

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

ASYLUM SEEKER ADVOCACY PROJECT,	)	
	)	
Plaintiff,	)	
vs.	)	CIVIL NO.:
	)	1:25-cv-03299-SAG
UNITED STATES CITIZENSHIP AND	)	
IMMIGRATION SERVICES, et al.,	)	
	)	
Defendants.	)	

Baltimore, Maryland
October 28, 2025
2:30 p.m.

TRANSCRIPT OF PROCEEDINGS
MOTIONS HEARING
BEFORE THE HONORABLE STEPHANIE A. GALLAGHER
Courtroom 7C

For the Plaintiff:

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(Computer-aided transcription of stenotype notes)

P R O C E E D I N G S

(2:25 p.m.)

THE COURT: Good afternoon. Please be seated, everyone. We are here in Asylum Seeker Advocacy Project versus USCIS. It is case number SAG-25-3299. Counsel, would you please identify yourselves for the record.

MR. GREGORY: Matt Gregory for the plaintiff.

MS. PELLETIER: Susan Pelletier for the plaintiff.

MR. BARRON: Andrew Barron for the plaintiff.

THE COURT: Good afternoon to you.

MS. IQBAL: Zareen Iqbal for defendants.

MR. AZRAK: Cesar Azrak for defendants.

THE COURT: Good afternoon to you as well.

We are here for a motions hearing on the motion for a temporary restraining order and preliminary injunction that has been filed. Because we have somewhat limited time for the hearing, I thought it would be helpful if I share some initial thoughts on my review of the motions rather than just opening the floor and letting you address from the beginning.

Obviously the posture of this case has shifted somewhat from when the case was originally filed because of changes that were made by the government agencies. There now, as far as I understand, appears to be a way for the people to pay the fees, and there appears to be some more uniformity with respect to the structure and terms of when payments are

1 owed.

2 Plaintiffs have pointed out a very legitimate residual
3 problem that seems to exist with respect to communication of
4 those changes both to persons who owe the fees and, perhaps
5 even more importantly, to judges and officers who are making
6 decisions about removal and have suggested that there are
7 potentially erroneous decisions being made based on whether
8 people have or have not paid fees, so I am going to want to
9 hear clearly about that.

10 With respect to things to focus on from the plaintiff's
11 perspective, so far I am less persuaded by the retroactivity
12 arguments and the arguments relating to whether Congressional
13 intent here is clear with respect to fiscal year 2025 and
14 whether the decisions that are currently being made to enforce
15 the fees are truly agency decisions or whether they're
16 implementing the clear intent of Congress in the statute.

17 Those are sort of the areas that are my primary areas of
18 concern that I wish to hear from the parties on today. So I'm
19 happy to at this point turn it over to plaintiffs.

20 MR. GREGORY: Thank you, Your Honor. Matt Gregory
21 for the plaintiff. I'll start where Your Honor left off with
22 the statutory issue, if I may. You mentioned the
23 for-fiscal-year-2025 language and so that's the main textual
24 hook that the Government has pointed to here, of course. We
25 have two responses at least.

1 One is that language is sort of imported from all of the
2 other fee provisions which follow the same structure as this
3 one. There are fees throughout the One Big Beautiful Bill Act
4 for immigration, and they follow the same structure where you
5 have subsection (a) or sometimes it's (b)(1), (c)(1),
6 depending on the numbering. But there's a subsection that
7 tells you when the fee applies and when you pay it, and then
8 there's a separate provision. That's subsection (b) here
9 which tells you what the amount of the fee is. Those
10 provisions are agnostic about whether a fee is actually
11 required for any particular applicant or when it's due.

12 Here, when you look to subsection (a), it tells you two
13 points in time to decide when a fee is due. One, you look to
14 when the applicant filed his or her application and then you
15 count forward 365 days to whether there's been a full calendar
16 year. Nothing in that subsection (a) tells you the statute
17 applies retroactively, and to my knowledge the Government
18 isn't arguing that any of the other fees in this statute apply
19 retroactively.

20 Even if you can point to a textual hook, as they've done
21 here and as Your Honor mentioned, it's not enough to say the
22 statute could be read to require a fee to be collected in
23 fiscal year 2025. That has to be the only way to read the
24 statute. The *Lindh* case in the Supreme Court talks about
25 this. Your Honor mentioned it. This is the -- excuse me,

1 Your Honor... the *Lyons* case.

2 Congress can use very clear language; it can say "shall
3 apply to all pending applications regardless of when they are
4 filed," things of that nature. This is a very strong
5 presumption against retroactivity because unless you're
6 convinced that Congress considered the question, affirmatively
7 decided to apply a fee retroactively, then it simply does not.

8 Here you have basically a copy and paste of a baseline
9 amount of a fee that is used throughout the statute. Every
10 other fee, as the Government has pointed out, can be collected
11 in fiscal year 2025 but that's not because of subsection (b);
12 it's because of the specific conduct that triggers the fee for
13 those other statutory provisions. For example, filing an
14 asylum application, 1802, or in the parole fee when you are
15 paroled into the United States. That's what triggers the
16 payment of the fee, not the language about the amount of the
17 fee in subsection (b).

18 THE COURT: I guess what I'm not understanding is
19 how -- if Congress didn't intend it to apply that the way the
20 Government is alleging it should be applied, why would the
21 language "for fiscal year 2025" be in there at all?

22 MR. GREGORY: Because throughout all of these
23 provisions, if you read the statute in context, Congress
24 wanted most of these fees to have an inflation adjustment, and
25 they throughout used fiscal year 2025, the amount of the fee

1 for that year, to set the baseline. The purpose of that
2 provision is to tell you what the fee is when it applies on
3 its own terms.

4 What's unique about Section 1808 is that it can't be
5 applied in fiscal year 2025 unless you apply it retroactively.
6 There's no indication Congress wanted any of this to apply to
7 retroactive conduct, and the strong presumption is that they
8 need to make an affirmative choice that you can tell they
9 considered it, not just they adopted language that could be
10 read to require it.

11 THE COURT: All right.

12 MR. GREGORY: So I would like to talk more about the
13 presumption against retroactivity, but I want to be respectful
14 of Your Honor's time. If you look at the *Martin* case, similar
15 case to ours, you have a fee that's being applied, a new fee
16 regime being applied to preenactment conduct. The Supreme
17 Court says, no, you cannot do that unless you get a very clear
18 statement from Congress along the lines of what I mentioned,
19 "the fee shall apply to all proceedings, applications,"
20 something of that nature.

21 If you look at the Fourth Circuit's decision in the
22 *Jaghoori* case, same thing, very strong presumption; the fact
23 that it can be applied prospectively potentially is not enough
24 to save it from the presumption against retroactivity.

25 THE COURT: Your view is that the language "remains

1 pending" isn't clear enough to get us over the hump in terms
2 of them expressly stating what they mean?

3 MR. GREGORY: It's remains pending is the present
4 tense, so we have two retroactivity arguments. One is what I
5 call the broader argument which is that no applicant who filed
6 before July 4th, 2025, should ever have to pay the fee. We
7 also have what I call the narrower argument. We think we win
8 on both but really you need to rule for us on either one of
9 these for this motion.

10 Under the narrower argument, you would start counting the
11 time on July 5th, so it's 365 days from the date of enactment
12 is the earliest anyone would owe the fee which would get you
13 to July 2026.

14 We think that "remains pending" in the present tense is a
15 clear indicator this statute, you have to struggle to read it
16 to require two applications that were pending before the date
17 of enactment and to count the time that they were pending
18 before the date of enactment.

19 THE COURT: Well, again, though, your argument sort
20 of assumes that the (b)(1) for fiscal year 2025 is solely in
21 there to set a baseline then to allow for calculation. So
22 under your theory, Congress never intended for anyone to
23 collect anything in fiscal year 2025 under this provision, and
24 it's simply putting this in here to set a baseline but didn't
25 make that expressly clear.

1 MR. GREGORY: Certainly in the other fee provisions,
2 it did. There's a parallelism with Section 1802 and Section
3 1808. 1802 sets the initial fee, same structure, has a fee of
4 \$100 for fiscal year 2025 as a baseline, and then you adjust
5 for inflation. They use the same structure in 1808 for the
6 annual fee. Under our interpretation, that's 365 days later.
7 This ensures that the annual fee and the initial fee are
8 always the same amount. If they hadn't done it that way, they
9 might not have resulted. That's we think why they put it
10 here. They were using the same inflation adjustment they use
11 everywhere else in the statute.

12 The fact that they said for 2025 doesn't tell you
13 unambiguously with the clarity required by the presumption
14 against retroactivity that they intended to effectively punish
15 applicants who have in some cases been waiting a decade for
16 their asylum application to be decided, this is entirely
17 without their control. At minimum, you would think Congress
18 would give them the full 365 days that it gave everybody else.

19 THE COURT: Get new filers?

20 MR. GREGORY: New filers. So if I file on July 5th,
21 I pay the initial fee and then 365 days later, I pay the
22 annual fee. Under our narrower retroactivity argument, that
23 would effectively be the same thing for someone who had an
24 application pending because otherwise you have to consider the
25 time their application was pending before enactment which was

1 clearly retroactive, and you don't have a clear enough
2 statement from Congress that they intended that result.

3 THE COURT: How do you respond to their argument
4 that it's not -- for example, your example of someone who's
5 been pending for 12 years already -- let me say understanding
6 in all of this that it is not the asylum applicant's choice
7 that it be pending for a long time. I'm sure they would all
8 rather have it decided quickly rather than sit in limbo for
9 lengthy periods of time. But if you have someone who's been
10 pending for 12 years, this provision -- I think everyone is in
11 agreement -- doesn't impose 12 years' worth of fees, right?
12 The question is just do they now owe a fee to sort of continue
13 in the system?

14 MR. GREGORY: I certainly agree with that. It's not
15 actually clear with me why the Government agrees with that
16 because under their interpretation, you should owe this for
17 each calendar year your application has been pending.
18 Obviously that would be an extreme result and one Congress
19 could not have intended, but they're forced to kind of come up
20 with this different interpretation that's nowhere in the text
21 where if your application was still pending on September 30th,
22 which is a date that appears nowhere in the statute, then you
23 owe it. But if it was decided on September 15th, then you
24 don't. The fact that they have to struggle like this to come
25 up with an interpretation that fits retroactive application

1 shows that Congress didn't clearly apply it retroactively.

2 I point to cases like again *Jaghoori*, *Church* and *Altizer*
3 in the Fourth Circuit, very similar facts. You have a new fee
4 regime that's being applied to an ongoing proceeding, and the
5 Fourth Circuit said no. Even if -- I think in that case the
6 statute applied to all proceedings, that's not enough. You
7 need more to overcome the presumption against retroactivity.

8 My colleague is pointing out to me even under USCIS's and
9 EOIR's interpretation, they are not collecting any fees in
10 fiscal year 2025. So the earliest USCIS will collect any fees
11 under their interpretation would be October 31st unless
12 somebody paid early. And EOIR, it's not clear to me whether
13 they have even started sending notices out or not -- I hope to
14 learn that today -- but it would be at some point 30 days from
15 a few days ago when they rolled out the payment mechanism.

16 So under nobody's interpretation is a fee going to be
17 collected in fiscal year 2025 here which, again, shows that
18 Congress didn't require them to sort of rush all this together
19 in a few months and collect these fees on short notice. This
20 is a statute meant to apply in the long term and has a
21 structure where you pay an initial fee when you file your
22 application, you get notice from the agency, you have a
23 touchpoint with the agency which is lacking for most of these
24 people, and then you count 365 days forward.

25 All of these notices problems that we're talking about

1 flow from this fundamental problem. When I file my initial
2 fee today, I at least get notice at that time that I will owe
3 it again in a year. But we're talking about people who in
4 some cases have had no contact with the agency for years
5 because they're just waiting for their application to be
6 decided. To my knowledge, this would be the only provision in
7 all of the immigration fees that Congress adopted that
8 wouldn't require that sort of touchpoint with the agency
9 first.

10 THE COURT: Okay. All right. Do you have more
11 points to make on retroactivity? I did have a couple of
12 questions, I wanted to get clarification from you on what you
13 were proposing with respect to -- what your argument is with
14 respect to what this Court should be doing with respect to
15 sort of this notice problem.

16 MR. GREGORY: The only thing I want to point out on
17 retroactivity, Your Honor, other provisions of the One Big
18 Beautiful Bill Act use very different language when they apply
19 retroactively. For example, there was a subsection -- this is
20 subsection 70302(f)(1)(C) that's titled Election for
21 Retroactive Application. Congress clearly know how to do this
22 when it wanted to, and this is a very roundabout way to just
23 import the same language, copy and paste from other provisions
24 for inflation adjustment to affirmatively decide to apply this
25 fee retroactively, not just to people who filed their

1 applications before July 4th but to all of the time that their
2 applications were pending before July 4th as well.

3 But I'm happy to answer Your Honor's questions if you'd
4 like to move on.

5 THE COURT: Sure. No, I didn't want to interrupt
6 that portion of your argument to move on, but I do want to
7 hear from you on this issue of the problems with the public
8 confusion and the confusion in communicating to the
9 decision-makers.

10 MR. GREGORY: Yeah. I think my colleague,
11 Ms. Pelletier, will speak to this on irreparable harm but in
12 terms of our legal claims, the arbitrary and capricious claim
13 and the unreasonable delay claim, this is a core problem that
14 again flows from this threshold legal mistake in applying the
15 fee retroactively. Just at Gibson Dunn, among our pro bono
16 clients, we have more than a dozen people who had the notice
17 sent to the wrong address. It was sent to the original
18 attorney that represented them, not the new attorney. Again,
19 these cases linger for years and years and years, so often
20 there will be a change.

21 We're very concerned that, even assuming people can come
22 up with \$100 to pay, a lot of people don't know that they're
23 supposed to pay this fee, and the agency hasn't actually
24 provided them the notice it has committed to. Again, this
25 problem would not have occurred if they had rolled it out the

1 way we think the statute requires where you pay the initial
2 fee and at least you get that touchpoint notice that you need
3 to pay a fee a year later.

4 On the delay claim, I think the Government has argued
5 that it's moot because of these new statements. We checked
6 the website at 2:00 today; the website still has the July
7 policy for EOIR. They haven't actually updated it. Maybe
8 they've done it since then, I don't know.

9 We're aware of cases -- we pointed out one in our reply
10 brief where people are still having their application
11 dismissed, and they're being ordered removed for nonpayment of
12 the fee.

13 THE COURT: Okay. Let me ask this. If I end up
14 disagreeing with you on the retroactivity, is there a claim
15 left that you have with respect to these notice provisions?

16 MR. GREGORY: Yes, Your Honor, so we have two
17 claims. The APA claim is that this was arbitrary and
18 capricious when they adopted inconsistent positions in July
19 and created all of this confusion that has now resulted. And
20 you base your review of that decision on the reasoning at the
21 time they issued the memo and the Federal Register Notice;
22 that's under *Chenery*. So the fact they tried to fix it later,
23 that's not enough to save those.

24 THE COURT: It would matter for injunctive relief,
25 right? So if it's been fixed...

1 MR. GREGORY: Well, I think then we would have a
2 debate about the mootness exception for voluntary cessation.
3 To my knowledge, it's only been fixed to the extent you
4 believe the declaration they filed in this court in direct
5 response to our litigation, hasn't actually been updated or
6 promulgated in the real world. Now if they rescinded the
7 memo, maybe we would have a different case, but they have not
8 done that yet.

9 THE COURT: The memo from July about how --

10 MR. GREGORY: The memo from July and the Federal
11 Register Notice from July. So under the APA, the remedy there
12 would be to vacate those, and they'd have to adopt the new
13 policy in a reasonable manner.

14 THE COURT: Okay. But in terms of the payment
15 mechanism, that exists?

16 MR. GREGORY: The payment mechanism exists. I think
17 it was either late the night before we filed our reply brief
18 or that morning, there was a payment mechanism added to the
19 website. Of course, you also need a meaningful opportunity to
20 pay the fee. That's part of this claim too, this is our
21 unreasonable delay claim. I don't know if they've started
22 sending notice out. I don't know if they're going to be able
23 to do it in a better manner than USCIS has done where, as I
24 said, we're aware of many, many instances where systematically
25 it's being sent to the wrong address. That's still part of

1 this claim.

2 Again, voluntary cessation prevents that claim from
3 becoming moot. And I can't see any harm to the Government in
4 Your Honor issuing an order that requires them to do what they
5 promised to do in a declaration they filed in this very
6 case.

7 THE COURT: And that's the language that you
8 proposed on page 10 of your reply saying "the Court should
9 enter a preliminary order forbidding EOIR from imposing any
10 adverse consequences for failure to pay the fee until it's
11 provided adequate notice and a meaningful opportunity to pay"?

12 MR. GREGORY: Correct, Your Honor.

13 THE COURT: All right.

14 MR. GREGORY: If I may, can I come back to the
15 statutory argument really quickly?

16 THE COURT: Sure.

17 MR. GREGORY: I just want to point out the sort of
18 harsh choice that this is putting the asylum applicants to.
19 The Government has pointed out that you can avoid paying this
20 fee. That's true in a lot of the Supreme Court's and the
21 Fourth Circuit's retroactivity cases. It was true in *Vartelas*
22 where if you just didn't travel out of the United States, you
23 wouldn't be subject to the fee. Here the consequences are
24 extremely harsh. You either have to comply with what we think
25 is an unlawful fee, or you have to withdraw an asylum

1 application that you may have built a whole life here, you may
2 be sent back to a country where you face persecution. This is
3 an extremely harsh choice to put applicants to.

4 People also made irrevocable decisions in addition to
5 just coming here and seeking asylum. As we pointed out in our
6 reply brief, some people filed multiple applications on the
7 understanding that there would not be a fee that would apply
8 going forward and it's impossible to undo those now. For one
9 thing, you can't get the attorney fees back that they paid in
10 reliance on the prior regime. It's also not clear they can
11 even withdraw those applications now without also withdrawing
12 their request for withholding of removal and CAT relief which
13 are on the same form that the government requires them to use
14 when they apply for asylum.

15 So I understand Your Honor is skeptical with some of the
16 statutory arguments, but I do want to make clear this is a
17 pretty extreme choice for Congress to make. It puts people in
18 a very untenable, difficult position, and we just don't see
19 the clarity in the statute that Congress actually wanted that
20 result, and we think the Supreme Court and Fourth Circuit case
21 law is very clear they would have had to do more than they did
22 to impose the fee retroactively.

23 THE COURT: Okay. All right, thank you.

24 MR. GREGORY: Thank you, Your Honor.

25 THE COURT: Did you say one of your colleagues

1 wanted to be heard also?

2 MR. GREGORY: My colleague, Susan Pelletier, will
3 talk about irreparable harm.

4 THE COURT: Sure.

5 MS. PELLETIER: Thank you, Your Honor. The
6 remaining injunction factors, in addition to likelihood of
7 success, clearly favor our client. Absent preliminary relief
8 from this Court, ASAP members face three types of irreparable
9 harm. I'll list them now and I'd like to briefly touch on
10 each of them. The first two harms are economic unrecoverable
11 payment of the annual asylum fee and extreme economic hardship
12 following payment. The third harm encompasses the immigration
13 consequences of abandoning an asylum claim, and all three of
14 these stem from two facts that we established in our briefs
15 and declarations.

16 First, that for many asylum seekers, coming up with \$100
17 on short notice is going to be very difficult, if not
18 impossible. And the second is that the agencies, as we've
19 discussed, are systematically failing to provide effective
20 notice to individuals that the agencies believe that that
21 payment is due.

22 Because of the exigencies on the ground, I'd like to
23 first turn to the immigration consequences. The agencies have
24 represented that nonpayment within the time period allowed
25 could result in an individual's asylum claim being denied.

1 Denial of an asylum claim can, in turn, result in the
2 individual's permanent loss of ability to apply for asylum
3 because of the one-year statute of limitations period that
4 applies to those applications, and it can also result in
5 removal to the applicant's home country where they fled
6 persecution. So it's not an exaggeration to say that the
7 consequences here really are life and death.

8 This obviously is not fanciful as we submitted in the
9 Exhibit K to the supplemental Reddy declaration, we are aware
10 of at least two instances where the immigration court has
11 already denied and ordered someone removed for failure to pay
12 the annual asylum fee. This is a fee that, even under the
13 Government's own representation, is not yet due and was
14 impossible to pay at the time, including, as my colleague
15 said, after the Government submitted the declaration in this
16 case saying that it had changed its policy. So the notice
17 issues here both flow, as Your Honor said, to the applicants
18 and to the Government's own employees.

19 The Government argues that this harm doesn't count
20 because it flows from the fact that an individual would not
21 have paid the annual asylum fee, and the Government
22 characterizes that as a violation of law. We think that
23 that's wrong for two reasons. The first is that in assessing
24 irreparable harm, Your Honor can take into account the
25 consequences of failing to comply with an unlawful government

1 demand. That's very clearly spelled out in the *VanDerStok*
2 case that we cite as well as the *Frosh* case out of this
3 court.

4 It also misunderstands the situation for asylum
5 applicants right now, many of whom cannot pay, they cannot
6 come up with the money; it is not a decision not to pay. Or
7 they have not received notice in the way that's required for
8 them to actually be able to do so. And that is true even for
9 individuals who have received the actual notice from USCIS.
10 As we've mentioned, that's not true of everyone who may be --
11 the agency believes it sent notice to, but the notices
12 themselves don't make clear when the 30-day period expires.
13 Is it from the time that the agency sent the notice, is it
14 from the time that the applicant received the notice? It's
15 very unclear.

16 So there are many instances in which someone would be
17 treated as having not paid and, under the government's view,
18 violated the law despite having tried to do so.

19 THE COURT: Let me ask this because you're somewhat
20 addressing with respect to the proposal that you made on page
21 10 forbidding EOIR from imposing any adverse consequences for
22 failure to pay the annual fee until it has provided adequate
23 notice and a meaningful opportunity to pay, you are addressing
24 somewhat, I guess, at least one issue that adequate notice
25 would require is a firm deadline for making the payment.

1 MS. PELLETIER: Exactly --

2 THE COURT: Obviously, presumably also it would be
3 notice sent to an address that the person actually can receive
4 it. When you say meaningful opportunity to pay, again,
5 understanding that some people might have financial
6 circumstances that are different from others, are you meaning
7 anything other than clear instructions for how to make the
8 payment?

9 MS. PELLETIER: Well, Your Honor, I think it depends
10 on the basis for the relief. I think if the Court is deciding
11 we are likely to succeed on our retroactivity claims, the
12 order should, of course, bar any requirement that individuals
13 who filed their applications before the date of enactment have
14 to pay the fee or that they have to do so before the
15 anniversary date of enactment next summer. But if the Court
16 is focused on the notice issue, it would be yes, that they
17 receive actual notice with sufficient time to pay; ideally
18 also because of this issue with the notice going to the wrong
19 addresses, people would be able to log into the system and see
20 when their payment is due under the agency's determination. I
21 think that would be an important step in the right direction.

22 And, of course, also for the agencies to notify the
23 public about their interpretation of the statute and including
24 informing immigration judges and others who are involved in
25 the immigration process, that they should not be treating

1 these fees as having been due before individuals are given
2 that opportunity.

3 THE COURT: Okay. Now is there a way -- if a
4 applicant logs on at this point, does it tell them when their
5 fee is due or no?

6 MS. PELLETIER: It does not. For USCIS, for many
7 people, they'll log on and even though they may have applied
8 more than a year ago, it says their fee is not yet due at this
9 time and they're unable to pay it. For others, they will log
10 in having not received notice and it suggests that they are
11 able to pay, but it doesn't tell them when. It's just that
12 they are able to enter their A-number and it looks like they
13 are able to make a payment, so there is no actual date that is
14 clear.

15 It's not clear what information the agency has on its
16 side about when those notices went out or when those notices
17 are due. We don't have that information. For EOIR, anyone
18 can pay the fee when they log on. It doesn't seem to have
19 this mechanism where it's blocking someone who doesn't yet
20 have a fee due, but, again, we don't know if any of those
21 notices have gone out and applicants don't have a way of
22 knowing, and it seems neither do immigration judges.

23 THE COURT: Okay.

24 MS. PELLETIER: Just briefly, I would turn to the
25 economic harms and why those are cognizable. The Government's

1 own cases acknowledge the economic harm can be irreparable and
2 that's true in two circumstances, both of which are present
3 here. One is when there's a likelihood that money paid out
4 will not be collectible at the end of litigation, and that's
5 true here for both legal and practical reasons. As a
6 doctrinal matter, it is far from clear that refunds would be
7 available at the end of this litigation. Even if they were
8 available, it could be cost prohibitive and logistically
9 impossible to get those to the millions of people that have
10 would have paid the annual fee during the period that
11 litigation was pending.

12 The second is whether or not money can be returned at the
13 end of litigation. Irreparable harm can stem from the severe
14 economic consequences that asylum seekers will face in the
15 immediate aftermath of paying. We have submitted evidence
16 showing that for many asylum seekers, coming up with \$100 on
17 short notice will force them to make very hard choices between
18 feeding their families, keeping the heat on. And courts have
19 treated harms like that, even if money is recoverable at the
20 end of litigation, as creating irreparable harm, warranting
21 preliminary relief.

22 I'll just turn very quickly to the balance of the
23 equities in the public interest. Those also clearly favor
24 ASAP and its members. As the Court recently explained in the
25 Department of Education case, the public has an interest in

1 the government following the law. Here that applies not just
2 to following the dictates of the One Big Beautiful Bill Act
3 but also the long-standing policy of the country to offer
4 asylum to those who need this country's protection. For over
5 75 years, this country has allowed people to apply for asylum,
6 and the full and fair adjudication of their claims is really
7 critical to that public interest.

8 Allowing the government to dismiss or deny asylum claims
9 based on a failure to pay a fee that Congress did not
10 meaningfully impose on them or because they have not received
11 notice would greatly undermine that public interest. It also
12 does not serve the public to subject large groups of people to
13 economic hardship. By contrast, the government has not shown
14 that it will experience any immediate harms if it is delayed
15 in collecting these fees. If it prevails in this litigation,
16 it can issue the notice that is required to give people a
17 meaningful opportunity to pay and then collect the fees at
18 that point.

19 I would just reiterate that if someone is to withdraw an
20 application because they cannot afford to pay the fee, they
21 would likely be foreclosed from seeking asylum going forward,
22 and that would be true even if at the end of this litigation,
23 it turns out that the fees were not required.

24 THE COURT: Okay. All right, thank you.
25 Ms. Iqbal.

1 MS. IQBAL: Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 MS. IQBAL: Your Honor, so I'll first address the
4 retroactivity arguments here. I first want to make clear and
5 confirm that the government is not applying the annual asylum
6 fee retroactively here. It's not a retroactive filing fee.
7 It's not being applied effective any date prior to OBBBA's
8 enactment. The fee is assigned prospectively effective
9 October 31st, 2025, for the period pending of FY 2025 from
10 October 1st, 2024, to September 30th, 2025.

11 In this way, it is very much akin to a property tax. It
12 is a fee that is necessary for the continuation of the
13 person's application, but it is not being applied
14 retroactively.

15 THE COURT: Wait, I want to make sure I understand
16 what you're saying. You said it's being applied beginning
17 October 31st, 2025, so you agree with plaintiff's position
18 that it is not being collected in fiscal year 2025?

19 MS. IQBAL: It's being assigned effective October
20 31st, 2025, so it's not being necessarily collected during the
21 fiscal year, but it is a fee that applies for the fiscal year
22 2025. So the way that the USCIS calculated it is they applied
23 it to all applications pending between October 1st, 2024, to
24 September 30th, 2025. Then they applied the fee, assigned
25 prospectively and -- excuse me, effective October 31st,

1 2025.

2 THE COURT: So -- but if I'm an applicant and I
3 decide to withdraw today, I'm going to withdraw my asylum
4 application, I don't owe the fee even though it's for -- my
5 application was pending that whole period October 1st, 2024,
6 through September 30th, 2025?

7 MS. IQBAL: No, Your Honor. The idea here is to
8 provide notice that the fee will become due within 30 days and
9 that gives the applicant the opportunity to withdraw, to pay
10 or not pay or to pursue a different avenue potentially of a
11 legal immigration status.

12 THE COURT: All right.

13 MS. IQBAL: Your Honor, so the plaintiffs here are
14 alleging it's impermissibly retroactive because this fee
15 counts time accrued, counts time pre OBBBA's enactment. Your
16 Honor, simply because a new fee or tax is based on time that's
17 previously accrued or that has some sort of retrospective
18 reach does not mean it's impermissibly retroactive. I would
19 submit to Your Honor here the language in the statute is
20 explicit that it was Congress's intent that this fee, the
21 annual asylum fee be applied to both current and future
22 annual -- excuse me, asylum applicants.

23 Your Honor --

24 THE COURT: What language do you rely on for that?

25 MS. IQBAL: Your Honor, I would point the Court's

1 attention to "for FY 2025." It's very clear. I understand
2 that the plaintiffs have tried to make a distinction between
3 "for" and "during." Your Honor, it's the Government's
4 position really that these are interchangeable, but I would
5 also direct the Court's attention to the other immigration
6 fees that are listed under this particular section. As
7 plaintiff has mentioned, there are several other immigration
8 fees that have been issued or increased. They use the same
9 exact language for 2025. They say for that initial amount,
10 it's for 2025, "for FY 2025."

11 Your Honor, if "for FY 2025" was intended to merely
12 indicate a baseline amount to calculate further or subsequent
13 years, that would mean that it was Congress's intent to
14 collect no fees for 2025, despite the fact that there were
15 three months pending, for any of the dozen or so fees that use
16 that language there, including the annual asylum fee. Which
17 cannot be the case when you factor in Congress's intent as it
18 is expressed in the House Committee Report, the Judiciary
19 Committee Report that we submitted and cited.

20 Your Honor, in addition to the "for 2025" as plaintiffs
21 pointed to as well, it clearly states that the -- there is a
22 fee for pending applications. Your Honor, that explicitly
23 indicates that it is intended to apply to current
24 applications, those that are presently pending.

25 Your Honor, so I would also submit to you in the House

1 Committee Report, the judiciary committee there in the same
2 section cited the Congressional Budget Office's estimate here.
3 So the CBO provided an estimate for every single new fee. For
4 the annual asylum fee, the CBO estimated that enacting the
5 provision specific to the annual asylum fee would increase
6 revenue and decrease the deficit by 1.1 billion over the 2025
7 to 2034 period. In order for that to be true, it would
8 require that fees be collected for pending applications during
9 the 2025 period. So the CBO even understood it to intend --
10 understood the section to include current pending
11 applications.

12 Your Honor, I understand the plaintiffs pointed to other
13 sections in OBBBA, there are two other sections where the
14 Congress has used the language "retroactive" explicitly. In
15 both those sections it actually, in fact, requires that
16 something be applied to a specific date. That is why Congress
17 used that. In the first section it had to do with Medicare
18 enrollment, someone who had been mistakenly disenrolled. The
19 requirement there is that it has to be effective a particular
20 date, but there is no such particular date here. That's the
21 reason why we submit to you that that language is not
22 necessary. That pending applications, the statute's use of
23 those to that term is sufficient to show that it was
24 Congress's intent that it applied to current applications.

25 Your Honor, with respect to -- we submit to the Court,

1 again, the Court does not have to go any further than *Landgraf*
2 factor number 1. Again, I want to emphasize here the fee is
3 being applied prospectively, so I would also add I think the
4 plaintiffs here have also alleged that the implementation of
5 this fee is retrospective or retroactive because it attaches
6 legal consequences to an applicant's prior decision to seek
7 asylum. Again, this is not a fee that is being applied to the
8 initial application. In this way it differentiates from
9 *St. Cyr*, from *Jaghoori*, from even *Church*.

10 In the case of *Church*, which plaintiff heavily relies
11 upon, in that instance the plaintiff there is being made to
12 pay a fee, a retroactive fee, a fee that was required at the
13 point of filing. This is not a prospective fee in any way.

14 Plaintiff also points to *Martin v. Hadix*. *Martin v.*
15 *Hadix* is also instructive in that in that particular instance,
16 there were two fees that were being applied there -- excuse
17 me, there were two changes in salary, in attorney's fees that
18 were being applied. One was prospective, one had to deal with
19 post-monitoring advice an attorney would give, post-judgment
20 advice. One had to deal with sort of the services that were
21 already provided.

22 Plaintiff is correct that the Court there did indicate
23 that the statute was not explicit in requiring that that
24 particular fee be applied retroactively, but it also stated
25 that the prospective fee was not impermissibly retroactive.

1 The reason why it stated so -- and even though the plaintiff
2 attorney made argument in that case that had the attorney
3 known, they had reasonable expectations there that their fees
4 would remain the same there, so they made the same argument.

5 The Court rejected that argument in that particular case
6 because the Court stated that you can withdraw your
7 representation. There's a choice there for your being
8 required to continue. You're not being required to continue
9 and to absorb the loss in the limited pay. So --

10 THE COURT: Part of the difficulty here, though, is
11 that these applicants, they don't want their application still
12 to be pending; right? For many of them, they wanted their
13 application to be decided years ago. So this is sort of
14 imposing a fee on people for pending for a long period of time
15 when they don't want to be pending at all. They would like to
16 have a decision.

17 MS. IQBAL: I understand that, Your Honor.
18 Congress's intent is clear that the reason, the purpose for
19 this fee is that asylum applicants have never had to pay any
20 fees, not for the initial application, nor for any kind of
21 adjudication services. As a result of that, as Congress has
22 indicated in its Judiciary Committee Report for the bill, as a
23 result of that, U.S. citizens have been footing the bill or
24 other lawful immigrants, legal immigrants who go through the
25 process who pay fees have also been footing that bill.

1 The point and the purpose of the statute and the purpose
2 of this specific annual asylum fee was to remedy that. There
3 are currently 3.4 [sic] estimated pending applications. The
4 goal here for Congress was to ensure there was some sort of
5 cost recruitment as a result of having to adjudicate this
6 ongoing millions, millions of asylum applications.

7 The principle there, as Congress also stated in the same
8 report, has always been the same principle that U.S. citizens
9 shouldn't have to foot the bill for any kind of immigration
10 processing. This is not the first time that Congress has --
11 rather, the government has attempted to issue an asylum fee.
12 In 2020 USCIS or DHS attempted to issue an initial application
13 fee for about \$50. At that point and currently as well, the
14 authority to do so was within the purview of the USCIS and DHS
15 under the Immigration and Nationality Act.

16 So that authority to issue a fee, whether it's for that
17 initial application, whether it's for adjudication -- later
18 adjudication, that authority has always existed. This is no
19 different from that existing authority.

20 If anything, Your Honor, the OBBBA has actually taken
21 away some of that discretion and it is now requiring,
22 requiring USCIS to impose a fee, an asylum fee here.

23 THE COURT: Let me ask for clarification on a point
24 where it appeared from plaintiffs was some question. If
25 someone's application has been pending for 12 years, are they

1 going to owe 12 years' worth of this fee, or are they going to
2 owe one year worth of this fee --

3 MS. IQBAL: No, Your Honor. It's not retroactive
4 again in that way where it's applying to cumulatively over the
5 period of time that a person's application has been pending.
6 So it's only for 2025 which is the first year it is being
7 collected. It will only be for those applications that were
8 pending for the full fiscal year of 2025.

9 THE COURT: Pending for full fiscal year. So if
10 somebody filed in April, they will not owe for fiscal year
11 2025?

12 MS. IQBAL: Yes, ma'am. The application would have
13 had to be pending between October 1st, 2024, and September
14 30th, 2025.

15 THE COURT: So they would have had to file on or
16 before October 1st, 2024?

17 MS. IQBAL: Yes, ma'am.

18 THE COURT: If you're somebody who did file on April
19 1st, 2025, when will you owe a fee?

20 MS. IQBAL: According to USCIS and now EOIR's
21 policy, that in any subsequent year, it will be based on the
22 calendar date that you filed.

23 THE COURT: Okay. So if I filed on April 1st, 2025,
24 I would get my notice April 1st, 2026? Or I'd get my
25 notice --

1 MS. IQBAL: Earlier.

2 THE COURT: -- March and then I would owe it by April
3 1st, 2026?

4 MS. IQBAL: Yes, Your Honor. That's my
5 understanding how the process will proceed going forward.

6 THE COURT: But obviously notices are still -- can
7 you give me some sense of what's happening now because it
8 seems like people aren't getting notices or may not have
9 gotten notices.

10 MS. IQBAL: Yes, Your Honor. Obviously we've been
11 in contact with both USCIS about this and EOIR, and since that
12 time -- since the plaintiff's filing, EOIR has adopted a
13 revised policy that is consistent with USCIS. Given the
14 change in the policy and, of course, the lapse in
15 appropriations -- EOIR is not entirely fee funded so it does
16 rely upon appropriations money, they don't have all of the
17 relevant staff. They have limited IT capabilities so they're
18 doing what they can to correct -- sorry... So they are in the
19 midst of doing what they can to sort of correct based on the
20 consistency now and so both organizations are coordinating.

21 EOIR has different capabilities in terms of payment
22 mechanisms in terms of sort of IT than USCIS does. Obviously
23 with the change in policy having just occurred, it will need a
24 reasonable amount of time to be able to issue notices. Again,
25 with the lapse in appropriations, it's making things a little

1 bit more difficult. So --

2 THE COURT: Wouldn't they be able to just put
3 something up on the website that says: Nobody owes fees right
4 now, fees will be imposed once we're back in office and can
5 send notices?

6 MS. IQBAL: Your Honor, we have followed up with
7 them about that, and they are working on trying to put
8 together some sort of public notice. They need to be able to
9 do something that's consistent with policy as well. And also
10 we have discussed with them the issue of ensuring that
11 immigration judges and staff are aware of the shift in policy,
12 and so they are also working on communicating that to judges
13 as well.

14 They have also reviewed the documentation that was
15 provided about individuals who have already faced some sort of
16 deportation or deported -- I believe the initial copies that
17 were filed were redacted so we didn't have the specifics. It
18 was a little bit difficult for EOIR to determine who specific
19 to identify the individuals who had been negatively affected.
20 But EOIR has indicated -- although it's not in the
21 declaration, EOIR has since indicated that if they can -- if
22 ASAP can provide information about those individuals who have
23 been affected, they can work to try to take corrective action
24 with a specific court.

25 THE COURT: I assume plaintiffs are willing to do

1 that?

2 MR. GREGORY: I'll have to talk to my client, Your
3 Honor. I think these individuals did not give us permission
4 to share their name, so I think it's a threshold question that
5 we would have to cover. I certainly appreciate the offer, and
6 that's a question we'll have to take back.

7 THE COURT: All right.

8 MS. IQBAL: That will be the same obviously for
9 anyone who has since faced any kind of negative consequences
10 as a result of the initial policy. So the agency is willing
11 to take corrective action there.

12 THE COURT: Let me ask this then. Based on what
13 you're saying now, the sort of language that plaintiffs have
14 suggested on page 10 of their reply for an order forbidding
15 EOIR from imposing any adverse consequences for failure to pay
16 the annual asylum fee until it has provided adequate notice
17 and a meaningful opportunity to pay, is there disagreement
18 with that? Could that be done as some sort of consent order?
19 Would we be able -- rather than an injunction. It sounds to
20 me from what you are representing here in court that EOIR
21 recognizes the problem with the current posture and is willing
22 to go as far as to take corrective action.

23 Would there be any problem with entering that sort of
24 agreement until EOIR can get its ducks in a row when the
25 shutdown ends and things can be put in place?

1 MS. IQBAL: Your Honor, EOIR is already taking steps
2 to correct and will be issuing notices as soon as it has the
3 capability. The Government can provide updates to the Court
4 if that's what you're seeking. Rather than entering some sort
5 of agreement here, if Your Honor would request that we submit
6 updates to provide you with --

7 THE COURT: The problem is that updates don't solve
8 really the problem because to the extent that there was some
9 sort of agreement that could be disseminated publicly to
10 plaintiff's members, to others even without EOIR being able to
11 add messages to its website, whatever, they would have some
12 sort of assurance that nobody was going to face adverse
13 consequences for failure to pay this fee until the mechanisms
14 are in place to do that. Providing updates to the Court
15 doesn't provide that sort of assurance to the public at large
16 who is faced with trying to pay this fee as to what the
17 current status is, particularly with the circumstance that we
18 have with respect to what is in the record in front of the
19 public in terms of the memos that have been enacted and things
20 of that nature.

21 I take your point that EOIR, with the shutdown, is
22 somewhat limited perhaps in what it can do, but I'm concerned
23 with public messaging here and getting information to people
24 who need it who are probably very concerned about their
25 obligations to pay these fees when they have -- presumably if

1 they try to call, they're not getting people on the phone if
2 people aren't there because of the shutdown; the systems
3 online don't seem to be working. So we have a large number of
4 people here who are probably very concerned about the
5 situation who are unable at this point to get reassurance.

6 MS. IQBAL: Your Honor, I understand the concerns
7 here. Both EOIR and USCIS appreciate those concerns as well
8 and I think they're working as quickly as possible to do that,
9 particularly with respect to public notice so that they can
10 alleviate that confusion.

11 I think with respect to some sort of joint status report,
12 I think I would have to go back and speak with the client
13 about that because they are under certain constraints, so
14 being able to agree with respect to particularly the frequency
15 with which the steps would need to be taken if there -- we're
16 happy to discuss further with the plaintiff here after we've
17 had some time with the client and to see if we can come up
18 with something so that we can maybe perhaps submit some sort
19 of joint status report where we are.

20 THE COURT: I think it would be more than a status
21 report. Again, it would need to be some sort of an agreement
22 that adverse consequences were not going to be imposed for a
23 failure to pay the fee until there has been reasonable notice
24 of when this fee is due because that's where my concern lies
25 is these judges or decision-makers who are taking action

1 against people for failure to pay when people are in this sort
2 of limbo situation where, because of the shutdown or
3 otherwise, they can't get accurate information about what is
4 owed and when.

5 MS. IQBAL: Yes, Your Honor, understood. If Your
6 Honor would permit, if we can then be given some time to
7 consult with the clients here and then have an opportunity to
8 speak with plaintiff about coming up potentially with an
9 agreement. If plaintiffs -- plaintiff is in agreement with
10 that. We would still need to discuss with the client first.

11 THE COURT: Okay. Are you able to reach someone
12 with the client this afternoon?

13 MS. IQBAL: Yes, we do have people on standby. Your
14 Honor is just seeking right now just consent or agreement on
15 our part to enter into an agreement but for the parties to
16 negotiate that agreement themselves; correct?

17 THE COURT: Yes, I suppose so, but I think the
18 starting point would be what plaintiffs have on page 10 of
19 their reply which, you know, they were asking me to enter a
20 preliminary order forbidding EOIR from imposing any adverse
21 consequences for failure to pay the fee until it has provided
22 adequate notice and a meaningful opportunity to pay.

23 What I was hearing from you was sort of some agreement
24 that EOIR understands the problem and is trying to do that,
25 even going as far as to be willing to consider corrective

1 action for people who have faced an adverse consequence for
2 failure to pay the fee at this point. So it sounded to me
3 like a potential opportunity for the parties to reach some
4 agreed resolution of at least some portion of the claim,
5 understanding that this does not go as far as what plaintiffs
6 are asking the Court to do.

7 MS. IQBAL: Yes, Your Honor, understood. Your
8 Honor, so currently -- I see on page number 10 what they are
9 requesting here. Obviously, there is meaningful opportunity
10 to pay at this point based on what plaintiff has requested so
11 there is a payment mechanism. So with respect to adequate
12 notice, EOIR's declaration makes clear that no one will have
13 to pay until notice is issued, and they'll have 30 days from
14 the point in which that notice is issued to pay.

15 So really the last point at issue here is really whether
16 or not there's something the agency can do to ensure that
17 those who have already faced adverse consequences will have
18 that corrected --

19 THE COURT: Well, yes and no. Obviously -- you
20 submitted an opposition saying that certain things had been
21 put in place, and then it sounds like even after that, at
22 least one person faced adverse consequences for failure to pay
23 when those measures had been put in place already, and it
24 apparently wasn't adequately communicated. So I'm not
25 necessarily confident that we're only talking about correcting

1 things that have already happened because I don't know what
2 has or has not been communicated to decision-makers, whether
3 decision-makers understand what has or has not been
4 communicated.

5 So I'm not necessarily confident that -- and we have the
6 problem that plaintiffs raised earlier with respect to
7 adequate notice as well. Because if notice is being sent to
8 someone's attorney who has closed up shop or has passed away
9 and the client doesn't receive that notice, that doesn't seem
10 to constitute adequate notice in this circumstance either.

11 So we have potential ongoing issues past what may already
12 have happened to date, and the question is whether there can
13 be an agreement that adverse consequences for failure to pay
14 will not be imposed until adequate notice has been provided.
15 That might, in a certain circumstance, go somewhat further
16 than whether it's just been stuck in the mail because, again,
17 it might be mailed to a 15-year-old address.

18 MS. IQBAL: Yes. Your Honor, I can't really speak
19 to the mailing aspect of this. If plaintiffs can provide more
20 information about that, we can discuss, I'm happy to address
21 that with EOIR -- or rather USCIS because the only
22 organization that has issued any notices at this point is
23 USCIS.

24 But we can reach out to some representatives from EOIR
25 and we can ask whether or not -- it may be possible that they

1 are taking action, as we speak, as to prevention. Your Honor,
2 obviously the main focus here is concern that no one else face
3 any adverse consequences as a result of having followed the
4 previous policy. We can get in touch with people from EOIR
5 and see whether or not there is something they can take more
6 immediate action with respect to communication to the judges
7 and staff.

8 If Your Honor will permit, if we can reach out to them
9 and if it's possible by the end of this afternoon, we can get
10 a response to the Court.

11 THE COURT: Okay. I think that will be helpful one
12 way or the other. I do want to ask a couple of other things.

13 What about the memo that was originally issued? Again, I
14 understand that we've gotten information in this litigation
15 that EOIR is changing its position in terms of when payments
16 are due and things like that. Is anything formal being done
17 to rescind the memo and any other guidance that was initially
18 put in the public record?

19 MS. IQBAL: Yes, Your Honor. They're working on
20 reissuing -- preparing and reissuing a new policy memo.
21 Again, EOIR has -- there's different steps there. They have
22 different levels of review, and they don't have all the staff
23 at this point. But I can try to get a better response about
24 when they might be reissuing a policy memo when the
25 expectation is that they might start sending out some notices

1 and also about whether they're going to -- or how immediately
2 they're going to send out communication to the rest of staff
3 regarding the change in policy.

4 But the memo itself, that will take a little bit more
5 time. I think what they're working on in particular right now
6 is issuing public notice, trying to find a different form.
7 Whether it is, like you mentioned, a message on a website,
8 something so at least the public can be notified regarding the
9 change.

10 THE COURT: Okay. What is EOIR's position with
11 respect to whether a failure to pay the asylum fee would
12 render a person ineligible for withholding removal or CAT
13 relief as well?

14 MS. IQBAL: Your Honor, EOIR has explained that the
15 annual asylum fee, while the persons use the same form to
16 apply for these different avenues of relief, although they're
17 using the same form, the nonpayment of the annual asylum fee
18 would not impact someone's application for these other avenues
19 that you listed, whether it's CAT or otherwise.

20 THE COURT: Okay. Are we sure that the immigration
21 judges are getting guidance on that as well?

22 MS. IQBAL: Yes, Your Honor. So the -- the process
23 for CAT or these other avenues has not changed. The
24 application remains the same, the process remains the same.
25 Unless there has been a change in OBBBA -- and I don't think

1 that's the case with respect to any fees, I don't know that
2 offhand -- but that process will remain the same. The AAF
3 does not impact that process.

4 THE COURT: Okay. All right. I think that covers
5 most of the questions I had for you. Were there other points
6 that you wanted to make?

7 MS. IQBAL: Your Honor, I would just emphasize again
8 where concerns retrospective affect or retroactivity, really
9 the circumstances here are indistinguishable in that unlike in
10 *St. Cyr*, *Jaghoori* and *Church*, there is nothing being
11 retroactively applied to past conduct here. There is no
12 retroactivity here. This is a prospective fee. If somebody
13 wants to continue the process, they pay the fee. I likened
14 this previously to sort of like a property tax which the
15 government issues all the time. I also referenced the
16 *Sunshine* case. While I realize it's Eleventh Circuit, it's
17 really more akin to something in the *Sunshine* case here where
18 if someone seeks to continue, they must pay a fee. The
19 *Sunshine* case is an annual integrity fee.

20 Your Honor, so again, I would draw that significant
21 distinction, especially when you're assessing *Landgraf's*
22 factor number 2. That factor really states very explicitly is
23 that if a statute attaches new legal consequences to events
24 completed before its enactment. Here it's distinguishable to
25 all the other cases that the plaintiffs have referenced.

1 There's not a single case that talks about pending
2 applications or a time that accrues for -- that a prospective
3 fee being applied to time that accrues. Simply that's because
4 it is not generally considered retrospective under law.

5 THE COURT: Okay. I forgot to ask -- we focused a
6 lot on likelihood of success. Do you wish to address the
7 irreparable harm or public interest factors?

8 MS. IQBAL: Your Honor, again, we just reiterate our
9 arguments here that with respect to a \$100 fee, typically that
10 is not generally considered a fee -- in the monetary loss not
11 considered necessarily irreparable harm. It doesn't amount to
12 necessarily irreparable harm here. Also I would point to -- I
13 understand that there's concern here that there may not be
14 refunds so can't speculate as to one way or another whether or
15 not a refund might be possible. You know, I can't say with
16 certainty, rather. The EOIR has stated that it has -- in its
17 declaration, that it's willing to credit fees in different --
18 in the event that something was misapplied, is willing to do.

19 So there is a possibility that the \$100, if paid
20 erroneously or whatever the case, can be credited in other
21 ways. I do understand that asylum seekers also generally have
22 multiple applications ongoing, family visa and things -- and
23 then these fees, employment documentation fees, authorization
24 fees. So there are ways in which to credit potentially in the
25 event that the \$100 -- the Court rules that the \$100 is

1 erroneous. That's it, Your Honor.

2 THE COURT: All right, thank you.

3 MR. GREGORY: Thank you, Your Honor. I guess the
4 first thing I'd like to say is obviously we are always happy
5 to talk with the Department of Justice about a potential
6 agreement, we welcome that. We need an order from the Court.
7 These fees at USCIS are due on -- is it Friday potentially? --
8 and people are at risk of removal or deportation. Several
9 days ago, they issued this declaration. It still has not been
10 implemented in the real world at EOIR.

11 My friend mentioned the shutdown. Immigration judges are
12 still hearing cases. People are still at risk of this. So
13 while I would love to reach an agreement, I don't think that's
14 realistic in the time that we need an order from the Court. I
15 would just like to point out Your Honor has the option of
16 issuing a temporary restraining order or something of that
17 nature to buy time for us to reach agreement with the
18 Government.

19 I also want to point out -- you mentioned on page 10 of
20 our brief a couple times so I pulled it up and looked at it.
21 I want to make clear that relief is available for Count 3.
22 That's our arbitrary and capricious claim 2 which goes against
23 both agencies. So the unreasonable delay claim we brought
24 only against EOIR because of lack of a payment mechanism. But
25 Count 3 allows you to provide the same relief under Section

1 705 which gives the Court ample authority to stay an agency
2 action to the extent necessary to preserve the status quo
3 while the case is litigated.

4 So we would ask that if you adopt the remedy on page
5 10 -- again, we think you should hold the fee is not
6 retroactive, period, but if you're not going to go there, we'd
7 ask you to apply that both to USCIS and EOIR.

8 I want to make a few points about --

9 THE COURT: I want to go back to -- because we had a
10 lot of talk about EOIR this morning and a little bit less
11 about USCIS except that some of the notices are not reaching
12 the recipients because they're going to the wrong place. Are
13 the notices, when they are going to the right place, providing
14 accurate deadlines, or are we still in the same boat where
15 they don't really know when it's due?

16 MR. GREGORY: I think no. I think the notices don't
17 include actual deadlines for the fees nor does the website.
18 Of course, this is a big problem. Not only are you getting
19 the notice in some instances very late because it went to your
20 old attorney or got stuck in the mail, but you might think you
21 have 30 days based on the agency representations when, in
22 fact, you just got this two weeks after they sent it; the
23 agency thinks your fee is due October 31st. So this is a real
24 problem the agencies have yet to address.

25 THE COURT: When you're saying fees are due on

1 Friday, where is that coming from?

2 MR. GREGORY: Because USCIS started sending the
3 notices, according to their website, on October 1st and they
4 said it's due 30 days later. If I want to be conservative and
5 think what's the worst case scenario here, it's 30 days after
6 they sent the notice in the mail -- although I don't think
7 they've been clear about that, not 30 days after somebody
8 received it. Again, for many of these people, even if they
9 are received, they are receiving it a couple weeks later.

10 THE COURT: Do you have any insight from the
11 Government's perspective as to when fees are due?

12 MS. IQBAL: The original USCIS notice indicated that
13 the payment would be due within 30 days of receipt of notice.
14 I have to double-check, but I think that between the USCIS's
15 July Federal Register Notice and then the notice itself, it
16 should be understood that it would be due by October 31st, so
17 I think that was made clear.

18 If there has been some issues with mailing, I expect like
19 in any case where a federal -- a fee is owed or due to a
20 federal agency, that that individual -- if they believe
21 themselves that they owe the fee and they haven't received any
22 sort of notice, that they can still contact USCIS --

23 THE COURT: Who is there or not there based on the
24 shutdown?

25 MS. IQBAL: USCIS is largely fee-funded so they --

1 EOIR isn't. But USCIS is largely fee-funded so there should
2 be staff that's reachable there.

3 THE COURT: All right. Can we get some
4 clarification by the end of the day today about what is going
5 on at USCIS? Is it USCIS's intent to start enforcing these
6 October 1st notices on October 31st, or is there some
7 consideration being built in for when applicants receive the
8 notice? I don't think having something in the Federal
9 Register is sufficient notice in these circumstances for an
10 asylum applicant to have notice of when a fee would be due.
11 So I'm more concerned about what is contained in the notice
12 that was actually sent to the asylum applicants.

13 MS. IQBAL: Yes, Your Honor. We'll seek
14 clarification for that as well.

15 THE COURT: Okay.

16 MS. PELLETIER: Your Honor, I would just share that
17 our client has said that when people have tried to get clarity
18 on this issue from USCIS, they have not been able to do so, on
19 the due date of their specific deadline based on notice or not
20 having received notice. So it's not the case that someone can
21 just call and get an answer at this point.

22 THE COURT: Based on the fact that no one is there
23 answering the phone? Or based on the fact that when they get
24 someone on the phone, they're not able to provide adequate
25 responses?

1 MS. PELLETIER: I'm not sure, but I know that this
2 has been an issue where people have been trying to get this
3 information and haven't been able to.

4 THE COURT: Okay, all right.

5 MR. GREGORY: Your Honor, all of these issues,
6 again, are why we need an order by October 31st to prevent
7 people from potentially having their application dismissed and
8 then being deported for nonpayment of the fee which it seems
9 like everyone here agrees should not be happening. The
10 Government itself seems to agree. I think getting some sort
11 of agreed resolution would be great, but we really need an
12 order before that date.

13 So on the people that we've identified that have reached
14 out to us that we know of who were ordered dismissed or
15 deported because of nonpayment of the fee, we obviously don't
16 know every immigration court, everything that's going on out
17 there, so although my client is happy to be a vehicle to help
18 the government resolve this issue, again, I think we need an
19 order from the Court because the agency has the unique ability
20 to determine who this has happened to.

21 I want to point out a couple other things in response to
22 my friend's comments. The revised policy at EOIR -- I want to
23 put that in quotations -- is still not on the website. I
24 understand there's a shutdown but I don't understand why it
25 would take that long. They've made other updates to the

1 website in the meantime, including putting out the payment
2 portal. If I go there today, I'm going to see that July EOIR
3 memo still. You're not going to know whether the agency is
4 going to send you notice or whether your fee is not currently
5 due or when it will be due once they send notice. None of
6 that information is there.

7 We shouldn't be doing this in this courtroom. People
8 shouldn't be having to scribble notes and report what was said
9 by DOJ attorneys. This should be something the agency
10 proactively goes out and does. Again, this is why we need an
11 order.

12 I do want to come back to retroactivity, if Your Honor
13 will just bear with me on a few points there. First, my
14 friend said it's not retroactive because it's applied in 2025.
15 That's exactly what was going on in *Jaghoori*, *Vartelas*, other
16 cases where there was some sort of post-enactment conduct that
17 triggered the consequences of a statute. The Supreme Court,
18 Fourth Circuit said the fact that you can avoid it because
19 it's actually happening to you in the future year doesn't mean
20 it's not retroactive.

21 My friend mentioned they're collecting the fee on October
22 31st, 2025; I just want to be clear that's not fiscal year
23 2025. Fiscal year 2025 ended on September 30th. So, again,
24 even under their interpretation, they're not collecting the
25 fee in fiscal year 2025.

1 Another potential interpretation of that language in the
2 statute could well be that Congress expected that if you filed
3 an application, say, July 10th, August 1st of 2025, the fee
4 that you owe would be for fiscal year 2025 because part of the
5 time that was accruing was in fiscal year 2025. So you would
6 pay it, under our narrow interpretation, in July 2026, 365
7 calendar days later, but you would pay the fiscal year 2025
8 fee because that is a substantial amount of the time that your
9 application remained pending.

10 These other fees, my colleague mentioned the government
11 wouldn't collect any of them in fiscal year 2025 under our
12 interpretation; that's simply not true. All of them under --
13 of their own force apply prospectively to something that
14 happens in fiscal year 2025. For example, I go to the agency
15 and I file my initial application or the government reaches
16 out to me and paroles me into the United States. That's
17 subsection (a) again. It's not the for-fiscal-year-2025
18 language. But Congress is collecting all of those fees, under
19 our interpretation, in fiscal year 2025.

20 She pointed out that this statute is intended to raise
21 money from the immigration process. That's undoubtedly true
22 but that's not enough to overcome the presumption against
23 retroactivity. If you read the *Landgraf* decision, the court
24 rejects that very argument. Every statute could accomplish its
25 purpose more fully -- is the quote in *Landgraf* -- if it

1 applied retroactively, but we assume as a background rule,
2 Congress does not intend statutes to apply that way.
3 Legislative history, I would submit, is also clearly off the
4 table because this has to be in the text of the statute for it
5 to matter under *Landgraf*.

6 I mentioned *Jaghoori* and *Vartelas*. My friend brought up
7 *Martin*. Look, *Martin* is on all fours here on the narrower
8 version of our retroactivity argument. It's just not the case
9 that in *Martin* the attorney fees would not have been collected
10 prospectively. In that case, the attorneys were requesting
11 fees that would be paid after the statute was enacted.
12 Congress said because you're counting, in my colleague's
13 words, the time from before the statute, then it's
14 retroactive. That's on all fours here, it's controlling
15 precedent, certainly controls over the Eleventh Circuit's
16 decision that my friend cited.

17 The last point that I'll address is the fact that the
18 agency had authority to issue some immigration fees by rule
19 before the statute was enacted. I'll just say that favors us.
20 Agencies, even more so than Congress, cannot apply rules
21 retroactively. So if they hadn't done so, you'd have no
22 reason to expect an agency would try to impose a fee on you
23 for time that your application had already been pending or for
24 your initial decision to file an application.

25 I think my colleague, Ms. Pelletier, had a couple of

1 additional points.

2 THE COURT: Sure.

3 MS. PELLETIER: I was just going to note that
4 Exhibit M from our rely brief is a copy of the USCIS notice.
5 So if that would be helpful for Your Honor to review, I'd
6 point you there.

7 THE COURT: Good.

8 MS. PELLETIER: We would just follow up on the
9 exchange you had with our colleague about the withholding of
10 removal and the CAT relief. We certainly agree with them that
11 the annual asylum fee and its payment or nonpayment shouldn't
12 affect that, but we'd just note that the immigration judge in
13 the examples that we provided did, in fact, treat it as cause
14 to deny both of those claims as well, so it is extremely
15 important that any notice would go to both of those issues.

16 THE COURT: Okay. At this point, I guess -- and
17 I'll look at Exhibit M, I didn't bring it into the courtroom
18 with me. But that notice, I assume, at this point does not
19 address what would happen to someone's CAT or withholding
20 applications?

21 MS. PELLETIER: No. It just says that if you do not
22 pay this fee, it may negatively affect your application
23 including, but not limited to, a delay in processing so it's
24 pretty vague.

25 THE COURT: Okay. All right. I appreciate

1 everyone's presentations today; this was helpful. I am going
2 to take this under advisement, although I know there is some
3 urgency to it. I will look to get that additional information
4 that we discussed today from the Government, hopefully by the
5 end of the day today.

6 I certainly welcome the parties to have further
7 discussion about a number of these issues including, but not
8 limited to, once you've consulted with the appropriate
9 parties, whether information can be provided about the persons
10 who have already suffered some consequences for failure to pay
11 the fees. It seems like that would be something that
12 potentially could be addressed in this way. But even in terms
13 of further steps that can be taken to try to effectuate some
14 of this.

15 So I'm going to take this under advisement and look to
16 get the additional information, and I will try to get a
17 decision to the parties shortly.

18 MR. GREGORY: Thank you, Your Honor.

19 MS. IQBAL: Thank you.

20 THE COURT: Thank you-all.

21 THE CLERK: All rise. This Court stands in recess.

22 (Proceedings concluded at 3:36 p.m.)
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

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Dated this 29th day of October 2025.



Patricia G. Mitchell, RMR, CRR
Federal Official Reporter

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