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Division of Humanitarian Affairs
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive

Camp Springs, MD 20746

RE: RIN 1615–AC97 or DHS Docket No. USCIS–2025–0370, Public Comment Opposing Proposed Rule on Employment Authorization Reform for Asylum Applicants

To Whom it May Concern:

Our organization, the Advocates for Human Rights ("the *Advocates"*), submits this comment related to DHS Docket No. USCIS–2025–0370 and urges the Department of Homeland Security (the *"Department"*) to withdraw the Notice of Proposed Rulemaking (*"NPRM"*) in its entirety. *See Employment Authorization Reform for Asylum Applicants*, 91 Fed. Reg. 8616 (Feb. 23, 2026) (DHS Docket No. USCIS-2025-0370). The NPRM would make sweeping changes to employment authorization for pending asylum applicants, including a potentially indefinite pause on new Employment Authorization Document (*"EAD"*) applications, a tripled waiting period, new discretionary and arbitrary eligibility barriers, and extended processing timeframes.

The Department should withdraw the NPRM in its entirety. First, the NPRM exceeds the Department's statutory authority and violates separation-of-powers principles by attempting to rewrite or frustrate existing laws passed by Congress, including the Immigration and Nationality Act (*"INA"*) and the Trafficking Victims Protection Reauthorization Act (*"TVPRA"*). Second, the NPRM is arbitrary and capricious under the Administrative Procedure Act (*"APA"*) because it inadequately justifies a dramatically longer waiting period; disregards serious reliance interests of asylum seekers, employers, and communities; converts what is currently a mandatory, standards-based process into an unbounded discretionary system; and adopts a so-called "pause" that the Department itself projects could function as a *de facto* multi-decade bar on new (c)(8)

EAD applications—an approach courts have rejected in closely related contexts. Third, key provisions—particularly the 48-hour rule, the illegal-entry bar, and the one-year filing deadline bar—conflict with U.S. obligations under international law by mechanically redefining "without delay" and imposing punitive restrictions on economic rights based on irregular entry. Finally, the NPRM's combined restrictions would foreseeably push asylum seekers into exploitative situations, impede access to identification and counsel, and heighten the risk of constructive *refoulement*.

The Advocates for Human Rights is a 501(c)(3) organization founded and headquartered in Minneapolis, Minnesota since 1983. For over 40 years, we have provided pro bono legal services to people in the Upper Midwest who are seeking asylum, detained by immigration, unaccompanied children, or trafficking victims. Each year, the Advocates provides legal services and social support referrals to thousands of survivors. In addition, the Advocates holds Special Consultative Status with the United Nations and routinely provides training or expert technical assistance on domestic violence, trafficking, and noncitizen rights to community advocates, *pro bono* attorneys, law students, service providers, the United Nations and state/local governments. We also play a leading role in advocating for legislative and public policy changes that further the rights and protections afforded to survivors and their children.

For many of the Advocates' clients, the fear and anxiety of navigating U.S. immigration systems compounds the trauma endured while in their home country or en route to seek safety in the U.S. It is once they are start on the path to permanent status like asylum, when they are given access to a work permit and identity document, that they can begin to earnestly attempt to rebuild their lives, support their families, engage with their new community, and start the long journey of healing. Not only does EAD access serve this role, but we know from our extensive expertise on human trafficking that lack of employment authorization and identity documents as well as dependence and financial insecurities are significant vulnerability factors that result in exploitation and trafficking amongst noncitizens in the U.S.

As just one example, an Advocates client was facing housing insecurity before she became eligible for a work permit through her asylum application. A powerful civil rights advocate in her home country who was forced to flee due to her work, she was relying on the kindness of the community, but expressed that homelessness was a strong possibility but-for that kindness or if she was unable to start working within the 30-day processing timeline for EADs. Under the NPRM's indefinite processing time and extended waiting period to file for an EAD, she would have been homeless or at risk of exploitation by those on whom she relied for housing.

For the reasons set-forth below, therefore, The Advocates calls on the Department to immediately withdraw the NPRM. While this Comment is limited to the provisions of the NPRM that we feel best highlight the violations involved therein, we oppose all proposed changes in this NPRM and call for its withdrawal in its entirety.

A. The NPRM Must Be Withdrawn as It Is Contrary to Current Law and Contravenes Congressional Intent.

The NPRM ignores current law and congressional intent in at least two ways. First, it contravenes the Constitution's checks and balances system and attempts to rewrite the INA. Second, it violates the TVPRA, and international law to which the U.S. is obligated through treaty ratification and Congressional passage of the Refugee Act of 1980.

1. The NPRM Ignores Powers Delegated to Congress and Contravenes the INA.

The Constitution's careful design of branches of government ensures checks and balances and prevents any one branch from exercising powers assigned to another. As the Supreme Court has emphasized, an agency's authority "to prescribe rules and regulations [to administer a statute] … is not the power to make law … but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute." *Manhattan Gen. Equip. Co. v. Comm'r*, 297 U.S. 129, 134 (1936).

The Department's authority to interpret and implement the Immigration and Nationality Act (INA) is constrained by federal law, including the Administrative Procedure Act (*"APA"*). The Department may issue guidance to clarify ambiguous terms, but it may not change statutory meaning or rewrite Congress's choices. The APA directs courts to "hold unlawful and set aside" agency action that is, among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdiction, authority, or limitations." *See* 5 U.S.C. § 706. Here, rather than implementing Congress's framework, however, the NPRM attempts to reengineer immigration law by fiat—a power that is not granted to agencies.

For over 30 years, federal policy has recognized that asylum seekers should be able to work legally while their claims are pending—a crucial protection recognized in the INA and U.S. obligations under the Refugee Convention. The NPRM would abruptly dismantle this longstanding framework. For historical context, Congress's most recent amendments to INA § 208(d)(2), which governs EADs, responded to a sharp rise in asylum filings. In FY 1995, the United States received more than 150,000 new asylum applications. *See* NPRM at 8651. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (*"IIRIRA"*) directed that asylum applications be adjudicated within 180 days. *See* 8 U.S.C. § 1158. In the same statutory scheme, Congress also limited employment authorization by providing that the Secretary may not authorize employment until 180 days after an asylum application is filed. *See* 8 U.S.C. § 1158.

As the NPRM acknowledges, Congress's intent was to give the INS—now USCIS—180 days to adjudicate the asylum application, with work authorization available after that period if adjudication was not completed. *See* NPRM at 8642. This created a careful balance between certain realities Congress acknowledged, both on the part of asylum seekers and the INS. As

courts have explained, one of the "chief purposes" of the larger regulatory amendments issued in January 1995, was to "'ensure that bona fide asylees are eligible to obtain employment authorization as quickly as possible.'" *Gonzalez Rosario v. United States Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1160 (W.D. Wash. 2018). Congress recognized that asylum seekers often arrive with nothing, and with no way to support themselves. It, therefore, created a mandatory requirement to issue work authorization in cases where a decision on the underlying asylum case has not yet been reached by the 180 day period, such that delays on the part of the government would not create circumstances where asylum seekers were forced to either work without authorization in exploitative conditions (as discussed *infra*) or be destitute, denied the opportunity to pay taxes, contribute to the community, and support themselves.

The NPRM would materially change this scheme and violate Congress's intent to ensure asylum seekers are not punished for government delays. It does so first by creating a "pause" on accepting new (c)(8) EAD applications that, by the Department's own estimates, would operate as a ban on new applications for an extended period. As the Department acknowledges, it could take more than *a century* for asylum seekers to become eligible for work authorization under the NPRM's scheme to pause new applications until the backlog can be addressed. The NPRM also extends the waiting period for asylum applicants seeking an initial (c)(8) EAD from the current 180-day "Asylum EAD Clock" framework to a 365-day waiting period. The Department suggests that asylum applicants would be "eligible to apply for employment authorization 365 calendar days from the date their asylum application is received." *See* NPRM at 8618. Thus, under the NPRM, an applicant "must wait before he or she is eligible to be granted employment authorization … from 180 days to 365 calendar days." *See* NPRM at 8653. In addition, the proposal would replace the two-step framework (150 days to file + 30 days for USCIS to adjudicate) with a single rule: Form I-765 may be filed "no earlier than 365 calendar days after" receipt of a complete asylum application, and it provides no required timeline by which USCIS must adjudicate the application. *See* NPRM at 8698.

The Department also impermissibly seeks to import additional requirements from other statutes into the EAD statutory and regulatory framework. The NPRM would deny (c)(8) EAD eligibility based on the one-year filing deadline by which individuals must file asylum applications *to be granted asylum*, effectively using work authorization as an additional enforcement lever. Yet, Congress created this one-year filing deadline with specific exceptions and a distinct adjudicatory framework within the context of asylum applications processing—not at the EAD phase. In that context, Congress built exceptions to the one-year filing deadline, recognizing that many asylum seekers have valid reasons for late filing. Under INA § 208(a)(2)(D), applicants who demonstrate "extraordinary circumstances relating to the delay in filing" or "changed circumstances which materially affect the applicant's eligibility for asylum" can still be granted asylum even if they file after the deadline. *See* 8 U.S.C. § 1158(a)(2)(D). These exceptions encompass a wide range of circumstances: serious illness, mental or physical disability, ineffective assistance of counsel, maintenance of lawful status, death of a family member, or other circumstances beyond the applicant's control. *See* 8 C.F.R. § 208.4(a)(5). Many asylum seekers—including trafficking victims, domestic violence survivors, and individuals with

severe trauma—routinely qualify for these exceptions. Yet, the NPRM would bar them from employment authorization even while their exception claims remain pending adjudication.

The changed and exceptional circumstances assessments are highly fact-specific but essential—people prevented from filing within one-year due to mental or physical health issues, trafficking and other abuse, or other circumstances can still be granted asylum. The Department here proposes that individuals *who have been granted an exception* to the one-year filing deadline may then be granted an EAD. Yet, this turns the statutory scheme on its head resulting in ineligibility for initial, asylum *pending* EADs for those filing after the one-year deadline because such an exception would not be determined until the asylum case itself is adjudicated—at which point the individual would be eligible for an asylum *granted* EAD and would have suffered years without employment authorization while their meritorious asylum case was pending. Alternatively, if the Department proposes to have EAD adjudicators assess exemptions, it fails both to account for the mini-hearings and adjudications that will be added to the simple EAD processing scheme as well as how it intends to ensure EAD adjudicators are trained and staffed to fairly and correctly assess such complex and nuanced provisions.

Individuals routinely miss the one-year filing deadline, but ultimately bring successful asylum claims precisely because Congress-created exceptions to the deadline and fair processing of such cases addresses those. For example, The Advocates represented a young woman who came to the U.S. without intention of seeking asylum, hoping to go back to her home country. Yet, when rebels murdered her father in home country, she had no choice but to seek safety and remain in the U.S. Under the NPRM, she would be ineligible for an EAD while that asylum claim was pending notwithstanding the fact that her case falls squarely within the Congressionally-established reasons individuals may not file their claim within one-year of entry.

Further, applying the one-year bar at the EAD stage creates perverse timing problems. An asylum applicant may file their asylum application on day 360—within the one-year deadline—but under the NPRM's 365-day waiting period, they cannot apply for an EAD until day 725 (365 days after filing). At that point, more than one year will have elapsed since their entry, and an EAD adjudicator reviewing the file may erroneously conclude the applicant missed the one-year deadline by looking at the entry date versus the EAD application date, rather than the entry date versus the asylum filing date. The NPRM fails to address this timing confusion or provide clear guidance to prevent such errors.

Lastly, the one-year filing deadline bar would disproportionately harm the most vulnerable asylum seekers. Research consistently shows that asylum seekers who miss the one-year deadline are often those with the most compelling claims: survivors of severe trauma who struggle to disclose persecution, victims of trafficking or domestic violence who remain under the control of their abusers, individuals with mental health conditions that impair their ability to navigate the legal system, those with language barriers—especially indigenous language speakers— who must find translation to express their claims, and those who lack access to legal counsel. *See* National Immigrant Justice Center, *The One-Year Asylum Deadline and the BIA: No*

Protection, No Process,(2010), *available at* https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2021-10/1Year-deadline-report-October-2021-final-for-web.pdf. These individuals would be doubly punished under the NPRM: first by facing the already-difficult task of establishing an exception to the one-year deadline in their asylum case, and second by being denied the ability to work lawfully while their claims—including their exception claims—remain pending.

The NPRM's inclusion of the one-year filing deadline also ignores—or, worse, intends to cause such a result—the fact that Congress expressly provided that people who file after one-year of entry, and who are not eligible for an exception or exemption, may nonetheless be granted protection under Withholding of Removal or Convention Against Torture provisions. The NPRM, therefore, leaves individuals who ultimately will be adjudged to have meritorious protection claims without access to work authorization until they are ultimately granted such relief. The Department has not reasonably explained why a threshold that already raises complex legal and factual issues in the asylum merits process should become an additional basis to deny access to lawful work during pendency, nor does it have the power to graft new statutory requirements onto the asylum EAD regime.

All these changes depart from Congress's clear, reasoned, and balanced 30- and 180-day framework that separates EAD adjudications from underlying asylum eligibility. Simply put, INA § 208(d)(2), 8 U.S.C. § 1158(d)(2), functionally mandates that the Department authorize employment after 180 days from the filing of an asylum application; it does not authorize the Department to substitute a 365-day baseline waiting period, to create an arbitrary "pause" based on its own inability to address the asylum backlog, or to categorically add new requirements and bars from other statutes. These changes are therefore incompatible with the current statutory framework and represent agency overreach.

This overreach is especially problematic because the NPRM purports to override settled judicial interpretations, as discussed further, *infra*. If Congress disagreed with those interpretations, it could have amended the statute to say so. Congress's decision not to enact such amendments underscores that the Department may not achieve through regulation what Congress has not authorized by law. The NPRM should be withdrawn because it violates the separation of powers doctrine and usurp power delegated specifically to Congress.

2. The NPRM Violates the Trafficking Victims Protection Act and the Palermo Protocol.

The NPRM is additionally problematic because it will result in human trafficking by stripping asylum seekers of lawful access to work and thereby increasing vulnerabilities that have been consistently identified to increase the risk of trafficking. Congress enacted the Victims of Trafficking and Violence Protection Act—commonly referred to as the Trafficking Victims Protection Act (*"TVPA"*) and its reauthorization ("TVPRA")—to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children,

to ensure just and effective punishment of traffickers, and to protect their victims." 22 U.S.C. § 7101(1). The TVPRA is Congress's comprehensive framework for preventing trafficking, protecting survivors, and prosecuting traffickers, and it reflects Congress's recognition that traffickers exploit conditions like poverty, lack of economic opportunity, and immigration precarity. *See* 22 U.S.C. § 7101(4), (6), (17)-(18), (20).

The TVPA defines labor trafficking as "[t]he recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery." *See* 22 U.S.C. § 7102(9). Individuals with precarious immigration statuses are particularly vulnerable to trafficking: fear of deportation or legal repercussions often prevents them from seeking help, while traffickers can exploit their lack of status and dependency to keep them in exploitative and harmful conditions. The NPRM's proposed "pause" and extended waiting period for asylum-based employment authorization would manufacture precisely these vulnerability factors by creating an indefinite period during which asylum seekers cannot legally work. This will force asylum seekers to accept exploitative work conditions by employers who take advantage of their lack of work authorization. Alternatively, or in addition, asylum seekers will become more reliant on others for food, shelter, health care, transportation, and legal fees—all of which will hand abusive individuals and traffickers a powerful tool of coercion to keep them in conditions of servitude, debt bondage, or forced sex.

The TVPA did not arise in a vacuum. It was enacted in 2000 as a result of the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, also known as the *Palermo Protocol*, which supplied the first internationally agreed-upon definition of trafficking and imposed affirmative obligations on States Parties not merely to criminalize trafficking, but to prevent it and protect victims and those at risk. *See* 22 U.S.C. § 7101(23). While related international human rights treaties had acknowledged trafficking, *e.g.,* Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); Convention on the Elimination of All Forms of Discrimination Against Women (1979); Convention on Rights of Child (1989); Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999), the Palermo Protocol provided the first globally harmonized trafficking framework. To date, there are 117 Signatories and 173 States Parties to the Palermo Protocol, including the United States. United Nations, *12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. TREATY COLLECTION (last visited Apr. 22, 2026). This means the Palermo Protocol has reached almost universal ratification. *See* Soumya Silver, *Twenty Years After the Passage of the Palermo Protocol: Identifying Common Flaws in Defining Trafficking through the First Global Study of Domestic Anti-Trafficking Laws*, 40 Yale L. & Pol'y Rev. 336 (2021).

Consistent with those international obligations—particularly the Palermo Protocol's definition of trafficking (Article 3), its requirement to criminalize trafficking (Article 5), and its

mandate to adopt comprehensive *prevention* and victim-protection measures (Article 9)—Congress enacted the TVPA as the United States' core domestic framework to combat trafficking and protect survivors. The TVPA was reauthorized in 2003, 2005, 2008, 2013, and 2019. U.S. Dep't of Justice, *Key Legislation*, U.S. DEP'T OF JUSTICE (last visited Apr. 22, 2026).

When Congress passed the TVPA, it made certain factual findings, noting specifically that the purposes of the TVPA are to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." 22 U.S.C. § 7101(1). To put a finer point on it, Congress also made specific findings on exactly how coercive labor trafficking can be, and how immigrant populations are disproportionately targeted. *Id.* at (7), (10), (14), (17). Notably, Congress found that "[t]raffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape" and that victims are often kept in "debt bondage." *Id.* at (6). Congress also recognized that "[v]ictims are often forced through physical violence to engage in... forced labor" and that many victims "are often illegal immigrants in the destination country... [and] therefore less able to avail themselves of government and law enforcement assistance." *Id.* at (17)-(18). Indeed, in recognition of these vulnerabilities amongst noncitizen populations, Congress included special immigration statuses and protections for victims of trafficking and serious crimes through the U and T visa categories. *See* 8 CFR 214.11(k)(1). By creating a class of asylum seekers who cannot legally work, the NPRM would directly amplify these vulnerabilities that Congress sought to address. Yet, despite more than 25 years of existence, and these strong efforts by the United States to recognize, prevent, and remediate human trafficking, the NPRM flies in the face of the purposes of both the TVPA, its reauthorizations, and the Palermo Protocol.

Instead of working to prevent and combat human trafficking, the NPRM would exacerbate it. Congress has already recognized that victims of trafficking "often fear retribution and forcible removal to countries in which they will face retribution or other hardship" and "these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes." 22 U.S.C. § 7101(20). The NPRM would specifically harness these facts and create a pipeline for people seeking safety in the U.S. to be exploited. By barring asylum seekers from legal employment for potentially decades, the NPRM would force them into labor markets where they have no legal protections, cannot complain about wage theft or unsafe conditions without risking exposure, and become prime targets for unscrupulous employers and traffickers who understand that these workers have no meaningful recourse. Such individuals would also become vulnerable to exploitation to those on whom they rely for basic needs as a result of the NPRM stripping of their ability to work and provide for themselves or their families. This foreseeable consequence directly contravenes the Palermo Protocol's Article 9 requirement that States Parties "alleviate the factors that make persons... vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity." The NPRM does not merely fail to alleviate these factors—it affirmatively creates them. This defies the purpose of the TVPRA and frustrates the United States' efforts and obligations under the Palermo Protocol.

Furthermore, Article 9(5) of the Palermo Protocol obligates States Parties to "adopt or strengthen legislative or other measures, such as educational, social or cultural measures... to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking." By rendering asylum seekers ineligible for legal employment, the NPRM does the opposite: it creates a captive labor pool that unscrupulous employers can exploit without fear of legal consequences. Employers who might otherwise face accountability for labor violations will instead gain access to workers who cannot complain, cannot organize, and cannot leave exploitative situations without facing destitution or deportation. The Department's own acknowledgment that asylum seekers may face "extremely difficult" circumstances waiting "365 calendar days, or potentially many years" (*see* NPRM at 8629) confirms that the government is aware these individuals will be forced to seek income somewhere—and that "somewhere" will inevitably be the unregulated shadow economy where trafficking thrives.

These concerns are not simply speculative. As the Advocates has reported to the Department in comments on T-visa regulations, as well as in comments to the Department of State's Trafficking in Persons Report, among others, we routinely see lack of work authorization or reliance on others for basic needs as the largest vulnerability factors amongst our clients for whom we provide T nonimmigrant status services. This finding has also been highlighted in our recent report on sex trafficking in Minnesota. For example, in a case that gave rise to Minnesota's first felony wage theft investigation and charges, hundreds of noncitizens were forced to work in extremely violative conditions by a dairy farm. In several of the cases, our clients reported that the company used the fact that they had no work authorization to keep them working long hours, in dangerous conditions, while living in sub-standard housing and often without pay as required. In another case, which resulted in Minnesota's first conviction for labor trafficking, a construction company kept several of our clients in conditions of forced labor by wielding their fears of immigration consequences and their lack of work authorization to keep them in such conditions. In yet other cases, we have had clients fall victim to sex trafficking by individuals who forced them to exchange commercial sex work for housing and food when the client could not cover such basic needs due to delays in processing of their immigration paperwork.

Flipped and thought of a different way, the NPRM would also create a new class of individuals who would be eligible for a T Visa due to the Department's own backwards rulemaking. *See* 8 CFR 214.11(k)(1). Thus, the NPRM would violate international and domestic law to give exploited laborers an alternative route at permanent status in the United States. This creates an absurd regulatory outcome: the Department would deliberately create the conditions for trafficking, then offer the trafficked victims a remedy for the harm the Department itself caused. Such a scheme cannot be reconciled with the United States' treaty obligations under the Palermo Protocol, which require prevention of trafficking—not the creation of policies that predictably generate new trafficking victims. For these reasons, the NPRM contravenes both the Palermo Protocol and the TVPRA, and should be withdrawn.

B. The NPRM is Arbitrary, Capricious, and an Abuse of Discretion.

The APA's arbitrary and capricious standard mentioned above requires that agency action be reasonable and reasonably explained. *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423, 141 S. Ct. 1150, 1158, 209 L. Ed. 2d 287 (2021). This requires that the agency articulate a rational connection between the facts found and the conclusions made. *Dep't of Com. v. New York*, 588 U.S. 752, 773, 139 S. Ct. 2551, 2569, 204 L. Ed. 2d 978 (2019).

When an agency changes course, as the Department has proposed to do here, it must "be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1913, 207 L. Ed. 2d 353 (2020). In fact, the Supreme Court has made it clear that "[i]t would be arbitrary and capricious to ignore such matters." *Id.* That is because agency action must be based on non-arbitrary, relevant factors, which here means that the Department's approach "must be tied, even if loosely, to the purposes of the immigration laws or the appropriate operation of the immigration system." *Judulang v. Holder*, 565 U.S. 42, 55, 132 S. Ct. 476, 485, 181 L. Ed. 2d 449 (2011). The NPRM is neither reasonable nor reasonably explained, nor is it appropriately tied to the purposes of the immigration system. Further, there are serious reliance interests that the Department has ignored. For these reasons, it must be withdrawn.

1. The 365 Day Waiting Period is Arbitrary, Capricious and an Abuse of Discretion.

The Department cites "numerous factors, including a massive growth in EAD application volume, the need for [Application Support Center biometrics] appointment scheduling, the identification of more national security and public safety concerns, and an increase in the level and complexity of fraud concerns" as influencing the Department's current inability to meet the 30-day adjudication standard. *See* NPRM at 8648. The Department, however, does not provide concrete evidence to support such vague national security, public safety, and fraud concerns. To properly rely on these claims, the Department would need to provide evidence that aliens who pose a national security risk are widely applying for and receiving employment authorization as the Department rushes to meet a 30-day adjudication period. The Department instead cites "significant strain on already limited agency resources" *See* NPRM at 8648. This is inadequate reasoning under the APA, and therefore the NPRM must be withdrawn for this reason.

2. The Indefinite EAD Application Pause Is Arbitrary, Capricious, an Abuse of Discretion, and Functionally Eliminates Employment Authorization.

A cornerstone, and particularly problematic provision, of the NPRM is a pause on the issuance of (c)(8) EADs until "the average processing time for affirmative asylum applications over a consecutive period of 90-day adjudications exceeds 180 days." *See* NPRM at 8618. However, the "pause" suggested by the NPRM cannot pass muster under the APA. First, the Department explicitly "expects that, upon implementation of this rule, new EAD applications for

pending asylum applicants would be paused for an extended period, possibly many years," somewhere **between 14 and 173 years**." *See* NPRM at 8618. Functionally, this means that the alleged "pause" is not a temporary measure but a *de facto* indefinite—and in practical terms, permanent—ban on new EAD applications. Once this provision is initiated, the Department has no binding obligation to reach the 180-day benchmark by any date certain, leaving applicants entirely at the mercy of the agency's adjudicative efficiency (or lack thereof) with no recourse. This is the very definition of arbitrary: "[d]oing away with any processing deadline will likely reduce or even eliminate advance work authorizations because nothing now renders the agency bound to adjudicate them." *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 964 (D. Md. 2020).

Moreover, the Department itself acknowledges that there are significant problems with a categorical deletion of the (c)(8) EAD category, and discards it as an option, presenting this "pause" as more reasonable. But, regardless of how it is termed, functionally, the same goal is achieved under its proposed scheme: no more (c)(8) applications. If the categorical elimination of the (c)(8) EAD is problematic, so too is a pause with no end certain. A "pause" is defined as "a short period in which something . . . is stopped before starting again." *see Cambridge Dictionary,* Available at: https://dictionary.cambridge.org/us/dictionary/english/pause (accessed April 22, 2026). Calling it a pause is illusory absent a credible plan to meet statutory benchmarks that ensure it is both short—of which 173 years is certainly not in this context—and starts again. The Department's own track record reinforces how unlikely this is. The Department has admitted in litigation that USCIS has continually violated the mandatory deadlines imposed by the statutory and regulatory EAD framework. *See Gonzalez Rosario v. United States Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1160 (W.D. Wash. 2018). Thus, trusting USCIS to self-remediate the backlog, without any oversight whatsoever, is unsupported by the agency's history. A blank check on adjudication timing, unchecked by any congressional limitations, is unwarranted, unwise, and unjust.

Lastly, the basis for the pause has nothing to do with an alien's eligibility or merit for the underlying asylum relief and is instead founded in an intention to discourage people from seeking asylum—an impermissible, arbitrary, and capricious aim. The government argues that such a rule is necessary because the asylum backlog has, in its opinion, allowed people to abuse the system to seek asylum, await years-long processing while holding work authorization even if they ultimately are denied asylum. Yet, the Department provides no evidence to support this sweeping claim, and the percentage of people found to have fraudulent or frivolous asylum applications is exceedingly low. *See* https://forumtogether.org/article/fact-sheet-asylum-fraud-and-immigration-court-absentia-rates/. An attempt to deter fraud cannot justify a rule that punishes bona fide asylum seekers, employers, and communities with reliance interests on these EADs, and that increases the risk of exploitation. If the Department has evidence that individuals undertake the dangerous journey to the United States on the vague hope of an unknown period of work authorization, it must show that evidence and narrowly tailor its response. Instead, the proposed pause is designed to address USCIS's own inefficiencies. A method for disfavoring new asylum seekers "that bears no relation to these matters—that neither focuses on nor relates

to an alien's fitness to remain in the country—is arbitrary and capricious." *Judulang v. Holder*, 565 U.S. 42, 55 (2011). For this additional reason, the NPRM is arbitrary and capricious and should be withdrawn.

3. **The EAD Issuance Procedure Under the Existing Statutory Framework is Mandatory, and Converting it to Discretionary is Arbitrary, Capricious, and an Abuse of Discretion.**

Under existing regulations (8 C.F.R. 274a.14(a)(1)), approval of a (c)(8) EAD application is not discretionary. The NPRM would not merely change that baseline; it would replace a mandatory framework with an unbounded discretionary one. *See* NPRM at 8661. The Department provides no clear standards to guide adjudicators or to allow applicants, employers, and practitioners to understand what is required, and it offers no meaningful limiting principle on the Department's discretion to deny (c)(8) EADs beyond the new ineligibility grounds.

The Department acknowledges that "there are many populations with reliance interests on the current regulatory framework for (c)(8) EAD applications, including aliens applying for asylum, employers, and state and local communities." *See* NPRM at 8629. Those reliance interests are substantial. Applicants and their families have structured employment, housing, health care, and schooling decisions around the expectation that—absent applicant-caused delay—work authorization becomes available under the 180-day framework. Employers, too, have relied on this authorization in staffing essential sectors, and community-based organizations rely on it when planning limited legal-services capacity and referrals. Timely work authorization allows asylum seekers to support themselves, maintain stable housing, and better participate in their immigration cases, including by retaining counsel when they can. *See* NPRM at 8643. Community support groups, too, have structured their systems to ensure asylum seekers are aided when they are most vulnerable—before work authorization—but that they will eventually become self-sufficient after the 180-day processing timeline, allowing community resources to be used for others. The NPRM throws that careful and workable structure in flux.

The NPRM does not meaningfully grapple with the immense negative impact on these reliance interests. The Department concedes it "does not know the portion of overall impacts of the NPRM that are transfers or costs" and does not account for "additional costs to businesses for lost profits and opportunity costs." *See* NPRM at 8665. At the same time, it cannot identify comparable or offsetting quantified benefits, admitting it "cannot currently quantify all of the potential benefits of this proposed rule," while projecting up to $126.6 billion in lost annual compensation to asylum applicants. The Department then assumes employers will replace asylum seekers with U.S. citizens or others authorized to work—but offers no evidence that replacement labor is available in the sectors and regions most affected, despite persistent labor shortages and evidence that work-authorized asylum seekers fill critical gaps. These analytical gaps matter under *Regents* because an agency cannot acknowledge reliance interests and then dismiss them based on unsupported assumptions and incomplete accounting.

The NPRM's attempt to justify sweeping changes by analogizing to regulatory reforms in the 1990s is also not supported by current conditions. The Department acknowledges that the modern affirmative asylum backlog exceeds 1.45 million pending cases as of FY 2024. *See* NPRM at 8654. Decades-old trends do not provide a reasoned basis for eliminating or severely delaying work authorization in today's system, and an agency may not justify transformative restrictions on humanitarian protection through historical analogies untethered to current data and operational reality.

4. The NPRM's New Bars to EADs are Arbitrary, Capricious and an Abuse of Discretion

Even if the Department's pause were to eventually allow new EAD applications, the Department also proposes new bars that either have no relation to EAD or asylum eligibility as established by Congress or involve nearly boundless discretion for denial that will result in arbitrary and capricious administrative action. The Department proposes imposing a series of new eligibility barriers and discretionary standards that would transform the work permit process into a mini-adjudication of the underlying asylum claim, and impose standards that are not required to win asylum. Under the Proposed Rule, an asylum applicant would be ineligible for an EAD if: (i) they applied for asylum more than one year after entering the United States; (ii) there is "reason to believe" a criminal bar to asylum applies; (iii) the person entered or attempted to enter the United States without inspection; or (iv) the person misses an asylum interview, court hearing, or biometrics appointment. *See* NPRM at 8699. The first two criteria require nuanced legal and factual analyses that occur during the adjudication of the asylum application with trained asylum officers; the second criteria imposes a vague barrier that exponentially expands narrow criminal bars to asylum; and the third bar creates a restriction related to manner of entry that is neither a standard for qualifying for asylum under the INA and Refugee Convention nor allowable as it amounts to a penalty. This comment addresses the manner of entry bar and the one-year filing deadline elsewhere.

The NPRM's proposed criminal bars are fatally flawed because they invite mini-asylum interviews at the EAD stage and expand the "reason to believe" standard. Congress limited the criminal bars to asylum to: particularly serious crimes (PSC) involving aggravated felonies in the U.S. and serious non-political crimes outside the U.S. INA § 208(b)(2)(A)(ii); INA § 208(b)(2)(A)(iii). Both categories involve fact-specific adjudications to determine whether the act constituted a particularly serious crime or a serious non-political crime. These are determinations that Congress has limited to the asylum merits phase, which involves trained asylum officers, factual inquiries, opportunities for rebuttal or explanation— none of which is involved at the EAD adjudication stage. Additionally, Congress limited asylum bars where there is a PSC only to those cases where the person be *convicted by a final judgment*. INA § 208(b)(2)(A)(ii). Yet, the NPRM expands this bar to include a "reason to believe" standard. The Department does not supply clear evidentiary standards, procedural safeguards, or a workable framework to ensure consistent application of this threshold across adjudicators. As a result, the rule invites arbitrary and capricious action through erroneous and inconsistent denials of a critical humanitarian

lifeline based on an untested, pre-adjudicatory suspicion standard to be implemented by officers trained only to adjudicate EAD applications. Thus, the NPRM's broad bars are arbitrary, capricious and an abuse of discretion that must be withdrawn.

The NPRM would also bar EAD eligibility if an asylum officer or Immigration Judge denies the asylum application within the 365-day waiting period or before adjudication of the initial EAD request (*see* NPRM at 8699)—potentially leaving an applicant unable to work even if that denial is later reversed on appeal. Thus, eligibility would be terminated notwithstanding ongoing appellate rights, depriving applicants of work authorization precisely while their cases remain legally unresolved. The Department has not reasonably explained why employment authorization during pendency should depend on an initial, potentially erroneous decision rather than the application's continued legal pendency. As such, this provision of the NPRM is arbitrary and capricious. Moreover, this additional consideration also runs the risk of forcing asylum seekers with meritorious claims to abandon them, in violation of *refoulement* obligations.

5. **Courts Have Already Found Similar Rules to be Arbitrary, Capricious and an Abuse of Discretion.**

This is not the first time that the Department has attempted to alter the statutory EAD framework this way. The court in *CASA de Md., Inc. v. Wolf*, 486 F. Supp. 3d 928 (2020), found the elimination of the 30-day EAD processing timeframe would be arbitrary and capricious under the APA. Upon examination, the *CASA de Maryland* court found that the 2020 elimination of the 30-day EAD clock was arbitrary and capricious because USCIS's rationale "bel[ied] the evidence in the record" and its responses to comments were "conclusory," not giving "adequate consideration" to important policy alternatives. *See CASA de Md., Inc.*, 486 F. Supp. 3d at 928. The same logical deficiencies are present here. The Department has already failed in its attempts to constrain the EAD process through regulations, and likewise the NPRM here will similarly fail. This is another flawed run at the same end. The NPRM should be withdrawn for this reason as well.

C. THE NPRM CREATES CATEGORICAL INELIGIBILITIES IN CONTRAVENTION OF THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND THE 1967 PROTOCOL, AS WELL AS THE REFUGEE ACT OF 1980 CODIFYING SUCH OBLIGATIONS.

The United States acceded to the 1967 Refugee Protocol (*"Refugee Protocol"*) in 1968 with no relevant declarations or reservations. *See* 1967 United Nations Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268. By doing so, the United States undertook to apply all substantive articles of the 1951 Convention Relating to the Status of Refugees (*"Refugee Convention"*). *See* 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150. Congress then passed the 1980 Refugee Convention to fully incorporate U.S. obligation under the Protocol and Convention. Importantly here, the

Refugee Convention prohibits states party from "impos[ing] penalties, on account of their illegal entry or presence" on refugees who present themselves without delay and show good cause." *Id.*

By becoming a state party to these treaties, the United States pledged to carry out their terms in good faith. *See* Vienna Convention on the Law of Treaties, art. 26. 1155 U.N.T.S. 331 (entry into force 27 Jan. 1980). Additionally, under the Refugee Protocol, the United States further committed to cooperating with the Office of the United Nations High Commissioner for Refugees (*"UNHCR"*) as it works to carry out its mission, and in particular, to aid UNHCR in its supervision duties regarding the interpretation of the Refugee Convention and Refugee Protocol. *See* 1967 Protocol Relating to the Status of Refugees, art. II.1. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, along with other UNHCR guidelines and analyses, provide authoritative interpretation and guidance on the procedures and criteria contained in the Refugee Convention and Refugee Protocol. *See* UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, HCR/1P/4/ENG/REV.4 (Apr. 2019). Furthermore, drawing on very fulsome legislative history, the Supreme Court has unequivocally recognized that in enacting the Refugee Act of 1980, Congress intended to conform U.S. law with international law. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 426 (1987). The Department, in its administrative rulemaking process, must therefore follow these clear directives from Congress and from the Supreme Court. However, the NPRM disregards well-established international law concepts in contravention of domestic law. Therefore, it must be withdrawn.

1. The 48-Hour Rule is Mechanical and Violates International and Domestic Law.

The NPRM would exclude "any alien who entered or attempted to enter the United States without inspection" from EAD eligibility. NPRM at 8618. While it pays lip service to Article 31, the NPRM provides only a few exceptions: (1) if, within 48 hours of entry/attempted entry, a person indicated to an immigration officer an intent to apply for asylum or expressed fear of persecution/torture (the *"48-Hour Rule"*); (2) if the person has "good cause" for the illegal entry/ attempted entry (with specified limitations); or (3) if the person is (or since their most recent entry has been determined to be) an unaccompanied alien child (*"UAC"*). *See* NPRM at 8661. Yet, this formulation is violative of international and U.S. law. The UNHCR, in its Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, explains "that there is no time limit which can be mechanically applied or associated with the expression "without delay." *See* United Nations High Commissioner for Refugees, *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, UNHCR, https://www.unhcr.org/media/unhcr-revised-guidelines-applicable-criteria-and-standards-relating-detention-asylum-seekers (last visited Apr. 22, 2026) [hereinafter UNHCR Revised Guidelines]. Despite this clear instruction, that is exactly what the Department has done in the Proposed Rule. The Department attempts to define "without delay" as 48 hours,

which is precisely the kind of "mechanically applied" time limit the UNHCR Guidelines prohibit. *See* NPRM at 8661.

Moreover, a mechanical definition of undue delay of 48 hours ignores the reality of survivors of trauma who are in acute crisis. Many persecuted individuals arriving at the border have fled extreme violence, injury, or trauma and may be physically or practically unable to self-report within 48 hours. For example, the Advocates aided an individual went into labor shortly after crossing after the border. She would have been unable to meet this 48-hour rule, resulting in a bar to work authorization under the NPRM despite Congress expressing no such requirement in statute. This example doubly underscores the harm of this rule— not only would the Advocates' client be impacted, but her newborn child would be impacted. Similarly, most of the Advocates' clients who have been forced to enter without inspection while seeking safety are non-English speakers, many of whom speak only indigenous languages. The 48-hour rule ignores the fact that only a small few will know of this requirement, much less be able to articulate their claim and access assistance. This restriction is not only therefore unrealistic in practice but unlawful under binding international obligations.

Finally, this proposed change again creates mini-asylum adjudications within the EAD adjudication decision. The NPRM would have adjudicators who are trained and empowered only to adjudicate EAD applications now making assessments of whether someone applied for asylum within 48-hours or had "good cause" for entry without inspection. Notwithstanding, the Department also fails to indicate what standards will be applied and whether the Department has accounted for the additional work--and, therefore, cost and delay— these mini-adjudications will cause. Therefore, the NPRM should be withdrawn.

2. The NPRM's Proposed Bars to EADs are Penalties and Violate International and Domestic Law.

Article 31 of the Refugee Convention does not define the term 'penalties.' However, according to UNHCR, the term "penalties" is to "be interpreted broadly, referring to any criminal or administrative measure imposed by the State that is unfavourable to the refugee." *See* UNHCR Guidelines. UNHCR explains further that "[t]hese may include financial sanctions, restrictions on freedom of movement, deprivation of liberty and restrictions on economic or social rights." *See* United Nations High Commissioner for Refugees, *Summary of the UNHCR Guidance on Article 31 of the 1951 Convention*, REFWORLD, https://www.refworld.org/sites/default/files/2025-06/quick_guide_to_unhcr_guidance_on_article_31_of_the_1951_convention.pdf (last visited Apr. 22, 2026).

The NPRM proposes an "illegal entry" ineligibility bar for initial (c)(8) asylum-based EADs. *See* NPRM at 8618. The Department would "exclude from (c)(8) EAD eligibility any alien who entered or attempted to enter the United States without inspection on or after the effective date of the final rule." *See* NPRM at 8661. In addition, the NPRM would deny (c)(8)

EAD eligibility based on the one-year filing deadline, effectively using work authorization as an additional enforcement lever in a context where Congress already created specific exceptions and a distinct adjudicatory framework. Both bars function as prohibited penalties under international law.

The Department asserts the illegal entry bar and the one-year filing deadline bars are not "penalties" under Article 31(1), but both are emblematic of a penalty: they cause textbook restrictions on an economic right. *See* NPRM at 8661. Further, hamstringing the primary means of financial self-sufficiency for asylum seekers functions in practice as a severe punishment for irregular border crossing, regardless of how the Department labels it. As such, this point too contravenes established international law principles in violation of Congressional and Supreme Court directives.

3. The NPRM Will Result in *Refoulement* in Violation of International and Domestic Law.

Because the NPRM further encumbers and complicates the asylum application process, it will result in people being returned to persecution or torture in violation of both international treaty obligations and domestic law, otherwise known as *refoulement*. States party's non-*refoulement* obligations are set out under the Refugee Convention, regional refugee law instruments, global and regional human rights law instruments and is also binding under customary international law, and as discussed further above, also under U.S. domestic law. *See* Office of the United Nations High Commissioner for Human Rights, *The Principle of Non-Refoulement Under International Human Rights Law*, OHCHR, https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf (last visited Apr. 22, 2026). This principle "obliges States not to expel or return (*refouler*), in any manner whatsoever, a person to territories where their life or freedom would be threatened, on account of their race, religion, nationality, membership of a particular social group or political opinion, or where there are substantial grounds for believing that they would be in danger of being subjected to serious human rights violations, notably torture or other forms of cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life." United Nations High Commissioner for Refugees, *Access to Territory and Non-Refoulement*, UNHCR, https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement (last visited Apr. 22, 2026).

Here, the NPRM creates constructive *refoulement*: asylums seekers will face a choice between the devil and the deep blue sea. Asylum seekers will be forced to find cash, take work in unprotected, exploitative, and unregulated shadow labor markets, or depend on exploitative individuals for basic needs. The only other option: to return to persecution. This violates the U.S.'s non-*refoulement* obligations, in addition to its obligations to prevent exploitation and human trafficking, discussed *supra*.

The Department acknowledges that many potentially meritorious asylum applicants may have "family responsibilities, medical, or other financial burdens," and that it may be "extremely difficult" to wait "365 calendar days," or "potentially many years due to the pause and restart provisions," before they can even apply for work authorization. NPRM at 8629. That combination—long or indefinite exclusion from legal work plus immediate subsistence needs—predictably drives workers into harmful arrangements. Without the ability to obtain work authorization, many asylum seekers face heightened risks of housing instability, food insecurity, and inability to access health care, education, and other essential services. The NPRM would also cause or exacerbate mental health harms for individuals who have already fled persecution and experienced trauma and are attempting to rebuild their lives while awaiting protection. Moreover, asylum applicants will face additional challenges to accessing counsel as they will be even less likely to obtain work and pay attorneys' fees.

These hardships will extend beyond asylum seekers themselves. Many applicants are heads of household or parents of children—including U.S. citizen children—whose health, stability, and development will be directly affected when their parents are prevented from working and supporting their households. Not only will this cause harms to individuals and families, it places children of asylum seekers at heightened risk of exploitation, trafficking and harm.

This is not the first time that the Department has been warned about these consequences, either. As a practical matter, a workforce that must work "in the shadows" to survive is more likely to accept sub-minimum wages, unsafe conditions, and wage theft, and less likely to report abuse—creating the very unregulated labor market that became the foundation of programs the Occupational Health and Safety Administration, the Department of Labor, and even immigration programs like Deferred Action for Labor Enforcement. The Department also acknowledges that it received many of these same warnings in earlier 1994 comments to proposed regulations. *See* NPRM at 8631. The practical consequences here belie the intent: make it so difficult for people to survive while they wait that they have no choice but to leave— effectively refouling them to face persecution or torture.

D. The NPRM Would Inflict Severe Harms on Asylum Seekers and Their Families, Which the Department Has Not Considered or Addressed.

Beyond these legal defects, the NPRM would cause severe and foreseeable humanitarian harms that the Department has not meaningfully considered or addressed. In addition to the risks outlined above, by delaying or foreclosing work authorization, the NPRM would impair asylum seekers' ability to maintain stable lives while their claims are pending—including by restricting access to identification and driver's licenses and by making it far more difficult to secure counsel and prepare asylum claims.

1. **Bars to EADs Sever Access to Identification, Driver's Licenses, and Occupational Licensure.**

By preventing or indefinitely delaying work permits for asylum seekers, the NPRM would cut off many asylum seekers' access to government identification. Work permits are a primary form of government-issued identification for asylum seekers, many of whom have had to leave their homes without identity documents—abandoning or destroying them in order to escape. Without a valid EAD, asylum seekers may be unable to obtain or maintain basic identification needed for daily life and would face barriers to health care, banking services, social services, and local and regional travel within the United States. For children seeking asylum, the NPRM will further inhibit the ability to access education in many instances. The NPRM would also hamper access to driver's licenses, as many states require a valid work permit to obtain or renew a driver's license. As a result, asylum seekers who cannot apply for an initial work permit may also lose the ability to drive legally, even when driving is necessary to maintain employment, access medical care, or transport children to school and other essential activities. For the same reasons, the NPRM would also restrict qualified asylum seekers' access to occupational and professional licenses.

2. **Bars to EADs Undermine Access to Counsel and the Ability to Prepare Asylum Claims.**

Without the ability to earn income, many asylum seekers will be forced to navigate complex immigration proceedings without legal assistance. This is particularly concerning in asylum proceedings before immigration courts, where applicants must present legal arguments and evidence in an adversarial process against a government attorney and before an immigration judge. Asylum applications must be presented in English and follow complex filing guidelines, creating additional costs of translation and preparation expenses.

By rendering asylum seekers unable to lawfully work, the NPRM would, therefore, severely undermine asylum seekers' ability to obtain legal representation and pursue their claims. Preparing an asylum claim is notoriously complex and costly, and many asylum seekers rely on lawful employment to afford counsel and gather and prepare the evidence necessary to support their cases. Asylum seekers have generally escaped serious harm, often leaving home without any financial resources with which they may cover legal fees. Work permits expeditiously granted after asylum application filings allow them to quickly access counsel. Access to counsel is not a luxury—people with counsel in asylum applications are more than three times as likely to win relief. By creating undue delay, or even elminating access to work authorization and identity documents, the NPRM will limit access to counsel to only those asylum seekers who can find other ways to afford it, creating yet another vulnerability to trafficking. This, too, will negatively impact organizations like the Advocates that provide pro bono legal services. As the number of people who would otherwise be able to afford private counsel upon obtaining an EAD will vastly diminish, our mission to serve vulnerable and indigent asylum seekers will be restricted as our resources will need to reach this much larger number of people in need. The

Advocates will, thus, either have to restructure our services, seek increased funding and staffing to meet the need, or change our mission. The NPRM provides no analysis of these very serious costs and reliance interests and it must, therefore, be withdrawn.

III. CONCLUSION

The Advocates strongly opposes the NPRM because it violates the existing statutory framework, is arbitrary and capricious, and violates U.S. international and domestic obligations to protect asylum seekers and prevent human trafficking. The NPRM constitutes impermissible regulatory overreach.

As explained above, the NPRM should also be withdrawn because it is arbitrary and capricious under the APA: it extends the waiting period to 365 days, converts a mandatory system into an unbounded discretionary regime, and implements an ostensibly temporary "pause" that would function as an indefinite—potentially century-long—bar on new (c)(8) EAD applications. It also conflicts with U.S. obligations under the 1951 Refugee Convention and 1967 Protocol by imposing mechanical and punitive ineligibility provisions, including the 48-hour rule and the illegal-entry bar. By cutting off access to lawful work and related stabilizing mechanisms, including identification and counsel, the NPRM would inflict severe, predictable harms on asylum seekers and their families and heighten the risk of constructive *refoulement*. Yet, the Department provides no analysis of those concerns and reliance interests, nor adequate evidence of the need for and narrow tailoring of this NPRM. For these reasons, the Department should withdraw the NPRM.

Thank you for considering these comments in response and opposition to the NPRM. Please contact us to provide any additional information you might need. We look forward to your response.

Sincerely,

The Advocates for Human Rights
Lindsey Greising, Policy Counsel