April 8, 2026

Via federal eRulemaking portal, http://www.regulations.gov

Jamee E. Comans
Acting Assistant Director
Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

RE: Interim Final Rule, Appellate Procedures for the Board of Immigration Appeals, EOIR Docket No. EOIR–26–AB37; Dir. Order No. 02–2026, 91 Fed. Reg. 5267 (Feb. 6, 2026)

Dear Assistant Director Comans:

The undersigned 60 organizations working with and on behalf of unaccompanied children write to express our deep concerns with and opposition to the Interim Final Rule ("IFR") titled "Appellate Procedures for the Board of Immigration Appeals," published by the Executive Office for Immigration Review on February 6, 2027.[1] The IFR abruptly abandons the traditional functions of the Board of Immigration Appeals ("BIA") in providing appellate review of immigration court fact-finding and questions of law, discretion, and judgment, instead prioritizing summary dismissal of most appeals. EOIR asserts that the IFR is necessary to advance systemic efficiency and to level purported procedural advantages available to immigrants. In reality, by truncating filing deadlines and the time frame for adjudications, requiring simultaneous briefing in non-detained cases and eliminating reply briefs, and defaulting to dismissal rather than meaningful consideration of appeals, the IFR dangerously stacks the deck against respondents generally, but particularly unaccompanied children and other vulnerable populations who already face significant barriers in the immigration system, including many who are proceeding *pro se*. In the process, the IFR forsakes due process and the carefully crafted safeguards of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and risks the return to grave harm of thousands of children and others with meritorious claims to protection, while likely inundating federal circuit courts with the appeals and backlogs it seeks to avoid. We urge that the IFR be withdrawn.

Despite ushering a seismic shift in the BIA's role of more than 80 years, EOIR initially provided only 30 days for public comments, with the rule slated to take effect before comments are considered. This abbreviated period discounts the importance of meaningful and considered review of public comments, just as the content of the IFR itself discounts the detrimental effects of denying access to meaningful

[1] 91 Fed. Reg. 5267 (Feb. 6, 2026).

appellate review for unaccompanied children and others whose lives and wellbeing are directly impacted as well as entities who will bear the burdens of exponential workload increases under the IFR. KIND and the Young Center joined more than 100 other organizations in submitting a letter[2] requesting an additional 30 days to convey our comments on the IFR, its complexities, and its impacts on our clients and work. This request was granted in late February. Nevertheless, the IFR's March effective date remains in place, raising concerns that critical input on the rule may be disregarded while avoidable harms will soon follow for children and many others.

Recently, several organizations filed suit[3] challenging the IFR, and a federal court issued an order vacating and setting aside several key provisions of the rule before it could take effect, including provisions pertaining to summary dismissal of most appeals, waiver of any issues not raised in the notice of appeal, and the 10-day deadline for filing a notice of appeal in all but certain asylum cases.[4] Recognizing that several provisions of the rule remain in effect and that litigation and potential rulemaking are ongoing, we offer the comments below on the IFR in its entirety to highlight the dire consequences it poses for children's safety and wellbeing.

I. The IFR Overlooks the Significant Vulnerabilities of Unaccompanied Children in the Immigration System and the Necessity of Procedural Safeguards and Meaningful Accommodations to Ensure Due Process

Many unaccompanied children flee to the United States in search of safety from violence, trafficking, abuse, and other threats to their lives and wellbeing in their countries of origin. Children often are eligible for one or more forms of humanitarian protection, including asylum, Special Immigrant Juvenile Status, or visas for victims of severe trafficking or crimes. Yet owing to their age, developmental stage, language and cultural differences, history of trauma, and limited familiarity with immigration law and processes, children face profound barriers in being able to navigate complex immigration proceedings and access legal relief. A key drafter of the TVPRA acknowledged these challenges, stating: "Currently, when a child is apprehended by immigration authorities, that child usually knows nothing about U.S. courts or immigration policies and frequently does not speak English. . . . The majority of these children have been forced to struggle through an immigration system designed for adults."[5]

The TVPRA and a framework of additional basic legal safeguards aim to better ensure fair consideration of unaccompanied children's legal claims to reduce the risk that children are returned to harm, including by: exempting unaccompanied children from expedited removal and instead requiring the use of full immigration court removal proceedings; enabling unaccompanied children to have their asylum claims

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[2] Nat'l Immigrant Justice Center, Letter from 117 Organizations Re: Request to Provide a Minimum of 60 days for Public Comment in Response to the Department of Justice (DOJ) Notice of Proposed Rulemaking (NPRM): Application of BIA Interim Final Rule: EOIR Docket No. EOIR-26-AB37 (Feb. 18, 2026), https://immigrantjustice.org/wp-content/uploads/2026/02/Org-sign-on_BIA-rule-comment-extension_Feb-2026.pdf.

[3] *Amica Center for Immigrant Rights v. EOIR*, D.D.C., No. 1:26-cv-00696 (D.D.C. 2026), Complaint (Feb. 26,2026), available at: https://www.courtlistener.com/docket/72338638/1/amica-center-for-immigrant-rights-v-executive-office-for-immigration/.

[4] *Id.,* Order (Mar. 8, 2026), available at: https://storage.courtlistener.com/recap/gov.uscourts.dcd.289845/gov.uscourts.dcd.289845.33.0.pdf.

[5] 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008).

first considered in a non-adversarial interview setting by U.S. Citizenship and Immigration Services, rather than immigration courts; exempting unaccompanied children from several bars to asylum; and providing for unaccompanied children's access to legal representation in their immigration proceedings and to protect them from trafficking and other mistreatment.[6] The TVPRA also 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."[7]

Although these safeguards are essential to ensuring due process for children, they have been undermined by the Administration's recent policies, which have deepened existing barriers and created new hurdles in the immigration system. In the past year, EOIR has eliminated specialized children's dockets and diminished guidance on child-sensitive court practices, while accelerating the timelines for immigration court proceedings and decisions and limiting judges' authority to grant continuances or use other docket management tools. Many unaccompanied children now are required to attend immigration proceedings and submit pleadings or applications for relief before they have had an opportunity to heal from trauma, be released from custody and reunified with family members, secure legal counsel to represent them, or have their applications for humanitarian protection considered by USCIS. Although many unaccompanied children have applications for humanitarian relief such as Special Immigrant Juvenile Status pending before USCIS, EOIR has recently issued removal orders to many of these children before their applications are considered. EOIR has also pretermitted some unaccompanied children's applications for asylum without meaningful consideration of children's claims.

Amid these changes, the Administration has created additional uncertainty regarding federal funding supporting legal services for unaccompanied children by pausing and terminating the federal contract for these services, then restarting it on a truncated timeline. As a result of these conditions, which remain in flux and are the subject of ongoing litigation, some children have faced disruptions to or transfer of their legal representation and remain fearful that any future changes could leave them alone in confronting their immigration proceedings.

EOIR fails to meaningfully consider how its other policies interact with and exacerbate the impacts of the IFR, which further undermines the TVPRA's safeguards and hinders access to protection for unaccompanied children by all but eviscerating access to appellate review. As new EOIR practices dramatically accelerate and alter children's proceedings, the right to appeal—always a fundamental due process safeguard—has only become more vital to address misunderstandings, adjudicative errors or abuses, and overlooked evidence, any of which could result in a child's return to harm or worse. Moreover, completing administrative review at the BIA is an essential prerequisite to accessing judicial review in the federal courts. By all but closing the door to appellate and judicial review, the IFR dramatically departs from Congress' directive to account for the specialized needs of unaccompanied children and fails to consider children's needs altogether while placing them at grave risk of harm.

[6] *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)).
[7] 8 U.S.C. § 1232(d)(8).

II. The IFR Restricts Access to Appellate Review and Judicial Review, Impeding Full and Fair Consideration of Unaccompanied Children's Cases

The IFR transforms the appellate process into one in which summary dismissal, rather than thoughtful review, is the default--effectively erecting a presumption *against* consideration of appeals, including those of children and other vulnerable populations. In a footnote, EOIR seeks to assure the public that it has considered the IFR's potential impacts on noncitizens and attorneys and states that while the IFR changes the status quo, "the benefits of this rule's streamlining efforts for the Government and for those with meritorious claims outweigh the potential for costs to those with non-meritorious claims who would have benefitted from the delay and whose appeals may be subject to summary dismissal under the IFR."[8] This explanation is circular and unavailing, and incorrectly assumes that the BIA can know without meaningfully reviewing individual cases which appeals have merit and which do not -- an impossibility, especially under the truncated and lopsided process dictated by the rule.

Importantly, the IFR does not merely authorize the BIA to use summary dismissal in individual cases—an authority the BIA already possesses where warranted by defined circumstances. Rather, it makes dismissal the baseline in nearly *all* cases, with the exception of those related to custody and bond. While the IFR dramatically increases the likelihood that most BIA appeals will not be considered on their merits, parties nevertheless must pay a staggering fee of $1,030[9] for even the prospect of appellate review. Paying this fee is a near impossibility for most children, who may not be of working age or have work authorization, and who rely on family members or other caregivers for support. A fee waiver is not guaranteed. These fees--coupled with new requirements that significantly shorten timelines for filing and adjudicating appeals, require simultaneous briefing, and limit extensions--mean that many children will be unable to find counsel or file appeals at all, even in cases involving clear error. Even if able to timely file an appeal, a child's submission may suffer from the limited time available to prepare the case or to consult with counsel. These risks are especially pronounced for unaccompanied children.

Consider a child who suffers from Post-Traumatic Stress Disorder and struggles to recount past abuse or persecution, therefore requiring several meetings with an attorney to prepare her claims for relief. Imagine that she is unrepresented by counsel and receives an oral removal order on a Friday. Under the IFR, she could have as little as 10 calendar days to file a Notice of Appeal—days during which she must find counsel, gather the $1,030 filing fee or prepare a waiver request, and communicate her options across a language barrier with a trusted adult who can help her act. Importantly, during this period, the transcript of proceedings likely would not yet be available for consultation by an attorney or adult assisting with the child's appeal and likely unavailable too during the subsequent window of 10 calendar days in which the Board may vote by a majority to permit briefing and accept a case for appellate review, or the appeal will be deemed summarily dismissed. The child also may be unaware of the basis on which the immigration judge denied their asylum case. The IFR purports to distinguish deadlines for filing Notices to Appeal based on whether or not an asylum claim was denied by an immigration judge based on one of three enumerated bars to asylum. The rule lacks clarity about how the filing deadline would be applied in such cases, yet the child would nevertheless be expected to successfully navigate

[8] 91 Fed. Reg. at 5270 n. 9.

[9] *See* One Big Beautiful Bill Act, Pub. L. 119–21 (July 4, 2025); EOIR, Types of Appeals, Motions, and Required Fees, https://www.justice.gov/eoir/types-appeals-motions-and-required-fees; EOIR, Notice of Inflationary Fee Adjustment, 91 Fed. Reg. 2561 (Jan. 21, 2026).

this murky landscape. In practice, the IFR's abbreviated and confusing timelines for filing and adjudicating appeals work in concert against the child, making the prospect of meaningful review not merely unlikely but structurally foreclosed before her case is ever read.

A. The Rule Creates Barriers to Children's Ability to Secure and Maintain Legal Representation

Under the IFR, parties will have 10 days, rather than 30 days, to file their Notices of Appeal, except in appeals of asylum decisions not based on one of three bars to asylum. Many unaccompanied children do not have an attorney to represent them in their immigration court proceedings and may similarly be without counsel at the appellate level. For children with attorneys, counsel who represented them in immigration court may be unable to continue representation before the BIA. This may occur for a range of reasons, including due to capacity limitations, limited experience with appeals, a conflict of interest, or the client's finances.

Currently, many immigration lawyers face strained capacity and more complex caseloads due to new policies that increasingly mean their clients' cases may be accelerated, be re-calendared with little notice, involve detention, or necessitate rapid motions practice as the Administration pursues immediate removal. With the IFR, EOIR arbitrarily disregards these realities while making it even more challenging for children and their legal counsel to meaningfully prepare and present the child's case. EOIR admits only in footnotes that parties may have difficulty finding counsel within the abbreviated time frame, while stating its belief that the purported benefits for timely adjudications outweigh these concerns.[10]

Although in the past issues raised in a Notice of Appeal could be more amply explained during scheduled briefing, parties may now be compelled to submit more detailed Notices of Appeals or submissions at the outset in hopes of averting summary dismissal. However, such filings will be an impossibility for most people proceeding *pro se* and likewise challenging for represented children. Children rely on adults to take them to appointments with counsel and need time to meet with their attorney to understand relevant processes, gather the filing fee or prepare a waiver, and make decisions about any course of action in their cases. Ten days is decidedly unrealistic for children and counsel working with them to be able to complete this process. This time frame also undermines the ability of nonprofit organizations to mentor or place cases with pro bono attorneys to represent children on appeal. In cases where an immigration judge issues an oral decision, a written version may not be received within the ten days allotted for appeal, forcing children and organizations representing them to rely on recollections or summaries to prepare filings or be able to explain the nature of the appeal to potential pro bono counsel. These procedural changes alone may in many cases foreclose children's access to appellate review and protection altogether.

[10] 91 Fed. Reg. at 5272 n. 16 ("The Department acknowledges that some aliens proceed pro se before the Immigration Judge and *may* seek counsel after an adverse decision and that in those circumstances changing the deadline from 30 to 10 days, except for asylum appeals by aliens not barred from applying, *may* impact their ability to obtain counsel to file a Notice of Appeal.") (emphasis in original); *id.* ("Similarly, the Department recognizes that some aliens whose cases are subject to the 10-day appeal period in this IFR may seek counsel to assist with their appeals after they receive a removal order and that, for those aliens, decreasing the appeal period to 10 days may make it more difficult for them to find counsel.").

EOIR in a footnote makes cursory reference to the possibility that someone may, for example, file a Notice to Appeal pro se and only find an attorney after the 10-day deadline, such that their appeal may be summarily dismissed before counsel can submit briefing. Rather than contending with the significant harms these circumstances pose—including the risk that a child may be removed to harm—EOIR states without factual basis that it "believes this population will be relatively small"[11] and that the IFR's benefits outweigh impacts for ability to obtain counsel. EOIR further argues that parties have time to seek counsel before a removal order is issued, an unsupported assumption that overlooks the ways EOIR's own policies are impeding access to counsel through accelerated proceedings. While claiming to increase efficiency, EOIR staggeringly fails to consider how the IFR and related policies that hinder legal representation undermine the integrity and quality of the BIA's decision making, as legal and factual errors may go unremedied if children and others are unable to bring them to the BIA's attention and to sufficiently articulate these issues if compelled to proceed pro se.

Under the IFR, summary dismissals could "occur quickly—within 15 days of filing the appeal,"[12] forcing a child to rapidly secure counsel to assist with a petition for review and an accompanying stay of removal at the federal circuit court level. This process may prove even more challenging, as counsel may be unable to continue representation or may not be admitted in the relevant circuit court, and the child may be unprepared to pay the additional legal fees and any unwaived filing fees. EOIR's failure to meaningfully evaluate and avert the IFR's troubling consequences for children's safety, due process, and the BIA's adjudications is arbitrary and capricious.

B. The IFR Arbitrarily Hampers the BIA's Capacity for Meaningful Review Through Concurrent and Limited Briefing

The IFR purports to reduce adjudication backlogs for appeals by shortening the deadlines for filing appeals and briefing issues, requiring parties and adjudicators to meet abbreviated submission and completion timelines. Section 1003.3 of the IFR, for example, would require both parties to submit their briefs simultaneously, on the theory that because this practice has been applied to detained respondents there is no reason not to use it for all respondents.[13] Simultaneous briefing in the detained context reflects a recognition of the important liberty interests at issue and the potential impacts of prolonged detention. EOIR fails to account for the significant tradeoffs for due process and access to justice of applying this approach more generally where no such circumstances exist.

A meaningful appellate process requires a dialogue between the parties via their submission of briefs elaborating on their arguments. Without the opportunity to view the appellant's brief, an appellee (whether a child respondent or the government) may need to preemptively brief issues and points that are not actually in dispute, consuming the time of adjudicators and parties while potentially leaving unaddressed matters actually placed in issue by the appellant. This creates new and unnecessary inefficiencies and complexities for EOIR and the parties, with no appreciable benefit. Although EOIR claims that a common schedule "precludes gamesmanship or manipulation by the parties, particularly by aliens seeking delay of the resolution of their cases,"[14] these changes only deepen disparities for the

[11] 91 Fed. Reg. at 5272 n. 16.
[12] 91 Fed. Reg. at 5270.
[13] *See* 91 Fed. Reg. at 5272-73; 5277 (see text of IFR 8 C.F.R. § 1003.3(c)(1))
[14] *Id.* at 5273.

most vulnerable in the immigration system. Unaccompanied children and other vulnerable populations often will not have the time, resources, understanding of the law, or legal representation to be able to engage in what may be an abstract exercise to discern why appeals are filed against them, while the government has at its disposal vast and growing resources and staffing to bring such challenges en masse.

Concurrent briefing also fails to account for the complexities of many unaccompanied children's cases. Issues raised in immigration court by child clients are often on the cutting edge of protection issues, involving definitions of particular social groups for asylum claims, the nature of persecution based on sexual- and gender-based violence, and the status of children in particular societies. Such issues are complex, novel, and often matters of first impression before the immigration courts, and they may not be correctly resolved in the first instance. Ample time to research, brief, and thoughtfully present these issues for the Board's consideration is often necessary to support quality decision-making and due process. Although EOIR argues that the IFR will enable the BIA to better focus on review of novel claims,[15] it instead creates barriers to consideration of these and indeed all appeals by requiring simultaneous briefing that hinders the ability of parties and adjudicators to delve deeper into differing interpretations, nearly eliminating reply briefs, and limiting the availability of extensions to where "exceptional circumstances"[16] are shown.

These concerns are compounded by the IFR's removal of the requirement that immigration judges review transcripts before forwarding the record to the BIA. In children's cases, critical determinations—including best interest findings and child advocate recommendations—are frequently delivered orally and preserved only in the transcript. Oral decisions issued from the bench may also be incomplete or inadequately reasoned, making transcript review the only reliable mechanism for ensuring the record accurately reflects what occurred in the hearing room. When summary dismissal can occur within 15 days and the Board is not required to review transcripts before acting, the record underlying that dismissal may be materially incomplete. This creates a direct and foreseeable risk that a child will be removed based on a record that does not faithfully capture the evidence presented on their behalf—including, in the most vulnerable cases, the very recommendations designed to protect them. The IFR's combination of compressed timelines, concurrent briefing, and the elimination of transcript review does not merely reduce efficiency—it structurally ensures that errors go undetected and unremedied before a child faces irreversible consequences.

In practice, these changes will do little to increase the Board's productivity and efficiency, but much to narrow access to necessary legal protection. The potential consequences of the IFR for children are far from theoretical. Without meaningful access to appellate review, the erroneous denial of a child's claim for protection may result in a child's return to danger.

[15] *Id.* at 5270.
[16] *Id.* at 5273.

C. EOIR Would Require Parties to Submit Fees to Request Appellate Review That the IFR Renders Unlikely

In a footnote, EOIR acknowledges recent increases in the fees for filing an appeal of an immigration judge's decision, as provided for by H.R. 1 (OBBBA).[17] EOIR states that it recognizes the potential for decreased appeals filings as a result of the fee but reasons that "the OBBBA does not prohibit fee waivers for appeals, so the impact of the fee increase may be minimal in practice."[18] EOIR argues that "even if the impact were greater," the IFR's changes are necessary to timely issue new decisions and that "EOIR's preliminary experience since the enactment of OBBBA is that the fee increase has not appreciably affected the volume of appeals."[19] EOIR understates the impacts of the fee for the ability of children and other vulnerable populations to appeal immigration judge decisions while sidestepping the inappropriateness of charging a fee for appellate functions that the IFR all but eviscerates.

The OBBBA imposes substantial fee increases on not only appeals of immigration judge decisions but on a variety of motions and underlying applications for relief, including a new initial asylum fee, annual asylum fee, and fee to petition for Special Immigrant Juvenile Status. Most children are unable to pay these fees, and fee waivers may not always be granted quickly or may be denied. Such situations place children in the perilous situation of having to quickly find the funds needed by requesting assistance from family or others or risking rejection of their application as incomplete if the fee is not included upfront—a likelihood that the IFR dramatically increases by reducing the time for filing a Notice of Appeal to 10 days for most appeals. At present, most children are unable to pay the fees for their underlying applications or motions or appeals, a reality that the layered nature of these fees only compounds. The experience of providers working with children starkly contrasts with EOIR's observations that the fee may have only a "minimal" impact on appeals and that it has not to date resulted in an appreciable reduction in filings.

In some cases, to ensure that a child's application is not rejected outright while their request for a fee waiver remains under consideration, pro bono counsel or other service providers working with a child may assist with the child's fee. Nearly eight months into the new OBBBA fees, these already significant additional costs are becoming more difficult for nonprofit organizations and private practitioners working *pro bono* to frontload. The assistance of practitioners in working to mitigate harms to children to date does not mean the fees' impacts have been "minimal" and EOIR cannot rely on this assistance to justify the collection of funds for appellate review it does not intend to provide. As the fees are in place for a longer time and with the IFR's accelerated filing timelines and barriers to counsel, it is likely impacts for children will become even pronounced and dire for children.

Problematically, children are being made to bear these financial burdens while the BIA seeks to relieve itself of any commitment to appellate review and dedicates itself instead to advancing summary dismissals as the presumptive outcome of most appeals. Tellingly, EOIR increased the fee in January to account for inflation, while staggeringly failing to account for the fundamental fairness concerns of promulgating a rule only weeks later that would make meaningful review by the BIA wholly unavailable in most cases. EOIR does not address the disparity between its streamlined functions and the potential

[17] 91 Fed. Reg. at 5270 n. 10.
[18] *Id.*
[19] *Id.*

windfall it would accumulate as a result. It also fails to consider how collecting these fees for review it does not afford only increases the need for children and others to petition federal circuit courts—a process that itself requires additional fees. EOIR explains elsewhere in the IFR Notice that the IFR's changes will "allow the Board to focus on addressing the backlog and, once it is clear, on providing meaningful review in cases requiring Board intervention."[20] Accepting fees from individuals with the goal of summarily dismissing new appeals and instead adjudicating already pending cases is arbitrary and capricious. Shifting the costs and burdens of the BIA's appellate review to parties and the federal courts is not the reasoned policymaking required by the APA and similarly departs from the INA, the TVPRA, and basic notions of due process.

III. The IFR Notice Relies on Misplaced Assumptions and Insufficient Justifications and Evidence

Among other justifications, the Notice asserts that the IFR's changes will improve the efficiency of the immigration system and address adjudication backlogs, ensure immigrants "do not amplify any procedural advantages" through "meritless appeals with attendant delays,"[21] and "deter aliens from making the dangerous journey and entering the country illegally."[22]

These justifications alternately mischaracterize the nature of immigration proceedings, lack factual basis, or inappropriately exceed regulatory authority. The Notice offers no factual basis, for example, for its assumption that changing the procedures for appeals will deter people from making the journey to or entering the United States, and indeed, there is none. Unaccompanied children and other protection seekers do not flee their countries based on the availability of subsequent appellate review, but rather, to seek protection from persecution, abuse, trafficking, and other threats to their lives and wellbeing. In any case, the Administration's aspirations of migration deterrence cannot justify dispensing with due process or obligations under U.S. and international treaty law to prevent *refoulement* of children and others to potential harm.

EOIR's assertions of purported "procedural advantages"[23] favoring immigrants are similarly misplaced. Congress enacted procedural safeguards for unaccompanied children precisely because children face unique difficulties navigating complex immigration procedures.[24] The ability of children and others to appeal to federal circuit courts from the BIA and to seek stays of removal while their cases are pending is not, as EOIR seeks to suggest, a procedural imbalance that justifies new restrictions; instead, it is a basic safeguard to prevent grave harm and violations of due process. These are aims to which EOIR should itself be committed to ensure the quality, integrity, and consistency of its own adjudications.

IV. EOIR Fails to Meaningfully Consider the IFR's Costs and Impacts on Federal Courts

EOIR asserts that the IFR—and the new summary dismissal process--will improve efficiency by allowing the agency to focus its limited resources on pending appeals and allowing noncitizens "to seek Federal

[20] 91 Fed. Reg. at 5270; *see also id.* ("This change in procedure will allow the Board to focus its limited resources on adjudicating the more than 200,000 pending appeals and, going forward, on selecting decisions for review that present novel issues warranting the Board's attention.").
[21] *See, e.g.,* 91 Fed. Reg. at 5271.
[22] *See, e.g., id*. at 5274-75.
[23] *Id*. at 5271.
[24] 8 U.S.C. § 1232(d)(8).

court review expeditiously, rather than potentially waiting for years for a Board decision that in the vast majority of cases would affirm the underlying Immigration Judge decision."[25] Elsewhere, EOIR laments that the BIA "functions now as simply a vessel for further delay of the eventual resolution of an alien's case."[26] These characterizations troublingly paint a picture of the BIA as a waiting room for actual review by federal circuit courts and discount the important role the Board has served and *should* serve in providing thoughtful consideration of appeals to ensure the law is applied correctly and that errors are addressed.

Although EOIR asserts that there is "no logical reason"[27] to expect the rule to cause a significant increase in petitions for review with federal circuit courts, it is apparent that the BIA's meaningful resolution of an appeal can prevent the need for a party to appeal further. EOIR acknowledges that the IFR's goal of issuing more BIA decisions could lead to an increase in petitions for review filed with the federal circuit courts annually, but asserts that this possibility does not outweigh the BIA's "interest in timely adjudications."[28] EOIR mischaracterizes its planned elimination of new appeals from the BIA's dockets through summary dismissal as the functional equivalent of meaningful adjudication. In reality, the IFR shifts to federal circuit courts the BIA's own role as the first level of appeal, with the effect of requiring federal circuit courts to undertake more challenging and intensive review than would likely be necessary if the BIA had first addressed appeals on their merits. At the same time, children will bear the serious risk of being removed if they cannot access such review, due to factors such as mounting costs and barriers to finding counsel to represent them at the federal court level.

The IFR poses new demands on federal courts at a time in which they are working to adjudicate a growing caseload challenging the Administration's enforcement actions, including appeals in habeas actions filed by those in detention. Federal judges and government attorneys alike have noted the increase and their workloads as a consequence. EOIR's failure to consider the IFR in this context and the costs and burdens it will exacerbate for the federal judiciary and children in particular is arbitrary and capricious.

V. The IFR Invokes Inadequate Justifications for Dispensing with Consideration of Public Comments Under the APA Prior to the Rule's Effective Date

EOIR promulgates the rule as an IFR with an effective date that precedes its consideration of public feedback. In doing so, it suggests the IFR is exempt from the APA's notice and comment requirements as a "procedural rule" and based on the "foreign affairs" exception. These reasons are both misplaced.

The rule does not, as the IFR Notice posits, address only "practices and procedures," but fundamentally alters and precludes due process for the most vulnerable in the immigration system. It would create specific procedural disadvantages and barriers for unaccompanied children that are wholly counter to the protective approach and safeguards advanced by Congress in the TVPRA.

EOIR's invocation of the "foreign affairs" exception is equally deficient. In addressing this exception EOIR references generally the Administration's efforts to deter and disincentivize migration and its work with

[25] 91 Fed. Reg. at 5720.
[26] *Id.* at 5271.
[27] *Id.* n. 14.
[28] *Id.* at 5271.

foreign partners toward these aims. EOIR argues that promulgating the IFR with immediacy "will allow the United States Government to build on momentum with international partners to address shared challenges to border security and illegal immigration," and that delaying implementation "could create migratory challenges for partners and undermine the momentum" it has built with partners.[29] EOIR's interpretation of the exception to encompass all negotiations around immigration and deterrence would unlawfully sideline the APA's requirements and its intent to advance meaningful input by the public and impacted parties, including on questions of due process for children and other noncitizens in the immigration system.

In the IFR Notice, EOIR asserts that DHS and noncitizens appealing their cases do not have reliance interests or a right related to a merits adjudication of their appeals.[30] Yet EOIR curiously suggests that it must consider the potential lack of engagement by foreign partners if the United States does not proceed via an IFR. EOIR does not explain how relationships that it bolstered amid current BIA appellate procedures would be suddenly undone by maintaining the status quo until public comments are fully considered. Its assertion that "countries may be less inclined to engage with the United States"[31] going forward rests on mere conjecture and is insufficient to justify casting aside public input about the foreseeable harms the IFR poses for thousands of unaccompanied children and other vulnerable individuals.

Conclusion

For the foregoing reasons, we urge that the IFR be withdrawn in its entirety to prevent significant harm to unaccompanied children and thousands of others impacted by the rule.

Sincerely,

Kids in Need of Defense (KIND)

Young Center for Immigrant Children's Rights

Advocates for Immigrant Rights

Acacia Center for Justice

American-Arab Anti-Discrimination Committee (ADC)

American Friends Service Committee (AFSC)

Ayuda

Beckner Immigration Law PLLC

Blanco Law Group PC

[29] 91 Fed. Reg. at 5275.
[30] *Id.* at 5271.
[31] *Id.*

Borderlands Resource Initiative

Catholic Charities Diocese of Owensboro

Center for Law and Social Policy

Center for Safety & Change

Central American Resource Center of Northern California - CARECEN SF

Cheryl Lin Law LLC

Children's Law Center

Children's Rights

Church World Service

Coalition for Humane Immigrant Rights (CHIRLA)

Community Legal Services in East Palo Alto

Connecticut Institute for Refugees and Immigrants

End SIJS Backlog Coalition

Episcopal Diocese of New York

Family Action Network Movement

Free to Be Youth Project –UJC

Freedom Network USA

Haitian Bridge Alliance

Houston Immigration Legal Services Collaborative

Human Rights Watch

Immigrant Children Advocates' Relief Effort (ICARE)

Immigrant Legal Resource Center

Jaskot Law

JBM Legal, LLC

Justice At Last

Justice Center of Southeast Massachusetts

JusticeMatters, Inc.

Law Foundation of Silicon Valley

Law Office of Helen Lawrence

Law Office of Michelle L Alvarez

Law Office of Peggy J. Bristol, PC

Legal Aid Society of Southwest Ohio, LLC

Luminus Network, Inc.

Mid-South Immigration Advocates

National Association of Social Workers

Neighbors Link

New Jersey Consortium for Immigrant Children

Oasis Legal Services

Project Libertad

Project Lifeline

Riguer Silva, LLC

RISE for Immigrants

Ruvalcaba Hernandez Law Firm

Safe Passage Project

Saratoga Immigration Coalition

Services, Immigrant Rights and Education Network (SIREN)

Somos Immigration Law, LLC

Sonoda Law Firm

The Door - A Center of Alternatives, Inc.

Trostle Law

Volunteers of Legal Service