IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

ASYLUM SEEKER ADVOCACY PROJECT,

Plaintiff,

v.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *et al.*,

Defendants.

Civil Action No. 1:25-cv-03299-SAG

Hearing Requested

Reply in Support of Plaintiff's Motion for Summary Judgment (ECF 123)

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Introduction

The government's opposition responds to a lawsuit ASAP did not bring. ASAP has never asked this Court to impose a one-size-fits-all notice period on millions of asylum applicants for the annual asylum fee. ASAP instead argued that a *minimum* notice period is an obvious alternative that EOIR was required to consider. Separately, EOIR's refusal to set a notice period rested on a legal error; EOIR believed (wrongly) that it lacked authority to set any uniform notice period at all. But the agency provided no reasoned basis for rejecting the obvious option of a minimum notice requirement. Federal courts have repeatedly and recently awarded relief against EOIR on the basis that immigration judges imposed unreasonable and impracticable deadlines. In view of this and other context that was known to EOIR at the time of its decision, its failure to consider a minimum notice period was arbitrary and capricious.

Additionally, EOIR failed to consider the administrability of its implementation, including its requirement of additional proof of payment of the annual asylum fee. This requirement imposes burdens that some applicants—including detained individuals—cannot meet, rests on disjointed and confusing instructions, and departs without explanation from USCIS's simpler approach, where payment itself establishes compliance. Each defect independently reflects a failure of reasoned decisionmaking and is arbitrary and capricious.

EOIR also continues to defend its unlawful template order, which has led to ASAP members being wrongfully ordered removed for nonpayment of the annual asylum fee. The template order improperly instructs immigration judges that they can dismiss withholding of removal and Convention Against Torture ("CAT") claims for nonpayment of the annual asylum fee, despite the Board of Immigration Appeals ("BIA") confirming that asylum fees do not extend to applications for withholding and CAT. *Matter of L-F-R-*, 29 I. & N. Dec. 787, 792 (B.I.A. 2026).

Much of the government's defense requires conjuring words in the statute that do not exist. Congress required EOIR to collect initial and annual asylum fees, but did not require dismissal for nonpayment, proof of payment, or denial of an entire Form I-589. Those consequences—and the notice afforded applicants—were EOIR's choices. The APA required EOIR to justify them and ensure they were consistent with the statute. It did neither. ASAP's motion for summary judgment should be granted.[1]

Argument

I. EOIR's implementation of the annual asylum fee is arbitrary and capricious. (Count 3)

A. The January 2 Memo rests on a fundamental legal error that infected EOIR's decisionmaking process.

EOIR mistakenly believed that it lacked authority to require immigration judges to set a uniform notice period before penalizing asylum applicants for nonpayment of the annual asylum fee. MSJ 13–15. The government responds that its error was "inconsequential," Opp. 12–14, because EOIR had considered and rejected, on other grounds, a "particular filing deadline for the [annual asylum fee] in every case," January 2 Memo, ECF 71-1, at 4; *see* Opp. 12–14. This is not the alternative ASAP contends that EOIR was required to consider. ASAP's argument is that EOIR should have considered a *minimum* notice requirement—one that would establish a floor while leaving immigration judges discretion to provide additional time. Nothing in the January 2 Memo shows that EOIR considered, much less rejected, that alternative.

But even taking EOIR's "inconsequential error" argument at face value, that would prevent vacatur only if the court can determine that EOIR "would clearly have acted" in the same way had it considered the alternative. *Mail Order Ass'n of Am. v. USPS*, 2 F.3d 408, 434 (D.C. Cir. 1993).

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[1] This Reply supports the arguments advanced in Plaintiff's Motion for Summary Judgment ("MSJ"). Plaintiff rests on its prior briefing in opposing Defendants' Motion to Dismiss.

That standard may be satisfied where an agency considered the relevant alternative and made clear that it would reach the same result on an independent policy ground. *See, e.g.*, *id.* It does not apply where a court "do[es] not know—nor [is it] free to guess—what the agency would have done" absent the error, *Int'l Union, UMW v. U.S. Dep't of Labor*, 358 F.3d 40, 45 (D.C. Cir. 2004), or where the agency was not "required" to reach the result it did, *Calcutt v. FDIC*, 598 U.S. 623, 630 (2023) (per curiam); *see also Am. Energy, LLC v. Dir., OWCP*, 106 F.4th 319, 334 (4th Cir. 2024) (vacating where it was "possible, maybe even probable" the agency would have reached the same result, "[b]ut we cannot be sure").

That is precisely the problem here. EOIR's reasons for rejecting a *uniform* notice period cannot establish that it clearly would have rejected the materially different alternative of a *minimum* notice period. The administrative record does not show that EOIR actually considered the distinct alternative of a minimum notice period. *See Mail Order Ass'n*, 2 F.3d at 424–27. Nor was EOIR required to reject a minimum notice period. *Calcutt*, 598 U.S. at 630. Though EOIR now represents that it would have adopted the same policy regardless of its mistaken belief (Opp. 12–14), that assertion appears nowhere in the January 2 Memo or the administrative record, and the Court cannot "accept . . . counsel's post hoc rationalizations for agency action." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983); *see also* MSJ 15 (collecting cases rejecting government's harmless-error theory).

In any event, EOIR's reasons for rejecting a uniform notice period—the need for flexible deadlines for detained applicants, pro se applicants, and families with staggered deadlines, ECF 71-1 at 5; Opp. 14—in fact *support* a minimum notice period because applicants in those situations are among the *most* vulnerable to missed deadlines on short notice. MSJ 16–17, 21.

B. EOIR failed to consider the obvious alternative of a minimum notice period, the problems created by its proof-of-payment requirement, the inadequacy of its notice procedures, and the absence of an adequate remedy.

The January 2 Memo did not consider obvious alternatives. An agency must consider viable, obvious alternatives, and the January 2 Memo fails to explain why EOIR did not adopt a minimum notice floor. *See* MSJ 22–23. Minimum notice requirements pervade our legal system, and EOIR acted arbitrarily and capriciously in failing to consider one here. *E.g.*, 8 U.S.C. § 1229(b)(1) (removal hearings "shall not be scheduled earlier than 10 days after the service of the notice to appear"). *See also Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 113 (D.C. Cir. 2026) (agency action was "arbitrary and capricious and contrary to law to the extent it substitute[d] . . . less protective process" for the procedures "required under existing regulations").

The government argues that it considered a uniform notice period but rejected it because it would constrain immigration judges' flexibility to grant longer payment periods. Opp. 13, 22–23. But the APA required EOIR to consider reasonable alternatives, and a one-size-fits-all deadline was not the only option to consider. A *minimum* notice period is an obvious alternative that EOIR failed to consider, one that would preserve the flexibility EOIR found lacking in a uniform deadline while still ensuring applicants receive adequate notice. At the same time, a minimum notice period addresses the risk that an immigration judge may allow too *little* time and deny applicants a meaningful opportunity to pay the fee. Nowhere in the January 2 Memo does EOIR confront the problem of extremely short, one- or two-day deadlines.

This Court's preliminary-injunction ruling does not require a different result. *See* ECF 94. The Court held only that there was "no evidence presently in the record that EOIR should have known" that immigration judges would impose unreasonable payment deadlines. *Id.* at 14. ASAP has now supplied that evidence. ASAP identified several federal courts that have held EOIR and immigration judges accountable for providing inadequate notice to asylum applicants. MSJ 20 (compiling cases from several federal circuit courts).

EOIR separately argues that the January 2 Memo was exempt from the APA's reasoned decisionmaking requirement because it was not a legislative rule subject to notice and comment. Opp. 20–22. But no matter how the government characterizes the January 2 Memo, it imposes substantive requirements that regulated parties must follow. That EOIR declined to undergo notice-and-comment in no way permits it to evade the arbitrary and capricious standard that applies to all agency action under 5 U.S.C. § 706(2)(A). *See State Farm*, 463 U.S. at 43; *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 31 (2020) (applying *State Farm* framework to a policy memorandum that did not undergo notice-and-comment).

EOIR's proof-of-payment requirement is arbitrary and capricious. EOIR failed to address the administrability problems created by requiring applicants to prove payment. *See* MSJ 23–26. The January 2 Memo imposes that burden through incoherent instructions and departs from USCIS's implementation of the same fee.

First, EOIR unnecessarily requires applicants to prove payments reflected in its own records, ignoring that some applicants—particularly people who are detained without computer or printer access—may be unable to do so on demand. *See, e.g.*, Reddy Decl. ¶ 56, ECF 29-2 (concerns about whether individuals in detention will have the opportunity to comply); Reddy 4th Suppl. Decl. ¶¶ 11–12, ECF 82-1 (barriers detained individuals face to proving compliance).

Second, the instructions in the template order and payment receipt are disjointed and do not describe a coherent compliance process. *Cf.* Opp. 18. The template order instructs applicants to print and save the payment receipt, and the payment receipt instructs applicants to include the receipt "with the application, motion, or appeal that is filed with the Immigration Court or the BIA

Clerk's Office." Reddy 6th Suppl. Decl. ¶¶ 7–8, ECF 123-5 & Ex. 1 (payment receipt); *see* ECF 85-1 at 4–5 (template order). But many asylum applicants have no need to file an application, motion, or appeal at the time they pay the annual asylum fee, making this instruction incoherent. Further, anyone instructed by court order to pay a fee to a government agency on that agency's website would reasonably assume that payment on the website satisfies the obligation. For example, one applicant was ordered removed for nonpayment despite EOIR previously confirming receipt of her fee; another faced a delayed merits ruling because he did not know to bring a payment receipt to the hearing. *See* Hasty Decl. ¶¶ 4, 7–9, ECF 123-12; McShiras Decl. ¶¶ 13–14, ECF 82-3.

Third, EOIR fails to explain why it has deviated in its implementation of the annual asylum fee from USCIS's approach in such a significant way. Unlike EOIR, the *only* action that USCIS requires for compliance with the annual asylum fee is successful payment of the fee to the agency. An applicant whose case moves between USCIS and EOIR (as is common) faces significant changes and new obstacles in demonstrating payment of the fee upon the transfer of their case.[2] *See* MSJ 24–25. As this Court has explained, an unexplained misalignment between agencies administering the same fee is arbitrary and capricious. *See* ECF 54 at 14–15.

The government tries to sidestep the proof-of-payment issue by stating that an agency "need not solve every problem before it in the same proceeding." Opp. 18 (quoting *Mobil Oil Expl. & Producing Se., Inc. v. United Distrib. Cos.*, 498 U.S. 211, 231 (1991)). But *Mobil Oil*

[2] The government glosses over concerns around issues of administrability as it relates to transfers between agencies, focusing instead on notice periods and stating that the transfer rules for applicants who move from USCIS to EOIR are "straightforward." Opp. 19–20. But the problems related to transfer between agencies go far beyond inconsistency in notice periods—and the agencies have provided no guidance to address those problems, let alone "straightforward" rules. For example, applicants transferred between agencies risk double charges or uncertainty about when and how much they owe. *See* MSJ 25.

refers to the agency's discretion to address "related, yet discrete, issues in terms of procedures . . . and priorities" and does not otherwise excuse the APA's requirement of reasoned decisionmaking. 498 U.S. at 230. Here, the question is what constitutes compliance with Section 1808's fee requirement—the very subject of the January 2 Memo. The administrability problems raised in this case are part of the problem EOIR was required to consider and address.

The January 2 Memo did not consider the problem of inadequate notice. The January 2 Memo predictably leads to inadequate notice of an applicant's deadline to pay the fee. MSJ 10, 15–17. The government's assurance that any such abuses of discretion are "infrequent and redressable," Opp. 22, does not make them any less foreseeable, and an agency may not ignore even a low-probability risk of grave harm where the harm can easily be avoided, *Sierra Club v. DOT*, 125 F.4th 1170, 1183 (D.C. Cir. 2025).[3] The government's suggestion that immigration judges might "flout" a minimum notice period (Opp. 15) is no defense either. To the contrary, a baseline would both reduce the risk of such errors and make them easier to identify and correct.[4]

The government also argues that applicants have "already been on notice for at least a year" that they are required to pay the annual asylum fee and that any notice period an immigration judge sets is bonus time to which applicants are "not automatically entitled by statute." Opp. 17–18.

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[3] Notwithstanding these foreseeable risks, the government invokes the presumption of regularity. Opp. 15. But the government cites no case providing that the presumption of regularity excuses an agency's failure to consider obvious problems that will result from the agency's policy. And multiple courts have held the presumption no longer applies. *See Fed. Educ. Ass'n v. Trump*, 795 F. Supp. 3d 74, 88–92 (D.D.C. 2025), *stay pending appeal denied*, 2025 WL 2738626 (D.C. Cir. Sept. 25, 2025) (compiling cases).

[4] The government's argument that any erroneous removal orders were subsequently corrected is also insufficient for this Court to infer that inadequate notice is redressable through the ordinary administrative process. At least some of these corrections occurred through counsel's intervention. *See* Hasty Decl. ¶¶ 16–17, ECF 123-12. And the possibility that errors may be corrected through appellate or other processes is not a reason to ignore obvious alternatives that would alleviate the need for that burdensome, lengthy, and costly process. *See infra* pp. 9–10.

But the fact of Congress creating a fee is not the same as adequate notice of when and how EOIR will require payment on pain of dismissal. The statute directs the *agency* to implement the fee, and it is arbitrary for EOIR to expect that individuals with long-pending asylum applications are on notice by virtue of the statute's enactment alone—especially when they have never previously had to pay any fees related to their asylum application. Further, that an applicant knows that a fee will *someday* come due is no substitute for notice of the operative deadline, the amount owed, the method of payment, or that proof of payment to EOIR may later be demanded by EOIR.

Similarly, the government's argument that applicants can just pay early, before the fee is due, does not cure the problem of EOIR's arbitrary and confusing implementation of Section 1808. Nor does the government's observation that some 30,000 applicants have already paid demonstrate that the January 2 Memo comports with the APA. Opp. 17. That is a small fraction (about 1.5 percent) of the population of applicants who EOIR claims are required to pay the fee. *Compare* ECF 71-1 at 4 n.10 (reporting 35,502 annual fee payments between October 23 and November 9, 2025), *with id.* at 5 ("approximately 2.4 million" pending asylum applications). The fact that some applicants have successfully navigated EOIR's payment portal does not relieve the agency of its obligation to provide a workable and reasonable process for all applicants.

The problem of inadequate notice is neither "conjecture" nor "generalized." Opp. 15, 23. In its opening brief, ASAP provided examples of immigration judges setting widely different deadlines once EOIR began implementing the annual asylum fee. MSJ 6–7. And federal appellate courts have reversed similar errors on appeal where immigration judges set unreasonably short deadlines, confirming that inadequate notice was a problem EOIR should have foreseen. *See* MSJ 19–20 (compiling pre-January 2 Memo cases in other contexts where immigration judges set inadequate deadlines). These federal appellate decisions placed EOIR on notice that immigration judges could abuse their discretion absent sufficient guardrails. *See Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 927 (D.C. Cir. 2017) (agency's failure to acknowledge a prior "pattern of agency conduct" was arbitrary and capricious).

The January 2 Memo did not consider the absence of an adequate remedy for applicants who receive no meaningful notice. EOIR does not justify its failure to consider that applicants have no adequate remedy when immigration judges fail to provide adequate notice. The government points to the availability of administrative processes, arguing that an applicant for whom an appeal is cost-prohibitive can instead seek reconsideration. Opp. 15–16. But a motion for reconsideration before an immigration judge is $1,065 (more than the $1,030 BIA appeal) and does not toll the 30-day deadline for appealing to the BIA, 8 C.F.R. § 1003.38(b)(3)—which is crucial to avoid a final order of removal and imminent deportation. *See* MSJ 12 n.7, 21.

Nor is the hypothetical possibility of a fee waiver under 8 C.F.R. § 1003.24 sufficient. Opp. 16. The BIA has recently made fee waivers unavailable to represented, non-detained respondents. *See Matter of Garcia Martinez*, 29 I. & N. Dec. 169, 171 (B.I.A. 2025). And it is arbitrary for EOIR to justify an ad hoc notice policy resulting in systemic, easily avoidable errors and place the burden and expense of fixing those errors on applicants. *Cf. Morton v. Ruiz*, 415 U.S. 199, 232 (1974) (explaining the APA requires "administrative policies affecting individual rights" to "avoid the inherently arbitrary nature of unpublished ad hoc determinations").

The government argues that a new BIA rule eroding availability of BIA review does not bar *every* appeal. Opp. 16. But that rule still diminishes applicants' appellate rights in most cases, given that it mandates summary dismissal of an appeal unless a majority of the en banc BIA votes to take the case. *See* 91 Fed. Reg. 5267, 5270 (Feb. 6, 2026). That another court has enjoined the new rule does not excuse EOIR's failure to reconcile its policies to prevent arbitrary deprivations.

The government cannot have it both ways. It cannot defend the January 2 Memo on the premise that BIA review remains available to cure erroneous adverse consequences while EOIR simultaneously works to eliminate that review. These agency actions emanate from one decisionmaker, and it is unreasonable for the agency to ignore how its own policies interact. Under arbitrary-and-capricious review, "an agency's right hand [should] take account of what its left hand is doing." *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187–88 (D.C. Cir. 2011).

C. The Court can consider prior statements from EOIR's former counsel and the Acting Chief Immigration Judge.

Separately, the government contends that the prior statements from EOIR's former counsel and the Acting Chief Immigration Judge are beyond the scope of this Court's review because EOIR did not "directly or indirectly consider[]" those statements when Director Margolin adopted the January 2 Memo. *See* Opp. 8–12, 23–24. But as to the government's statements in this litigation, EOIR stipulated that "the filings in this case may be considered by the Court . . . notwithstanding any disputes between the parties as to whether those documents are appropriately included in the administrative records." ECF 122 at 1.

In any event, the government's assertion that EOIR did not directly or indirectly consider those filings is beside the point. Although an agency must place in the administrative record everything it considered, that obligation does not prevent a court from holding that an agency was arbitrary and capricious in *failing* to consider evidence that was before the agency. *See CASA, Inc. v. Noem*, 2025 WL 3514378, at *15–16 (D. Md. Dec. 8, 2025); *see also State Farm*, 463 U.S. at 43 ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action"). The "mere fact" that EOIR failed to consider certain materials before it "does not lead to the conclusion that they were not before the agency." *Styrene Info. & Research Ctr., Inc. v. Sebelius*, 851 F. Supp. 2d 57, 64 (D.D.C. 2012).

Here, EOIR issued the January 2 Memo as a direct response to this litigation and therefore necessarily would have been aware of the agency's own filings, statements at oral argument, and related representations and strategy in this case. *See* ECF 71-1 at 1–3 & n.5. Similarly, EOIR would (or should) have been aware of how its own Chief Immigration Judge was directing other immigration judges to implement the initial and annual asylum fees by prescribing a 30-day deadline. Thus, it makes no difference whether the documents in question were formally certified by EOIR when it self-selected the record for this Court's review, or whether these documents were reviewed by the ultimate decisionmaker. These documents provide essential context because they show that EOIR considered one alternative—a uniform 30-day deadline—while the certified record contains no indication that it considered the distinct, obvious alternative ASAP identifies: a minimum notice period. *See Am. Wildlands v. Kempthorne*, 530 F.3d 991, 1002 (D.C. Cir. 2008) (recognizing an exception to the administrative-record rule permitting a court to "supplement the record with 'background information' in order to determine whether the agency considered all of the relevant factors" (cleaned up)). This Court may therefore consider them to determine whether the policy choices EOIR made in the January 2 Memo were arbitrary and capricious.

II. The Court should grant summary judgment on ASAP's claim regarding withholding of removal and CAT (Count 5) in light of the BIA's decision in *L-F-R-*.

After the government filed its opposition, the BIA held that "the annual asylum fee and consequences for not paying it do not extend to an application for statutory withholding of removal or a request for protection under the CAT," and that an IJ "err[s]" by "pretermit[ting] the entire Form I-589 application" for nonpayment. *Matter of L-F-R-*, 29 I. & N. Dec. at 788, 792. EOIR cannot instruct immigration judges to take action that conflicts with BIA precedent. *See* 8 C.F.R.

§ 1003.1(g)(1). Yet EOIR's template order continues to instruct immigration judges and applicants that nonpayment of the annual asylum fee "may result in . . . denial or dismissal" of an applicant's "application," ECF 85-1 at 4, including CAT and withholding claims.

The government argues that it can continue using the template order because the BIA's decision "reduces the likelihood that EOIR's policy might lead to IJs applying the [annual fee] to withholding and CAT claims." Notice of Supplemental Authority, ECF 133 at 2. But it continues to be arbitrary and capricious for EOIR to instruct immigration judges to impose consequences that are legally erroneous—especially given the devastating consequences for applicants. No principle of APA review allows courts to deny relief from unlawful agency action on the theory that an agency's policies are so unlawful that everyone is likely to ignore them. It is inexplicable why EOIR continues to defend and use a template order that EOIR's own appellate tribunal has held is contrary to the plain text of Section 1808.

Nor does the BIA's decision otherwise obviate the need for this Court to resolve ASAP's challenge to the template order. While *Matter of L-F-R-*'s reasoning encompasses both the initial and annual asylum fee, the case's holding addresses only the latter. 29 I. & N. Dec. at 787. This Court should clarify that withholding of removal and CAT are not subject to *either* the initial asylum fee or the annual asylum fee, both of which are part of ASAP's claim in Count Five. Moreover, the BIA's statutory interpretation is not binding on federal courts, *see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024), and it could change in the future, for instance if the question is "refer[red] to the Attorney General," 8 C.F.R. § 1003.1(h)(1). The BIA's decision therefore supports ASAP's arguments on the merits and is no substitute for a judicial ruling settling the meaning of the statute and setting aside EOIR's template order.[5]

III. ASAP is entitled to injunctive and declaratory relief.

A. Post-decision evidence is relevant to determining the remedy.

The government argues that this Court may not consider "new declarations and other new exhibits" that ASAP filed with its cross-motion for summary judgment on the basis that those documents are not part of the administrative record or "post-date PM 26-01." Opp. 9. But ASAP properly introduced this evidence to support its arguments on standing, ongoing injury, irreparable harm, and the remedy for the January 2 Memo's and template order's legal flaws. The declarations and orders that "post-date PM 26-01" are relevant to those latter issues, not to reconstructing EOIR's reasoning in the January 2 Memo or template order. MSJ 7–8, 10–12, 34–40. This Court may therefore consider that evidence in evaluating ASAP's requested relief. *See Esch v. Yeutter*, 876 F.2d 976, 991 (D.C. Cir. 1989) (courts have "countenanc[ed] use of extra-record evidence . . . in cases where relief is at issue" (quotation marks and citation omitted)).

B. Injunctive relief is appropriate.

The government argues that this Court may not enter an injunction "wholly barring implementation of the fee, which is required by statute." Opp. 27. But ASAP is challenging the government's failure to comply with the APA in implementing the fee required by Section 1808, not Congress's decision to impose the fee itself. The requested injunction is targeted accordingly. ASAP seeks to prevent EOIR from implementing the fee in a manner that violates the APA, which would not prevent the agency from adopting a policy that complies with: (1) Section 1808's

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[5] ASAP believes that its arguments as to Counts 1–2 (retroactivity) and 4 (agency action unlawfully withheld) are adequately addressed in its opening brief. ASAP preserves its arguments as to those Counts.

requirement that the agency implement and collect an annual asylum fee; and (2) the APA's requirement that the agency do so in a way that reflects reasoned decisionmaking. That is precisely what Section 1808 and the APA obligate EOIR to do.

The government's own positions show that an injunction would have "meaningful practical effect independent of . . . vacatur." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165–66 (2010). The government insists (incorrectly) that Section 1808 is self-implementing and could continue to be imposed even if the agency actions at issue in this case are vacated. Opp. 4, 5, 24–25. That argument fails to contend with the statute's text and with the Attorney General's (and, through delegation, EOIR's) roles in the statutory scheme.[6] But regardless, the government's erroneous position demonstrates why vacatur alone will not afford complete relief.

ASAP has also established that its members face irreparable harm absent relief. Contrary to the government's contention, Opp. 27, financial harm can be irreparable in some circumstances. *See* MSJ 36. And as the government recognizes, ASAP's members face more than just financial harm. Opp. 27. Those other harms include dismissal of asylum, withholding of removal, and CAT claims; unlawful detention; and removal to countries where applicants may face persecution or torture. MSJ 36–37. This Court has already found that "[r]emoval constitutes irreparable harm." ECF 54 at 16 (citing *J.O.P. v. DHS*, 338 F.R.D. 33, 61 (D. Md. 2020)). And as other courts in this district have held, "[i]t is beyond dispute that unlawful [immigration] detention" by itself "visits irreparable harm." *Abrego Garcia v. Noem*, 812 F. Supp. 3d 550, 553 (D. Md. 2025) (citing *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022)).

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[6] The government is also mistaken that its position reflects "the Court's own view that it could stay the previous agency guidance while still permitting the agency to require the fee." Opp. 24. The Court's letter order shows only that the agency could issue new, APA-compliant rules to implement the statute, not that the statute was self-implementing. ECF 70.

The balance of equities also decisively favors ASAP. An injunction would not "stop collection of the fee" and "effectively prohibit[] the enforcement of a statute." Opp. 28 (quotation marks and citation omitted). As explained above, nothing in ASAP's requested relief would prevent EOIR from adopting a policy that complies with the APA. The government is not harmed by being made to follow the law—including the APA—and the public interest favors lawful government conduct. *See Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011).

C. Declaratory relief is necessary and appropriate.

Declaratory relief is also necessary. Although the Declaratory Judgment Act does not provide an independent cause of action, Opp. 28, the APA expressly authorizes declaratory relief as a remedy. 5 U.S.C. § 703. Declaratory relief would confirm that EOIR may not require either the initial or annual asylum fee for withholding of removal or CAT claims, and it would settle the legal consequences of the Court's vacatur order by foreclosing the government's position that the asylum fee is self-executing and so avoiding the "real risk that the Court will set the dispute up for a 'redo'" in which these same parties come to court over the same issue. *Metro. Transp. Auth. v. Duffy*, 2026 WL 588117, at *66 (S.D.N.Y. Mar. 3, 2026). Declaratory relief would thus provide a clear view of the law as it stands, post-vacatur. Then, if the agency declines to follow the declarations of the Court, ASAP can seek further relief to enforce the declaratory judgment, while ASAP's members and others can use the declaration defensively in the face of wrongfully applied fees or punishments for nonpayment.

Conclusion

The Court should grant ASAP's motion for summary judgment.

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Respectfully submitted,
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