

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

The Door, *et al.*,

Plaintiffs,

vs.

Joseph B. Edlow, *et al.*,

Defendants.

Case No. 8:26-cv-04326-BAH

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF EX PARTE MOTION FOR A
STAY UNDER THE ADMINISTRATIVE PROCEDURE ACT AND TEMPORARY
RESTRAINING ORDER**

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I. INTRODUCTION

Right now, every day, a child is appearing before an asylum officer to describe the most traumatic moments of her life without preparation, without the evidence she needs, and without the lawyer she knows and trusts. Though she is represented by counsel, her lawyer received notice of the asylum interview days or even hours earlier, without the time to gather additional evidence or prepare her. In the meantime, her lawyer tried to reschedule the interview due to having to attend four other asylum interviews the same day—including one scheduled at the very same time, but the government denied the request because it did not qualify as “exceptional circumstances.” Both the child and her attorney are paralyzed in this new reality because of two unlawful policies implemented by USCIS to keep counsel from effectively representing their child clients, stripping those children of their rights to counsel and their access to the asylum process.

When a child arrives in the United States without a parent or legal guardian after fleeing persecution, trafficking, or abuse at home, that child cannot lawfully be deported without a meaningful opportunity to apply for asylum. Given the unique vulnerability of these unaccompanied children, Congress provided them with heightened protections, including attorney representation, to the greatest extent practicable, in their immigration proceedings; and granted a right to present their asylum claims through a non-adversarial interview before U.S. Citizenship and Immigration Services (“USCIS”) in the first instance, rather than in a more formal court setting. In recent weeks, however, USCIS has launched a campaign to eviscerate these rights.

Despite a longstanding policy of providing 21 days’ notice prior to an asylum interview for all applicants, USCIS is now specifically targeting unaccompanied child applicants across the country for radically reduced notice—sometimes just days, or even less than one day, before an interview (the “Inadequate Notice Policy”). USCIS’s new notice policy deprives children and their counsel of the time necessary to prepare for asylum interviews, which require a child to recount harrowing personal experiences to a stranger. The short window between notice and the interview also makes it impossible for children and their counsel to submit supplemental evidence before

USCIS’s own regulatory deadline, which is 14 days prior to the interview date. 8 C.F.R. § 208.9(e)(1). Compounding this harm, USCIS recently changed its rescheduling policy to require “exceptional circumstances” to reschedule an asylum interview (the “Exceptional Circumstances Policy”) and has denied rescheduling requests even when a child’s attorney is scheduled for multiple asylum interviews at the same time. As a result, children’s immigration counsel, including Plaintiffs in this action, have been left with impossible choices because their attorneys cannot be in two places at once.

Because of USCIS’s policy changes, children are being rushed through high-stakes asylum interviews under conditions of extreme stress without sufficient preparation, without trusted counsel present, and without an opportunity to obtain and submit critical evidence to support their claims. The six Plaintiff organizations are facing several hundred asylum interviews with scarcely any notice or time to prepare, forcing them to stop almost all other work to provide even the barest representation. Every day that passes, more children are forced to appear at their asylum interviews unprepared and without trusted counsel. In one case, USCIS refused to reschedule the interview of an unaccompanied child who had just given birth to a preterm baby, with both child and baby suffering from health consequences that would have made attendance at the interview unsafe. Despite counsel’s pleas to reschedule, USCIS not only refused but issued the child a notice for failure to appear.

This chaotic, harmful situation is entirely unnecessary. It is no secret that since taking office in January 2025, the Trump administration has made the removal of immigrant children from the United States a priority, convening a multi-agency task force designed both to speed up removal of unaccompanied minors and to do so “without lawyers.”¹ Its policies to further that priority are arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act. USCIS has articulated no lawful justification for depriving unaccompanied

¹ Alexandra Villareal, *Trump Ally Stephen Miller Leads Sweeping Push to Accelerate Removal of Migrant Children*, The Guardian (Sep. 19, 2026, at 06:00 ET), <https://www.theguardian.com/us-news/2026/sep/19/stephen-miller-trump-migrant-children>.

children of the 21-day notice generally applicable to asylum applications, nor for restricting rescheduling to exceptional circumstances. No such justification exists. To the contrary: singling out unaccompanied children for especially harsh scheduling policies is plainly inconsistent with congressional intent.

An immediate stay is necessary because Plaintiffs—legal service providers whose core mission is to provide representation to as many unaccompanied children as possible—and their child clients are suffering significant irreparable harm from these two unlawful policies. The relief Plaintiffs seek for themselves and their unaccompanied child clients is modest: a return to the status quo where children had a meaningful opportunity to prepare for and participate in their immigration cases. Without a stay of USCIS’s Inadequate Notice Policy and Exceptional Circumstances Policy, Plaintiffs and their clients will continue to be deprived of meaningful access to the asylum process, rendering null the procedural protections enshrined in the TVPRA, 8 U.S.C. § 1232(a)(5)(D), (c)(5), (d)(8), and the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C). The risks to unaccompanied children are too great to allow USCIS’s policies to continue while the Court evaluates the merits of this case.

II. STATEMENT OF FACTS

A. The TVPRA Guarantees Unaccompanied Children Access to a Unique Asylum Application Process.

After disturbing reports that unaccompanied children were facing detention and deportation without legal representation, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), 8 U.S.C. § 1232, with bipartisan support. Recognizing that traumatized children cannot be expected to navigate the asylum process alone or on accelerated timelines, Congress exempted unaccompanied children from expedited removal proceedings, permitted them to apply for asylum beyond the one-year time limit imposed on adults, provided these children the right to a non-adversarial asylum interview before USCIS, and required that the asylum process “be governed by regulations which take into account the specialized needs of unaccompanied [noncitizen] children.” 8 U.S.C. § 1232(a)(5)(D), (d)(8); 8

U.S.C. § 1158(a)(2)(E) (exempting unaccompanied children from the INA’s one-year filing deadline for asylum and channeling their applications through USCIS in the first instance), (b)(3)(C). Congress further mandated that the Office of Refugee Resettlement (“ORR”), the government agency with custody over these children, ensure “to the greatest extent practicable” that they have the assistance of counsel. 8 U.S.C. § 1232(c)(5).

Of the many protections enshrined in the TVPRA, two are especially at risk here: *first*, Congress’s unique commitment to ensuring that unaccompanied children are represented in immigration proceedings by an attorney or qualified representative, and *second*, the unaccompanied child’s right to pursue the “affirmative” asylum process through procedures that take into account their specialized needs, including a non-adversarial interview before a USCIS asylum officer in the first instance.

1. Congress Intended for Unaccompanied Children to Have Legal Representation.

The TVPRA directs the Secretary of Health and Human Services to “ensure, to the greatest extent practicable” that any unaccompanied child who was or is in the custody of the Office of Refugee Resettlement “have counsel to represent them in legal proceedings or matters” at no cost to the child. 8 U.S.C. § 1232(c)(5). As stated by the House Appropriations Committee, providing counsel is “absolutely critical to ensure that children understand their rights as they navigate the legal process to determine their status in the United States.” H.R. Rep. No. 111-220, at 165. What began as an effort to secure pro bono assistance turned into congressional funds to hire dedicated counsel to provide full legal representation to unaccompanied children through ORR’s Unaccompanied Children’s Program. *See* Consolidated Appropriations Act, 2012, Pub. L. 112-74, Div. F, Tit. II, 125 Stat. 786, 1077 (2011); 45 C.F.R. § 410.1309(a)(4). Plaintiffs are members of the network of legal service providers who, for the last 13 years, were engaged under this appropriation of funds to represent unaccompanied children. *See* Richardson Decl. ¶¶ 17–18; Sanchez Kennedy Decl. ¶ 7; Avila-Cimpeanu Decl. ¶ 9; Hough Decl. ¶ 17; Donovan-Kaloust Decl. ¶ 6; Nally Decl. ¶ 7.

The role of counsel in fulfilling the mandate of the TVPRA cannot be overstated. As Senator Dianne Feinstein noted when she introduced the TVPRA in the Senate in 2008, the passage of the TVPRA marked an “important step” in the protection of unaccompanied children, a “most vulnerable group” to whom the United States owes “a special obligation” to ensure humane and fair treatment. 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008). In recognition of the challenges a child alone in the United States faces when navigating the asylum process, including the time it may take for an unaccompanied child to understand their legal rights, secure counsel, prepare applications, and secure the emotional and physical stability to meaningfully present a claim, Congress directed that “[a]pplications for asylum and other forms of relief from removal in which an [unaccompanied child] is the principal applicant shall be governed by regulations which take into account the specialized needs of [unaccompanied children] and which address both procedural and substantive aspects of handling [unaccompanied children’s] cases.” 8 U.S.C. § 1232(d)(8). The provision of free legal counsel was—and still is—a critical component of the TVPRA.

2. Plaintiffs’ Child Clients Have the Right to a Non-Adversarial Asylum Interview Process.

All noncitizens physically present in the United States or who arrive in the United States, irrespective of their immigration status, have a statutory right to apply for asylum. 8 U.S.C. § 1158(a)(1). A person in removal proceedings may file a “defensive” asylum application before an immigration judge. *See* 8 U.S.C. § 1229a. Anyone not in removal proceedings may file an “affirmative” asylum application with USCIS. *See* 8 C.F.R. § 208.2(a). Whereas defensive proceedings in immigration court are adversarial, with cross-examinations by government lawyers, affirmative interviews are non-adversarial and take place in a local Asylum Office. *See id.* § 208.9(b).

Again, because of unaccompanied children’s status as a vulnerable group, Congress, through the TVPRA, amended portions of the Immigration and Nationality Act (“INA”) by providing unaccompanied children the right to file affirmative asylum applications with USCIS, even after they have been placed in removal proceedings. *See* 8 U.S.C. § 1158(b)(3)(C). Thus,

“[i]nstead of having to be cross-examined in an adversarial courtroom by trained government lawyers, unaccompanied children engage with USCIS officers trained to conduct non-adversarial interviews and to apply child-sensitive and trauma-informed interview techniques.” *J.O.P. v. U.S. Dep’t of Homeland Sec.*, 409 F. Supp. 3d 367, 373 (D. Md. 2019).

There is a meaningful difference between an in-person asylum interview at a USCIS Asylum Office and an adversarial court hearing before an immigration judge, with cross-examination by a Department of Homeland Security (“DHS”) trial attorney. USCIS asylum officers are required to conduct interviews in a “non-adversarial manner,” with the goal of eliciting all relevant information to assess an applicant’s eligibility for asylum. 8 C.F.R. § 208.9(b). The interview is the only opportunity an asylum applicant has before USCIS to provide their own testimony and address any potential concerns the asylum officer has with the application. *See* USCIS, Refugee, Asylum, and International Operations (RAIO), *RAIO Directorate: Interviewing – Introduction to the Non-Adversarial Interview Lesson Plan*, 10–12.² Asylum officers are trained to use “child-sensitive questioning and listening techniques that facilitate eliciting information from children” during the asylum interview. USCIS, *RAIO Directorate: Children’s Claims Lesson Plan*, 3.³

Asylum officers are also trained to expect that a child represented by counsel will produce documentary evidence. The RAIO Children’s Claims Lesson Plan states: “A child, through his or her advocate or support person, is expected to either produce such documentation or offer a reasonable explanation as to why those documents cannot be obtained. What is reasonable will depend on the child’s individual circumstances, *including whether or not the child is represented* and the circumstances of his or her flight.” *Id.* at 42 (emphasis added).

² Available at https://www.uscis.gov/sites/default/files/document/foia/Interviewing_-_Intro_to_the_NonAdversarial_Interview_LP_RAIO.pdf.

³ Available at https://www.uscis.gov/sites/default/files/document/foia/Childrens_Claims_LP_RAIO.pdf.

Given the extraordinarily high stakes in asylum proceedings where applicants bear the burden of proof, attorneys require specialized training and ample time to gather necessary evidence—some of which may be overseas—to fully prepare for the asylum interview and finalize the asylum application. *See* Richardson Decl. ¶ 30; Avila-Cimpeanu Decl. ¶¶ 18–20; Donovan-Kaloust Decl. ¶¶ 17–20; Hough Decl. ¶ 27; Sanchez Kennedy Decl. ¶¶ 24–25; Nally Decl. ¶¶ 14–15. Regulations provide that once an application is filed, an applicant (or a child through her representative) may file additional, supporting evidence up to 14 days prior to the scheduled asylum interview, with any evidence submitted after that subject to the discretion of the asylum officer to accept or reject. 8 C.F.R. § 208.9(e)(1).

B. USCIS’s Historic Policies Governing Notice, Rescheduling, and Presentation of Supplemental Evidence in Asylum Cases Were Consistent with The TVPRA.

Unaccompanied children seeking asylum have almost always experienced trauma, intense fear, or exploitation in their countries of origin. *See* Richardson Decl. ¶¶ 22–23; Sanchez Kennedy Decl. ¶ 10; Avila-Cimpeanu Decl. ¶ 16; Donovan-Kaloust Decl. ¶¶ 13, 17; Nally Decl. ¶ 12; Hough Decl. ¶ 11. An attorney with specialized training in representing children in asylum proceedings often needs several months to develop the rapport necessary for an unaccompanied child to feel comfortable sharing the traumatic events that form the basis of their claim for protection. *See* Donovan-Kaloust Decl. ¶¶ 13, 17; Nally Decl. ¶¶ 12–13; Richardson Decl. ¶ 23; Avila-Cimpeanu Decl. ¶¶ 12, 15; Hough Decl. ¶¶ 21, 27; Sanchez Kennedy Decl. ¶¶ 15–17. That relationship of trust is essential to the attorney’s effective development of the case, to their collection of evidence necessary to meet the statutory burden of proof to obtain asylum, and to their ability to prepare their child clients for an interview intended to elicit sensitive facts with weighty legal significance. *Id.* Consistent with the TVPRA, USCIS’s historic practices facilitated both the preparation and presentation of unaccompanied children’s asylum applications in the following ways.

A Minimum of 21 Days’ Notice Before an Asylum Interview. USCIS’s Affirmative Asylum Procedures Manual (“AAPM”), the agency’s comprehensive guide for asylum officers, provides that interview notices are generated for interviews within 45 days or within 21 or 22 days

of the interview date, depending on how the case is selected for interview. AAPM § II.G.3.⁴ Throughout the course of Plaintiffs’ practice representing unaccompanied children seeking asylum before USCIS, the agency adhered to this policy of issuing written notice of an asylum interview at minimum 21 days before the scheduled interview date. *See, e.g.*, Donovan-Kaloust Decl. ¶ 20; Richardson Decl. ¶ 25; Avila-Cimpeanu Decl. ¶ 18; Hough Decl. ¶ 28; Sanchez Kennedy Decl. ¶ 21, 48 (asylum officer asking Plaintiff’s client to sign a declaration “waiving his right to receive 21 days’ notice”).

Adequate notice before an asylum interview is essential to Plaintiffs’ ability to fulfill their missions of providing effective legal representation to unaccompanied children seeking asylum. *See* Nally Decl. ¶ 14; Sanchez Kennedy Decl. ¶ 24; Hough Decl. ¶ 29; Donovan-Kaloust Decl. ¶ 20; Avila-Cimpeanu Decl. ¶¶ 18–20; Richardson Decl. ¶¶ 26–27, 30. From the time an attorney receives the interview notice to the day of the interview, several critical steps must occur to render a complete asylum application and ensure that an unaccompanied child can present effective testimony.

First, attorneys use the time prior to the interview to gather and submit any supplemental evidence in support of the child’s asylum application. *See* Hough Decl. ¶ 29; Richardson Decl. ¶ 26; Avila-Cimpeanu Decl. ¶¶ 19–20; Nally Decl. ¶ 15; Sanchez Kennedy Decl. ¶¶ 21, 24; Donovan-Kaloust Decl. ¶ 20. Historically, and as explicitly permitted under the regulations, Plaintiffs were able to submit supplemental evidence to the Asylum Office after an interview notice had been issued. 8 C.F.R. § 208.9(e)(1) (supplemental evidence filings allowed up to 14 days prior to interview); *see also* Declaration of Non-Party Witness Lauren Fisher Flores of American Bar Association South Texas Pro Bono Asylum Representation Project (ProBAR) (“Fisher Flores Decl.”) ¶ 29 (“Local practice was to bring supporting evidence packets on the day of the interview.”). This evidence consisted of updated client declarations, letters of support, psychological or medical evaluations, expert declarations, updated country conditions evidence,

⁴ Available at <https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf>.

and/or briefing. *See, e.g.*, Richardson Decl. ¶¶ 26, 30; Sanchez Kennedy Decl. ¶¶ 22, 25; Hough ¶¶ 27, 29. In other words, the notice period accounted for the right to supplement an application; it was therefore critical to Plaintiffs’ ability to present a complete and effective application on behalf of their clients and, given that country conditions can change rapidly, ensure that the application included the most updated corroborating evidence. *See* Richardson Decl. ¶ 26; Nally Decl. ¶ 14; Avila-Cimpeanu Decl. ¶¶ 18–20; Sanchez Kennedy Decl. ¶¶ 21–22, 25; Donovan-Kaloust Decl. ¶¶ 18, 20; Hough Decl. ¶¶ 27, 29.

Second, and equally important, the attorney would begin preparing their child client—sometimes barely old enough to form sentences—to testify at the interview. Since an asylum seeker’s testimony during the interview is the principal tool asylum officers use to evaluate an asylum claim, it is paramount that a child understand what the interview will be like, who will sit where, how to use an interpreter, the importance of telling the truth and providing comprehensive testimony, and how to manage the intense stress and anxiety asylum interviews cause many children. *See, e.g.* Nally Decl. ¶ 15; Richardson Decl. ¶¶ 27, 30; Avila-Cimpeanu Decl. ¶¶ 18–20. Published research corroborates Plaintiffs’ experiences: preparing a child for an asylum interview is time-intensive and requires providing children with the support necessary to recount traumatic experiences to an asylum officer without shutting down.⁵

⁵ *See, e.g.*, van Os et al., *Finding Keys: A Systematic Review of Barriers and Facilitators for Refugee Children’s Disclosure of Their Life Stories, Trauma, Violence & Abuse* (2020) (“Social workers, mentors, and guardians should have time to build trust and to help a young refugee in revealing the life story before the minor is heard by the migration authorities.”); S. Diaz & C.E. Frazier, *Child Trauma: Research, Law, and Policy for Considerations in Immigration Proceedings* (Loyola Univ. Chi. 2023), <https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1043&context=chrc>. (explaining that when children “are overwhelmed with fear, they may lose the capacity to put their experiences into words,” and their brains “may not encode the traumatic memory in a verbal, linear narrative at all”); S. Chilliak et al., *Interviewing Asylum-Seeking Children: A Scoping Review of Research to Inform Best Practices, Trauma, Violence & Abuse* (2024) (reporting that asylum-seeking youth “felt they were given inadequate time to prepare for their hearings, which exacerbated stress.”).

Opportunity to Reschedule Interviews. After receiving an interview notice, Plaintiffs historically had the opportunity to reschedule the interview, once as a matter of course and one additional time for “good cause.” *See* AAPM, § III.T (“As a matter of Asylum Division policy, the Asylum Office reschedules an interview if it is the applicant’s first request for a rescheduling, and the request is received prior to the interview date. [. . .][If] the interview has already been rescheduled on one (1) occasion, the applicant must establish that the request for a rescheduling is due to ‘good cause.’”). The AAPM defines “good cause” as a “reasonable excuse for being unable to appear for an asylum interview.” *Id.*

In Plaintiffs’ experience, USCIS always rescheduled for good cause. *See, e.g.,* Avila-Cimpeanu Decl. ¶ 21; Richardson Decl. ¶ 28; Nally Decl. ¶ 19; Sanchez Kennedy Decl. ¶ 23; Donovan-Kalous Decl. ¶¶ 20–21. USCIS would grant a “good cause” rescheduling request in a variety of situations, such as scheduling conflicts, requiring additional time to gather supporting evidence, illnesses or medical emergencies on the part of attorney or client, and instances where an unaccompanied child was too distressed to testify that day. *See, e.g.,* Avila-Cimpeanu Decl. ¶ 21; Richardson Decl. ¶ 28; Sanchez Kennedy Decl. ¶¶ 22–23; Donovan-Kaloust Decl. ¶ 21; Nally ¶ 19; *see also* Fisher Flores Decl. ¶¶ 29, 31.

The ability to submit rescheduling requests is an important procedural safeguard for unaccompanied children seeking asylum before USCIS. Fundamentally, rescheduling ensures that Plaintiffs may submit a complete application on behalf of their clients and that unaccompanied children have access to counsel at the asylum interview itself. *See, e.g.,* Avila-Cimpeanu Decl. ¶ 21; Richardson Decl. ¶ 28; Sanchez Kennedy Decl. ¶¶ 22–23, 32; Donovan-Kaloust ¶ 21; Nally ¶ 19; *see also* 8 C.F.R. § 208.9(b). Rescheduling can also account for additional time, if necessary, to prepare child clients, and naturally operates as a failsafe should additional time be necessary to submit supplemental evidence, manage conflicting deadlines, and minimize interference with a child’s school or family obligations. *See* Avila-Cimpeanu Decl. ¶ 21; Sanchez Kennedy Decl. ¶¶ 22–23; Richardson Decl. ¶ 28; Nally Decl. ¶ 19; Donovan-Kaloust Decl. ¶ 21.

C. In Contravention of Procedural Safeguards, USCIS Has Reduced Asylum Interview Notice for Unaccompanied Children and Effectively Disallowed Rescheduling.

USCIS has now unlawfully disregarded its obligation to implement policies and procedures that “tak[e] into account” the needs of unaccompanied children, 8 U.S.C. § 1232(d)(8), with profound and immediate effects on Plaintiffs and the children they represent. The agency has implemented a series of new policies that have transformed the affirmative asylum process, in turn upending the statutory and regulatory scheme intended to protect unaccompanied children. These policies directly interfere with Plaintiffs’ ability to provide effective legal representation to their unaccompanied child clients, frustrating Congress’s purpose in passing the TVPRA. As a result, the policies work together to rush children through, and deprive them of their right to meaningfully access, the affirmative asylum process.

1. USCIS Inadequate Notice Policy

Since at least September 2026, and only in the case of unaccompanied children, USCIS radically departed from its 21-day notice policy and authorized shortening notice of unaccompanied children’s asylum interviews to a matter of just days and, in some cases, less than one day. *See* Donovan-Kaloust Decl. ¶ 36; Sanchez Kennedy Decl. ¶¶ 37, 43; Nally Decl. ¶¶ 23–24; Richardson Decl. ¶¶ 34–35; Avila-Cimpeanu Decl. ¶¶ 22–23; Hough Decl. ¶ 28; *see also* Fisher Flores Decl. ¶¶ 36–37.

This Inadequate Notice Policy came on the heels of an unprecedented increase in the number of asylum interview notices for Plaintiffs’ unaccompanied child clients, with hundreds of interviews all clustered to take place over a compressed time period. *See* Donovan-Kaloust Decl. ¶ 35; Sanchez Kennedy Decl. ¶¶ 37, 40; Nally Decl. ¶ 18; Richardson Decl. ¶ 34; Avila-Cimpeanu Decl. ¶ 22; Hough Decl. ¶ 28; *see also* Fisher Flores Decl. ¶ 34. Many of those interviews are scheduled for the same day. *See, e.g.,* Donovan-Kaloust Decl. ¶ 40; Sanchez Kennedy Decl. ¶ 38; Richardson Decl. ¶ 36; Avila-Cimpeanu Decl. ¶ 27. Plaintiffs have learned that this sudden flood of interview notices was the result of a USCIS scheduling initiative solely focused on unaccompanied children, with instructions to regional Asylum Offices to complete affirmative

asylum interviews of every unaccompanied child with a pending asylum application by the end of the 2026 calendar year. *See* Sanchez Kennedy Decl. ¶ 40.

Public reporting confirms the existence of the Inadequate Notice Policy. On September 23, 2026, a media report indicated that USCIS issued an internal memorandum requesting approval from Defendant USCIS Director Edlow to “eliminate the 21-day advance notice requirement before scheduling an asylum interview” for unaccompanied children in government custody.⁶

Naturally, when USCIS gives only several days’ or even 24 hours’ notice, Plaintiffs cannot meaningfully prepare their child clients for their asylum interviews, either by compiling supplemental evidence or by preparing the child to provide testimony. This, in turn, means USCIS cannot fully consider—and so cannot properly adjudicate—a child’s asylum application. *See* Sanchez Kennedy Decl. ¶¶ 39, 42; Donovan-Kaloust Decl. ¶¶ 37–39, 44; Avila-Cimpeanu Decl. ¶¶ 23–26; Nally Decl. ¶ 20; Hough Decl. ¶ 29; Richardson Decl. ¶¶ 43–44, 48–49. Plaintiffs are now generally unable to submit updated evidence on behalf of their unaccompanied child clients because the interview notices arrive after the 14-day deadline to submit supplemental evidence. *See* 8 C.F.R. 208.9(e)(1).

The Inadequate Notice Policy has had real consequences for Plaintiffs and their clients. Two of Galveston-Houston Immigrant Representation Project’s clients received less than 24 hours’ notice before their scheduled asylum interviews, providing their attorney no time to supplement evidence or prepare either client for their interviews. Sanchez Kennedy Decl. ¶¶ 43–44. Several Plaintiffs have had to appear alongside their unaccompanied child clients without the requisite supplemental evidence—either because the Asylum Office refused to deliver it to the interviewer, or because the time between notice and interview was so short that gathering documentation, in particular from overseas, was impossible. *See, e.g.,* Sanchez Kennedy Decl. ¶ 39; Donovan-Kaloust Decl. ¶¶ 38–39, 44; Avila-Cimpeanu Decl. ¶¶ 24, 26; Hough Decl. ¶ 38.

⁶ *See* Jonathan Blitzer, *X* (Sept. 23, 2026), <https://x.com/JonathanBlitzer/status/2102931169427820908>.

And whereas Plaintiffs could previously rely on the discretion of an asylum officer to accept later-submitted evidence, that discretion has now been stripped. *See, e.g.*, Richardson Decl. ¶ 26; Nally Decl. ¶ 20; Avila-Cimpeanu Decl. ¶ 25; Donovan-Kaloust Decl. ¶ 36; Hough Decl. ¶ 29. On August 21, 2026, USCIS published an “Alert” purporting to be an “Updated Evidence Submission Policy” that now effectively disallows attorneys from submitting supplemental evidence after the 14-day deadline before the interview.⁷ *See, e.g.*, Nally Decl. ¶ 24; Avila-Cimpeanu Decl. ¶ 25; Sanchez Kennedy Decl. ¶ 39; Donovan-Kaloust Decl. ¶ 36; Hough Decl. ¶ 29. Combined with USCIS’s Exceptional Circumstances Policy, described below, it is no longer feasible to reschedule an interview to submit additional evidence.

2. USCIS Exceptional Circumstances Policy

On August 21, 2026, USCIS issued a second policy providing that requests to reschedule asylum interviews may only be granted on a showing of “exceptional circumstances,” doing away entirely with the prior policy allowing rescheduling as a matter of course for first requests *and* the good cause standard for second rescheduling requests.⁸ The Exceptional Circumstances Policy was published on the USCIS website, without any explanation, justification, or memorandum addressing the goal or need for the Policy. The policy sets the bar for “exceptional circumstances” as including “serious illness,” or “extreme cruelty to” the applicant or “death of [your parent]” and notes that “[l]ess compelling circumstances will not be classified as exceptional circumstances.”⁹ Unavailability of counsel is not included as “an exceptional circumstance.”

In Plaintiffs’ experience, “exceptional circumstances” is so narrowly construed that they face impossible barriers to rescheduling even under what can only be defined as exceptional circumstances. USCIS has denied rescheduling requests under the new policy even after a car crash

⁷ *See* USCIS, *ALERT: Updated Evidence Submission Policy for Affirmative Asylum Applications*, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum> (last visited Oct. 18, 2026).

⁸ USCIS, *Establishing Exceptional Circumstances for Rescheduling Asylum Interviews*, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/establishing-exceptional-circumstances-for-rescheduling-affirmative-asylum-interviews> (last updated Sept. 4, 2026).

⁹ *Id.*

involving a child’s counsel of record. *See* Avila-Cimpeanu Decl. ¶ 29. Because the Agency was denying all rescheduling requests, rescheduling was not an option for a child who had been reunited with his father more than 500 miles from the original Asylum Office location, when an applicant had a high-risk pregnancy with serious postpartum complications, and when an applicant was nursing a newborn. *See, e.g.,* Nally Decl. ¶ 21; Avila-Cimpeanu Decl. ¶ 28; Donovan-Kaloust Decl. ¶ 42. USCIS even insisted on proceeding with an interview of a child who had been discharged from the hospital the day before due to a documented heart condition. Richardson Decl. ¶¶ 48–49. When the child was crying in pain and clutching her chest during the asylum interview, the officer persisted, calling in a supervisor to tell the child that the interview was “very important.” *Id.* at ¶ 49. It was not until hours later that USCIS finally agreed to stop the interview and permitted counsel to submit a rescheduling request. *Id.* Had counsel been unable to attend—as nearly happened, with only one business days’ notice—the child would have had no advocate to protect her rights and her health. *See id.* ¶¶ 48–49.

As with USCIS’s Inadequate Notice Policy, its Exceptional Circumstances Policy effectively prevents Plaintiffs from submitting necessary additional evidence before the interview: the agency now routinely denies rescheduling requests that would allow Plaintiffs adequate time to gather and admit that evidence. *See, e.g.,* Sanchez Kennedy Decl. ¶ 39; Donovan-Kaloust Decl. ¶ 42. What’s more, the policy leads to absurd outcomes when, for example, USCIS schedules the same attorney for two, three, or four interviews at the same time—and then refuses to reschedule those interviews. *See, e.g.,* Avila-Cimpeanu Decl. ¶ 27; Sanchez Kennedy Decl. ¶ 38; Donovan-Kaloust Decl. ¶¶ 40, 42; Richardson Decl. ¶¶ 36–37.

The obvious consequence is that Plaintiffs have been forced to make impossible choices: which child to accompany to the interview, which child to send with a non-attorney staff member, or whether to substitute counsel completely unfamiliar with the child and the child’s application, knowing that assigning unfamiliar counsel significantly reduces the trust and comfort that enables a child to disclose. *See, e.g.,* Richardson Decl. ¶¶ 42–44; Donovan-Kaloust Decl. ¶ 40. Ultimately, Plaintiffs will be forced to consider whether to send a child to the interview alone—decisions

inimical to their own ethical obligations and the missions of their organizations. This is not representation to the greatest extent practicable, 8 U.S.C. § 1232(c)(5); it is not even fundamental access to counsel. 8 C.F.R. § 208.9(b).

III. ARGUMENT

Section 705 of the APA authorizes a court reviewing an agency action to “issue all necessary and appropriate process to postpone the effective date of [the] agency action or to preserve status or rights pending conclusion of the review proceedings” “[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury.” 5 U.S.C. § 705. “The standard of review for relief under 5 U.S.C. 705 is the same as the standard of review for preliminary injunctions.” *Nw. Immigrant Rts. Project v. U.S. Citizenship & Immigr. Servs.*, 496 F. Supp. 3d 31, 45 (D.D.C. 2020).

A temporary restraining order is appropriate to “preserve the status quo only until a preliminary injunction hearing can be held.” *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999) (quotation omitted). To obtain a temporary restraining order, the movant must establish by a preponderance of the evidence that: (1) they are likely to succeed on the merits of their case; (2) they are likely to suffer irreparable harm in the absence of injunctive relief; (3) the balance of the equities tips in their favor; and (4) an injunction would be in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). When, as here, the Government is the opposing party, the balance of equities and the public interest consideration merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As explained below, Plaintiffs meet the standards for a stay and temporary restraining order.

A. Plaintiffs Have Standing on Behalf of Themselves and Their Unaccompanied Child Clients.

To establish standing, a plaintiff must have (1) suffered an “injury in fact,” (2) that is fairly traceable to the challenged action of the defendant, and (3) that is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The injury must be “concrete and particularized” and “actual or imminent.” *Id.* An organizational plaintiff may

establish an injury by showing that a defendant's actions "directly affected and interfered with [its] core business activities." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)); see also *Republican Nat'l Comm. v. N. Carolina State Bd. of Elections*, 120 F.4th 390, 397 (4th Cir. 2024) (organization sufficiently pleads standing when policy concretely impaired their core missions by stymying activities and causing resource drain). Plaintiffs, as retained counsel pursuant to 8 U.S.C. § 1232(c)(5) and 8 C.F.R. § 208.9(b), "[are] within the zone of interests protected by the statute." *Pye v. United States*, 269 F.3d 459, 467 (4th Cir. 2001).

As nonprofit organizations dedicated to the legal representation of unaccompanied children, Plaintiffs have standing to challenge the two policies at issue in this motion. USCIS's Inadequate Notice Policy and Exceptional Circumstances Policy have prevented Plaintiffs from providing effective representation to their clients by requiring them prepare for and attend asylum interviews on extremely short notice, with no option to reschedule and no time to prepare their clients or submit supplemental evidence. Plaintiffs have also turned away unaccompanied children for asylum representation, notwithstanding their organizations' missions; have dedicated resources to recruiting and training members of the private bar to provide pro bono representation; and have ceased or significantly limited their other core work. See Richardson Decl. ¶¶ 65–66 (requiring denial of representation to new unaccompanied child clients and reallocation of The Door's staff and resources from other core youth services); Nally Decl. ¶¶ 27–28 (preventing Amica from accepting new clients and reducing staff time spent on other cases); Avila-Cimpeanu Decl. ¶¶ 30–31 (straining FIRR's staffing capacity and preventing the organization from accepting new child clients and continuing friend of court services); Sanchez Kennedy Decl. ¶¶ 36, 41 (declining representation for new clients and spending time and resources recruiting and training pro bono lawyers as well as other nonprofit organizations to help cover asylum interviews for GHIRP's child clients); Donovan-Kaloust Decl. ¶¶ 52–54 (turning away unaccompanied child clients ImmDef would otherwise have represented, requiring attorneys to put work for non-asylum seeking clients on hold, and diverting staff from adult immigration removal defense program to

cover asylum interviews); Hough Decl. ¶ 38 (reallocating JFCS staff who do not typically represent unaccompanied children to attend asylum interviews and limiting JFCS's ability to accept new cases for unaccompanied children).

Plaintiffs also have third party standing to challenge these policies on behalf of their unaccompanied child clients. To assert third-party standing, an organizational plaintiff must demonstrate (1) an injury-in-fact; (2) a “close relationship” with the third party; and (3) some “hindrance” to the third party’s ability to protect their own interests. *See Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 214–15 (4th Cir. 2020), as amended Aug. 31, 2020. As shown, above, Plaintiffs have suffered a “perceptible impair[ment]” to their core business activities. *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Maryland, Inc.*, 843 F. App’x 493, 496 (4th Cir. 2021). Plaintiffs have a close relationship with their unaccompanied child clients. *See Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 623 n.3 (1989) (noting that the attorney-client relationship is “one of special consequence”). And Plaintiffs’ clients—many of whom are of tender age, have experienced trauma, and are currently in ORR custody—face significant obstacles in bringing a suit on their own, due to their lack of access to the legal system outside of Plaintiffs’ advocacy, their indigence, their immigration status, their lack of proficiency in English, and their consequent fear of retaliation by Defendants. *See e.g., Mayor and City Council of Baltimore v. Trump*, 416 F. Supp. 3d 452, 490–91 (D. Md. 2019) (discussing immigration status as a factor hindering protection of one’s own interests); *Exodus Refugee Immigr., Inc. v. Pence*, 165 F. Supp. 3d 718, 732 (S.D. Ind.), *aff’d*, 838 F.3d 902 (7th Cir. 2016) (same); Richardson Decl. ¶¶ 22–23, 31; Nally Decl. ¶¶ 12–13; Avila-Cimpeanu Decl. ¶¶ 12, 16; Sanchez Kennedy Decl. ¶¶ 10, 12; Donovan-Kaloust Decl. ¶¶ 12–13; Hough Decl. ¶ 11.

B. Plaintiffs Are Suffering Irreparable Injury.

USCIS’s Inadequate Notice Policy and Exceptional Circumstances Policy are subjecting Plaintiffs and their unaccompanied child clients to grave, irreparable harm. This harm will only escalate as Plaintiffs and their clients have had to face hundreds of asylum interviews, which USCIS refuses to reschedule despite inadequate notice, emergencies, or scheduling conflicts

created by the agency itself. To establish irreparable harm, plaintiffs must show they will suffer harm that is “neither remote nor speculative, but actual and imminent.” *Maryland v. Noem*, 823 F. Supp. 3d 560, 570 (D. Md. 2026) (Hurson, J.) (citing *Mountain Valley Pipeline v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 216 (4th Cir. 2019)). Irreparable harm is often found where, as here, “monetary damages are unavailable.” *Handsome Brook Farm, LLC v. Humane Farm Animal Care, Inc.*, 700 F. App’x 251, 263 (4th Cir. 2017). As in this instance, the harm is irreparable because the “damage done by [USCIS]’s violation of the APA cannot be fully cured by later remedial action.” *Ass’n of Cmty. Cancer Ctrs. v. Azar*, 509 F. Supp. 3d 482, 501 (D. Md. 2020).

The changes to USCIS’s asylum interview policies have forced Plaintiffs to forgo numerous fundamental components of their representation of unaccompanied children seeking asylum. They have been barred from supplying critical evidence, denied rescheduling despite emergencies and clearly impossible practical circumstances created by the policy itself, and, as a result, been prevented from appearing alongside their clients at their interviews. *See supra* Section II.C. In addition to the injuries caused to Plaintiffs’ core activities, including the diversion of resources in order to respond to the policies, each instance of such fundamental governmental interference with Plaintiffs’ ability to effectively represent their child clients is an irreparable harm. *See, e.g., Cook Cnty. v. Wolf*, 962 F.3d 208, 233 (7th Cir. 2020) (irreparable harm found when county “will have to divert resources away from existing programs to respond to the effects of the [policy].”); *Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 875, 881 (C.D. Cal. 2025) (“Government action that frustrates an organization’s core mission gives rise to irreparable harm,” including impediments to plaintiffs’ ability to represent immigrants and refugees).

For Plaintiffs’ unaccompanied child clients, the irreparable harm is even more obvious. Congress recognized the dangers unaccompanied children face without specialized procedures and without access to counsel, and it enacted the TVPRA to provide relief in both areas. Today, because of that system, Plaintiffs are often the most trusted people in the lives of their unaccompanied child clients. Those relationships depend on adequate time to build trust,

sensitivity to language barriers and trauma, and the confidence that the legal representative will be able to prepare a complete and effective asylum application and be present in the moment of truth. *See* Richardson Decl. ¶¶ 22–23; Nally ¶¶ 12–13; Avila-Cimpeanu Decl. ¶¶ 12, 15–16; Sanchez Kennedy Decl. ¶¶ 10, 15–17; Donovan-Kaloust Decl. ¶¶ 13, 17; Hough Decl. ¶¶ 21, 27. The Inadequate Notice and Exceptional Circumstances Policies cause irreparable harm by thwarting these relationships and forcing children into highly traumatic interviews without trusted counsel.

As has already occurred over the past month, hundreds of children have had to or are about to proceed with asylum interviews without adequate preparation, without supplemental evidence to corroborate their asylum claims, and under medically dangerous conditions. As a result, these children will be deprived of the ability to present a full application and to prepare for their one shot to tell their story in a non-adversarial context, which the TVPRA guarantees. *See, e.g., M.M.M. ex rel. J.M.A. v. Sessions*, 347 F. Supp. 3d 526, 535 (S.D. Cal. 2018) (depriving children of “their right to seek asylum” constitutes irreparable harm). These harms cannot be undone, and scores of additional children will experience them alike if this Court does not act.

Every day that Defendants are allowed to continue with these policies is a day a child, or dozens of children, is denied effective representation in her asylum interview.

C. Plaintiffs Are Likely to Succeed on the Merits.

To establish the first *Winter* prong, “[P]laintiff[s] need not establish a ‘certainty of success,’ but must make a clear showing that [they are] likely to succeed at trial.” *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (quoting *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013)). And under Section 706(2) of the APA, a district court may set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Here, Plaintiffs are likely to succeed at trial because they can clearly show the Inadequate Notice Policy and the Exceptional Circumstances Policy are both arbitrary and capricious and contrary to law in violation of the APA.

1. The Inadequate Notice Policy and Exceptional Circumstances Policy Are Final Agency Action Reviewable Under the APA.

The Inadequate Notice Policy and Exceptional Circumstances Policy are final agency action reviewable under the APA because each “marks the consummation of the agency’s decision-making process” (i.e. the “consummation” prong) and (2) is an action “by which rights or obligations have been determined or from which legal consequences will flow” (i.e. the “consequentiality” prong). *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (internal citations omitted). Courts take a “pragmatic approach” to determining final agency action, focusing not on the form of the activity, but whether its “effects [are] felt in a concrete way by the challenging parties,” including the threatened effect. *Abbott Lab’ys v. Gardner*, 387 U.S. 136, 148–49 (1967).

The Inadequate Notice Policy is final because it has been applied to all Plaintiffs, immediately interfering with Plaintiffs’ effective representation of their clients. Additionally, public reporting indicates that USCIS has memorialized this policy in a written memorandum seeking to remove the 21-day notice requirement in the cases of unaccompanied children.¹⁰ *See also Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 145-146 (D.D.C. 2018) (finding final agency action, of which written memos were one piece of evidence). Even so, a policy need not be published in order to satisfy the APA’s pragmatic final agency action requirement. *See Venetian Casino Resort LLC v. EEOC*, 530 F.3d 925, 929, 931 (D.C. Cir. 2008) (reviewing challenge to an agency’s “decision . . . to adopt [an unwritten] policy of disclosing confidential information without notice” because such a policy was “surely a consummation of the agency’s decisionmaking process” that negatively affected the plaintiff’s rights).

The Exceptional Circumstances Policy is also final agency action: it has been published on the USCIS website, is framed in binding terms, and it has been implemented across the country, as shown in Plaintiffs’ experiences from New York to Texas to California. *U.S. Army Corps of Eng’rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016); *see J.Z. v. Dep’t of Homeland Sec.*, 2026 WL

¹⁰ *See* fn. 6, Jonathan Blitzer, *X* (Sept. 23, 2026).

3015634, at *4 (D.D.C. Oct. 7, 2026) (finding final agency action where the agencies “have publicly announced the decision on their website”).

There can be no doubt that legal consequences flow from both policies. *Bennett*, 520 U.S. at 178; *U.S. Army Corps of Engineers*, 578 U.S. at 598 (quoting *Sackett v. E.P.A.*, 566 U.S. 120, 131 (2012) (Ginsburg, J., concurring)). Plaintiffs cannot prepare their clients for interview on inadequate notice timelines, and they have lost their ability to submit supplemental evidence—including declarations, medical and psychological evaluations, and up-to-date country conditions evidence—as a matter of right. *See* 8 C.F.R. § 208.9(e)(1); *see also, e.g.*, Richardson Decl. ¶¶ 43–44; Sanchez Kennedy Decl. ¶ 39; Donovan-Kaloust Decl. ¶¶ 37–39, 41–42; Avila-Cimpeanu Decl. ¶¶ 23–26; Hough Decl. ¶ 38. Both the Inadequate Notice Policy and the Exceptional Circumstances Policy prevent Plaintiffs’ attorneys from attending their clients’ asylum interviews, interfering with children’s right to counsel. 8 C.F.R. § 208.9(b). And under the Exceptional Circumstances Policy, Plaintiffs are also unable to reschedule their interviews to prepare their clients, to continue to collect evidence, or even to protect their medically sensitive children from interviews that could cause further injury. *See supra* Section II.C.2.

2. The Inadequate Notice Policy and Exceptional Circumstances Policy Are Arbitrary and Capricious.

Final agency action is arbitrary and capricious where the agency has: “[1] relied on factors which Congress has not intended it to consider, [2] entirely failed to consider an important aspect of the problem, [3] offered an explanation for its decision that runs counter to the evidence before the agency, or [4] 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 U.S., Inc. v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 43 (1983). In addition, “when an agency rescinds a prior policy its reasoned analysis must consider the alternative[s] that are within the ambit of the existing [policy],” and consider whether “longstanding policies may have engendered serious reliance interests that must be taken into account.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*,

591 U.S. 1, 30 (2020); *see also Food & Drug Admin. v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025).

The Inadequate Notice Policy and Exceptional Circumstances Policy, though distinct, are each arbitrary and capricious for nearly all of the reasons listed in *State Farm*. 463 U.S. at 43. Both policies deprive Plaintiffs of their ability to effectively represent their unaccompanied children clients and deprive their clients of meaningful access to the asylum process. As explained below, both policies were issued without any explanation, fail to consider critical aspects of the asylum process for unaccompanied children, run contrary to congressional intent, fail to account for reliance interests of Plaintiffs and child applicants, and lead to results too implausible to suggest a mere difference in view. *Id.* The policies instead represent a concerted effort to target unaccompanied minor children.

First, the Inadequate Notice Policy and Exceptional Circumstances Policy are arbitrary and capricious because USCIS has offered no reasoned justification for its changes in policy. *See, e.g., Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 779 F. Supp. 3d 584, 617 (D. Md. 2025) (finding agency action arbitrary and capricious where “[t]he agency was required to demonstrate self-awareness where it changed positions and to explain the reasons for those changes in position” and “[i]t did not”); *J.Z.*, 2026 WL 3015634, at *7 (policy was arbitrary and capricious where Defendants could not “articulate a satisfactory explanation” for the choices made). USCIS has failed to show the required “self-awareness” and has not published any justification on its website or in any of the notices received by Plaintiffs.

Instead, USCIS failed to consider the unique vulnerabilities of unaccompanied children and the resulting impact of the new policies. The TVPRA’s text and legislative history are unambiguous: any decision affecting the asylum procedures for unaccompanied children must ensure that children are able to effectively present their claims, represented by counsel, in a child-centered environment. *See, e.g.,* 8 U.S.C. § 1232(d)(8) (requiring that unaccompanied children’s applications for asylum “be governed by regulations which take into account the specialized needs of unaccompanied [noncitizen] children.”); H. Rep. No. 111-220, at 165 (“[L]egal representation

is absolutely critical to ensure that children understand their rights as they navigate the legal process to determine their status in the United States.”). In instituting the Inadequate Notice Policy, USCIS has failed to consider that adequate notice is necessary to gather supplemental evidence and to prepare for the asylum interview. *See, e.g., Rodriguez–Solis v. Blanche*, 177 F.4th 266, 273–74 (4th Cir. 2026) (noting importance of time to submit supplemental documents in context of adult asylum seeker). The agency has not considered that, by eliminating adequate notice, it is essentially precluding Plaintiffs and their clients from making a full and meaningful asylum presentation of their claims. *See, e.g., J.Z.*, 2026 WL 3015634, at *4 (finding that USCIS acted arbitrarily and capriciously where it adopted a policy to stop collecting required biometrics data from detained noncitizens “without any indication that [the agency] considered that it would preclude detained people from pursuing pending USCIS applications for immigration status”).

In instituting the Exceptional Circumstances Policy, USCIS has failed to consider Congress’s intent that unaccompanied children “have counsel to represent them in legal proceedings or matters” “to the greatest extent practicable.” 8 U.S.C. § 1232(c)(5). The policy results in attorneys being double- or even triple-booked for asylum interviews, forcing children to appear without their own counsel or with a legal representative with whom they have had no opportunity to develop the relationship necessary to disclose critical facts. *See, e.g., Rodriguez–Solis*, 177 F.4th at 274 (“A new lawyer would need time to build rapport with [an asylum seeker] to elicit the sort of ‘extremely traumatic’ testimony necessary for [an] asylum hearing.”). There is simply no good reason to refuse to reschedule in such circumstances. *See, e.g., Jimenez–Cedillo v. Sessions*, 885 F.3d 292, 298 (4th Cir. 2018) (“[A]n agency must ‘display awareness that it is changing position and show that there are good reasons for the new policy.’”) (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016)).

Second, the Inadequate Notice Policy and the Exceptional Circumstances Policy are arbitrary and capricious because they conflict with USCIS’s own regulations and the TVPRA. USCIS’s regulations require that supplemental evidence be submitted no later than 14 days before an interview. 8 C.F.R. § 208.9(e)(1). The Inadequate Notice Policy conflicts directly with this

requirement. As explained *supra* Section II.C.1, the inescapable effect of the Policy, which prevents Plaintiffs and their child clients from complying with the 14-day supplemental evidence rule, renders it both contrary to law and arbitrary and capricious. The Exceptional Circumstances Policy cannot be reconciled with an unaccompanied child's right to legal representation "to the greatest extent practicable" under the TVPRA, as well as the child's right to have counsel present at the asylum interview under the INA. Any possible explanation for the policy changes is "so implausible that it cannot be ascribed to a difference in view." *State Farm*, 463 U.S. at 43; *see also Asylum Seeker Advoc. Project v. U.S. Citizenship & Immigr. Servs.*, 808 F. Supp. 3d 708, 718–19 (D. Md. 2025) (concluding plaintiff was likely to show arbitrary and capricious agency action for a preliminary injunction based on contradictions in USCIS's asylum policies).

Third, the Inadequate Notice Policy and Exceptional Circumstances Policies are arbitrary and capricious because USCIS did not consider that its historic policies "have engendered serious reliance interests." *Regents*, 591 U.S. at 30–33 (internal quotation marks omitted); *J.O.P.*, 409 F. Supp. 3d at 378. Throughout their years of practice, Plaintiffs have relied on USCIS's policies to structure entire programs focused on representing unaccompanied children. They have made decisions about staffing and allocation of resources based on a standard, minimum notice period and the opportunity to reschedule for cause. *See, e.g.*, Richardson Decl. ¶¶ 26–28; Nally Decl. ¶¶ 14–15; Avila-Cimpeanu Decl. ¶¶ 18–20, 27; Sanchez Kennedy Decl. ¶¶ 21–22, 24; Donovan-Kaloust Decl. ¶¶ 17–18, 36; Hough Decl. ¶¶ 28–29. USCIS failed to consider that its abrupt and radical change to its notice policy would upend expectations and create serious roadblocks to the provision of effective legal services, including by impeding attorneys' ability to prepare their clients for interviews, submit supplemental evidence prior to those interviews, and attend all the interviews scheduled on short notice. "When an agency changes course, as DHS did here, it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account. [. . .] [T]o ignore such matters" is arbitrary and capricious. *Regents*, 591 U.S. at 30 (internal quotation marks omitted).

Fourth and finally, even assuming that USCIS had legitimate goals in creating the policies, it did not consider any alternatives to achieving them. “An agency is required to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.” *Spirit Airlines, Inc. v. Dep’t of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (quoting *Am. Radio Relay League, Inc. v. Fed. Commc’n’s Comm’n*, 524 F.3d 227, 242 (D.C. Cir. 2008)). The need to consider alternatives is especially strong where, as here, the agency is changing its prior position. *Regents*, 591 U.S. at 30. USCIS ignored the practical consequences of these policies and the many tools it possesses to ensure that Plaintiffs receive notice sufficient to submit supplemental evidence and are not scheduled for multiple asylum interviews at the same time. As Plaintiffs’ experiences show, nothing in USCIS’s abrupt and disruptive policy changes indicates that the agency considered any reasonable alternatives.

3. The Inadequate Notice Policy and Exceptional Circumstances Policy Are Contrary to Law.

The conflicts and chaos engendered by USCIS’s new policies also underscore that those policies are contrary to law under the APA. To begin, as discussed *supra*, USCIS regulations permit asylum applicants to submit evidence up to 14 calendar days in advance of their interview as of right, with any later-submitted evidence accepted only as a matter of discretion. 8 C.F.R. § 208.9(e)(1).¹¹ The right to submit supplemental evidence is a critical safeguard in the asylum application process. *See* II.B., *supra*. By notifying Plaintiffs and their unaccompanied child clients of their interviews *after* the 14-day deadline has passed and refusing to reschedule interviews to accommodate evidence submissions, USCIS deprives Plaintiffs of the procedural protections guaranteed by regulation. USCIS’s Inadequate Notice and Exceptional Circumstances Policies are therefore “not in accordance with law.” 5 U.S.C. § 706(2)(A); *see, e.g., Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.”); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265-

¹¹ As explained in Section II.C.1 *supra*, USCIS issued a policy on August 21, 2026, removing the discretionary portion of 208.9(e)(1).

67 (1954) (agency must follow “[r]egulations with the force and effect of law”); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 113 (D.C. Cir. 2026) (“Agencies may not adopt guidance or other procedures that conflict with or disregard duly promulgated regulations.”); *cf. United States v. Mitchell*, 39 F.3d 465, 468 (4th Cir. 1994) (holding that plain language of “contrary to law” provision in criminal statute includes violations of regulations).

Moreover, by adopting a policy that specifically targets unaccompanied children and their attorneys’ ability to provide counsel in the asylum process, the Inadequate Notice Policy is contrary to several TVPRA requirements. For example, it violates the requirement that USCIS’s procedures “take into account the specialized needs of unaccompanied [noncitizen] children” in both “procedural and substantive aspects” of their cases. 8 U.S.C. § 1232(d)(8). Far from considering children’s specialized needs, USCIS has singled out unaccompanied children for procedures that directly undermine the ability of child applicants to build sufficient trust with counsel to disclose extremely traumatic childhood experiences and prepare to describe those experiences to a stranger in an asylum interview. And, by disallowing counsel from gathering and submitting evidence and preparing a child of tender age for an interview at the Asylum Office, the Policy renders meaningless the TVPRA’s guarantee of the right to seek asylum before USCIS in the first instance, *with the assistance of counsel*. 8 U.S.C. § 1232(c)(5) (requiring provision of counsel “to the greatest extent practicable”); *see also* 8 C.F.R. § 208.9(b) (right to bring counsel to asylum interview); *cf. Brooks v. Tennessee*, 406 U.S. 605, 612 (1972) (holding, in the Sixth Amendment context, that the state deprives a defendant from “the ‘guiding hand of counsel’” when it restricts counsel’s ability to make choices about evidence).

Finally, the Exceptional Circumstances Policy is contrary to law because it effectively denies unaccompanied children their right to counsel of their choosing. “Exceptional circumstances,” as USCIS interprets them, are not met when a single attorney is double-, triple-, or even quadruple-booked for asylum interviews, or when an attorney suffers a car accident that prevents her from attending the interview. *See, e.g.,* Richardson Decl. ¶¶ 36–37; Nally Decl. ¶ 21; Avila-Cimpeanu Decl. ¶¶ 27, 29; Sanchez Kennedy Decl. ¶ 38; Donovan-Kaloust Decl. ¶¶ 39, 42.

Plaintiffs' relationships with their clients were painstakingly built over time, to ensure children were protected throughout their immigration proceedings, pursuant to the TVPRA. Stripping children of their chosen attorney just before the asylum interview cannot be interpreted as anything other than the denial of counsel under a framework designed to provide that access to unaccompanied children.

D. The Balance of Equities and the Public Interest Strongly Favor Plaintiffs.

Finally, to obtain a TRO or a stay under the APA, Plaintiffs must establish "the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. However, because the Government is a defendant, these factors merge. *See Kravitz v. U.S. Dep't of Com.*, 366 F. Supp. 3d 681, 755 (D. Md. 2019) (citing *Pursuing Am. Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016)). This is because "the government's interest is the public interest." *Ass'n of Cmty. Cancer Ctrs.*, 509 F. Supp. 3d at 501 (emphasis in original) (quoting *Pursuing Am. Greatness*, 831 F.3d at 511).

The government and public cannot claim "public interest in the perpetuation of unlawful agency action." *City of Columbus v. Kennedy*, 796 F. Supp. 3d 123, 174 (D. Md. 2025) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). Here, where Defendants have pushed through two discrete policies upending decades of established, relied-upon procedures for the adjudication of unaccompanied children's asylum claims, creating chaos and hardship for children and non-profit legal service providers fighting to act in their clients' best interests, the balance of equities tips sharply in Plaintiffs' favor. *See Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 969–70 (D. Md. 2020) (holding balance of equities and public interest tip in organizational plaintiffs' favor where the government had previously operated under long-standing status quo and where "narrowly drawn relief" would rectify irreparable harm). Defendants' service of the public interest "does not mean [they] can flout the law." *Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, 771 F. Supp. 3d 717, 808 (D. Md. 2025).

There is simply no public interest in rushing children through asylum interviews with almost no notice or ability to prepare and refusing reasonable requests to reschedule. The

challenged policies flout the will of Congress to provide more, not fewer, protections for unaccompanied children. The government cannot establish hardship based on their hasty and imprudent agency actions; to the contrary, “[i]t would be in the public interest [] to ease the significant confusion that has ensued due to Defendants’ [] policies.” *Asylum Seeker Advoc. Project*, 808 F. Supp. 3d at 721.

E. Plaintiffs Are Entitled to a Universal Stay.

The only appropriate relief is a stay of both the Inadequate Notice Policy and the Exceptional Circumstances Policy. The traditional relief afforded to Plaintiffs by the APA—vacatur of the unlawful policy—is available here and is not abrogated by recent Supreme Court precedent. As was held recently in this District, “in line with other recent cases addressing the issue, [] the limiting principle on universal or national injunctions announced in [*Trump v. CASA, Inc.*, 606 U.S. 831 (2025)] does not apply to APA cases like the one at bar.” *City of Columbus*, 796 F. Supp. 3d at 176 (citing cases). Indeed, the majority opinion in *CASA* “explicitly left open ‘whether the [APA] authorizes federal courts to vacate federal agency action,’” *Id.* (quoting *CASA*, 606 U.S. at 847 n.10 (citing 5 U.S.C. § 706(2)); *see also Ctr. for Taxpayer Rts. v. Internal Revenue Serv.*, 2026 WL 2635380, at *14 (D.C. Cir. Sept. 8, 2026) (section 705 “allows a district court to preliminarily ‘postpone the effective date of an agency action’ when ‘necessary to prevent irreparable injury’” by “operat[ing] on the legal source of authority for an agency to act at all” (quoting 5 U.S.C. § 705)). With the wide-ranging effect of Defendants’ policies across Plaintiffs’ offices coast-to-coast, a universal stay is the only efficient means of addressing Defendants’ policies under the APA. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d 19, 105 (D.D.C. 2025), *aff’d sub nom. Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81 (D.C. Cir. 2026).

IV. CONCLUSION

For the foregoing reasons, because Plaintiffs are suffering irreparable harm, have established that they are likely to succeed on the merits and the balance of equities and public interest tip in their favor, Plaintiffs respectfully request that this Court stay these new policies and

reinstate USCIS's prior policies of 1) providing at least 21 days' notice prior to an asylum interview and 2) allowing applicants to reschedule interviews once as a matter of course and again for good cause.

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