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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
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DHS Docket No. USCIS-2026-0133, USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill, RIN 1615-AD09

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 the interim final rule (IFR) USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill from the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS) that was published in the Federal Register on April 29, 2026. 91 Fed. Reg. 22,952 (Apr. 29, 2026) (DHS Docket No. USCIS-2026-0133). 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.

MALDEF takes this opportunity to express its views on how the proposed changes will affect Latinos in the United States and their ability to obtain asylum relief or maintain valid work authorization with Temporary Protected Status (TPS). MALDEF is greatly concerned that the IFR will negatively affect low-income Latinos and limit access to relief to which they are entitled and to legal employment.

I. DHS Has Issued This IFR Without Good Cause for Skipping Notice and Comment in Violation of the Administrative Procedure Act (APA)

In the IFR, DHS claims that it is issuing this IFR under the Administrative Procedure Act's (APA's) good-cause exception to the general notice and comment

requirement.[1] DHS claims that "H.R.1 requires immediate implementation to ensure compliance with the statutory mandate and provides no discretion to DHS on the provisions implemented in this rule."[2] However, the relevant statute generally requires that the Federal Register publish a notice of proposed rulemaking except "when the agency for good cause finds…that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[3] DHS fails to articulate a satisfactory reason why good cause exists here or why undergoing the notice and comment process would be "impracticable, unnecessary, or contrary to the public interest."[4] Instead, DHS claims that the IFR's compliance with H.R. 1 renders notice and comment unnecessary, arguing that "the rule is routine", "inconsequential to the industry", and "needed for consistency with legislation[.]"[5] While this IFR does purport to implement regulations consistent with legislation, the IFR is hardly "inconsequential to the industry" or free from possible "public debate over the agency's course of action," and DHS offers no satisfactory reasoning to the contrary.[6] Thus, the good-cause exception does not apply to this IFR, and DHS must undergo the usual process for it.

II. The IFR Imposes Severe Hardships on Asylum Seekers and Leaves Them Little to No Recourse

According to section 208(d)(3) of the Immigration and Nationality Act (INA), "[t]he Attorney General may impose fees for the consideration of an application for asylum[.]"[7] A 2025 Federal Register notice announced that USCIS would implement a minimum $100 asylum application fee and a minimum $100 annual asylum fee (AAF) for each year the applicant's asylum petition remains pending.[8] The application fee this IFR promulgates is nonrefundable, even if DHS rejects the underlying asylum application.[9] DHS claims both "legal and practical reasons" for retaining the asylum application fee, including "deterr[ing] defective filings," but the introduction of an asylum application fee creates more possible defects in an asylum application, thus defeating its stated purpose.[10]

Additionally, the minimum $100 Annual Asylum Fee that this IFR implements creates a perverse incentive for USCIS to prolong asylum adjudications.[11] Because the fee recurs while an application remains pending, delay benefits the agency at the expense of asylum applicants, who are already among the most vulnerable people seeking protection in the United States.[12] That incentive is especially troubling because the IFR does not treat nonpayment as a minor administrative defect: instead, it attaches severe, case-dispositive consequences to missed payment.[13]

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[1] USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill, 91 Fed. Reg. 22,952, 22,953 (Apr. 29, 2026) (to be codified at 8 C.F.R. pts. 103, 106, 208, 244, 274).
[2] *Id.* at 22,953.
[3] 5 U.S.C. § 553(b) (2023).
[4] *Id.*; USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill, 91 Fed. Reg. at 22,953.
[5] USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill, 91 Fed. Reg. at 22,962.
[6] *Id.* at 22,962.
[7] Immigration and Nationality Act § 208(d)(3), 8 U.S.C. § 1158(d)(3) (2025).
[8] USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill, 91 Fed. Reg. at 22,954.
[9] *Id.* at 22,954, 22,956.
[10] *Id.* at 22,956.
[11] *Id.* at 22,957.
[12] *Id.*
[13] *Id.*

Under the IFR, DHS provides that, after individualized notice—assuming the applicant actually receives it—and a 30-day window for online payment, failure to pay the AAF results in rejection of the applicant's pending asylum application.[14] The applicant must then file a new asylum application and pay the corresponding fee.[15] The rejection is not appealable.[16] For applicants who lack lawful status, DHS further states that it will either initiate expedited removal or issue a Notice to Appear.[17] Thus, nonpayment may transform a pending protection claim into a pathway toward expedited removal.

The consequences extend beyond the asylum application itself. Rejection for nonpayment stops the asylum employment-authorization clock and causes any pending employment-authorization application to be rejected or denied.[18] Existing employment authorization also terminates immediately when USCIS rejects the asylum application.[19] Similarly, when an immigration judge denies or rejects an asylum application, employment authorization terminates 30 days later unless the applicant timely appeals to the Board of Immigration Appeals, and if the BIA denies an appeal from the denial or rejection of an asylum application, employment authorization terminates immediately.[20] Taken together, these provisions make nonpayment, even if inadvertent, catastrophic: an asylum seeker may lose a pending protection claim, become exposed to removal, and lose the legal ability to work. The IFR therefore uses the AAF not simply as a fee, but as a mechanism that can destabilize the legal status, economic survival, and safety of people fleeing persecution.

DHS acknowledges, as it must, that denying rather than rejecting an asylum application for AAF nonpayment would add to DHS's adjudicatory burden, and that rejecting an asylum application for nonpayment without issuing an NTA, while barring the applicant from refiling, would almost certainly violate the humanitarian purpose of asylum law.[21] However, DHS's proposed solution does not cure the problem.

DHS attempts to recast the initiation of removal proceedings as a benefit to certain asylum applicants whose applications are rejected for nonpayment, reasoning that those proceedings may allow applicants to pursue withholding of removal, protection under the Convention Against Torture, or asylum defensively.

That reasoning is unpersuasive. Removal proceedings are not a procedural safeguard for people whose protection claims have been rejected for inability or failure to pay a fee. They are adversarial proceedings that carry the immediate threat of deportation and impose substantial financial, legal, and psychological burdens on asylum seekers. DHS's rationale not only unconvincingly attempts to convert a punitive consequence of nonpayment into a purported procedural benefit and obscures the severe burdens the IFR imposes on people seeking humanitarian protection, it also belies a deeply improper contempt for those who most need its services that has led it to reject a perfectly viable and far less punitive alternative consequence to AAF nonpayment.[22]

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[14] *Id.*
[15] *Id.*
[16] 8 C.F.R. § 103.2(a)(7)(iii) ("A rejection of a filing with USCIS may not be appealed.").
[17] USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill, 91 Fed. Reg. at 22,957.
[18] *Id.* at 22,957–58.
[19] *Id.* at 22,958.
[20] *Id.*
[21] *Id.* at 22,959.
[22] *Id.* at 22,960.

III. The IFR Uses Flawed Reasoning to Impose Heavier Burdens on Temporary Protected Status (TPS) Holders

H.R.1 established new limits on employment authorization documents (EADs) for individuals with Temporary Protected Status (TPS), namely by capping validity to one year or the duration of the TPS recipient's status, whichever is shorter, and adds a non-waivable, non-reducible fee to initial TPS EAD applications.[23] The same temporal limits and new fees also apply to TPS renewals and extensions.[24] USCIS is now promulgating regulations to implement these TPS EAD provisions.[25]

DHS claims that, because TPS designations do not extend beyond one year, TPS holders face no meaningful risk of gaps in employment authorization or job loss.[26] Shorter designation periods do not eliminate the risk of employment disruption; they may heighten it by making TPS holders more dependent on timely agency action to extend status and employment authorization. Even in situations where TPS designations and relevant EADs have been automatically extended, requiring such frequent reauthorization requests when DHS is already decrying existing backlogs is self-defeating.[27] Finally, DHS's explanation for requiring such frequent renewal requests inappropriately and inaccurately frames TPS recipients as potential national security threats.[28]

IV. Conclusion

The IFR imposes heavy burdens with harsh consequences on asylum seekers and TPS holders without any flexibility and little recourse for those affected. During a time when DHS is using thinly veiled excuses of procedural efficiency and national security as a smokescreen for anti-immigrant and, in particular anti-Latino, policies and actions, this IFR 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.[29] For the foregoing reasons, MALDEF respectfully requests that USCIS rescind this IFR 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.

Thank you.

Sincerely,

Ellen E. Findley
Legislative Staff Attorney

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[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.* at 22,961.
[27] *Id.*
[28] *Id.*
[29] *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).