Congress of the United States
Washington, DC 20515

January 13, 2020

Mr. Kenneth T. Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services, Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529

RE: Comment on Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants
DHS Docket No. USCIS-2019-0011

Dear Mr. Cuccinelli:

We, the undersigned Members of Congress, respectfully submit the following comment in opposition to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants, published November 14, 2019 (DHS Docket No. DHS-2019-0011).[1] As Members of Congress, we have a strong interest in the potential of asylum seekers to meet the labor needs of employers in our districts, and the well-being of asylum seekers who live in our congressional districts and seek to contribute to our local communities.

Currently, a person who has fled persecution in their home country and sought safety in the United States – an "asylum seeker" – may apply for an employment authorization document (EAD) that allows them to work legally.[2] However, the proposed rule would make it significantly harder for asylum seekers to obtain employment authorization or to renew their current employment authorization when it expires. We are particularly concerned with the imposition of new eligibility requirements for work authorization, and the extension of the waiting period before an asylum seeker can apply for work authorization from five months to a year after filing an asylum application.

In the NPRM, DHS acknowledges there are significant costs to moving forward with the proposed rule. DHS estimates that the changes would impact approximately 300,000 asylum seekers annually,[3] and would result in about $269.5 million to $815.9 million annually in lost wages to asylum seekers and about $41.3 million to $125 million in lost contributions to Social Security and Medicare.[4] Furthermore, the NPRM states that the lost earnings would be about

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[1] The Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants (hereinafter "NPRM").
[2] 8. C.F.R. § 274a.12(c)(8).
[3] NPRM at 62396.
[4] NPRM at 62409-Table 10. DHS calculated the lost wages to asylum seekers and lost contributions to Social Security and Medicare by analyzing the impact of only about a quarter of EAD holders that the

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$1.2 billion to $3.6 billion and the tax transfers would be about $182 million to $551 million annually.[5] These significant costs are sufficient reason for DHS to pause the rulemaking process.

But these are not the only costs that concern us, or that should be considered, as it relates to the proposed rule. The proposed rule will harm asylum seekers and their families, hurt local businesses, and put a drain on the resources of social service organizations, state and local government, and other federal agencies.[6]

Impact on Asylum Seekers and their Families

We are concerned that the proposed changes will cause hundreds of thousands of asylum seekers to wait for much longer periods of time before they can work legally and will prevent many asylum seekers from receiving work authorization at all.[7] Because of backlogs in asylum case processing, these changes would mean that many asylum applicants have to wait years before receiving a final decision on their asylum case or the ability to work lawfully.[8] Also, thousands of asylum seekers who have been legally working while their cases are pending will be unable to renew their work authorizations and will likely be forced to leave their jobs.[9]

Work authorization not only allows asylum seekers to attain self-sufficiency and support themselves and their families, but also helps asylum seekers integrate into local communities.[10] Without work authorization and the associated access to employment, asylum seekers will have difficulty obtaining drivers' licenses in many of our home states, as well as trouble obtaining banking services, adequate housing, and healthcare due to lack of identification.[11]

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agency determined would be affected (39,000 of the 153,458 EADs affected annually). As such, these calculations are based on an impact to only a quarter of EAD holders, which is likely an underestimation of the impacted population.

[5] NPRM at 62410.

[6] For an overview of the significance of work authorization for asylum seekers generally, *see*, Human Rights Watch, *At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, 2013, at 27-33 [*available at* https://www.refworld.org/docid/5285fc0c4.html] ["Human Rights Watch Report"].

[7] *See*, *See* Jack Herrera, *What Will Happen if Trump Cancels Work Permits for Asylum Seekers?,* PACIFIC STANDARD (Apr. 30 2019) [available at https://psmag.com/news/what-will-happen-if-trump-cancels-work-permits-for-asylum-seekers]; Nicole Narea, *A New Trump Administration Proposal Could Put Asylum Seekers Out of a Job*, VOX (Sept. 11, 2019), [available at_https://vox.com/policy-and-politics/2019/9/11/20853362/trump-work-permit-asylum].

[8] *See*, Marissa Esthimer, *Crisis in the Courts: Is the Backlogged U.S. Immigration Court System at its Breaking Point?* MIGRATION POLICY INSTITUTE (Oct. 3, 2019) (noting that "wait times have skyrocketed in recent years, surpassing 700 days on average that a currently open case has been pending" and that "the growing backlog and pushes to expedite decisions, combined with pre-existing disparities in asylum grant rates, could result in insufficient due process for those who need it most") [available at https://www.migrationpolicy.org/article/backlogged-us-immigration-courts-breaking-point].

[9] *Id.*

[10] *See*, Human Rights Watch Report at 12-16.

[11] *Id.* at 15 (Noting that until an asylum seeker is either granted asylum or work authorization, they are eligible for few, if any, social service benefits in the United States).

Furthermore, asylum seekers who cannot legally work will be significantly less likely to be able to afford legal counsel, and thus significantly less likely to prevail in their asylum cases. Given that asylum seekers do not currently have a right to government-funded counsel, like criminal defendants,[12] we should not take away their ability to work in order to retain needed private counsel. Access to legal counsel is critical, as we recognize that immigrants who are represented are significantly more likely than their unrepresented counterparts to obtain immigration relief, such as asylum.[13]

Impact on Local Businesses, Social Services Organizations, and Local and State Governments

We are concerned about the impact of the proposed rule on local businesses in our communities, which DHS fails to consider as part of the cost in the NPRM. In an economy with historically low unemployment, employers in many regions are looking to asylum seekers as a source of needed labor when domestic citizen workers are not available. Many business sectors rely heavily on the labor of immigrants, including asylum seekers with work authorization while their cases are pending before an immigration judge or an asylum officer.[14] These sectors range from agriculture and meatpacking to healthcare.[15]

Asylum seekers often fill positions that businesses in the United States are unable to fill otherwise. For example, asylum seekers may come with credentials that are in short supply in the U.S. workforce, or in a specific community, which benefits from the arrival of workers with specialized skills or experiences making them uniquely qualified to perform certain work. Upwardly Global, which helps immigrants and refugees to integrate into the professional American workforce, noted that "asylum seekers often occupy hard-to-fill jobs in the U.S. workforce," and that half of its program participants work in "industries with well-documented

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[12] *See* Ingrid Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 48–50 & 71 (2015) (detailing the significance of legal representation in immigration proceedings for case outcomes); New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, 33 CARDOZO L. REV. 357, 363–64 (2011) (discussing the consequences of lack of adequate legal representation in immigration cases).

[13] *See* The Vera Institute, THE CASE FOR UNIVERSAL REPRESENTATION, (Dec. 2018), [*available at* https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1] (highlighting how having counsel on both sides increases efficiency of immigration proceedings).

[14] *See generally*, New American Economy, *Open Letter from 1,470 Economists on Immigration* (Apr. 12, 2017), [available at https://www.newamericaneconomy.org/feature/an-open-letter-from-1470-economists-on-immigration/].

[15] *See, e.g.*, Stacey Vanek Smith and Cardiff Garcia, *Worker Shortage Hurts California's Agriculture Industry*, NPR (May 3, 2018) [available at https://npr.org/2018/05/03/607996811/worker-shortage-hurts-californias-agriculture-industry]; Alfred Corchado, *Companies squeezed by labor shortage welcome immigrants*, Seattle Times (May 22, 2018) [available at https://seattletimes.com/business/companies-squeezed-by-labor-shortage-welcome-immigrants/; Shelly Hagan, *Immigrants Help to Alleviate U.S. Health Care Staffing Shortage*, Bloomberg (June 3, 2019) [available at https://www.bloomberg.com/news/articles/2019-06-03/immigrants-help-to-alleviate-u-s-health-care-staffing-shortage].

worker shortages."[16] Similarly, the Maine Business Immigration Coalition, a coalition of Maine businesses, chambers of commerce, and associations, recently stated that "[i]mmigrants are critical to Maine's ability to have a strong economy," as they are "a significant source of newcomers who stem our state's population decline," at a time when "Maine's labor shortage is reaching a crisis point, hindering business growth and causing some businesses to contract."[17] The Coalition also noted that in its experience with asylum seekers in the state, the asylum seekers "are highly educated, are eager to work, and have skills that Maine's employers and economy need."[18]

To the extent that asylum seekers bring skills or training that are otherwise absent from the workforce, companies that would have hired them will bear significant costs in trying to fill positions, or, alternatively, the costs of being unable to fill positions.[19] Furthermore, companies in our communities that currently have asylum seekers on staff are in danger of losing their employees who will be unable to renew their existing work authorization under the proposed rule. The net result will likely be substantial lost profits and productivity, impacting our local economies.

We are also concerned about the impact of the proposed rule on local services provided by social services organizations, faith-based organizations, and local governments. By barring or delaying many asylum seekers from receiving work authorization, the proposed rule will force some asylum seekers to rely on community resources for financial support, housing, food or other services. Therefore, such organizations are likely to have their resources stretched beyond capacity.

Last, it is worth noting that this proposed rule is part of a broader effort by the Administration to make it more difficult for asylum seekers to win their claims by restricting access to employment authorization. In September and November 2019 respectively, DHS proposed (1) eliminating the 30-day deadline for the government to adjudicate initial employment authorization

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[16] Upwardly Global, *Upwardly Global's Public Comment on Work Authorization for Asylum Seekers* (Oct. 10, 2019), [available at https://upwardlyglobal.org/all-news/upwardly-globals-public-comment-work-authorization-asylum seekers/].

[17] Maine Business Immigration Coalition, Public Comment, *Re: USCIS 2018-0001: Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications* (Oct. 30, 2019) [available at https://regulations.gov/document?D=USCIS-2018-0001-0078].

[18] *Id.*; *see also*, Sarah Matusek, *Among Those Helping Maine's New Arrivals: Other Immigrants,* CHRISTIAN SCIENCE MONITOR (Aug. 13, 2019), [available at: https://www.csmonitor.com/USA/Society/2019/0813/Among-those-helping-Maine-s-new-arrivals-Other-immigrants].

[19] *See, e.g.*, Stacey Vanek Smith and Cardiff Garcia, *Worker Shortage Hurts California's Agriculture Industry*, NPR (May 3, 2018) [available at https://npr.org/2018/05/03/607996811/worker-shortage-hurts-californias-agriculture-industry]; Alfred Corchado, *Companies Squeezed by Labor Shortage Welcome Immigrants*, SEATTLE TIMES (May 22, 2018) [available at https://seattletimes.com/business/companies-squeezed-by-labor-shortage-welcome-immigrants/]; Shelly Hagan, *Immigrants Help to Alleviate U.S. Health Care Staffing Shortage*, BLOOMBERG (June 3, 2019) [available at https://www.bloomberg.com/news/articles/2019-06-03/immigrants-help-to-alleviate-u-s-health-care-staffing-shortage].

applications[20]; and (2) imposing a $490 fee for filing an employment authorization application.[21] Each of these attempts to delay or deny work authorization to asylum seekers should be reconsidered, as the underlying motivation for these changes contradicts the congressional intent behind making work authorization available to asylum seekers in the first place: for asylum seekers to more quickly integrate and participate in our local communities and economies.[22]

For the above reasons, we as Members of the House of Representatives urge DHS to retain the current regulations for work authorization and asylum or at a minimum consider alternatives.

Sincerely,

Chellie Pingree
Member of Congress

Nanette Diaz Barragan
Member of Congress

Jerrold Nadler
Member of Congress

Zoe Lofgren
Member of Congress

Joaquin Castro
Member of Congress

Mark Pocan
Member of Congress

[20] Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications (DHS Docket No. USCIS-2018-0001).

[21] USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements (DHS Docket No. USCIS-2019-0010).

[22] Congress created a statute to allow for asylum applicants to receive work authorization pending the adjudication of their cases. *See* 8 U.S.C. § 1158(d)(2). *See also*, *Gonzalez Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018) (discussing the purpose of the statutory scheme at issue).

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