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' MEMORANDUM IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND STAY AND REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OF TEMPORARY RESTRAINING ORDER

Defendants, by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 65, files this Memorandum in Support of their Opposition to Plaintiffs' Motion for Preliminary Injunction and Stay (ECF No. 74), and Reply to Plaintiffs' Opposition to Defendants' Motion for Reconsideration (ECF No. 54) of Temporary Restraining Order (ECF No. 63), and states as follows:

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I. INTRODUCTION

This case concerns policy decisions entrusted by Congress to the Executive Branch. More specifically, Congress has tasked the United States Citizenship and Immigration Services ("USCIS") with creating policies concerning the scheduling and rescheduling of asylum interviews for unaccompanied alien children ("UAC"). Similarly, Congress has also entrusted the Executive Office of Immigration Review ("EOIR") with the management of their dockets in the adjudication of the legal status of UACs in the United States. The purpose of these policies is to reduce an unprecedented affirmative asylum backlog, efficiently schedule and resolve cases, and preserve valuable government resources. The policies also recognize that UACs, given their age and circumstances, are particularly vulnerable and susceptible to bad actors in the immigration system. The subject policies balance these interests, ensuring that UACs receive fair, efficient and timely adjudications of their asylum applications.

On November 24, 2026, USCIS memorialized these policies in a memorandum entitled "Scheduling Asylum Interviews for Unaccompanied Alien Children in Office of Refugee Resettlement Custody and Failure to Appear Procedures." This memorandum supersedes both the provisions of the September 27, 2026 decision memorandum entitled "Expedited Scheduling and Adjudication of Asylum Applications Filed by Unaccompanied Alien Children in Office of Refugee Resettlement Custody," regarding the scheduling of interviews of unaccompanied alien children (UACs) in the custody of the Office of Refugee Resettlement (ORR), and the determination that all scheduled asylum interviews should only be rescheduled upon a showing of "exceptional circumstances," rather than the prior more permissive process which permitted automatic rescheduling upon request, and later requests upon a showing of "good cause." Because the memorandum supersedes the policies at issue in Plaintiffs' Complaint (ECF No. 1), Request for Temporary Restraining Order (ECF No. 23-1), the Court's November 6, 2026 Order granting

Plaintiffs' request for a Temporary Restraining Order (ECF No. 63), and Plaintiffs' subject Motion for Preliminary Injunction (ECF No. 74), Plaintiffs' Motion for Preliminary Injunction should be dismissed by the Court for mootness and the TRO should be dissolved.

Alternatively, the Court must deny Plaintiffs' request for a preliminary injunction in this matter. Plaintiffs cannot establish a likelihood of success on the merits of their claims or that Plaintiffs will suffer irreparable harm should these policies remain undisturbed. Additionally, the balance of equities in this matter tips in favor of the Government because public interest does not support judicial intervention into agency scheduling decisions.

II. BACKGROUND

A. Inadequate Notice Policy

As provided in 8 U.S.C §1158(a)(1), 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 a 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 according to generally set priorities: 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. In fact, there is no legal requirement that USCIS conduct an asylum interview at all. *See Affirmative Asylum Referrals Without Interview*, 91 Fed. Reg. 47101 (July 28, 2026) (interim final rule). 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.

B. Exceptional Circumstances Policy

In the summer of 2026, USCIS published an alert to provide advance 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 Nov. 3, 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 circumstances 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 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 -Nov. 3, 2026).

C. Policy Memorandum Scheduling Asylum Interviews for Unaccompanied Alien Children in Office of Refugee Resettlement Custody and Failure to Appear Procedures

On November 24, 2026, USCIS issued the Policy Memorandum entitled Scheduling Asylum Interviews for Unaccompanied Alien Children in Office of Refugee Resettlement Custody and Failure to Appear Procedures. See Exhibit 1. This memorandum provides a comprehensive background regarding the problems and challenges USCIS faces in scheduling and rescheduling interviews, including the unique welfare concerns presented by UACs, as well as update procedures to address those issues. *Id.* The Memorandum discusses the conflict between Congress's expectation that USCIS immediately move forward asylum interviews and the need to

reschedule such interviews should the alien fail to appear, and the interview needs to be rescheduled based upon exceptional circumstances.

In practice, the USCIS Asylum Division has often scheduled interviews with 21 days' notice to the alien. And, prior to August 21, 2026, when an alien failed to appear for an asylum interview USCIS allowed aliens to reschedule an asylum interview once without any justification whatsoever upon a request made before the asylum interview. USCIS also permitted unlimited reschedules after that for "good cause" if the alien contacted USCIS within 45 days of the failure to appear, or for exceptional circumstances even if the alien contacted USCIS more than 45 days after the scheduled interview date, unnecessarily drawing out the process and draining USCIS resources. USCIS applied these failure to appear procedures generally to both UAC and non-UAC cases. On August 21, 2026, USCIS issued updated procedures related to an alien's failure to appear for an interview applicable to all asylum cases before USCIS. These updated procedures more closely aligned USCIS's procedures with governing regulations, particularly as USCIS strives to reduce its unprecedented affirmative asylum backlog, efficiently schedule and resolve cases, and preserve valuable resources and finite interview slots. Under the updated procedures, where an alien fails to appear for a scheduled asylum interview, the alien must demonstrate exceptional circumstances for the failure to appear within 10 days of the missed interview in order to excuse the failure to appear. If that does not happen, the alien generally has an opportunity to continue pursuing his or her asylum application in removal proceedings before an immigration judge even if proceedings are not immediately initiated by virtue of USCIS referring the application.

These prior procedures have created an unprecedented backlog of asylum interviews and significant new issues have arisen since 1998 and 2009 that complicate the timely adjudication of asylum applications. When considering the special needs of the UAC population, the factor that

USCIS can most effectively address immediately is scheduling. Prompt adjudication reduces uncertainty, facilitates a protection decision, and allows related proceedings to either advance or moot out. USCIS can preserve the opportunity for case-specific accommodation where warranted including consideration of counsel availability, while at the same time reestablishing the importance of ensuring that UAC asylum cases are considered and efficiently resolved.

The Memorandum aims to reduce the backlog of asylum interviews while protecting the extraordinary needs of UACs by implementing the following changes: first, asylum office directors will aim to schedule interviews for UACs in ORR custody within a target timeframe of 24 hours to seven days after providing notice to the UAC and his or her legal representative, where applicable. Considering the UAC is in ORR custody and should be prepared to discuss the asylum application that he or she already filed, 24 hours to seven days' notice for an interview is reasonable, where the circumstances include participating in a non-adversarial interview with an asylum officer specially trained on non-adversarial interview techniques, children's claims, and eliciting testimony, and where USCIS may provide an interpreter in the event the UAC does not have one.

Second, the Memorandum supplements what exceptional circumstances should be considered by an asylum officer if the UAC does not appear for the asylum interview with USCIS, wither in person or virtually. Now, the asylum office will process the UAC's case according to current failure to appear procedures, noting that USCIS scheduling the same attorney of record for multiple UAC interviews on the same date and time constitutes exceptional circumstances to excuse and reschedule conflicting interviews (i.e., to facilitate proceeding with one scheduled UAC interview on the scheduled date and time, the attorney may request rescheduling of other interviews also scheduled at the same date and time).

D. Detained Docket Deadline

Pursuant to the regulation at 8 C.F.R. § 1003.0(b)(1)(ii), the EOIR Director has the authority to "[d]irect the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of adjudicators to cases; and otherwise to manage the docket of matters to be decided by the Board, the immigration judges, the Chief Administrative Hearing Officer, or the administrative law judges." The Director may delegate this authority to the Chief Immigration Judge. 8 C.F.R. § 1003.0(b)(2)(i). Pursuant to the EOIR Director's authority, as outlined in 8 C.F.R. § 11003.0(b)(ii) and (iv), EOIR issued two policy memoranda relevant to docket management of juvenile and detained cases before EOIR.

On December 20, 2017, EOIR's Chief Immigration Judge published Operating Policies and Procedures Memorandum 17-03: *Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children* ("OPPM 17-03"). See Exhibit 2, OPPM 17-03. This document provides uniform guidance to Immigration Judges who oversee proceedings involving juveniles, including unaccompanied alien children. Section IV(B) Scheduling juvenile cases instructs immigration judges to "conduct cases involving juvenile respondents, particularly unaccompanied alien children, on a separate docket or at a fixed time in the week or month." *Id.* at 5. Section IV(I) Be aware of time instructs the immigration judges to allow the parties in juvenile cases a full opportunity to present or challenge evidence, but where appropriate, the judges "should seek not only to limit the number of times that children must be brought to court but also to resolve issues of removability and relief without undue delay." *Id.* at 6. The section goes on to instruct immigration judges to consider "limiting the amount of time the child is on the stand without compromising due process for the opposing party" because "stress and fatigue can

adversely impact the ability of a younger child to participate in his or her removal proceedings." *Id.*

On September 12, 2025, the EOIR Director issued a Policy Memorandum *Case Priorities and Immigration Court Performance Measures* ("PM 25-47"). See Exhibit 3 PM 25-47. The purpose of PM 25-47 was to clarify EOIR's priorities and system of measurement to ensure that each immigration court has a standard to assess its progress in advancing the national interest. This document highlights that EOIR has always prioritized all cases involving individuals in detention or custody—without reference or distinction to UAC cases—and established reasonable timeframes for the resolution of such cases.

E. Procedural Background

On October 15, 2026, Plaintiffs filed the underlying Complaint bringing six Counts in this Cause of Action. *See* ECF No. 1. In Count One, Plaintiffs argue that that USCIS's "Inadequate Notice Policy" 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 Count Six, Plaintiffs argue that EOIR's Detained Docket Deadline violates the APA, 5 U.S.C. § 706(2)(A), as being arbitrary and capricious. ECF 1, p. 40.

On October 19, 2026, Plaintiffs filed an Ex Parte Motion for Temporary Restraining Order against Retraining Order and Stay, requesting the Court to temporarily set aside USCIS's Inadequate Notice Policy and Exceptional Circumstances Policy based upon allegations that they were arbitrary and capricious and contrary to law. *See* ECF No. 23. On October 29, 2026, Defendants opposed Plaintiff's request for relief. See ECF No. 32. By Order dated October 30, 2026, the Court granted Plaintiffs' Motion for Temporary Restraining Order and Stay under the APA. *See* ECF No. 54. On November 3, 2026, Defendants filed a Motion for Reconsideration, requesting the Court to dissolve the Temporary Restraining Order. *See* ECF No. 57. By Order dated November 6, 2026, the Court issued a briefing schedule permitting Plaintiffs to file an opposition to the Motion for Reconsideration in combination with a Motion for Preliminary Injunction. *See* ECF No. 63, 4 ¶ 5. Plaintiffs filed the subject Motion for Preliminary Injunction on November 12, 2026. *See* ECF No. 74.

III. FACTS

Under the previous administration the United States experienced an unprecedented surge of aliens at the Southwest border. Unfortunately, many of those aliens were UACs. Sadly, many UACs were trafficked by cartels and others in an attempt to exploit vulnerabilities in our immigration system. One such vulnerability was that the surge of aliens resulted in a tsunami of asylum claims, including by UACs. Given the sheer number of asylum claims, USCIS faced a substantial backlog in interviewing aliens and processing asylum claims. In addition, UACs and their representatives would often request to reschedule interviews. Under previous USCIS policies, the initial request would be granted as a matter of course and future rescheduling would be readily granted for "good cause." This regularly resulted in UACs being held in HHS custody for months and months before even getting an asylum interview, at substantial cost to the

Government and the UACs. And the TVPRA requires HHS release UACs to "capable and willing" sponsoring adults, even if they cannot be verified as relatives. As a result, the previous administration released around 300,000 UACs whose whereabouts could not be verified, often because they were released to "sponsors" engaged in fraud.

DHS, DOJ, and HHS have prioritized reducing illegal immigration and protecting UACs. As part of this initiative, USCIS is also prioritizing the asylum claims of UACs. But because of the preexisting backlog of asylum claims, asylum interviews for UACs are still lagging behind. This issue is compounded by the fact that those representing UACs can readily reschedule interviews potentially months out multiple times. Focusing on the needs of UACs and asylum-seekers who present meritorious claims generally, USCIS stopped allowing for automatic grants for initial rescheduling requests and required exceptional circumstances for all requests. USCIS will of course consider concerns lawyers have with double bookings and impracticalities. But that cannot justify routinely delaying interviews by long periods where UACs remain in limbo. USCIS's purpose in changing the requirements for scheduling and rescheduling interviews was to quickly adjudicate UAC asylum claims so they can either be granted or other proceedings can move forward with the goal of safely returning UACs to their families abroad. That may not be in the interests of the advocates seeking to halt this important change in guidance, but it is in the long-term interests of UACs.

IV. LEGAL STANDARDS

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"; 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).

V. ARGUMENT

A. Plaintiffs Lack Standing

After Defendants filed their brief in response to Plaintiffs' Ex Parte Motion for Temporary Retraining Order, the First Circuit published a decision in *Greater Bos. Legal Servs. v. United States Dep't of Homeland Sec.*, No. 25-1799, 2026 WL 3257620 (1st Cir. Oct. 29, 2026), that is directly relevant to the current motions pending before this court. The key takeaway from that decision is that a group of legal service providers cannot establish standing to bring a suit under the APA by alleging that that a challenged agency policy limits the number of clients it can take on or impacts the costs of representation. *Id*. at *6.

The claims at issue in *Greater Boston Legal Services* are very similar to the ones that Plaintiffs assert here. There, as here, Plaintiffs were a group of attorneys, law firms, and a nonprofit legal services organization who represent aliens in immigration proceedings. *Greater Bos. Legal Servs. v. United States Dep't of Homeland Sec.*, No. 21-CV-10083-DJC, 2025 WL 1725826, at *2 (D. Mass. June 20, 2025), *aff'd on other grounds*, No. 25-1799, 2026 WL 3257620 (1st Cir. Oct. 29, 2026). Also identical to the present case, Plaintiffs claimed, as part of their APA claim, that an alleged policy concerning USCIS' processing of asylum applications interfered with an obligation owed to their clients by virtue of a DHS regulation (albeit 8 C.F.R. § 103.2(b)(16) rather than 8 C.F.R. § 208.9(e)). *Id*. at *5. The district court concluded that that the agency's practices, even if considered a discreet policy as alleged by Plaintiffs, did not violate the regulation because USCIS

still allowed asylum applicants to inspect relevant records during their asylum proceedings, which is all that 8 C.F.R. § 103.2(b)(16) required. *Id*. at *7.

This court should apply the same rationale and reach the same result as the First Circuit. The six legal service providers constituting the Plaintiffs in this case do not have standing to challenge the way that USCIS processes their client's asylum applications based on an alleged impact on their organizations' provision of legal services. *Greater Bos. Legal Servs*, 2026 WL 3257620, *6. First, even assuming the alleged policies exist, based on U.S. Supreme Court precedent, including *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367 (2024), when claiming standing it is "insufficient to allege that a challenged policy constrains a firm's ability to represent as many clients as it would like." *Greater Bos. Legal Servs.*, 2026 WL 3257620, at *6 . Further, the core-business-activities exception described in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), does not include situations where a legal services organization asserts standing "by alleging that a challenged policy increases the cost of representation or limits the size of a client roster." *Greater Bos. Legal Servs.*, 2026 WL 3257620 at *6. Finally, Plaintiffs' claimed injury is too speculative and attenuated to warrant standing because they have not established the existence of the claimed policies or combination thereof and that the asserted harm would actually occur in any specific instance. *Id*. at *4.

B. The November 24, 2026 Policy Memorandum obviates the October 30, 2026 TRO and moots Plaintiffs' Motion for Preliminary Injunction.

The November 24, 2026 Memorandum eliminates the conduct that gave rise to the TRO because it supersedes the policies at issue in Plaintiffs' Ex Parte Motion for Stay under the APA and Temporary Restraining Order ("Plaintiffs' Motion"). *See* ECF No. 23. Plaintiffs' Motion specifically took issue with USCIS's scheduling UAC asylum interviews with 24 hours notice, and

the circumstances considered by asylum officers when the legal representatives of UACs requested to reschedule and interview because the attorneys are double or triple booked for asylum interviews. *Id.* at 2. Plaintiffs requested a stay of those practices, arguing that they violated the APA, the TVPRA and the INA.

The November 24, 2026 Memorandum expressly supersedes and replaces the policies challenged in Plaintiffs' Motion. The Memorandum provides that USCIS will aim to schedule interviews for UACs in ORR custody with a target timeframe of 24 hours to seven days after providing notice to the UAC and his or her legal representative. This eliminated Plaintiffs' concern that they will not have enough time to meet with the UACs or gather evidence prior to a scheduled interview. The Memorandum also eliminates Plaintiffs' concern regarding the inability to reschedule an asylum interview due to unavailability of the legal representative. The new policy provides that an asylum officer will recognize as an exceptional circumstance a UAC's failure to appear for a scheduled interview when the UAC's legal representative is scheduled to appear at multiple UAC interviews occurring simultaneously.

Defendants authority for issues the November 24, 2026 Memorandum is based upon *Dep't of Homeland Sec. v. Regents of the Univ. of California,* 591 U.S. 1 (2020). USCIS relies on *Regents,* for its two-step framework illustrating the options an agency may exercise in correcting its previous actions. In *Regents*, the Supreme Court explained that "a court may remand for the agency to do one of two things: First, the agency can offer 'a fuller explanation of the agency's reasoning *at the time of the agency action*.' ... Alternatively, the agency can 'deal with the problem afresh' by taking *new* agency action." 591 U.S. at 20 (alterations in original) (citations omitted). When an agency offers a fuller explanation, "the agency may elaborate later on [its] reason (or reasons) but may not provide new ones." *Id*. at 20-21.

Because the operative policy underlying Plaintiffs' claims has been withdrawn, the factual and legal circumstances that justified interim injunctive relief have materially changed. The extraordinary relief embodied in the TRO is therefore no longer necessary or appropriate.

C. Plaintiffs are unlikely to succeed on the merits

i. Plaintiffs are unable to prove that the alleged USCIS's policies are Final Agency Actions

Plaintiffs cannot show that the contested 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. Despite Plaintiffs' allegations, in the Motion for Reconsideration, Defendants did not concede that the Inadequate Notice or Exceptional Circumstances policies constitute final agency actions. *See* ECF No. 74-1, 13. The policies are not subject to review by this Court under the APA because they are not final agency actions.

Plaintiffs have not directed the Court to any fact suggesting that the policies are final agency actions. Plaintiffs have not made any plausible allegations that the policies were a final directive, decision memorandum, or other authoritative agency action showing that the alleged practices were formally adopted as binding USCIS policy. Referencing a tweet purporting to show a deliberative draft of a memorandum does not pass muster. ECF 1, 20. Nor do Plaintiffs allege facts establishing that any identified official exercised final delegated authority to adopt a

nationwide, binding policy governing interview scheduling, rescheduling, or evidentiary submissions. *See Jake's Fireworks, Inc. v. United States Consumer Product Safety Commission*, 105 F.4th 627, 631 (4th Cir. 2024) (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 151 (1967)). The policies are not the consummation of USCIS's decision making processes set out in the agency's governing statutes and regulations and do not represent the culmination of USCIS's consideration of scheduling UAC asylum interviews, determining exceptional circumstances for rescheduling interviews, or permitting representatives of UACs to present evidence at the interviews. *Jake's Fireworks, Inc.*, 105 F.4d at 631. Rather, the changes to guidance are operational adjustments within USCIS's existing authority to schedule and manage affirmative asylum interviews, made in response to the substantial asylum backlog and the need to resolve UACs' cases efficiently while accounting for their distinct circumstances.

USCIS has long exercised discretion over the timing of asylum interviews and whether to reschedule them. The challenged adjustments did not alter any statute, regulation, or binding legal standard governing eligibility for asylum. *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 809-10 (2003). Nor did they eliminate the opportunity for UACs to seek asylum, receive representation, submit evidence, or request rescheduling. Rather, USCIS authorized asylum offices, in appropriate cases, to schedule interviews for UACs in ORR custody on an expedited basis. The evaluation of rescheduling requests under an exceptional-circumstances standard is generally applicable and unconnected to UAC interview scheduling. *See* ECF No. 57-1 ¶¶ 10-11, 17. These measures are case-management decisions concerning the administration of existing procedures, not final agency actions establishing new legal rights or obligations.

The adjustments reflect USCIS's obligation to balance multiple considerations inherent in administering the affirmative asylum process. Congress has afforded UACs distinct procedural

protections, including USCIS's initial jurisdiction over their asylum applications. *See* 8 U.S.C. § 1158(b)(3)(C). But those protections do not require USCIS to leave UACs' claims unresolved indefinitely or to preserve a particular scheduling practice in all circumstances. To the contrary, prompt adjudication advances the interests Congress sought to protect by reducing prolonged uncertainty, avoiding unnecessary time in restrictive custodial settings, and allowing children who qualify for protection to receive a timely decision. ECF No. 57-1 ¶¶ 12-13, 19.

Plaintiffs also have not alleged any facts that the policies alter the legal landscape for UACs such that Plaintiffs are unable to provide effective counsel to their clients or that UACs are deprived of their ability to submit evidence supporting their claims. *See* ECF No. 74-1, 13-14, ¶1. The policies do not deprive UACs of assistance of counsel in preparation of and during asylum interviews and the policies did not eliminate Plaintiffs' ability to seek rescheduling of interviews in order to submit supplemental evidence or otherwise. These post-filing document submission issues cannot possibly be viewed as altering legal rights and outcomes because no matter the USCIS policy or practice, an alien establishes his or her eligibility for asylum through credible testimony or corroborating evidence when the adjudicator so requests. 8 U.S.C. § 1158(b)(1)(B).

ii. Plaintiffs cannot prove that USCIS's Policies are Contrary to Law.

Plaintiffs allege that USCIS's policies are contrary to law because the TVPRA requires USCIS's policies to be consistent with the consideration of UAC's specialized needs. *See* ECF No. 74-1, 14, ¶ 2. But neither the TVPRA nor the INA prescribe a 21-day minimum notice period for asylum interviews, guarantee automatic rescheduling, require unrestricted continuances, or otherwise mandate the scheduling practices Plaintiffs seek to impose.

USCIS's prior procedures stated that its automated scheduling system schedules interviews and issues generally generated interview notices "approximately" 21 days before the scheduled

interview. *See* USCIS, Affirmative Asylum Procedures Manual (Feb. 2025) at § II.G(2)(a) – II.G(3), available at https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf (last visited Nov. 2, 2026). That timeframe reflected the operation of USCIS's then-existing scheduling system, not a statutory or regulatory entitlement to 21 days' advance notice. Because federal law does not require USCIS to provide 21 days' notice, the agency's adjustment of its scheduling procedures cannot be contrary to law. Plaintiffs assert that since § II.G(3) states that the automated system generated notice of the interview within "21 or 22 days", this automation created a requirement that notice be generated at least 21 prior to an interview. This description is merely an explanation of the automation and general expectation and did not create a right. The only requirement outlined in the section is "within three (3) business days of the Notices being printed and no fewer than 18 days before the scheduled interview date, Asylum Office personnel mail the Interview Notice to the applicant and any representative of record." This requirement only guaranteed when an Interview Notice would be sent and not when it would be received. Additionally, the section also allows for exceptions to the requirement at the discretion of the Director as long as the applicant received adequate notice and no definition of "adequate notice" is illustrated. As the exception notes, the Director is authorized to change the notice requirements and expectations laid out in the section for "special circumstances." The historic backlog of cases to be adjudicated undoubtedly establishes that such an exception departs from that prior operational practice.

Plaintiffs additionally assert that the inadequate notice policy is contrary to law as notice under 14 days prevents them from providing supplemental evidence at least 14 days before the interview. This remains untrue. The 14-day deadline to submit supplemental evidence is not a starting gun to collect evidence but a notice point that evidence may not be accepted after such a

point. As 8 C.F.R. § 208.9(e)(1) notes, the asylum officer may still consider evidence submitted after the 14-day deadline. While Plaintiffs have attached and cited to several declarations to their motion, they present few instances of evidence being rejected. In one instance, notice of the hearing was given beyond 14 days and the representative failed to provide evidence in the statutory timeline. See ECF No. 74-5, ¶ 9. The evidence was untimely submitted, and it was not a violation of law to refuse the evidence. The additional declarations reference general concerns of a 14 day policy but fail to cite specific examples of evidence being submitted and denied by the asylum officer. See ECF Nos. 74-5, ¶ 6; 74-6, ¶ 13, 15; 74-9, ¶ 6.

Further, Plaintiffs misconstrue 8 C.F.R. § 208.9(e) as imposing an affirmative obligation on USCIS to provide at least fourteen, or effectively 21, days' advance notice of an asylum interview because Plaintiffs assume they have a "regulatory right to submit supplemental evidence up to 14 days before [UACs] asylum interviews." ECF No. 74-1, 14. The regulation makes no such statement. By its terms, § 208.9(e) establishes a soft deadline governing an applicant's submission of additional supporting evidence before a scheduled interview. It does not prescribe when USCIS must schedule an interview, create a minimum notice period, or require USCIS to postpone an interview whenever the applicant seeks to develop or supplement the record.

The regulation's history and purpose confirms that reading. When DHS promulgated the 14-day provision, it explained that the deadline was designed to provide asylum officers with adequate time to review any additional evidence before the interview. *See Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg. 38,532, 38,535 (June 26, 2020). DHS further explained that an applicant's request to submit additional evidence after the applicable deadline would be subject to an asylum officer's discretion and to the extent that it required a delay in processing, would be treated as an applicant-caused delay. *Id.* Thus, the

provision was intended to facilitate timely and orderly adjudication by ensuring that asylum officers have sufficient opportunity to review materials before conducting the interview, not to create a new procedural entitlement to postpone interviews or to require USCIS to provide a particular amount of advanced interview notice.

Plaintiffs' interpretation would invert the regulation. Under their theory, a deadline directed to applicants would become a constraint on USCIS's scheduling authority, requiring the agency to provide enough advance notice to allow an applicant to submit additional materials before the soft deadline. But nothing in the text of § 208.9(e) or its published rulemaking supports that result. Critically, an applicant is expected to submit a complete asylum application, including the factual basis for the claim and available supporting materials, when the application is filed. *See* 8 C.F.R. § 208.3(a) (requiring submission of a completed application); *see also* 8 C.F.R. § 208.9(e) (addressing only "additional supporting evidence" submitted after the application). Applicants are, accordingly, not expected to gather all of the evidence for their case between the date they file their application and the date of their interview. Section 208.9(e) accordingly concerns only "*additional* supplemental evidence," not evidence that an applicant or representative elected not to include with the initial application. The need for such material ordinarily arises when meaningful time passes between filing and interview and relevant circumstances change, such as a material development in country conditions, newly available corroborating evidence, a change in the applicant's health or personal circumstances, or another development bearing on the claim. In that setting, the fourteen-day deadline gives the asylum officer adequate time to review the new material before the interview. *See Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg. 38,532, 38,535 (June 26, 2020). No such need for

supplemental evidence arises in a situation where the UAC is interviewed within days or weeks of their initial asylum application as argued by Plaintiffs.

Nor does this position preclude USCIS from addressing the unusual case in which genuinely material, newly available evidence arises after filing. USCIS retains discretion to consider case-specific circumstances, including whether additional materials may appropriately be accepted or whether rescheduling is warranted. But that discretionary, individualized authority does not convert § 208.9(e) into a guarantee that every applicant will receive a post-filing period to develop evidence before an interview may occur. It has always been up to the asylum officer to consider the credibility and persuasiveness of the existing record evidence and request supplementary evidence if needed. 8 U.S.C. § 1158(b)(1)(B)(ii).

Likewise, nothing about USCIS's scheduling, rescheduling, or evidence-submission procedures deprives an applicant of the right to be represented by counsel. The governing regulation provides that an asylum applicant "may have an attorney or representative present at the interview," at no expense to the Government. 8 C.F.R. § 208.9(b). That right permits an applicant to retain counsel and have counsel participate in the asylum interview. It does not guarantee that USCIS will schedule an interview only at the convenience of a particular attorney, provide a specified preparation period before every interview, or grant a continuance whenever counsel seeks additional time.

The challenged procedures preserve the ability of UACs to be represented. They neither bar counsel from appearing at interviews nor prohibit counsel from communicating with clients, preparing applications, submitting timely materials, making statements or comments on the evidence, or asking follow-up questions at the conclusion of an interview. *See* 8 C.F.R. § 208.9(b), (d)(1). Nor do the procedures categorically preclude rescheduling. USCIS retains authority to

consider case-specific requests to reschedule based on serious circumstances, including the unavailability of an attorney or representative and overlapping appointments. *See* ECF No. 57-1 ¶ 17.

Plaintiffs instead seek to transform the regulatory right to representation into a right to have every interview scheduled on terms preferred by counsel. But the right to counsel at an asylum interview does not require USCIS to ensure the availability of a particular attorney on any date selected by that attorney, especially where the applicant may be represented by another qualified attorney or accredited representative. A scheduling conflict may warrant individualized consideration, but it does not itself establish that the applicant has been denied the opportunity to be represented.

iii. Plaintiffs cannot demonstrate that USCIS's Policies are Arbitrary and Capricious.

An agency's action 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.*

Plaintiffs cannot establish that USCIS's scheduling and rescheduling procedures are arbitrary or capricious. The INA and TVPRA do not prescribe a minimum interview-notice period, guarantee an automatic opportunity to reschedule, or otherwise mandate the particular case-

management practices Plaintiffs seek. USCIS retains substantial discretion to administer the timing of asylum interviews and to evaluate rescheduling requests, subject to the governing statutes and regulations. In exercising that discretion, USCIS reasonably sought to balance prompt adjudication of UACs' asylum claims, the efficient use of limited adjudicative resources, and the individualized circumstances that may warrant rescheduling. *See* ECF No. 57-1 ¶¶ 10-19. Likewise, the exceptional-circumstances standard preserves a mechanism for individualized exceptions. USCIS has not eliminated rescheduling; instead, it evaluates whether the facts present a compelling, case-specific basis to depart from the scheduled interview date, the result of which wastes an interview slot highly coveted by asylum-seekers across the country. *Id.* ¶¶ 11, 17.

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 has to do with scheduling or rescheduling asylum interviews. First, 8 U.S.C. § 1158(a)(1) simply provides that an alien in the United States 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) (cert. granted in part 2026 WL 3453847 Nov. 13, 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, just not in Plaintiffs' preferred manner. 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, the applicant 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 C.F.R. § 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 C.F.R. § 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. 8 U.S.C. 1158(b)(1)(B)(ii).

1. Exceptional Circumstances Policy and 8 U.S.C. § 1158(d)(5)(A)(v) and 8 C.F.R. § 208.10

Congress expressly recognized the need for speed in asylum processing to avoid perverse incentives to flood a backlogged system with non-meritorious claims solely to obtain work authorization after 180 days of pendency under 8 U.S.C. § 1158(d)(2). Thus, Congress required any interview or hearing on the asylum application be held within 45 days of filing "absent exceptional circumstances" and that final administrative adjudication of an asylum application be completed within 180 days of filing "absent exceptional circumstances." 8 U.S.C. § 1158(d)(5)(A)(ii)-(iii). To adhere to those timelines, Congress also required that an applicant establish exceptional circumstances for not appearing at his or her interview as initially scheduled. 8 U.S.C. § 1158(d)(5)(A)(v). Although that provision does not itself prescribe the standard for every interview-rescheduling request, it confirms that Congress recognized exceptional circumstances as an appropriate basis for deviations from ordinary asylum-processing timelines. USCIS's use of that standard to assess requests to depart from a scheduled interview date is therefore consistent with, rather than contrary to, Congress's concern for timely resolution of asylum applications.

The implementing regulation similarly recognizes the relevance of exceptional circumstances when an asylum applicant does not appear for a scheduled interview. *See* 8 C.F.R. § 208.10. That regulation provides for dismissal (or referral without interview) of an asylum application when the applicant fails to appear for a scheduled interview without prior authorization. *Id.* The regulation also proscribes how USCIS administers that "prior authorization," which is that a failure to follow-through with the interview as initially scheduled "will be excused if the applicant demonstrates that such failure was the result of exceptional circumstances." *Id.* By virtue of the regulation, the agency declared that it would grant "authorization" to not appear for an interview as scheduled if exceptional circumstances are shown, thus creating a single standard for evaluating situations in which the agency cannot proceed as expeditiously on the application as desired. *See* 8 U.S.C. § 1158(d)(5)(A)(v) (providing consequences for applicants who fail to appear for an interview "without prior authorization or in the absence of exceptional circumstance."); *see also* 8 U.S.C. § 1158(d)(1) (granting the Attorney General and DHS Secretary authority to establish procedures for the consideration of asylum applications) 1158(d)(5)(B) (authorizing the Attorney General and DHS Secretary to provide conditions or limitations on the consideration of an application by regulation).

Plaintiffs' assertion that Defendants have offered "shifting" and impermissible post-hoc justifications mischaracterizes the record. *See* ECF No. 74-1 at 15-16. Defendants have consistently explained that the scheduling and rescheduling adjustments serve related objectives: timely adjudication of UACs' asylum applications; reduction of unnecessary delays, uncertainty, and restrictive custodial placements; efficient administration of a significant affirmative-asylum backlog; and case-specific consideration of circumstances that may warrant rescheduling. *See* ECF No. 57 at 1-6; ECF No. 57-1 ¶¶ 10-19.

Those reasons are complementary, not inconsistent. USCIS's reliance on the exceptional-circumstances framework is consistent with its broader judgment that automatic or routine rescheduling can unnecessarily delay adjudication, waste limited resources and undermine backlog reduction efforts, and prolong uncertainty. *See* ECF No. 57-1 ¶¶ 11, 15-19. Similarly, USCIS's efforts to expedite interviews for UACs in ORR custody reflect the same concern for prompt, orderly resolution of claims. *Id.* ¶¶ 10, 12-16, 19. That the policies serve both administrative and child-welfare interests does not make either rationale a post-hoc rationalization.

Plaintiffs also incorrectly conflate an explanation of the legal framework with an assertion that a particular procedure is compelled by statute or regulation. Defendants' position is that the INA and its implementing regulations recognize the importance of timely asylum adjudication and use the exceptional-circumstances standard in addressing the consequences of failure to appear. *See* 8 U.S.C. § 1158(d)(5)(A)(v); 8 C.F.R. § 208.10; ECF No. 57-1 ¶ 18. That framework supports, but does not mean that Congress expressly dictated, USCIS's decision to use an exceptional-circumstances standard when evaluating advance requests to reschedule interviews. The absence of a statutory mandate for Plaintiffs' preferred automatic-rescheduling and 21-day-notice procedures confirms USCIS's discretion to adjust its case-management practices.

In any event, the relevant question is whether USCIS articulated a rational connection between the procedures adopted and the agency's legitimate objectives. It did. USCIS reasonably determined that permitting expedited scheduling where appropriate and requiring a case-specific showing before rescheduling would help move UAC's cases toward resolution, while retaining discretion to account for genuinely serious circumstances. *See* ECF No. 57-1 ¶¶ 10-19. Plaintiffs' disagreement with the weight USCIS assigned to timeliness, docket management, individualized

exceptions, and other considerations does not establish that the agency changed its rationale or acted arbitrarily.

2. Inadequate Notice Policy and TVPRA

Plaintiffs contend that USCIS's expedited-interview scheduling procedure is contrary to the TVPRA because shortened notice allegedly fails to account for UAC's specialized needs. *See* ECF No. 74-1 at 14-15. But the TVPRA does not impose a 21-day minimum notice requirement, mandate that every interview be scheduled only after a fixed preparation period or otherwise prescribe the interview-scheduling procedures Plaintiffs seek to require.

USCIS reasonably determined that prompt asylum interviews may advance the interests of UACs, particularly children in ORR custody. While Plaintiffs incorrectly characterize USCIS's expedited scheduling procedures as preferring to adjudicate a UAC's asylum application while the child remains in ORR custody rather than permit the UAC's release to a suitable sponsor, *see* ECF No. 74-1 at 16-17, USCIS has made no such determination. The challenged procedures concern the prompt administration of asylum interviews within USCIS's jurisdiction. They do not alter ORR's independent placement and release responsibilities, *see* 8 U.S.C. § 1232(c)(2), or condition a UAC's release on completion of the child's asylum proceedings.[1]

At the same time, Congress's prompt-placement directive does not require USCIS to delay adjudication of a pending asylum application. A child's placement status and the adjudication of the child's asylum application are distinct matters administered by different agencies under

[1] Congress assigned ORR responsibility for the care and placement of UACs. *See* 6 U.S.C. § 279(b)(1)(A). Under 8 U.S.C. § 1232(c)(2)(A), ORR must "promptly place" a UAC "in the least restrictive setting that is in the best interest of the child." The statute further provides that ORR must place the child with an appropriate sponsor. *Id.* Congress thus established a child-welfare framework under which ORR, not USCIS, makes individualized placement and release determinations.

separate statutory authorities. USCIS reasonably may seek to adjudicate an application promptly, including when a child is still in ORR custody, without assuming that custody should continue until a decision issues. *See* ECF No. 57-1 ¶¶ 10, 12-19.

Prompt adjudication may benefit UACs in either setting. If a UAC is released to a suitable sponsor, a timely asylum decision reduces the uncertainty associated with a prolonged unresolved immigration matter. If a UAC remains in ORR custody because placement with a sponsor is not yet appropriate or available, timely adjudication can reduce the period during which the UAC's claim remains pending. In either circumstance, expedited processing does not substitute USCIS's judgment for ORR's statutory placement determination. Rather, it advances USCIS's separate responsibility to adjudicate claims within its jurisdiction efficiently and with due regard for the circumstances of UACs.

Plaintiffs' argument therefore conflates two distinct propositions: that ORR must promptly place UACs in the least restrictive appropriate setting, and that USCIS must delay asylum interviews until a UAC is released or until a particular amount of time has passed. The former is a statutory obligation imposed on ORR; the latter appears nowhere in the TVPRA or the INA. Nothing in § 1232(c)(2)(A) forbids USCIS from scheduling a prompt interview, establishes a minimum pre-interview notice period, or requires USCIS to retain prior rescheduling practices. USCIS's interest in timely adjudication is fully compatible with ORR's continuing, independent obligation to seek appropriate and prompt placement for each child.

USCIS's expedited-interview scheduling procedure is not arbitrary and capricious because it reasonably balances the specialized needs of UACs with the agency's responsibility to timely adjudicate their asylum applications. The TVPRA does not mandate a 21-day notice period or require USCIS to preserve prior scheduling practices; it requires procedures that take account of

UAC's specialized needs. *See* 8 U.S.C. § 1232(d)(8). USCIS reasonably concluded that prompt interviews can reduce prolonged uncertainty and facilitate timely resolution of UAC's claims, while retaining case-specific discretion to set interview dates and consider requests for rescheduling. *See* ECF No. 57-1 ¶¶ 10, 12-19. Nor does prompt scheduling conflict with Congress's direction that ORR place children promptly in the least restrictive setting consistent with their best interests. *See* 8 U.S.C. § 1232(c)(2)(A). USCIS does not make placement or release decisions, and its scheduling procedures neither require continued ORR custody nor delay ORR's independent obligation to pursue appropriate sponsor placement. The procedure thus reflects a reasoned approach to USCIS's separate adjudicatory responsibilities, rather than disregard for Congress's child-specific framework.

iv. Plaintiffs Cannot Demonstrate A Due Process Violation

1. Plaintiffs do not have a Property Interest in Applying for Asylum

Plaintiffs quote *Mallette v. Arlington*, 91 F.3d 630 (4th Cir. 1996) out of context. In that case, the plaintiff was a retired county employee who appealed the denial of her service-related disability retirement benefits claiming that the county violated her due process rights by failing to provide her with adequate notice of a hearing. *Id*. The court held that a county ordinance endowed the plaintiff with a legitimate claim of entitlement to her retirement benefits and thus she had a property interest in her application protected by the due process clause of the Fourteenth Amendment. *Id.* at 634.

In the present case, under 8 U.S.C. § 1158, the decision to grant asylum rests in the discretion of the Attorney General or the Secretary of Homeland Security. Even if a UAC meets the statutory definition of a refugee, the Government is never legally obligated to grant asylum. *See Arabzada v. Donis*, 725 F. Supp. 3d 1, 19 (D.D.C. 2024) ("there is no constitutional right to

political asylum itself." (quoting *Maldonado-Perez v. I.N.S.*, 865 F.2d 328, 332 (D.C. Cir. 1989)); *see also Hamal*, 2020 WL 2934954, at *4 n.4 (D. D.C. June 3, 2020). ("Generally, there is no property right in an immigrant visa."). In *Arabzada*, the plaintiff sought relief under the APA and Mandamus, alleging unreasonable delay of adjudication of her I-589 asylum application. 725 F. Supp. 3d at 1. The plaintiff argued that the unreasonable delay of the adjudication of her asylum application was an unconstitutional violation of her right to due process under the Fifth Amendment. *Id*. at 18. The court disagreed, finding that the plaintiff did not have a cognizable liberty or property interest in her asylum application. *Id*. The court determined that the plain language of 8 U.S.C. § 1158(d)(7) expressly disclaims any substantive or procedural rights under the statute. *See* 8 U.S.C. § 1158(d)(7) ("Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.").

2. The Mathews Factors Do Not Apply because Plaintiffs and their clients do not have a property interest in their asylum applications.

The Court need not reach application of the *Mathews* factors because Plaintiffs and their clients have no cognizable liberty or property interest in their asylum application. But, assuming the Court agrees with Plaintiffs that UACs possess a property interest in their asylum applications, the three-factor framework under *Mathews v. Eldridge*, 424 U.S. 319 (1976), does not favor Plaintiffs in this case.

Plaintiffs' application of *Mathews* in an immigration context is misplaced. *Mathews* involved a challenge to the constitutional validity of administrative procedures established by the Secretary of Health and Human Services in determining the termination of social security disability benefits. *Id*. The Court held that an evidentiary hearing is not required prior to the termination of

disability benefits and that the agency's administrative procedures fully comported with due process. *Id.* at 349. This Court has only applied the *Mathews* framework in immigration cases where an alien is detained under 8 U.S.C. § 1226, and not in cases where an alien is contesting the procedure in which their asylum application is adjudicated. *See Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022) (finding the district court abused its discretion in evaluating erroneous deprivation of private interest of alien in freedom from detention pending removal under *Mathews*).

And even assuming Plaintiffs and their clients have cognizable liberty or property interests in their asylum applications, the procedures in place are sufficient. In the asylum context, there are only "minimal procedural due process" protections and all that is required is an eventual opportunity for a "meaningful or fair evidentiary hearing with a reasonable opportunity to be present" before the Government decides the outcome of the application. *Arabzada*, 725 F. Supp. 3d at 19. And courts have held that the Government's choices in scheduling or conducting immigration proceedings do not violate due process. *Id.*; *see also Morgan v. Gonzales*, 445 F.3d 549, 552 (2d Cir. 2006) (finding no due process right to a continuance of immigration proceedings); *Mudric v. Att'y Gen. of the U.S.*, 469 F.3d 94, 99 (3d Cir. 2006) ("[F]ederal immigration laws do not vest in aliens a constitutional right to have their immigration matters adjudicated in the most expeditious manner possible.");; *Lixandru v. U.S. Att'y Gen.*, 359 F. App'x 102, 108 (11th Cir. 2009) ("In the absence of a cognizable due process right to have his asylum application adjudicated in a timely manner, [petitioner's] due process claim must fail."); *Matter of A-K-R-*, 29 I. & N. Dec. 839, 842 (BIA 2026) (no due process violation where immigration judge denied alien additional time to prepare application for relief from removal).

Accordingly, the *Mathews* framework does not apply to this case because the Plaintiffs are not in detention, and they have not identified case or statute that supports their contention that

UACs have a property interest in their asylum applications such that they are entitled to due process rights under the Fifth Amendment of the U.S. Constitution.

3. Existing Procedures Satisfy Due Process.

All applicants requested to appear before USCIS to answer questions about the asylum application that they previously filed with USCIS have an opportunity to meet with USCIS at a different date and time if they cannot show up as a result of circumstances out of their control. *See* 8 U.S.C. § 1229a(e)(1) (in the immigration context, exceptional circumstances refers to those circumstances "beyond the control of the alien"). It goes without saying that the scope of circumstances that are beyond the control of a UAC in a custodial setting are greater than those of an average, adult asylum applicant. Thus, the reschedule policy does, in fact, accommodate the unique needs of UACs pursuant to the TVPRA and does not come anywhere close to running afoul of the Constitution. Plaintiffs may dislike USCIS's policies but, as noted, they are in accordance with applicable law—and courts are not empowered to impose upon federal agencies their own idea of what procedure would be best or proper. *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.* ("*Vermont*"), 435 U.S. 519, 549 (1978).

Plaintiffs have absolutely no basis to assert a legal right to a lag time in adjudicating their client's asylum applications. Defendants, in exercising discretion to schedule UAC interviews on an expedited basis, fundamentally disagree that requiring several weeks' delay before a UAC can meet with a USCIS officer is in every UAC's best interest. But even to the extent that mandating such delays present Plaintiffs' ideal state, the agency's choice of a different operational path does not implicate a due process concern. While "[a]gencies are free to grant additional procedural rights in the exercise of their discretion," courts are "generally not free to impose them if the agencies have not chosen to grant them." *Id.* at 524; *cf. id.* ("This is not to say necessarily that there are no circumstances which would ever justify a court in overturning agency action because

of a failure to employ procedures beyond those required by the statute. *But such circumstances, if they exist, are extremely rare*.") (emphasis added). To be sure, the Supreme Court has "emphasized that the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments." *Id.* Courts should "not stray beyond the judicial province to explore the procedural format or to impose upon the agency its own notion of which procedures are 'best' or most likely to further some vague, undefined public good." *Id.* at 549. Therefore, USCIS's use of expedited scheduling, coupled with case-specific consideration of exceptional circumstances, does not itself establish a constitutional violation.

v. Plaintiffs Fail To Establish Final Agency Action Regarding EOIR

1. Plaintiffs Have Not Identified A Reviewable Agency Directive relating to UACs

Plaintiffs allege that the Detained Docket Deadline constitutes a final agency action under *Bennett* because "officials acknowledge the policy and the agency's conduct shows that the policy is being implemented." *See* ECF No. 74-1, 28. Plaintiffs have not identified a published rule, but rely largely on anecdotal statements, isolated comments, and scheduling observations. *Id*.

2. Individual Scheduling Decisions Remain Case-Specific

To the extent that Plaintiffs are referring to EOIRs scheduling practices, EOIR has taken steps to tackle the backlog of immigration court proceedings by setting benchmarks for completion of cases on EOIR's Dedicated Docket pursuant to PM 25-47 Case Priorities and Immigration Court Performance Measures ("PM 25-47"). PM 25-47 directs immigration judges to prioritize case adjudication based upon categories provided in Appendix A of the PM, none of which are specific to UACs. The PM specifically states that it does not limit the discretion afforded to immigration judges under the law and does not mandate or direct a specific outcome in any particular case.

To the extent that PM 25-47 is the Detained Docket Deadline policy to which Plaintiffs refer, it is not a final agency action because it is not a consummation of EOIR's decision making authority nor is it an action determining the rights of UACs or from which legal consequences will flow, as stated by the *Bennett* test. Plaintiffs assert that immigration judges' "acknowledgement of the directive, together with the consistent course of conduct that implements them, is proof that the policy reflects the consummation of EOIR's decision making rather than the independent scheduling choices of individual judges." *See* ECF No. 74-1, 29. That statement is directly contradicted by the language of the PM where it provides that "immigration judges retain discretion over their dockets to reschedule cases in furtherance of this PM, **if they so choose**." (emphasis added). Also, the PM ensures that it will not interfere with the rights of any alien by instructing that even if a case that comes before the immigration court is designated as a priority, the PM does not "limit the discretion afforded to an immigration judge under applicable law, nor is it intended to mandate or direct a specific outcome in any particular case."

vi. Plaintiffs cannot prove that any EOIR Detained Docket Policy is Arbitrary and Capricious.

Plaintiffs cannot prove that any Detained Docket policy is arbitrary and capricious because they are unable to show that EOIR "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." *State Farm*, 463 U.S. at 43 citing *SEC v. Chenery Corp.,* 332 U.S. 194, 196 (1947).

The provisions cited by Plaintiffs reflect Congress' judgment that UACs warrant certain accommodations during the immigration process, but none of the cited provisions prohibit EOIR

from managing its docket, establishing case-processing priorities, or setting target completion dates. EOIR's docketing practices do not impede the flexibility that Congress afforded to UACs which include an exemption from the one year asylum filing deadline and maintaining initial jurisdiction of UAC asylum applications with USCIS. EOIR has no jurisdiction over a UACs asylum application under the TVPRA.

Second, the policy does not hinder UAC's ability to seek asylum as asserted by Plaintiffs. On the contrary, the policy assists UACs in obtaining the relief sought in their asylum applications by prioritizing the adjudication of such cases without undue delay while remaining committed to principles of due process. PM 25-47 ("the timely completion of all cases consistent with due process remains a matter of the utmost importance for the agency.").

Third, Plaintiffs' alleged reliance interests are neither substantial nor legally protected. Continuances in immigration proceedings are discretionary and have never been guaranteed, making any expectation of extended preparation periods inherently contingent. 8 C.F.R. § 1003.29 ("The Immigration Judge *may* grant a motion for continuance for good cause shown.") (emphasis added). Attorneys' decisions to accept particular caseloads based on anticipated continuances do not create an entitlement to continuation of prior agency practices. EOIR reasonably determined that the need for efficient adjudication of detained cases, reduction of backlogs, and prompt resolution of claims outweighed any reliance interests arising from discretionary scheduling practices. Accordingly, the agency's policy change was neither arbitrary nor capricious under *DHS v. Regents of Uni. Of Cal.*, 591 U.S. 1 (2020) or *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211 (2016).

D. Plaintiffs cannot demonstrate irreparable harm

Any alleged irreparable injury stemmed from implementation of the now-rescinded policy. Plaintiffs cannot establish a likelihood of future injury based on a policy that no longer governs agency operations. Absent an ongoing or imminent threat of harm traceable to the challenged memorandum, prospective injunctive relief is unwarranted.

Alternatively, Plaintiffs will not be irreparably harmed in the absence of a preliminary injunction 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 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.

Similarly, Plaintiffs' alleged harm is neither irreparable nor attributable to the Detained Docket Deadline itself. The policy does not prevent representation, foreclose the presentation of asylum claims, or eliminate available case-management tools, including motions for continuances where good cause exists. Plaintiffs' assertions that they lack sufficient time and resources reflect organizational and staffing challenges, not a legally cognizable injury caused by EOIR. Moreover, generalized concerns about compressed preparation timelines and future scheduling demands are speculative and do not establish that any particular client will be unable to present a full and fair case. Any burden associated with adjusting to faster adjudication schedules is insufficient to constitute irreparable harm, particularly where the agency has a substantial interest in the prompt resolution of detained cases. Any risk that a particular respondent may receive an adverse decision stems from the individualized facts of that case, not from the scheduling policy itself. Moreover, allegations that some UACs have had limited preparation time do not establish that EOIR's policy generally results in ineffective representation or erroneous removal orders, particularly where immigration judges retain authority to manage proceedings and ensure fundamental fairness.

E. The Balance of 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, and

EOIR's ability to grant discretion to immigration judges on how to effectively manage their dockets.

VI. ANY RELIEF SHOULD BE NARROWLY TAILORED

Any relief granted by the Court in this matter should extend no further than necessary to redress any injury proven by Plaintiffs. Nationwide relief in this matter is inappropriate where narrower relief would suffice. Plaintiffs are seeking judicial management of asylum interview scheduling, continuance standards, and internal agency guidance and operations. Such relief exceeds traditional equitable limits.

V. Conclusion

WHEREFORE, Defendant respectfully requests that the Court Dissolve the October 30, 2026 TRO and DENY Plaintiffs' Motion for Preliminary Injunction and Stay as Moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2026, a copy of the foregoing Motion and accompanying documents was served to all parties of record via CM/ECF.

Dayna Kipnis
Dayna Kipnis
Assistant United States Attorney

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

November 24, 2026

Memorandum

TO: Ted Kim
Associate Director
Refugee, Asylum and International Operations Directorate

FROM: Joseph P. Edlow
Director

SUBJECT: **Scheduling Asylum Interviews for Unaccompanied Alien Children in Office of Refugee Resettlement Custody and Failure to Appear Procedures**

Purpose

This memorandum supersedes both the provisions of the September 27, 2026 decision memorandum entitled "Expedited Scheduling and Adjudication of Asylum Applications Filed by Unaccompanied Alien Children in Office of Refugee Resettlement Custody," regarding the scheduling of interviews of unaccompanied alien children (UACs) in the custody of the Office of Refugee Resettlement (ORR), and for all UACs, the determination that all scheduled asylum interviews should only be rescheduled upon a showing of "exceptional circumstances," rather than the prior more permissive process which permitted automatic rescheduling upon request, and later requests upon a showing of "good cause." This memorandum provides a comprehensive background regarding the problems and challenges USCIS faces in scheduling and rescheduling interviews, including the unique welfare concerns presented by UACs, as well as updated procedures to address those issues.

Background

Asylum Interview Scheduling

Section 208(a)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1158(a)(1), provides that any alien physically present in the United States may apply for asylum, either through a credible fear screening where DHS initiates expedited removal or by filing an application for asylum for consideration under the procedures of INA § 208, 8 U.S.C. § 1158. Affirmative asylum applicants have no statutory right to an interview. INA § 208, 8 U.S.C. § 1158; *see also Affirmative Asylum Referrals Without Interview*, 91 Fed. Reg. 47101 (July 28, 2026) (interim final rule). Further, there is no statutory minimum notice period that must be provided to an affirmative asylum applicant in advance of a scheduled interview with USCIS. Rather, Congress emphasized its expectation that asylum proceedings immediately move forward, either in the

form of an interview before USCIS or a hearing before an immigration judge, *at most* 45 days after the alien files an application. *See* INA § 208(d)(5)(A)(ii), 8 U.S.C. § 1158(d)(5)(A)(ii). Pursuant to INA § 208(d), 8 U.S.C. § 1158(d), DHS maintains regulations governing its consideration of asylum applications at 8 CFR § 208, et seq. Those regulations, detailed as they are, do not provide any rule about how much notice must be given to UAC asylum applicants if USCIS opts to interview them following initial review of the application submission.

In practice, the USCIS Asylum Division has often scheduled asylum interviews with 21 days' notice to the alien. Specifically, the USCIS Asylum Division's Affirmative Asylum Procedures Manual (AAPM) provides that USCIS generates interview notices within 21 or 22 days for batch scheduled cases and interview notices should be mailed "no fewer than 18 days before the scheduled interview date." At the same time, the AAPM acknowledges that asylum office directors maintain discretion to schedule interviews with less than the default 21 days' notice for cases involving special circumstances, provided the alien receives adequate notice of the interview. After a comprehensive review of the special circumstances presented by UACs in ORR custody, USCIS determined that such cases should generally be scheduled on a more expeditious basis whenever possible, as laid out in the discussion below.

Failure to Appear Procedures
Pursuant to section 208(d)(5)(A)(v) of the INA, 8 U.S.C. § 1158(d)(5)(A)(v), an alien's asylum application may be dismissed, or an alien may be otherwise sanctioned for failure to attend an asylum interview absent exceptional circumstances or prior authorization. Implementing regulations at 8 CFR § 208.10 provide that USCIS will excuse (i.e., provide "authorization" for) an alien's failure to appear at a scheduled asylum interview if such failure was the result of exceptional circumstances. As such, the regulation creates a single, clear standard, which is that any failure to appear at an asylum interview (or request to not appear at such interview) will be "without prior authorization" under INA § 208(d)(5)(A)(v), 8 U.S.C. § 1158(d)(5)(A)(v), unless the alien demonstrates exceptional circumstances.

In practice, prior to August 21, 2026, USCIS permitted failures to appear for an asylum interview in a manner inconsistent with the asylum statute or regulations, which is one of the many critical reasons for the crisis-level backlog in the asylum system today. Prior to August 21, 2026, USCIS allowed aliens to reschedule an asylum interview once without any justification whatsoever upon a request made before the asylum interview. USCIS also permitted unlimited reschedules after that for "good cause" if the alien contacted USCIS within 45 days of the failure to appear, or for exceptional circumstances even if the alien contacted USCIS more than 45 days after the scheduled interview date, unnecessarily drawing out the process and draining USCIS resources. USCIS applied these failure to appear procedures generally to both UAC and non-UAC cases. On August 21, 2026, USCIS issued updated procedures related to an alien's failure to appear for an interview applicable to all asylum cases before USCIS. These updated procedures more closely aligned USCIS's procedures with governing regulations, particularly as USCIS strives to reduce its unprecedented affirmative asylum backlog, efficiently schedule and resolve cases, and preserve valuable resources and finite interview slots. Under the updated procedures, when an alien fails to appear for a scheduled asylum interview, the alien must demonstrate exceptional circumstances for the failure to appear within 10 days of the missed

interview in order to excuse the failure to appear. If that does not happen, the alien generally has an opportunity to continue pursuing his or her asylum application in removal proceedings before an immigration judge even if proceedings are not immediately initiated by virtue of USCIS referring the application.

Discussion

Special Considerations for Scheduling and Rescheduling UAC Interviews

After careful consideration of the special circumstances of UACs in ORR custody, I have concluded that those circumstances warrant the scheduling of such asylum interviews on an expedited basis. Counsel and representatives should ordinarily complete the principal development of a UAC's asylum claim before filing Form I-589, including establishing an attorney-client relationship, developing rapport, gathering information and available corroboration, identifying legal theories, considering necessary professional evaluations, and preparing the application. Filing initiates adjudication; it is not the beginning of all case preparation, and interview scheduling should not be counsel's first opportunity to prepare the child for the asylum process. Prompt scheduling of the interview will not deprive counsel of the opportunity to establish a relationship with their client, prepare the case sufficiently for filing, and prepare a UAC client for the likelihood of a prompt interview.

Historical practice confirms that child-sensitive adjudication and prompt processing are not inconsistent objectives. For example, the 1998 INS *Guidelines for Children's Asylum Claims* identified the unique issues that children present in the context of the asylum process, noting they may need child-sensitive questioning and a child-friendly interview environment and directing asylum officers to use age-appropriate procedures; however, it also notes that, at that time, "[v]irtually all applicants who filed their asylum applications after January 4, 1995, [had] their cases decided within 60 days." *INS, Guidelines for Children's Asylum Claims* at 5–9 (Dec. 10, 1998).

USCIS's historical UAC guidance likewise recognizes the importance of moving UAC asylum claims forward without unnecessary delay. The 2009 memorandum from then Asylum Division Chief Joseph Langlois directs that, "[i]nterview scheduling should be done as expeditiously as possible for UACs, particularly for those who are in ORR custody at the time of filing," and that asylum offices should attempt to schedule the interview before the child's next immigration-court hearing. *USCIS, Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children* at 5 (Mar. 25, 2009). The memorandum also directs manual scheduling and special arrangements for UACs in ORR custody. *Id.* at 3–6. Prompt scheduling is not a recent departure from child-sensitive practice; it is an established feature of USCIS's approach to UAC cases.

As discussed below, significant new issues have arisen since 1998 and 2009 that complicate the timely adjudication of asylum applications, including the development of an extraordinary backlog. When considering the special needs of the UAC population, the factor that USCIS can most effectively address immediately is scheduling. Prompt adjudication reduces uncertainty, facilitates a protection decision, and allows related proceedings to either advance or moot out. USCIS can preserve the opportunity for case-specific accommodation where warranted,

including consideration of counsel availability, while at the same time reestablishing the importance of ensuring that UAC asylum cases are considered and efficiently resolved.

The following factors inform my conclusion that USCIS must prioritize prompt scheduling of UAC asylum interviews:

- Backlog: Between Fiscal Year (FY) 2021 and FY 2024, the United States experienced a substantial surge of aliens at the Southwest border, including at least 475,000 UACs without adult guardians.[1] In many instances, cartels and others trafficked UACs to exploit vulnerabilities in the immigration system.[2] This influx of aliens crossing the Southwest border resulted in a massive increase in asylum claims, including from UACs. Many of these UACs are in ORR custody awaiting resolution of their cases and outdated USCIS scheduling policies, including routinely allowing for multiple reschedules and postponements, have created an open-ended source of delay for these cases, prolonging any reduction of the backlog of such cases and wasting valuable USCIS interviewing and adjudicative resources.
- Detention: As recognized in 8 CFR § 208.5(a), where possible, the Department of Homeland Security (DHS) shall give expedited consideration to the applications of detained aliens. USCIS recognizes that, given their age and circumstances, UACs are particularly vulnerable and may have experienced trauma at an early age, including from abuse, neglect, trafficking, or other mistreatment. USCIS addresses this reality in part by ensuring asylum officers are specifically trained on children's claims, eliciting testimony, conducting non-adversarial interviews, detecting possible victims of trafficking, and interviewing survivors of torture and other severe trauma. Additionally, USCIS seeks to ensure that its role in the processing of UAC asylum applications does not result in delays that cause UACs, especially those who are childhood survivors of trauma, to remain in ORR custody any longer than necessary.
- Overlapping Jurisdiction: USCIS must mitigate unnecessary procedural delays in processing the cases of UACs in ORR custody where UACs are in removal proceedings before the Executive Office for Immigration Review (EOIR). USCIS has initial jurisdiction over asylum applications filed by UACs, even where they are simultaneously in removal proceedings, pursuant to INA § 208(b)(3)(C), 8 U.S.C. § 1158(b)(3)(C). Due to short-sighted litigation, such as *J.O.P. v. DHS* (No. 8:19-cv-01944-SAG D. Md.), USCIS must exercise jurisdiction over

[1] See Department of Justice, *DOJ, DHS, HHS Hold Press Conference on Efforts to Safeguard Unaccompanied Alien Children*, Press Conference Video (June 11, 2026), at :37-12:00 (Video); Office of Refugee Resettlement, Administration for Children and Families, *Summary Report on Fraud Perpetrated by Potential and Actual Sponsors in the Unaccompanied Alien Children Program*, Oct. 6, 2026, https://acf.gov/system/files/filefield_paths/CLEAN---ORR-MEMO_Final_.2-PDF.pdf.
[2] See Video at :37-3:00; DHS, *Secretary Noem & President Trump Take Sledgehammer to Human Trafficking Networks Thanks to Robust Defense of the Homeland, Crackdown on Cartels*, Jan. 22, 2026, https://www.dhs.gov/news/2026/01/22/secretary-noem-president-trump-take-sledgehammer-human-trafficking-networks-thanks.

applications filed while the alien was designated a UAC, even if the alien has long passed the age of 18, including many situations in which the former UAC ends up in adult detention, which creates further barriers to adjudication. Thus, USCIS must exercise its initial jurisdiction expeditiously to avoid multiple continuances of removal proceedings before EOIR, which wastes government resources and contributes to the immigration court backlog.

- Indeterminate Status: UACs in ORR custody are often in a state of procedural limbo while their asylum application is pending with USCIS. USCIS seeks to efficiently complete its role in the process to bring the UAC closer to a definitive status as quickly as possible. USCIS may grant asylum, resolving the alien's status to that of an asylee and eliminating the need for continued removal proceedings. If USCIS does not grant asylum, the asylum application continues to be processed before EOIR, where the immigration judge will evaluate the UAC's asylum claim de novo, and where the UAC may also pursue alternate forms of relief. In all such cases, USCIS must take adjudicative action regarding the asylum application over which it has initial jurisdiction to make apparent the appropriate next steps in proceedings before EOIR and so the UAC and his or her legal representative, where applicable, may evaluate next steps and prepare accordingly.
- Eligibility Considerations: The asylum claims of UACs may become weaker as time goes on, particularly where they are based on past persecution and DHS may rebut the presumption of a well-founded fear of future persecution based on a fundamental change in circumstances or the possibility of internal relocation. USCIS seeks to ensure prompt scheduling and resolution of such cases so that any weakening of a potential asylum claim that accrues with the passage of time is not a result of inefficiency on the part of USCIS.
- TVPRA: 8 U.S.C. § 1232(d)(8) provides that the specialized needs of UACs must be taken into account in processing their asylum applications. In addition to the considerations outlined above, USCIS takes substantive aspects of UAC claims into account by, for instance, excusing the one-year filing deadline. *See* 8 U.S.C. § 1158(a)(2)(E); 8 CFR § 208.4(a)(5)(ii). USCIS also takes procedural aspects into consideration by ensuring the UAC has an interpreter if needed, permitting a trusted adult to attend the interview, and continually updating its mandatory training modules on children's claims, interviewing techniques, and trafficking issues. Further, rescheduling requests based on USCIS scheduling the same attorney of record for multiple UAC asylum interviews at the same time must be considered exceptional circumstances and granted. Although USCIS evaluates requests to reschedule interviews at a uniform exceptional circumstances standard, USCIS takes the specialized circumstances of UACs in ORR custody into consideration when evaluating whether circumstances beyond the UACs' control resulted in their inability to appear for the interview as scheduled, which drives the individualized exceptional circumstances determination.[3] None of these

[3] *See* INA § 240(e)(1); 8 U.S.C. § 1229a(e)(1) (defining exceptional circumstances as compelling circumstances beyond the control of the alien.

> measures taken to account for the specialized needs of UACs are hampered by expedited scheduling of the asylum interview.

Based on the above considerations, asylum office directors will aim to schedule interviews for UACs in ORR custody within a target timeframe of 24 hours to seven days after providing notice to the UAC and his or her legal representative, where applicable. USCIS will continue to provide each UAC with notice of the interview requirements and will notify legal representatives when the UAC is represented. Considering the UAC is in ORR custody and should be prepared to discuss the asylum application that he or she already filed, 24 hours to seven days' notice for an interview is reasonable, where the circumstances include participating in a non-adversarial interview with an asylum officer specially trained on non-adversarial interview techniques, children's claims, and eliciting testimony, and where USCIS may provide an interpreter in the event the UAC does not have one.

Additionally, if any UAC does not appear for an asylum interview with USCIS, either virtually or in person, the asylum office will process the UAC's case according to current failure to appear procedures, noting that USCIS scheduling the same attorney of record for multiple UAC interviews on the same date and time constitutes exceptional circumstances to excuse and reschedule conflicting interviews (i.e., to facilitate proceeding with one scheduled UAC interview on the scheduled date and time, the attorney may request rescheduling of other interviews also scheduled at the same date and time).

Given USCIS's overarching interest in processing UAC cases (including those in ORR custody) efficiently, avoiding multiple continuances and procedural delays where UACs are also in removal proceedings before EOIR, and ensuring UACs do not remain in ORR custody for prolonged periods of time where applicable, I have concluded that USCIS's interest in standardizing the exercise of discretion to schedule UAC interviews as timely as possible to outweigh any potential reliance interests on behalf of UACs and their representatives. Further, any such reliance interest was mitigated by USCIS's publication of a web alert describing the updated procedures in early August of 2026.

I considered relevant legal authority to determine whether the notice practices articulated in this memo are adequate. The minimum notice period for an asylum interview with USCIS is necessarily less than the 10 days' notice required for a hearing before an immigration judge. *See Matter of A-K-R-*, 29 I. & N. Dec. 839, 840 (BIA 2026). Unlike a removal hearing initiated by the government, the asylum interview is scheduled in response to the alien's filing of a Form I-589, Application for Asylum and for Withholding of Removal, and request that USCIS process it. There are also elevated due process considerations at stake in adversarial removal proceedings that could result in immediate removal that do not exist before USCIS in its scheduling of a non-adversarial interview with an asylum officer specifically trained in handling children's claims and eliciting testimony, as described above.

Relevant regulatory and statutory authority also support USCIS scheduling UACs in ORR custody on a more expeditious basis than the historically common 21 days' notice. By regulation, an alien should be able to discuss his or her asylum application with USCIS personnel

as soon as it is filed. *See* 8 CFR § 103.2(b)(1) (any benefit requestor must establish eligibility at the time of filing); *see also* 8 CFR § 208.3(a) and (c) (requiring that an asylum application be filed "with any additional supporting evidence" at the time of filing). In the event that the alien obtains additional supporting evidence after the time of filing, USCIS policy provides, in accordance with 8 CFR § 208.9(e)(1), that the alien can present specific evidence during the course of an asylum interview or in response to a request for corroborating evidence. Asylum officers maintain discretion to accept evidence submitted less than 14 days prior to the interview date or to grant the alien a brief extension of time during which the alien may submit additional evidence under 8 CFR § 208.9(e)(1).[4] Moreover, as recognized by statute, an alien 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 § 208(b)(1)(B)(ii), 8 U.S.C. § 1158(b)(1)(B)(ii).

Consistent with current practice, a UAC in ORR custody may voluntarily request an expedited interview by executing a waiver.[5] USCIS, however, does not require aliens to execute a waiver before an asylum office director can exercise discretion to schedule an interview with less than the default notice that is programmed into the USCIS batch scheduling system. Therefore, USCIS typically will not obtain a waiver from UACs in ORR custody before USCIS initiates the expedited scheduling of these cases within 24 hours to seven days from the time of notice.

UAC Failure to Appear Procedures

I do not consider it necessary, prudent, or in the public interest for USCIS to create separate procedures for UACs who fail to appear for an asylum interview, whether or not such interview was scheduled with fewer than 21 days' notice. One reason for this superseding memorandum, however, is to clarify that exceptional circumstances include situations in which USCIS schedules the attorney of record for multiple UAC interview at the same time, rendering the attorney unable to attend one or more of the interviews. USCIS instituted its current failure to appear for asylum interview procedures, consistent with applicable statutory and regulatory guidelines, as part of an overall effort to reduce the current affirmative asylum backlog, including by efficiently scheduling and processing cases and preserving valuable resources and interview slots. The procedures governing failure to appear for an asylum interview in place as of August 21, 2026, adequately and fairly address any legitimate need of aliens, including UACs, to reschedule asylum interviews, consistent with the exceptional circumstances standard outlined in both statute and regulation. *See* INA § 208(d)(5)(A)(v), 8 U.S.C. § 1158(d)(5)(A)(v); 8 CFR § 208.10.

[4] 8 CFR § 208.9(e) was promulgated to ensure that asylum officers had sufficient time to review evidence and clarify an alien's request to submit additional evidence would be considered an applicant-caused delay. *See Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg. 38532, 38535 (June 26, 2020) (final rule). Nothing about it was intended to create a right to an asylum interview or mandate a particular notice period for an asylum interview.

[5] AAPM Appendix 124, Waiver of 21-Day Notice for Asylum Interview (UACs in Custody), documents alien-initiated requests to schedule an asylum interview with fewer than 21 days' notice.

It is not possible to permit the rescheduling of UAC interviews absent exceptional circumstances (which may include exceptional circumstances experienced by either the alien or the alien's legal representative) and still expeditiously resolve such cases as required given the considerations described above. Were USCIS to permit the rescheduling of such interviews at a lower standard than the current generally applicable exceptional circumstances standard when an alien fails to appear, it would undermine the goals outlined above related to efficiently processing UAC cases and likely render the efforts to expeditiously process such cases futile, as interview scheduling could be subject to multiple reschedules, interview slots would be wasted, EOIR hearings would be continued, and the considerations outlined above would be largely ignored. At the same time, the specialized circumstances of UACs can be taken into account when evaluating whether a UAC applicant's failure to appear for an interview was the result of exceptional circumstances. Exceptional circumstances include circumstances beyond an alien's control that prevent him or her from attending an asylum interview. For instance, for a UAC in ORR custody, there may be circumstances outside of the UAC's control, such as an issue at the facility where the UAC is housed, that could prevent him or her from attending an asylum interview and qualify as exceptional circumstances. Additionally, if a UAC's legal representative is unable to attend the UAC's asylum interview due to an exceptional circumstance beyond his or her control and contacts USCIS within 10 days of the failure to appear, the UAC's failure to appear will be excused and the interview will be rescheduled. I have concluded that the exceptional circumstances standard may be applied to the particularized circumstances of UACs without any need to change the overall standard at which USCIS evaluates an alien's failure to appear for an interview. As such, in line with the overarching interests in expeditiously processing UAC cases, including those in ORR custody, USCIS must maintain the generally applicable failure to appear for asylum interview procedures in place as of August 21, 2026.

Conclusion

For the reasons discussed in this memorandum, USCIS will expeditiously schedule asylum interviews for UACs in ORR custody within 24 hours to seven days from the time of notice, whenever possible, and will apply the current generally applicable failure to appear for an asylum interview procedures in place as of August 21, 2026, to all UAC cases, consistent with this memorandum.

U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

December 20, 2017

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: MaryBeth Keller MBK
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 17-03:
Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children

This Operating Policies and Procedures Memorandum (OPPM) rescinds and replaces OPPM 07-01, *Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children*, dated May 22, 2007.

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I. Introduction

Immigration cases involving children are complicated and implicate sensitive issues beyond those encountered in adult cases. For instance, an infant brought into the United States illegally by his family, an older child smuggled into the United States by relatives, an adolescent gang member, and a teenager convicted as an adult for serious criminal activity are all examples of immigration cases involving children, but they may not warrant identical treatment under the law.

This OPPM provides guidance for adjudicating cases involving any unmarried individual under the age of 18, including as both respondents and third-party witnesses. It is not intended to limit the discretion of an Immigration Judge, and nothing herein should be construed as mandating a particular outcome in any specific case.

II. Definitions

Immigration law utilizes multiple terms in different legal contexts to refer to unmarried individuals who have not attained a certain age. The Immigration and Nationality Act (INA or Act) defines a "child" as an unmarried person under 21 years of age. INA §§ 101(b)(1) and (c)(1). The regulations define a "juvenile" as an alien under the age of 18, 8 C.F.R. § 1236.3, and refer to a "minor" when describing aliens under 14 years of age. 8 C.F.R. §§ 103.8(c)(2)(ii); 1236.2. The Homeland Security Act of 2002 introduced the concept of an "unaccompanied alien child (UAC)," which it defined as a child who has no lawful immigration status in the United States, has not attained 18 years of age, and who has no parent or legal guardian in the United States, or no parent

or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).

This OPPM applies to all immigration proceedings involving unmarried children under the age of 18. Therefore, to avoid confusion, any references in this OPPM to the terms "child," "unaccompanied alien child," "juvenile," or "minor" (or their plural forms) are meant to refer to an unmarried individual under the age of 18. Further, although this OPPM applies primarily to respondents, its principles may also be applicable to child witnesses in immigration proceedings, regardless of whether the witness is an alien, a U.S. citizen, or a U.S. national.

III. Basic principles

Immigration Judges should be mindful of several overarching principles when presiding over cases involving juveniles:

A. Individual circumstances. Every Immigration Judge should employ age-appropriate procedures whenever a juvenile respondent or witness is present in the courtroom. However, not all cases involving juveniles are alike, and Immigration Judges should apply appropriate procedures in juvenile cases as the specific circumstances of the case warrant and always in accordance with applicable law.

B. Best interest of the child. Issues of law—*e.g.* determinations of removability and eligibility for relief or protection from removal—are governed by statutes, regulations, and case law. Although 8 U.S.C. § 1232(c)(2) contains provisions for the Department of Health and Human Services (HHS) to consider "the best interest of the child" in certain circumstances, no similar provision exists in the INA directing Immigration Judges to consider the concept of "the best interest of the child" as a legal standard for determining removability or eligibility for relief or protection from removal. Therefore, this concept alone cannot provide a legal basis for granting relief or protection not otherwise sanctioned by law.

C. Legal and personal representation. Neither the INA nor the regulations permit Immigration Judges to appoint a legal representative or a guardian ad litem. Nevertheless, all Immigration Judges are required to provide a list of *pro bono* legal service providers in accordance with 8 C.F.R. § 1240.10(a)(2) and should encourage the use of appropriate *pro bono* resources, consistent with applicable ethical principles.

D. Judicial impartiality. Although juvenile cases may present sympathetic allegations, Immigration Judges must be mindful that they are unbiased arbitrators of the law and not advocates for either party in the cases they hear. Accordingly, Immigration Judges must remain neutral and impartial when adjudicating juvenile cases and shall not display any appearance of impropriety when presiding over such cases. *Ethics*

and Professionalism Guide for Immigration Judges, §§ V, VI, and VIII; 5 C.F.R. §§ 2635.101(b)(8) and (14).

E. Applicability to all Immigration Judges. All Immigration Judges shall be prepared to adjudicate cases involving juveniles. Accordingly, all Immigration Judges have the responsibility to be familiar with the applicable law and guidance related to juveniles and to maintain professional competence in adjudicating such cases. *Ethics and Professionalism Guide for Immigration Judges*, § IV. In particular, Immigration Judges must not only be familiar with the different statutory and regulatory definitions of "child," "juvenile," "minor," and "unaccompanied alien child" but also must apply them correctly in the appropriate context.

F. Child Abuse and Human Trafficking Protocols. Issues regarding child abuse/neglect and human trafficking may arise when adjudicating cases involving juveniles. EOIR personnel, including Immigration Judges, are required to report instances of child abuse and/or neglect and suspected human trafficking in accordance with the guidance outlined in *Identification and Referral of Potential Trafficking Victims or Traffickers before the Executive Office for Immigration Review* (April 27, 2015) and *Identification and Referral of Potential Child Abuse and/or Neglect Victims before the Executive Office for Immigration Review* (May 23, 2017). Each protocol offers tools for identifying abuse/neglect and/or human trafficking and guidance for when and how to report it. For assistance with reporting a child abuse/neglect or human trafficking case, please contact the Office of the General Counsel.

IV. Courtroom setting and procedures

With these basic principles in mind, Immigration Judges should also be cognizant of special circumstances occasionally raised by juveniles participating in immigration proceedings. Although claims in immigration court are raised in an adversarial setting, cases involving juveniles may make special demands on all parties. Therefore, consideration should be given, in appropriate circumstances, to some modifications to the ordinary courtroom operations. Nevertheless, Immigration Judges should be mindful that an alien's status as a juvenile does not, by itself, excuse compliance with statutory and regulatory requirements. The following guidance is offered to balance appropriate consideration of a juvenile's circumstances with legal requirements applicable to all immigration proceedings:

A. Courtroom orientation. The courtroom is usually an unfamiliar place for children. To the extent that resources and time permit and under the supervision of court personnel, children may be permitted to explore the courtroom—other than the Immigration Judge's bench, records of proceedings, and courtroom technological equipment such as computers and video teleconferencing units—and to practice answering simple questions in preparation for testimony. Additionally, to the extent that resources permit, court administrators should be receptive to requests by legal representatives or custodians of children to visit

immigration courts prior to the initial hearing. Court administrators should also be open to other ways to familiarize children with court operations.

B. Scheduling juvenile cases. Wherever feasible, courts should conduct cases involving juvenile respondents, particularly unaccompanied alien children, on a separate docket or at a fixed time in the week or month. If the number of cases does not warrant a separate docket, courts should attempt to schedule children's cases at a specific time on the regular docket but separate and apart from adult cases. Courts should similarly keep detained dockets for adults and children completely separate and try to ensure that dockets do not have the effect of forcing unaccompanied alien children to be transported or held with detained adults. To help ensure that juvenile and adult dockets are kept separate, court personnel will ensure that the date of birth for all juvenile respondents in immigration proceedings is entered in CASE.

C. Courtrooms. Courtrooms are not equipped with special furniture designed for children. However, Immigration Judges can and should permit reasonable modifications to the courtroom to accommodate children, such as: permitting counsel to bring pillows or booster seats for young respondents; permitting young respondents to sit in one of the pews with an adult companion or permitting the companion to sit at counsel's table; allowing a young child to bring a quiet toy, book, or other personal item into the courtroom; permitting the child to testify while seated next to an adult or friend, rather than in the witness stand; etc. These simple and common sense adjustments would not alter the serious nature of the proceedings. They would, however, help foster an atmosphere in which a child is better able to participate more fully in the proceedings.

D. Waiver of a juvenile's appearance. Unless a juvenile's appearance has been waived by the Immigration Judge, he or she is obligated to attend his or her immigration proceeding. Immigration judges should adhere to the requirements of 8 C.F.R. § 1003.25 in determining whether to waive a juvenile's appearance at a hearing. In all cases where an Immigration Judge waives the presence of a juvenile at a hearing, the Immigration Judge must state on the record that the waiver has been granted or must issue a written order to that effect.

E. Removing the robe. Like the courtroom, the robe is a symbol of the Immigration Judge's independence and authority. While most children will be far more interested in the judge's behavior than the judge's attire, the robe may be disconcerting for younger respondents. If an Immigration Judge determines in a particular case that dispensing with the robe would add to the child's ability to participate, OPPM 94-10, *Wearing of the Robe During Immigration Judge Hearings*, is modified to permit the judge to remove the robe in that instance.

F. Control access to the courtroom. Young children may be reluctant to testify about painful or embarrassing incidents, and the reluctance may increase with

the number of spectators or other respondents present. Although hearings are generally open to the public, judges should be sensitive to the concerns of juveniles if there is a motion to close the hearing pursuant to 8 C.F.R. § 1003.27.

G. Explain the proceedings at the outset. In cases involving juveniles, Immigration Judges should consider making a brief opening statement at the beginning of each proceeding or at the commencement of a specialized docket for juvenile cases to explain the purpose and nature of the proceeding, to introduce the parties and discuss each person's role, and to explain operational matters such as recording, interpreting, and note taking.

H. Pay attention to the interpreter. Immigration Judges should permit time for the interpreter and a younger child to establish some rapport by talking about unrelated matters before testimony is taken. Immigration Judges should also watch for any indication that the child and the interpreter are having difficulty communicating. Any statement to be translated should be made at an age-appropriate level and translated at that level for the child respondent.

I. Be aware of time. As in any case, the Immigration Judge should give the parties a full opportunity to present or challenge evidence. However, stress and fatigue can adversely impact the ability of a younger child to participate in his or her removal proceedings. Therefore, where appropriate, Immigration Judges should seek not only to limit the number of times that children must be brought to court but also to resolve issues of removability and relief without undue delay. Additionally, if a child is called to testify, Immigration Judges should consider limiting the amount of time the child is on the stand without compromising due process for the opposing party. Similarly, Immigration Judges should recognize that, for emotional and physical reasons, children may require more frequent breaks than adults.

J. Preparation for a juvenile's testimony. As with any witness, an Immigration Judge should be confident that the child is competent to testify in the proceedings, including whether the child is of sufficient mental capacity to understand the oath and to give sworn testimony. The explanation of the oath should vary with the age of the witness: promise "to tell the truth" or promise "to tell what really happened," etc. Children should be told that it is all right for them to say, "I don't know" if that is the correct answer and to request that a question be asked another way if the child does not understand it. Immigration Judges should also explain to the child witness that he or she should not feel at fault if an objection is raised to a question.

K. Employ child-sensitive questioning. Language and tone are especially important when juveniles are witnesses. Proper questioning and listening techniques will produce a more complete and accurate record. The immigration court process is

adversarial. Due process and fundamental fairness require that testimony by a juvenile witness, like that of any other witness, be subject to cross-examination, particularly if the testimony is speculative, vague, or contains indicia of inappropriate coaching. Nevertheless, Immigration Judges should ask and encourage the parties to phrase questions to a juvenile witness in age-appropriate language and tone. Abusive questioning should not be tolerated under any circumstances.

L. Credibility and burden of proof assessments. Testimony from a child, as with testimony from any witness, is neither inherently reliable nor inherently unreliable. As noted above, an Immigration Judge must always first ensure that a child is competent to testify before considering what weight, if any, to afford that testimony. Immigration Judges should also recognize that children, especially young children, will usually not be able to present testimony with the same degree of precision as adults. Vague, speculative, or generalized answers by a child, especially a particularly young child, are not necessarily indicators of dishonesty. Immigration Judges should recognize that a child's testimony may be limited not only by his or her ability to understand what happened, but also by his or her skill in describing the event in a way that is intelligible to adults. Immigration Judges should be mindful that children are highly suggestible and their testimony could be influenced by their desire to please judges or other adults. Immigration Judges should bear in mind, however, that legal requirements, including credibility standards and burdens of proof, are not relaxed or obviated for juvenile respondents. Thus, although vague, speculative, or generalized testimony by a child witness is not necessarily an indicator of dishonesty, it may nevertheless also be insufficient by itself to be found credible or to meet an applicable burden of proof. *See Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (finding that general testimony may be insufficient to meet the burden of proof); *Matter of E-P-*, 21 I&N Dec. 860, 862 (BIA 1997) (finding that credible testimony alone is not necessarily dispositive to meet the burden of proof).

M. Unaccompanied Alien Child (UAC). Immigration Judges should exercise special care in cases where the respondent is alleged to be a UAC. First, a UAC is eligible for voluntary departure at no cost to the child. 8 U.S.C. § 1232(a)(5)(D)(ii). To the extent practicable, an Immigration Judge should expedite consideration of a request for voluntary departure by a UAC, especially one that is in the custody of HHS.

Second, UAC status is not static, as both a UAC's age and his or her accompaniment status may change. Thus, judges should ensure that an alien claiming to be a UAC is, in fact, a UAC at the time his or her case is adjudicated. Moreover, because a UAC generally receives more favorable treatment under the law than other categories of illegal aliens, there is an incentive to misrepresent

accompaniment status or age in order to attempt to qualify for the benefits associated with UAC status.

Consequently, Immigration Judges, while remaining sensitive to the concerns of juveniles, should be vigilant in adjudicating cases of a purported UAC. In June 2017, all Immigration Court employees were reminded of their responsibilities regarding suspected fraud and abuse, particularly regarding applications for benefits, relief, or protection in removal proceedings, and were directed to take action where warranted. All EOIR employees have an ethical duty to the United States government and its citizens to disclose "waste, fraud, abuse, and corruption to appropriate authorities." 5 C.F.R. § 2635.101(b)(11). This duty applies to immigration judges and is further codified in Section VII of the *Ethics and Professionalism Guide for Immigration Judges*. Because reporting fraud and abuse in the immigration system is an ethical duty of all EOIR employees, including Immigration Judges, any suspicion of fraud or misrepresentation by someone in a UAC case should be reported to the EOIR Office of the General Counsel Fraud and Abuse Prevention Program.

V. Conclusion

Immigration cases involving juveniles are challenging; there is no blanket approach applicable to all such cases. Although juvenile cases warrant special consideration in appropriate circumstances, Immigration Judges should also be mindful that legal requirements applicable to all immigration cases are not necessarily diminished solely because the respondent is a juvenile.

If you have any questions regarding this OPPM, please contact your Assistant Chief Immigration Judge.

OOD
PM 25-47
Effective: September 12, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: September 12, 2025

CASE PRIORITIES AND IMMIGRATION COURT PERFORMANCE MEASURES

PURPOSE:	Clarify and reaffirm EOIR case priorities and performance measures
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	*Case Priorities and Immigration Court Performance Measures*

To serve the national interest, EOIR must achieve the effective and efficient enforcement of our Nation's immigration laws. Through this Policy Memorandum (PM), EOIR clarifies its priorities and system of measurement to ensure that each immigration court has a standard to assess its progress in advancing the national interest. This PM is effective immediately, and it applies prospectively to all new cases filed and to all immigration court cases reopened, recalendared, or remanded. This PM supersedes and replaces the January 17, 2018, Executive Office for Immigration Review (EOIR) memorandum entitled "Case Priorities and Immigration Court Performance Measures" (2018 Memorandum), and it supplements both PM 19-13, *Use of Status Dockets* (Aug. 16, 2019) and PM 20-07, *Case Management and Docketing Practices* (Jan. 31, 2020).

I. Background

On December 5, 2017, the Attorney General issued a memorandum to all EOIR employees entitled "Renewing Our Commitment to the Timely and Efficient Adjudication of Immigration Cases to Serve the National Interest." The Attorney General's memorandum outlined several principles to ensure that the adjudication of immigration cases serves the national interest, including addressing a then-approximately 650,000 case backlog before the immigration courts.

In response, the EOIR Director issued the 2018 Memorandum, which laid out EOIR's specific priorities and measures for adjudicating cases that would support the achievement of those principles. A few months later, EOIR individualized the metrics from the 2018 Memorandum and added additional individualized case completion goals for Immigration Judges. Shortly thereafter,

EOIR further increased its efforts to consolidate and institutionalize agency policy regarding case management and docketing practices by issuing the case completion guidelines in PM 20-07.

Subsequently, on October 19, 2021, EOIR leadership revoked all individualized performance metrics for Immigration Judges. EOIR leadership did not formally rescind or replace the portions of the 2018 Memorandum and PM 20-07 unrelated to individualized performance metrics for Immigration Judges.[1] However, notwithstanding their continued validity, during the period between October 19, 2021, and January 19, 2025, EOIR leadership issued numerous policies, which undermined the goals of the 2018 Memorandum and PM 20-07, and failed to take appropriate steps to effectuate those Memoranda. In part, due to those actions (or inactions), the EOIR immigration court backlog grew to historical levels.

Beginning January 20, 2025, however, EOIR has taken numerous steps to tackle that backlog and restore the integrity of EOIR adjudications for the public that EOIR serves. Now, to further align EOIR's operations with Executive Branch policies and priorities, this PM refocuses the agency on a primary mission: timely and fairly adjudicating immigration cases. Accordingly, this PM builds upon PM 20-07, supersedes and replaces the 2018 Memorandum, and supplements PM 19-13.

II. Case Prioritization

Pursuant to this PM, any case that is subject to a completion benchmark listed in Appendix A, or subject to another established completion benchmark, *see*, *e.g.*, PM 25-41, *Updates to the Dedicated Docket* (Aug. 19, 2025) (setting benchmarks for completing cases on EOIR's Dedicated Docket), is a priority case for the agency.

Since its creation in 1983, EOIR has prioritized all cases involving individuals in detention or custody, regardless of the custodian. *See* PM 20-07 at 2 (discussing the history of prioritizing detained cases). Likewise, EOIR has prioritized all cases subject to a statutory or regulatory deadline, as well as cases subject to a federal court-ordered deadline. *See, e.g., id*. at 3 (discussing statutory deadlines for credible fear reviews and reasonable fear reviews). Those case categories should continue to be prioritized in addition to cases listed in Appendix A or subject to another established completion benchmark.

Repeated changes in case prioritization decrease adjudicative efficiency and imperil EOIR's ability to track case data over time, hindering the agency's ability to serve its mission and the American people. Thus, these case prioritization categories are expected to remain stable and consistently effectuated moving forward. However, as developments warrant, other priority designations may

[1] The 2018 Memorandum also formed a basis for PM 19-13 as its definition of a status case was formally adopted into that PM, and it was included as an Appendix to that PM. On October 4, 2022, the EOIR Director issued Director's Memorandum 23-01, which rescinded PM 19-13. It is not entirely clear if the EOIR Director intended to rescind the 2018 Memorandum as well, but there is no record of any formal revocation of it. In any event, on March 21, 2025, PM 19-13 was reinstated, which would have also reinstated the 2018 Memorandum as its Appendix, even if it had been rescinded. *See* PM 25-27, *Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13* (Mar. 21, 2025). The instant PM now supersedes and cancels the 2018 Memorandum and, accordingly, supplements PM 19-13 in its place. The instant PM retains the same definition of a status case used in PM 19-13 and the 2018 Memorandum.

be additionally established, and other categories of cases may be tracked regardless of whether they reflect a priority designation.

The designation of a category of cases as a priority is an indication that such cases should be completed expeditiously and without undue delay consistent with due process. Because the designations outlined in this PM apply prospectively, nothing in this PM requires rescheduling currently docketed cases, and immigration courts may maintain those dockets as scheduled. Nevertheless, Immigration Judges retain discretion over their dockets to reschedule cases in furtherance of this PM, if they so choose. The designation of priority cases is also not intended to diminish or reduce the significance of other cases. Indeed, the timely completion of *all* cases consistent with due process remains a matter of the utmost importance for the agency. Finally, the designation of a case as a priority is not intended to limit the discretion afforded an Immigration Judge under applicable law, nor is it intended to mandate or direct a specific outcome in any particular case.

III. Immigration Court Performance Metrics

EOIR will implement the immigration court performance metrics ("court-based performance metrics") listed in Appendix A of this PM.

Almost every trial court system in the United States uses performance or case completion metrics to ensure that it is operating efficiently and appropriately.[2] Recognizing the importance of establishing performance measures, the National Judicial College, in association with the Department of Justice, has outlined several essential principles for managing cases including "[p]romulgation and monitoring of time standards for the overall disposition of cases. . . ."[3] Performance measures are common, well-established, and necessary mechanisms for evaluating how well a court is performing its core role of adjudicating cases, and EOIR is no exception to the rule.

It is not novel or unique to apply performance measures to EOIR's immigration courts.[4] Indeed, EOIR has in multiple instances implemented evaluative case processing metrics alongside case

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[2] In the federal system, for example, the Civil Justice Reform Act of 1990 requires semiannual reporting of the number of certain types of civil cases and motions pending beyond a particular date with the intent of reducing litigation delays in federal district courts. *See* 28 U.S.C. § 476. Many administrative adjudicatory systems also feature case processing time standards, either by statute, regulation, or policy. *See, e.g.*, 42 U.S.C. § 1395ff (establishing hearing deadlines for cases before administrative law judges at the Department of Health and Human Services); Fed. Energy Regulatory Comm'n, *Complaint Resolution Paths and Target Time Frames*, https://www.ferc.gov/complaint-resolution-paths-and-target-time-frames (last updated April 24, 2025) (outlining time standards for administrative law judges hearing cases at the Federal Energy Regulatory Commission). Finally, most states have adopted court case processing time standards, many of which follow model standards. *See* Nat'l Ctr. for State Courts, *Model Time Standards for State Trial Courts* (2011), https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1836/.

[3] *See* Dressel, Hon. W.F., *Court Organization and Effective Caseflow Management: Time to Redefine* (2010), National Judicial College in association with U.S. Dept. of Justice, Bureau of Justice Assistance, *available at* https://www.judges.org/wp-content/uploads/2020/03/Time-to-Redefine.pdf.

[4] The Board of Immigration Appeals is subject to regulatory performance measures. *See*, *e.g.*, 8 C.F.R. § 1003.1(e)(8). The Office of the Chief Administrative Hearing Officer has previously been subject to case completion goals set by policy and may have new goals set in the future. *See* PM 25-13, *Office of the Chief Administrative Hearing Officer* (Jan. 31, 2025).

prioritization, such as the enforcement of statutory or regulatory deadlines for the completion of certain types of cases, including for certain applications for asylum, *see, e.g.*, 8 U.S.C. § 1158(d)(5)(A)(iii), and for cases subject to EOIR's goals under the Government Performance and Results Act (GPRA) of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993), and the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

EOIR has built upon these foundational statutory authorities through numerous measures designed to improve the efficiency and integrity of the nation's immigration courts. Establishing performance measures for the immigration courts and regularly reviewing immigration court performance is vital to ensuring the immigration court system is performing strongly; EOIR is adjudicating cases fairly, expeditiously, and uniformly consistent with its mission; and, EOIR is taking appropriate strides to address its pending caseload in support of the national interest. *See* Exec. Order No. 14159, 90 Fed. Reg. at 8443; Exec. Order No. 14165, 90 Fed. Reg. at 8467.

Although EOIR's immigration court employees have certainly made significant progress since January 20, 2025, to address the substantial backlog exacerbated by prior leadership, the enormity of the remaining backlog—and the agency's interests in maintaining appropriate adjudicatory efficiency—demand that the agency implement immigration court performance measures. Accordingly, the court-based performance metrics in Appendix A should be regularly tracked and accounted for by Assistant Chief Immigration Judges (ACIJs). These metrics are intended to determine which immigration courts are operating in an appropriate manner and which may need more specialized attention in the form of additional or new court management or personnel, creative thinking and planning, or other relevant action.

Further, the metrics established by this PM work in conjunction with PM 20-07, which provides additional guidelines and may subject some cases to more than one metric. EOIR will also track the age of existing cases at each court and may implement measures for excessively aged cases in the future.

These court-based measures are not intended to apply specifically to any individual employee. Rather, these metrics apply to the entire immigration court as a whole, and all immigration court employees share responsibility to ensure that their respective immigration courts successfully meet them.

IV. Conclusion

To meet the current caseload, continue to reduce the existing immigration court backlog, ensure appropriate adjudicatory efficiency, and support the national interest in achieving the faithful, effective, and efficient enforcement of our Nation's immigration laws, EOIR will implement the court-based performance metrics outlined in Appendix A. As a professional administrative court system within the Department of Justice exercising the Attorney General's delegated authority, EOIR should strive to restore its adjudicatory integrity and standing as the preeminent administrative adjudicative agency within the federal government. All EOIR adjudicators should want to fulfill the agency's mission to the best of their abilities and at the highest level possible. System-wide standards for case prioritization and court performance metrics are common-sense and critical parts of achieving those goals.

The EOIR Director has the authority under 8 C.F.R. § 1003.0(b)(1)(ii) to "[d]irect the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in [her] discretion, to set priorities or time frames for the resolution of cases" and "otherwise to manage the docket of matters to be decided by" Immigration Judges. Under 8 C.F.R. § 1003.0(b)(1)(iv), the Director also has the authority to "[e]valuate the performance" of the Office of the Chief Immigration Judge and "take corrective action where needed." This PM utilizes those authorities to ensure that Immigration Judges will continue to adhere to applicable law in adjudicating cases, complete those cases efficiently and fairly, and restore integrity to EOIR adjudications, which was eroded significantly between 2021 and 2025.

Finally, to be clear, EOIR is not reinstating individualized performance measures for Immigration Judges at the present time. The partisan and intentional misrepresentation of the measures implemented in 2018 as "quotas" spawned numerous debates, which only served as a distraction—likely by design—and undermined the utility of the measures. *Cf.* PM 25-02, *EOIR's Core Policy Values*, 5 (Jan. 27, 2025) ("EOIR should not countenance any obtuse or tendentious arguments intended to undermine the application of its policies"). Additionally, despite the absurd discourse, baseless innuendoes of incompetence or a lack of ethics by Immigration Judges, and general "pearl-clutching" surrounding the appropriateness of the 2018 measure related to Immigration Judges completing 700 cases per year, recent history has demonstrated that Immigration Judges can easily meet that milestone even without such a measure.[5] Moreover, EOIR already continually monitors Immigration Judge performance and does not necessarily need a 700-case performance measure to ensure accountability, integrity, and fidelity to the law of its Immigration Judge corps.[6] To that end, ACIJs are reminded of their responsibility for ensuring the Judges they supervise are adjudicating cases impartially and in accordance with the law.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case. Nothing in this PM limits an adjudicator's independent judgment and discretion in adjudicating

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[5] In Fiscal Year (FY) 2024, 735 Immigration Judges completed 704,514 cases, an average of roughly 958 cases per Immigration Judge. *See generally* EOIR Workload and Adjudication Statistics, https://www.justice.gov/eoir/workload-and-adjudication-statistics. Moreover, the true average per Immigration Judge was almost certainly higher as the 735 total number of Immigration Judges included supervisory or management Judges who only infrequently adjudicated cases. The general silence in the face of these statistics from those who previously criticized the 700-completion performance measure as unrealistic or only attainable by unethically or incompetently violating due process underscored the dishonesty or hypocrisy of the initial criticism. Further, FY 2024 does not appear to have been a unique period. Through the first three quarters of FY 2025, Immigration Judges are averaging approximately 858 completions per Immigration Judge. *See id*. That average, too, almost certainly is an underestimate as the total number of Immigration Judges on board at EOIR at the end of Quarter Three includes both supervisory or management judges who only infrequently adjudicate cases and a significant number of judges who have already stopped adjudicating cases because they volunteered for the Deferred Resignation Program.

[6] Furthermore, past performance evaluations of Immigration Judges, nearly all of whom received the highest rating notwithstanding a wide range of performance abilities and commitments to applying the law impartially, were poor vehicles for assessing Immigration Judge quality. Although EOIR may revise its performance evaluation standards for adjudicators subject to such evaluations in the future, those evaluations cannot—and do not—substitute for the Attorney General's plenary judgment as to who merits being or remaining an inferior officer adjudicator at EOIR. *See* PM 25-23, *Inferior Officers* (Feb. 21, 2025).

cases or an adjudicator's authority under applicable law.

Please contact your supervisor if you have any questions.

APPENDIX A
IMMIGRATION COURT PERFORMANCE METRICS

1. Ninety-five percent (95%) of all non-status[7] detained[8] removal[9] cases should be completed[10] within 60 days of filing of the Notice to Appear (NTA), reopening or recalendaring of the case, remand from the Board of Immigration Appeals (BIA), or notification of detention.

2. Ninety-five percent (95%) of all non-status non-detained removal cases should be completed within 365 days (1 year) of filing of the NTA, reopening or recalendaring of the case, remand from the BIA, or notification of release from custody.

3. Ninety-five percent (95%) of all motions should be adjudicated within 30 days of filing.

4. Ninety-five percent (95%) of all custody redetermination requests should be completed within 5 days of the request for redetermination.

5. Ninety-five percent (95%) of all merits hearings should be completed on the initial scheduled individual merits hearing date.

6. One hundred percent (100%) of all credible fear reviews should be completed within seven (7) days of the initial determination by an asylum officer that an alien does not have a credible fear of persecution. *See* INA § 235(b)(l)(B)(iii)(III), 8 U.S.C. § 1225(b)(1)(B)(iii)(III). One hundred percent (100%) of all reasonable fear reviews should be completed within ten (10) days of the filing of the negative reasonable fear determination as reflected in Form I-863. *See* 8 C.F.R. § 1208.31(g).

7. One hundred percent (100%) of all expedited asylum cases should be completed within the statutory deadline. *See* INA 208(d)(5)(A)(iii); 8 U.S.C. § 1158(d)(5)(A)(iii).

8. Ninety-five percent (95%) of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from detention by the IHP custodian.

9. One hundred percent (100%) of all electronic and paper records should be accurate and complete.

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[7] A status case is (1) one in which an Immigration Judge is required to continue the case pursuant to binding authority in order to await the adjudication of an application or petition by U.S. Citizenship and Immigration Services; (2) one in which the Immigration Judge is required to reserve a decision rather than completing the case pursuant to law or policy; or (3) one which is subject to a deadline established by a federal court order.

[8] A detained case is one where the alien is in some type of official custody at the time of the EOIR hearing, regardless of whether the Department of Homeland Security, the Department of Health and Human Services, or another federal, state, or local entity is the custodian.

[9] A "removal" case includes a case in removal proceedings, in addition to any reopened, recalendared, or remanded cases in exclusion or deportation proceedings.

[10] A completed removal case is one in which a final decision has been rendered concluding the case at the immigration court level and encompasses an order of removal, an order of voluntary departure, an order terminating proceedings, or an order granting protection or relief from removal. For other types of cases, a completed case is one in which a final decision has been rendered appropriate for the specific type of case proceeding. A case that is administratively closed is still a pending case and, thus, not a completed case.

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

ORDER

Upon Consideration of Defendants' Opposition to Plaintiff' Motion for Preliminary Injunction and Reply to Plaintiffs' Opposition to the Motion to Reconsider, it is hereby

ORDERED that Defendants' Motion is Granted, and it is further

ORDERED that the October 30, 2026 Temporary Restraining Order is hereby dissolved.

Dated:

_____
Brendan A. Hurson
United States District Court Judge