

**NATIONAL
IMMIGRANT
JUSTICE CENTER**
A HEARTLAND ALLIANCE PROGRAM

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Samantha Deshombres
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services, Department of Homeland Security
20 Massachusetts Avenue NW, Mailstop #2140
Washington, D.C. 20529-2140

Re: DHS Docket No. USCIS-2018-0001, RIN 1615-AC19 Comment in Response to Proposed Rulemaking: Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications

Dear Sir/Madam:

I am writing on behalf of the National Immigrant Justice Center (NIJC) in response to the Department of Homeland Security's (DHS) proposed rule to express our strong opposition to the changes regarding the process time for work permits for asylum applicants published in the Federal Register on September 9, 2019 (RIN 1615-AC19; DHS Docket No. USCIS-2018-0001).¹

NIJC is dedicated to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding more than three decades ago, NIJC has been unique in blending individual client advocacy with broad-based systemic change. Headquartered in Chicago, with additional offices elsewhere in the Midwest, San Diego, and Washington, D.C., NIJC provides legal services to more than 10,000 individuals each year, including individuals from across the globe who have come to the United States seeking safety and refuge. In 2018, NIJC provide legal services to more than 1,300 asylum seekers.

The United States' legal and moral obligations to protect those seeking safety from persecution

¹ Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 84 Fed. Reg. 47,148 (Sep. 09, 2019) (to be codified at 8 C.F.R. pt. 208).

includes the obligation to ensure that those seeking and those granted asylum are able to access the benefits and services that enable them to live a full life. Chipping away at the ability of asylum seekers to access employment authorization directly contravenes these obligations.

This comment will address: 1) the disproportionate harm the rule will have on already vulnerable and disadvantaged populations; 2) the ways in which the rule will negatively affect the local, state, and national economy; and 3) the reality that this rule is simply another method being used by this administration to undercut protections for asylum seekers. We urge the rule to be withdrawn in its entirety, as it will only exacerbate financial challenges asylum applicants face and negatively impact the economy. In short, this rule is nothing more than another component part of the administration's efforts to destabilize the asylum system and erect barriers to the achievement of health, safety and well-being for those seeking protection in the United States.

I. The proposed rule will disproportionately hurt already vulnerable disadvantaged populations.

For asylum seekers, getting a work authorization document (EAD, or “work permit”) is a crucial step toward finding safety and accessing the services and community support necessary to begin rebuilding a full and productive life.

Most asylum seekers cannot obtain any form of identification, such as a driver's license, without first receiving their EAD. Delaying the ability of asylum seekers to obtain an EAD, therefore, not only deprives asylum seekers of the ability to build financial security but also undermines access to numerous building blocks of stability, such as: accessing social benefits, opening a bank account, registering their child for school, or ensuring their home gets heating and electricity.²

NIJC client Lucy, the sole caretaker for her four grandchildren, was facing a hopeless situation. Before getting her work permit she and her grandchildren were living in cramped quarters with distant relatives, barely surviving. Lucy remembers one night as an illustration of just how dire their situation was, when the family of five had to share one egg for dinner. After Lucy received her work permit she was able to find a steady full-time job and move out of the cramped living situation she and her grandchildren were in. For her, an EAD was the first step toward achieving the ability to provide the basic things that she and her grandchildren needed to not only survive but thrive.

The right to work and the right to a sufficient standard of living are basic tenants of international human rights law; the Universal Declaration of Human Rights provides that these rights apply to “everyone, without any discrimination”³ Denying asylum seekers of the ability to quickly

² For more, see THE CENTER FOR POPULAR DEMOCRACY (CPD), *Who We Are*, 7 (Dec. 2013), <https://populardemocracy.org/sites/default/files/municipal%20id%20report.pdf>.

³ See Universal Declaration of Human Rights, G.A. 217A, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec.

and meaningfully access the right to work undermines the very premise of a domestic system of refugee protection.

The proposed rule will leave thousands of asylum seekers without the ability to work lawfully.

Delaying asylum seekers' access to lawful employment during the pendency of their asylum claims will remove countless willing workers from the United States work force. The proposed rule acknowledges that "lost compensation to asylum applicants could range from \$255.88 million to \$774.76 million annually,"⁴ Undoubtedly, this will cause significant financial hardship to asylum applicants who are unable to work and to those who depend on them financially. For asylum seekers, many of whom are already traumatized by the threats and persecution that led them to apply for asylum, closing off the ability to work will have a massive destabilizing effect leading to housing instability, food insecurity, and vulnerability to serious physical and mental health deterioration.⁵

Without a prompt work permit, asylum applicants will be unable to access many services that enable them and their families to survive and thrive.

Accessing employment authorization is the key that allows asylum seekers and asylees to access services and public spaces that are critical to succeed and thrive in the United States. Delaying access to EADs for asylum seekers will have impacts far beyond wage loss. Without a functioning ID document, asylum seekers and their families might, for example, be unable to: rent a home or apartment, get a library card, apply for food stamps, get married, purchase a cell phone, or pick up a prescription.⁶

Forcing asylum seekers to wait for an unknown amount of time before they can even apply for a work permit leaves them and their families in precarious economic positions, raising the likelihood of needed reliance on local, state, or federal assistance such as food stamps and subsidized housing or even homeless shelters. For some immigrants and their families, however, accessing such support is either impossible or clouded by fear and vulnerability because of the administration's regulatory efforts to punish immigrants who rely on public benefits.⁷ Although

12, 1948).

⁴ Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 84 Fed. Reg. at 47,148.

⁵ HUMAN RIGHTS FIRST, *New Work Authorization Rule for Asylum Seekers Could Have Devastating Consequences*, (Sept. 06, 2019), <https://www.humanrightsfirst.org/press-release/new-work-authorization-rule-asylum-seekers-could-have-devastating-consequences>.

⁶ Ashe Schow, *24 Things that Require a Photo ID*, WASHINGTON EXAMINER (Aug. 14, 2013), <https://www.washingtonexaminer.com/24-things-that-require-a-photo-id>.

⁷ Sarah Holder, *How Rule Changes about Public Benefits Could Affect Immigrants*, CITYLAB (Aug. 13, 2019),

numerous federal courts have issued preliminary injunctions indefinitely blocking that proposed rule from being implemented,⁸ grave fears linger in immigrant communities as families remain scared and uncertain as to which benefits it is safe for them to access.⁹

Delaying asylum seekers' access to work authorization and the benefits that accompany it will only exacerbate the widespread chill in immigrant communities that has gravely impacted the ability of immigrant communities to access protections from local law enforcement or engage with state and local government writ large. Immigrants and their families live under a cloud of fear that any interaction with police will lead to a request to see their ID and questions about their immigration status.¹⁰

A 2018 study conducted by Urban Institute found that amongst immigrant families, one out of every six adults in immigrant families stated they were afraid to engage in everyday activities such as driving, applying for or renewing a driver's license, talking to police, or reporting a crime due to fear "in which they could be asked or bothered about [their] citizenship status."¹¹ In 2017, the police chiefs of Houston¹² and Los Angeles¹³ reported a significant decrease in the number of sexual and domestic violence reports received by their offices. This decrease was attributed to the increased fear driven by

Without his work permit NIJC client Amadou would never have been able to follow his dreams of going to medical school and giving back to his community. Amadou received his work permit and upon graduating from high school, he found part-time work at a local post office. With the money he earns, he is using it to put himself through community college. Amadou has big plans for his life, which would all have to be put on hold or force him to rely on public benefits if had to wait indefinitely for his work permit.

<https://www.citylab.com/equity/2019/08/public-charge-rule-legal-immigration-welfare-services-dhs/595987/>.

⁸ Olivia Golden, *Five Federal Courts Enjoin Public Charge Rule, Citing Powerful Evidence*, THE CENTER FOR LAW AND SOCIAL POLICY, <https://www.clasp.org/blog/five-federal-courts-enjoin-public-charge-rule-citing-powerful-evidence>.

⁹ Elizabeth Trovall, *Immigrant Families Suffer Health Impacts, As Many Fear New Public Charge Rule*, HOUSTON PUBLIC MEDIA (Aug. 16, 2019), <https://www.houstonpublicmedia.org/articles/news/in-depth/2019/08/16/342934/immigrant-families-suffer-health-impacts-as-many-fear-new-public-charge-rule/>,

¹⁰ *Who We Are*, *supra* note 2, at 8.

¹¹ Hamutal Bernstein et al., *Adults in Immigrant Families Report Avoiding Routine Activities Because of Immigration Concerns*, URBAN INSTITUTE, 2, 11 (July 2019), https://www.urban.org/sites/default/files/publication/100626/2019.07.22_immigrants_avoiding_activities_final_v2_1.pdf.

¹² Brooke A. Lewis, *HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year*, HOUSTON CHRONICLE (Apr. 06, 2017), <https://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>.

¹³ James Queally, *Latinos are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, LOS ANGELES TIMES (Mar. 21, 2017), <https://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

aggressive immigration initiatives promised by the then-new administration.¹⁴

With a work permit, and thus an ID, asylum seekers do not have to hesitate to call the police if they or someone they know are victims of a crime. Allowing asylum seekers to promptly receive work permits, which opens the door to other forms of identification and security, will increase the safety not just of asylum seekers and their families but of all United States neighborhoods and communities.

Providing asylum seekers with employment authorization and the ensuing ability to access community services also fosters inclusion. Many undocumented immigrants are forced to live in the shadows of their communities and cities. Immigrants—documented and undocumented—avoid public spaces for fear of being asked to display an ID and face ensuing immigration enforcement.¹⁵ This fear hinders immigrants' ability to establish meaningful connections within their neighborhoods and communities and heightens physical and psychological distress,¹⁶ which may manifest in the form of depressive or anxiety disorders, PTSD, or even neurocognitive disorder as a result of a traumatic brain injury due to abuse or injury.¹⁷ Asylum seekers should be able to take their children to school or go to their local library without being afraid they may be

NIJC client Esmeralda suffered severe violence and abuse in her home country. After she received her work permit, she was able to find a job and gain access to therapy she so critically needed to process her past trauma. Thanks to her therapy, she is now able to manage the anxiety she experiences daily. Timely access to lawful employment was, for Esmeralda, critical not only to her mental health and well-being but also to her ability to meaningfully present her asylum claim to an adjudicator.

asked for ID or feel alienated from their community simply because they do not have an ID.¹⁸ Empowering immigrant communities with work permits that are quickly processed will mean more productive and safer communities.

Denying access to work permits means compromising immigrants' ability to meaningfully pursue their asylum claim.

Without an ability to lawfully work, asylum seekers cannot afford legal counsel and are thus significantly less likely to win relief. In fact, an asylum seeker is

approximately five times more likely to be successful in an asylum case if they have a

¹⁴ Proclamation No. 13767, 82 Fed. Reg. 8,793 (Jan. 25, 2017).

¹⁵ Bernstein, *supra* note 11.

¹⁶ Bernstein, *supra* note 11, at 11-12.

¹⁷ Roy Aranda, *Living in the Shadows: Plight of the Undocumented*, J. CLINICAL PSYCHOL. (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5129489/>.

¹⁸ See THE CENTER FOR POPULAR DEMOCRACY, *Building Identity: A Toolkit for Designing and Implementing a Successful Municipal ID Program* (Nov. 2015), https://populardemocracy.org/sites/default/files/Municipal-ID-Report_WEB_Nov2015_0.pdf.

representation.¹⁹ Because most asylum seekers often flee their home country with little to no warning, once they arrive to the United States these individuals often arrive with few personal belongings or nothing at all. It is then no surprise asylum seekers do not have the financial means to be able to hire a private attorney and then must rely on local non-profits to assist them. For asylum applicants who do find pro bono or low cost representation, attendant expenses such as paying for transportation to get to and from meetings with their attorney or even to court appearances are impossible to cover without work authorization.

II. The proposed rule will negatively affect the local, state, and national economy.

Many industries in the United States rely on immigrant employees.

Immigrants are a critical factor in keeping the United States' economy healthy and growing. Immigrants are more concentrated in labor markets that literally feed and house America—in 2016 “immigrants accounted for one in four construction workers”²⁰ and seven out of ten agricultural workers were born in Mexico with only one out of four born in the United States.²¹ Additionally, with baby boomers aging, the U.S. will need more than 800,000 individuals to take jobs that not only replace them in the workforce but also would take care of this population.²² The proposed rule will cut into these economic gains by effectively removing a large number of individuals from working.

Companies that would employ these asylum-seekers will either have insufficient access to labor or bear the costs of finding alternative labor. Finding other populations to take over labor intensive jobs, such as agriculture and farming jobs, will be next to impossible. Certainly, asylum seekers are more than capable of filling other roles in the workforce but this illustrates not only the shortages employers are facing but also brings up dangerous that may occur when immigrants are forced to work under the table. Immigrants who work in the shadows of the American economy become more vulnerable to exploitation – inhumane and abusive working conditions with swift retaliation if they attempt to stand up for themselves or report any of the abuses.²³

¹⁹ Samantha Balaban, *Without a Lawyer, Asylum-Seekers Struggle with Confusing Legal Processes*, NPR (Feb. 25, 2018), <https://www.npr.org/2018/02/25/588646667/without-a-lawyer-asylum-seekers-struggle-with-confusing-legal-processes>.

²⁰ Eduardo Porter, *Short of Workers, U.S. Builders and Farmers Crave More Immigrants*, NY TIMES (Apr. 03, 2019), <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>.

²¹ *Id.*

²² Mary Jo Dudley, *These U.S. Industries Can't Work Without Illegal Immigrants* (Jan. 10, 2019), <https://www.cbsnews.com/news/illegal-immigrants-us-jobs-economy-farm-workers-taxes/>.

²³ Paul Harris, *Undocumented Workers' Grim Reality: Speak Out on Abuse and Risk Deportation*, THE GUARDIAN (Mar. 23, 2013), <https://www.theguardian.com/world/2013/mar/28/undocumented-migrants-worker-abuse-deportation>.

Local, state, and federal governments will lose income tax revenue from asylum-seekers who are delayed in entering the job market or forced to work in the shadow economy.

In the proposed rule, DHS estimates that the *annual* Medicare and social security revenue loss to the government to be between \$39.15 to \$118.54 million dollars.²⁴ Moreover, DHS estimates the rule will cause asylum-seekers to *annually* lose \$255.88 to \$774.76 million in income.²⁵ This means that rather than having that amount of money being pumped back into their communities and states, allowing for improved streets, schools, and healthier citizens, those funds will be completely flushed down the drain.

III. The proposed rule is simply another way the administration is attempting to undercut protections for asylum seekers.

NIJC client Katie found independence and safety with her work permit. Katie fled her home country due to violent persecution she faced by a powerful gang. Upon arriving in the United States, Katie lived with her two children and their abusive father, who exerted immense control over Katie. Obtaining her EAD allowed Katie to move out of the house she previously shared with her abuser and gain financial independence. Moreover, Katie was able to get an ID not only for herself but her children, who did not previously have any ID because the consulate from her home country required her abuser's presence to apply for their passports.

This administration's third-country transit bar, instituting of the so-called "Migrant Protection Protocols" (MPP) is clear evidence that this administration is attempting to make it harder for individuals who seek safe haven at the Mexico-U.S. border to win asylum and get on a path to citizenship.²⁶ To date, this cruel policy has impacted almost 50,000 asylum seekers and will likely impact more the longer it remains active.²⁷ This proposed rule change is another attack, in a long line of attacks, by this administration in an effort to deter and inflict as much harm as possible.²⁸

DHS's proposed justification for pursuing this rule change should not be given credence. In the rule, DHS argues that increasing processing time is a way to reduce fraud and uphold national security.²⁹ However, as with much rhetoric

²⁴ Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 84 Fed. Reg. at 47,150.

²⁵ *Id.*

²⁶ HUMAN RIGHTS FIRST, *Order from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* (Oct. 2019), <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

²⁷ *Id.*

²⁸ Heidi Altman & Joann Bautista, *A Timeline of the Trump Administration's Efforts to End Asylum*, NATIONAL IMMIGRANT JUSTICE CENTER (Aug. 27, 2019), <https://www.immigrantjustice.org/staff/blog/timeline-trump-administrations-efforts-end-asylum>.

²⁹ Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 84 Fed. Reg. at 47,150.

emanating from this administration, these suggested allegations of widespread fraud are completely lacking in evidentiary support.³⁰ In the past, the administration has had no issue misleading Congress and the public with inaccurate or incomplete data in order to perpetuate their anti-immigrant agenda;³¹ it is sadly no surprise that they attempt to do the same here.

IV. Conclusion.

For all of the reasons mentioned above, we strongly oppose the implementation of this rule. Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact us to provide further information.

Sincerely,

National Immigrant Justice Center
A HEARTLAND ALLIANCE Program

³⁰ Jose Magaña-Salgado, et al., *The Trump Administration's Manipulation of Data to Perpetuate Anti-Immigrant Policies* (Jan. 2019), https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2019-01/NIJC-Policy-Brief_Trump-Data-Manipulation_Jan2019.pdf.

³¹ *Id.*