November 28, 2025

Submitted via www.regulations.gov

United States of America
Before the Department of Homeland Security

Removal of the Automatic Extension of Employment Authorization Documents	)	CIS No. 2826-25
	)	DHS Docket No. USCIS-2025-0271
	)	RIN 1615-AD05

COMMENTS OF THE ADVOCATES FOR HUMAN RIGHTS

I. Background

The Advocates for Human Rights opposes the October 30, 2025 Interim-Final Rule (IFR) removing any automatic extension on employment authorization documents for noncitizens. The regulation punishes applicants, families, communities and employers for USCIS' failure to timely process applications. In addition, it will place more people at risk of human trafficking and exploitation. Moreover, the IFR unlawfully reverses DHS's nearly decade-long policy of providing automatic EAD extensions, disregards reliance interests that DHS itself recognized less than a year ago, rejects feasible alternatives, and relies on illogical and vague "security" interests all while unlawfully bypassing notice-and-comment rulemaking required under the APA.

Noncitizens are required to obtain a work permit (EAD) in order to work in the United States unless they are authorized to work incident to status. The law has allowed such EADs to be issued where an individual is awaiting adjudication of an underlying status application. This includes asylum seekers, victims of domestic violence, victims of serious crimes, victims of human trafficking, at-risk juveniles, family members and employees awaiting permanent residency processing, and more. EADs serve an essential function of ensuring individuals in the U.S. awaiting adjudications of status are able to support themselves and their families, access a reliable and accepted form of identification, and contribute to their communities. Without EADs, individuals are vulnerable to exploitation.

Automatic extensions of EADs have become necessary because long delays in processing of underlying applications have resulted from DHS' failure to invest in adjudications while its more-than-adequate budget is diverted to enforcement. For example, an individual issued an EAD based on a pending asylum application is issued an EAD valid for one-year; however, asylum decisions are taking more than five-years on average. Thus, without extensions, individuals would be forced to re-apply for work permits about five or more times while

awaiting a decision on their asylum application. However, because current processing times for EADs are *more than one-year*, automatic extension have ensured that people can file those extensions of work permission and await final processing of their multiple EADs without severe gaps in authorization. By eliminating such extensions while simultaneously failing to address the backlog in case processing, USCIS is essentially forcing people to apply for their next work permit the day they get one issued or face gaps in authorization.

While the Department argues that this change is necessary to ensure people are adequately vetted, the IFR actually decreases the ability to ensure national security as resources will have to be diverted from adjudications of underlying relief and determinations of who remain in the U.S. in order to process the increase in EAD applications that people waiting for relief will have to continually file as a result of this change. The fact that automatic extensions have balanced employer and applicant needs during long delays without prejudicing national security concerns for more than a decade contradicts the vague arguments on which the Department herein attempts to rely.

Finally, the Department's disregard of the Administrative Procedures Act requirements for Notice and Comment Rulemaking further urges withdrawal of this IFR. None of the exceptions to this requirement applies in the instant IFR. By attempting to force immediate impact of this harmful and shortsighted change in policy without allowing adequate time to receive and consider comments, the Department is not only harming communities but violating the law.

Because the IFR is not only shortsighted, baseless and unlawfully issued, it will cause severe human harm, it should be immediately withdrawn.

II. The Advocates for Human Rights' Interest in the Instant IFR

The Advocates for Human Rights is a nonprofit, nongovernmental organization headquartered in Minneapolis, Minnesota. Founded in 1983, The Advocates for Human Rights' mission is to implement international human rights standards to promote civil society and reinforce the rule of law. Holding Special Consultative Status at the United Nations (UN), AHR regularly engages UN human rights mechanisms in addition to providing expert technical assistance and advocacy in the Upper Midwest of the United States.

For over forty years, The Advocates for Human Rights has been the primary provider of free legal representation to asylum seekers in the Upper Midwest. Today our practice includes representation of asylum seekers, unaccompanied children, victims of human trafficking, and people held in civil immigration detention. We have provided free immigration legal services in more than 10,000 cases and are one of the only organizations providing such services free of charge in the region. The Advocates also regularly trains and mentors pro bono lawyers, coordinates and presents on immigration law at conferences and continuing legal education programs and leads numerous efforts around legal services for migrants.

In particular, we have worked on anti-trafficking efforts for more than a decade, providing free legal services to trafficking victims, conducting baseline assessments, and serving in an advisory capacity to state and local governments on labor trafficking protocols and legislation. Through

this work, we have provided pro bono representation to hundreds of trafficking victims in immigration proceedings and worked with law enforcement on investigations of trafficking. We have further trained and worked with service providers, community groups, faith organizations, and more to identify signs of trafficking and provide appropriate support to such victims.

In addition to immigration legal services, The Advocates works in Minnesota and internationally to improve laws to end violence against women and girls. Our WATCH Project monitors domestic violence, sexual assault, and sex trafficking cases in Minnesota courts. Globally, with our on-the-ground partners, we have driven key advances in women's rights and are now leading a coalition to counter the global anti-gender movement. The Advocates also works across programs to uphold the rights of LGBTIQ+ people and others who are experiencing violence and discrimination based on sexual orientation, gender identity and expression or sex characteristics.

The Advocates monitors and documents government compliance with international obligations, advocates for human rights-based public policy responses, trains government and nongovernmental actors, represents victims, and coordinates legal services responses in large-scale cases. Working with diaspora and in-country human rights defenders, The Advocates leverages pro bono resources to document and advocate to end human rights abuses and to abolish the death penalty worldwide. The Advocates holds Special Consultative Status with the UN, where it presents oral and written statements to charter-based bodies such as the Human Rights Council, participates in UN review of compliance with human rights treaties through shadow reporting, and provides technical advice.

III. The IFR Puts People at Risk of Trafficking and Exploitation

As an expert organization on anti-human trafficking prevention and response, AHR regularly consults with and provides technical assistance to law enforcement, government entities, legislators, social service providers, community groups, and more to ensure the U.S. is preventing and punishing trafficking in-line with the Palermo Protocol. From this work, we know that access to reliable employment authorization is a major factor in vulnerability to trafficking. Numerous reports have long documented that people reliant on visa sponsors for their status or work authorization, as well as those whose employers know they lack such authorization, are uniquely vulnerable. In hundreds of cases across the Upper Midwest, we have worked with victims who have reported that their trafficker threatened that they must accept involuntary servitude conditions because they lacked work authorization and would be turned over to immigration enforcement—leveraging the fact that immigration enforcement has too often targeted the victims rather than employers/traffickers who are violating U.S. immigration and labor laws against employing people without authorization. The instant IFR increases these vulnerabilities by creating gaps in authorization, uncertainty about authorization, and increased cost of authorization

TVPRA recognized the importance of work authorization to preventing human trafficking. Indeed, DHS' own Continued Presence information document indicates "CP provides victims with a legal means to temporarily live and work in the U.S., providing them stability, a means of support, and protection from removal. It alleviates fears about removal and economic support,

which not only stabilizes victims but also improves victims' ability to cooperate with law enforcement. CP is therefore also an important tool for federal, state and local law enforcement in their investigation of human trafficking-related crimes, leading to more successful prosecutions."[1] The importance of work authorization to both protecting victims and supporting prosecutions of trafficking is clearly indicated by Congressional authority to issue such both during pending T nonimmigrant status applications as well as through Continued Presence. The Department's own use of Continued Presence and Deferred Action for witnesses further underscores this acknowledgement. Therefore, the gaps in EADs created by the IFR not only create vulnerabilities but undermine the law enforcement interests. Given the Department's sole justification for this IFR, as discussed below, is based on national security concerns, the impact on law enforcement must be considered and was not.

IV. The IFR Violates Refugee Protections

The 1951 Refugee Convention recognizes that all human beings shall enjoy fundamental rights and freedoms without discrimination. The Convention, which the U.S. has incorporated through the Refugee Act of 1980, specifically enshrines the right of refugees to work, obtain documentation, and access education. *See* 1951 Refugee Convention and Its Protocol, Art. 24(1)(a). The UNHCR Guidance makes clear that asylum seekers awaiting adjudication of their cases are to be afforded the right to work as they are included within the definition of "refugees."[2] At present, asylum seekers must obtain EADs to work while their cases are pending. Gaps in EADs restrict the enjoyment of these rights either by directly impacting the right to safe work, or because many services require documentation for which an EAD may the only form of proof available.

Delays in processing renewal applications are not the fault of applicants, such as asylum seekers. Rather, they are the result of under-funding and bureaucratic delays in USCIS, which have been exacerbated by the lack of investment in adjudications capacity at USCIS. Applicants must not bear the brunt of these inefficiencies when they have complied with all requirements and Congress has made them eligible to obtain EADs. In our work, we have seen how even prior extension periods shorter than 540-days were insufficient as thousands of timely-filed renewal applications are not processed within validity periods or automatic extension period, causing applicants to lose their employment authorization[1] and the many benefits which are connected to EADs, such as driver's licenses. For example, one client is an Afghan national seeking asylum because of persecution and torture they would suffer as a result of their support of the U.S. mission in Afghanistan and opposition to the Taliban. Despite timely filing their EAD renewal in January of 2025, they have yet to receive it as of November 2025—11 months waiting. Under current regulations, they are able to continue working and supporting their family; however, under the IFR, they would be left without authorization for an indeterminate amount of time until

[1] https://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf
[2] UNHCR Guidelines on International Legal Standards Relating to Decent Work for Refugees, Art. 7, "Unless indicated otherwise, the term "refugee" is used broadly, covering both asylum-seekers awaiting a determination of their claims, and refugees who are authorized to stay in the host country after it has been determined they are refugees (refugees "lawfully staying in" the country in accordance with the 1951 Convention).

USCIS adjudicates either the asylum application or a new EAD. When providing the ability for asylum seekers to obtain work authorization, Congress could not have intended this arbitrary and capricious impact not only on the livelihood of a vulnerable individual but on the employer that has been able to rely on them.

The right to work is a protected right and the proposed temporary increase to the automatic extension period will ensure that the labor rights of asylum seekers and others are protected within the United States.

V. The IFR Harms Families, Communities and Employers

The IFR will have multiplier effects, harming families, communities and employers. People utilizing work authorization that benefit from automatic extensions are people who contribute to our communities. Leaving them at risk of gaps or constant need to submit reauthorizations means that they may be unable to continue to fill jobs or that employers will face constant bureaucracy and whiplash to ensure compliance with employment laws. Given the nearly one-year delay inherent in current EAD processing times, people will essentially be forced to apply for renewal the day they get an EAD to prevent gaps in authorization. Moreover, as USCIS processing times continue to elongate, even this may not be sufficient and will leave employers forced with letting go of workers they have trained or falling out of compliance during a waiting period. Although it does not advance any such "justification" in issuing the IFR, the Department may argue that this will simply further their goal of urging employers to hire American workers. Yet, the data does not support that likelihood. Instead, it is most likely that more and more businesses will continue to face closure when they cannot maintain reliable workers or the administrative burden created by this change.

Families and the vulnerable will bear the significant brunt of this change. Parents working to support their children while awaiting regular status may no longer be able to do so, especially if employers close due to labor shortages or refuse to hire workers with EADs due to the burden. This will result in many people falling victim to the kind of trafficking and exploitation highlighted above as well as families facing hard decisions about survival—decisions that are contrary to our values as a nation. Child migrants will also be particularly impacted. Many children come to the U.S. without guardians to seek safety under laws that recognize such a need. Already, too many of our young clients are forced to work in conditions of servitude or exploitation to try and support themselves alone in a new country. The instant IFR will exacerbate these harms and drive human trafficking. Making life painful for noncitizens will not stop people in need from seeking safety, families seeking reunification, victims seeking justice, or other seeking opportunity in America; it will simply result in severe human harm in the process. When layered on top of gutting to public benefits to noncitizens and ongoing issues with funding for social supports, this IFR simply wreaks havoc and entrenches a class of people in hardship.

Yet, we also know that American communities always rise to the task of taking care of those around them. As a result, while many will suffer, communities will also be forced to reallocate funds and resources toward supporting those who could otherwise support themselves if given

consistent work authorization. DHS should be supporting community response by ensuring its policies do not cause unnecessary harms and instead allow communities to target resources to the most in need.

Many services in the U.S. are also tied to identification and status requirements, for which an EAD may be the only proof an applicant can provide. For example, many driver's licenses require proof of status. This results in our clients facing gaps in driver's license status where USCIS cannot process renewals in time. Our clients must expend many hours during work periods to seek extensions of driving privileges, and state and local agencies must expend resources to process these renewals at short intervals under the previous six-month extension. Without an extension, many people must make the hard choice between risking an infraction for driving without a valid license or losing a job or ability to transport children to school. Many others who have jobs that require valid licenses, such as truck drivers, may lose their job if they cannot show a valid identification.

These harms are particularly acute for our clients who may have had their other documents taken by traffickers, lost in displacement, or who have been unable to safely escape persecution and obtain new passports without risk of torture. Asylum seekers, for example, are often forced to flee without documents in order to avoid detection and would be unable to obtain new passports in the U.S. because of fear of their government's consulate or embassy. Trafficking victims routinely report that their trafficker forces them to provide their passport, which they keep as a method of coercive control. And, many unaccompanied minors either have no documentation or were unable to bring such with them. However, our world routinely demands some form of identification to access a range of necessities, from housing to employment and even medical care. Ensuring people who are statutorily eligible to get work permits, which can serve as such document, can get them is a crucial safeguard against exploitation and harm.

VI. The Basis for the IFR is Unfounded and Internally Inconsistent

Despite the above-noted harms, the Department attempts to justify the IFR on a single assertion: the desire to complete vetting and security checks before approving an individual's work permit renewal. *See* 2025 IFR, 90 Fed. Reg. DHS offers no other policy rationale. Further, generalized statements about danger and national security are inadequate to support regulatory changes, especially where data and interests counsel the opposite. The 2025 IFR identifies no evidence that automatic extensions have compromised security, nor any data showing that eliminating extensions would meaningfully enhance screening. Indeed, for nearly ten years, millions of EAD holders have worked under automatic extensions. Yet the 2025 IFR provides no statistics showing that this system allowed security risks to persist or resulted in later security-based denials.

In this case, however, a national security basis is all the less compelling as they actually reveal a significant mismatch between the concern asserted and the expected outcomes. *See Dep't of Com. v. New York*, 588 U.S. 752, 755 (2019) (decisionmaking arbitrary and capricious where there was "a significant mismatch between" the agency's decision and the sole rationale provided for it). By removing automatic extensions, USCIS will receive increasing numbers of EAD

application requests from people facing backlogs and needing work authorization. As noted above, the one-year processing time at present means that many people will be submitting new applications as soon as they receive their EAD. Comparatively, the Department's basis for the 540-day extension in 2022 noted the administrative burden that would be relieved by not having to continually process applications every year for cases known to have years-long waits.

Because of the increased burden, USCIS will either have to hire more staff or divert resources to process these applications. Doing so necessarily results in fewer applications for *status* being processed. Yet, decisions on applications for status provide a greater national security benefit as they result in the ability of DHS to determine long-term presence of an individual or, in some cases, issue Notices to Appear so that a person may be removed from the U.S. Processing of interim EADs does not accomplish this. The IFR, thus, means that DHS resources will be spent on EAD processing while more and more people remain in the U.S. without decisions on their ability to stay. If the Department truly was concerned about vetting and safety, it would direct resources to long-term status processing so that individuals no longer are forced to reapply for work authorization while awaiting status for which they are eligible and the Department can process removal of those who are not eligible. As such, the IFR should be withdrawn.

VII. Failing to Extend EADs Harms Organizations Like Ours

As a nonprofit legal service provider for noncitizen victims of human rights abuses, The Advocates is directly impacted by this rule. To ensure our clients can support themselves, remain free from exploitative labor conditions, can comply with laws on driver's licenses tied to EADs, and more, we must often provide legal services for EAD renewal applications for our clients. When applications were more expeditiously processed, a client might have a decision on their status and full work authorization before the need to renew an EAD. However, due to delays, almost all applicants will need to renew an EAD at least once. This results in added staff time that must be directed to preparing those filings, tracking deadlines, and following up. In one case, for example, we have had to file two renewal EAD applications for a client because their asylum case has yet to even have an interview. In that case, despite timely filing the renewal under the prior, shorter extension period, the applicant nearly had a gap in employment, causing us to spend additional resources on inquiries to USCIS, requesting Congressional liaison support, and assuaging the client's concerns. By recognizing processing delays, automatic extensions allowed us to stop expending resources on continual EAD renewals by providing essential authorization while USCIS directed resources to issuing final decisions in underlying cases.

VIII. The Department's Use of an Interim Final Rule is Unlawful

DHS made the 2025 IFR effective immediately, without providing the notice or opportunity to comment required by the APA. The agency's use of an interim final rule was unlawful.

First, DHS has not satisfied the "meticulous and demanding" standard for invoking the APA's "good cause" exception. *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) (citation omitted). That narrow exception allows an agency to bypass notice and comment only where it "for good cause finds . . . that notice and public procedure thereon are impracticable,

unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B). While DHS claims that notice and comment would be impracticable and contrary to the public interest, it relies almost entirely on the unsupported security rationale discussed above, along with stating it is "self-evident" that more workers would "rush" to apply for EAD renewals before the rule took effect. 2025 IFR, 90 Fed. Reg. at 48,813. Again, DHS has not provided evidence of any security risks caused by automatic extensions. *Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 46 (D.D.C. 2020) (good cause exception not satisfied where agencies only provided a single example of potential adverse consequences and "offer[ed] no other data or information that persuasively supports their prediction of a surge" in border crossings before rule took effect). DHS therefore cannot satisfy the good cause exception to avoid notice-and-comment rulemaking.

Second, the 2025 IFR improperly relies on the exception for normal rulemaking involving the "foreign affairs function of the United States." 5 U.S.C. § 553(a)(1). This exception, too, comes with a "high bar." *Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 55 (D.D.C. 2020). In particular, courts have warned against "[t]he dangers of an expansive reading of the foreign affairs exception" in the immigration context, where inevitable "incidental foreign affairs effects" would "eliminate[] public participation in this entire area of administrative law." *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 202 (2d Cir. 2010). DHS cannot meet that high bar here, as the potential effects on international relations that it puts forward are all speculative, tenuous, or otherwise reliant on unsupported claims of security risks. 2025 IFR, 90 Fed. Reg. at 48,814.

Therefore, for the above-stated reasons, The Advocates for Human Rights calls on the Department to withdraw this unlawful, harmful, and shortsighted regulatory change.

Should you require additional information, please contact us.

Respectfully Submitted,

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