

Submitted via www.regulations.gov

April 9, 2025

Mr. Mark Phillips, Chief
Residence and Naturalization Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Dr.
Camp Springs, MD 20746

Re: Alien Registration Form and Evidence of Registration, DHS Docket No. USCIS 2025-0004

Dear Chief Phillips:

The National Immigration Project of the National Lawyers Guild (National Immigration Project)¹ submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS) request for comment on the Alien² Registration Form and Evidence of Registration Interim Final Rule (IFR) published in the Federal Register on March 12, 2025, under Department of Homeland Security (DHS) Docket No. USCIS-2025-0004, OMB Control Number 1615-NEW. The National Immigration Project strongly opposes this rule which seeks to criminalize noncitizens simply for being in the United States without lawful status or for failing to comply with requirements that force them to make unreasonable and impossible choices. Highlighting the unfairness of this “Catch 22” situation, any of the impossible choices may subject them to criminal liability. DHS should immediately rescind this rule.

The National Immigration Project is a national nonprofit membership organization that provides support, referrals, and legal and technical assistance to attorneys, community organizations, families, and advocates seeking to advance the rights of noncitizens. The National Immigration Project focuses especially on the immigration consequences of criminal convictions, and its mission is to fight for justice and fairness for noncitizens who have contact with the criminal legal system. Additionally, we fight for fairness and transparency in immigration adjudication systems and believe that all noncitizens should be afforded the right to fair adjudications of their claims to remain in the United States. The National Immigration Project strongly opposes the

¹ The author of this comment is National Immigration Project supervising attorney, Victoria Neilson with input from National Immigration Project director of legal support and training, Michelle N. Méndez.

² The National Immigration Project strongly objects to the use of the word “alien” to describe human beings. However, we will use that term in this comment when referring to the specific registration requirement and form since the registration process itself is dehumanizing and treats noncitizens as criminals.

increasing criminalization and surveillance of noncitizens and believes this registration system to be abusive and unlawful.

The National Immigration Project Objects to DHS Issuing This Rule as an Interim Final Rule

The purpose of notice and comment is to allow the public a meaningful opportunity to comment. In general, the Administrative Procedures Act (APA) § 553 requires that the public as “interested persons” have “an opportunity to participate in the rule making.” Therefore, agencies must afford “interested persons a reasonable and meaningful opportunity to participate in the rulemaking process.”³ Courts have found that to comply with this participation requirement, the agencies must offer a comment period that is “adequate” to provide a “meaningful opportunity.”⁴ Given the importance of the public’s participation in the rulemaking process, Executive Order 12866 specifies that rulemaking “in most cases should include a comment period of not less than 60 days.”⁵ Likewise, Executive Order 13563 explicitly states, “To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.”⁶ Offering this limited opportunity to respond to changes which have already been implemented and giving only 30 days to comment, contradicts these Executive Orders and makes it less likely that the agencies will receive informed feedback on the proposed change.

Here, DHS has published this rule as an IFR rather than through a Notice of Proposed Rulemaking (NPRM) process, even though the rule has extraordinary significance and will potentially affect the rights of millions of noncitizens. DHS claims that this rule is exempt from the NPRM process because it is a “procedural rule” exempted from notice-and-comment rulemaking under the APA.⁷

The text of the IFR states:

The procedural-rule exception “covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *JEM Broad. Co., Inc. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)); see also *Mendoza v. Perez*, 754 F.3d 1002, 1023–24 (D.C. Cir. 2014); *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987) (holding that procedural rules are those that do not “encode a substantive value judgment or put a stamp of approval or disapproval on a given type of behavior”).⁸

³ *Forester v. CPSC*, 559 F.2d 774, 787 (D.C. Cir. 1977).

⁴ *N.C. Growers’ Ass’n v. UFW*, 702 F.3d 755, 770 (4th Cir. 2012).

⁵ See Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993).

⁶ Exec. Order No. 13563, 76 Fed. Reg. 3821 Improving Regulation and Regulatory Review (Jan. 18, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review>.

⁷ Alien Registration Form and Evidence of Registration, 90 Fed. Reg. 11793, 11796 (Mar. 12, 2025) (to be codified at 8 CFR 264).

⁸ *Id.*

But this rule is not, as the IFR wrongly suggests, a simple “agency organization, procedure, or practice” rule, because it will profoundly affect noncitizens’ rights and the rights of their family members. Citing *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987), the IFR states that “procedural rules are those that do not ‘encode a substantive value judgment or put a stamp of approval or disapproval on a given type of behavior’”⁹ Given that the Executive Order that forms the basis for this IFR states that noncitizens who are in the United States without lawful status, “present significant threats to national security and public safety, committing vile and heinous acts against innocent Americans,”¹⁰ it is difficult to see how the purpose of this rule is not to “put a stamp of. . .disapproval” on those who must comply. Issuing a regulation that creates vast new registration requirements with criminal penalties for anyone who does not carry documents with them, is not a procedural rule; it is a rule that erodes the rights of noncitizens and citizens alike accordingly, issuing it as an IFR violated the APA.

This rule’s historical roots proves that this rule is substantive rather than procedural in nature. This rule is implementing a law that was passed in 1940¹¹—nearly 100 years ago and while the United States was on the brink of entering the Second World War. It requires noncitizens who may currently be in the United States without lawful status, but who may have the ability to legalize their status in the future, as well as noncitizens with certain applications pending, to provide detailed biographic information, submit themselves to biometrics, or face potential imprisonment. This rule implicates the most fundamental liberty interests protected under the U.S. Constitution; it is simply absurd to claim that this rule does not alter the rights of parties when failure to comply with the rule could lead to imprisonment while compliance with the rule could lead to the noncitizen being detained and removed.¹²

It is also disingenuous for DHS to claim exemption from notice and comment rulemaking based on the ground that the rule “merely adds another method (the myUSCIS registration process) for compliance with existing statutory registration requirements.”¹³ All regulations provide vehicles for agencies to implement a statutory framework. Under this reasoning, no regulation would need to undergo notice and comment rulemaking and the APA would be meaningless.

Further, as discussed below, the new online form G-325R is extremely complex. Under the Paperwork Reduction Act (PRA), any form that collects information about noncitizens is required to be published in the Federal Register as an NPRM with a minimum of 60 days for the public to comment.¹⁴ Here, the form was published on March 3, 2025 and will go into effect on April 11, 2025, clearly violating the terms of the PRA.

Given the curtailed timeframe to submit comments on the IFR and the new form, the National Immigration Project is only able to submit this short comment. If DHS had given the proper notice and published the rule as an NPRM, the National Immigration Project would have been

⁹ *Id.*

¹⁰ White House, Protecting the American People Against Invasion, Executive Order 14159, (Jan. 20, 2025) <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>.

¹¹ *Id.* at 11793.

¹² *Meyer v. Nebraska*, 262 U.S. 390, 399-401 (1923) (liberty includes, among other rights, the right of “freedom from bodily restraint.”)

¹³ *Id.* at 11796.

¹⁴ 44 USC § 3501 *et seq.*

able to submit a more comprehensive comment to this deeply disturbing rule. Indeed, given our focus on the immigration consequences of criminal convictions, and our mission to fight for justice and fairness for noncitizens who have contact with the criminal legal system, we have a lot to say but are constrained by this very limited time frame to comment.

The National Immigration Project Strongly Opposes the Substance of This Rule

The IFR puts noncitizens into an untenable, “damned if you do, damned if you don’t” situation. Noncitizens who willfully fail to register can be fined \$5000 or imprisoned for six months.¹⁵ After registering, the noncitizen would be issued documentation proving registration which they would be legally required to carry at all times or be subject to further fines and potential imprisonment.¹⁶ The IFR cites to 8 CFR § 264.1(e) as evidence that these registration requirements are “longstanding”¹⁷ and then goes through a laundry list of forms through which noncitizens share biographical information with the U.S. government.¹⁸ Those forms, however, are given to noncitizens upon entry into the United States (such as the I-94) or upon applying for a specific benefit from USCIS, such as adjustment of status through the I-485 or employment authorization through the I-765. Despite the claim that registration has been a longstanding requirement, DHS admits in the IFR that the government has never created a form through which noncitizens present in the United States who have not applied for a benefit would be legally required to register with the federal government.¹⁹

Furthermore, although DHS tries to paint this requirement as nothing new, it does acknowledge that the reason for the IFR is the recent Executive Order titled “Protecting the American People Against Invasion.”²⁰ That Executive Order directs the Departments of Justice, Homeland Security and State to “prioritize the prosecution of criminal offenses related to the unauthorized entry or continued unauthorized presence of aliens in the United States.”²¹ Coupling this new registration requirement with an order to the agencies requiring them to prioritize prosecuting violations and misdemeanors rather than serious crimes, highlights the concern that the purpose of this registration is “mass deportation.”

The IFR states that the “rule does not impose any new registration or fingerprinting obligations separate from the obligations already contained in the INA.”²² Yet the IFR also makes clear that there has not previously been a method for noncitizens to register with the federal government.²³ While the statute may have already included this requirement (because of fears of actual invasion leading up to the U.S. declaration of war prior to World War II), the agencies have never enforced this rule and noncitizens could not have registered previously without a mechanism to do so. Again, hearkening back to World War II, the system this rule imposes is similar to the

¹⁵ 90 Fed. Reg. at 11794.

¹⁶ *Id.* setting forth further \$5000 fines and 30 days imprisonment.

¹⁷ *Id.*

¹⁸ *Id.* at 11794-95.

¹⁹ *Id.* at 11795.

²⁰ *Id.*

²¹ White House, *Protecting the American People Against Invasion*, Executive Order 14159, (Jan. 20, 2025)

<https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>

²² 90 Fed. Reg. at 11797.

²³ *Id.* at 11793.

registration requirement imposed by Germany prior to and throughout the second World War where unpopular groups were forced to register with the government as a means of control.²⁴

The IFR Singles Out Asylum Seekers and TPS Recipients Unnecessarily for Registration

The list of forms that DHS claims meet the registration requirement come from 8 CFR § 264.1(g)(1).²⁵ This regulatory provision does not include Form I-821 or Form I-589. However, DHS seeks to amend that provision through this IFR to require Temporary Protected Status and asylum applicants to comply with the registration requirement. Instead of requiring Temporary Protected Status and asylum applicants to register, DHS could easily have designated the I-821 and I-589 as forms that meet the registration requirement pursuant to this rule. Indeed, both of those forms collect substantial amounts of biometrics and data about the applicants. The arbitrary inclusion of forms I-821 and I-589 proves DHS's lack of logical reasoning in determining who must register and who is exempt on an old version of the regulation. The lack of a sound reason for requiring TPS holders and asylum seekers to register begs the question of "what is the purpose?" Whether intended or not, the actual consequence of this requirement is that these two vulnerable groups will face another procedural hurdle in their quest for legal status and criminal consequences if they fail to comply. Requiring asylum seekers and TPS holders to submit this new registration form, capturing data the federal government already has and requiring noncitizens to submit to biometrics when they have likely already done so, is arbitrary and seemingly based on bias against these groups of noncitizens who are politically disfavored.²⁶ It also places a significant and unnecessary burden on DHS employees at a time when jobs are being slashed by the federal government.

Completion of Form G-325R Places an Unreasonable Burden on Noncitizens

The IFR creates a new collection instrument, form G-325R, to collect the information required by this new rule. However, form 325R does not exist as a paper form. The only way to even analyze the form to respond to this IFR was by searching on the regulations.gov website which provides a lengthy document²⁷ in "Copydeck" format which is difficult to find and difficult to read. Likewise, there is no paper form that counsel can review with a potential client before advising them about the registration requirement and the information that the form collects.

²⁴ See Robert M. W. Kempner, *The German National Registration System as Means of Police Control of Population*, 36 J. Crim. L. & Criminology 362 (1945-1946),

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=3364&context=jclc>.

²⁵ 90 Fed. Reg. at 11795.

²⁶ See, Presidential Memorandum, *Preventing Abuses of the Legal System and the Federal Court* (March 22, 2025)

<https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/> (Calling on the attorney general to initiate disciplinary actions against immigration lawyers, claiming that "the immigration bar, and powerful Big Law pro bono practices, frequently coach clients to conceal their past or lie about their circumstances when asserting their asylum claims, all in an attempt to circumvent immigration policies enacted to protect our national security and deceive the immigration authorities and courts into granting them undeserved relief.").

See also, 90 Fed. Reg. 9040, 9041 (Feb. 5, 2025) Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status (finding that even assuming extraordinary conditions continue to exist in Venezuela, "it is contrary to the national interest to permit the Venezuelan nationals (or aliens having no nationality who last habitually resided in Venezuela) to remain temporarily in the United States.")

²⁷ G-325R - Alien Registration Form and Evidence of Registration IFR Posted by the U.S. Citizenship and Immigration Services on Mar 13, 2025, <https://www.regulations.gov/document/USCIS-2025-0004-0022>

Filing procedures are also onerous and inaccessible to all who are impacted. The IFR requires noncitizens to create a myUSCIS account and requires them to file the registration online. There is no other option to complete the form on paper. Many noncitizens have limited English ability, limited formal education, and limited access to secure internet connections. Forcing noncitizens to complete an online form or face potential imprisonment raises the specter of jailing people based on their poverty or education level.

The IFR further states that the form is “currently free of charge” but seeks comments on charging noncitizens a fee of \$30.²⁸ Since noncitizens who have filed for work authorization are exempt from this new registration requirement, the fee, if implemented, would only be collected from noncitizens who are not work authorized. By suggesting its desire to add a fee to the registration requirement in the future, DHS seems to be presenting another Hobson’s choice through this IFR: requiring noncitizens to work without authorization or to face potential imprisonment for not complying with the rule.

Form G 325-R Has Undefined Terms and No Adequate Instructions

Form G 325-R collects significant information about the noncitizens required to complete it. Since it is a purely online form, there is no detailed instruction sheet to accompany the form as there is for other forms which are available as pdfs. Some aspects of the form are confusing and there is no explanation. The form asks questions that are so broad it is not clear what the intent of the question is. For example, there are two questions “Since entry, in what activities have you been engaged?*” and “In what activities do you intend to engage between now and your expected date of departure?*” that are so broad, they are impossible to answer. There is no explanation as to what types of activities DHS requires the noncitizen to include. Since the purpose of this form as described in the statute is merely to register, there is no limiting factor, based on the purpose of the form, as to what the noncitizen should include here. Counsel who may be asked to advise noncitizens on how to complete the form have no guidance on what to tell their clients. These completely freeform questions set noncitizens up to be accused of future misrepresentation for not fully providing answers to questions that make no sense. Indeed, these questions are best characterized as “trap questions.”

Similarly the questions “How long do you expect to remain in the United States?*” and “What is your expected date of departure (if any)?*” is impossible to answer for many noncitizens. Many noncitizens forced to complete this registration will be asylum seekers caught in lengthy backlogs or family members of U.S. citizens, waiting for an opportunity to improve their own legal status. These questions also seem designed to entrap the noncitizen—forcing them to either incorrectly answer that they intend to leave soon, or face consequences for intending to remain in the United States without lawful status.

The question “Have you EVER committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime, or convicted)?* [emphasis in original],” should be eliminated from all DHS forms. Noncitizens who may not be familiar with U.S. laws have no

²⁸ 90 Fed. Reg. at 11795-96.

way of knowing what conduct may be criminalized in a given state. This is a “damned if you do, damned if you don’t” question which could require a noncitizen to make an admission with severe legal consequences with no prior access to counsel. At the same time, if a noncitizen answers “no” and DHS later determines they should have answered yes, DHS may unfairly allege that noncitizens should face consequences for misrepresentation despite them not having fully understood the question.

The form also permits noncitizens to upload evidence, such as criminal records, or “Upload any additional evidence or documents you want to provide that help explain any of your responses on the form.” Since the form is not an application for relief, there is no legal standard to meet, and thus no benefit to a noncitizen to upload anything in relation to the registration. However, since there is no explanation noncitizens may upload documents that are completely irrelevant or that are self-incriminating. If DHS does not rescind this regulation in its entirety, it should, at a make the form available on paper, provide detailed instructions, and eliminate these undefined, overbroad questions from the form.

The IFR Does Not Account for the Burden It Places on U.S. Citizens, Especially Black Indigenous and People of Color (BIPOC) Citizens

The IFR requires all noncitizens to carry proof of registration with the government or face fines or potential imprisonment. The IFR discusses the burden on noncitizens who will be required to submit the form G-325R online as well as the costs of traveling to Application Support Centers (ASCs) to submit fingerprints and other biometrics.²⁹ It does not attempt to calculate these costs for noncitizens.

There is no calculation or even acknowledgement of the burden this rule places on U.S. citizens. Of course, if the federal government intends to enforce a “show me your papers” rule against noncitizens, then *every person in the United States, including citizens, must carry proof of their immigration status or face potential penalties*. If a noncitizen must carry proof of registration to avoid arrest by DHS officers or to pass through increasingly common DHS checkpoints, then U.S. citizens would likewise have to prove that they are exempt from the DHS registration requirements by carrying their own proof of status. As DHS has engaged in aggressive enforcement measures, even before this rule has come into effect, there are increasing numbers of U.S. citizens being erroneously and unlawfully arrested.³⁰ It is therefore likely that this rule will lead to racial profiling against BIPOC U.S. citizens as non-white individuals are more likely to be targeted by DHS agents.³¹

²⁹ *Id.* at 11797.

³⁰ María Luisa Paúl, *As Trump Cracks Down on Immigration, U.S. Citizens Are Among Those Snared*, THE WASHINGTON POST, Apr. 5, 2025, <https://www.washingtonpost.com/immigration/2025/04/05/us-citizens-deported-immigration/>. (reporting on seven recent arrests of citizens and citing to 2019 report that 1 to 1.5 percent of such arrests are of U.S. citizens); Senator Mark Warner, Warner Pushes Trump Administration on Alarming Immigration Arrest of U.S. Citizen and Virginia Resident (March 21, 2025) <https://www.warner.senate.gov/public/index.cfm/2025/3/warner-pushes-trump-administration-on-alarming-immigration-arrest-of-u-s-citizen-and-virginia-resident>.

³¹ Suzanne Gamboa and Nicole Acevedo, Trump Immigration Raids Snag U.S. Citizens, Including Native Americans, Raising Racial Profiling Fears, NBC NEWS, Jan. 28, 2025,

Conclusion

In closing, the National Immigration Project strongly opposes this IFR and urges DHS to rescind it in its entirety. Please do not hesitate to contact Michelle N. Méndez at michelle@nipnlg.org if you have any questions or need any further information. Thank you for your consideration.

Respectfully,



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<https://www.nbcnews.com/news/latino/trump-immigration-raids-citizens-profiling-accusations-native-american-rcna189203>; American Immigration Council, *The 287(g) Program: An Overview* at 4 (Jan. 20, 2025) <https://www.americanimmigrationcouncil.org/research/287g-program-immigration> (“287(g) agreements [between DHS and state or local law enforcement] have resulted in widespread racial profiling.”); American Immigration Council, *Records Shed Light on Border Patrol’s Racial Profiling of Immigrants in Ohio* (March 19, 2024) <https://www.americanimmigrationcouncil.org/news/foia-records-border-patrol-racial-profiling-immigrants-ohio-report> (FOIA analysis determined that “Primary targets of immigration enforcement were males, classified as laborers of Latin American origin between the ages of 23 and 40, deemed to have darker skin.”).