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Division of Humanitarian Affairs, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: Employment Authorization Reform for Asylum Applicants, CIS No. 2799–25; DHS Docket No. USCIS– 2025–0370, 91 Fed. Reg. 8616 (Feb. 23, 2026)

To Whom It May Concern:

Kids in Need of Defense (KIND) respectfully submits the following comments in response to the above Notice of Proposed Rulemaking (NPRM) on “Employment Authorization Reform for Asylum Applicants,” published by the Department of Homeland Security (DHS) on February 23, 2026 (the “Proposed Rule”).¹

KIND is an international organization working to ensure that no child faces immigration court alone. KIND has provided legal representation in immigration matters to more than 17,000 children in U.S. immigration proceedings, provided legal rights education to more than 78,000 children, and formed pro bono partnerships with nearly 900 corporations, law firms, law schools, and bar associations to provide children with pro bono representation. KIND’s social services program facilitates support for unaccompanied children, including case management, educational support, access to housing and medical care, community referrals, and other services. KIND also works to address the root causes of migration and to promote the safety and well-being of children at every stage.

Through this work, KIND has witnessed the critical importance of work authorization and employment authorization documents (“EADs”) to support the ability of eligible children to access lawful work opportunities that contribute to their wellbeing, safety, and financial security; avoid situations of trafficking and exploitation; and secure government-issued identification that is often required to access basic services, even if not used for employment purposes. The Proposed Rule, however, would all but eviscerate access to EADs for asylum seekers by imposing an indefinite pause on U.S. Citizenship and Immigration Services’ (USCIS) processing of their initial work authorization applications until the agency is able to process all affirmative asylum applications within an average of six months. USCIS acknowledges that it could take an estimated 14 to 173 years to reach this processing time,² a duration that could reach nearly double the average lifespan of people in the United States. During this time,

¹ 91 Fed. Reg. 8616 (Feb. 23, 2026).

² *Id.* at 8618.

unaccompanied children and thousands of other people seeking protection would be unable to meaningfully access safety, stability, or critical services that are essential for their healing and wellbeing as they wait for their asylum applications to be adjudicated. Additional changes would impose new biometrics requirements, require asylum seekers to wait 365 days before applying for work authorization, provide USCIS broad discretion to deny initial EAD applications and renewals, and extend the time available for USCIS to adjudicate initial work permits from 30 days to 180 days.

By erecting intractable barriers to accessing EADs, these changes risk subjecting thousands of protection seekers to deep and indefinite financial insecurity and risk of harm; expose unaccompanied children to heightened risk of trafficking, exploitation, and other harms that Congress sought to mitigate through the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and related safeguards; and threaten broad-based economic impacts for employers and businesses.

Although the Proposed Rule exempts unaccompanied children from several of the new eligibility requirements, it nevertheless subjects children to a series of delays and barriers that will only exacerbate their vulnerability and destabilize their families and communities. These risks are compounded by a series of other regulatory and policy changes proposed and implemented by DHS over the past year pertaining to asylum, biometrics, and work authorization. By failing to fully consider the myriad ways the Proposed Rule detrimentally impacts the most vulnerable in the immigration system, the Proposed Rule falls short of the Administrative Procedure Act's requirements and similarly runs counter to the Immigration and Nationality Act (INA) and the TVPRA. We urge DHS to rescind the Proposed Rule in its entirety.

I. The Proposed Rule Inadequately Considers the TVPRA and Specific Legal Protections for Unaccompanied Children

Congress, through the TVPRA, created specific procedural safeguards for unaccompanied children in recognition of the dangers many children have fled in their countries of origin, the inherent barriers children arriving without a parent or legal guardian face in the immigration system, and the risks that children could be returned to trafficking, persecution, or other grave harm if their protection claims are not fully and fairly considered. Among other provisions, the TVPRA provides for border screenings, care and placement by the Office of Refugee Resettlement, and access to post-release services. It also provides for unaccompanied children's placement in full immigration removal proceedings under INA Section 240, access to counsel and independent child advocates, the opportunity to apply for asylum first before USCIS in a non-adversarial interview setting, exemption from the one-year filing deadline and safe third country bars to asylum, and exemption from expedited removal.³

An additional TVPRA provision directs that "[a]pplications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children's cases."⁴

³ See generally William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457 (Dec. 23, 2008), at Sec. 235 (codified at 8 U.S.C. § 1232; 8 U.S.C. § 1158(a)(2)(E)).

⁴ 8 U.S.C. § 1232(d)(8).

Implicit in these protections is an intent to reduce barriers that impede children from accessing necessary protection and to ensure federal policymaking appropriately considers children’s unique vulnerability. Notwithstanding the fundamental importance of these protections, the Proposed Rule includes only limited exceptions for unaccompanied children from several of the new eligibility requirements for EADs. Children still will be required to navigate the harsh consequences of the Proposed Rule’s other provisions, including the indefinite pause on processing of initial EADs, the increased waiting period before applying for work authorization, lengthier adjudication time frames, and new and potentially boundless discretion for DHS to deny their EAD applications and speed denials of asylum applications. Such changes could upend access to critical social services and care as well as safe, lawful employment as children age and while they wait potentially years for a decision in their protection case. Without the basic supports that all children need to simply survive, let alone develop and thrive, these changes will mean that many children will feel they have no choice but to continue searching for protection elsewhere, potentially by undertaking perilous journeys to other countries. Children also may request to return to their country of origin, despite significant protection needs and the ongoing threats to their wellbeing facing them there. By imperiling and undermining unaccompanied children’s stability, wellbeing, and ability to access asylum protection, the Proposed Rule harmfully and arbitrarily departs from Congress’s clear intent in enacting the TVPRA.

II. The Proposed Rule Creates New and Harmful Barriers to Critical Government-Issued Identification for Unaccompanied Children

Many unaccompanied children flee to the United States in search of protection from dire threats to their lives and wellbeing in their countries of origin. To be able to access humanitarian protection, children must navigate complex immigration processes and proceedings. During these proceedings and interviews, children may have to testify or be questioned about traumatic events giving rise to their claims for protection. Undertaking these steps often requires that children develop sufficient trust to be able to disclose sensitive information about the harm and threats they have faced. Psychosocial support and services often are critical to support children who may have experienced prior harm at the hands of adults and to minimize risk of re-traumatization as children process painful experiences and participate in their legal protection case. Social services and other assistance help children navigate adjustments such as adapting to new living arrangements, enrolling in a new school, or learning English. Frequently, however, these services are inaccessible without government-issued identification. For many children, EADs currently meet this need, including for children who are not yet eligible to work but who rely on EADs for identification purposes. In many cases, EADs are the only form of government-issued identification a child may have or be able to obtain while their legal case remains pending.

In 2023, the Office of Refugee Resettlement (ORR) recognized the barriers unaccompanied children leaving its care commonly experience in accessing government-issued identification. Accordingly, ORR piloted a new card version of its Verification of Release (VoR) form with certain care providers. This effort did not, however, reach all children and it is unclear whether state, local, and federal agencies and other service providers widely accepted these cards as proof of identity. The current status of this initiative is unknown. However, DHS has recently issued notices to some children requesting additional evidence of identification and stating that ORR Verification of Release forms are not valid to prove identity. Consequently, the ability of unaccompanied children seeking asylum to access necessary services while they await adjudication of their cases likely will become even more difficult—a troubling reality that the Proposed Rule only exacerbates.

DHS acknowledges in a footnote that EADs serve as “valued identification document”⁵ for some people, independent of their use for employment, but fails to grapple with the consequences of depriving children of such documentation. If unable to access counseling, medical experts, and other necessary supports, many children will be unable to attend or meaningfully participate in proceedings before USCIS or immigration courts or to fully articulate the need for protection underlying their asylum applications. Consequently, children with meritorious cases for protection may have their applications denied and could be deported to the very harms they fled. These circumstances conflict with the federal government’s obligations under U.S. and international asylum law to prevent the *refoulement* of asylum seekers and similarly diverge from congressional intent through the TVPRA to advance child-sensitive procedures to ensure unaccompanied children are never returned to trafficking or other mistreatment.

The Proposed Rule also threatens to hinder children’s ability to access routine and preventive medical care, housing, and other services that are vital for children’s healthy development and for which government-issued documentation may be requested. Similar hurdles impede children’s ability to obtain driver’s licenses as they come of age or to create bank accounts or enroll in training or educational opportunities. Lack of access to EADs and identification is not simply an administrative inconvenience but acts as a profound barrier for children’s healthy development and ability to secure long-term safety and protection.

In addition to broadly impacting children previously released from ORR care, the Proposed Rule undermines ORR’s safe placement of unaccompanied children currently in and aging out of ORR custody, as provided for by the Homeland Security Act of 2002, the TVPRA, and ORR policies. As a consequence of a number of changes to ORR’s sponsorship policies, unaccompanied children are now remaining on average 190 days or more in ORR custody.⁶ Other changes in policy and practice have accelerated children’s immigration court hearings and proceedings⁷ and demanded that many children prepare their applications for asylum or other protection while still in ORR custody or shortly after their release. The Proposed Rule could mean that a growing number of children could soon face new barriers to accessing EADs, and in turn social services to assist them, just as they are met with the challenging and sensitive process of preparing for their asylum hearings or interviews and navigating the uncertainty and anxiety of awaiting a decision in their case. USCIS’s failure to consider these predictable impacts is arbitrary and capricious and undermines, rather than advances, the wellbeing of unaccompanied children and the integrity of USCIS’s and EOIR’s asylum adjudications.

⁵ 91 Fed. Reg. at 8679 n. 309 (“DHS is aware that some aliens obtain an EAD as a valued identification document. Hence, some individuals may continue to file for a (c)(8) under affirmative asylum even though it would not generate a specific pecuniary benefit. . .”).

⁶ ORR, Unaccompanied Alien Children, Data, Average Monthly Data (Length of Care) (Current as of Apr. 10, 2026), <https://acf.gov/orr/about/ucs/facts-and-data> (indicating an average monthly length of care for discharged children of 194 days for March 2026).

⁷ See generally Kids in Need of Defense, *A Timeline Spotlight: Immigration Court Policy Changes Impacting Unaccompanied Children* (Dec. 2025), https://supportkind.org/wp-content/uploads/2025/12/25_Timeline-Spotlight-1.pdf.

III. The Proposed Rule Impedes Access to Lawful Employment and Threatens to Exacerbate the Risks of Trafficking and Exploitation Facing Unaccompanied Youth

Many unaccompanied children fleeing trauma and harm in their country of origin experience additional barriers to protection as they navigate complex immigration proceedings, adapt to life in the United States, and approach adulthood with limited financial and other resources. Owing to these circumstances, their developmental stage, and lack of immigration status while their asylum applications remain pending, unaccompanied children may be targeted for trafficking, exploitation, and other harm by those who prey upon their desperate need for care and safety. News reports have documented troubling instances of child labor exploitation of unaccompanied children across industries.⁸ EADs help to mitigate these risks by enabling youth of working age to access safe and lawful employment and training opportunities that can support them in acquiring financial security, building job and life skills, and advancing personal goals and contributions. Such opportunities also can foster the development of community connections and trusted adult contacts to whom a young person can turn for assistance if they experience any risks or face danger in the future.

The Proposed Rule, however, could require unaccompanied youth seeking asylum to wait 365 days to be able to apply for an EAD and to wait for up to 180 days after that for their EAD application to be adjudicated. This would likely occur only after DHS has lifted a presumed pause on processing of initial EAD applications, as provided for by the rule until DHS achieves substantial reductions in the affirmative asylum backlog.

The Proposed Rule poses far-reaching consequences. If finalized, the regulation's provisions would mean that asylum seeking children and youth who seek an EAD for identification only or for work purposes, where eligible, could go their whole childhood, young adulthood, and even adulthood without ever being able to receive necessary services or to access lawful work or job training. Critical years of development in which adequate nutrition, healthcare, education, and care are especially vital for children could instead involve deep poverty, homelessness, and unyielding barriers to psychosocial and medical services precisely when children need them most. Youth whose EAD renewal applications are denied or delayed as a consequence of the Proposed Rule's new eligibility requirements or DHS's unfettered discretion to deny applications may lose jobs that have afforded them necessary stability. Their families, employers, and communities may experience cascading impacts.

Additionally, children who are 18 and aging out of ORR care could experience particular hardships as they leave government custody and assume new adult responsibilities, potentially with even less assistance and without a caregiver to support them. ORR policies require the creation of individualized post-18 plans for youth aging out of ORR care to identify a non-secure placement and any ongoing social services necessary to help ensure the youth's safety and wellbeing following release.⁹ Yet the Proposed Rule's restrictive provisions could curtail access to the very services or training opportunities that have

⁸ Hannah Drier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. Times (Feb. 28, 2003), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

⁹ See, e.g., Office of Refugee Resettlement, ORR Field Guidance #9, Interim Guidance – Age Outs and Post-18 Planning (Feb. 17, 2021), <https://acf.gov/sites/default/files/documents/orr/FG-9%20Interim%20Guidance%20Age%20Outs%20and%20Post-18%20Planning%202021%2002%2017.pdf> (providing interim guidance and citing prior federal appropriations directives within H. Rept. 116-450 pertaining to post-18 plans).

been identified as potentially beneficial in supporting a youth's future safety and stability. If unable to access these services and opportunities, youth may experience interruptions in medical and mental health care that is essential for their healing and wellbeing. These circumstances also increase the risk of re-traumatization, as a youth's inability to receive help and support as they transition to independent living could reactivate feelings and recollections of earlier trauma, loss, abandonment, and harm. As children and youth's needs go unmet, their vulnerability and the risk that they will be targeted for trafficking and exploitation increase.

IV. The NPRM Relies on Unsupported Assertions and Arbitrarily Seeks to Externalize to Vulnerable Populations DHS's Responsibility for Considering and Averting the Proposed Rule's Harmful Impacts

Rather than thoughtfully considering and averting the Proposed Rule's harmful impacts, DHS instead highlights further consequences that could follow for asylum seekers if they work without authorization in order to provide for themselves or their families amid anticipated hardships, warning that individuals "should be aware that this may render them removable and ineligible for future benefits such as adjustment of status."¹⁰ DHS elsewhere in the NPRM seeks to minimize the likely severity of the Proposed Rule's impacts for vulnerable populations and their reliance interest on current regulations by stating that "many asylum seekers may have existing support networks of family, friends, and community members, including other asylees and refugees, who are able to alleviate the financial burdens caused by the longer wait to receive employment authorization. These communities provide a significant and positive national fiscal impact and may support those who are not yet employment authorized."¹¹ DHS further suggests that its new restrictions may actually benefit asylum seekers by deterring frivolous or meritless filings, "which would permit DHS to more efficiently adjudicate the applications for aliens with meritorious asylum claims."¹²

These assertions are without evidence or support and are belied by the experiences of asylum seekers, including unaccompanied children, who are already experiencing the detrimental impact of numerous other Administration policies that are narrowing eligibility for public benefits and services, creating new procedural hurdles and requirements to access protection and work authorization, accelerating immigration proceedings, increasing and prolonging detention of protection seekers, and creating new incentives and initiatives to urge or compel children and families to abandon their protection claims.¹³ In the face of widely publicized and intense immigration enforcement, harsh rhetoric by the Administration toward asylum seekers, and the emergence of new and shifting regulatory and legal restrictions over the past year, many asylum seekers and the members of the public have experienced deepening instability

¹⁰ 91 Fed. Reg. at 8644.

¹¹ *Id.* at 8629.

¹² *Id.* at 8630.

¹³ See, e.g., Kids in Need of Defense, *Timeline: How the Second Trump Administration Is Rolling Back Protections for Unaccompanied Children* (last updated Jan. 26, 2026), <https://supportkind.org/resources/a-timeline-tracking-how-the-second-trump-administration-is-rolling-back-protections-for-unaccompanied-children/>; Human Rights First, *Issue Brief: Locked Up, Banished, Endangered: Immigration One Year Under Trump 2.0* (Jan. 2026), <https://humanrightsfirst.org/wp-content/uploads/2026/01/One-Year-Trump2-Factsheet.pdf>; Robert Hasson, et al., *The Trump Administration's First 100 Days of Immigration Policy: Impacts to Immigrant Children and Families* (Aug. 2025), The Center on Immigration and Child Welfare Initiative, https://cimmcw.org/wp-content/uploads/CICW-100-days-brief_Final.pdf.

and fear resulting in a broad chilling effect that keeps many people from going to work, school, or engaging in daily activities outside of their homes and in their communities.¹⁴ Many of these policies have been challenged in litigation or undergone repeated changes.¹⁵ Nevertheless, ongoing arrests, deportations, and detention of people across communities nationwide have destabilized many families and led to family separations and the deportation of loved ones on whom children and other family members rely for love and psychosocial support, physical care, and financial security.¹⁶ These impacts touch not only asylum seekers but family members who are U.S. citizens or who have lawful immigration status, and have created widespread hardships that strain families' ability to meet basic needs. While some families may be able to navigate the increasing difficulties posed by the Proposed Rule with temporary support from others, many children and family members likely will find themselves increasingly vulnerable and without others on whom they can rely, as communities grapple with mounting and often urgent needs and given the indefinite nature of the Proposed Rule's restrictions. Many immigrant families have expressed concern about their own financial circumstances as well as about recent policy changes impacting immigrant communities.¹⁷ DHS's failure to fully consider these foreseeable realities and its attempts to externalize to other vulnerable populations its responsibility for addressing the harmful impacts of its own policy decisions are arbitrary and capricious.

DHS's justifications sound a particularly hollow tone as it undertakes additional efforts that would dramatically increase the financial burdens on children and their families through the imposition of staggering fees and fines. These sums include fees of \$5,000 or more that DHS has recently imposed on some unaccompanied children and their sponsors for H.R. 1's "inadmissible alien apprehension fee"¹⁸ and/or fines of \$250 or more for improper entry.¹⁹ By assigning insurmountable debt to children who

¹⁴ See, e.g., Simmerdeep Kaur, *'It just punishes people': Federal rule could strip asylum seekers of legal employment*, Union Bulletin (Apr. 11, 2026), https://www.union-bulletin.com/news/local/it-just-punishes-people-federal-rule-could-strip-asylum-seekers-of-legal-employment/article_ce4421e6-02b3-4a19-82f2-c8fa692b57de.html; Maanvi Singh, *US agents increasingly arresting Afghan asylum seekers, lawyers say: 'A huge chilling effect'*, The Guardian (Dec. 12, 2025), <https://www.theguardian.com/us-news/2025/dec/12/afghan-asylum-seekers-immigration>; Ximena Bustillo, *Asylum-seekers thought they were following the rules. Now some are told to start over*, NPR (Aug. 10, 2025), <https://www.npr.org/2025/08/10/nx-s1-5487598/asylum-seekers>; Meg Anderson, *Lawyers, judges see a chilling effect from immigrants' arrests at criminal courthouses*, NPR (Aug. 8, 2025), <https://www.npr.org/2025/08/08/nx-s1-5467685/lawyers-judges-see-a-chilling-effect-from-immigrants-arrests-at-criminal-courthouses>.

¹⁵ See, e.g., Camilo Montoya-Galvez, *Trump administration scaling back asylum crackdown enacted after D.C. National Guard shooting, sources say*, CBS News (Mar. 30, 2026), <https://www.cbsnews.com/news/trump-administration-scaling-back-asylum-crackdown-national-guard-shooting/>.

¹⁶ See, e.g., Daniela X. Sandoval, *How Fear of Separation is Reshaping Latino Families—and What Communities Can Do*, Greater Good Magazine (Apr. 14, 2026), <https://greatergood.berkeley.edu/article/item/how-fear-of-separation-is-reshaping-latino-families-and-what-communities-can-do>; Kids in Need of Defense, *How the Administration's Enforcement Policies Are Separating Families and Harming Unaccompanied Children* (Jan. 13, 2026), <https://supportkind.org/resources/how-the-administrations-enforcement-policies-are-separating-families-and-harming-unaccompanied-children/>.

¹⁷ See, e.g., Drishti Pillai, Isabelle Valdes, Alisha Rao, et al., *Living in an Undocumented Immigrant Family Under the Second Trump Administration: Fear, Uncertainty, and Impacts on Health and Well-Being* (May 8, 2025), KFF, <https://www.kff.org/racial-equity-and-health-policy/living-in-an-undocumented-immigrant-family-under-the-second-trump-administration-fear-uncertainty-and-impacts-on-health-and-well-being/>.

¹⁸ See One Big Beautiful Bill Act (H.R. 1), Pub. L. 119-21 (July 4, 2025), at Sec. 100017 (codified at 8 U.S.C. § 1815).

¹⁹ See, e.g., 8 U.S.C. § 1325.

have fled to the United States in search of protection and who most often will have no ability to pay, the federal government is effectively putting an extraordinary price on children's release from custody and future safety that could foreclose access to asylum and other humanitarian protection altogether. Families may have little notice of these fees, be uncertain about how to challenge them, and unable to pay. These circumstances also increase the risk that criminal actors or others who are aware of children's desperation may seek to pay these fees on their behalf only to require children to toil in debt bondage or other involuntary servitude to pay them off. The application of these fees to children and other asylum seekers poses serious due process concerns and risks breaches of the TVPRA and U.S. and international asylum law.

DHS's efforts through the Proposed Rule to constrict access to EADs for asylum seekers at the same time that it levies steep financial burdens on these same individuals callously and illogically deepens these risks. DHS cannot credibly claim that families and communities can help mitigate the burdens of delayed access to EADs under the Proposed Rule while simultaneously advancing numerous efforts intended to overwhelm the very ability of immigrant children and families to remain in the United States and to compel them to self-deport.²⁰ DHS similarly cannot credibly claim that the Proposed Rule will enable more efficient adjudication of meritorious asylum claims. Under the Proposed Rule, DHS will have new authority to speed consideration of an underlying asylum application if nonspecific "derogatory information" is found during the EAD application process—an effort that could result in the de-prioritization or delayed adjudication of meritorious asylum claims. DHS's justifications fall short of the thoughtful and reasoned process demanded by the APA and neglect to consider the real and incalculable harm that the Proposed Rule poses for thousands of children.

V. The Proposed Rule's Indefinite Pause on Initial EADs and Barriers to EAD Renewals Will Hinder Unaccompanied Children's Access to Legal Representation

Indefinitely foreclosing access to initial work authorization and the Proposed Rule's other provisions also will frustrate the ability of children to access legal representation that is critical to full and fair consideration of their asylum claims. Many children who have fled trauma and harm experience significant difficulty trusting adults to be able to disclose the circumstances underlying their search for protection in the United States and to seek assistance. Attorneys meet routinely with children to develop trusted professional relationships that enable children to share what has happened to them,

²⁰ See, e.g., Kids in Need of Defense, *A Timeline Spotlight: Unlawful Removals of Unaccompanied Children* (Jan. 2026), https://supportkind.org/wp-content/uploads/2026/01/26_Timeline-Spotlight-Unlawful-Removals-1.pdf; Muzaffar Chishti, Kathleen Bush-Joseph, and Colleen Putzel-Kavanaugh, *Unleashing Power in New Ways: Immigration in the First Year of Trump 2.0* (Jan. 13, 2026), Migration Policy Institute, <https://www.migrationpolicy.org/article/trump-2-immigration-1st-year> ("The administration has also encouraged immigrants without legal status to leave voluntarily by making their lives harder and facilitating departure, offering \$1,000 compensation and a free flight to their origin country for people who register with the CBP Home app. The administration has also sought to make life for immigrants in the United States harder by reducing immigrant families' access to federally funded public benefits and social programs, and by imposing steep fines for various immigration infractions."); Camilo Montoya-Galvez, *U.S. to offer migrant teens \$2,500 if they agree to voluntarily leave the country* (Oct. 3, 2025), CBS News, <https://www.cbsnews.com/news/us-immigration-migrant-teens-2500-self-deportation/>.

apply for any legal protections for which they may be eligible, and prepare their cases for consideration by adjudicators.

Legal representation remains critical after submission of a child's initial asylum application. In the weeks, months, and years that a child's asylum claim may be pending, children often experience significant fear, stress, and anxiety related to their legal cases--uncertain when they will be scheduled for interviews or further proceedings, whether they will be questioned about painful experiences giving rise to their protection case, and whether they will be able to remain in the United States or face return to the dangers they fled. Attorneys accompany children through this process, provide information about legal processes to help children better understand and comply with agency procedures, and connect children with psychosocial and other services to minimize risk of re-traumatization and support children's participation in future proceedings.

Legal representation has a marked impact on the outcome of children's cases, with unrepresented children significantly more likely to be denied legal relief or to receive removal orders.²¹ Recognizing the importance of legal services to protecting unaccompanied children from harm, the TVPRA requires the Secretary of Health and Human Services to ensure "to the greatest extent practicable" that unaccompanied children "have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking."²² The TVPRA further requires that HHS "shall make every effort" to utilize the services of pro bono counsel who agree to provide representation to such children without charge."²³ Many unaccompanied children may have attorneys to represent them on the basis of these provisions, yet recent efforts by the Administration to halt, terminate, and restart in short intervals federal funding supporting these services mean that many children have faced significant challenges in securing and maintaining such legal representation.²⁴

The Proposed Rule would exacerbate these challenges further still by making it nearly impossible for children or families supporting them to pay for and secure private legal services if *pro bono* representation is not available or such services are interrupted due to disruptions in federal funding in the future, as occurred in March 2025.²⁵ It similarly would create additional barriers to paying new and mounting fees that are now required for various motions and applications for protection, including those for which fee waivers are not available or granted. These fees include a new annual asylum fee, for which there is no fee waiver, as well as significant fees to apply for and renew work authorization.²⁶ Additionally, as discussed above, by creating barriers for children in need of government-issued identification, the Proposed Rule also threatens to deprive children of the critical psychosocial, medical,

²¹ See, e.g., Congressional Research Service, Unaccompanied Alien Children, at p. 40 (discussing the impact of legal representation on outcomes of unaccompanied children's cases).

²² 8 U.S.C. § 1232(c)(5).

²³ *Id.*

²⁴ See generally *Community Legal Services in East Palo Alto v. U.S. Dep't of Health and Human Servs.* (3:25-cv-02847) (D. N.Ca.), <https://storage.courtlistener.com/recap/gov.uscourts.cand.447078/gov.uscourts.cand.447078.153.0.pdf>.

²⁵ See, e.g., Trump Administration Halts Funding for Legal Representation of Migrant Children, N.Y. Times (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/us/migrant-children-legal-representation-funding.html>.

²⁶ See One Big Beautiful Bill Act, Pub. L. 119-21, at Sec. 100009 (8 U.S.C. § 1808) (annual asylum fee); Sec. 100003 (employment authorization document fees); Sec. 100011 (Fee Relating to Renewal or Extension of Employment Authorization for Asylum Applicants).

and other services they need to be able to prepare their legal cases, attend and participate in their immigration proceedings, and receive support in processing and addressing prior trauma and harm in order to minimize risk of re-traumatization. By insufficiently considering these concerns, the Proposed Rule undermines critical protections of the TVPRA and increases the risk that children may be denied asylum protection, not for lack of meritorious cases but for lack of due process.

VI. The NPRM Insufficiently Considers the Proposed Rule’s Interaction with Other Recent Policies Increasing Immigration Enforcement and Limiting Access to Healthcare and Other Public Benefits

By establishing restrictive eligibility criteria for EADs, pausing processing of initial EAD applications, and creating barriers to renewal of existing EADs, the Proposed Rule threatens to deepen economic insecurity and limit access to other supportive services not only for unaccompanied children but families and households at large, including U.S. citizen children. These impacts are likely to be especially pronounced in the wake of recent efforts to restrict eligibility for federal public benefits²⁷ and for federal healthcare programs and subsidies through the OBBBA²⁸ that have left and could leave many people who were previously eligible for these benefits without such access. Rulemaking recently proposed by the Department of Housing and Urban Development (HUD) similarly threatens to hinder access to federal housing assistance for many families,²⁹ and if finalized, to increase the risk that children and families may face housing insecurity or homelessness.

States and localities could face increased demand for programming and services as communities grow increasingly vulnerable. Needs could become particularly acute as many children and their families may delay seeking support or even being in the vicinity of locations that provide services, given the Administration’s widespread immigration enforcement actions nationwide and recent policy changes that weakened prior limits on immigration enforcement at or near certain sensitive locations,³⁰ including

²⁷ See U.S. Dep’t of Health and Human Servs., Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 90 Fed. Reg. 31232.

²⁸ See generally One Big Beautiful Bill Act, Pub. L. 119-21 (July 4, 2025); Kelly Whitener, *New Immigrant Eligibility Restrictions Coming to Federally-Funded Health Coverage* (Oct. 1, 2025), Georgetown University, McCourt School of Public Policy, Center for Children and Families, <https://ccf.georgetown.edu/2025/10/01/new-immigrant-eligibility-restrictions-coming-to-federally-funded-health-coverage/>; Katherine DeBriere, Shandra Hartly, and Jules Lutaba, *Eligibility and Enrollment Provisions in OBBBA*, Nat’l Health Law Program (Aug. 21, 2025), https://healthlaw.org/wp-content/uploads/2025/08/2025-08-20-EE-Provisions-in-OBBBA_Final-CLEAN.pdf; Heidi Altman, Tanya Broder, and Ben D’Avanzo, *The Anti-Immigrant Policies in Trump’s Final “Big Beautiful Bill,” Explained* (Aug. 20, 2025), Nat’l Immigration Law Center, <https://www.nilc.org/resources/the-anti-immigrant-policies-in-trumps-final-big-beautiful-bill-explained/>.

²⁹ Cassandra Dumay, *HUD moves to end assistance for families with mixed immigration status*, Politico (Feb. 19, 2026), <https://www.politico.com/news/2026/02/19/hud-moves-to-end-assistance-for-families-with-mixed-immigration-status-00788871>; Children Thrive Action Network, “Over 100 Children’s Advocacy Organizations Oppose Proposed Rule That Will Restrict Housing Access and Destabilize Families” (Apr. 21, 2026), <https://childrethriveaction.org/2026/04/over-100-childrens-advocacy-organizations-oppose-proposed-rule-that-will-restrict-housing-access-and-destabilize-families-2/>.

³⁰ See DHS, Memorandum on Enforcement in or Near Protected Areas (Jan. 20, 2025), https://www.dhs.gov/sites/default/files/2025-03/25_0120_S1_enforcement-actions-in-near-protected-areas.pdf (rescinding *Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021); see generally Suma

medical facilities, schools, and other locations where children and families may receive services. In considering potential impacts to public entities as a result of the Proposed Rule, the NPRM argues that “there could be a counterbalance; as this rule potentially will reduce immigration, there could be less of an economic strain on states, local government, and nongovernmental organizations, in terms of any public assistance and resources that are currently provided to asylum applicants.”³¹ This claim insufficiently considers the cascading impacts that likely will follow from the loss of an estimated \$34.6 to 126.6 billion in compensation each year as a consequence of the Proposed Rule’s restrictions on asylum seekers’ ability to work³²--impacts and gaps that will be felt not only by individual families, but employers, states, localities, and communities more broadly.

Children and families who are unable to afford rent or a mortgage or to rely on others for safe housing may find themselves unhoused and in precarious living situations. Without necessary funds to pay for food, children and family members may go hungry and be left without basic nutrition that is essential for healthy development. Lacking stable access to food, housing, and transportation, unaccompanied children seeking asylum and other family members, including U.S. citizen siblings or relatives, likely will experience significant challenges to enrolling in, attending, or meaningfully participating in school. Experiencing these grave hardships—with no independent means to mitigate them—unaccompanied children may be targeted for harm and exploitation by those who take advantage of their vulnerability. Children may feel they have no choice but to abandon their asylum cases and to return to their country of origin, notwithstanding the dangers facing them. Family members may also become separated from one another, potentially indefinitely, as the Proposed Rule’s restrictions compel people to search elsewhere for needed services, work, and protection to be able to help themselves and their loved ones.

VII. The NPRM Relies on Unsupported Assumptions about Asylum Seekers’ Motives and Risks Harm to Asylum Seekers Contrary to U.S. and International Asylum Law

DHS acknowledges that the Proposed Rule’s changes may cause “some degree of economic hardship” and could impact people with meritorious asylum claims, who “may abandon their applications or decide not to file applications and forego the protection that asylum would provide because they would not be able to support themselves while their asylum application is adjudicated.”³³ DHS further acknowledges that as a result of the rule’s increased waiting period for an EAD, “there may be [noncitizens] with potentially meritorious asylum claims who instead return to a country where they may fear harm.”³⁴ Yet DHS concludes that the “[t]he security of the United States and the integrity of our immigration processes outweighs the potential harm to a subset of the asylum applicant population.”³⁵

DHS appears to contend that the return of some asylum seekers to potential harm is a sufficient cost to bear to achieve the Proposed Rule’s purported benefits of program integrity and fraud deterrence. This

Setty, Kaelin Rapport, Emily Rodriguez, and Renato Rocha, *Even the Playground Isn’t Safe: How Immigration Policies Are Harming Our Youngest Children* (Apr. 2026), Center for Law and Social Policy, <https://www.clasp.org/wp-content/uploads/2026/04/Even-the-Playground-Isnt-Safe-.pdf>.

³¹ 91 Fed. Reg. at 8664.

³² *Id.* at 8696.

³³ *Id.* at 8644; *see also id.* at 8629.

³⁴ *Id.* at 8644.

³⁵ *Id.* at 8629.

reasoning is both morally and logically deficient and amounts to stating that harm to some meritorious asylum seekers is permissible in the name of more efficiently processing *other* meritorious asylum applications.³⁶ DHS appears to mischaracterize the motives of asylum seekers at large and to assume the fraudulence of such cases.³⁷ In announcing the Proposed Rule, DHS asserted in a press release that “[n]early every illegal alien attempts to exploit the system by applying for asylum.”³⁸ Such statements, in addition to giving the appearance of a predetermined outcome in critical protection cases, overlook DHS’s obligations under U.S. and international asylum and refugee law and contrast starkly with the agency’s prior recognition of asylum seekers’ unique vulnerability and need for work authorization to help sustain them during the asylum process.³⁹

DHS cannot disregard its obligation to prevent *refoulement* of or harm to asylum seekers, and its attempts to do so are contrary to the APA, the Immigration and Nationality Act (INA), and the U.S.’s obligations under international law. Moreover, DHS offers insufficient evidence in support of its repeated claims that the rule will address national security and public safety concerns and relies largely on broad and conclusory statements.⁴⁰ Arguments that these regulatory changes are necessary to

³⁶ See, e.g., DHS, *DHS Proposes Rule to Prioritize Americans' Safety by Strengthening Screening of Asylum Seekers*, <https://www.dhs.gov/news/2026/02/20/dhs-proposes-rule-prioritize-americans-safety-strengthening-screening-asylum> (Feb. 20, 2026) (“This rule, if finalized, would reduce the incentive to file frivolous, fraudulent, or otherwise meritless asylum claims by changing filing and eligibility requirements for aliens requesting employment authorization based on a pending asylum application. The agency would focus more of its finite resources on reviewing pending asylum applications, including backlog cases and other pending applications and petitions, and allow our asylum system to prioritize those actually seeking refuge from danger.”); see also 91 Fed. Reg. at 8643-44 (“DHS believes the provisions of this proposed rule will enable meritorious applications to be granted sooner and meritless applications to be referred or denied sooner.”).

³⁷ See DHS, *DHS Proposes Rule to Prioritize Americans' Safety by Strengthening Screening of Asylum Seekers*, <https://www.dhs.gov/news/2026/02/20/dhs-proposes-rule-prioritize-americans-safety-strengthening-screening-asylum> (Feb. 20, 2026); see also 91 Fed. Reg. at 8649 (“Yet again, DHS again finds the asylum system to be under-resourced and overwhelmed with asylum applications, and consequently an easy target for many driven by the opportunity to receive employment authorization by filing a frivolous, fraudulent, or otherwise meritless asylum application”).

³⁸ See, e.g., DHS, *DHS Proposes Rule to Prioritize Americans' Safety by Strengthening Screening of Asylum Seekers*, <https://www.dhs.gov/news/2026/02/20/dhs-proposes-rule-prioritize-americans-safety-strengthening-screening-asylum> (Feb. 20, 2026).

³⁹ See, e.g., Dep’t of Homeland Security, *Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*, 89 Fed. Reg. 24628, 24652 (Apr. 8, 2024) (“Continuous employment authorization during the pendency of an asylum application is vital for asylum seekers in the United States, given their particularly vulnerable position. Therefore, this group of renewal applicants needs urgent action via this rulemaking so these applicants can continue to have employment authorization and/or EAD validity and continue to make a living to sustain themselves and their families.”).

⁴⁰ See, e.g., 91 Fed. Reg. at 8644 (“DHS has determined it is reasonable to require additional time and security requirements on asylum applicants before they may apply for and receive an EAD. The urgency to protect national security, public safety, and maintain the integrity of the U.S. asylum and immigration system outweighs the hardship that may be imposed by an additional waiting period the meritorious asylum applicant population would experience prior to receiving an EAD.”); see *id.* at 8656 (“Another complicating factor in the processing of applications for employment authorization is the increased concern for fraud and national security threats that require more thorough and complex vetting.”); see *id.* at 8660 (“While DHS data cannot conclusively establish at

protect public safety raise questions when these very changes likely will compel asylum seekers to return to known harm.

These arguments also suffer from the Administration’s vacillating claims about immigration at the U.S.-Mexico border. DHS asserts in the NPRM that the proposed changes are necessary “to address the increased public safety and national security concerns exacerbated by large numbers of aliens illegally crossing the border and overwhelming the U.S. immigration system” and that “these reforms will help mitigate the crisis that our immigration and asylum systems are facing as a consequence of the mass migration of aliens across the southern border, and improve the current asylum backlog”⁴¹ Yet the Administration elsewhere proclaims the scarcity of border crossings, including in a recent press release announcing “U.S. Border Patrol’s 11th consecutive month of zero releases at the southern border, continuing the trend of historically low border crossings.”⁴²

VIII. New Biometrics Requirements Pose Confusion and Additional Burdens for Unaccompanied Children, While Deepening Systemic Inefficiencies and Confusion

This Proposed Rule would impose new biometrics requirements on individuals, including children and youth, applying for initial EADs and EAD renewals. In November 2025, DHS published a Proposed Rule on collection and use of biometrics that would dramatically expand the agency’s authority to request, obtain, and use biometrics information for “continuous vetting” and that would provide consequences for failing to submit biometrics.⁴³ KIND submitted a comment detailing significant concerns in relation to that Proposed Rule, which permits the collection of biometrics from children as young as infants and toddlers while failing to adequately consider the questionable reliability of biometric results for young children, the limited capacity of children to consent to such data collection, and the significant barriers the regulation would pose for children’s access to safety and legal protection. KIND reiterates those concerns here as DHS seeks to introduce new biometrics requirements.

DHS acknowledges that biometrics requirements already exist for those applying for asylum⁴⁴ but seeks here to create additional requirements at the time of initial application for an EAD and for requests to renew this benefit. These requirements threaten widespread confusion, duplication, and greater workload for the agency. They also create additional hurdles for children and other protection seekers, who confusingly may be requested to provide the same information numerous times in a short period,

this time how many of those aliens were denied specifically because they posed a risk to the national security and public safety of the United States, what is of paramount importance in supporting this proposed rule, is that ultimately those aliens received a (c)(8) EAD despite being ineligible for asylum (regardless of the specific grounds.”).

⁴¹ 91 Fed. Reg. at 8628.

⁴² CBP, *Trump administration delivers 11 straight months of zero releases at the border* (Apr. 9, 2026), <https://www.cbp.gov/newsroom/national-media-release/trump-administration-delivers-11-straight-months-zero-releases>.

⁴³ See generally USCIS, *Collection and Use of Biometrics by U.S. Citizenship and Immigration Services*, 90 Fed. Reg. 49,062 (Nov. 3, 2025).

⁴⁴ 91 Fed. Reg. at 8643.

and with potential attendant costs, and face denial of their EAD or other applications if they fail to appear for biometrics appointments⁴⁵ or cannot understand these similar requests.

Importantly, DHS has recently implemented new policies that hinder the ability of individuals to appear at such appointments, including while in government custody,⁴⁶ or to reuse prior photos⁴⁷ to meet biometrics requirements. Pursuant to these changes, USCIS has stated that it does not collect biometrics from people detained or incarcerated in any DHS or non-DHS facility who have a pending application or petition with the agency and that DHS more generally has no obligation to collect biometrics from detained individuals unless they are in removal proceedings or have an application pending before EOIR. As a consequence of this policy, many children in the government's care and custody foreseeably will be unable to attend biometrics appointments that DHS may schedule for them and could have their applications for humanitarian protection rejected as abandoned. This Proposed Rule would double down on those potential outcomes and undue discretion of DHS to upend children's access to statutory safeguards designed to facilitate their fair access to humanitarian protection.

Additionally, these layered requirements could require protection seekers who are not in government custody to repeatedly secure transportation and funds to comply with biometrics appointments—challenges that are considerable for many asylum seekers and for children in particular, who must rely on adult caregivers. DHS does not detail what specific information it hopes to glean in the potentially brief intervals that may pass between repeated biometrics requests. It also likely understates the impact of requiring the agency to manage a significant number of additional biometrics submissions and the ways in which these cumulative requirements could exacerbate, rather than alleviate, existing adjudication backlogs.

IX. Providing DHS Broad Discretion to Deny EADs, the Proposed Rule Creates Broad Risk of Inconsistent and Biased EAD and Asylum Adjudications

Amid other sweeping changes, the Proposed Rule would permit DHS broad discretion to reject initial and renewal work permit applications. Currently, DHS must grant authorization to work when an applicant has met the eligibility requirements. The Proposed Rule, however, permits discretionary denials without any specific parameters for how DHS might implement this expansive authority. Unaccompanied children already face unique hurdles in navigating complex adjudication processes due to their age, stage of development, and prior trauma. Under the Proposed Rule, they would need to prepare for their asylum interviews and/or proceedings before immigration court while potentially facing challenges to their EAD application based on novel, unspecified, or even improper grounds. It is uncertain how DHS would make these determinations and how they might affect a child's underlying asylum application before another adjudicator. This creates the potential for inconsistent and biased adjudications that could have far-reaching and dangerous implications for children in need of protection.

⁴⁵ *Id.* at 8618.

⁴⁶ USCIS, *Policy Alert PA-2025-28: Biometrics Collection for Individuals in Custody* (Dec. 5, 2025), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251205-BiometricsCollection.pdf>.

⁴⁷ USCIS, *Policy Manual Update: Photo Validity Requirements* (Dec. 12, 2025).

X. The Proposed Rule Injects Uncertainty into the Adjudication Process by Removing Language Regarding When Applications Are Considered Complete

The Proposed Rule eliminates language stating that an application for asylum is considered “complete” if USCIS does not return the incomplete application to the applicant within 30 days⁴⁸ and would permit DHS to reject asylum applications for minor omissions or oversights. These provisions only heighten burdens for children who may be navigating these processes with little if any support, and they could prioritize perfect completion of applications above children’s basic protection. Although the NPRM suggests these provisions will help better utilize the government’s limited resources, they in practice could lead to the need for repeated filings and create further hurdles for people with meritorious asylum claims.

Conclusion

KIND is deeply concerned that the Proposed Rule upends longstanding policy intended to support the wellbeing and resilience of asylum seekers and the most vulnerable in the immigration system to instead create new barriers to lifesaving humanitarian protection. The profound risks for unaccompanied children threaten not only long-term developmental consequences if children are unable to receive necessary services, care, and financial support as they grow and transition to adulthood but also increased risks of trafficking and exploitation. By increasing children’s vulnerability and that of their families and communities, the Proposed Rule could compel children’s return to the very dangers they fled. We urge DHS to withdraw this proposal to prevent grave harm to children and to uphold the foundational protections of the TVPRA and U.S. and international asylum law.

Sincerely,

/s/

Jennifer Podkul

Chief, Global Policy and Advocacy
Kids in Need of Defense (KIND)

⁴⁸ 91 Fed. Reg. at 8618.