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## Unlicensed to Work: An Analysis of the United States' Human Rights Violation Against Asylum Seekers Due to the Unreasonable Waiting Period for Work Authorization, and How the Nation Forfeits an Economic Opportunity in the Process

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**UNLICENSED TO WORK: AN ANALYSIS OF THE UNITED STATES’ HUMAN RIGHTS VIOLATION AGAINST ASYLUM SEEKERS DUE TO THE UNREASONABLE WAITING PERIOD FOR WORK AUTHORIZATION, AND HOW THE NATION FORFEITS AN ECONOMIC OPPORTUNITY IN THE PROCESS**

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#### I. INTRODUCTION

American society has long upheld two values: immigration and capitalism.<sup>1</sup> Those who established the United States of America, who signed the Declaration of Independence, and who authored the Constitution were either immigrants or of immigrant descent.<sup>2</sup> These individuals declared freedoms, and freedoms were pursued. Later, one of these coveted freedoms became known as the American Dream.<sup>3</sup> This Dream, in essence, offers one to work for the life they want and to build it based on the effort they choose to exert.<sup>4</sup>

Despite the special place in our nation for immigration and the American Dream, the current between the two has short-circuited. Many immigrant classifications are not immediately granted work authorization upon arriving in the United States.<sup>5</sup> Specifically, asylum seekers have one of the most prolonged—and arguably unreasonable—waiting periods in seeking work authorization.<sup>6</sup> This population of immigrants must wait a minimum of five months before they are eligible to apply for work authorization.<sup>7</sup> Once eligible, applicants may file their application; however, they must wait an additional thirty days

1. See *Six Basic American Cultural Values*, VINTAGE AM. WAYS, <https://vintageamericanways.com/american-values> (last visited Oct. 20, 2023).

2. *Did You Know That Our Founding Fathers Were All Immigrants?*, NEW AM. ECON. (Feb. 15, 2016), <https://www.newamericaneconomy.org/feature/did-you-know-that-our-founding-fathers-were-all-immigrants>; see also Declaration Resources Project, *How Many of the Signers Were Born in the American Colonies?*, HARVARD UNIVERSITY, [https://declaration.fas.harvard.edu/faq/how-many-signers-were-born-american-colonies#:~:text=48%20of%20the%2056%20signers,in%20Wales%20\(Francis%20Lewis\)](https://declaration.fas.harvard.edu/faq/how-many-signers-were-born-american-colonies#:~:text=48%20of%20the%2056%20signers,in%20Wales%20(Francis%20Lewis)) (last visited Oct. 20, 2023).

3. Anna Diamond, *The Original Meanings of the “American Dream” and “America First” Were Starkly Different from How We Use Them Today*, SMITHSONIAN MAG. (Oct. 2018), <https://www.smithsonianmag.com/history/ behold-america-american-dream-slogan-book-sarah-churchwell-180970311>.

4. *Id.*

5. 8 C.F.R. § 208.7 (2022); *id.* § 274a.12 (2023).

6. See U.S. CITIZENSHIP AND IMMIGR. SERVS., *THE 180-DAY ASYLUM EAD CLOCK NOTICE* (2022), <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf> [hereinafter *The 180-Day Asylum EAD Clock Notice*]; HUM. RTS. WATCH, *AT LEAST LET THEM WORK: THE DENIAL OF WORK AUTHORIZATION AND ASSISTANCE FOR ASYLUM SEEKERS IN THE UNITED STATES 2* (Lori A. Nessel & Bill Frelick, eds., 2013) [hereinafter *Let Them Work*].

7. *Id.*

once they have filed for application to be processed.<sup>8</sup> Thus, applicants wait a minimum of six months before being granted asylum.<sup>9</sup> In 2022, at least 77,000 asylum seekers were in the United States without a license to work legally.<sup>10</sup> This statistic means that, despite the nation's current worker shortage crisis,<sup>11</sup> employers cannot even consider those 77,000 individuals for vacant jobs for at least six months.<sup>12</sup> Moreover, with recent backlogs in application and adjudication, asylum seekers commonly wait *years* to obtain a work license.<sup>13</sup>

Though asylum seekers are not entitled to a constitutional right to work as non-citizens, the United States has a duty to grant them this right in order to comply with the nation's signatory membership to the United Nations' 1967 Protocol of the Refugee Convention.<sup>14</sup> Any unjustified delay of this right to work is a human rights violation.<sup>15</sup> Even if the United States possessed a justified reason, the prolongation is counterproductive for the nation.<sup>16</sup> Although restrictions on immigrants are often meant to protect the interests of the nation and its citizens, this stalemate of unemployment for asylum seekers has proven so destructive for both Americans and asylum seekers that the Department of State is begging lawmakers for a shortened waiting period.<sup>17</sup> The waiting period's effect is too frequently (1) a time of poverty for those individuals; (2) a population of individuals choosing to work illegally to avoid poverty; (3) the government and charities draining aid and pro bono services to these individuals; and/or (4) the government forfeiting an economic opportunity.<sup>18</sup>

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8. *The 180-Day Asylum EAD Clock Notice*, *supra* note 6; *Let Them Work*, *supra* note 6, at 10.

9. *Id.*

10. Suzanne Monyak, *Asylum-Seekers Face Delays on Recent Work Permit Applications*, ROLL CALL (Aug. 10, 2022, 3:55 PM), <https://rollcall.com/2022/08/10/asylum-seekers-face-delays-on-recent-work-permit-applications>.

11. See Stephanie Ferguson, *Understanding America's Labor Shortage: The Most Impacted Industries*, U.S. CHAMBER OF COM. (Aug. 10, 2023), <https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries>; Abha Bhattarai, *Worker Shortages Are Fueling America's Biggest Labor Crises*, WASH. POST (Sept. 16, 2022, 4:34 PM), <https://www.washingtonpost.com/business/2022/09/16/worker-shortage-strikes-economy/>; Milton Ezrati, *Roots of America's Labor Shortage*, FORBES (May 30, 2022, 7:29 AM), <https://www.forbes.com/sites/miltonezrati/2022/05/30/roots-of-americas-labor-shortage/?sh=235b24382d7a>.

12. Monyak, *supra* note 10.

13. OFF. OF CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, ANN. REP. 2022 ix (2022) ("The asylum backlog has grown to more than 430,000 pending cases, with devastating impacts on asylum seekers and their family members.").

14. U.N. High Comm'r for Refugees, Convention and Protocol Relating to the Status of Refugees, Introductory Note, Apr. 22, 1954, <https://www.unhcr.org/en-us/3b66c2aa10> [hereinafter *Convention and Protocol Relating to the Status of Refugees*]; See DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES §1.1 (13th ed. 2023) (stating asylum is "a formal part of U.S domestic law" and asylum law is "expressly based on international law" of the Refugee Convention).

15. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 23 (Dec. 10, 1948) [hereinafter *Art. 23*].

16. See Thomas Gin, et al., *2022 Global Refugee Work Rights Report*, CTR. FOR GLOB. DEV. 21 (2022), [https://www.cgdev.org/sites/default/files/2022-global-refugee-work-rights-report\\_0.pdf](https://www.cgdev.org/sites/default/files/2022-global-refugee-work-rights-report_0.pdf) ("While refugees should have access to the labor market as a basic right, economic inclusion can in addition benefit host communities as well as refugees themselves.").

17. See OFF. OF CITIZENSHIP AND IMMIGR. SERVS. OMBUDSMAN, *supra* note 13, at ix.

18. *Let Them Work*, *supra* note 6, at 24, 27, 32–33, 37 (2013); see Eileen Sullivan, *Biden Administration Has Admitted One Million Migrants to Await Hearings*, N.Y. TIMES (Sept. 6, 2022), <https://www.nytimes.com/2022/09/06/us/politics/asylum-biden-administration.html> [hereinafter, Sullivan, *One Million Migrants*]; *Non-profit Impact Matters: How America's Charitable Nonprofits Strengthen Communities and Improve Lives*, NAT'L COUNCIL OF NONPROFITS (2019), <https://www.nonprofitimpactmatters.org/>; *FEMA Awards \$110 Million to the Emergency Food and Shelter Program to Assist Migrants*, FEMA (Mar. 18, 2021), <https://www.fema.gov/press-release/20210318/fema-awards-110-million-emergency-food-and-shelter-program-assist-migrants> [hereinafter *Nonprofit Impact Matters*].

To avoid harming asylum seekers and to fulfill the economic opportunity for America, lawmakers should streamline the asylum process and shorten the waiting period so asylum seekers can more quickly obtain work authorization. Lawmakers should also consider restructuring the amount of government aid and grants for asylum seekers' humanitarian aid to relocate the remainder toward employment-related training and opportunities for asylum seekers. Such a solution could give this immigrant population a sense of earning, allow them to integrate more quickly into American culture, and help them find a positive distraction from their persecution-induced trauma. This solution could also generate a "return-on-investment" for government grants and aid spent on asylum seekers by more quickly integrating them into the national economy.

This comment will (1) analyze current and previous asylum and work-authorization laws; (2) present how the United States is violating human rights by depriving asylum seekers of the right to work and how the waiting period damages asylum seekers; (3) illustrate how the United States is unreasonably forfeiting an economic opportunity by enforcing the unreasonably long waiting period; (4) analyze work-authorization policies from other countries as well as models to better invest funds for asylum seekers if they can obtain work authorization sooner; and (5) propose procedural changes to the employment authorization process for asylum seekers—including shortening the waiting period—as well as propose that the government reduce current asylum seeker aid and reallocate the remainder toward employment training and opportunities for asylum seekers.

Asylum seekers are only one classification of immigrants and thus are only one category of immigration law.<sup>19</sup> Asylum law is notoriously complex and frequently evolving.<sup>20</sup> Therefore, Part I of this Comment will present the essentials for understanding the laws and procedures relevant to an individual seeking asylum and how the rules affect their eligibility for work authorization. Before considering solutions to the current "unlicensed to work"<sup>21</sup> problem, it is also essential to analyze the evolution of asylum law and work authorization for asylum applicants. Part II will analyze critical points in the history of asylum law to understand why there is a waiting period, to begin considering any disadvantages to reducing the waiting period, and to avoid overcorrecting the waiting period.

According to the United Nations, "[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."<sup>22</sup> If the United States prevents asylum seekers from working legally for at least six months without a valid reason, the country may be guilty of violating this fundamental human right.<sup>23</sup> Moreover, the unreasonable waiting period for work authorization can damage asylum seekers' financial security, physical health, and psychological health.<sup>24</sup> Part III

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19. 8 C.F.R. § 208.7 (2022); *id.* § 274a.12 (2023).

20. OFF. OF CITIZENSHIP AND IMMIGR. SERVS. OMBUDSMAN, *supra* note 13, at 46–47; see Eileen Sullivan, *Biden Administration Prepares Sweeping Change to Asylum Process*, N.Y. TIMES (Mar. 24, 2022), <https://www.nytimes.com/2022/03/24/us/politics/us-asylum-changes.html> [hereinafter Sullivan, *Biden Administration*].

21. It is important to note that an asylum seeker's work authorization is not actually a license in the sense that it requires a test or inspection. See Jean Murray, *Business Licenses and Permits*, THE BALANCE (Apr. 14, 2020), <https://www.thebalancemoney.com/business-licenses-and-permits-398925#:~:text=Sometimes%20a%20license%20requires%20a,a%20gun%20is%20another%20example> ("Licensing often implies competence."). Although "unauthorized to work" is the more appropriate legal term, "unlicensed to work" plays on a commonly known phrase and is therefore used in order to more easily catch attention and to better resonate with the general reader.

22. Art. 23, *supra* note 15.

23. *Id.*; *Let Them Work*, *supra* note 6, at 1.

24. *Let Them Work*, *supra* note 6, at 27, 30–31, 37; *US: Catch-22 for Asylum Seekers*, HUM. RTS. WATCH (Nov. 12, 2013), <https://www.hrw.org/news/2013/11/12/us-catch-22-asylum-seekers> [hereinafter *Catch-22 for Asylum Seekers*].

thus exhibits how depriving asylum seekers of the right to work is harmful. Many of these individuals have already suffered very traumatic experiences.<sup>25</sup> This section presents studies of the positive effects that result from working, even for those who have suffered trauma.<sup>26</sup>

How can asylum seekers survive if they cannot provide financially for themselves? Contrary to common belief, asylum seekers do not directly receive federal funding or aid.<sup>27</sup> Instead, the federal government has delegated this responsibility to the states.<sup>28</sup> Nevertheless, between state funding and the federal grants sourced to nonprofit organizations for aiding asylum seekers, a gross amount of government dollars are funneled to asylum seekers.<sup>29</sup> Part IV exhibits the economic burden imposed on the United States and the opportunity forfeited by merely providing aid to asylum seekers instead of permitting them to transition to self-sufficiency through employment much sooner.

In assessing the unreasonable disadvantages for both asylum seekers and Americans by prohibiting asylum seekers from working legally, the ideal solution is to change the current procedures for the EAD application, including reducing the waiting period for work authorization. Part V will analyze waiting periods and economic opportunities implemented in other countries for asylum seekers. Additionally, this section will consider options for reallocating the current government and nonprofit aid for asylum seekers towards investing in employment opportunities for these individuals.

Finally, Part VI proposes changes to the current asylum process and work authorization waiting period. Streamlining the application and shortening the waiting period would help asylum seekers obtain work authorization sooner. If they obtain work authorization sooner, then the government could restructure funds towards better investment opportunities for asylum seekers to ultimately boost the economy.

## II. AN UNREASONABLE WAITING PERIOD: CURRENT PROCEDURES GROSSLY DELAY THE ASYLUM SEEKER'S WORK AUTHORIZATION

As mentioned above, asylum law is only one component among the multifaceted immigration law, in which asylum law itself is complex and often confusing.<sup>30</sup> Generally, asylum refers to “the protection of persons facing persecution.”<sup>31</sup> Specifically, asylum is available to foreign nationals seeking refuge from their own country because of persecution.<sup>32</sup> Individuals seeking asylum must prove that they have suffered past persecution—

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25. *Let Them Work*, *supra* note 6, at 20, 28, 31, 35; *Catch-22 for Asylum Seekers*, *supra* note 24.

26. *Let Them Work*, *supra* note 6, at 30; *Catch-22 for Asylum Seekers*, *supra* note 24.

27. *Mapping Public Benefits for Immigrants in the States*, PEW (Sept. 24, 2014), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/09/mapping-public-benefits-for-immigrants-in-the-states> [hereinafter *Mapping Public Benefits*]; Tanya Broder & Gabrielle Lessard, *Overview of Immigrant Eligibility for Federal Programs*, NAT'L IMMIGR. L. CTR. (Mar. 2023), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>.

28. 8 U.S.C. § 1621(d); *Mapping Public Benefits*, *supra* note 27.

29. *Mapping Public Benefits*, *supra* note 27; FEMA, *supra* note 18.

30. OFF. OF CITIZENSHIP AND IMMIGR. SERVS. OMBUDSMAN, *supra* note 13, at 46–47; *see* ANKER, *supra* note 14, at §§ 1:4, 1:19.

31. ANKER, *supra* note 14, at § 1:1. The term is also limited to “an extreme concept involving a severe level of harm that includes actions so severe that they constitute an exigent threat.” 8 C.F.R. § 208.1(e). “Persecution” refers to “an intent to target a belief or characteristic, a severe level of harm, and the infliction of a severe level of harm by the government of a country or by persons or an organization that the government was unable or unwilling to control.” *Id.*

32. *See* ANKER, *supra* note 14, at § 1:2.

or have a well-founded fear of future persecution—“on account of race, religion, nationality, membership in a particular social group, or political opinion.”<sup>33</sup> To be eligible to apply for asylum, the individual must physically be in the United States or arrive at a U.S. port of entry, such as a border checkpoint or airport customs.<sup>34</sup> The individual does not have to file for asylum at that moment; instead, the individual may state asylum as their purpose for entering.<sup>35</sup> However, the asylum seeker must file for asylum within one year of their entry date.<sup>36</sup>

For a hypothetical illustration, consider a fictional immigrant named Hanna from Botswana.<sup>37</sup> In Botswana, Hanna openly opposed the government’s agriculture policies. Hanna began to receive threats from the government that her house would be burned down unless she ceased openly disagreeing with the government’s stance on agriculture. Hanna’s house was eventually burned to the ground with a spray-painted message in the front of the property that read, “We warned you. And this is only the beginning.” Hanna fled from Botswana as quickly as possible and arrived in the United States on January 8, 2022. Hanna now must file an asylum application by January 7, 2023.<sup>38</sup> She is technically in the United States without an official immigrant status but may stay to complete her asylum process.<sup>39</sup>

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33. 8 U.S.C. § 1101(a)(42)(A).

34. 8 U.S.C. § 1158(a)(1), (b)(1), (d).

35. *Obtaining Asylum in the United States*, U.S. CITIZEN AND IMMIGR. SERV., [https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states#:~:text=A%20defensive%20application%20for%20asylum,for%20Immigration%20Review%20\(EOIR\)](https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states#:~:text=A%20defensive%20application%20for%20asylum,for%20Immigration%20Review%20(EOIR)) (last visited Oct. 21, 2023). However, when an asylum seeker arrives to a port of entry without existing immigrant documentation, such as a tourist visa or work visa, they are typically placed into removal proceedings in which their asylum claim would serve as their defense to removal. *Id.* This is often referred to as “defensive asylum.” *Id.* If an asylum seeker initially entered the U.S. with valid immigrant documentation like a tourist visa or work visa but then later applies for asylum, this is often referred to as “affirmative asylum.” *Id.* When an individual seeks affirmative asylum, their initial valid documentation is usually only temporary, and therefore, asylum would permit them to remain in the United States for a longer term and ultimately prevent them from returning to their home country. *See Difference Between Affirmative and Defensive Asylum*, SVERDLOFF L. GRP., <https://sverdlofflaw.com/affirmative-vs-defensive-asylum/#:~:text=Affirmative%20asylum%20seekers%20are%20yet,U.S.%20Executive%20Office%20of%20Immigration> (last visited Nov. 9, 2023). Ironically, placing asylum seekers in removal proceedings simply because they do not have proper documentation in itself is prohibited by the Refugee Convention. *Convention and Protocol Relating to the Status of Refugees*, *supra* note 14, at 3. Further, “[t]he [Refugee] Convention further stipulates that, subject to specific exception, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum or being arbitrarily detained purely on the basis of seeking asylum.” *Id.*

36. 8 C.F.R. § 208.4(a)(2)(i)(A).

37. Note this hypothetical scenario is meant only to illustrate the general elements of an asylum claim and is not presented to insinuate any likelihood of such an asylum case originating from persecution in Botswana.

38. *Supra* note 36 and accompanying text. In reality, the process of entry for an asylum seeker may be much more complicated and difficult than Hanna’s Hypo due to all the factors that affect whether an immigrant is seeking affirmative asylum or defensive asylum, as well as depending on where they enter. *Id.* However, to not confuse or distract the reader with the intricacies of initially seeking asylum, this hypothetical keeps Hanna’s process of entry vague to maintain the scope of this comment as much as possible on the employment authorization process for asylum seekers.

39. *See supra* note 35 and accompanying text.

*A. Asylum Seekers are Not Granted Instant Employment Authorization and Instead Must Wait At Least 180 Days*

The United States has yet to grant Asylum seekers instant employment authorization.<sup>40</sup> On the contrary, asylum seekers are generally only eligible to apply for employment authorization documents (“EAD”) at least 150 days after submitting their asylum application.<sup>41</sup> Once an individual submits an application for employment authorization, there is a thirty-day processing period in which the government assesses the EAD application and subsequently grants or denies it.<sup>42</sup> However, “no employment authorization shall be issued to an asylum applicant before the expiration of the 180 days following the filing of the asylum application,” meaning that the applicant will not receive the determination of their EAD application until thirty days after filing.<sup>43</sup> In sum, an applicant will have to wait at least 180 days from the time of filing the asylum application before finding out whether their EAD application is granted or denied.<sup>44</sup> In an ideal scenario, an asylum applicant could receive employment authorization within 180 days of arriving in the United States.<sup>45</sup> Unfortunately, reality does not mirror this ideal timeline.<sup>46</sup>

*B. Asylum Seekers Wait Much Longer than 180 Days for Work Authorization*

In reality, the work authorization timeline is not so fast-tracked.<sup>47</sup> First, this ideal 180-day timeline assumes the applicant can submit their asylum application within twenty-four hours of entering the United States.<sup>48</sup> Factors such as language barriers, understanding the asylum application, access to legal counsel, and assimilating to U.S. culture can all obstruct the promptness with which an asylum seeker files their application.<sup>49</sup> In 2020, 47% of all immigrants age five and older were not proficient English speakers.<sup>50</sup> In addition to potential language problems, some asylum seekers have historically believed that

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40. See generally 8 C.F.R. § 208.7(a)(1). “Employment authorization” is the formal and legal term; however, it is also commonly and informally referred to as “work authorization.” As such, this Comment uses the two forms of the term interchangeably. See *Let Them Work*, *supra* note 6.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. 8 C.F.R. § 208.7(a)(1).

46. *Access to Counsel*, NAT’L IMMIGR. JUST. CTR., <https://immigrantjustice.org/issues/access-counsel> (last visited on Oct. 21, 2023) [hereinafter *Access to Counsel*]; See *Key Findings about U.S. immigrants*, PEW RSCH. CTR. (Aug. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants> [hereinafter *Key Findings*].

47. See *Access to Counsel*, *supra* note 46; *Key Findings*, *supra* note 46.

48. A recent interim rule enacted by the government in May 2022, The Asylum Processing Rule (“APR”), offers potentially the quickest existing path to employment authorization for asylum seekers. Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078, 18078–80, 18084 (Mar. 29, 2022) [hereinafter 87 Fed. Reg. 60]. The APR includes an updated Credible Fear Screening for asylum seekers in removal proceedings. *Asylum and Credible Fear Interim Final Rule*, AM. IMMIGR. LAWYERS ASSOC’N (Dec. 8, 2022), <https://www.aila.org/advo-media/issues/featured-issue-asylum-and-credible-fear> [hereinafter *Interim Final Rule*]. The details of this interim rule will be further explained and addressed in Part VI.

49. See *Access to Counsel*, *supra* note 46; *Key Findings*, *supra* note 46.

50. *Key Findings*, *supra* note 46. Note that this statistic accounts for all immigrants. *Id.* Though this percentage may be larger or smaller specifically for asylum seekers, it serves as a reminder that language barrier is likely a reality for many asylum seekers.



an initial interview at a border entry point activates their asylum application.<sup>51</sup> “[B]ut that’s actually not really true,” said Denise Gilman, a clinical professor, and director of the Immigration Clinic at the University of Texas School of Law.<sup>52</sup> Further, without a lawyer, most asylum seekers do not even realize that they are not “already being considered for asylum.”<sup>53</sup> The impact of legal counsel in asylum cases is tremendous: “Without representation, only 1 in 10 claimants ultimately win their asylum case. In contrast, those represented by counsel are at least three times more likely to have their claims approved.”<sup>54</sup> Without legal representation, an applicant is left to complete and submit—on their own—a twelve-page I-589 asylum form and supplemental documents.<sup>55</sup> USCIS offers a fourteen-page document of instructions for completing and submitting the I-589; non-profit organizations also offer additional instructions for completing the I-589, like the Political Asylum/Immigration Representation Project’s seventeen-page instructional packet.<sup>56</sup> While these may aid an asylum seeker who is applying without a lawyer, the size of both the application and the instructional packets demonstrate the application’s complexity.<sup>57</sup> In sum, a lack of legal representation can significantly impede the quickness with which an individual can apply for asylum and, subsequently, for work authorization.<sup>58</sup>

As Gilman noted, before an immigrant even considers hiring a lawyer, they first have to realize that the asylum process requires more than just the initial screening and that asylum is a legal matter.<sup>59</sup> In 2019, only 29% of all people worldwide with a legal problem understood the problem to be “legal in nature as opposed to ‘bad luck’ or a community matter.”<sup>60</sup> Even if an asylum seeker recognizes their legal issue, funds can become another obstacle. According to the World Justice Project, one in six people worldwide reported that “it was difficult or nearly impossible to find the money required to resolve their [legal] problem.”<sup>61</sup> As such, asylum seekers likely face many hurdles in completing their asylum application, such as language barriers, lack of legal counsel, and insufficient funds.<sup>62</sup>

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51. D’Angelo Gore, *FactChecking Claims About Asylum Grants and Immigration Court Attendance*, FACTCHECK.ORG (Apr. 1, 2021), <https://www.factcheck.org/2021/04/factchecking-claims-about-asylum-grants-and-immigration-court-attendance/>.

52. Gore, *supra* note 51. Gilman added that there had been litigation complaining that border officials were not explaining to asylum seekers after their border interview that there is still a required application component to seeking asylum, and that the application must be filed within one year of their entry. *Id.* This source refers to the border process prior to the Asylum Processing Rule mentioned in Footnote 48. *Interim Final Rule*, *supra* note 48. Further, prior to the May 2022 final interim rule, officers at the border would conduct an initial screening, but it would not serve as the start of their asylum application. Gore, *supra* note 51. However, the APR is not applicable to all asylum seekers, which means asylum seekers are likely still confused by or misinformed about the process. See *Asylum and Credible Fear Interim Final Rule*, *supra* note 48.

53. Gore, *supra* note 51.

54. Jacob Czarnecki & Haley Hamblin, *Legal Representation for Asylum Seekers: An Overlooked Area of Reform for a System in Crisis*, NISKANEN CTR. (Aug. 24, 2021), <https://www.niskanenctr.org/legal-representation-for-asylum-seekers-an-overlooked-area-of-reform-for-a-system-in-crisis/#:~:text=Without%20legal%20counsel%2C%20asylum%20seekers,to%20have%20their%20claims%20approved.>

55. *I-589, Application for Asylum and for Withholding of Removal*, U.S. CITIZEN & IMMIGR. SERV., <https://www.uscis.gov/i-589> (last visited Oct. 21, 2023) [hereinafter *I-589 Application*].

56. See generally *Instructions for Form I-589*, U.S. CITIZEN & IMMIGR. SERV., <https://www.uscis.gov/i-589>; *Pro Se Asylum Manual*, POL. ASYLUM/IMMIGR. REPRESENTATION PROJECT (May 2019), <https://www.pairproject.org/wp-content/uploads/2019/06/Asylum-Pro-Se-Manual-English-May-2019.pdf>; see also *How to File for Asylum Without a Lawyer*, MASSLEGALSERVICES (May 20, 2019), <https://www.masslegalservices.org/content/how-file-asylum-without-lawyer>.

57. See generally *I-589 Application*, *supra* note 55; *Instructions for Form I-589*, *supra* note 56.

58. Czarnecki & Hamblin, *supra* note 54.

59. Gore, *supra* note 51.

60. *Global Insights on Access to Justice*, WORLD JUST. PROJECT 7 (2019), <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf>.

61. *Id.*

62. Sabrineh Ardan, *Access to Justice for Asylum Seekers: Developing an Effective Model of Holistic*

With these statistics in mind, consider the fictional immigrant Hanna. Is she likely aware of how to apply for asylum—or that her right to work legally depends on whether and when she has filed her asylum application once she entered the United States? Could she quickly find legal counsel and—without a job—afford that legal counsel to help apply for asylum and subsequently for employment authorization? Remember, she arrived in the U.S. on January 8, 2022.

Perhaps she faced obstacles in understanding the asylum application process and whether she could obtain a lawyer. Nevertheless, imagine she could submit an asylum application on May 1, 2022. She then waited the 150 days to apply for work authorization. On September 28, assuming her pending asylum application has not been denied, she could finally file her EAD application. If the application processes smoothly, she could receive her employment authorization on October 28. In this scenario, Hanna would have been in the country for nearly ten months without being able to work legally compared to the ideal six-month timeline statutorily outlined.<sup>63</sup>

*C. USCIS’s Grossly Backlogged System for EAD Applications Unreasonably Prolongs the Asylum Seeker’s Opportunity to Work*

In reality, asylum seekers wait longer than Hanna’s Hypo due to severe application backlogs. The current backlog in asylum and EAD applications often grossly delays the asylum seeker’s timeline in receiving legal employment. July 2022 marked a record low, with less than 5% of EAD applications to be processed within the required thirty-day timeframe.<sup>64</sup> Moreover, even though the law requires the USCIS to process EAD applications within thirty days, barely any applicants are receiving a response.<sup>65</sup> Between May and July 2022, most applications processed by USCIS had been pending for more than 120 days.<sup>66</sup> In those three months, USCIS also “face[d] a new wave of more than 77,000 pending work permit requests.”<sup>67</sup>

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*Asylum Representation*, 48 U. MICH. J. L. REFORM 1001, 1013 (2015).

63. 8 C.F.R. § 208.7(a)(1).

64. Monyak, *supra* note 10. The percentage drastically “plummeted” between February 2022 and July 2022 from 93% to less than 5%. *Id.* Monyak explains this sudden decline likely resulted from *Asylum v. Mayorkas*. *Id.* (“a court opinion released that February”); see also *Table 1, I-765 - Application for Employment Authorization Eligibility Category: C08, Pending Asylum Initial Permission to Accept Employment Completions by Processing Time Buckets August 1, 2020 - July 31, 2022 Aggregated by Fiscal Year and Month Potential Rosario Class Members*, U.S. CITIZEN & IMMIGR. SERV., <https://s3.documentcloud.org/documents/22130223/july-2022-rosario-report.pdf> (last visited Oct. 27, 2022) [hereinafter *Table 1, I-765*]. The percentage of processed applications did rise to 44% in April 2023, but the influx of asylum seekers still has many complaining the waiting period is too long. Andrew Kreighbaum, *Asylum Seekers Notch Wins, Work Permit Processing Times Ease*, BLOOMBERG L., (May 24, 2013) <https://news.bloomberglaw.com/daily-labor-report/asylum-seekers-notch-wins-as-work-permit-processing-times-ease>; Gloria Oladipo, *New York Rights Groups Call for Fast-Track Work Permits for Asylum Seekers*, THE GUARDIAN (Aug. 10, 2023), <https://www.theguardian.com/us-news/2023/aug/10/work-permits-asylum-seeker-mayorkas-biden-immigration>; Christian M. Wade, *Biden urged to fast-track work for migrants*, THE SALEM NEWS (Aug. 5, 2023), [https://www.salemnews.com/news/biden-urged-to-fast-track-work-for-migrants/article\\_dbb95cd4-31ef-11ee-838a-ef19e1ef0e1b.html](https://www.salemnews.com/news/biden-urged-to-fast-track-work-for-migrants/article_dbb95cd4-31ef-11ee-838a-ef19e1ef0e1b.html).

65. 8 C.F.R. § 208.7(a)(1); Monyak, *supra* note 10.

66. Monyak, *supra* note 10.

67. *Id.*

In 2019, the Department of Homeland Security received more than 148,000 new affirmative asylum cases alone.<sup>68</sup> Approximately 575,000 asylum cases were pending in the immigration courts at the end of 2020.<sup>69</sup>

Back to Hanna's hypothetical situation, assume it took time to complete her work authorization application, so she filed this application on October 1, 2022. Suppose her case is like most EAD applications, which take more than 120 days to process.<sup>70</sup> In that case, she likely will not receive work authorization until at least January 29, 2023. This date indicates that Hanna will wait more than one year to be authorized to work legally in the country. A single individual's average cost of living in the United States in 2021 was \$38,266 per year.<sup>71</sup> If Hanna lacks a legal source of income for over a year, how is she expected to obtain around \$38,266?

Part IV will further explore how asylum seekers scramble for funds during the waiting period. For now, Hanna's hypothetical situation helps to illustrate the significant financial burden accrued due to the gross application backlogs.

#### *D. The History and Evolution of Asylum Law and the Related Work Authorization Process Provides Context to the Gross Backlogs and Unreasonable Timeline for Asylum Seekers' Work Authorization*

U.S. asylum law is greatly shaped by the United States' membership as a signatory to the United Nations' 1967 Protocol of the Refugee Convention.<sup>72</sup> In fact, "U.S. asylum law is domestic law expressly based on international law," and "Congress and the U.S. Supreme Court have been clear: the United States enacted the 1980 Refugee Act to reflect U.S. legal obligations under the Refugee Convention."<sup>73</sup>

The Refugee Convention was initially held and established in 1951.<sup>74</sup> The international conversation of protecting refugees was originally birthed from the millions of individuals displaced in the aftermath of World War I.<sup>75</sup> As World War II escalated that number, the United Nations finally enacted an international treaty to ensure those fleeing

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68. PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2021: REP. TO CONG., U.S. DEP'T OF STATE 6, <https://www.state.gov/reports/report-to-congress-on-proposed-refugee-admissions-for-fy-2021/> (last visited Oct. 25, 2023) [hereinafter PROPOSED REFUGEE ADMISSIONS].

69. PROPOSED REFUGEE ADMISSIONS, *supra* note 68. In its 2022 Report to Congress, the U.S. Department of Homeland Security recommended that USCIS process employment authorization renewals more flexibly to help reduce the gross backlog. OFF. OF CITIZENSHIP AND IMMIGR. SERVS. OMBUDSMAN, *supra* note 13, at viii, 20 ("Delays in renewing employment authorization documents (EAD's) interrupt employment for noncitizens while simultaneously hampering the ability of U.S. businesses to employ their workforce continuously . . . [We] recommend[] that USCIS[] build on existing automatic extension periods to allow for uninterrupted work authorization while waiting for USCIS to adjudicate a renewal EAD application," "eliminate the need for a separate EAD application when filing for certain benefits," and "continue to identify and prioritize occupations for expedited processing.").

70. Monyak, *supra* note 10.

71. *New to America: What is the Average Monthly Cost of Living in USA?*, UPWARDLI, <https://www.upwardli.com/resources/new-to-america-what-is-the-average-monthly-cost-of-living-in-usa#:~:text=The%20average%20monthly%20living%20expenses,which%20is%20%2485%2C139%20per%20year> (last visited Oct. 25, 2023) [hereinafter *New to America*].

72. *Asylum Seekers and Refugees*, NAT'L IMMIGR. JUST. CTR., <https://immigrantjustice.org/issues/asylum-seekers-and-refugees> (last visited Oct. 25, 2023).

73. ANKER, *supra* note 42. The Refugee Convention is officially known as the "Convention Relating to the Status of Refugees," but is more commonly known as the Refugee Convention. See *The 1951 Refugee Convention*, U.N. HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/en-us/1951-refugee-convention.html> (last visited Oct. 25, 2023) [hereinafter *The 1951 Refugee Convention*]; see also *Convention and Protocol Relating to the Status of Refugees*, *supra* note 14, at 3.

74. *Convention and Protocol Relating to the Status of Refugees*, *supra* note 14, at 2, 9.

75. *The 1951 Refugee Convention*, *supra* note 73.

persecution could find refuge without fear of being forced to return to their home country.<sup>76</sup> While non-refoulement is a central objective of the treaty, the agreement also protects certain rights for refugees and provides additional parameters.<sup>77</sup> The 1951 Convention mostly applied to European refugees affected by the world wars, but the 1967 Protocol amended the Convention to remove any “geographical and temporal limits” required in the original treaty,<sup>78</sup> encompassing protection for all refugees regardless of origin.<sup>79</sup> The Convention “lays down basic minimum standards for the treatment of refugees . . . [.]” Such rights include access to the courts, to primary education, to *work*, and the provision for documentation, including a refugee travel document in passport form.<sup>80</sup>

The history and development of U.S. asylum law extends beyond the Refugee Convention and has evolved into “a robust body of law.”<sup>81</sup> Before considering solutions to the current “unlicensed to work” problem, it is essential to analyze the evolution of U.S. asylum law to (1) understand why there is a waiting period, (2) consider any disadvantages to reducing the waiting period, and (3) avoid overcorrecting the waiting period when proposing solutions.

#### i. 1891-1949: Laying the Foundation of Immigration Law

Although asylum law has been “a formal part of U.S. domestic law” for forty-three years,<sup>82</sup> its history exceeds that time period. In 1891, Congress created the first immigration governing agency to “oversee the admission of [all] immigrants.”<sup>83</sup> At that time, “U.S. immigration laws did not restrict the number of immigrants the U.S. would accept.”<sup>84</sup> This open welcome meant refugees like asylum seekers “could resettle in the U.S. as long as they met the regular requirements for immigrant admissions.”<sup>85</sup> Nearly thirty years later, the Immigration Act of 1917 enacted a “literacy requirement”: all immigrants, except those under age sixteen or who were religiously persecuted, had to demonstrate that they could read.<sup>86</sup>

Next came an even stricter regulation from the “Quota Acts” in the early 1920s.<sup>87</sup> Through these two Acts, the U.S. restricted the annual amount of immigrants arriving per national origin.<sup>88</sup> In the following decades, the World War II refugee crisis and the Quota Acts left the U.S. denying entry to a significant number of refugees fleeing persecution.<sup>89</sup> Recognizing the global refugee crisis, the Displaced Persons Act was enacted in 1948 and “required that admitted displaced persons find a place to live in the U.S. and a job that would not replace a worker already in the country.”<sup>90</sup>

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76. *Convention and Protocol Relating to the Status of Refugees*, *supra* note 14, at 2.

77. *Id.* at 3.

78. *Id.* at 2.

79. *Id.*

80. *Id.* at 3 (emphasis added).

81. ANKER, *supra* note 14. See *Refugee Timeline*, U.S. CITIZEN & IMMIGR. SERV., <https://www.uscis.gov/about-us/our-history/history-office-and-library/featured-stories-from-the-uscis-history-office-and-library/refugee-timeline> (last visited Oct. 25, 2023) [hereinafter *Refugee Timeline*].

82. ANKER, *supra* note 14.

83. *Refugee Timeline*, *supra* note 81. The first immigration agency was the Bureau of Immigration. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Refugee Timeline*, *supra* note 81. In restricting the quantity of immigrants based on their national origin, the two Acts were highly prejudicial against Europeans except for those from the Northern and Western European regions. *Id.*

89. *Id.*

90. *Id.*

ii. 1950-1979: Reforming Asylum Law

In the early 1950s, the world experienced a major shift in refugee advocacy when the United Nations established its High Commissioner for Refugees and held the Refugee Convention in 1951.<sup>91</sup> From then on, the Refugee Convention and its 1967 Protocol became the baseline for refugee and asylum law in all signatory countries.<sup>92</sup> The United States did not initially sign on to the Refugee Convention but had routinely enacted several pro-refugee acts until finally adopting the Refugee Convention, ratifying the treaty and its 1967 Protocol in 1968.<sup>93</sup> To comply with this international treaty, the U.S. began granting asylum to individuals already within its borders in 1972.<sup>94</sup>

iii. 1980-1990: Codifying U.S. Asylum Law

In 1980, asylum law was finally codified into U.S. law and formally adopted the Refugee Convention's definition of "refugee."<sup>95</sup> Further, the statutory definition under U.S. law classifies a refugee as someone "who is unable or unwilling to return to, and is unable or unwilling to avail [themselves] of the protection of" their country of origin, owing to a well-founded fear of being persecuted "on account of race, religion, nationality, membership of a particular social group, or political opinion . . ."<sup>96</sup> The new law authorized the Attorney General to grant asylum to those who successfully met the refugee definition.<sup>97</sup> In practice, the law permitted the government, per its discretion, to approve employment authorization for asylum seekers who filed a "'non-frivolous' asylum application."<sup>98</sup>

iv. 1990-1994: Asylum and Employment Authorization Shared One Application

In 1990, the Immigration and Naturalization Service ("INS") updated regulations, which streamlined and expedited the process even more for an applicant.<sup>99</sup> These updates generally permitted an asylum seeker to apply simultaneously for asylum and employment authorization.<sup>100</sup> Once an asylum seeker submitted their application, INS processed it within ninety days.<sup>101</sup> Additionally, if INS failed to process the application within ninety days, the "applicant was automatically granted work authorization for no more than 240 days."<sup>102</sup>

The system benefitted applicants, but two significant flaws surfaced.<sup>103</sup> First, individuals simply seeking work authorization filed "boilerplate" asylum applications,

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91. *Id.*

92. *Refugee Timeline*, *supra* note 81.

93. *Refugee Timeline*, *supra* note 81; ANKER, *supra* note 14.

94. *Refugee Timeline*, *supra* note 81.

95. *Refugee Timeline*, *supra* note 81; ANKER, *supra* note 14.

96. 8 U.S.C. § 1101(a)(42)(A).

97. DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES § 1.3 n.21, § 1.4 (13th ed. 2023); *Let Them Work*, *supra* note 6, at 8.

98. *Let Them Work*, *supra* note 6, at 8. "A 'frivolous' application was one that was 'manifestly unfounded or abusive.'" *Id.* at 9. A May 1994 memo further defined "frivolous application" as one filed only "'for purposes of avoiding departure from the United States,' unsupported by evidence of persecution, or claims 'subject to mandatory denial.'" *Id.*

99. *Id.* at 8.

100. *Id.*

101. *Let Them Work*, *supra* note 6, at 9.

102. *Id.*

103. *Id.* at 10.

in which their asylum claims seemed legitimate on paper but were ingenuine in reality.<sup>104</sup> Officials subsequently complained that such applications were abusing the streamlined system.<sup>105</sup> Second, the influx of boilerplate applications was clogging the system and backlogging “bona fide” asylum cases.<sup>106</sup> Officials worried this would ultimately lead to “undermining the ability to adjudicate” such bona fide applications if boilerplate applications continued to muddle the application pool.<sup>107</sup>

v. 1995-2010: Efforts to Protect Against “Application Fraud” Resulted in Longer Waiting Periods

To reduce the backlog, the Clinton Administration implemented revisions such as staffing additional asylum officers.<sup>108</sup> To combat the concern of boilerplate applications, the administration decoupled the work authorization and asylum processes, with work authorization still reliant on an asylum application.<sup>109</sup> The updated process barred an asylum seeker from applying for work authorization until waiting at least 150 days after filing the asylum application, along with waiting the subsequent thirty-day processing requirement.<sup>110</sup> These amendments enacted in 1996 remain in place today.<sup>111</sup>

vi. 2011-Present: The Ultimate Backlog Era

Work authorization within asylum law has transformed even in the past five years, mostly affected by a battle of case law. Ironically, the results illustrate a boomerang effect: The current rules have simply been restored to their original form from about five years ago, only now more strictly enforced.

In *Rosario v. USCIS*, a class of asylum applicants sought an injunction from the court to enforce the thirty-day processing requirements of EAD applications.<sup>112</sup> The plaintiffs claimed the government agency had not processed their work authorization applications within the thirty-day requirement.<sup>113</sup> For instance, the USCIS received one plaintiff’s work authorization application on December 31, 2015, but it did not adjudicate the application until March 31, 2016; another plaintiff’s application was received on December 15, 2014, but was not adjudicated until June 16, 2015.<sup>114</sup> Based on USCIS data, the court found that “from 2010 to 2017, USCIS met its 30-day deadline in only 22% of cases—that is, out of 698,096 total applications, USCIS resolved only 154,629 applications on time.”<sup>115</sup> Issuing its opinion in 2018, the court in *Rosario* ultimately held that the law did indeed require a thirty-day processing time for the EAD applications.<sup>116</sup>

In reaching its conclusion, the court noted that the Administrative Procedure Act permits a court to compel “agency action unlawfully withheld or unreasonably delayed”

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104. *Id.*

105. *Id.*

106. *Let Them Work*, *supra* note 6, at 10.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Let Them Work*, *supra* note 6, at 10–11.

111. See *The 180-Day Asylum EAD Clock Notice*, *supra* note 6; Dara Lind, *The Disastrous, Forgotten 1996 Law that Created Today’s Immigration Problem*, VOX (Apr. 28, 2016, 8:40 AM), <https://www.vox.com/2016/4/28/11515132/iirira-clinton-immigration>.

112. *Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1158 (W.D. Wash. 2018).

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 1163.

when “an injunction is necessary to effectuate the congressional purpose behind the statute.”<sup>117</sup> The court also analyzed the policy of the thirty-day processing deadline, finding that one of the policy’s “chief purposes” was “to ensure that bona fide asylees are eligible to obtain employment authorization as quickly as possible.”<sup>118</sup> The court determined that INS’s original goal of the thirty-day processing deadline was to ensure “timely employment authorization.”<sup>119</sup> Further, INS’s “purpose of promulgating the 30-day deadline on top of that 150-day waiting period was to cabin what was already—in the agency’s view—an extraordinary amount of time to wait for work authorization.”<sup>120</sup> Additionally, the court reasoned that, despite the waiting period, INS “made clear that ‘[i]deally . . . few applicants would ever reach the 150-day point.’”<sup>121</sup> Rather, the agency “selected 150 days because it was a period ‘beyond which it would not be appropriate to deny work authorization to a person whose claim has not been adjudicated.’”<sup>122</sup> The court reemphasized that this historical context of the deadline policy “further elucidate[d] that the 30-day deadline was instituted to promote timeliness.”<sup>123</sup>

However, the government acted fast. In 2020, USCIS and the Department of Homeland Security (“DHS”) announced the Timeline Repeal Rule, a law eliminating the requirement placed on the government to process the EAD applications within thirty days.<sup>124</sup> Asylum seeker advocacy groups including Casa de Maryland (“Casa”) and Asylum Seeker Advocacy Project (“ASAP”) swiftly responded with a lawsuit.<sup>125</sup> The plaintiffs complained “that the two rules would ‘place a crushing and unlawful burden’ on asylum applicants by upending the well-established system that they rely on to obtain work authorization, and would result in lost compensation to asylum applicants exceeding \$2.3 billion annually.”<sup>126</sup> In September 2020, the U.S. District Court for the District of Maryland enjoined the government from enforcing the new Timeline Repeal Rule against members of Casa and ASAP.<sup>127</sup> In the Spring of 2021, Casa and ASAP once again filed a motion for the injunction to apply to all asylum applicants.<sup>128</sup> Subsequently, the acting Secretary of DHS, Alejandro Mayorkas, ratified the Timeline Repeal Rule in May 2021.<sup>129</sup> However, the rule was short-lived: in February 2022, the court vacated the decision, holding the Timeline Repeal Rule was void due to a procedural error.<sup>130</sup>

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117. *Rosario*, 365 F. Supp. 3d at 1160.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Rosario*, 365 F. Supp. 3d at 1161.

122. *Id.*

123. *Id.*

124. See Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 85 Fed. Reg. 120, 37502, 37508, 37530, 37545 (June 22, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-06-22/pdf/2020-13391.pdf> [hereinafter 85 Fed. Reg. 120]. See also *Resources Related to Lawsuit Challenging New DHS Asylum EAD Rules*, AM. IMMIGR. LAWS. ASS’N (June 15, 2021), <https://www.aila.org/infonet/resources-lawsuit-challenging-dhs-asylum-ead-rules> [hereinafter *Resources Related to Lawsuit*].

125. *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 935 (D. Md. 2020); see also *Advocacy Organizations File Lawsuit Challenging New DHS Asylum EAD Rules*, AM. IMMIGR. LAWS. ASS’N (July 21, 2020), <https://www.aila.org/infonet/advocacy-organizations-file-lawsuit-challenging> [hereinafter *Advocacy Organizations File Lawsuit*]; *Resources Related to Lawsuit*, *supra* note 125.

126. *Advocacy Organizations File Lawsuit*, *supra* note 126 (citing *Casa*, 486 F. Supp. 3d 928 (D. Md. 2020)).

127. *Casa*, 486 F. Supp. 3d at 973.

128. Pl.’s Mem. Supp. Summ. J. at 1–2, *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928 (D. Md. 2020) (No. 20-2118-PX). See *Resources Related to Lawsuit*, *supra* note 125.

129. *DHS Secretary Ratifies Rule Removing 30-Day EAD Processing Requirement for Asylum Applicants*, AM. IMMIGR. LAWS. ASS’N (May 4, 2021), <https://www.aila.org/library/dhs-ratifies-rule-removing-30-day-ead-processing>.

130. *Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11, 26 (D.D.C. 2022).

Though the EAD rules for asylum seekers have ridden a rollercoaster these past few years, these regulations have now simply returned to the familiar 1996 form.<sup>131</sup> Unfortunately, the *Rosario* decision has not proven effective, since EAD applications continue to remain grossly backlogged in recent years.<sup>132</sup> Nevertheless, U.S. Senate Bill 255 and House Bill 1325, reintroduced in February 2023, signal a flicker of hope in legislation for asylum applicants seeking employment authorization.<sup>133</sup> Titled, “The Asylum Seeker Work Authorization Act of 2023,” the proposed bills focus on reducing the waiting period from 180 days to 30 days for asylum seekers awaiting work authorization.<sup>134</sup> The bills’ proposed timeline for the waiting period seems to align with INS’s original intent as noted by the court in *Rosario* and, therefore, would further adhere to the decision from *Rosario*.<sup>135</sup> Further, the Act, if passed, along with the *Rosario* decision—if the decision is enforced—would ensure asylum seekers the opportunity to obtain work authorization in as short as thirty days.<sup>136</sup>

### III. A HUMAN RIGHTS VIOLATION: THE UNREASONABLE WAITING PERIOD TO WORK FOR ASYLUM SEEKERS DAMAGES THEM FINANCIALLY, PHYSICALLY, AND PSYCHOLOGICALLY

As a signatory to the Refugee Convention, the United States must enforce all refugee rights that the agreement protects, which include the right to work.<sup>137</sup> The Refugee Convention recognized “refugees’ need for access to decent work.”<sup>138</sup> “Decent work” includes “opportunities for work that is productive and delivers a fair income; security in the workplace”; “prospects for personal development and social integration; freedom for people to express their concerns, organize, and participate in decisions that affect their lives; and equality of opportunity and treatment for people of all genders.”<sup>139</sup> Instead, the United States violates human rights and international law by withholding the right to work legally

131. See Lind, *supra* note 112; *Let Them Work*, *supra* note 6, at 10–11.

132. Monyak, *supra* note 10; see also *Table 1, I-765*, *supra* note 64; OFF. OF CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, *supra* note 13, at iv, viii, 43.

133. Asylum Seeker Work Authorization Act of 2023, S. 225, 118th Cong. (2023–24), <https://www.congress.gov/bill/118th-congress/senate-bill/255/text?s=1&r=4>; Asylum Seeker Work Authorization Act of 2023, H.R. 1325, 118th Cong. (2023–24), <https://www.congress.gov/bill/118th-congress/house-bill/1325?q=%7B%22search%22%3A%5B%221325%22%5D%7D&s=1&r=1>; *Asylum Seeker Work Authorization Act of 2023: Bill Summary*, NAT’L IMMIGR. F. (June 15, 2023) <https://immigrationforum.org/article/asylum-seeker-work-authorization-act-of-2023-bill-summary/> [hereinafter *Bill Summary 2023*]; see *Congresswoman Pingree Renews Push to Speed Up Asylum Seeker Work Authorization Process*, CONGRESSWOMAN CHELLIE PINGREE, <https://pingree.house.gov/news/documentsingle.aspx?DocumentID=4501> (last visited Oct. 28, 2023) [hereinafter *Congresswoman Pingree*]. Former versions of these bills were initially introduced in February 2022 as the Asylum Seeker Work Authorization Act of 2022. See Asylum Seeker Work Authorization Act of 2022, S. 3665, 117th Cong. (2021–22), <https://www.congress.gov/bill/117th-congress/senate-bill/3665#>; *Bill Summary: Asylum Seeker Work Authorization Act*, NAT’L IMMIGR. F. (May 17, 2022) <https://immigrationforum.org/article/bill-summary-asylum-seeker-work-authorization-act/>.

134. *Bill Summary 2023*, *supra* note 134; *Congresswoman Pingree*, *supra* note 134.

135. *Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1159–61, 1163 (W.D. Wash. 2018).

136. *DHS Secretary Ratifies Rule Removing 30-Day EAD Processing Requirement for Asylum Applicants*, *supra* note 130; *Rosario*, 365 F. Supp. 3d at 1159–61, 1163.

137. *Convention and Protocol Relating to the Status of Refugees*, *supra* note 14, at 3.

138. *Global Compact on Refugees: Indicator Report*, U.N. HIGH COMM’R FOR REFUGEES 38 (2021), [https://www.unhcr.org/global-compact-refugees-indicator-report/wp-content/uploads/sites/143/2021/11/2021\\_GCR-Indicator-Report\\_spread\\_web.pdf](https://www.unhcr.org/global-compact-refugees-indicator-report/wp-content/uploads/sites/143/2021/11/2021_GCR-Indicator-Report_spread_web.pdf) [hereinafter *Global Compact on Refugees*].

139. *Id.* at 39.



from asylum seekers for such an unreasonable amount of time.<sup>140</sup> The consequences of depriving this right, as further explained in the following paragraphs, are financial, physical, and psychological damage to these individuals.

*A. The Unreasonable Waiting Period Too Often Impoverishes Asylum Seekers*

Fleeing to and residing in another country without authorization to work for at least six months can quickly become a recipe for poverty.<sup>141</sup> Without a source of income, asylum seekers are likely unable to provide for their basic needs, such as food and housing.<sup>142</sup> As mentioned, there are various types of immigrant status.<sup>143</sup> Because asylum seekers are “nonqualified” immigrants, meaning they do not have an official immigrant status, the government restricts them from obtaining most social welfare benefits.<sup>144</sup>

The U.S. Federal Government generally does not grant aid or public benefits directly to asylum seekers.<sup>145</sup> Instead, the federal government has deferred this authority to the states.<sup>146</sup> Title 8 of the U.S.C., Section 1621 grants states the power to provide public benefits to “nonqualified” immigrants.<sup>147</sup> However,

[f]ederal law provides that immigrants who do not qualify for federal benefits, including asylum seekers, are also ineligible for state and local public benefits, subject to many of the same exceptions applicable to federal public benefits—unless the state has passed a law that affirmatively makes them eligible.<sup>148</sup>

According to the Migration Policy Institute, several states have implemented statutory provisions qualifying nonqualified immigrants, such as asylum seekers, for certain state benefits.<sup>149</sup> States like Illinois, Minnesota, and Washington offer cash assistance programs for asylum seekers, and other states provide specific benefits programs similar to healthcare and food stamps.<sup>150</sup> Many nonprofit and charity organizations also provide temporary aid in food, housing, legal assistance, health evaluations, case management, and more.<sup>151</sup> However, an organization’s “capacity to provide such benefits and services is often outpaced by the need for them.”<sup>152</sup> For instance, an article published by The City in September 2022 highlighted how New York City has struggled to accommodate the “up-tick” of asylum seekers arriving in the Big Apple due to already-full city shelters from

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140. See Art. 23, *supra* note 15; *Convention and Protocol Relating to the Status of Refugees*, *supra* note 14, at 3; *Global Compact on Refugees*, *supra* note 139, at 38, 40.

141. Essey Workie et al., *The Missing Link*, MIGRATION POL’Y INST. 3 (2022), [https://www.migrationpolicy.org/sites/default/files/publications/mpi\\_asylee-asylum-seeker-benefits-2022\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi_asylee-asylum-seeker-benefits-2022_final.pdf) [hereinafter *The Missing Link*]; OFF. OF CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, *supra* note 13, at 43.

142. See Gabriel Poblete, *Asylum-Seekers Who Came Months Ago Still Say They Lack Housing, Legal Help Due to Immigration Status*, THE CITY (Sept. 30, 2022), <https://www.thecity.nyc/2022/9/30/23381145/asylum-migrants-nyc-housing-jobs-lawyers>.

143. 8 C.F.R. § 208.7 (2023).

144. *Let Them Work*, *supra* note 6, at 16.

145. Broder & Lessard, *supra* note 27.

146. 8 U.S.C. § 1621(d); *Mapping Public Benefits*, *supra* note 27.

147. 8 U.S.C. § 1621(d).

148. *The Missing Link*, *supra* note 142, at 19.

149. *Id.*

150. *Id.*

151. *Id.* at 27.

152. *Id.*

immigrants awaiting employment authorization.<sup>153</sup> The article reported that “[o]ver 11,800 of the more than 15,500 asylum-seekers [] have entered city shelters.”<sup>154</sup> As discussed earlier, studies have shown that asylum seekers are three times more likely to have their application granted, and granted more quickly, when they have legal representation.<sup>155</sup> However, as the 2013 Human Rights Watch Report observed, asylum seekers often find themselves stuck “in a circular problem:” They cannot afford the legal assistance they need because they cannot work, and they cannot work because they are barred from work authorization due to their lack of legal assistance.<sup>156</sup>

The severe backlog in Employment Authorization Documents applications only exacerbates the circular struggle for these individuals.<sup>157</sup> Indeed, “[t]he delays have left thousands of asylum-seekers—an inherently vulnerable population—without the ability to support themselves in the U.S.”<sup>158</sup> This legal limbo, grossly prolonged by application backlogs, creates such uncertainty for applicants, which only “compounds the stress and trauma of an already stressful situation.”<sup>159</sup>

Some asylum seekers resort to riskier and dangerous alternatives to avoid getting trapped in the cycle. First, such a situation causes many to seek unauthorized forms of employment, such as manual labor jobs in construction, kitchen, and house-cleaning jobs;<sup>160</sup> however, the significant risk with illegal employment for asylum seekers is that, if discovered, the unlawful activity may bar their asylum case from being approved and serve as grounds for removal proceedings.<sup>161</sup> Additionally, since the “transitory months between applying for asylum and receiving employment authorization can be the most vulnerable period” for applicants, there is a greater chance that female asylum seekers will be lured into sex trafficking.<sup>162</sup> Further, “[w]ithout official documentation, access to resources, and awareness of their rights, they become easy targets of traffickers.”<sup>163</sup> In light of these risky alternatives, consider the hypothetical scenario of Hanna once more. Hanna waited nearly ten months to receive employment authorization after entering the United States. As mentioned above, Hanna’s financial needs may have reached—or even surpassed—\$38,266 during that waiting period.<sup>164</sup> While Hanna may be able to receive some aid from local governments and charities, the assistance is not likely sufficient to compensate for all of her financial needs.

153. Poblete, *supra* note 143; see *More migrants arrive as New York City Mayor Eric Adams Addresses Budget Crisis*, ABC 7 (Aug. 9, 2023), <https://abc7ny.com/nyc-migrant-shelters-port-authority-migrants-budget-crisis/13622313/#:~:text=The%20mayor%20announced%20the%20updated,entered%20the%20city's%20shelter%20system>. Human Rights Watch also noted how “[a]sylum seekers often live in impoverished neighborhoods and cramped apartments.” *Let Them Work*, *supra* note 6, at 32.

154. Poblete, *supra* note 143.

155. Czarnecki & Hamblin, *supra* note 54.

156. *Let Them Work*, *supra* note 6, at 37.

157. OFF. OF CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, *supra* note 13, at viii, 2-3 (“For the individual filer, the pain is immediate and often severe: lost jobs and the benefits attached to them (both temporary and permanent), lost societal benefits such as driver’s licenses, lost safety net benefits, and similar losses—to say nothing of the anxiety, stress, and depression they experience.”).

158. Monyak, *supra* note 10.

159. *Id.* Quoted here is Amy R. Grenier. *Id.* Grenier is a practicing attorney at the American Immigration Lawyers Association, where she focuses on asylum and border policy issues. *Id.*

160. Poblete, *supra* note 143; *Let Them Work*, *supra* note 6, at 33.

161. Working without authorization does not statutorily bar an applicant from asylum. *Asylum Bars*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-bars> (last visited Nov. 27, 2022); however, because immigration officers have broad discretion to ultimately decide asylum applications, the factor of unauthorized employment can risk asylum seekers chance at asylum; *Let Them Work*, *supra* note 6, at 35, n.174.

162. *The Missing Link*, *supra* note 142, at 27.

163. See *Fleeing Home: Refugees and Human Trafficking*, COUNCIL ON FOREIGN RELS. (Dec. 31, 2019, 12:00 PM), <https://www.cfr.org/blog/fleeing-home-refugees-and-human-trafficking>.

164. *New to America*, *supra* note 71.

Imagine now that USCIS had not yet granted Hanna's asylum application due to the gross backlog. Thus, her asylum case was still pending while she was granted work authorization. Perhaps Hanna had engaged in illegal employment or criminal activity during her ten-month waiting period to generate enough finances. If this activity is discovered by an immigration officer reviewing her asylum case, it could risk her eligibility for asylum.<sup>165</sup>

*B. The Unreasonable Waiting Period Psychologically and Physically Damages Asylum Seekers*

Along with living in poverty, “[o]ne of the most profoundly troubling effects of the lack of work authorization is the mental and emotional toll it takes on asylum seekers.”<sup>166</sup> In various reports and articles, asylum seekers have expressed that being deprived of the opportunity to work has left them feeling depressed and helpless.<sup>167</sup> That sense of helplessness, sourced from the lack of work authorization, causes suicidal thoughts for some—and, tragically, has even driven others to act on those thoughts.<sup>168</sup>

Consequently, the effects of poverty and the psychological toll on asylum seekers can harm the asylum seeker's physical well-being.<sup>169</sup> Just like legal assistance can cost money that an asylum seeker cannot afford without a job, so can healthcare.<sup>170</sup> Some asylum seekers even arrive to the U.S. with untreated physical trauma or injuries suffered from their persecution or in the process of traveling to the country.<sup>171</sup> Even while awaiting work authorization, this comment has already addressed an asylum seeker's heightened vulnerability to risks such as sex trafficking, depression, and suicidal thoughts, all of which—if they occur—harm an individual's physical well-being.

Unfortunately, many asylum seekers have suffered both physical and psychological trauma from the persecution they fled.<sup>172</sup> According to an American Psychological Association (“APA”) article, unemployment can amount to additional traumas.<sup>173</sup> “[B]eing unemployed for a long period of time is a psychological trauma and a financial trauma, and the two are closely intertwined,” Carl Van Horn, a professor of public policy and an expert on workforce and unemployment policy at Rutgers University, said in the article.<sup>174</sup> Connie Wanberg, an industrial and organizational psychologist at the University of Minnesota, added, “Work provides us time structure, it provides us identity, it provides us purpose and it also provides us social interactions with others.”<sup>175</sup> “When you lose all that, it creates a lot of difficulties for people,” Wanburg said.<sup>176</sup> Individuals who need employment to survive are at the most risk for mental health challenges after a job loss.<sup>177</sup>

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165. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 162.

166. *Let Them Work*, *supra* note 6, at 28.

167. *Id.*; see Cora Wright, *Barriers and Backlog: Asylum Office Delays Continue to Cause Harm*, HUM. RTS. FIRST <https://humanrightsfirst.org/library/barriers-and-backlog-asylum-office-delays-continue-to-cause-harm/> (last visited Oct. 29, 2023); Poblete, *supra* note 143.

168. See Wright, *supra* note 168; see also Poblete, *supra* note 143.

169. *Let Them Work*, *supra* note 6, at 1–2, 27, 31.

170. *Id.*

171. *Id.*

172. *Id.* at 20, 28, 31, 35.

173. Stephanie Pappas, *The Toll of Job Loss*, AM. PSYCH. ASS'N (Oct. 1, 2020), <https://www.apa.org/monitor/2020/10/toll-job-loss>.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

One could argue that asylum seekers would be classified as a population to whom unemployment immediately threatens their survival.<sup>178</sup> There is a negative correlation between the length of unemployment and mental health effects, because individuals facing more than six months of unemployment experience the worst mental health outcomes.<sup>179</sup> As previously explained, an asylum seeker can only obtain work authorization—*at the earliest*—six months after filing an asylum application.<sup>180</sup> The longer the stretch of unemployment for asylum seekers, the worse they are likely to fare and the worse mental health conditions they will suffer.<sup>181</sup> Even Hanna, the hypothetical asylum seeker, faced only typical setbacks in filing her asylum and work authorization applications; yet, she was still without employment for nearly twelve months. Considering the staunch effect that unemployment can have on an individual, let alone an asylum seeker who has already suffered trauma from persecution, U.S. asylum law should only cause an asylum seeker to wait *at most* six months to receive work authorization.<sup>182</sup>

Ironically, work “may be the ‘single most important thing’ in rehabilitating traumatized asylum seekers.”<sup>183</sup> It can even serve as an informal therapy for individuals who are processing or healing from trauma.<sup>184</sup> As the APA article alluded to—and the Human Rights Watch echoes—a job can “give[] asylum seekers a sense of purpose,” and it can function as a “distraction from thinking about traumatic experiences.”<sup>185</sup>

Thus, shortening the waiting period for asylum seekers would not only prevent the potential additional traumas of unemployment but would also allow these individuals an opportunity to relieve existing traumas. This method appears beneficial for asylum seekers, but is it useful for the interests of the United States? The following section presents how the current waiting period burdens the country when, alternatively, shortening the waiting period would advance the economic interests of the United States.

#### IV. A FORFEITED OPPORTUNITY: THE UNREASONABLE WAITING PERIOD UNNECESSARILY DEPRIVES THE NATION OF ECONOMIC POTENTIAL

The unreasonable waiting period for employment authorization not only harms asylum seekers, but it also burdens the United States. The waiting period financially drains the U.S. in the form of federal grants and state funds that provide humanitarian aid or public assistance to asylum seekers.<sup>186</sup> The unreasonable waiting period also deprives the nation of economic opportunity. According to a 2021 UNHCR Report, substantial work benefits refugees, host economies, and societies while enhancing prospects for durable solutions.<sup>187</sup> Further, the sooner asylum seekers can enter the workforce, the sooner they will contribute to boosting the economy.<sup>188</sup> However, due to the unreasonable waiting period, this opportunity goes unfulfilled.

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178. See Wright, *supra* note 168; see also Poblete, *supra* note 143.

179. Pappas, *supra* note 174.

180. *The 180-Day Asylum EAD Clock Notice*, *supra* note 6.

181. Pappas, *supra* note 174.

182. *Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1161 (W.D. Wash. 2018).

183. *Let Them Work*, *supra* note 6, at 30.

184. Pappas, *supra* note 174.

185. *Let Them Work*, *supra* note 6, at 30; Pappas, *supra* note 174.

186. Sullivan, *One Million Migrants*, *supra* note 18; FEMA, *supra* note 18.

187. *Global Compact on Refugees*, *supra* note 139, at 39.

188. *Id.* at 38–39.

*A. The Government Self-Imposes Undue Financial Burdens Because of the Unreasonable Waiting Period*

Depriving asylum seekers of the opportunity to work for at least six months not only harms those individuals, but also burdens the U.S. Government financially.<sup>189</sup> While providing aid to asylum seekers is philanthropic, six months of financial assistance drains the U.S. government of limited economic resources. The living shelters in New York City are a great example of a resource that is not meant to aid asylum seekers long-term.<sup>190</sup> As previously mentioned, the federal government does not provide aid to asylum seekers directly since these individuals lack an official immigrant status.<sup>191</sup> Instead, the states can allot state funds through statutory provisions.<sup>192</sup> Ironically, through this process, states can also reallocate certain federal grant money—provided to the states—to asylum seekers.<sup>193</sup>

On one hand, the states' willingness to provide aid and support to asylum seekers is admirable. A New York Times article from September 2022 featured the unmatched efforts of Maine in giving aid and support to asylum seekers.<sup>194</sup> Between January 2021 and September 2022, Maine received more than 700 asylum-seeking families.<sup>195</sup> The article highlighted how southern Maine, especially in and around the Portland area, has offered free housing for one year to these asylum seekers and assistance for food, medical care, and legal matters.<sup>196</sup>

Alternatively, this admirable gesture takes a financial toll. The city of Portland alone spent \$40 million from January 2021 through June 2022 on these humanitarian efforts for asylum seekers, relying on “state funds and federal emergency shelter dollars to help cover costs.”<sup>197</sup> Officials from Maine expressed they were not only happy to provide the aid for philanthropic reasons, but also for the return on investment of these individuals eventually entering the workforce in Maine.<sup>198</sup> One could argue that Maine is wise in recognizing the “win-win” situation for these asylum seekers and the state. However, Maine could eventually face the same problem that New York City has experienced in providing city shelters to

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189. Sullivan, *One Million Migrants*, *supra* note 18; FEMA, *supra* note 18.

190. Poblete, *supra* note 143. Human Rights Watch also noted how “[a]sylum seekers often live in impoverished neighborhoods and cramped apartments.” *Let Them Work*, *supra* note 6, at 32.

191. *Mapping Public Benefits*, *supra* note 27 (“Although the federal government maintains authority over admitting immigrants into the country and their eligibility for federal benefits programs, states have choices in making certain benefits available to their immigrant residents.”).

192. 8 U.S.C. § 1621(b), <https://www.govinfo.gov/link/uscode/8/1621>; *Mapping Public Benefits*, *supra* note 27.

193. *Mapping Public Benefits*, *supra* note 27 (“In 2002 and 2009, states also were granted options for expanding health coverage to certain immigrants using Medicaid and CHIP, which are jointly funded by states and the federal government . . . . The delivery structure of public benefits programs is not only complicated at the federal level, but many states have also chosen to expand access to federal benefits or to provide state-only funded benefits to some immigrants ineligible for federal assistance.”).

194. Sullivan, *One Million Migrants*, *supra* note 18.

195. Sullivan, *One Million Migrants*, *supra* note 18. Note that the number 700 represents the number of families, not just 700 individuals. *Id.* The article mentions most of these 700 families were from the Democratic Republic of Congo and Angola. *Id.* “Congolese households consist of an average of 5.3 members,” and “the average Angolan household has 4.8 members.” *Democratic Republic of Congo*, DEMOGRAPHIC & HEALTH SURVEY 2 (2013–14), <https://dhsprogram.com/pubs/pdf/SR218/SR218.e.pdf>; *Angola*, MULTIPLE HEALTH INDICATOR & HEALTH SURVEY 2 (2015–16), <https://dhsprogram.com/pubs/pdf/SR238/SR238.pdf>. Based on these statistics, if each of the 700 families that arrived in Maine had an average of five family members, then the number of asylum seekers Maine received could have been around 3,500 individuals.

196. Sullivan, *One Million Migrants*, *supra* note 18.

197. *Id.*

198. *Id.*

asylum seekers: it takes longer than six months—or even longer than one year—for asylum seekers to receive work authorization, thus maxing out the resources provided by the city.<sup>199</sup>

A less obvious use of government funds spent on asylum seekers is the charity of nonprofit organizations. Most nonprofit organizations rely heavily on federal grants to carry out charitable services.<sup>200</sup> According to the National Council of Nonprofits, “80 cents of every dollar of nonprofit revenue” is sourced from federal grants.<sup>201</sup> Further, if many of these grants were reduced or discontinued, the result could be devastating to the existence of the nonprofits they supply.<sup>202</sup> For example, “[i]n 2017, the White House proposed cutting \$193 billion from the Supplemental Nutrition Assistance Program (SNAP) . . . Those proposed cuts, which did not ultimately go forward, would have consumed the equivalent of cashing out all of the assets and shutting down the nation’s 15 largest foundations.”<sup>203</sup> In 2021, FEMA supplied \$510 million towards an Emergency Food and Shelter Program, distributing \$400 million to local non-profits and social services organizations to aid the hungry and homeless in communities, and \$110 million to nonprofits aiding immigrants at the southern U.S. border.<sup>204</sup> In providing housing for the 700 families in Maine, the state also relied on help from local nonprofits.<sup>205</sup> However, considering these statistics, these non-profits’ efforts may have been assisted by grant funding, which would exhibit that the majority of support for asylum seekers falls upon the U.S. Government.<sup>206</sup>

In addition to its philanthropic efforts, Maine has also discovered the potential “return-on-investment” of hosting and providing aid for asylum seekers within their state boundaries: these individuals represent an opportunity to eventually bolster the state’s economy.<sup>207</sup> But why cause a city like Portland, Maine to spend \$40 million for more than one year of humanitarian aid, when that amount could either be reduced by shortening the waiting period for work authorization, or by re-allocating to job on-boarding or workshops for asylum seekers in the meantime? The U.S., in effect, forfeits an economic opportunity by enforcing such an unreasonably long waiting period for asylum seekers’ work authorization. Instead, if asylum seekers were allowed to legally enter the workforce sooner, the states could either preserve or re-allocate these resources towards training programs that will help asylum seekers assimilate into the local work culture sooner.

### *B. Asylum Seekers Could Significantly Contribute to the Workforce and the Current Worker Shortage, Ultimately Boosting the Economy*

In prolonging the opportunity for asylum seekers to obtain work authorization, the U.S. also forfeits a significant economic opportunity. For years, many Americans feared

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199. Poblete, *supra* note 143; see Randy Billings, *What can Maine do?*, PORTLAND PRESS HERALD (May 30, 2023), <https://www.pressherald.com/2023/05/26/asylum-seekers-immigration-what-can-maine-do/> (“Since 2015, Maine’s congressional delegation has repeatedly pushed to reduce the period asylum seekers must wait to seek work authorization from at least six months to 30 days. But so far, those efforts have gone nowhere.”).

200. *Nonprofit Impact Matters*, *supra* note 18; see also *80% Of Nonprofits’ Revenue is from Government, Fee for Service*, THE NONPROFIT TIMES (Sept. 19, 2019), <https://thenonprofittimes.com/news/80-of-nonprofits-revenue-is-from-government-fee-for-service/> [hereinafter *80% Of Nonprofits*].

201. *80% Of Nonprofits*, *supra* note 201.

202. Informational Graph for *Nonprofit Impact Matters*, NAT’L COUNCIL OF NONPROFITS, <https://www.nonprofitimpactmatters.org/site/assets/files/1015/nonprofit-impact-matters-infographic-sept-2019.pdf> (last visited Oct. 29, 2023); *80% Of Nonprofits*, *supra* note 201.

203. NAT’L COUNCIL OF NONPROFITS, *supra* note 203; *80% Of Nonprofits*, *supra* note 201.

204. FEMA, *supra* note 18.

205. Sullivan, *One Million Migrants*, *supra* note 18.

206. *80% Of Nonprofits*, *supra* note 201.

207. Sullivan, *One Million Migrants*, *supra* note 18.

that immigrants would steal job opportunities from U.S. citizens.<sup>208</sup> On the contrary, research demonstrates that immigrants work jobs most Americans do not want; contribute significantly to the economy; and are even more likely than U.S. Citizens to start new businesses.<sup>209</sup> Some studies even prove that “areas with more immigration have actually seen higher gains in per-capita income.”<sup>210</sup> These statistics coupled with the nation’s worker shortage in recent years would likely boost the economy.<sup>211</sup> In September 2022, there were “more than 11 million job openings and only 6 million unemployed workers . . .”<sup>212</sup> Listing reasons for the shortage, the Washington Post speculated the “slowdown” in the immigration process as a possible cause.<sup>213</sup> Amon Emeka, a sociology professor at Skidmore College, suggests local immigrants could fill the gap.<sup>214</sup> Emeka noted that integrating immigrants into the U.S. workforce is also crucial to compensate for the lower birth rates in the younger generations.<sup>215</sup> “Since we can’t go back in time and convince Americans to have more babies, we’ll need immigrants to fill out the labor force . . . to make up labor shortfalls in the years to come,” Emeka said.<sup>216</sup>

In their Global Refugee Work Rights Report 2022, the Center for Global Development explained that allowing refugees to work optimizes the economic benefit for the local host country or community because it equips the individuals to more fully contribute “as employers, employees, taxpayers, and innovators.”<sup>217</sup> In contrast, “[t]he more restricted they are from labor markets, the less they can contribute and the greater the costs may be to refugees and those supporting them.”<sup>218</sup> Instead, “when refugees work and become self-reliant, the cost to host governments and donors of hosting refugees declines or disappears.”<sup>219</sup>

If asylum seekers could work sooner, then they could better contribute to society than if they were simply waiting for work authorization. Obtaining work authorization sooner thus advances the interests of both asylum seekers and the nation.

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208. *Immigrants and the Economy*, ACLU, <https://www.aclu.org/other/immigrants-and-economy> (Mar. 12, 2002) [hereinafter *Immigrants and the Economy*]; see *Debunking the Myth of the Job Stealing Immigrant*, N.Y. TIMES MAG. (Mar. 24, 2015), <https://www.nytimes.com/2015/03/29/magazine/debunking-the-myth-of-the-job-stealing-immigrant.html>.

209. Brennan Hoban, *Do Immigrants “Steal” Jobs from American Workers?*, BROOKINGS (Aug. 24, 2017), <https://www.brookings.edu/blog/brookings-now/2017/08/24/do-immigrants-steal-jobs-from-american-workers/>; *Immigrants and the Economy*, *supra* note 209; Arloc Sherman, et al., *Immigrants Contribute Greatly to U.S. Economy, Despite Administration’s “Public Charge” Rule Rationale*, CTR. ON BUDGET & POL’Y PRIORITIES (Aug. 15, 2019), <https://www.cbpp.org/research/poverty-and-inequality/immigrants-contribute-greatly-to-us-economy-despite-administrations>; Adi Gaskell, *Immigrants Create More Jobs Than They Take*, FORBES (Nov. 11, 2020, 8:30 AM), <https://www.forbes.com/sites/adigaskell/2020/11/11/immigrants-create-more-jobs-than-they-take/?sh=5f1bfb5719ea>.

210. Gaskell, *supra* note 210.

211. *Id.*; Pierre Azoulay, et al., *Immigration and Entrepreneurship in the United States* 2, 13, 16, 20 (Nat’l Bureau of Econ. Rsch., Working Paper No. 27778, 2020), <https://www.nber.org/papers/w27778>.

212. Bhattarai, *supra* note 11.

213. *Id.*

214. Sullivan, *One Million Migrants*, *supra* note 18.

215. *Id.*

216. *Id.*

217. 2022 *Global Refugee Work Rights Report*, *supra* note 16, at 21 (quoting Clemens, et al., *The Economic and Fiscal Effects of Granting Refugees Formal Labor Market Access* 5 (Ctr. for Glob. Dev., Working Paper No. 496, 2018), <https://www.cgdev.org/publication/economic-and-fiscal-effects-granting-refugees-formal-labor-market-access>).

218. *Id.*

219. *Id.*

V. AN INSPIRATION: THE IMMIGRATION POLICIES OF OTHER COUNTRIES ALONG WITH EMPLOYMENT TRAINING PROGRAMS MODEL POTENTIAL SOLUTIONS FOR REDUCING THE WAITING PERIOD AND OPTIMIZING ECONOMIC INTEGRATION

Since integrating asylum seekers into the workforce sooner presents advantages for both the applicants and the U.S. as a whole, shorter waiting periods and ideas for optimizing the population's integration should be evaluated. The immigration policies of other countries, along with employment training programs utilized by companies here in the United States, model potential solutions for reducing the waiting period and optimizing the economic integration of asylum seekers.

*A. Certain Other Countries' Policies Provide a Significantly Shorter Work Authorization Timeline for Asylum Seekers as Well as Opportunities to Economically Integrate*

The immigration policies of other countries around the world model potential solutions for the U.S. in reducing the waiting period and optimizing economic integration. Worldwide, 121 countries permit asylum seekers.<sup>220</sup> Certain countries provide a significantly shorter work authorization timeline for asylum seekers, and some even provide opportunities to economically integrate.

This comment is not meant to discount the impressive role that the United States has undertaken in hosting asylum seekers as well as all categories of immigrants. The United States is the world's "top migrant destination," attracting eighteen percent of all migrants worldwide, totaling more than 50.6 million individuals.<sup>221</sup> A study from 2020 by the Migration Policy Institute revealed this number amounted to more than the number of migrants in the next four receiving countries combined.<sup>222</sup> However, the gaps in the work authorization policies for asylum seekers mean this Nation could consider the policies of other countries in reforming our own.<sup>223</sup> Certain countries' policies permit asylum seekers access to work sooner and subsequently to more quickly contribute to the economy.<sup>224</sup>

According to UNHCR, 4.6 million asylum seekers worldwide awaited a decision on their asylum application at the end of 2021.<sup>225</sup> Sixty-six percent of these applications were filed in only ten countries, including the United States.<sup>226</sup> However, while some of these other countries like Canada significantly reduced their backlog of pending asylum cases, the United States fell in the category of countries with the most *increased* backlog.<sup>227</sup> Compared to other countries, the United States did receive the largest number of newest asylum claims in 2021 but also experienced a backlog increase in asylum cases by thirty-one percent, piling the amount of pending asylum cases from 998,000 to 1,303,200.<sup>228</sup>

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220. *Global Trends: Forced Displacement in 2021*, U.N. HIGH COMM'R FOR REFUGEES 5, n.13 (June 16, 2021), <https://www.unhcr.org/62a9d1494/global-trends-report-2021> [hereinafter *Forced Displacement*].

221. Jeanne Batalova, *Top Statistics on Global Migration and Migrants*, MIGRATION POL'Y INST. 4 (July 21, 2022), [https://www.migrationpolicy.org/sites/default/files/source\\_images/Global\\_FRS2022PRINT\\_FINAL.pdf](https://www.migrationpolicy.org/sites/default/files/source_images/Global_FRS2022PRINT_FINAL.pdf).

222. *Id.* Those next four countries included Germany, Saudi Arabia, Russia, and the United Kingdom. *Id.*

223. See Ferguson, *supra* note 11.

224. *2022 Global Refugee Work Rights Report*, *supra* note 16, at 21; *Forced Displacement*, *supra* note 221.

225. *Forced Displacement*, *supra* note 221, at 30, 34. It is worth noting that this number of worldwide pending asylum applications is not an all-time high. Actually, in 2018, the world had 2.0 million pending asylum applications. *Id.* at 30.

226. *Forced Displacement*, *supra* note 221, at 30, 31 fig. 13.

227. *Id.* at 34.

228. *Id.* at 31 fig. 13, 34.



This Comment focuses on certain policies from Germany, Canada, Brazil, and Uganda because they are all signatories to the Refugee Convention and have all recently and notably impacted the asylum seeker population.<sup>229</sup> Each of these four countries also represents a different continent. Moreover, even though these countries may differ from the United States in government, economic structure, and geographic location, the U.S. should recognize certain policies in determining how it could reduce its waiting period for asylum seekers' work authorization.

Germany, like the U.S., receives one of the highest quantities of asylum applications annually.<sup>230</sup> Germany takes a unique approach, however, to processing asylum seekers.<sup>231</sup> This European nation requires certain asylum seekers to stay in "reception centres" as they go through their asylum process.<sup>232</sup> Typically, while they remain in reception centres, they are not allowed to apply for asylum unless they have remained in the centre for nine months.<sup>233</sup> Some asylum seekers do not have to stay in reception centres as they await asylum and may apply for employment authorization after only waiting three months.<sup>234</sup>

Brazil is another country that has recently received praise for changes in its employment authorization policies for asylum seekers.<sup>235</sup> Asylum seekers in Brazil are eligible for work authorization as soon as they complete their asylum application process.<sup>236</sup> Once they complete the application and submit it to the "Federal Police," they receive their "Protocol," a temporary ID representing they are an asylum applicant with a pending application.<sup>237</sup> Once applicants receive their Protocol, they are eligible to obtain work authorization.<sup>238</sup>

Canada, a country that reduced its backlog of pending asylum cases in 2021 from 85,400 to 63,200, has a very minimal timeline for asylum seeker's employment authorization.<sup>239</sup> In Canada, officers make a determination for asylum seekers at the border of

229. States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, U.N. HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/us/media/states-parties-1951-convention-and-its-1967-protocol> (last visited Oct. 29, 2023).

230. See 2022 *Global Refugee Work Rights Report*, *supra* note 16, at 21.

231. Paula Hoffmeyer-Zlotnik & Marlene Stiller, *Short Overview of the Asylum Procedure*, ASYLUM INFO. DATABASE (June 4, 2023), <https://asylumineurope.org/reports/country/germany/asylum-procedure/general/short-overview-asylum-procedure/>.

232. Paula Hoffmeyer-Zlotnik & Marlene Stiller, *Conditions in Reception Facilities*, ASYLUM INFO. DATABASE (June 4, 2023), <https://asylumineurope.org/reports/country/germany/reception-conditions/housing/conditions-reception-facilities/>; Paula Hoffmeyer-Zlotnik & Marlene Stiller, *Access to the Labour Market*, ASYLUM INFO. DATABASE (June 4, 2023), <https://asylumineurope.org/reports/country/germany/reception-conditions/employment-and-education/access-labour-market/>; Paula Hoffmeyer-Zlotnik & Marlene Stiller, *Short Overview of the Asylum Procedure*, ASYLUM INFO. DATABASE (June 4, 2023), <https://asylumineurope.org/reports/country/germany/asylum-procedure/general/short-overview-asylum-procedure/>.

233. Paula Hoffmeyer-Zlotnik & Marlene Stiller, *Access to the Labour Market*, ASYLUM INFO. DATABASE (June 4, 2023), <https://asylumineurope.org/reports/country/germany/reception-conditions/employment-and-education/access-labour-market/>.

234. *Id.*

235. The Borgen Project, *Brazil's Successful Refugee Policies: A Model for the World*, BORGEM MAG. (Sept. 15, 2021), <https://www.borgenmagazine.com/brazils-successful-refugee-policies/>. See Michelle Mora, *Brazilian Refugee Policies: A Latin American Model?*, JOHNS HOPKINS SCHOOL OF ADVANCED INT'L STUD. (May 13, 2016), <http://www.saisperspectives.com/2016issue/2016/5/13/brazilian-refugee-policies-a-latin-american-model>.

236. *Welcome to Brazil! You are Safe Here!*, U.N. HIGH COMM'R FOR REFUGEES (last visited Oct. 29, 2023), <https://www.acnur.org/portugues/wp-content/uploads/2019/11/Folder-Sisconare-ING-whatsapp.pdf>.

237. *Id.*

238. *Id.*

239. *Forced Displacement*, *supra* note 221, at 34; *Claiming Asylum in Canada—What Happens?*, GOV'T OF CANADA, [https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming\\_asylum\\_Incanadawhathappens.html](https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming_asylum_Incanadawhathappens.html) (last visited Oct. 29, 2023). See also *Claim Refugee Status from in Canada:*

whether they have a “refugee claim” eligible for a hearing.<sup>240</sup> If the refugee claim is deemed eligible, they can apply for work authorization once they complete a medical examination.<sup>241</sup>

Uganda is also a country that receives a majority of the asylum seekers and refugees, especially those in neighboring countries.<sup>242</sup> The African nation is also considered to have the most progressive refugee and asylum policies.<sup>243</sup> Both innovative and generous in its refugee policy, the Ugandan government provides asylum seekers with a plot of land for individuals to live and cultivate for those in rural areas.<sup>244</sup> Many Ugandans embrace the policy because the country values helping “our brothers and sisters.”<sup>245</sup> “Today, it is them, tomorrow, it could be any one of us,” said Ugandan Prime Minister Ruhakana Rugunda, echoing the compassionate sentiment.<sup>246</sup> Yet Uganda’s approach is not only humanitarian.<sup>247</sup> The nation has also recognized the economic contributions refugees make when they are provided with opportunities to integrate.<sup>248</sup> The refugees with land to cultivate in rural areas have been able to positively impact Uganda’s agricultural activity.<sup>249</sup> Even those refugees in urban areas have created vibrant businesses that benefit their communities and share a piece of their own culture with Uganda.<sup>250</sup>

Although what works best for these countries may not be what works best for the United States, perhaps certain components of these various methods and policies from other countries can be applied to the U.S. work authorization process for asylum seekers. The argument in Part VI incorporates aspects of these policies in proposing solutions for improving the current work authorization situation for asylum seekers.

#### *B. Offering Employment Training and Similar Integration Programs Equips Asylum Seekers to Enter the Workforce Sooner, Ultimately Strengthening Local Businesses and Communities*

While authorizing asylum seekers to work sooner is the main goal, equipping asylum seekers with extensive employment training would optimize their contributions. According to Georgetown University’s Beeck Center, it takes a village.<sup>251</sup> Even more, like

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*After You Apply*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps.html> (last visited Oct. 29, 2023).

240. *Claiming Asylum in Canada—What Happens?*, *supra* note 240; *see also Claim Refugee Status from in Canada*, *supra* note 240.

241. *Claiming Asylum in Canada—What Happens?*, *supra* note 240; *see also Claim Refugee Status from in Canada*, *supra* note 240.

242. *Forced Displacement*, *supra* note 221, at 31 fig.13, 33 fig.16; *see Uganda’s Progressive Approach to Refugee Management*, THE WORLD BANK (Aug. 31, 2016), <https://www.worldbank.org/en/topic/fragilityconflictviolence/brief/ugandas-progressive-approach-refugee-management> [*hereinafter Uganda’s Progressive Approach*] (“Uganda has been generously hosting refugees and asylum seekers from 13 countries...including the Democratic Republic of Congo, Somalia, South Sudan, Rwanda, Eritrea, and Burundi”).

243. *Uganda’s Progressive Approach*, *supra* note 243; Tessa Coggio, *Can Uganda’s Breakthrough Refugee-Hosting Model Be Sustained?*, MIGRATION POL’Y INST. (Oct. 31, 2018), <https://www.migrationpolicy.org/article/can-ugandas-breakthrough-refugee-hosting-model-be-sustained>.

244. *Uganda’s Progressive Approach*, *supra* note 243; Coggio, *supra* note 244.

245. Coggio, *supra* note 244.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Uganda’s Progressive Approach*, *supra* note 243; Coggio, *supra* note 244.

250. *Uganda’s Progressive Approach*, *supra* note 242; Coggio, *supra* note 244.

251. Betsy Zeidman & Cristina Alaniz, *Workforce Training of Immigrants and Refugees: What Works?*, BEECK CTR. (Aug. 28, 2020), <https://beeckcenter.georgetown.edu/workforce-training-of-immigrants-and-refugees-what-works/> [*hereinafter Zeidman, What Works?*]; Betsy Zeidman et al., *Workforce Training of Immigrants and*

Uganda reasoned, such efforts benefit the village.<sup>252</sup> The Beeck Center urges the government to partner with local non-profit organizations, immigrant support groups, and potential employers of individual communities to train and integrate immigrants into the workforce.<sup>253</sup> The Beeck Center encourages these entities to collaborate and create a training program that is tailored for the local community at hand.<sup>254</sup> The report proposes these entities to “[b]raid in different streams of capital,” potentially with the government funding initial basics such as English classes and customer relations, while employers could fund more specialized training for specific jobs needed.<sup>255</sup> Within this proposed model is also the suggestion for implementing experiential learning programs for immigrants such as apprenticeships or pre-apprenticeships.<sup>256</sup>

Certain companies like Chobani already value and advocate for hiring immigrants, especially in light of the current worker shortage.<sup>257</sup> Thirty percent of Chobani’s employees are immigrants or refugees.<sup>258</sup> The #1 Greek yogurt company also hosted an international forum in recent years to discuss employment pathways for refugees.<sup>259</sup> Chobani is not just initiating the conversation; rather, the company has already blazed the trail for creating an employment model that both embraces immigrants in the work force and also humanizes them.<sup>260</sup> Chobani CEO and founder Hamdi Ulukaya said such emphasis is not about politics nor about doing “refugee work,” rather it is “about hiring from our community.”<sup>261</sup>

If the federal government, state governments, and non-profit organizations were to save funds by reducing aid for asylum seekers because asylum seekers could obtain employment authorization sooner, then governments could restructure grant funds to support such employment and training programs.<sup>262</sup> As these authors note, there is no single solution for how to best fund opportunities to integrate immigrants like asylum seekers into the workforce, but there should not be only one solution because programs should be “culturally sensitive and aligned with the needs of the local community.”<sup>263</sup>

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*Refugees: How Can We Pay for It?*, BEECK CTR. (Sept. 21, 2020), <https://beeckcenter.georgetown.edu/workforce-training-of-immigrants-and-refugees-how-can-we-pay-for-it/> [hereinafter Zeidman, *How Can We Pay for It?*].

252. *Uganda’s Progressive Approach*, *supra* note 243; Coggio, *supra* note 244.

253. Zeidman & Alaniz, *What Works?*, *supra* note 252; Zeidman et al., *How Can We Pay for It?*, *supra* note 252.

254. Zeidman & Alaniz, *What Works?*, *supra* note 252.

255. Zeidman et al., *How Can We Pay for It?*, *supra* note 252.

256. Zeidman & Alaniz, *What Works?*, *supra* note 252; Zeidman et al., *How Can We Pay for It?*, *supra* note 252.

257. Phil Wahba, *Chobani CEO Urges Companies Facing Labor Gap to Hire Refugees: ‘You Will Have the Most Loyal and Motivated Workforce You’ve Ever Seen’*, FORTUNE (Jan. 27, 2023, 5:30 AM), <https://fortune.com/2023/01/27/chobani-hiring-refugees-workforce-labor-shortage-recruiting/>.

258. Christine Lagorio-Chafkin, *This Billion-Dollar Founder Says Hiring Refugees Isn’t a Political Act*, INC., <https://www.inc.com/magazine/201806/christine-lagorio/chobani-yogurt-hamdi-ulukaya-hiring-refugees.html> (last visited Oct. 29, 2023).

259. *Chobani to Host World Refugee Forum, An Urgent Discussion Addressing the Challenges Confronting 36 Million Refugees Around the World*, CHOBANI (July 28, 2022), <https://www.chobani.com/newsroom/our-news/chobani-to-host-world-refugee-forum-an-urgent-discussion-addressing-the/>.

260. Lagorio-Chafkin, *supra* note 259.

261. *Id.*

262. Perhaps the government could re-allocate funds towards grants like those supported by the Workforce Innovation and Opportunity Act to better equip work-authorized asylum seekers. *Workforce Innovation and Opportunity Act*, EMP. & TRAINING ADMIN., <https://www.dol.gov/agencies/eta/wioa> (last visited Oct. 29, 2023) [hereinafter *WIOA*] (“WIOA is landmark legislation that is designed to strengthen and improve our nation’s public workforce system and help get Americans, including youth and those with significant barriers to employment, into high-quality jobs and careers and help employers hire and retain skilled workers.”).

263. Zeidman & Alaniz, *What Works?*, *supra* note 252.

VI. A RIGHT TO WORK: STREAMLINING THE OVERALL ASYLUM  
PROCESS, SHORTENING THE EAD WAITING PERIOD, AND  
RESTRUCTURING FUNDS TO EMPLOY ASYLUM SEEKERS IS ULTIMATELY  
MORE CONSTRUCTIVE THAN CONTINUING TO ENFORCE THE EIGHTEEN-  
MONTH WAITING PERIOD AND SIMPLY FUNDING AID

The preceding sections of this comment not only reemphasize the harms and burdens of the sixth month waiting period for both asylum seekers and the nation, but the sections also demonstrate how shortening the waiting period for employment authorization would advance both the interests of asylum seekers and the nation. The United States should significantly shorten its waiting period. But, how short? What is a healthy balance between reducing the waiting period but still allowing enough time to vet individuals and ensure claims are not fraudulent or frivolous? The foregoing paragraphs will propose possible solutions to these questions. This section will also recommend that the government restructure the current amount of funds and non-profit grants from only funding humanitarian aid to re-allocating funds towards employment training programs and similar opportunities for asylum seekers to assimilate into employment and contribute to the economy quickly.

*A. Streamlining the Overall Asylum Process Allows Asylum Seekers to More Quickly Obtain Work Authorization and Enter the Workforce*

First, streamlining the overall asylum process allows asylum seekers to more quickly obtain work authorization, enter the workforce, and begin contributing to society. The last streamlined asylum application process was from the early 1990s when there was one application for both asylum and employment authorization.<sup>264</sup> The government then bifurcated the process and required asylum seekers to wait 150 days before applying for work authorization in order to avoid a gross quantity of boilerplate applications.<sup>265</sup>

However, there still exists a way to re-streamline the asylum process while also avoiding a gross quantity of boilerplate applications. First, the government should implement an initial determination for asylum seekers at their port of entry like those done in Canada.<sup>266</sup> Canadian officers make an official determination at the country's border of whether the asylum seeker has a "refugee claim" eligible for a hearing.<sup>267</sup> Through this process, asylum seekers qualify to apply for work authorization once their refugee claim is deemed eligible.<sup>268</sup>

A recent interim final rule enacted in May 2022 indicates a shift towards utilizing initial asylum claim determinations to streamline the asylum seeker's path.<sup>269</sup> Titled the Asylum Processing Rule ("APR"), the interim final rule includes a Credible Fear Screening for asylum seekers placed in removal proceedings after arriving to certain entry points at the border without proper documentation.<sup>270</sup> In the first phase through this new process, asylum seekers begin their asylum application process with the credible fear screening.<sup>271</sup>

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264. *Let Them Work*, *supra* note 6, at 8.

265. *Id.* at 10.

266. *See Claiming Asylum in Canada—What Happens?*, *supra* note 240.

267. *Id.*

268. *Id.*

269. 87 Fed. Reg. 60, *supra* note 48. The Asylum Processing Rule ("APR") includes a Credible Fear Screening for asylum seekers in removal proceedings. *Interim Final Rule*, *supra* note 48.

270. 87 Fed. Reg. 60, *supra* note 48, at 18084; *Interim Final Rule*, *supra* note 48.

271. 87 Fed. Reg. 60, *supra* note 48, at 18084; *Interim Final Rule*, *supra* note 48.

If the screening officer finds the claim of fear credible, the asylum seeker will be recommended for a second interview.<sup>272</sup> If they pass the second interview, then they do not have to submit an asylum application and they only have to wait for a determination on their claim.<sup>273</sup> This means once the asylum seeker passes the interview, since they have completed the asylum “application” process, they now simply must wait 150 days to apply for work authorization.<sup>274</sup>

However, this new interim final rule only applies to a limited population of asylum seekers.<sup>275</sup> Further, the screening is only available to asylum seekers who (1) arrived after May 31, 2022; (2) are single adults; (3) are either “detained at the Pearsall Houston, Otay Mesa, Karnes, Hutto, or Imperial detention facilities” or “were picked up in the Rio Grande Valley,” and (4) claim to “intend to reside in USCIS jurisdictions of Boston, Miami, New York, Newark San Francisco, Los Angeles, Chicago, Washington D.C., or New Orleans.”<sup>276</sup> While this process may potentially expedite the process for that population of asylum seekers, the rest of the asylum seekers are left to the same extensive and bifurcated process as before.<sup>277</sup> As already mentioned, the current process for the rest of asylum seekers already confuses many asylum seekers into thinking they have filed for asylum by simply passing through the entry point.<sup>278</sup> Therefore, the government should implement a credible fear screening for all asylum seekers to streamline the asylum application process, ultimately allowing quicker access to obtaining work authorization.<sup>279</sup>

*B. Shortening the Filing Period for Employment Authorization Would Decrease Illegal Employees and Allow Asylum Seekers to More Quickly Contribute to the Economy*

Even if the government streamlines the overall asylum process, 180 days—six months—is still a long time without a job. Along with streamlining the asylum process, the government should also shorten the waiting period. As the court in *Rosario v. USCIS* analyzed, the government’s intent for enacting the waiting period was that “[i]deally . . . few applicants would ever reach the 150-day point.”<sup>280</sup> Further, the government felt anything longer than this plus the thirty-day waiting period “would not be appropriate to deny work authorization to a person whose claim has not been adjudicated.”<sup>281</sup> Additionally, the mid-1900s amendments enacted an EAD waiting period for an asylum seeker.<sup>282</sup> Nearly thirty years later, to wait this long proves detrimental to both asylum seekers and the nation. It is time to reduce the waiting period instead of enforcing “an extraordinary amount of time to wait for work authorization.”<sup>283</sup>

The government implemented the 150-day waiting period in the mid-1990s to combat the backlog caused by boilerplate applications.<sup>284</sup> However, if the APR already implements a credible fear screening, and if the process for all asylum seekers was streamlined to include a determination of a credible fear, then the gross amount of boilerplate

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272. 87 Fed. Reg. 60, *supra* note 48, at 18085; *Interim Final Rule*, *supra* note 48.

273. 87 Fed. Reg. 60, *supra* note 48, at 18085.

274. *Id.*

275. *Interim Final Rule*, *supra* note 48.

276. *Id.*

277. *Id.*

278. Gore, *supra* note 51.

279. *Interim Final Rule*, *supra* note 48.

280. *Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1161 (W.D. Wash. 2018).

281. *Id.*

282. *Id.*

283. *Rosario*, 365 F. Supp. 3d at 1161.

284. *Id.*

applications would likely already be combatted. Further, there would be no need for the 150-day waiting period in applying for work authorization.

Therefore, coupled with the proposed credible fear screening for all asylum seekers, the government should permit asylum seekers to apply for work authorization as soon as they pass the initial credible fear screening.<sup>285</sup> Assuming there would still be a processing period for the application, asylum seekers could obtain work authorization as quickly as thirty days after entering the U.S. Given the realities of cultural obstacles that delay an asylum seeker's timeline in filing an application—such as language barriers or knowledge of the application process—most asylum seekers would likely still not file right away.<sup>286</sup> Regardless, with this solution, asylum seekers could begin to earn income, provide for themselves, avoid working unlawfully, and contribute to their communities. The result would relieve the financial burden of the government and non-profit organizations in providing such extensive humanitarian aid, as well as ultimately boosting local economies, state economies, and the national economy.

*C. Reducing Government Funds and Non-profit Grants from Asylum Seeker Aid and Re-allocating These Funds Towards Employment Training and Opportunities for Asylum Seekers is Ultimately More Constructive Than the Current System*

If the U.S. shortened the timeline for work authorization, then the government and non-profit organizations would be relieved of the financial burden of providing humanitarian aid for such an extensive period. With this solution, governments could restructure funds towards employment education and training for asylum seekers. For instance, if those asylum seekers in Portland, Maine, were granted employment authorization sooner, then the city's funding allocated towards two years of housing assistance may not be as needed.<sup>287</sup> A portion of that housing assistance and other amount of aid for asylum seekers could be reallocated towards organizing trainings and coordinating work-authorized asylum seekers with local businesses to integrate them more quickly into the local economy.

Like the Beeck Center highlighted, the braided capital model would best distribute the financial responsibility between the government, non-profit organizations, and local employers.<sup>288</sup> Once again, it may take a village, but it would benefit the village.<sup>289</sup> Within this proposed model is also the suggestion for implementing experiential learning programs for immigrants such as apprenticeships or pre-apprenticeships.<sup>290</sup> There may not be one single solution for how to best fund opportunities to integrate immigrants like asylum seekers into the workforce, but in this way programs can be “culturally sensitive and aligned with the needs of the local community.”<sup>291</sup>

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285. *Interim Final Rule*, *supra* note 48.

286. *See Access to Counsel*, *supra* note 46; *see Key Findings*, *supra* note 46.

287. Sullivan, *One Million Migrants*, *supra* note 18.

288. Zeidman & Alaniz, *What Works?*, *supra* note 252; Zeidman et al., *How Can We Pay for It?*, *supra* note 252.

289. Zeidman & Alaniz, *What Works?*, *supra* note 252; Zeidman et al., *How Can We Pay for It?*, *supra* note 252. Perhaps the government could re-allocate funds towards grants supported by the Workforce Innovation and Opportunity Act to better equip work-authorized asylum seekers. *WIOA*, *supra* note 263.

290. Zeidman & Alaniz, *What Works?*, *supra* note 252.

291. *Id.*

## VII. CONCLUSION

180 days is too long. This unreasonable waiting period for work authorization deprives asylum seekers of the right to work, potentially exacerbating the psychological and physical harm and trauma they have already suffered. It violates human rights and subsequently violates the United States' signatory membership to the Refugee Convention by depriving asylum seekers of a sooner opportunity for decent work.<sup>292</sup> Additionally, the severe backlog of applications only intensifies the already unreasonable waiting period.<sup>293</sup> The drafters never intended for an applicant to wait 150 days without work authorization, because such a wait "would not be appropriate" for a "person whose claim has not been adjudicated."<sup>294</sup>

The unreasonable waiting period without work authorization harms an asylum seeker when the opportunity to work could help in healing an asylum seeker.<sup>295</sup> Ironically, the unreasonable waiting period also unduly burdens the government when granting work authorization for asylum seekers sooner could advance the nation's economic interests, filling the gap in the worker shortage, and boosting the economy. To resolve the unreasonable waiting period, the government must shorten the timeline and streamline the application. As a result, the federal government could partner with state governments and local employers to invest in asylum seekers' job opportunities and training to ultimately enhance the future economy. It may take a village, but it will benefit the village.<sup>296</sup>

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292. *Convention and Protocol Relating to the Status of Refugees*, *supra* note 14.

285. *Art. 23*, *supra* note 15.

294. *Rosario*, 365 F. Supp. 3d at 1161.

295. *Pappas*, *supra* note 174.

296. *Zeidman & Alaniz, What Works?*, *supra* note 252; *Zeidman et al., How Can We Pay for It?*, *supra* note 252; *WIOA*, *supra* note 263.

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