UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOMINGO ARREGUIN GOMEZ, *et al.*, Plaintiffs, v. JOSEPH R. BIDEN, JR., President of the United States of America, *et al.*, Defendants.	Civil Action No. 20-1419 (APM)
MOHAMMED ABDULAZIZ ABDULBAGI MOHAMMED, *et al.*, Plaintiffs, v. ANTONY BLINKEN, Secretary, U.S. Department of State, *et al.*, Defendants.	Civil Action No. 20-1856 (APM)
CLAUDINE NGUM FONJONG, *et al.*, Plaintiffs, v. JOSEPH R. BIDEN, JR., President of the United States of America, *et al.*, Defendants.	Civil Action No. 20-2128 (APM)

AFSIN AKER, *et al.*, Plaintiffs, v. JOSEPH R. BIDEN, JR., President of the United States of America, *et al.*, Defendants.	Civil Action No. 20-1926 (APM)

MORAA ASNATH KENNEDY, *et al.*, Plaintiffs, v. JOSEPH R. BIDEN, JR., President of the United States of America, *et al.*, Defendants.	Civil Action No. 20-2639 (APM)

DEFENDANTS' OPPOSITION TO THE *MOHAMMED*, *FONJONG*, AND *KENNEDY* PLAINTIFFS' MOTION TO VACATE STAY

INTRODUCTION

The *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs (or "Plaintiffs") seek to lift the stay this Court ordered in this case because they object to the pace at which the United States Court of Appeals for the District of Columbia Circuit is resolving the consolidated appeal in *Goodluck, et al. v. Biden*, *et al.*, No. 21-5263 (D.C. Cir.). *See* Pls.' Motion to Vacate Stay (the "Motion"), ECF No. 267. The Court should deny Plaintiffs' request because no material change in circumstances warrants disturbing the stay.

PROCEDURAL HISTORY

This case, which concerns, *inter alia*, the processing of Diversity Visa ("DV") applications during Fiscal Year ("FY") 2020 by the U.S. Department of State (the "State Department"), has a lengthy and complex factual and procedural history. As relevant here, during 2020—the height of the COVID-19 pandemic—President Trump issued a series of proclamations to address the damage that the pandemic had inflicted on the U.S. economy (collectively, the "COVID Labor Proclamations"). *See, e.g., Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, 85 Fed. Reg. 23,441 (Apr. 27, 2020) ("Proclamation 10014"); *Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, 85 Fed. Reg. 38,263 (June 22, 2020) ("Proclamation 10052"). These proclamations, *inter alia*, suspended the entry into the United States of certain categories of intending immigrants abroad, including FY 2020 DV selectees and their derivative family members. Taking into account the effect of the COVID-19 pandemic in countries around the world, the safety of agency employees, and the significantly limited resources available at each U.S. consular post, the State Department implemented the COVID Labor Proclamations by suspending the issuance of visas for those noncitizens subject to the proclamations and the processing of visa applications from such individuals. *See* CAR 24.

During summer 2020, plaintiffs from four cases, many of whom were FY 2020 DV selectees, filed suit before this Court challenging the COVID Labor Proclamations that President Trump issued to respond to the pandemic as well as the agency actions implementing those proclamations. *Gomez v. Trump* (*Gomez I*), 485 F. Supp. 3d 145, 157 (D.D.C. 2020). As pertinent

here, all DV plaintiffs sought preliminary injunctive relief requiring the State Department to process DV applications before September 30, 2020, and further requested that the district court reserve DV numbers for future adjudication after the conclusion of FY 2020. *Id*. at 165. On September 4, 2020, this Court issued a preliminary-injunction order that largely denied relief except as to the DV Plaintiffs. *See generally Gomez I*, 485 F. Supp. 3d 145.[1] In relevant part, the Court found the State Department's determination that the COVID Labor Proclamations' bar on entry foreclosed the issuance of FY 2020 DVs was likely contrary to law and granted preliminary injunctive relief only as to the DV Plaintiffs, requiring the State Department to adjudicate FY 2020 DV applications. *See id.* at 190–94, 202–05. Between September 5 and September 30, 2020, in compliance with the Court's preliminary injunction order, the State Department adjudicated 7,693 DV applications and issued 6,972 DVs. ECF No. 253-2 at 1; *see also Gomez v. Trump* (*Gomez II*), 490 F. Supp. 3d 276, 292 (D.D.C. 2020) (noting that, as of September 24, 2020, the State Department had "adjudicated 5,093 diversity visa applications, issuing 3,208 diversity visas . . . ."). On September 30, 2020, the Court amended its preliminary injunction order, directing the State Department to reserve 9,095 DV numbers after the conclusion of FY 2020 for future adjudication pending a final ruling on the merits. *See Gomez II*, 490 F. Supp. 3d at 294–95. The Court also certified a class of "[i]ndividuals who have been selected to receive an immigrant visa

[1] The *Gomez* Plaintiffs appealed from the September 4, 2020 order, No. 20-5292 (D.C. Cir.). Their opening brief, filed on October 29, 2020, raised the following issues: (1) whether the Proclamations are invalid because they "(a) fail the requirement in 8 U.S.C. § 1182(f) to be supported by a 'find[ing] that the entry of [the affected foreign nationals] would be detrimental to the interests of the United States,'" (b) "violate the separation of powers," and (c) are issued in violation of the nondelegation doctrine; and (2) whether the non-DV Plaintiffs suffered irreparable harm. While the appeal was pending, President Biden rescinded one proclamation and another proclamation expired by its own terms. Because none of the challenged proclamations remained in effect, the D.C. Circuit dismissed that appeal as moot.

through the U.S. Department of State's FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020 . . ." (the "*Gomez* class"). *Id.* at 295. The *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs are members of the *Gomez* class who have retained separate counsel. *See*, *e.g.*, ECF No. 237 at 17 ("The court is thus satisfied that the . . . *Fonjong*, *Kennedy*, and *Mohammed* Plaintiffs, both as members of the DV-2020 class certified in *Gomez* and in their individual cases, have standing to assert their claims at the summary judgment stage."). Subsequently, during the pendency of the case, the COVID Labor Proclamations were rescinded or expired. *See Revoking Proclamation 10014*, 86 Fed. Reg. 11847.

On August 17, 2021, the Court issued an opinion granting summary judgment in favor of the DV Plaintiffs on most of their remaining APA claims against the State Department regarding its actions in implementing the Presidential Proclamations.[2] *Gomez v. Biden* (*Gomez III*), 2021 WL 3663535 (D.D.C. Aug. 17, 2021). In particular, the Court held the following: (1) the State Department's policy of suspending adjudication and issuance of visas (or "No-Visa Policy") was not in accordance with law and was arbitrary and capricious; (2) the State Department's exclusion of FY 2020 DV selectees from its guidance on emergency and mission-critical services was arbitrary and capricious; and (3) the State Department's non-processing of the DV applications constituted agency action unreasonably delayed and unlawfully withheld. *See id*. at *24. On October 13, 2021, the Court issued a Minute Order directing the State Department to issue the 9,095 FY 2020 DVs that it had previously "reserved" under the preliminary injunction to class

[2] Due to the rescission and expiration of the challenged proclamations, the Court's summary judgment opinion denied as moot (1) the non-DV immigrant plaintiffs' claims; (2) APA claims against the national interest exception; and (3) the claims that the Proclamations are unlawful.

members by September 30, 2022, two years after the statutory September 30, 2020 deadline for FY 2020 DV processing. *See* ECF No. 244. On December 10, 2021, Defendants noted an appeal. ECF No. 248.

On February 1, 2022, Defendants moved for a stay of this Court's October 13, 2021 order pending resolution of Defendants' appeal of that order to the D.C. Circuit. ECF No. 253. On February 2, 2022, Defendants filed a Motion for Consolidation with the D.C. Circuit to consolidate the appeal of this Court's order with appeals of similar orders in three other cases: *Goodluck, et al. v. Biden, et al.*, Nos. 21-5263, 21-5270 ("*Goodluck*"); *Rai, et al. v. Blinken, et al.*, No. 21-5277; and *Goh, et al. v. U.S. Dep't of State, et al.*, Nos. 21-5271, 21-5272. *See Goodluck*, No. 21-5263, Doc. No. 1933478. On March 3, 2022, this Court granted the stay for a period of 30 days on the condition that, within seven days, Defendants seek expedited review before the D.C. Circuit. ECF No. 258 at 5. On March 9, 2022, Defendants-Appellants filed their Motion to Expedite Appeal of this case, along with the above-listed cases, with the D.C. Circuit, thereby satisfying this Court's condition precedent. *See* ECF No. 259. On March 21, 2022, the D.C. Circuit granted the motion to expedite and consolidated the above-listed appeals under *Goodluck*, No. 21-5263. *See* ECF No. 260 at 3.

On April 5, 2022, the Court granted in part Defendants' motion to extend the stay. ECF No. 264. In particular, the Court "maintain[ed] the stay with respect to adjudicating and issuing reserved 2020 diversity visas . . . until the D.C. Circuit announces its opinion . . ." in *Goodluck*. *Id.* at 3. The Court, however, "lift[ed] the stay as it relate[d] to the State Department's work to prepare its information technology infrastructure to issue DV 2020 visas past the end of the fiscal year," *id.*, and required the State Department to complete that process by September 1, 2022. *Id.*

at 3-4. Pursuant to the Court's order of April 5, 2022, on July 21, 2022, Defendants filed a status report that explained, *inter alia*, that the State Department "has completed the necessary IT systems modifications to process . . . DV . . . cases from prior fiscal years if Plaintiffs prevail on appeal." ECF No. 265 at 2.

The parties briefed the consolidated *Goodluck* appeal by June 2022. *See* No. 21-5263, Doc. No. 1950028. The D.C. Circuit heard oral argument on September 16, 2022. *Id.*, Doc. No. 1964530. The parties are currently awaiting the panel's decision.

On March 5, 2024, the *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs alone—without the support of *Gomez* class counsel—moved to vacate this Court's order of April 5, 2022.[3] ECF No. 267. The Motion, which is captioned only as to *Mohammed*, *Fonjong*, and *Kennedy*, seemingly seeks to vacate this Court's Order of April 5, 2022 in its entirety, not simply in the application of the stay as to the *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs.[4] *See generally id.*

[3] By email of March 1, 2023, counsel for the *Gomez* class wrote, in relevant part: "The Gomez Plaintiffs take no position on the motion by the Mohammed, Fonjong, and Kennedy Plaintiffs. The Gomez Plaintiffs are deeply concerned about the delay in an issuance of a decision by the D.C. Circuit but we do not think the delay at the D.C. Circuit provides a basis for Judge Mehta to reconsider his stay as the D.C. Circuit's delay is outside of his control."

[4] This Court and another court in this district issued substantially similar stays in the other DV cases on appeal to the D.C. Circuit in the consolidated *Goodluck* appeal. Min. Order, *Goodluck,* No. 21-cv-01530 (D.D.C. Apr. 18, 2022), *Rai,* No. 21-cv-00863, ECF No. 81 (D.D.C.), *Goh*, No. 21-cv-00999, ECF No. 59 (D.D.C.). Plaintiffs in those district court cases have not moved to vacate those stays.

ARGUMENT

1. There Is No Material Change In Circumstances That Merits Vacating The Stay

Plaintiffs submit that "[t]he circumstances that the Court considered when granting the stay have materially changed and the balance of the four injunction factors now weigh in favor of vacating the stay." ECF No. 267 at 1-2. This is not correct.

As an initial matter, Plaintiffs' contention that "[t]he Court's initial order was premised on the expedited appeal of its decision" is misplaced. *Id.* at 3. As noted, the consolidated *Goodluck* appeal *is* an expedited appeal. As this Court previously acknowledged, consistent with the requirements of its initial grant of a stay, Defendants sought, and the D.C. Circuit granted, expedited review of the consolidated *Goodluck* appeal. *See* ECF No. 264 at 2. Pursuant to the D.C. Circuit's scheduling order, the parties fully briefed the consolidated appeal by early June 2022, and the D.C. Circuit panel held oral argument on September 16, 2022. *See* ECF No. 260 at 3. The D.C. Circuit controls its docket and the timing of its issuance of opinions, and this Court acknowledged this when it extended the stay "until the D.C. Circuit announces its opinion." ECF No. 264 at 4. Thus, Defendants complied with this Court's Order and pursued an expedited appeal of the consolidated *Goodluck* appeal and Plaintiffs cannot plausibly argue that the current procedural posture of the appeal amounts to a material change in circumstances that warrant this Court lifting the stay. *See* ECF No. 264.

Plaintiffs advance four additional rationale for what they claim is a "[m]aterial [c]hange in [c]ircumstances." ECF No. 267 at 3. None has merit.

First, Plaintiffs submit that "Defendants likelihood of success on the merits has decreased significantly," *id.* at 4, by virtue of an unpublished decision by the "Court of Appeals for the

District of Columbia," *id.* at 2, in *Li v. Blinken*, No. 22-5266, 2023 WL 4044487 (D.C. Cir. June 16, 2023). In *Li*, the D.C. Circuit dismissed an appeal from the denial of a preliminary injunction as moot in a case that concerned allegations that the State Department and U.S. Citizenship and Immigration Services unlawfully withheld employment-based EB-5 visa numbers. *Id.* at *1. *Li* is inapposite to the instant matter.

At the threshold, Plaintiffs' description of *Li* is erroneous and misleading.[5] For instance, Plaintiffs attempt to support their claim by selectively quoting from *dicta* in *Li*.[6] Plaintiffs focus on the phrase, "that plaintiffs feared when seeking preliminary relief continued to occur *even after the deadline* for requested relief passes, perpetuating or even exacerbating the alleged irreparable harm," ECF No. 267 at 4 (quoting *Li*, 2023 WL 4044487, at *2) (emphasis added in the Motion), for the proposition that the D.C. Circuit is inclined to find that this Court had equitable authority to order the processing of DV applications after the statutory FY 2020 deadline. *See id.* ("This is analogous to the harm and the deadline faced by the Court."). Yet, taken in context, that passage from *Li* suggests precisely the opposite. In relevant part, *Li* provides:

> [E]ven were this court to agree that the district court erred in the first instance, *this court cannot turn back time and order the issuance of injunctive relief to prevent assertedly irreparable harms from occurring after September 30, 2022*, as they would necessarily have already happened. More specifically, *even the*

[5] The *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs assert that *Li* is "an opinion written by J. Henderson," ECF No. 267 at 4, when, in fact, the D.C. Circuit issued *Li* per curiam. *Li*, 2023 WL 4044487. Judge Henderson, however, was a member of the D.C. Circuit panel that issued the unpublished opinion in *Li,* 2023 WL 4044487. The D.C. Circuit panel that heard oral argument in the consolidated *Goodluck* appeal includes Judge Henderson as well as Chief Judge Srinivasan and Judge Katsas. No. 21-5263, Doc. No. 1964530.

[6] Tellingly, although Plaintiffs submit that, in *Li,* 2023 WL 4044487, "the Court of Appeals has now ruled on their ability to offer redress to the plaintiffs such as those in this case," ECF No. 267 at 4, in the approximately nine months since the D.C. Circuit issued *Li,* 2023 WL 4044487, they have not filed in *Goodluck* a letter concerning *Li,* 2023 WL 4044487, pursuant to Federal Rule of Appellate Procedure 28(j).

> *applicants agree that this court can no longer order the federal agencies to allocate visa numbers from Fiscal Year 2022*—which is the precise preliminary relief they sought in district court and have pursued in this appeal. Bo Li Reply Br. 4.
>
> Of course, sometimes the irreparable harm that plaintiffs fear when seeking preliminary relief continues to occur even after the deadline for requested relief passes, perpetuating or even exacerbating the alleged irreparable harm. Were that shown, we would retain the ability on appeal to offer effective redress.
>
> But this case is different. . . .

Li, 2023 WL 4044487, at *2 (emphases added).

If anything, *Li* signals that the D.C. Circuit may be skeptical of injunctive relief that would require the issuance of visas after a statutory deadline, and, in turn, of the lawfulness of this Court's order requiring the State Department to issue DVs after the statutory FY 2020 deadline. Regardless, neither the parties nor this Court need prognosticate about how the D.C. Circuit *might* resolve the pending *Goodluck* appeal, because *Goodluck* has been submitted to the Panel and the D.C. Circuit *will* issue its decision. *Li,* therefore, does not create any "material[] change[]" in "circumstances" that warrants vacating the stay. ECF No. 267 at 4.

Second, Plaintiffs submit that the Court should vacate the stay because, "[n]ow that the COVID-19 threat to health and safety has subsided," the State Department "now has the resources" to issue DVs from FY 2020. ECF No. 267 at 5. This contention too is meritless.

Notably, Plaintiffs previously sought to minimize the degree to which the COVID-19 pandemic disrupted the State Department's consular operations. *See*, *e.g.*, ECF No. 194-1 at 21 ("Indeed, in the September 30, 2020, Order, this Court relied on COVID in not issuing visas, but we know now that the Defendants' bad faith—not COVID-19—resulted in the lack of issuances . . ."); *id*. ("Objectively speaking, Defendants have lied to this Court. Most businesses operating

during the COVID-19 pandemic have found a way to open back up . . . Yet, the State Department . . . have shut down consular posts and wholesale stopped the adjudication of diversity visas—despite the availability of protection from the virus such as plexiglass shields, masks, social distancing and vaccines."); *id*. at 22 ("They exploited a tragic global pandemic as pretext of implementing a draconian ban on legal immigration into the United States."). The Plaintiffs now concede that the pandemic was indeed disruptive and agree with the Government that the pandemic posed a clear "threat[] to the health and safety of the Department of State." ECF No. 267 at 5. They even laud that, with the pandemic in the rearview mirror, "the Department of State has exceeded expectations in visa processing, issuing a historic number of visas." *Id*.

The COVID-19 pandemic's effects on the State Department's operations, of course, are very different today than they were in April 2022, when the Court extended the stay, or in 2020, when Plaintiffs filed suit. Yet, the Court's stay was not predicated solely on the operational disruptions to the State Department that the COVID-19 pandemic caused. As noted, the Court previously determined that Defendants "have raised serious legal issues that warrant more deliberative investigation." ECF No. 264 at 3. That paramount consideration remains unchanged today.

In its order extending the stay, this Court observed that Defendants "also have established irreparable harm based on the adverse impact court-ordered issuance of over 9,000 DV 2020 visas by September 1, 2022, would have on the Secretary of State's discretionary authority to prioritize visa services during the pandemic." ECF No. 264 at 3. That the pandemic has receded into the background, however, does not change the reality that requiring the State Department to issue more than 9,000 FY 2020 DVs by a date certain would necessarily diminish the State Department's

discretion to allocate its finite resources in response to the challenges and demands that the agency faces. *See Gjoci v. Dep't of State*, No. 21-cv-0294-RCL, 2021 WL 3912143 at *13 (D.D.C., Sept. 1, 2021) ("visa processing during the pandemic is a zero-sum game with defendants' limited resources. Processing one category of immigrant visas necessarily results in diminished resources for processing another category of visas."). This is particularly true where, as here, the D.C. Circuit is currently considering, *inter alia*, whether this Court has equitable authority to reserve and subsequently require the State Department to issue DVs after the statutory FY deadline had passed. In sum, that the COVID-19 pandemic has continued to diminish in severity during the pendency of this case or since the Court extended the stay does not provide an adequate basis to disturb the stay.

Third, Plaintiffs submit that "the threats to the life and limb of Painiffs [sic] have dramatically increased" and therefore that "the circumstances now weigh heavily in favor of vacating the stay." ECF No. 267 at 5. Although in its April 5, 2022 Order, this Court determined that Plaintiffs' "interests continue to weigh against a stay," it nonetheless extended the stay. ECF No. 264 at 3. Here, the Plaintiffs provide no meaningful evidence of any change in circumstances that would merit this Court's reconsideration of Plaintiffs' interests. The Motion alludes only very generally to global crises, such as "[w]ar in Ukraine, genocide in Sudan, forced conscription in Russia, and totalitarian regimes in Afghanistan," ECF No. 267 at 5, without any evidence or even allegations of how these separate and distinct world events affect the Plaintiffs in this litigation specifically. Plaintiffs assert that "[t]hese threats are real" by alleging that "[a] plaintiff's one and half year old child *in a related diversity case* was killed in the genocide in Sudan," ECF No. 267 at 5 (emphasis added), for whom "it was not guaranteed that the individual would have been

granted a diversity visa . . . ." *Id.* Such an allegation is of course tragic, but unfortunately it pertains to a purported plaintiff in a *different* case whose circumstances would most likely be unaffected by vacating the stay in the instant case. Plaintiffs' generalized assertions fail to set forth any material change in the Plaintiffs' interest that merit the Court's reevaluation of this factor.

Finally, Plaintiffs argue unpersuasively that the Court should depart from its earlier determination that "the public interest remains neutral." ECF No. 264 at 3. *See* ECF No. 267 at 6. Plaintiffs assert that "the public interest now wieghs [sic] in the favor of the Plaintiffs" because "[m]any diversity visa winners have forgone their initially intended lawful pathway to immigration to the United States, opting instead for seeking asylum at the southwest border." ECF No. 267 at 6. Once again, the Plaintiffs provide nothing more than conclusory allegations in their effort to bootstrap this case to broader concerns about asylum requests being made by persons not party to this litigation. Plaintiffs baldly assert that "[t]here has been a notable increase in asylum seekers arriving at the southwest border, many of whom are individuals with legitimate claims to diversity visas." *Id.* Yet, they cite to an online article that is devoid of any discussion of DVs, much less "individuals with legitimate claims to diversity visas," *id.*, whom the *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs never even assert are plaintiffs in this matter. *See* Stef W. Kight*, Scoop: Migrant backlog to hit 8 million under Biden by October, data reveal*, Axios (Mar. 2, 2024), https://www.axios.com/2024/03/02/data-biden-border-crisis-immigration-8-million-detention (discussing asylum applications and migration without any reference to DVs).[7] Plaintiffs thus fail

[7] The URL that the *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs provide for the article, https://bit.ly/49ACAJ6, appears inactive. *See* ECF No. 267 at 6.

to offer any viable ground on which the Court should revisit its previous determination that "the public interest remains neutral." ECF No. 264 at 3.

Plaintiffs have thus failed to demonstrate that there has been any material change in circumstances in this case that warrants this Court lifting the stay.

2. The *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs Are Seeking Relief from the Wrong Court

As a general rule, the filing of a notice of appeal "divests the district court of control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). The district court retains jurisdiction, however, to "'preserve the status quo until decision by the appellate court' and otherwise act 'in aid of the appeal.'" *Broidy Cap. Mgmt. LLC v. Muzin*, No. 19-cv-150 (DLF), 2022 WL 2157047, at *2 (D.D.C. June 15, 2022) (citing and quoting *Newton v. Consol. Gas Co. of New York*, 258 U.S. 165, 177 (1922) and *Grand Jury Proc. Under Seal v. United States*, 947 F.2d 1188, 1190 (4th Cir. 1991)).

Here, the basis for Plaintiffs' Motion boils down to a complaint that the D.C. Circuit panel is taking too long to issue a decision in the consolidated *Goodluck* appeal—a concern, as *Gomez* class counsel recognizes, that this Court cannot remedy. Plaintiffs should pursue this complaint with the D.C. Circuit, not with the district court. *See generally Griggs*, 459 U.S. at 58.

This Court observed in its Order of April 5, 2022, that if it were "to insist that the State Department comply with its orders, the relief sought by Defendants on appeal effectively would be rendered unavailable." ECF No. 264 at 3. The Court therefore decided not to "moot these actions before the D.C. Circuit has had a full opportunity to review this court's decisions." *Id.* Here, by moving the Court to vacate the stay now, Plaintiffs seek to contradict the Court's reasoning for entering the stay in the first place. And, they fail to provide any authority that would

support their request for this Court to "render[] unavailable," *id.*, the relief Defendants seek on appeal at this stage in the litigation. Thus, the Court should deny Plaintiffs' request and keep the stay in place until the D.C. Circuit issues its decision in *Goodluck*.

CONCLUSION

The *Mohammed*, *Fonjong*, and *Kennedy* Plaintiffs have failed to identify any material change in circumstances that would compel the Court to revisit its earlier decision to extend the stay in this case. Defendants, therefore, request that the Court deny the Motion and maintain the stay and thus the status quo until the D.C. Circuit issues its opinion in *Goodluck*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Columbia by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

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