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Regulatory Coordination Division
Office of Policy and Strategy,
US. Citizenship and Immigration Services,
Department of Homeland Security
20 Massachusetts Avenue NW, Mailstop #2140
Washington, D.C. 20529

**RE: DHS Docket No. USCIS-2018-0001, RIN 1615-AC19
Removal of 30-Day Processing Provision for Asylum Seekers' Initial
Employment Authorization Document Applications**

Dear Chief Deshombres:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM) entitled "Removal of 30-day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications" published on September 9, 2019.

CLINIC embraces the core Gospel value of welcoming the stranger. CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs. CLINIC is the largest nationwide network of nonprofit immigration programs, with approximately 375 affiliates in 49 states and the District of Columbia. Through its affiliates, CLINIC advocates for the just and humane treatment of asylum seekers through direct representation, pro bono referrals, and engagement with policy makers.

There is no justifiable reason to implement a rule change that would increase economic hardships for asylum seekers and their families, the employers they work for, and the communities in which they live. Therefore, DHS should withdraw the NPRM "Removal of 30-day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications."

CLINIC appreciates the opportunity to provide comments on this proposed rule. CLINIC believes that U.S. policies on immigration should reflect the country's core moral values and historical practice of welcoming immigrants and refugees fleeing persecution. Immigration policies should ensure justice, offer protection, and treat immigrants humanely. People of faith have consistently

stood by the principle that all immigrants, especially the most vulnerable among us, including asylum seekers, deserve an immigration system that is fair and humane.

As Pope Francis has said, “I ask leaders and legislators and the entire international community to confront the reality of those who have been displaced by force, with effective projects and new approaches in order to protect their dignity, to improve the quality of their life and to face the challenges that are emerging from modern forms of persecution, oppression and slavery.”¹

CLINIC likewise believes that the most vulnerable among us need greater protections and opportunities, including the ability to work to support themselves and their families. In this vein, CLINIC submits the following comments in opposition to the proposed changes.

I. General Comments

The Department of Homeland Security’s Proposed Rule,² if published in their current form, would remove the regulatory requirement that initial Employment Authorization Document (EAD) applications for asylum applicants be adjudicated within 30 days of submission. CLINIC strongly opposes this change and urges DHS to withdraw this portion of the proposed regulation. Eliminating this 30-day regulatory requirement during which USCIS must adjudicate the EAD application will remove an important safeguard for asylum seekers eager to be self-sufficient and assimilate into our American economy. Without this safeguard, asylum seekers will be unable to sustain themselves as they await adjudication of their asylum claim.

By depriving asylum seekers of the ability to support themselves and their families, the government’s proposed regulations would cause lasting harm to vulnerable people fleeing persecution and seeking refuge in the United States.

CLINIC does not oppose the rule change that would allow asylum applicants to submit EAD renewal applications more than 90 days before expiration, although we believe the rule should include further safeguards as discussed in Section X of this comment below; all other comments concern the removal of the 30 day adjudication timeframe.

II. Background

Until 1994, asylum seekers could file an application for asylum and work authorization concurrently.³ In 1994, the regulations were amended to state that “an asylum applicant [would] not be eligible to apply for employment authorization based on his or her asylum application until

¹ Pope Francis, *Address to Participants in the Plenary of the Pontifical Council for the Pastoral Care of Migrants and Itinerant People*, (May 24, 2013), http://w2.vatican.va/content/francesco/en/speeches/2013/may/documents/papa-francesco_20130524_migranti-itineranti.html.

² DHS Docket No. USCIS-2018-0001, RIN 1615-AC19, *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, <https://www.govinfo.gov/content/pkg/FR-2019-09-09/pdf/2019-19125.pdf>. The Notice of Proposed Rulemaking is hereinafter referred to in the text of these comments as “NPRM” and citations to it are based on the Federal Register page. The proposed regulations themselves are referred to as “proposed regulations” and are cited by the proposed number in the Code of Federal Regulations (CFR).

³ See, 59 Fed. Reg. 14780 (Mar. 30, 1994) (“Such applications, submitted on Forms I-765, often accompany asylum applications.”).

150 days after the date on which the asylum application [was] filed.”⁴ This new language created the EAD asylum clock.⁵ Upon filing a complete application for asylum, the clock would begin to run.⁶

Once an asylum seeker applied for employment authorization, legacy Immigration and Naturalization Service (INS), then had 30 days to consider the EAD application; it could not, however, issue an EAD before the clock reached 180 days, unless it granted asylum to the applicant before that time.⁷ One of the main objectives of the 30-day deadline was to promote timeliness.⁸

In 1996, Congress amended the INA incorporating language similar to the regulations.⁹ Under the INA as amended, DHS may not issue an EAD to an asylum seeker whose application is pending until 180 days have passed from the date the asylum application is filed.¹⁰ Current regulations require asylum seekers to wait 150 days from the time their I-589 (Application for Asylum and Withholding of Removal) is received by USCIS before they can file an initial request for employment authorization.¹¹ Upon receiving the initial EAD application, the regulations require USCIS¹² to grant or deny employment authorization within a 30-day timeframe.¹³ Despite this regulatory requirement, according to the NPRM, by 2015, USCIS failed to adjudicate more than half of initial asylum applicants’ EADs within the required 30 days.¹⁴

Advocates brought a class action lawsuit, *Rosario v. USCIS*, in May 2015 seeking an injunction to order USCIS to comply with its own rule.¹⁵ According to data cited in the *Rosario* court order, from 2010 to 2017, USCIS adjudicated 22 percent of initial EAD applications within 30 days—that is, out of 698,096 total applications, USCIS resolved only 154,629 applications on time.¹⁶ USCIS moved to dismiss the suit and argued that the “30-day regulatory deadline is

⁴ 59 Fed. Reg. 62284, 62290 (Dec. 5, 1994)(codified as amended 8 CFR § 208.7) The amendments to 8 CFR § 208.7 were first proposed in 59 Fed. Reg. 14779 (Mar. 30, 1994)).

⁵ 59 Fed. Reg. 62284, 62291. *See also* Nadine Wettstein et al., American Immigration Council and Penn State’s Center for Immigrants’ Rights, *Up Against the Clock: Fixing the Broken Employment Authorization Asylum Clock*, https://www.americanimmigrationcouncil.org/sites/default/files/other_litigation_documents/asylum_clock_paper.pdf.

⁶ David A. Martin, *Making Asylum Policy: the 1994 Reforms*, 70 WASH. L. REV. 725, 737-38, 754 (1995).

⁷ 8 CFR § 208.7(a)(1) (1994).

⁸ *Gonzalez Rosario v. United States Citizenship & Immigration Servs.*, 365 F. Supp. 3d 1156, 1161 (W.D. Wash. 2018)(“ the purpose of promulgating the 30-day deadline on top of that 150-day waiting period was to cabin what was already—in the agency’s view—an extraordinary amount of time to wait for work authorization. ..This context further elucidates that the 30-day deadline was instituted to promote timeliness.” [citations omitted.]

⁹ *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 604, 110 Stat. 3009, 115 (1996) (codified as amended INA § 208).

¹⁰ INA § 208 (d)(2).

¹¹ 8 CFR § 208.7(a)(1).

¹² The Homeland Security Act of 2002 abolished INS and moved its functions to DHS. DHS has three immigration-related components: USCIS, United States Customs and Border Protection (CBP), and United States Immigration and Customs Enforcement (ICE). *See* Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 451-471, 116 Stat. 2135, 2195-2205 (2002) (codified as 6 USC §§ 271-279, 291 (2002)).

¹³ 8 CFR § 208.7(a)(1).

¹⁴ 84 Fed. Reg. 47156 (Sep. 9, 2019).

¹⁵ *Gonzalez Rosario v. United States Citizenship & Immigration Servs.*, 365 F. Supp. 3d 1156, 1161 (W.D. Wash. 2018).

¹⁶ *Id.* at 1158.

discretionary.”¹⁷ The *Rosario* court disagreed and in July 2018, the court held that not only did the “plain language of the regulation favor [] mandatory interpretation,” but “[r]eading the 30-day timeline as mandatory also comports with the regulation’s overall goals and related regulations.”¹⁸

Since July 2018, when the court in *Rosario* issued its injunction, USCIS has adjudicated 99 percent of initial EAD applications within 30 days¹⁹ demonstrating that USCIS is capable of complying with the existing regulatory timeframe. Having lost in court, DHS now seeks to amend the regulations because it does not want to adjudicate asylum seekers’ EADs expeditiously, even though it has demonstrated that it is capable of doing so. DHS does not state anywhere in the NPRM that it is unable to meet the 30-day timeline; instead it vaguely says that officers who have been adjudicating asylum EADs “could” be doing something else.²⁰ The reasons DHS articulates for seeking to change this rule appear to be pretextual, and, in any event, could be addressed through other changes, as discussed below, that would not have the same devastating impact on vulnerable asylum seekers.

III. The Proposed Regulations Are a Significant Departure from Longstanding Practice and Contrary to Congressional Intent.

When legacy INS issued the regulation requiring adjudication within 30 days of filing the EAD application, it was because the agency recognized that forcing asylum seekers to wait 150 days after filing an asylum application to seek an EAD would already incur a lengthy delay—180 days total. The focus on expediency is reinforced by how the agency described the 30-day deadline in 1994: “The INS will adjudicate these applications for work authorization within 30 days of receipt, regardless of the merits of the underlying asylum claim.”²¹ Even though the agency imposed a 150-day waiting period before an asylum seeker may submit an initial EAD application, it made clear that “[i]deally... few applicants would ever reach the 150-day point.”²²

Indeed, legacy INS selected 150 days because it was a period “beyond which it would not be appropriate to deny work authorization to a person whose claim had not been adjudicated.”²³ Thus, the purpose of promulgating the 30-day deadline in conjunction with the 150-day waiting period was to alleviate the impact of what was already—in the agency’s view—an extraordinary amount of time to wait for work authorization.²⁴ Congress accepted the concept of having asylum seekers

¹⁷ *Id.* at 1159.

¹⁸ *Id.*

¹⁹ Compliance Report, *Rosario* Litigation: USCIS I-765 – Application for Employment Authorization Eligibility, Category: CO8, Pending Asylum Initial Permission to Accept Employment Completions by Processing Time Buckets, FY15-FY19 (Through June 30, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/nirp_v_uscis_defendants_july_2019_compliance_report.pdf.

²⁰ 84 Fed. Reg. 47150. (“If the 30-day timeframe is removed, these redistributed resources *could* be reallocated, potentially reducing delays in processing of other applications, and avoiding costs associated with hiring additional employees.”)[emphasis added.]

²¹ 59 Fed. Reg. 14780.

²² *Id.*

²³ *Id.*

²⁴ *Id.*, See also *Gonzalez Rosario v. United States Citizenship & Immigration Servs.*, 365 F. Supp. 3d 1156, 1161 (W.D. Wash. 2018.)

wait 180 days to have their asylum applications adjudicated when it amended the INA to codify the 180 day waiting period.²⁵

The same humanitarian considerations included in the regulatory history of the 30-day timeframe were analyzed in the *Rosario* litigation when USCIS failed to meet its legal obligations. In issuing a court order to compel USCIS to adhere to the regulatory 30-day deadline, the *Rosario* court concluded that “the balance [of equities] has been struck in favor of expedient adjudication of initial EAD applications so that asylum seekers may obtain work authorization when waiting—often for years—to have their asylum applications resolved.”²⁶ *Rosario* goes on to state that delays are:

‘less tolerable when human health and welfare are at stake,’ and that is exactly what is at stake here: Asylum seekers are unable to obtain work when their EAD applications are delayed and consequently, are unable to financially support themselves or their loved ones... This negative impact on human welfare is further compounded by the length of USCIS’s delay.²⁷

The *Rosario* court found that USCIS’s delay in resolving EADs was unreasonable and that “resource constraints” was an inappropriate justification when human welfare is concerned.²⁸

The *Rosario* court was compelled to issue injunctive relief because of the human welfare costs that delays to adjudicating EADs place on asylum seekers. Oftentimes, asylum seekers flee their countries with nothing more than clothes on their back and the cash in their pockets. They come with their life savings that are quickly depleted on living expenses while they await adjudication of their asylum claims.²⁹ Asylum seeking families have limited means and struggle to pay for necessities such as food and shelter.³⁰ Preserving the 30-day EAD timeframe is consistent with Congressional intent and the *Rosario* court decision both of which recognized an EAD as an important humanitarian protection for vulnerable asylum seekers.

IV. DHS’s Justifications for Delaying the Ability of Asylum Seekers to Support Themselves Are Based on Incomplete Data or a Lack of Data Altogether.

In estimating the costs and benefits of removing the 30-day timeframe, the proposed regulations rely on the assumption that USCIS would return to its adjudication rate from 2017—before the

²⁵ INA § 208(d)(2).

²⁶ *Gonzalez Rosario*, 365 F. Supp. 3d at 1161; *See also Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1177 (9th Cir. 2002).

²⁷ *Gonzalez Rosario*, 365 F. Supp. 3d at 1162, quoting *Telecommunications Research & Action Center v. F.C.C.*, 750 F.2d 70, 80 (D.C. Cir. 1984).

²⁸ *Id.* at 1163, footnote 6: “To the extent Defendants rely on resource constraints as a standalone argument, that argument is unavailing. The Supreme Court recently rejected a similar argument from an agency citing “a number of practical concerns.” *Pereira v. Sessions*, -- U.S. --, 138 S. Ct. 2105, 2118 (2018). The Court found these “meritless” considerations “do not justify departing from the [law’s] clear text.” *Id.* The court concludes the same here.

²⁹ Lindsay M. Harris & Joan Hodges-Wu, “Asylum seekers leave everything behind. There’s no way they can pay Trump’s fee.” WASHINGTON POST, May 1, 2019, <https://www.washingtonpost.com/outlook/2019/05/01/asylum-seekers-leave-everything-behind-theres-no-way-they-can-pay-trumps-fee/>.

³⁰ Human Rights Watch, “*We Can’t Help You Here. U.S. Returns Asylum Seekers to Mexico*,” July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

Rosario court order. But the NPRM does not explain why USCIS would return to this prior adjudication timeframe. The NPRM states that before the *Rosario* litigation, USCIS adjudicated 78 percent of asylum seekers' initial EAD applications within 60 days and only 47 percent within 30 days.³¹ But the NPRM fails to take into account that the reason USCIS adjudicated these EADs as quickly as it did was because **they were under a legal requirement to do so**. Even with a regulation requiring the EADs to be adjudicated within 30 days, USCIS failed to do so more than half the time. And the data DHS relies on in the NPRM paints the agency's adjudications in a more positive light than the statistics submitted to the *Rosario* court by USCIS. In that litigation, USCIS claimed to timely resolve only 28 percent of initial EAD applications.³² Regardless of which figure is correct, DHS does not dispute that even with a time limit imposed, it did not meet it most of the time. There is little reason to believe that DHS will adjudicate EADs within 60 days, or even within 90 days,³³ if there is no requirement for it to do so.³⁴

V. The Proposed Regulation's Purported Reliance on Security Concerns Are Misplaced.

The NPRM claims that the government needs more time to process EAD applications because of outdated application procedures that were in operation at the time the 30-day timeframe was established.³⁵ However, the government's changes in processing EAD applications were fully implemented by 2006.³⁶ There is no reason, more than a decade after these changes have been fully implemented for DHS to assert now that it cannot process the EAD applications within 30 days.

Likewise, the NPRM states that USCIS needs more time to adjudicate asylum EAD applications because of changes to vetting procedures and increased background checks resulting from the U.S. government's response to the September 11, 2011 terror attacks ("9/11"). Yet, these changes have been in place since 2004 with the creation of the Office of Fraud Detection and National Security (FDNS).³⁷ USCIS has had well over a decade to implement post-9/11 enhanced vetting and security checks and has been vetting asylum applicants with these criteria for fifteen years.

DHS used a similar national security and vetting argument in the *Rosario* litigation. In its decision, the *Rosario* court noted that the government's security concerns were too vague to justify failure to comply with the 30-day processing deadline. The court found that practical concerns did not

³¹ 84 Fed. Reg. 47149, 47162.

³² *Gonzalez Rosario*, 365 F. Supp. 3d at 1159.

³³ As discussed below, the NPRM posits the possibility of imposing a 90-day processing time but rejects even this longer time requirement, choosing instead to have no limit on the time an asylum seeker's initial EAD application can remain pending.

³⁴ Immigration advocates have reported that USCIS has slowed processing for many application types since 2017. See American Immigration Lawyers Association, *Deconstructing the Invisible Wall: How Policy Changes by the Trump Administration Are Slowing and Restricting Legal Immigration*, Mar. 19, 2018, <https://aila.org/infonet/aila-report-deconstructing-the-invisible-wall>.

³⁵ 84 Fed. Reg. p. 47154.

³⁶ *Id.* at 47154, footnote. 17.

³⁷ *Id.* at 47154-55.

justify departing from the law’s clear text,³⁸ especially when the agency’s delay in adjudicating EADs was found to negatively impact human welfare.³⁹

After the *Rosario v. USCIS* decision, USCIS dedicated resources to comply with the court order to timely process asylum pending EAD applications. Despite the existence of production and vetting changes that the rulemaking lists as justification for the removal of the 30-day timeframe, DHS compliance reports demonstrate that USCIS is currently deciding over 99 percent of EADs within the 30-day processing timeline.⁴⁰ This statistic proves that USCIS has the ability to adjudicate EADs within a 30-day timeframe, demonstrating that DHS’s fraud and security concerns can be addressed within the 30-day processing time.

In any event, processing an EAD only gives an asylum seeker the authority to work lawfully in the United States. If the government has actual concerns that a particular asylum seeker could pose a national security threat, not adjudicating the EAD would not alleviate the threat—whether or not the asylum seeker can work lawfully, he or she is still physically present in the United States.

VI. DHS Could Achieve Its Stated Goals by Removing the 150-Day Prohibition on Filing an Asylum Pending Initial EAD and Allowing Asylum Seekers to File EAD Applications Concurrently with the Asylum Application.

If DHS truly needs more than 30 days to complete security checks and produce more sophisticated EAD cards, it should allow asylum seekers to file their initial EAD applications concurrently with their asylum applications, as was the practice prior to 1994.⁴¹ Under INA § 208(d)(2), USCIS cannot issue the EAD until 180 days have passed, but nothing prevents USCIS from accepting the EAD application immediately and performing the necessary security checks once the asylum application is filed. Indeed, if an individual poses a threat to national security, it would be best for USCIS to identify that threat as soon as possible, rather than waiting more than 150 days after filing the asylum application to engage in a vetting process.

VII. The NPRM Does Not Adequately Explain Why USCIS Cannot Hire More Officers.

The NPRM makes sweeping claims about the high costs of alternatives to the removal of the 30-day timeframe, but fails to support these claims with any statistics or information. For example, USCIS could hire more officers but the NPRM admits that DHS has not estimated the costs of this alternative.⁴² The rulemaking suggests that it would be too expensive to hire additional officers to keep up with timely processing and cites to “the historic asylum backlog.”⁴³ However, this

³⁸ *Gonzalez Rosario*, 365 F. Supp. 3d at 1163, footnote. 6, quoting *Pereira v. Sessions*, -- U.S. --, 138 S. Ct. 2105, 2118 (2018).

³⁹ *Gonzalez Rosario*, 365 F. Supp. 3d at 1162.

⁴⁰ Compliance Report, Rosario Litigation: USCIS I-765 – Application for Employment Authorization Eligibility, Category: CO8, Pending Asylum Initial Permission to Accept Employment Completions by Processing Time Buckets, FY15-FY19 (Through June 30, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/nirp_v_uscis_defendants_july_2019_compliance_report.pdf.

⁴¹ See, 59 Fed. Reg. 14780 (“Such applications, submitted on Forms I-765, often accompany asylum applications.”).

⁴² 84 Fed. Reg. 47149.

⁴³ *Id.*

reasoning appears to be pretextual since the proposed regulations only deal with initial EADs filed by asylum seekers and not EAD renewals for asylum seekers whose cases are stuck in the asylum office backlog.

Moreover, the NPRM states that DHS wants more “flexibility” but does not offer any data about how the 30-day adjudications of asylum seekers’ EADs have affected any other application types. There is not a scintilla of data showing that but for the 30 day timeframe for initial asylum EADs, other applications would not be subject to backlogs. Instead, the NPRM states, “If the 30-day timeframe is removed, these redistributed resources *could be* reallocated, *potentially* reducing delays in processing of other applications, and avoiding costs associated with hiring additional employees. USCIS has not estimated these avoided costs.”⁴⁴ [emphasis added.] Thus DHS is not even committing to reducing wait times for other types of applications if it removes the 30-day timeframe for these EAD applications.

The NPRM also disingenuously states, “Hiring more officers could bring improvements but that would not *immediately* shorten adjudication timeframes because additional time would be required to onboard new employees, and train them.”⁴⁵ [emphasis added.] The issue is not whether hiring officers would “immediately” shorten timeframes, it is whether doing so would address the issue long-term. If USCIS hired more officers and trained them, within a few months there would be more trained officers who could adjudicate these applications expeditiously. DHS instead rejects out of hand the possibility of hiring more officers, and does not even provide an estimate of the cost of hiring more officers, nor does it engage in an economic analysis of the cost of hiring new officers as compared to the loss to the tax base by preventing asylum seekers from working lawfully and paying taxes. Even DHS admits in the NPRM that asylum seekers would lose annual salary wages and benefits totaling between \$255.88 million to \$774.76 million.⁴⁶

VIII. If Not Fully Withdrawn, the Proposed Regulations Should Provide an Alternative Timeframe for Adjudicating Asylum EADs.

The elimination of the 30-day rule without providing an alternative maximum processing time is excessively harsh. The NPRM briefly mentions that DHS considered proposing a 90-day EAD adjudication timeframe to replace the current 30-day window but deemed this amount of time to be inadequate.⁴⁷ The fact that DHS simultaneously claims that it would likely adjudicate these EAD applications within 60 days of filing,⁴⁸ and that it cannot commit to adjudicating these applications within 90 days seems to indicate that DHS does not actually intend to adjudicate applications within 60 days.

DHS further rejects its own consideration of a 90-day timeframe because that timeframe would also result in financial losses to the asylum seeker, employers who hire asylum seekers, and the federal government through lost income tax revenue.⁴⁹ But these losses would increase

⁴⁴ *Id.* at 47165.

⁴⁵ *Id.*

⁴⁶ *Id.* at 47150.

⁴⁷ *Id.* at 47166 - 47167.

⁴⁸ *Id.* at 47149.

⁴⁹ *Id.* at 47167, Table 12.

significantly if the timeframe would be entirely eliminated as the rulemaking proposes and asylum seekers are forced to wait longer than 90 days (meaning 240 days since they can't file at all for 150 days). Finally, the proposed regulations do not address the fact that the majority of these losses will be nonexistent if the timeframe remains the same.

IX. The Proposed Regulations Do Not Recognize that Asylum Seekers Are Fleeing Persecution and that Congress Has Therefore Afforded Them Special Protections.

Asylum seekers are among the most vulnerable noncitizens in the United States. The U.S. government does not provide asylum seekers with housing, stipends, or government appointed counsel. Asylum seekers who cannot work would have difficulty obtaining healthcare and medical treatment, identification documents such as drivers' licenses,⁵⁰ and legal counsel for their underlying asylum applications, making it much less likely that they will prevail on their applications.⁵¹ The rule change would also cause significant hardship to asylum seekers' families and destabilize the financial and health situation their children, spouses, parents, and other family members. Additionally, charities, including faith-based social services organizations, will be forced to expend limited resources to help asylum seekers with subsistence while they wait longer for the ability to support themselves through work.

Asylum seekers' work authorization should be prioritized by USCIS, even assuming, arguendo, that complying with the 30-day rule would mean that some other categories of EAD applications are delayed in adjudication because asylum seekers are among the most vulnerable populations in the world. As Pope Francis has said, "Developing countries continue to be drained of their best natural and human resources for the benefit of a few privileged markets. . . . Those who pay the price are always the little ones, the poor, the most vulnerable, who are prevented from sitting at the table and are left with the 'crumbs' of the banquet."⁵² Rather than place additional hurdles⁵³

⁵⁰ Immigration and Customs Enforcement (ICE) Factsheet, "Applying for a Driver's License or State Identification Card," Updated Sep. 5, 2012, https://www.ice.gov/doclib/sevis/pdf/dmv_factsheet.pdf.

⁵¹ Asylum seekers cannot afford legal representation without the ability to lawfully work, and asylum seekers represented by legal counsel are nearly four times more likely to win their cases than those appearing in immigration court without an attorney. See, Human Rights First, *Fact Sheet: Central Americans were Increasingly Winning Asylum Before President Trump Took Office*, (Jan. 2019), https://www.humanrightsfirst.org/sites/default/files/Asylum_Grant_Rates.pdf; see also TRAC, *Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year, Outcome and More*, (through Aug. 2019), <https://trac.syr.edu/phptools/immigration/asylum/>.

⁵² Gerard O'Connell, *Pope Francis Reminds Christians that Migrants and Refugees Should Be Welcomed Around the World*, AMERICAN THE JESUIT REVIEW, Sep. 29, 2019, <https://www.americamagazine.org/faith/2019/09/29/pope-francis-reminds-christians-migrants-and-refugees-should-be-welcomed-around>.

⁵³ In the past two years, asylum seekers have faced unprecedented restrictions on their ability to exercise their right to seek safety in the United States. The government has sought to impose an Asylum Ban (barring those who enter the U.S. without inspection from eligibility to seek asylum) EOIR Docket No. 18-0501, A.G. Order No. 4327-2018, RIN 1125-AA89, 1615-AC34, Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations, Procedures for Protection Claims, <https://www.federalregister.gov/documents/2018/11/09/2018-24594/aliens-subject-to-a-bar-on-entry-under-certain-presidential-proclamations-procedures-for-protection> which is currently enjoined. It has implemented a Third Country Transit Bar, EOIR Docket No. 19-0504, A.G. Order No. 4488-2019, RIN 1125-AA91, 1615-AC44, 84 Fed. Reg. 33829, Asylum Eligibility and Procedural Modifications, <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural>

before asylum seekers in their quest for self-sufficiency, the U.S. government should be welcoming the stranger and allowing asylum seekers to provide for themselves and their families by issuing employment authorization as quickly as legally possible under the INA.

X. CLINIC Supports Removing the Requirement that Asylum Seekers Cannot Submit EAD Renewals Until 90 Days Before Expiration but Believes the Regulations Should Include Further Safeguards.

The proposed regulations would also remove the current requirement⁵⁴ that asylum seekers' applications for EAD renewal be filed and received by USCIS at least 90 days prior to the expiration of the employment authorization. This change would allow asylum applicants to have their EADs automatically extended for up to 180 days from their expiration date if they file a Form I-765 renewal application before their current employment authorization expires⁵⁵ but not more than 180 days before expiration.⁵⁶ CLINIC supports the rule change which allows for asylum seekers to submit their EAD renewal application more than 90 days before the EAD expires, however CLINIC also urges DHS to set a timeframe for adjudicating renewals because, even with the automatic extension, we have heard of asylum applicants not receiving their EAD renewal cards by the time the automatic extension ends. Moreover, many employers are not aware of the automatic extension rules and asylum seekers often rely on their EADs as a primary form of government-issued identification. Thus the automatic extension should not be seen as a substitute for DHS timely issuing physical EAD renewal cards.

XI. Conclusion

For all of the reasons discussed above, CLINIC urges that the rule change removing the 30 day adjudication requirement be withdrawn. To address the security vetting concerns DHS uses to justify the proposed rule, CLINIC urges DHS to return to pre-1994 rules which allow asylum seekers to file their employment authorization application concurrently with the asylum application, thus giving DHS the full 180 days to perform security checks. In the alternative, if DHS does not fully withdraw this requirement, CLINIC urges DHS to adopt a slightly longer required processing timeframe, such as 60 days—the timeframe DHS claims it will process most asylum seekers' EADs in the NPRM. If DHS were to adopt a longer required processing time, the regulation should still provide for initial asylum seekers' EAD application to be processed within 180 days of filing for asylum.

[modifications](#) preventing those who have transited through a country on the way to the southern border from being eligible for asylum. It has forced vulnerable asylum seekers to wait in dangerous conditions in Mexico while their cases are pending in the United States, “Migrant Protection Protocols” <https://www.ice.gov/factsheets/migrant-protection-protocols-mpp> .And it has announced its intentions to charge a fee for asylum applications Presidential Memorandum for the Attorney General and Secretary of Homeland Security on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System (April 29, 2019), <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-additional-measures-enhance-border-security-restore-integrity-immigration-system/>.

⁵⁴ 8 CFR § 208.7(d).

⁵⁵ 8 CFR § 274a.13(d), as amended in 2017. Additionally asylum applicants must be, *inter alia*, requesting renewal based on the same employment authorization category under which the expiring EAD was granted.

⁵⁶ 84 Fed. Reg. 47155, footnotes 23, 24.

The Trump administration wants to deter asylum seekers from seeking protection in the United States and this proposed regulation appears to be a further attempt⁵⁷ to do so. President Trump has said, “The biggest loophole drawing illegal aliens to our borders is the use of fraudulent or meritless asylum claims to gain entry into our great country.”⁵⁸ It is immoral to paint the “least ones”⁵⁹ among us as liars without any proof of this claim. It is inappropriate to call asylum seekers “illegal aliens” because seeking asylum is not illegal. All individuals have the right to seek protection from persecution and the United States has committed itself to protecting this right through its ratification of the Refugee Convention and Protocol, and the Convention Against Torture⁶⁰ and while these claims are pending asylum seekers have the right to work and support themselves.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Michelle Mendez, Director of CLINIC’s Defending Vulnerable Populations Project, at mmendez@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,



Anna Marie Gallagher
Executive Director

⁵⁷ In the past two years, the government has issued executive orders, precedential decisions by the attorney general, regulations, and informal policy changes explicitly designed to prevent asylum seekers from exercising their rights under U.S. law. *See*, National Immigrant Justice Center, *A Timeline of the Trump Administration’s Efforts to End Asylum*, (Aug. 27, 2019), <https://www.immigrantjustice.org/staff/blog/timeline-trump-administrations-efforts-end-asylum>.

⁵⁸ White House Fact Sheet, *President Donald J. Trump Is Working to Stop the Abuse of Our Asylum System and Address the Root Causes of the Border Crisis* (Apr. 29, 2019), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-working-stop-abuse-asylum-system-address-root-causes-border-crisis/>.

⁵⁹ *Matthew* 25:40-45.

⁶⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681 (1998), 1465 U.N.T.S. 85.