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Domestic Policy Council
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Washington, DC 20500

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20016

Director Ur Jaddou
U.S. Citizenship and Immigration Services
20 Massachusetts Ave NW
Washington, DC 20001

September 26, 2023

Dear Director Tanden, Secretary Mayorkas, and Director Jaddou,

The undersigned organizations urge the Department of Homeland Security (“DHS”) to take immediate action to expand the automatic extension of work authorization for immigrants with pending work permit renewal applications. We welcome the recent announcement that U.S. Citizenship and Immigration Services (“USCIS”) will issue certain work permits with a 5-year validity period.¹ However, this policy change does not prevent immigrants who have already received work permits that are only valid for two years from experiencing a gap in their work authorization due to crisis-level work permit renewal delays. If DHS does not act swiftly, hundreds of thousands of immigrants will be at risk of losing their jobs when their work authorization expires. Failing to act will have a severe and enduring impact on the economy and devastate labor markets across the country.

On May 4, 2022, DHS issued a Temporary Final Rule (“TFR”), which automatically extended certain work permits for 540 days after their expiration date.² This rule allowed employed immigrants to keep their jobs while DHS took additional time to process their work permit renewal applications. Ultimately, the rule will have stopped over 420,000 thousand people from losing access to the legal workforce, preventing a loss of \$3.9 billion in wages and saving

¹ U.S. Department of Homeland Security, Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act (Sept. 20, 2023),

<https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>.

² Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26614 (May 4, 2022) (to be codified at 8 C.F.R. pt. 274a).

businesses billions of dollars.³ However, that rule is set to expire on October 26, 2023, even though its protections remain essential.⁴

If the rule is allowed to expire without additional action, job losses will resume and governments and businesses will suffer significant economic harm. We thus urge DHS to take immediate action to extend and expand the protections offered by the rule. Importantly, we ask DHS to make a permanent regulatory change that expands the auto extension period for work permit renewal applications in order to provide security to immigrants and businesses, and to promote long-term economic stability.

The Crisis of Delayed Work Permit Renewal Adjudications

DHS issued the TFR expanding the automatic extension period to 540 days because it acknowledged it could not process all renewal applications before immigrants' work authorization would expire.⁵ Since the time the rule was issued, however, the backlog of pending renewal applications has increased significantly, and there is no indication that DHS will be able to process the pending renewal applications before applicants' work authorization periods expire. In the TFR, DHS reported that as of December 31, 2021, 66,000 work permit renewal applicants had applications still pending after their 180-day automatic extension period had lapsed.⁶ According to the latest data DHS published, as of June 30, 2023, there are now 263,062 renewal applications which have been pending for 180 days or more since they were received.⁷ Once the TFR expires, new renewal applicants will not benefit from a 540-day extension of their work permits. Instead, applicants will be granted a limited 180-day extension.⁸ Once that period lapses, individuals will lose their work authorization and be forced out of the legal labor market while they wait for DHS to process their applications.

³ See Michelle Hackman, *Immigrants to Get Extension for Expiring or Expired U.S. Work Permits*, Wall St. J. (May 3, 2022, 12:41 PM), <https://www.wsj.com/articles/immigrants-to-get-extension-for-expiring-or-expired-u-s-work-permits-11651579201>; Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Research Center: Pew Hispanic Center (Apr. 14, 2009), <https://www.pewresearch.org/hispanic/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>.

⁴ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. at 26614.

⁵ See Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. at 26628.

⁶ *Id.* at 26619.

⁷ U.S. Citizenship and Immigration Services, I-765, Application for Employment Authorization Counts of Pending Petitions by Days Pending for All Eligibility Categories and (c)(8) Pending Asylum Category (June 30, 2023), https://www.uscis.gov/sites/default/files/document/data/i765_p_allcat_c08_fy2023q3.pdf.

⁸ See Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. at 26630.

As DHS itself noted, “employment authorization . . . is critical to applicants’ and their families’ livelihoods as well as U.S. employers’ continuity of operations.”⁹ If DHS does not increase the work permit extension, asylum seekers and other immigrants will lose their jobs, denying them the ability to work to support their families, risking homelessness, starvation, and loss of medical care. Employers will also be severely impacted by losing hundreds of thousands of trusted employees who cannot be easily replaced. Current economic analysis shows that there are still more open jobs than available workers in many sectors,¹⁰ and employers still face severe labor shortages.¹¹ Immigrant laborers also work in crucial industries including construction, medicine, technology, and trucking that are essential to sustained economic recovery.¹² If DHS does not act, imminent widespread job loss could destabilize the fragile economic recovery from the COVID-19 pandemic and undermine the administration’s success in combating inflation.¹³

The work permit backlogs also affect local and state governments¹⁴ and federal tax revenues.¹⁵ If DHS does not lengthen the automatic extension, there will be an even greater demand on city and state governments to provide affordable housing, shelter, and other services. Cities and states have also called on the federal government to process work permit applications more quickly.¹⁶ If

⁹ *Id.* at 26626.

¹⁰ In July 2023, there were 8.8 million job openings and 5.8 million people unemployed. U.S. Department of Labor, Bureau of Labor Statistics, Job Openings and Labor Turnover - July 2023 (Aug. 29, 2023), <https://www.bls.gov/news.release/pdf/jolts.pdf>; U.S. Department of Labor, U.S. Bureau of Labor Statistics, Employment Situation News Release (Aug. 4, 2023), https://www.bls.gov/news.release/archives/empsit_08042023.htm.

¹¹ See Jasmine Garsd, *There’s a Labor Shortage in the U.S. Why Is It So Hard for Migrants to Legally Work?*, NPR (Aug. 26, 2023), <https://www.npr.org/2023/08/26/1196174159/theres-a-labor-shortage-in-the-u-s-why-is-it-so-hard-for-migrants-to-legally-work>.

¹² Catherine Rampell, *The Missing Immigrant Workers*, Wash. Post (Nov. 22, 2021, 6:49 PM), <https://www.washingtonpost.com/opinions/2021/11/22/legal-immigrant-workers-paperwork-renewal-backlog/>; Andrew Kreighbaum, *Non-Citizens’ Work Permits Extended in Rule Aimed at Backlog*, Bloomberg Law (May 3, 2022, 2:25 PM), <https://news.bloomberglaw.com/daily-labor-report/visa-holders-work-permits-extended-in-rule-targeting-backlogs>. See also Julia Preston, *Migrants Desperate for Jobs Trapped in Asylum Maze*, The Marshall Project (Sept. 8, 2023, 5:00 AM), <https://www.themarshallproject.org/2023/09/08/migrants-work-permits-adams-asylum>; Immigration Research Initiative, “Let Us Work”: The Wage Gain When Asylum Seekers Gain Work Authorization (Sept. 7, 2023), <https://immresearch.org/publications/let-us-work-the-wage-gain-when-asylum-seekers-gain-work-authorization/>.

¹³ Ben Casselman & Jeanna Smialek, *Could the Recession in the Distance Be Just a Mirage?*, N.Y. Times (July 19, 2023), <https://www.nytimes.com/2023/07/19/business/economy/economy-soft-landing.html?searchResultPosition=8> (“With the economy already slowing, even relatively small developments . . . could be enough to knock the recovery off course, said Jay Bryson, chief economist for Wells Fargo.”).

¹⁴ Cities for Action, *Over 50 Cities for Action (C4A) Mayors & County Executives Call on the Department of Homeland Security (DHS) to Address Inefficiencies and Inequities in the Processing of Form I-765, Applications for Employment Authorization* (Mar. 28, 2023), https://www.citiesforaction.us/employment_authorization.

¹⁵ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. at 26644.

¹⁶ See, e.g., Lisa Kashinsky & Kelly Garrity, *Mass. Governor Slams White House for ‘Federal Crisis of Inaction’ on Migrants*, Politico (Aug. 8, 2023, 12:46 PM),

thousands of immigrant workers lose their jobs, this will only increase the demand on state and local governments at the same time as they welcome recently arrived asylum seekers.

Recommendations

DHS should extend and expand the existing protections provided by the TFR. The agency should ensure the automatic extension period is a duration that allows it to process all renewal applications prior to the expiration of applicants' work authorization. While the agency is best positioned to estimate how long the extension should be, recent backlog data suggests that under current processing times, at minimum, the TFR's 540-day extension period should be extended well beyond its October 26, 2023 expiration date.

Indeed, current trends suggest that **the optimal solution would be for DHS to make any additional automatic extension a permanent regulatory change.**¹⁷ People seeking asylum wait around 5-7 years for their asylum case to be processed.¹⁸ As a result, many people seeking asylum will apply to renew their work permit several times while their asylum case remains pending, worsening the backlog. The large number of newly arrived asylum seekers applying for an initial work permit are likely to renew their work permit within the next several years, and the need for a longer processing window is likely to increase. For these reasons, DHS should issue an Interim Final Rule (IFR), rather than a second Temporary Final Rule.

DHS should issue a final rule as quickly as possible. The longer DHS waits to issue new regulations, the longer immigrants will be living in fear of losing their work authorization, and employers will be afraid of potentially losing their employees. Swift action on the part of DHS can provide security to hundreds of thousands of immigrant workers, prevent billions in economic losses, and avoid a crisis in overburdening local government services. It will also

<https://www.politico.com/news/2023/08/08/massachusetts-new-york-asylum-seekers-biden-00110278>; Chris Sommerfeldt & Tim Balk, *NYC Asks Feds to Fast-Track Work Papers for Migrants amid Busing Crisis*, NY Daily News (Sept. 14, 2022, 6:44 PM), <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-mayor-adams-asks-feds-work-papers-migrants-texas-20220914-w62b47pukrbydlgtz4ezdvnspsu-story.html>.

¹⁷ A permanent change could most easily take the form of an Interim Final Rule (IFR) that would ensure USCIS is not in a similar position once the TFR expires. While a TFR only changes the federal regulations temporarily, an IFR could provide a long-term solution to this crisis and would go into effect immediately. Under the Administrative Procedure Act, an agency may issue a rule without a prior notice and comment period, if the agency "for good cause finds" the comment procedure "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). DHS has good cause to issue an IFR in this context for at least three reasons. First, USCIS faces crisis-level work permit renewal backlogs. Second, an IFR allows USCIS to shift its resources towards processing initial work permit applications for people who have recently arrived. Third, if DHS does not lengthen the work permit extension, employers will experience disruptions to their operations at a time when there are still more open jobs than available workers.

¹⁸ See Eileen Sullivan, *Biden Administration Has Admitted One Million Migrants to Await Hearings*, N.Y. Times <https://www.nytimes.com/2022/09/06/us/politics/asylum-biden-administration.html> (last updated Sept. 11, 2022).

allow for USCIS to shift its limited resources to processing initial work permit applications for individuals with pending asylum applications, parole, and TPS. The time to act is now.

Signed,

National

Afghans For A Better Tomorrow

AFL-CIO

African Communities Together (ACT)

Alianza Americas

American Business Immigration Coalition - Action

American Civil Liberties Union

American Friends Service Committee (AFSC)

American Immigration Council

American Immigration Lawyers Association

American Protection Group, Inc.

Americans for Immigrant Justice

Amplio Recruiting

Asian Americans Advancing Justice | AAJC

Asylum Seeker Advocacy Project (ASAP)

Bend the Arc: Jewish Action

Cameroon Advocacy Network

Care in Action

CASA, Inc.

Catholic Legal Immigration Network, Inc. (CLINIC)

Center for Gender & Refugee Studies

Center for Victims of Torture

Church World Service

Coalition for Humane Immigrant Rights (CHIRLA)

Coalition on Human Needs

Communities United for Status & Protection (CUSP)

Cooperative Baptist Fellowship
Franciscan Action Network
Freedom Network USA
FWD.us
Haitian Bridge Alliance
HIAS
Hispanic Federation
Human Rights First
Immigrant Legal Resource Center
Immigration Equality
Immigration Hub
Innovation Law Lab
International Refugee Assistance Project (IRAP)
International Rescue Committee
Justice Action Center
Kids in Need of Defense
Kino Border Initiative
Lutheran Immigration and Refugee Service
Maryknoll Office for Global Concerns
MomsRising/MamásConPoder
Mujeres Latinas en Accion
NAFSA: Association of International Educators
National Day Laborer Organizing Network (NDLON)
National Domestic Workers Alliance
National Employment Law Project
National Immigration Forum
National Immigration Law Center
National Immigrant Justice Center
National Immigration Project (NIPNLG)
National Partnership for New Americans
NETWORK Lobby for Catholic Social Justice

Nigerian Center
Oxfam America
Presente.org
Presidents' Alliance on Higher Education and Immigration
R J Martinez Group
Refugee Congress
Refugees International
Service Employees International Union (SEIU)
Sisters of Mercy of the Americas Justice Team
Social Workers for Immigration Justice and Human Rights
Southeast Asia Resource Action Center (SEARAC)
Tahirih Justice Center
Temp Worker Justice
Temporary Protected Status Deferred Enforced Departure Administrative Advocacy Coalition
(TPS-DED AAC)
U.S. Committee for Refugees and Immigrants (USCRI)
Unitarian Universalist Service Committee
Unitarian Universalists for Social Justice
Upwardly Global
We Are All America
Welcoming America
Witness at the Border
Women's Refugee Commission
World Education Services
#WelcomeWithDignity

State/Local

African Advocacy Network
Al Otro Lado
Asian Americans Advancing Justice-Atlanta
Association of Latinos/as/xs Motivating Action

Ayuda
Black Owned Maine
Career Planning Services
Catholic Migration Services, New York
Center for Changing Lives
Central American Resource Center
Chicago Commons
Cleveland Jobs with Justice
CLUE-Clergy and Laity United for Economic Justice
Coastal Church
Community Legal Services in East Palo Alto
Current-C Energy / Current-C Sustainable Building Systems
Diocesan Migrant and Refugee Services Inc/ Estrella del Paso
Dorothy Day Catholic Worker, Washington DC
El Calvario Community and Immigrant Advocacy Center
Esperanza Immigrant Rights Project
Evanston Latinos
Fellowship Southwest
Furniture Friends
Gateway Community Services, Maine
Hartmann & Forbes
Hispanic American Community Education and Services
Hope Acts
HospitalityMaine
Houston Immigration Legal Services Collaborative
Human Agenda
I AM TIM JONES
Illinois Migrant Council
Immigrant Defenders Law Center
Immigrant Legal Advocacy Project
Immigrant Services of Champaign Urbana

Immigration Institute of the Bay Area
Instituto del Progreso Latino
Interfaith Welcome Coalition - San Antonio
Kleiman International Consultants
L"Africanan Market Llc
La Raza Central Legal
Las Americas Immigrant Advocacy Center
Latino Policy Forum
Latino Union of Chicago
LOUISIANA ORGANIZATION FOR REFUGEES AND IMMIGRANTS
Lutheran Social Services of the National Capital Area (LSSNCA)
Maine Equal Justice
Maine Immigrants' Rights Coalition
Massachusetts Immigrant and Refugee Advocacy Coalition
Metropolitan Family Services
Metrowest Legal Services
Michigan Immigrant Rights Center
Midcoast Literacy
New American Welcome Center
Ohio Immigrant Alliance
Palenque LSNA
People-Places-Things, LLC
Pilsen Alliance
Portland Adult Education
Portland Regional Chamber of Commerce
Preble Street and Homeless Voices for Justice
Presente! Maine
Rezide Modern Homes
Silberman School of Social Work at Hunter College
Southwest Suburban Immigrant Project
Spur LLC

Student Clinic for Immigrant Justice
The Advocates for Human Rights
The Immigration Project
The Resurrection Project
Unified Asian Communities
Urban Evolution
VERITAS CARE OF MAINE INC
Wind of the Spirit Immigrant Resource Center