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**Re: Comment from the Asian Americans Advancing Justice Affiliation on DHS Docket No. USCIS–2025–0271, Interim Final Rule “Removal of the Automatic Extension of Employment Authorization Documents,” RIN 1615-AD05.**

The Asian Americans Advancing Justice affiliation (Advancing Justice) writes in opposition to the October 30, 2025 Interim Final Rule (IFR) eliminating automatic extensions of Employment Authorization Documents (EADs). This IFR reverses longstanding policy, downplays ongoing adjudication delays, and ignores the substantial harm this rule will inflict on workers, employers, and communities.

Advancing Justice is a national affiliation of four leading organizations advocating for the civil and human rights of Asian Americans and other underserved communities and for a fair and equitable society for all. To achieve our mission, we work together—as equal and independent partners under one name, speaking with one unified and powerful voice—to promote justice, empower our communities, bring local and national constituents together, and strengthen our multi-racial democracy.

Working families will suffer the brunt of this rule’s negative impacts. Facing potential gaps in employment authorization, EAD holders will have to grapple with employment disruption, loss of income, inability to cover basic expenses, and possible relocation to obtain employment. Furthermore, employers, already facing labor shortages, inflation, and a new tariff landscape, will now have to contend with another source of uncertainty and additional costs. The rule will also negatively impact other stakeholders who rely on a regulatory system that aims to minimize government-caused lapses in employment authorization. These stakeholders include state, city, and local governments; regional economies; educational institutions; healthcare providers; and the broader public, among others.

These changes will significantly harm Asian Americans and Pacific Islanders. There are 26.8 million Asian Americans in the U.S., nearly 8 percent of the population, and over 1.8 million Native Hawaiian and Pacific Islanders, comprising 0.5 percent of the total population.<sup>1</sup> Moreover, as of 2023, Asia serves as the second largest region of origin for immigration to the United States, accounting for 31 percent (or 14.6 million) of all foreign-born United States

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<sup>1</sup>U.S. Census Bureau, *Population Estimates 2020-2024*, <https://www.census.gov/programs-surveys/popest/data/tables.html> (last visited Nov. 19, 2025).

residents.<sup>2</sup> Indeed, Asian Americans and Pacific Islanders make up sizeable segments of many of the EAD categories implicated by this rule. And Asian American and Pacific Islander business owners—who manage over three million businesses that employ over five million workers and generate nearly a trillion dollars in sales—will have to contend with further workforce uncertainties resulting from this rule.<sup>3</sup> In light of these severe harms, we urge the Department of Homeland Security (DHS) to fully withdraw the IFR.

## I. Background

DHS issued this IFR, effective Oct. 30, 2025, ending automatic extensions of EADs for individuals filing EAD renewals in certain employment authorization categories.<sup>4</sup> For nearly a decade, USCIS has automatically provided an authorization extension of some length to many types of individuals with expiring EADs.<sup>5</sup> Most recently, in 2024, DHS determined that a 540-day automatic EAD extension was necessary to prevent employment lapses caused by agency delays.<sup>6</sup>

Nonetheless, the 2025 IFR now eliminates automatic extensions, imposing consequences that DHS less than a year ago deemed economically harmful and operationally unworkable. In fact, USCIS’s most recent data indicates that 54% of work permit applications take longer than 180 days to process.<sup>7</sup> Renewal requests make up 44% of pending work permit requests.<sup>8</sup> Since EAD holders can typically only submit renewal requests within six months of expiration, many will experience gaps in employment authorization under this new rule.<sup>9</sup>

Additionally, DHS opted to promulgate this rule through an IFR, bypassing the notice and opportunity for comment required by the Administrative Procedure Act (APA). In this instance, an IFR is unwarranted and unlawful. DHS’s reliance on the “good cause” and “foreign affairs” APA exceptions rests on flimsy and speculative grounds. The narrow “good cause” exception to notice and comment requires that such procedures prove “impracticable, unnecessary, or contrary to the public interest.”<sup>10</sup> While DHS claims that notice and comment would be impracticable and

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<sup>2</sup> Migration Policy Institute, *Immigrants from Asia in the United States*, <https://www.migrationpolicy.org/article/immigrants-asia-united-states#size> (last visited Nov. 19, 2025).

<sup>3</sup> U.S. Small Business Administration, *Facts About Small Business: Asian American Pacific Islander Ownership Statistics 2024*, <https://advocacy.sba.gov/2024/05/07/facts-about-small-business-asian-american-pacific-islander-ownership-statistics-2024/> (last visited Nov. 17, 2025).

<sup>4</sup> Removal of the Automatic Extension of Employment Authorization Documents, 90 Fed. Reg. 48,799 (Oct. 30, 2025).

<sup>5</sup> Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting of the High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82,455 (Nov. 18, 2016).

<sup>6</sup> Increase of the Automatic Extension Period of Employment Authorization for Certain Renewal Applicants, 89 Fed. Reg. 101,208 (Dec. 13, 2024).

<sup>7</sup> U.S. Citizenship & Immigration Services, *Appropriation Requirement Data (Sept. 2025)*, [https://www.uscis.gov/sites/default/files/document/data/appropriation\\_requirement\\_september%202025.csv](https://www.uscis.gov/sites/default/files/document/data/appropriation_requirement_september%202025.csv) (last visited Nov. 18, 2025).

<sup>8</sup> American Immigration Council, *USCIS Ends Automatic Extensions for Most Work Permits, Placing Immigrant Workers and Employers in Limbo*, <https://www.americanimmigrationcouncil.org/blog/uscis-ends-automatic-extensions-for-work-permits/> (last visited Nov. 18, 2025).

<sup>9</sup> U.S. Citizenship & Immigration Services, *Employment Authorization Document*, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document> (last visited Nov. 21, 2025).

<sup>10</sup> 5 U.S.C. § 553(b)(3)(B).

contrary to the public interest, it relies on an unsupported security rationale.<sup>11</sup> Likewise, courts have limited the application of the “foreign affairs” APA exception in the immigration context, where inevitable “incidental foreign affairs effects” would “eliminate[] public participation in this entire area of administrative law.”<sup>12</sup> DHS cannot satisfy that high bar here, as the potential effects on international relations that it puts forward are speculative, tenuous, or otherwise reliant on unsupported claims of security risks.<sup>13</sup> A major change to EAD authorization of this sort necessitates proper public input, as evidenced by the prior notice and comment processes utilized by previous administration for updates to EAD extension policies.

## **II. USCIS’s purported reasons for issuing this new rule lack justification.**

In justifying its policy change, DHS alleges a need to more exhaustively vet individuals on security grounds.<sup>14</sup> According to the IFR, granting extensions prior to fully adjudicating renewal requests compromises national security interests.

Yet DHS fails to provide any meaningful evidence tying the current practice of automatic EAD extensions to security risks. In support of its security theory, DHS cites only a single incident without showing it involved an automatic extension or explaining how eliminating automatic extensions would have served as a corrective.<sup>15</sup> In fact, this new, unsupported security claim diverges from the agency’s previous rules on the matter, which did not identify adverse impacts of automatic extensions on security vetting.<sup>16</sup> Further, the IFR does not explain why existing vetting procedures are insufficient. All renewal applicants have previously held EADs and undergone prior vetting. And, as part of a renewal application, applicants supply information—including biometrics—to enable continued vetting.<sup>17</sup> Many EAD holders also likely have other pending applications before USCIS that allow for additional agency vetting.<sup>18</sup> With such scant evidence, DHS’s alleged security concerns ring hollow.

DHS also claims that it must halt automatic extensions to reduce frivolous and fraudulent applications.<sup>19</sup> Doing so, DHS alleges, will free up overextended agency resources. But, here too, DHS does not provide any concrete evidence of fraud connected to EAD renewals, once again failing to back up its assumptions with any real evidence.

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<sup>11</sup> See *Cap. Area Immigrants’ Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 46 (D.D.C. 2020) (good cause exception not satisfied where agencies only provided a single example of potential adverse consequences and “offer[ed] no other data or information that persuasively supports their prediction of a surge” in border crossings before rule took effect).

<sup>12</sup> See *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 202 (2d Cir. 2010).

<sup>13</sup> 90 Fed. Reg. at 48,814.

<sup>14</sup> 90 Fed. Reg. at 48,799–800, 48,803, 48,806–17, 48,819.

<sup>15</sup> *Id.* at 48,808–09, 48,813–14.

<sup>16</sup> See generally 89 Fed. Reg. 101,208.

<sup>17</sup> American Immigration Council, *USCIS Ends Automatic Extensions for Most Work Permits, Placing Immigrant Workers and Employers in Limbo*, <https://www.americanimmigrationcouncil.org/blog/uscis-ends-automatic-extensions-for-work-permits/> (last visited Nov. 18, 2025).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 48,817.

### **III. This rule will lead to inefficient and unnecessary lapses in employment authorization, introducing harmful uncertainties for a broad swath of immigrants, immigrant families, and employers.**

Ending automatic extensions of EADs will negatively impact both incident to status and non-incident to status employment authorization categories. Non-incident to status individuals, who apply separately for employment authorization and rely on EADs to work legally, will be unable to work when their EADs lapse due to the delays in approving renewal applications. USCIS' latest data shows that the majority of work permit applications take longer than six months to process.<sup>20</sup> Without the automatic extension for timely renewed work permits, thousands of workers—previously authorized to work—will lose their jobs because USCIS will take months to process their renewal requests and will no longer offer automatic extensions.<sup>5</sup> This change poses a threat to self-sufficiency and family stability, as family members will suddenly be unable to work and cover household expenses.

Even those EAD holders whose employment authorization was granted with their immigration status will still suffer in the event of an EAD lapse. The IFR itself acknowledges that these individuals without an EAD may lack alternate unexpired evidence of employment authorization to show employers for I-9 purposes. Additionally, many individuals rely on EADs to obtain other forms of identification necessary for employment and self-sufficiency, such as driver's licenses.<sup>21</sup>

Several of the EAD categories implicated—including asylum applicants, recipients of Withholding of Removal, petitioners under the Violence Against Women Act (VAWA), and Temporary Protected Status (TPS) recipients—serve vulnerable populations who will suffer even further disruption to their lives because of the work authorization lapses this rule seems designed to increase.

Gaps in work authorization also cause workforce disruptions and additional costs for employers, who will face inefficiencies and inconsistencies in hiring and rehiring individuals who are highly motivated to work, even as many employers are already facing labor shortages, inflation, and a tariff landscape that has introduced uncertainty into the business environment

### **IV. This rule change poses a threat to self-sufficiency and family stability for many Asian noncitizens and Pacific Islander noncitizens going through immigration legal processes.**

Termination of automatic EAD extensions will especially hurt Asian noncitizens and Pacific Islander noncitizens, who make up large percentages of many of the impacted EAD categories. In 2023, there were 170,748 H-4 visa admissions from Asian countries (C26 EADs).<sup>22</sup> On

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<sup>20</sup> U.S. Citizenship & Immigration Services, *Appropriation Requirement Data (Sept. 2025)*, [https://www.uscis.gov/sites/default/files/document/data/appropriation\\_requirement\\_september%202025.csv](https://www.uscis.gov/sites/default/files/document/data/appropriation_requirement_september%202025.csv) (last visited Nov. 18, 2025).

<sup>21</sup> 90 Fed. Reg. at 48,809.

<sup>22</sup> AAPI Data, *By the Numbers: Immigration*, <https://aapidata.com/featured/by-the-numbers-immigration/> (last visited Nov. 18, 2025).

average, Asian immigrants have also constituted the largest share of new Legal Permanent Residents in the last decade, and will be uniquely hurt by the lack of automatic EAD extensions for adjustment of status applicants (C09 EADs).<sup>23</sup> The rule will also freeze automatic EAD extensions for Pacific Islander citizens of Micronesia, Marshall Islands, and Palau (A08 EADs).

Asian immigrants also comprised the largest share of admitted refugees and asylees in recent years—nearly 22,500 admitted refugees and 7,400 asylees annually over a ten-year period ending in 2023 (A03 EADs for refugees, A05 EADs for asylees and C08 EADs for pending asylum applicants).<sup>24</sup> Asylum seekers have a right to live and work in the United States as they go through the asylum process, but they often wait years for an asylum interview with USCIS.<sup>25</sup> During that time, they rely on work authorization to be able to work and provide for their families. Disruptions in work authorization mean that they could lose their jobs while enduring prolonged USCIS processing times.

A staff member of one of our organizations believes at least 50 of the organization’s clients will likely experience gaps in employment authorization as a result of this rule. A representative from another organization’s legal services department stated:

*We easily have more than 100 clients that will be impacted by this rule. It will place individuals in difficult situations with no good outcomes or alternatives. If we submit an EAD renewal application prior to 6 months of its end date, it may be rejected, and even if we do submit it right at 6 months, there's a good chance there will be a gap in work authorization given the average processing time and that the automatic extension has been terminated. This will lead to loss of jobs and livelihoods and will add unnecessary and additional difficulties.*

## **V. Conclusion**

For the reasons stated above, we call on the Administration to withdraw this rule immediately. Workers and employers should not be forced to suffer unnecessarily due to USCIS’s own processing delays. This rule will foster uncertainty in the workplace, disrupt livelihoods, and destabilize families and communities. It is especially troubling that DHS has failed to provide any justification for such a harmful policy change. We urge the Trump Administration and DHS to withdraw this rule and instead focus on actual changes that will improve our immigration system.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Human Rights First, [Saving Lives, Ending Inefficiencies: Steps to Strengthen the U.S. Asylum Adjudication System](#) (last visited Nov. 21, 2025).