DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208 and 235

RIN 1615-AC57

[CIS No. 2844-26; Docket No: USCIS 2020-0013]

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1235

RIN 1125-AB08

[Dir. Order No. 03-2025]

Security Bars and Processing; Confirmation of Effective Date; Partial Withdrawal

AGENCY: U.S. Citizenship and Immigration Services ("USCIS"), Department of Homeland Security ("DHS"); Executive Office for Immigration Review ("EOIR"), Department of Justice ("DOJ").

ACTION: Final rule; partial withdrawal and correction.

SUMMARY: In December 2020, DHS and DOJ (collectively, "the Departments") issued a final rule that clarified when an alien who poses a public health risk is ineligible for asylum and withholding of removal and revised their credible fear screening regulations. After multiple delays, the rule is scheduled to take effect on December 31, 2025. However, since December 2020, the Departments have further amended their regulations, complicating the codification of the 2020 rule. In this final rule, the Departments are withdrawing certain amendments from the 2020 rule while leaving unaltered the rule's substantive public health-related provisions, which will become effective as scheduled.

DATES: *Partial Withdrawal:* As of December 29, 2025, amendatory instructions 4, 5, 6, 7, 8, 12, 13, and 14 published on December 23, 2020, at 85 FR 84160, which were delayed by the rules published at 86 FR 6847 (Jan. 25, 2021), 86 FR 15069 (Mar. 22,

2021), 86 FR 73615 (Dec. 28, 2021), 87 FR 79789 (Dec. 28, 2022), and 89 FR 105386 (Dec. 27, 2024), are withdrawn.

Effective Date: The corrections in this document are effective December 31, 2025.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Summary

In December 2020, the Departments published the final rule titled "Security Bars and Processing," 85 FR 84160 (Dec. 23, 2020) ("Security Bars Final Rule"), to clarify that the statutory "danger to the security of the United States" bars to eligibility for asylum and withholding of removal encompass certain emergency public health concerns. Additionally, the Security Bars Final Rule introduced procedural changes relating to credible fear processing for certain aliens. The Security Bars Final Rule was slated to become effective on January 22, 2021; however, the rule's effective date was delayed multiple times due to a preliminary injunction against a related rule and due to conflicts with other rules issued while it was delayed. *See* Security Bars and Processing; Delay of Effective Date, 86 FR 6847 (Jan. 25, 2021) ("January 2021 Delay Final Rule"); Security Bars and Processing; Delay of Effective Date, 86 FR 15069 (Mar. 22, 2021) ("March 2021 Delay IFR"[1]); Security Bars and Processing; Delay of Effective Date, 86 FR 73615 (Dec. 28, 2021) ("December 2021 Delay IFR"); Security Bars and Processing;

[1] "IFR" means "interim final rule."

Delay of Effective Date, 87 FR 79789 (Dec. 28, 2022) ("December 2022 Delay IFR"); Security Bars and Processing; Delay of Effective Date, 89 FR 105386 (Dec. 27, 2024) ("December 2024 Delay IFR").

This rule withdraws amendatory instructions of the Security Bars Final Rule that would conflict with amendments made by rules issued while its effective date was delayed or that may otherwise cause confusion. The rule makes no changes to the substantive public health-related provisions that the Security Bars Final Rule adopted. Notably, even though the Departments will no longer codify provisions of the Security Bars Final Rule related to fear screening, the Departments may still consider the Security Bars Final Rule's clarifications of "danger to the security of the United States" bars to asylum and withholding of removal, in such screenings. *See* Application of Certain Mandatory Bars in Fear Screenings, 89 FR 103370 (Dec. 18, 2024) ("DHS Mandatory Bars Rule") (providing USCIS asylum officers ("AOs") discretion to consider the potential applicability of specified mandatory bars to asylum and statutory withholding of removal during fear screening processes); *see also* Clarification Regarding Bars to Eligibility During Credible Fear and Reasonable Fear Review, 89 FR 105392 (Dec. 27, 2024) ("EOIR Bars IFR") (allowing Immigration Judges to review an AO's determination that a mandatory bar applies in credible and reasonable fear reviews).

II. Background

A. Legal Authority

The Attorney General[2] and the Secretary of Homeland Security issue this rule pursuant to their respective authorities concerning asylum and withholding of removal determinations.

The Homeland Security Act of 2002 ("HSA"), Pub. L. 107–296, 116 Stat. 2135,

[2] In Attorney General Order Number 6260-2025 (May 8, 2025), the Attorney General exercised her authority under 28 U.S.C. 509 and 510 to delegate her authority to issue regulations related to immigration matters within the jurisdiction of EOIR to EOIR's Director.

as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The Immigration and Nationality Act ("INA" or "Act"), as amended, charges the Secretary "with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens," INA 103(a)(1), 8 U.S.C. 1103(a)(1), and grants the Secretary the power to take all actions "necessary for carrying out" the Secretary's authority under the provisions of the INA, INA 103(a)(3), 8 U.S.C. 1103(a)(3).[3] The HSA also transferred to DHS responsibility for initial adjudication of affirmative asylum applications, *i.e.*, applications for asylum first made outside the removal context. *See* 6 U.S.C. 271(b)(3).[4] Specifically, the HSA vested the adjudication of affirmative asylum and refugee applications with USCIS.[5] *Id.* USCIS AOs determine in the first instance whether an alien's affirmative asylum application should be granted. *See* 8 CFR 208.2(a)(1).

But the HSA retained DOJ's authority over certain individual immigration adjudications including those related to defensive asylum applications, *i.e.*, applications for asylum made in removal proceedings under section 240 of the INA, 8 U.S.C. 1229a ("section 240 removal proceedings"). EOIR conducts these adjudications, subject to the direction and regulation of the Attorney General. *See* 6 U.S.C. 521; INA 103(g), 8 U.S.C. 1103(g); INA 240, 8 U.S.C. 1229a. Thus, Immigration Judges within DOJ generally continue to adjudicate all defensive asylum applications filed by aliens during section 240 removal proceedings in addition to adjudicating affirmative asylum

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[3] Additionally, under the HSA, references to the "Attorney General" in the INA also encompass the Secretary with respect to statutory authorities vested in the Secretary by the HSA or subsequent legislation, including in relation to immigration proceedings before DHS. 6 U.S.C. 251, 271(b)(3), (5), 557.

[4] If USCIS does not approve an affirmative application for asylum and the alien appears to be inadmissible under section 212(a) of the INA, 8 U.S.C. 1182(a), or deportable under section 237(a) of the INA, 8 U.S.C. 1227(a), then, subject to certain exceptions, USCIS will place the alien into removal proceedings under section 240 of the INA, 8 U.S.C. 1229a, where the affirmative asylum application may be renewed for consideration by the Immigration Judge. 8 CFR 208.14(c)(1).

[5] When the HSA established DHS, the Citizenship and Immigration Services component was known as the "Bureau of Citizenship and Immigration Services." 6 U.S.C. 271(a)(1). DHS later changed the name of the Bureau of Citizenship and Immigration Services to USCIS. Name Change From the Bureau of Citizenship and Immigration Services to U.S. Citizenship and Immigration Services, 69 FR 60938, 60938 (Oct. 13, 2004).

applications referred to section 240 removal proceedings by USCIS.[6] *See* INA 101(b)(4), 8 U.S.C. 1101(b)(4) (defining "[I]mmigration [J]udge"); 8 CFR 208.14(c)(1), 1208.2(b); *Dhakal v. Sessions*, 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals ("BIA" or "Board"), also within DOJ's EOIR, in turn hears appeals from Immigration Judges' decisions in section 240 removal proceedings. *See* 8 CFR 1003.1(b)(3). In addition, the INA provides "[t]hat determination and ruling by the Attorney General with respect to all questions of law shall be controlling." INA 103(a)(1), 8 U.S.C. 1103(a)(1).

B. Legal Framework for Asylum and Withholding

Asylum is a discretionary benefit that the Attorney General or the Secretary can grant if an alien establishes, among other things, that he or she has experienced past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA 208(b)(1), 8 U.S.C. 1158(b)(1) (providing that the Attorney General and Secretary "may" grant asylum to refugees); INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A) (defining "refugee"). Aliens who are ineligible for a grant of asylum, or who are denied asylum based on the Attorney General's or the Secretary's discretion, nonetheless may qualify for other forms of protection. Specifically, an alien may be eligible for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3) ("statutory withholding of removal") or withholding or deferral of removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 114 ("CAT"). *See* 8 CFR 208.3(b), 208.13(c)(1), 208.16(c), 208.17(c), 1208.3(b), 1208.13(c)(1), 1208.16(c), 1208.17.

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[6] USCIS has jurisdiction to adjudicate defensive asylum applications filed by unaccompanied alien children in removal proceedings. INA 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C); *see also* 6 U.S.C. 279(g) (defining "unaccompanied alien child").

Withholding and deferral of removal bar an alien's removal to a specific country where the alien would "more likely than not" face persecution or torture, meaning that the alien would face a clear probability that his or her life or freedom would be threatened on account of a protected ground or a clear probability of torture. 8 CFR 208.16(b)(2), (c)(2), 1208.16(b)(2), (c)(2); *see INS v. Stevic*, 467 U.S. 407, 413, 424, 430 (1984) (holding that the "clear probability" or "more likely than not" standard applies to withholding of deportation). Thus, if an alien establishes that it is more likely than not that the alien's life or freedom would be threatened on account of a protected ground in a specific country, but is denied asylum for some other reason, the alien nonetheless may be entitled to statutory withholding of removal to that specific country if not also barred from that form of protection. INA 241(b)(3)(A), (B), 8 U.S.C. 1231(b)(3)(A), (B); 8 CFR 208.16, 1208.16. Likewise, an alien who establishes that he or she is more likely than not to face torture in the country of removal will qualify for protection under the regulations implementing the CAT (also referred to as "CAT protection"). *See* 8 CFR 208.16(c), 208.17(a), 1208.16(c), 1208.17(a).

The INA provides mandatory bars to applying for asylum at section 208(a)(2) of the INA, 8 U.S.C. 1158(a)(2), to asylum eligibility at section 208(b)(2)(A) of the INA, 8 U.S.C. 1158(b)(2)(A), and to eligibility for withholding of removal at section 241(b)(3)(B) of the INA, 8 U.S.C. 1231(b)(3)(B) (referred to collectively as "mandatory bars"). Pursuant to the CAT regulations, the mandatory bars to eligibility for withholding of removal under section 241(b)(3)(B) of the INA, 8 U.S.C. 1231(b)(3)(B), also apply to withholding of removal under those regulations. 8 CFR 208.16(d)(2), 1208.16(d)(2). If an alien would be entitled to withholding of removal under the CAT regulations but for being subject to a mandatory bar, the alien is entitled to deferral of removal pursuant to 8 CFR 208.17(a), 1208.17(a). 8 CFR 208.16(c)(4), 1208.16(c)(4). There are no bars to deferral of removal under the CAT regulations.

Specifically, the INA imposes the following statutory bars to asylum eligibility at section 208(b)(2)(A)(i)–(v), 8 U.S.C. 1158(b)(2)(A)(i)–(v), and to eligibility for withholding of removal at section 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B) for persons: (1) who "ordered, incited, assisted, or otherwise participated in the persecution of any person" "on account of" or "because of" a protected ground, INA 208(b)(2)(A)(i), 241(b)(3)(B)(i), 8 U.S.C. 1158(b)(2)(A)(i), 1231(b)(3)(B)(i); (2) who have been convicted of a "particularly serious crime," INA 208(b)(2)(A)(ii), 241(b)(3)(B)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), 1231(b)(3)(B)(ii); (3) for whom "there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States," INA 208(b)(2)(A)(iii), 241(b)(3)(B)(iii), 8 U.S.C. 1158(b)(2)(A)(iii), 1231(b)(3)(B)(iii); (4) for whom "there are reasonable grounds to believe that the alien is a danger to the security of the United States," INA 208(b)(2)(A)(iv), 241(b)(3)(B)(iv), 8 U.S.C. 1158(b)(2)(A)(iv), 1231(b)(3)(B)(iv); and (5) who are described in certain terrorism-related provisions, INA 208(b)(2)(A)(v), 241(b)(3)(B), 8 U.S.C. 1158(b)(2)(A)(v), 1231(b)(3)(B).

A sixth statutory bar to eligibility for asylum, which does not bar eligibility for withholding of removal, applies to any alien who "was firmly resettled in another country prior to arriving in the United States." INA 208(b)(2)(A)(vi), 8 U.S.C. 1158(b)(2)(A)(vi). Additionally, there are statutory bars to withholding of removal eligibility for admitted aliens who are deportable under section 237(a)(4)(D) of the INA, 8 U.S.C. 1227(a)(4)(D), for involvement in genocide, torture, extrajudicial killing, or Nazi persecution as defined in section 212(a)(3)(E)(i)–(iii) of the INA, 8 U.S.C. 1182(a)(3)(E)(i)–(iii). *See* INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B); 8 CFR 1208.16(d)(2).

C. Expedited Removal and Screenings in the Credible Fear Process

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104–208, div. C, 110 Stat. 3009, 3009–546, Congress established the

expedited removal process. This process applies to certain aliens who are present in the United States without having been admitted or having been paroled into the United States or who are arriving in the United States (and, in the discretion of the Secretary, certain other designated classes of aliens), provided the aliens are also either (1) inadmissible under section 212(a)(6)(C) of the INA, 8 U.S.C. 1182(a)(6)(C), which renders inadmissible aliens who make certain material misrepresentations; or (2) inadmissible under section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7), which renders inadmissible aliens who lack documents required for admission. INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i). DHS may remove an alien subject to expedited removal, "without further hearing or review unless the [alien] indicates either an intention to apply for asylum . . . or a fear of persecution." *Id.*

Congress created a screening process, known as "credible fear" screening, to identify potentially valid claims for asylum by aliens in expedited removal proceedings. The Departments have used the same screening process to identify potentially valid claims for statutory withholding of removal and CAT protection. If an alien indicates a fear of persecution or torture, a fear of return to his or her country (which may involve possible persecution or torture, even if not necessarily articulated as such by the alien), or an intention to apply for asylum during the course of the expedited removal process, DHS refers the alien to a USCIS AO to determine whether the alien has a credible fear of persecution or torture in the country of citizenship or removal. INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); *see also* 8 CFR 235.3(b)(4). An alien has a "credible fear of persecution" if "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum." INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). If the AO determines that the alien does not have a credible fear of persecution or torture, the alien may request that an Immigration

Judge review that determination. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.30(g), 208.33(b)(2)(v), 1208.30(g).

D. Security Bars Rule and Subsequent Delays

On July 9, 2020, the Departments published a notice of proposed rulemaking ("NPRM") titled "Security Bars and Processing," 85 FR 41201 ("Security Bars NPRM"). On December 23, 2020, the Departments published the Security Bars Final Rule, responding to comments received in response to the NPRM. 85 FR 84160. The Security Bars Final Rule amended the Departments' asylum and withholding of removal regulations to provide that certain emergency public health concerns generated by a communicable disease constitute circumstances for which there are "reasonable grounds for regarding" or "reasonable grounds to believe that an alien is a danger to the security of the United States," making the alien ineligible to be granted asylum and ineligible for withholding of removal, both under the INA and under the CAT regulations. *See* 85 FR 84193–94, 84196–97. The Security Bars Final Rule also amended the Departments' credible fear regulations, including by modifying changes made to the regulatory framework by a rule that the Departments published during the period between the Security Bars NPRM and the Security Bars Final Rule. *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 80274 (Dec. 11, 2020) ("Global Asylum Final Rule").

Relevant to this rule, the Global Asylum Final Rule and amendatory instructions 4, 6, 8, 12, and 14 of the Security Bars Final Rule amended the regulations setting forth the process for aliens in expedited removal who indicate a fear of removal or an intent to apply for asylum in multiple ways.

First, the rules require that, during credible fear screenings and reviews, AOs and Immigration Judges consider the applicability of any bars to being able to apply for asylum or to eligibility for asylum set forth at section 208(a)(2)(B)–(C) and (b)(2) of the

INA, 8 U.S.C. 1158(a)(2)(B)–(C) and (b)(2), including any bars established by regulation under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), and any bars to withholding of removal at section 241(b)(3)(B) of the INA, 8 U.S.C. 1231(b)(3)(B). *See* 85 FR 80390–91, 80393, 80399 (Global Asylum Final Rule amending §§ 208.30(e)(1)(iii), (2)(iii), (5)(i), 1003.42(d)(1), 1208.30(g)(1)); 85 FR 84194–96 (Security Bars Final Rule amending §§ 208.30(e)(5)(i)(A), (e)(5)(iv), 1003.42(d)(1)).

Second, if the AO or Immigration Judge determined that an alien does not have a significant possibility of eligibility for asylum due to the operation of a regulatory bar or any statutory bar to asylum eligibility, the AO or Immigration Judge would screen the alien for potential statutory withholding of removal and CAT protection eligibility under the "reasonable possibility of persecution or torture" standard—a standard higher than the "significant possibility of demonstrating eligibility for asylum" standard that otherwise applied.[7] 85 FR 80390–91, 80393, 80399–400 (Global Asylum Final Rule amending §§ 208.30(e)(5), 1003.42(d), 1208.30(g)); 85 FR 84194–95, 84197–98 (Security Bars Final Rule amending §§ 208.30(e)(5)(i)(B), 1208.30(g)(1)(ii)).

Third, if the alien would be able to establish a significant possibility of eligibility for asylum or a reasonable possibility of persecution but for being subject to one or both of the bars to asylum and withholding for those who pose a "danger to the security of the United States" at section 208(b)(2)(A)(iv) or 241(b)(3)(B)(iv) of the INA, 8 U.S.C.

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[7] The "significant possibility of eligibility for asylum" standard to be applied in expedited removal proceedings is lower than the "reasonable possibility of persecution or torture" standard because the expedited removal statute speaks in terms of the possibility of eligibility for asylum, which requires the alien to show a well-founded fear of persecution. INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v) (requiring "a significant possibility . . . that the alien could establish eligibility for asylum under section 208"); INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A) (requiring aliens to establish a "well-founded fear of persecution on account of" a protected ground to be a "refugee"); INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (allowing for a grant of asylum where an alien establishes that he or she is a "refugee"). The Supreme Court has equated the "well-founded fear" standard with a "reasonable possibility." *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987) (quoting *Stevic*, 467 U.S. at 424–25). Put another way, the statutory credible fear standard requires the officer to determine whether the alien has a significant possibility of establishing a reasonable possibility of persecution. When the officer applies only a "reasonable possibility of persecution or torture" standard, the inquiry is into the possibility of the harm taking place, not the possibility of meeting the ultimate standard.

1158(b)(2)(A)(iv) or 1231(b)(3)(B)(iv), the AO or Immigration Judge would screen the alien to determine whether he or she would be more likely than not to be tortured in the country of removal. 85 FR 84194–95, 84197–8 (Security Bars Final Rule amending §§ 208.30(e)(5)(iii)(B), (C), (iv)(A)(*1*), (*2*), (f), 1208.30(g)(1)(ii)). If the alien met that burden, DHS would either place the alien in asylum-and-withholding-only ("AWO") proceedings instead of section 240 removal proceedings or remove the alien to a third country. 85 FR 84194–95 (Security Bars Final Rule amending § 208.30(e)(5)(iii)(B), (iv)(A)(*2*)). Unlike section 240 removal proceedings, during which aliens may apply for any form of relief or protection for which they may be eligible, aliens in AWO proceedings may apply only for asylum, statutory withholding of removal, and CAT protection. *See* 8 CFR 1208.2(c)(1).

Fourth, aliens determined to have a credible fear of persecution, or a reasonable possibility of persecution or torture, would be referred for AWO proceedings. 85 FR 80392 (Global Asylum Final Rule amending § 208.30(f)); 85 FR 84194–95, 84197–98 (Security Bars Final Rule amending §§ 208.30(e)(5)(i)(B), (f)(1), 1208.30(g)(1)(ii), (2)(iv)(B)).

Fifth, if an alien refused to indicate whether he or she wants Immigration Judge review of a negative determination, DHS would consider such a refusal as declining review. 85 FR 80392, 80399 (Global Asylum Final Rule amending §§ 208.30(g)(1) and 1208.30(g)(2)(i)); 85 FR 84195–96, 84197–98 (Security Bars Final Rule amending §§ 208.30(g)(1) and 1208.30(g)(2)(i)).

The Global Asylum Final Rule and Security Bars Final Rule also amended provisions relating to the processes for applying two since-rescinded regulatory bars to asylum eligibility, *see* 85 FR 80390–91 (Global Asylum Final Rule amending §§ 208.30(e)(5)(ii)–(iii), 1003.42(d)(2)–(3), 1208.30(g)(1)(i)–(ii)); 85 FR 84194–95,

84197–98 (Security Bars Final Rule amending § 208.30(e)(5)(iii), 1208.30(g)(1)(ii)),[8] and updated language in various provisions to take account of the heightened "reasonable possibility" and "more likely than not" standards, *see* 85 FR 80389–94, 80399–400 (Global Asylum Final Rule amending various provisions in §§ 208.30, 1003.42, and 1208.30); 85 FR 84194—98 (Security Bars Final Rule amending §§ 208.30(e)(4), (g)(1), 235.6(a)(2)(i), 1208.30(e), (g)(2)(iv)(A)–(B), 1235.6(a)(2)(i)).

Although the Security Bars Final Rule was originally scheduled to take effect on January 22, 2021, intervening events and circumstances required the Departments to delay its effective date, most recently until December 31, 2025.[9] First, prior to the January 22, 2021, effective date of the Security Bars Final Rule, a district court preliminarily enjoined the Departments "from implementing, enforcing, or applying the [Global Asylum Final Rule] or any related policies or procedures." *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021) ("*Pangea II*"). The Security Bars Final Rule explicitly relied on changes made by the Global Asylum Final Rule, and the regulatory text of the Security Bars Final Rule repeated broader changes made by the Global Asylum Final Rule, such as requiring the application of bars to asylum eligibility and withholding of removal during credible fear screenings. *See, e.g.*, 85 FR 84187–88. Accordingly, as a result of the *Pangea II* preliminary injunction, the Departments determined that delay of the Security Bars Final Rule's effective date was justified. *See* January 2021 Delay Final Rule, 86 FR 6847; March 2021 Delay IFR, 86 FR 15070–71; December 2021 Delay IFR, 86 FR 73616–17; December 2022 Delay IFR, 87 FR 79790–91; December 2024 Delay IFR, 89 FR 105387.

In the December 2022 Delay IFR, the Departments explained that they were

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[8] *See* Circumvention of Lawful Pathways, 88 FR 31314 (May 16, 2023) (rescinding Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 FR 55934 (Nov. 9, 2018), and Asylum Eligibility and Procedural Modifications, 85 FR 82260 (Dec. 17, 2020)).
[9] *See* 86 FR 6847; 86 FR 15069; 86 FR 73615; 87 FR 79789; 89 FR 105386.

delaying the Security Bars Final Rule's effective date because its implementation remained infeasible due to the *Pangea II* preliminary injunction against the Global Asylum Final Rule and related policies and procedures. *See* 87 FR 79790–91. Further, the Departments determined that, as a result of a subsequent, intervening rulemaking, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 FR 18078 (Mar. 29, 2022) ("Asylum Processing IFR"), implementation of the Security Bars Final Rule would result in conflicting and confusing regulatory text. 87 FR 79791–92. The Departments thus explained that delaying the effective date until December 31, 2024, would permit the Departments "sufficient time to complete notice-and-comment rulemaking to modify or rescind the Security Bars final rule, even in the event that circumstances require shifting departmental priorities and resources." 87 FR 79792.

However, superseding regulatory priorities prevented completion of the anticipated rulemaking prior to December 31, 2024. After considering public comments on the December 2022 Delay IFR related to the Security Bars Final Rule's effective date, the Departments determined that it was appropriate to delay the rule's effective date until December 31, 2025, "in light of the Departments' limited resources and intervening regulatory priorities." December 2024 Delay IFR, 89 FR 105388. The Departments also explained that allowing the Security Bars Final Rule to become effective would "conflict with regulatory changes implemented by the intervening rulemakings, resulting in conflicting and confusing changes to the Departments' regulations." *See* 89 FR 105388. The Departments also noted that, since the publication of the Security Bars Final Rule, the Departments had issued multiple additional rules altering the credible fear screening process and asylum eligibility more generally. *See, e.g.*, Asylum Processing IFR, 87 FR 18078; Circumvention of Lawful Pathways, 88 FR 31314 (May 16, 2023) ("Lawful Pathways Final Rule"); DHS Mandatory Bars Rule, 89 FR 103370; Securing the Border,

89 FR 81156 (Oct. 7, 2024). The Departments determined that the intervening rules and their impacts on screening processes required further evaluation of "their potential interplay with the Security Bars final rule." *See* 89 FR 105388.

Beyond these important considerations, the Departments also concluded that "there would be no direct, immediate impact on eligibility for asylum or other protection if the Security Bars final rule were to go into effect on December 31, 2024, because there [was] no existing public health situation that would trigger the bars outlined in the rule." 89 FR 105389. The Departments determined that the lack of any immediate impact further supported delaying the effective date. Accordingly, based on the foregoing considerations, the Departments delayed the effective date of the Security Bars Final Rule to December 31, 2025. 89 FR 105389. The Departments also continued to welcome comments about the effective date of the Security Bars Final Rule but did not seek comments on whether the Departments should modify or rescind the rule or comments otherwise addressing the substance of the rule. 89 FR 105389.

E. Subsequent Rules

Since the publication of the Security Bars Final Rule, the Departments have issued four rules amending their credible fear provisions that are relevant here: (1) the Asylum Processing IFR; (2) the Lawful Pathways Final Rule; (3) the DHS Mandatory Bars Rule; and (4) the EOIR Bars IFR. Those rules' amendments overwrote or rescinded provisions that the Security Bars Final Rule would amend upon becoming effective. Accordingly, some of the Security Bars Final Rule's amendments, if allowed to go into effect, would create conflicting text and inconsistent and confusing terminology that would complicate implementing the regulations. Further, amendments that the Departments adopted after the Security Bars Final Rule would be overwritten without justification for the reversion and without observing the procedures typically required by the Administrative Procedure Act ("APA"). Overall, implementation of the Security

Bars Final Rule without any change would put the Departments' ability to use the expedited removal system at risk. These issues are discussed in greater detail below.

1. Asylum Processing IFR

On March 29, 2022, the Departments issued the Asylum Processing IFR. As relevant here, the Asylum Processing IFR amended 8 CFR 208.30, 1003.42, and 1208.30 to generally return to the regulatory framework in place prior to the promulgation of the Global Asylum Final Rule. 87 FR 18091. The specific amendments that were reversed by the Asylum Processing IFR were those that required the consideration of mandatory bars during credible fear screenings, provided procedures for aliens determined to be subject to such bars, required that aliens with a positive screening determination be placed in AWO proceedings, and mandated that an alien's failure to indicate whether he or she wants Immigration Judge review of a negative determination be interpreted as a decision to decline such review. 87 FR 18218–23 (amending portions of §§ 208.30, 235.6, 1003.42, 1208.30, and 1235.6). In doing so, the Asylum Processing IFR amended 8 CFR 208.30 to remove paragraphs (e)(5)(i)(A) and (B) and (f)(1)—paragraphs the Security Bars Final Rule would amend upon becoming effective—as discussed in Section III.A of this preamble.

2. Lawful Pathways Final Rule

On May 16, 2023, the Departments published the Lawful Pathways Final Rule, 88 FR 31314, which, as relevant here, rescinded an earlier, enjoined final rule regarding transit through a third country, Asylum Eligibility and Procedural Modifications, 85 FR 82260 (Dec. 17, 2020) ("TCT Bar Final Rule"). Notably, to rescind the TCT Bar Final Rule, the Departments removed various regulatory provisions including, as relevant here, 8 CFR 208.30(e)(5)(iii) and 1208.30(g)(1). *See* 88 FR 31319. If the Departments did not withdraw amendatory instructions 4 and 12 of the Security Bars Final Rule, the Security Bars Final Rule would add these specific provisions back into the regulations. *See* 85 FR

84194–5, 84197–98. The addition of these provisions would thus establish procedures for adjudicators to follow when considering the application of the TCT bar, which no longer exists. *See* 88 FR 31449, 31451 (removing and reserving paragraph (c)(4) of §§ 208.13 and 1208.13). To avoid codifying such obsolete regulatory language, the Departments are withdrawing amendatory instructions 4 and 12 of the Security Bars Final Rule.

3. DHS Mandatory Bars Rule

On December 18, 2024, DHS issued the DHS Mandatory Bars Rule, which, as relevant here, allows AOs to consider the potential applicability of statutory bars to asylum and withholding of removal during credible fear screenings except for the bar to asylum for aliens who were firmly resettled in another country.[10] *See* 89 FR 103370. Under the DHS Mandatory Bars Rule, AOs determine at their discretion whether to consider these statutory bars to asylum and withholding of removal during fear screenings; in contrast, the Security Bars Final Rule would make such consideration mandatory. *See* 8 CFR 208.30(e)(5)(ii); 85 FR 84190, 84194–95.

If the Security Bars Final Rule were to go into effect in its entirety, certain provisions within the Code of Federal Regulations ("CFR") would continue to make the consideration of bars discretionary, while others would make it mandatory. Specifically, current paragraph (ii) of 8 CFR 208.30(e)(5) provides that where an alien "appears to be subject to one or more of the mandatory bars" other than the firm resettlement bar, the AO "may consider the applicability of such bar(s)." But amendatory instruction 4 of the Security Bars Final Rule would add paragraph (iv), which would also require application of any mandatory bar, including the firm resettlement bar. *See* 85 FR 84194–95. Additionally, 8 CFR 208.30(e)(5) would set forth different screening standards where an

[10] *See supra* Section II.B of this preamble (explaining the statutory bars to eligibility for asylum and withholding of removal).

alien is subject to a mandatory bar to asylum and withholding of removal that would vary depending on the type of mandatory bar—under current paragraph (ii), the applicable screening standard for torture where an alien is subject to a mandatory bar to asylum and withholding of removal is the "significant possibility" of demonstrating eligibility for CAT protection standard, whereas under paragraph (iv), if the alien is subject to the security bars to asylum and withholding of removal, the alien would be screened for torture at the "more likely than not" standard. *Compare* 8 CFR 208.30(e)(5), *with* 85 FR 84194–95 (adding paragraph (iv) to 8 CFR 208.30(e)(5)). Finally, the discretionary provisions at current paragraph (ii) would require placing an alien who receives a positive determination into section 240 removal proceedings or allowing USCIS to maintain jurisdiction for further consideration of the application, whereas paragraph (iv) would require that DHS place the alien into AWO proceedings or remove the alien to a third country, as applicable. These irreconcilable provisions require the withdrawal of amendatory instruction 4.

4. EOIR Bars IFR

Shortly after publication of DHS's Mandatory Bars Rule, DOJ published the EOIR Bars IFR, 89 FR 105392, to clarify that Immigration Judges review AOs' credible fear determinations de novo, including, where relevant, an AO's application of any bars to asylum or withholding of removal. To effectuate this clarification, and as relevant here, EOIR amended 8 CFR 1003.42(d) to explicitly state that the Immigration Judge's de novo credible fear "determination shall, where relevant, include review of the asylum officer's application of any bars to asylum and withholding of removal pursuant to 8 CFR 208.30(e)(5)." 89 FR 105402. However, amendatory instruction 8 of the Security Bars Final Rule instructs the Office of the Federal Register ("OFR") to revise 8 CFR 1003.42(d)(1), a paragraph that no longer exists. *See* 85 FR 84196; *see also* 8 CFR 1003.42. If the Departments do not withdraw amendatory instruction 8 of the Security

Bars Final Rule, *see* 85 FR 84196, the OFR would be unable to revise a non-existent paragraph and thus would add an editorial note to 8 CFR 1003.42 to indicate an apparent agency error, creating confusion and leading to questions surrounding the text's validity and effect. *Cf. Document Drafting Handbook* 6-4 (June 2025), https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf ("*Document Drafting Handbook*") (noting that OFR may "add an editorial note of the agency error" in the context of other sorts of discrepancies in regulations). Thus, EOIR's regulations would lack the clarity needed as to whether an Immigration Judge is able to review any bars the AO may have applied pursuant to 8 CFR 208.30(e)(5) in making a negative fear determination. Accordingly, for clarity of the regulations, EOIR will maintain its later-enacted provision from the EOIR Bars IFR at 8 CFR 1003.42(d), which necessitates withdrawing amendatory instruction 8 of the Security Bars Final Rule.

III. Discussion

The Departments have considered the complete history of this rulemaking, the subsequent history of the provisions it was poised to amend as discussed in Sections II.D and E of this preamble, and all concerns raised by commenters in response to the delay rules, as discussed below in Sections IV and V of this preamble. Although the Departments previously suggested that they may initiate a new rulemaking with respect to the Security Bars Final Rule,[11] the Departments after further consideration decline to pursue a new rulemaking. Instead, the rule will take effect as scheduled with specific amendments withdrawn to avoid conflicting or confusing regulatory text.

The portions of the Security Bars Final Rule that will remain unchanged and go into effect as previously scheduled are the substantive provisions that clarify that the bars to asylum and withholding of removal for those who pose a danger to the security of the

[11] *See* March 2021 Delay IFR, 86 FR 15069, 15071 (requesting comment on "a potential future rulemaking rescinding or amending the Security Bars" Final Rule); December 2021 Delay IFR, 86 FR 73617; December 2022 Delay IFR, 87 FR 79792–93.

United States cover aliens who may pose certain public health risks. These provisions will be codified at 8 CFR 208.13(c)(10), 1208.13(c)(10) (clarification with respect to asylum), and at 8 CFR 208.16(d)(2), 1208.16(d)(2) (clarification with respect to statutory and CAT withholding of removal).

However, the Departments now withdraw certain amendments in the Security Bars Final Rule. The Departments are withdrawing the amendatory instructions that would amend the Departments' credible fear regulations because, as explained in Sections II.E and III.A of this preamble, codification of those provisions is irreconcilable with the current state of the regulations, which the Departments have amended multiple times since the publication of the Security Bars Final Rule. Additionally, as explained in Section III.B of this preamble, the Departments are withdrawing amendments relating to the ability to remove aliens to third countries to avoid unnecessary confusion. Thus, this rule withdraws the amendatory instructions from the Security Bars Final Rule to the extent that they would amend 8 CFR 208.16(f), 208.30, 235.6, 1003.42, 1208.16(f), 1208.30, and 1235.6, and the Security Bars Final Rule will no longer amend those provisions. The reasons for withdrawal of the amendatory instructions related to these specific provisions are discussed further below.

A. Withdrawing Credible Fear Amendments

With this rule, the Departments are withdrawing the amendatory instructions that would amend 8 CFR 208.30, 235.6, 1003.42, 1208.30, and 1235.6 (amendatory instructions 4, 5, 6, 7, 8, 12, 13, and 14). The Departments are withdrawing these portions of the Security Bars Final Rule because they conflict with the currently effective regulations due to amendments by intervening rules. Specific conflicts with subsequent rules are discussed in more detail in Section II.E of this preamble; more generally, however, if the Security Bars Final Rule were to go into effect, its publication of cross-references to the now nonexistent 8 CFR 208.13(c)(4) and 1208.13(c)(4) would introduce

inconsistencies in the regulations and create confusion as to the Departments' intended procedures for credible fear determinations. Further, the setting forth of two entirely different processes and procedures for applying mandatory bars during credible fear screenings would interfere with the Departments' ability to consider those bars during screenings and reviews.

Additionally, amendatory instructions to revise five different paragraphs cannot be implemented as intended. Specifically, amendatory instructions 4, 8, and 12 instruct OFR to revise five paragraphs that no longer exist: 8 CFR 208.30(e)(5)(i)(A) and (B) and (f)(1), 1003.42(d)(1), and 1208.30(g)(1)(ii). Those paragraphs existed when the Security Bars Final Rule was published; thus, OFR could have "revised" them as instructed at that time. *See Document Drafting Handbook* at 3-38 (stating that the amendatory term "[r]evise" "[r]eplaces an existing CFR unit in its entirety," whereas the term "[a]dd" "[i]nserts new content into the CFR"). However, subsequent rules removed those paragraphs. *See* Asylum Processing IFR, 87 FR 18218–19 (amending 8 CFR 208.30 to remove paragraphs (e)(5)(i)(A) and (B) and (f)(1)); Lawful Pathways Final Rule, 88 FR 31451 (redesignating paragraph (d)(1) of 8 CFR 1003.42 as paragraph (d) and removing and reserving paragraph (g)(1) in 8 CFR 1208.30). Thus, OFR could not amend these paragraphs as instructed in the Security Bars Final Rule and would instead add editorial notes to 8 CFR 208.30, 1003.42, and 1208.30 indicating an apparent agency error. *Cf. Document Drafting Handbook* at 6-4 (noting that OFR may "add an editorial note of the agency error" in the context of other sorts of discrepancies in regulations). The addition of the effective text as editorial notes would create confusion as to the text's validity and effect.

A main goal of the Security Bars Final Rule was to clarify how the bars to asylum and withholding of removal relating to aliens who pose a danger to the security of the United States apply during credible fear screenings. *See* 85 FR 84160. Despite the

Departments' withdrawal of the rule's amendments to their credible fear provisions, currently operative regulations independently provide a framework through which adjudicators may consider statutory bars to eligibility for asylum and withholding of removal, including the Security Bar Final Rule's amendments clarifying the "danger to the security of the United States" bars, during the credible fear process. Notably, 8 CFR 208.30(e)(5)(i) and (ii) provide that an AO may consider the mandatory bars set forth in section 208(b)(2)(A)(i) through (v) of the INA, 8 U.S.C. 1158(b)(2)(A)(i)–(v), or section 241(b)(3)(B) of the INA, 8 U.S.C. 1231(b)(3)(B), during a credible fear determination. Such consideration includes section 208(b)(2)(A)(iv) of the INA, 8 U.S.C. 1158(b)(2)(A)(iv), and section 241(b)(3)(B)(iv) of the INA, 8 U.S.C. 1231(b)(3)(B)(iv), which the Security Bars Final Rule, when effective, will clarify by providing that aliens may be ineligible for asylum and withholding of removal for posing a "danger to the security of the United States" based on certain public health concerns.[12] Additionally, 8 CFR 1003.42(d) provides that an Immigration Judge may review an AO's credible fear determination de novo, including, where relevant, review of an AO's application of any bars to asylum and withholding of removal. Consequently, both AOs and Immigration Judges may consider statutory bars, including the Security Bar Final Rule's amendments clarifying the "danger to the security of the United States" bars, during the credible fear process without the Security Bar Final Rule's amendments to 8 CFR 208.30, 235.6, 1003.42, 1208.30, and 1235.6. Indeed, as discussed above, allowing the Security Bars Final Rule to become effective without removing the identified amendatory instructions may have the opposite effect—that is, it may interfere with the Departments' ability to apply its amendments clarifying the "danger to the security of the United States" bars

[12] DHS explained that this application would occur in the 2024 notice of proposed rulemaking that preceded the DHS Mandatory Bars Rule in 2024. DHS Mandatory Bars Rule, 89 FR 41358 ("Should the provisions of the [Security Bars] rule go into effect . . . , it would have implications as to who could constitute a security risk—as in, what is 'a danger to the security of the United States.' Under the instant rule, AOs would be allowed to consider those provisions as part of applying the security bar in credible fear and reasonable fear screenings.").

during credible fear screenings because it would result in confusing regulatory text and editorial notes.

Overall, the Departments have determined that implementing the Security Bars Final Rule without withdrawing the above-identified instructions would impede the Administration's success in managing the border.[13] If the Departments do not withdraw these instructions, the Security Bars Final Rule would create confusion and inconsistencies in the operative CFR provisions that govern the processing of aliens using expedited removal procedures. For the foregoing reasons, amendatory instructions 4, 6, 8, 12, and 14 are withdrawn. The Departments are also withdrawing amendatory instructions 5, 7, and 13, which include authority citations rendered unnecessary by the withdrawal of the former list of instructions. Importantly, these withdrawals will have no immediate impact on current credible fear screening processes or the adjudication of asylum applications.

B. Withdrawing Third-Country Removal Provisions

Paragraph (f) in 8 CFR 208.16 and 1208.16 currently reiterates that DHS may remove an alien granted withholding of removal or deferral of removal to a third country other than the country to which removal has been withheld or deferred. The Security Bars Final Rule would revise 8 CFR 208.16(f) and 1208.16(f) to add procedures for removing an alien to a third country "prior to a determination or adjudication of the alien's initial request for withholding or deferral of removal" in certain circumstances and set out parameters for the use of such authority. 85 FR 84193–94, 84197. In practice, these revisions would codify a process to notify the alien of the potential third country removal and allow the alien to withdraw his or her initial request for withholding or

[13] *See, e.g.*, DHS, *History Made, Again: Trump Administration Crushes Border Records in July* (Aug. 1, 2025), https://www.dhs.gov/news/2025/08/01/history-made-again-trump-administration-crushes-border-records-july [https://perma.cc/JRY3-KTRF] (describing continued record low border encounter and release numbers).

deferral of removal to avoid removal to the third country. *See* 85 FR 84810 ("This rule provides the alien with the option to return to his or her home country rather than to seek withholding or deferral protection, which could lead to such third country removal."). If the alien did not elect to withdraw his or her application, then the alien could be removed to the third country unless he or she established that he or she would more likely than not face torture in the third country. 85 FR 84194, 84197.

Upon further consideration, the Departments are withdrawing these amendments because they could cause confusion and are unnecessary to effectuate the substantive public health-related provisions the Security Bars Final Rule will implement.

First, the Departments are withdrawing the amendments to 8 CFR 208.16(f) and 1208.16(f) to avoid confusion as to the possibility of third-country removals and the availability of withholding of removal under the INA and CAT protection from the third country. As noted above, the revisions the Security Bars Final Rule would make to 8 CFR 208.16(f) and 1208.16(f) would require the consideration of the likelihood of torture in the third country, which is the test for CAT protection, but not the likelihood of persecution on account of a protected ground, which is the test for statutory withholding of removal. *See* 85 FR 84194, 84197. The omission of the test for statutory withholding of removal makes sense in the context of the Security Bars Final Rule, which states in its preamble that "DHS's discretionary ability to remove certain aliens to third countries only applies to aliens determined to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United States eligibility bars."[14] 85 FR 84181. However, the regulatory text does not include the requirement that the alien be first subject to the asylum and withholding eligibility bars identified in the preamble of the Security Bars Final Rule. The amendments to 8 CFR 208.16(f) and 1208.16(f) made

[14] The Security Bars Final Rule also states that third-country removals would be used in circumstances where aliens were ineligible for asylum due to the TCT Bar. *See* 85 FR 84181. The process for removals in that circumstance was set forth in amendments to 8 CFR 208.30(e)(5)(iii)(B)(*2*).

by the Security Bars Final Rule could lead a reader to believe, incorrectly, that in all third-country-removal circumstances aliens must only be screened for a likelihood of torture, and not a likelihood of persecution, when relevant. To avoid the potential for confusion or interference with DHS's ability to remove aliens to third countries, the Departments are withdrawing the amendments to 8 CFR 208.16(f) and 1208.16(f).

Second, these provisions are not necessary for DHS to effectuate third country removals. *See* INA 241(b), 8 U.S.C. 1231(b) (outlining the countries to which DHS may remove an alien). For aliens in removal proceedings, the Immigration Judge designates the country or countries of removal, in accordance with section 241 of the INA, 8 U.S.C. 1231. 8 CFR 1240.10(f). If, during the course of proceedings, DHS seeks to remove an alien to a third country, DHS notifies the Immigration Judge of that new prospective country of removal, and, if relevant, the alien may seek protection from removal to that country. *See id.*; 8 CFR 1240.11(c)(1)(i).

C. Unaffected Provisions

This rule does not make any changes to the remainder of the Security Bars Final Rule. That rule makes key changes to 8 CFR 208.13 and 1208.13, including by clarifying that aliens are subject to the statutory bars to eligibility for asylum and withholding of removal where there are "reasonable grounds for regarding" or "reasonable grounds to believe that [an] alien is a danger to the security of the United States" in certain circumstances based on emergency public health concerns generated by a communicable disease. *See* 85 FR 84193–94, 84196–97 (adding clarifying provisions to the asylum and withholding of removal regulations at 8 CFR 208.13(c)(10), 208.16(d)(2), 1208.13(c)(10), and 1208.16(d)(2)). The revisions introduce specific criteria, such as exhibiting symptoms of a disease or having been exposed to the disease during its incubation and contagion period. *See* 85 FR 84193–94, 84196–97 (adding these criteria at 8 CFR 208.13(c)(10)(i)(A)–(B), 208.16(d)(2)(ii)(A)–(B),

1208.13(c)(10)(i)(A)–(B), and 1208.16(d)(2)(ii)(A)–(B)). The revisions further allow DHS, DOJ, and the Department of Health and Human Services to jointly designate regions or countries experiencing epidemics as posing a public health risk to the United States, making aliens from those areas ineligible for asylum and withholding of removal. *See* 85 FR 84193–94, 84196–97 (adding this authority at 8 CFR 208.13(c)(10)(ii)(A)–(C), 208.16(d)(2)(iii)(A)–(C), 1208.13(c)(10)(ii)(A)–(C), and 1208.16(d)(2)(iii)(A)–(C)). Additionally, the revisions explicitly exempt from operation of the Security Bars Final Rule those aliens returning from Canada under the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries[15] that is currently in place with Canada under section 208(a)(2)(A) of the INA, 8 U.S.C. 1158(a)(2)(A). *See* 85 FR 84193–94, 84196–97 (adding exemption at 8 CFR 208.13(c)(10)(iii), 208.16(d)(2)(iv), 1208.13(c)(10)(iii), and 1208.16(d)(2)(iv)).

IV. Public Comments on Delay IFRs and Responses

As part of the second, third, and fourth delays of the Security Bars Final Rule, the Departments requested and received public comments addressing both the delay of the effective date and any potential future action to modify or rescind the Security Bars Final Rule. Individuals, elected officials, and non-governmental organizations all commented on the March 2021, December 2021, and December 2022 delay IFRs.[16] The Departments did not receive any comments on the December 2024 delay IFR.[17] The Departments

[15] *See* Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims From Nationals of Third Countries, 88 FR 18227 (Mar. 28, 2023).

[16] Comments may be reviewed at https://www.regulations.gov/document/USCIS-2020-0013-5072/comment; https://www.regulations.gov/document/USCIS-2020-0013-5118/comment; https://www.regulations.gov/document/USCIS-2020-0013-5136/comment; and https://www.regulations.gov/docket/EOIR-2020-0010/comments.

[17] Readers may visit https://www.regulations.gov/docket/USCIS-2020-0013/comments?postedDateFrom=2024-12-27&postedDateTo=2025-11-10 to see that no comments were received on the docket after the date of publication of the December 2024 Delay IFR.

summarize and respond to comments below.[18]

A. Support for the Security Bars Final Rule

Comment: Several commenters expressed support for the Security Bars Final Rule, stating that the clarification would apply in time-limited circumstances and its implementation would prioritize the public health and security of Americans while still providing protections to refugees. Commenters believed the Security Bars Final Rule would ensure that communicable diseases are not spread within the United States, thereby preventing Americans' health from being placed at risk. Additionally, commenters noted that other measures exist to offer aliens protection. Several commenters stated that seeking asylum is a privilege and not a right and that the Security Bars Final Rule aligns with international treaties, particularly the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 ("Refugee Convention"), and the INA, with one commenter noting that aliens are inadmissible to the United States if they "have a communicable disease of public health significance," INA 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i).

Response: The Departments appreciate the commenters' support for the Security Bars Final Rule.

B. Opposition to the Security Bars Final Rule

Comments: Several commenters expressed the opinion that the Departments were implementing the Security Bars Final Rule to deny immigration benefits, using public health concerns as a pretext. One commenter stated that the rule would run "the risk of continuing to perpetuate harmful racist stereotypes and tropes under the guise of public health." Another questioned the need for the rule's public health-related immigration restrictions, as "the vast majority of the pandemic-related spread stems from within our

[18] The Departments do not address comments seeking changes to U.S. laws, regulations, or agency policies that are unrelated to the changes made by the Security Bars Final Rule, nor does this rule resolve issues that are outside the scope of that rulemaking.

borders." Another commenter argued that there was "no viable public health argument for this rule" and that the rule uses "false public health claims to justify violations of U.S. law and treaty obligations to protect refugees." Another commenter argued that the rule "labels asylum seekers as threats to national security and prevents them from accessing life-saving asylum," all under "the guise of public health." One commenter stated that the rule "violates [the rights of individuals requesting asylum] under the mistaken guise of public health." Another wrote that the rule "relies heavily on the crutch of public health and potential impacts on border security that are unsubstantiated, speculative, and avoidable." Another commenter wrote that public health measures should be applied equally to all individuals entering the United States, and not merely for those seeking asylum. Another wrote that the rule "weaponizes public health as a pretext for disregarding fundamental aspects of U.S. asylum law." A few commenters also opined that the rule was not medically sound, arguing that DHS officials lack the medical expertise to make public health determinations. One commenter wrote that the rule would "arbitrarily discriminate against individuals based on a border patrol agent's uninformed medical determination or an individual's country of origin."

Response: The Departments disagree with the commenters' characterizations of the Security Bars Final Rule, which the Departments adopted after receiving and responding to comments, including responding to comments making substantively similar claims. *See, e.g.*, 85 FR 84167–71. The current rulemaking is not a reevaluation of the Security Bars Final Rule itself; that rule has already been issued through notice-and-comment rulemaking. Rather, this rulemaking addresses whether certain technical, non-substantive changes to the Security Bars Final Rule are necessary before the rule goes into effect as scheduled, as explained in Sections II.E and III of this preamble.

Comments: Several commenters expressed the opinion that there were less restrictive means available to combat a public health emergency and that the Security

Bars Final Rule could harm public trust by exacerbating health disparities among immigrant communities. One commenter stated that the rule is "sweeping in scope and would apply to people who present no—or minimal—risk to public health." Another commenter wrote that COVID-19 testing and isolation could help meet the needs of public health while being less restrictive on the asylum process. Another commenter wrote that the rule fails to consider less restrictive alternatives that safeguard public health while protecting asylum seekers, with one organization stating that "there are less restrictive measures to ensure public health than a complete ban on asylum eligibility," and the Government should adopt those less restrictive measures.

Response: The Departments disagree with the commenters' characterizations of the Security Bars Final Rule, and the Departments already responded to substantively similar claims in the Security Bars Final Rule in response to comments received on the Security Bars NPRM. *See, e.g.*, 85 FR 84167–71, 84173. As noted previously, this rulemaking is not a reevaluation of the Security Bars Final Rule itself. Rather, this rulemaking addresses whether certain technical, non-substantive changes to the Security Bars Final Rule are necessary before the rule goes into effect as scheduled.

Comments: Some commenters opined that the Security Bars Final Rule is a violation of human rights law, with one commenter writing that rescission of the rule "is essential to protect the right to seek asylum and comply with U.S. domestic and international obligations." For example, one commenter wrote that "[d]eporting all those who come to a border seeking asylum without process and without protections violates asylum-seekers' right of non-refoulement." Another commenter wrote that the rule represents "the wholesale abdication of the U.S.'s non-refoulement obligations." Another commenter stated that the rule "would result in the continued punishment of families and individuals who attempt to exercise their legal right to seek protection in the United States." With respect to due process, one commenter argued that the rule denied

asylum seekers the opportunity for a fair hearing by applying asylum bars during initial screenings and allowing DHS to deport individuals to third countries without adequate review. Several commenters questioned whether the rule would violate the treaty commitments of the United States, such as the CAT, the Refugee Convention, and the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268.

Response: The Departments disagree with the commenters' characterizations of the Security Bars Final Rule, and the Departments already responded to substantively similar claims in the Security Bars Final Rule in response to comments received on the Security Bars NPRM. *See, e.g.*, 85 FR 84163–65, 84176, 84177–81. As noted previously, this rulemaking is not a reevaluation of the Security Bars Final Rule itself. This rulemaking instead addresses whether certain technical, non-substantive changes to the Security Bars Final Rule are necessary before the rule goes into effect as scheduled.

Comments: A few commenters indicated that they believe the Security Bars Final Rule is discriminatory. Commenters stated the Security Bars Final Rule would "perpetuate harmful racist stereotypes and tropes," including "portraying immigrants as threats to public health and welfare." Another commenter wrote that the rule would "disproportionately impact victims with limited resources or who lack literacy in immigration law from accessing protections." One commenter stated that the rule "diminishes the rights of all to be treated with the utmost compassion and recognized as fellow human beings." Some commenters also claimed that the rule would treat asylum seekers with a categorical public health approach rather than evaluate them on an individual basis.

Response: The Departments disagree with the commenters' characterizations of the Security Bars Final Rule, and the Departments already responded to substantively similar claims in the Security Bars Final Rule in response to comments received on the

Security Bars NPRM. *See, e.g.*, 85 FR 84163–65, 84176, 84177–81. Again, this rulemaking is not a reevaluation of the Security Bars Final Rule itself. Instead, this rulemaking addresses whether certain technical, non-substantive changes to the Security Bars Final Rule are necessary before the rule goes into effect as scheduled.

Comments: Commenters opined that the rule would raise the standard of proof applicable to migrants, including the burden of proof for individuals seeking deferral of removal under the CAT regulations. Commenters also wrote that the rule would impose an unreasonably high burden of proof for protection under those regulations, while another argued that the rule imposes unreasonable evidentiary burdens on asylum seekers during expedited proceedings, effectively denying them a fair opportunity to seek protection.

Response: As discussed in Section III.A of this preamble, the Departments are withdrawing the amendatory instructions that would amend the Departments' credible fear provisions. Accordingly, the provisions discussed by these commenters will not be codified.

C. Additional Delay

The Departments previously considered and addressed comments related to delaying the effective date of the Security Bars Final Rule. *See* 87 FR 79792–93 (December 2022 Delay IFR discussing and responding to comments related to the delayed effective date); *see also* 89 FR 105387–88 (December 2024 Delay IFR discussing and responding to comments related to the delayed effective date). As summarized in the December 2022 and December 2024 Delay IFRs, some commenters supported further delaying the Security Bars Final Rule—including indefinitely—whereas others did not support further delays. 87 FR 79793; 89 FR 105388. In the December 2022 Delay IFR, the Departments explained that a two-year delay was appropriate to provide time to assess the inconsistencies between the Security Bars Final

Rule and other rules and for the promulgation of a subsequent rule that the Departments were considering at that time. 87 FR 79793. Then, in response to additional comments, the Departments in the December 2024 Delay IFR determined that a one-year further delay was appropriate in light of the Departments' limited resources and intervening regulatory priorities. 89 FR 105388. The Departments also continued to welcome comments on the possibility of further delays, 89 FR 105388, but the Departments did not receive any comments in response to the December 2024 Delay IFR.

The Departments have decided that additional delay is not necessary. The Departments delayed the Security Bars Final Rule largely because of a preliminary injunction against the Global Asylum Final Rule and because allowing the Security Bars Final Rule to go into effect would have resulted in confusing regulatory text. *See, e.g.*, December 2024 Delay IFR, 89 FR 105388. The Departments have determined that the most effective way to remedy these concerns is to withdraw the specific portions of the Security Bars Final Rule that may conflict with other regulatory text (which will simultaneously withdraw the portions of the rule that may conflict with the preliminary injunction), while taking no further actions to interfere with other portions of the Security Bars Final Rule (in particular, the portions clarifying that the statutory "danger to the security of the United States" bars to eligibility for asylum and withholding of removal encompass certain emergency public health concerns) from becoming effective as scheduled. This course of action will both resolve the bases for past delays and obviate the need for additional delays, without interfering with the public health benefits that the Departments sought to achieve when promulgating the Security Bars Final Rule. Thus, the Departments believe that further delay is unnecessary.

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The APA generally requires agencies to publish "notice of proposed rule making"

in the *Federal Register* for a period of public comment unless a rule meets an exception to that requirement. 5 U.S.C. 553(b)(A)–(B). In addition, the APA generally requires a 30-day delay to the effective date of a rule. 5 U.S.C. 553(d).

1. Notice and Comment

This rulemaking satisfies the APA's notice-and-comment requirement. As noted above in Section IV of this preamble, the Departments in the second, third, and fourth delays of the Security Bars Final Rule requested and received public comments addressing the delay of the effective date of the Security Bars Final Rule. The Departments also welcomed comments on whether to amend or rescind the Security Bars Final Rule in the second delay of the Security Bars Final Rule. *See* March 2021 Delay IFR, 86 FR 15069. Additionally, the Departments sought comment on the question of further delay in the fifth delay of the Security Bars Final Rule, *see* December 2024 Delay IFR, 89 FR 105388, but the Departments did not receive any comments in response to that request. As explained above in Section IV.B of this preamble, many comments received by the Departments addressed the underlying merits of the Security Bars Final Rule—a matter the Departments already considered when initially promulgating the Security Bars Final Rule. Some comments, however, did specifically address the issue of further delay. For example, some commenters argued that the Departments should delay the Security Bars Final Rule's effective date indefinitely or for a significant, extended period of time and suggested that other legal means should be used to manage immigration-related concerns about infectious diseases during the delay. *See* December 2024 Delay IFR, 89 FR 105388 (describing previously received comments).

The Departments have considered these comments in concluding that the most appropriate course of action is to withdraw certain provisions of the Security Bars Final Rule while taking no action to stop the remainder of the rule going into effect as scheduled. As explained previously, the Departments delayed the Security Bars Final

Rule largely because of a preliminary injunction against the Global Asylum Final Rule and because allowing the Security Bars Final Rule to go into effect would have resulted in confusing regulatory text. *See, e.g.*, December 2024 Delay IFR, 89 FR 105388. The Departments have concluded that the most effective way to remedy these concerns is to withdraw the specific portions of the Security Bars Final Rule that may conflict with other regulatory text (which will simultaneously withdraw the portions of the rule that may conflict with the preliminary injunction) while taking no further actions to interfere with other portions of the Security Bars Final Rule (in particular, the portions clarifying that the statutory "danger to the security of the United States" bars to eligibility for asylum and withholding of removal encompass certain emergency public health concerns) from becoming effective as scheduled. This course of action will both resolve the bases for past delays and obviate the need for additional delays, without interfering with the public health benefits that the Departments sought to achieve when promulgating the rule. Thus, although the Departments appreciate the response from commenters suggesting, *e.g.*, an indefinite delay, the Departments believe that further delay is unnecessary.

2. Procedural Rule

Even if the Departments had not complied with the notice-and-comment requirements of the APA, the APA's notice-and-comment and delayed-effective-date requirements do not apply to "rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A); 5 U.S.C. 553(d)(3) (providing that the required publication or service of a "substantive" rule shall generally be made not less than 30 days before its effective date). Courts "have used the term 'procedural exception' as shorthand for that exemption." *AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023). "[T]he critical feature of a rule that satisfies the . . . procedural exception is that it 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." *Id.* (quoting *James V. Hurson Assocs., Inc. v. Glickman*, 229 F.3d 277, 280 (D.C. Cir. 2000)); *cf. Texas v. United States*, 809 F.3d 134, 176 (5th Cir. 2015) (holding that a rule is not procedural when it "modifies substantive rights and interests" (quoting *U.S. Dep't of Lab. v. Kast Metals Corp.*, 744 F.2d 1145, 1153 (5th Cir. 1984))). To determine whether a rule is procedural or substantive, courts "must look at [the rule's] effect on those interests ultimately at stake in the agency proceeding." *Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629, 637 (D.C. Cir. 1984). That said, "an otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties." *James V. Hurson Assocs., Inc.*, 229 F.3d at 281. Even "a rule with a 'substantial impact' upon the persons subject to it is not necessarily a substantive rule under" the APA. *Elec. Priv. Info. Ctr. v. DHS*, 653 F.3d 1, 5 (D.C. Cir. 2011) (citing *Pub. Citizen v. Dep't of State*, 276 F.3d, 634, 640–41 (D.C. Cir. 2002)).

The Departments have determined that this rule regulates agency procedure and is therefore exempt from notice-and-comment and delayed-effective-date requirements under the APA. *See* 5 U.S.C. 553(b)(A); *id.* 553(d)(3). Although this rule does withdraw certain amendatory instructions of the Security Bars Final Rule, withdrawing the identified amendatory instructions will not alter individuals' rights or interests, nor will doing so alter any eligibility requirements for relief or protection from removal or place any new "substantive burden[s]" on regulated parties. *Elec. Priv. Info. Ctr.*, 653 F.3d at 6; *see JEM Broad. Co.*, *Inc. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994). Instead, removing such amendatory instructions simply avoids writing over regulatory amendments properly adopted after the Security Bars Final Rule was published, as described in Sections II.E and III.A of this preamble, or codifying language that could cause confusion, as described in Section III.B of this preamble, thus preventing the codification of confusing or conflicting regulatory text. The substance of the Security

Bars Final Rule—*i.e.*, that the statutory "danger to the security of the United States" bars to eligibility for asylum and withholding of removal encompass certain emergency public health concerns—remains unaffected by the changes to the Security Bars Final Rule adopted in this rulemaking. The changes made by this rulemaking accordingly will not affect the "rights or interests" of aliens, *see AFL-CIO*, 57 F.4th at 1034, because those rights or interests will remain exactly the same as if the Security Bars Final Rule had been allowed to go into effect as scheduled without the changes made by this rulemaking. As such, this rule is a "'housekeeping'" measure that falls squarely within the procedural rule exception to the APA's notice-and-comment and delayed-effective-date requirements. *See James V. Hurson Assocs., Inc.*, 229 F.3d at 282 (quoting *Nat'l Whistleblower Ctr. v. Nuclear Regul. Comm'n*, 208 F.3d 256, 263 (D.C. Cir. 2000)).

Accordingly, this rule is not subject to the notice-and-comment and delayed-effective-date requirements of the APA.

3. Good Cause

A rule is exempt from the APA's notice-and-comment requirements when an agency "for good cause" finds that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). An agency may also forgo a delayed effective date "for good cause found." 5 U.S.C. 553(d)(3). The Departments have determined that there is good cause to forgo notice-and-comment procedures for this partial withdrawal because providing notice and an opportunity to comment is unnecessary. For the same reason, this rule is exempt from the APA's delayed-effective-date requirements.

When determining that notice and comment is "unnecessary," the agency must consider whether the rule is "insignificant in nature and impact, and inconsequential to . . . the public." *See Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (quotation omitted) (holding that notice and comment rulemaking was necessary

because the regulation at issue "greatly expanded the regulated community and increased the regulatory burden"); *see also North Carolina Growers' Ass'n, Inc. v. United Farm Workers*, 702 F.3d 755, 766 (4th Cir. 2012) (describing the unnecessary prong as applying "when amendments are 'minor or merely technical,' and of little public interest" (quoting *Nat'l Nutritional Foods Ass'n v. Kennedy*, 572 F.2d 377, 384–85 (2d Cir. 1978))).

Notice and comment on the Departments' decision to withdraw specific amendatory instructions in the Security Bars Final Rule is unnecessary because rules that underwent notice and comment rulemaking or were exempt from notice and comment rulemaking, as described in Section II.E of this preamble, superseded those amendments while the Security Bars Final Rule's effective date was delayed. In some instances, the intervening rules substantively removed provisions that had been implemented by the Global Asylum Final Rule and were set to be further amended by the Security Bars Final Rule. For example, the requirement to consider mandatory bars during credible fear screenings was adopted through the Global Asylum Final Rule, amended by the Security Bars Final Rule, but subsequently removed by the Asylum Processing IFR. *See* Section II.E.1 of this preamble. Intervening rules also affected the structure of the applicable CFR sections such that certain paragraphs that the Security Bars Final Rule would revise—in the absence of this rulemaking—no longer exist, as described in Section III.A of this preamble. Hence, as described in Sections II.E and III.A of this preamble, the substantive policy choices adopted in the amendatory instructions the Departments are withdrawing from the Security Bars Final Rule have been reversed or altered by intervening rules that were adopted after notice and comment or were exempt from the APA's notice-and-comment requirements. Withdrawing these regulatory amendments accordingly amounts to a "technical" change, *see North Carolina Growers' Ass'n*, 702 F.3d at 766, designed only to ensure that the CFR continues to accurately reflect the

correct procedures—*i.e.*, to ensure that the delayed implementation of the Security Bars Final Rule does not create conflicts with the amendments to the credible fear provisions that were made in the later-enacted rules discussed in Section II.E of this preamble.[19]

As to whether there is good cause to forego the delayed effective date typically required by the APA, courts have asked whether the need to immediately implement a new rule outweighs regulated parties' need to prepare for implementation of the rule. *See, e.g.*, *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981). Here, there is no need for additional delay for regulated parties to prepare for implementation of this rule. Regulated parties have long been on notice that the Security Bars Final Rule was scheduled to go into effect on December 31, 2025; and the changes made to the Security Bars Final Rule by this current rulemaking will not require any time for adjustment by regulated parties because withdrawing certain portions of the Security Bars Final Rule will ensure only that the immigration adjudication system continues to function as it currently does. In contrast, delaying this rule under section 533(d) of the APA would risk causing significant confusion, as discussed above in Sections II.E and III of this preamble.

For these reasons, the Departments have determined that notice-and-comment procedures and a delayed effective date are unnecessary.

4. Foreign Affairs

The requirements of 5 U.S.C. 553 do not apply to this rule because it involves a "foreign affairs function of the United States." 5 U.S.C. 553(a)(1). Courts have held that this exception applies when the rule in question "clearly and directly involves a foreign

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[19] Although the withdrawal of the parts of amendatory instructions 3 and 11 that relate to revisions to paragraph (f) in 8 CFR 208.16 and 1208.16 are not the result of amendments by intervening rules, their removal likewise does not effect a change to the status quo. Withdrawing those amendments avoids introducing potential confusion as to the availability of statutory withholding of removal for aliens slated for removal under the INA, as described in Section III.B of this preamble.

affairs function." *E.B. v. U.S. Dep't of State*, 583 F. Supp. 3d 58, 63 (D.D.C. 2022) (cleaned up). In addition, although the text of the APA does not require an agency invoking this exception to show that such procedures may result in "definitely undesirable international consequences," some courts have required such a showing. *Rajah v. Mukasey*, 544 F.3d 427, 437 (2d Cir. 2008) (quotation marks omitted). This rule satisfies both standards.

This rule is intended to ensure the Departments' continued ability to process aliens using the expedited removal statute by avoiding conflicting instructions to agency personnel implementing the credible fear screening process and the removal process generally. *See* INA 235(b)(1), 8 U.S.C. 1225(b)(1). If there are conflicting instructions, the Departments' ability to operate the expedited removal system, as well as the use of third-country removal procedures, could be interrupted. As recently explained when expanding the scope of expedited removal to the statutory maximum, the use of expedited removal "enhance[s] national security and public safety—while reducing government costs—by facilitating prompt immigration determinations." Designating Aliens for Expedited Removal, 90 FR 8139, 8139 (Jan. 24, 2025). The Departments believe that the use of expedited removal, both at the border and elsewhere, disincentivizes aliens from entering the United States unlawfully. If that process is interrupted, those disincentives may disappear.

Ensuring the continued viability of the expedited removal process and third-country removal procedures without delay avoids the possibility of losing momentum with international partners to address shared challenges to border security and illegal immigration. The United States' border management strategy is predicated on the belief that migration is a shared responsibility among all countries in the region, and Executive Order 14150 of January 20, 2025 ("America First Policy Directive to the Secretary of State"), sets out the President's vision that "the foreign policy of the United States shall

champion core American interests and always put America and American citizens first." 90 FR 8337 (Jan. 20, 2025). In this regard, the Administration is actively engaged in negotiations, including wide-ranging discussions with foreign partners, on matters related to border security, such as to reduce illegal immigration and advance security in the United States and the region. *See* Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439, 27454–55 & nn.48–55 (June 27, 2025) (discussing the Administration's efforts).

For its foreign policy efforts to succeed in this regard, the United States must demonstrate its own willingness to maintain its ability to use available tools to disincentivize, prepare for, and respond to ongoing migratory challenges and unlawful immigration. This rule ensures that two such critical tools—expedited removal and third-country removals—will not be potentially interrupted by conflicting and confusing regulatory provisions and so will remain means by which the Departments may deliver consequences to aliens who make the dangerous journey for purposes of entering the United States unlawfully. Such efforts demonstrate to international partners the United States' commitment to ending illegal immigration. Although southern border encounters between ports of entry have fallen to historical lows since January 2025,[20] this Administration has made it a priority to take all measures to ensure that DHS maintains operational control at the border in order to prevent potential illegal immigration surges, as occurred during the last Administration.[21] Loss of operational control of the border results in large numbers of migrants making the dangerous journey to the southern border through countries in the Western Hemisphere.[22] Therefore, delaying this rule's

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[20] CBP, *Trump Administration Delivers 5 Straight Months of 0 Releases at the Border* (Oct. 24, 2025), https://www.cbp.gov/newsroom/national-media-release/trump-administration-delivers-5-straight-months-0-releases-border [https://perma.cc/W33V-ZPH3].

[21] *See* Executive Order 14165, *Securing Our Borders*, 90 FR 8467 (Jan. 20, 2025)

[22] *See, e.g.*, Securing the Border, 89 FR 81186 (noting that when there is a strain on resources due to a large number of aliens crossing the southern border illegally, this situation creates "incentives for migrants to make the dangerous journey to the southern border in the hope that the overwhelmed and under-resourced immigration system will not be able to expeditiously process them for removal").

withdrawal of the identified amendatory instructions to await further notice and comment or a delayed effective date could undermine the momentum that this Administration has built with foreign partners towards shared border security challenges.

Moreover, the Administration is actively engaged in negotiations with other countries intended to address the large number of illegal aliens in the United States, including those who may be subject to expedited removal or removed to a third country. This includes various agreements that the Administration has signed with foreign governments in which those countries have agreed to accept third-country nationals, as well as their own nationals, upon removal.[23] The Administration's negotiations also include discussions designed to help ensure that other countries issue travel documents for their nationals for removal and approve removal flights from the United States in a timely manner.[24]

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[23] *See* Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, 90 FR 30076 (July 8, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Relating to the Transfer of Nationals of Central American Countries to Guatemala, 90 FR 31670 (July 15, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests, 90 FR 42597 (Sept. 3, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador, 90 FR 51376 (Nov. 17, 2025); Marco Rubio, *Press Statement: Signing of a Safe Third Country Agreement with Paraguay* (Aug. 14, 2025), https://www.state.gov/releases/office-of-the-spokesperson/2025/08/signing-of-a-safe-third-country-agreement-with-paraguay [https://perma.cc/5H66-NDBV]; Ministry of Foreign Affairs of the Republic of Belize*, Belize Signs Safe Third Country Agreement With United States* (Oct. 20, 2025), https://www.pressoffice.gov.bz/belize-signs-safe-third-country-agreement-with-united-states [https://perma.cc/U6VC-PLT3]; Ecuavisa, *Ecuador recibirá hasta 300 refugiados al año enviados por EE. UU.* (Sept. 1, 2025), https://www.ecuavisa.com/noticias/politica/estados-unidos-refugiados-ecuador-DC10033154 [https://perma.cc/CE4Z-MXB8].

[24] It is critical to the ability of the United States to remove aliens that the aliens' countries of citizenship timely issue travel documents for their nationals for removal and that the countries approve removal flights from the United States. In bilateral engagements, this Administration has made it clear to other countries that it is their responsibility to facilitate the return of their nationals who do not have a legal basis to remain in the United States. A country's refusal to either issue travel documents for its nationals or authorize removal flights may carry consequences. For example, on January 26, 2025, Colombia's refusal to allow removal flights to land in Colombia led the United States to impose visa restrictions to indicate that reducing illegal immigration and removal of aliens with no legal right to remain in the United States is a critical foreign policy objective of the United States. *See* The White House, *Statement from the Press Secretary* (Jan. 26, 2025), https://www.whitehouse.gov/briefings-statements/2025/01/statement-from-the-press-secretary/ [https://perma.cc/B5MT-2LXE]; U.S. Department of State, *Secretary Rubio Authorizes Visa Restrictions on Colombian Government Officials and their Immediate Family Members* (Jan. 26, 2025), https://www.state.gov/secretary-rubio-authorizes-visa-restrictions-on-colombian-government-officials-and-their-immediate-family-members/ [https://perma.cc/V2QU-M7XQ]; U.S. Department of

These efforts also include coordination with other countries to support the Administration's efforts to encourage aliens to depart the United States voluntarily and return to their home countries, consistent with Presidential Proclamation 10935, 90 FR 20357 (May 9, 2025) ("Establishing Project Homecoming").[25] In sum, these actions indicate that the removal of aliens with no legal right to remain in the United States is a critical foreign policy objective of the United States.

Here too, for these foreign policy efforts to succeed, the United States must demonstrate that it is ensuring the continued usability of all the tools it has available to help achieve the purpose of these international efforts and negotiations: to encourage other countries to cooperate with the United States' efforts to remove illegal aliens.

Delaying this rule's withdrawal of the identified amendatory instructions could have undesirable consequences on the United States' ongoing foreign policy goals, including efforts to encourage other countries to issue travel documents. Quite simply, if the United States is unable to demonstrate its continuous, effective commitment to taking quick and robust action to remove aliens, which depends on international cooperation, countries may be less inclined to engage with the United States on these ongoing efforts in the future.

In addition, the Department of State recently described the foreign affairs aspect of immigration in its determination that "efforts . . . to control the status, entry, and exit of people . . . across the borders of the United States" constitute a foreign affairs function of the United States under the APA. *See* Determination: Foreign Affairs Functions of the United States, 90 FR 12200, 12200 (Mar. 14, 2025). In making this determination, the

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State, *Ending Illegal Immigration in the United States* (Jan. 26, 2025), https://www.state.gov/ending-illegal-immigration-in-the-united-states/ [https://perma.cc/7L3M-TDTJ].

[25] For example, on May 19, 2025, DHS conducted a voluntary charter flight from the United States to Honduras and Columbia, in coordination with those governments, for aliens who opted to self-deport. *See* DHS, *Project Homecoming Charter Flight Brings Self-Deporters to Honduras, Colombia* (May 19, 2025), https://www.dhs.gov/news/2025/05/19/project-homecoming-charter-flight-brings-self-deporters-honduras-colombia/ [https://perma.cc/VXP9-6DSF]. The participants were welcomed by representatives from their home governments, who also provided benefits and services to those aliens. *See id*.

Department of State explained that "[s]ecuring America's borders and protecting its citizens from external threats is the first priority foreign affairs function of the United States" and noted that an unsecured border presents a range of threats to U.S. citizens, which can be eliminated or mitigated through the execution of the foreign affairs functions. 90 FR 12200. This rule will remove the potential for interruption of U.S. efforts to achieve the total and efficient enforcement of U.S. immigration law and, accordingly, champions a core American interest in accordance with American foreign policy. *See id.*

B. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 ("Unleashing Prosperity Through Deregulation") directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations."

Although this rule is not economically significant under section 3(f)(1) of Executive Order 12866, the Office of Management and Budget ("OMB") has designated this rule a "significant regulatory action" under section 3(f) of that order. Accordingly, the rule has been reviewed by OMB.

This rule is not a regulatory action subject to Executive Order 14192 because it is

being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States or any other function performed by the Federal Government with respect to aliens. *See* OMB, Memorandum M-25-20, *Guidance Implementing Section 3 of Executive Order 14192, titled "Unleashing Prosperity Through Deregulation"* at 5 (Mar. 26, 2025).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Departments have reviewed this rule in accordance with the RFA's requirements and have determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not regulate "small entit[ies]" as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, may seek asylum or withholding or deferral of removal, and only individual aliens are otherwise placed in immigration proceedings. Further, the RFA's regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 604(a). Because the Departments were permitted to forgo notice-and-comment procedures for the reasons explained in Section V.A of this preamble, a regulatory flexibility analysis is not required for this rule.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 ("UMRA") is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a

written statement assessing the effects of any Federal mandate in a proposed rule, or a final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. *See* 2 U.S.C. 1532(a). This final rule does not contain a Federal mandate as the term is defined under UMRA: It does not impose any enforceable duty upon any State, local, or Tribal government or any private sector entity. Any downstream effects on such entities would arise solely due to the entity's voluntary choices, and the voluntary choices of others, and would not be a consequence of an enforceable duty imposed by this rule. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA. The requirements of title II of UMRA, therefore, do not apply, and the Departments have not prepared a statement under UMRA.

E. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

F. Executive Order 13132 (Federalism)

This final rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

This rule does not have Tribal implications under Executive Order 13175 because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

I. National Environmental Policy Act

DHS and its components analyze final actions to determine whether the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4321 *et seq.*, applies to them and, if so, what degree of analysis is required. DHS established the policies and procedures that DHS and its components use to comply with NEPA in Directive 023-01 Rev. 01, Implementing the National Environmental Policy Act (Oct. 31, 2014), https://www.dhs.gov/sites/default/files/publications/mgmt/environmental-management/mgmt-dir_023-01-implementation-national-environmental-policy-act_revision-01.pdf, and Instruction Manual 023-01-001-01 Rev. 01, Implementation of the National Environmental Policy Act (NEPA) (Nov. 6, 2014) ("Instruction Manual").[26]

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions ("categorical exclusions") that experience has shown do

[26] The Instruction Manual contains DHS's procedures for implementing NEPA, and copies are available upon request. *See* DHS, *National Environmental Policy Act Compliance* (July 29, 2025), https://www.dhs.gov/ocrso/eed/epb/nepa.

not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.[27] The Instruction Manual, Appendix A, lists the DHS Categorical Exclusions.[28]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[29]

This rule amends a not-yet-effective final rule in ways that will not change the current status quo and thus will not result in a change in the final rule's environmental effect. This rule is strictly administrative; it amends DHS's existing regulations governing credible fear procedures and protection eligibility to avoid confusion and conflicting regulatory text, rather than to change the substance of the Security Bars Final Rule. DHS has reviewed this partial withdrawal rule and finds that no significant impact on the environment, nor any change in environmental effect, will result from the amendments being promulgated in this partial withdrawal rule.

Accordingly, DHS finds that the promulgation of this rule clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures because it is as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect. Therefore, this rule is categorically excluded from further NEPA review. DOJ is adopting the DHS determination that this rule is categorically excluded under exclusion A3 of DHS's Instruction Manual because

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[27] *See* 42 U.S.C. 4336(a)(2), 4336e(1).
[28] *See* Instruction Manual, Appendix A, Table 1.
[29] Instruction Manual at V.B(2)(a) through (c).

the rule makes changes to DOJ's provisions of the Security Bars Final Rule that are similar to those made to DHS's provisions. *See* 42 U.S.C. 4336c (allowing an agency to adopt another agency's categorical exclusion determination).

J. Paperwork Reduction Act

This rule does not adopt new, or revisions to existing, "collection[s] of information" as that term is defined under the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects

8 CFR Parts 208 and 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements

Accordingly, for the reasons set forth in the preamble, in FR Doc. 2020-28436 appearing on page 84160 in the *Federal Register* of Wednesday, December 23, 2020, the following corrections are made:

1. On page 84193, starting in the third column, in part 208, amendment 3 and the accompanying regulatory text are corrected to read as follows:

3. Amend § 208.16 by revising paragraph (d)(2) to read as follows:

§ 208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(d) * * *

(2) *Mandatory denials*--(i) *In general*. Except as provided in paragraph (d)(3) of this section, an application for withholding of removal under section 241(b)(3) of the Act or under the regulations issued pursuant to the legislation implementing the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings

commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial of withholding enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(ii) *Public health emergencies*. If a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3, then an alien is ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act if the alien:

(A) Exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate; or

(B) Has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period for the disease, per guidance issued by the Secretary or the Attorney General, as appropriate.

(iii) *Danger to the public health caused by an epidemic outside of the United States*. If, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly:

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or

have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States; and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in paragraph (d)(2)(ii)(A) of this section who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act, including any relevant exceptions as appropriate, then--

(C) An alien or class of aliens are ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act if the alien or class of aliens are described in paragraph (d)(2)(ii)(A) of this section and are regarded as a danger to the security of the United States as provided for in paragraph (d)(2)(ii)(B) of this section.

(iv) The grounds for mandatory denial described in paragraphs (d)(2)(ii) and (iii) of this section shall not apply to an alien who is applying for asylum or withholding of removal in the United States upon return from Canada to the United States and pursuant to the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries.

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2. On page 84197, starting in the first column, in part 1208, amendment 11 and the

accompanying regulatory text are corrected to read as follows:

11. Amend § 1208.16 by revising paragraph (d)(2) to read as follows:

§ 1208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(d) * * *

(2) *Mandatory denials*--(i) *In general*. Except as provided in paragraph (d)(3) of this section, an application for withholding of removal under section 241(b)(3) of the Act or under the regulations issued pursuant to the legislation implementing the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial of withholding enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(ii) *Public health emergencies*. If a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3, then an alien is ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act if the alien--

(A) Exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate; or

(B) Has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period for the disease, per guidance issued by the Secretary or the Attorney General, as appropriate.

(iii) *Danger to the public health caused by an epidemic outside of the United States*. If, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly--

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States; and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in paragraph (d)(2)(iii)(A) of this section who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act, including any relevant exceptions as appropriate, then--

(C) An alien or class of aliens are ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United

States under section 241(b)(3)(B)(iv) of the Act if the alien or class of aliens are described in paragraph (d)(2)(iii)(A) of this section and are regarded as a danger to the security of the United States as provided for in paragraph (d)(2)(iii)(B) of this section.

(iv) The grounds for mandatory denial described in paragraphs (d)(2)(ii) and (iii) of this section shall not apply to an alien who is applying for asylum or withholding of removal in the United States upon return from Canada to the United States and pursuant to the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries).

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Kristi Noem,
Secretary of Homeland Security

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Daren K. Margolin,
Director, Executive Office for Immigration Review, Department of Justice

[FR Doc. 2025-23970 Filed: 12/29/2025 8:45 am; Publication Date: 12/30/2025]