



ASYLUM SEEKER ADVOCACY PROJECT

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To Whom It May Concern:

The Asylum Seeker Advocacy Project (ASAP) respectfully submits the following response to the U.S. Citizenship and Immigration Services (USCIS) notice, "Identifying Barriers Across [USCIS] Benefits and Services; Request for Public Input," RIN 1615-ZB87 or CIS No. 2684-21 or DHS Docket No. USCIS-2021-0004, 86 Fed. Reg. 20,398 (Apr. 19, 2021) [hereinafter "Request for Public Input"].

Interest in the Request for Public Input

ASAP is a membership organization of more than 100,000 asylum seekers from over 150 countries now living in all 50 U.S. states and at the Mexico-U.S. border. ASAP members are asylum seekers who want to: (1) learn how to navigate the asylum process; (2) get connected with legal services; (3) identify and advocate for ways to make the asylum system work for asylum seekers; and (4) connect with other asylum seekers who want to work together to help build a more humane asylum system and a United States that welcomes those who flee persecution.

ASAP provides community support and legal services to members regardless of where they are located. In addition, input from ASAP members drives ASAP's organizational goals, including ASAP's advocacy priorities for policy and litigation. To

that end, ASAP regularly consults with members to understand their perspectives and experiences regarding the immigration system and their priorities for improving it.

Since its establishment, ASAP has provided over 13,000 legal referrals, shared legal resources with over 100,000 members, and successfully resolved nearly 2,000 legal emergencies for members in 44 states and on both sides of the Mexico-U.S. border. ASAP has represented asylum seekers before 39 immigration courts, the Board of Immigration Appeals (BIA), the Department of Homeland Security (DHS), federal courts, and in administrative filings with USCIS. ASAP also conducts legal training, creates guides and resources, and provides technical assistance to pro bono attorneys. ASAP has provided remote legal assistance to asylum applicants—both *pro se* and represented—including assistance filing defensive applications for asylum, withholding of removal, and protection under the Convention Against Torture; urgent motions in immigration courts; and work authorization applications.

USCIS’s Request for Public Input

On April 19, 2021, USCIS published a Request for Public Input as to “how [USCIS] can reduce administrative and other barriers and burdens within its regulations and policies, including those that prevent foreign citizens from easily obtaining access to immigration services and benefits.”¹ USCIS requested input within 30 days regarding seventeen broad questions, including:

- whether any of the agency’s “regulations; policies; precedents or adopted decisions; adjudicatory practices; forms, form instructions, or information collections; or other USCIS procedures or requirements” constitute “unjustified or excessive barriers that impede easy access to legally authorized immigration benefits and fair, efficient adjudications of these benefits”;
- whether any USCIS regulations or processes “disproportionally burden disadvantaged, vulnerable, or marginalized communities”;
- what “aspects of the immigrant and nonimmigrant perspectives or experiences [USCIS] should . . . be aware of” to “better inform” the agency’s analyses; and
- whether USCIS has any “regulations or forms that have been overtaken by technological developments.”²

¹ Request for Public Input, 86 Fed. Reg. at 20,398.

² *Id.* at 20,399–400.

Reducing Barriers to Access at USCIS

ASAP commends USCIS for acknowledging the presence of barriers and burdens preventing noncitizens from obtaining access to benefits and services. ASAP also applauds the agency's commitment to resolving these barriers. Moreover, ASAP strongly agrees that the perspectives and experiences of impacted individuals are critically important in guiding USCIS's policies and procedures, particularly (but not only) the agency's efforts to improve accessibility.

Informed by the perspectives and experiences of ASAP members and the ASAP staff members who have supported them, ASAP writes to emphasize six points:

- USCIS should be aware that **anti-immigrant rhetoric and actions** from the federal government have made many ASAP members feel deeply unwelcome in the United States, negatively affecting their ability to access USCIS services. The agency should reverse this trend through affirmative and inclusive reforms to its stated mission, website, services, and regulations, as well as guidance to agency staff.
- The agency's lack of **language access** poses a significant barrier for many ASAP members, with a disproportionate impact on the most vulnerable language minorities. To address this barrier, USCIS should make its websites, instructions, and services available in a broader array of languages, and it should make its forms available in a broader array of languages as well, beginning with Spanish.
- The complexity of USCIS's forms and the requirement of mail submission create redundancies and impose logistical and financial burdens on ASAP members, making it less likely that they can access benefits and services and that their applications can be timely adjudicated. USCIS should therefore **consolidate and simplify its forms and expand e-filing**, consistent with its obligations under the Paperwork Reduction Act.
- USCIS should **improve its customer service systems** to ensure that ASAP members and other noncitizens can access support when they face barriers.
- **Severe and systematic processing issues** at USCIS, particularly delays in processing asylum applications and asylum-based employment authorization documents (EADs), have proven devastating for ASAP members. USCIS should resolve these issues by rescinding and replacing harmful regulations, increasing transparency in processing, and improving staffing and training.
- Given the importance of input from directly affected individuals, and particularly those most marginalized, USCIS should **continue to receive comments** regarding accessibility and should improve language access in its commenting process.

I. **Consistent with USCIS's values, the agency should take affirmative steps to welcome and support those seeking refuge.**

USCIS is a uniquely situated and powerful messenger: the agency both shapes the way noncitizens feel about the United States and signals the nation's values to society. Unfortunately, ASAP members have overwhelmingly expressed concern that they feel unwelcome in the United States due to the federal government's anti-immigrant rhetoric and actions over the past few years, including actions taken by USCIS. Accordingly, when asked what they would change about the asylum process, a number of ASAP members responded that they would shift the system from its current xenophobic orientation to a more empathetic, welcoming, and fair one:

"I would like there to be less discrimination against asylum seekers in the United States. We are seeking to be in this country in order to protect our lives from danger. We only wish to work and contribute to this society, and to live in a place where our lives will be safe."

"I would change the stigma that exists in society against people who, seeing themselves in danger in their country of origin, decide to go out in search of asylum in a new country with better opportunities for themselves and their children." [translated]

"Although I understand the need to vet immigrants for the safety of the United States, I would make the process less antagonistic. . . . The whole process is daunting. It is not how I expected to be. I came to the United States hoping to find peace of mind, and yet I am in a constant state of fear."

"Asylum seekers like me are often treated as if we are not telling the truth. We find barriers to every benefit that we seek, from drivers licenses to work permits."

"The government should change its concept that one who applies for asylum does so for frivolous purposes or to obtain quick benefits. The asylum seeker is someone who has survived a severe experience of persecution in their country and decided to leave it to protect their life." [translated]

"I would change the number of barriers the government uses to defend against 'fraud.' The simple fact is that no one would leave

the land they love and that they grew up in if it weren't for extreme desperation." [translated]

"Every day they enact new rules, all trying to discourage people from applying for the right to asylum and protection."

"Stop stigmatizing people who request asylum before knowing the fear and suffering that they may be going through. We all want to collaborate and build a better future." [translated]

"Seeking asylum should not be a crime. Asylum is often the salvation of thousands of families who leave everything behind, trying to find security for their loved ones. I would like the asylum seeker to be seen as someone who wants to give their best rather than someone who just wants to benefit from the system." [translated]

One ASAP member's entire response was: **"I don't want to feel unwanted."**

USCIS should immediately work to reverse this painful tide of government-backed anti-immigrant sentiment, which both reduces the likelihood that asylum seekers (particularly the most marginalized among them) will feel safe accessing the agency's services and makes it more difficult for them to do so.

First, the agency should restore and build upon the language in its pre-2018 mission statement acknowledging that the United States of America is "a nation of immigrants."³ The agency's revised mission statement and values should also reflect "the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands," as set forth in the Refugee Act of 1980.⁴ Upon revising its mission statement and values, the agency should make a public announcement about the revisions and promote them in the media.

Second, USCIS should update its guidance and re-train its workforce to ensure that all staff embody the agency's "core value" of respect⁵ and act consistently with the

³ American Immigration Lawyers Association (AILA), *USCIS Director L. Francis Cissna Issues Statement on the New Agency Mission* (Feb. 22, 2018), <https://www.aila.org/infonet/uscis-statement-the-new-agency-mission-statement>.

⁴ Pub. L. No. 96-212, § 101, 94 Stat. 102, 102.

⁵ USCIS, *Mission and Core Values*, <https://www.uscis.gov/about-us/mission-and-core-values> (last updated July 5, 2020).

agency's mission once revised. Fundamentally, all USCIS staff—particularly asylum officers conducting asylum interviews, credible fear interviews, and reasonable fear interviews—must treat asylum seekers and other noncitizens with an orientation of respect rather than skepticism.

As part of this effort, USCIS should ensure that all staff account for trauma and its well-documented effects on memory when interacting with applicants and determining whether they have met their burden of proof.⁶ In addition, USCIS should ensure that asylum officers and other adjudicators understand and accommodate the significant difficulties in evidence-gathering faced by survivors of persecution who have been forced to flee their countries. ASAP members explain:

“When you flee from a country with a dictatorial, criminal, and autocratic regime, it is very difficult to bring evidence of threats, forced detentions, and torture. . . . The regime itself is in charge of hiding, disappearing, or preventing these facts from coming to light in order to constitute evidence.” [translated]

“Recounting traumatic stories and expecting to remember a horrible experience exactly the same way multiple times is taxing on my mental state. I have actual injuries from my harm—I have lost my sense of feeling in my arms—but asking me to remember what an officer said to me several years ago is even more traumatizing. I am so afraid to be wrong.”

“When they ask us questions, they don't know how much it hurts to answer.” [translated]

Third, USCIS should create an asylum landing page on its website to welcome individuals seeking asylum, provide intelligible resources on how to navigate the asylum process, inform asylum seekers of their rights, and provide guidance on when and how they may apply for EADs. The landing page should acknowledge the difficulties asylum seekers face in coming forward to apply for asylum, appreciate asylum seekers' courage,

⁶ USCIS's training for new asylum officers on trauma-informed interviewing has “changed little” since 1995. USCIS, RAI0 Directorate – Officer Training, Interviewing Survivors of Torture and Other Severe Trauma at 3, https://www.uscis.gov/sites/default/files/document/foia/Interviewing_-_Survivors_of_Torture_LP_RAIO.pdf (revised Dec. 20, 2019).

and embrace their right to seek asylum rather than view them with skepticism. The landing page should be offered in multiple languages, as discussed below in Part II.⁷

Fourth, USCIS should fund the creation of intelligible *pro se* resources, and direct *pro se* individuals to such resources through the agency's website, in order to ensure that these individuals can access the agency's services (including the asylum and EAD processes). For example, one ASAP member suggests that USCIS could provide classes or videos on how to complete Form I-589. Importantly, however, USCIS need not (and likely should not) create these resources itself. Instead, the agency should issue grants to nonprofit organizations and legal clinics with experience in developing such resources and representing and supporting noncitizens. Moreover, such organizations, including ASAP,⁸ have already developed a wealth of *pro se* guides, videos, infographics, and other resources to which USCIS could direct asylum seekers and other individuals. USCIS should also simplify its forms and instructions to make them more accessible to *pro se* individuals, as discussed below in Part III-A.

Fifth, USCIS should eliminate unnecessary regulatory barriers to seeking asylum and EADs, including those erected by the prior administration and those that preceded it. For example, and as discussed below in Part V-B, USCIS should promptly rescind both Trump Administration rules effective August 2020 that significantly restricted asylum seekers' eligibility for EADs, increased fees, and damaged EAD and asylum processing.⁹ As part of this process, DHS should revisit the Secretary's disappointing attempt to ratify the first August 2020 rule, which repealed the 30-day processing timeline for asylum-based EADs—a timeline that for decades provided a crucial guarantee as to when vulnerable asylum seekers could financially support themselves, their families, and their communities. As ASAP members' comments demonstrate, noncitizens are acutely aware that the August 2020 rules and others were motivated by anti-immigrant sentiment and designed to deter noncitizens from exercising their legal rights.

Sixth, as discussed in the following section, USCIS must meet the language access standards set by agencies such as the Internal Revenue Service (IRS). Put simply, USCIS can welcome asylum seekers by communicating with them in their native languages.

⁷ USCIS should also consider redesigning its overall website to be more user friendly and solicit input on this question from applicants and web design experts.

⁸ See ASAP, *Resources for Asylum Seekers*, <https://help.asylumadvocacy.org/>.

⁹ Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38,532 (June 26, 2020) (effective Aug. 25, 2020); Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applicants, 85 Fed. Reg. 37,502 (June 22, 2020) (effective Aug. 21, 2020).

- II. In accordance with federal language access mandates, USCIS should make its website, forms, instructions, and services available in a broader array of languages.

Under Title VI of the Civil Rights Act of 1964 and Executive Order 13166, USCIS and other federal agencies must “ensure that the programs and activities they normally provide in English are accessible to [limited English proficiency] persons and thus do not discriminate on the basis of national origin.”¹⁰ In accordance with these longstanding requirements, USCIS must make its website, forms, instructions, and services available in a much broader array of languages.

Currently, USCIS only issues and accepts its forms in English, and it requires applicants to furnish certified translations of any non-English supporting documents. Although most pages on USCIS’s website are available in Spanish, its forms and instructions (for example, Form I-589 and instructions for Form I-589) are exclusively provided in English. USCIS does not offer any translations of forms such as Form I-589, even for purely illustrative purposes.

Individuals who are fluent in neither English nor Spanish face even greater barriers to access than those who only or primarily speak Spanish. For example, USCIS’s “multilingual resource center” currently offers just three resources in Hindi (one related to COVID-19 and two related to the unauthorized practice of immigration law); six in Arabic (half of which relate to the unauthorized practice of immigration law); eight in Haitian Creole (half of which relate to the unauthorized practice of immigration law); and nine in Russian (again, nearly half of which relate to the unauthorized practice of immigration law). Similarly, “Ask Emma,” USCIS’s online virtual assistant, only answers typed questions in English and Spanish. The USCIS Contact Center, too, only offers telephonic support in English and Spanish and does not provide access to over-the-phone interpreter services.

This absence of language access is stunning for an immigrant-facing U.S. agency in the year 2021. In contrast, the IRS provides its forms and instructions and accepts forms in Spanish. Moreover, taxpayers who interact with the IRS can access over-the-phone interpreter services in over 350 languages. In light of USCIS’s services and mission, the agency is significantly more likely than the IRS or virtually any other federal agency to serve people whose primary language is not English.

¹⁰ Exec. Order No. 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (Aug. 11, 2000); see also Department of Justice, LEP.gov: Executive Order 13166, <https://www.lep.gov/executive-order-13166>.

USCIS's failure to offer forms and instructions in languages other than English, or to make its website or support services available in languages other than English and Spanish, significantly impedes access to its services for many ASAP members and other noncitizens—particularly for the most vulnerable individuals. As discussed above in Part I, these failures also signal to individuals who are not fluent in English (likely a substantial majority of USCIS's customer base) that they are not invited to access the agency's services.

USCIS can take a number of immediate steps to reduce or eliminate these barriers to access. First, the agency should generate a list of non-English languages, including but not limited to Spanish, that it intends to support with its website, forms, instructions, and support services, based on its understanding of the prevalence of these languages in the population it serves. (For reference, the most prevalent languages among ASAP's 100,000 members include Spanish, English, Russian, Punjabi, Mandarin Chinese, Haitian Creole, Arabic, French, Turkish, and Hindi.)

Second, the agency should ensure that its website, forms, and instructions are available in all of these languages. In addition, it should accept forms in all of these languages so that applicants are not forced to complete forms and swear to the accuracy of their statements on forms in unfamiliar languages.

Third, for applicants who prefer relatively uncommon languages in which USCIS still will not provide forms, the agency should allow individuals who do not speak English to complete all forms (including Forms I-765 and I-912) with the assistance of reliable translation services or *pro se* resources rather than human interpreters—without having to affirm that they are fluent in English. Currently, some (but not all) USCIS forms require individuals to either affirm that they can read and understand English or affirm that they have used an interpreter, and any interpreter must sign the form as well. (For an example, see Parts 3 and 4 of the current Form I-765.)

This inconsistent affirmation requirement, which was added to Form I-765 during the Trump Administration, means that individuals who are not fluent in English and cannot find an English speaker to fill out the form as an interpreter simply cannot apply. The requirement makes it impossible for nonprofits to do effective *pro se* community education that supports non-English-speakers applying for EADs or fee waivers on their own. It is difficult to see what purpose the requirement serves given that it was not present during the Obama Administration, is not included on all forms (compare Form I-589, for example), and USCIS forms already ask the applicant to include information for

a preparer if one was used. As a general rule, and particularly given the advanced capabilities of modern translation services such as Google Translate, all applicants should be able to complete and submit USCIS forms without assistance. USCIS should therefore remove the English affirmation and interpreter sections on its forms altogether.

Fourth, USCIS should make its online and phone support systems available in other languages. USCIS should utilize advances in technology to make “Ask Emma” available in languages beyond English and Spanish. In addition, the agency should expand the number of languages supported by the phone menu of the USCIS Contact Center, and it should provide access to over-the-phone interpreter services akin to those already used by the IRS.

Fifth, USCIS should rescind its temporary final rule requiring asylum seekers to use USCIS-provided telephonic interpreters in their interviews, lest their applications for asylum be dismissed or referred to immigration court.¹¹ While USCIS should provide interpreters in any interviews upon request and free of charge (and should expand this service well beyond the 47 languages it currently provides), it should also allow asylum seekers to utilize their own interpreters if they so wish. As explained above in Part I, asylum interviews are harrowing and re-traumatizing experiences for many asylum seekers, and individuals should be permitted to utilize their own trusted interpreters to help disclose their experiences of persecution. The temporary final rule is particularly cruel because it is unnecessary in light of the wide availability of COVID-19 vaccines to protect USCIS staff.

Finally, USCIS should hire more multilingual client-facing staff to reduce the need for interpretation. (USCIS should ensure that staff are highly fluent in languages other than English before permitting them to provide services or conduct interviews in those languages.) As one ASAP member wrote:

I would like USCIS agents who speak Spanish to participate in the asylum interview. It would be good if the agents really understood the terrible experiences that those of us who fled our countries go through. With an interpreter, emotions are not fully conveyed.
[translated]

¹¹ See USCIS, Temporary Final Rule: Asylum Interview Interpreter Requirement Modification Due to COVID-19, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/temporary-final-rule-asylum-interview-interpreter-requirement-modification-due-to-covid-19> (last updated Mar. 22, 2021).

III. USCIS should consolidate and simplify its forms, and significantly expand e-filing, to improve accessibility and eliminate redundancies consistent with the agency's responsibilities under the Paperwork Reduction Act.

USCIS's complicated and redundant forms, as well as its requirement to file paper versions of the forms, pose additional and substantial barriers to access. For example, an asylum seeker applying for an initial EAD under category (c)(8) must currently undergo the following steps:

- The asylum seeker must print out and complete the up-to-seven-page Form I-765 (in English, as noted above in Part II, even if she is not fluent in English).
 - The English-only instructions for the form span 31 pages.
 - The form itself contains dozens of questions and may require submission of significant corroborating evidence, such as original and certified police and court records relating to *any* criminal charges, arrests, or convictions in *any* country, as well as certified documentation of any final dispositions relating to *any* such charge/arrest/conviction, regardless of whether these facts have any bearing on an individual's eligibility for an EAD.
 - The form will also require the asylum seeker to repeat information that she has already provided to USCIS in Form I-589.
- The asylum seeker may think she must pay the \$410 filing fee listed on USCIS's website under "filing fee," even though she is exempt from that fee as a (c)(8) applicant. If she is not an ASAP member or a member of CASA de Maryland, she must pay the \$85 fee for biometrics services even though she has no income (see Part V-B, below).
 - Alternatively, the asylum seeker may submit Form I-912, Request for Fee Waiver. This form is only available in English and is up to eleven pages long. Its English-only instructions are eleven pages long as well.
- The asylum seeker must then find the proper address from a complicated list and pay for the postage to mail her application.¹² If she chooses the wrong address, her application will be returned to her or significantly delayed.
 - The asylum seeker must submit only one copy of Form I-765—but when she submitted Form I-589, she was required to submit multiple copies at her own expense or similarly risk a return or delay.

¹² See USCIS, Direct Filing Addresses for Form I-765, Application for Employment Authorization, <https://www.uscis.gov/i-765-addresses> (last updated May 4, 2021).

- Upon delivery, the asylum seeker’s paper application may languish in a physical lockbox for months¹³ before it is manually checked and a receipt notice is issued. The date on the notice may not match the date that the application was delivered.
- If the asylum seeker accidentally included the \$410 fee or failed to pay the \$85 fee—or if she paid the proper fee but the USCIS lockbox staff committed human error—her application will be rejected and she must start the process anew.

Each of these steps makes it significantly more difficult for noncitizens to access USCIS’s services. Yet all of these difficulties are unnecessary. USCIS should eliminate these barriers by (A) combining and simplifying its forms and (B) enabling e-filing of forms and supporting evidence using computers and smartphones.

A. Combining and simplifying USCIS forms

USCIS can take immediate steps to simplify its forms and eliminate redundancies. Such revisions would not only remove barriers to access, but also accord with the agency’s responsibilities under the Paperwork Reduction Act.¹⁴

First, USCIS should shorten its forms and simplify its instructions accordingly. For example, Form I-765, Application for Employment Authorization, ballooned during the Trump Administration from two pages in 2017 to seven pages today. Some of the added questions and required evidence pertain to new and harmful regulatory barriers to eligibility that USCIS should rescind (see Part V-B below), while others may not even affect EAD eligibility. This more-than-tripling in length has dissuaded asylum seekers from applying for EADs, increased error rates on both the applicant side and the agency side, and contributed to the endemic delays in processing discussed below. USCIS can significantly improve access simply by reverting to the prior form.

Similarly, Form I-589, Application for Asylum and for Withholding of Removal, is up to twelve pages long and should be simplified substantially.

In addition, USCIS should develop a shorter fee waiver request than the unwieldy, intrusive, eleven-page Form I-912 that it currently uses. Much of the information and documentation required by Form I-912 is unnecessary to determine whether an applicant is entitled to a fee waiver, as evidenced by the Executive Office for Immigration Review’s (EOIR’s) one-page Form EOIR-26A.

¹³ See USCIS, USCIS Lockbox Updates (Jan. 8, 2021), <https://www.uscis.gov/news/alerts/uscis-lockbox-updates>.

¹⁴ Pub. L. No. 96-511, 94 Stat. 2812 (1980) (codified at 44 U.S.C. §§ 3501–3521).

Second, and relatedly, USCIS should avoid using forms to collect types of information that are poorly suited to the format. Forms are effective in collecting data, but not as effective for narrative responses that require multiple sentences, paragraphs, or pages to answer. To that end, USCIS could reduce Form I-589 to collecting only a few pages of biographical information, with the opportunity to provide written narratives at a later stage and without use of a rigid form. In addition to reducing paperwork, this change would have the added benefit of enabling many asylum seekers to apply for asylum earlier, thus beginning their EAD clocks earlier, in turn giving them the much-needed financial independence of an EAD at an earlier date and enabling them and their families to better access additional USCIS services.

Third, USCIS should combine forms to reduce inefficiencies from duplicative application questions. For example, there are significant overlaps in the information an applicant must provide in Forms I-589, I-765, and I-912, even though many asylum seekers are likely to complete all three of these forms regarding related requests. Instead, USCIS should update Form I-765 to include a simple check box that enables applicants to request fee waivers, if the agency requires any fees for EADs at all. It should also update Form I-589 to include a check box that enables applicants to apply for an initial (c)(8) EAD simultaneously (to be granted once they are statutorily eligible) and/or request a fee waiver if fees apply. Given that USCIS has already implemented a check box on Form I-765 to allow applicants to simultaneously request social security cards—documents issued by a distinct agency in a different department of the executive branch—the agency should be able to take advantage of similar synergies in its own internal services.

In addition, upon enabling e-filing as discussed below in Part III-B, USCIS should allow an applicant to review information submitted in a prior application and confirm that the information remains correct, rather than requiring the applicant to re-input the same information on every subsequent application.

Fourth, USCIS should debug the PDF versions of its forms to eliminate glitches and ensure that the forms are fillable using common software applications and operating systems. Following the example set by the IRS, USCIS should also release Application Programming Interfaces (APIs) to enable stakeholders to develop TurboTax-style applications to assist immigrants and their families in completing immigration forms. Such APIs would enable the government to both improve efficiency and increase accuracy by enabling vetted third parties to assist users in completing forms at scale.

Fifth, USCIS should cease using arcane form rejection criteria to ensure that more individuals can access the agency's services. ASAP applauds the agency for its recent elimination of the cruel and unnecessary "blank space" criteria instituted in October 2019.¹⁵ The agency should similarly revisit all of its rejection criteria and accept as many applications as possible, recognizing the burden that applicants face in compiling and submitting forms and the serious consequences of needless delay. Whenever possible, USCIS should issue requests for evidence (RFEs) instead of rejecting applications. To this end, USCIS should also revoke its 2018 Policy Memorandum regarding issuance of RFEs, which gives adjudicators significant discretion to reject applications without RFEs based on vague standards that prejudice applicants, particularly those who are *pro se*.¹⁶

Sixth, USCIS should stop requiring applicants to submit multiple copies of certain forms, such as Form I-589. The burden of making copies should not fall to asylum seekers, who are often not permitted to work and may struggle to access printers, especially if they are *pro se*. Instead, the agency should simply scan applications or make physical copies of them upon receipt.

Seventh, for the reasons discussed above in Part II, USCIS must issue and accept forms and provide form instructions in a broad array of languages that reflects the needs of its applicants.

B. Enabling e-filing of forms and supporting evidence using computers and smartphones

If USCIS truly wishes to ensure that applicants can access its services, it must enter the twenty-first century and accelerate its embrace of e-filing, including but not limited to Forms I-589, I-765, and I-912.

Expanding USCIS's e-filing options will significantly improve ease of access to USCIS's services, both for immigration law practitioners and for *pro se* applicants. For users who are able to access it, e-filing allows the agency to avoid requesting and collecting duplicative information, reduces human error, eliminates mailing delays and costs, and enables quicker (if not immediate) resolution of preliminary issues such as fee collection.

¹⁵ USCIS, USCIS Confirms Elimination of "Blank Space" Criteria (Apr. 1, 2021), <https://www.uscis.gov/news/alerts/uscis-confirms-elimination-of-blank-space-criteria>.

¹⁶ USCIS, PM-602-0163, Issuance of Certain RFEs and NOIDs; Revisions to *Adjudicator's Field Manual (AFM)* Chapter 10.5(a), Chapter 10.5(b) (July 13, 2018), https://www.uscis.gov/sites/default/files/document/memos/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf.

USCIS has intended to transition to e-filing for over a decade,¹⁷ but online filing is currently available only for a handful of forms.¹⁸ To minimize barriers to access, the agency's expanded e-filing options should adhere to the following principles:

- E-filing of Forms I-589, I-765,¹⁹ I-912, and others must be made available in multiple languages. Failure to expand language accessibility as outlined above in Part II will fundamentally undermine the benefits of e-filing and prevent meaningful access to the system for many applicants.
- E-filing of these and other forms must continue to be available free of cost to users in order to ensure financial accessibility and avoid discriminating against indigent respondents.
- E-filing of these and other forms must be accessible to *pro se* applicants.
- E-filing of these and other forms must not be mandatory. USCIS services must remain available to respondents without access to, or fluency with, technology.
- USCIS should continue to accept digital signatures in order to facilitate e-filing.
- E-filing of these and other forms must be accessible not only on traditional computers but also on smartphones. Smartphones are the primary devices with which most individuals interact on a daily basis, and far more applicants will be able to access smartphone-accessible e-filing than e-filing that is limited to traditional computers.
- USCIS must clarify exactly which categories of applicants may utilize e-filing for any given form. USCIS's page for Form I-765 currently features a "File Online" button without clarifying that this button only applies to certain categories of F-1 students.²⁰ The button has caused confusion among some ASAP members preparing to apply for (c)(8) EADs, who are *not* eligible for e-filing at this time.

¹⁷ See USCIS, USCIS Transformation: Proposed Rule for Mandatory E-Filing, <https://www.uscis.gov/archive/uscis-transformation-proposed-rule-for-mandatory-e-filing> (last updated Apr. 8, 2011).

¹⁸ See USCIS, Forms Available to File Online, <https://www.uscis.gov/file-online/forms-available-to-file-online> (last updated Apr. 12, 2021).

¹⁹ Last month, USCIS announced that certain F-1 students could file I-765s online; expanding this program into a functional and easily accessible online filing system for asylum seekers would substantially address many of the issues for asylum seekers described above. See USCIS, F-1 Students Seeking Optional Practical Training Can Now File Form I-765 Online (Apr. 12, 2021), <https://www.uscis.gov/news/news-releases/f-1-students-seeking-optional-practical-training-can-now-file-form-i-765-online>.

²⁰ USCIS, I-765, Application for Employment Authorization, <https://www.uscis.gov/i-765> (last updated May 4, 2021).

Beyond forms, USCIS should also accept supporting evidence electronically via computers and smartphones, particularly in asylum cases. When asylum seekers are able to collect photos or documentary evidence from their countries of origin, the evidence often comes from relatives via text or WhatsApp messages to their phones. Enabling asylum seekers to submit this evidence to the agency using the same devices will save time and money, further reducing barriers to access.

IV. USCIS should improve its customer service systems to ensure that individuals who face barriers to access can resolve them.

To fully remove barriers to immigration benefits, USCIS must also create more responsive and accessible systems of customer service. Applicants' and their advocates' ability to access important case status information and troubleshoot problems is central to creating a fairer and more accessible immigration process. USCIS's current customer service systems, however, make it nearly impossible for applicants to meaningfully engage with the agency to address their needs—particularly (but not only) in light of the COVID-19 pandemic.

USCIS has centralized its customer service through the USCIS Contact Center's toll-free number, which uses an automated voice response system. ASAP members, however, have reported several problems with that system and USCIS's telephonic customer service more generally. Although these issues with USCIS's customer service predate the COVID-19 pandemic, they have taken on particular importance due to the pandemic-induced shutdown of in-person InfoPass appointments.

As an initial matter, and as discussed above in Part II, the voice response system only provides assistance in English and Spanish and remains entirely inaccessible to the substantial portion of ASAP members who speak neither language.²¹ At the same time, USCIS also limits who may access case information or submit service requests through the toll-free number, requiring either that the applicant themselves or their attorney of record call directly.²² ASAP members who speak neither Spanish nor English and who do not have attorneys therefore have difficulty accessing the agency's customer service

²¹ See USCIS, USCIS Begins Implementing New Interactive Voice Response Telephone System (May 18, 2020), <https://www.uscis.gov/news/alerts/uscis-begins-implementing-new-interactive-voice-response-telephone-system>.

²² AILA, *Walled Off: How USCIS Has Closed Its Doors on Customers and Strayed from Its Statutory Customer Service Mission* at 3–4 (Feb. 12, 2021), <https://www.aila.org/advocacy/aila-policy-briefs/policy-brief-walled-off-how-uscis-has-closed> [hereinafter "Walled Off"].

systems, despite the availability of over-the-phone interpretation services at sibling agencies like the IRS.

ASAP members who are able to call the toll-free number still face several barriers. One of the primary complaints ASAP receives about the USCIS Contact Center is that the automated voice response system makes it nearly impossible to reach a USCIS representative directly. “To speak to a live representative, callers must first navigate a long series of prompts and menu options and listen to at least one substantive (and sometimes complicated) message.”²³ Even after navigating those prompts, callers may reach a dead end, unable to speak to a USCIS representative unless they know the specific responses that trigger a connection to a live agent.

Many ASAP members have reported being unable to reach USCIS representatives despite having inquiries that plainly require individualized attention. For example, ASAP members who are experiencing unlawful delays in their initial (c)(8) EAD applications²⁴ are required to call the USCIS Contact Center and speak with a representative to begin the dispute resolution process.²⁵ Members who cannot reach USCIS representatives are left with no means to address the unlawful delays in the processing of their applications.

The problems do not stop there. Members who do manage to get through to a live USCIS representative often do not fare much better. The Contact Center operates as a two-tier system.²⁶ Tier 1 representatives are not federal officers, but rather contract employees with minimal training and incomplete access to case information.²⁷ If a caller’s inquiry goes beyond the Tier 1 representative’s limited abilities, the contractor can either create a service request, which forwards the inquiry to the field office or service location where the case is pending, or elevate the call to a Tier 2 representative.²⁸ Tier 2

²³ CIS Ombudsman, Annual Report 2020 at 89 (June 30, 2020), <https://www.dhs.gov/topic/prior-annual-reports>.

²⁴ Despite recent regulatory changes discussed below in Part V-B, ASAP members and members of CASA de Maryland remain entitled to 30-day processing of their initial (c)(8) work permit applications. See *CASA de Maryland v. Wolf*, 486 F. Supp. 3d 928, 973 (D. Md. 2020), *appeal dismissed*, No. 20-2217 (L), 2021 WL 1923045 (4th Cir. Mar. 23, 2021) [hereinafter “CASA”].

²⁵ See USCIS, Rosario Class Action, <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-agreements/rosario-class-action> (last updated Jan. 14, 2018).

²⁶ CIS Ombudsman, Annual Report 2019 at 45 (July 12, 2019), <https://www.dhs.gov/topic/prior-annual-reports>.

²⁷ *Id.*

²⁸ *Id.* at 45–46.

representatives are actual federal employees who are better versed in the immigration process.²⁹

Unfortunately, Tier 1 representatives often lack substantive knowledge about the immigration process and are ill-equipped to address callers' needs. For example, months after a federal court issued an order requiring USCIS to process ASAP members' initial (c)(8) EAD applications within 30 days,³⁰ ASAP members and staff reported that many Tier 1 representatives appeared entirely unaware of the ruling and of ASAP members' rights. These representatives would refuse to lodge service requests for ASAP members experiencing unlawful delays in the processing of their EAD applications, as well as ASAP staff who attempted to assist members, incorrectly stating that members' applications were "within normal processing times" and effectively blocking them from receiving any redress.

While Tier 2 representatives are federal employees with "more in-depth immigration benefits training and access to more information in USCIS systems,"³¹ ASAP members report significant barriers in contacting such representatives. To speak with a Tier 2 representative, a caller must first have their case escalated by a Tier 1 representative³² and wait for a callback within 48 to 72 hours. Many ASAP members report receiving callbacks at unpredictable times or receiving callbacks from USCIS representatives who do not speak their preferred language. If members miss their callbacks, they are forced to begin the entire process from scratch and again call the USCIS toll-free number.

In sum, USCIS's current customer service systems are both inaccessible and inefficient. However, there are several changes USCIS could implement to make its customer service more inclusive and effective. First, as recommended above in Part II, USCIS should provide customer service in more languages. Unsurprisingly, a significant portion of ASAP members and other applicants for immigration benefits speak languages other than Spanish and English. Offering customer service in more languages would ensure that the agency is addressing the needs of those applicants, rather than shutting them out entirely.

Second, USCIS should develop and promote new mediums for customer service. For example, USCIS should provide applicants the ability to automatically lodge service

²⁹ *Id.* at 46.

³⁰ See *CASA*, *supra* note 24, at 973.

³¹ Annual Report 2019, *supra* note 26, at 46.

³² *Id.*

requests online. While “Ask Emma” is a step in the right direction, the process of filing a service request online should be further simplified, automated, and expanded to additional languages. Moreover, USCIS should allow applicants to monitor the status of their pending service request online to check how and whether their case is progressing without requiring lengthy follow-up calls to the language-limited phone line.

USCIS should also reinstate its local and national email inquiry inboxes like SCOPSSCATA@uscis.dhs.gov, which previously allowed applicants to make inquiries and engage in any necessary follow-up over email with agency staff directly familiar with their cases.³³ USCIS could go even further and expand customer service systems to other, more accessible messaging platforms, like WhatsApp. Offering other customer service options would have the dual benefit of making USCIS’s customer service more accessible and reducing the overall traffic to the toll-free number.

Third, USCIS should establish a clear and direct way for applicants to contact USCIS representatives in the event that they do require live assistance. The current automated voice response system does not provide a clear path for callers to speak to an actual USCIS representative. USCIS should allow applicants to directly indicate when they would like to speak to a representative. If the call requires escalation to Tier 2, callers should either be immediately transferred to the appropriate representative or, at minimum, be given a specific date and time to receive a call back. Callers who miss their callbacks should not be forced to start the entire process again from the beginning. Instead, each caller should be provided with a unique identifier that would allow them to circumvent the process and avoid redundancy if they miss their callback or the call is disconnected.

Fourth, USCIS should allow volunteers and non-attorney legal staff, including paralegals and legal assistants, to make requests through the USCIS Contact Center on behalf of applicants. USCIS’s current policy requiring either the applicant themselves or attorneys of record to lodge a service request is inefficient for applicants, attorneys, and the agency itself. Allowing volunteers and advocates to call on behalf of applicants who do not have attorneys of record would make USCIS’s customer service systems more accessible to *pro se* applicants. Similarly, allowing non-attorney legal staff to make customer service requests for applicants with attorneys would alleviate the burden on attorneys and increase efficiency for the agency by decreasing the likelihood of missed callbacks.

³³ Walled Off, *supra* note 22, at 12 (explaining that USCIS discontinued the public use of these email inboxes in 2018).

Fifth, USCIS must provide more thorough and consistent training to its customer service staff and contractors. USCIS must regularly train its customer service representatives and keep them informed of important changes in the immigration process. USCIS should develop a clear and consistent method, for example, of immediately updating customer service staff (including Tier 1 representatives) of court orders or other significant legal developments affecting applicants' rights.

Finally, USCIS should create a mechanism for applicants to easily provide the agency with ongoing feedback on its customer service systems, and it should commit to continue adapting those systems to meet the needs of all applicants.

V. USCIS should address significant and harmful backlogs in its adjudication of benefits applications by rescinding and replacing damaging regulations, improving agency transparency, and boosting staffing.

Over the past few years, noncitizens have experienced record delays in processing and adjudication of immigration benefits applications at USCIS.³⁴ By the end of fiscal year 2020, the asylum office backlog alone grew to 386,000 pending applications.³⁵ ASAP members overwhelmingly report that they have been negatively impacted by these extended processing delays, particularly regarding their applications for asylum and asylum-based EADs.

The consequences of these delays have been devastating.³⁶ USCIS's delays in processing applications for asylum and asylum-based EADs prevent ASAP members from establishing their lives in the United States and force them to live in constant

³⁴ See, e.g., Paul Stern & Sharvari Dalal-Dheini, *AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow* (Feb. 26, 2020), <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>; Jason Boyd & Greg Chen, *AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration* (Jan. 30, 2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

³⁵ Human Rights First, *Protection Postponed: Asylum Office Backlogs Cause Suffering, Separate Families, and Undermine Integration* at 1 (Apr. 2021), https://www.humanrightsfirst.org/sites/default/files/Protection_Postponed.pdf [hereinafter "Protection Postponed"]; see also USCIS, *USCIS Number of Service Wide Forms Fiscal Year to Date 2020*, https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2020Q4.pdf.

³⁶ See *Protection Postponed*, *supra* note 35, at 5–11 (discussing human consequences of delayed asylum application adjudications, including prolonged family separation, mental and emotional anguish, economic deprivation, barriers to community integration, and impaired access to counsel).

uncertainty—particularly given the lack of transparency and predictability. As members explain:

“[T]he time spent by an asylum applicant to wait for a USCIS response is almost random [P]eople can still be waiting for years for an interview.”

“[I would change] long wait times and all the anxiety that comes with it. As a survivor of domestic violence in [my country of origin], I took both my children and fled. Now, I am not sure when I will be able to go and tell my story here to U.S. officials, but back in [my country of origin] there is more and more danger.”

“Waiting times affect us greatly. We left our country in search of protection in the United States, but it is very difficult to know that the response times are very long. We are not even able to access work permits in a reasonable time to be able to support ourselves.” [translated]

“The asylum process should be faster to avoid the re-victimization of applicants The delay in the process negatively impacts applicants’ mental health.” [translated]

“The most important thing would be shortening processing times in all aspects—for asylum applications and work permit applications. Unfortunately, currently we are in a kind of limbo.” [translated]

“I want to have more transparency in this system of asylum. We are stuck now, and we do not know when we will have our interview. This state of uncertainty makes me feel very anxious.”

“It is not fair to wait for years or longer for families that have young children and live with uncertainty day after day.” [translated]

“As an asylum seeker with a pending asylum case, one of the worst feelings is not knowing an actual or estimated time frame and not being able to do anything about it. You sleep every night knowing that the life you’re building here is not yours yet and can be taken away from you any day.”

USCIS can and should address these substantial harms, which directly block ASAP members and other noncitizens from accessing benefits and services, by rescinding and

replacing harmful policies and regulations, increasing transparency, and adopting other improvements in both (A) asylum processing and (B) EAD processing.

A. Improvements to asylum case processing

Many ASAP members report that they have waited years for asylum interviews, even though U.S. law generally requires that asylum interviews be conducted within 45 days of the filing of asylum applications.³⁷ The policies of the previous administration greatly exacerbated these delays in processing through the prioritization and expansion of draconian and exclusionary policies at the border—such as expedited removal—that diverted substantial resources from asylum processing.³⁸ USCIS’s recent “last in, first out” (LIFO) approach has not resulted in significant reduction of the backlog; instead, it has condemned longstanding cases to languish indefinitely³⁹ while forcing applicants with more recent cases to scramble to prepare for their interviews.

To resolve these issues, DHS and USCIS should do everything possible to reduce asylum processing times and promptly and reliably schedule asylum interviews for those with pending applications. First, DHS should reverse the prior administration’s diversion of resources to, and expansion of, unnecessary border policies such as expedited removal—particularly once Title 42 is lifted. Importantly, USCIS must process its case backlog *without* depriving asylum seekers of due process and a full and fair opportunity to be heard.

Second, USCIS should allocate sufficient resources and staffing to asylum offices to promptly schedule interviews within the legally mandated 45-day period, while also setting meaningful targets to eliminate the backlog of applications. Phrased differently, the agency must commit to a timeframe in which it can ensure legal compliance and guarantee that no asylum seekers have to wait over a year before receiving an interview.

Third, USCIS should create clear and accessible tools that allow asylum applicants with pending applications to easily check on their places in the queue and estimate when USCIS plans to schedule their interviews. USCIS should make this process as transparent as possible, including creating an online system that allows asylum applicants to see where and when their interviews will be scheduled and notifies them of scheduling well

³⁷ See 8 U.S.C. § 1158(d)(5)(A)(ii) (“[I]n the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed . . .”).

³⁸ See Protection Postponed, *supra* note 35, at 2, 5.

³⁹ *Id.* at 11–13.

in advance of the interview date. For instance, one ASAP member suggests that USCIS should “give you an approximate minimum or maximum wait time” after receiving an application. In addition, USCIS should continue to properly staff asylum offices to ensure that the agency does not surprise applicants with last-minute interview delays, which numerous ASAP members describe as anxiety-inducing and re-traumatizing.

Fourth, as outlined above in Part IV, USCIS should overhaul and modernize its customer service options—including through better staff training and more accessible call-in systems and other mediums of support—to further improve asylum seekers’ experiences.

B. Improvements to EAD processing and removal of EAD fees

ASAP members and other asylum seekers rely on EADs to support themselves and their families as they seek safety and shelter in their new home country.⁴⁰ Many ASAP members emphasize that work authorization allows them to live with basic “dignity” and to feel like they are making a contribution to society. One member notes that the ability to work lets those who “leave their country fleeing in fear for their lives to . . . be free and live honestly without fear.” Another explains that work authorization allows asylum seekers “to legally support themselves . . . as well as contribute and integrate into society” and “contribute to the development of the [U.S.] through paying taxes.”

Without valid EADs, ASAP members lack the ability to work lawfully in the U.S. and often cannot earn the necessary income to acquire basic necessities such as housing, food, and medical care for their families.⁴¹ For example, one ASAP member explains that asylum seekers need EADs to earn incomes so they can “survive with their families and avoid starvation and hunger.” Another member states that delays in EAD processing make it “hard to survive, [because] we need to work in order to provide for ourselves and our families. . . . It would be extremely difficult for us if we had to wait a year for the opportunity to show our gratitude by earning wages and contributing to the growth of this country.”

EADs also serve as one of the only forms of reliable identification for asylum seekers when they first arrive in this country—if not *the* only form of identification. EADs are thus critical predicates for eligibility for state, local, and private services. For example, the availability of an EAD can impact an asylum-seeking youth’s ability to receive an

⁴⁰ See Human Rights Watch, *At Least Let Them Work* at 1–3 (Nov. 12, 2013), https://www.hrw.org/sites/default/files/reports/us1113_asylum_forUPload.pdf.

⁴¹ *Id.* at 15–16, 31–35.

education: One ASAP member notes that “as a young asylum seeker . . . a social security number and work permit [would allow me] to enter the university education system.”

Unfortunately, ASAP members report significant delays in USCIS’s processing of their applications for asylum-based EADs, despite the court order requiring USCIS to adjudicate their initial EAD applications within 30 days.⁴² Even today, eight months after the court issued its order, USCIS’s compliance has been abysmal,⁴³ and many ASAP members report that USCIS continues to fail to adhere to its legal mandate to timely process their EAD applications.

Additionally, because applicants seeking to *renew* their EADs are not subject to any mandatory processing times, they suffer from even more egregious processing delays. Thus, many ASAP members with pending renewal applications are concerned that their applications are not even being adjudicated within six months. While renewal applicants may be able to work for up to 180 days while their new applications remain pending, they are at risk of losing work authorization after that period. As a result, the agency’s excessive delays are causing EAD renewal applicants to needlessly lose their jobs and benefits, substantially increasing their risk of homelessness, food insecurity, and medical neglect.

The preceding administration’s efforts to restrict asylum seeker EAD eligibility and processing have proven catastrophic in this regard.⁴⁴ Even the un-enjoined rules have negatively impacted ASAP members and other asylum seekers by creating confusion, engendering further delays in adjudication, and barring many vulnerable asylum seekers from receiving EADs.⁴⁵

USCIS should act immediately to improve processing times and address access issues that harm asylum seekers applying for EADs. First, the agency should rescind both of the prior administration’s rules restricting EAD eligibility and slowing EAD processing

⁴² *CASA*, *supra* note 24, at 973.

⁴³ See generally, e.g., Pls.’ Mot. for Civil Contempt and to Enforce Permanent Injunction, *Rosario v. USCIS*, No. 2:15-cv-00813-JLR (W.D. Wash. Mar. 25, 2021), ECF No. 171 (outlining USCIS’s egregious, systematic failure to comply with court-mandated processing times) [hereinafter “*Rosario* Contempt Motion”].

⁴⁴ See sources cited *supra* note 9.

⁴⁵ Cf. Asylum Seeker Advocacy Project, Comment to the Department of Homeland Security’s Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants, DHS Docket No. DHS-2019-0011, 84 Fed. Reg. 62,374, at 7–15 (Jan. 13, 2020), <https://www.regulations.gov/document/USCIS-2019-0011-0803> (detailing impacts of proposed rule on asylum seekers generally and ASAP members specifically).

for asylum seekers.⁴⁶ ASAP is deeply disappointed that DHS recently attempted to ratify the prior administration's rule removing the 30-day processing requirement for asylum-based EADs,⁴⁷ even after a court held that the rule was likely unlawful in light of DHS's failure to fully grapple with the damage the rule would cause and consider less harmful alternatives.⁴⁸ In its effort to save the rule, DHS ironically sought to preserve a significant *barrier* to access in the midst of this very comment period about how it could *improve* access. Particularly given the disastrous effects the rule has had on processing even *for asylum seekers who are not subject to it*,⁴⁹ DHS and USCIS must revisit this decision and rescind the rule.

USCIS must also rescind the broader asylum-based EAD rule effective August 25, 2020, which more than doubled the waiting period for asylum-based EAD eligibility; categorically barred groups of asylum seekers from accessing EADs (including many who entered without inspection, had been convicted of certain crimes, or had filed their asylum applications more than one year after entering the United States); automatically terminated EADs for various asylum seekers regardless of whether they continued to pursue their claims; instituted a new biometrics requirement; empowered individual adjudicators to arbitrarily deny EADs to asylum seekers based on discretion; singled out asylum seekers who had passed credible fear or reasonable fear interviews to exclude them from eligibility for parole-based EADs; and enacted other detrimental changes to asylum case processing and asylum-based EAD processing. Like the rule repealing the 30-day processing requirement for asylum-based EADs, this pretextual rule is an obvious effort to make it more difficult for asylum seekers to access EADs, in direct contradiction to the access-favoring policy announced by President Biden in Executive Order 14012.⁵⁰ USCIS should remove the many barriers the rule imposes by rescinding it in full.

Second, USCIS should allocate sufficient staff and resources to timely process all asylum-based EAD applications within 30 days of receipt. The agency should not only approve applications within 30 days, but should also promptly produce and mail EAD

⁴⁶ See sources cited *supra* note 9.

⁴⁷ DHS, DHS Ratifies Rule that Removes 30 Day EAD Processing Requirement and Acknowledges Importance of Issuing Timely Work Authorizations (May 7, 2021), <https://www.dhs.gov/news/2021/05/07/dhs-ratifies-rule-removes-30-day-ead-processing-requirement>.

⁴⁸ CASA, *supra* note 24, at 961–64.

⁴⁹ See *Rosario Contempt Motion*, *supra* note 43.

⁵⁰ 86 Fed. Reg. 8277 (Feb. 2, 2021) (directing agencies to “identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits” to facilitate “full participation by immigrants, including refugees, in our civic life”).

cards after processing. In addition, USCIS should alert asylum seekers with USCIS accounts via email and text message when their EAD cards are placed in the mail.

Third, USCIS should engage in new and affirmative rulemaking and policy reforms to further improve EAD application processing and remove barriers to eligibility. In a new rulemaking, USCIS should eliminate the remaining categorical barriers to asylum-based EADs which predate the prior administration's rules, such as the bar on EADs for asylum seekers with prior convictions which USCIS adjudicators believe constitute "aggravated felonies."⁵¹

USCIS should also ensure that its efforts to address the backlog in EAD application processing do not penalize asylum seekers. To that end, in new rulemaking, USCIS should adjust the asylum-based EAD application waiting period as needed to ensure that asylum seekers can receive their EADs as soon as the 180-day statutory timeline has been satisfied, as they could prior to the Trump Administration. For example, if USCIS believes it needs 40 rather than 30 days to process asylum-based EADs, it should accept applications starting 140 days after an asylum application is filed rather than 150 days after an asylum application is filed.

As discussed above in Part III-A, USCIS should further consider allowing individuals to apply to receive EADs after 180 days via Form I-589, at the same time they apply for asylum. It should further consider simplifying Form I-589 so as to enable asylum seekers to lodge an asylum application and begin their EAD clocks without having to detail every element of their claim on an unwieldy form far in advance of any interview or hearing.

Fourth, USCIS should provide a straightforward and accessible system for asylum seekers to address post-approval delays with their EADs, including card production delays and technical errors such as name misprinting. Relatedly, numerous ASAP members have recently reported errors in the entry of their names in the Social Security Administration (SSA) database and the printing of their names on their social security cards, despite having submitted correct information on Form I-765 and receiving properly printed EAD cards from USCIS. Because many employers require social security cards and will decline to employ someone whose name on their EAD card is a mismatch with their social security card and SSA systems, these technical agency errors effectively bar many asylum seekers from working, almost as if they had been denied EADs

⁵¹ Whether a prior conviction constitutes an "aggravated felony" is a notoriously complex legal question that frequently evolves with new case law and varies by jurisdiction.

altogether. Accordingly, USCIS should work with the Social Security Administration to fix these problems and ensure that it transmits correct and accurate data.

Finally, ASAP members report that USCIS fees are burdensome and often deter them from accessing immigration benefits. For example, one member notes that the cost to renew an EAD is “excessively expensive” and laments that “the economic conditions of the applicant are not taken into account.” Accordingly, USCIS should eliminate or substantially reduce fees for all asylum seekers, who are disproportionately likely to be in precarious economic circumstances and may not be able to complete the complicated Form I-912. This includes repealing the \$85 biometrics fee and requirement imposed by the August 25, 2020 rule and the \$410 application fee for asylum-based EAD renewals.

- VI. USCIS should reopen the comment period for 90 days (or, alternatively, open a new comment period) and encourage comments in all languages to provide a meaningful opportunity for stakeholders, particularly noncitizens who interact directly with USCIS, to weigh in.**

As ASAP members’ insights demonstrate, individuals directly affected by the immigration system possess a wealth of recommendations about how to improve it. This comes as no surprise: Having interacted with the system as applicants or petitioners, these individuals are the best situated to identify problems and propose solutions. USCIS and other immigration agencies should therefore solicit guidance from directly affected individuals and give their recommendations serious consideration, particularly (but not only) when those recommendations pertain to accessibility.

Unfortunately, the truncated 30-day comment period provided here does not allow for meaningful participation by many noncitizens, particularly those who lack legal backgrounds and those whose primary language is not English. 30 days is *half* of the standard review period for traditional regulatory proposals,⁵² which may be narrower (i.e., bounded to specific regulatory text) and less inclusive of lay perspectives than this

⁵² Executive Order 12866 states that agencies should allow “not less than 60 days” for public comment “in most cases,” in order to “afford the public a meaningful opportunity to comment on any proposed regulation.” Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993). Executive Order 13563 states that “[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.” Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011). The minimum standard review period under the Paperwork Reduction Act is also 60 days. See 5 C.F.R. § 1320.8(d)(1).

Request for Public Input aims to be. Such a short comment period itself poses a barrier to access.

ASAP agrees that the existing barriers to access at USCIS impose severe harms on noncitizens and require urgent resolution. Accordingly, ASAP does *not* advocate that USCIS delay taking action to address these barriers. Rather, USCIS should begin reviewing public input and implementing improvements immediately, but it should also reopen the comment period for 90 days—or, alternatively, open a new 90-day comment period—to continue soliciting input.

In addition, to facilitate participation by directly affected individuals as discussed above in Part II, USCIS should translate its request for comment into multiple languages, and it should clearly state that it will accept comments in languages other than English. If the agency truly aims to improve accessibility for the most marginalized individuals, it must ensure that those individuals have a meaningful opportunity to provide guidance.

Conclusion

For the above reasons, USCIS should adopt the recommendations outlined herein and should reopen the comment period (with expanded language access) to continue soliciting input from affected individuals.

Thank you for your time and consideration.

Sincerely,



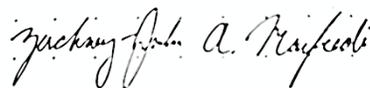
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