authority to administer and enforce U.S. immigration laws (8 C.F.R. § 2.1) does not implicate the United States' foreign policy and diplomatic relations that fall within the Secretary of State's authority and expertise. Further, if the Secretary's broad conclusion applied to DHS actions generally, and specifically to the control of people already within the United States, the foreign affairs exception would "become distended." *Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th

¹²⁰ *See* TRAC Immigr., *supra* note 25.

¹²¹ Merriam-Webster defines "efficiency" as an "efficient operation as measured by a comparison of production with cost (as in energy, time, and money)." Merriam-Webster.com Dictionary, *Efficiency*, Merriam-Webster, <https://perma.cc/7AJN-WK45>.

Cir. 1980) (citation omitted). Instead, for the exception to apply, notice and comment provisions “should provoke definitely undesirable international consequences.” *Id.* (citing S. Rep. No. 752, 79th Cong., 1st Sess. 13 (1945)). The Department does not and cannot support such an allegation here.

The Department’s failure to engage in pre-rule notice-and-comment procedures deprived the States of the ability to influence the Department’s decision. As discussed, the States have unique interests and perspectives to contribute on issues of national importance and widespread impact, particularly when such policies will cause substantial harm to the States and its residents. If the States had been provided with an opportunity to comment on the Rule before it was promulgated, they would have raised the myriad harmful impacts before it took effect.¹²²

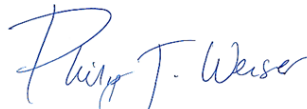
V. Conclusion

For all the above reasons, we urge the Department to withdraw the Interim Final Rule.

Sincerely,



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¹²² Oddly, the Department also claims that it stated in the preamble that “there is good cause to make this rule effective immediately upon publication” (*see* 91 Fed. Reg. at 47,126), but no such discussion exists within the Rule. Regardless, the “good cause” exception should be “narrowly construed and only reluctantly countenanced.” *United States v. Ross*, 848 F.3d 1129, 1132 (D.C. Cir. 2017) (citations omitted).



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