IMMIGRATION EQUALITY

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Submitted via www.regulations.gov

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U.S. Citizenship and Immigration Services, Department of Homeland Security
20 Massachusetts Avenue NW, Mailstop #2140
Washington, D.C. 20529-2140

January 13, 2019

Re: Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants, DHS Docket No. USCIS-2019-0011 84 F.R. 62374

Dear Ms. Deshommes:

I write on behalf of Immigration Equality in response 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, DHS Docket No. DHS-2019-0011, 84 F.R. 62374, issued November 14, 2019 ("Notice" or "proposed rule"). We strongly oppose the changes proposed to the asylum application, interview, and employment authorization ("EAD") process. The proposed rule will have grave effects on our client base of lesbian, gay, bisexual, transgender, queer ("LGBTQ") and HIV-positive (collectively, with LGBTQ, "LGBTQ/H") asylum seekers. Most significantly, the proposed rule would prevent or needlessly delay our clients from attaining self-sufficiency and would deny them access to critical necessities, including food, shelter, and health services. The proposed rule also causes uncertainty on whether or not an asylum application is deemed to be complete with USCIS, which is important for asylum seekers given that, unless an exception applies, they have to file their applications within one year of their entry into the United States.

We, therefore, strongly urge that the proposed rule be withdrawn in its entirety and asylum seekers be allowed to apply for EADs concurrently with their asylum applications or, alternatively, that the current rules remain in effect. Please note that while we do not discuss every aspect of the proposed rule, we strongly oppose the proposed rule in its entirety. We further note that the documents cited in the footnotes herein should be reviewed and should be considered part of the administrative record.

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I. Immigration Equality

Immigration Equality is a national organization that provides free legal services and advocacy for LGBTQ and HIV-positive immigrants. In more than 80 countries, it is either a crime or profoundly dangerous to be LGBTQ. Immigration Equality's mission is centered around securing safety and freedom for LGBTQ and HIV-positive individuals. Our in-house legal team and pro bono network of 130+ law firms in 150+ offices nationwide are currently providing legal representation to more than 600 asylum seekers, including securing EADs for most of these individuals.

Given our extensive experience, we understand at the most fundamental level the importance of securing work authorization for our clients as quickly as possible. Without the ability to work, asylum seekers often are denied basic necessities, such as housing, food, medication and healthcare. Not only are these necessities critical for survival, but they are essential for individuals to effectively pursue their asylum claims.

II. The Proposed Rule Radically Limits LGBTQ/H Asylum Seekers' Ability to Apply for Work Authorization

The proposed rule, in its entirety, is aimed at limiting an asylum seeker's ability to apply for an EAD and undermines the ability of immigrants to support themselves and their families. Most notably:

a. Extending the Wait Period to Apply for Work Authorization Harms LGBTQ/H Asylum Seekers

Under the current system, asylum seekers must wait 150 days from the date they file an asylum application before applying for an EAD (if the applicant has caused delays in their asylum case, they must wait even longer). USCIS will only grant an EAD if 180 days have elapsed from the date that an asylum seeker filed an asylum application. The goal of this 150- and 180-day period is to "deter applicants from delaying their asylum application."[1] Therefore, the days of delay in adjudication of an asylum seeker's application caused by actions of the asylum seeker, are not counted towards the 180 days.[2] Actions of the asylum seeker that are considered to delay adjudication include requesting that an Immigration Court change venue in an asylum seeker's case, grant a continuance, or requesting an asylum office to reschedule an interview.[3] DHS is proposing to do away with the 180-day "clock" and all the delay calculations, and to instead,

[1] Notice at 62388.
[2] *See* EXEC. OFFICE OF IMMIGRATION REVIEW & U.S. CITIZENSHIP AND IMMIGRATION SERVS., THE 180-DAY ASYLUM EAD CLOCK NOTICE (2017) https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice_-_revised_05-10-2017.pdf.
[3] *See id.*

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institute a 365-calendar day waiting period before an asylum seeker can file an application for an EAD.[4]

The existing five-month wait period before applying for an EAD is already unduly burdensome forcing many asylum seekers into homelessness, and making access to food, clothing, shelter, medication, and health services very difficult. The proposed rule would exacerbate this already precarious situation forcing asylum seekers to wait even longer before applying for work permits.

The burden of this 365-calendar day wait period will impact LGBTQ and HIV-positive asylum seekers profoundly. As described in greater detail in Section IV below, many LGBTQ and HIV-positive individuals seek asylum in the United States as a result of persecution by their own families and communities. Thus, many of our clients cannot rely on family or community networks in the United States for financial support. By forcing asylum seekers to wait a longer period of time to apply for an EAD, the proposed rule will result in many LGBTQ/H asylum seekers foregoing basic necessities like food, housing and medical care. Alternatively, they may be forced to rely on support from homophobic, transphobic, and/or serophobic family or community members, subjecting them to increased violence and abuse. Additionally, LGBTQ/H asylum seekers will likely need to rely more heavily on social service organizations for help, stretching thin the already limited resources of such organizations.

b. The Proposed Rule Penalizes LGBTQ/H Asylum Seekers for Supporting their Asylum Applications with Evidence and Availing Themselves of Critical Administrative Tools and Remedies

DHS has also proposed that both initial and renewal EAD applications be denied if there are any unresolved "applicant-caused" delays at the time the EAD application is adjudicated.[5] This proposal will result in arbitrary denials of EADs and increased inefficiencies in the asylum process.

The applicant-caused delays contemplated by the proposed rule would include routine and necessary administrative tools and processes. For instance, a change of venue request from an asylum seeker who relocated after being released from detention would result in an EAD denial unless the asylum seeker attended a hearing in the new venue prior the adjudication of their EAD application. Likewise, a request to reschedule an asylum interview with USCIS because the applicant was critically ill would result in a denial of an EAD unless the applicant attended their rescheduled interview prior to adjudication of their EAD application.

Penalizing asylum seekers by denying EADs for those who avail themselves of these routine, yet essential, remedies and processes is unjust and will have a devastating impact on our clients. For instance, our client MP, a gay man from Nicaragua living with HIV, presented himself at the border

[4] Notice at 62421.
[5] Notice at 62389.

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and requested asylum. He was detained at Otay Mesa Detention Center in Southern California. After being released on parole, he moved to Florida to live with his sister, his only relative in the United States. When MP's brother-in-law found out MP was HIV-positive he kicked MP out of the house. Without a place to live and no support network, MP moved to New York City in order to access medical care and mental health resources. Since MP was forced to move several times in order to secure lifesaving HIV care and secure housing, he had to file a request to change the venue of his proceeding with the immigration court. Under the proposed rule, if MP's asylum application was adjudicated before he had a hearing in the new venue, the EAD application would be denied. The proposed rule would thus punish MP for seeking safety, stability and life-saving HIV care.

The proposed rule would also deny EAD applications to asylum seekers who amend or supplement their applications. Such a result is perverse. Generally, amendments and supplements to asylum applications are filed to keep the government up to date regarding any notable changes in the applicant's life, status and case. Far from causing delays, such filings aid in the efficient adjudication of asylum claims. The proposed rule would make DHS's job more difficult since asylum seekers would be deterred from appropriately amending and supplementing their applications. Moreover, applicants would be forced to make difficult decisions regarding whether to submit information necessary to support their asylum claim or risk losing their employment authorization. This will be especially difficult given that asylum applicants bear the burden of corroborating their asylum claims, which include information on the changed circumstances of the applicants themselves and changing conditions in their home countries. Notably, it is not always possible for asylum seekers to submit all evidence when they first submit their asylum application, especially when they are detained and have no access to counsel.

In defensive asylum applications pending before the Immigration Courts, asylum seekers are given a "call-up date" by which they are to submit evidence in support of their claims. This call-up date is scheduled before an individual hearing, but after an asylum seeker has filed an application for asylum. The proposed rule could result in a situation where an applicant who appears at a master calendar hearing in March 2019, schedules an individual hearing for the first available date, in June 2021, submits supplemental documentation and an amended I-589 form in July 2019, and who then becomes eligible to apply for employment authorization in August, could be denied EAD because the immigration judge had not separately "ruled" on the "request" to amend/supplement the application, even though the court was certainly expecting such filings to be made and had no plan to do anything with them until shortly before the individual hearing in 2021.

In essence, DHS is planning to penalize asylum seekers for unpredictable processing times over which asylum seekers have no control whatsoever and for being truthful by submitting amendments and other filings to supplement their applications. EAD renewal applications currently take roughly four to six months, but the precise date a particular EAD application will be adjudicated is obviously unknown to the asylum seeker who has no control over what is or is not unresolved at a given moment. DHS' previous proposal to eliminate its deadline for processing

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EAD applications[6] will cause even more uncertainty about when the EAD application will be adjudicated. In short, the proposed rule will result in completely arbitrary EAD denials and significant administrative inefficiencies.

c. The Proposed Rule Denies EADs to LGBTQ/H Asylum Seekers Who File After the One-Year Filing Deadline Even if They Meet A Statutory Exception

Under the current system, asylum seekers must generally file their asylum application within one year after their entry into the United States, or must prove to an asylum officer or immigration judge that they meet an exception to this one-year filing deadline.[7] Applications for EADs are presently not impacted by the one-year filing deadline. However, under the proposed rule, EADs will only be granted if the asylum seeker meets the one-year filing deadline, or if an asylum officer or immigration judge makes a finding that an exception to the one-year filing deadline is met. Immigration judges and asylum officers decide on whether or not an asylum seeker meets an exception for the one-year filing deadline when the underlying application for asylum is adjudicated. Thus, the practical result is that no EADs will be granted for any asylum seeker who files after the one-year filing deadline, even where the asylum seeker ultimately meets an exception.

Such a result would dramatically impact our clients. Many LGBTQ asylum seekers are traumatized by the pervasive homophobic and transphobic violence in their countries of origin. Indeed, in many of these countries, being openly LGBTQ can subject an individual to severe criminal penalties, including imprisonment or even death. In order to stay safe, many LGBTQ individuals choose not to disclose their sexual orientation or gender identity, and sometimes, even repress their own sexual orientation or gender identity. In fact, many asylum seekers only "come out" as LGBTQ once they are living safely in the United States where they are free to express themselves. Accordingly, many of our clients successfully rely on having recently "come out" and many HIV-positive asylum seekers rely on a recent HIV diagnosis as an exception to the one-year filing deadline. Thus, the proposed rule would make EADs inaccessible for vulnerable LGBTQ/H asylum seekers with meritorious claims.

As justification for the one-year filing deadline provision of the proposed rule, DHS claims that the provision will reduce the asylum backlog by discouraging people from filing for asylum merely to "trigger removal proceedings" so that they can apply for cancellation of removal on form EOIR 42B.[8] This justification is unpersuasive. Asylum offices have developed an interview waiver program for asylum seekers who have been in the United States for over ten years before filing their asylum application. "The purpose of the waiver [program] is to allow the Asylum Division to move those applicants who only want to seek cancellation of removal in immigration court out

[6] *See* Removal of 30-Day Processing Provision for Asylum Applicant Related Form I–765 Employment Authorization Applications, 84 Fed. Reg. 47148 (proposed Sept. 9, 2019).
[7] Immigration & Nationality Act, 8 U.S.C. §1158(a)(2)(D).
[8] Notice at 62389-90.

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of the Asylum Division's backlog while conserving program resources for bona fide asylum seekers."[9] Should an individual wish to pursue cancellation of removal for nonpermanent residents on form EOIR 42B, the interview waiver program gives such person an opportunity to skip the interview process and directly be issued an NTA. This program is efficient and will serve to reduce the number of backlogged cases that have been filed for purposes of cancellation of removal.

The government's proposal to not issue EADs to asylum seekers who file an asylum application past the one-year filing deadline is unjust and unfair and severely impacts the lives and well-being of LGBTQ/H asylum seekers.

d. The Proposed Rule Denies EADs to LGBTQ/H Asylum Seekers with Minor Criminal Convictions Even Though the Convictions Do Not Preclude a Grant of Asylum.

The proposed rule would greatly expand the range of criminal convictions that would bar an asylum seeker from employment authorization, including convictions that are not bars to asylum itself. It would also allow USCIS adjudicators to deny asylum seekers employment authorization based only on having been *charged* with a crime (not convicted) if the charges are still pending when the EAD application is adjudicated.[10]

The proposal also conditions an EAD grant for any asylum seeker with pending or unresolved criminal charges on a "totality of the circumstances" test.[11] Basically, the proposed rule would require adjudicators of EAD applications to make complex determinations about whether particular offenses are subject to the categorical bar to EADs. However, these USCIS adjudicators would be making this decision with incomplete information. Indeed, in order to determine whether a particular criminal charge bars eligibility, DHS proposes that all applicants complete a biometrics check.[12] This biometrics information appears to be the sole source on which adjudicators will base their decision. With such limited information on charges and convictions, adjudicators will not be able to make an informed decision on whether or not a conviction would bar an asylum seeker from being eligible for an EAD.

e. The Proposed Rule Undermines the Fundamental Tenets of Asylum by Denying LGBTQ/H Asylum Seekers EADs for Having Entered Without Inspection

[9] U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS ASYLUM DIVISION QUARTERLY STAKEHOLDER MEETING (Nov. 16, 2018), *available at* https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_QuestionsandAnswersNov162018AsylumMeeting.pdf.
[10] Notice at 62404-05.
[11] Notice at 62375, 62422.
[12] Notice at 62376, 62390.

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Under the proposed rule, DHS seeks to prohibit asylum seekers from obtaining EADs if they entered or attempted to enter the U.S. at a place and time other than lawfully through a U.S. port of entry without good cause.[13] Good cause is defined as "a reasonable justification" for entering the United States without inspection "as determined by the adjudicator on a case-by-case basis."[14] Examples of reasonable justification include requiring immediate medical attention or fleeing imminent serious harm.[15] The Rule provides a limited exception to the bar where: 1) the asylum seeker, after entry, presents themselves to the Secretary of Homeland Security or their delegate; 2) the asylum seeker indicates to the Secretary of Homeland Security or their delegate an intention to apply for asylum or expresses a fear of persecution or torture; and 3) the asylum seeker has good cause for having, or having attempted to, enter without inspection.

Immigration Equality strongly opposes this provision as it leaves asylum seekers without employment authorization for what could be years as their cases make their way through the courts. Moreover, it unlawfully penalizes asylum seekers in violation of the U.S.'s legal obligations under the 1951 Convention Relating to the Status of Refugees ("Refugee Convention") and the 1967 Protocol Relating to the Status of Refugees (the "Protocol"). Namely, it would constitute a prohibited penalty under Article 31 of the Refugee Convention and Protocol which specifically prohibits states from imposing penalties on refugees on account of their illegal entry or presence. Moreover, application of the ban on asylum seekers who cross the border between ports of entry is particularly troubling given DHS's active attempts to prevent asylum seekers from presenting at ports of entry through a series of policies and actions, including, the practice of "metering," the Migrant Protection Protocols, the third country transit ban, and the asylum cooperative agreements established with Guatemala, Honduras and El Salvador, as well as any additional countries in the future.

Notably, the manner of entry into the United States has little legal bearing on a person's right to seek asylum. The Board of Immigration Appeals has long held that "an alien's manner of entry or attempted entry . . . should not be considered in such a way that the practical effect is to deny [asylum] relief in virtually all cases."[16]

DHS states that "[e]xamples of reasonable justifications for [entering or attempting to enter without inspection] include . . . fleeing imminent serious harm."[17] The act of applying for asylum indicates that the asylum seeker is fleeing impending harm. The very fact that the asylum seeker has applied for asylum, should be "good cause" for having entered without inspection.

The proposed rule does not clarify to whom the case must be made to show that the asylum seeker has "good cause" for having entered without inspection. Should the adjudicator of this good cause

[13] Notice at 62422.
[14] Notice at 62392.
[15] *Id.*
[16] Matter of Pula, 19 I&N Dec. 467, 473 (B.I.A. 1987).
[17] Notice at 62392.

be the officer adjudicating the EAD application, it would significantly impact LGBTQ/H asylum seekers who entered the United States without inspection.

First, there are several LGBTQ/H specific-issues on which asylum officers are given mandatory training.[18] This training imparts sensitivity to LGBTQ/H-specific issues. It is unclear whether this training will also be mandatory for all USCIS officers adjudicating EAD applications.

Second, should LGBTQ/H asylum seekers be required to provide evidence that they fled persecution in order to show that they had "good cause" for entering the United States without inspection, the EAD application adjudication process would be equal to a "mini-merits" adjudication, i.e., the officer adjudicating the EAD application would essentially be making a determination on whether or not the asylum seeker was fleeing impending harm – a job which has been entrusted to only asylum officers and immigration judges. This mini-merits hearing would be conducted by an officer without the training on LGBTQ/H-specific issues, which would be pertinent to the adjudication of the application.

Finally, this rule is counterintuitive to DHS' reasoning that the proposed rule will "ease some of the administrative burdens USCIS faces in accepting and adjudicating applications for asylum and related employment authorization."[19]. By having to look at criminal issues and by having to adjudicate what is considered good cause for having entered without inspection, adjudicators of EAD applications will be tasked with a lot more than they are currently. Additionally, after the officer adjudicating an EAD decides on whether or not an asylum seeker had "good cause" for entering without inspection by fleeing persecution, an asylum officer or immigration judge would rule on the same issue, thus resulting in duplicative work and increasing the burden on the DHS.

In DHS' own words, "[a]sylum is a discretionary benefit that should be reserved only for those who are truly in need of the protection of the United States." Since an asylum seeker's manner of entry is not entirely relevant in considering whether or not the applicant qualifies for asylum, it should also not be relevant in the adjudication of an EAD application based on a pending asylum application. DHS' proposal to consider manner of entry for an EAD application based on a pending asylum application fundamentally undermines and contradicts the spirit and foundational tenets of asylum.

III. Eliminating the Current Requirement that Affirmative Asylum Applications Be Deemed Incomplete within 30 Days of Filing Will Result in the Rejection of Meritorious Claims

[18] U.S. CITIZENSHIP & IMMIGRATION SERVS., GUIDANCE FOR ADJUDICATING LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) REFUGEE AND ASYLUM CLAIMS. (Dec. 28, 2011), *available at* https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum%20Native%20Documents%20and%20Static%20Files/RAIO-Training-March-2012.pdf.
[19] Notice at 62383.

The Proposed Rule removes the provision that an application for asylum will automatically be deemed "complete" if USCIS fails to return the application to the alien within a 30-day period.[20] This proposal will cause uncertainty on whether or not an application is deemed "complete" and thus filed with USCIS. Under the current system, applications are deemed to be "complete" for adjudication purposes, if USCIS does not return the application within 30 days of filing. This is important because, an application that is deemed to be "complete" retains the filing date - i.e., the date on which the application was filed. Because asylum seekers generally have only one year from the date of their last entry into the United States to apply for asylum, the filing date is important to prove that the application was indeed filed within one year of the asylum seeker's last entry. Given that asylum applications can be rejected by USCIS long after they are filed, affirmative asylum applicants will not know whether their application was deemed "incomplete" in a timely manner. If an applicant files an application close to the one-year filing deadline, and that application is deemed "incomplete" due to a minor technical error, the proposed rule will likely prevent the applicant from correcting the deficiency in their application in time to reapply within the one-year filing deadline. The net result is that meritorious asylum applications will be rejected in violation of the United States obligations under domestic and international law.

IV. The Proposed Rule Will Negatively Impact Immigration Equality Clients

Immigration Equality's client population is uniquely vulnerable. Many clients have endured extreme violence in their countries of origin on account of their sexual orientation, gender identity and/or HIV status, and have fled to the United States with no financial resources or safety net to speak of. Obtaining permanent legal status in the U.S. is a crucial lifeline, and the ability to work while awaiting a determination on an asylum application is critical for survival. Simply put, without the an EAD, many of our clients cannot eat, cannot access transportation, cannot secure housing and cannot access essential healthcare.

Ninety-nine percent of our clients live at or below 250% of the poverty line when they are accepted into our legal services program with a substantial portion living at or below the poverty line. Forty-four percent are under the age of 30. Moreover, LGBTQ and HIV-positive individuals often seek asylum in the United States as a result of persecution by their own families and communities. Thus, our clients often cannot rely on family or community networks in the United States for financial support. Accordingly, it is crucial that our clients have an immediate means to support themselves.

Studies show that asylum seekers who lack community support are likely to become "homeless, live in overcrowded or unsafe conditions, and lack basic needs like food and clothing."[21] This has been true for many of our clients who, with the delay in securing an EAD under the current rule, routinely face homelessness and hunger. The National Coalition for the Homeless reports that

[20] Notice at 62390.
[21] Human Rights First, *Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families*, (Apr. 29, 2019), https://www.humanrightsfirst.org/resource/callous-and-calculated-longer-work-authorization-bar-endangers-lives-asylum-seekers-and.

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"LGBT individuals experiencing homelessness are often at a heightened risk of violence, abuse, and exploitation compared with their heterosexual peers. Transgender people are particularly at physical risk due to a lack of acceptance and are often turned away from shelters; in some cases signs have been posted barring their entrance."[22] Moreover, without an EAD, many LGBTQ/H asylum seekers are forced to enter the shadow economy where they are subjected to increased exploitation and abuse.

Further, many of our clients have medical needs that go unmet due to lack of income. The situation will worsen if the proposed rule takes effect. For example:

- HIV treatment, known as anti-retroviral therapy, is prohibitively expensive. Having to wait for work authorization for longer periods of time will hamper efforts by asylum seekers living with HIV to access necessary medical treatment and medication. This is not only devastating to the health of the individual, but could also have negative health consequences on the community at large, as disruptions in HIV care and treatment—especially resulting in reduced adherence or medication rationing—can lead to drug resistant strains of HIV. In short, the proposed rule could have a ripple effect on public health.

- Transgender clients who discontinue hormone therapy due to lack of financial resources can experience severe health consequences. Hormone therapy "is a medically necessary intervention for many transsexual, transgender, and gender-nonconforming individuals with gender dysphoria."[23] However, it is expensive and needs to be ongoing and closely monitored by healthcare professionals.[24] Ceasing treatment due to a lack of income can result in serious negative physical and mental health outcomes.[25]

- Many of our clients faced extreme violence and trauma in their country of origin and are in desperate need of mental health counselling services. These services are often inaccessible to asylum seekers who have no income.

We have seen firsthand the devastating impact the proposed rule would have on our clients. For example, our client NAS, a gay man from Ghana, was in the country for a little over a year when

[22] National Coalition for the Homeless, *LGBT Homelessness*, https://nationalhomeless.org/issues/lgbt/ (last visited Jan. 13, 2019).
[23] World Professional Association For Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, 33 (2011), https://www.wpath.org/media/cms/Documents/Web%20Transfer/SOC/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf.
[24] *Id*. at 65.
[25] American Psychiatric Association, *What is Gender Dysphoria* (Feb. 2016), https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria.

he was outed as gay to the Ghanaian community in the United States and to his family in Ghana. NAS was unable to go back to Ghana, given that his life would be in greater danger now that he was outed. His sister, with whom he was living in the United States, kicked him out of her house once she found out about his sexual orientation. NAS successfully relied on his outing as an exception to the one-year filing deadline and, with the help of Immigration Equality, filed an application for asylum. During the 180-day period without an EAD, NAS was homeless and in need of mental health services. It was extremely difficult for NAS to access these services or support himself since he was not yet eligible for an EAD. The proposed rule, by forcing people to wait 365-calendar days before applying for an EAD and imposing additional restrictions on applicants who miss the one-year filing deadline, would worsen the situation for asylum seekers like NAS.

In addition, many of our clients arrive to the U.S. without recognized forms of identification and cannot access social services without appropriate documents. An EAD is often the only form of picture identification an asylee can provide to social services agencies to access the resources they desperately need. It is also one of the few forms of travel documents permitted by TSA in order to travel within the United States.[26]

Without an EAD, many LGBTQ/H asylum seekers will also not be able to secure any other form of identification. Without identification, life is extremely difficult in the United States.[27] The difficulties are compounded for LGBTQ/H asylum seekers. Having a valid, up-to-date, ID can be important in order for an asylum seeker to avoid retraumatization. Transgender individuals, for instance, are continually subject to trauma when they do not have an ID that matches their gender identity.[28] By forcing a transgender asylum seeker to wait for 365-calendar days to apply for an EAD, the proposed rule prevents the asylum seeker from applying for an ID that matches their gender identity. Due to a lack of proper identification, transgender individuals, who have fled persecution on the basis of their gender identity, are continually retraumatized by situations where their gender identity is called into question.

Without an accurate, up-to-date ID card, even routine tasks can become bureaucratic nightmares.[29] Take for instance, the case of MS, a gay man from Chad who fled persecution on account of his sexual orientation. In Chad, MS was detained and tortured by the police because he is gay. Upon

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[26] Transportation Security Administration, *Travel: Identification*, https://www.tsa.gov/travel/security-screening/identification (last visited Nov. 7, 2019).
[27] *See* Patrick Marion Bradley, *The Invisibles: The Cruel Catch-222 of Being Poor with no ID*, WASHINGTON POST, June 15, 2017, https://www.washingtonpost.com/lifestyle/magazine/what-happens-to-people-who-cant-prove-who-they-are/2017/06/14/fc0aaca2-4215-11e7-adba-394ee67a7582_story.html.
[28] *See* Nolan Feeney, *Identity Crisis: Changing Legal Documents No Easy Task for Transgender Individuals*, TIME MAGAZINE, July 10, 2013, http://healthland.time.com/2013/07/10/identity-crisis-changing-documents-no-easy-task-for-transgender-individuals/.
[29] *See* Hannah Hussey, Ctr. For Am. Progress, *Expanding ID Card Access for LGBT Homeless Youth*, (Oct. 1, 2015), https://www.americanprogress.org/issues/lgbtq-rights/reports/2015/10/01/122044/expanding-id-card-access-for-lgbt-homeless-youth/.

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arrival into the United States, MS was forced to rely upon an acquaintance for housing. While MS was seeking counsel to help him with his asylum application, the acquaintance kicked him out of the house and refused to return MS' identity documents to him. Scared of law enforcement due to his experiences in Chad, MS did not report this to the police. MS was rendered homeless. Every homeless shelter he went to asked for some form of ID. Immigration Equality strongly advocated on his behalf to convince a homeless shelter to accept MS despite his lack of identity documentation. This experience is common amongst LGBTQ/H asylum seekers even now, with the 180-day waiting period. The situation will only worsen if the waiting period is made 365-calendar days.

Federal law does not provide asylum seekers with public assistance, such as income, housing or food assistance.[30] While federal law permits states to provided state-funded benefits for asylum seekers, this is entirely discretionary and only about half the states have extended any programs providing befits and eligibility can be extremely limited.[31]

It is a constant struggle for us to find social and medical service providers to fill the gap. The need is simply too great for the available resources. As a result, many of our clients suffer needlessly, with dire consequences for their health and well-being. This also has an impact on their underlying asylum claims. For example, without income, clients do not have money for transportation and miss appointments. Without housing, a consistent address and an ability to pay for phone service, attorneys have difficulty reaching clients and clients struggle to collect the necessary evidence to support their claims. Without appropriate mental healthcare resources, clients who have suffered severe trauma are retraumatized every time they discuss their experiences with their attorneys.

The timeframe under the current rule already causes hardship to our clients, forcing them to wait even longer is unconscionable.

Our clients are resilient, resourceful and want to be self-sufficient. After obtaining work authorization, our clients are successful and go on to be significant contributors to American society, pursuing careers in education, healthcare, the arts and activism, among others.

For example, one of our clients who fled Uzbekistan due to persecution on account of his sexual orientation is now a painter and graphic designer in New York City. A Nigerian client fleeing persecution founded a full-service media company empowering communities through storytelling. He is also now the Executive Director of a refugee shelter. A Mexican transgender client is an activist working with multiple organizations that advocate for the rights and needs of LGBTQ communities. She further contributes to society by working as a case manager at a community health center and is a full-time student in political science. Another one of our clients fled

[30] Human Rights First, *supra* note 13.
[31] *Id.*

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Venezuela to seek asylum in the U.S. and is a fashion designer. He went on to become a finale contestant on Project Runway.

V. Conclusion

For these reasons, DHS should immediately abandon the proposed rule, and either allow for asylum seekers to apply for EADs concurrently with their asylum applications or, alternatively, keep the current system in place. We urge DHS to dedicate its efforts to advancing policies that strengthen rather than undermine the ability of immigrants to support themselves and their families in the future.

Thank you for the opportunity to submit comments on the proposed rule. Please do not hesitate to contact Bridget Crawford at bcrawford@immigrationequality.org to obtain further information.

Sincerely,

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