UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THE DOOR, *et al*. Plaintiffs, v. JOSEPH B. EDLOW, DIRECTOR, USCIS, *et al.* Defendant.	Civil Action No. 8:26-cv-04326-BAH

DEFENDANTS' OPPOSITION TO PLAINTIFFS' COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Defendants, by and through undersigned counsel, and pursuant to the Court's October 22, 2026 Order at ECF. No 29, Local Rule 105.2 and Fed. R. Civ. P. 65, files this Opposition to Plaintiffs' Complaint for Injunctive and Declaratory Relief, ECF No. 1 and 23, and states in support as follows:

1. Plaintiffs are not entitled to injunctive or declaratory relief in this matter because they are unlikely to succeed on the merits of their claims, cannot show that are likely to suffer irreparable harm in the absence of preliminary relief, and cannot prove that the balance of equities tip in their favor as required by Federal Rule of Civil Procedure 65 and *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

2. This Court lack subject matter jurisdiction to entertain Plaintiffs' Complaint because Plaintiffs lack Article III standing to challenge Defendants' alleged policies.

3. This Court lacks subject matter jurisdiction to consider Plaintiffs' challenges to Defendants' alleged policies under the APA because Plaintiffs have failed to show that the alleged policies are final agency action, or that they are arbitrary and capricious.

4. Plaintiffs' do not have due process rights under the Fifth Amendment of the U.S. Constitution as it relates to their representation of Unaccompanied Alien Children ("UAC") in administrative, non-adversarial interviews conducted by asylum officers.

Dated: October 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2026, I caused a copy of the forgoing to be served upon all registered parties through CM/ECF.

Dated: October 26, 2026

/s
Dayna Kipnis
Assistant United States Attorney

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DEFENDANTS' MEMORANDUM IN SUPPORT OF OPPOSITION TO PLAINTIFFS' COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Defendants, by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 65, files this Memorandum in Support of their Opposition to Plaintiffs' Complaint for Injunctive and Declaratory Relief, ECF No. 1 and 23, and states as follows:

I. INTRODUCTION

Typically, before this Court, plaintiffs are arguing that Defendants' policies contribute to delays in adjudicating various immigration requests. Here, however, Plaintiffs, a coalition of legal service providers, allege the opposite: that Defendants' processing of certain requests for immigration benefits are too expeditious.[1] Ironically, Plaintiffs claim that they need judicial intervention to maintain the status quo of a fair, non-adversarial, child-focused asylum processing system while simultaneously asserting that they are no longer able to spend hours or days preparing their clients to go toe-to-toe with grizzly government officials trying to deport them. ECF No. 23

[1] At the time of this filing, undersigned counsel was unable to obtain information from Defendant Executive Office of Immigration Review to oppose Plaintiffs' allegation contained in ECF Nos. 1 and 23 as they relate to this individual Defendant.

at pp. 2, 6. The six Plaintiffs in this case are legal service providers who assist unaccompanied alien children ("UAC") with asylum interviews before officers of the United States Citizenship and Immigration Services ("USCIS") and in proceedings before the Executive Office for Immigration Review ("EOIR"). Plaintiffs allege that they have been harmed by USCIS' asylum interview scheduling and rescheduling practices, and EOIR's alleged "Detained Docket Deadline". See ECF No. 1, p. 3-4. As a result, Plaintiffs are requesting that this Court immediately intervene in Defendant agencies' day-to-day functions while they attempt to prove that some amorphous mix of the agencies' standard operations violate the APA, and their due process rights under the Fifth Amendment of the United States Constitution. *Id*. p. 41.

The Plaintiffs are not entitled to the preliminary injunctive relief which they seek in this matter because Plaintiffs lack standing. Even if Plaintiffs establish standing, they have not shown a likelihood of success on the merits. Plaintiffs, as legal service providers, do not have Fifth Amendment due process rights related to asylum procedures under the Immigration and Naturalization Act because those rights are personal to the individual aliens seeking asylum. Moreover, Plaintiffs' proposed TRO references vague and speculative policies, fails to identify any members of their organizations that have been or will be imminently harmed by the alleged policies, and their proposed remedies do not match the alleged harms they identify. Finally, the balance of equities and public interest disfavors an injunction, and Plaintiffs' requested relief is overly broad, unworkable, potentially contrary to law and otherwise improper.

II. BACKGROUND

A. Statutory Background

1. Asylum

8 U.S.C §1158(a)(1) provides that any alien who is physically present in the United States or who arrives in the United States, irrespective of status, may apply for asylum. Subsection (b)(3)(C) provides that an asylum officer, not an Immigration Judge, shall have initial jurisdiction over any asylum application filed by an UAC.

The Asylum Division of USCIS generally prioritizes the most recently filed affirmative asylum applications when scheduling affirmative asylum interviews. USCIS schedules affirmative asylum interviews along two tracks simultaneously; first priority are applications that were scheduled for an interview, but the interview had to be rescheduled at the applicant's request or the needs of USCIS; second priority are applications that have been pending 21 days or fewer; and third priority are all other pending applications starting with newer filings and working back towards older filings. See *Affirmative Asylum Interview Scheduling*, U.S. Citizenship & Immigration Servs., https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling (last updated Mar. 29, 2024). There is no statutory or regulatory requirement that dictates how far before a scheduled asylum interview the Asylum Division must send a notice to the applicant. Due to the need for operational flexibility, interview scheduling has always been based on a loose set of practices designed to make sure that the applicant knows when and where to appear for their interview. Under those practices, USCIS generally tries to mail out interview notices at least 18 days before the scheduled interview where possible, but the asylum office has always maintained and in certain circumstances exercised its discretion to schedule interviews on a shorter timeline. https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf

In the summer of 2026, USCIS published an alert to provide advanced notice to applicants and their representatives who may have had reliance interests in historical practices, that beginning

on August 21, 2026, USCIS was going to evaluate requests to reschedule missed interviews at the exceptional circumstances standard as required by statute and regulation at 8 CFR § 208.10. https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum Under that practice, USCIS asylum officers examine the individual facts and circumstances of an alien's case to determine whether they have demonstrated exceptional circumstances. *Establishing Exceptional Circumstances for Rescheduling Affirmative Asylum Interviews*. U.S. Citizenship & Immigration Servs., https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/establishing-exceptional-circumstances-for-rescheduling-affirmative-asylum-interviews (last updated Sept. 4, 2026). If an alien requests to reschedule before the date of the asylum interview and establishes exceptional circumstances, the asylum office will reschedule the interview for a later date and notify the alien in writing. If the asylum office determines that the alien failed to establish exceptional circumstances, the rescheduling request will be denied in writing, and the alien must attend the interview or will be deemed by the asylum office as failing to appear. If an alien misses their interview and fails to establish exceptional circumstance within 10 calendar days, USCIS will either dismiss the alien's asylum application or refer the application to EOIR depending on the legal status of the alien and consistent with longstanding regulatory requirements. To request an exceptional circumstance finding to reschedule an interview or for failure to appear, an alien must submit a written explanation and include any available documents in support. This policy applies uniformly to all individuals requesting the rescheduling of the asylum interview. *Establishing Exceptional Circumstances for Rescheduling Affirmative Asylum Interviews*, U.S. Citizenship & Immigration Servs., https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/establishing-exceptional-circumstances-for-rescheduling-affirmative-asylum-interviews (last updated Sept. 4, 2026).

B. Procedural Background

Plaintiffs bring six Counts in this Cause of Action. In Count One, Plaintiffs argue that that USCIS's "Inadequate Notice Policy"[2] violates the APA, 5. U.S.C. § 706(2)(A) as being contrary to law and in violation of 8.U.S.C §§ 1158(a)(1) and (b)(3)(C), 8 C.F.R. § 208.9(e)(1), and 8 U.S.C. §§ 1232(c)(2), (c)(5) and (d)(8). ECF 1, p. 32. In Count Two, Plaintiffs argue that the "Inadequate Notice Policy" violates the APA, 5 U.S.C. § 706(2)(A) because it is arbitrary and capricious. *Id*. at p. 34. In Count Three, Plaintiffs argue that the "Exceptional Circumstances Policy" violates the APA for the same reasons as stated in Count One. *Id*. at p. 35. In Count Four, Plaintiffs argue that the "Exceptional Circumstances Policy" violates the APA because it is arbitrary and capricious. *Id.* at p. 37. In Count Five, Plaintiffs argue that USCIS's policies violate the Fifth Amendment of the U.S. Constitution procedural due process as it relates to themselves and their clients. ECF 1, p. 38. In Counts Six, Plaintiffs argue that EOIR's "Detained Docket Deadline" violates the APA § 706(2)A) as being arbitrary and capricious. ECF 1, p. 40.

III. LEGAL STANDARDS

A. Preliminary Injunction

Federal Rule of Civil Procedure 65 authorizes a district court to grant injunctive relief in the form of either a TRO or a preliminary injunction. A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To obtain a preliminary injunction, the movant must show that (1) "he is likely to succeed on the merits"; (2) "he is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor";

[2] Defendant USCIS does not have a policies entitled "Inadequate Notice Policy" and "Exception Circumstances Policy" but will refer to them as referenced in the Complaint to avoid confusion.

and (4) "an injunction is in the public interest." *Id*. at 20. The latter two factors "merge when the Government is the opposing party." *Nken v*. *Holder*, 556 U.S. 418, 435 (2009).

IV. ARGUMENT

A. Plaintiffs are Unlikely to Succeed on the Merits

Plaintiffs are unlikely to succeed on the merits for three reasons. First, they lack standing to bring their claims. Second, Plaintiffs have not established that the alleged policies violate the APA, or that they are final agency actions. Even if the Plaintiffs can establish that the alleged policies are final agency actions, they are not subject to judicial review because they are discretionary.

1. Standing

To establish Article III standing, a plaintiff must show "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). A "concrete" injury is one that is "real, and not abstract." *Id.* at 424 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016)). Concrete injuries may be "tangible"—*i.e.*, involve physical or monetary harm—or "intangible," in which case they must "have a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *Id.* at 424-25. Examples of concrete intangible harms include reputational harms, disclosure of private information, intrusion upon seclusion, and "harms specified by the Constitution itself" (such as abridgment of free speech and infringement of free exercise). *Id.* at 425. However, "[t]he intangible harm of enduring a statutory violation, standing alone, typically won't suffice under Article III—unless there's a separate harm (or a materially increased risk of another harm) associated with the violation." *O'Leary v. TrustedID, Inc.*, 60 F.4th 240, 243 (4th

Cir. 2023). "In other words, 'under Article III, an injury in law is not an injury in fact.'" *Id.* (quoting *TransUnion*, 594 U.S. at 427). Plaintiffs bear the burden of demonstrating standing, which they must do "for each claim that they press and for each form of relief that they seek." *TransUnion*, 594 U.S. at 430-31 ("standing is not dispensed in gross").

An organization, such as Plaintiffs are, may be able to assert either organizational or representational standing if they "can demonstrate Article III standing either in their own right or as a representative of their members." *NAACP v. United States*, 2026 WL 1265450, *15 (D. Md. May 8, 2026). Organizational standing is conferred when an organization must show it has suffered an "injury in fact," in that defendant's "actions impede its efforts to carry out its mission." *Casa de Maryland, Inc. v. Wolf*, 486 F.Supp.3d. 928, 946 (citing *Lane v. Holder*, 703 F.3d 668, 674 (4th Cir. 2012) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)); *see also Warth v. Seldin*, 422 U.S. 490, 511 (1975)). The Fourth Circuit made clear in *Lane*, that prioritization of resources to combat a perceived ill does not constitute a cognizable injury.[3] The same can and should be said of USCIS's prioritization of processing asylum applications of young people who are confined in the custody of the Department of Health and Human Services and whose applications the government has a regulatory obligation to expedite. See 8 CFR 208.5 ("Where possible, expedited consideration shall be given to applications of detained aliens").

Representational standing requires that Plaintiffs demonstrate that "(1) its own members would have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim nor the relief sought requires

[3] "To determine that an organization that decides to spend its money on educating members, responding to member inquiries, or undertaking litigation in response to legislation suffers a cognizable injury would be to imply ... that any sincere plaintiff could bootstrap standing by expending its resources in response to actions of another." *Casa de Maryland, Inc.*, 486 F.Supp.3d. at 946 citing *Lane*, 703 F.3d at 675 (citations omitted).

the participation of individual members in the lawsuit." *Casa de Maryland, Inc.*, 486 F.Supp.3d. at 946 (citing *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013)). Plaintiffs must put forward facts to make plausible that at least one identified member has suffered or would suffer harm. *Id.*

Plaintiffs cannot sufficiently demonstrate that any single Plaintiff has organizational or representational standing to challenge the alleged policies. The harms identified by Plaintiffs are all theoretical and speculative. Plaintiffs argue that the "Exceptional Circumstances Policy" does not include the possibility of the unavailability of the unaccompanied child's counsel of record due to their involvement in a car crash. ECF 1, ¶ 67. Plaintiffs further identified as a potential harm to be "a profound risk that Plaintiffs will have no opportunity to submit supplemental evidence" in support of an unaccompanied child's asylum application due to USCIS's alleged "Evidence Submission Policy." ECF 1, ¶69. In paragraphs 70, 71 and 72, Plaintiffs contend that USCIS polices "make it physically impossible for Plaintiffs to attend" all of their clients' asylum interviews and leave little notice to prepare or submit evidence for the interview. However, these allegations are speculative. Plaintiffs have not offered any evidence by way of declaration or affidavit to show that these injuries have in fact occurred or are going to occur to them or their clients in the imminent future. Plaintiffs are unable to establish that their organizations or the members of their organizations have suffered from a concrete injury in fact and, therefore, have failed to demonstrate standing.

Preparing clients for interviews, responding to interview notices, assigning attorneys, managing calendars, seeking continuances, and gathering evidence are central components of Plaintiffs' ordinary legal-representation activities. The alleged need to devote more time to those tasks does not, without more, establish that USCIS impaired Plaintiffs' operations through a

policy. Nor does an attorney's conflicting schedule convert a routine operational burden into a concrete injury caused by the Government. Unfortunate as it may be, Plaintiffs' underlying complaint is about a lack of funding for legal service providers to represent UACs during their asylum application process, which is not an injury traceable to any action of Defendants and standing must fail. ECF No. 1, ¶ 13, 62. *See also Lujan v. DEFAs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992). Further, Plaintiffs' claim that they have had to decline new clients or pause other work is derivative of their own staffing and allocation decisions. ECF No. 1, ¶46. Those decisions may reflect difficult operational choices, but they do not establish that a discrete government action compelled the asserted diversion. An organization cannot manufacture standing by voluntarily reallocating resources in response to perceived risks or isolated events.

2. This Court Lacks Subject Matter Jurisdiction under the APA.

Though Plaintiffs purport to predicate their claims on the APA, there is no jurisdictional basis for the Court to consider these claims. *Califano v. Sanders*, 430 U.S. 99, 104-07 (1977) ("the APA is not to be interpreted as an implied grant of subject matter jurisdiction to review agency actions"). In making their APA claims, Plaintiffs ignore that APA review extends only to *final* agency actions except where: (1) a statute explicitly precludes review; and (2) the agency action is "committed to agency discretion by law." 5 U.S.C. § 701(a) (1) – (2); 5 U.S.C. § 704. Claims under 5 U.S.C. § 706(1), ECF No. 1, Counts One, Two, Three, Four and Six, "can only proceed where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004) (emphasis in original).

a. The Policies are not Final Agency Decisions.

Plaintiffs cannot show that the alleged policies are a "final" agency action subject to APA review, *see* 5 U.S.C. § 704, because they neither (1) conclude a decision-making process; nor (2) determine "rights and obligations" or impose "legal consequences." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). There is no final agency action where, as here, an agency statement merely advises "the public of the agency's construction of rules which it administers." *Ass'n of Flight Attendants-CWA, AFL-CIO v. Huerta*, 785 F.3d 710, 713 (D.C. Cir. 2015); *Indep. Equip. Dealers Ass'n v. EPA*, 372 F.3d 420, 427 (D.C. Cir. 2004) ("an agency merely express[ing] its view of what the law requires of [it]" does not constitute "final agency action"). No allegation here demonstrates finality.

The Fourth Circuit's decision *Int'l Refugee Assistance Project v. Trump*, a case which is **dissimilar** to this case, proves the point. There, Chief Judge Gregory explained in his concurring opinion that the Government barring entry of certain foreign nationals *was* a "final agency action" because it "upend[ed]" the "normal individualized [visa] vetting process[,]" and had immediate "legal consequences[.]" 883 F.3d 233, 285 (4th Cir.), *as amended* (Feb. 28, 2018), *cert. granted, judgment vacated on jurisdictional grounds*, 585 U.S. 1028 (2018). In contrast here, the policies alleged by Plaintiff do not exist, and there is no policy memo entitled "Inadequate Notice Policy" or "Exceptional Circumstance Policy." Plaintiffs are alleging there was a secret internal memo circulating that shortens interview notice periods, but they fail to cite anything that supports this other than a twitter feed: Jonathan Blitzer, *X* (Sept. 23, 2026), https://x.com/JonathanBlitzer/status/2102931169427820908. See ECF No. 1, ¶ 66.

Where "no rights [are] fixed, no obligations [are] imposed, and no concrete legal consequences" flow, there is no "final agency action [] to establish jurisdiction." *Kewayfati*, 2026 WL 100809, at *9.

Final agency actions also generally bear "traditional hallmarks" that demonstrate there is "nothing left" for the agency to do. *Kelerchian v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 655 F. Supp. 3d 334, 345–46 (E.D. Pa. 2023). This is not the case here, where the alleged policies instruct USCIS to initiate an interview, which is the first step (not the last) in taking definitive action. S*ee also Kelerchian*, 655 F. Supp. 3d at 345-46 (the agency's classification of its action is an "important [] factor" in deciding whether it is a "final"). Since Plaintiffs have not alleged a final agency action, their APA claims (Counts One, Two, Three, Four and Six) are likely to fail.

b. Plaintiffs are unlikely to show that the alleged policies are arbitrary and capricious and not in accordance with the Law (Counts One, Two, Three, Four and Six).

Plaintiffs point to five statutory provisions and one regulation that they claim USCIS is or will violate by virtue of its scheduling and rescheduling practices. Yet, none of those statutory and regulatory provisions have to do with scheduling or rescheduling asylum interviews. First, 8 U.S.C. § 1158(a)(1) simply provides that an alien in the U.S. may apply for asylum. Plaintiffs have not alleged that USCIS is prohibiting its clients from applying for asylum and therefore this claim fails. *See Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 109 (D.C. Cir. 2026) (distinguishing between the right to apply for asylum and subsequent processing of the application). Second, 8 U.S.C. § 1158(b)(3)(C) provides that USCIS has initial jurisdiction over asylum applications filed by UACs. It is an undisputed fact that USCIS is exercising initial

jurisdiction by processing Plaintiffs' clients' asylum claims. Next, 8 CFR § 208.9(e)(1) provides that where USCIS has jurisdiction over an application pursuant to 8 CFR § 208.2(a)(1)(i) and the applicant comes across additional evidence after filing their application, they should submit it either 14 days before any interview or later at the asylum officer's discretion. This provision does not apply to Plaintiffs' clients' applications which USCIS considers under 8 U.S.C. § 1158(b)(3)(C), not 8 CFR § 208.2(a)(1)(i). But even if it did, nothing about that regulation creates a rule about USCIS' initial scheduling of an interview, where an asylum officer will "elicit all relevant and useful information bearing on the applicant's eligibility for asylum." 8 CFR § 208.9(b). As recognized by statute, an applicant can meet his or her burden of proof to establish eligibility for asylum through credible testimony alone or through a post-interview corroborating evidence submission where the adjudicator deems it appropriate. INA section 208(b)(1)(B)(ii). Finally, Plaintiffs point to three TVPRA provisions at 8 USC 1232(c)(2), (c)(5), and (d)(8). The first two concern obligations of the Department of Health and Human Services, an independent agency that is not a defendant in this case and therefore does not establish a claim in this case. The final subsection provides that UAC specialized needs be taken into account in processing their applications. Plaintiffs motion establishes that Defendant USCIS does just that. See ECF No. 23 at 6 ("Asylum officers are trained to use 'child-sensitive questioning and listening techniques that facilitate eliciting information from children' during the asylum interview.").

An agency's decision is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, **or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.**" *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463

U.S. 29, 43 (1983). The scope of review under the "arbitrary and capricious" standard is "narrow[,]" and "a court is not to substitute its judgment for that of the agency[,]" even if it disagrees with the agency's decision. *Id*. Rather, the Court must "consider whether the decision was based on a consideration of the relevant factors" or "whether there has been a clear error of judgment." *Id*.

Defendants' scheduling practices cannot be analyzed in a vacuum. "Courts in this district (and others) have repeatedly found USCIS's last-in, first-out policy constitutes a rule of reason when considered against the issues of its backlog in adjudicating pending asylum applications." *Gah v. U.S. Dep't of Homeland Sec.*, No. 1:25-CV-00898-JRR, 2026 WL 757299, at *7 (D. Md. Mar. 18, 2026). Congress by and large left the particulars of how to process asylum applications up to the discretion of DHS and EOIR. See 8 U.S.C §1158(d)(1). One exception, however, is that Congress specifically mandated that any asylum applicant appear for any scheduled interview or hearing on their application "in the absence of exceptional circumstances." See 8 U.S.C §1158(d)(5)(A)(v). That provision confirms that the statute contemplates agency assessment of exceptional circumstances in administering interview and hearing schedules. It does not, however, establish a statutory entitlement to a particular amount of advance interview notice or to rescheduling based on counsel's availability.

3. Plaintiffs are unlikely to succeed on Count Five Alleging Due Process Violations under the Fifth Amendment of the U.S. Constitution.

Even assuming that Plaintiffs have standing to bring a Fifth Amendment claim, their claim is nevertheless without merit. Again, as is much of their Complaint, Plaintiffs' argument is based upon speculation and conjecture, that there is a perceived "risk of erroneous deprivation of rights" by the alleged policies of Defendants. ECF 1, ¶ 140. While Plaintiffs contend that the alleged policies "directly interfere with the ability of Plaintiffs' unaccompanied child clients….to present

their asylum cases by denying them time to meaningfully prepare for their interviews and the ability to submit supplemental evidence," Plaintiffs again provide no concrete examples of this having occurred or imminently occurring to one of their clients. ECF 1, ¶ 113. Plaintiffs offer no authority to support their contention that unaccompanied minor children have a Fifth Amendment right to counsel at an asylum interview before an asylum officer. Plaintiffs cite to 8 CFR 208.9(b) which states, "The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence" but offer nothing in addition to support their contention that this regulation confers a constitutional right to counsel or due process at an asylum interview.

To state a procedural due process claim, Plaintiffs must first establish that the challenged conduct deprives their clients of a constitutionally protected liberty or property interest. Plaintiffs have not done so. The statutes and regulations which Plaintiffs rely upon provide an opportunity to apply for asylum and permit an applicant to appear at an asylum interview with counsel or a representative. See 8 U.S.C. § 1158; 8 C.F.R. § 208.9(b). But they do not create a constitutional entitlement to a particular amount of advance interview notice, a first rescheduling request as of right, a good-cause rescheduling standard, counsel's preferred interview date, an in-person interview, or the acceptance of supplemental evidence outside the applicable submission deadline.

The right to retain counsel in immigration matters is limited and does not import the full range of procedural protections applicable in criminal proceedings. See *Arrey v. Barr*, 916 F.3d 1149, 1157 (9th Cir. 2019); *United States v. Barajas-Alvarado*, 655 F.3d 1077, 1088 (9th Cir. 2011). Nor does the opportunity to appear with counsel establish a constitutional right to counsel of choice, counsel's attendance at every agency interview notwithstanding scheduling constraints, or an individualized scheduling accommodation whenever counsel faces a conflict.

Plaintiffs' allegations principally concern the asserted risk that shorter notice, a more restrictive rescheduling standard, and evidence-submission procedures will make representation more difficult. ECF No. 1, ¶¶ 139-40. But increased difficulty in preparing a case does not establish a deprivation of a protected interest. Plaintiffs do not allege that USCIS has categorically barred their clients from retaining or communicating with counsel, prevented counsel from appearing where available, refused to accept any evidence, or denied asylum based on the absence of counsel. And Plaintiffs identify no authority holding that unaccompanied children have a Fifth Amendment right to a specified notice period or a particular rescheduling practice before a non-adversarial USCIS asylum interview. Accordingly, Plaintiffs argument under Count Five will also fail.

B. Plaintiffs cannot demonstrate irreparable harm.

Plaintiffs will not be irreparably harmed in the absence of a temporary restraining order because their alleged anticipated harm is not "actual and imminent," but rather "remote and speculative." *Does 1-26 v. Musk*, 2025 WL 840574, at *26 (D. Md. Mar. 18, 2025); *Sterling Com. Credit--Michigan, LLC v. Phoenix Indus. I, LLC*, 762 F. Supp. 2d 8, 14 (D.D.C. 2011) (the irreparable injury "must be both certain and great; it must be actual and not theoretical"). A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's "unsubstantiated fears[.]" *Williams v. Maryland*, 2011 WL 3422825, at *9 (D. Md. Aug. 3, 2011). A mere "possibility" is "too lenient[;]" Plaintiffs must instead establish that irreparable harm is "likely." *Winter*, 555 U.S. at 22. Without showing irreparable harm, Plaintiffs are not entitled to a preliminary injunction. *Id.*

Plaintiffs fail to establish that their purported harm is certain and great and of such imminence that there is a clear and present need for equitable relief. Their allegations establish,

at most, that certain interview notices have been issued on shortened timelines, that some rescheduling requests have been denied or allegedly unanswered, and that Plaintiffs have faced with staffing and scheduling challenges in managing their caseloads. But Plaintiffs do not show that any identified client will be denied a meaningful opportunity to pursue asylum, that USCIS has barred counsel from participating in an interview, that an interview outcome cannot be addressed through ordinary administrative or immigration-court processes, or that a particular client faces an imminent and noncompensable injury attributable to the challenged practices. *See e.g.*, *Banerjee v. USCIS*, 2021 WL 4918183, at *3 (D. Neb. Oct. 21, 2021) (plaintiff could not show irreparable injury because she did not establish, in the absence of an injunction, that her "status will be affected in any way").

C. The Balance of the Equities and Public Interest Favor the Government.

Finally, granting a stay would be contrary to the public interest. The balance of harms and the public interest elements of the injunctive relief test merge when the government is the opposing party, *Nken*, 556 U.S. at 435, and Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). Granting the relief sought does not serve public interest, as it would merely place Plaintiffs in status quo of managing a docket with not enough time and or resources and displace USCIS's operational judgment concerning how to manage affirmative-asylum interviews, allocate limited interviewing resources, sequence cases, and address its pending caseload.

V. CONCLUSION

WHEREFORE, Defendants respectfully request that the Court DENY Plaintiffs' Complaint for Injunctive and Declaratory Relief. Should the Court grant Plaintiffs' Complaint, Defendants request that any preliminary injunctive or declaratory relief granted be appropriately

tailored and specific. Should the Court conclude that a minimum notice period must exist between USCIS's issuance of an interview notice to a UAC and the interview itself, that determination would not justify enjoining the web alert through which USCIS announced that it will apply the exceptional-circumstances standard to all requests to reschedule interviews (not solely those involving UACs), as that policy is grounded in existing statutory and regulatory authority, including 8 C.F.R. § 208.10.

Dated: October 26, 2026

Respectfully submitted,

Kelly O. Hayes
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2026, I caused a copy of the forgoing to be served upon all registered parties through CM/ECF.

Dated: October 26, 2026

/s
Dayna Kipnis
Assistant United States Attorney