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Submitted via: <https://www.regulations.gov>.

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Secretary of Homeland Security
U.S. Department of Homeland Security
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Business and Foreign Workers Division
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Re: Human Rights First Comment on the Department of Homeland Security’s Interim Final Rule, “Removal of the Automatic Extension of Employment Authorization Documents,” Docket No. USCIS-2025-0271

Dear Secretary Noem,

Human Rights First submits this comment in opposition to the Interim Final Rule (IFR) promulgated by the Department of Homeland Security (DHS), titled “Removal of the Automatic Extension of Employment Authorization Documents.”¹ The IFR amends federal regulations to eliminate the automatic extension of employment authorization validity for people who are waiting for the government to adjudicate their timely filed renewal application. Human Rights First recommends that the IFR be rescinded in its entirety.

I. Overview

Human Rights First strongly opposes the IFR, which threatens the ability of asylum seekers and other immigrants to support themselves. The IFR is part of the administration’s wide-ranging efforts to target and coerce immigrants by making it extremely difficult to survive in the United States. By eliminating an automatic extension of employment authorization for immigrants who file timely renewal applications, the IFR will inevitably cause gaps in employment authorization because of U.S. Citizenship and Immigration Services (USCIS) processing times. In recognition

¹ *Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed. Reg. 48,799 (Oct. 30, 2025), <https://www.federalregister.gov/documents/2025/10/30/2025-19702/removal-of-the-automatic-extension-of-employment-authorization-documents>.

that immigrants should not lose employment authorization due to agency delays, DHS has provided for an automatic extension for nearly a decade and permanently lengthened the extension just last year.

For many, gaps in employment authorization are catastrophic: asylum seekers and other immigrants who do not have permission to work face housing instability or homelessness, food insecurity, inability to afford medical care, deteriorating mental and physical health, loss of a driver's license, and other consequences. These gaps leave people unable to provide for themselves and their families, shattering the stability that they have built in the United States after fleeing persecution or other harms. The agency's issuance of the IFR contravenes the Administrative Procedure Act, jeopardizes Constitutional due process protections, and violates core guarantees of U.S. asylum law and the Refugee Convention. The IFR should be rescinded and the 540-day automatic extension restored.

II. Human Rights First's Interest in the Rule

For 47 years, Human Rights First has worked on a non-partisan basis in the United States and abroad to promote respect for human rights and the rule of law. Human Rights First provides pro bono legal representation to indigent asylum seekers and engages in advocacy that aims to promote laws and policies that protect the universal freedoms of all individuals worldwide. Human Rights First grounds its work in the legal standards of the 1951 Refugee Convention, its 1967 Protocol, and other international human rights instruments, and advocates adherence to these standards in United States law and policy.

Working in partnership with volunteer attorneys, Human Rights First's Refugee Representation program has helped tens of thousands of asylum seekers who came to the United States fleeing persecution and torture. Because so many seek refuge in the United States, we embrace a model that enables us to do more with less. We engage attorneys from law firms, corporations, and law school clinics across the country to provide pro bono representation to asylum seekers who cannot otherwise afford high-quality legal representation. Our in-house attorneys—who have decades of experience combined—train and mentor those pro bono attorneys to ensure that our clients receive the highest-quality representation possible.

Human Rights First's extensive experience working directly with refugees seeking protection in the United States is the foundation for Human Rights First's advocacy and informs the observations that follow.

III. The Interim Final Rule is Part of the the Administration’s Broader Efforts to Punish Immigrants

Since re-entering office in January 2025, the Trump administration has carried out a mass detention and deportation effort that systematically strips immigrants of their due process rights and separates families. Immigration agents are sowing terror in U.S. communities, forcibly disappearing people on a mass scale.² Families have been left searching desperately for loved ones who have vanished into federal custody – or been sent elsewhere in the world – without a mechanism to ascertain their location for days, weeks, or longer.³

The administration has referred to itself as “hunt[ing]” immigrants,⁴ with agents tracking people to their homes,⁵ workplaces,⁶ schools,⁷ daycare,⁸ and court hearings.⁹ Immigration agents have violently assaulted people during arrests¹⁰ and torn people away from their crying children and spouses.¹¹ The administration is now detaining more immigrants in Immigration and Customs Enforcement (ICE) jails than at any known time in U.S. history.¹² At least 21 people have already

² Human Rights First et al., *Information Submitted to the U.N. Working Group on Enforced or Involuntary Disappearances: Disappearances of Migrants and Asylum Seekers in the United States* (Apr. 25, 2025), <https://humanrightsfirst.org/wp-content/uploads/2025/04/Written-statement-for-WG-on-Enforced-and-Involuntary-Disappearances.pdf>.

³ Oliver Laughland, *Plane to purgatory: how Trump’s deportation program shuttles immigrants into lawless limbo*, *The Guardian* (Sept. 10, 2025), <https://www.theguardian.com/us-news/ng-interactive/2025/sep/10/trump-globalx-airline-deportation-immigration>.

⁴ U.S. Dep’t of Homeland Sec., *DHS Releases New Nationwide and International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025), <https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self>.

⁵ Renee Hickman, Kristina Cooke & Ted Hesson, *U.S. Border Patrol raid sweeps in citizens, families as Chicago crackdown intensifies*, *Reuters* (Oct. 4, 2025), <https://www.reuters.com/world/us/us-border-patrol-raid-sweeps-citizens-families-chicago-crackdown-intensifies-2025-10-04/>.

⁶ American Immigration Council, *Understanding ICE Raids at American Workplaces* (Oct. 9, 2025), <https://www.americanimmigrationcouncil.org/fact-sheet/understanding-ice-worksites-raids/>

⁷ Office of Rep. Chellie Pingree, *Pingree Demands Answers from ICE After Parent Detained at School Drop-off*, Press Release (Sept. 17, 2025), <https://pingree.house.gov/news/documentsingle.aspx?DocumentID=6645>.

⁸ Chicago Parents Denounce ICE for Violently Detaining Beloved Daycare Teacher in Front of Toddlers,” *Democracy Now!* (Nov. 11, 2025), https://www.democracynow.org/2025/11/11/ice_arrest_of_chicago_daycare_teacher.

⁹ Joshua Goodman & Tim Sullivan, *They Thought They Were in Court for a Routine Immigration Hearing, but Walked into a Deportation Trap*, *PBS NewsHour* (Nov. 19, 2025), <https://www.pbs.org/newshour/nation/they-thought-they-were-in-court-for-a-routine-immigration-hearing-but-walked-into-a-deportation-trap>.

¹⁰ Andy Newman and Luis Ferré-Sadurní, *U.S. Agent Pushes Woman to Floor in Immigration Courthouse Confrontation*, *N.Y. Times* (Sept. 25, 2025), <https://www.nytimes.com/2025/09/25/nyregion/ice-push-woman-nyc.html>.

¹¹ Id.; Rebecca Schneid, *Viral Videos Show Toddlers Caught Up in Aggressive ICE Crackdown*, *TIME* (Nov. 9, 2025), <https://time.com/7332405/ice-arrest-toddler-la-video/>.

¹² Camilo Montoya-Galvez, *ICE’s Detainee Population Reaches 66,000, a New Record High, Statistics Show*, *CBS News* (Nov. 6, 2025), <https://www.cbsnews.com/news/ices-detainee-population-reaches-66000-a-new-record-high-statistics-show/>.

died in ICE jails since President Trump took office,¹³ with reports of delayed or inadequate medical care leading up to some of the deaths,¹⁴ and to which the Trump administration callously responded with “people die in ICE custody.”¹⁵ Unbearable conditions, medical neglect, and abuses are proliferating in immigration jails as the administration continues to jail people in severely overcrowded facilities, where people report being forced to sleep on the floors, denial of adequate food and water, and coercion by ICE officers to sign deportation documents.¹⁶

The administration has systematically targeted asylum seekers who are already living in the United States as well as people arriving to seek protection, stripping people of the right to a

¹³ See U.S. Immigration & Customs Enforcement, *Detainee Death Reporting* (last visited Nov. 25, 2025), <https://www.ice.gov/detain/detainee-death-reporting>; WLRN, *Immigrant Dies in ICE Custody in Miami — the 17th Death This Year* (Oct. 20, 2025), <https://www.wlrn.org/light/news-in-brief/2025-10-20/immigrant-dies-in-ice-custody-in-miami-the-17th-death-t-his-year>; Anthony Victoria, *Federal Lawmakers Demand Answers After Gabriel García-Avilés Dies in Custody at Adelanto ICE Processing Center*, KVCR News (Nov. 6, 2025), <https://www.kvcrnews.org/local-news/2025-11-06/federal-lawmakers-demand-answers-after-gabriel-garcia-aviles-dies-in-custody-at-adelanto-ice-processing-center>; Paola Rodriguez, *Vigil Remembers Missouri Man Who Died in ICE Custody*, STL Public Radio (Oct. 13, 2025), <https://www.stlpr.org/law-order/2025-10-13/vigil-remembers-missouri-man-died-ice-custody>; Freedom for Immigrants, Press Release, *Advocates Mourn Another Loss of Life to ICE Detention Under Trump* (last visited Oct. 7, 2025), <https://www.freedomforimmigrants.org/news-and-updates/advocates-mourn-another-loss-of-life-to-ice-detention-under-trump>; National Day Laborer Organizing Network (NDLON), Press Release, *NDLON Mourns Santos Banegas Who Died in ICE Custody* (Sept. 23, 2025), <https://ndlon.org/ndlon-mourns-santos-banegas-who-died-in-ice-custody/>; Andrew Free, *ICE Confirms 3 More October Deaths, Detention Kills* (Substack) (Oct. 30, 2025), <https://detentionkills.substack.com/p/ice-confirms-3-more-october-deaths>.

¹⁴ Human Rights Watch, “*You Feel Like Your Life Is Over*”: *Abusive Practices at Three Florida Immigration Detention Centers since January 2025* (Jul. 21, 2025), <https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration>; Syra Ortiz Blanes & Claire Healy, *Two Men in ICE Custody Died of ‘Natural’ Causes. Were Their Deaths Preventable?* (May 7, 2025), Miami Herald, <https://www.miamiherald.com/news/local/immigration/article304966226.html>.

¹⁵ Edith Olmsted, *Trump Border Czar Has Gruesome Response to Man Dying in ICE Custody*, New Republic (June 30, 2025), <https://newrepublic.com/post/197451/donald-trump-border-czar-tom-homan-man-dying-ice-custody>.

¹⁶ Miriam Jordan & Jazmine Ulloa, *Concerns Grow Over Dire Conditions in Immigrant Detention*, N.Y. Times (June 28, 2025; updated July 1, 2025), <https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html>; Human Rights Watch, “*You Feel Like Your Life Is Over*”: *Abusive Practices at Three Florida Immigration Detention Centers since January 2025* (Jul. 21, 2025), <https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration>; Bennett Haerberle, *Judge, Attorneys for Detainees Tour Broadview ICE Facility Amid Lawsuit Over Conditions*, NBC Chicago (Nov. 13, 2025), <https://www.nbcchicago.com/investigations/federal-judge-attorneys-for-detainees-tour-ice-detention-facility-amid-lawsuit-over-conditions/3851349/>; Bobbi-Jean Misick, *Conditions at Louisiana ICE Lockup Worsen as Detainees Increase, Immigrant Rights Advocates Say*, Louisiana Illuminator (Nov. 13, 2025), <https://lailluminator.com/2025/11/13/ice-pine-prairie/>.

hearing¹⁷ or in some instances even a screening¹⁸ on their asylum claim. Another prong of the targeting of immigrant communities is the administration's removal of people to third countries to which they have no connection, where they have been tortured, arbitrarily detained, refouled, or subjected to other harms.¹⁹ Some people who are detained face the threat of removal to a third country and are reportedly coerced into accepting deportation under this threat.

The threats of life-threatening detention, family separation, disappearance to a foreign country, and other punishment, appear intended to coerce and/or pressure people to leave the United States rather than risk such harms while having their immigration case adjudicated. The administration has stated this aim explicitly in public statements threatening immigrants with forced removal to El Salvador, Eswatini, or South Sudan²⁰ – where the Trump administration has already sent immigrants to face arbitrary detention and other human rights violations. The Secretary of Homeland Security has stated: “If you do not leave, we will hunt you down, arrest you, and you could end up in this El Salvadorian prison.”²¹ The administration also wields the threat of family separation to coerce people to abandon their claims for asylum and return to the country where they fled persecution. In addition to cases documented by the New York Times,²² Human Rights First has recently interviewed families fleeing political-based persecution who were threatened with separation if they did not accept their deportation.

¹⁷ Suzanne Gamboa, *Immigration Arrests in Courthouses Have Become the New Deportation Tool, Stripping Migrants of a Legal Process*, NBC News (May 30, 2025), <https://www.nbcnews.com/news/latino/immigrations-arrests-ice-deportations-courthouse-legal-process-ice-rcna209671>.

¹⁸ Human Rights First, “*This Is an Order From Trump*”: Abuse, Expulsions, and Refoulement of People Seeking Asylum (May 2025), https://humanrightsfirst.org/wp-content/uploads/2025/05/ThisIsAnOrderFromTrumpReport_final1.pdf.

¹⁹ U.N. Off. of the High Comm’r for Hum. Rights, *UN Experts Alarmed by Resumption of U.S. Deportations to Third Countries, Warn Authorities to Assess Risks of Torture*, (July 8, 2025), <https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn>; Human Rights Watch, “*You Have Arrived in Hell*”: Torture and Other Abuses Against Venezuelans in El Salvador’s Mega-Prison (Nov. 12, 2025), <https://www.hrw.org/report/2025/11/12/you-have-arrived-in-hell/torture-and-other-abuses-against-venezuelans-in-el-salvador>; Human Rights First, “*This Is an Order From Trump*”: Abuse, Expulsions, and Refoulement of People Seeking Asylum (May 2025), https://humanrightsfirst.org/wp-content/uploads/2025/05/ThisIsAnOrderFromTrumpReport_final1.pdf;

Gerald Imray, *A Cuban Man Deported by the U.S. to Africa Is on a Hunger Strike, His Lawyer Says*, AP News (Oct. 22, 2025), [https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859;D.A.v.Noem,1:25-cv-03135,\(D.D.C.Sep12,2025\)](https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859;D.A.v.Noem,1:25-cv-03135,(D.D.C.Sep12,2025)).

²⁰ John Eligon & Hamed Aleaziz, *Man Who’d Served His Time in U.S. Is Deported to an African Prison*, N.Y. Times (Sept. 1, 2025), <https://www.nytimes.com/2025/09/01/world/africa/trump-deportations-prison-us-eswatini-africa-jamaica.html>.

²¹ Kristi Noem, Secretary of Homeland Security, X (Mar. 26, 2025, 7:08 PM ET), https://x.com/Sec_Noem/status/1905034256826408982.

²² Hamed Aleaziz, *Inside Trump’s New Tactic to Separate Immigrant Families*, N.Y. Times (Aug. 5, 2025), <https://www.nytimes.com/2025/08/05/us/politics/trump-administration-family-separation.html>.

Use of immigration detention is another form of coercion. The administration has attempted to eliminate bond hearings for the vast majority of detained people,²³ leaving many in indefinite detention with limited ability to challenge it.²⁴ It has also dismantled federal oversight bodies that investigate rights violations and conditions in detention.²⁵ As conditions continue to deteriorate, attorneys routinely report instances of people in detention agreeing to abandon their claim and accept deportation because of the horrific conditions in detention.

Eliminating the right of immigrants to work and provide for their families while they have legal status or are waiting for their immigration case to be decided is a core part of this agenda of coercion, as it was under the first Trump administration. By taking away the right to work, the administration is making life in the United States so unbearable that people will face the choice of whether to give up or pursue their case without the ability to support themselves and their children. The IFR, in conjunction with new legislation²⁶ that imposes unprecedented fees on asylum applications and continuing fees every year the application is pending, will make it impossible for many to pay to have their asylum case considered, let alone pay for food, housing, and other necessities. In addition to causing lapses in employment authorization for those waiting for their cases to be adjudicated, the IFR also eliminates the automatic extension and will cause lapses for people who already have legal status, including withholding of removal and Temporary Protected Status. Disrupting the right to work for people who have already been granted status is consistent with the administration's targeting of people with legal status, which includes detention, deportation, and/or removal to third countries.²⁷

The IFR will also push some people who lose their employment authorization to seek unauthorized work to survive, making them even more vulnerable to being preyed upon by unscrupulous actors as well as aggressive immigration enforcement through worksite raids.

²³ Erica Bryant, *ICE Is Denying People Bond to Keep Them Locked Up*, Vera Institute (Aug. 8, 2025), <https://www.vera.org/news/ice-is-denying-people-bond-to-keep-them-locked-up>; American Immigration Council, *Detention under INA § 235(b): The Statutory Scheme and Strategies for Release* (Sept. 1, 2025), <https://www.americanimmigrationcouncil.org/practice-advisory/ina-235b-detention-practice-advisory/>.

²⁴ A recent decision in *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.) (2025) granting partial summary judgment rejected these policies, but the case is still pending appeal.

²⁵ Zolan Kanno-Youngs, Hamed Aleaziz, Adam Goldman & Eileen Sullivan, *Trump Shuts Down 3 Watchdog Agencies Overseeing Immigration Crackdown*, N.Y. Times (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/us/politics/trump-civil-rights-homeland-security-deportations.html>.

²⁶ American Immigration Council, *What's in the Big Beautiful Bill? Immigration and Border Security Unpacked* (July 13, 2025), <https://www.americanimmigrationcouncil.org/fact-sheet/big-beautiful-bill-immigration-border-security>.

²⁷ Brendan Rascius, *Venezuelan man came to the U.S. legally 10 years ago. Now he's in Florida ICE lock-up and family worries he's had a heart attack*, The Independent (Nov. 19, 2025), <https://www.independent.co.uk/news/world/americas/us-politics/ice-detention-florida-venezuela-heart-attack-b2869411.html>; Copy of email sent by Immigration and Customs Enforcement, obtained by Reuters, https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf; Human Rights First et al., *Report to the Inter-American Commission on Human Rights in Follow Up to July 24, 2025 Public Hearing, "Human Rights Situation of Migrants, Refugees and Asylum Seekers"* (Oct. 13, 2025), <https://humanrightsfirst.org/wp-content/uploads/2025/10/Report-to-IACHR-10.13.2025.pdf>.

Additionally, as the agency explicitly portends in the IFR, gaps in employment authorization may have a “detrimental impact...on an applicant’s eligibility for future immigration benefits should the applicant engage in unauthorized employment during the gap.”²⁸ By forcing some people into unauthorized employment, the IFR will have a ripple effect that may result in denial of future immigration benefits, consistent with the administration’s agenda.

The first Trump administration similarly took aim at employment authorization for asylum seekers. It promulgated draconian regulations that eliminated employment authorization for asylum seekers, including by forcing people – as this IFR does – to wait longer and longer periods without employment authorization.²⁹ Those regulations doubled the already long wait time for asylum seekers to be eligible for employment authorization after they apply for asylum, eliminated crucial deadlines for processing initial employment authorization applications, and made broad categories of asylum seekers ineligible for employment authorization. These punitive regulations were permanently invalidated by a federal court in February 2021.³⁰

IV. The Interim Final Rule Will Produce Gaps in Employment Authorization for People Who Timely File to Renew

People who apply for immigration status in the United States already face numerous hurdles to qualify for and obtain employment authorization. In order to qualify for employment authorization, they must demonstrate that they are eligible based on, for instance, an underlying immigration application or legal status. Asylum seekers are required to submit an asylum application – a twelve-page form that must be completed in English – and then wait another 150 days until they can even apply for employment authorization in the asylum applicant category, and another 30 days before they are eligible to receive it. USCIS processes the application and sends the applicant an Employment Authorization Document (EAD) as proof that they are permitted to work in the United States. People with immigration status, such as those granted withholding of removal and Temporary Protected Status, may receive EADs and must similarly wait for it to be approved in order to lawfully work. People who were already granted asylum do

²⁸ *Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed. Reg. 48,799, 48,817 (Oct. 30, 2025),

<https://www.federalregister.gov/documents/2025/10/30/2025-19702/removal-of-the-automatic-extension-of-employment-authorization-documents>.

²⁹ *Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg. 38,532 (June 26, 2020) (codified at 8 C.F.R. pts. 208 & 274a),

<https://www.federalregister.gov/documents/2020/06/26/2020-13544/asylum-application-interview-and-employment-authorization-for-applicants>; *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765*

Employment Authorization Applications, 85 Fed. Reg. 37,502 (June 22, 2020) (codified at 8 C.F.R. pt. 208), <https://www.federalregister.gov/documents/2020/06/22/2020-13391/removal-of-30-day-processing-provision-for-asylum-applicant-related-form-i-765-employment>.

³⁰ *Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11 (D.D.C. 2022).

not need an EAD in order to work – as their asylee status automatically confers employment authorization – but may still apply for an EAD because some employers wrongly require it; as a result, asylees may similarly suffer adverse consequences due to the EAD processing times.

These punishingly long wait times may be extended further due to inability to afford the fee for an EAD, USCIS processing error, language barriers, detention, or other barriers. After overcoming these hurdles, people who receive their EADs remain eligible for employment authorization while their application remains pending or while they maintain the legal status underlying the EAD. However, EADs have a limited validity period and must be renewed. Due to backlogs, EADs have routinely expired long before USCIS adjudicated the renewal application, causing gaps in employment authorization. These gaps have devastating consequences, such as loss of work, housing, and ability to obtain food, medical care, and other basic necessities.

USCIS has for nearly a decade provided an automatic extension of employment authorization where individuals timely file a renewal application in the same eligibility category as the existing EAD. In 2016, DHS issued a final rule³¹ that provided for an automatic extension of employment authorization validity for up to 180 days for certain eligibility categories — including asylum applicants and people granted withholding of removal or Temporary Protected Status³² — where the renewal application was timely filed. DHS explained that the 180-day extension “significantly mitigates the risk of gaps in employment authorization and required documentation for eligible individuals.”³³

Beginning in 2022, DHS issued a series of temporary rules that extended the 180-day automatic extension to up to 540 days, in recognition that the 180-day extension was insufficient to prevent gaps in employment authorization given the length of processing times.³⁴ In 2024, DHS issued a final rule to make the 540-day automatic extension permanent, explaining that the extension

³¹ *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 81 Fed. Reg. 82,398, 82,458 (Nov. 18, 2016) (final rule, codified at 8 C.F.R. pts. 204, 205, 214, 245 & 274a), <https://www.federalregister.gov/documents/2016/11/18/2016-27540/retention-of-eb-1-eb-2-and-eb-3-immigrant-workers-and-program-improvements-affecting-high-skilled>.

³² *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 80 Fed. Reg. 81,900, 81,928 (Dec. 31, 2015) (proposed rule, codified at 8 C.F.R. pts. 204, 205, 214, 245 & 274a), <https://www.federalregister.gov/documents/2015/12/31/2015-32666/retention-of-eb-1-eb-2-and-eb-3-immigrant-workers-and-program-improvements-affecting-high-skilled>.

³³ *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 81 Fed. Reg. 82,398, 82,458 (Nov. 18, 2016) (final rule, codified at 8 C.F.R. pts. 204, 205, 214, 245 & 274a), <https://www.federalregister.gov/documents/2016/11/18/2016-27540/retention-of-eb-1-eb-2-and-eb-3-immigrant-workers-and-program-improvements-affecting-high-skilled>.

³⁴ U.S. Citizenship & Immigration Servs., *Automatic Employment Authorization Document (EAD) Extension* (archived Oct. 29, 2025), <https://www.uscis.gov/archive/automatic-employment-authorization-document-ead-extension>.

“proved to be very successful at minimizing disruption to renewal EAD applicants and their U.S. employers that would have otherwise resulted from USCIS processing delays.”³⁵ The agency further found that the 2022 temporary extension **immediately restored employment authorization and/or EAD validity for around 70,000 EAD applicants at the time the rule went into effect and then helped nearly 280,000 renewal EAD applicants avoid a gap in employment authorization and/or EAD validity based on renewals filed from May 4, 2022 to October 26 2023.**³⁶ These figures underscore the enormous impact of the 540-day extension and the devastating consequences of the agency’s current decision to end automatic extensions of *any length*. The agency concluded in the 2024 final rule that “[p]ermanently increasing the automatic extension period will help avoid the gaps in employment authorization and/or documentation that could otherwise affect eligible renewal EAD applicants, their families, and their U.S. employers...because of circumstances that are beyond the control of the applicant.”³⁷

By abruptly eliminating the automatic extension altogether, the 2025 IFR seeks to cut off a person’s employment authorization at the renewal stage, meaning that people who already overcame every hurdle to secure employment authorization will have it arbitrarily revoked despite complying with the guidelines for timely renewal. This year, the government has continued to face significant backlogs in adjudicating employment authorization applications, increasing the danger of lapses in employment authorization due to the IFR. USCIS’s data reflects that as of September 2025 the agency was processing over 1.5 million applications for employment authorization.³⁸ As of June 30, 2025, **827,354 total EAD renewal applications were pending,**³⁹ **with over 165,000 of them pending for more than 180 days.**⁴⁰ **Of these, 269,451 pending applications to renew employment authorization were based on an asylum application, with nearly 50,000 of these pending longer than 180 days.**⁴¹ With the automatic extension of validity no longer in place, asylum seekers and immigrants who file renewal applications after the date of the IFR could lose employment authorization due to USCIS backlogs through no fault of their own, even if they follow USCIS’s recommendation that people

³⁵ *Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 101,208 (Dec. 13, 2024) (codified at 8 C.F.R. pt. 274a), <https://www.federalregister.gov/documents/2024/12/13/2024-28584/increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation-for-certain>.

³⁶ *Id.* at 101,210.

³⁷ *Id.* at 101,211.

³⁸ U.S. Citizenship & Immigr. Servs., *FY 22 Appropriations Reporting Requirement – Application Processing Data for September 2025* (csv), https://www.uscis.gov/sites/default/files/document/data/appropriation_requirement_september%202025.csv.

³⁹ U.S. Citizenship & Immigr. Servs., *I-765, Application for Employment Authorization (All Categories, Including (c)(8)) Fiscal Year 2025, Quarter 3* (xlsx), https://www.uscis.gov/sites/default/files/document/data/i765_p_allcat_c08_fy2025_q3.xlsx.

⁴⁰ *Id.*

⁴¹ *Id.*

file renewal applications “up to 180 days before their EAD expires.”⁴² If processing times similar to those reflected in the June data persist, this could impact massive numbers of people including potentially tens of thousands of asylum applicants and other immigrants who face processing times longer than 180 days.

V. Lapses in Employment Authorization Severely Harm Immigrants and Their Families

The U.S. government has long recognized that continuous access to employment authorization is fundamental to the autonomy, stability, and well-being of immigrants and their families. DHS has underscored this commitment and sought to avoid gaps in employment authorization that arise through no fault of the applicant by issuing regulations over the past decade that instituted automatic extensions of employment authorization where a timely renewal application was filed. Just last year, DHS emphasized in its final rule permanently increasing the automatic extension period to 540 days that lapses in permission to work can cause “substantial and unnecessary harm to noncitizens [...], their families, their employers, and the public at large.”⁴³ It further notes that continuous permission to work “is vital for asylum seekers in the United States to access housing, food, and other necessities” and that asylum seekers may need ongoing employment authorization to obtain proof of identity, afford legal representation, and access necessary medical care and mental health services.⁴⁴

Even in its 2025 IFR, DHS acknowledges the harms of eliminating the automatic extension. The agency notes that the backlogs for renewal EAD applications “could have significant adverse consequences” for immigrants and their families.⁴⁵ It further explains that the IFR creates “an increased risk of loss of work authorization”⁴⁶ and that applicants and their families may have relied on the automatic extensions “to avoid lapses in employment authorization that may be detrimental to the [noncitizen], their family’s finances, and their employer’s operations”⁴⁷ and “to

⁴² U.S. Citizenship & Immigr. Servs., *DHS Ends Automatic Extension of Employment Authorization* (Oct. 29, 2025), <https://www.uscis.gov/newsroom/news-releases/dhs-ends-automatic-extension-of-employment-authorization>.

⁴³ *Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 101,208, 101,210 and 101,216 (Dec. 13, 2024) (codified at 8 C.F.R. pt. 274a), <https://www.federalregister.gov/documents/2024/12/13/2024-28584/increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation-for-certain>.

⁴⁴ *Id.* at 101,225.

⁴⁵ *Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed. Reg. 48,799, 48,817 (Oct. 30, 2025), <https://www.federalregister.gov/documents/2025/10/30/2025-19702/removal-of-the-automatic-extension-of-employment-authorization-documents>.

⁴⁶ *Id.*

⁴⁷ *Id.* at 48,809.

obtain other forms of identification, such as driver’s licenses.”⁴⁸ However, it quickly dismisses such harms as outweighed by “the government’s interests and policy concerns.”⁴⁹

As survivors of trauma and forced displacement, immigrants seeking asylum face a host of challenges in the United States, including a sense of powerlessness, language barriers, and physical and mental health issues stemming from persecution and a fear of return to persecution. These vulnerabilities are compounded by an inability to work. Human Rights First has seen firsthand the overwhelming challenges that vulnerable asylum seekers and their families already face when they lack permission to work – a reality that will only become more pervasive due to the IFR. Asylum seekers who lack employment authorization face housing instability or homelessness and struggle to access basic necessities, such as food and medical care.⁵⁰ They are often unable to provide for dependent family members, including minor children, causing a ripple effect that impacts the entire family unit. Without employment authorization, many are also unable to apply for many state-issued identity documents or driver’s licenses, which severely limits their access to banking and transportation.

Because asylum seekers are considered “nonqualified”⁵¹ immigrants for purposes of federal public assistance, they are generally ineligible for federal income, housing, or food assistance, except in limited emergency circumstances. Although states may provide “nonqualified” immigrants, such as asylum seekers, with state-funded benefits, the vast majority of U.S. states have not implemented such programs or otherwise limit eligibility to individuals who meet certain age or health criteria.⁵² As a result, asylum seekers who are unable to work lack a social safety net, forcing some to seek support from family, friends, or even strangers and leaving many with no way to cover their immediate needs.

People who will be impacted by the IFR have already overcome many hurdles and waited long periods to obtain initial employment authorization, as discussed in Section IV. Many of the

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Human Rights First, *Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families* (Apr. 2019), <https://humanrightsfirst.org/library/callous-and-calculated-longer-work-authorization-bar-endangers-lives-of-asylum-seekers-and-their-families/>.

⁵¹ Workie, Essey, Lillie Hinkle & Stephanie Heredia, *The Missing Link: Connecting Eligible Asylees and Asylum Seekers with Benefits and Services*, Migration Policy Institute (July 2022), https://www.migrationpolicy.org/sites/default/files/publications/mpi_asylee-asylum-seeker-benefits-2022_final.pdf.

⁵² Akash Pillai, Drishti Pillai & Samantha Artiga, *State Health Coverage for Immigrants and Implications for Health Coverage and Care*, KFF (May 29, 2025, updated Sept. 12, 2025), <https://www.kff.org/racial-equity-and-health-policy/state-health-coverage-for-immigrants-and-implications-for-health-coverage-and-care/>.

asylum seekers Human Rights First represents endure enormous hardship, including precarious living situations, while awaiting initial employment authorization.⁵³ For instance:⁵⁴

- Sarai*, a Salvadoran asylum seeker fleeing domestic violence and death threats, and her son were forced to live with an abusive man because she could not support herself in the United States without employment authorization. After she received her work permit, she secured a job as a shop clerk and was able to rent housing for herself and her son.
- Michele*, a survivor of torture from the Central African Republic, had no community and no way to support himself until he received employment authorization. As a result, he spent six months homeless—sleeping on subways or spare beds in emergency rooms—until he received his work permit and obtained employment with a car service.
- Hassan*, an asylum seeker and survivor of political persecution from Sudan, was forced to live in a homeless shelter while awaiting employment authorization. After Hassan finally received permission to work, he was able to obtain a driver’s license, which allowed him to land a job driving patients to their medical appointments and gave him the freedom to move out of the shelter into stable housing.

When asylum seekers like these clients are finally granted initial employment authorization, they are better able to support themselves and their families and find stability and safety. But the IFR will likely create lapses in employment authorization for large numbers of people who have already obtained it, casting people back into the precarious and unsafe situations that they experienced while waiting for their initial employment authorization to be processed. Human Rights First has witnessed the devastating cascading effects that gaps in employment authorization due to USCIS processing delays have on clients who have already been granted initial authorization and started to build a stable life for themselves and their families in the United States.⁵⁵ For instance:

- Isabel*, a domestic violence survivor from Guatemala and primary caregiver for her 10- and 13-year-old daughters, lost her employment authorization due to USCIS delays in processing renewal applications. As a result, she lost her job as a forklift driver, which had been her source of income for two and a half years. Due to the loss of income, she struggled to pay rent, causing Isabel and her daughters severe anxiety about the family’s survival. Isabel suffered from insomnia, migraines, gastrointestinal issues, and physical pain because of her job loss, and one of Isabel’s young daughters grew so anxious that she began having body aches and pulling out her hair, requiring Isabel to take her to the

⁵³ Human Rights First, *Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families* (Apr. 2019), <https://humanrightsfirst.org/library/callous-and-calculated-longer-work-authorization-bar-endangers-lives-of-asylum-seekers-and-their-families/>.

⁵⁴ Each of the clients is referenced by a pseudonym to protect their identity.

⁵⁵ Declaration of Jenna Gilbert, Esq., on behalf of Human Rights First (Nov. 10, 2021), <https://humanrightsfirst.org/wp-content/uploads/2021/11/Human-Rights-First-Declaration-11.10.21-1.pdf>.

emergency room. Isabel also lost her driver's license due to the loss of employment authorization.

- Hisham,* an asylum seeker from Syria who was the sole provider for his family, lost his employment authorization because of USCIS delays in processing his renewal application. Before losing his permission to work, Hisham had worked as a telecommunications specialist, allowing him to provide for his family and then-pregnant wife. Hisham and his wife, who were recently married, had just bought a house and were expecting their first child. But after Hisham lost his employment authorization, his bank notified him that banking rules affecting Syrian nationals required them to close his account upon the expiration of his work permit, jeopardizing Hisham's access to financial stability at a crucial moment in his budding family's lives.
- Rosa,* an asylum seeker from Honduras with three children, filed a timely application to renew her EAD and received an automatic 180-day extension of her employment authorization. However, USCIS took longer than six and a half months to process and grant the renewal application, causing Rosa's EAD to expire and forcing her to leave her job during the COVID-19 pandemic.
- Samuel,* an asylum seeker from Uganda and the sole provider for his family, also timely applied to renew his EAD and received an automatic 180-day extension of his permission to work, but USCIS did not approve his renewal application until *16 months* after he submitted his application, causing Samuel to lose two jobs as a certified nursing assistant, as well as his driver's license, through no fault of his own.

By eliminating automatic EAD extensions for timely filed renewal applications, the IFR will only further increase lapses in employment authorization and compound harms against immigrants, including asylum seekers and people granted withholding of removal and other protections.

VI. The Interim Final Rule is Unlawful

DHS's elimination of automatic extensions of employment authorization for asylum applicants and other immigrants is unlawful. The IFR violates due process protections by depriving immigrants of a meaningful opportunity to pursue their claims. It also undermines the government's obligations under domestic law and international refugee protection frameworks to ensure fair access to asylum, avoid refoulement, and facilitate integration of refugees. Moreover, the IFR abruptly reverses course from a final rule issued just last year without providing evidence to explain the reversal, in violation of the Administrative Procedure Act.

A. The IFR Undermines Due Process and Right to Seek Asylum

The Fifth Amendment of the U.S. Constitution guarantees that all persons in the United States, including asylum seekers, are entitled to due process of law. The Immigration and Nationality Act (INA) guarantees access to asylum⁵⁶ and requires that noncitizens in immigration court proceedings have a reasonable opportunity to examine and present evidence,⁵⁷ a hearing about their application,⁵⁸ and can meaningfully participate in the adjudication of their claims.⁵⁹

The IFR directly undermines the right to due process and the right to seek asylum. The elimination of automatic extensions will cause large numbers of asylum seekers and other immigrants to lose employment authorization through no fault of their own and while their timely-filed renewal applications remain pending.

These inevitable gaps in employment authorization will impose insurmountable barriers to preparing and presenting an immigration case, and even surviving in the United States while immigrants wait for a decision. Immigrants must be able to work to pay rent, purchase food, and support themselves and their families while awaiting the adjudication of their claims.⁶⁰ Access to consistent income helps enable applicants to pay to retain counsel, attend hearings, gather evidence, and otherwise participate meaningfully in the adjudication of their claims.⁶¹ Stripping individuals of the ability to work lawfully during the pendency of their asylum applications deprives them of the basic means of survival necessary to exercise their statutory rights.

Federal courts have recognized these hardships. In *Casa de Maryland v. Wolf*, the court stated that “limiting approval of employment authorization for bona fide asylees will inevitably affect their ability to afford the costs of seeking asylum, including hiring legal counsel,” and the agency has “historically granted employment authorization to mitigate the evident economic hardship faced by asylum applicants...allowing applicants to lawfully support themselves while they await a final decision on their asylum applications.”⁶² The court’s reasoning reflects an underlying principle: timely and continuous access to employment authorization is essential to the fairness and functionality of the asylum process.

⁵⁶ 8 U.S.C. §1158(a)(1).

⁵⁷ 8 U.S.C. §1229a(b)(4).

⁵⁸ 8 U.S.C. §1229a(b)(2).

⁵⁹ *Rusu v. INS*, 296 F.3d 316, 321–22 (4th Cir. 2002); see also *Burger v. Gonzales* 498 F.3d 131, 134 (2d Cir. 2007) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)) (recognizing that due process, at a minimum, entitles noncitizens to the opportunity to be heard at a meaningful time and in a meaningful manner).

⁶⁰ Warren, Elizabeth et al., *Letter from Senators Warren et al. to President Biden, Sec’y Mayorkas & Dir. Jaddou on Employment Authorization Document Permit Extensions* (Mar. 29, 2024), https://www.warren.senate.gov/imo/media/doc/letter_from_senator_warren_colleagues_to_president_biden_dhs_usc_is_on_ead_permit_extensions1.pdf.

⁶¹ INA Section 240(b)(4) states that respondents “shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceeding.”

⁶² 486 F. Supp. 3d 928 (D. Md. 2020); See *Broader EAD Rules*, 85 Fed. Reg. 38,544.

Fees for asylum applications and additional annual fees while the application is pending—imposed this year for the first time in U.S. history—further illustrate that uninterrupted employment authorization is indispensable. Many asylum seekers who do not have consistent access to employment authorization will be unable to afford these costs; consequently, their asylum claims may be rejected simply because they cannot pay.⁶³ Additionally, these gaps in employment authorization will push people to perform unauthorized work to survive, which could lead to significant consequences, including being targeted during raids, detention, deportation, and denial of immigration benefits in the future.

By eliminating automatic EAD extensions, the IFR threatens an essential safeguard—consistent access to employment authorization—that enables people to meaningfully participate in their cases and access the life-saving asylum system. The rule will subject individuals to severe economic hardship, impair access to counsel, and create a substantial risk that valid asylum claims will never be heard.

B. The IFR Violates the Administrative Procedure Act (APA)

1. Internally Inconsistent with DHS's Own Prior Reasoning

The 2025 IFR abruptly reverses DHS's carefully reasoned 2024 final rule extending the period of the automatic extension from 180 days to 540 days. DHS concluded in 2024 that the 540-day automatic EAD extension was necessary to prevent employment lapses caused by USCIS processing delays and to protect noncitizens, employers, and the broader economy.⁶⁴ DHS emphasized at that time that “lapses in employment authorization and EAD validity can result in substantial harm to noncitizens, their families, their employers, and the public at large.”⁶⁵

DHS further found that the 180-day extension established in the 2016 final rule “does not provide USCIS enough time” to avoid harmful work-authorization gaps and that a permanent 540-day extension was required.⁶⁶ These findings were recent, detailed, and grounded in the agency's own operational data.

The IFR provides no new evidence contradicting these prior conclusions. Instead, it eliminates automatic extensions entirely, re-imposing the same economic harms and operational problems DHS expressly identified less than a year ago. Such an abrupt reversal, without a reasoned

⁶³ Asylum Seeker Advocacy Project (ASAP), *There Are New Fees for Asylum Applications and Work Permits*, ASAP Together (Nov. 13, 2025), <https://asaptogether.org/en/new-fees/>; Jesse Lee Peterson, *Trump puts a new fee on asylum seekers; many say they don't know how to pay*, Politico (Oct. 21, 2025), <https://www.politico.com/news/2025/10/21/trump-put-a-new-fee-on-asylum-seekers-many-say-they-dont-know-how-to-pay-00616987>.

⁶⁴ *Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 101,208.

⁶⁵ *Id.* at 101,209.

⁶⁶ *Id.* at 101,210–12.

explanation or a change in underlying facts, violates the Administrative Procedure Act’s requirement that agency actions be rational and adequately justified.⁶⁷

2. *Contradicts the Evidence Before the Agency: USCIS Backlogs Make Employment Authorization Lapses Unavoidable*

The IFR’s central assertion that asylum seekers can avoid employment authorization gaps through “proper planning” is squarely contradicted by the agency’s own evidence showing that USCIS’s processing times for renewal applications recently extended past 180 days in over 165,000 cases, leaving people vulnerable to lapses in authorization without an automatic extension even if they have timely filed for renewal. Under the APA, an agency must “examine the relevant data and articulate a satisfactory explanation for its action,” and may not “offer an explanation that runs counter to the evidence before the agency.”⁶⁸ DHS fails this requirement.

USCIS’s published data on EAD processing times demonstrate that applicants who submit renewal requests well in advance are still at significant risk of losing employment authorization without an automatic extension. USCIS recommends that people file renewal applications “up to 180 days before their EAD expires.”⁶⁹ As of June 2025, asylum applicants who filed EAD renewal applications experienced long waits, **with processing times exceeding 180 days in tens of thousands of cases.**⁷⁰ This means that even if asylum applicants follow USCIS guidance and file for EAD renewals up to 180 days before expiration of their EAD, they will still experience lapses due to the IFR. Additionally, the possibility of filing even earlier is not a solution because USCIS does not set the new EAD to begin when the old one expires. Instead, the new validity period begins on the date of approval. As a result, if an applicant files early, e.g. seven or eight months in advance, and USCIS happens to approve the renewal before expiration, the new card may become valid before the existing card has even lapsed, causing the two validity periods to overlap. This overlap shortens the usable lifespan of the new card and effectively deprives the applicant of periods of employment authorization they would have had otherwise. Thus, the IFR could force applicants into an accelerating renewal cycle: because each renewal period starts earlier than the last, the applicant must file increasingly far in advance to avoid a lapse. This structural reality makes DHS’s claim that asylum seekers can prevent gaps simply by “filing early” unrealistic and self-defeating.

The IFR itself confirms the extent of these delays: DHS acknowledges that USCIS backlogs are driven by unpredictable variables, that it “cannot predict” whether adjudications will occur before expiration, and that, absent a dramatic and uncertain reduction in workload, ending

⁶⁷ *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).

⁶⁸ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

⁶⁹ U.S. Citizenship & Immigration Servs., *DHS Ends Automatic Extension of Employment Authorization*, (Oct. 29, 2025), <https://www.uscis.gov/newsroom/news-releases/dhs-ends-automatic-extension-of-employment-authorization>.

⁷⁰ See USCIS, *I-765 Application for Employment Authorization, Counts of Pending Petitions*, FY 2025 Q3.

automatic extensions will result in additional lapses.⁷¹ DHS admits that it cannot even predict the scale of impact, noting that it cannot “estimate the population” of immigrants that will be impacted by the IFR.⁷² Thus, DHS’s claim that immigrants can avoid lapses with “proper planning” is not merely unsupported; it is inconsistent with the agency’s empirical data and its recent factual findings. Its assertion about “proper planning” by immigrants is also nonsensical given that the agency itself admits it cannot predict changes in processing times and impact of the IFR. Because timely filings for renewals cannot prevent lapses in employment authorization, DHS’s explanation runs counter to the evidence. The IFR therefore violates the APA’s requirement of reasoned decisionmaking.

C. The IFR Violates the Refugee Convention

The IFR is incompatible with the United States’ obligations under the Refugee Convention and its Protocol.⁷³

Article 34 of the Refugee Convention requires states to “as far as possible facilitate the assimilation and naturalization of refugees.”⁷⁴ This provision reflects a core principle of international refugee protection: that refugees should be enabled, not obstructed, in rebuilding stable, self-sufficient lives in the country where they seek protection. Legal inclusion in the workforce has long been one of the primary mechanisms through which asylum seekers integrate into the United States. Lawful employment promotes English-language acquisition, social and cultural participation, and community ties. It also allows asylum seekers to contribute to the U.S. economy through taxes, consumer spending, and long-term economic participation, including home ownership, education, and entrepreneurship.

By eliminating automatic extensions of employment authorization, the rule creates periods in which asylum applicants, many of whom have been lawfully employed, supporting their families, and contributing to their communities for years, may lose employment authorization and be barred from legal employment, solely because of adjudication delays outside their control. In doing so, the IFR interrupts ongoing integration, destabilizes families and communities, and imposes conditions that coerce individuals to abandon their claims or leave the country. Rather than supporting the integration obligations the United States has undertaken, the IFR impedes them.

⁷¹ *Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed. Reg. at 48,816.

⁷² *Id.*

⁷³ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137,

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>.

⁷⁴ Additionally, Article 23 of the Universal Declaration of Human Rights recognizes that “[e]veryone has the right to work,” and the ICCPR protects the rights to life, dignity, and family unity for “all individuals within [a State Party’s] territory.” ICCPR arts. 2, 6, 17. Scholars have long recognized that these guarantees necessarily protect the ability to seek employment to meet basic needs. See Geoffrey Heeren, *The Immigrant Right to Work*, 31 Geo. Immigr. L.J. 243, 276 (2016).

The IFR also conflicts with the Refugee Convention’s core non-refoulement obligations and access to a fair asylum procedure. Article 33 of the Refugee Convention prohibits states from returning (refouling) a refugee to a country where their “life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁷⁵ Known as the principle of non-refoulement, it is “cornerstone of the 1951 Convention and its 1967 Protocol.”⁷⁶ U.S. courts have recognized that the principle of non-refoulement is codified in U.S. law.⁷⁷ UNHCR has moreover made clear that Article 33 prohibits the refoulement of a person who has a well-founded fear of persecution, with certain limited exceptions.⁷⁸ Additionally, the Refugee Convention and Protocol require “[a]ccess to a fair and efficient refugee status determination procedure,” which is a safeguard against refoulement.⁷⁹

By undermining asylum seekers’ ability to meet their basic needs through legal employment while their claims are pending, the IFR creates practical barriers to filing and pursuing asylum applications. This effectively obstructs access to the asylum process and risks forcing individuals to abandon their claims, contravening the Convention’s requirements that refugees cannot be returned to persecution and that states must facilitate meaningful access to asylum.

VII. Conclusion

The IFR unlawfully reverses a critical safeguard in place for nearly a decade to guard against loss of employment authorization due to USCIS processing delays. Its impacts will be catastrophic, derailing the lives of immigrants who have already obtained employment authorization and are trying to support themselves and their families. The IFR is yet another attempt by this administration to make it so punitive to seek asylum or other status in the United States that people relinquish their rights or cannot meaningfully present their case. DHS should withdraw the IFR in its entirety.

⁷⁵ U.N. High Comm’r for Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees* (1951 & 1967), <https://www.unhcr.org/en-us/3b66c2aa10>.

⁷⁶ U.N. High Comm’r for Refugees (UNHCR), *Comments on the Interim Final Rule from the U.S. Dep’t of Homeland Sec. and U.S. Dep’t of Justice: “Securing the Border”* (July 8, 2024), <https://www.regulations.gov/comment/USCIS-2024-0006-1033>.

⁷⁷ *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440–41 (1987).

⁷⁸ U.N. High Comm’r for Refugees (UNHCR), *Comments on the Interim Final Rule from the U.S. Dep’t of Homeland Sec. and U.S. Dep’t of Justice: “Securing the Border”* (July 8, 2024), <https://www.regulations.gov/comment/USCIS-2024-0006-1033>; U.N. High Comm’r for Refugees (UNHCR), *Comments Submitted in Docket No. USCIS-2022-0016* (Mar. 20, 2023), <https://www.regulations.gov/comment/USCIS-2022-0016-7428>; U.N. High Comm’r for Refugees (UNHCR), *Brief of the Office of the United Nations High Commissioner for Refugees as Amicus Curiae, O.A. v. Trump*, No. 19-5272 (D.C. Cir. Aug. 13, 2020), <https://www.refworld.org/jurisprudence/amicus/unhcr/2020/en/123235>.

⁷⁹ U.N. High Comm’r for Refugees (UNHCR), *Comment Submitted in Docket No. USCIS-2024-0006* (July 8, 2024), <https://www.regulations.gov/comment/USCIS-2024-0006-1033>.