United States Senate
WASHINGTON, DC 20510

November 19, 2026

The Honorable Markwayne Mullin
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528

The Honorable Joseph B. Edlow
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20588

Dear Secretary Mullin and Director Edlow:

The Trump administration has once again used a quiet procedural change to place another obstacle in the path of people seeking refuge in the United States. U.S. Citizenship and Immigration Services' (USCIS) new asylum-interview policy turns a scheduling problem into an immigration trap: an applicant who cannot prove abuse, serious illness, the death of an immediate family member, or similarly extraordinary harm may be denied a new interview date and then punished for not appearing, even when the applicant asked to reschedule in advance and USCIS failed to respond. A missed appointment should not become a backdoor route into removal proceedings. This policy is cruel in practice, arbitrary in design, and legally suspect. USCIS should suspend and withdraw it.

Effective August 21, 2026, USCIS began requiring applicants to establish "exceptional circumstances" before it will reschedule an affirmative asylum interview, including when an applicant asks for permission before the interview date.[1] USCIS describes exceptional circumstances as compelling events beyond the applicant's control and identifies abuse, serious illness, and the death of certain close relatives as examples.[2] "Less compelling circumstances," USCIS warns, will not qualify.[3] If USCIS denies an advance request—or has not granted it by the interview date—the applicant must attend the original appointment or be treated as having failed to appear.[4] USCIS has also eliminated language from its Form I-797C, Notice of Action, warning

[1] U.S. Citizenship and Immigration Services, Establishing Exceptional Circumstances for Rescheduling Affirmative Asylum Interviews, https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/establishing-exceptional-circumstances-for-rescheduling-affirmative-asylum-interviews (last reviewed/updated Sept. 4, 2026).
[2] *Id*.
[3] *Id*.
[4] *Id*.

of the consequences of a "failure to appear," now giving an applicant only 10 calendar days after a missed interview to provide an explanation and supporting records.[5] Failure to satisfy this new standard can result in dismissal of the asylum application, referral to immigration court, possible termination of parole, and consequences for employment authorization.[6]

The policy appears to contradict the structure Congress deliberately placed in the Immigration and Nationality Act (INA). The INA permits consequences when an asylum applicant "fails without prior authorization or in the absence of exceptional circumstances" to appear for an interview.[7] Congress thus recognized two distinct ways an absence may be excused: the applicant may obtain permission in advance, or the applicant may later establish exceptional circumstances. USCIS's own regulation repeats that distinction, while another regulation recognizes that a timely rescheduling request may warrant excusing an absence.[8] By imposing the same exceptional-circumstances standard on advance requests and failure to appear, USCIS appears to collapse two distinct statutory paths into one. That result appears inconsistent with the statute and the agency's own rules.

USCIS's longstanding practice respected this distinction, generally treating timely requests to reschedule an asylum interview as subject to a good cause standard, and repeated absences or failures to appear as subject to an extraordinary circumstances standard. In 2000, the agency explained that it would excuse a first failure to appear based on good cause, applying the exceptional circumstance standard to subsequent failures.[9] Later, USCIS procedures applied the good-cause standard to requests made on or within 45 days after the interview date and generally reserved the more demanding exceptional-circumstances standard for requests made after that period.[10] When the Department of Homeland Security (DHS) adopted a narrower exceptional-circumstances rule in 2020, it used notice-and-comment rulemaking and applied the standard to appointments that had already been missed.[11] That rule was later vacated, and DHS restored the prior regulatory language.[12]

USCIS has now imposed an even more stringent national policy change through a website announcement. The announcement provides no statutory justification for this change, meaningful explanation for abandoning the good cause standard, eliminating the warning notice, or reducing

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[5] *Id*.
[6] *Id*.
[7] INA § 208(d)(5)(A)(v), 8 U.S.C. § 1158(d)(5)(A)(v).
[8] 8 C.F.R. §§ 103.2(b)(13)(ii), 208.10 (2026).
[9] *Asylum Procedures*, 65 Fed. Reg. 76,121, 76,126 (Dec. 6, 2000).
[10] Memorandum from John Lafferty, Chief, Asylum Div., U.S. Citizenship & Immigr. Servs., to All Asylum Office Staff, *Issuance of Revised Procedures Regarding Failure to Appear and Reschedule Requests* 4 (Oct. 17, 2013), https://www.aila.org/aila-files/287AD3DB-4922-419F-A56A-4F60CC4C668D/13110808.pdf.
[11] Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38,532 (June 26, 2020).
[12] Asylum Application and Employment Authorization for Applicants; Implementation of Vacatur, 87 Fed. Reg. 57,795 (Sept. 22, 2022).

the prior response period to 10 days. That is particularly troubling because Congress provided that additional conditions or limitations on the consideration of asylum applications may be established "by regulation."[13] A nationwide mandate carrying dismissal, removal, parole, and employment-authorization consequences should not be imposed by webpage while avoiding the transparency and public participation required by the Administrative Procedure Act.

This policy also fits the Trump administration's broader pattern of making sweeping immigration changes outside public view. Earlier this year, Senator Markey's office documented how the Administration has used internal directives, regulatory reinterpretations, adjudicatory delays, and operational changes to constrict lawful immigration pathways while evading meaningful public scrutiny.[14] Here again, USCIS has announced a consequential restriction with little warning, no opportunity for public comment, and no publicly disclosed evidence that applicants were abusing the prior process or that the new policy will improve the asylum system.

The practical consequences are already alarming. The Catholic Legal Immigration Network, Inc. has reported that USCIS representatives advised practitioners that the agency may take up to 30 days to decide rescheduling requests—often beyond the scheduled interview date.[15] Yet USCIS tells applicants that they must attend unless the agency has already approved the request. That is a bureaucratic trap of USCIS's own making. The agency cannot delay its decision, treat that delay as the applicant's default, and then use the resulting default to dismiss an asylum claim or initiate removal proceedings.

To help us and the public better understand the legal basis for this policy, how it was developed, and how it is affecting asylum applicants, please provide written answers and responsive documents no later than December 9, 2026:

1. What statutory, regulatory, or other legal authority does USCIS rely on for this policy?

   a. How does the policy preserve the distinction Congress drew between obtaining "prior authorization" and showing "exceptional circumstances" after an absence?

   b. How is the policy consistent with 8 C.F.R. §§ 103.2(b)(13)(ii) and 208.10?

   c. Why does USCIS apply the definition of "exceptional circumstances" in INA § 240(e)(1), which appears in provisions governing immigration-court proceedings, to advance requests to reschedule affirmative asylum interviews?

2. How did USCIS develop and adopt the policy?

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[13] INA § 208(d)(5)(B), 8 U.S.C. § 1158(d)(5)(B).

[14] Cath. Legal Immigr. Network, Inc., *Field Alert: High Impact—Processing Alerts for Affirmative Asylum Filings* (Aug. 28, 2026), https://www.cliniclegal.org/resources/field-alert-high-impact-processing-alerts-affirmative-asylum-filings-082826.

[15] Office of U.S. Senator Edward J. Markey, *Under the Radar II: The Second Trump Administration's Stealth Attack on the U.S. Immigration System* (Aug. 2026), https://www.markey.senate.gov/imo/media/doc/under_the_radar_ii.pdf.

a. Why did USCIS conclude that notice-and-comment rulemaking was not required under 5 U.S.C. § 553 or INA § 208(d)(5)(B)?

b. Is the exceptional-circumstances standard binding on asylum officers, or may an officer approve an advance request based on good cause that does not rise to the level of exceptional circumstances?

c. Which officials proposed, reviewed, and approved the policy, and when did each approval occur?

d. Please produce all final decision memoranda, legal analyses, implementation instructions, training materials, standard operating procedures, and decision templates concerning the policy.

3. What factual record supports the policy change?

   a. What data did USCIS consider concerning rescheduling requests, repeat requests, failures to appear, unused interview appointments, and the time required to decide rescheduling requests?

   b. What evidence, if any, showed that applicants were abusing the prior good-cause process?

   c. What was the basis for reducing the response period to 10 calendar days and eliminating the Failure to Appear Warning?

   d. What alternatives did USCIS consider, including retaining good cause for advance or first-time requests, limiting repeated requests, or preserving a warning and cure period?

4. How does USCIS handle a timely rescheduling request that remains undecided on the interview date?

   a. What instructions have asylum officers received for handling such cases?

   b. Since August 21, 2026, what have been the median and longest processing times for rescheduling requests, and how many requests were decided only after the scheduled interview?

   c. Does USCIS pause dismissal, referral to immigration court, parole termination, and employment-authorization consequences while a timely request remains pending? If not, why not?

   d. How has USCIS treated requests that were pending, and interview notices that had already been issued, when the new policy took effect?

5. For the period beginning August 21, 2026, please report the following nationwide, by asylum office:

a. The number of advance and post-interview rescheduling requests received, granted, denied, and still pending;

b. The number of requests decided after the scheduled interview date;

c. The number of applicants treated as having failed to appear while a timely request remained pending;

d. The number of resulting dismissals, referrals to immigration court, parole terminations, and employment-authorization consequences; and

e. To the extent USCIS tracks this information, the outcomes for represented and unrepresented applicants.

6. What safeguards are in place to ensure that applicants receive fair notice and a meaningful opportunity to comply?

   a. How did USCIS notify applicants, attorneys, accredited representatives, and community organizations of the change?

   b. What protections apply when an applicant did not properly receive an interview notice, has limited English proficiency, requires a disability accommodation, or cannot reasonably obtain supporting records within 10 calendar days?

   c. What supervisory review, reconsideration, or appeal is available after USCIS denies a rescheduling request, and how many denials have been reversed through any such process?

   d. Will USCIS immediately suspend adverse action against applicants whose timely requests remain undecided and restore the good-cause standard, Failure to Appear Warning, and a meaningful response period while the policy is under review? If not, why not?

This is not a neutral calendar rule. It can determine whether a person seeking protection is allowed to present an asylum claim to USCIS or is instead pushed into removal proceedings. Administrative convenience does not permit USCIS to rewrite the INA, bypass public rulemaking, or manufacture defaults through its own delay.

We urge USCIS to immediately suspend this policy, restore a fair rescheduling process, and bar adverse action while a timely request remains pending.

Sincerely,

Edward J. Markey
United States Senator

Richard Blumenthal
United States Senator