April 11, 2025

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Residence and Naturalization Division Chief,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security,
5900 Capital Gateway Drive,
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Submitted via http://www.regulations.gov

Re: **Department of Homeland Security, U.S. Citizenship and Immigration Services, Interim Final Rule; *Alien Registration Form and Evidence of Registration* (DHS Docket No. USCIS-2025-0004, RIN 1615-AC96)**

Dear Chief Phillips:

The American Immigration Lawyers Association (AILA) and the American Immigration Council (Council) respectfully submit the following comment in response to the above-referenced U.S. Citizenship and Immigration Services (USCIS) interim final rule (IFR) with request for comments on the Alien Registration Form and Evidence of Registration (DHS Docket No. USCIS-2025-0004), published in the Federal Register on March 12, 2025.[1]

Established in 1946, AILA is a voluntary bar association of more than 17,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA's mission includes the advancement of the law pertaining to immigration and naturalization and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws and protect the legal rights of noncitizens. The Council frequently appears before federal courts on issues relating to the interpretation of the Immigration and Nationality Act (INA) and its implementing regulations.

[1] 90 FR 11793 (March 12, 2025).

I. Introduction

AILA and the Council urge that the IFR be withdrawn. The IFR clearly violates the Administrative Procedure Act (APA) by foregoing notice and comment rulemaking and imposing arbitrary and capricious requirements. The history and established practice of registration is gravely misconstrued to assert that the procedural-rule exception applies here. The vagueness and confusing language of the IFR makes compliance impossible, while imposing serious penalties. Not only does the IFR violate the APA, but it also conflicts with the Paperwork Reduction Act (PRA) in requiring information that is superfluous or exceeds the scope of what would be necessary for an individual to properly record their information with the Department of Homeland Security (DHS). We also find that the IFR's creation of compelled self-incrimination violates the Fifth Amendment.

As described in the comments below, the IFR creates a set of requirements that are burdensome, unnecessary, and conflict with the rule of law.

II. The IFR should be withdrawn because it is in direct violation of the Administrative Procedure Act's notice and comment requirements in that the IFR is a legislative rule impacting millions of people; changes approximately 85 years of established practices; provides no meaningful explanation; and ignores significant public reliance interests.

In issuing its IFR, USCIS choses to eschew notice and comment rulemaking, claiming that it is a rule of agency organization, procedure, or practice (procedural rule) and not a legislative rule under the APA, citing 5 USC §553(b)(A).[2] USCIS' reliance on this provision, however, is misplaced as this exception is narrowly construed and applies only to procedural rules that do not impact substantive rights.

AILA and the Council dispute the agency's assertion that the procedural-rule exception applies to this IFR, as the imposition of a universal alien registration requirement in practice alters the rights and interests of a significant number of parties within the U.S. Specifically, the IFR subjects an estimated two to three million people to criminal liability, imprisonment, and deportation. In describing the rule as merely procedural, USCIS ignores the rule's monumental scope and impact on the regulated community. The U.S. government has *never* had a comprehensive registration scheme before. "Indeed, the Executive has never understood federal law as mandating a universal obligation for non-citizens to register and carry documents."[3]

Although the INA states that there is an obligation to register, there has been no actual universal obligation to register for approximately 85 years because the U.S. government had not provided a mechanism for all noncitizens in the United States to register. There can be no willful violation of a requirement for those noncitizens for whom compliance is impossible. This was the factual situation from the enforcement period of the Alien Registration Act of 1940 (August 1940 to September 1944 as discussed below) up until the publication of this IFR. Until now, the

[2] Id.

[3] *See* Nancy Morawetz & Natasha Fernández-Silber, *Immigration Law and the Myth of Comprehensive Registration*, 48 U.C. Davis L. Rev. 141, 173 (2014) (hereafter *Myth of Comprehensive Registration)*.

government never required registration as a means to prioritize prosecution of misdemeanor immigration offenses, but when the IFR takes effect, millions of undocumented people inside of the United States will face a new criminal Class B misdemeanor liability for a willful failure to register.

Registration – History and Purpose

The IFR is a stark departure from a decades long policy that, with the exception of wartime or an armed attack, accomplished the registration requirement through appropriate, established statutory and regulatory means for granting immigrant status and other immigration benefits. The brief registration period (identified above) pursuant to the Alien Registration Act of 1940 was a response to wartime fears about internal security and intended to gain a greater understanding of who was in the United States. The success of encouraging those not lawfully present in the U.S. to register under the Act was due to wide publicity by federal officials and the Attorney General's authority to suspend deportation for registrants. The Attorney General reassured noncitizens over national radio broadcast that those with "irregularity connected with their entrance" would receive "all consideration" for immigration relief if they registered.[4] By January 1941, nearly 5 million noncitizens had registered, and the Attorney General, as promised, exercised his discretion to suspend the deportation of thousands of noncitizens who unlawfully entered.[5] Here, there is no such consideration, and without it, the registration process is unlikely to achieve its goal of facilitating implementation of Executive Order 14159.[6]

Almost immediately after World War II ended, the Immigration and Naturalization Service (INS) began dismantling the universal registration system, including eliminating its registration division and shifting registration into its immigration functions, with registration documents increasingly becoming proof of immigration status rather than a form through which to register.[7] The INS also exempted entire classes of noncitizens, including Canadians visiting for less than six months and certain laborers, from registration requirements.[8] With no wartime pressure to identify "disloyal" noncitizens, INS abandoned trying to register immigrants lacking status. Even after the Immigration and Nationality Act ("INA") of 1952 became law, which incorporated the registration requirements from the Smith Act and added a requirement to carry any proof of registration,[9] the INS did not establish a registration process for all noncitizens.

The only other time the federal government has instituted even a limited registration requirement separate from the immigration process was in response to an armed attack. The National Security Entry-Exit Registration System ("NSEERS") was imposed soon after the 9/11 attacks to require nationals from 25 predominantly Muslim and Middle Eastern countries to register. In 2011, the government stopped using NSEERS after finding the program no longer provided any increase in

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[4] *See Myth of Comprehensive Registration*, 48 U.C. Davis L. Rev. at 157-58 (2014) (quoting Robert H. Jackson, U.S. Attorney Gen., Speech Over the Broadcasting Facilities of the Columbia Broadcasting System Station WJSV: Alien Registration and Democracy 3-4 (Dec. 21, 1940)

[5] *Id.* at 160 & n.98.

[6] Protecting the American People Against Invasion 90 FR 8443 (Jan. 29, 2025).

[7] See *Myth of Comprehensive Registration*, 48 U.C. Davis L. Rev. at 161-62.

[8] *Id.* at 162-63 & n.115-17 (citing 12 Fed. Reg. 5130, 5131 (July 31, 1947)).

[9] *See* INA, Pub. L. No. 82-414, §§ 261-64, 66 Stat. 163, 223-25 (1952).

security.[10] In 2016, DHS rescinded the regulatory framework that authorized NSEERS because it proved ineffective and was "rendered obsolete" in light of more universally applicable security measures.[11]

To assert that the IFR does not impact the public's rights or interests and merely provides a new form to register compliance for those left out in the past ignores both the history of the provision and the common-sense consequences of its implementation. The assertion is, therefore, disingenuous as a matter of fact and law.

The IFR acknowledges that, under the existing regulations, there is effectively no way for certain categories of foreign nationals to register: "[Foreign nationals] who entered without inspection and have not otherwise been encountered by DHS lack a designated registration form."[12] In addition, the IFR notes that, "In some cases, the acceptable evidence of registration at 8 CFR §264.1(b) is the result of an approved application only, which may leave denied or pending applicants without any acceptable evidence that they have complied with the requirement to register."[13] In particular, the IFR asserts, "This IFR fills the gaps in the regulatory regime by prescribing a registration form available to all [foreign nationals] regardless of their status, in addition to the other forms already listed."[14]

The IFR also claims that "[t]he rule does not impose any new registration or fingerprinting obligations separate from the obligations already contained in the Act.[15]" The IFR uses this bald-faced assertion to justify the absence of prior notice and comment, stating that the IFR is merely a procedural rule because: "The IFR merely adds another method (the myUSCIS registration process) for compliance with existing statutory registration requirements. It does not alter the rights or interests of any party or encode a substantive value judgment on a given type of private behavior."[16]

These two points are contradictory. If the existing regulatory regime, as DHS concedes, did not provide any way for certain categories of foreign nationals to comply with the statutory registration requirement, then as to those categories of foreign nationals, the requirement was a nullity. As the BIA has recognized, "*Lex non cogit ad impossibilia.*"[17] That is, "the law does not compel the impossible."[18] Thus, where compliance with an obligation is impossible, it is no obligation at all. The legal contract term for this incongruity is "impossibility of performance."

Given that reality, the IFR does indeed alter the rights or interests of many parties. By making it newly possible for certain categories of noncitizens to comply with a heretofore theoretical obligation, the IFR transforms the previously nugatory theoretical obligation into a significant new

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[10] *See* DHS, *Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS)*, 76 FR 23830, 23831 (Apr. 28, 2011).
[11] 81 Fed. Reg. 94231 (Dec. 23, 2016).
[12] 90 FR at 11795.
[13] *Id*. at 11796.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *See Matter of C-C-*, 3 I&N Dec. 221, 222 (BIA 1948).
[18] *See Matter of Ruiz-Massieu*, 22 I&N Dec. 833, 841 (BIA 1999) (explaining the holding in *Matter of C-C-*).

obligation with even more significant new compliance penalties. Accordingly, the IFR new registration should have been issued as a proposed rule and complied with the notice and comment requirements of the APA.

Because the IFR creates significant new and substantial requirements that materially impact a large number of foreign nationals, courts have long held that, in this scenario, proper notice and an appropriate opportunity for comment must be provided,

> To draw the line between substance and procedure in the context of administrative rulemaking, courts have generally held that notice and comment is required if the rule makes a substantive impact on the rights and duties of the person subject to regulation. If the rule does not have such an impact, it is exempt from the notice and comment requirements of the statute.[19]

An example of a federal rule that was determined to be procedural and not legislative was the U.S. Department of Labor's regulation governing the selection of employers for workplace safety investigations. This regulation did not change the rights of the employers covered by the DOL's inspections.[20] By contrast, an example of a federal rule analogous to the IFR that was determined to require notice and comment was the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR)'s policy of demanding biographical and biometric information from all adult household members of an unaccompanied minor's sponsor and systematically sharing that information with DHS. This rule was not exempt from notice –and comment as a rule of agency organization, procedure, or practice. The U.S. District Court for the Eastern District of Virginia found that the policy substantively governed under what conditions a sponsor could be precluded from taking custody of an unaccompanied minor, and the policy guidance made clear that no persons living with adults who were unwilling to provide identification and fingerprints could ever apply to sponsor an unaccompanied minor, clearly affecting the potential sponsors' substantive rights.[21]

The procedural rule exception to the notice-and-comment requirements of the APA is to be narrowly construed.[22] This "limited carveout is intended for 'internal housekeeping measures organizing agency activities."[23]

Based on the plain reading of the IFR, millions of people in the U.S. will now be required to register with the U.S. government for the first time. Failure to comply carries serious consequences, including monetary fines, the possibility of imprisonment, or both. This change obviously impacts their rights and duties and, as such, the IFR **does not** qualify for the procedural rule exemption. By attempting to do so, DHS clearly violated the APA by skipping notice and comment rulemaking, and we request that it be withdrawn and republished as a notice of proposed rulemaking.

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[19] *See Reynolds Metals Co. v. Rumsfeld*, 564 F.2d 663, 669 (4th Cir. 1977).
[20] *See See U.S. Dep't of Labor v. Kast Metals Corp.*, 744 F.2d 1145, 1155-56 (5th Cir. 1984).
[21] *See J.E.C.M. ex rel. Saravia v. Lloyd*, 352 F. Supp. 3d 559, 581-82 (E.D. Va. 2018).
[22] *See Mendoza v. Perez*, 754 F.3d 1002, 1023 (D.C. Cir. 2014)
[23] *See AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (quoting *Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987).

The sheer volume of information being requested on the Form G-325R also makes clear that this is plainly a legislative rule requiring notice and comment. As explained in more detail below, the form is many pages long, and asks detailed questions not only about the registrant, but also about the registrant's marriage, spouse, and parents. Rather than "merely add[ing] another method...for compliance with existing statutory registration requirements" as the IFR incorrectly claims,[24] DHS creates an entirely new requirement to provide extensive personal and family information to the government that has not been required before. Implementing such a requirement without complying with the required notice and comment processes is a plain violation of the APA.

By forgoing notice and comment rulemaking, DHS further ignored the reliance interests of the public. The regulated community primarily affected, and noted as such in the IFR, is not accustomed to registering, as it has never been possible for everyone to register. Now, however, pursuant to this IFR, DHS is requiring millions of people to comply with a new registration requirement. DHS is not merely providing a new online form. The actions required of the public cannot be shifted so suddenly, especially when considering the criminal penalty implications. Getting millions of people to comply with a new regulatory scheme requires a strong and sustained outreach campaign to all stakeholders in advance, not a surprise announcement. Millions of people cannot be registered overnight. Because the regulated community has acted in justifiable reliance on 85 years of consistent federal practice, DHS must recognize that it is drastically changing its position.

When a "prior policy has engendered serious reliance interests that must be taken into account," an agency must provide a more detailed explanation than would suffice for a new policy created on a blank slate.[25] By describing the IFR as merely procedural, DHS ignores the reliance interests of the regulated community and what it would realistically take to get millions of people to register. This overly broad and baseless claim to a procedural exemption from the APA's protections is an insult to the public's intelligence and the founding principles of due process our Constitution protects.

III. The Interim Final Rule violates the Administrative Procedure Act as it is arbitrary and capricious.

The G-325R was "live" and available to submit via a myUSCIS account well before the IFR's effective date, yet no information was provided regarding when its use was required or when enforcement would begin other than an effective date of the IFR at the website location for Form G-325R that DHS was accepting comments on the form. It is unclear whether, in order to avoid arrest and prosecution, noncitizens are expected to register before the IFR takes effect, or whether DHS considers the obligation to register within 30 days to run from the April 11, 2025 effective date. Further, the questions asked on Form G-325R require far more information than necessary for an individual to be registered and are thus unduly burdensome and exceed statutory authority.[26]

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[24] 90 FR at 11796.

[25] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

[26] *See* 8 USC §§1301 -1306.

a. The information requested on Form G-325R goes far beyond that which is necessary for registration of an individual.

Historically and consistent with the statute, the registration requirement required provision of far less information than what is now being sought under the IFR. Specifically, the Alien Registration Act of 1940 (a/k/a the Smith Act) required that the forms created for registration purposes:

> *contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the criminal record, if any, of such alien; and (5) such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General.*[27]

As discussed above, the historical context for the Smith Act is critical to understanding its purpose and appropriate scope. Prior to its passage, World War II was raging in Europe and Japan was engaged in a large-scale invasion and occupation of China. There was immense concern about when and how the war would impact the United States, including through potential foreign adversaries already present within the country. Congress passed this registration requirement to gather information regarding possible subversive activities in preparation for such an eventuality.

With this understanding in mind — an expanding global war on the doorsteps of the United States — the INS created the form AR-2[28], which was used only between August 1940 and March 1944 and which generally requested the following information from noncitizens in the United States:

- Name, name at time of entry, and other names used;
- Present address;
- Date of birth;
- Place of birth;
- Port, date, and ship of most recent arrival, as well as status at that time;
- Date of first arrival;
- "Usual" occupation, present occupation, and name, address, and business of employer;
- Membership in clubs, organizations, or societies of the prior five years;
- Information on prior military service;
- Whether a naturalization petition had been filed on the individual's behalf;
- Criminal record information;
- Signature

As should be apparent, these war-time requirements for registration focused almost exclusively on the present time information of the noncitizen. The only information requested pertaining to the noncitizen's past actions or activities were: 1) Information related to most recent arrival in the United States (understanding there was no I-94 equivalent at the time); 2) Membership in

[27] *See* Smith Act, Pub. L. No. 76-670, 54 Stat. 670 (1940), repealed by Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 403(a)(39), 66 Stat. 163, 280 (effective Dec. 24, 1952).
[28] *See* the history on AR-2 forms available through the National Archives here: https://www.archives.gov/research/immigration/alien-registration-ar-2

organizations over the previous five years; 3) Past military service; 4) Whether a naturalization application had previously been filed; and 5) Criminal history. The registration resulted in an AR-3 (Alien Registration Receipt Card) being produced, which noted nothing about immigration status. For that matter, there was no requirement for registrants to carry the AR-3.[29]

The statutory requirements have remained essentially unchanged since the Smith Act, and are reflected currently at 8 USC §1304(a), stating that the forms to be prepared for registration purposes for those who have not otherwise been registered:

> Contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed.[30]

The lack of meaningful change to the implementing statute over the last 85 years, or its enforcement, unequivocally demonstrates what has been understood as necessary for registration: identity, activities within the United States, length of time of expected presence in the United States, and public safety as it relates to criminal history and connection to foreign adversaries during wartime. Registration has not previously been used as a tool for massive information gathering to serve as a resource for the obvious targeting of the undocumented for deportation. Instead, registration has consistently been a means for collecting basic information about a noncitizen in the United States to ensure that criminal records have properly been reviewed, to flag national security threats during war-time and post-9/11, and that those within the United States have answered the basic questions of "when, why, and for how long."

The IFR vastly exceeds this longstanding understanding of what the registration requirement is meant to do, especially considering that the IFR does *not* anticipate or provide evidence of an ongoing war that will reach U.S. soil, and is instead morphing the registration requirement into something it was not meant to be: a massive dragnet of information gathering on noncitizens in the United States to facilitate their removal. While we do not support unlawful entry to the United States or willful violations of law, we also do not support the IFR erasing the difference between civil and criminal violations by characterizing a civil overstay as a misdemeanor criminal offense due to a non-citizen's failure to register and "carry" a qualifying registration document. This is no mere formality.

We submit that, at minimum, the below listed items of information being requested in the Form G-325R, pursuant to the IFR, exceed the statutory scope of 8 USC §1304(a), including §(a)(5). We believe that the only reasonable way to interpret the phrase "additional matters as may be prescribed" is that it must be read in the context of the statute which does not support DHS' vast expansion of the scope and reach of registration to cover the following information:

- **Address history, the length of time residing at each address, and specifically all physical addresses over the last five years**. The G-325R requirement that addresses

[29] *See* U.S. Citizenship and Immigration Services, USCIS Policy Manual, [Washington, D.C.] : U.S. Citizenship and Immigration Services, Vol.11 Part B.Ch.1
[30] 8 USC §1304(a).

be provided for the last 5 years is inconsistent with the governing statutes as well as historical practices and therefore unduly burdens registrants.

- **I-94 Arrival-Departure Record Number and expiration date of period of authorized stay as shown on Form I-94.** Individuals who have a Form I-94 are considered to already be registered; therefore such information would be superfluous and unduly burdensome on registrants. We also note that children under the age of 14 who applied for visas are registered under 8 USC §1201(b),[31]and they should not have to register again. Children, whether they have reached the age of 14 or not, who are admitted to the United States and issued a Form I-94 in nonimmigrant status, have a form of registration identified in 8 CFR § 264.1(a) and evidence of registration per 8 CFR §264.1(b).

- **Specifically requested date of departure from the United States.** As currently written, this question sequentially follows the question of "How long do you expect to remain in the United States." With the required text field preceding this question providing the information on length of stay in the United States, it is unclear what evidentiary value this specific date would provide except to create a false impression of inaccurate information to DHS in the event that plans change, or to suggest that a noncitizen misrepresented themselves should they not depart on the specific date entered. This question serves only to confuse and does not solicit additional helpful information for DHS.

- **Family information, including information about the registrant's marriage, spouse, and parents**. The registration requirement has historically focused solely on the registrant. However, as currently proposed in the IFR, a full 21 questions are devoted to the individual's spouse and their parents. This information does nothing to further the objectives of the registration requirement and clumsily attempts to turn the registration requirement into something it was not contemplated to be, while at the same time putting undue burdens on applicants conscientiously attempting to complete this form.

Each of the categories of information and specific pieces of information requested above pursuant to the registration rule are either superfluous or exceed the scope of what would be necessary for an individual to properly record their information with DHS. Where previous registrations had a "look back" period on certain questions, they were clearly tied to national security during an impending (and then active) war. One's past military service and organizational memberships were important information for the then-INS to screen during World War II. This wartime/peace-time distinction is important, especially as DHS currently possesses insufficient resources to process the information it currently collects, much less unnecessary information coming from what may be millions of registrants. The above requested information, at minimum, does not appear necessary for the proper performance of the functions of DHS, does not possess any practical utility for the agency beyond filling up server space, and is in violation of the Paperwork Reduction Act (PRA).

[31] 8 USC §1302(b) (referring to registration of a child less than fourteen years old who "has not been registered under section 1201(b) . . .").

We request DHS review the questions asked in, and the information solicited by, the form to determine if each is necessary and consistent with the type of information enumerated in 8 USC §1304(a). Alternatively, if the question is instead unduly burdensome to a registrant, duplicative of information already requested by DHS, or unnecessary for DHS to successfully register a noncitizen's biographic information in its systems, then it must be promptly removed form the form. A Notice of Proposed Rulemaking instead of an IFR would have enabled stakeholders and the public to weigh in and help DHS avoid such arbitrary, capricious, and unduly burdensome questions from being implemented.

This form is comparable to the DS-5535 supplemental questionnaire used by the U.S. Department of State for visa applicants, **which was proposed for public comment** in February of 2021.[32] Thus, we believe the Form G-325R requires similar public scrutiny as to its actual implications and impact.

b. There should be no imposition of a biometrics fee

Section IV of the Supplementary Information portion of the IFR requests public comment on the option of imposing a biometric services fee of $30 per registrant, for the collection, use, and storage of biometric information, pursuant to 8 CFR §§103.16-17. DHS explains that USCIS currently pays approximately $10 to the FBI for fingerprinting results, and approximately $19.50 for the biometric collection, storage and use at an ASC.

DHS should not implement a biometric services fee for the registration process. A services fee is just that – a fee paid for services. With most fees collected by DHS relating to immigration, an individual can choose whether he or she wants the services being requested and, by making that decision, can elect whether to incur a fee for the biometrics portion of an application. When someone files Forms I-600, I-800, I-485, I-765 or any other form for which biometrics are required, they are making an affirmative decision to request the specific immigration benefit. With that decision comes acceptance of the ancillary requirement to pay a biometrics fee. The comparable DS-5535 noted above requires no separate fee collected by the U.S. Department of State.

The registration process and required completion of Form G-325R for those not already registered is not a process one can choose to complete; there is no choice. The biometrics services fee therefore is not for "services" at all. Instead, it is assessment of an additional, involuntary fee that is unlike any other services fee charged by DHS. Requiring payment for such an obligation that is entirely unrelated to a benefit application would be inconsistent with broader DHS practice.

Moreover, the mechanism for collecting this biometrics fee is unclear. Because the fee is not tied to a benefit request, there is no filing fee check being written and sent to USCIS for collection. Some individuals who may be subject to the fee do not have access to a credit card or, in some instances, even the internet, making online payment exceptionally difficult or practically impossible. Implementing a fee without a fully functional mechanism allowing individuals to pay it is patently unwise, not good policy and puts individuals who want to comply with the rule but lack the logistical ability to do so in an impossible position.

[32] 86 FR 8475 (February 5, 2021).

DHS should also consider the effect of such a fee on families with limited means. While a $30 fee may seem inconsequential, for a family of limited means, this amount can add up quickly. Multiplying the fee by five family members, for instance, suddenly becomes a $150 fee for the family to absorb. For families already struggling to make ends meet, finding an additional $150 to spend to comply with a new requirement unrelated to any immigration benefit application can be a real and practical issue. This is exacerbated by the lack of clarity on whether fee waivers would be applicable to such a fee, and how such a waiver would be requested. Would individuals unable to afford the fee need to separately file an I-912 Request for Fee Waiver? And if so, how would that I-912 be connected to the payment of the $30 biometrics fee? Simply creating the mechanism of connecting those two applications would require a system that presumably doesn't yet exist at DHS and would be an unnecessary expenditure of limited government resources.

DHS should limit the application of services fee to just that – a request for services. Complying with the IFR is not a request for services and should not carry an additional fee.

c. More Effective and Efficient Forms Exist to Capture the Same Information as Registration Without Being Burdensome

As noted above, the stated basis for the implementation of the IFR is that it is a procedural rule, with which we have disagreed at length above, and is in support of Executive Order 14159, entitled, "Protecting the American People Against Invasion." DHS notes that the primary impacted populations include:

> (1) "[a]liens who are present in the United States without inspection and admission or inspection and parole and have not yet registered,"
> (2) "Canadian visitors who entered the United States at land ports of entry and were not issued evidence of registration," and
> (3) "an alien, whether previously registered or not, who turns 14 years old in the United States and therefore must register within 30 days after their 14th birthday."

In creating an additional form for the first stated population to complete, adding criminal consequences and an increased potential fine amount is unlikely to serve as a sufficient motivator for compliance. The original statutory provision sets forth a fine of up to $100, not $5000.

> (e)PERSONAL POSSESSION OF REGISTRATION OR RECEIPT CARD; PENALTIES
> Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d). Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed $100 or be imprisoned not more than thirty days, or both.[33]

Regarding the second and the third populations cited, some of the members of which do not have internet access, the requirement to create individual electronic accounts, to complete a form asking

[33] 8 U.S.C. § 1304(e).

for more information than they would have otherwise had to provide for admission into the United States, and then to appear for a biometrics appointment at an ASC is overly burdensome.

Waiting 30 days for such individuals to self-report would be far less efficient and far less effective than capturing the required information at the time of entry. The stated objectives of the IFR would be better served by capturing all of the information at one's time of entry. The policy goal should be to have as much compliance as possible and not set traps for the unwary to be punished.

Moreover, having significantly greater populations of foreign nationals appear at ASCs will only increase the burden at ASCs. If the person intends to visit the U.S. for four to six months, it is unclear as to how will the ASC appointments be expedited to facilitate the availability of required Registration Certificates. The IFR indicates that upon completion of Form G-325R, a notice to appear at an ASC will be generated.[34] The notice will contain the date, time, and location for appearance. If the notice is similar to other ASC biometrics appointment notices, individuals who are not able to appear at the specified time, place, and location must contact the USCIS to reschedule such an appointment. This requirement will also delay ASC appointments for everyone else who needs to have their biometrics completed, such as those in the adjustment of status process. The additional work and inefficiency created by this poorly considered process are counterproductive. This added burden is also unlikely to encourage compliance and therefore will undermine the original purpose for the implementation of the IFR.

In addition to registration, the current regulation at 8 CFR 264.1(b) requires individuals to carry evidence of registration, which includes, among other evidence, Form I-94. The relevant statute provides:

> (e)PERSONAL POSSESSION OF REGISTRATION OR RECEIPT CARD; PENALTIES
> Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d). Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed $100 or be imprisoned not more than thirty days, or both.[35]

Given that all of this information is electronically available, it would seem fundamentally more efficient to provide for alternatives to a physical copy of the evidence of registration. It seems fundamentally incongruous in 2025 to create an additional burden on individuals to carry the physical documentation in their possession, when an officer can easily access the required documentation and information electronically via the myUSCIS account or for that matter as to the Form I-94 or I-94W, the CBP I-94/I-94W url address. While having such evidence may facilitate the process and be a convenience to the officer, it should not rise to the level of being a misdemeanor, potential fine of up to $5000, potential imprisonment of 30 days, or even both. In a day and age where carrying physical documents is increasingly less common and CBP has moved to stampless entry and simplified arrival processes to reduce the generation of paper documents,

[34] DHS noted that an appointment notice will not be generated for those for whom fingerprinting is waived, such as children under the age of 14 or Canadian nonimmigrants. *See* 90 FR at 11795.
[35] 8 USC §1304(e)

we believe that offering an electronic alternative would encourage more compliance. In addition, there is no recognition of receipts generated via the Trusted Traveler programs of CBP such as Global Entry as registration documents.

d. There is a reason for noncontrolled Canadian visitors.

Our Canadian neighbors visiting the United States have been insulated in the past from registration. For example, by 1952, Canadians who were visiting the United States for less than six months and Mexican workers under the Bracero program were exempt from registration requirements, even though there was no clear authorization in the statute for these pragmatic exemptions.[36]

For Canadian visitors in the U.S. for thirty days or more, CBP has long waived the need for such visitors to obtain an admission stamp in their passport or a Form I-94 admission record.[37] The IFR does not exempt Canadians from admission records even though they are exempt from most nonimmigrant visa foil requirements that apply to other nationalities. CBP statistics and media reports already reflect that admissions at the northern land border have already reduced.[38] Such reduction in northern land border admissions broadly and negatively impact the U.S. economy and this enhanced enforcement focus targets a historically most favored trading partner that has experienced long standing and mutually beneficial streamlined procedures to enter the U.S.

As noted in the IFR[39] CBP admits many Canadian nonimmigrants to the United States as business visitors or tourists (comparable to admission as a B-1/B-2 visa holder, respectively) at the land border without a Form I-94 admission record. For that matter, due to CBP's implementation of stampless entry, they are also unlikely to be provided an admission stamp that references an entry date, category of admission, and end date.[40]

Canadians are also visa-exempt in most nonimmigrant categories based on their low security risk, good compliance record, and historical treatment as a most favored trading partner. To enforce the use of the provisional Form I-94 process at the land border will tax existing limited CBP staff for a small return in protecting the public from any potential security threat lurking among our Canadian neighbors. Based on Canadian government statistics, at the end of 2024, 60% of all of Canada's foreign financial assets and 53% of all international liabilities were in the United States. Canadian investors' holdings of United States securities substantially increased from $823.7 billion in 2014 to $3,044.8 billion at the end of 2024, which represents a growth of 270% over the prior 10 years. For that matter, United States securities totaled 73% of all foreign securities held by Canadian investors in 2024.[41]

Canadians visiting the United States via air will have a Form I-94 created as part of their airline ticket process. That is why registration is not a burden in this situation. Nor is it a burden for sea

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[36] *See* Nancy Morawetz & Natasha Fernández-Silber, *Immigration Law and the Myth of Comprehensive Registration*, 48 U.C. Davis L. Rev. 141, 173 (2014) (hereafter *Myth of Comprehensive Registration)*
[37] 90 FR at 11795.
[38] *See* CBP traveler statistics here: https://www.cbp.gov/newsroom/stats/travel
[39] 90 FR at 11793.
[40] 8 CFR §212.1(a)(1) and §235.1(f)(1)(ii).
[41] *See* information on 'Focus on Canada and the United States' here: https://www.statcan.gc.ca/en/topics-start/canada-united-states/investment-ownership

entries. The land border is always treated differently due to processing time concerns for pedestrian, commercial, and passenger vehicular traffic. The reason to treat land border admissions differently was recognized even back in 1950 as noted earlier in this comment. In addition, due to CBP's pragmatic approach, Canadians are accustomed to being allowed to remain in the United States for up to six months after driving into the United States via a land port of entry for decades.

At a minimum, AILA and the Council recommend that DHS correct 8 CFR §235.1(h) to make land, sea, and air issued Forms I-94 by default valid for multiple entries. Right now, only a Form I-94 issued at the land border is by default a multiple entry document.[42] An air or sea issued Form I-94 is only valid for a single entry, unless otherwise designated. Note that the language of the regulation does not consider the electronic I-94 online world we live in. It still contemplates a physical surrender of the Form I-94 for compliance. CBP has implemented a voluntary self-reporting exit function on the CBP Home mobile app, but this option should only be necessary in the land border environment due to the availability of passenger manifests for air and seaports to track departures from the United States. For that matter, the IFR does not address the fact that the CBP and the Canada Border Services Agency have a data sharing agreement.[43]

As noted above, the necessity to download and print a paper Form I-94 to "carry" or "possess" is an anachronism. The availability of the record via the internet for the agency to review should be sufficient for efficiency as well as security. CBP is using facial recognition technology extensively.[44] The use of the paper Form I-94 is throw-back to an era long gone and not necessary to achieve security objectives and must be eliminated.

e. The change in the Designated Forms under Section 264.1 overlooks categories and unnecessarily burdens them

The IFR's amendments to 8 CFR §264.1's list of prescribed registration forms, and forms constituting evidence of registration, only add "the new form at 8 CFR §264.1(a)" and "the corresponding evidence of registration at 8 CFR §264.1(b).[45] This change was done narrowly even though the IFR recognizes that "an alien who entered without inspection and who is later encountered by DHS, such as by applying for (or being granted) asylum or Temporary Protected Status (TPS), would not typically use the registration forms [currently] identified in 8 CFR §264.1(a) when applying for asylum or TPS."[46]

The IFR recognizes that such persons with grants of legal status, such as through TPS, can obtain EADs but do not have to do so.[47] This means that persons who obtain registration-qualifying documents with an EAD, and those who do not obtain an EAD are treated differently in the IFR.

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[42] *See* USCIS I-94 information here: https://www.cbp.gov/travel/international-visitors/i-94#:~:text=If%20you%20received%20an%20electronic,the%20I%2D94%20Fact%20Sheet.
[43] *See* information on the Free and Secure Trade Program here: https://www.cbsa-asfc.gc.ca/prog/fast-expres/about-apropos-eng.html
[44] *See* CBP information on use of biometric facial comparison technology here: https://www.cbp.gov/travel/biometrics
[45] 90 FR at 11796.
[46] *Id*. at 11795
[47] *Id*. at 11795, n.5.

In fact, there are many other types of applications for immigration benefits that already request the type of information required by 8 USC. §1304(a), and which do not necessarily result in the production of an EAD, yet do not qualify as having registered or having evidence of registration under either the current regulation or the IFR. This group includes, but is not limited to, persons who have:

- applied for or have been granted Deferred Action for Childhood Arrivals (DACA) without requesting or obtaining an EAD,
- applied for or have been granted U or T nonimmigrant status without requesting or obtaining an EAD,
- applied for or have been granted VAWA benefits via a stand-alone Form I-360 (which leads to a grant of deferred action) without requesting or obtaining an EAD.

In these circumstances, the registration information required by 8 USC §1304(a) has already been provided, and such persons would be present with an authorized stay in the United States. Yet, the regulations were not amended to treat these persons as having been registered or as having evidence of registration. Imposing the requirement to obtain a registration certificate requires unnecessarily duplicative efforts by persons subject to the rule and creates unnecessary potential exposure to criminal sanctions. No explanation or justification was given in the IFR for the exclusion of these persons from the amendments to the regulatory lists. Noncitizens who have already submitted detailed information to the government through other forms may reasonably believe they have "registered" already.

If DHS had complied with the law and provided advance notice and an opportunity to comment, these significant issues would have been addressed and the agency could not have disregarded its obligation to consider such comments and either amend the proposal or provide an explanation and a justification for why similarly situated persons are being treated differently solely for failing to request an EAD in conjunction with requests for immigration benefits which would otherwise satisfy the information requirements of 8 USC §1304(a).

IV. The Interim Final Rule should be withdrawn because it is vague in that it does not provide sufficient information for compliance, thus making it arbitrary and capricious.

a. It is unclear whether individuals must provide only fingerprinting or a full set of biometrics for compliance

The IFR states that "Submission of the registration in myUSCIS initiates the process for the foreign national's Biometrics Services Appointment at a USCIS Application Support Center (ASC). USCIS contacts the registrant regarding the biometrics services appointment and the collection of biometrics, including fingerprints, photograph and signature.[48]" Elsewhere, however, the IFR refers to "the registration and fingerprinting requirements of 8 U.S.C. 1302."

[48] 90 FR 11793

As the IFR implicitly acknowledges, the statutory registration provisions refer only to fingerprinting, and not to other biometrics. The IFR, in contrast, refers to the collection of "biometrics, including fingerprints, photograph and signature."

It is therefore not clear as to what is required in order to be compliant. Does someone have to provide just fingerprints or does one have to provide a full set of biometrics? If the IFR is intended to collect additional forms of biometrics, it exceeds the statutory authority. Nowhere in the IFR, however, has it been explained on what rationale, and under what authority, these additional biometrics are to be collected. Absent such rationale and authority, submission of the registration should result in the collection only of fingerprints, and not of other biometrics. Moreover, requiring more than fingerprints would be inconsistent with the other means by which one would be considered registered.

b. The requirement to file online only, in English only, and without attorney representation, makes registration inaccessible for many individuals.

Failure to offer an alternative to online filing is unacceptable. It is unreasonable, overly burdensome and challenging for many to allow only online filing. Not all people have access to the internet. For those who do, it may only be through use of their mobile phone. Form G-325R has lengthy questions that cannot be easily reviewed on a small phone screen. Moreover, the form not only requires someone to view the questions, but to also provide lengthy and detailed responses. Failure to provide accurate information would have dire consequences. On small screens, it is easy to enter incorrect information. The design of mobile phones was never meant to allow for detailed, lengthy responses on USCIS forms

Even if the foreign national has access to the internet on a computer, myUSCIS remains a complex system that even very experienced individuals have difficulty navigating. An English-only form with complicated, compound questions, is setting up foreign nationals for failure, particularly those with limited education and only a rudimentary comprehension, if any, of written English. Moreover, Form G-325R does not appear to have any functionality allowing the option for individuals to have an attorney represent them and facilitate the process, nor any option for an attorney to make an appearance via filing Form G-28, as the actual Form G-325R can only be prepared on the foreign national's myUSCIS account. Attorney accounts on myUSCIS do not list the Form G-325R. Having the option only to file the form online in English is an issue for those without computer access, or with limited education or little or no English and is a fatal flaw of the IFR's registration process.

Allowing for online only filing will effectively penalize low income and rural foreign nationals with limited access to computers and the internet. Moreover, requiring compliance by foreign nationals who were never inspected or admitted, via a system that provides only an online option that must be submitted through an already complicated government computer system is both unfair and unrealistic. Accordingly, AILA and the Council urge DHS to withdraw the IFR until a more effective and fair mechanism can be proposed through the APA's notice and comment process.

c. The IFR is vague, and several open questions remain unanswered, urgently requiring DHS clarification before the rulemaking goes into effect.

One of the key benefits of the notice and comment process under the APA is to provide the public with the opportunity to point out aspects of a proposed rule that are unclear or confusing. This allows the agency promulgating the rule to adjust the regulatory language to resolve these ambiguities, resulting in a rule that is much clearer and easier to understand. By skipping the notice and comment process altogether and publishing this rule as an IFR, DHS has missed the opportunity to receive questions about these ambiguities and to address them and adjust the rule language accordingly.

This rule is replete with ambiguities that require more clarification from DHS before the rule goes into effect. These include:

1. Whether children under 14 years of age who enter the United States on a visa (e.g., H-4, L-2, etc.), and therefore have already been registered consistent with 8 USC §1201(b), are required to re-comply with the registration requirements of 8 USC §1302, including the new requirement to register and be fingerprinted when they turn 14 years old.

2. Whether visa-exempt Canadian children who enter the U.S. under the age of 14 are subject to the requirement to register and be fingerprinted when they turn 14.

3. The extent to which the registration requirements are retroactive, and whether they cover people who entered the U.S. more than 30 days before the IFR was published or takes effect, or whether they cover children subject to registration upon turning 14 who turned 14 more than 30 days before the IFR was published or takes effect. If it is not retroactive, it is unclear whether DHS is setting the applicability date at the March 12th IFR publication date or the April 11th IFR effective date.

4. Whether lawful permanent resident (LPR) children who turn 14 must go through the Form G-325R process. Children who applied for an immigrant visa under the age of 14 also were already registered pursuant to 8 USC §1201, and the text of 8 USC §1302(b) can be read as not requiring re-registration upon reaching 14 years of age. It is also unclear whether all children who received Form I-551 while under the age of 14 are exempt from the process as long as they comply with the existing rule that they file a Form I-90 within 30 days of turning 14 to apply for a new green card.

    - Relatedly, there is a question with respect to children who do not file a Form I-90 within 30 days of turning 14 because their current green card expires before they turn 16, such that the Form I-90 regulations at 8 CFR §264.5 exempt them from having to file a Form I-90 within 30 days of turning 14 – do they need to go through the Form G-325R process when they turn 14 because they are using that regulatory exception that allows them not to submit a Form I-90 (and get fingerprinted) until they file their routine green card extension application within 6 months of the card's expiration?

The confusion caused by the IFR is even reflected on the USCIS website, where despite the IFR identifying the listed documents as evidence of registration, whether or not they have expired, the USCIS webpage on the new registration process[49] says (emphasis added):

Aliens who have already registered include:

- Lawful permanent residents;
- Aliens paroled into the United States under INA 212(d)(5), ***even if the period of parole has expired***;
- Aliens admitted to the United States as nonimmigrants who were issued Form I-94 or I-94W (paper or electronic), ***even if the period of admission has expired***;
- All aliens present in the United States who were issued immigrant or nonimmigrant visas before their last date of arrival;
- Aliens whom DHS has placed into removal proceedings;
- Aliens issued an employment authorization document;
- Aliens who have applied for lawful permanent residence using Forms I-485, I-687, I-691, I-698, I-700, and provided fingerprints (unless waived), even if the applications were denied; and
- Aliens issued Border Crossing Cards.

It is confusing that for some documents on the list (NIV I-94, parole documents), the USCIS registration webpage makes it a point to say they count as registration even if expired, but the webpage doesn't repeat that for other documents on the list, in particular, EADs and BCCs. As for green cards, USCIS chose to describe the already-registered class as "lawful permanent residents," rather than following the regulation and listing "I-551 Permanent Resident Card", so they did noy have the opportunity to address the "expired or not" issue as to green cards. Therefore, DHS should clarify whether a foreign national's receipt of any of these documents counts as being registered, regardless of whether the document may now be expired.

V. The IFR is unconstitutional and should be withdrawn.

a. The Interim Final Rule violates the Fifth Amendment

The registration process under the IFR creates several compelled self-incrimination problems in violation of the Fifth Amendment of the Constitution.

The Constitution commands that "[n]o person ... shall be compelled in any criminal case to be a witness against himself.[50]" This privilege against compelled self-incrimination exists not only to "preserv[e] the integrity of [the] judicial system," but it also "reflects the Constitution's concern for the essential values represented by 'our respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life.[51]'" It "reflects many of our fundamental values and most noble aspirations," including "our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury

[49] *See* USCIS page on the Alien Registration Requirement here: https://www.uscis.gov/alienregistration
[50] U.S. Const. amend. V.
[51] *Tehan v. U.S. ex rel. Shott*, 382 U.S. 406, 415-16 (1966)

or contempt," and it "registers an important advance in the development of our liberty—'one of the great landmarks in man's struggle to make himself civilized.[52]'"

"The privilege afforded not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime."[53] "To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result."[54] To reject an invocation of the privilege, it must be "'*perfectly clear*, from a careful consideration of all the circumstances in the case, that the witness is mistaken, and that the answer(s) *cannot possibly* have such tendency' to incriminate.[55]"

History and tradition provide that a person may claim the privilege in any proceeding whatsoever in which testimony is legally required when their answer might be used against them in that proceeding or in a future criminal proceeding or when it might be exploited to uncover other evidence against him. This has long been true for administrative proceedings.[56] For example, an "obligatio[n] to register" with an agency "create[s] ... 'real and appreciable,' and not merely 'imaginary and unsubstantial,' hazards of self-incrimination," especially where one is "confronted by a comprehensive system of federal" regulation, and is "required, on pain of criminal prosecution, to provide information which he might reasonably suppose would be available to prosecuting authorities, and which would surely prove a significant 'link in a chain' of evidence tending to establish his guilt" for some offense.[57] In *Marchetti,* the Supreme Court specifically held that requiring the defendant to register and pay wagering taxes violated his privilege against self-incrimination.

Not unlike the situation the Court considered in *Marchetti*, the IFR's registration requirement is a compulsory "duty" the completion of which could render someone vulnerable to criminal prosecution.[58] The registration "forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed."[59] Registrants "shall submit under oath the information required for such registration."[60] Willful failure to register is subject to criminal penalties.[61]

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[52] *Id*. at 414, n.12 (citations omitted).
[53] *Hoffman v. United States*, 341 U.S. 479, 486 (1951) (citation omitted).
[54] *Id*. at 486-87.
[55] *Id*. at 488 (citations omitted).
[56] *Kastigar v. United States*, 406 U.S. 441, 444–45 (1972) "It can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used. (footnotes omitted); See also, *Petition of Groban*, 352 U.S. 330, 333 (1957) (collecting cases).
[57] *MIarchetti v. United States*, 390 U.S. 39, 48 (1968) (citations and footnotes omitted).
[58] 8 USC §§1302(a) & (b)
[59] *Id*. at §1304(a).
[60] *Id*. at §1304(c)
[61] *Id*. at §1306(a)

The making of a knowingly false statement on an application for registration is also subject to criminal penalties.[62] In fact, knowingly and willfully making a materially false statement on an application for registration would also be a felony punishable up to five years in prison.[63] Even the knowing and willful making of false statements that amount to "a simple denial of guilt" would constitute a felony under §1001(a)(2) due to the Supreme Court's rejection of the traditional "exculpatory no" doctrine in the context of §1001 prosecutions.[64] And, given that "neither the text nor the spirit of the Fifth Amendment confers a privilege to lie," the only option available for "'[p]roper invocation of the Fifth Amendment privilege against compulsory self-incrimination allows a witness to remain silent, but not to swear falsely.'"[65]

In other words, the only way that a person subject to this IFR can invoke their privilege against self-incrimination is either not to register, or to register without fully completing the registration form. But pursuing either option, including incomplete registration, would likely amount to a criminal offense under 8 USC §1306(a). Providing false responses on the registration form would obviously not be an option.

With that in mind, the registration process under the IFR creates several compelled self-incrimination problems in violation of the Fifth Amendment. This is a function of modern immigration law making unlawful entry and reentry criminal offenses.[66] Additionally, the felony offense of illegal reentry after removal applies even to the act of being "at any time found in, the United States," *id*. at §1326(a)(2), which is a continuing offense that starts the statute of limitation at the moment of being "found," *e.g.*, *United States v. Santana-Castellano*, 74 F.3d 593, 597-98 (5th Cir. 1996). Failure to give written notice of a change of address is also a criminal offense, pursuant to 8 USC §1306(b).

Thus, the following questions on Form G-325R give rise to self-incrimination problems because they "not only exten[d] to answers that would in themselves support a conviction under a federal criminal statute but likewise embrac[e] those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime."[67]

- Question 1.11 (last 5 years of address history),
- Question 1.12 (last arrival), and
- Question 1.13 (I-94 information).

For someone who unlawfully entered, reentered, or reentered following removal, the United States, answering these questions would be self-incriminatory. For someone who failed to report their change of address, answering at least the address history question would be self-incriminatory. Even more flagrantly, Question 3.2 asks if the registration has ever committed **any** crime for which they have not been arrested, convicted, etc. Question 3.5, which inquires into past violations of

[62] *Id*. at §1306(b).
[63] 18 U.S.C. § 1001(a)(2).
[64] *Brogan v. United States*, 522 U.S. 398, 400-06 (1998)
[65] *Id*. at 404-05
[66] 8 US.C §1325(a).
[67] *Hoffman*, 341 U.S. at 486 (citation omitted).

controlled substance laws without limiting the question to convictions, suffers from the same problem.[68]

These serious Fifth Amendment issues are in sharp contrast to the approximately 85-year policy that noncitizens who were ineligible to use the designated forms had no enforceable obligation to register or carry proof of registration. Under the current regulations, registration and evidence of registration are based on existing immigration processes for screening noncitizens: visa and benefit applications, admission procedures, and removal proceedings—not a new registration form as required by the IFR. We thus ask that you withdraw the IFR until such time as these problems can be resolved with appropriate public input.

VI. Conclusion

The IFR is replete with legal issues, including the failure to provide a proper advance notice and comment opportunity for a substantial change in policy that affects millions of people without articulating a reasoned explanation for the change, violates the Fifth Amendment, fails to consider problems and ambiguities DHS has created, fails to offer options that optimize compliance and avoid duplicative and overburdensome requirements on the impacted population, and fails to clearly describe the classes of affected individuals who are or are not required to register or be fingerprinted or have other biometrics taken. For these reasons, the IFR must be withdrawn. The presentation of the IFR as a simple form change is either shockingly naive or patently disingenuous. Its alarming lack of implementing guidance for those foreign nationals subject to the IFR's registration requirement will directly result in inadvertent noncompliance and negatively affect large numbers of low-risk visitors. More fundamentally, the IFR will have limited impact on its stated national security goals and will realize little return on the security dollar investment of DHS.

In light of these challenges, AILA and the Council strongly recommend that DHS withdraw the IFR and provide the public with an opportunity to comment on its requirements in accordance with the agency's obligations pursuant to the APA or, at an absolute minimum, postpone the effective date of the IFR, and meaningfully assess and respond to the comments provided herein, utilizing thoughtful and studied data and recommendations before implementing any policy changes to the registration process.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION
THE AMERICAN IMMIGRATION COUNCIL

[68] The only way to move forward with these compelled inquiries would be for the provision of derivative and use immunity to registrants. *Kastigar*, 406 U.S. at 445-47, 452.