Center for Gender & Refugee Studies

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Via Federal e-Rulemaking Portal, https://www.regulations.gov

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Chief, Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: DHS Docket No. USCIS–2025–0271, Removal of the Automatic Extension of Employment Authorization Documents

Dear Mr. Buono:

The Center for Gender & Refugee Studies (CGRS) submits this comment opposing in the strongest possible terms the Interim Final Rule*, Removal of the Automatic Extension of Employment Authorization Documents*, 90 Fed.Reg. 48,799 (Oct. 30, 2025) ("Rule") eliminating automatic extensions of Employment Authorization Documents ("EADs"). The Rule is inconsistent with the United States' obligations under international law; unlawfully reverses DHS's nearly decade-long policy choice of providing automatic EAD extensions; fails to consider important aspects of the problem, including the halting of asylum decisions and ongoing adjudication delays, and to examine relevant data, including economic evidence; disregards reliance interests that DHS itself recognized less than a year ago; rejects responsible alternatives; and unlawfully bypasses notice-and-comment. The result is a rule that will destabilize the workforce, disrupt employer operations, and inflict severe harm on workers and their families solely due to government processing delays. In particular, it will cause undue hardship to vulnerable populations such as asylum seekers, including those at risk of gender-based violence. DHS must rescind the Rule in full. We include the following outline to guide your review.

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I. EXPERTISE OF THE CENTER FOR GENDER & REFUGEE STUDIES

The Center for Gender & Refugee Studies ("CGRS") was founded in 1999 by Professor Karen Musalo[1] following her groundbreaking legal victory in *Matter of Kasinga*[2] to advocate for asylum seekers fleeing gender-based violence. CGRS protects the fundamental human rights of refugee women, children, LGBTQ+ individuals, and others who flee persecution and torture in their home countries. CGRS is an internationally-respected resource, renowned for our knowledge of the law and ability to combine sophisticated legal strategies with policy advocacy and human rights interventions.

We take the lead on emerging issues, participate as counsel or *amicus curiae* in impact litigation to advance the rights of asylum seekers,[3] produce an extensive library of litigation

[1] Bank of America Foundation Chair in International Law; Professor & Director, Center for Gender & Refugee Studies, University of California College of the Law, San Francisco.

[2] 21 I&N Dec. 357 (BIA 1996).

[3] *See, e.g.*, *Al Otro Lado v. EOIR*, 138 F.4th 1102 (9th Cir. 2025) (affirming in part and vacating in part district court's ruling that held unlawful metering of asylum seekers at ports of entry), *cert. granted sub nom. Noem v. Al Otro Lado*, 2025 WL 3198572 (Nov. 17, 2025); *U.T. v. Bondi*, 1:20-cv-00116-EGS (D.D.C. amended complaint filed Oct. 15, 2025) (challenging rule providing the structure for asylum cooperative agreements enabling the removal of asylum seekers to designated countries without hearing their claims in the United States); *RAICES v. Noem,* 793 F.Supp.3d 19 (D.D.C. 2025) (granting in part plaintiffs' motion for summary judgment and to certify class and denying preliminary injunction in case challenging Presidential proclamation that invokes INA 212(f) to "suspend the entry" of noncitizens at the southern border) appeal docketed, No. 25-05243 (D.D. Cir. Jul. 7, 2025); *E.Q. v. DHS*, No. 1:25-cv-00791 (D.D.C. filed Mar. 17, 2025) (challenging rule that requires asylum officers conducting initial fear screenings to make complicated determinations about applicability of mandatory bars that would render individuals ineligible for asylum); *Las Americas Immigr. Advoc. Ctr. v. DHS*, 783 F.Supp.3d 200 (D.D.C. May 2025) (granting in part and denying in part plaintiffs' motion for summary judgment and defendants' motion cross-motion for summary judgment (challenging "Securing the Border" rule), appeal docketed, No. 25-5313 (D.C. Cir., Sept. 2, 2025); *Al Otro Lado v. Trump*, No. 3:25-cv-01501 (S.D. Cal. complaint filed June 11, 2025); *Al Otro Lado and Haitian Bridge Alliance v. Mayorkas,* No. 3:23-cv-01367-AGS-BLM (S.D. Cal., Sept. 19, 2025) (granting joint motion to dismiss in challenge to turnbacks of arriving asylum seekers without CBP One appointments); *East Bay Sanctuary Covenant v. Trump*, 683 F. Supp. 3d 1025 (N.D. Cal. July 25, 2023), (granting plaintiffs summary judgment in challenge to "Circumvention of Lawful Pathways" rule), vacated, No. 23-16032 (9th Cir. Apr. 10, 2025) (vacating and remanding to district court for further proceedings); *Immigr. Def. Law Ctr. v. Mayorkas*, No. CV 20-9893 JGBSHKX, 2023 WL 3149243, 18-19 (C.D. Cal., Mar. 15, 2023) (granting in part and denying in part defendants' motion to dismiss challenge to implementation of MPP 1.0 and granting plaintiffs' motion for class certification), appeal docketed, No. 25-02581 (9th Cir. Apr. 22, 2025); *Huisha-Huisha v. Mayorkas*, 642 F. Supp. 3d 1 (D.D.C. Nov. 15, 2022) (vacating and setting aside Title 42 policy as arbitrary and capricious), cert. and stay granted sub nom. *Arizona v. Mayorkas*, 143 S. Ct. 478, 214 L. Ed. 2d 312 (2022), and vacated, No. 22-5325, 2023 WL 5921335 (D.C. Cir. Sept. 7, 2023); *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966 (N.D. Cal. 2021) (preliminarily enjoining the "Global Asylum" rule); and *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020) (affirming in part and vacating in part the district court's injunction against the use of *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (*Matter of A-B- I*), and guidance implementing *Matter of A-B-* in credible fear proceedings).

support materials, maintain an unsurpassed database of asylum records and decisions, and work in coalitions with refugee, immigrant, LGBTQ+, children's, and women's rights networks.[4]

Since our founding, we have engaged in international human rights fact-finding and analysis with a strong emphasis on El Salvador, Guatemala, Haiti, Honduras, and Mexico, to address the underlying causes of forced migration that produce refugees, including climate change and environmental disasters.[5] CGRS also provides technical assistance to thousands of attorneys across the country each year, all of whom are representing asylum seekers at various stages of the legal process.

We have assisted many clients with their EAD applications, including renewals, and have conducted trainings on EAD issues for attorneys representing asylum seekers.

As a critical part of our mission, CGRS serves as a resource to decision makers to promote laws and public policies that recognize the legitimate protection claims of those fleeing persecution and torture. Our goal is to ensure that the U.S. framework of law and policy respects the rights of refugees and aligns with international law.

It is in furtherance of our mission that we submit this comment urging that the Rule be rescinded in its entirety.

II. THE RULE IS INCONSISTENT WITH INTERNATIONAL LAW

The Rule is inconsistent with the relevant international legal obligations of the United States. These are found in the 1967 Protocol Relating to the Status of Refugees ("Refugee Protocol").[6] The United States acceded to the Refugee Protocol in 1968 with no relevant declarations or reservations. By doing so, the United States undertook to apply all substantive articles of the 1951 Convention Relating to the Status of Refugees ("Refugee Convention").[7] These treaties have been implemented in domestic law in the Refugee Act of 1980, other subsequent legislation, and accompanying regulations.

Article 17 of the Refugee Convention relates to the right to engage in wage-earning employment. It provides that refugees lawfully in the territory of the host state (which would include not only asylees and resettled refugees, but all individuals pursuing asylum claims who apply for renewal EADs), shall be the accorded the "most favorable treatment accorded to nationals of a foreign country in the same circumstances." Given that the Rule

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[4] *See, e.g.*, the Welcome With Dignity campaign.

[5] *See, e.g.*, Center for Gender & Refugee Studies (CGRS), The IACtHR's Advisory Opinion on the Climate Emergency: An Important Step for the Protection of Climate-Displaced Individuals (2025); The Chile Declaration and Plan of Action 2024-2034: A Blueprint for Addressing Climate and Disaster-Related Displacement in the Americas (2025); Precluding Protection: Findings from Interviews with Haitian Asylum Seekers in Central and Southern Mexico (2024); "Manifesting" Fear at the Border: Lessons from Title 42 Expulsions (2024).

[6] 606 U.N.T.S. 267 (entry into force 4 Oct. 1967).

[7] 189 U.N.T.S. 137 (entry into force 22 April 1954).

does not end all automatic extensions of the validity period of EADs for those applying for renewal (*e.g.*, TPS-based EAD validity extensions through Federal Register Notice), it provides refugees applying to renew their EADs less favorable treatment than other foreign nationals, including those with protection needs such as TPS holders. It is therefore issued in violation of Article 17 of the Refugee Convention and should be withdrawn as inconsistent with the binding international legal obligations of the United States.

III. THE RULE FAILS TO CONSIDER IMPORTANT ASPECTS OF THE PROBLEM AND FAILS TO EXAMINE RELEVANT DATA

The Rule is unlawful because it is arbitrary and capricious under the Administrative Procedure Act ("APA").[8] An agency rule is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[9] A rule is also arbitrary and capricious if the agency fails to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[10]

A. DHS has failed to consider important aspects of the problem and offers explanations that run counter to evidence before the agency

1. The Rule fails to account for the halting of asylum decisions

On the evening of Friday, November 28, 2025, USCIS Director Joseph Edlow announced that "USCIS has halted all asylum decisions until we can ensure that every alien is vetted and screened to the maximum degree possible."[11] The agency has not publicly provided any additional information, clarifications, or guidance related to this announcement. Implementing a policy to halt asylum decisions means that asylum applications will remain pending longer than they would have in the absence of the policy. This increase in processing times means more asylum applicants' EADs will expire during the pendency of their asylum applications, resulting in the need to file additional requests to renew their EADs pursuant to 8 CFR 274a.12(c)(8). The Rule fails to account for the impact the policy to halt asylum decisions will have on the backlog of renewal EAD applications, an important aspect of the problem discussed further in Part III.A.3., *infra*.

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[8] 5 U.S.C. 706(2)(A).

[9] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983). *See also Texas v. United States Environmental Protection Agency,* 132 F.4th 808 (5th Cir. 2025) (internal citations omitted).

[10] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (internal quotation omitted).

[11] Joseph B. Edlow, X, https://x.com/uscisjoe/status/1994545007588774347?s=46, (Nov. 28, 2025).

2. The Rule inexplicably reverses DHS's previous Final Rules

DHS's Rule contravenes Congress's mandate that the agency ensure "the overall economic security of the United States is not diminished by efforts . . . aimed at securing the homeland."[12] Consistent with this statutory mandate, DHS concluded less than a year ago that a 540-day automatic EAD extension was necessary to prevent employment lapses caused by USCIS delays and to protect employers and workers. *Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 101,208 (Dec. 13, 2024) ("2024 Final Rule"). Indeed, DHS previously found that even the 180-day extension established under a prior rule "does not provide USCIS enough time" to avoid harmful gaps in work authorization. *Id.* at 101,209–10. Yet the Rule eliminates extensions entirely—imposing consequences DHS recently deemed economically harmful and operationally unworkable. This reversal in policy–without new evidence or a reasoned explanation–violates the APA.[13]

3. The Rule ignores backlogs

The Rule also ignores that backlogs persist today and provides no projections or plans to reduce the backlogs that necessitate automatic extensions. The Rule incorrectly portrays backlogs as a mere future "scenario," Rule at 48,816, 48,818, but in reality, processing delays remain significant. DHS's most recent data show that more than 165,000 EAD renewal applications have been pending for over 180 days, confirming that lapses in authorization remain a present problem, not a hypothetical future "scenario."[14] Only months ago, DHS found that persistent adjudication delays required a permanent 540-day extension. 2024 Final Rule at 101,210–12. The Rule offers no new evidence that would alter the agency's recent conclusion. Furthermore, DHS, in an earlier prior rule, emphasized that the automatic EAD extension would "allow the movement of resources" in situations where the agency faced higher than expected filing volumes. *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, 81 Fed. Reg., 82,39882, 82,407 (Nov. 18, 2016) ("2016 Final Rule"). In this Rule, the agency fails to meaningfully discuss how the agency plans to address current and future EAD processing backlogs as it removes this critical agency tool.

For example, multiple CGRS clients' renewal EAD applications, filed pursuant to 8 CFR 274a.12(c)(8), were recently approved after pending for over 200 days at USCIS. Another client's renewal EAD was recently approved after pending for over 180 days. These clients benefited from the automatic 540-day extension of the validity period of their EADs, avoiding disruption to their ability to legally work that would have resulted from USCIS

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[12] 6 U.S.C. § 111(b)(1)(F).

[13] *See FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).

[14] *See* U.S. Citizenship & Immigr. Servs., *I-765, Application for Employment Authorization*, *Counts of Pending Petitions by Days Pending For All Eligibility Categories and (c)(8) Pending Asylum Category as of June 30, 2025* (Fiscal Year 2025, Quarter 3), https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data.

backlogs and inability to process EAD applications within 180 days in the absence of the automatic extension. These clients' experiences demonstrate the inadequacy of DHS' backlog reduction plan, especially given that their renewal EAD applications were pending during a time when the measures touted in the Rule as intended to reduce the backlog were in place.

4. The Rule ignores USCIS staffing reductions

The Rule ignores the impact of DHS's recent and planned future reductions in the USCIS workforce. The preamble emphasizes the agency's efforts to free up adjudicative resources and acknowledges that diverting officers who adjudicate EAD applications to other assignments "significantly strained operational resources for renewal EAD adjudications, resulting in increased processing times." Rule at 48,806, n. 74. Yet the Rule inexplicably fails to consider the impact of DHS's own actions to reduce the USCIS workforce since January 2025. In April, nearly 20,000 USCIS staff—about 80 percent of the workforce—received communications urging them to end their employment with USCIS.[15] The Rule does not explain how ongoing or planned USCIS staffing cuts affect the adjudicative resources available to process renewal EAD applications or how it accounted for these cuts in its planning to reduce backlogs.

5. DHS's reliance on "proper planning" by applicants is implausible and contrary to evidence

The Rule's assertion that renewal applicants' "proper planning" could avoid lapses is false and ignores operational realities. Both in its 2024 Final Rule and this Rule, DHS acknowledges that USCIS's backlogs and resulting lapses in employment authorization are not the fault of EAD renewal applicants. *See* 2024 Final Rule at 101,209; Rule at 48,817. Yet the Rule repeatedly and implausibly states that "proper planning" by renewal applicants could avoid gaps in employment authorization. Rule at 48,819–10, 48,819.

If "proper planning" means filing more than six months early, then DHS ignores that although USCIS may accept EAD renewals filed more than 180 days before expiration, the agency issues overlapping—not consecutive—validity periods, effectively cutting into the card's usable time and forcing applicants into an ever-earlier renewal cycle. The Rule fails to acknowledge this problem or propose a workable alternative of issuing consecutive validity periods for very early-filed renewal applications. Moreover, EAD renewal applicants cannot "properly plan" for every unforeseen circumstance that may affect USCIS's processing times. Indeed, the 2016 and 2024 Final Rules were issued for the explicit purpose of addressing unforeseen circumstances that neither the agency nor applicants could reasonably anticipate. 2016 Final Rule at 82,407; 2024 Final Rule at 101,210.

For example, a CGRS client filed an EAD renewal application pursuant to 8 CFR 274a.12(c)(8) six months prior to expiration. During the pendency of the renewal application, which

[15] Nicolae Butler, "USCIS Staff Cuts Threaten to Worsen Immigration Backlogs," MIGRANT INSIDER, Apr. 16, 2025.

ultimately lasted 439 days before it was approved, DHS issued its Temporary Final Rule, *Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants*, 87 Fed.Reg. 26,614 (May 4, 2022) ("2022 TFR"). The 2022 TFR increased the automatic extension period from 180 days to 540 days. Although the client, who had engaged in proper planning by timely filing the renewal application, experienced a gap of about 1 month in the validity of their EAD, the issuance of the 2022 TFR enabled them to avoid a much longer gap that would have resulted in the absence of the increase in the automatic extension period.

Two other CGRS clients' proper planning through timely filing illustrates the problem of cutting the usable time of renewal EADs, which DHS fails to properly consider in the Rule. These clients' EAD renewal applications were recently approved under 8 CFR 274a.12(c)(8). They experienced overlaps of 13 and 16 days in the validity periods of their respective EADs, a valuable loss of time these clients were made to endure through no fault of their own. This lost time will likely be compounded over the extended processing time for asylum claims, as applicants will need to repeatedly renew their EADs on an ever-shortening timeline. Furthermore, this effectively raises the EAD fee, since applicants are not getting the full period of work authorization that they are paying for.

These examples demonstrate the Rule's reliance on proper planning by applicants is implausible and contrary to evidence.

B. DHS has failed to examine relevant data

The Rule ignores the reality of continued demand from high numbers of noncitizens for work authorization and instead rests on assumptions that are plainly incorrect. DHS is wrong to "expect[]" that EAD renewal filings will "substantially decline" simply because this Administration attempted to terminate the Cuban, Haitian, Nicaraguan, and Venezuelan ("CHNV") parole programs and several countries' TPS designations. *Cf.* Rule at 48,809. Many people who first came through CHNV and similar parole programs, or who previously had TPS, have now applied for asylum or other protections that still require EAD renewals. These applications are not going away, they are simply moving into different categories.

Additionally, the termination of the CHNV parole programs and the TPS designations have all been challenged in court and none of those lawsuits have reached final judgment. If these terminations are reversed, parolees and TPS beneficiaries will continue applying for EAD renewals. Accordingly, DHS must plan for continued high renewal volumes, not pretend they will disappear.

The Rule provides no economic impact analysis and does not reconcile its current position with DHS's recent determination that automatic extensions yield substantial economic benefits. Despite having engaged in economic analysis less than a year ago on this same issue, the Rule asserts DHS "cannot quantify" the economic impacts of eliminating automatic EAD extensions—even as the agency bypasses notice-and-comment, which

would have produced relevant data.[16] DHS likewise ignores its own recent economic analysis showing billions of dollars in economic benefits from automatic extensions, including approximately $10 billion in stabilized earnings, $3.5 billion in employer savings, and $1.1 billion in tax revenue. 2024 Final Rule at 101,210–12.

The Rule offers no updated or contrary economic analysis and instead relies on speculative concerns. As DHS acknowledges, foreign-born workers constitute roughly 20% of the U.S. civilian workforce. Rule at 48,815. By DHS's own logic, eliminating automatic extensions does not simply affect individual households or hypothetical outflows abroad, it disrupts up to one-fifth of the U.S. labor force, and the U.S. employers, tax revenues, and economic activity tied to that workforce. The reality, which DHS recently recognized in the 2024 Final Rule but ignores now, is that eliminating automatic extensions risks widespread workforce destabilizations, higher employer turnover costs, and reduced tax revenue.

In short, the Rule abandons DHS's statutory duty to safeguard U.S. economic security, ignores important aspects of the agency's ongoing backlogs that necessitate automatic extensions, and disregards DHS's own recent evidence. The agency cannot lawfully reverse its position without justification. The Rule should be withdrawn.

IV. THE RULE IGNORES SIGNIFICANT RELIANCE INTERESTS

The Rule also disregards the significant reliance interests that DHS itself reaffirmed less than a year ago when it issued a permanent 540-day automatic extension, and which have existed since the agency's issuance of the 2016 Final Rule. For nearly a decade, USCIS has automatically provided an extension of some length to some groups of workers with expiring EADs. *See* 2016 Final Rule at 82,455. In the 2024 Final Rule, DHS invited stakeholders to rely on a permanent 540-day extension and explicitly sought comment on making the extension permanent to provide regulatory certainty and workforce stability. 2024 Final Rule at 101,230. Employers and workers reasonably structured hiring, staffing, payroll planning, and employee retention around that assurance.

The Rule will exacerbate asylum seekers' already economically and socially vulnerable situations. They are not entitled to most forms of government assistance and social welfare benefits and can support themselves and their families only by working, which requires steady and reliable access to documentation proving they are legally authorized to do so. Asylum seekers have relied on the 540-day automatic extension to ensure their ability to legally work does not become jeopardized by bureaucratic delays in processing renewal EAD applications. By disrupting access to documentation asylum seekers have been using to demonstrate their eligibility to work while their cases remain pending, the Rule puts them at greater risk of hunger, homelessness, and potentially abusive living situations, as well as trafficking and other coercive employment practices.

[16] *See* 5 U.S.C. §§ 553(b)–(c).

Furthermore, noncitizens, including asylum seekers, rely on valid EADs to access other essential documents like driver licenses.[17] Disrupting the validity of their EADs while renewal applications are pending will have compounding effects such as risking their ability to drive and to meet other critical needs for themselves and their familes. Access to reliable transportation, for example, is also essential for the safety of those at risk of gender-based violence.

DHS cannot now abruptly withdraw the permanent 540-day automatic extension without addressing these significant reliance interests. Doing so violates core administrative law principles.[18] In short, DHS invited refugees, workers, employers, families, schools, service providers, and communities to rely on regulatory stability, then pulled the rug out from under them without explanation. DHS failed to properly consider these significant reliance interests when issuing the Rule.

V. THE RULE FAILS TO CONSIDER RESPONSIBLE ALTERNATIVES

DHS fails to meaningfully consider responsible, less disruptive alternatives, in violation of the APA. An agency has a duty to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of significant and viable alternatives.[19]

A. Consecutive EADs

For instance, DHS claims that "proper planning" by renewal applicants could ensure no lapses in work authorization, yet this fails to recognize that DHS does not issue consecutive EADs. When individuals file well in advance of expiration, USCIS routinely issues overlapping validity periods rather than tacking the new approval onto the end of the existing authorization. As a result, early filers lose usable work-authorization time, forcing them into an ever-accelerating renewal cycle where they must apply earlier and earlier at significant personal and financial cost merely to maintain continuous work authorization. Filing fees, legal fees, time off work to prepare filings, and the emotional and economic strain of constant renewal planning make this approach untenable.

As discussed in section III.A.4. above, CGRS clients whose timely filed EAD renewal applications were recently approved under 8 CFR 274a.12(c)(8) experienced overlaps in the validity periods of their respective EADs, a valuable loss of time these clients were made to endure through no fault of their own.

If DHS truly believed early filing was the solution, it was required to consider—and explain why it rejected—the obvious alternative of issuing consecutive EAD validity periods so that applicants could file early without losing work authorization time and money. This

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[17] *See, e.g.*, Texas Department of Public Safety, Driver license/identification card and REAL ID Checklist, https://www.dps.texas.gov/apps/DriverLicense/RealID/ (accessed Nov. 19, 2025).
[18] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (agency must meaningfully consider reliance interests when abandoning prior policy).
[19] *See City of Brookings Mun. Telephone Co. v. F.C.C.,* 822 F.2d 1153, 1169 (D.C. Cir. 1987).

straightforward fix would allow individuals to apply far in advance, provide USCIS a longer adjudication window, and preserve the full period of authorized employment. DHS's failure even to address this option underscores the inadequacy of its "proper planning" rationale and confirms that the agency did not meaningfully consider reasonable, less disruptive alternatives.

B. Concurrent vetting

Nor does DHS explain why it cannot simply continue to conduct vetting during the renewal process and deny renewal of employment authorization if "potential hits of derogatory information" arise—a process it already uses. Rule at 48,804 ("If the application is denied, the automatically extended employment authorization and/or EAD generally is terminated on the day of the denial."); *id.* at 48,806, 48,808–10 (citing concerns about "potential hits of derogatory information"). With or without the automatic extension, the individual remains in the United States; the only question is whether they are forced out of lawful employment while being vetted. In other words, DHS already has a system that protects security while letting people keep working, and it has not explained why it cannot keep using it.

C. Secure paper

DHS's concern that its own receipt notices are printed on "non-secure" or "plain" paper ignores an obvious solution: printing the extension notices on secure paper. *See* Rule at 48,809–10, 48,817 (concerns about automatic extension being memorialized on "non-secure" paper). Rejecting straightforward, commonsense solutions in favor of a rule that causes sweeping economic harm and predictable worker displacement is the definition of arbitrary and capricious decisionmaking.

VI. DHS'S USE OF AN INTERIM FINAL RULE IS UNLAWFUL

DHS made the Rule 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.[20] 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."[21] 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, along with stating it is "self-evident" that more workers would "rush" to apply for EAD renewals before the rule took effect. Rule at 48,813. Again, DHS has not provided evidence of any security risks caused by

[20] *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) (citation omitted).
[21] 5 U.S.C. § 553(b)(3)(B).

automatic extensions.[22] DHS therefore cannot satisfy the good cause exception to avoid notice-and-comment rulemaking.

Second, the Rule improperly relies on the exception for normal rulemaking involving the "foreign affairs function of the United States."[23] This exception, too, comes with a "high bar."[24] 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."[25] 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. Rule at 48,814.

VII. CONCLUSION

For all of these reasons, DHS should rescind the Rule in its entirety. The Rule contradicts DHS's statutory mandate, its own 2016 and 2024 Final Rules, and the factual and economic record. It rests on speculation, ignores operational realities, and will cause predictable, major harm to refugees, workers, families, employers, and the broader economy—all due to government processing delays.

Thank you for the opportunity to submit comments on the Rule. Should you have any questions, please contact Matthew Joseph at josephmatt@uclawsf.edu.

Sincerely,

Matthew Joseph
Senior Policy Counsel

[22] *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).
[23] 5 U.S.C. § 553(a)(1).
[24] *Id.* at 55.
[25] *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 202 (2d Cir. 2010).