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Daniel Delgado, Acting Director
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U.S. Department of Homeland Security

Lauren Alder Reid, Assistant Director
Office of Policy
Executive Office for Immigration Review

March 27, 2023

Re: DHS RIN 1615-AC83/EOIR RIN 1125-AB26 or DHS Docket No. USCIS 2022-0016/A.G. Order No. 5605-2023 Comments in Opposition to Proposed Rule: Circumvention of Lawful Pathways

Dear Acting Director Delgado and Assistant Director Reid,

The Young Center for Immigrant Children's Rights (Young Center) writes to comment on the above-referenced proposed rule, titled "Circumvention of Lawful Pathways," published on February 23, 2023, by the U.S. Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR), U.S. Department of Justice (DOJ).¹

The Young Center serves as the federally-appointed independent Child Advocate, akin to best interests guardian ad litem, for trafficking victims and other vulnerable unaccompanied children in government custody, as authorized by the Trafficking Victims Protection Reauthorization Act (TVPRA).² The Young Center is the only organization authorized by ORR to serve in that capacity. The role of the Child Advocate is to advocate for the best interests of the child. A child's best interests are determined by considering the child's safety, expressed wishes, right to family integrity, liberty, developmental needs, and identity. Since 2004, ORR has appointed Young Center Child Advocates for thousands of unaccompanied children in ORR custody, many of whom are seeking asylum and/or another form of legal protection in the United States. In the past few years, we have been increasingly appointed to children who have been separated from their family as a result of harmful immigration policies that deny or limit access to asylum at the southern border of the U.S.

At the Young Center, we understand the particular vulnerability of immigrant children who have fled unimaginable violence or threats in their countries. They have traveled hundreds if not thousands of miles to the United States. Some travel to the border alone, while others travel with family or in the company of strangers. Regardless, they are all entitled under U.S. law to seek the

¹ See 88 Fed. Reg. 11704 (Feb. 23, 2023).

² William Wilberforce Trafficking Victims Protection Reauthorization Act, 8 U.S.C. § 1232(c)(6)(A) (hereafter TVPRA).

protection of asylum.³ And they are all children and should be treated as children. We are gravely concerned that the proposed rule will jeopardize the safety and well-being of immigrant children by undermining their right to seek asylum, and by forcing their return to persecution in violation of U.S. law, and basic principles of child welfare and human decency.

The proposed rule would deny many children, families, and adults the right to seek asylum at the southern border if they transited through a third country, with very limited exceptions. As a result, children in families—including those who have legitimate claims that they have been persecuted in or fear persecution upon return to their country of origin—will be denied the right to ask for asylum simply because of the route they took to the United States, a factor that is often not under children's control. This would result in children being returned to danger and persecution in violation of immigration laws enacted by Congress and contained in international treaties, and which reflect basic principles of child welfare and human decency.

In addition, the rule would fuel harmful family separations that have already been occurring due to the U.S. government's immigration policies. The harm these forced separations cause to the health and wellbeing of immigrant children and their families is well-established. The proposed rule follows on the heels of the Biden Administration's announcement in January 2023 of a host of border policies, including this proposed rule, that threaten to eviscerate the ability of most asylum-seekers, including children in families and other vulnerable individuals, from being able to seek protection in the United States.⁴

As an initial matter, we object to the agency's unfair and unrealistic 30-day timeframe in which to submit a comment regarding this proposed rule. The proposed rule threatens to bar access to asylum for many, if not most, families and adults seeking protection at the U.S. southern border. Given the sweeping changes proposed in the rule and the enormous consequences for the safety and health of many, a comment period of at least 60 days would have been appropriate for the public to have adequate time to consider and to fully address the impact that the rule would have on the immigration system.

Due to the shortened comment period, we have not been able to cover every aspect of the proposed rule. We submit these comments to address specifically the far-reaching effects this rule would have on children and families who seek protection at the U.S. southern border and the particular harm to immigrant children, both unaccompanied and those in families. For the reasons including but not limited to those that follow, DHS and DOJ should immediately withdraw the proposed rule in its entirety and instead dedicate their efforts to ensuring a robust asylum system and immigration policies and procedures that protect all children and are tailored to the specific needs and vulnerabilities of children.

³ See 8 U.S.C. § 1158(a)(1).

⁴ See The White House, *FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions (Jan. 5, 2023)*, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>.

I. The proposed rule undermines children's safety and well-being—their best interests—by denying children and families the right to apply for asylum

The proposed rule would deny access to asylum for many children in violation of their rights under U.S. and international asylum law. Although the proposed rule would not apply to unaccompanied children, it would apply to families seeking protection at the southern border, which includes children traveling as part of families. Tens of thousands of children, including infants, have been expelled under Title 42. Data show that as of May 2022, CBP had expelled over 30,000 children ages 3 and under to Mexican border cities.⁵

The U.S. asylum system was first codified in statute through the Refugee Act of 1980, which amended the Immigration and Nationality Act. The Refugee Act established a right to apply for asylum for “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...), irrespective of such alien's status”⁶ and created a “broad class of refugees who are eligible for a discretionary grant of asylum.”⁷ By acceding to the 1967 Protocol Relating to the Status of Refugees,⁸ which binds parties to the United Nations Convention Relating to the Status of Refugees,⁹ the United States obligated itself to develop and interpret U.S. refugee law in a manner that complies with the Protocol's principle of *non-refoulement*—the commitment not to return refugees to a country where they will face persecution on protected grounds.¹⁰

Children's right to seek asylum finds even greater protection in U.S. law. The complicated nature of asylum—having to show past persecution or fear of future persecution based on particular grounds—has required various aspects of substantive asylum law to be examined with a child-sensitive lens.¹¹ U.S. case law and guidance have required decision makers to contemplate certain

⁵ Children Thrive Action Network, *Children and Families Must Have Access to Asylum* (Sept. 2022), <https://childrethriveaction.org/wp-content/uploads/2022/09/Title-42-Factsheet-1.pdf>.

⁶ 8 U.S.C. § 1158(a)(1).

⁷ See *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 424 (1987).

⁸ Protocol Relating to the Status of Refugees, Oct. 4, 1967, 606 U.N.T.S. 267.

⁹ Convention Relating to the Status of Refugees, July 28, 1951, 140 U.N.T.S. 1954.

¹⁰ Immigr. Def. Project & Harvard Immigr. & Refugee Clinical Program, *Misapplication of the Particularly Serious Crime Bar to Deny Refugees Protection from Removal to Countries Where Their Life or Freedom is Threatened* 11 (Fall 2019), https://www.immigrantdefenseproject.org/wp-content/uploads/IDP_Harvard_Report_FINAL.pdf (arguing that the U.S. Constitution and Supreme Court case law make clear that federal law must be interpreted to follow the U.S.'s treaty obligations, including the Refugee Convention's non-refoulement mandate and its limited exception).

¹¹ Ctr. for Gender & Refugee Stud., *Children's Asylum Claims: CGRS Practice Advisory* 11, 18 (Mar. 2015), https://cgrs.uchastings.edu/sites/default/files/CGRS_Child_Asylum_Advisory_3-31-2015_FINAL.pdf, https://cgrs.uchastings.edu/sites/default/files/CGRS_Child_Asylum_Advisory_3-31-2015_FINAL.pdf (listing gender, family membership, domestic relationships, mental illness, childhood at the time of persecution, and others as immutable and fundamental characteristics).

considerations when examining the elements of asylum in children's cases.¹²

The United States is a signatory to the United Nations Convention on the Rights of the Child (CRC)¹³ and is therefore obligated “to refrain from acts that would defeat the object and purpose of the Convention.”¹⁴ The CRC protects the rights of children seeking asylum and explicitly states that those protections apply to all children, “whether unaccompanied or accompanied by his or her parents or by any other person.”¹⁵ Expounding on those rights, the U.N. Committee on the Rights of the Child has stated that States are required to “set up a functioning asylum system” in which “[a]sylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection.”¹⁶

The CRC represents virtually unanimous consensus that “[i]n all actions concerning children... the best interests of the child shall be a primary consideration.”¹⁷ The U.N. Committee on the Rights of the Child, along with the UN Committee on the Protection of the Rights of All Migrant Workers, has explicitly stated that States are required to “conduct a best-interests determination in cases that could lead to the expulsion of migrant families due to their migration status, in order to evaluate the impact of deportation on children's rights and development, including their mental health.”¹⁸ Over the past several decades, Congress has incorporated the best interests standard into

¹² See, e.g., *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1313 (9th Cir. 2012) (holding that “an infant can be the victim of persecution, even though he has no present recollection of the events that constituted his persecution”); *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004) (“age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution”); *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004) (overturning immigration judge's finding that nine-year-old applicant had not adequately expressed fear of future persecution and noting that “very young children may be incapable of expressing fear to the same degree or with the same level of detail as an adult”).

¹³ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

¹⁴ U.S. Citizenship & Immigr. Serv., U.S. Dep't of Homeland Sec., *RAIO Combined Training Program: Children's Claims* § 2.2 (2019),

https://www.uscis.gov/sites/default/files/document/foia/Childrens_Claims_LP_RAIO.pdf; Vienna

Convention on the Law of Treaties, art. 18, May 23, 1969, 1155 U.N.T.S. 331.

¹⁵ CRC, art. 22.

¹⁶ U.N. Comm. on the Rts. of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, ¶¶ 66, 74, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005), <https://www.refworld.org/docid/42dd174b4.html>.

¹⁷ Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. Every nation in the world but the United States has ratified the Convention on the Rights of the Child. The United States is a signatory. See U.N. Treaty Collection, Convention on the Rights of the Child, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4 (containing depository information).

¹⁸ U.N. Comm. on the Rights of the Child and U.N. Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Joint General Comment No. 3 (2017) of the Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of*

multiple aspects of immigration law, notably through Special Immigrant Juvenile Status, which is granted by U.S. Citizenship and Immigration Services (USCIS) only after a finding that return to the country of origin is not in a child's best interests.¹⁹ Moreover, U.S. family and child welfare law recognizes the "best interests of the child" principle, with all 50 states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands requiring consideration of a child's best interests in decisions about the child's custody, placement, and other critical life issues.²⁰ While the "best interests of the child" principle has no single definition under U.S. law, it consistently encompasses the child's health, safety, and protection as significant factors.²¹ Resettlement through asylum, to the extent it will prevent serious risks to a child's safety and health, is generally in the best interests of the child.²²

The U.N. Committee on the Rights of the Child has made clear that the best interests standard under the CRC, in addition to being a substantive right, is a "rule of procedure":

Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees.²³

In the context of international migration, the Committee has stated that States are required to "ensure that any decision to return a child to his or her country of origin is based on evidentiary considerations on a case-by-case basis and pursuant to a procedure with appropriate due process safeguards, including a robust individual assessment and determination of the best-interests of the

the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, ¶ 32(g), U.N. Doc. CMW/C/GC/3-CRC/C/GC/22 (Nov. 16, 2017), <https://www.refworld.org/docid/5a1293a24.html> [hereinafter *Joint General Comment No. 3*].

¹⁹ 8 U.S.C. § 1101(a)(27)(J).

²⁰ Child Welfare Information Gateway, Children's Bureau, Admin. for Children and Families, U.S. Dep't of Health and Human Serv., *Determining the best interests of the child* 1 (2020), https://www.childwelfare.gov/pubpdfs/best_interest.pdf.

²¹ *See, e.g., id.*, at 2 (identifying the "health, safety and/or protection of the child" as a "guiding principle of best interests determinations"). *See also* Subcomm. on Best Interests, Interagency Working Grp. on Unaccompanied and Separated Children, *Framework for Considering the Best Interests of Unaccompanied Children* 5 (2016), <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/Best-Interests-Framework.pdf>.

²² *See* United Nations High Comm'r for Refugees, *UNHCR Guidelines on Determining the Best Interest of the Child* 70 (May 2008), <https://www.unhcr.org/en-us/protection/children/4566b16b2/unhcr-guidelines-determining-best-interests-child.html>.

²³ U.N. Comm. on the Rts. of the Child, *General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration* (art. 3, para. 1), ¶ 6, U.N. Doc. CRC/C/GC/14 (May 29, 2013), https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf [hereinafter *General Comment No. 14*].

child.”²⁴ It has further stated that “[c]onsiderations such as those relating to general migration control cannot override best-interests considerations.”

The proposed rule directly contravenes the United States’ legal obligations to asylum-seekers and its specific obligations to child asylum-seekers as a matter of both substance and procedure. Rather than ensure that children can exercise their right to apply for asylum, the proposed rule would make it nearly impossible for children to ask for and receive asylum. The proposed rule would impose barriers to asylum in the United States that are breathtaking in scope, such as forcing those seeking safety to wait in dangerous conditions in Mexico and an overlapping web of policies that preclude asylum eligibility for countless migrants simply because of their transit path or whether they were able to schedule an appointment, among a limited number of appointments, on a cell phone app.²⁵ By eliminating the possibility of asylum for children in families who enter the United States through the southern border and who in many cases have been successful in obtaining legal relief when they have the time and resources to be meaningfully heard, the rule would guarantee that many children and families will be returned to danger, persecution, and harm.

Contrary to the robust individualized, case-by-case assessment required under the CRC before a child asylum seeker is returned to their country of origin, the proposed rule significantly limits individualized consideration of the cases of children in families. Instead, the proposed rule mandates a presumption of ineligibility for asylum based on certain categorical requirements and standards—many of which are outside the children’s control—with narrow exceptions. Moreover, as discussed below, the proposed rule fails to ensure due process and instead eliminates the basic procedural safeguards of the expedited removal process so that for many, there will be no meaningful opportunity to be heard on their claims for protection.

Rather than advance the best interests of children, the proposed rule completely fails to account for the specific needs and vulnerabilities of children in families. For instance, denying children the ability to seek asylum based on the route they traveled to the U.S. border to enter the United States not only violates existing law, which extends them that explicit protection, but ignores the realities of childhood. Children who travel with adults are subject to the decision-making of those adults—including when, where and how they will cross the U.S. border. Those adults may be well-intended parents or adult family members. But children also cross borders under the control of smugglers or traffickers. It would be both illogical and contrary to public policy to penalize children—to deny them the opportunity to seek asylum, and to potentially return them to persecution or other dangerous situations—for decisions that were not their own (and in particular, for decisions that

²⁴ *Joint General Comment No. 3*, ¶ 33.

²⁵ The National Immigrant Justice Center maintains a frequently updated timeline providing details of each of the asylum bans and other policies issued and implemented by the government that undermine asylum access. See Nat’l Immigr. Just. Ctr., *Asylum-seekers & Refugees*, <https://www.immigrantjustice.org/issues/asylum-seekers-refugees> (last visited March 22, 2023). For more information on the harms and rights abuses inherent in the Migrant Protection Protocols, or “Return-to-Mexico” program, see Hum. Rts. First, *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process* (Aug. 2019), <https://humanrightsfirst.org/wp-content/uploads/2022/10/Delivered-to-Danger-August-2019-.pdf>.

are often made in haste, under stress, or under other extremely difficult circumstances), regarding which countries to transit through and how to ask for protection from the United States. The United States should not restrict asylum for children but should instead continue to follow and build upon federal and international protections regarding children's right to seek asylum.

II. The proposed rule denies children in families a full and fair opportunity to be heard on their claims for protection and thereby fails to ensure due process

Children have unique needs and vulnerabilities and face particular challenges to their meaningful participation in immigration proceedings. These unique needs, vulnerabilities, and challenges make it necessary for the U.S. immigration system to employ child-sensitive considerations and heightened procedural protections in order to ensure due process. Both EOIR and USCIS recognize that children (and their cases) are distinct from adults and therefore, their cases require consideration of children's unique needs and vulnerabilities. EOIR guidance recognizes that, "[i]mmigration cases involving children are complicated and implicate sensitive issues beyond those encountered in adult cases."²⁶ The Board of Immigration Appeals has acknowledged that a respondent's young age can affect their participation in immigration proceedings, such that additional procedural protections may be necessary.²⁷ Likewise, USCIS guidance recognizes that "children's needs are different from adults due to their developmental needs, their dependence, including in legal matters, and their vulnerability to harm" so that governmental actions toward children must be tailored accordingly.²⁸

The importance of ensuring children have an opportunity to be heard and understood appears in both domestic and international law. The CRC recognizes, for all children who are "capable of forming their own views," "the right to express those views freely in all matters affecting the child."²⁹ In furtherance of this right, the CRC mandates that children be "provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body[.]"³⁰ In expounding upon these rights, the U.N. Committee on the Rights of the Child has explained that "[c]hildren who come to a country...as refugees are in a particularly vulnerable situation" and that "[c]hildren may have their own migration projects and migration-driving factors, and policies and decisions cannot be effective or appropriate without their participation."³¹ Accordingly, the Committee states that it is critical for States "to fully implement [children's] right to express their views on all aspects of...immigration

²⁶ Off. of the Chief Immigration Judge, Exec. Off. for Immigration Review, U.S. Dep't of Justice, Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children 2 (2017), <https://www.justice.gov/eoir/file/oppm17-03/download>.

²⁷ See, e.g., *In re A-D-*, AXXX XXX 526 (BIA May 22, 2017) (noting that brain development continues to develop into the early 20s, and that age may be a factor in excusing respondents from asylum filing deadline).

²⁸ *USCIS RAIIO Training on Children's Claims*, *supra* n. 14, § 2.4.2.

²⁹ CRC, Art. 12, para. 1

³⁰ CRC, Art. 12, para. 2.

³¹ *General Comment No. 12*, para. 123; *Joint General Comment No. 3*, para. 35.

and asylum proceedings...In the case of an asylum claim, the child must...have the opportunity to present her or his reasons leading to the asylum claim.”³² As part of their obligation to guarantee this right, States must provide children with all relevant information on their rights, the services available, and the immigration and asylum processes and their outcomes, “in the child’s own language in a timely manner, in a child-sensitive and age-appropriate manner, in order to make their voice heard and to be given due weight in the proceedings.”³³ Moreover, “[a] guardian or adviser should be appointed, free of charge.”³⁴

Rather than ensure these or other additional procedural safeguards to ensure that children have a full and fair opportunity to be heard on their claims for asylum, the proposed rule does exactly the opposite. Like the Trump Administration’s transit ban, the proposed rule’s restrictions on asylum are located in the expedited removal process, in which asylum-seekers would be deported without an asylum hearing if they do not pass their fear screenings. Asylum-seekers would be required to show that the presumption of ineligibility for asylum does not apply to them or that they can rebut the presumption of ineligibility, which will be impossible for many given that these screenings typically occur over the phone while asylum-seekers are detained, with little to no access to counsel.

Due process violations under the current expedited removal process are well-documented.³⁵ DHS has deported asylum-seekers without providing them with credible fear interviews or removal hearings before immigration judges, even though they stated that they fear return, in violation of their rights under U.S. law.³⁶ Most asylum-seekers can not find an attorney to assist them with their credible fear interviews, and access to legal representation is very limited. Moreover, asylum officers have regularly conducted credible fear interviews in languages that asylum-seekers do not fluently speak. These issues have resulted in widespread, erroneous negative credible fear determinations.³⁷

Instead of addressing these due process deficiencies in the existing expedited removal process, the proposed rule would gut even the basic procedural safeguards of the expedited removal process—which are already inadequate to ensure due process for adults, let alone children—and severely limit asylum-seekers’ ability to present and be heard on their claims. As a result, the vast majority will likely receive negative determinations and will be deported within a matter of days. As with other expedited processes implemented by this Administration and past Administrations that permit asylum-seekers only a short period of time to make their claims for protection, the procedures under the proposed rule completely fail to account for the specific needs and

³² *General Comment No. 12*, para. 123.

³³ *Id.*

³⁴ *Id.*

³⁵ See, e.g., Human Rights First, *Pretense of Protection: Biden Administration and Congress Should Avoid Exacerbating Expedited Removal Deficiencies* (2022), <https://humanrightsfirst.org/wp-content/uploads/2023/01/PretenseofProtection-21.pdf>.

³⁶ *Id.*

³⁷ *Id.*

vulnerabilities of children, particularly asylum-seeking children, who often require additional time to prepare their cases and retain legal counsel.

Earlier this month, the Young Center and First Focus on Children published a report titled *Fast Not Fair: How Expedited Processes Harm Immigrant Children Seeking Protection*, which describes how expedited processes deny children and families a full and fair opportunity to be heard on their claims for protection and increase the risk that children will be returned to danger and persecution.³⁸ As explained in the report, expedited processes prioritize speed over fairness in considering children's asylum cases. They ignore the reality that children are different from adults, and their claims for protection therefore require both time and specialized care in both their preparation and adjudication. Expedited processes inherently lack this time and care, and lack specialized procedural or substantive protections for children. They therefore increase the risk that children with legitimate claims for protections will be denied relief and returned to danger.

A. The proposed rule's expedited timeframes and inadequate procedures for processing asylum claims fail to consider the unique needs of children

Children in immigration proceedings warrant heightened procedural protections to ensure they have a fair opportunity to be heard. Children are developmentally distinct from adults, with research showing that children's brains continue to develop well into their twenties.³⁹ Children process, recall, and communicate information differently, as perception, memory, recall, and other capacities develop with age; even older children vary in cognitive abilities.⁴⁰ Cultural and linguistic differences may further hinder communication and comprehension as a child is interviewed.⁴¹ Children also need time to build trust in the professionals who advocate for them and to understand the adversarial system in which their asylum claim will be adjudicated.

Despite the capacity limitations inherent in children's ongoing intellectual, social, and emotional development, children are held to the same high bars for asylum and other humanitarian relief as adults. Current U.S. laws, regulations, and processes governing asylum adjudications are

³⁸ Young Center for Immigrant Children's Rights and First Focus on Children, *Fast Not Fair: How Expedited Processes Harm Immigrant Children Seeking Protection*, (Feb. 2023), <https://www.theyoungcenter.org/fastnotfair>.

³⁹ Sara B. Johnson, Robert W. Blum, and Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. OF ADOLESCENT HEALTH 216 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/>. See also In re A-D-, AXXX XXX 526 (BIA May 22, 2017) (noting that brain development continues to develop into the early 20s, and that age may be a factor in excusing respondents from asylum filing deadline); *USCIS RAO Combined Training on Children's Claims*, *supra* n. 15, § 2.4.2 ("children's needs are different from adults due to their developmental needs, their dependence, including in legal matters, and their vulnerability to harm").

⁴⁰ Chris Newlin et al., *Child Forensic Interviewing: Best Practices*, *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, 3-4 (Sept. 2015), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf>.

⁴¹ TRAC Immigration, *The Impact of Nationality, Language, Gender and Age on Asylum Success* (Dec. 7, 2021), <https://trac.syr.edu/immigration/reports/668/> (finding that asylum-seekers in U.S. immigration courts during the last two decades came from over 200 countries and spoke over 400 different languages).

exceedingly complicated, and winning asylum is difficult for all applicants, most especially for children. Asylum-seekers bear the burden of establishing their eligibility for asylum⁴² in the face of a complex web of laws and regulations, without the benefit of appointed counsel.⁴³ Despite their age and stage of development, children also must show they have suffered persecution or will suffer persecution based on a protected ground—many without a lawyer to represent them and while still in detention. Moreover, claims for asylum are time- and labor-intensive, placing demands on children that they are likely to be unequipped to meet in the short term. For example, a forensic evaluation of a child's medical or psychological history often provides essential evidence for a meritorious asylum claim, but obtaining these services, especially pro bono, often entails wait times of many months.

In addition, a child's ability to establish eligibility for asylum or other forms of protection for which they may be eligible often depends on individual and institutional actors whom children do not control. Because children are neither financially nor emotionally self-sufficient, asylum-seeking children are dependent upon others to facilitate their participation in a legal system designed for adults. They must depend on the support of parents or other adult caregivers and on scarce free or low-cost resources for legal, medical, and educational services. Even if ready to pursue relief, a child may be unable to influence adults or institutions on whom progress or preparation depends. For children whose cases are tied to that of their parents, these child-specific considerations are rarely taken into account.

By fast-tracking the asylum cases of families with children, and limiting children's opportunity to be heard and present evidence, the proposed rule deprives children of fair and adequate examination of their asylum claims and places a huge—and in many cases, insurmountable—barrier to a vital protection for children that is already difficult to obtain. While it is critical that children's cases be adjudicated as efficiently as possible, it should not be at the expense of ensuring that children have a full and fair opportunity to be heard according to the specific and unique needs of each child.

B. The proposed rule fails to account for how a history of trauma affects a child's navigation of immigration proceedings

Many immigrant children, particularly those who seek asylum, have suffered trafficking, abuse, or other violence from events that occurred in their countries of origin, during their migration journey, or upon arriving in the United States.⁴⁴ In particular, child migration from Central America is

⁴² 8 U.S.C. § 1158(b)(1)(B)(i); 8 C.F.R. § 1240.8(d).

⁴³ See Lauren Villagran, Daniel Connolly & Aaron Montes, *Asylum Seekers in U.S. Face Years of Waiting, Little Chance of Winning Their Cases*, USA TODAY, (Sept. 25, 2019), <https://www.usatoday.com/in-depth/news/nation/2019/09/23/immigration-court-asylum-seekers-what-to-expect/2026541001/>.

⁴⁴ Emily M. Cohodes et al., *Migration-related trauma and mental health among migrant children emigrating from Mexico and Central America to the United States: Effects on developmental neurobiology and implications for policy*, 63 DEVELOPMENTAL PSYCHOBIOLOGY 1, 4 (2021), http://candlab.yale.edu/sites/default/files/publications/Cohodes_etal_2021_DP.pdf.

frequently connected to gang violence, the erosion of human rights, violence in the home, and other grave danger in their countries of origin.⁴⁵ The resulting trauma histories, and often compounded trauma, exacerbate the gap that a child must bridge to participate in preparing a legal defense against removal.

A trauma history can affect a child's ability or willingness to provide information about past incidents.⁴⁶ Children who have experienced trauma may have piecemeal or nonlinear memories of the harm they suffered, making it time-consuming to develop and corroborate their claims.⁴⁷ It often takes time for them to talk about their experiences. For many children, it is only after release from government detention or after they have had time to settle and adjust to life in the U.S. with trusted adults that they are able to talk about the harm they faced in their home country. For many, the asylum process is the first time they ever discuss their experiences, and it is a process that requires time and patience, both to ensure a full understanding of their story and to avoid a process that inflicts additional and unnecessary harm on a child.

By forcing a child to address traumatic facts without appropriate support in order to meet a predetermined timeline rather than one that accounts for the child's age, development, and trauma history, expedited processes ignore the significant impact of trauma on children and the ways in which trauma can delay a child's ability to assist their attorneys in preparing their cases, and ultimately obstruct decision makers in the fact-finding process.

C. The proposed rule denies children and families the time they need to find and consult with counsel and adequately prepare their asylum cases

The proposed rule would mandate a fast-tracked process for processing asylum claims, likely within a matter of days and while asylum-seekers are detained, conditions that would make it extremely difficult for asylum-seekers to be able to have any opportunity to consult with an attorney, let alone have meaningful representation to prepare for their interviews. Yet, for children, access to legal representation is critical to ensuring that their stories and expressed wishes are effectively communicated and understood in their immigration proceedings. Access to counsel is also essential for children and families to be able to navigate the immigration system, its complicated legal procedures, and the various legal and evidentiary standards to obtain relief. It is unreasonable to expect any person, especially a child, to understand the complexities of U.S. asylum law and lay out every element of their claim by themselves without representation.

Data from the Biden Administration's Dedicated Docket program, which sets a goal of issuing decisions in asylum cases before immigration court within an expedited timeframe of 300 days

⁴⁵ U.N. High Comm'r for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* 9-11 (2016), <https://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.html>.

⁴⁶ *Child forensic interviewing*, *supra* n. 40, at 5. See also USCIS RAIO Combined Training Program, *supra* n. 14, at § 6 ("Child asylum applicants may be less forthcoming than adults and may hesitate to talk about past experiences in order not to relive their trauma").

⁴⁷ *Child forensic interviewing*, *supra* n. 40, at 5.

from their initial hearing, illustrates the vital importance of access to counsel in ensuring due process for children and families in immigration proceedings. Consistent with prior research demonstrating the critical impact of legal representation on the ability of asylum-seekers, particularly children, to obtain legal relief in immigration proceedings,⁴⁸ the inability to obtain legal representation has made it extremely difficult for families on the Dedicated Docket to win legal relief. Only 7% of cases on the Dedicated Docket that were closed in 2022 were granted asylum, compared with 52% of cases in regular proceedings.⁴⁹ Moreover, data analyzed by Syracuse University's Transactional Records Access Clearinghouse shows that only 4.7% of those ordered deported during the first 7 months of the Dedicated Docket had legal representation.⁵⁰ On the other hand, of the mere 13 people granted asylum during that same time period, all had legal representation.⁵¹ Similarly, a UCLA report analyzing data for the Dedicated Docket in Los Angeles found that most of the families ordered removed in absentia did not have representation, while the vast majority of those families who were able to file applications for asylum or were able to get their cases transferred to a regular docket were represented.⁵²

Given that families in the Dedicated Docket program have faced difficulties in finding counsel and preparing their cases within a 300-day timeframe while they are released, it is very likely that the vast majority of asylum-seekers subject to the procedures and requirements in this proposed rule will not have access to counsel prior to or during their fear screenings. In addition, asylum-seekers will suffer language barriers, abusive and dangerous conditions of detention, and acute trauma. All of these factors will make it extremely challenging for asylum-seekers to overcome the presumption of ineligibility in their preliminary screenings. Indeed, without an attorney, it is likely that most asylum-seekers will not even know the requirements of this complex rule or what they will have to show during their screenings. For children, these barriers and hurdles will only be amplified.

Moreover, the due process violations under this proposed rule will be magnified if the Biden Administration pursues its reported plan⁵³ to conduct credible fear interviews within days of asylum-seekers' arrival in Customs and Border Protection (CBP) custody, where dire conditions and lack of access to counsel would exacerbate deficiencies in due process. The Trump

⁴⁸ See, e.g., TRAC Immigration, *Representation Makes Fourteen-Fold Difference in Outcome: Immigration Court "Women with Children" Cases* (July 15, 2015), <https://trac.syr.edu/immigration/reports/396/>.

⁴⁹ TRAC Immigration, *A National Assessment of the Biden Administration's Dedicated Docket Initiative* (Dec. 6, 2022), <https://trac.syr.edu/reports/704/>.

⁵⁰ TRAC Immigration, *Unrepresented Families Seeking Asylum on "Dedicated Docket" Ordered Deported by Immigration Courts* (Jan. 13, 2022), <https://trac.syr.edu/immigration/reports/674/>.

⁵¹ *Id.*

⁵² Center for Immigration Law and Policy, UCLA School of Law, *The Biden Administration's Dedicated Docket: Inside Los Angeles' Accelerated Court Hearings for Families Seeking Asylum* 8-9 (May 2022), https://law.ucla.edu/sites/default/files/PDFs/Center_for_Immigration_Law_and_Policy/Dedicated_Docket_in_LA_Report_FINAL_05.22.pdf.

⁵³ Ted Hesson & Kristina Cooke, *Biden Moving to Restart Trump-era Rapid Asylum Screenings at U.S.-Mexico Border – Sources*, Reuters (Jan. 26, 2023), <https://www.reuters.com/world/us/biden-moving-restart-trump-era-rapid-asylum-screenings-us-mexico-border-sources-2023-01-26/>

Administration similarly conducted credible fear interviews in CBP custody through the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs,⁵⁴ which the Biden administration ended.⁵⁵ A 2021 investigation by the DHS Office of Inspector General found that under PACR and HARP, CBP provided inadequate access to phones and private space for individuals to consult with legal representatives and to participate in asylum officer screening interviews and immigration court proceedings.⁵⁶ Moreover, the government failed to provide legal orientation programs to detained asylum-seekers, and detainees lacked access to pens or paper, avenues to conduct legal research, and the ability to keep any documents with them.⁵⁷ Given these conditions, it is not surprising that positive credible fear determinations vastly decreased, with only 18 percent of individuals in PACR and 30 percent in HARP passing their screenings, compared to 40 percent nationwide (excluding HARP and PACR) during the same period.⁵⁸ The proposed rule does not account for or remedy any of these failings in past expedited processes.

D. The proposed rule would deprive children of the ability to pursue independent claims for asylum

By law, children may assert independent asylum claims, separate and distinct from the claims of their parents and guardians.⁵⁹ As with expedited removal, the proposed rule would deny children in families the opportunity to make a claim for protection independent of their parent or legal guardian. A report on expedited removal by the U.S. Commission for International Religious Freedom found that children under 14 arriving with parents had few opportunities to make an independent claim for protection, as border patrol agents question only the parent on behalf of the child.⁶⁰ When asked about scenarios where children might have a claim independent from their parent or legal guardian, “border patrol agents responded . . . that they were confident that, since the child had made it to the safety of the United States, s/he would voice any concerns s/he had,”⁶¹ despite the fact that border patrol agents are uniformed, armed government officials whom children and families encounter right after they have ended an arduous journey, often after fleeing persecution by government officials in their countries of origin or countries of transit.

⁵⁴ Off. of Inspector Gen., U.S. Dep’t of Homeland Sec., *DHS Has Not Effectively Implemented the Prompt Asylum Pilot Programs* 5 (2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-01/OIG-21-16-Jan21.pdf>.

⁵⁵ Exec. Order No. 14010, 86 Fed. Reg. 8267 (Feb. 2, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02561.pdf>.

⁵⁶ *DHS Has Not Effectively Implemented the Prompt Asylum Pilot Programs*, *supra* n. 54, at 17.

⁵⁷ *Id.*, at 19.

⁵⁸ *Pretense of Protection*, *supra* n. 35, at 23.

⁵⁹ 8 C.F.R. §§ 1208.3, 1208.13.

⁶⁰ Elizabeth Cassidy and Tiffany Lynch, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, U.S. Commission on International Religious Freedom 30 (2016), <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.

⁶¹ *Id.*

Similarly, the UCLA report on the Dedicated Docket program found that families subjected to the Dedicated Docket in Los Angeles were unaware that children could make a separate claim for relief, and that few children were able to pursue independent claims.⁶² In some cases, judges have even encouraged families to consolidate their claims, failing to consider the possibility that children may have independent claims. Border officials, asylum officers, and judges frequently fail to appreciate that children may have separate claims for relief that involve sensitive information that a child may be unable to disclose in the presence of their parents or guardians. Because the expedited removal process typically lacks personnel trained in child development and trauma, as well as child-appropriate, private spaces, it is particularly ill-equipped to ensure that children are able to articulate separate claims for protection.

III. The detention of children and families is inhumane and should not be employed as part of the implementation of this rule or any other immigration policies

To the extent that DHS is considering implementing this proposed rule in conjunction with an expansion or resurrection of the government's practice of detaining families in ICE or CBP facilities, the Young Center urges this Administration to honor its promise and commitment to end the detention of immigrant families.⁶³ Family detention is inhumane and has been widely condemned by human rights organizations and medical experts. The American Academy of Pediatrics has explicitly stated that DHS should discontinue the use of family detention due to the impact of detention on the health of children and families.⁶⁴ It has further recommended that "[p]rocessing of children and family units should occur in a child friendly manner, taking place outside current CBP processing centers or conducted by child welfare professionals, to provide conditions that emphasize the health and well-being of children and families at this critical stage of immigration proceedings."⁶⁵ In 2016, DHS Secretary Jeh Johnson formed an ICE Advisory Committee on Family Residential Centers, to which the Young Center's Policy Director at the time was appointed; after one year of investigation, the Committee recommended that "DHS's immigration enforcement practices "operationalize the presumption that detention is generally neither appropriate nor necessary for families—and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children."⁶⁶

The deleterious effects of detention on the health and well-being of children is well-established. Detention can "have a serious, long-lasting impact on children's psychological well-being. The persistent stress, despair, and uncertainty of detention—even when it's just for a few weeks—

⁶² *Inside Los Angeles' Accelerated Court Hearings for Families Seeking Asylum*, *supra* n. 52, at 15.

⁶³ Colleen Long and Elliott Spagat, *In reversal, Biden weighs detaining migrant families*, AP NEWS (Mar. 7, 2023), <https://apnews.com/article/immigration-migrant-families-detention-border-biden-0909546c3984ae439b376d02c40ac7ff>.

⁶⁴ Julie M. Linton et al., American Academy of Pediatrics Counsel on Community Pediatrics, *Detention of Immigrant Children*, 139 PEDIATRICS 1, 8 (2017).

⁶⁵ *Id.*, at 8-9.

⁶⁶ ICE Advisory Committee on Family Residential Centers, *Report of the ICE Advisory Committee on Family Residential Centers* (Oct. 7, 2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>.

compromises young children’s intellectual, cognitive, emotional, and social development” and “raises the risk of recurrent and distressing memories, nightmares, dissociative reactions, prolonged psychological distress, and negative alterations in cognition.”⁶⁷ When older children are detained, they “may experience a sense of hopelessness and futility and can have trouble sleeping or concentrating. As a response to their hopelessness and anger, some young people harm themselves.”⁶⁸ For young people who have fled their countries due to threats and violence, “detention may serve to continue their experience of being treated unfairly or unjustly, as well as their perception that life is unsafe, uncertain, unstable, and unpredictable.”⁶⁹ Detention essentially returns an asylum-seeking child “to the state of existential panic that [they] experienced when subjected to the human rights violations or persecution which led [them] to flee [their] country of origin.”⁷⁰

Studies of detained families have found that detained “[p]arents exhibited depression, anxiety, loss of locus of control, and a sense of powerlessness and hopelessness.”⁷¹ Moreover, “[p]arents often faced difficulty parenting their children and subsequently experienced strained parent–child relationships.”⁷² Detention itself undermines parental authority and capacity to respond to their children’s needs. The strain is exacerbated when parents suffer mental health problems while in detention.⁷³

Poor and even appalling detention conditions in CBP and ICE facilities have been well-documented. In a 2022 study of women who had been detained at the Berks Detention Center, which had previously been used to detain immigrant families, detainees reported widespread mistreatment by ICE and CBP employees and horrid conditions in CBP facilities, including insufficient or inedible food and water; lack of access to showers and other basic hygiene; and inability to sleep because of overcrowding, lack of adequate bedding, cold conditions, and lights that are kept on all night.⁷⁴ Similar conditions were reported by detained children in complaints filed by four legal organizations based on interviews with over 26,000 unaccompanied children who had been detained in CBP custody.⁷⁵ Despite a recent settlement agreement in *Flores* mandating the federal government to comply with specific custodial conditions and procedures for

⁶⁷ Luis H. Zayas, *Immigration Enforcement Practices Harm Refugee Children and Citizen-Children*, 38 ZERO TO THREE 20, 22 (2018).

⁶⁸ Int’l Detention Coalition, *Captured Childhood* 53 (2012), <https://idcoalition.org/wp-content/uploads/2016/01/Captured-Childhood.pdf>.

⁶⁹ *Id.* at 50.

⁷⁰ *Id.* at 54.

⁷¹ *Detention of Immigrant Children*, *supra* n. 64, at 6.

⁷² *Id.*

⁷³ *Id.*; see also Sarah Mares, *The Mental Health of Children and Parents Detained on Christmas Island: Secondary Analysis of an Australian Human Rights Commission Data Set*, 18 HEALTH & HUMAN RIGHTS 292 (2016), <https://pubmed.ncbi.nlm.nih.gov/28559688/>.

⁷⁴ Human Rights First, *Biden Administration Detains Women Seeking Safety and Separates Them From Their Families* (2022), https://humanrightsfirst.org/wp-content/uploads/2022/12/Final-Berks-Factsheet-12.1.2022_FINAL-1.pdf.

⁷⁵ Anna Flagg and Julia Preston, “No Place for A Child,” THE MARSHALL PROJECT (Jun. 16, 2022), <https://www.themarshallproject.org/2022/06/16/no-place-for-a-child>.

immigrant children (including children in families) in federal government custody, a January 2023 report filed by the Juvenile Care Monitor in that case found that children in families detained in CBP facilities in El Paso and the Rio Grande Valley continue to experience overcrowding and protracted periods of detention, as well as “a lack of child-friendly amenities, activities, and caregiving personnel.”⁷⁶

IV. The proposed rule would undermine children’s best interests by fueling family separations

Like other policies that have barred access to asylum for migrants at the border such as the Remain in Mexico policy and Title 42, the proposed rule would fuel family separation by forcing parents to “choose” between remaining with their children in dangerous conditions or separating from them in hopes that the children will find safety if they approach the border unaccompanied. During the Remain in Mexico policy and under Title 42, Young Center Child Advocates have been appointed to children whose parents or other family members made the heartbreaking decision to separate from a child, because of harmful immigration policies that deny access to asylum at the border to families and adults.⁷⁷ According to data provided in response to a FOIA request, more than 12,000 children in fiscal year 2021 entered the U.S. as unaccompanied children after previously being expelled under Title 42, typically with their parents.⁷⁸ The pressure to separate is especially intense for the most vulnerable, such as those who fear persecution in Mexico or who find themselves without enough food or medicine to care for their children. Violence is a real concern for families subjected to Title 42, under which many families have faced kidnapping, rape, and assault.⁷⁹

Young Center Child Advocates working with children who suffered separation from their families have witnessed firsthand the deep emotional harm and trauma of separations at the border and the

⁷⁶ Juvenile Care Monitor Report at 50, *Flores v. Garland*, No. 85-cv-04544-DMG-AGR, ECF No. 1326, (C.D. Cal. Jan. 30, 2023).

⁷⁷ See, e.g., Young Center for Immigrant Children’s Rights, *Family Separation is Not Over: How the Trump Administration Continues to Separate Children from Their Parents to Serve Its Political Ends* 13-14 (2020), <https://bit.ly/YoungCenterFamilySeparationIsNotOver>; Young Center for Immigrant Children’s Rights, *Two Years of Family Separation and Violence: Why Title 42 Must End Immediately* 25-27 (Mar. 2020), <https://www.theyoungcenter.org/stories/2022/3/20/two-years-of-family-separation-and-violence-why-title-42-must-end-immediately>.

⁷⁸ Camilo Montoya-Galvez, *Immigrant Children Reentered U.S. Border Custody in 2021 After Being Expelled*, CBS NEWS, (May 20, 2022), <https://www.cbsnews.com/news/immigration-migrant-children-us-border-custody-unaccompanied-minors-2021/>.

⁷⁹ Human Rights First, Human Rights Stain, *Public Health Farce: Evasion of Asylum Law and Title 42 Abuse Must End—and Never Be Revived* 4 (Dec. 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/12/HumanRightsStainPublicHealthFarce-1.pdf> (tracking of 13,480 reports of murder, kidnapping, rape, torture, and other violent attacks against people blocked in or expelled to Mexico due to Title 42 since January 2021).

long-term effects on children.⁸⁰ The American Academy of Pediatrics has stated that “the most fundamental adaptational mechanism for any child is a secure relationship with a safe, stable, nurturing adult who is continuous over time in the child’s life[,] usually the child’s parent or caregiver but can involve extended family and biological or fictive kin.”⁸¹ “[T]he caregiver’s proximity and responsivity to the child’s needs and reflection of the child’s emotional experience” are central to a child’s development of an attachment relationship to their caregiver.⁸² Supportive caregivers provide children with a sense of safety and security, serving as a critical buffer and a protective factor for children in stressful and difficult situations.⁸³ Mental health experts have found that caregiver presence and relationships when children are exposed to migration-related stress may effectively mitigate the negative effects of this exposure.⁸⁴

Given the buffering role that a relationship and proximity with parents or caregivers serves for a child, child health and medical experts have recognized that a child’s separation from parents is a deeply traumatizing experience and can carry significant physical and emotional consequences well beyond the period of separation.⁸⁵ The American Psychological Association has raised grave concerns that the sudden and unexpected separation of a child from their parent can cause severe emotional trauma, noting that “the longer that parents and children are separated, the greater the reported symptoms of anxiety and depression are for children.”⁸⁶ A past President of the American Academy of Pediatrics cautions: “[H]ighly stressful experiences, like family separation, can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry

⁸⁰ See, e.g., Brief for Amici Curiae Young Center for Immigrant Children’s Rights, KIND, et al. at 25-27, *Texas v. Biden*, No. 21-10806 (N.D. Tex. Sept. 27, 2021), https://static1.squarespace.com/static/597ab5f3bebafb0a625aaf45/t/61531cee91a6897acaf74c12/1632836847044/2021_09_27_00516031522+Amicus+Brief.pdf.

⁸¹ Heather Forkey et al., American Academy of Pediatrics Council on Foster Care, Adoption, and Kinship Care, Council on Community Pediatrics, Council on Child Abuse and Neglect, Committee on Psychosocial Aspects of Child and Family Health, *Trauma-Informed Care*, 148 PEDIATRICS 1, 3 (2021), <https://publications.aap.org/pediatrics/article/148/2/e2021052580/179745/Trauma-Informed-Care>.

⁸² K.L. Edyburn et al, Seeking safety and humanity in the harshest immigration climate in a generation: A review of the literature on the effects of separation and detention on migrant and asylum-seeking children and families in the United States during the Trump administration, 34 SOCIAL POLICY REPORT 1, 17 (2021), <https://srcd.onlinelibrary.wiley.com/doi/full/10.1002/sop2.12>.

⁸³ *Trauma-Informed Care*, *supra* n. 81, at 6.

⁸⁴ *Migration-related trauma*, *supra* n. 44, at 1, 4.

⁸⁵ Letter to Department of Homeland Security Secretary Kirstjen M. Nielsen, Renewed Appeal from Experts in Child Welfare, Juvenile Justice and Child Development to Halt the Separation of Children from Parents at the Border (June 7, 2018) (a letter from over 200 child-centered organizations opposed to family separation on the grounds that it “disrupts the parent-child relationship and puts children at increased risk for both physical and mental illness” even after reunification), <https://www.childrensdefense.org/wp-content/uploads/2018/08/child-welfare-juvenile.pdf>.

⁸⁶ See Letter to Former Department of Homeland Security Secretary John F. Kelly, AMERICAN PSYCHOLOGICAL ASSOC. (Apr. 5, 2017), <http://www.apa.org/advocacy/immigration/separating-families.pdf>.

lifelong consequences for children.”⁸⁷ The World Health Organization agrees: “Parent-child separation has a direct and immediate impact on a child’s physical, cognitive, mental and emotional well-being.”⁸⁸

The negative impact on a child’s health and well-being due to family separation does not end once a child is reunited with their family. Mental health experts have found that “threatened or actual separation from caregivers constitutes a major traumatic exposure that is associated with behavioral and psychological difficulties for children both immediately following and for years following separation.”⁸⁹ Even after reunification, children may endure life-long psychological and health damage like experiencing symptoms of post-traumatic stress disorder.⁹⁰ Research has shown that migrant children separated from their family for even a short period of time can develop psychological trauma and long-term mental health risks.⁹¹

In addition to fueling family separations, the proposed rule would also prevent reunification of families, including children, who do not travel to the border together. Exceptions in the proposed rule that promote family unity where refugee families travel to the United States together will not prevent the separation of families where spouses and children remain abroad. Asylum-seekers banned from asylum protection under the rule would have to establish eligibility for Withholding of Removal or protection under CAT to obtain protection from deportation. However, those who are able to meet the higher threshold and granted these lesser forms of protection would be left in permanent limbo, under constant threat of deportation and separated from their spouses, children, and other family members whom they had to leave behind. Unlike asylum, these forms of relief do not confer permanent status or a path to citizenship, do not allow people to petition for their spouses and children, do not permit people to travel abroad, and leave people with a permanent removal order, subject to deportation at any time.

⁸⁷ Colleen Kraft, American Academy of Pediatrics, *Statement Opposing Separation of Children and Parents at the Border* (May 8, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>.

⁸⁸ Catherine Jan et al., *Improving the Health and Well-Being of Children of Migrant Workers*, BULLETIN OF THE WORLD HEALTH ORG. 850, 850 (2017), <http://www.who.int/bulletin/volumes/95/12/17-196329.pdf>.

⁸⁹ *Migration-related trauma*, *supra* n. 44, at 4.

⁹⁰ Claudio J. Perez, *How U.S. Policy Has Failed Immigrant Children: Family Separation in the Obama and Trump Eras*, Am. Bar Ass’n (Mar. 10, 2021), https://www.americanbar.org/groups/family_law/publications/family-law-quarterly/volume-54/issue-1/how-us-policy-has-failed-immigrant-children-family-separation-the-obama-and-trump-eras/; *see also Oversight of the Customs and Border Protection’s Response to the Smuggling of Persons at the Southern Border: Hearing Before the Senate Comm. on the Judiciary*, 116th Cong. (2019) (testimony of Julie Linton, American Academy of Pediatrics).

⁹¹ Sarah A. MacLean et al., *Characterization of the mental health of immigrant children separated from their mothers at the U.S.–Mexico border*, 286 PSYCHIATRY RESEARCH 1, 2 (2019), <https://projectlifeline.us/wp-content/uploads/2020/09/Mental-Health-of-Separated-Migrant-Children.pdf>.

As a result, many asylum-seekers who should be granted asylum under U.S. law will languish in the United States in legal limbo, indefinitely separated from spouses and/or children who remain abroad in danger. The Trump administration's transit ban similarly left many families separated by barring asylum-seekers from asylum and leaving them with the inadequate protection of withholding of removal. Like the Trump transit ban, this asylum ban would leave families indefinitely separated.

V. Requiring asylum-seekers to schedule appointments to access ports of entry through the CBP One app is unfair and contravenes asylum law

The proposed rule requires asylum-seekers at the southern border to schedule appointments through the CBP One app and would generally deny asylum to asylum-seekers who arrive at a border port of entry without a previously scheduled appointment and were not denied protection in a transit country. However, CBP One is impossible for many asylum-seekers to access or use.

A. The proposed rule would rely on technology that fails most asylum-seekers

Many asylum-seekers do not have the resources to obtain a smartphone.⁹² Even if an individual or family has access to a smartphone, their phones may not have adequate memory or battery life, or they may not have access to charging stations or reliable wifi.⁹³ Others may not have the literacy or technological skills to be able to use and navigate a smartphone or the app. Some individuals with disabilities also face barriers and challenges in accessing smartphones that prevent them from being able to use CBP One.

Additionally, the app is not available in most languages, including Indigenous languages, and all error messages are in English, barring many asylum-seekers from being able to use the app.⁹⁴ The app has also disparately harmed Black asylum-seekers due to racial bias in its facial recognition technology, which has prevented many from obtaining an appointment.⁹⁵ Requiring asylum-seekers to use CBP One at the southern border also raises concerns that the system will be used for illegal metering, based not on wait time but on luck, technology skills, or resources to secure

⁹² Stephanie Leutert and Caitlyn Yates, Univ. of Texas at Austin Strauss Center for International Security and Law, *Asylum Processing at the U.S.-Mexico Border: February 2023* (Feb. 2023), https://www.strausscenter.org/wp-content/uploads/Feb_2023_Asylum_Processing.pdf.

⁹³ *Id.* Partner organizations at the southern border have also reported to the Young Center that another issue in accessing CBP One has been that some asylum-seekers have a certain brand of smartphone – Huawei – that does not support the app.

⁹⁴ Melissa del Bosque, *Facial recognition bias frustrates Black asylum applicants to US, advocates say*, THE GUARDIAN, (February 8, 2023), <https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias>.

⁹⁵ Arelis R. Hernández, *Desperate Migrants Seeking Asylum Face a New Hurdle: Technology*, WASHINGTON POST, (March 11, 2023), <https://www.washingtonpost.com/nation/2023/03/11/asylum-seekers-mexico-border-app/>; *Asylum Processing at the U.S.-Mexico Border: February 2023*, *supra* n. 92.

an appointment, which would effectively turn asylum access into a lottery that favors those with more wealth, resources, and privilege.⁹⁶

In addition to CBP One's failure to ensure fair and equitable access, asylum-seekers have reported experiencing numerous glitches and technical problems, such as system outages, error messages, or lags due to too many individuals trying to schedule appointments at the same time.⁹⁷ The app's requirement that families take live photos of all family members, including children, has created another barrier for use of the app. Because the app has required that the individual in the photo have their eyes open (and not blinking), parents using the app have reported that it has been extremely difficult to submit photos for infants and young children.

Asylum-seekers who can access and navigate the app are still often unable to schedule appointments due to extremely limited slots.⁹⁸ The limited slots are particularly punitive for families, who are being required by DHS to schedule separate appointments for each member of the family, including children. It is extremely difficult for families of 3 or more individuals to schedule back-to-back appointments on the app. Without appointments for each member of the family, CBP has refused to allow family members without appointments, including children, to enter at ports of entry for Title 42 exemption screenings.⁹⁹

B. The proposed rule's CBP One requirement would leave particularly vulnerable migrants in danger for even longer periods

By requiring asylum-seekers at the southern border to schedule appointments through CBP One, the proposed rule would leave many vulnerable asylum-seekers, including those who are children, with disabilities, Black, Indigenous, and/or LGBTQ, in grave danger. Asylum-seekers unable to secure appointments through the CBP One app will be forced to remain indefinitely at the border in dangerous conditions, often with no access to safe housing or stable income as they continue to try to make an appointment. These conditions increase the likelihood that they will be targeted for violence by cartels, traffickers, and the abusers from which they initially fled. Indeed, requiring asylum-seekers to schedule an appointment through CBP One has already resulted in horrific violence and death, including the murder of a 17-year-old Cuban child in Mexico who was required to wait weeks for an appointment.¹⁰⁰

⁹⁶ Order, *Al Otro Lado v. Mayorkas*, No. 3:17-cv-02366-BAS-KSC, ECF No. 742 (S.D. Cal. Sept. 2, 2021).

⁹⁷ Andrea Castillo, *Asylum Seekers Face Decision to Split up Families or Wait Indefinitely Under New Border Policy*, LOS ANGELES TIMES, (Feb. 24, 2023) <https://www.latimes.com/politics/story/2023-02-24/asylum-seeking-families-consider-separation-shortage-mobile-app-appointments>.

⁹⁸ *Desperate Migrants Seeking Asylum Face a New Hurdle*, *supra* n. 95.

⁹⁹ *Id.*; *Asylum Seekers Face Decision to Split up Families or Wait Indefinitely*, *supra* n. 97.

¹⁰⁰ *Joven Migrante Cubano, Asesinado a Tiros en un Hotel en Mexico: Estaba a la Espera de Llegar a EEUU* ("Young Cuban Migrant Shot to Death in a Mexican Hotel: While Awaiting Entry to the U.S."), UNIVISION, (Jan. 23, 2023), <https://www.univision.com/local/miami-wltv/joven-migrante-cubano-asesinado-a-tiros-en-un-hotel-en-mexico-estaba-a-la-espera-de-llegar-a-eeuu-video>.

While migrants in Mexico generally face xenophobic discrimination and abuse, Black immigrants are particularly vulnerable to racist harassment and violence in Mexico.¹⁰¹ Mexican police have specifically targeted Black migrants for abuse and violence.¹⁰² A 2021 survey found that nearly 20 percent of Haitian asylum-seekers in the northern Mexican border region reported being subject to beatings, extortion, and threats by Mexican police.¹⁰³ Mexican immigration officials routinely target Afro-Mexicans and Black migrants at immigration checkpoints.¹⁰⁴ Cartels and gangs also target Black migrants for various crimes such as kidnapping because they stand out as migrants based on their skin color. Black LGBTQ asylum-seekers from Jamaica and other countries have reported both racist and anti-LGBTQ violence and discrimination.¹⁰⁵

Similarly, Indigenous people migrating through Mexico are also targeted for racist and xenophobic violence.¹⁰⁶ Indigenous women are also targeted for sexual assault and rape.¹⁰⁷ Both Black and Indigenous migrants report pervasive discrimination and barriers in accessing public and health services, particularly if they do not speak Spanish.¹⁰⁸

Individuals with disabilities, including children, also face discrimination and barriers in accessing services and support in Mexico. A 2020 report by Disability Rights International documented “severe and pervasive human rights violations against children and adults with disabilities in Mexico[,]” including “[v]iolence, sexual abuse, forced sterilization, forced abortion, and trafficking for labor or sex.”¹⁰⁹ In 2019, Human Rights Watch found that “the Mexican government

¹⁰¹ <https://cronkitenews.azpbs.org/2022/07/27/tapachula-mexico-black-migrants-see-racism-dead-end/>

¹⁰² S. Priya Morley et al., “*There is a Target on Us*” – *The Impact of Mexico’s Anti-Black Racism on African Migrants at Mexico’s Southern Border* 17 (2021), <https://www.immigrationresearch.org/system/files/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>.

¹⁰³ Human Rights First, *Human Rights Travesty: Biden Administration Embrace of Trump Asylum Expulsion Policy Endangers Lives, Wreaks Havoc* 8 (Aug. 2021), <https://www.humanrightsfirst.org/resource/human-rights-travesty-biden-administration-embrace-trump-asylum-expulsion-policy-endangers>.

¹⁰⁴ “*There is a Target on Us*”, *supra* n. 102, at 18.

¹⁰⁵ Kate Morisey, *Jamaican asylum seekers in Tijuana facing racism, homophobia while they wait*, SAN DIEGO UNION TRIBUNE, (Jan. 3, 2022), <https://www.sandiegouniontribune.com/news/immigration/story/2022-01-03/jamaican-asylum-seekers-tijuana-racism-homophobia>.

¹⁰⁶ René Kladzyk, Maria Ramos Pacheco and Veronica Martinez, *Indigenous Diaspora: Leaving Home and the Journey Across Mexico*, EL PASO TIMES, (May 12, 2021), <https://www.elpasotimes.com/story/news/2021/05/10/texas-immigration-indigenous-diaspora-leaving-home-and-journey-across-mexico/5004360001/>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*; Shahid Meighan, *Black Migrants See Nothing in Tapachula but Racism and a Dead End*, CRONKITE NEWS, (July 27, 2022), <https://cronkitenews.azpbs.org/2022/07/27/tapachula-mexico-black-migrants-see-racism-dead-end/>.

¹⁰⁹ Laurie Ahern et al., Disability Rights International, *Crimes Against Humanity: Decades of Violence and Abuse in Mexican Institutions for Children and Adults with Disabilities* 6 (2020), <https://www.driadvocacy.org/wp-content/uploads/Mexico-2020-ENG-web.pdf>.

does not have a proper system in place there to screen and identify asylum-seekers with disabilities and chronic health conditions” and that “authorities have not ensured physical accessibility in shelters.”¹¹⁰

C. The proposed rule’s CBP One requirement would lead to family separation, and the inequities of this requirement cannot be remedied

Given the significant risk of harm, violence, discrimination, and persecution against children in Mexico, the CBP One requirement in this proposed rule would fuel further family separations at the southern border, as with the Title 42 policy and other U.S. government policies that have blocked access to asylum. The problems for families with scheduling appointments through the app has already forced families to separate. Families unable to secure CBP One app appointments together as a family unit have made the impossible choice to send their children across the border alone to protect them from harm in Mexican border regions.¹¹¹ The Young Center is aware of one egregious case in which a family presented themselves at a port of entry, and a CBP officer forcibly separated the father from his children when the father explained that he did not have appointments for the entire family. The children were transferred to ORR custody, and the father was left without any information on how to be reunified with his children even though the family was attempting to comply with the opaque process created under CBP One.

At the Young Center, we have spoken with families in Mexico who have been unable to get appointments through CBP One for their entire family unit. These families have expressed a wide gamut of emotions – frustration, distress, anxiety, confusion, and fear – as they weigh impossible decisions that no families should have to make to be safe. In our experience, CBP One has already created confusion and chaos at the border, and the proposed rule would only exacerbate this situation. Moreover, even correcting so-called “technical” problems with the app—including but by no means limited to ensuring that the app functions in all languages spoken by asylum-seekers; offers accommodations such as oral instructions for asylum-seekers with disabilities or who are unable to read; facilitates appointments by families; offers sufficient appointments to all asylum-seekers; and eliminates the racial bias demonstrated in the current app—would not resolve the fundamental problem of limiting asylum access only to migrants who are able to afford both the technology and access to wifi necessary to use the program. Those flaws cannot be remedied and will remain a permanent barrier to fair implementation of the proposed rule.

¹¹⁰ Human Rights Watch, *Mexico: Risks at Border for Those With Disabilities* (Oct. 29, 2019), <https://www.hrw.org/news/2019/10/29/mexico-risks-border-those-disabilities>.

¹¹¹ *Asylum Seekers Face Decision to Split up Families or Wait Indefinitely*, supra n. 97.; Valerie Gonzalez, *Families Consider Separation to Seek Asylum as They Face Limited Appointments Through CBP App*, THE MONITOR, (Feb. 21, 2023), <https://myrgv.com/local-news/2023/02/21/families-consider-separation-to-seek-asylum-as-they-face-limited-appointments-through-cbp-app/>; Daina Beth Solomon and Ted Hesson, *Struggling with U.S. Asylum App, Migrant Families Split at Border*, REUTERS, (Feb. 27, 2023), <https://www.reuters.com/world/us/struggling-with-us-asylum-app-migrant-families-split-border-2023-02-27/>.

VI. By targeting asylum-seekers at the U.S. southern border, the proposed rule is discriminatory and would disproportionately harm Latinx, Indigenous, Black, and LGBTQ asylum-seekers, including many children

The proposed rule, which applies only to people who seek protection at the southern border, will disproportionately harm Black, Indigenous, and Latinx people, who represent the vast majority of asylum-seekers seeking protection at the southern border.¹¹² Many Black, Indigenous, and Latinx children and families will be barred from accessing asylum after fleeing danger and violence and making difficult and dangerous journeys, over days, weeks, and even months, to arrive at the southern border. During the period that the Trump Administration's transit ban was implemented, immigration court asylum denial rates surged for many Black, Brown, and Indigenous asylum-seekers requesting safety at the southern border.¹¹³ For instance, asylum grant rates declined by 45 percent for Cameroonian asylum applicants, 32.4 percent for Cubans, 29.9 percent for Venezuelans, 17 percent for Eritreans, 12.9 percent for Hondurans, 12 percent for Congolese (DRC), and 7.7 percent for Guatemalans from December 2019 to March 2020, compared to the year before the third-country transit asylum ban began to affect refugee claims, according to data analyzed by Syracuse University's Transactional Records Access Clearinghouse.¹¹⁴

Moreover, the presumption of ineligibility and heightened standards which asylum-seekers will be required to meet for withholding of removal and CAT protection under this proposed rule will open the door for greater racial bias and disparities in fear screenings. During the Trump Administration, as a result of attempts to alter the credible fear standard by heightening credibility requirements which are susceptible to subjective, racial and other biases, DHS officers increasingly issued negative credible fear determinations based on a purported lack of credibility.¹¹⁵ A 2021 Report by Human Rights First found that between 2016 and 2020, negative credible determinations rose by 1450 percent, and that this increase fell disproportionately on non-European asylum-seekers.¹¹⁶ The percentage of negative CFI determinations rose most steeply for asylum-seekers from the Caribbean, Central and South America, the Middle East/North Africa and Sub-Saharan Africa, while asylum-seekers from Europe experienced the lowest increase.¹¹⁷

The proposed rule also perpetuates nationality-based discrimination in access to asylum, as it largely bans asylum for people who do not enter the United States via limited parole initiatives or previously scheduled appointments at ports of entry while simultaneously only affording limited access to parole initiatives for certain nationalities. For instance, while there are currently limited parole initiatives for some nationalities, there are no similar parole initiatives for people from Guatemala, Honduras, and El Salvador.

¹¹² Adam Isacson, *Migration, Country by Country, at the U.S. -Mexico Border*, WOLA, (Nov. 23, 2022), <https://www.wola.org/2022/11/migration-country-by-country-at-the-u-s-mexico-border/>.

¹¹³ Human Rights First, *Biden Administration Plan to Resurrect Asylum Ban Advances Trump Agenda 4* (2023), https://humanrightsfirst.org/wp-content/uploads/2023/01/AsylumBanFactsheet_final2.pdf.

¹¹⁴ *Id.*, at 4-5.

¹¹⁵ *Pretense of Protection*, *supra* n. 35, at 30-31.

¹¹⁶ *Id.*, at 31.

¹¹⁷ *Id.*

The risk of danger, violence, persecution, and even death to asylum-seeking children and families that would be caused by the sweeping restrictions on asylum access imposed by this proposed rule can not be overstated. The persecution, violence, and other human rights conditions causing refugees to flee these countries have been well-documented in the US. government's own reports, as well as by international human rights organizations.¹¹⁸ For instance, in 2021, in designating Haitians in the United States for Temporary Protected Status, DHS stated that Haiti is "currently grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses[.]" including "reported arbitrary arrests and detentions."¹¹⁹ Government reports for Guatemala in 2020 and 2021 documented widespread violence against women, trafficking in persons, violent attacks against LGBTQ persons, and gang recruitment of displaced children.¹²⁰ In 2022, Human Rights Watch reported significant human rights abuses in El Salvador, including the forcible recruitment of children and sexual abuse of women, girls, and LGBTQ people.¹²¹

LGBTQ+ refugees including children fleeing these countries would also be disparately impacted by the proposed rule. LGBTQ+ identities are criminalized and face high rates of violence in Central America and the Caribbean.¹²² Parents of LGBTQ+ children who experience bullying and abuse in school receive inadequate support from government agencies.¹²³ Due to widespread anti-LGBTQ+ sentiment, LGBTQ+ children and their families who flee persecution in their countries of origin encounter police violence in their search for safety in neighboring countries and face systemic barriers to essential services they need to survive.¹²⁴ In Mexico, LGBTQ+ youth have experienced high incidents of discrimination and reported high rates of suicidal ideation, according

¹¹⁸ *Pretense of Protection*, *supra* n. 35, at 25-27, 28-30.

¹¹⁹ USCIS, DHS, Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41864 (Aug. 3, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-08-03/pdf/2021-16481.pdf>.

¹²⁰ *Pretense of Protection*, *supra* n. 35, at 30.

¹²¹ *World Report 2022: El Salvador*, HUMAN RIGHTS WATCH (last accessed Mar. 26, 2023), <https://www.hrw.org/world-report/2022/country-chapters/el-salvador>.

¹²² Human Rights Watch, "Every Day I Live in Fear": Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States (Oct. 7, 2020) <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador>; Human Rights Watch, "I Have to Leave to Be Me": Discriminatory Laws Against LGBT People in the Eastern Caribbean (March 21, 2018), <https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean>.

¹²³ Daniel Politi, *Mothers of LGBTQ Children Join Forces in Latin America*, AP NEWS, (Nov. 20, 2022), <https://apnews.com/article/religion-violence-caribbean-discrimination-gay-rights-b7d7c8c728a7978ab541faf0f9972217>.

¹²⁴ Diana Baptista, *In Mexico, Displaced LGBTQ+ People Push for Equal, Safe Jobs*, OPENLY NEWS, (Dec. 12, 2022), <https://www.openlynews.com/?id=ad53f28a-1ee6-4ac3-84e8-492a760a184d>; Oscar Lopez, *LGBT+ Migrants Face Abuse in Mexican Border City: Activists*, REUTERS, (Nov. 14, 2018), <https://www.reuters.com/article/us-mexico-lgbt-migrants/lgbt-migrants-face-abuse-in-mexican-border-city-activists-idUSKCN1NJ1MV>.

to the Mexican National Council to Prevent Discrimination.¹²⁵ Transgender and Gender-Non-Conforming youth have been disproportionately targeted and experience the highest rates of police violence and self-harm.¹²⁶

VII. Conclusion

As a federal court recently stated in litigation challenging harm caused to asylum-seekers as a result of the U.S. government's Remain in Mexico policies, **“Although a grant of asylum is discretionary, the right to apply is not.”**¹²⁷ United States and international law codify the right of children to seek asylum and have begun to create procedures to ensure fair access to that protection. Barring children in families from seeking asylum would roll back decades of work and undermine children's right to seek safety and protection in clear contravention of U.S. law and the best interests of children. The Young Center opposes the adoption of any rule that bars or in any way limits children's access to legal relief that protects their safety and well-being, significantly risks returning them to danger and violence, and fails to treat children as children. We strongly urge DHS and DOJ to rescind the proposed rule in its entirety.

Respectfully,



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¹²⁵ Shawna Chen and Oriana Gonzalez, *Trevor Project Expands Digital Crisis Services to LGBTQ Youth in Mexico*, AXIOS, (Mar. 9, 2022), <https://www.axios.com/2022/03/09/lgbtq-youth-mexico-trevor-project>, citing Consejo Nacional para Prevenir la Discriminacion, *Encuesta sobre Discriminacion por Motivos de Orientacion Sexual e Identidad de Genero* (National Council for the Prevention of Discrimination, *Study on Discrimination on the Basis of Sexual Orientation and Gender Identity*) (2018), https://www.conapred.org.mx/userfiles/files/Presentacion_ENDOSIG_16_05_2019.pdf.

¹²⁶ Transgender Law Center and Cornell University Law School LGBT Clinic, *Report on Human Rights Conditions of Transgender Women in Mexico*, (May 2016), <https://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf>.

¹²⁷ Order (1) Granting in Part and Denying in Part Defendants' Motion to Dismiss (Dkt. No. 189); and (2) Granting Plaintiffs' Motion for Class Certification (Dkt. No. 205) in Chambers at 7, *Immigrant Defs. L. Ctr. v. Mayorkas*, No. 2:20-cv-09893-JGB-SHK, ECF No. 261 (C.D. Cal. Mar. 15, 2023).