



January 4, 2021

Ms. Lauren Alder Reid
Assistant Director, Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1800
Falls Church, Virginia 22041
Via federal eRulemaking portal, <http://www.regulations.gov>

RE: Executive Office for Immigration Review, RIN 1125-AA81; Request for Re-Notice of “Executive Office for Immigration Review Electronic Case Access and Filing” to allow sufficient time for meaningful public input

Dear Ms. Alder Reid:

Kids in Need of Defense (KIND) submits the following comments on the Executive Office for Immigration Review’s (EOIR) proposed rule titled Executive Office for Immigration Review Electronic Case Access and Filing (the “Proposed Rule”), published on December 4, 2020, in a Notice of Proposed Rulemaking (NPRM), 85 Fed. Reg. 78240.

KIND is a national nonprofit organization dedicated to providing free legal representation and protection to unaccompanied immigrant and refugee children in removal proceedings. Since January 2009, KIND has received referrals for more than 21,000 children from 77 countries. KIND has field offices in ten cities: Los Angeles, San Francisco, Atlanta, Baltimore, Boston, Houston, Newark, New York City, Seattle, and Washington, DC. Legal services professionals who serve children through KIND, including staff as well as over 675 pro bono partners, provide defense in removal proceedings and pursue immigration benefits on behalf of their child clients. KIND also employs social services coordinators throughout the country, providing unaccompanied children with the support they need outside of the courtroom. KIND promotes protection of children in countries of origin and transit countries and works to address the root causes of child migration from Central America. KIND also advocates for laws, policies, and practices to improve the protection of unaccompanied children. KIND staff and pro bono partners engage with EOIR and the Department of Homeland Security to file and serve applications and pleadings on behalf of child respondents facing removal proceedings at Immigration Courts nationwide.

The Proposed Rule Fails to Provide Sufficient Time for Adequate Public Review

KIND recognizes the importance of the nationwide implementation of EOIR’s Electronic Case Access and Filing (“ECAS”) system. However, KIND urges EOIR to re-notice the rule with a comment period sufficient to support meaningful public participation, preferably longer than the required minimum of 60 days.

The Proposed Rule has been issued with only a 30-day comment period, in violation of Executive Order 12,866, and with no suggestion of a good reason for an abbreviated period. Executive Order 12,866, Regulatory Planning and Review, sec. 6(1)(a), 58 Fed. Reg. 51735, 51740 (Oct. 4, 1993) (“[E]ach agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.”). Challenges posed by the COVID-19 pandemic, intervening federal holidays, and several other contemporaneous substantive rulemaking notices in the same timeframe erect further barriers to meaningful engagement by the public and underscore the inappropriateness of an accelerated comment timeline.

A meaningful comment period is critical for a proposal like this Proposed Rule given that the system-wide implementation of the ECAS system intersects with many thousands of users, eventually including *pro se* individuals. For legal representatives of both the Department of Homeland Security and respondents, use of the electronic filing system will comprise of a momentous portion of their work, and will also serve as the primary mechanism for interfacing with EOIR. It is therefore critical that ECAS be implemented only after the public has a full opportunity to provide analysis and input. Requiring analysis in just 30 days, including two federal holidays, suggests haste to implement the system without consideration of critical feedback to ensure that the ECAS system is implemented both effectively and fairly for all parties. A rule like this calls for an iterative process with a full opportunity for public comment and, if significant changes are prompted by those comments, a supplemental notice and second comment period.

Given that the ECAS system and Proposed Rule regarding its implementation restructure the case processing landscape for many thousands of users, KIND urges EOIR to re-notice this Proposed Rule, with the minimum required 60-day comment period or more, and to contemplate providing for a second round of comments.

Sincerely,

/s/

Maria Odom
Vice President for Legal Programs
Kids in Need of Defense