

October 9, 2026

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

Management Directorate
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: CIS No. 2853-26; DHS Docket No. USCIS-2026-0232 (RIN 1615-AD19)
Mandatory Electronic Filing (e-Filing) Interim Final Rule

To Whom It May Concern:

The [Center for Gender & Refugee Studies](#) ("CGRS") submits this comment opposing in the strongest possible terms the Interim Final Rule *Mandatory Electronic Filing (e-Filing)*, 91 Fed. Reg. 51,924 (Aug. 11, 2026) ("Rule"). The Rule is unlawful under the Administrative Procedure Act ("APA") because it was issued without observance of procedure required by law and is arbitrary and capricious.

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 Musalo¹ 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 support materials, maintain an unsurpassed database of asylum

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., *Immigration Equality, et al. v. Mullin, et al.*, No. 1:26-cv-02921 (D.D.C. filed Aug. 19, 2026) (Challenging DHS IFR *Affirmative Asylum Referrals Without Interview*, 91 Fed. Reg. 47,101 (July 28, 2026).; *U.T. v. Blanche*, 2026 WL 2824333 (D.D.C. Sept. 21, 2026) (challenging rule providing the structure for asylum cooperative agreements, which enable the removal of asylum seekers to designated countries without an opportunity to pursue their claims in the United States; class certification granted); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81 (D.C. Cir. 2026), *cert. pending*, No. 26-239 (filed Aug. 24, 2026) (challenging Proclamation 10888 and related guidance suspending processing of asylum seekers at the southern border who enter without inspection) (“RAICES”); *E.Q. v. DHS*, 835 F.Supp.3d 221 (Apr. 8, 2026) (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; motion to dismiss denied in part); *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’ cross-motion for summary judgment in challenge to “Securing the Border” rule), appeal docketed, No. 25-5313 (D.C. Cir., Sept. 2, 2025); *Al Otro Lado and Haitian Bridge Alliance v. Trump*, 2026 WL 897318 (S.D. Cal. Mar. 30, 2026) (challenging Proclamation 10888 and related guidance suspending entry of asylum seekers at ports along the southern border and cancelling scheduled CBP One appointments; class certification granted); *East Bay Sanctuary Covenant v. Trump*, 2026 WL 1256873 (N.D. Cal. May 7, 2026) (reaffirming grant of summary judgment to plaintiffs in challenge to “Circumvention of Lawful Pathways” rule), appeal docketed, No. 26-4982 (9th Cir., Aug. 4, 2026); *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); and *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966 (N.D. Cal. 2021) (preliminarily enjoining the “Global Asylum” rule).

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

We have particular subject matter expertise in the filing of immigration benefit requests before U.S. Citizenship and Immigration Services ("USCIS"), particularly those related to asylum and parole, having successfully represented many clients before the agency and legacy INS since our inception. In addition to our own docket of cases before USCIS, CGRS has provided technical assistance in over 17,000 affirmative asylum cases. We provide training and mentorship on practice before USCIS. Thousands of advocates have attended our trainings on affirmative asylum, as well as the other trainings that CGRS provides to attorneys across the country each year, all of whom are representing asylum seekers at various stages of the legal process and therefore must be kept fully aware of Department of Homeland Security ("DHS" or "the Department") policies and practices. CGRS also produces resources for *pro se* asylum seekers and is very familiar with the numerous hurdles they face in attempting to understand the asylum system and present their cases.

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.

⁴ See, e.g., the [Welcome With Dignity](#) and [No Turning Back](#) campaigns.

⁵ See, e.g., 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); and ["Manifesting" Fear at the Border: Lessons from Title 42 Expulsions](#) (2024).

II. THE RULE IS UNLAWFUL UNDER THE APA BECAUSE IT WAS ISSUED WITHOUT OBSERVANCE OF PROCEDURE REQUIRED BY LAW

Agency actions taken without observance of procedure required by law are unlawful and must be set aside.⁶ The APA generally requires agencies to publish notices of proposed rulemaking in the Federal Register; provide interested persons an opportunity to participate in the rulemaking by submitting written data, views, or arguments; and to consider relevant matters presented.⁷ Here, DHS published the Rule as an interim final rule, effective upon publication, without issuing a notice of proposed rulemaking.

DHS asserts that the Rule is exempt from notice-and-comment rulemaking and delayed effective date⁸ requirements under the APA, because it is a rule of agency organization, procedure, or practice. Rule at 51,948. However, the Rule does not meet the requirements of this exemption and thus is subject to the APA's notice-and-comment requirements as a substantive rule. DHS alternately asserts, but fails to establish, that it has good cause for not delaying the Rule's effective date. Rule at 51,948.

Because DHS failed to issue a notice of proposed rulemaking and failed to establish an exception to the APA's notice-and-comment and delayed effective date requirements, the Rule was issued without observance of procedure required by law.

A. The Rule is Not a Procedural Rule

A matter relating to agency organization, procedure, or practice ("procedural rule") is excepted from the APA's notice-and-comment requirements.⁹ The APA's general requirement that agencies publish substantive rules at least 30 days before their effective date does not apply to procedural rules.¹⁰ A procedural rule does not itself alter the rights and interests of parties (that is, does not impose new substantive burdens), and the exception for procedural rules must be construed narrowly.¹¹

⁶ 5 U.S.C. § 706(2)(D).

⁷ 5 U.S.C. § 553(b) and (c).

⁸ 5 U.S.C. § 553(d).

⁹ 5 U.S.C. § 553(b)(B).

¹⁰ 5 U.S.C. § 553(d).

¹¹ Elec. Privacy Info. Ctr. v. DHS, 653 F.3d 1, 5-6 (D.C. Cir. 2011) (internal citation omitted).

The Rule substantially alters the rights and interests of people seeking asylum before USCIS. The Rule's impacts as described in detail, *infra*, will force them to bear new substantive burdens. Therefore, the Rule does not qualify as a procedural rule.

B. DHS Has Not Established Good Cause for Failing to Delay the Rule's Effective Date

The Rule also improperly relies on the good cause exception in declining to delay the Rule's effective date by at least 30 days from publication.¹² DHS asserts it has established good cause in light of the Rule's requirement that USCIS observe at least a 60-day delay before requiring e-Filing for any form and the need for its new waiver form to be approved by OMB. Rule at 51,948. However, the publication of notice on USCIS's website that a form will be subject to the Rule's mandatory e-Filing requirement does not cure the defect caused by DHS's failure to delay the effective date of the Rule itself. DHS has indicated it will accept comments on this Rule submitted by October 13, 2026, 60 days after the Rule took effect. Rule at 51,924.

However, by refusing to delay the Rule's effective date, DHS permits USCIS to publish notices of mandatory e-Filing prior to considering comments related to particular form and benefit types. The Rule does not describe whether or how comments received on this rulemaking will impact DHS's decision to mandate e-filing for particular form types. DHS does not acknowledge these shortcomings or attempt to explain why it has good cause for allowing USCIS to designate forms for mandatory e-Filing, irrespective of any objections that might be raised in public comments.

III. THE RULE IS UNLAWFUL UNDER THE APA BECAUSE IT IS ARBITRARY AND CAPRICIOUS

The Rule is unlawful because it is arbitrary and capricious under the APA.¹³ DHS has entirely failed to consider important aspects of the problem and failed to articulate satisfactory explanations or sufficiently accurate, reasoned, or detailed justifications for the Rule's changes to existing policies.¹⁴

¹² 5 U.S.C. § 553(d)(3).

¹³ 5 U.S.C. § 706(2)(A).

¹⁴ *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

The Rule is also arbitrary and capricious because DHS has failed 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.”¹⁵ The agency also has a duty to consider responsible alternatives to its chosen policy and give an explanation for its rejection of such alternatives.¹⁶ DHS breached that duty here.

Furthermore, an agency enacting a policy change must not only acknowledge the change but is also required to provide a reasoned explanation for its action, and, when the prior policy has engendered serious reliance interests that must be taken into account, must provide a more detailed justification for the change than what would suffice for a new policy.¹⁷ DHS has also failed to meet those requirements. Because of DHS’s numerous errors in promulgating the Rule, discussed below, the Rule must be set aside under the APA as arbitrary and capricious.

A. DHS Has Failed to Consider Important Aspects of the Problem

1. The Rule Creates New Obstacles That Will Deny People Fleeing Persecution Access to the Asylum System

As an overarching observation, we note the Rule’s repeated emphasis on cost and efficiency necessarily comes at the expense of a key safeguard critical to avoiding the risk of forced return to danger: the ability to file a complete asylum application. The Department acknowledges that “despite the prevalence of the internet, there are still requestors who do not use the internet, whether because of expense, interest, availability, or digital literacy,” but concludes that the Rule’s benefits “justify the costs this limited population may incur.” Rule at 51,993. At no point does the Rule acknowledge or discuss the potential impact on people seeking asylum relief or related protection, including their return to persecution or torture. Nor does it provide any justification, reasonable or otherwise, for stripping this population of its already limited ability to access the asylum system.

As discussed below, the Rule will prevent many people from filing complete applications for asylum, which will result in their removal to persecution and

omitted), *withdrawn by* Texas v. United States EPA, 2026 WL 687198 (Mar. 9, 2026), *substituted, reinstated by, in part, and remanded by* Texas v. United States EPA, 026 WL 710552 (Mar. 13, 2026).

¹⁵ See *State Farm*, 463 U.S. at 43 (1983) (internal quotation omitted).

¹⁶ See *City of Brookings Mun. Telephone Co. v. F.C.C.*, 822 F.2d 1153, 1169 (D.C. Cir. 1987).

¹⁷ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

torture in violation of domestic asylum law,¹⁸ the 1967 Protocol Relating to the Status of Refugees,¹⁹ and the Convention Against Torture (CAT).²⁰

a. The Rule Will Prevent *Pro Se* Asylum Seekers from Filing Asylum Applications

For numerous reasons, many asylum seekers are unable to obtain counsel to assist them in navigating an area of law that courts have called “labyrinthine,” “second only to the Internal Revenue Code in complexity,” and “a maze of hyper-technical statutes and regulations that engender...confusion for the Government and petitioners alike.”²¹ For these *pro se* individuals, who “may not possess the legal knowledge to fully appreciate which facts are relevant,”²² trying to understand and respond to narrative questions relating to the elements of asylum is difficult enough. Adding the requirement that they do so through an online portal, will make it next to impossible for many of those individuals who not only lack the English-language competency but also do not possess the technological resources and sophistication necessary to complete the online form or submit supporting evidence.

Legal representation is one of, if not the, single biggest factor in whether an applicant will be successful in their claim.²³ In fiscal year 2025, only 19% of applicants without an attorney received asylum or other relief.²⁴ In contrast, those who were represented were more than three times as likely to win their cases than their unrepresented counterparts, with a grant rate of 53%.²⁵ But many people fleeing persecution are unable to retain counsel due to temporal and monetary

¹⁸ INA § 208, 8 U.S.C. § 1158.

¹⁹ 606 U.N.T.S. 267 (entry into force 4 Oct. 1967).

²⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 100-20, 1465 U.N.T.S. 85.

²¹ See *Filja v. Gonzales*, 447 F.3d 241, 253 (3d Cir. 2006); *Baltazar-Alcazar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004) (internal quotation marks omitted); *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003).

²² *Jacinto v. INS*, 208 F.3d 725, 733 (9th Cir. 2000).

²³ M.E. Hammond, [Asylum Statistics USA: Approval Rates by States & Top Countries](#), DocketWise Blog (Aug. 21, 2026); see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-940, [U.S. ASYLUM SYSTEM: SIGNIFICANT VARIATION EXISTED IN ASYLUM OUTCOMES ACROSS IMMIGRATION COURTS AND JUDGES](#) (2008), at 30 (“Representation generally doubled the likelihood of affirmative and defensive cases being granted asylum, after we controlled for the effects of the immigration court the case was heard in; the applicant’s nationality . . .”).

²⁴ M.E. Hammond, *supra* n. 23.

²⁵ *Id.*

restraints. Furthermore, because asylum applications must be filed within one year of arrival, asylum seekers have limited time to find available legal representation.

Moreover, because asylum seekers cannot legally work in the United States until *after* they have filed their asylum application²⁶ and may have fled their countries with nothing or expended all their money to get to safety, they often are unable to afford to hire an attorney.²⁷ As the Department is aware,²⁸ many applicants also fall victim to *notario* fraud,²⁹ an issue that will doubtless be exacerbated if asylum seekers must rely on others for access to technological devices and assistance to plead for protection.

These realities all counsel against forcing asylum seekers to e-file, rather than leaving them with the option of either e-filing or paper filing their applications.

b. Many Asylum Seekers Do Not Have Access to the Hardware and Technology Necessary to E-File Their Asylum Applications

The Rule mistakenly focuses on the population of the United States writ large, failing to take into account disparities in resources available to asylum seekers who often lack the capacity to acquire and maintain the technological hardware and software they would need to properly complete an asylum application, including consistent internet access, computers, scanners, and pdf software. Further, asylum seekers' inability to legally work until after they file their applications also contributes to their more limited ability to access reliable technology resources to file their applications in the first place.

The suggestion that an individual could successfully and substantively fill out a Form I-589 asylum application, including all of its lengthy narrative responses, on a smartphone keypad is at odds with reality. Rule at 51,941. DHS's prior experimentation with the CBP One mobile application ("CBP One") is instructive. That application had numerous prompted questions relating to biographical data, much like pages 1 through 4 of the Form I-589 asylum application. Yet for many asylum seekers, CBP One proved inaccessible due, among other factors, to a lack of reliable, fast internet, phones with outdated operating systems, or because of

²⁶ 8 CFR 208.7(a)(v), 274a.12(c)(8).

²⁷ [The Barriers to Legal Representation for Asylum Seekers](#), Univ. of Denver Ctr. for Immigration Pol'y & Rsch. (2026).

²⁸ [USCIS: Avoid Scams](#), updated 08/04/2026.

²⁹ [The Barriers to Legal Representation for Asylum Seekers](#), *supra* n. 27.

language or literacy barriers.³⁰ The limited number of individuals and families who were able to access CBP One encountered persistent problems when they attempted to navigate the app, including the app freezing, kicking them off, not recognizing their faces, misidentifying their location, or failing to provide a confirmation code, thereby forcing them to begin all over again.³¹

The 12-page Form I-589 asylum application the Rule would force asylum seekers to fill out on mobile phones is even more onerous by comparison. In addition to its four pages of biographical questions, the Form I-589 includes an additional five pages of questions requiring detailed narrative responses regarding everything from past and feared future persecution and torture, to government action or inaction in the applicant's country of origin, potential bars to asylum, and the underlying legal theories of the claim.³²

The alleged availability of internet and computers at public libraries does not solve this issue. Rule at 51,944. First, libraries have a limited number of computers and thus typically have time limits for how long one can spend working on them.³³ Asylum applications alone can take a long time to complete, as does putting together an entire packet of evidence supporting the claim. Even the most expert immigration attorneys spend hours and hours, often over a period of weeks or months, to put together an asylum application that comports with the extremely complicated, ever-changing, interpretations of many aspects of asylum law, as well as the onerous requirements for credibility and corroboration.³⁴

Given the extremely time-intensive nature of preparing an asylum application, it is not realistic to think that an asylum applicant could file a complete application setting forth their claims in the library setting. Second, even when libraries do provide access to scanning and printing, many charge for those services, which can

³⁰ See CGRS Comment, Circumvention of Lawful Pathways (CLP) Final Rule, 88 Fed. Reg. 31314, at 33 (Jun. 14, 2023), <https://www.regulations.gov/comment/USCIS-2022-0016-51965>.

³¹ *Id.* at 34-35.

³² See [USCIS Form I-589](#).

³³ See, e.g., San Francisco Public Library, [Internet and Computer Use Rules and Policies](#). Asylum applicants living outside major cities may face increased barriers to e-filing. A 2017 study shows over one third of libraries are in rural areas, which have the fewest available computers. Brian Real, Ph.D. & R. Norman Rose, [Rural Libraries in the United States](#), Am. Lib. Ass'n 1, 5 (2017) ("Finally, rural libraries offer the fewest public access computers overall (8.8, compared to an average of 18.8 for all libraries.).").

³⁴ We note that the asylum standard does not and should not require such an excessive and unrealistic level of detail and documentation/corroboration, but in practice, this is what is required.

involve lengthy and confusing instructions that, as discussed in Section III.A.1.b, *infra*, asylum seekers will have difficulty navigating. Third, most asylum seekers need to verbally work with an interpreter to complete the asylum application. Libraries famously do not permit people to talk a lot because it can be disruptive to other patrons.³⁵ As such, it would be impossible for an asylum seeker to work with an interpreter to fill out the lengthy and involved responses.

Moreover, the Rule does not consider the complete and utter lack of privacy in the *public* library and potential dangers of disclosure of sensitive and confidential information including personal identifying information and information about the asylum claim itself. Nor does it contend with the fact that asylum seekers are almost invariably survivors of trauma, often including psychological, physical, and sexual abuse. Sometimes that abuse was at the hands of a government or a large criminal group. A recent study shows that this population is often afraid to use the internet for fear of being surveilled.³⁶ It is also well documented that trauma can impede disclosure of those past harms under the best of circumstances. Trauma survivors commonly use avoidance as a coping mechanism³⁷ and may be reluctant to discuss details of their abuse because reliving it is painful or recounting the trauma triggers shame.³⁸

The lack of privacy inherent in the context of a public library, public computer console, and unsecured internet will undoubtedly have a chilling effect on asylum seekers' ability to disclose their histories of trauma and effectively present their claims in their asylum applications. DHS itself has recognized this dynamic by promulgating regulations requiring that asylum interviews, credible fear interviews,

³⁵ See, e.g., San Francisco Public Library, [Internet and Computer Use Rules and Policies](#).

³⁶ Bhandari, et al., *Multi-stakeholder Perspectives on Digital Tools for U.S. Asylum Applicants Seeking Healthcare and Legal Information*, Ass'n for Comput. Machinery 529, 529:4, 9–10 (2022), <https://dl.acm.org/doi/pdf/10.1145/3555642>.

³⁷ See [Treatment Improvement Protocol 57, Trauma-Informed Care in Behavioral Health Services](#), U.S. Dep't of Health and Human Servs., Substance Abuse and Mental Health Services Administration 61, 73 (2014).

³⁸ See Epstein & Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. Pa. L. Rev. 399, 410–11 (2019); Gangsei & Deutsch, *Psychological evaluation of asylum seekers as a therapeutic process*, 17 Torture 79, 80 (2007) ("[S]urvivors frequently bear the burden of guilt and shame, which makes it too painful and humiliating to tell the outside world about the torture.").

and reasonable fear interviews take place “separate and apart from the general public.”³⁹

c. The Rule Will Foreclose Asylum for People Who Lack Digital Literacy or Technological Sophistication

The Rule’s justification that mobile devices are capable of “running digital applications, taking photographs, sending and receiving digital files and messages, screenshotting or copying digital documents, and scanning paper documents,” fails entirely to consider whether applicants, particularly those without counsel, will understand how to do any of those things. Rule at 51,943. The Rule’s reliance on the “pervasiveness of these handheld technologies . . . among working-age adults” or youth once again focuses on people in the United States broadly and fails to disaggregate the relevant population here: newly arrived noncitizens, many of whom have fled their countries of origin, have been trafficked or suffered other atrocities before or during their journey, do not speak, read, or write English, and have no idea how to navigate the complex digital landscapes and technologies the Rule relies upon. The Rule’s emphasis on the prevalence of “internet *usage*,” Rule at 51,942 (emphasis added), is similarly misplaced. Ability to use the internet says *nothing* about technological sophistication or the ability to navigate lengthy online forms without leaving out critical information or making substantive errors.

In CGRS’s experience, our clients have been challenged to set up USCIS online accounts without assistance. Our staff consistently must assist them in registering and then responding or e-signing much simpler applications, such as work authorization or parole applications. Even navigating the annual asylum fee portal⁴⁰ has proved challenging for our clients, and due to the harsh consequences of failing to timely pay those fees, such as abandonment of their asylum application, our staff routinely assists in that process. Following the CBP One debacle, *see supra* Section III, DHS should be acutely aware of the barriers associated with requiring new arrivals and people fleeing persecution from all over the globe to use unfamiliar technologies and online programs, to access the opportunity to even apply for asylum. Yet the Rule does not acknowledge those lessons, let alone provide a reasoned explanation for why this mandatory e-filing program will have different results.

³⁹ 8 CFR 208.9(b), 208.30(d), and 208.31(c).

⁴⁰ [USCIS: Annual Asylum Fee portal](#).

The Rule's explanation that overseas visa applicants, and employment-based applications are filed online, does nothing to address the complicating factors facing those seeking asylum. Rule at 51,935-36. In CGRS's experience, people seeking family- or employment-based visas overwhelmingly have relatives in the United States, counsel, or U.S.-based employers or schools to assist them. The same is not true for asylum seekers, who are woefully under-counseled. Moreover, unlike asylum applications, those applications do not require requestors to fill out lengthy narrative responses detailing their most traumatic life events, nor does their denial bar the applicants from applying again. The all-or-nothing nature of asylum applications makes it critical that people seeking protection be given the option of using the filing method—paper or e-filing—that best enables them to file a complete application that lays out all of the bases for their relief and how their claim meets the nuanced elements of asylum.

The Department further contends that requestors can avail themselves of assistance from public library staff who will assist them in filling out government forms. Rule at 51,994. But again, this ignores the confidential nature of asylum claims and the difficulties people seeking asylum have in discussing their past traumas with anyone, let alone strangers in a public place.⁴¹ Librarians are not trained in trauma-informed interviewing techniques, much less the legal requirements for asylum. They also have their primary job responsibilities to fulfill, so any assistance they could potentially provide would be very limited.

Nor does the Rule acknowledge that most libraries do not provide interpretation services, necessary for the vast majority of asylum seekers. The Department is well aware that very few applicants can read English with sufficient comprehension to understand the contents of the asylum application or the online instructions that will be provided to them. Fewer still have knowledge of the law detailed enough to grasp the legal significance of the facts they should include. Therefore, any meaningful opportunity to set forth their claim must afford them an opportunity to amend, correct, or supplement the asylum application and presupposes access to both competent interpretation and qualified legal counsel.

⁴¹ 8 CFR 208.6; Gangsei & Deutsch, *Psychological evaluation of asylum seekers as a therapeutic process*, 17 *Torture* 79, 80 (2007); see also Mosley, *Re-Victimization and the Asylum Process: Jimenez Ferreira v. Lynch: Re-Assessing the Weight Placed on Credible Fear Interviews in Determining Credibility*, 36 *L. & Ineq.* 315, 326-27 (2018).

The Rule will exacerbate the already disastrous effects that lack of language access, legal sophistication, and the effects of trauma on disclosure have on people's ability to set forth a complete and successful asylum claim. These harms are particularly disadvantageous to survivors of gender-based violence, gang brutality, or any other claim based on the particular social group ground, given the complicated nature of the legal standard. Yet, the Rule acknowledges none of these factors. Nor does the Rule include any mechanism that would allow people to amend, correct, or supplement the information in their e-filed Form I-589, which, given the issues discussed above, will be necessary.

2. DHS Failed to Consider How the Rule's Interaction with Other Immigration Policies and Practices Will Lead to Erroneous Denials of Asylum and Related Protection

The Rule does not consider or even mention how the limitations of online filing combined with other recent DHS regulations, DHS and Department of Justice ("DOJ") policies, and Board of Immigration Appeals ("BIA") decisions will affect people seeking asylum writ large. It only mentions the Form I-589 asylum application four times in passing, Rule at 51,946, 51,956. It fails to acknowledge the exponentially increasing hurdles to asylum access that the agencies have thrown in front of people fleeing persecution, let alone how those obstacles are further exacerbated by the imposition of the Rule. We explain four of these interlocking obstacles below.

a. Affirmative Asylum Referrals Without Interview Interim Final Rule ("Asylum Referral Rule")⁴²

Just two weeks before issuing this Rule, DHS issued a separate rule which dispensed with its longstanding policy affording affirmative asylum applicants a *right* to an asylum interview prior to immigration judge ("IJ") review ("Asylum Referral Rule").⁴³ Among other things, the new Asylum Referral Rule permits asylum officers to refer claims to the IJ based solely on review of the asylum application without ever conducting an interview.⁴⁴ In effect, the Asylum Referral Rule authorizes asylum officers to deny applicants their right to an asylum interview on

⁴² *Affirmative Asylum Referrals Without Interview*, 91 Fed. Reg. 47,101 (July 28, 2026).

⁴³ *Id.*; cf. 8 CFR 208.4(a).

⁴⁴ 91 Fed. Reg. 47,101.

the papers alone if they determine that the applicant *may* be subject to a bar to asylum or “is not eligible on the merits of the claim.”⁴⁵

The Asylum Referral Rule also upends the asylum office’s historical practice of providing an opportunity for people to submit additional supporting evidence, testimony, and arguments relevant to the merits of their claim, including whether or not they are subject to any bars, *after* the filing of the Form I-589 application.⁴⁶ Instead, asylum officers are encouraged to adjudicate claims solely on what is provided in the initial filing and information provided by the government, e.g., background checks.⁴⁷ But as discussed in Section III.A.1 *supra*, the e-filing requirement will prevent most asylum seekers from being able to present the full details of their claims, let alone any supporting documents, meaning that their written record for adjudication will be deficient.

This scenario is made even more fraught by a series of recent BIA cases, discussed in the following three subsections, which authorize rejection of cases for attempting to amend an asylum application, failure to fill out an answer to the adjudicator’s satisfaction, or a purported failure to state a *prima facie* claim under the ever-narrowing framework the BIA and Attorneys General have built over the past 21 months endorsing categorical rejection of certain types of claims.⁴⁸

Thus, when considered together with the Asylum Referral Rule and the Board’s decisions, this Rule means that those people will never have an opportunity for an asylum interview but will be shuffled directly into immigration court, thereby making the existence of the affirmative asylum process meaningless. Further, as discussed next, once these applicants find themselves before the IJ, their ill-formed applications will be scrutinized for errors or omissions that may provide grounds for the IJ to pretermite them altogether. Yet the Rule does not even mention the Asylum Referral Rule, let alone grapple with the inevitable harms that will arise from the combination of that Rule with this one.

⁴⁵ *Id.*

⁴⁶ 91 Fed. Reg. 47,111.

⁴⁷ *Id.*

⁴⁸ See, e.g., Matter of K-E-S-G-, 29 I&N Dec. 145 (BIA 2025); Matter of S-S-F-M-, 29 I&N Dec 207 (A.G. 2025); Matter of R-E-R-M- & J-D-R-M-, 29 I&N Dec. 202 (A.G. 2025); cf. Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); see also CGRS, [Trump Slams the Door on Women and Families](#) (Sept. 23, 2025); Poyer, [Asylum Just Got Harder](#), American Immigration Counsel (Aug. 6, 2025).

b. One Year Bar Application Under *Matter of M-A-F*-⁴⁹

Since 2025, DHS and DOJ have been treating amendments to asylum applications—no matter how slight—as new applications for asylum, treating the date of amendment as the filing date for the purposes of the statutory one-year filing deadline,⁵⁰ and denying claims on the basis that they were not filed within one year of arrival.⁵¹ Given the above-discussed obstacles inherent in filing a wholly complete application, it is clear that many people will not have fully addressed everything in their online filing. They will thus be faced with two bad choices: amending the application and presenting all reasonably available evidence to support their claims and facing imposition of the one-year filing deadline bar; or presenting only a portion of their claim. In either scenario, the person will face a heightened risk of removal to persecution or torture.

c. Pretermission Under *Matter of C-A-R-R*-⁵² & *Matter of H-A-A-V*-⁵³

Two other recent cases permit IJs to pretermit applications on the written record if the applicant either failed to respond to every single question on the application or failed to make a *prima facie* showing of asylum eligibility on the merits. The Board and Attorneys General have also issued numerous decisions narrowing what types of claims asylum officers and IJs can grant.⁵⁴ This means that more detailed applications and supporting evidence are necessary to avoid pretermission. But because of the onerous nature of the application and the difficulty of fully presenting the claim using a mobile phone or public device, the Rule's e-filing requirement will result in a higher number of pretermissions under both cases.

⁴⁹ 26 I&N Dec. 651 (BIA 2015).

⁵⁰ National Immigration Project, [Practice Advisory: Distinguishing Matter of M-A-F- in the Pretermission Context](#) (May 22, 2026).

⁵¹ INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B).

⁵² 29 I&N Dec. 13 (BIA 2025).

⁵³ 29 I&N Dec. 233 (BIA 2025).

⁵⁴ See, e.g., *Matter of K-E-S-G-*, 29 I&N Dec. 145 (BIA 2025); *Matter of S-S-F-M-*, 29 I&N Dec 207 (A.G. 2025); *Matter of R-E-R-M- & J-D-R-M-*, 29 I&N Dec. 202 (A.G. 2025); *Matter of D-G-E-A- & N-G-G-E-*, 29 I&N DEC. 570 (BIA 2026).

d. Adverse Credibility Determinations Under *Matter of A-Q-R-K-*

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Additionally, the Board has made it clear that IJs should penalize applicants for omissions in their initial applications.⁵⁵ Thus, if an applicant is unable due to technological limitations or environmental factors limiting their ability to recount all of the details of their case in the asylum application, they are likely to be found not credible and denied asylum, regardless of their inability to earlier present their full claim. As such, the Rule will result in removal of people with meritorious claims to danger. Again, the Rule neither acknowledges nor justifies these catastrophic consequences.

B. DHS Has Ignored Serious Reliance Interests

The Rule fails to recognize the serious reliance interests of asylum applicants in not being forcibly returned to persecution or torture. As explained in Section III.A *supra*, the Rule's e-filing requirement will prevent people fleeing persecution and torture from filing complete and legally sufficient Form I-589 asylum applications and will therefore result in pretermission of their claims without an interview or immigration court hearing. The Rule ignores these reliance interests, in violation of the APA.

C. Availability of a Waiver to the E-Filing Requirement Does Will Not Mitigate These Harms

The sole safeguard set forth in the Rule is entirely insufficient to cure the inherent defects in the e-filing process. Instead, the Rule's waiver provision imposes yet another barrier to a population that is already extremely disadvantaged. First, the waiver, like this Rule, mistakenly focuses on the ability to access the internet, but does not consider the numerous other obstacles asylum seekers face in using an online system. Rule at 51,945. For the reasons discussed above—lack of access to private technological hardware, internet and software, lack of technological sophistication, lack of language access, and lack of employment or income—most asylum seekers will be unable to comprehend what they need to prove in a waiver request or to fill out and file the request form, let alone succeed in receiving a waiver.

⁵⁵ 29 I&N Dec. 865 (BIA 2026).

⁵⁶ *Id.* at 868.

Our clients have difficulty understanding the requirements for simple fee waivers focused on finances. They cannot be reasonably expected to marshal evidence of the relative availability or unavailability of “public technology resources.” *Id.* Second, it is unlikely that these newly arrived noncitizens will understand that if the waiver is granted, they must then file their paper application within 30 days of the grant date, not the date they receive it in the mail. Rule at 51,946. Third, unlike most other applications for relief, asylum applications must be filed within one year of arrival in the United States or the application may be barred.⁵⁷ The Rule expressly prohibits concurrent filing of the waiver and the paper application, Rule at 51,946, but does not impose an adjudication deadline on USCIS. As such, the Rule may place applicants seeking a waiver of the e-filing requirement in danger of their asylum claim being time barred.

D. The Rule’s Security Justifications Are Speculative, Conclusory, and at Odds with the Overwhelming Data

The Rule gives too much weight to e-filing serving as a protective measure for immigrants vulnerable to domestic violence, trafficking, or other crimes and abuses. Rule at 51,939, 51,966. While it is true that it may be safer for some, for many others, it may make pursuing immigration relief or protection more dangerous. “According to the National Network to End Domestic Violence, 97% of U.S. domestic violence programs report that survivors have experienced abuse involving technology.”⁵⁸ This can include, for example, “monitoring phone calls, text messages, emails, or internet activity, or impersonating survivors using fake accounts.”⁵⁹ These realities not only refute the Rule’s speculation regarding safety to users, but also raise serious questions about whether or not e-filing is indeed more reliable as a security measure as the Rule claims. A better solution, not considered by the Rule, would be to continue to allow people the choice of opting-in to e-filing, for applications involving sensitive issues such as Violence Against Women Act petitions, T and U Visas, and asylum applications.

The Rule’s suggestion that mandatory e-filing is necessary for fraud prevention is also meritless. If anything, forcing people who lack access to technological hardware to use public computers and seek assistance from strangers exposes

⁵⁷ INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B).

⁵⁸ [“Domestic Violence in the Digital Age: The Rise of Tech-Enabled Abuse,”](#) *Respond Inc.*; see also, e.g., “When Technology Becomes a Weapon: The Rising Danger of Tech-Enabled Abuse,” *National Organization for Women* (Jan. 5, 2026).

⁵⁹ See “Domestic Violence in the Digital Age,” *supra* n. 58.

their personal identifying information, increasing the likelihood of identity theft and other forms of fraud. To the extent the Department seeks to ferret out fraudulent applications, Rule at 51,938, asylum interviews where the asylum officer can determine if there are any reasonable explanations for discrepancies or “boiler plate” language, not electronic scanning, are the appropriate mechanism for determining whether an application may have been filed fraudulently.

E. DHS Failed to Consider Alternatives That Could Reduce Costs Without Closing the Door on Asylum Seekers

DHS failed 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.⁶⁰

The Rule acknowledges that the vast majority of relief requestors file paper applications but claims that efficiency and costs such as postage for notices or shipment of paper files sufficiently justify the e-filing requirement across the board. Rule at 51,930-31, 51,943. But there are several less disruptive ways to minimize costs and still preserve access to asylum that the Rule does not consider. For example, USCIS could include options for notification on the Form I-589 that applicants could check off including, for example, notification via text. The agency could also allow people to opt into an online USCIS portal that could easily be accessed by a cell phone and include their online account number in their paper filing so that they can access all notices online. That way, USCIS could send any communications, including receipt notices or requests for evidence through that portal and use a two-part verification to maintain security. While this will still be burdensome to some people seeking asylum, it will not interfere with their ability to submit a procedurally and substantively complete asylum application in the way that mandatory e-filing of the full Form I-589 will.⁶¹

The Department also complains that it incurs shipping costs and risks loss of applications and documents by mailing paper A-Files from place to place. Rule at 51,936. But these concerns could easily be mitigated if the Department would simply scan the paper applications and supporting documents as soon as it receives them—capabilities it clearly has. Rule at 51,937.

⁶⁰ See *City of Brookings Mun. Telephone Co. v. F.C.C.*, 822 F.2d 1153, 1169 (D.C. Cir. 1987).

⁶¹ See *supra* Sections III.A & III.B.

To the extent the Rule raises efficiency and cost issues involving rejected filings, in CGRS's experience many rejections are due to USCIS error. For example, we have had parole applications rejected for failure to include a fee or a signature, despite there being no such deficiencies. We have also experienced problems with USCIS's online payment portal when online payments were not recorded by USCIS. We would urge the Department to better train its staff to process both paper and online applications.

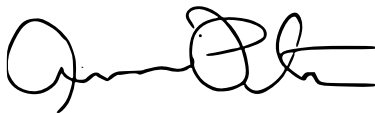
Finally, USCIS could better address concerns with efficiency and cost by simplifying its form applications generally and the Form I-589 specifically. As discussed earlier, the I-589 is an onerous form. Over the years, it has quadrupled in size ballooning from three pages to 12. Yet there is nothing to suggest that the lengthening of the form has made processing and adjudication of these applications run more smoothly. By shortening and simplifying the initial I-589 application and instructions, the agency would not only reduce the need for requests for evidence but would also make it easier for people to apply online.

IV. CONCLUSION

For all of these reasons, DHS should rescind the Rule in its entirety. The Rule was issued without observance of procedure required by law and is arbitrary and capricious. It ignores serious impacts and reliance interests, rests on speculation and conclusory analysis, and will cause predictable, major harm to refugees and other vulnerable populations—all due to DHS's desire to dispense with the affirmative asylum caseload no matter the cost.

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,

A handwritten signature in black ink, appearing to read 'Anne Peterson', with a stylized, cursive script.

Anne Peterson
Senior Counsel