IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

J.O.P., **M.A.L.C.**, **M.E.R.E.**, **K.A.R.C.,** and **E.D.G.,** on behalf of themselves as individuals and on behalf of others similarly situated, Plaintiffs, v. **U.S. DEPARTMENT OF HOMELAND SECURITY,** et al., Defendants.	Civil Action No. 8:19-CV-01944-GJH

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO ENFORCE THE PRELIMINARY INJUNCTION

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Despite the Court's Order prohibiting USCIS from "applying the asylum eligibility policy, as set forth in USCIS's May 31, 2019 memorandum, to bar individuals previously determined to be unaccompanied alien children from seeking asylum before the agency" and requiring it to process asylum applications pursuant to the "USCIS policy predating the May 31, 2019 memorandum," USCIS continues to reject jurisdiction over asylum applications based on the 2019 Redetermination Memo. Relying on a policy that is expressly set forth in the 2019 Redetermination Memo, USCIS instructed its asylum officers to defer to the determination of an immigration judge's decision as to whether USCIS had initial jurisdiction over an asylum application. The 2013 Kim Memo—which, under this Court's order, USCIS should be following—does not permit this abdication of USCIS jurisdiction to an immigration judge. In short, Defendants have failed to comply with the Court's Order by implementing aspects of the enjoined 2019 Redetermination Memo.

Defendants' arguments in opposition all lack merit. First, Defendants seek to sidestep the issue by arguing that Plaintiffs lack standing to even raise a violation of the Court's Order. But the Court has already recognized Plaintiffs' standing in issuing a temporary restraining order enjoining Defendants from applying the 2019 Redetermination Memo; no further showing is needed merely to have standing to enforce the Order that the Court entered in Plaintiffs' favor. In any case, Plaintiffs also can establish injury-in-fact based on Defendants' implementation of the deference policy because they face a substantial risk of imminent harm from Defendants' unlawful policy. Each of the original four Plaintiffs are in removal proceedings before an immigration judge, and each faces a substantial risk that USCIS will unlawfully defer to an IJ's factual finding that they are no longer an "unaccompanied alien child." That is particularly so because Defendants insist that USCIS is *compelled* to defer to immigration judge determinations

and take the position that the Court's Order somehow does not implicate their continued implementation of this policy.

Second, Defendants' attempt to defend their actions fails, because they rely on an exceptionally narrow and self-serving interpretation of the Court's Order—that the Court's Order allows them to implement any "practice" that was in place before the 2019 policy was enacted. Defendants admit that, prior to 2019, USCIS had not adopted a formal policy to defer to an immigration judge's UAC determination. Rather, Defendants suggest only that USCIS had an informal, unwritten practice of deference, and they argue that the Court's Order does not preclude them from continuing such a preexisting practice. But even accepting the (dubious) factual premise of Defendants' argument, it is wrong. The Court's Order enjoining Defendants from implementing the 2019 Redetermination Memo does not contain any exception for policies that were codified in the memorandum but (supposedly) grew out of informal agency practices that had already begun to depart from the 2013 Kim Memo. To the contrary, the Court's Order instructs Defendants to stop rejecting jurisdiction over any application "whose application would have been accepted under the USCIS policy predating the May 31, 2019 memorandum," i.e., the 2013 Kim Memo.

Furthermore, Defendants have not even established the premise for their argument, because they cannot show that there was any consistent, formal, or publicly known practice of deference to immigration judge jurisdictional determinations that predated the 2019 Redetermination Memo. On this point, Defendants completely ignore two factual declarations by asylum officers that Plaintiffs submitted in their opening brief that make clear that USCIS did *not* have a policy, before the 2019 Redetermination Memo, to defer to IJ jurisdictional determinations. Instead, Defendants rely on a declaration from another asylum officer, which

offers conclusory assertions that USCIS had such a practice in place, which the officer says is supported by "case-related emails" that supposedly refer to this practice. But Defendants did not provide a single such email. Indeed, they have failed to provide a single official case record (even in redacted form) reflecting USCIS's alleged "practice" to defer to an immigration judge's determination as to whether an applicant was a UAC.

Plaintiffs respectfully request that the Court grant Plaintiffs' motion and require USCIS to comply with the Court's Order to process asylum applications under the 2013 Kim Memo, which should preclude them from abdicating initial jurisdiction based on deference to the jurisdictional finding of an immigration judge.

I. ARGUMENT

A. Defendants' Standing Argument Lacks Merit

Defendants' argument that Plaintiffs lack standing to challenge U.S. Citizenship and Immigration Services ("USCIS") deference to immigration judges ("IJs") is tantamount to an argument that Plaintiffs may not seek enforcement of the Court's preliminary injunction order, and is therefore without merit. D.I. 88 at 5. The Court has already recognized Plaintiffs' standing in issuing a temporary restraining order (later converted into a preliminary injunction) enjoining Defendants from applying the 2019 Redetermination Memo. D.I. 55; D.I. 71. The directive that asylum officers will defer to an IJ jurisdictional determination is an express term of the 2019 Redetermination Memo. Plaintiffs do not need to make a further showing of injury merely to enforce the preliminary injunction that the Court issued in this case. *See Salazar v. Buono*, 559 U.S. 700, 712 (2010) (holding that a party had standing to enforce an injunction because "[a] party that obtains a judgment in its favor acquires a 'judicially cognizable' interest in ensuring compliance with that judgment").

Defendants' contention on this point echoes an assertion they advanced at the TRO hearing, which this Court rightly rejected. There, Defendants consented to entry of a TRO as to the named Plaintiffs, and argued that this Court was precluded from entering a broader injunction to block implementation of the 2019 Redetermination Memo on the theory that the named Plaintiffs would not be injured. The Court explained that Defendants' position was inconsistent with the basic structure of the Administrative Procedure Act, as "the remedy Congress provides for unlawful agency action is setting aside that agency action, not simply prohibiting the application of that action to individuals." D.I. 54 at 8-9; *see also Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) ("When a reviewing court determines that agency [action is] unlawful, the ordinary result is that the [action is] vacated—not that [its] application to the individual [plaintiffs] is proscribed."). It necessarily follows that the Plaintiffs have standing to enforce the injunction resulting from their own motion when Defendants take actions to implement policies announced in the 2019 Redetermination Memo in the face of the Court's Order suspending operation of that memo *entirely*.

The cases cited by Defendants are too far afield from the context of this case to support their position. In *Lewis v. Casey*, 518 U.S. 343, 358 (1996), the Supreme Court held that a prison inmate could not establish an injury simply by alleging that a prison law library or legal assistance program is subpar in some theoretical sense. In *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1550 (2016), there was no allegation of harm beyond a "bare procedural violation." Here, Plaintiffs allege that they filed their asylum applications with USCIS, exercising their right to seek asylum based on the policy in place since 2013, and stand to lose associated protections through application of the rules set forth in the 2019 Redetermination Memo. D.I. 91 ¶¶ 25-55,

120-138. Indeed, in issuing the TRO, the Court agreed that Plaintiffs would be irreparably harmed if Defendants apply the 2019 Redetermination Memo. D.I. 54 at 14-15.

In any event, even if Plaintiffs were required to show standing to challenge each individual aspect of the 2019 Redetermination Memo, Defendants' arguments would still fail. Defendants insist that the four originally-named Plaintiffs lack standing because they have not "suffered a rejection of jurisdiction at USCIS because of a prior adverse IJ UAC jurisdictional determination," D.I. 88 at 5, but they completely ignore that standing may be established based on a future, anticipated harm when there is a "substantial risk" that the harm will occur, *N.Y. Republican State Comm. v. Sec. & Exch. Comm'n*, 927 F.3d 499, 504 (D.C. Cir. 2019) (finding standing to challenge an agency rule where there was an "increased risk of at least some harm as a result of the SEC's decision to adopt" the rule). Each of the original four Plaintiffs are in removal proceedings before the Executive Office for Immigration Review ("EOIR") , and each faces a substantial risk that USCIS will unlawfully defer to an IJ's factual finding that they are no longer an "unaccompanied alien child" ("UAC"), depriving them of their right to seek asylum before USCIS. Defendants' own representations to the Court make this risk clear. According to Defendants, "IJs clearly have the authority to make these determinations" and "USCIS had a long-standing practice" to defer to IJ UAC determinations. D.I. 101-1 at 3, 23. Plaintiffs do not have to wait for the axe to fall to challenge an unlawful policy.[1] Moreover, it is common and appropriate in a Rule 23(b)(2) class action for a court to issue preliminary relief prior to class certification. *See, e.g.*, *Rodriguez v. Providence Comm. Corrs., Inc.*, 155 F. Supp. 3d 758, 767

[1] In addition, the First Amended Complaint includes a new named plaintiff (E.D.G.) who is part of the putative class identified in Plaintiffs' original Complaint and whose standing Defendants do not contest. USCIS has already unlawfully deferred to an IJ's finding that E.D.G. was not a UAC at the time he filed his asylum application, and USCIS rejected jurisdiction over his application for that reason. *See* D.I. 76.

(M.D. Tenn. 2015) (collecting cases). Such proceedings would be dead letters if plaintiffs, having standing to secure preliminary relief on behalf of a putative class, could not enforce the resulting orders.

B. Defendants Have Violated the Court's Preliminary Injunction Order

Defendants violated the Court's Order by following the 2019 Redetermination Memo's mandate to defer to IJ determinations and by flouting the previous policy—the 2013 Kim Memo. In the September 30, 2019 denial letter at issue, USCIS stated that it rejected jurisdiction over E.D.G.'s asylum application because "the Immigration Judge made an affirmative act to terminate UAC status on October 10, 2018." D.I. 80 ¶ 18 & Ex. A. USCIS's deference to an IJ jurisdictional determination implements the enjoined 2019 Redetermination Memo, which expressly instructs asylum officers to defer: "If EOIR has explicitly determined that USCIS does not have jurisdiction over an asylum application because it is not one filed by a UAC, the asylum officer will defer to that determination." D.I. 77, Ex. 1 at 4 n.5.

The 2013 Kim Memo—which this Court's Order requires USCIS to follow—has an unequivocal and simple rule: "Unless there was an affirmative act by [U.S. Department of Health and Human Services ("HHS"), U.S. Immigration and Customs Enforcement ("ICE") or U.S. Customs and Border Protection ("CBP")] to terminate the UAC finding before the applicant filed the initial application for asylum, Asylum Offices will adopt the previous [U.S. Department of Homeland Security ("DHS")] determination that the applicant was a UAC." D.I. 77, Ex. 3 at 2. The 2013 Policy requires (1) adoption of a prior DHS determination, *unless* (2) there was a *pre-filing* affirmative act by *HHS, ICE, or CBP*. *Id.* Defendants violated the 2013 Kim Memo, and thus the Court's Order, when they deferred (following the 2019 Redetermination Memo) to an IJ determination rather than acting in accordance with E.D.G.'s previous determination made by DHS (as required by the 2013 Kim Memo).

In defense, Defendants offer an exceptionally narrow and self-serving interpretation of the Court's Order. According to Defendants, the "critical language" in the Court's Order is the clause enjoining them from rejecting jurisdiction over an application that USCIS would have accepted "under the USCIS policy predating the May 31, 2019 memorandum," which they contend allowed them to revert to any "policy or practice" that the agency may have been following before issuing the 2019 Redetermination Memo, regardless of whether such a policy or practice was consistent with the 2013 Kim Memo. D.I. 88 at 2. But the Court's Order does not contain any reference to alleged "practices." Contrary to Defendants' assertion, it is not plausible to read this Court's Order as allowing USCIS to continue to implement policies expressly set forth in the 2019 Redetermination Memo so long as the policies may have grown out of informal (and inconsistently applied) agency practices that predate the memo.

The 2013 Kim Memo established the relevant USCIS policy for UAC determinations before the 2019 Redetermination Memo. This memorandum, dated May 28, 2013, states that the procedures therein "are effective on June 10, 2013, and apply to any USCIS decision issued on or after that date." D.I. 77, Ex. 3 at 1. The 2019 Redetermination Memo, in turn, explicitly states that it "modifies the May 28, 2013 memorandum," and applies to "any USCIS decision issued on or after the effective date." D.I. 77, Ex. 1 at 1 (underline in original). The Court's Order explicitly refers to the 2013 Kim Memo, instructing Defendants to "retract any adverse decision already rendered in an individual case applying the 2019 UAC Memorandum and reinstate consideration of such case applying the 2013 UAC Memorandum." D.I. 71 ¶ 2. In short, this Court ordered Defendants to restore the 2013 Kim Memo, not to implement purported "practices in effect prior to the issuance of the 2019 Memorandum" that the 2019 Redetermination Memo then codified. D.I. 88 at 2.

Defendants also argue that the 2019 Redetermination Memo has "many parts," and that, according to Defendants, Plaintiffs' Complaint did not challenge all of it. D.I. 88 at 8. To the contrary, Plaintiffs' Complaint challenged the entire 2019 Redetermination Memo, including on grounds that it was issued without proper notice as required by the APA. D.I. 1 at 30-31. The Court's Order enjoins Defendants from applying the entire 2019 Redetermination Memo, not simply portions thereof. D.I. 71. Failure to comply with the APA's rulemaking process renders invalid the entire rule, not simply a portion thereof. *See Harmon*, 878 F.2d at 495 n.21. Moreover, the issue of USCIS's deference to an IJ is part-and-parcel of the jurisdictional-determination question at the heart of this lawsuit. Plaintiffs are challenging the policy and rules, articulated formally for the first time in the 2019 Redetermination Memo, which allow USCIS to unlawfully decline jurisdiction over an asylum application filed by a person who had previously been determined to be a UAC. USCIS's new attempt to circumvent the Court's Order would result in the exact harm which Plaintiffs alleged at the outset—that Plaintiffs will be unlawfully "subjected to an adversarial asylum process that Congress deemed inappropriate for these young, traumatized, and largely alone individuals." D.I. 22 at 30.

Notably, Defendants do not even attempt to defend USCIS's jurisdictional rejection in E.D.G.'s case on its own terms, presumably because the conflict with the 2013 Kim Memo is so stark. The Asylum Office expressly based its rejection of E.D.G.'s case on an "affirmative act" of an IJ. D.I. 80 ¶ 18 & Ex. A ("The Immigration Judge made an affirmative act to terminate UAC status on October 10, 2018."). As Plaintiffs have explained, p. 6, *supra*, and as Defendants do not dispute, a decision by an IJ *after* an applicant has already filed for asylum cannot possibly qualify as an "affirmative act" under the 2013 Kim Memo. Abandoning the asylum officer's reasoning in E.D.G.'s case, Defendants now contend that the IJ's findings warrant deference

even though they are concededly "distinct from the kind of 'affirmative acts' relating to the care and custody of UAC that ICE, CBP or HHS might take." *See* D.I. 88-1 ¶ 20. Defendants should not be allowed to circumvent this Court's Order by recharacterizing such blatant departures from the 2013 Kim Memo, whose efficacy this Court restored (at least pending this litigation). *See SEC v. Chenery Corp.*, 318 U.S. 80, 95 (1943) ("[A]n administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained."); *Orellana v. Barr*, 925 F.3d 145, 153 (4th Cir. 2019) ("Because the agency never asserted this as a justification for its order, principles of administrative law bar us from dismissing the petition on this basis").

C. Defendants Have Not Shown a Longstanding Practice That Predates the 2019 Redetermination Memo

Defendants' rationalizations of their actions also fail on their own terms because they have not shown any consistent, formal, or publicly known practice of deference to IJ jurisdictional determinations. Defendants concede that, until the 2019 Redetermination Memo, a purported deference practice had not been memorialized in any "formal memorandum." D.I. 88-1 ¶ 12. As Defendants' counsel explained (correctly) at the hearing on Plaintiffs' TRO motion, "[u]nder the 2013 policy, where the person was over the age of 18, to take the easy example, USCIS would still be able to take jurisdiction even though the immigration judge had said no, subject to deportation." DeJong Ex. 6 (7/19/2019 Tr.) at 60-61. Nevertheless, contrary to that admission, Defendants have reversed course and now assert that this alleged deference is a "longstanding practice" that began "well before" the 2019 Redetermination Memo. D.I. 88 at 3, 5.

First, Defendants completely ignore all of the evidence that Plaintiffs submitted in their opening brief that makes clear that USCIS did not have a policy, before the 2019

Redetermination Memo, to defer to IJ jurisdictional determinations. Lauren Esterle, a former asylum officer, explained that the Asylum Office's in-depth, six-week training taught officers to "respect" a prior DHS UAC determination, and never indicated that officers would defer to any later determination by an IJ. D.I. 81 ¶¶ 6, 7. Ms. Esterle herself *taught* further training modules, and as late as January 2019, was never aware of trainings, instructions, or guidance "that allowed, much less required, asylum officers to defer to a determination by EOIR that USCIS lacked jurisdiction over an asylum application because it was not one filed by a UAC," or that such a finding could qualify under the 2013 Kim Memo's provision for "affirmative acts." *Id.* ¶ 12. Jennifer Bibby-Girth, another former asylum officer who was responsible for training officers on the rollout of the 2013 Kim Memo, confirms that that memorandum meant that "immigration judges did not have the authority to make any determinations about UAC status or to terminate UAC findings." D.I. 82 ¶ 6. This "longstanding practice," if it existed, was thus not simply unknown to the public, but unknown to USCIS officers themselves, including supervisors and those responsible for training.

Defendants attempt to support the allegation of this "longstanding practice" with a conclusory declaration from Kimberly Sicard. D.I. 88-1. Ms. Sicard acknowledged that "there is no reference in the 2013 memorandum, and no other formal memorandum issued to articulate this practice," and yet still asserts that "the practice existed well before the 2019 memorandum." D.I. 88-1 ¶ 12. She relies on "case-related emails sent to and from various personnel about specific individual cases over the years," that allegedly refer to a USCIS practice of deferring to IJ jurisdictional determinations. *Id.* ¶ 15. But she did not provide any of the emails, on grounds that the "great majority" are "privileged because they either include USCIS counsel or represent

deliberative process, or implicate privacy issues under statute or agency policy."[2] *Id.* Defendants' vague reference to "case-related emails" is woefully inadequate to show that USCIS had adopted any consistent practice or policy on this issue. Moreover, Defendants cannot wield privilege as both a "shield" and a "sword," and because Defendants refuse to provide the allegedly privileged emails, the Court should disregard Defendant's argument entirely. *See People for Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Md., Inc.*, 2018 WL 3546725, at *3 (D. Md. July 24, 2018) ("[P]rivileges cannot be used as both a sword and a shield. A party cannot choose to disclose only so much of allegedly privileged matter as is helpful to his case.").

Ms. Sicard also references a template that she states USCIS developed in 2018 for ICE attorneys to document IJ "UAC jurisdictional determinations." D.I. 88-1 ¶ 16; D.I. 88 at 4. Defendants have not provided Plaintiffs or the Court with a copy of the template.[3] In any event, the fact that ICE attorneys were asked to record IJ jurisdictional determinations does not establish a practice of USCIS deference to such determinations. Moreover, a publicly available template from 2015 regarding USCIS jurisdictional rejections for UAC cases has no reference at all to deference to an IJ determination. DeJong Ex. 7; *see also* Suppl. Decl. of Lauren Esterle (filed on Jan. 24, 2020) ¶ 18. Instead, it considers, consistent with the 2013 Kim Memo, whether any prior UAC determination was still in place or had been terminated prior to the asylum application's filing. *Id.*

[2] Defendants provide no justification for failing to provide even a version of the emails that has been redacted to remove information they claim is privileged or confidential. They do not even describe the emails—for example, what the dates of the emails are, who sent or received them, and what they generally said.

[3] Ms. Esterle is not aware of any such template from her time as an asylum officer. Suppl. Esterle Decl. ¶ 17.

Ms. Sicard also refers to a set of November 3, 2017 USCIS Asylum Division Stakeholder Meeting notes stating "asylum offices defer to IJ determinations where IJs have made a finding that an asylum application was not filed by a UAC." D.I. 88-1 ¶¶ 13-14. According to Defendants, the information in this document was made public in 2017, "eventually posted and available on line." D.I. 88 at 3. In fact, these notes were not available on USCIS's website when Plaintiffs filed their Motion to Enforce, more than two years after the meeting occurred.[4] In contrast, notes of other stakeholder meetings held while the 2013 Kim Memo was in effect and before the 2019 Redetermination Memo was issued—and which were made available on USCIS's website—repeatedly confirmed that the 2013 Kim Memo remained in effect. Indeed, Defendants entirely ignore that, as recently as May 20, 2019, USCIS confirmed that that it would not defer to an IJ jurisdictional determination under the 2013 Kim Memo. D.I. 76 at 11 ("*Matter of M-A-C-O-* addresses immigration judge determinations to whether an asylum application was filed by a UAC. It does not address USCIS determination about its own jurisdiction. USCIS continues to make its jurisdictional determinations under its own procedures.").

Finally, Plaintiffs submit a responsive declaration from Ms. Esterle that reinforces that USCIS did not have any policy or "longstanding practice" to defer to an IJ's jurisdictional determination under the 2013 Kim Memo. In her entire time as an asylum officer from 2016 to 2019, including a year as a training officer, Ms. Esterle was not aware of any USCIS training, written materials, or any other guidance that allowed, much less required, asylum officers to

[4] Based on a search of the Internet Archive, the document was not publicly available on the USCIS website in August 2019 but appeared on the relevant USCIS webpage in December 2019, a month after Plaintiffs filed their Motion to Enforce. *See* DeJong Ex. 8 (current USCIS link where the November 3, 2017 USCIS Asylum Division Stakeholder Meeting notes is presently available); DeJong Ex. 9 (Internet Archive from August 2019 in which the November 3, 2017 USCIS Asylum Division Stakeholder Meeting Notes is not available).

defer to an IJ's determination that an application was not one filed by a UAC. Suppl. Esterle Decl. ¶¶ 6-10. She was not aware of any USCIS training, instructions, or other guidance that "documented a trend or increasing practice of IJs undertaking fact finding on the UAC status of individuals before them and then assertion jurisdiction over their asylum applications after determining that USCIS lacked jurisdiction over those applications because they were not one filed by a UAC." *Id.* ¶ 11. And she was not aware of any USCIS training, instruction or other guidance that documented USCIS "concerns regarding either the possibility of USCIS and IJs both asserting jurisdiction over asylum applications filed by asylum seekers with prior UAC determinations." *Id.* ¶ 12. Finally, she was not aware of any training, instruction or other guidance that documented USCIS's alleged practice of deferring to IJ UAC determinations. *Id.* ¶ 13.[5]

In short, Defendants have not shown that USCIS had a "longstanding practice" to defer to an IJ's determination as to whether an asylum application was one filed by a UAC. Indeed, they have failed to provide even a single official case record (even in redacted form) reflecting such a practice.

D. Even If Defendants Had Shown a Longstanding Practice of USCIS Deference to IJ Jurisdictional Determinations, It Would Violate the APA

Even if Defendants had shown a past practice of USCIS deference to IJ jurisdictional determinations, such a practice had not been publicly disclosed in any meaningful sense and was not consistently applied. At a minimum, the 2019 Redetermination Memo purports to codify this "practice," elevating it to a legislative policy that forecloses individual asylum officers from

[5] Ms. Esterle also notes that USCIS did not have any trainings, instructions or other guidance that documented any request by USCIS that ICE trial attorneys ask IJs to issue written orders documenting IJs' determinations that asylum applications were not ones filed by UACs. *Id.* ¶ 16.

exercising discretion by commanding that they "will defer" to jurisdictional determinations made by EOIR. D.I. 91-1 at 4 n.5. This sort of codification itself represents a legislative rule adopted in violation of the APA. *See* Plaintiffs' Opp. to Mot. to Dismiss First Amended Complaint at 30.[6] It is thus unremarkable that it was covered by the scope of the injunction, which is designed to protect the putative class from APA-violative legislative rules restricting TVPRA jurisdiction.

* * * * *

Defendants' self-serving interpretation of the Court's Order would severely undercut the injunction's force. It would allow Defendants to continue to implement the 2019 Redetermination Memo by simply asserting that policies announced in it were consistent with informal past "practices"—even though such practices were not developed through notice and comment. And it would thus require Plaintiffs to return to the Court continually to amend the injunction. But should the Court conclude that USCIS's deference practice does not violate the terms of the current preliminary injunction, Plaintiffs are prepared to file a motion to amend the injunction based on the First Amended Complaint's new allegations.

II. CONCLUSION

For all of the above reasons, Plaintiffs respectfully move this Court for an order enforcing the Court's preliminary injunction and requiring Defendants to stop rejecting jurisdiction over asylum applications based on the 2019 Redetermination Memo, which necessarily requires Defendants to stop rejecting such jurisdiction based on a determination by an IJ.

[6] Plaintiffs' Opposition Brief was filed on January 24, 2020, contemporaneously with this reply brief.

Dated: January 24, 2020

Respectfully submitted,

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