



Statement for the Record by Kids in Need of Defense (KIND)

“Oversight of U.S. Citizenship and Immigration Services”

House Judiciary Subcommittee on Immigration and Citizenship

July 29, 2020

Kids in Need of Defense (KIND) is the nation’s leading organization advocating for the rights of unaccompanied migrant and refugee children. KIND was founded by the Microsoft Corporation and UNHCR Special Envoy Angelina Jolie in 2008 to address the lack of legal services for unaccompanied children in the United States. Leveraging strategic partnerships with private law firms, corporations, law schools, and bar associations, each year we provide pro bono legal representation for over 5,000 children in immigration proceedings. In addition, we seek to change law and policy to improve the protection of unaccompanied children in the United States and to build a stronger regional protection framework throughout Central America and Mexico.

U.S. Citizenship and Immigration Services (USCIS) is currently running a shortfall in its annual operating budget of an estimated \$1.2 billion. Officials within the agency have blamed the shortfall on the COVID-19 pandemic. However, a number of factors have resulted in USCIS’s weak financial position, including the agency’s deviation from its primary statutory mandate: to function as a service-oriented immigration benefits agency that effectively facilitates immigration to the United States.¹ In recent years, USCIS has implemented policies that restrict rather than facilitate immigration, making it difficult—and in some circumstances impossible—for unaccompanied children and other individuals who legally qualify for immigration benefits to obtain them.² Well before the pandemic, these measures resulted in significant lost revenue by deterring or precluding fee-generating applications and petitions.

KIND is concerned by the recent attempts by USCIS to increase fees across the board, but particularly for asylum seekers and unaccompanied children. We recommend that fee increases are prohibited for these vulnerable populations and that USCIS ensures there is robust access to fee waivers for humanitarian applications. Additionally, USCIS must work to fulfil its obligation to adjudicate Special Immigrant Juvenile petitions within 180 days, provide automatic extensions to the validity periods of employment authorization documents, and provide Congress with quarterly reports on the agency’s efforts to reduce its overall case backlog while ensuring fair and accurate adjudications. Finally, it is imperative that unaccompanied children continue to receive non-adversarial hearings before asylum officers as required by law.

¹ See AILA, “Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration” (Jan. 30, 2019); <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

² See, e.g., “Policy Changes and Processing Delays at USCIS” *before* the Immigration and Citizenship Subcommittee of the House Judiciary Committee, 116th Cong. 1st Sess. (2019) (statement of AILA President Marketa Lindt); <https://docs.house.gov/meetings/JU/JU01/20190716/109787/HHRG-116-JU01-Wstate-LindtM-20190716.pdf>.

In this moment of crisis, KIND supports supplemental appropriations for USCIS so that they agency may continue to process children’s humanitarian protection claims. KIND supports funding for the agency with conditions to ensure USCIS policies and operations are aligned with these recommendations and its service-oriented mandate. KIND is concerned by any effort to withhold funds from USCIS would exacerbate case processing delays and leave unaccompanied children and other applicants and petitioners without protection from return to dangerous and potentially life-threatening conditions in their country of origin.

Recommendations

To ensure that unaccompanied children have access to essential immigration benefits and that the agency adjudicates these children’s cases fairly and efficiently, KIND recommends active oversight and that any appropriations to the agency include the following guardrails:

- (1) Prohibit fees for seeking asylum and for asylum seekers’ initial requests for employment authorization.** In November 2019, USCIS proposed the unprecedented requirement of a filing fee for Form I-589, *Application for Asylum and for Withholding of Removal*, as well as for a first-time I-765, *Application for Employment Authorization*, filed by an asylum seeker.³ A filing fee for asylum applications would preclude some unaccompanied children from requesting asylum, potentially life-saving relief. Imposing fees on unaccompanied children’s applications for employment authorization would not just prevent their ability to work, but also to obtain federal identification needed to access housing, medical care, and educational opportunities while their asylum cases are pending.
- (2) Prohibit USCIS’s planned 10 percent application fee surcharge and proposed fee hikes for adjustment of status, employment authorization, and naturalization applications.** In November 2019, USCIS proposed a 10 percent fee surcharge, as well as substantial fee hikes—in some instances higher than 80 percent—for Forms I-485, *Application to Register Permanent Residence or Adjust Status*; I-765, *Application for Employment Authorization*; and N-400, *Application for Naturalization*. These fee increases would constrict legal immigration and would prevent many unaccompanied children from obtaining employment, acquiring permanent legal residence, and becoming citizens—ultimately blocking them from self-sufficiency and hindering their successful integration into the United States.
- (3) Ensure robust access to fee waivers for humanitarian applications, including for individuals receiving means-tested benefits.** USCIS has sought to limit the ability for vulnerable applicants and petitioners to access fee waivers, for example by eliminating the receipt of means-tested public benefits as a fee waiver qualification.⁴ These restrictions would entirely shut out many low-income noncitizens from the nation’s legal immigration system, including most unaccompanied children.
- (4) Require USCIS to adjudicate Special Immigrant Juvenile petitions within 180 days and to provide Congress with detailed quarterly reports on the agency’s efforts to**

³ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019) (Proposed Rule).

⁴ See, e.g., USCIS, “USCIS Updates Fee Waiver Requirements” (Oct. 25, 2019); <https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements>.

reduce its overall case backlog while ensuring fair and accurate adjudications. Unaccompanied children seeking Special Immigrant Juvenile humanitarian protection must apply through Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*. From 2016 to 2019, USCIS’s average processing time for Form I-360 increased by over a year, from 4.8 months to 16.8 months. This increase of more than 300 percent defies congressional intent that the agency adjudicates SIJ cases within 180 days. The extraordinary wait times also leave affected children at heightened risk of harm.⁵ During that same period, the average overall USCIS case processing time rose by more than 50 percent, with adverse consequences throughout the nation for noncitizens and citizens alike.⁶ The agency’s own actions—including its imposition of unnecessary bureaucratic hurdles in the adjudication process—constitute key drivers of these delays.⁷

(5) Mandate auto-extension of the validity period of employment authorization documents until at least 90 days after President Trump’s emergency proclamation ends. From 2016 to 2019, USCIS’s average processing time for employment authorization applications surged by nearly 75 percent.⁸ The agency’s financial crisis, combined with health and safety risks that impede some renewal filings, now pose additional obstacles to USCIS’s timely renewal of employment authorization documents that are often essential to unaccompanied children’s access to housing, medical care, and educational opportunities. Auto-extending the documents’ validity period would bring vital relief to these children while conserving limited agency resources.

(6) Ensure that unaccompanied children receive non-adversarial hearings before an asylum officer. The Trafficking Victims Protection Reauthorization Act provides for an unaccompanied child’s right to have her asylum case first heard in a non-adversarial setting before a trained USCIS asylum officer.⁹ USCIS has sought to bar from non-adversarial asylum interviews those children who turn 18 before filing their asylum applications.¹⁰ While a federal court temporarily blocked these restrictions from taking effect, this policy remains the subject of litigation.¹¹ If this policy goes into effect, it would contravene congressional intent by depriving unaccompanied children of the opportunity to pursue their asylum claims in a non-adversarial setting before a specially trained asylum officer.

⁵ See USCIS, “Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year,” <https://egov.uscis.gov/processing-times/historic-pt>.

⁶ See AILA, “Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow;” (Feb. 26, 2020); <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>.

⁷ See *id.*

⁸ See USCIS, “Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year,” <https://egov.uscis.gov/processing-times/historic-pt>.

⁹ William Wilberforce Trafficking Victims Protection Act of 2008, 8 U.S.C.A. § 1232(c)(6)(A).

¹⁰ See USCIS, “Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children” (May 31, 2019) www.uscis.gov/sites/default/files/document/memos/Memo_-_Updated_Procedures_for_I-589s_Filed_by_UACs_5-31-2019.pdf.

¹¹ In the case of *J.O.P. v. U.S. Dept. of Homeland Security, et. al.*, Civil Action 8:19-cv-01944, the United States District Court for the District of Maryland issued a temporary restraining order enjoining USCIS from applying the May 31, 2019 Memo. Pursuant to the order, USCIS must reinstate application of the prior May 2013 memorandum, USCIS “Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children” (May 28, 2013) www.uscis.gov/sites/default/files/document/memos/determ-juris-asylum-app-file-unaccompanied-alien-children.pdf.