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Division of Humanitarian Affairs
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Joint Comment in Opposition to Notice of Proposed Rulemaking, USCIS-2025-0370

Dear USCIS Division of Humanitarian Affairs:[1]

The Tahirih Justice Center, together with **52 organizations** that work to assist, uplift, and advocate on behalf of survivors of domestic violence, sexual assault, human trafficking, and other forms of gender-based violence (GBV), submits this comment in opposition to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking, *Employment Authorization Reform for Asylum Applicants*, USCIS Docket No. USCIS–2025–0370; 91 F.R. 8616 (Feb. 23, 2026) ("proposed rule").

Our organizations work every day to assist, uplift, and

[1] The proposed rule directs commenters who seek further information to the Division of Humanitarian Affairs. See *Employment Authorization Reform for Asylum Applicants*, USCIS Docket No. USCIS–2025–0370; 91 F.R. 8616 (Feb. 23, 2026). It is our understanding, however, that Department of Homeland Security ("DHS") has since eliminated that division. As a result, it is unclear to whom comments are properly directed or which component within DHS is responsible for this rulemaking. This clarity complicates meaningful public participation in the notice-and-comment process.

advocate on behalf of survivors of severe abuses—including human trafficking, domestic violence, sexual assault, forced marriage, and other forms of gender-motivated violence. Most survivors seeking asylum arrive in the United States with limited resources, no access to public assistance, and few support systems to help them meet basic needs while awaiting adjudication of their asylum-based Employment Authorization Document (EAD) applications. For these survivors, employment authorization is not merely an economic benefit; it is a lifeline to safety, stability, and the ability to live free from violence.

The proposed rule would delay, limit, or entirely block access to employment authorization for many asylum seekers. If implemented, these provisions would inflict severe and unnecessary harm on survivors — placing them at heightened risk of homelessness, poverty, ongoing exploitation, and re-victimization.

For the reasons detailed below, we strongly oppose the proposed rule and urge DHS to withdraw the proposed rule in its entirety and maintain the current regulatory framework.

I. The Proposed Rule Fails to Acknowledge the Essential Role of Economic Self-Sufficiency for Survivors and its Public Safety and Economic Implications

DHS' proposed rule overlooks a critical reality: for GBV survivors, employment authorization is not a mere economic benefit — it is a matter of safety, stability, and survival. Yet, across the proposed rule's 85-page preamble, DHS fails to recognize or analyze how restricting or eliminating access to employment authorization uniquely harms asylum seekers who are survivors of domestic violence, sexual assault, human trafficking, forced marriage, and other forms of GBV.

Women, girls, LGBTQI+ individuals, and others fleeing GBV constitute some of the world's most vulnerable asylum seekers.[2] Many have survived persecution by state or non-state actors, including forced marriage, female genital mutilation/cutting, human trafficking, rape, domestic violence, and femicide. The DHS Office of Immigration Statistics (OIS) reported in August 2022 that the number of women and girls encountered at the border in 2021 reached record levels, noting that rising female migration often reflects

[2] UN High Comm'r for Refugees, *Women's Claims*, https://www.unhcr.org/en-us/womens-claims.html (last visited Apr. 23, 2026); UN Office of the High Comm'r for Hum. Rts., *LGBTI and Gender-Diverse Persons in Forced Displacement,* https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/lgbti-and-gender-diverse-persons-forced-displacement (last visited Apr. 23, 2026).

worsening gender-based violence and broader instability in countries of origin.[3]

After fleeing such harm, survivors routinely face ongoing danger, isolation, and acute economic hardship. Most arrive in the United States with little or no financial support and are ineligible for public benefits,[4] leaving them and their children at heightened risk of homelessness, food insecurity, and health crises. Safe housing and economic stability consistently rank among the most urgent challenges facing noncitizen women in the United States.[5]

A. Economic Stability is Foundational to Survivors' Safety and Ability to Rebuild Their Lives

Timely access to employment authorization is indispensable to survivors' ability to achieve safety and autonomy. With lawful employment, survivors can secure stable housing, access medical and mental-health care, more easily obtain legal representation, and safely leave abusive or exploitative relationships.[6] Income from authorized work reduces the likelihood of remaining in or returning to violence, and increases the likelihood of engaging with law enforcement or seeking protective orders.[7] Economic independence also promotes broader public safety gains. Poverty is strongly correlated with higher rates of domestic violence, with women in poverty experiencing abuse at twice the rate of those

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[3] DHS-OIS Aug. 2022 Rep. at 9-10.

[4] See Migration Policy Institute, *The Missing Link: Connecting Eligible Asylees and Asylum Seekers to Benefits and Services* (2022) at 13, https://www.migrationpolicy.org/sites/default/files/publications/mpi_asylee-asylum-seeker-benefits-2022_final.pdf.

[5] Tahirih Justice Center, *Nationwide Survey: A Window Into the Challenges Immigrant Women and Girls Face in the United States and the Policy Solutions to Address Them* (Jan.31, 2018) at5, 9-10, https://www.tahirih.org/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf.

[6] *See* National Network to End Domestic Violence, *About Financial Abuse*, https://nnedv.org/content/about-financial-abuse/; Shah, N. D., Nguyen, G., Wagman, J. A., & Glik, D. C. (2023). *Factors Influencing the Use of Domestic Violence Restraining Orders in Los Angeles*. Violence against women, 29(9), 1604–1622. https://doi.org/10.1177/10778012221120442; Human Rights Watch, *"At Least Let Them Work": The Denial of Work Authorization and Assistance for Asylum Seekers in the United States* (Nov. 2013), available at https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united.

[7] *See* Her Justice, *Stories from Immigrant Survivors of Gender-Based Violence: The Impact of Work Authorization* (2023) at 22, available at https://herjustice.org/wp-content/uploads/2023/11/Her-Justice-Policy-Report-Impact-of-Work-Authorization.pdf; Mary Ann Dutton, et al., *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal Policy and Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 271 (2000).

with greater economic stability.[8] Despite these well-established dynamics, the proposed rule would effectively cut off the ability of survivors to gain stability after experiencing violence.

The proposed rule would indefinitely or severely delay access to employment authorization for recent asylum seekers. DHS has also proposed dramatically extending timeframes for adjudicating EAD applications,[9] meaning survivors could face years-long or even indefinite waits with no guaranteed decision and no recourse. The consequences are predictable: deeper poverty, increased vulnerability to exploitation, and prolonged dependence on overburdened nonprofit and community resources.

DHS's Regulatory Impact Analysis treats lost wages as a potential transfer. But for survivors, lost income keeps them trapped in situations of abuse, violence, or exploitation. Without income, survivors cannot secure housing, provide for their children, or access life-saving services. These foreseeable harms remain wholly unexamined in the proposed rule, despite the Department's obligation to assess all reasonably anticipated costs.

B. Delaying or Prohibiting Employment Authorization Will Irreparably Harm GBV Survivors

DHS characterizes EAD delays as a potential redistribution of wages to U.S. workers. This framing fails to capture the lived reality of survivors who cannot return to their home countries without risking further persecution, yet must work to meet basic needs. When denied employment authorization, many will work regardless — but in the informal economy, where they are highly vulnerable to wage theft, coercion, exploitation, and violence.[10]

For GBV survivors, working without authorization compounds risk. Survivors may face harsher conditions, longer hours, or threats from employers who exploit their status. They may be pressured into labor under abusive conditions, paid far below promised wages, or denied pay entirely. Meanwhile,

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[8] National Network to End Domestic Violence, *Financial Abuse Fact Sheet*, available at https://nnedv.org/wp-content/documents/Financial%20Abuse%20Fact%20Sheet%20-%20May%202025%20EN.pdf (last accessed March 9, 2026).

[9] 8 CFR § 208.7 (a)(1)(iii) (proposed).

[10] Human Rights Watch, *"At Least Let Them Work": The Denial of Work Authorization and Assistance for Asylum Seekers in the United States* (Nov. 2013), available at https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united.

working without authorization may place them in further immigration precarity[11] — placing survivors in an impossible position: unsafe work or food insecurity and homelessness.

Although DHS acknowledges it cannot quantify these harms, it fails even to describe them meaningfully or at all.[12] This omission is a significant analytical defect given the proposed rule's predictable and disproportionate impact on asylum-seeking survivors.

The proposed rule also provides no gender-disaggregated analysis. DHS does not examine what proportion of (c)(8) EAD holders are women, how the proposed increased wait to file an application, eligibility bars, discretionary adjudications provision, or the EAD pause disproportionately affect women, or whether the rule will have disparate impacts on GBV survivors. Women and girls constitute approximately half of all asylum seekers,[13] and are disproportionately affected by gender-based persecution. The absence of a gender-impact analysis is a substantial deficiency in the proposed rule.

Multiple provisions of the proposed rule — including the entry without inspection bar,[14] the one-year-filing-deadline bar,[15] the "reason-to-believe" bar,[16] and extended waiting period to file an initial application[17] — interact in ways that predictably and disproportionately harm survivors fleeing GBV. Federal agencies are required to consider such impacts. DHS's failure to do so in an 85-page preamble is neither trivial nor accidental; it reflects a fundamental failure to consider important aspects of the proposed rule.

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[11] For example, an asylum seeker does not accrue unlawful presence while a bona fide asylum application is pending, unless during such time the noncitizen is employed without authorization. INA § 212(a)(9)(B)(iii)(I).

[12] 91 FR 8644.

[13] TRAC, *A Sober Assessment of the Growing U.S. Asylum Backlog* (Dec. 22, 2022), available at https://tracreports.org/reports/705/#:~:text=Gender%20and%20Age,See%20Table%205.&text=*%20All%20includes%20190%2C254%20individuals%20where,persons%20whose%20gender%20was%20known.

[14] 8 CFR § 208.7(a)(iv)(D) (proposed).

[15] 8 CFR § 208.7(a)(iv)(B) (proposed).

[16] 8 CFR § 208.7(a)(iv)(A) (proposed).

[17] 8 CFR § 208.7(a)(ii)(A) (proposed).

II. The Proposed Rule's Provisions to Delay or Restrict Access to Employment Authorization Are Punitive, Harmful to Survivors, and Unsupported by Evidence

A. Expanding the Waiting Period from 150 Days to 365 Days to File an Initial Application is Unnecessary and Punitive

Current regulations require asylum seekers to wait 150 days after filing an asylum application before applying for an EAD.[18] The proposed rule would extend this period to a full year — a change DHS asserts will deter abusive or frivolous filings.[19] DHS relies heavily on a decades-old decline in asylum filings following the 1994 rule implementing the 150-day wait, but provides no evidence that the 150-day period caused that decline, nor that a 365-day wait would produce similar effects today.[20] DHS also offers no empirical basis for selecting a 365-day delay. The agency neither explains how it determined the proposed duration nor assesses its implications for survivors of GBV, who already face profound economic instability during the existing 150-day period.

For survivors, extending the waiting period compounds harm and hardship. Survivors escaping intimate partner violence, trafficking, or community-based persecution often arrive with no financial resources, no support network, and no ability to access public services. The inability to work legally for an entire year or longer threatens survivors' safety, stability, and health, and unnecessarily strains local service providers and community resources.

These are not abstract hypotheticals. "Beth," an asylum seeker who was subjected to childhood sexual abuse, physical abuse, and trafficking in her home country, experienced this directly. Beth, an orphan, managed to escape to the United States and applied for asylum. While awaiting employment authorization eligibility, she has had to rely on indigent support and local charities to support herself and her U.S. citizen infant. If Beth must wait an entire year to apply for an EAD, and then await adjudication under longer allowable processing times, it will stall her ability to work, increase economic hardship for her and her U.S. citizen child, and place additional strain on community-based resources.

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[18] 8 CFR § 208.7(a)(1).

[19] 91 FR 8643.

[20] 91 FR 8631.

Preparing a gender-based asylum claim requires extensive time, specialized legal assistance, and careful documentation. Survivors need time to gather evidence, build trust with counsel, seek psychological support, and reconstruct memories impacted by trauma. The proposed rule's collective provisions—longer wait times to file, a 180-day adjudication window, and the likelihood of frequent pauses—offers no additional time to prepare asylum claims but removes the economic stability needed to secure legal representation and other critical services. Access to counsel is one of the strongest predictors of success; asylum seekers with representation are more than three times as likely to prevail in their claims.[21]

DHS concedes that the proposed rule may deter asylum seekers with meritorious claims, who may be unable to endure a year or more without income.[22] This admission underscores a fundamental flaw in the proposed rule: rather than meaningfully target fraudulent claims, the proposed rule instead makes the asylum process functionally inaccessible to survivors with potentially meritorious, legally sound claims. To justify its fraud concerns, DHS points to press releases of successful investigations and prosecutions of fraud schemes.[23] Yet these press releases confirm a point DHS fails to meaningfully address: there are existing fraud detection methods that work, rendering the proposed rule's provisions entirely punitive to bona fide applicants. Furthermore, DHS points to a decade-old U.S. Government Accountability Office (GAO) report raising concerns of asylum-related fraud. Yet DHS fails to engage meaningfully in the proposed rule with the GAO recommendations in that report, none of which included delaying, limiting, or blocking access to EADs.[24]

The proposed provision would have harmed survivors like "Mary," who fled her home country while pregnant because, unwilling to have an abortion as the father of her child demanded, she endured such brutal beatings and violence that she knew she had to find safety to save herself and her child. Under the existing regulation, Mary was able to secure authorized employment, obtain health insurance coverage, support herself and her child, and establish independence from an abusive relationship. Her meritorious asylum application was granted. Her authorized employment and ultimate asylum grant helped Mary heal

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[21] James Pittman, 8 a.m., *2025 Legal Industry Report: State of Immigration: Insights from 2024 and trends shaping the year ahead* (June 2025), available at ttps://www.docketwise.com/downloads/2025-immigration-research-report/.

[22] 91 FR 8630.

[23] 91 FR 8636.

[24] U.S. Gov't Accountability Office, *Report to Congressional Requesters, "Asylum: Additional Actions Needed to Assess and Address Fraud Risks"* (Dec. 2015), https://www.gao.gov/assets/gao-16-50.pdf.

from the severe persecution she endured, gain stability and autonomy over her life, and continue to protect her child from violence.

B. Barring Employment Authorization for Asylum Seekers Who Enter Without Inspection is Unjustified and Disproportionately Harms Survivors

The proposed rule would bar initial EAD eligibility for asylum seekers who entered the United States without inspection unless they express a fear of return or an intent to apply for asylum within 48 hours, or can otherwise demonstrate "good cause."[25] In practice, this would operate as a penalty for manner of entry for an asylum-related benefit, despite such penalties for asylum being prohibited under the 1951 Refugee Convention[26] and incorporated into U.S. law through the Refugee Act of 1980.[27]

Congress specifically authorized asylum claims from individuals who "arrive in the United States (whether or not at a designated port of arrival … [ ]."[28] Existing regulations already impose significant consequences for entering between ports of entry through the Circumvention of Lawful Pathways[29] and Securing the Border[30] final rules. DHS provides no evidence that asylum seekers who fail to make a fear claim within 48 hours are more likely to file fraudulent claims or less likely to qualify for asylum.

For survivors of GBV, these assumptions are particularly misplaced. Survivors fleeing imminent danger frequently have no feasible way to present at ports of entry – and cannot safely wait for an opportunity to do so. Many are fleeing traffickers, violent partners, or community-based threats and must take the first possible route to safety. A 2022 survey of service providers along the U.S.-Mexico border found that increased wait times at the border meant that survivors were frequently found and harmed by the persecutors they had fled.[31]

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[25] 8 CFR § 208.7 (iv)(D)(1)-(2) (proposed).

[26] Convention relating to the Status of Refugees, art. 31, July 28, 1951, 189 U.N.T.S. 150.

[27] Public Law 96-212, 94 Stat. 102, codified at 8 U.S.C. § 1101 et seq.

[28] INA § 208(a).

[29] 88 FR 31314.

[30] 89 FR 81156.

[31] Oxfam America and Tahirih Justice Center, *Surviving Deterrence: how US Asylum Deterrence Policies Normalize Gender-Based Violence*, (2022) at 14, available at https://www.tahirih.org/wp-content/uploads/2022/10/Oxfam_Tahirh_Surviving-Deterrence_English_2022.pdf.

The proposal also disregards the well-documented effects of trauma on disclosure. Survivors may be unable or unwilling to articulate fears to uniformed officers within 48 hours due to shame, fear of retaliation, cultural dynamics, or distrust born of past persecution and adverse encounters with law enforcement or other state actors. Research shows that harmful or dismissive treatment by immigration officers can retraumatize survivors and discourage disclosure altogether. One service provider recounted that "[survivors are] telling their stories of … rape and sexual assault, and the [Border Patrol] officers are just grilling them about minor inconsistencies."[32]

Additionally, many survivors do express fear at the border but are unlawfully turned back. According to a 2022 survey of border-region service providers, 65 percent of survey respondents indicated that their clients have been expelled or turned back frequently or very frequently from the United States because CBP officials had not followed required procedures, e.g., allowing asylum seekers to apply for asylum if they indicate a desire to do so. Survey respondents, on average, also indicated that about half the time their clients had not applied for asylum because of intimidation or discouragement by U.S. immigration officials at the border, and that CBP failures to follow required procedures led to frequent expulsions and discouragement, preventing survivors from seeking asylum despite eligibility.[33]

Although the proposed rule provides potential examples of "good cause" in the preamble, the proposed exception lacks any clear definition or guidance. This provision would introduce new adjudicatory burdens into the EAD process that are likely to create inconsistent, arbitrary outcomes. DHS again relies on generalized statements that EADs for asylum seekers are a "pull factor," without evidence that such a penalty would improve program integrity.[34]

Finally, DHS proposes conditioning EAD eligibility on entering lawfully after eliminating CBPOne — the primary mechanism for scheduling port-of-entry appointments.[35] Imposing this eligibility condition after DHS itself dismantled a primary mechanism for arriving at a port of entry is facially

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[32] *Id*. at 16.

[33] *Id.* at 17.

[34] 88 FR 31313-31314.

[35] U.S. Customs and Border Protection, *CBP Removes Scheduling Functionality in CBP One™ App,* Jan. 21, 2026, available at https://www.cbp.gov/newsroom/national-media-release/cbp-removes-scheduling-functionality-cbp-one-app (last visited Apr. 23, 2026).

inconsistent and fails to address how asylum seekers could realistically comply with this provision.

C. Importing the One-Year Filing Deadline into Employment Authorization Adjudications is Illogical, Punitive, and Especially Harmful for Survivors

The proposed rule would bar EAD eligibility for any asylum seeker who files an asylum application more than one year after arrival, unless an asylum officer or immigration judge has already determined that an exception applies.[36] But such determinations occur overwhelmingly after EAD adjudications. As a result, survivors with valid exceptions to the one-year deadline — and meritorious asylum claims — would be categorically barred from work authorization throughout their cases, which may stretch on for years.

DHS cites the rare scenario in which an asylum officer finds that an applicant has met their burden for an exception to the one year filing deadline, but refers a case on other grounds, but this likely represents a very small percentage of cases.[37] The overwhelming majority of asylum seekers with legitimate exceptions would be barred from EAD access while awaiting a final decision — even if they will ultimately be granted asylum.

This punitive approach magnifies existing barriers faced by survivors. Trauma-related conditions such as post-traumatic stress disorder (PTSD), depression, dissociation, and memory fragmentation may impede timely filing. Survivors may also prioritize immediate safety needs before focusing on their immigration case, including fleeing an abuser, securing stable housing, caring for children, or obtaining emergency services.[38]

For example, "Amelia" fled decades of atrocious abuse by her husband in her home country in Central America. The police and government repeatedly ignored her reports and pleas for help. Eventually, after enduring a beating so severe she lost consciousness and awoke in the hospital, she fled directly from the hospital and made her way to the United States to seek safety. Upon crossing the border, she became lost, dehydrated, and ill. Through the kindness of strangers, she survived. It took weeks for Amelia to

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[36] 8 CFR § 208.7(a)(1)(iv)(C) (proposed).

[37] 91 FR 8659.

[38] Oxfam America and Tahirih Justice Center, *Surviving Deterrence: how US Asylum Deterrence Policies Normalize Gender-Based Violence*, (2022) at 18, available at https://www.tahirih.org/wp-content/uploads/2022/10/Oxfam_Tahirh_Surviving-Deterrence_English_2022.pdf.

recover physically, and months to navigate where she could live, how she could support herself, and to find an attorney who could help *pro bono* because she lacked employment authorization. Only after being connected to mental health, medical, and social services could she address the effects of her severe trauma – insomnia, memory recall, and PTSD – to share the details of her story over the course of many interviews with her attorney. Amelia filed after the one-year deadline but ultimately prevailed in demonstrating that the extraordinary circumstances exception applied to her. Had the proposed rule been in effect at the time, Amelia would have been barred from lawful employment for nearly 8 years awaiting a final adjudication of her claim, which was ultimately determined to be meritorious.

As discussed below, the proposed rule further proposes eliminating the current provision deeming Form I-589 complete if USCIS does not reject it within 30 days — a change that would allow USCIS to delay intake processing and reject filings after the one-year mark, disproportionately harming pro se applicants.[39] The rule therefore invites precisely the kind of arbitrary and capricious outcomes administrative law forbids.

D. An Unsupported and Ill-Defined "Reason to Believe" Eligibility Bar Will Arbitrarily Deny Survivors the Ability to Work Lawfully

The proposed rule proposes to exclude from (c)(8) EAD eligibility any applicant for whom USCIS has "reason to believe" that one of the criminal bars to asylum — under INA §§ 208(b)(2)(A)(ii)–(iii) — may apply.[40] These statutory bars cover the "particularly serious crime" bar and the "serious nonpolitical crime" bar. The proposed provision is deeply problematic for several reasons.

1. DHS's Justification is Unsupported and Mischaracterizes Existing Data

DHS claims the provision is necessary to prevent individuals who are ultimately denied asylum from receiving interim employment authorization.[41] It cites an increase in the number of denied or referred asylum applications that had received at least one (c)(8) EAD.[42] But this reasoning rests on speculation. DHS concedes it cannot determine how many of those denials were based on national-security or

[39] 8 CFR § 208.3(c)(3) (proposed).

[40] 8 CFR § 208.7(iv)(A) (proposed).

[41] 91 FR 8642.

[42] 91 FR 8660.

public-safety grounds, yet it treats all such applicants as "not eligible" for asylum.[43]

Moreover, DHS ignores that asylum applications referred to the Executive Office for Immigration Review (EOIR) receive de novo review and that immigration judges in many cases grant asylum in cases USCIS has referred.[44] Even when an immigration judge denies asylum, such denials may stem from insufficient record development, trauma-related memory barriers, or the difficulty of articulating claims under complex and evolving case law—not from criminal bars. As noted above, access to competent legal representation is the most influential factor in asylum outcomes. Turning these uncertainties into a basis for denying work authorization is improper and unsupported.

2. The Proposal Introduces a New Adjudicatory Step Without Procedural Safeguards

In asylum adjudications, the application of the particularly serious crime or serious nonpolitical crime bar includes procedural protections: the applicant may contest the characterization of their conduct, submit rebuttal evidence, and—in the particularly serious crime context—show they do not pose a danger to the community. The proposed rule provides no analogous procedural protections in the EAD context.

Instead, the "reason to believe" determination would appear to be made by an EAD adjudicator in Service Center Operations (SCOPS) based solely on the record, without an interview, hearing, or clearly defined evidentiary standards. This would deprive applicants of any meaningful opportunity to contest allegations before losing access to initial or renewed work authorization.

3. The Standard Proposed is Lower Than the Standards Used in Asylum Law

The proposed rule introduces an evidentiary threshold — "reason to believe" — that is vague and lower than the standards required to apply the underlying asylum bars.

The particularly serious crime bar requires a final conviction and a finding that the person constitutes a danger to the community.[45] The serious nonpolitical crime bar requires "serious reasons for believing" that the person committed such a crime abroad.[46] By contrast, the proposed rule does not define

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[43] *Id.*

[44] 8 CFR § 1240.1.

[45] INA § 208(b)(2)(ii).

[46] INA § 208(b)(2)(iii).

what DHS means by a "reason to believe" these bars to asylum "may" apply, and DHS does not explain how this standard aligns with the gravity of the consequences. The proposed rule therefore proposes to impose a severe collateral penalty—the loss of the ability to work and support oneself—based on a threshold that is materially lower than the one Congress established for the underlying asylum bars. DHS provides no justification for this significant policy departure.

4. The Proposed Rule Provides No Guidance for How Adjudicators Will Apply the Standard

DHS offers almost no information about how EAD adjudicators will make "reason to believe" determinations. The proposal does not explain:

- how SCOPS officers (who are not asylum officers) will be trained;
- what sources of evidence they will consult;
- how they will assess or weigh foreign criminal records; or
- whether any review or correction mechanism will be available.

Given that an incorrect determination could permanently bar an applicant—including a GBV survivor—from work authorization, this lack of procedural clarity is a serious defect and falls short of required reasoned decision-making.

5. The Proposed Provision Disproportionately Harms Survivors, Particularly Trafficking Victims

The proposed rule fails to consider the predictable impact on survivors of GBV and human trafficking. Abusers and traffickers often coerce victims into committing unlawful acts under threat of harm to the victim or their loved ones. These actions—which occur under extreme duress—may appear as criminal conduct but are in fact manifestations of the underlying persecution.[47] Such victims should not be barred from EAD eligibility. The proposed rule does not address this reality or provide any

[47] *See* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *The Use of Forced Criminality: Victims Hidden Behind the Crime*, June 2014, available at https://2009-2017.state.gov/documents/organization/233938.pdf (last visited April 23, 2026); BWJP Defense Center for Criminalized Survivors, *Criminalized Survivors Fact Sheet* at 2 (2024), available at https://bwjp.org/wp-content/uploads/2024/10/Defense-Fact-Sheet-UPDATED.pdf (last visited March 23, 2026).

survivor-centered protections.

E. Eliminating Access to Statutorily Available Employment Authorization Based on USCIS's Own Processing Delays Lacks Justification, Transparency, and Fundamental Fairness

The proposed rule proposes to "pause" the intake and acceptance of new initial Form I-765 applications for asylum applicants whenever the average processing time for affirmative asylum applications exceeds 180 days for 90 consecutive days. Given current processing times—which DHS does not make available on the USCIS website,[48] in the proposed rule, or in any other public source—DHS acknowledges that this pause could last between 14 and 173 years,[49] effectively creating an indefinite—or even permanent—bar to initial employment authorization for asylum seekers.

This provision marks a dramatic departure from decades of practice and is unsupported by reasoned analysis. It rests on two fundamentally flawed premises.

First, DHS justifies the proposed pause by asserting that a significant number of asylum applications are frivolous or fraudulent, filed primarily as a means of obtaining employment authorization.[50] Yet the proposed rule cites no empirical evidence quantifying rates of fraud or frivolous filings, or demonstrating that EAD eligibility is a principal driver of asylum filings. Instead, DHS relies on circular reasoning, treating the size of the asylum backlog as proof of fraud and then proposing to limit EADs in order to reduce filings, without analyzing the true causes of the backlog.

DHS itself describes the "primary problem" as the sheer volume of pending cases overwhelming asylum resources.[51] But the solution proposed—a halt to EAD processing—has no logical connection to the identified issue.

DHS' second premise is that pausing EAD adjudications would free resources to reduce the asylum

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[48] USCIS, *Immigration and Citizenship Data, Fiscal 2025: Quarter 4 Data Reports*, available at https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic_id%5B%5D=33688&ddt_mon=&ddt_yr=&query=&items_per_page=10 (last visited Apr. 23, 2026).

[49] 91 FR 8618.

[50] 91 FR 8650.

[51] 91 FR 8646.

backlog. As noted above, Forms I-765 are adjudicated by SCOPS personnel, not asylum officers. These staffing categories are not directly interchangeable.[52] Removing EAD adjudications from SCOPS would not directly increase the number of asylum officers available to conduct interviews or issue decisions.

DHS provides no analysis of:

- how many SCOPS officers adjudicate (c)(8) EADs;
- the resource savings of streamlined EAD case processing efficiencies;[53]
- what workload would be reduced;
- whether any of those personnel could be reassigned to asylum adjudications; or
- how such reassignment would improve processing times.

Without such analysis, the proposed pause is unsupported by evidence and fails to constitute reasoned decision-making.

The proposed rule contains no exceptions for survivors of GBV or others facing urgent, life-threatening circumstances. During a pause—which DHS concedes could last generations—a survivor who has filed a meritorious asylum claim could be legally barred from working for the entire duration of their case. This could mean years without income, housing stability, or the ability to meet basic needs.

The absence of any safety mechanism—no humanitarian exception, no case-by-case hardship consideration, no pathway for survivors in imminent danger—reveals a fundamental flaw. By tying EAD access to USCIS' own systemic delays, the proposed rule imposes life-altering consequences on the very individuals the asylum system is intended to protect.

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[52] USCIS, *The 180-Day Asylum EAD Clock Notice*, revised March 2025, available at https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf ("Asylum EAD Clock Notice") (last visited Apr. 23, 2026).

[53] For example, the federal Defendants in *Mansor v. USCIS*, 2:23-cv-00347 (W.D. Wash.) notified the court on February 10, 2025, that as of February 4, 2025, USCIS had paused its streamlined case processing and adjudicating EAD applications and initial Temporary Protected Status applications. *See* National Immigration Litigation Alliance, *NILA's Affirmative Litigation Docket*, available at https://immigrationlitigation.org/impact-litigation/ (last visited Apr. 23, 2026).

III. Expanding Biometrics Requirements and Imposing Harsh Penalties for Missed Appointments is Unnecessary, Unjustified, and Harmful to Survivors

The proposed rule proposes sweeping changes to biometrics requirements for (c)(8) applicants that would impose significant and unnecessary burdens on GBV survivors while offering no meaningful programmatic benefit.[54]

A. Mandatory Biometrics for All (c)(8) EAD Applications is Redundant and Resource-Draining.

DHS proposes requiring biometrics collection for *every* initial and renewal (c)(8) EAD application. This requirement is duplicative. Biometrics are already collected for Form I-589 asylum applications, and those appointments are already auto-expedited in USCIS scheduling systems.[55] Adding a second, redundant biometrics appointment—particularly for renewal applicants whose biometrics have already been captured—will unnecessarily burden both applicants and USCIS resources.

DHS attempts to justify this expansion by citing delays in Form I-589 biometrics processing.[56] Yet the proposed solution—to *increase* the number of required biometrics appointments—would exacerbate, rather than alleviate, scheduling pressures at Application Support Centers (ASCs) and within USCIS' Immigration Records and Identity Services Directorate. The proposed rule also fails to acknowledge the availability of biometrics re-use – a policy and procedure adopted by USCIS over the course of multiple administrations – to address efficiency concerns.[57] The proposed rule therefore offers no rational connection between the identified problem and the proposed solution.

B. Punitive Consequences for Missing Biometrics Appointments Disproportionately Harm GBV Survivors

The proposed rule would bar an applicant from receiving a (c)(8) EAD if they fail to appear for a

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[54] 8 CFR § 208.7(a) (proposed).

[55] 91 FR 8657.

[56] 91 FR 8657.

[57] *See, e.g.,* USCIS Policy Manual, volume 1, part C, chapter 2 (discussing biometrics photo re-use), available at https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2 (last visited Apr. 23, 2026).

biometrics appointment, unless they can demonstrate "exceptional circumstances."[58] This heightened standard ignores the barriers survivors often face, as GBV survivors are disproportionately likely to miss appointments for reasons rooted directly in their victimization, including:

- abusive partners restricting movement or withholding mail;
- frequent address changes to avoid an abuser, causing appointment notices to be missed;
- lack of childcare or transportation;
- unsafe or unstable housing conditions that prevent reliable mail receipt; and
- economic precarity that makes taking unpaid time off impossible.

The proposed rule neither acknowledges these realities nor incorporates any trauma-informed considerations into the standard for excused absences. Under the proposed rule, adjudicators are not required — and are not guided — to consider the applicant's safety or history of abuse when assessing whether an appointment was "missed" or whether the delay should be excused.

Current policy already treats missed biometrics appointments as applicant-caused delays that can stop the EAD clock.[59] The proposed rule expands biometrics requirements but fails to expand the exceptions framework accordingly, creating a disproportionate and unjustified penalty regime for survivors.

IV. Making (c)(8) EADs a Discretionary Benefit Harms Survivors

The proposed rule also proposes to convert (c)(8) employment authorization from a nondiscretionary to a discretionary benefit.[60] This change would have sweeping and harmful consequences for survivors seeking asylum.

A. Discretionary (c)(8) EAD Adjudications Undermines Predictability, Stability, and Safety for Survivors

Survivors rely on EAD eligibility to secure economic stability, legal representation, and safe

[58] 8 CFR § 208.7(a)(4) (proposed).

[59] Asylum EAD Clock Notice at 4.

[60] 8 CFR § 274a.13(a)(1) (proposed).

housing, and to make plans to escape or remain free from an abuser. By making EAD approvals discretionary—with no defined standard and no right to appeal—the proposed rule introduces uncertainty into every stage of safety-planning. Even survivors who meet all statutory and regulatory criteria could be denied work authorization. The uncertainty of whether an EAD will be granted makes it more difficult for a survivor to predictably rely on future income from work, having a government-issued photo identification, and accessing a driver's license. All of these are critical aspects to a survivor's decision making and ability to recover from violence, or to leave abusive or exploitative situations. DHS acknowledges that this uncertainty may discourage individuals with meritorious claims from applying for asylum or may push them to return to countries where they fear harm, thereby magnifying existing risks.[61]

B. Discretion Allows Adjudicators to Deny EADs Even When Applicants Clear All Eligibility Bars

The proposed discretionary structure permits USCIS to deny an EAD even if the applicant does not trigger the new "reason to believe" eligibility restrictions. For example, a survivor with a minor offense, a dismissed charge, or an arrest that never resulted in prosecution could still be denied at the discretionary stage—despite the conduct being tied to abuse or victimization. The proposed rule offers no framework distinguishing criminal history reflecting culpable conduct from criminal history reflecting a survivor's exploitation or persecution.

Thus, a survivor could satisfy the eligibility requirements yet still be denied based on weaker evidence and without an opportunity to contest how their record is characterized.

C. The Proposed Rule Provides No Clear Standard for How Discretion Should Be Exercised

The proposed regulatory text defers entirely to sub-regulatory guidance in the USCIS Policy Manual, which expanded USCIS consideration of negative discretionary factors in recent months. Current policy allows adjudicators to weigh "country-specific facts and circumstances"—including insufficient vetting information about nationals from countries subject to Presidential Proclamations under INA § 212(f)—as significant negative factors.[62] This could allow an adjudicator to treat national origin itself as

[61] 91 FR 8629.

[62] USCIS Policy Manual, Vol. 1, Part E, Chapter 8, last updated Feb. 3, 2026, available at https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8.

a negative factor, meaning a survivor's EAD could be denied based solely on "country-specific facts and circumstances" related to their nationality, without any individualized analysis of their circumstances or the violence they fled.

D. Humanitarian Factors Are Relevant, but the Proposed Rule Provides No Mechanism to Ensure They Are Considered

While humanitarian considerations—such as past persecution, current danger, or the consequences of EAD denial—are relevant positive factors, adjudicators in SCOPS are not asylum officers and do not review asylum records during an EAD adjudication. The proposed rule does not establish any mechanism to ensure that adjudicators receive or meaningfully consider the information necessary to evaluate a survivor's humanitarian circumstances. As a result, survivors may be denied essential work authorization not based on individualized risk or need, but due to opaque, unreviewable discretionary judgments unsupported by the underlying asylum record.

V. Extending the (c)(8) EAD Processing Requirement From 30 Days to 180 Days Produces an Untenable Delay in Employment Authorization for Survivors

DHS proposes to extend the existing 30-day requirement for (c)(8) EAD processing to a 180-day requirement.[63] DHS treats the proposed increase to the asylum EAD clock and the extension of the EAD processing requirement as separate provisions, but they operate sequentially for an applicant. Under the combined effect of both provisions, even assuming the proposed initial EAD pause is not implemented, an asylum seeker must wait 365 days before filing an initial (c)(8) EAD application, then faces up to 180 additional days of EAD processing time. Thus, the time from asylum filing to work authorization under the proposed rule –assuming no pause, no denial, and prompt processing within the maximum allowed time – is 545 days, or 1.5 years, compared to 180 days under the current regulatory scheme. DHS's cost analysis quantifies the economic harm of the asylum EAD clock expansion and the processing time extension in isolation, but does not calculate the compounded harm of their sequential operation.[64] For GBV survivors – for whom work authorization is a key mechanism for economic independence and safety – the difference between 180 days and 545 days is the difference between safety and economic stability and the dire consequences discussed above of poverty and unauthorized employment in the shadow economy.

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[63] 8 CFR § 208.7(a)(1)(iii) (proposed).

[64] 91 FR 8684-8685.

VI. The Proposed Changes to 8 CFR § 208.3(c)(3) Would Further Erode EAD Access

DHS proposes to remove the language in 8 CFR § 208.3(c)(3) providing that an application for asylum will be deemed "complete" if USCIS fails to return the incomplete application to the alien within a 30-day period.[65] DHS justifies this by proposing to align its criteria for determining when an asylum application is received and complete more closely with the general rules governing immigration benefit requests in 8 CFR § 103.2, under which immigration benefit requests not meeting these requirements are rejected and returned and do not retain a filing date.[66]

DHS frames the completeness provision as an outlier from the general benefit-request framework that needs to be harmonized with 8 CFR § 103.2. This framing inverts the provision's actual function. The deemed-complete rule was not an oversight — it was a deliberate constraint on USCIS inaction in a context where agency delay has concrete, legal consequences for the applicant. If an asylum application has been returned as incomplete in accordance with § 208.3(c)(3), the 150-day period will commence upon receipt by USCIS of a complete asylum application. This means that USCIS can delay the entire EAD clock simply by delaying – potentially indefinitely – the rejection of an incomplete application. Removing the current 30-day deemed-complete regulatory text would eliminate any regulatory limit on how long USCIS can hold an application before deciding whether to treat it as complete. The proposed rule eliminates this safeguard without acknowledging its purpose or analyzing the consequences of its removal. It also offers no substitute mechanism — no alternative timeline for completeness review, no obligation to notify the applicant of a deficiency within any specified period, and no consequence for USCIS delay in making a completeness determination. Under the proposed rule, USCIS could receive an application, make no completeness determination for months or years, and the applicant would have no regulatory basis to argue that the application should be treated as filed and complete.

DHS offers only the justification – without acknowledging the humanitarian nature of asylum – that the current rule is inconsistent with general benefit request procedures.[67] DHS does not identify a single instance in which the deemed-complete provision was invoked inappropriately, does not quantify how many applications have been deemed complete without USCIS review, does not assess whether the deemed-complete provision has created administrative confusion, and does not engage with the well-documented history of the provision as a deliberate and functional element of the 1994 regulatory reform. The absence of any empirical or operational basis for removing a protection that has existed for over 30 years, engendering significant reliance interests, amounts to the agency removing a self-imposed deadline

[65] 91 FR 8655.

[66] *Id.*

[67] *Id.*

without cause.

The proposed change to the regulatory text also fails to meaningfully address important considerations, including that a significant number of asylum applicants are individuals who are unrepresented by counsel, recently arrived, have experienced significant trauma, may have limited English proficiency, and may be unfamiliar with asylum and immigration processes. For survivors, particularly those without legal representation, the impacts of trauma and the complexity of articulating a gender-based asylum claim under the particular social group protected ground also make it more difficult to ensure they have filed a complete initial application.

The current "deemed complete" regulatory language gives applicants, including survivors, a meaningful opportunity to correct deficiencies with notice, and serves as a backstop to ensure that USCIS's failure to timely identify and return a deficient application could not be used later to deny that the application was properly filed. Eliminating this protection, without providing or even considering any alternatives, will most severely impact the most vulnerable asylum seekers – the same population DHS claims the proposed rule is designed to help by clearing the backlog of meritorious asylum cases.

VII. Prioritizing Asylum Adjudications Where Derogatory Information is Discovered in EAD Processing Exacerbates the Backlog Harms to Survivors

The proposed rule would allow USCIS to prioritize adjudication of asylum applications when derogatory information is identified during the adjudication of a (c)(8) EAD application.[68] This proposed provision, if implemented, would exacerbate the negative effects of the affirmative asylum backlog on applicants with no derogatory information, including survivors with meritorious asylum claims. By introducing this new prioritization scheme, DHS further extends the case life cycle of asylum applicants stuck in the backlog, entrenching and worsening the long wait for case resolution, and the stability and benefits that a grant of asylum brings.

This provision also sits in direct tension with the proposed rule's central premise that reducing the volume of EAD adjudications is necessary to alleviate resource constraints within the asylum system. On one hand, DHS asserts that affirmative asylum processing times routinely exceed 180 days and that USCIS must reduce the number of EAD applications competing for resources in order to address the growing backlog.[69] On the other hand, DHS simultaneously argues that adjudicating EAD applications yields critical public-safety and national-security information, because background checks conducted during EAD processing may surface derogatory information that can be used to accelerate asylum adjudications.

[68] 8 CFR § 208.7(a)(1)(v) (proposed).

[69] 91 FR 8618.

The proposed rule does not reconcile these conflicting rationales.[70]

If the pause provision takes effect—as DHS anticipates immediately upon the rule's effective date—and remains in place for the projected 14 to 173 years, no initial EAD applications would be accepted. Without initial EAD filings, there would be no EAD adjudications; without EAD adjudications, no biometrics would be collected; and without biometrics collection, the mechanism that the proposed rule relies upon to surface derogatory information would not exist. The public-safety and national-security benefits DHS claims for this provision would therefore be unavailable during the entire period in which the pause remains active.

Yet the proposed rule does not acknowledge this contradiction. It presents the pause and the derogatory-information prioritization provision as complementary components of a coherent policy framework, when in fact one provision nullifies the operational precondition of the other.

DHS further attempts to justify the pause by characterizing EAD adjudications as a drain on asylum-system resources, while simultaneously describing those same adjudications as a benefit because they purportedly enhance vetting. The proposed rule provides no analysis explaining when or how EAD adjudication shifts from being a "cost" to being a "benefit," nor why the agency proposes simultaneously to curtail EAD adjudications (through the pause) while expanding them (through enhanced biometrics requirements and derogatory-information screening). These are mutually incompatible resource-allocation theories, presented without acknowledgment of their internal inconsistency.

The proposed rule's internal contradictions extend further. The proposed pause applies only to initial (c)(8) applicants — the group DHS claims poses the greatest potential public-safety concern. Yet the derogatory-information prioritization provision would apply to both initial and renewal EAD applicants. Individuals seeking renewal EADs have already undergone biometrics collection, background checks, and at least one prior adjudication; they are the group least likely to generate newly surfaced derogatory information. Nonetheless, under the proposed rule, USCIS would continue collecting biometrics and screening renewal applicants—including survivors with longstanding ties to the United States and meritorious asylum claims—while eliminating screening of the very population DHS identifies as presenting potential risk. This structure undermines the agency's own stated public-safety rationale.

The proposed rule does not address these contradictions or explain how the rule is intended to function as a cohesive policy framework. Its failure to disclose or analyze the relationship between these provisions — let alone reconcile their incompatibility — represents a significant omission in the agency's reasoning and further illustrates why the proposed rule is arbitrary, unworkable, and harmful to survivors.

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[70] 91 FR 8663.

VIII. The Proposed Rule Imposes Significant Burdens on Survivor-Serving Organizations

The proposed rule would dramatically increase the demands placed on the undersigned organizations and others that assist, uplift, and advocate on behalf of asylum-seeking survivors of GBV. By prolonging periods during which asylum applicants are unable to work — and, in many cases, eliminating access to employment authorization altogether — the rule, as proposed, would intensify survivors' economic instability and substantially increase their reliance on nonprofit service providers.

Our organizations already support or advocate on behalf of survivors facing acute economic hardship, housing insecurity, and lack of access to basic needs while they pursue immigration relief. The proposed delays and barriers to EAD access will deepen this instability, requiring survivor-serving organizations to offer more extensive and prolonged non-legal assistance, including emergency financial support, shelter referrals, food resources, case management, and safety-planning.

At the same time, demand for legal services will increase as survivors attempt to navigate more complex and punitive requirements embedded in the proposed rule. Survivors' inability to achieve financial independence will also make it more difficult for them to meet other obligations of the asylum process, such as attending biometrics appointments, traveling to hearings, or gathering documentary evidence—further compounding the legal challenges they face.

As survivors' needs increase and become more prolonged, the organizational capacity of survivor-serving organizations to take on new clients will diminish. This will leave fewer survivors able to access critical legal and social services, further undermining their ability to pursue meritorious asylum claims and to achieve safety and stability in the United States.

IX. Conclusion

The proposed rule would keep asylum seekers—especially survivors of gender-based violence—in prolonged and preventable poverty while they pursue protection in the United States. Rather than deterring fraudulent applications, the rule's provisions would punish survivors fleeing life-threatening persecution, destabilize families, and subject survivors to economic insecurity that heightens their vulnerability to exploitation and abuse.

DHS repeatedly asserts benefits that are unsubstantiated and unquantified, relying on generalized claims about frivolous filings without providing meaningful evidence. At the same time, the proposed rule minimizes or disregards the concrete, foreseeable harm the rule would inflict. These harms include

deepened trauma for survivors who already face chronic instability, increased risks to their safety, and greater burdens on community organizations and taxpayers who ultimately absorb the costs of prolonged economic instability.

The existing 150-day waiting period already discourages improper filings. Additional delays, bars, and punitive restrictions are unnecessary, unsupported by evidence, and inconsistent with the humanitarian purpose of the asylum system. We therefore urge DHS to withdraw the proposed rule in its entirety and maintain the current regulatory framework governing EAD access for asylum seekers.

Respectfully submitted,

National Organizations

Tahirih Justice Center

Asian Pacific Institute on Gender-Based Violence

ASISTA Immigration Assistance

Center for Human Rights and Constitutional Law

Esperanza United

Freedom Network USA

Futures Without Violence

Human Trafficking Legal Center

Immigrant Legal Resource Center

Just Solutions

Justice and Joy National Collaborative

Legal Momentum, the Women's Legal Defense & Education Fund

National Alliance to End Sexual Violence

National Immigrant Justice Center

National Immigration Law Center (NILC)

National Network To End Domestic Violence

National Organization for Women

National Women's Political Caucus

Peaceful Families Project

Sexual Violence Prevention Association (SVPA)

Young Center for Immigrant Children's Rights

State or Local Organizations

Alabama

Alabama Coalition Against Domestic Violence

California

California Immigration Project

California Partnership to End Domestic Violence

Coalition to Abolish Slavery and Trafficking

Community Legal Services in East Palo Alto

Community Solutions

Immigration Center for Women and Children

Justice At Last

Los Angeles LGBT Center

South Asian Network

Sunita Jain Anti-Trafficking Initiative. Loyola Law School

Survivor Justice Center

Colorado

Rocky Mountain Immigrant Advocacy Network (RMIAN)

Connecticut

Connecticut Institute for Refugees and Immigrants

District of Columbia
Ayuda

Georgia

Georgia Coalition Against Domestic Violence

Illinois

KAN-WIN

Kansas

Kansas Coalition Against Sexual & Domestic Violence

Kentucky

DOVES of Gateway

Maryland

Maryland Coalition Against Sexual Assault

Minnesota

Violence Free Minnesota

Nevada

Nevada Coalition to End Domestic and Sexual Violence

New Mexico

New Mexico Coalition Against Domestic Violence

New York

Her Justice

Hudson Valley Justice Center

The New York City Anti-Violence Project

Rhode Island

Rhode Island Coalition Against Domestic Violence

Utah

Utah Domestic Violence Coalition

Virginia

Virginia Sexual & Domestic Violence Action Alliance

Washington

Beyond Survival

Washington State Coalition Against Domestic Violence & Sexual Assault

Wisconsin

Wisconsin Coalition Against Sexual Assault