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**Submitted via [www.regulations.gov](http://www.regulations.gov)**

April 24, 2026

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: DHS Docket No. USCIS-2025-0370, Employment Authorization Reform for Asylum Applicants**

To whom it may concern:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund), in response to the request for comment on Employment Authorization Reform for Asylum Applicants from the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS) that was published in the Federal Register on February 23, 2026. 91 Fed. Reg. 8618 (Feb. 23, 2026) (DHS Docket No. USCIS-2025-0370). Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in the areas of voting rights, education, immigrants' rights, employment, and freedom from open bias.

On February 23, 2026, USCIS issued a notice of proposed rulemaking (NPRM), with a request for comment, that, if adopted, would drastically alter the process that asylum seekers use to obtain employment authorization documents (EADs).<sup>1</sup> USCIS estimates that "upon implementation of this rule, new EAD applications for pending asylum applicants would be paused for an extended period, possibly... between 14 and 173 years to reach a 180-day processing time, depending on the extent of the reduction in asylum application receipts following this rule."<sup>2</sup>

For the following reasons, MALDEF strongly opposes the NPRM and urges USCIS to withdraw the NPRM in its entirety.

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<sup>1</sup> Employment Authorization Reform for Asylum Applicants, 91 Fed. Reg. 8618 (Feb. 23, 2026).

<sup>2</sup> *Id.* at 8618–19.

## I. Organizational Interest

MALDEF has a strong interest in ensuring immigrant workers continue to work legally and contribute to the U.S. economy. Ever since its inception, MALDEF has worked to protect the rights of Latinos and, indeed, of all people, particularly in the spheres of employment and immigrants' rights. MALDEF advocates for the equal treatment of immigrants in the workplace, including equal access to hiring and promotions, safe and fair working conditions, and workplaces free from discrimination and harassment.

Throughout its history, MALDEF has fought to preserve the rights of immigrant workers, often advocating for individuals who are eligible for EADs and thus benefit from obtaining EADs. For example, in 2021, MALDEF brought suit on behalf of DACA recipients who were unlawfully denied jobs due to their immigration status.<sup>3</sup>

MALDEF submits this comment based on its experience advocating for immigrant workers—including many Latino workers, who make up 48.7% of the foreign-born workforce in the United States<sup>4</sup>—who will materially suffer from the proposed changes to asylum seekers' access to EADs.

## II. The NPRM's Layered Barriers to Work Authorization Would Inhibit Asylum Seekers' Abilities to Support Themselves While Seeking Asylum

The NPRM proposes extensive changes to the process for asylum seekers to obtain EADs while awaiting their adjudications, raising several barriers to their ability to support themselves and their families. First, the NPRM proposes to extend the current 150-day waiting period for EADs for asylum seekers to 365 calendar days from the date USCIS receives an asylum application.<sup>5</sup> Additionally, the NPRM proposes to extend USCIS' adjudication timeline for asylum applications from 30 days to 180 days, with flexibility to add more time if USCIS decides to perform additional background checks.<sup>6</sup> Furthermore, the NPRM proposes to pause processing initial EAD applications when the average affirmative asylum application processing time exceeds 180 days until the average processing time decreases to 180 days for a sustained period of time.<sup>7</sup>

The NPRM also seeks to impose new bars to eligibility for EADs for asylum seekers. With limited exceptions, these barriers include: (1) when an asylum application filed more than one year after entry to the United States; (2) when there is a "reason to believe" a criminal bar to asylum applies to the applicant; (3) an applicant's entry without inspection to the United States; and (4) failure to appear at an interview, court hearing, or biometrics appointment.<sup>8</sup> The first two criteria have more to do with the adjudication of a grant of asylum than with a grant of work authorization, and the latter two are unrelated to asylum eligibility. Furthermore, the "reason to believe" standard is impermissibly vague, and USCIS fails to explain it adequately.

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<sup>3</sup> Class Action Complaint, *Jerez v. Revature*, No. 1:21-cv-04669 (E.D.N.Y. Aug. 19, 2021).

<sup>4</sup> U.S. Dept. of Labor, USDL-25-0847, *Foreign-Born Workers: Labor Force Characteristics — 2024 2* (2025).

<sup>5</sup> Employment Authorization Reform for Asylum Applicants, 91 Fed. Reg. at 8618.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 8618–19.

<sup>8</sup> *Id.*

Additionally, the NPRM would amend existing regulations to change grants of EADs under 8 C.F.R. 274a.12(c)(8) from required to discretionary, unnecessarily undermining the confidence that qualifying individuals can have when filing their EAD applications.<sup>9</sup> The NPRM also proposes to eliminate the “deemed complete” safeguard for applications for which USCIS fails to issue a receipt within 30 days of receiving the application, which would remove an efficiency-enhancing tool.<sup>10</sup> Finally, the NPRM proposes that USCIS prioritize adjudicating asylum applications for which USCIS finds “derogatory information” during the EAD application process, but USCIS fails to clarify what it means by “derogatory information[.]”<sup>11</sup>

In short, instead of simplifying the process of applying for asylum or adjudicating asylum applications, USCIS adds barriers and complications that will likely increase application and adjudication burdens in contravention of DHS’s stated goal.<sup>12</sup> All of these changes create or complicate barriers for asylum seekers to obtain work authorization and thus make the lives of some of the most vulnerable people in the United States that much harder. If USCIS truly seeks to improve efficiency and shorten adjudication times, it should not pursue raising even more bureaucratic hurdles for its applicants and adjudicators.

### III. The NPRM Would Inflict Severe Harms on Asylum Seekers and Their Families

Asylum adjudications can take a significant amount of time. Leaving asylum seekers without the ability to work legally to support themselves will drive already desperate families into more dire circumstances. DHS briefly acknowledges that some families may return to life-threatening circumstances if they cannot support themselves for an extended period of time,<sup>13</sup> but DHS fails to engage meaningfully with just how devastating that harm will be.<sup>14</sup>

DHS estimates that the NPRM will cost asylum seekers between \$34.6 billion and \$126.6 billion annually in lost wages due to EAD restrictions.<sup>15</sup> DHS’s own analysis, however, neglects to consider the broader economic harm that can result from loss of the workforce, such as exacerbation of existing labor shortages, costs of replacing workers, reductions in tax contributions, and downstream economic effects in the communities where asylum seekers live.<sup>16</sup>

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<sup>9</sup> See 8 CFR 274.a13(a)(1) (“The approval of applications filed under 8 CFR 274.a12(c), *except for 8 CFR 274a.12(c)(8)*, are within the discretion of USCIS.” (emphasis added)).

<sup>10</sup> 91 Fed. Reg. at 8619.

<sup>11</sup> *Id.* at 8618.

<sup>12</sup> See also *id.* at 8658 (“DHS acknowledges that requiring EAD adjudicators to consider new eligibility requirements that are also analyzed in the asylum interview will likely increase the time needed to process (c)(8) employment authorization applications and could be viewed as contradictory to stated efficiency goals.”).

<sup>13</sup> *Id.* at 8629 (“Due to this rule and the increased waiting periods before [a noncitizen] may receive employment authorization, there may be [noncitizens] with potentially meritorious claims who instead return to a country where they may fear harm.”).

<sup>14</sup> Courts may set aside agency action as arbitrary and capricious if the agency has “entirely failed to consider an important aspect of the problem,” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), which includes harms to immigrants and asylum seekers, see, e.g., *Casa de Md., Inc. v. Wolf*, 486 F. Supp. 3d 928, 965 (D. Md. 2020); *N.W. Immigrant Rts. Project v. U.S. Citizenship and Immigr. Servs.*, 496 F. Supp. 3d 31, 76–78 (D.D.C. 2020); *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 541 (N.D. Cal. 2020).

<sup>15</sup> 91 Fed. Reg. at 8621.

<sup>16</sup> See *id.* at 8677–94.

Without a way to earn income lawfully for an extended period of time, asylum seekers and their families face increased barriers to housing stability, access to education, and access to health care, including mental health care.<sup>17</sup> Additionally, a lack of opportunity to work lawfully will likely increase the risks that asylum seekers will enter into or remain in abusive work and/or home environments.<sup>18</sup> These barriers will likely extend, too, to any U.S. citizen children of asylum seekers who depend upon their parents for financial and psychological support.

Additionally, restricting access to EADs for asylum seekers would encumber their ability to obtain other forms of identification and licensure, including driver's licenses and professional licenses.<sup>19</sup> Furthermore, lack of work authorization makes seeking legal counsel more difficult for asylum seekers: pursuing an asylum claim can be a laborious process that requires expertise in the relevant law, and inability to work and thus afford an attorney may prevent asylum seekers from successfully pursuing a claim.<sup>20</sup> MALDEF cannot emphasize enough the severe harms that this NPRM will have upon asylum seekers—already some of the most vulnerable people in the world—and their families in multiple aspects of their lives.

#### IV. The NPRM Ignores Reliance Interests

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<sup>17</sup> See, e.g., Sandra Sanchez, *Asylum-Seekers Worry Over Potential Changes to Work Permit Rules*, Border Report (June 6, 2025), <https://www.borderreport.com/hot-topics/immigration/asylum-seekers-worry-over-potential-changes-to-work-permit-rules/>; Kate Goettel, *Failure to Reauthorize Employment Harms Asylum Seekers and the U.S. Economy*, Am. Immigr. Council (Nov. 12, 2021), <https://www.americanimmigrationcouncil.org/blog/employment-delays-asylum-seekers-economy/> (“[L]ack of work authorization acutely affects these asylum seekers’ ability to support themselves and their families, putting them in financial peril.”); *At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, Hum. Rts. Watch (Nov. 12, 2013), <https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united> (“It is often very difficult for asylum seekers who are barred from work authorization to find accommodation because they cannot legally make enough money to pay for housing and transportation. . . . Asylum seekers who are barred from work authorization and not assisted by friends, families, or organizations are often unable to purchase food.”).

<sup>18</sup> See *At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, Hum. Rts. Watch (Nov. 12, 2013), <https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united> (“Forcing asylum seekers to rely on others for subsistence permits, and even encourages, abusive and exploitive relationships”).

<sup>19</sup> See *Obtaining an Employment Authorization Document*, Immigr. Equal. (last accessed Mar. 12, 2026), <https://immigrationequality.org/asylum/asylum-manual/obtaining-an-employment-authorization-document/> (“Many asylees still apply for and obtain EADs, however, because they are a good form of identification to have, and may be necessary in order to obtain other identification such as state issued drivers’ licenses or identification cards.”).

<sup>20</sup> See, e.g., *Casa de Md., Inc.*, 486 F. Supp. 3d at 966 (“It is axiomatic that without being able to work, asylum applicants lack the resources to pursue their claims.”); *Grijalva v. Ilchert*, 815 F. Supp. 328, 332 (N.D. Cal. 1993) (noting that a noncitizen “who is wrongfully denied employment authorization is compelled to rely on friends and relatives for support, to work illegally and risk deportation or adverse action on his asylum application, or, ultimately, to abandon his application for asylum”); *Ramos v. Thornburgh*, 732 F. Supp. 696, 700 (E.D. Tex. 1989) (“[T]he inability to work for the extended period . . . may compel an applicant to abandon his or her asylum application . . . [and] subject the applicant to even more severe persecution upon return to the country he or she has attempted to flee.”); *United States v. Bazargan*, 992 F.2d 844, 848 (8th Cir. 1993) (noting that an EAD application based on a pending asylum application “is granted routinely, to avoid creating a situation in which the [asylum seeker] must choose either to rely ‘on friends and relatives for support, to work illegally and risk deportation or adverse action on his asylum application, or, ultimately, to abandon his application for asylum’” (quoting *Ramos*, 732 F. Supp. at 699)); cf. *Nat’l Ctr. for Immigrants Rts., Inc. v. Immigr. and Naturalization Serv.*, 743 F.2d 1365, 1369 (9th Cir. 1984) (“The hardship [to immigrants] from being unable to work to support themselves and their dependents . . . and to pay for legal representation is beyond question.”).

DHS and its precursor have allowed individuals with pending asylum claims to obtain work authorization for over three decades.<sup>21</sup> Employers and workers have reasonably structured business decisions around the assurances that asylum seekers can apply for EADs when their asylum applications have been pending for 150 days and that such applications will be adjudicated within 30 days, and so, too, have other stakeholders across various sectors in surrounding communities. As discussed above, the NPRM seeks drastic changes to the existing process for asylum seekers to apply for EADs. Nevertheless, the NPRM fails to address adequately the substantial reliance interests that have arisen from this longstanding policy, in violation of basic principles of administrative law.<sup>22</sup>

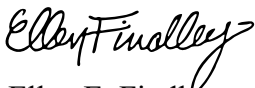
## V. Conclusion

Overhauling the process for asylum seekers to obtain EADs so dramatically will likely discourage asylum applicants from seeking relief and leave asylum seekers vulnerable to exploitation. During a time when DHS is using thinly veiled excuses of procedural efficiency and discretion as a smokescreen for anti-immigrant and, in particular, anti-Latino policies and actions, this NPRM will only serve to impede the lives of noncitizens seeking the chance to earn a livelihood and will have a disproportionately harmful effect on Latinos.<sup>23</sup>

For the foregoing reasons, MALDEF respectfully requests that USCIS rescind this NPRM in its entirety. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or [efindley@maldef.org](mailto:efindley@maldef.org).

Thank you.

Sincerely,



Ellen E. Findley  
Legislative Staff Attorney

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<sup>21</sup> See Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization, 59 Fed. Reg. 62,284 (Dec. 5, 1994).

<sup>22</sup> See *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (agency must provide detailed justification when “its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account”).

<sup>23</sup> See, e.g., Jeanne Batalova, *Refugees and Asylees in the United States*, Migration Pol’y Inst. (Jan. 8, 2026), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states> (including Venezuela, El Salvador, Guatemala, Honduras, and Colombia among the top countries of origin for asylees in FY 2023).