UNITED STATES DISTRICT COURT
FOR THE DISTRICT MARYLAND

ASYLUM SEEKER ADVOCACY PROJECT,

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *et. al*;

Defendants.

No. 1:25-cv-03299-SAG

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

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INTRODUCTION

On July 4, 2025, Congress enacted the One Big Beautiful Bill Act ("OBBBA" or "statute"), which created new immigration fees and, in some cases, increased existing ones, for Fiscal Year 2025 ("FY 2025") and future fiscal years. For the very first time, Congress imposed an initial asylum application fee and an annual asylum fee requirement ("AAF"). Pub. L. No. 119-21, §§ 100002, 100009, 139 Stat. 72, 371 (2025) (codified at 8 U.S.C. §§ 1802 and 1808, respectively). In explaining its decision, Congress made clear that these new asylum fees were long overdue and necessary to recover the growing costs of adjudicating the millions of pending asylum applications before both the United States Citizenship and Immigration Services ("USCIS"), a component agency of the U.S. Department of Homeland Security, and the Executive Office of Immigration Review ("EOIR").[1]

Shortly after the statute's enactment, the two organizations responsible for adjudicating asylum applications, USCIS and EOIR, respectively issued public notice of each's intent to implement the new AAF for applications pending in FY 2025—in accordance with the statute's express language and purpose. While USCIS publicly announced that it would impose the FY 2025 AAF for all applications pending for the entirety of FY 2025 (from October 1, 2024 to September 30, 2025) (Ex. 2), EOIR announced that a fee would be imposed for all applications pending for more than one year as of a date after enactment (July 4, 2025) (Ex. 1). Although the two organizations' positions initially differed, unlike USCIS, EOIR did not state when payment would actually become due and has not issued any individual payment notices—as it worked to develop a fee implementation process in coordination with USCIS. Furthermore, as of this filing,

[1] H.R. Rep No. 119-106, Book 1, at 130-135 (2025).

EOIR has revised its position to reflect USCIS's and is taking steps to finalize its FY 2025 AAF notice and payment process.

Seizing on this initial discrepancy between the two organizations' implementation approaches, Plaintiff filed a complaint on behalf of its asylum-seeking members, alleging the following: (1) USCIS and EOIR unlawfully applied 8 U.S.C. §1808's ("Section 1808") annual asylum fee retroactively, by imposing fees on applications filed before July 4, 2025 and separately, by counting the time an application remained pending prior to July 4, 2025 (representing Counts I and II); (2) USCIS and EOIR acted arbitrarily and capriciously in violation of the Administrative Procedures Act, in imposing the FY 2025 AAF, retroactively (Count III); and (3) EOIR unlawfully withheld and unreasonably delayed providing applicants with a clear payment mechanism and necessary instructions on how to pay the fee, to the extent payment is required (Count IV).

Plaintiff also seeks extraordinary preliminary relief in the form of preliminary injunction and temporary restraining order and/or a nationwide stay pursuant to Section 705 of the APA—enjoining USCIS and EOIR from implementing the statutorily mandated AAF for FY 2025 and ordering EOIR to reinstate any applications rejected or denied for non-payment of the FY 2025 AAF, despite Plaintiff not providing any proof or factual allegations of such. In lieu of that, it requests the Court order EOIR halt from imposing its FY 2025 AAF until it provides clear instructions and a payment mechanism.

This Court should deny Plaintiff's request for any preliminary relief for the following reasons. As threshold matter, Plaintiff has failed to establish it possesses the requisite associational standing for bringing these claims on its members' behalf. Furthermore, despite Plaintiff's claims, Section 1808 expressly requires that the AAF be applied to applications pending in FY 2025, but the AAF is otherwise not impermissibly retroactive, because it is both procedural and prospective.

Plaintiff also fails in its argument that the government's implementation of the FY 2025 AAF is arbitrary and capricious. In light of EOIR's decision to adopt USCIS's procedure, there is no longer any inconsistency between the agencies' respective positions, and as the record shows, USCIS's position is well-reasoned. Finally, there was no unreasonable delay here in EOIR's implementation of the FY 2025 AAF, as the record shows several steps were required to finalize EOIR's process, including coordination with USCIS. Regardless, Plaintiff's request is now moot, given EOIR intends to implement the FY 2025 AAF in accordance with USCIS's procedure.

BACKGROUND

A. Statutory Background

The One Big Beautiful Bill Act ("OBBBA" or "Act"), enacted on July 4, 2025, created a new requirement that asylum seekers pay an initial fee at the time they submit their application for asylum, and an annual asylum fee ("AAF") for "each calendar year" that their applications remain pending. Pub. L. No. 119-21, §§ 100002, 100009, 139 Stat. 72, 371 (2025) (codified at 8 U.S.C. §§ 1802, 1808). Section 1802(b), in relevant sum, imposes the initial fee as follows:

"During fiscal year 2025, the amount specified in this section shall be the greater of—

(1) $100; or

(2) such amount as the Secretary or the Attorney General, as applicable, may establish, by rule." 8 U.S.C. §1802(b).

For the AAF, Section 1808(a) provides, in relevant sum:

"In addition to any other fee authorized by law, for each calendar year that an alien's application for asylum remains pending, the Secretary of Homeland Security or the Attorney General, as applicable, shall require the payment of a fee, equal to the amount specified in subsection (b), by such alien. Section 1808(b)(1), in turn, determines the "amount specified" for the fee:

For fiscal year 2025, the amount specified in [Section 1808] shall be the greater of—

(A) $100; or

(B) such amount as the Secretary of Homeland Security may establish, by rule. *Id.* § 1808(a).

Subsection (b)(2) then provides for "[a]nnual adjustments for inflation," and states that "[d]uring fiscal year 2026, and during each subsequent fiscal year," the amount equals the amount required "for the most recently concluded fiscal year" plus an inflation adjustment." *Id.* § 1808(b)(2).

Also, the Immigration and Nationality Act ("INA") (codified at Title 8, USC, Aliens and Nationality, §§ 1101-1178), directs the Attorney General to impose asylum fees:

> The Attorney General shall impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Nothing in this paragraph may be construed to limit the authority of the Attorney General to set additional adjudication and naturalization fees in accordance with section 1356(m) of this title. 8 U.S.C. § 1158(d)(3).

B. Factual Background

As noted above, the OBBBA created a new initial and annual fee requirement for asylum applications. Pub. L. No. 119-21, §§ 100002, 100009. The USCIS and EOIR are responsible for implementing the new annual asylum fee. There are two ways to apply for asylum: affirmatively with USCIS, or defensively before an immigration judge at EOIR. Pl.'s Mot. for a TRO, Prelim. Inj., Prelim. Relief Under 5 U.S.C. § 705, ECF No. 29-1 ("Br."), ECF 29-1;Decl. of Swapna C. Reddy, Co-Executive Director of the Asylum Seeker Advocacy Project, ¶¶ 23–24, ECF No. 29-2 ("Reddy Decl."). Applicants seek asylum defensively before EOIR immigration judges, if they are in removal proceedings. If the applicant is not in removal proceedings, generally the applicant must file an asylum application with USCIS. 8 C.F.R. § 208.2.

The law requires asylum applications to be adjudicated within 180 days of filing, barring exceptional circumstances. 8 U.S.C. § 1158(d)(5)(A)(iii). However, asylum applications often take a few years to adjudicate, both by USCIS and EOIR, due to the substantial number of pending applications and new filings every year. As the HR-1 (OBBBA) Judiciary Committee's report on immigration fees noted, "The combined asylum backlog from EOIR and USCIS stands at more than 3 million pending applications." H.R. Rep No. 119-106, Book 1, at 859 & nn.130-135 (2025).

On July 17, 2025, EOIR issued a policy memorandum (the "EOIR Memo"), stating the following, "Because the statute imposes the annual asylum fee beginning in fiscal year 2025, *see* OBBBA § 100009(b)(1), that fee applies to any asylum application pending for more than one year as of a date after the date of enactment of OBBBA." (*see* Ex. 1). In that notice, EOIR acknowledged that the OBBBA did not affect the validity of EOIR's fee waiver request form, Form EOIR-26A. Furthermore, it stated that that OBBBA would not affect where fees are payable, and that "until the new asylum fees are fully integrated into existing payment systems, the Immigration Courts will implement temporary measures—*e.g.* possibly authorizing provisional acceptance of an application pending the subsequent submission of the fee—to ensure that aliens have an avenue to pay the required fees and submit applications." *Id*. at 3 n.7.

On July 22, USCIS published a notice in the Federal Register, "USCIS Immigration Fees Required by HR-1 Reconciliation Bill," 2025-13738 (90 Fed. Reg. 34,511) (July 22, 2025) (See Ex. 2), stating that Section 1808 imposes a FY 2025 annual fee requirement ("AAF") and explaining how USCIS would assess the fee in line with Section 1808:

> To effectuate the FY 2025 fee, DHS will require that any alien who filed a Form I-589, Application for Asylum and for Withholding of Removal, with USCIS before or on the beginning of fiscal year 2025, October 1, 2024, and whose application is still pending with USCIS at the end of fiscal year 2025, on September 30, 2025, must pay the FY 2025 amount specified by statute. *Id.* at 34,514.

It further explained:

> DHS determined that the fee applies to a Form I-589 pending as of October 1, 2024 or submitted thereafter because language in HR-1 is clear and unambiguous that the AAF applies during fiscal year 2025, which runs from October 1, 2024 through September 30, 2025, and to each fiscal year thereafter. Subsection (b)(1) of section 100009(b) provides for an initial amount that "shall" be applied for fiscal year (FY) 2025. Subsection (a) applies a fee for "each calendar year that an alien's application for asylum remains pending." Because HR-1 states that the AAF will be applicable in FY 2025, it necessarily applies the provision to the start of FY 2025. To apply the law only to applications filed after the date of enactment in July 2025 or later would result in no fee collections in FY 2025 because no such application would be pending for a calendar year (*i.e.* twelve months) during that time frame. *Id.* at 34,515.

Regarding how payment would be collected, the notice stated the following:

> For the first time the AAF is due under this notice, asylum applicants need not monitor the time their application has been pending and if the AAF applies to them. USCIS will provide personal, individual notice to each asylum applicant with an application pending with USCIS from whom the AAF is required, the amount of the fee, when the fee must be paid, how the fee must be paid, and the consequences of failure to pay. USCIS will require that AAF be paid using an online fee payment process. USCIS will provide guidance for future years' AAF payments in subsequent issuances. *Id.*

On September 23, EOIR created a payment mechanism for the new initial asylum fee, but not for the AAF.[2] On or around October 1, USCIS posted an update on its website, indicating that it created a payment mechanism for the AAF and had begun sending notices to applicants who will be required to pay within 30 days. USCIS began sending FY 2025 AAF payment notices on October 1, 2025. As of the date of this filing, EOIR has revised its FY 2025 AAF implementation policy and process to reflect USCIS's such that it too will impose fees for applications pending from October 1, 2024 to September 30, 2025. Furthermore, no payment notices will be sent until EOIR has established an online AAF payment mechanism, and applicants will have 30 days from the date of the notice to pay. *See* Decl. of Daren K. Margolin, Ex. 3.

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[2] "Updates to the EOIR Payment Portal," DOJ EOIR Notice (Sep. 23, 2025) https://www.justice.gov/eoir/media/1414551/dl?inline.

On October 3, 2025, Plaintiff ASAP filed a complaint against Defendants with this Court, alleging that (1) USCIS and EOIR unlawfully applied Section 1808's annual asylum fee retroactively; (2) USCIS and EOIR acted arbitrarily and capriciously in imposing the FY 2025 AAF, retroactively; and (3) EOIR unlawfully withheld and unreasonably delayed providing applicants with a clear mechanism and necessary instructions on how to pay the fee, to the extent payment is required. Plaintiff states that it is a national voluntary membership organization of asylum seekers from 175 countries who are now living in the United States, and that it "provides members with legal and community support, including time-sensitive updates, legal resources, and opportunities for members to work together for nationwide systemic reform based on the priorities identified by its membership." ASAP further states that its mission is "to build a more welcoming United States." Reddy Decl. ¶¶ 4, 9. ASAP's website states that "the Asylum Seeker Advocacy Project (ASAP) aims to provide factual information about current immigration laws."[3]

On October 7, 2025, Plaintiff filed a Motion for a Temporary Restraining Order, Preliminary Injunction, And/Or Preliminary Relief Under 5 U.S.C. § 705 (Br., ECF No. 29-1) in this matter. On October 14, 2025, upon joint request of the Parties, this Court ordered Defendants to respond to this Motion by October 20, 2025, and Plaintiff to file its reply by October 23, 2025.

LEGAL STANDARD

"[A] preliminary injunction is an extraordinary and drastic remedy." *Mazurek v. Armstrong,* 520 U.S. 968, 972 (1997) (citation omitted). An injunction is "never awarded as of right," *id.* at 690, and "should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion," *id.* at 972. To warrant preliminary relief, the movant must satisfy a four-prong test, establishing "that he is likely to succeed on the merits, that he is likely to suffer

[3] ASAP, Questions and Answers For Asylum Seekers, https://asaptogether.org/en/faqs/ (last visited Oct. 20, 2025).

irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The third and fourth factors of the analysis—harm to others and the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The standard for a stay under Section 705—which applies only to APA claims—is the same as the standard for a preliminary injunction. *Casa de Md., Inc. v. Wolf*, 486 F. Supp. 3d 928, 950 (D. Md. 2020) ("The factors governing issuance of a preliminary injunction also govern issuance of a § 705 stay." (citation omitted)).

ARGUMENT

I. PLAINTIFF IS UNLIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS

Plaintiff cannot meet the high burden required for preliminary relief in this case. As a threshold matter, Plaintiff cannot succeed in obtaining any of the relief it seeks, because it lacks standing to bring its claims. But even if Plaintiff does have standing, it is unlikely to succeed on the merits.

A. Plaintiff Lacks Associational Standing to Sue on Behalf of Its Members

"[N]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)). One element of this limitation is that a plaintiff must have standing to sue, a requirement that is "built on separation-of-powers principles" and "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Id.* A plaintiff "must support [each element of standing] with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560-61 (1992). (cleaned up).

Here, Plaintiff is an organization, not an individual—meaning that it has two paths to standing: either *organizational* standing, in which it seeks "redress for an injury suffered by the organization itself"; or *associational* standing, in which it acts solely "on behalf of its members." *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 458 (4th Cir. 2005). Plaintiff invokes only the latter. Accordingly, it bears the burden of making a "clear showing," *Mazurek*, 520 U.S. at 972, of three elements: that "(1) its members would otherwise have standing to sue as individuals; (2) the interests at stake are germane to the group's purpose; and (3) neither the claim made nor the relief requested requires the participation of individual members in the suit." *White Tail Park,* 413 F.3d at 458.

Despite its apparently cursory assumption that it has satisfied those elements, Plaintiff makes no showing that its members' interest in not paying the annual asylum fee is "germane to the group's purpose." *Id.* Instead, Plaintiff submits, alongside its motion for preliminary relief, a declaration containing merely two pages of "[b]ackground on ASAP," none of which identifies an organizational purpose relevant to the lawfulness of asylum fees. Reddy Decl. 2–3. Instead, the declaration explains simply that "ASAP is a national voluntary membership organization of asylum seekers," the "mission" of which is "to build a more welcoming United States." *Id.* ¶¶ 4, 9. And as part of its work, ASAP "provides … asylum seekers with legal information and support" and "regularly disseminates information and legal resources" to its members regarding such issues as "how to navigate the immigration system," "apply for asylum," and "apply for a work permit." *Id.* ¶¶ 9, 14.

But "build[ing] a more welcoming United States" *id.* ¶ 9, is hardly a mission germane to the issue of executive branch agencies' implementation of asylum fees that are mandated by statute. The "interests at stake," *White Tail Park*, 413 F.3d at 458, are those of individual asylum applicants who wish not to part with $100; the primary work of ASAP, by contrast, is, on its own telling, to disseminate information to its members about immigration law. The relationship between those interests is simply too remote to trigger the application of associational standing here. If so tenuous a relationship could satisfy the germaneness requirement of associational standing, that standing test would be utterly toothless. After all, there would be no limiting principle to such a test: ASAP would have standing to challenge any statute or regulation of any impact to the immigration system merely because it is interested in a "more welcoming United States" Reddy Decl. ¶ 9, and the dissemination of immigration-related information. *Cf. Dayton Area Chamber of Comm. v. Kennedy*, 147 F.4th 626, 633–34 (6th Cir. 2025) (interests of organization dedicated to improving "business climate" not sufficiently germane to lawsuit alleging government action "making it more difficult for [organization's members] to operate their businesses").

The Article III case-or-controversy requirement—which standing law exists to vindicate, *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337–38 (2016)—cannot be reduced to so low a bar. And because Plaintiff fails to make a "clear showing" that its organizational purpose is germane to the retroactivity of asylum fees, it fails to meet its burden establishing standing at this stage.

B. Section 1808 imposes an annual asylum fee for applications pending in Fiscal Year 2025.[4]

Plaintiff asserts that Defendants' interpretation of Section's 1808's annual asylum fee

[4] Defendants address Count I and Count II of Plaintiff's motion together, because the two claims are inextricably intertwined.

requirement for FY 2025 is impermissibly retroactive in two ways. First, it alleges that it is impermissibly retroactive because no such fee requirement existed when the affected applicants first filed. Second, Plaintiff alleges that Defendants impermissibly count the time an asylum application was pending on or before July 4, 2025, in determining whether it has been pending for a full year. *See* Br. 20. Despite Plaintiff's assertions to the contrary, Section 1808 expressly requires payment of an annual asylum fee for applications pending in FY 2025. Furthermore, the FY 2025 annual fee requirement is not impermissibly retroactive, because it is purely procedural and otherwise prospective.

Courts assess statutory retroactivity using the two-step test from *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). *See Rendon v. U.S. Att'y Gen.*, 972 F.3d 1252, 1258 (11th Cir. 2020). First, courts look to "whether Congress has expressly prescribed the statute's proper reach." *Landgraf*, 511 U.S. at 280; see also *Jaghoori v. Holder*, 772 F.3d 764, 770 (4th Cir. 2014) ("The prescriptive language in the statute must be express, unambiguous, and unequivocal."). In the absence of language as helpful as that, "[courts try] to draw a comparably firm conclusion about the temporal reach specifically intended by applying 'our normal rules of construction,'" *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37 (2006) (quoting *Lindh v. Murphy*, 521 U.S. 320, 326 (1997)). If that effort fails, courts consider whether the statute would have a "retroactive effect" in that "it would impair rights a party possessed when [it] acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280. If the answer is yes, courts then apply the presumption against retroactivity by construing the statute as inapplicable to the event or act in question owing to the "absen[ce of] a clear indication from Congress that it intended such a result." *INS v. St. Cyr*, 533 U.S. 289, 316 (2001); see *Martin v. Hadix*, 527 U.S. 343, 352 (1999) (quoting *Landgraf*, 511 U.S. at 280).

1. Section 1808 expressly prescribes that the annual asylum fee requirement applies for applications pending in FY 2025.

With respect to the first prong, Section 1808 expressly prescribes an annual fee requirement for applications pending in FY 2025. To reiterate, Section 1808 became effective on July 5, 2025, *during fiscal year 2025*, and Section 1808(b)(1) clearly states that there is an initial annual fee "*[f]or fiscal 2025*." (emphasis added). Furthermore, and as Plaintiff itself acknowledges, Section 1808(a) discusses collection of the annual fee in *the present tense*, stating that a fee is due "for each calendar year that an alien's application for asylum remains pending." Contrary to Plaintiff's assertion, the term 'remains pending' does not mean that an annual fee will only be assessed for those applications pending one year *after the date of enactment*. The language imposes no such temporal restriction. Instead, the term 'remains pending' simply and plainly refers to any application still ongoing one year *after the date of its filing*, which for FY 2025 would necessarily include applications pending prior to the statute's enactment. As USCIS explained in its Federal Register Notice issued on July 22, 2025, "HR-1 states that the [annual asylum fee] will be applicable in FY 2025. To apply the law only to applications filed after the date of enactment in July 2025 or later would result in no fee collections in FY 2025 because no such application would be pending for a calendar year (*i.e.* twelve months) during that time frame." 90 Fed. Reg. at 34,515.

If any doubt lingers as to the statute's clarity on this point, the court must then look to "normal rules of [statutory] construction," to determine the statute's temporal reach. *Murphy*, 521 U.S. at 326. A statute is not given retroactive effect "unless such construction is required by explicit language *or by necessary implication*." *United States v. St. Louis, S.F. & T.R. Co.*, 270 U.S. 1, 3 (1926) (emphasis added); *see also Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 290 (2010)) ("The court interprets 'statutes, not isolated provisions." (quoting *Gustafson v. Alloyd Co.,* 513 U.S. 561, 568 (1995)).

In applying common statutory construction principles, the canon against surplusage commands that statutes be read in a way that, "if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Here, the statute's construction necessarily implies that Section 1808's annual fee requirement temporally applies to applications pending in FY 2025. Contrary to Plaintiff's assertion, Section 1808's FY 2025 fee amount is not intended to serve as a mere baseline for calculating the FY 2026 fee. Nothing in the statute says as much. Indeed, such an interpretation would clash with the Title X, Subpart I ("Immigration Fees") as a whole, whereby a FY 2025 is assessed for every new immigration fee enacted.

Plaintiff also alleges that if Congress intended the annual fee to be retroactive, it would have used the term 'during' under Subsection (b)(1) ("Initial amount.—*For* fiscal year 2025…"), as it does under Subsection (b)(2) ("Annual adjustments for inflation.—*During* fiscal year 2026, and during each subsequent fiscal year…"). The meaningful-variation canon directs that when a statute uses one term in one place and a distinct term elsewhere, the difference matters—that is, the distinct words have different meanings. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457–58 (2022). However, this canon is "mostly applied to terms with some heft and distinctiveness, whose use drafters are likely to keep track of and standardize." *Pulsifer v. United States*, 601 U.S. 124, 149 (2024); See also *IBP, Inc. v. Alvarez*, 546 U.S. 21, 33–34 (2005); *see also Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 279 (2018) (holding that "money remuneration" must mean something different from "all remuneration" when used in "companion" statutes (emphasis deleted). Here, the ubiquitous nature of the terms "for" and "during," as well as their lack of heft and distinctiveness, undermine any meaningful variation between the two terms. *Pulsifer*, 601 U.S. at 148; *See* also *Barry v. McDonough*, 101 F.4th 1348, 1356 (Fed. Cir. 2024) ("The words "for each" lack the "heft and distinctiveness" to warrant the application of the meaningful-variation canon in this circumstance." (quoting *Pulsifer*, 601 U.S. at 148)).

If any meaning is to be assigned to Subsection (1)(b)'s use of the term "for" instead of "during," it is one that favors retrospective reach. Under Title X, Subpart A ("Immigration Fees"), the term "*during* FY 2025" is applied only in instances where a fee is due at filing and/or where there is no past conduct or pending application to consider. In other words, these fees must apply prospectively. For instance, the Employment Authorization Document ("EAD") Fee under Section 1803 is an initial fee due at the time of filing. By indicating that the initial amount applies "during 2025," Congress expressed it clear intent that the fee be assessed prospectively for the remainder of FY 2025, effective upon OBBBA's enactment. It is the same for the Temporary Protected Status (initial or one-time) fee (Section 1803(c)(2)), and even the initial Asylum fee (Section 1802(b)), which all also direct that the fee apply "during fiscal year 2025".

Contrary to Plaintiff's assertion, where the statute states there is an initial amount "for FY 2025," there is a FY 2025 fee requirement, and the government has been consistent in applying this interpretation. Where 'during FY 2025' applies to necessarily prospective applications, for FY 2025' requires retrospective reach, referring to events occurring during the well-defined period of October 1, 2024 to September 30, 2025. Here, that event is the pendency of an asylum application. In all instances *where a pending FY 2025 application is possible*, the provision states, "for fiscal year 2025," and in every instance that 'for fiscal year 2025' is used, a fee has either been issued effective FY 2025 or based on the application's FY 2025 pendency. For the annual asylum fee requirement, USCIS (and now EOIR) have assessed fees for applications pending the duration of FY 2025. As another example, the immigrant parole fee (Section 1804(c)), *which is due upon grant of parole*, also applies to applications that were pending during FY 2025 (*See* Immigration Parole

Fee Required by HR-1 Reconciliation Bill, 90 Fed. Reg. 48,317 (Oct. 16, 2025), same as for the visa integrity fee (Section 1806(a)(2)).

Furthermore, it could not have been Congress's intent to require some fees during FY 2025 and others during FY 2026, where no apparent rationale for such difference exists. "Courts should construe laws in harmony with the legislative intent and seek to carry out legislative purpose." *Foster v. United States*, 303 U.S. 118, 120 (1938). The OBBBA creates new immigration fees and increases existing immigration fees upwards of 900%, clearly demonstrating Congress's strong desire and urgent need to increase funding for USCIS and EOIR—which both are predominantly fee funded.[5] In fact, in its legislative committee report, where it explains its reasons for the increase in immigration fees, Congress specifically decries how USCIS and EOIR are unable to recover costs for processing their enormous backlog of asylum applications due to the lack of asylum application fees. If the Court were to apply Plaintiff's rationale that the term "for FY 2025" merely signifies Congress's intent to provide a baseline amount, *it would have to also accept that it was Congress's intent to forgo collection of several different fees for all of FY 2025, despite there being three months left in the fiscal year*. *See Gonzales*, 548 U.S. at 40 (In considering legislative intent, "the point of the statute's revision, however, was obviously to expand the scope of the reinstatement authority and invest it with something closer to finality, and it would make no sense to infer that Congress meant to except the broad class of persons who had departed before the time of enactment but who might return illegally at some point in the future."). Foregoing any such fees, including for the hundreds of thousands of pending asylum applications during FY 2025, would undoubtedly conflict with Congress's stated goal of urgently remedying USCIS's and EOIR's significant funding shortfalls.

[5] H.R. Rep No. 119-106, Book 1, at 130-135 (2025).

Finally, in accordance with *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), the government's interpretation, as stated in its policy statement, is entitled to deference "to the extent that it has the 'power to persuade.'" *Knox Creek Coal Co Coal Corp. v. Sec'y of Lab., Mine Safety & Health Admin.,* 811 F.3d 148, 160 (4th Cir. 2016) (quoting *Skidmore*, 323 U.S. at 140).[6] Thus, "the weight that courts afford an agency's interpretation depends upon the thoroughness evident in the agency's consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Nicoletti v. Bayless*, No. 24-6012, 2025 WL 80294, at *2 (4th Cir. Jan. 13, 2025) (quoting *Carlton & Harris Chiropractic, Inc. v. PDR Network, LLC*, 982 F.3d 258, 264 (4th Cir. 2020) (cleaned up); *see also Perez v. Cuccinelli*, 949 F.3d 865, 877 (4th Cir. 2020)). The record clearly shows that USCIS's (and now EOIR's) determination that Section 1808 includes a fee requirement for FY 2025 was based on a thorough and well-reasoned assessment of the statute and other relevant law, including the Immigration and Nationality Act (8 U.S.C. § 1101 *et seq*.) and *Landgraf,* as well as the agencies' expertise in the appropriate implementation of immigration fees. *See* Ex. 2. For the above reasons, *Landgraf*'s first prong is met.

2. Section 1808 is not impermissibly retroactive.

A statute is impermissibly retroactive, if it "impairs rights a party possessed when [it] acted, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280. Importantly, a statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating the statute's enactment, see *Republic Nat'l Bank of Miami v. United States,* 506 U.S. 80, 100 (1992) (Thomas,

[6] The Supreme Court's decision in *Loper Bright* v. *Raimondo* does not 603 U.S. 369, 393-94 (2024); *see id.* at 476 (Kagan, J., dissenting) ("[T]he majority makes clear that what is usually called *Skidmore* deference continues to apply. Under that decision, agency interpretations constitute a body of experience and informed judgment that may be entitled to respect." (cleaned up)).

J., concurring in part and concurring in judgment), or upsets expectations based in prior law. *Landgraf*, 511 U.S. at 269 n.24. Rather, the court must ask whether the new provision attaches *new legal consequences to events completed before its enactment in a way that offends familiar considerations of fair notice, reasonable reliance, and settled expectations*. *Id*; *see also Jaghoori*, 772 F.3d at 770 (citation omitted).

a. Section 1808's FY 2025 annual asylum fee requirement is procedural.

As demonstrated above, Section 1808 clearly expresses its temporal reach as applying to FY 2025, but it is not otherwise impermissibly retroactive because it merely applies changes in procedural rules required by statute. As *Landgraf* makes clear, the general presumption against retrospective application of statutes remains unless the new statute simply affects procedure or matters secondary to the principal cause of action. *See Landgraf*, 511 U.S. at 274-78; *see also Chenault v. U.S. Postal Serv*., 37 F.3d 535, 538 (9th Cir.1994) ("*Landgraf* created a scheme whereby courts must scrutinize each provision of a given statute to ascertain whether it is substantive or procedural . . . if a provision is substantive, a presumption against retroactive application attaches.").

To confirm, OBBBA is a reconciliation bill, whose stated purpose is to reduce taxes, reduce or increase spending for various federal programs, and increase the statutory debt limit. OBBBA Summary, H.R. 1, 119-21 (July 4, 2025). The OBBBA did not grant the government any new authority with respect to the collection of asylum application fees. This authority already existed under Section 208(d)(3) of the INA (2024) (providing that the government may impose fees for the consideration of an application for asylum). Section 1808's FY 2025 AAF requirement therefore is not substantive, but procedural, as it merely amends the process by which fees will be collected. It neither grants nor strips a substantive right. See *Landgraf*, 511 U.S. at 280–81 (right to a jury trial is procedural but new right to compensatory and punitive damages is substantive); *Brown v. Angelone*, 150 F.3d 370, 373 (4th Cir. 1998) ("when application of a new limitation period would wholly eliminate claims for substantive rights or remedial actions considered timely under the old law, the application is "impermissibly retroactive."); and *Altizer v. Deeds*, 191 F.3d 540, 546 n.11 (4th Cir. 1999) ("Although section 1915(g) [which allows qualifying individuals to pay the filing fee in installments over time] attaches consequences to past actions, we find that these consequences are matters of procedure. Section 1915(g) does not affect a prisoner's substantive rights, and it does not block his or her access to the courts.") quoting *Adepegba v. Hammons,* 103 F.3d 383, 386 (5th Cir.1996)).

b. Section 1808's FY 2025 annual fee requirement is prospective.

While it is true that assessing an annual asylum fee for FY 2025 requires retrospective reach (i.e. counting the time an application was pending prior to the statute's enactment), that alone does not render such reach impermissible for the purpose of assigning a prospective fee. *Landgraf*, 511 U.S. at 269 n.24, (describing "a new property tax" as prospective even if it "may upset the reasonable expectations that prompted those affected to acquire property" before its enactment). To confirm, the government (USCIS and now EOIR) is in the process of assessing an annual asylum fee for applications pending for the duration of FY 2025 (from October 1, 2024 to September 30, 2025), but that fee did not become due until a few months after the OBBBA's enactment. See Ex. 2 and 3. Only if an application was pending for the full FY 2025 is a fee assessed, effective October 1, 2025, with payment due within 30 days of receipt of notice. As the Fourth Circuit previously held, "a statute has no retroactive effect where the conduct being regulated begins before a statutory change occurs and continues after that change has taken effect." *Frontier-Kemper Constructors, Inc. v. Dir., Off. of Workers' Comp. Programs, United States Dep't* *of Lab.,* 876 F.3d 683, 689 (4th Cir. 2017), *as amended* (Dec. 12, 2017).

Contrary to Plaintiff's assertion, the Section 1808 FY 2025 AAF requirement does not attach new legal consequences to events completed before its enactment. *Jaghoori*, 772 F.3d at 770. An asylum seeker can make the choice to withdraw their application in advance of the payment deadline and therefore not pay the fee. In other words, the annual asylum fee is a maintenance fee that is required to continue the application process, subject to a decision made by the affected applicant subsequent to OBBBA's enactment. It is not a penalty or disability assigned to past conduct (i.e. the filing of an initial application), as was the case in *Vartelas v. Holder*, 566 U.S. 257, 260–61 (2012), *St. Cyr*, 533 U.S. at 316, and *Jaghoori* 772 F.3d at 770 —where retroactive effect was applied to the immigrant's past criminal conduct. Again, the FY 2025 annual fee is assigned not because an application was filed (i.e. the past conduct Plaintiff alleges), but because the application continued to accrue post enactment, to September 30, 2025.

The case of *Sunshine State Regional Center, Inc. v. Director, USCIS*, 143 F.4th 1331, 1346 (11th Cir. 2025), is particularly instructive here. In that case, the newly passed EB-5 Reform and Integrity Act of 2022 ("Act") required regional centers in the EB-5 "immigrant investor" visa program to pay an annual Integrity Fund Fee going forward. The court held that USCIS did not impermissibly apply the Act's fee requirement retroactively by assessing the fee against a regional center, whose designation predated Act's enactment, even if the Act was ambiguous as to fee's temporal parameters. The fee was not a new duty with respect to any transaction already completed, but rather, a condition of already-designated regional centers' *continued participation in the program*. *Id.* at 1346-47; *see also In re CF & I Fabricators of Utah, Inc.*, 150 F.3d 1233, 1237 (10th Cir. 1998) (declaring "not retroactive" a statute imposing prospective fees on debtors who had already entered bankruptcy). Like the fee in *Sunshine State Reg'l Ctr.*, the FY 2025 annual asylum fee is prospective.

c. Section 1808's AAF does not upset familiar considerations of fair notice, reasonable reliance, and settled expectations.

Finally, Plaintiff alleges that their members were not provided fair notice of Section 1808's annual fee requirement and that the new fee undermines their reasonable reliance and expectations. Br. However, asylum seekers did have notice that they could be subject to such fees. Section 208(d)(3) of the INA, up until OBBBA's enactment, stated that the agencies may impose fees "for the consideration of" asylum applications and that the Attorney General may impose fees in installments or over a period of time. Furthermore, Subsection 208(d)(5)(B) states that "The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter." Plaintiff, as a self-proclaimed purveyor of immigration information, had knowledge that any of its members with previously filed and pending asylum applications could be subject to a fee for the government's "consideration" of such applications. Also, prior to OBBBA's enactment, nearly every other immigration application required a fee at filing or at issue.[7]

Furthermore, implementation of the $100 FY 2025 fee does not create a "manifest injustice," as Plaintiff also alleges. Applicants are not being denied disability benefits (*Miller v. Callahan*, 964 F. Supp. 939, 950 (D.Md. 1997), or being made to pay exorbitant attorney's fees, *Martin*, 527 U.S. at 360, and regardless, Plaintiff fails to address the required factors for showing manifest injustice.

> "The 'manifest injustice' inquiry turns on several factors: (1) Whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of burden which a retroactive

[7] Lawyers for Movement, National Immigration Project, Comparison Chart of Immigration-Related H.R.1 The So-Called One Big Beautiful Bill Act, https://nipnlg.org/sites/default/files/2025-07/Final-Fee-Increases-HR1.pdf.

> order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard." *Zaragoza v. Garland*, 52 F.4th 1006, 1023 (7th Cir. 2022) (quoting *NLRB v. Wayne Transp.*, 776 F.2d 745, 751 n.8 (7th Cir. 1985)).

For the above reasons, Section 1808's FY 2025 AAF is not impermissibly retroactive, and there is no manifest injustice.

C. Neither EOIR nor USCIS Acted Arbitrarily or Capriciously in Setting Effective Dates

Plaintiff alleges that USCIS and EOIR acted arbitrarily and capriciously by not coordinating with each other and adopting inconsistent interpretations of Section 1808. Br. EOIR has since revised its position to reflect USCIS's and will implement the FY 2025 AAF in the same manner as USCIS. *See* Ex. 3. Accordingly, any inconsistency between the agencies' respective positions has been resolved. While there is no longer any discrepancy in procedures, Defendants maintain they did not act arbitrarily and capriciously in applying separate procedures for collecting the FY 2025 fee. Because the AAF is procedural, as previously explained, agencies have significant discretion in its implementation. Indeed, Congress categorized fees as part of the "asylum procedure" described in Section 208(d)(3) of the INA and granted executive branch agencies significant discretion to implement asylum-related fees and other procedural aspects of asylum processing. See INA Section 208(d)(5)(B). *See also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394-95 (2024) ("In a case involving an agency…the statute's meaning may well be that the agency is authorized to exercise a degree of discretion…For example, some statutes 'expressly delegate[ ]' to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to 'fill up the details' of a statutory scheme" (quoting *Batterton v. Francis*, 423 U.S. 416, 425 and *Wayman v. Southard*, 23 U.S. 1, 43 (1825))). EOIR otherwise provided reasoned explanation for its initial assessment of this new procedural requirement.[8]

Separately, USCIS's (and now EOIR's) FY 2025 AAF implementation method is not arbitrary and capricious. Agency 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 U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983)). "Judicial review under [the arbitrary and capricious] standard is deferential, and a court may not substitute its own policy judgment for that of the agency." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). Rather, the Court must ensure "that the agency has acted within a zone of reasonableness." *Id.* As described in detail above, USCIS's decision to implement the FY 2025 AAF for applications pending the duration of FY 2025 is both well-reasoned and reasonable and is consistent with how USCIS is implementing other FY 2025 fees under OBBBA.

D. EOIR Has Not Unreasonably Delayed in Providing a Method of Payment

As mentioned above, as of this filing, EOIR is taking steps to implement its revised policy, in line with USCIS's. Ex. 3. That said, EOIR did not unlawfully withhold or unreasonably delay implementation of the FY 2025 AAF. The Administrative Procedure Act "imposes a general but nondiscretionary duty upon an administrative agency to pass upon a matter presented to it 'within a reasonable time,' 5 U.S.C. § 555(b), and authorizes a reviewing court to 'compel agency action

[8] While there no longer exists any inconsistency between the two agencies' positions, Defendants maintain that EOIR's original interpretation was not arbitrary or capricious and preserve their right to further defend any challenges to its legality.

unlawfully withheld or unreasonably delayed,' *id.* § 706(1)." *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1099 (D.C. Cir. 2003). Where an agency "fails[s] to take a *discrete* agency action that it is *required to take*," the APA creates a private cause of action for a party aggrieved by that agency's unreasonable delay to compel such action. *FERC v. Powhatan Energy Fund, LLC*, 949 F.3d 891, 903 (4th Cir. 2020).

While Section 1808 compels fee collection ("shall collect"), it does not require prompt or immediate assessment of such fees, unlike in *FERC*, where the statute required that FERC "promptly assess [a] penalty, by order." *Id*. at 903. Furthermore, Section 208(d)(5)(B) of the INA expressly grants the Attorney General significant discretion in the manner of implementation. Also, there can be no reasonable expectation that EOIR would implement the FY 2025 AAF "immediately," given the need to coordinate with USCIS both legally and operationally, and the scope of the undertaking. Indeed, EOIR's July 17, 2025 policy memorandum indicates the various additional steps EOIR must take before operationalizing any fee, including updating the adjoining regulations and implementing a pay mechanism. See also Ex. 3. Also, USCIS only began issuing payment notices on October 1, 2025. And despite Plaintiff's assertions, EOIR's July 17, 2025 policy memorandum does not state that the FY 2025 AAF will come due on July 4, 2025. It merely explains the method by which the fee will be assessed. As EOIR confirms, as of the date of this filing, it has not issued any payment notices. *Id.* Plaintiffs have provided no concrete evidence that any applicant has been penalized for non-payment of the AAF. Br. 23. Furthermore, EOIR reaffirms that no payment is due until after an individual payment notice is issued. *Id*.

II. PLAINTIFF'S MEMBERS WILL NOT SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF

Apart from the lack of any likelihood of success, Plaintiff also has failed to demonstrate that it's members will suffer irreparable harm if the Court does not enter the requested preliminary injunction. To show irreparable injury, a plaintiff must make a "clear showing" that it will suffer harm that is "'neither remote nor speculative, but actual and imminent.'" *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991) (citation omitted). In addition, harm is irreparable only when it "cannot be fully rectified by the final judgment after trial." *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 216 (4th Cir. 2019). "'Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of [an injunction] are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date weighs heavily against a claim of irreparable harm.'" *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)) (cleaned up). Accordingly, "the temporary loss of income … does not usually constitute irreparable injury." *Sampson*, 415 U.S. at 90. But here, the *only* cognizable injury Plaintiff identifies is the loss of $100 by each of its affected members. That alone suffices to defeat Plaintiff's motion. In the face of that black-letter law, Plaintiff blithely insists that the alleged "economic consequences alone are irreparable harm that warrant preliminary relief" because "it is far from clear whether applicants will be able to obtain refunds either from the agency or through litigation." Br. 26. That argument is wrong twice over. *First*, it misstates the governing legal test: the operative question is whether Plaintiff has met its burden of showing that its members are likely to suffer irreparable harm, not whether it is "clear" that asylum applicants "will be able to obtain refunds." The burden, in other words, is not on Defendants to assure the availability of refunds, but rather on Plaintiff to show the likely *unavailability* of refunds. *Second*, and as a legal matter, Plaintiff fails to demonstrate that refunds will not be available. Its only argument to that effect is that sovereign immunity might inhibit the ability of asylum applicants to recover their fees if those fees are found to have been unlawfully imposed. *Id.* But to the contrary, sovereign immunity does not prevent the entry of judgment against the Government requiring it to set aside unlawful agency action, even when the inevitable "by-product" of that judgment is the reimbursement of funds. *Bowen v. Massachusetts*, 487 U.S. 879, 910 (1988); *see also id.* at 893 ("The fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages'" triggering sovereign immunity); *United States v. Minor*, 228 F.3d 352, 355 (4th Cir. 2000) (payment of money constitutes equitable relief where award is not for "damages in substitution for a loss"). Here, Plaintiff simply has not carried its burden of showing that if asylum applicants are required to pay the annual fee during the pendency of this case, they will have no recourse to recover their funds should they ultimately prevail.

Nevertheless, Plaintiff argues that despite the monetary nature of the alleged injury, that harm is nonetheless irreparable because the "limited financial means" of asylum seekers sometimes requires "making difficult tradeoffs" regarding personal or family budgets. Br. 25–26. But Plaintiff cites no meaningful authority to support its view that an exception applies in this case to the general rule that monetary injury is not irreparable. In fact, the *only* case it cites for that proposition—from an out-of-circuit district court—went out of its way to emphasize the extreme circumstances warranting an exception in that case. *See* Br. 26 (citing *Lee v. Christian Coal. of Am., Inc.*, 160 F. Supp. 2d 14, 31–32 (D.D.C. 2001)). There, the court acknowledged an exception to the governing rule when "the plaintiff is so poor that he would be harmed in the interim by the loss," noting other caselaw explaining that "the plaintiff must quite literally find himself being forced into the streets or facing the spectre of bankruptcy before a court can enter a finding of irreparable harm." *Lee*, 160 F. Supp. 2d at 31 (citing *Williams v. State Univ. of N.Y.*, 635 F. Supp. 1243, 1248 (E.D.N.Y. 1986)). With that high bar in mind, the court noted that even financial harm would qualify as irreparable harm in that case because the plaintiffs had lost their jobs as a result of the challenged action, and would "have great difficulty finding other work to avoid insolvency, eviction, and even to obtain food." *Id.* at 32. Plaintiff comes nowhere close to demonstrating that the $100 payment at issue here resembles the loss of employment that featured in *Lee*, nor that the payment threatens its members with insolvency, eviction, or starvation.

Finally, Plaintiff attempts to satisfy the irreparable-harm requirement by arguing that if asylum applicants do *not* pay the fee, they risk suffering irreparable harm in the form of adverse immigration consequences. Br. 26–28. But that argument gets the state of affairs backwards. What Plaintiff seeks is a preliminary injunction *against* the payment of the required fee pending the outcome of this litigation, so in the *absence* of preliminary relief, asylum applicants are presumed to continue complying with federal law by paying the annual fee, thereby sparing them the parade of horribles recited by Plaintiff in the event of non-payment. To repeat the governing test: the injunction sought is only available if a plaintiff shows that "he is likely to suffer irreparable harm *in the absence of preliminary relief*." *Winter*, 555 U.S. at 20 (emphasis added). Absent an injunction, no adverse immigration-related consequences would occur as a result of the Government's challenged conduct. Rather, such adverse immigration consequences would result only (and predictably) from a violation of law by asylum applicants themselves—namely, a violation of the statute requiring payment of the annual fee, which, unless and until this Court holds otherwise, remains governing law. In fact, the only potential irreparable harm would be to Defendants in the event that the Court grants the present motion, because there would be no incentive to pay the AAF for those who owe the fee but have their asylum applications adjudicated during the pendency of this litigation.

III. NEITHER THE EQUITIES NOR THE PUBLIC INTEREST WEIGH IN FAVOR OF PRELIMINARY RELIEF

Finally, preliminary relief is inappropriate in this case because the balance of the equities and the public interest tip in Defendants' favor. When, as here, the Government is the party opposing preliminary relief, those two factors merge. *Nken*, 556 U.S. at 435. And as courts have repeatedly acknowledged, "there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations.'" *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). Here, granting the preliminary injunction that Plaintiff seeks would disrupt the agencies' efforts to abide by the clear terms of the OBBBA: that an annual asylum fee be collected for fiscal year 2025 wherever an asylum application has been pending for over a year, despite the OBBBA's passage with fewer than three months remaining in that fiscal year. In response, Plaintiff argues that, to the contrary, preliminary relief is necessary because it will "provide thousands of asylum seekers much-needed clarity about their obligations (or lack thereof) under Section 1808." Br. 29. But on Plaintiffs' own telling, both USCIS and EOIR have *already* clearly indicated that § 1808 is appropriately understood to apply to those applications that reached a year of pendency in FY 2025, and each has published an explanation of the manner in which it will administer the annual fee for those applications within its jurisdiction. *Id.* at 5–7. That each agency would process the applications before it differently is no indictment of the "clarity" of those processes. Accordingly, Plaintiff fails to show that the balance of the equities or the public interest weigh in favor of preliminary relief.

IV. If the Court Chooses to Grant Preliminary Relief, Such Relief Must Be Narrowly Tailored to Plaintiff and Its Members

If the Court chooses to grant Plaintiff preliminary relief, it should narrowly tailor any relief to Plaintiff and its members. Here, Plaintiff seeks "a stay under the Administration Procedure Act [sic], 5 U.S.C. § 705, and a … preliminary injunction." Br. 3. But both kinds of relief are subject to the same equitable principles. That's because § 705 was designed "to reflect existing law . . . and not to fashion new rules of intervention for District Courts." *Sampson*, 415 U.S. at 68 n.15. And when a court crafts equitable relief, it is bound by "the rule that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*." *Trump v. CASA, Inc.*, 606 U.S. 831, 862(2025) (Thomas, J., concurring) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).

Accordingly, "the question is not whether an injunction offers complete relief to *everyone* potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief *to the plaintiffs before the court.*" *Id.* at 852. In keeping with that longstanding principle, the House Report that accompanied the APA explained, at the time of the statute's passage in 1946, that relief under § 705 should "normally, if not always, be limited the parties complainant." H.R. Rep. No. 79-1980, at 277 (1946). More broadly, the Supreme Court has recently instructed that "[w]hen interpreting a statute that authorizes federal courts to grant" preliminary relief, courts "do not lightly assume that Congress has intended to depart from established principles" of equity. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (citation omitted). For that reason, this very district has previously limited § 705 relief to the "plaintiffs who have demonstrated … standing at this stage" rather than authorizing nationwide vacatur of agency action, *Wolf*, 486 F. Supp. 3d at 970–72 (D. Md. 2020) (citing *CASA de Md., Inc. v. Trump*, 971 F.3d 220 (4th Cir. 2020)), and noted the Fourth Circuit's "stinging and lengthy rebuke" of another court for granting nationwide vacatur of agency action, *id.* at 971[9]; *see also Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 995–96 (9th Cir. 2025) (applying traditional limitations on equitable relief to § 705 stay).

The plain language of § 705 requires the Court to consider relief that merely "preserve[s] status or rights pending conclusion of the review proceedings" and is tailored "to the extent necessary to prevent irreparable injury." In limiting such relief "to the extent necessary to prevent irreparable injury," 5 U.S.C. § 705, the statue directs courts to apply traditional equitable principles, which include tailoring relief to be no more intrusive than necessary to prevent irreparable harm to the parties. Accordingly, if the Court chooses to grant preliminary relief, it makes no difference whether such relief is couched as a preliminary injunction or a § 705 stay; rather than vacating the retroactive fee-collection efforts of USCIS and EOIR altogether, any preliminary relief granted must be cabined to the parties presently before the Court.

V. IF THE COURT CHOOSES TO GRANT PRELIMINARY RELIEF, IT SHOULD REQUIRE PLAINTIFF TO POST SUFFICIENT BOND AND SHOULD ENTER A STAY.

Finally, to the extent the Court issues any injunctive relief, Defendants respectfully request the requirement of a reasonable bond, considering the financial damages and other costs that a preliminary injunction will cost Defendants. Under Federal Rule of Civil Procedure 65(c), courts may grant preliminary relief "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained" by Defendants in the event that they are "found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). To that end, the Fourth Circuit has directed that "[i]n fixing the amount of an injunction bond, the district court should be guided by the purpose underlying Rule 65(c), which is to provide a mechanism for

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[9] After the Fourth Circuit published that opinion, the full Court granted *en banc* rehearing of the case. But before rehearing could take place, a new presidential administration took office and sought dismissal of the appeal, which the Court granted. *See* Order, *CASA de Md., Inc. v. Biden*, No. 19-2222 (4th Cir. March 11, 2021).

reimbursing an enjoined party for harm it suffers as a result of an improvidently issued injunction or restraining order." *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 n.3 (4th Cir. 1999). For that reason, "[t]he amount of the bond … ordinarily depends on the gravity of the potential harm to the enjoined party." *Id.* Here, Plaintiff seeks to enjoin the requirement that each of the asylum applicants who filed before the passage of the OBBBA, and have maintained that application for over a year, pay a $100 fee—an injunction of enormous financial worth. The loss of such a significant sum throughout the pendency of this case is precisely the harm that Rule 65(c) exists to cure. Accordingly, the Court should require Plaintiff to post bond before obtaining any injunction against Defendants prohibiting the collection of the annual asylum fee for the pendency of this case.

Defendants also request that the Court stay any injunction pending appeal or, at minimum, enter a seven-day administrative stay, to allow the Solicitor General to determine whether to authorize an appeal and seek emergency appellate relief.

CONCLUSION

The Court should deny Plaintiff's motion for preliminary relief.

October 20, 2025

Respectfully submitted,

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Counsel for Defendants

EXHIBIT 1

OOD
PM 25-36 (Amended)
Effective: July 17, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: July 17, 2025

SIRCE OWEN
Digitally signed by SIRCE OWEN
Date: 2025.07.17 18:09:05 -04'00'

STATUTORY FEES UNDER THE ONE BIG BEAUTIFUL BILL ACT

PURPOSE:	Update and supplement EOIR policy regarding fees
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 25-35, *Statutory Fees Under the One Big Beautiful Bill Act*

This Policy Memorandum (PM) supersedes and replaces PM 25-35 in order to clarify certain points for adjudicators.

I. Background

On December 18, 2020, EOIR issued PM 21-10, *Fees*, which noted EOIR's statutory authority to set fees to ensure full cost recovery and committed EOIR to reviewing its fees on at least a biennial basis. PM 21-10 also provided guidance on the adjudication of fee waivers.[1]

More recently, on Friday, July 4, 2025, President Donald J. Trump signed the One Big Beautiful Bill Act ("OBBBA") (H.R.1), which, *inter alia*, introduced or increased numerous immigration-related fees relevant to EOIR and amended the availability of fee waivers in certain instances. Effective immediately, EOIR is implementing the statutorily mandated immigration fees and fee waiver changes established by OBBBA. To the extent EOIR's current regulations regarding fees and availability of fee waivers are inconsistent with OBBBA, the regulations are superseded by the statute.[2] *See*, *e.g.*, *Farrell v. United States*, 313 F.3d 1214, 1219 (9th Cir. 2002) ("It is well-settled that when a regulation conflicts with a subsequently enacted statute, the statute controls and voids the regulation.").

II. Key Provisions of OBBBA

First, OBBBA implemented or increased fees for various applications for relief and protection

[1] PM 21-10 was rescinded on June 7, 2021, and then reinstated on January 30, 2025. *See* PM 25-12, *Cancellation of Policy Memorandum 21-24 and Reinstatement of Policy Memorandum 21-10* (Jan. 30, 2025).
[2] EOIR will conduct a future rulemaking to conform its regulations to OBBBA.

from removal adjudicated in EOIR proceedings, increased fees for appeals before the Board of Immigration Appeals (Board), and increased fees for various types of motions before EOIR. Importantly, the fees imposed by OBBBA are "[i]n *addition* to any other fees authorized by law." *See*, *e.g*., OBBBA § 100013(a)(1) (emphasis added). Thus, for applications adjudicated by EOIR, the fees imposed by OBBBA are in addition to the existing fees established by regulation. *See* 8 C.F.R. § 1103.7. The fee amounts contained in this PM reflect the current, accurate fee amounts.

OBBBA also introduced a new fee requirement for initial asylum applications and further requires annual fees for every calendar year that an asylum application remains pending.[3] Because the statute imposes the annual asylum fee beginning in fiscal year 2025, *see* OBBBA § 100009(b)(1), that fee applies to any asylum application pending for more than one year as of a date after the date of enactment of OBBBA.[4]

OBBBA does not affect where fees are payable. Fees continue to be payable as noted in PM 21-10 and 8 C.F.R. § 1103.7(a). Moreover, until EOIR updates the fee amounts in its regulations at 8 C.F.R. § 1103.7(b), Immigration Court and Board staff should apply the fee amounts as reflective of the changes made by OBBBA, which are contained in Section III of this PM below.

Second, OBBBA prohibits certain fees from being waived or reduced. Specifically, pursuant to provisions of OBBBA, the following fees shall not be waived or reduced:

- initial asylum application fee (sec. 100002(e));
- annual asylum fee (sec. 100009(d));
- Temporary Protected Status fee (sec. 100006).[5]

OBBBA does not affect the validity of EOIR's fee waiver request form, Form EOIR-26A. Further, the guidance contained in PM 21-10 regarding practices for the adjudication of fee waiver requests remains valid.[6] The Board may also provide further guidance on the adjudication of fee waivers through the issuance of precedential decisions.

Third, OBBBA explicitly authorizes the DHS Secretary and the Attorney General to increase the noted fees by regulation above the amounts provided in OBBBA. Thus, consistent with PM 21-10, EOIR will continue to review its fees on at least a biennial basis, if not more frequently, to determine whether any further fee adjustments are warranted.

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[3] Under OBBBA, motions to reopen based on an underlying asylum application are also now subject to a fee.

[4] For example, an asylum application filed on July 7, 2024, that was still pending as of July 7, 2025, would be subject to the fee.

[5] OBBBA does not alter EOIR's rule that "[n]o [fee] waiver may be granted with respect to the fee prescribed for a Department of Homeland Security form or action that is identified as non-waivable in regulations of the Department of Homeland Security." 8 C.F.R. § 1103.7(c). Thus, in certain circumstances EOIR may not waive fees for a Form I-485 or a Form I-601. *See* 8 C.F.R. §§ 106.3(a)(3)(iv)(C), (D).

[6] Adjudicators should be mindful of potential fraud or misrepresentations on fee waiver applications, particularly from aliens who have employment authorization and have lived in the United States for many years. Instances of suspected fraud should be referred to EOIR's Anti-Fraud Program.

Fourth, OBBBA fees are subject to an annual inflation adjustment beginning in fiscal year 2026. Accordingly, EOIR will annually review, implement, and communicate any inflation-based updates needed to comply with OBBBA.

Lastly, Immigration Court and Board staff must ensure that all filings include either the proper fees, proof of payment of the proper fees, or an appropriate and complete fee waiver request form where applicable. Filings that do not comply with the statutory fee requirement shall be rejected.[7]

III. EOIR Fees under OBBBA

Applications for Relief or Protection from Removal

Name & Form	Fee Amount
Adjustment of Status (Form I-485)	$2,940
Asylum (Form I-589)	$100
Annual Asylum Fee	$100 (annually every calendar year that the asylum application is pending)
Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A)	$700
Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B)	$1,600
Suspension of Deportation (Form I-881)	$700
Temporary Protected Status ("TPS") (Form I-821)	$500
Waiver of Inadmissibility (Form I-601)	$2,100

[7] Until the new asylum fees are fully integrated into existing payment systems, the Immigration Courts will implement temporary measures—*e.g.* possibly authorizing provisional acceptance of an application pending the subsequent submission of the fee—to ensure that aliens have an avenue to pay the required fees and submit applications. All other fees should remain payable through existing payment structures at EOIR or the Department of Homeland Security.

Board Appeals

Name & Form	Fee Amount
Appeal from an IJ decision (Form EOIR-26)	$1,010, except for bond appeals, which have no fee
Appeal from a decision of a DHS officer (Form EOIR-29)	$1,010
Appeal in a practitioner discipline case (Form EOIR-45)	$2,000

Motions to Reopen or Reconsider Filed by Aliens

Name	Fee Amount
Motion to reopen or reconsider before the Immigration Judge	$1,045, except no fee if: • motions to reopen an in absentia removal order filed in accordance with INA § 240(b)(5)(C)(ii);[8] or • motions to reopen an in absentia deportation order filed in accordance with former INA § 242B(c)(3)(B) (prior to April 1, 1997)
Motion to reopen or reconsider before the Board	$1,010

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 cases or an adjudicator's authority under applicable law.

Please contact your supervisor if you have any questions.

[8] A motion to reopen an in absentia order filed pursuant to INA § 240(b)(5)(C)(i) *does* require a fee.

EXHIBIT 2

The National Archives and Records Administration is closed to normal operations due to a lack of appropriations. FederalRegister.gov will automatically provide the daily Federal Register and Public Inspection List but we will not provide technical support. The official, published Federal Register is available at https://www.govinfo.gov/app/collection/fr.

LEGAL STATUS

This site displays a prototype of a "Web 2.0" version of the daily Federal Register. It is not an official legal edition of the Federal Register, and does not replace the official print version or the official electronic version on GPO's govinfo.gov.

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The OFR/GPO partnership is committed to presenting accurate and reliable regulatory information on FederalRegister.gov with the objective of establishing the XML-based Federal Register as an ACFR-sanctioned publication in the future. While every effort has been made to ensure that the material on FederalRegister.gov is accurately displayed, consistent with the official SGML-based PDF version on govinfo.gov, those relying on it for legal research should verify their results against an official edition of the Federal Register. Until the ACFR grants it official status, the XML rendition of the daily Federal Register on FederalRegister.gov does not provide legal notice to the public or judicial notice to the courts.

LEGAL STATUS

USCIS Immigration Fees Required by HR-1 Reconciliation Bill

A Notice by the Homeland Security Department on 07/22/2025

PUBLISHED CONTENT - DOCUMENT DETAILS

Agency: Department of Homeland Security
Agency/Docket Number: CIS No. 2829-25
Document Citation: 90 FR 34511
Document Number: 2025-13738
Document Type: Notice
Pages: 34511-34516 (6 pages)
Publication Date: 07/22/2025

PUBLISHED DOCUMENT: 2025-13738 (90 FR 34511)

DOCUMENT HEADINGS

Department of Homeland Security
[CIS No. 2829-25]

AGENCY:

U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION:

Notice of immigration fees.

SUMMARY:

U.S. Citizenship and Immigration Services (USCIS) is announcing a series of fees to be collected by USCIS. Recently enacted legislation that provided for reconciliation pursuant to Title II of House Concurrent Resolution 14, titled HR-1, establishes specific fees for various immigration-related forms, benefits, statuses, petitions, applications, and requests administered by multiple government agencies. This notice announces the new fees that are administered by USCIS, a

component of the U.S. Department of Homeland Security (DHS), to whom those fees apply, when the new fees take effect, instructions on their payment, when and if the fees may be waived, and consequences of the failure to pay. This notice is intended to provide the information needed for the public to comply with the new law.

DATES:

Unless specified otherwise in this notice, the fees announced in this notice must be submitted for any immigration benefit requests postmarked on or after July 22, 2025. Any form postmarked on or after August 21, 2025 without the proper filing fee will be rejected.

FOR FURTHER INFORMATION CONTACT:

Office of Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746, telephone (240) 721-3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

AAF—Annual Asylum Fee

CPI-U—Consumer Price Index for All Urban Consumers

DHS—Department of Homeland Security

EAD—Employment Authorization Document

FY—Fiscal Year

HR-1—One Big Beautiful Bill Act

IMMVI—Immigrant Military Members and Veterans Initiative

INA—Immigration and Nationality Act

PIP—Parole in Place

SIJ—Special Immigrant Juvenile

TPS—Temporary Protected Status

USCIS—U.S. Citizenship and Immigration Services

I. Background and Authority

A. H.R.1—One Big Beautiful Bill Act

On July 4, 2025, the President signed into law H.R.1—One Big Beautiful Bill Act, Public Law 119-21 (https://www.govinfo.gov/link/plaw/119/public/21), 139 Stat. 72 (“HR-1”). HR-1 was a comprehensive legislative package that changed many laws and added new laws that touch many areas of the United States government. Among those changes, the (printed page 34512) law established several new provisions and fees to the Immigration and Nationality Act (INA). *See* HR-1, Title X, Subtitle A, Part I, Sections 100001 through 1000018.

The new fees are provided as minimum amounts for Fiscal Year (FY) 2025, authorize the relevant agency to adjust them as determined necessary using rulemaking, and are required to be adjusted annually based on the Consumer Price Index for All Urban Consumers (CPI-U). In most cases, fee waivers or reductions are prohibited for the additional fees under HR-1. The funds collected from these fees are allocated to relevant agencies or the U.S. Treasury. USCIS will reject or deny any immigration benefit requests that are submitted without all of the fees required, including the new fees announced in this notice, as provided in 8 CFR 103.2(a)(7)(ii)(D) (https://www.ecfr.gov/current/title-8/section-103.2#p-103.2(a)(7)(ii)(D)).

B. DHS Fee Setting Authority, USCIS Fees, and HR-1 Fees

INA sec. 286(m), 8 U.S.C. 1356(m) (https://www.govinfo.gov/link/uscode/8/1356), authorizes the Secretary of Homeland Security to set fees for adjudication by regulation "at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants" and "that will recover any additional costs associated with the administration of the fees collected." DHS codified new fees and related regulations as authorized by INA sec. 286(m) on January 31, 2024, effective April 1, 2024. *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* Final Rule, 89 FR 6194 (/citation/89-FR-6194) (Jan. 31, 2024) (USCIS Fee Rule).

Unless otherwise described in this notice regarding a specific fee, the new fees in HR-1 are required in addition to any other fee authorized by law and by the heads of relevant departments.[1] That means that the fees in HR-1 do not supersede or replace those promulgated by the USCIS Fee Rule, rather they will be charged "in addition" to current fees.[2] USCIS fees are generally codified in 8 CFR part 106 (https://www.ecfr.gov/current/title-8/part-106) and any other fees authorized by law as referred to in this notice refers to part 106 unless otherwise noted.

USCIS acknowledges that the portion of the HR-1 fees that USCIS retains will be in addition to the revenue it receives from the fees that DHS determined in the USCIS Fee Rule were needed to recover the full costs of operating USCIS. Regardless, the HR-1 text "in addition to any other fee authorized by law" is clear. Furthermore, to interpret HR-1 as providing for replacement of the USCIS fees DHS codified in 8 CFR part 106 (https://www.ecfr.gov/current/title-8/part-106) would result in USCIS being unable to fund its operations. If HR-1 fees replaced the fees that USCIS retains to recover its operating costs with new fees that must partly or wholly go to the Treasury, USCIS would be required to maintain our current production and service levels with a large reduction in revenue. USCIS will soon conduct a total cost recovery fee study consistent with the CFO Act, 31 U.S.C. 901 (https://www.govinfo.gov/link/uscode/31/901)-03 (requiring each agency's Chief Financial Officer (CFO) to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency's fees). However, USCIS has no basis to believe that Congress intended HR-1 to result in USCIS not being fully funded until promulgation of the next USCIS fee rule.

II. New Immigration Fees

This notice announces certain new fees promulgated by HR-1, when collection of the fees will begin and, when necessary, how the fees are to be paid.[3]

The new immigration fees imposed by HR-1 are in addition to any other fees already authorized by law and regulations, as shown in Table 1.

The DHS fee and HR-1 fees must be submitted separately. If the requestor is eligible for a fee waiver for the DHS fee, he or she may submit Form I-912, Request for Fee Waiver, or a written fee waiver request, along with HR-1 fee as listed in Table 1.[4] The annual pending asylum application fee must be submitted online.

A. Summary of New Fees

Table 1—USCIS Immigration Benefit Request With Additional Fees From HR-1

Benefit category	Form	Current filing fee [5]	Immigration fee type	HR-1 FY 2025 fee	Combined fees
Asylum	I-589 [6]	$0	Asylum Fee (Initial fee for aliens filing an application for asylum)	$100 No Fee Waiver Available.	$100
	I-589 (Pending)	N/A	Annual Pending Asylum Application Fee	$100 (annual for every calendar year that the asylum application is pending); payable online only No Fee Waiver Available.	100
EADs	I-765 [7] —Initial for (c)(8) Asylum Applicant	$0	Initial Asylum Applicant EAD	$550 No Fee Waiver Available.	550
	I-765—Initial (c)(8) Applying under Special *American Baptist Churches* v. *Thornburgh* [8] (ABC) Procedures	Paper Filing: $520 Fee Waiver Available. Online Filing: $470 Fee Waiver Available.	Initial Asylum Applicant EAD Initial Asylum Applicant EAD	$550 No Fee waiver Available. $550 No Fee waiver Available.	1,070 1,020
	I-765—Renewal for (c)(8) Asylum Applicant	Paper Filing: $520 Fee Waiver Available.	Renewal or Extension of Asylum Applicant EAD	$275 No Fee Waiver Available.	795
		Online Filing: $470 Fee Waiver Available.	Renewal or Extension of Asylum Applicant EAD	$275 No Fee Waiver Available.	745
	I-765—Initial for (a)(4) Paroled Refugee	$0	Initial Parole EAD—Valid for 1 year	$550 No Fee Waiver Available.	550
	I-765—Initial (c)(11) for 212(d)(5)(A) Parole	Paper Filing: $520 Fee Waiver Available.	Initial Parole EAD—Valid for 1 year	$550 No Fee Waiver Available.	1,070
		Online Filing: $470 Fee Waiver Available.	Initial Parole EAD—Valid for 1 year	$550 No Fee Waiver Available.	1,020
		IMMVI current or former service members, special processes for paroled Ukrainians: $0	Initial Parole EAD—Valid for 1 year	$550 No Fee Waiver Available.	550

Benefit category	Form	Current filing fee [5]	Immigration fee type	HR-1 FY 2025 fee	Combined fees
	I-765—Initial (c)(34) Paroled Spouse of (b)(37) Entrepreneur	Paper Filing: $520 Fee Waiver Available.	Initial Parole EAD—Valid for 1 year	$550 No Fee Waiver Available.	1,070
	I-765—Renewal (a)(4) Paroled Refugee	$0	Initial Parole EAD—Valid for 1 year	$275 No Fee Waiver Available.	275
	I-765—(c)(11) Renewal for 212(d)(5)(A) Parole	Paper Filing: $520 Fee Waiver Available.	Renewal or Extension of Parole EAD—Valid for 1 year	$275 No Fee Waiver Available.	795
		Online Filing: $470 Fee Waiver Available.	Renewal or Extension of Parole EAD—Valid for 1 year	$275 No Fee Waiver Available.	745
		IMMVI [9] current or former U.S. armed forces: $0	Renewal or Extension of Parole EAD—Valid for 1 year	$275 No Fee Waiver Available.	275
	I-765—Renewal (c)(34) Paroled spouse of (b)(37) Entrepreneur	Paper Filing: $520 Fee Waiver Available.	Renewal or Extension of Parole EAD—Valid for 1 year	$275 No Fee Waiver Available.	795
	I-765—Initial (a)(12) or (c)(19) TPS	Paper Filing: $520 Fee Waiver Available.	Initial TPS EAD—Valid for 1 year or the duration of the TPS designation whichever is shorter	$550 No Fee Waiver Available.	1,070
		Online Filing: $470 Fee Waiver Available.	Initial TPS EAD—Valid for 1 year or the duration of the TPS designation whichever is shorter	$550 No Fee Waiver Available.	1,020
	I-765—Renewal (a)(12) or (c)(19) TPS	Paper Filing: $520 Fee Waiver Available.	Renewal or Extension of TPS EAD—Valid for 1 year	$275 No Fee Waiver Available.	795
		Online Filing: $470 Fee Waiver Available.	Renewal or Extension of TPS EAD—Valid for 1 year	$275 No Fee Waiver Available.	745

Benefit category	Form	Current filing fee [5]	Immigration fee type	HR-1 FY 2025 fee	Combined fees
	I-131 [10] —Employment Authorization Upon Issuance of New Period of Parole	Paper Filing: $1,150 Fee Waiver Available. Online Filing: $1,050 Fee Waiver Available.	EAD upon new period of Parole (Re-parole) EAD upon new period of Parole (Re-parole)	$275 [11] No Fee Waiver Available. $275 No Fee Waiver Available.	1,425 1,325
		Military PIP [12] for family of service members: $520 Fee Waiver Available.	EAD upon new period of Parole (Re-parole)	$275 No Fee Waiver Available.	795
		IMMVI, FRTF, [13] Military PIP for current or former service members: $0	EAD upon new period of Parole (Re-parole)	$275 No Fee Waiver Available.	275
TPS	I-821 [14] —Initial TPS Registration	$50 + $30 (biometrics fee) Fee Waivable.[15]	TPS Fee	$500 No Fee Waiver Available.	530
SIJs	I-360 [16]	$0	Special Immigrant Juvenile Fee	$250 No Fee Waiver Available.[17]	250

B. Description of the New Fees

1. ASYLUM FEE

HR-1 created a new fee for any alien who files an application for asylum under section 208 (8 U.S.C. 1158 (https://www.govinfo.gov/link/uscode/8/1158)) at the time such application is filed. Sec. 100002(a). The asylum fee cannot be (printed page 34514) waived or reduced. Id.(e). The initial asylum fee amount is set at $100 for FY 2025. Id. Because Sec. 100002 imposes this asylum application fee "at the time such application is filed," the fee applies to asylum applications filed on or after the date of publication of this Notice. Any Form I-589, Application for Asylum and for Withholding of Removal, submitted to USCIS must include the new fee or it will be rejected as provided in the **DATES** section of this notice.

2. EMPLOYMENT AUTHORIZATION DOCUMENT FEES

HR-1 created new EAD fees in addition to other existing fees for EADs. Sec. 100003. The fees apply to specific groups of applicants and vary by initial, renewal, or extension for those groups.

A. ASYLUM EAD

HR-1 created a fee for individuals filing an initial application for employment authorization based on a pending asylum application under section 208(d)(2) (8 U.S.C. 1158(d)(2) (https://www.govinfo.gov/link/uscode/8/1158)), which is $550 for FY 2025. Sec. 100003(a). The fee is due when the initial employment authorization application is filed. Id. The asylum EAD fee cannot be waived or reduced. Id. (a)(5).

In addition to the initial EAD application fee, HR-1 created an additional fee for renewals and extensions of employment authorization for asylum applicants. Sec. 100011. The fee is $275 for FY 2025. HR-1 renewal or extension fee cannot be waived or reduced, though USCIS may waive the pre-existing regulatory fee. See 8 CFR 106.2(a)(44) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(44)) and 8 CFR 106.3(a)(3)(ii)(F) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(ii)(F)).

B. PAROLEE EAD FEES

HR-1 requires a fee "by any alien paroled into the United States for any initial application for employment authorization at the time such initial application is filed." Sec. 100003(b)(1). This additional fee is $550 for FY 2025. Each initial employment authorization shall be valid for a period of 1 year or for the duration of the individual's parole, whichever is shorter. Id. The fee is due when the initial employment authorization application is filed. Id. The HR-1 parole EAD fee cannot be waived or reduced. Sec. 100003(b)(5). However, USCIS may waive the pre-existing regulatory fee. See 8 CFR 106.2(a)(44) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(44)) and 8 CFR 106.3(a)(3)(ii)(F) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(ii)(F)).

In addition to the initial EAD application fee, HR-1 created an additional fee for renewals and extensions of employment authorization "based on a grant of parole." Sec. 100010(a). The fee that is effective for FY 2025 is $275. The HR-1 fee cannot be waived or reduced, though USCIS may waive the pre-existing regulatory fee. See 8 CFR 106.2(a)(44) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(44)) and 8 CFR 106.3(a)(3)(ii)(F) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(ii)(F)).

Sec. 100003(b)(1) states that these fees apply to "any alien paroled" into the United States. This language, on its face, would seem to encompass all those who were paroled into the United States at any point in time, regardless of the category under which they are seeking to qualify for employment authorization, rather than only those who are applying for employment authorization based on being "an alien paroled into the United States . . . pursuant to section 212(d)(5) of the Act". See 8 CFR 274a.12(c)(11) (https://www.ecfr.gov/current/title-8/section-274a.12#p-274a.12(c)(11)). Such a reading does not align with the remainder of the statutory text which sets a validity period for the employment authorization of 1 year or the “duration of the alien's parole, whichever is shorter”, sec. 100003(b)(1), and which states that the renewal or extension is “based on a grant of parole”, sec. 100010(a). In addition, applying this fee to any alien who was paroled into the United States rather than only those seeking to qualify for employment authorization on that basis would create the perverse effect of applying the fee to asylum applicants who were initially paroled into the United States, even though asylum applicants already have a $550 initial employment authorization application fee designated in the prior paragraph, sec. 100003(a)(1), and even if they were not granted parole for any significant duration. In order to give effect to the parolee employment authorization provisions in the context of the whole statutory text, the fees in sections 100003(b) and 100010 must be read to apply to those paroled into the United States pursuant to INA 212(d)(5)(A) and who are seeking authorization for employment on that basis under category (c)(11).

If an alien requests an EAD under category (c)(11), based upon approval of a new period of parole (re-parole) by filing Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records, USCIS will initially impose the lower $275 HR-1 fee. USCIS recognizes that a parolee may have been granted parole, opted to not request an EAD for that initial period of parole, and is now requesting an initial EAD for an additional period of parole being requested. However, the current Form I-131 and Form I-765 do not distinguish initial EAD requests from renewal or extension EAD requests. USCIS will presume that an EAD requested for re-parole, renewal, or extension of parole will be for a renewal EAD regardless of whether the alien has no current or previous EAD and we will only require a $275 fee under HR-1.

C. TEMPORARY PROTECTED STATUS (TPS) EAD FEES

The additional fee for an alien who files an initial EAD application under TPS is $550. Sec. 100003(c). Each initial employment authorization for TPS registrants who are subject to this fee will be valid for a period of 1 year or for the duration of the alien's TPS, whichever is shorter. Id. The HR-1 TPS EAD fee cannot be waived or reduced. Sec. 100003(c)(5). However, USCIS may continue to waive the preexisting regulatory TPS EAD fee. See 8 CFR 106.2(a)(44) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(44)) and 8 CFR 106.3(a)(3)(ii)(F) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(ii)(F)).

In addition to the initial EAD application fee, HR-1 created an additional fee for renewals and extensions of employment authorization for aliens granted TPS. Sec. 100012. The renewal or extension period for employment authorization shall be approved for a period of no more than 1 year, or for the duration of the designation of TPS, whichever is shorter. Sec. 100012(a). The FY 2025 fee is $275. The HR-1 renewal or extension fee cannot be waived or reduced. Sec. 100012(d). However, USCIS may continue to waive the preexisting regulatory TPS EAD fee. See 8 CFR 106.2(a)(44) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(44)) and 8 CFR 106.3(a)(3)(ii)(F) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(ii)(F)).

3. TEMPORARY PROTECTED STATUS FEE

HR-1 amended Section 244(c)(1)(B) of the INA (8 U.S.C. 1254a(c)(1)(B) (https://www.govinfo.gov/link/uscode/8/1254a)) to raise the maximum cost to register for temporary protected status using Form I-821, Application for Temporary Protected Status, from $50 to $500. Sec 100006. Because DHS has set the fee for first-time Form I-821 applicants as “$50 or the maximum permitted by section 244(c)(1)(B) of the Act” in 8 CFR 106.2(a)(50)(i) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(50)(i)),[18] the resulting fee is $500, not including the $30 biometric services fee. See 8 CFR 106.2(a)(50)(iii) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(50)(iii)). The HR-1 TPS fee cannot be waived or reduced. Sec. 100006. Aliens filing Form I-821 may continue to request a waiver of the biometrics fee. See 8 CFR 106.2(a)(50)(iii) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(50)(iii)), 8 CFR 106.3(a)(3)(i)(E) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(i)(E)).

4. SPECIAL IMMIGRANT JUVENILE FEE

HR-1 created a new fee for any alien who files a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant for Special Immigrant Juvenile (SIJ) status under section (printed page 34515) 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J) (https://www.govinfo.gov/link/uscode/8/1101). Sec. 100005. The FY 2025 HR-1 fee is $250. The language of HR-1 prohibits fee waivers or exemptions for this fee.[19] There is no separate authority permitting fee waivers for Form I-360. Cf. 8 CFR 106.3(a)(3) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)).

5. ANNUAL ASYLUM FEE (AAF)

HR-1 requires all aliens with a pending asylum application to pay an annual fee for each calendar year that the alien's application remains pending, in addition to any other fee. Sec. 100009. The first AAF is $100 for FY 2025. Sec. 100009(b). DHS interprets the term “remains pending” to mean any application filed with USCIS or DOJ and that remains pending with any federal government agency, court, or entity with jurisdiction over asylum claims as intended by Sec. 100009(b) of HR-1. This notice provides notice and information about how USCIS will administer the fee required from asylum applicants with applications pending more than one year with USCIS.

To effectuate the FY 2025 fee, DHS will require that any alien who filed a Form I-589, Application for Asylum and for Withholding of Removal, with USCIS before or on the beginning of fiscal year 2025, October 1, 2024, and whose application is still pending with USCIS at the end of fiscal year 2025, on September 30, 2025, must pay the FY 2025 amount specified by statute.[20] Such aliens must also pay the AAF as of September 30 in each subsequent year that the application remains pending with USCIS. For applications pending for more than a year prior to October 1, 2024, DHS has determined that HR-1 does not require any additional AAF for years that the application was pending prior to FY 2025. Any alien who filed or files a Form I-589 after October 1, 2024, that remains pending with USCIS for 365 days must pay the AAF as of the one-year anniversary of his or her filing date and each year thereafter that the application remains pending on such day of the calendar year.

DHS determined that the fee applies to a Form I-589 pending as of October 1, 2024 or submitted thereafter because language in HR-1 is clear and unambiguous that the AAF applies during fiscal year 2025, which runs from October 1, 2024 through September 30, 2025, and to each fiscal year thereafter. Subsection (b)(1) of section 100009(b) provides for an initial amount that “shall” be applied for fiscal year (FY) 2025. Subsection (a) applies a fee for “each calendar year that an alien's application for asylum remains pending.” Because HR-1 states that the AAF will be applicable in FY 2025, it necessarily applies the provision to the start of FY 2025. To apply the law only to applications filed after the date of enactment in July 2025 or later would result in no fee collections in FY 2025 because no such application would be pending for a calendar year (*i.e.* twelve months) during that time frame. Therefore, section 100009(b) requires applying the fee to applications pending with USCIS before enactment of HR-1. As such, Section 100009 contains a clear expression of intent to apply the AAF to applications filed on or before October 1, 2024 that remain pending for the entirety of fiscal year 2025. DHS is not retroactively applying the AAF to applications pending for one-year periods during fiscal years prior to 2025. *Landgraf* v. *USI Film Prods.,* 511 U.S. 244, 264 (1994). Requiring the 2025 AAF with respect to pending asylum applications filed as of October 1, 2024, the first day of FY 2025, is not impermissibly retroactive because it merely applies changes in procedural rules required by statute. Id. at 275; see also INA 208(d)(3) (2024) (listing “fees” under the “asylum procedure” subsection and providing that the government may impose fees for the consideration of an application for asylum).

For the first time the AAF is due under this notice, asylum applicants need not monitor the time their application has been pending and if the AAF applies to them. USCIS will provide personal, individual notice to each asylum applicant with an application pending with USCIS from whom the AAF is required, the amount of the fee, when the fee must be paid, how the fee must be paid, and the consequences of failure to pay. USCIS will require that AAF be paid using an online fee payment process. USCIS will provide guidance for future years' AAF payments in subsequent issuances.

C. Consumer Price Index for All Urban Consumers (CPI-U) Updates

In FY 2026 and each subsequent fiscal year, DHS will adjust the fee by inflation by using the Consumer Price Index for all Urban Consumers (CPI-U) for the month of July. See secs. 100002(c), 10003(a)(3), 100003(b)(3) 100003(c)(3), 10004(d), 10005(c), 10006, 10009(b)(2), 100010(b)(2), 100012(b)(2). The Department of Homeland Security (DHS) will round the adjusted fee to the next lowest multiple of $10, secs. 100002(c), 100003(a)(3), 100003(b)(3) 100003(c)(3), 100004(d), 100005(c), 100006, 100010(b)(2), 100012(b)(2), or the nearest dollar. Sec. 100009(b)(2). USCIS will deposit and retain a portion of the revenue from some of these fees in the Immigration Examinations Fee Account (IEFA).[21] The remaining revenue will be deposited with the general fund of the Treasury.[22]

D. Fee Waivers and Exemptions

Fees, fee exemptions, and fee waivers [23] in 8 CFR part 106 (https://www.ecfr.gov/current/title-8/part-106) have not changed. Fees imposed by HR-1 cannot be waived or reduced.[24] Therefore the fees required by HR-1 for an immigration benefit request must be paid with each request submitted. However, a request may be submitted for one of the benefits covered by HR-1 and if the benefit is eligible for a DHS fee waiver, may still be accompanied by a USCIS Form I-912, Request for a Fee Waiver, under 8 CFR 106.3(a) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)) in lieu of the fee required by 8 CFR 106.2(a) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)). If the fee waiver is approved, the application will be accepted without the USCIS regulatory fee. However, even if a waiver under 8 CFR 106.3(a) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)) of the fee required by 8 CFR 106.2(a) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)) is requested, and even if the applicant is eligible and approved for the waiver, the fee required by HR-1 and announced in this notice must be paid for each request.

In addition, INA section 245(l)(7), 8 U.S.C. 1255(l)(7) (https://www.govinfo.gov/link/uscode/8/1255),[25] requires DHS to (printed page 34516) allow a request for waiver of the fees required for certain immigration benefit requests. However, where the new specific language in HR-1 states that the fees “shall not be waived or reduced” DHS interprets HR-1 as superseding section 245(l)(7), 1255(l)(7), for purposes of the new fees imposed by HR-1. Although a waiver of the USCIS fee under 8 CFR 106.3(a)(3)(iii) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(iii)) of the fee required by 8 CFR 106.2(a) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)) may be requested, USCIS will not waive such a fee required by HR-1 and a request for such may not be submitted.

E. HR-1 Fees Not in the Notice

This notice does not announce all of the fees required or authorized by HR-1. DHS will announce the collection of any fees not covered in this notice in a future action. USCIS is not announcing certain fees required by HR-1 in this notice as follows:

- The IMMIGRATION PAROLE FEE required by section 100004 (parole fee) of HR-1. HR-1 contains multiple exceptions to the requirement for the parole fee and DHS must interpret how the exceptions should be applied. DHS will announce the parole fee in a future publication.
- The VISA INTEGRITY FEE required by section 100007 of HR-1 for any alien issued a nonimmigrant visa at the time of such issuance. The VISA INTEGRITY FEE requires cross-agency coordination before implementing; the fee will be implemented in a future publication.
- The FORM I-94 FEE required by section 100008 of HR-1 is required from any alien who submits an application for a Form I-94 Arrival/Departure Record. DHS will be issuing guidance on the Form I-94 fee requirements in a future publication.
- The ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) fee required by section 100014 of HR-1. These are not USCIS administered fees.
- The ELECTRONIC VISA UPDATE SYSTEM FEE required by section 100015 (Visa update fee) and the FEE FOR ALIENS ORDERED REMOVED IN ABSENTIA (in absentia fee) required by section 100016 are not USCIS administered fees.

DHS will continue to work toward implementation of the remaining fees applicable to USCIS, specifically: (1) fees related to Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records, and (2) Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

III. Effective Date and Implementation

DHS recognizes that HR-1 became effective upon Presidential signature on July 4, 2025, and we are working to implement the statutory mandates as soon as practicable. This notice explains how we will collect the required fees. While that work is ongoing, and in an effort to implement the plain terms of HR-1 as quickly as possible, USCIS will begin collecting the filing fees for fiscal year 2025 for any immigration benefit requests postmarked on or after July 22, 2025. In addition, DHS has balanced the impact on the public of imposing HR-1 fees and the timeliness of complying with the statutory mandates. Because of the time needed by DHS and USCIS to issue guidance on and operationalize the required fees, and for the public to adapt their immigration benefit requests that are in process to the changes, requests postmarked on or after August 21, 2025 without the proper filing fee will be rejected. DHS has determined that the policy required by this Notice is the most equitable path forward in order to effectuate HR-1 as expeditiously as practicable. The HR-1 fees are required by law, but for additional clarity, DHS may codify these fees in 8 CFR part 106 (https://www.ecfr.gov/current/title-8/part-106) in a future rule.

IV. Paperwork Reduction Act

This notice is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3521 (https://www.govinfo.gov/link/uscode/44/3501) (PRA). The PRA does not preclude the imposition of a penalty on an entity for failing to comply with a collection of information that is imposed on the entity by statute. See 5 CFR 1320.6(e) (https://www.ecfr.gov/current/title-5/section-1320.6#p-1320.6(e)).

Angelica Alfonso-Royals,

Acting Director, United States Citizenship and Immigration Services.

Footnotes

1. *See Sec. 100002(a) ("In addition to any other fee authorized by law, the Secretary of Homeland Security or the Attorney General, as applicable, shall require the payment of a fee, equal to the amount specified in this section, by any alien who files an application for asylum under section 208 (8 U.S.C. 1158 (https://www.govinfo.gov/link/uscode/8/1158)) at the time such application is filed."); see also Sec. 100003(a)(1) (initial application for employment authorization under section 208(d)(2)); Sec. 100003(b)(1) (initial application for employment authorization filed by any alien paroled into the United States); Sec. 100003(c)(1) (initial application for employment authorization under section 244(a)(1)(B)); Sec. 100005(a) (any alien, parent, or legal guardian of an alien applying for special immigrant juvenile status under section 101(a)(27)(J)); Sec. 100009(a) (for each calendar year that an alien's asylum application remains pending); Sec. 100010(a) (any parolee who seeks a renewal or extension of employment authorization based on a grant of parole); Sec. 100011(a) (any alien who has applied for asylum for each renewal or extension of employment authorization); Sec. 100012(a) (renewal or extension of employment authorization based on a grant of temporary protected status).*

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2. *One exception is at section 100006 of Title X governing the Temporary Protected Status application fee. This provision replaces the $50 registration fee amount specified at INA sec. 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) (https://www.govinfo.gov/link/uscode/8/1254a) with the new registration fee amount of $500. See 8 CFR 106.2(a)(50)(i) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(50)(i)).*

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3. As explained later in this notice, USCIS does not list all the new fees required by HR-1 in this notice because (1) the law contains restrictions on collection of the fees that require additional study and planning before they can be implemented, or (2) the fee is administered by another DHS component or federal agency.

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4. For information on how to submit fees, see USCIS, Filing Fees, https://www.uscis.gov/forms/filing-fees (https://www.uscis.gov/forms/filing-fees) (Last Reviewed/Updated: May 28, 2025). USCIS will update the I-912 as appreciate to account for the changes in HR-1.

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5. For additional information on fees, including fee waivers, see Form G-1055, Fee Schedule, https://www.uscis.gov/g-1055 (https://www.uscis.gov/g-1055).

6. Form I-589, Application for Asylum and for Withholding of Removal.

7. Form I-765, Application for Employment Authorization.

8. See American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991). See also, USCIS, American Baptist Churches v. Thornburgh (ABC) Settlement Agreement, https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/american-baptist-churches-v-thornburgh-abc-settlement-agreement (https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/american-baptist-churches-v-thornburgh-abc-settlement-agreement) (last visited July 9, 2025).

9. Parole for Immigrant Military Members and Veterans Initiative (IMMVI).

10. Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records. Part 9 of Form I-131 currently permits certain aliens to request an EAD upon approval of a new period of parole (re-parole).

11. As explained below, USCIS will temporarily charge the $275 for requests for initial EADs and renewal or extension EADs.

12. Military Parole in Place (Military PIP).

13. Parole for members of the Family Reunification Task Force (FRFT) settlement agreement.

14. Form I-821, Application for Temporary Protected Status.

15. HR-1 increased the base application fee for an initial Form I-821 from $50 to $500, which is no longer eligible for a fee waiver. See Sec. 100006. However, the $30 biometrics fee remains eligible for fee waiver. See 8 CFR 106.2(a)(50)(iii) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(50)(iii)), 8 CFR 106.3(a)(3)(i)(E) (https://www.ecfr.gov/current/title-8/section-106.3#p-106.3(a)(3)(i)(E)).

16. Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

17. Section II.D. of this notice contains an explanation of fee waivers as they apply to HR-1 fees. Sec. 100005 establishing the SIJ fee does not include an explicit "no fee waiver" provision. However, USCIS' general authority to grant waivers is based on the discretionary language of INA 286(m), 8 U.S.C. 1356(m) (https://www.govinfo.gov/link/uscode/8/1356), which states that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants." In contrast, the language of Sec. 100005(a) is mandatory ("the Secretary of Homeland Security shall require the payment of a fee"). Therefore, no fee waiver is available.

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18. By regulation at 8 CFR 106.2(a)(50)(i) (https://www.ecfr.gov/current/title-8/section-106.2#p-106.2(a)(50)(i)), DHS has exercised its discretionary authority to impose the maximum fee permitted by section 244(c)(1)(B).

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19. Sec. 100005 states that "the Secretary of Homeland Security shall require the payment of a fee, equal to the amount specified in this section . . . ." USCIS authority to waive fees in its fee schedule rests in the language of 8 U.S.C. 1356(m) (https://www.govinfo.gov/link/uscode/8/1356), which grants the Secretary of Homeland Security discretion in setting fees. The new SIJ fee, however, is mandatory.

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20. USCIS collects certain fees on behalf of EOIR. Administrative processes such as whether USCIS will collect the AAF or any other HR-1 fees on behalf of EOIR are beyond the scope of this notice.

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21. Secs. 100002 (50% to USCIS), 100003 (25% to USCIS), 100010 (25% to USCIS), 100011 (25% to USCIS), 100012 (25% to USCIS).
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22. Secs. 100002 (50% to the Treasury), 100003 (75% to Treasury), 100010 (75% to Treasury), 100011(75% to Treasury), 100012 (75% to Treasury); Secs. 100004-06, 100009 (100% to Treasury).
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23. See Form G-1055, Fee Schedule, https://www.uscis.gov/g-1055 (https://www.uscis.gov/g-1055) (last reviewed/updated July 11, 2025).
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24. See Sec. 100002(e) (asylum fee); Sec. 100003 (initial employment authorization document fees); Sec. 100006 (temporary protected status fee); Sec. 100009(d) (annual asylum fee); Sec. 100010(d) (fees for renewal and extension of employment authorization for parolees); Sec. 100011(d) (fees for renewal or extension of employment authorization for asylum applicants); Sec. 100012(d) (fees for renewal and extension of employment authorization for temporary protected status).
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25. "The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) of this title (as in effect on March 31, 1997)."
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[FR Doc. 2025-13738 (/d/2025-13738) Filed 7-18-25; 4:15 pm]

BILLING CODE 9111-97-P

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ASYLUM SEEKER ADVOCACY PROJECT, Plaintiff, v. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, et al. Defendants.	25-cv-03299-SAG

DECLARATION OF DAREN K. MARGOLIN

I, Daren K. Margolin, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Director of the Executive Office for Immigration Review ("EOIR") in the U.S. Department of Justice ("DOJ"). EOIR's mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings. I was recently appointed EOIR Director in October 2025 by the Attorney General.

2. This declaration is based on my personal knowledge and information made available to me in the course of performing my official duties.

3. On July 4, 2025, President Donald J. Trump signed the One Big Beautiful Bill Act ("OBBBA") (H.R.1), which, inter alia, introduced or increased numerous immigration related fees relevant to EOIR and amended the availability of fee waivers in certain instances. The purpose of this declaration is to provide information regarding H.R.-1's annual asylum fee (AAF) to be collected by EOIR.

4. To effectuate the Fiscal Year (FY) 2025 fee under H.R.-1, EOIR will collect from any alien who filed a Form I-589, Application for Asylum and for Withholding of Removal, before or on the beginning of FY 2025, October 1, 2024, and whose application remains pending at the end of FY 2025 to pay the FY 2025 amount specified by statute. Such aliens must also pay the AAF in each subsequent year that the application remains pending.

5. Any alien who filed or files a Form I-589 after October 1, 2024, that remains pending for 365 days must pay the AAF as of the one-year anniversary of his or her filing date and each year thereafter that the application remains pending, due no later than 30 days after the anniversary date.

6. All fees set by the OBBBA, except the initial fee for the I-589 and the AAF, were already payable through existing payment structures, which have not changed. In July 2025 EOIR directed the Office of the Chief Immigration Judge to establish temporary measures to, at the least, track the two new asylum fees owed—if not to also actually collect the fees—until the two new fees were fully integrated into existing payment systems. That integration, which is being handled by a different federal agency outside of EOIR, has been delayed due to the current, ongoing Government shutdown.

7. Once the new asylum fees are fully integrated into existing payment systems, EOIR will notify aliens of any fees due via a billing notice that will be sent either electronically or by U.S. mail. The first AAF that will be collected by EOIR is $100 for FY 2025, which cannot be waived or reduced. Sec. 100009(b)(1), (d). EOIR will correspondingly add an AAF dropdown to the EOIR Payment portal so that the AAF can be paid electronically on EOIR's payment portal. *See* https://epay.eoir.justice.gov/index.

8. Once EOIR issues FY 2025 AAF billing notices owed, payments must be made by the alien no later than 30 days later to be considered timely. After AAF billing notices are sent, failure to timely-pay the AAF may result in the asylum application being deemed abandoned.

9. Aliens with asylum applications pending as of HR-1's enactment date must only pay their annual asylum fee beginning in FY25. That is, an alien whose asylum application has

been pending for multiple years prior to FY25 is not required to pay multiple annual fees for those years prior to FY25.

10. No alien for whom the AAF was due prior to the integration of that fee into EOIR's existing electronic payment system will be required to pay the AAF until 30 days after the AAF billing notices have been mailed out. Due to the uncertainty related to the Government shutdown, EOIR cannot provide an exact date to the Court in which AAF billing notices will be mailed out but expects that notices will likely be mailed prior to January 15, 2026.

11. To the extent that any aliens have made anticipatory or advance payments to EOIR for the AAF, those payments will be applied to the alien's owed fees, as appropriate, once the AAF billing notices are issued.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on this 20th day of October 2025.

Daren K. Margolin
Director
Executive Office for Immigration Review

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ASYLUM SEEKER ADVOCACY PROJECT, Plaintiff, v. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *et al.*, Defendants.	Civil Action No. 1:25-cv-03299-SAG

[PROPOSED] ORDER

UPON CONSIDERATION of Plaintiffs' Motion for Preliminary Injunction, Temporary Restraining Order and/or Stay under 5 U.S.C. § 705, and Defendants' response thereto, it is hereby

ORDERED that Plaintiff's motion is hereby DENIED.

SO ORDERED.

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Dated

____
STEPHANIE A. GALLAGHER
District Court Judge