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Ms. Lauren Alder Reid, Assistant Director
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Via Electronic Submission: www.regulations.gov

RE: Comments on behalf of America First Legal Foundation to the Department of Homeland Security and the Department of Justice, Notice of Proposed Rulemaking, "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers," 86 FR 46906, DHS Docket No. USCIS-2021-0012 (Aug. 20, 2021)

Dear Ms. Strano and Ms. Alder Reid:

America First Legal Foundation ("AFL") is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

We submit these comments regarding the Department of Homeland Security's ("DHS") and the Department of Justice's ("DOJ") Notice of Proposed Rulemaking, *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of*

Removal, and CAT Protection Claims by Asylum Officers, 86 FR 46906 (Aug. 20, 2021) (the "NPRM" or "proposed rule").

I. Summary

The proposed rule will not survive judicial review. It is substantively unlawful, practically ineffective, and administratively burdensome. And if promulgated it will be yet another magnet for illegal immigration, further exacerbating the crisis at our southern border.

First, the proposed rule is inconsistent with long-standing statutory and regulatory provisions governing expedited removal. It ignores the legislative intent of the Homeland Security Act of 2002, and impermissibly redefines the scope of DHS's parole authority.

Second, U.S. Citizenship and Immigration Services ("USCIS") will be unable to implement the proposed rule effectively and efficiently without significant planning and additional funding. At a minimum, USCIS will have to redraft all training materials, train existing officers on withholding of removal and protection under the Convention Against Torture ("CAT"), and ultimately hire hundreds of new asylum officers. For an agency that narrowly escaped financial ruin in 2020, the money simply does not exist to carry out this mission.

Third, the proposed rule irrationally denies immigration judges the ability to adjudicate cases in the manner most conducive to ascertaining the truth—through an adversarial hearing where the alien and DHS can both present evidence and arguments—in favor of a process that uses asylum officers who are predisposed to granting relief. Thus, the practical considerations also warrant the withdrawal of this proposal.

The timing for this proposed rule could not be worse. The United States is in crisis because the Biden Administration has opened the southern border[1] and effectively ended immigration enforcement.[2]

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[1] U.S. Customs and Border Protection, *Southwest Land Border Encounters* (Sept. 2021), https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters; U.S. Border Patrol, *Monthly Apprehensions (FY 2000 – FY 2019)*, https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Monthly%20Apprehensions%20%28FY%202000%20-%20FY%202019%29_1.pdf; Congressional Research Service, *Immigration: Recent Apprehension Trends at the U.S. Southwest Border* (Nov. 19, 2019), https://www.everycrsreport.com/reports/R46012.html.

[2] For example, DHS has resorted to utilizing Notices to Report, a document without any statutory or regulatory authority, to illegally circumvent statutes addressing detention, release, and parole authority to usher in thousands of aliens who have no legal claim to enter or remain in the United

The proposed rule will needlessly exacerbate an already explosive situation. Any changes viewed as further easing immigration enforcement will serve as a tremendous pull factor leading toward even more illegal immigration. The news that people can be released into the United States—through parole or otherwise—and apply for benefits without even filling out an application for asylum will attract hundreds of thousands of persons eager to take advantage of the American taxpayer.

If DHS and DOJ finalize the NPRM, we will spare no expense and make every effort to ensure that it is properly enjoined, held unlawful, and set aside.

II. There Proposed Rule Lacks Statutory Authority.

The proposed rule is *ultra vires*.

It is well-established that an agency may only act as "authoritatively prescribed by Congress."[3] Put differently, it is unlawful for agencies to act in violation of their own enabling statutory authority, yet that is precisely what DHS and DOJ propose to do here.[4] In this NPRM, the Departments wrongly assert that USCIS has the power to issue orders of removal and to, via regulation, expand the circumstances under which parole may be granted to aliens.

As discussed below, any reviewing court would look no further than the first prong of the *Chevron* Doctrine and would find that "…Congress has spoken to the precise question at issue…" and that the "…intent of Congress is clear…"[5] DHS and DOJ plainly lack the statutory authority to implement the proposed regulations.

a. The NPRM Impermissibly Transfers Authority from the Department of Justice to the Department of Homeland Security Without Statutory Authority.

The Departments seek to provide those aliens found to have a credible fear with an opportunity to present a full-fledged protection claim before USCIS. Instead of being placed in removal proceedings before an immigration judge, the alien would first have an opportunity to present the claim in a non-adversarial setting before an asylum

States. Andrew R. Arthur, *Big Surprise: Most Migrants Released at Border Don't Report to ICE*, CENTER FOR IMMIGRATION STUDIES (Jul. 29, 2021), https://cis.org/Arthur/Big-Surprise-Most-Migrants-Released-Border-Dont-Report-ICE.

[3] *City of Arlington v. FCC*, 529 U.S. 290, 298 (2013).

[4] *Id.*; *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994).

[5] *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).

officer.[6] As part of that adjudication, the asylum officer will have the ability to grant asylum, withholding of removal, or protection pursuant to the CAT.[7]

While we will discuss our concerns with the non-adversarial proceedings and other technical matters associated with granting either withholding of removal or protection under CAT, *infra*, as a predicate matter, USCIS does not have the authority to order removal from the United States in this context.[8] A removal order and subsequent grant of either form of protection are functions are reserved for immigration judges within the Executive Office for Immigration Review (EOIR), a component of the Department of Justice.

Prior to the creation of DHS, all immigration matters were handled within the former Immigration and Naturalization Service (INS). While enforcement and adjudication functions were comingled with those hearing officers ordering deportation, these functions were eventually separated. In 1983, DOJ promulgated rules to "…improve the management, direction, and control of the immigration judicial review programs…"[9] In doing so, the quasi-judicial functions previously managed by INS were reorganized into the newly formed EOIR.[10] Specifically, the INS Commissioner was divested of any authority to direct any function transferred to EOIR.[11]

This regulatory separation of authority continued statutorily with the passage of the Homeland Security Act of 2002.[12] As Congress created DHS, it specifically determined which functions would be transferred. Regarding asylum officers, or USCIS in general, Congress specified which immigration functions would be transferred to the new created department.[13] Section 451 of the HSA established the Bureau of Citizenship and Immigration Services and provided its function as transferred from the DOJ.[14] By including a catchall provision for any functions that

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[6] NPRM at 46942.
[7] *Id*. at 46942-46944.
[8] DHS, of course, retains authority to issue removal orders through its enforcement components under the expedited removal and administrative removal regimes.
[9] Board of Immigration Appeals; Immigration Review Functions; Editorial Amendments, 48 Fed. Reg. 8038 (Feb. 25, 1983) (codified at 8 C.F.R. parts 1,3, and 100).
[10] *Id*. at 8039.
[11] In relevant part, the Federal Register noted " (a) The Attorney General has delegated to the Commissioner, the principal officer of the Immigration and Naturalization Service, authority to direct the administration of the Service and enforce the Act and all other laws relating to immigration and naturalization except the authority delegated to the Executive Officer for Immigration Review, the Board of Immigration Appeals, the Office of the Special Inquiry Officer, or Special Inquiry Officers." *Id*.
[12] Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).
[13] *Id*.
[14] *Id*. at §451(b), 116 Stat. 2135, 2196 (2002). ("(b) Transfer of Functions from the Commissioner. – In accordance with title XV (relating to transition provisions), there are transferred from the

may have been missed in the paragraphs 1 through 4, it is apparent that the intent was to ensure that whatever adjudicative functions were being performed by INS prior to the transfer, would be continued by USCIS subsequent to it. Nothing in the provision suggests the intent to transfer any other functions.

As additional evidence that EOIR functions were not transferred, the HSA affirmatively established EOIR within DOJ. This section, codified in INA, states:

> (1) *In general.* – The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.[15],[16]

This provision makes clear that the Attorney General retained the functions of EOIR—to include the authority to order deportation from the United States and to grant withholding of removal or protection under the CAT. Nowhere in the HSA nor in the INA is there any reference to USCIS exercising authority to order removal or to grant withholding or CAT protection. As the former INS did not exercise such authority, and no such functions were specifically transferred to USCIS, the statute is not ambiguous or silent on the matter. Congressional intent is clear that such quasi-judicial functions would remain with EOIR where such functions have been exercised exclusively since 1983.

In support of their claim, the Departments argue that an order of removal is entered prior to the credible fear determination and that the only impediment to removal is the possibility that an alien may be eligible for protection.[17] The Departments suggest that such review is distinct from removal proceedings before an immigration judge because the scope is much narrower and USCIS would not be determining whether

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Commissioner of Immigration and Naturalization Services the following functions and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.
(2) Adjudications of naturalization petitions.
(3) Adjudications of asylum and refugee applications.
(4) Adjudications performed at service centers.
(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.").

[15] 8 U.S.C. § 1103(g).

[16] The Immigration Reform, Accountability and Security Enhancement Act of 2002 (S. 2444; 107th Cong.) was introduced in May of 2002 but was never passed. This language was retained for the Homeland Security Act of 2002, Pub. L. No. 107-296, § 1102, 116 Stat. 2135, 2273-2274 (2002).

[17] NPRM at 46919.

an alien should be admitted to the United States.[18] This proposition is certainly correct when referring only to the credible fear interview itself. If the alien is found to not have a credible fear of persecution or torture, then the only impediment to removal is obviated and pursuant to statute, the order issued when the alien is placed in expedited removal proceedings is implemented.

But this is simply not the case where the alien is found to have a credible fear. As correctly stated by the Departments, in such instances, the alien is detained for "further consideration of the application for asylum."[19] As noted, this term is not defined in the statute. However, the remainder of the expedited removal statute never again addresses the aliens described in 8 U.S.C. § 1225(b)(1)(B)(ii). What is clear is that such further consideration takes the alien outside the auspices of credible fear and hence, a simple finding that the alien is ineligible for asylum would not, pursuant to the statute, appear to permit USCIS to order removal of the alien.

The Departments view this alleged absence of a clear statutory mandate gives them the latitude to proceed as intended in these amendments. To that end, the NPRM notes that section 1225(b)(2) establishes that any alien not previously defined in section 1225(b)(1)(B) shall be placed in removal proceedings pursuant to 8 U.S.C. § 1229a.[20] Those defined in section 1225(b)(1)(B) should merely receive further consideration if found to have a credible fear. To support this position, the Departments cite to presumptions held by both the Supreme Court and the D.C. Circuit that Congressional mandates in one section of a statute while silence in another does not suggest a prohibition.[21]

Such reliance is wrongly placed. While 8 U.S.C. § 1225 does not define "further consideration," nor itself specify that aliens shall be placed in removal proceedings, to do so would have simply been duplicative. 8 U.S.C. § 1229a(a)(3) states:

> *Exclusive procedures.* – Unless otherwise specified in the Act, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. Nothing in this section shall affect proceedings conducted pursuant to Section 238.[22]

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[18] *Id.*
[19] 8 U.S.C. § 1225(b)(1)(B)(ii).
[20] NPRM at 46917.
[21] *Id.* (citing *Russello v. U.S.*, 464 U.S. 16, 23 (1983)) (also citing *Catawaba Cty., N.C. v. EPA*, 571 F. 3d 20, 36 (D.C. Cir. 2009).
[22] 8 U.S.C. § 1229a(a)(3).

Except for section 1225 itself, or 8 U.S.C. § 1228,[23] at any time that the government seeks to determine admissibility it is exclusively conducted pursuant to section 1229a. Without a set aside for "further proceedings" as referenced in section 1225, the plain statutory language suggests that those proceedings would be governed under section 1229a. The Departments' argument that such further consideration of an asylum application is distinct from the purpose of removal proceedings is, at best, semantics.

Any alien in expedited removal proceedings who seeks asylum must first be determined to be inadmissible. When the alien presents an application for asylum, regardless of whether it would be an immigration judge or an asylum officer, the inquiry is the same and the alien must prove that they are, indeed, admissible and entitled to the relief sought. While protection pursuant to statutory withholding of removal and CAT may be irrespective of admissibility, asylum is considered relief from removal and entitles the alien to all other privileges pertaining thereto.

The only distinction is clear. The immigration judge in removal proceedings is authorized to grant or deny relief and ultimately order removal, if appropriate. The asylum officer enjoys no such authority and no statutory provision relating to the administration of asylum claims provides it, outside of a negative credible fear finding.

While the Departments allege that asylum officers have authority to order removal, they further suggest that the officers have the authority to grant protection from removal in the form of statutory withholding of removal and withholding of removal pursuant to CAT. But statutory withholding of removal specifies that an alien may not be removed "to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social, or political opinion."[24] The alien must establish that it is more likely than not that such persecution would occur. A much higher standard that the well-founded fear required for asylum eligibility. CAT protection, implemented via regulations, operates in much the same way as withholding of removal but specifically relates to torture.[25]

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[23] 8 U.S.C. § 1228 provides procedures for the Attorney General or Secretary of Homeland Security to expeditiously remove non-permanent residents who are convicted of aggravated felonies. Such procedures require DHS to provide notice to the alien and prohibit removal before 14 calendar days. The statute includes a presumption of deportability.

[24] 8 U.S.C. § 1231(b)(3)(A).

[25] Following the U.S. ratifying its signing of the CAT in 1994, Congress implemented CAT protections in Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998. *See* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. 105-277, Div. G, Tit. XII, chap. 3, subchap.

Withholding of removal and CAT cannot be considered or granted prior to the entry of an order of removal.[26] Neither is considered an immigration benefit and are there to ensure compliance with our obligations not to return an alien, not statutorily eligible for asylum, to a country where they will be persecuted or tortured. Neither protection is a bar to removal to another country where the alien would be safe from the claimed persecution or torture.[27]

Returning to the text of 8 U.S.C. § 1229a(a)(3), removal proceedings are the exclusive procedure for determinations on whether an alien should be removed. The questions posed in a withholding or CAT inquiry are exactly that: should the alien be removed? Even assuming, *arguendo*, that the Departments could establish an authority for asylum officers to order removal, the follow-up of whether an alien should be removed falls exclusively to immigration court proceedings.

In the absence of any clear statutory basis or ambiguity, the Departments must reconsider relevant amendments to the regulations that would authorize asylum offices to order an alien removed at the conclusion of an asylum interview originating in expedited removal.

b. The NPRM Expands the Use of Parole Without Statutory Authority.

The NPRM proposes a distortion of parole authority that exceeds the allowable grounds for considering parole under the INA. Not only does this contradict clear statutory meaning, but it has larger consequences for the legality of detention of aliens in the credible fear context in general.

In relevant part, the NPRM permits the parole of aliens in expedited removal proceedings as well as those pending credible fear interviews. Specifically, it states:

> Parole of such alien, in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter, may be permitted only when DHS determines, in the exercise of discretion, that parole is required to meet a medical emergency, for a legitimate law enforcement objective, or because detention is unavailable or impracticable (including situations in which continued detention would unduly impact the health or safety of individuals with special vulnerabilities).[28]

B, section 2242 (1998). Specifically, the U.S. policy is "not to expel, extradite, or otherwise effect the involuntary removal of any person to a country where there are substantial grounds for believe that the person would be in danger of being subjected to torture." *Id*. at section 2242(a).

[26] *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008); 8 C.F.R. § 208.16(c); 8 C.F.R. § 208.17(a).

[27] *Silva-Pereira v. Lynch*, 827 F. 3d 1176, 1191-92 (9th Cir. 2016).

[28] NPRM at 46946.

This provision is as absurd as it is unlawful. It purports to add to the limited circumstances DHS can parole an alien under the INA any situation where detention is unavailable—to wit, instances where limited bedspace does not permit detention of all aliens placed in expedited removal proceedings. This has no statutory support.

There is no ambiguity in the INA governing parole. Parole is available on a case-by-case basis only to aliens for "urgent humanitarian reasons or significant public benefit."[29] Parole authority is appropriate where an alien has a critical humanitarian need or parole is deemed to be a significant public benefit to the United States. Additionally, parole is available only on a case-by-case basis with the government making an individualized determination in each case. Nowhere in the INA does Congress provide the government with the authority to parole aliens into the country to ease the burden of otherwise needing to comply with the law.

Nevertheless, the Departments cite to Supreme Court precedent that DHS has the authority to temporarily parole in aliens who are subject to expedited removal. While this comment does not seek to challenge that authority, the NPRM conveniently leaves out a key modifier. In discussing detention under 8 § USC 1225(b), the Court in *Jennings v. Rodriguez* stated, "[r]egardless of which of those two sections authorizes their detention, applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit."[30] The *Jennings* Court does not provide support for an interpretation of parole that goes beyond the humanitarian need or public benefit. Yet, the Departments have used it as general premise to move forward with an expanded interpretation.

Additionally, the legislative history of parole authority, cited by the former INS in its initial regulation, makes clear that the intent was to exercise the authority in a narrow and restrictive manner. The original rule stated:

> The drafters of the Immigration and Nationality Act of 1952 gave as examples situations where parole was warranted in cases involving the need for immediate medical attention, witnesses, and aliens being brought into the United States for prosecution. H. Rep. No. 1365, 82nd Cong., 2d Sess. at 52 (1952). In 1965, a Congressional committee stated that the parole provisions 'were designated to authorize the Attorney General to act on an *emergent, individual, and isolated situation*, such as the case of an alien who requires immediate medical attention, and

[29] 8 U.S.C. § 1182(d)(5)(A).
[30] *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018).

not for the immigration of classes or groups outside the limit of the law.' 5 Rep. No. 748, 98th Cong., 1st Sess. at 17 (1965).[31]

The NPRM fails to address how these additional parole factors would fall within the contours of the statute or congressional intent. In support of the change, the NPRM states that it would give DHS the ability to prioritize detention for those posing the greatest risk to the United States.[32] Taken on its face, this would upend the parole process. Lawful application of parole requires a case-by-case analysis of the specific facts at issue and prohibits categorical parole.[33] This amendment would have the opposite effect where the default would be parole for every alien except those who pose the "greatest threats." Even assuming that this would be a proper use of the authority, the ambiguity of the terms "unavailable" and "impractical" provide far more discretion to DHS than has ever been otherwise contemplated.

This proposed amendment further states that parole would not serve as an independent basis for employment authorization. Current regulations provide that an alien paroled pursuant to section 1182(d)(5) of the Act may apply for employment authorization.[34] That the Departments recognize that the contemplated parole should not form the basis for employment authorization suggests that the Departments further recognize that this parole is not permitted pursuant to section 1182(d)(5) and, hence, is an *ultra vires* application.

While this provision gives the appearance that the Departments are limiting employment authorization in this instance, they are not. While the alien may not be eligible to apply for employment authorization pursuant to the specific regulation addressing employment authority for parolees, nothing in this section prohibits applications filed after the alien files a completed asylum application as authorized by federal regulations.[35]

Recent news reports suggest that DHS is already implementing a far broader application of parole authority than permitted under law.[36] Through documents received by Customs and Border Protection, it appears that over 31,000 aliens have been paroled into the United States along the southwest border since August.[37] This

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[31] Detention and Parole of Inadmissible Aliens; Interim Rule with Requests for Comments, 47 Fed. Reg. 30044 (Jul. 9, 1982) (codified in 8 C.F.R. parts 212 and 235) (emphasis added).
[32] NPRM at 46913.
[33] 8 U.S.C. § 1182(d)(5)(A).
[34] 8 C.F.R. § 274a.12(c)(11).
[35] 8 C.F.R. § 274a.12(c)(8).
[36] Bill Melugin, *Leaked Border Patrol Docs Show Mass Release of Illegal Immigrants into US by Biden Administration*, FOX NEWS (Oct. 13, 2021) https://www.foxnews.com/politics/leaked-border-patrol-docs-release-immigrants-us-biden-administration.
[37] *Id.*

begs the question as to what authority was used to accomplish such a mass parole. It would be unprecedented to suggest that each one of those aliens required parole for urgent humanitarian reasons or that their parole served a significant public benefit. Even a combination of those two authorities seems unreasonably high.

This proposed rule is the epitome of bootstrapping. The Departments are using this rule to gain authority to legalize actions that have already been taking place for months. The rationale is pretextual at best and suggests that DHS simply does not wish to hold aliens in custody, despite the clear statutory mandate to do so. This amended regulation provides a convenient, albeit *ultra vires*, reason to release aliens *en masse*.

The Departments should review this section to determine whether the amendments made to parole authority are statutorily authorized by Congress. Such a review would indicate that such an exercise of parole authority is plainly unlawful.

III. The NPRM Fails to Address Adequately Relevant Substantive and Procedural Questions.

Under the guise of efficiency, amendments made to existing regulations under this NPRM will wreak havoc on the administration of the asylum process. In addition to the *ultra vires* nature of the NPRM, many provisions contradict existing regulations and implementation would cause procedural confusion and further delays and backlogs as an ultimate result. As the outlined procedures will bring the credible fear system to a halt, it will likewise encourage fraud and frivolity and uproot any integrity remaining in the process.

a. The Immigration Court Backlog Does Not Justify the NPRM.

The crux of the rationale for this NPRM is the apparent backlogged immigration court system that is seemingly more overburdened by the influx of cases originating as credible fear referrals. EOIR's most recent statistics[38] show a pending caseload of 1,328,413 cases.[39] Of that pending caseload, only 221,950 cases originated from credible fear referrals.[40] As less than 17% of the immigration court caseload

[38] Unless otherwise stated, all EOIR statistical information dates from FY 2008-Q3 FY 2021.

[39] EOIR has since updated its statistics through the third quarter of FY 2021 showing that 65% of aliens filed for asylum. EOIR, *Executive Office for Immigration Review Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (July 2021), https://www.justice.gov/eoir/page/file/1242166/download.

[40] EOIR has since updated its statistics through the third quarter of FY 2021 showing that 65% of aliens filed for asylum. EOIR, *Executive Office for Immigration Review Adjudication Statistics: Pending I-862 Proceedings Originating With a Credible Fear Claim and All Pending I-862s* (July 2021), https://www.justice.gov/eoir/page/file/1112996/download.

originates from credible fear referrals, it is unclear how eliminating that casework will have a significant impact on the flow of pending cases.

Additionally, the Departments note that under current procedures, many aliens determined to have a credible fear never file an application. The Departments cite to EOIR's statistic that 62%[41] of those aliens between FY 2008 and the third quarter of FY 2020 have filed applications but current statistics up that number to 65%. Accordingly, only 77,682 cases—or less than 6% of the total pending caseload—are asylum filers originating with credible fear referrals. Eliminating this small percentage of the docket will do little to improve resource management at EOIR. The notion that this will somehow lead to more time on "priority" cases is also misplaced, as every matter before the immigration courts should be a priority as the statute has determined. For the Departments to allege that somehow the immigration courts are not able to focus on what they deem to be the important cases demonstrates a clear misapplication of the Immigration and Nationality Act and, without any sort of definition of "priority" is ambiguous at best and more likely is a perfunctory rationale used to conceal the true motives behind this NPRM.

b. EOIR Statistics Demonstrate that Most Cases Originating in the Credible Fear Process Lack Merit, Further Undermining the NPRM's Arbitrary Rationale.

While not discussed in the NPRM, EOIR statistics further demonstrate that from FY 2008 through third quarter of 2021, the grant rate for asylum matters originating from credible fear referrals is only 12.69%. *In absentia* removal order rates for cases originating as credible fear referrals also remain high. This means that most aliens being placed into immigration court proceedings following a credible fear determination are being ordered removed.[42] This results in most referred aliens not being eligible for work authorization or, if they are eventually re-apprehended, missing their opportunities to apply for asylum relief. For reasons that are not easily comprehended, the Departments infer that the current procedures cause this situation. Other than lip service, there is no indication that the Departments suggest that the reason for the low success rate in court, the high *in absentia* rates, or any

[41] EOIR has since updated its statistics through the third quarter of FY 2021 showing that 65% of aliens filed for asylum. EOIR, *Executive Office for Immigration Review Adjudication Statistics: Rates of Asylum Filings in Cases Originating with a Credible Fear Claim* (July 2021), https://www.justice.gov/eoir/page/file/1062971/download.

[42] EOIR, *Executive Office for Immigration Review Adjudication Statistics: In Absentia Removal Orders in Cases Originating with a Credible Fear Claim*, (Jul. 2021), https://www.justice.gov/eoir/page/file/1116666/download.

other statistics could be the result of frivolous claims by aliens being coached prior to reaching a port of entry and claiming fear.

If the Departments were considering the possibility of fraud and frivolity, they would not have considered amendments that so easily breed that type of behavior and that will serve as magnet for every alien seeking economic betterment or any other reason to come to journey to the United States. Instead of taking fraud seriously, the Departments propose a system that prioritizes ease and automation to prevent aliens from having to do much more than tell a story to begin and possibly, to conclude, the process.

c. The NPRM's Proposal to Remove the Application Requirement for Aliens Apprehended at the Border is Irrational and Arbitrary.

Under the NPRM, an alien with a positive fear determination is no longer required to file an I-589 to apply for asylum.[43] Instead, the record of the credible fear determination will be sufficient and will be transcribed and used in lieu of the formal application.[44] While this certainly provides the alien a seamless process and ensures that each application is filed, more importantly to the Departments, it ensures that the applications are filed timely and quickly.

This change provides additional due process to aliens merely arriving at the border over those aliens in the country which still must complete the I-589 and ensure that they do so timely. The Supreme Court has held that aliens seeking admission or denied entry only have due process right as far as what the relevant statute provides.[45] This contrasts with those aliens who have been domiciled in the country or have otherwise established strong ties.[46] So the proposed regulations seek to attain more due process for those seeking admission and placed in expedited removal proceedings as they are relieved of any responsibility to file the application. A benefit not afforded to any other class of alien.

Moreover, the lack of an asylum application requirement will complicate review of cases when the few denials that would come after this rule is finalized are ultimately appealed—including at the various U.S. Courts of Appeals.

The Departments discuss the true underlying goal of the amendments when referencing the 1-year filing deadline and the eligibility to file for work authorization. Under current law, a claim for asylum must be filed within one year of the alien's

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[43] NPRM at 46941.
[44] *Id.*
[45] *See Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1982 (2020) (citing *Nishimura Ekiu v. United States,* 142 U.S. 651, 660 (1892)); *See also U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950).
[46] *Id.*

arrival within the United States.[47] An application for asylum may accepted after the one-year period if, among other reasons, the alien can demonstrate that extraordinary circumstances resulted in such a delay. Additionally, an applicant for asylum may not submit an application for employment authorization earlier than 150 days after the completed asylum application was submitted.[48] Once the application for employment authorization is submitted, it cannot be approved and valid earlier than 180 days from the date that the completed asylum application is submitted.[49] It is worth noting that the filing of an incomplete asylum application will not begin the clock toward eligibility for employment authorization.[50]

Under the proposed regulations, the burden to timely file a complete application would shift to the government. The alien can simply rest on the laurels of the story, changing or including relevant details in advance of the asylum interview,[51] but without having to affirmatively file an application. While this in and of itself does not ensure a positive result, it does ensure that each alien will meet the 1-year filing requirement and will be able to receive work authorization as early as possible. This proposal makes the biggest magnet for illegal immigration, work authorization, as easy as walking to a port of entry and stating a fear of return. The Departments should consider alternative options that keep the burden on the alien and ensure that they are not able to use this system to get work authorization for a time and then simply disappear.

d. *The NPRM Impermissibly Adopts an Irrational and Arbitrary Standard for Preliminary Assessments of Claims for Withholding of Removal or Protection under CAT.*

The Departments seek to apply the "significant possibility" standard to review for all applicants in the credible fear screening process.[52] The NPRM states that it will be a more efficient and effective process, and further, that everyone with a significant possibility of persecution or torture be fully heard on the merits of the claim.

Under statute and existing regulation, to be eligible for statutory withholding of removal or CAT protection, an alien must demonstrate "a clear probability" of either persecution or harm. Compare this to the reasonable possibility of persecution that asylum seekers must prove. Courts have held that a clear probability means "that it is more likely than not that applicants will be persecuted upon their removal."[53] The Departments reasoned in prior regulatory proposals that because the ultimate

[47] 8 U.S.C. § 1158(a)(2)(B).
[48] 8 C.F.R. § 208.7(a).
[49] *Id.*
[50] *Id.*
[51] NPRM at 46941.
[52] *Id.* at 46944-45.
[53] *INS v. Cardoza-Fonseca*, 480, U.S. 421, 429 (1987).

burden was higher, the standard of review at the initial screening should also be higher.[54]

By recodifying all screening standards at the lower threshold, the Departments are signaling that all aliens in the process should be treated as asylum applicants and provided with the same benefits while they await adjudication on an application for which they are not eligible. This, again, encourages frivolous claims and even more individuals who seek employment authorization documents in the United States. The NPRM fails to state how this proposal would create efficiencies in the full process.

While it may provide some small-time saver in the initial credible fear screen, it will lead to additional aliens filing for employment authorization before USCIS, and lead to more time wasted for asylum officers to interview aliens who are statutorily ineligible for asylum. Even if asylum officers could order removal and withhold or defer that removal, it is incomprehensible why the Departments would want these asylum officers to spend additional time evaluating such aliens for asylum eligibility. The rationale presented in the NPRM is deficient and this provision should be reconsidered and dropped from the proposed regulation.

e. The NPRM Proposes Procedures that Conflict with Existing Regulations.

The NPRM states that "[t]he applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States."[55] While the regulatory text is ambiguously drafted, the NPRM explains that "under this proposed rule only a spouse or children who were included in the credible fear determination…or have a pending asylum application with USCIS pursuant to § 208.2(a)(1)(ii) can be included on the request for asylum."[56] That the Departments anticipate that spouses and children *already* in the United States with pending asylum applications can join the new application suggests a clear conflict of procedure.

Under the proposed regulations, the principal applicant would have his or her asylum matter heard and concluded by the asylum officer (with availability for immigration court review). This is not the case for the riders who previously filed affirmative applications and are already present in the country. Pursuant to regulations which are not being amended here, if not approved by the asylum officer, those riders not originating from a credible fear claim would receive Notices to Appear and be referred to the immigration court for removal proceedings.[57] It is unclear how this would work procedurally, and the NPRM does not address or appear to consider this probability. Assuming that the asylum officer was able to retain jurisdiction of the riders'

[54] NPRM at 36270.
[55] NPRM at 46941.
[56] *Id*. at 46916.
[57] 8 C.F.R. §208.14(c)(1).

applications and that referral was not necessary, riders cannot be included in grants of withholding of removal or protection under CAT.[58]

f. *The NPRM Adopts an Arbitrary and Capricious Non-Adversarial Process for Aliens Seeking Asylum After Being Placed into Expedited Removal.*

The proposed regulations articulate the conduct and authorities of the asylum officers during asylum interview. Specifically, the regulations state:

> *Conduct and purpose of interview or hearing*. The asylum officer shall conduct the interview or hearing in a non-adversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview or hearing shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. At the time of the interview or hearing, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.[59]

In drafting this paragraph, the Departments should have considered the adverse effects of a non-adversarial hearing on the integrity of the asylum system and should have specified that the purpose of the interview was to not only assess eligibility for asylum but to make a separate determination on credibility. Without such changes or a more careful analysis of why this paragraph is appropriate, as drafted, the proposal is simply inadequate.

The NPRM cites to MPI and focuses on interviews being less resource intensive, and further make a bold and unqualified statement that such proceedings "lend themselves to a fuller understanding of the strengths and weaknesses of an applicant's case."[60] This statement is simply illogical.

The whole purpose of an adversarial hearing is to ensure that both the strengths and weaknesses of a case are made clear for the trier of fact. The asylum officer is already at a significant disadvantage here as they are forced to rely on the summary drafted during the credible fear interview and any additional evidence that the alien may have presented. It is difficult enough for asylum officers to rely on notes and

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[58] 8 C.F.R. §1208.16(e); *In re A-K-*, 24 I&N Dec. 275, 279 (BIA 2007) (citing *Niang v. Gonzales*, 492 F. 3d 505, 512 (4th Cir. 2007) ["As Congress has not provided for such a derivative withholding claim, we will not judicially amend the statute to create one.]); *Chendrawasih v. Holder*, 571 F.3d 128, 131 (1st Cir. 2009).

[59] NPRM at 46942.

[60] *Id*. at 46918.

summaries instead of an asylum application to establish the strengths of the case, but it is nearly impossible to use those documents to ferret out weaknesses in an application.

The process as drafted is skewed to give the alien the upper hand throughout the entire process. Even if a final regulation did not require the filing of an asylum application, placing the alien in removal proceedings would be the best option as DHS would be able to cross-examine the alien, object to evidence, provide its own evidence, and ultimately assist the trier of fact in making an accurate determination as to whether the alien is eligible for the relief sought. The Departments have provided insufficient justification as to why a non-adversarial hearing is appropriate and is in the interest of the Departments and the country writ large.

The stated purpose of the hearing likewise undermines our immigration system and fails to include any reference to credibility assessments. In its current form, the draft regulation either ignores the necessity to assess credibility or the Departments believe that "eligibility" covers all aspects of the claim. Either way, the Departments are wrong and should have clearly stated that the asylum officer is to make a credibility determination.

Credibility determinations are independent of any analysis of the sufficiency of the applicant's evidence.[61] The evidence presented by an applicant during the interview must be sufficient to establish eligibility for the claim but, separately, the applicant must testify credibly and, where needed should produce corroborative evidence.

Additionally, an asylum officer would be reluctant to make an adverse credibility determination in the case. While no presumption of credibility exists, there is a rebuttable presumption in the absence of an adverse credibility determination. Without additional guidance to asylum officers, it would be nearly impossible for them to make an adverse credibility determination that could survive appellate review. The drafted regulation fails to address this point and the plain meaning suggests that the asylum officer is more engaged in a fact-finding and evidence collecting endeavor than an actual adjudication where credibility must be determined.

g. The NPRM's De Novo Review Process is Irrational and Arbitrary.

Finally, the proposed regulations provide for so-called *de novo* review of a determination by the immigration judge when requested by the alien. While review by an immigration judge is not *per se* concerning, the limitations provided to the *de*

[61] *Torres v. Mukasey*, 551 F. 3d 616, 629-30 (7th Cir. 2008); *Abdulai v. Ashcroft*, 239 F. 3d 542, 551 n. 6 (3rd Cir. 2001).

novo review prevent a true review of the asylum officers' determination. The proposed regulation states,

> Either party may provide documentation, but the party must establish that the testimony or documentation is not duplicative of testimony or documentation already presented to the asylum officer, and that the testimony or documentation is necessary to ensure a sufficient factual record upon which to base a reasoned decision on the application or applications.[62]

The provision gives the immigration judge the ability to relitigate the matter, but the above quoted subparagraph limits that authority. Describing this as *de novo* review is disingenuous, as the immigration judge is hamstrung by the limitation on what evidence can be accepted.

Additionally, this provision calls into question the role of the DHS trial attorney during the review. Traditionally, when an asylum office refers a case to an immigration court, it commences removal proceedings and follows the normal course. Here, the DHS attorney would be required to proffer to the court what the intended evidence or testimony would show to allow its admission during the review. There is also no clear opportunity for the DHS trial attorney to cross-examine the alien or any witnesses that the alien may have relied on during the underlying interview before the asylum officer. This ties the hands of the government and is susceptible to fraud and frivolity.

IV. The NPRM Fails to Consider Adequately the Administrative Burdens and Costs of the Proposal.

The NPRM includes an economic analysis purporting to consider the cost of implementing this rule on the affected population as well as the government. But this analysis is deficient, as it fails to consider the actual administrative burdens that would be placed on USCIS, applicants for other benefits before that agency, and how the agency can expend resources to implement it.

While EOIR has a large pending caseload, this pales in comparison to the total number of pending cases at USCIS. Currently, USCIS reports that it has 7,791,959 cases pending.[63] This includes 403,957 applications for asylum and 1,364,128

[62] NPRM at 46947.

[63] U.S. Citizenship and Immigration Services, *Number of Service-wide Forms Fiscal Year to Date*, (Aug. 2021), https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2021Q3.pdf.

applications for employment authorization.[64] Both pending numbers should be expected to increase exponentially if this proposed rule is implemented.

While the NPRM estimates that only 75,000 cases would be added annually because of this rule, the Departments fail to address the increasing apprehension numbers along the border and further fail to estimate the number of aliens who may be enticed by this rule to venture to the United States. Using historical, or even current data, fails to consider the perception that many people will have (through smugglers and word of mouth) that this rule makes it easier for aliens to get into the country, be immediately released from custody, and be on a path to employment authorization in only a matter of months.

Additionally, this number was derived from taking average annual numbers but does not appear to factor in either COVID-19 drops in credible fear determinations or the subsequent drop after DHS established procedures pursuant to Title 42.[65] With over a million aliens apprehended at the border since January of 2021 alone, one can assume that large numbers of aliens will seek protection and, pursuant to the proposed regulation, will be placed into this pending asylum caseload.

Additionally, as each will be *prima facie* eligible for employment authorization, the number of applications for authorization will also increase.

It is unclear where the purported efficiency in the system will lie. The Departments' rationale has rested on efficient and effective processing of these claims ensuring that the cases are heard faster and removing the necessity of removal proceedings. Instead, the aliens will still have lengthy waiting times prior to an interview, it will just be done in a non-adversarial setting where the alien is not in the government's custody.

The net benefit is simply absent at the front end and appears to rest on the Departments' unspoken motive and apparent belief that it is more likely that an asylum officer will grant asylum or other protection in these circumstances and that the approval rates will rise well-beyond the 12.69% presently granted by immigration judges. Yet the Departments repeatedly assert that this process, including a phased implementation, will have a positive impact to alleviate the pressures placed on the backlogged immigration court docket. But it does nothing to address or alleviate the pressures placed on the even more insurmountable USICS pending caseload. This is pretext at its finest and cannot form a valid basis for administrative action.

[64] *Id*.
[65] NPRM at 46923.

Accordingly, the Departments should consider the efficiencies touted in this proposed rule and explain, given these numbers, how this is a more efficient use of resources.

Putting costs aside, USCIS estimates that it will need to hire an additional 800 asylum officers and supervisors to handle an additional caseload of 75,000 cases annually.[66] If the number of cases increases, one can assume that USCIS would need to hire even more asylum officers. While the economic estimate recognizes the costs associated with training these new officers, it fails to address the actual cost of training.[67]

While new officers would need to go through the same asylum training as all current officers, given the breadth of authority provided to asylum officers, the training would no longer be sufficient. As asylum officers would be required to order removal and make determination on statutory withholding and CAT protection, the entire cadre of asylum officers would need to be retrained to adjudicate the burdens of proof and the evidence to be considered in those contexts. While they are all already given some training on torture under CAT for credible fear purposes, this pales in comparison to the level of detail that they would need to understand to make the decision that immigration judges are now routinely consider. Additionally, this re-training would first require USCIS to redraft all training materials to provide more fulsome guidance on these issues. Approving those materials internally is a time-consuming endeavor and will need to be completed before a single new asylum officer can begin training or before an existing asylum officer can competently adjudicate the full application for asylum as imagined under these proposed regulations.

As for cost, the Departments have suggested low and high ranges of costs based on the number of cases. While the NPRM seems to suggest that it will be more likely an addition 75,000 cases per year, it does provide higher estimates if the case increase is closer to 300,000. At the lowest population estimate, the 10-year cost is estimated between $1.5 billion to $8.6 billion and at a lower level the estimate, with a 7 percent discount rate, ranges from $1.3 billion to $7 billion. This places the midpoint at approximately $3.2 billion dollars.[68]

How will USCIS be able to pay for the implementation of this rule? The vast majority of USCIS funding comes from the Immigration Examinations Fee Account (IEFA),

[66] *Id*. at 46921.
[67] *Id*. at 46933-34.
[68] *Id*. at 46923.

paid into by individuals and entities seeking immigration benefits.[69] This is not a yearly appropriation. While USCIS does receive a small Congressional appropriation, it is limited to the E-Verify program. While the NPRM casually discusses implementation costs over a series of years, it fails to address the underlying factor of whether USCIS can afford to implement it.

In FY 2021, USCIS had total resources in the amount of $5,423,960,000.[70] Obligations for the same year totaled $4,751,909,000 leaving a carryover of $747,051,000.[71] This carryover is crucial to begin operations in the new fiscal year without needing to rely on an appropriation (as other agencies do). If USCIS must hire an additional 800 officers, all expected to be at the GS-13 or higher,[72] train those officers, retrain existing asylum officers, and redraft all relevant training material, the obligations in the following fiscal year would be exponentially higher. Without additional fees, this would, in turn, place the carryover at a dangerously low level.[73]

It is shocking that the NPRM does not consider this possibility or suggest an alternative approach to pay for this implementation moving forward. Without sufficient funds available to pay for the implementation, and if the carryover is fully depleted, USCIS would find itself in violation of the Anti-Deficiency Act.[74] Given the razor thin margins that USCIS is already experiencing and the 2020 drop in collections experienced as a result of COVID, in summer of 2020, USCIS was forced to issue furlough notices to over 70% of its federal employees or face an Anti-Deficiency Act violation.[75] Although USCIS was able to trim enough obligations to stave off a devastating furlough, the agency was forced to implement rigorous hiring freezes to ensure that financial obligations could be met.[76] None of this is considered in the economic analysis. The NPRM simply assumes that USCIS will be able to fund

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[69] 8 U.S.C. § 1356(m); *See* Department of Homeland Security, *United States Citizenship and Immigration Services Budget Overview*: *Fiscal Year 2022 Congressional Justification*, (undated), https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2022_Budget_Overview.pdf.
[70] Department of Homeland Security, *United States Citizenship and Immigration Services Budget Overview*: *Fiscal Year 2022 Congressional Justification*, at p. CIS-8, (undated), https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2022_Budget_Overview.pdf.
[71] *Id*.
[72] NPRM at 46932.
[73] Department of Homeland Security, *United States Citizenship and Immigration Services Budget Overview*: *Fiscal Year 2022 Congressional Justification*, at p. CIS-8, (undated), https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2022_Budget_Overview.pdf.
[74] 31 U.S.C. § 1341 *et. seq*.
[75] Nicole Ogrysko, *Furlough Notice Arrive for Some 13,400 USCIS Employees*, FEDERAL NEWS NETWORK (Jun. 29, 2020), https://federalnewsnetwork.com/workforce/2020/06/furlough-notices-arrive-for-some-13400-uscis-employees.
[76] News Release, U.S. Citizenship and Immigration Services, *USCIS Averts Furlough of Nearly 70% of Workforce*, (Aug. 25, 2020), https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce.

implementation, hire the requisite staff, and still be able to meet all other legal and financial obligations. The economic analysis is severely lacking as it fails to recognize the specter of the Anti-Deficiency Act and the true ability to pay for costs under this proposed regulation.

Lastly, the NPRM wrongly limits the affected population to those only in the credible fear process and ignores any effect that this proposed rule might have on all other individuals and entities seeking benefits before USCIS.[77] In addressing the potential impacts, the NPRM looks to those who would enjoy a cost savings from having to file a completed I-589, the cost savings to non-governmental organizations and other support networks who would be relieved of burdens as aliens would be able to receive employment authorization earlier, and cost savings to EOIR.[78] While the rule ignores the cost of implementation to other USCIS functions. Without an annual appropriation to cover these costs, USCIS would have to prioritize these adjudicatory functions over other functions. It is unknown what may be sacrificed but we could see costs cut in fraud detection operations or other adjudications, including family and employment-based adjustments of status. It also is inconceivable to suggest that there will not be an impact on affirmative asylum cases. With a finite number of asylum offices and office space, even with an increase in staff, the Departments fail to address what the realistic number of all asylum adjudications could be per day, per week, per month, etc. Instead, the NPRM makes a blanket statement that this rule will not have any impact on the remainder of asylum system. This is yet another disingenuous statement without any clear support. Hence, the suggestion that the entire population expected to be affected by this rule is 71,363 annually[79] is preposterous and ignores any impact that this rule will have to all other USCIS adjudications, and any additional slowdown experienced while this rule is ramped up. While the NPRM appears to be overly concerned with the cost of and benefit to human dignity for the affected population, it willfully ignores those same principles for any applicant who entered the United States legally and is seeking to obtain immigration benefits through the appropriate processes.

The analysis under 12866 fails to competently address the actual cost of implementation on USCIS and improperly narrows its definition of the affected population. It cannot be considered sufficient without studying USCIS' financial obligations, past financial issues, and constraints due to IEFA collections and the

[77] NPRM at 46928.
[78] *Id*. at 46923-25.
[79] *Id*. at 46928.

Anti-Deficiency Act. The Departments must start over and conduct a further analysis including these factors.

V. The NPRM Arbitrarily and Capriciously Fails to Account for Protected Reliance Interests.

The APA sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts. It requires agencies to engage in reasoned decision making. And it directs that agency actions be set aside if they are arbitrary and capricious.[80]

The government is obligated to "turn square corners in dealing with the people."[81] When an agency changes course, as DHS and DOJ have done here, they must "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" In fact, "it would be arbitrary and capricious to ignore such matters."[82]

The NPRM fails to recognize—much less account for—the serious reliance interests of American citizens and legal immigrants in the enforcement of existing laws that will be disrupted by the major changes it proposes. The impact of the flood of migrants the proposed rule promises to produce will certainly be felt by citizens and legal immigrants, especially those in lower socio-economic bands, who rely on public services including hospitals, schools, and police, fire, and other public safety providers. The adverse impact of mass migration on employment, education, and health care, especially on minority communities, are well established.[83] However, despite the empirically established impact of open borders and mass illegal migration on American citizens, including especially minorities, the agencies justify the proposed rule on grounds of "equity."[84]

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[80] *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992); *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020).
[81] *Id.* at 1909.
[82] *Id.* at 1911.
[83] *See, e.g.,* Vernon M. Briggs, Cornell Univ., *Illegal Immigration: The Impact on Wages and Employment of Black Workers: Testimony Before the U.S. Commission on Civil Rights* (Apr. 4, 2008) https://cis.org/Testimony/Illegal-Immigration-Impact-Wages-and-Employment-Black-Workers; *see also* Norman Matloff, Univ. of California Davis, *The Adverse Impacts of Immigration on Minorities: Testimony to House Judiciary Committee Subcommittee on Immigration* (Updated March 4, 1999) https://heather.cs.ucdavis.edu/pub/Immigration/EffOnMinorities/MHReport.pdf; *accord* Olusegun Ayodele Akanbi, Int'l Monetary Fund, *Impact of migration on economic growth and human development: Case of Sub-Saharan African countries*, Int'l J. of Social Econ. 44(5):683-695 (May 2017) ("The distinctive feature of the study is the significant but negative role played by migration in explaining human development and economic growth" in Africa).
[84] 86 FR at 46922.

VI. Conclusion

For the reasons set forth above—and for other related issues not listed here—America First Legal strongly opposes this proposed regulation and urges the Departments to withdraw it.