UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TAHIRIH JUSTICE CENTER *et al.*, Plaintiffs, v. ALEJANDRO MAYORKAS *et al.*, Defendants.	Civil Action No. 1:21-cv-124-TSC

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE RENEWED MOTION TO PARTIALLY LIFT THE STAY OF PROCEEDINGS

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INTRODUCTION

Defendants oppose Plaintiffs' renewed motion to partially lift the stay of proceedings to proceed directly to summary judgment on the merits of some of their claims against a joint rule issued in 2020, *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg. 80,274 (Dec. 11, 2020) ("Rule"). ECF No. 47 (Pls.' Mot.). For almost two and a half years, proceedings in this case have been stayed because the provisions of the Rule that Plaintiffs challenge remain preliminarily enjoined in other proceedings and because the Department of Justice ("DOJ") and the Department of Homeland Security ("DHS") (collectively, "the Departments") have been engaged in rulemaking that will address all of the remaining provisions Plaintiffs have challenged. Neither of those facts has changed. Nevertheless, Plaintiffs now move to lift the stay—and then to bypass Defendants' opportunity to respond to Plaintiffs' complaint, without Defendants' consent, in contravention of fundamental provisions of the Federal Rules of Civil Procedure—because they are frustrated with the pace of rulemaking.

The Court should retain the stay for the same reasons it was initially issued. First, preserving the stay would conserve judicial resources, as whether vacatur is available under the Federal Vacancies Reform Act ("FVRA") (and if so to which portions of the Rule could vacatur be applied) is a novel question in light of *Garland v. Aleman Gonzalez*, 142 S. Ct. 2057 (2022), and the Supreme Court's recent decision in *United States v. Texas*, 143 S. Ct. 1964 (2023), raises significant questions going to whether Plaintiffs have standing. Second, the circumstances that justified the stay—the challenged provisions of the Rule being preliminarily enjoined and the Departments proceeding with rulemaking to modify or rescind those provisions—remain unchanged. Third, the balance of interests favors continuing the stay because litigating the case would divert resources from the rulemaking, and a final decision in Plaintiffs' favor would create

additional confusion and further delay the Departments' rulemaking efforts without providing any benefit to Plaintiffs.

Accordingly, the Court should deny Plaintiffs' renewed motion and retain the stay.

BACKGROUND

I. The Rule.

On December 11, 2020, the Departments, after seeking public comments, published the Rule as a joint final rule amending various sections of Title 8 of the Code of Federal Regulations dealing with the requirements and procedures for applying for asylum and related forms of protection from removal, including provisions regarding statutory withholding of removal, protection under the United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment ("CAT"), expedited removal, credible fear processing, and reasonable fear processing. The Rule was initially challenged in three suits, all filed on December 21, 2020: (1) *Human Rights First v. Wolf*, No. 1:20-cv-03764-TSC (D.D.C. filed Dec. 21, 2020); (2) *Pangea Legal Servs. v. DHS*, No. 3:20-cv-09253-JD (N.D. Cal. filed Dec. 21, 2020); and (3) *Immigration Equality v. DHS*, No. 3:20-cv-09258-JD (N.D. Cal. filed Dec. 21, 2020). On January 8, 2021, three days before the Rule was to become effective, the United States District Court for the Northern District of California issued a preliminary injunction, enjoining the Departments, the relevant sub-agencies, and their employees or others acting in concert with them or at their behest from "implementing, enforcing, or applying" the Rule "or any related policies or procedures." *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021).

II. This Suit.

Almost a week after the Rule was preliminarily enjoined, and about a month after the other three suits were filed, Plaintiffs filed this suit in which they challenged the Rule on grounds similar to those raised in the three previously filed suits. Within weeks of filing, and before the

proceedings progressed past the complaint stage, the parties filed a joint stipulation in which they agreed that "these proceedings should be held in abeyance, as long as the preliminary injunction entered in *Pangea* . . . remains in place." ECF No. 16 at 2. The Court stayed the proceedings and ordered the parties to submit a status report in ninety days. Minute Order dated Feb. 9, 2021. In the next status report, filed on May 7, 2021, the parties again represented that they agreed that "these proceedings should remain stayed, as long as the preliminary injunction entered in *Pangea* . . . remains in place." ECF No. 17 at 2. Two days later, the Court ordered that "the Stay shall continue until further order of the court so as to allow Defendants time to review the Rule at issue in this litigation" and ordered a status report be filed in ninety days and then every thirty days thereafter. Minute Order dated May 9, 2021.

The parties filed status reports every thirty days until, on September 23, 2022, Plaintiffs filed a motion to partially lift the stay of proceedings alleging that there had been a change in circumstances, that continuing the stay of proceedings harmed Plaintiffs and the public, that lifting the stay would promote judicial economy, and that moving forward with litigation would not harm Defendants. *See generally* ECF No. 37. They asked the Court to lift the stay to permit summary judgment briefing—bypassing a response to the Complaint—as to certain of their claims relating to the authority of former Acting Secretary of Homeland Security Chad Wolf to issue the Rule. *Id.* at 8. The Departments opposed the motion.

On December 1, 2022, the Court denied Plaintiffs' motion without prejudice. The Court reasoned that it "may lift a stay it imposed '[w]hen circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate.'" Minute Order dated Dec. 1, 2022 (quoting *Marsh v. Johnson*, 263 F. Supp. 2d 49, 52 (D.D.C. 2003)). The Court further noted that "[w]hen considering a stay, courts 'weigh competing interests and maintain an even

balance between the court's interest in judicial economy and any possible hardship to the parties.'" Minute Order dated Dec. 1, 2022 (quoting *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 732–33 (D.C. Cir. 2012)). The Court noted it was concerned about the length of the stay in the case but also found that "the facts that precipitated the stay—and agreed to by the parties in their joint stipulation, *see* ECF No. 16—have not changed" and thus that at that time, "judicial economy and the weighing of harms to the parties if the stay is removed, favor waiting until the end of May 2023, to observe whether Defendants have completed prospective rulemakings." Minute Order dated Dec. 1, 2022. The Court ordered the parties to file a joint status report on June 1, 2023, and scheduled a status hearing for June 2, 2023.

The parties filed a joint status report on June 1, 2023, in which Plaintiffs represented that they were "inclined to renew their motion to partially lift the stay but will wait until after the June 2, 2023 status hearing to finalize their position." ECF No. 44 at 2. During the June 2, 2023, hearing, Plaintiffs notified the Court that they would renew their motion.

III. Present Motion

On July 14, 2023, Plaintiffs filed a renewed motion to partially lift the stay of proceedings. *See* Pls.' Mot. In their motion, Plaintiffs again ask to lift the stay as to their claims relating to the appointment of former Secretary Chad Wolf, alleging that continuing the stay would be an abuse of discretion as it "would amount to an indefinite denial of Plaintiffs' ability to vindicate their rights and have their day in court." *Id.* at 12; *see id.* at 15–17. Plaintiffs further claim that the government will not suffer any harm if the FVRA claims are litigated, *see id.* at 13, 17–20, but that Plaintiffs, their clients, and "other participants in the immigration system" continue to suffer harm, *id.* at 13, 20–25. Plaintiffs also assert that continuing the stay would undermine judicial efficiency. *See id.* at 25–30. Finally, Plaintiffs argue that the Departments' plan to engage in additional rulemaking does not moot this suit. *See id.* at 30–31.

IV. Current Status of the Rule.

On February 2, 2021, the President issued an Executive Order in which he instructed the Departments to, "within 180 days . . . conduct a comprehensive examination of current rules, regulations, precedential decisions, and internal guidelines governing the adjudication of asylum claims and determinations of refugee status to evaluate whether the United States provides protection for those fleeing domestic or gang violence in a manner consistent with international standards" and to, "within 270 days . . . promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a 'particular social group.'" Exec. Order No. 14,010, 86 Fed. Reg. 8,267, 8,271 (Feb. 2, 2021). Although those periods have expired, the Departments continue their review and are working on new rulemakings to amend or rescind the provisions addressed in the Rule.

The Departments have already issued one Interim Final Rule ("IFR") after notice and comment, which went into effect on May 31, 2022, and replaced most of the Rule's provisions relating to expedited removal and credible fear. *See Procedures for Credible Fear Screening and Consideration of Asylum, Withholding, and CAT Protection Claims by Asylum Officers*, 87 Fed. Reg. 18,078 (Mar. 29, 2022) ("Asylum Processing IFR"). Specifically, that IFR, in addition to making other changes, replaced or amended the following provisions of Title 8 of the Code of Federal Regulations, replacing the amendments made by the Rule: § 208.2(c)(1)(ix); § 208.30(b)–(c), (d) introductory text, (e)(1)–(4), (e)(5)(i), (e)(6) introductory text, (e)(6)(ii), (f)–(g); § 235.6(a)(2)(i), (a)(2)(iii); § 1003.42(d)(1); § 1208.2(c)(1)(ix); § 1208.30(a), (e), (g)(2); and § 1245.6(a)(2)(i) and (iii). In another final rule published on May 16, 2023, *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31,314 (May 16, 2023) ("Lawful Pathways Rule"), the Departments rescinded amendments made by the Rule to provisions implementing two other rules

at 8 C.F.R. §§ 208.30(e)(5)(ii) and (iii), 1003.42(d)(2) and (3), and 1208.30(g)(1).[1]

In addition to the Asylum Processing IFR and the Lawful Pathways Rule, the Departments are currently working on two rulemakings related to the Rule, which are listed in the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions: (1) *Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations*, RIN 1125-AB13 (DOJ)[2] and RIN 1615-AC65 (DHS)[3]; and (2) *Evidentiary Hearings on Applications for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture*, RIN 1125-AB22 (DOJ only).[4] As stated previously, and as Plaintiffs note multiple times in their motion, the timetables listed in the Unified Agenda are aspirational, and the Departments have not yet published a Notice of Proposed Rulemaking ("NPRM") or finalized these rules.

STANDARD OF REVIEW

A federal district court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). "[A] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Hisler v. Gallaudet Univ.*, 344 F. Supp. 2d 29, 35 (D.D.C. 2004) (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857,

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[1] The Lawful Pathways Rule was vacated and remanded on July 25, 2023. *East Bay Sanctuary Covenant v. Biden*, No. 18-CV-06810-JST, 2023 WL 4729278 (N.D. Cal. July 25, 2023). However, the Ninth Circuit has stayed the vacatur pending resolution of the government's appeal, *East Bay Sanctuary Covenant v. Biden*, No. 23-16032 (9th Cir. Aug. 3, 2023) (granting stay of vacatur pending appeal), and thus the Lawful Pathways Rule remains in effect.

[2] *See* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=1125-AB13.

[3] *See* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=1615-AC65.

[4] *See* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=1125-AB22.

863–64 (9th Cir. 1979)). Once a stay is imposed, the Court may lift it "[w]hen circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate." *Marsh*, 263 F. Supp. 2d at 52. In determining whether to do so, the Court retains the same "inherent power and discretion" it exercised to impose the stay. *Id.* In considering a stay, courts must "'weigh competing interests and maintain an even balance' between the court's interests in judicial economy and any possible hardship to the parties." *Belize*, 668 F.3d at 732–33 (quoting *Landis*, 299 U.S. at 254–55).

Identifying and weighing these "competing interests" of "possible hardship[s]" and "judicial economy," *id.* at 732–33, require the court to "make such determinations in the light of the particular circumstances of the case," *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980). The party seeking the stay bears the burden "of establishing its need," *Clinton*, 520 U.S. at 708, and specifically of "mak[ing] out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else," *Landis*, 299 U.S. at 255. At the same time, a party may be required "to submit to delay not immoderate in extent and not oppressive in its consequences if . . . convenience will thereby be promoted." *Id.* at 256.

ARGUMENT

At the outset, and in response to the Court's question during the June Status Hearing whether it has authority to adjudicate Plaintiffs' claims in light of the nationwide preliminary injunction in the *Pangea* case, the Departments do not believe that the preliminary injunction in *Pangea* itself prevents the Court from adjudicating this case. However, if the stay is lifted, as suggested below, the Departments anticipate arguing that Plaintiffs lack standing, and the existence of the preliminary injunction might implicate those arguments. Nevertheless, the Court

should deny Plaintiffs' renewed motion to partially lift the stay because litigating any part of this case at this juncture is not in the interest of judicial economy, circumstances justifying the stay remain unchanged, the balance of harms that would result from lifting the stay favors Defendants, and a stay remains reasonable. Contrary to Plaintiffs' assertions, lifting the stay as to a few claims relating to one issue would not mean that the Court would only need to consider that sole issue. Given that this case was stayed in its infancy—before any answer or pre-answer motions were filed—Defendants are entitled to raise any grounds for dismissal and to challenge the justiciability of the case, whether through such a response or motions or during the summary judgment briefing, potentially multiplying the issues the Court would have to consider. Additionally, as explained in more detail below, the Court would have to determine what remedy it could provide Plaintiffs, which is a complex question after *Aleman Gonzalez*, 142 S. Ct. 2057. Furthermore, the circumstances underlying the stay have not changed. The injunction issued in *Pangea* remains in place, and Defendants continue to work on new rulemakings that they expect would moot this litigation once final. In addition, Plaintiffs have identified no harms resulting from the stay; the vacatur they seek would not remove the provisions they find offensive from the Code of Federal Regulations. By contrast, lifting the stay given the diversion of resources necessary for litigation would harm the Defendants. Finally, the stay has not become immoderate under the case law Plaintiffs cite.

I. Continuing the Stay Is in the Interest of Judicial Economy.

The provisions of the Rule that Plaintiffs challenge are not currently in force, as they have been preliminarily enjoined in *Pangea*. Moreover, the Departments are engaged in rulemaking that they expect will moot out the cases challenging the Rule, including this one. Although Plaintiffs may prefer that the Departments' timelines were shorter, any disagreement about timing does not change the fact that additional rulemaking is underway and that such rulemaking is likely

to moot this litigation.

The potential for mootness should alone be sufficient to establish that the stay remains in the interest of judicial economy. But here, even a partial lifting of the stay would restart litigation that was in its infancy when initially stayed and would require the Court to grapple with several novel legal issues. Contrary to Plaintiffs' assertion, Pls.' Mot. at 18, 25–26, advancing the case would in fact require significant judicial and party resources. Thus, it is in the interest of judicial economy to keep these proceedings stayed.

A. The Case Is in Its Infancy.

Because these proceedings were stayed a few weeks after they began and before anything other than a Complaint was filed, lifting the stay even as it pertains to one count will be akin to beginning a new case. For example, Defendants have not yet had the opportunity to file a responsive pleading or a motion under Federal Rule of Civil Procedure 12(b). Thus, the Court has not yet had the opportunity to consider the Departments' arguments regarding jurisdiction and justiciability—such as, whether the Court has jurisdiction to consider Plaintiffs' claims given the Immigration and Nationality Act's ("INA") unique jurisdiction-limiting provisions at section 242, 8 U.S.C. § 1252, and whether Plaintiffs, who are legal service organizations not directly regulated by the Rule's provisions, have a legally cognizable injury to support standing where they challenge rules governing the adjudication of benefits for third parties.

Despite the Departments raising these points in their opposition to Plaintiffs' motion to partially lift the stay, *see* ECF No. 42 at 7–8, Plaintiffs do not mention any of these threshold inquiries. Instead, they suggest that the Court could proceed directly to briefing on the issue of whether former Acting Secretary of Homeland Security Chad Wolf had authority to sign the Rule, on which they believe they are likely to prevail, and suggest that this is the only issue the Court would need to consider, *see* Pls.' Mot. at 25–26. Defendants do not believe that Plaintiffs are

likely to succeed on that issue. *See, e.g.*, Appellants' Opening Br. 22–29, ECF No. 11, *Gonzales & Gonzales v. DHS.*, No. 22-16552 (9th Cir. Jan. 5, 2023). But Plaintiffs also overlook that the Court would have to resolve several complex issues, including standing and remedy, before it could provide Plaintiffs any relief. Thus, whether Plaintiffs are likely to succeed on the merits of their claims relating to former Acting Secretary Wolf's authority is just one factor in the judicial economy calculus in this case, and that one factor is outweighed by the complexity of the other issues the Court would have to address.

B. Litigating Would Require the Court to Address Justiciability, Most Notably Standing in Light of *United States v. Texas*.

Importantly, the Court has not addressed threshold questions in this case, such as whether Plaintiffs have standing, an issue that will require new briefing from both parties and new analysis from the Court in light of the Supreme Court's recent decision in *Texas*, 143 S. Ct. 1964. Specifically, the Departments will argue that Plaintiffs lack standing to challenge the Rule because they have not suffered an injury that is "legally and judicially cognizable." *Id.* at 1970 (quotation omitted). Plaintiffs are organizations that provide services to potentially affected asylum seekers. The Rule does not regulate Plaintiffs, and no party—organizational or otherwise—has a "judicially cognizable interest in procuring enforcement of the immigration laws" against somebody else. *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 897 (1984) (citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). The Supreme Court recently reiterated that this principle "remains the law today" in holding that two States lacked standing to challenge DHS immigration enforcement policies. *See Texas*, 143 S. Ct. at 1970. Just as the States could not establish a cognizable interest in the Executive's exercise of discretion regarding which noncitizens to prioritize for "arrests and prosecutions" based on allegations of indirect monetary effects, *id.* at 1971–72 & n.3, Plaintiffs cannot justify judicial intrusion into the Executive's exercise of discretion regarding which

noncitizens may be eligible for asylum based on similar voluntary spending decisions. At bottom, the *Texas* decision raises important questions for the parties to brief and the Court to consider, and such questions will have to be addressed before Plaintiffs' claims regarding the FVRA can be litigated to a final decision.

C. Litigating Would Require the Court to Address Complex Legal Questions Regarding the Available Remedy Under 8 U.S.C. § 1252(f)(1).

In addition to the threshold questions identified above, if the case progresses to a final decision on any of Plaintiffs' claims, the Court will have to determine what, if any, relief is available, and what, if any, impact that relief would have on the Rule—both of which are complicated questions in the wake of the Supreme Court's recent decision in *Aleman Gonzalez*. Plaintiffs ask the Court to vacate the Rule under the FVRA, which they appear to believe would have the same effect as the Departments issuing a final rule rescinding or replacing the Rule. But whether or not that is true, the Court following a ruling on the merits would have to determine whether it has the power to vacate some or all of the Rule. Specifically, there are two complex questions the Court would have to consider: (1) the scope of 8 U.S.C. § 1252(f)(1)'s prohibition on lower courts "enjoin[ing] or restrain[ing] the operation of" a covered provision; and (2) how to parse the rule unto its provisions that are and are not covered by section 1252(f)(1). The Departments believe that both novel questions will require significant, complicated briefing and will not be simple to resolve.

1. Most of the Rule Is Subject to 8 U.S.C. § 1252(f)(1)'s Prohibition on Lower Courts' Jurisdiction to Enjoin or Restrain the Operations of Specific Statutes.

To determine what remedy is available to Plaintiffs, if any, the Court will have to grapple with several questions when it comes to the remedy limitation provision at 8 U.S.C. § 1252(f)(1), including: (1) how to resolve an apparent conflict in the language of that provision between the

version in the INA, as enacted by Congress and published in the Statutes at Large, and the version in Title 8 of the United States Code; (2) which provisions of the Rule implement which provisions of the statute; and (3) what to do when a provision of the Rule implements a statutory provision covered by the remedy limitation provision as well as a statutory provision that is not. All of these are questions of first impression Plaintiffs would require the Court to consider in litigation that is likely to become moot through additional rulemaking.

The remedy limitation provision of the INA, as codified, provides:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f)(1). The Supreme Court considered the scope of this provision in *Aleman Gonzalez* and held that section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out" certain specified provisions of the INA, 142 S. Ct. at 2065, which includes enjoining "the way that [they are] being carried out," *id.* at 2064 (internal quotation marks omitted). In other words, under the remedy limitation provision, the Court cannot restrain Defendants from their chosen manner of implementing provisions of the Rule that fall under section 1252(f)(1).

The Rule implements several of the provisions of the INA and Title 8 of the U.S. Code referenced in § 1252(f)(1). Specifically, the asylum provisions implement sections 101(a)(42), and 208 of the INA, 8 U.S.C. §§ 1101(a)(42) and 1158, as well as section 240 of the INA, 8 U.S.C. § 1229a, when applied by immigration judges; the withholding of removal provisions implement sections 240 and 241(b)(3) of the INA, 8 U.S.C. §§ 1229a and 1231(b)(3); the CAT provisions

implement section 240 of the INA, 8 U.S.C. § 1229a, and a note to 8 U.S.C. § 1231 that is not in the INA; the reasonable fear provisions implement section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3); and the credible fear and expedited removal provisions not addressed by the Credible Fear and Asylum Processing IFR and Lawful Pathways Rule implement section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1). Which of these provisions fall under the scope of section 1252(f)(1) cannot definitively be determined by looking solely to the U.S. Code because, although "the appearance of a provision in the current edition of the United States Code is 'prima facie' evidence that the provision has the force of law, 1 U.S.C. § 204(a), it is the Statutes at Large that provide[] the 'legal evidence of laws.'" *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 (1993) (citing 1 U.S.C. § 112).[5] Thus, "the Code cannot prevail over the Statutes at Large when the two are inconsistent." *Stephan v. United States*, 319 U.S. 423, 426 (1943); *Preston v. Heckler*, 734 F.2d 1359, 1368 (9th Cir. 1984) (holding that "the Statutes at Large must prevail" where the U.S. Code differs from the language in the Act).

In the case of 8 U.S.C. § 1252(f)(1) and the provisions to which it applies, the U.S. Code is indeed inconsistent with the INA. Section 1252(f)(1) of Title 8 states that the provision applies to "part IV of [] subchapter [II of Title 8 of the U.S. Code]," whereas section 242(f)(1) of the INA

[5] In some cases, the title of the U.S. Code is the law because Congress has enacted it directly as positive law. 1 U.S.C. § 204(a); *see generally* U.S. House of Representatives, Office of the Law Revision Counsel, United States Code, [https://perma.cc/N8EB-442G]. Title 8 of the U.S. Code, however, has not been enacted as positive law (although the statutory provisions assembled within it have been), so it is merely prima facie evidence of the law. *See id.* § 204, note (showing the titles of the U.S. Code that have been enacted into positive law); *see also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1149 n.1 (9th Cir. 2022) ("Because title 8 of the United States Code has not been enacted as positive law, we will generally refer to the underlying provisions of the INA, while also supplying the corresponding citation to title 8."). The text of the INA, as amended, is available on the website of the U.S. Government Publishing Office. *See* [https://perma.cc/TY2Z-QX25].

states that the provision applies to "chapter 4 of title II [of the INA]." These differing references affect the scope of the remedy limitation provision. Section 1252(f)(1) of Title 8 appears to apply to sections 1221 through 1232 of Title 8, which correspond to sections 232 through 241 of the INA, as well as a provision added at 1232 of Title 8 that is not in the INA and all notes, at least some of which are not in the INA. By contrast, section 242(f)(1) of the INA appears to apply to sections 231 through 244 of the INA, which would not include 8 U.S.C. § 1232 or notes contained only in the U.S. Code. The asylum provisions (sections 101(a)(42) and 208 of the INA, 8 U.S.C. §§ 1101(a)(42) and 1158) do not fall within either range, while the withholding statute that the withholding and reasonable fear provisions implement (section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3)) and the expedited removal and credible fear statute (section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1)) fall within both ranges. The note to 8 U.S.C. § 1231, which the CAT provisions implement, appears to be included in the range of section 1252(f)(1), but the note is not found in the INA at all. But the provisions relating to asylum, withholding of removal, and CAT protection are all applied during removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a, and during expedited removal under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), and so any order that interferes with the Departments' chosen means of implementing the asylum, withholding of removal, and CAT provisions would necessarily interfere with how the Departments implement those two covered provisions.

The upshot is that the Court lacks the jurisdiction to enjoin or restrain through vacatur certain provisions of the Rule that are covered by section 242(f)(1) of the INA. For provisions of the Rule that are not covered by section 242(f)(1) of the INA, if the Court determined it could enjoin or restrain those provisions through vacatur, it will be required to take a scalpel to the Rule to avoid violating section 242(f)(1). Thus, lifting the stay will necessarily require the Court to

address the novel questions above regarding which provisions section 242(f)(1) or 1252(f)(1) cover, and also to determine how to address parts of the Rule that implement asylum, which is applied outside removal proceedings but also in removal proceedings and the definitions for which are also used to adjudicate withholding of removal.[6] With respect to those provisions, the Court will have to decide whether it can enjoin or restrain the interpretation of a statutory term as to asylum and withholding of removal adjudications by immigration judges but not as to asylum adjudications by asylum officers[7]; and if the Court did enjoin or restrain it as to one type of application but not another, whether it can thus require Defendants' adjudicators to apply two different interpretations of the same statutory terms.

Requiring Defendants to administer the U.S. asylum and protection system in such a way—with differing standards governing closely related forms of relief and that also differ depending on

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[6] The substantive analyses for asylum and withholding of removal are for the most part parallel. For example, both inquire into whether an applicant has established that they have been subject to or have a future fear of "persecution" that is on account of or because of one of the five protected grounds of race, religion, nationality, "political opinion," or "membership in a particular social group." *Compare* 8 C.F.R. §§ 208.13(b), 1208.13(b) (2018) (asylum), *with* 8 C.F.R. §§ 208.16(b), 1208.16(b) (2020) (withholding of removal). Each of the statutory terms in quotation marks in the prior sentence were defined in the Rule for both asylum and withholding of removal purposes. *See* 85 Fed. Reg. at 80,385–86, 80,394–95 (amending 8 C.F.R. §§ 208.1 and 1208.1 to add definitions for "persecution," "political opinion," and "particular social group" "[f]or purposes of adjudicating an application for asylum . . . or for withholding of removal"). Several other provisions the Rule amended apply explicitly to asylum and withholding of removal, or else changed the provisions for each in parallel ways to maintain the parallel analyses, such as for internal relocation. *See* 85 Fed. Reg. at 80,387–39, 80,396, 80398 (amending the internal relocation provisions for asylum at 8 C.F.R. §§ 208.13(b)(3) and 1208.13(b)(3) and the internal relocation provisions for withholding at 8 C.F.R. § 208.16(b)(3) and 1208.16(b)(3)).

[7] Generally, a request for asylum may arise in three circumstances: (1) a noncitizen present in the United States and not in removal proceedings may affirmatively apply to U.S. Citizenship and Immigration Services (USCIS), *see Dhakal v. Sessions*, 895 F.3d 532, 536 (7th Cir. 2018); 8 C.F.R. § 208.2(a); (2) a noncitizen in removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a, may apply before the immigration judge as a defense to removal, 8 C.F.R. §§ 208.2(b), 1208.2(b), 1240.11(c); and (3) a noncitizen in expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), may request asylum.

the adjudicator—would render that system untenably complex and burdensome. But if Defendants cannot be restrained from implementing all such overlapping provisions, any order in Plaintiffs' favor would necessarily be limited to the provisions implementing only some INA provisions, covering only asylum before USCIS, and not asylum and other forms of protection, such as withholding of removal, before EOIR. Notably, the Court would need to address these complicated issues with respect to provisions that remain enjoined and ineffective under the *Pangea* preliminary injunction and which will likely be mooted by the completion of the Departments' rulemaking process.

2. The Rule Implements Provisions Listed in 8 U.S.C. § 1252(f)(1).

In addition to determining which aspects of the Rule implement which provisions of the INA, the Court would also need to interpret section 1252(f)(1)'s prohibition on an order enjoining or restraining the operation of the Departments' implementation of a statute. Section 1252(f)(1) provides that, "[r]egardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of" the specified provisions, with one exception not relevant here. 8 U.S.C. § 1252(f)(1). As the Supreme Court recently explained, section 1252(f)(1)'s reference to "the 'operation of' the relevant statutes is best understood to refer to the Government's efforts to enforce or implement them." *Aleman Gonzalez*, 142 S. Ct. at 2064. Accordingly, section 1252(f)(1) generally prohibits lower courts from "order[ing] federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Id.* at 2065.

That is exactly what Plaintiffs request through an order vacating the Rule. Portions of the Rule represent an effort by the Departments to implement removal proceedings at 8 U.S.C. § 1229a, the withholding of removal statute at 8 U.S.C. § 1231(b)(3), or the expedited removal

statute at 8 U.S.C. § 1225(b)(1), and an order vacating portions of the Rule that implement those provisions would "enjoin or restrain" the Departments' "operation," 8 U.S.C. § 1252(f)(1), of those provisions. Like an injunction, vacatur "restrict[s] or stop[s] official action," *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 13 (2015), by prohibiting officials from relying on the agency action under review. Vacatur is a "less drastic remedy," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), than an injunction prohibiting the agency from re-adopting the challenged policy in the future. But a vacatur is practically equivalent to an injunction compelling the agency to rescind or stop implementing the challenged action. In *DHS v. Regents of the Univ. of Calif.*, the Supreme Court observed that its affirmance of the district court's "order vacating the rescission [of a Government program] ma[de] it unnecessary to examine the propriety of the nationwide scope of the injunctions issued by" the lower courts. 140 S. Ct. 1891, 1916 n.7 (2020). Vacatur thus possesses the hallmark of the relief barred by section 1252(f)(1): It "order[s] federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out" the law. *Aleman Gonzalez*, 142 S. Ct. at 2065.

In any event, section 1252(f)(1), on its face, is not limited to injunctions. Instead, it prohibits lower-court orders that "enjoin *or restrain*" the Executive Branch's operation of the covered provisions. 8 U.S.C. § 1252(f)(1) (emphasis added). The common denominator of the terms "enjoin" and "restrain," *id.*, is that they involve coercion. *See* Black's Law Dictionary 529 (6th ed. 1990) ("[e]njoin" means to "require," "command," or "positively direct") (emphasis omitted); *id.* at 1314 ("[r]estrain" means to "limit" or "put compulsion upon") (emphasis omitted). Together, they indicate that a court may not impose coercive relief that "interfere[s] with the Government's efforts to operate" the covered provisions in a particular way. *Aleman Gonzalez*, 142 S. Ct. at 2065. That meaning easily encompasses judicial vacatur. A contrary interpretation

would read the word "restrain" out of the statute.

Given these complex questions relating to section 1252(f)(1) and the Departments' consistent representations that they are engaging in rulemaking that would moot out Plaintiffs' challenges, it would be a waste of judicial and party resources for the Court to consider these issues and their applicability to this case now. Nor is there any need for the Court to address these issues because, as explained, the preliminary injunction in *Pangea* remains in force and the Departments are engaged in rulemaking that would moot this challenge. Accordingly, the Court should continue the stay of proceedings in this case in the interest of judicial economy.

II. The Circumstances that Warranted the Stay Remain the Same.

When the parties agreed to a stay of proceedings in February 2021, they did so "as long as the preliminary injunction entered in *Pangea* . . . remain[ed] in place" and to allow the Departments the opportunity to review the Rule and engage in further rulemaking. ECF No. 16 at 1. Since that time, the Departments have consistently represented that they are engaged in rulemaking. *See generally* ECF Nos. 17–20, 22–24, 26–28, 30, 32–35, 44. Plaintiffs suggest that because the Fall 2022 Unified Agenda included a statement that some provisions of the Rule may be republished without amendment, the Departments have decided not to replace the Rule in its entirety. *Id.* at 30–31. Plaintiffs overread this statement and claim that it should lead to the conclusion that the new rulemaking would not render their claims moot. To the contrary, a new rulemaking, even if it republishes without amendment some provisions from the Rule, would be issued through a different rulemaking process, be signed by those with authority to issue the rules, and provide a justification for any republished provisions. In other words, any challenge to the republished provisions would need to be brought against the new rulemaking. Moreover, Plaintiffs' speculation as to the Departments' intent does not establish that the Departments have changed their minds and decided not to engage in new rulemaking—and they have not.

III. The Balance of Harms Tips in Favor of the Government.

Lifting the stay at this juncture will cause appreciable harm to Defendants, but continuing the stay will cause no significant harm to Plaintiffs. Plaintiffs contend that the continued stay in this litigation harms them as their attorneys are confused regarding what regulations are effective and has caused other courts to make legal errors in some cases. Pls.' Mot. 21–25. But litigating this case to a final judgment will not have an impact on the cause of their attorneys' confusion, and cited examples of supposed judicial confusion do not show any material impact on the outcome of any case. By contrast, lifting the stay will disrupt current rulemaking efforts that have been ongoing for more than two years and require Defendants to divert resources away from that rulemaking. That result would benefit no one—not Plaintiffs, and not the public at large.

A. Plaintiffs Overstate the Alleged Harms Caused by a Continued Stay.

Plaintiffs contend that the continued stay in this case harms them because the stay has caused uncertainty that interferes with their evaluation of cases and allocation of resources. Pls.' Mot. 21–24. They also contend the continued stay has led to judicial confusion about the status of the Rule notwithstanding the *Pangea* preliminary injunction. Pls.' Mot. 23. Both contentions overstate any alleged harm.

First, the Rule Plaintiffs challenge is preliminarily enjoined, and Plaintiffs have not shown how a ruling in their favor here would change the status of the currently applicable regulations or the ongoing rulemaking. Specifically, the uncertainty that Plaintiffs claim causes them harm has nothing to do with the stay. Plaintiffs claim that "uncertainty about if and when the government will replace the Rule—and with what—frustrates Plaintiffs' efforts to assess the merits of prospective new cases," Pls.' Mot. 22, but uncertainty about what the law will be in the future would not be resolved by vacatur based on Plaintiffs' FVRA claims as it would not dictate the substance of any future rulemaking the Departments issue.

Second, Plaintiffs argue that they and the public are harmed by the enjoined provisions being reflected on ecfr.gov and the Cornell Legal Information Institute's website and the latter's failure to "flag that any of the subsections are enjoined." Pls.' Mot. 22. They also fault the Federal Register's website for not notating the *Pangea* injunction on its page for the Rule. *Id.* At the outset, none of these websites are maintained by a defendant in this case. To the extent Plaintiffs disagree with the way the organizations who maintain those websites reflect preliminarily enjoined regulatory amendments, such arguments are outside the scope of this litigation. Regardless, a final judgment vacating the Rule would not itself change what is reflected on those websites.

Third, Plaintiffs claim in their motion that they are experiencing "'increasing resistance and even refusal among law firms' to 'represent clients *pro bono* in both affirmative and defensive claims for asylum' because of the status of the Rule," Pls.' Mot. 22–23, but the declaration they cite in support does not state as much. Rather, the relevant paragraph in the declaration discusses multiple factors that have had an impact on the willingness of pro bono partners to represent clients, including "changing rules" and "lengthy backlogs and delays in adjudications." ECF No. 47-1 at ¶ 8. It is never certain what the law will be in the future, but litigating this case to a final judgment will not provide the clarity Plaintiffs seek.

Fourth, Plaintiffs assert that federal courts are "being misled" and are "repeatedly citing the changes made by the Rule as operative law." Pls.' Mot. 23. In their prior motion, Plaintiffs included almost four pages' worth of citations to cases where they alleged that courts had applied enjoined language, ECF No. 37 at 15–18, and the Departments showed that in each and every instance the citation had no impact on the case, ECF Nos. 42-1, 42-2, 42-3. Now, Plaintiffs cite six court of appeals decisions, and again, in none of those cases were the erroneous citations

material.[8] Three of the cited decisions were already addressed in the Departments' prior opposition and are not new. *See* ECF No. 42-1 at 1 (explaining that the erroneous citations in *Bhandari v. Garland*, 847 F. App'x 257, 259 (5th Cir. 2021); *Padilla-Franco v. Garland*, 999 F.3d 604, 608 (8th Cir. 2021); and *Guatemala-Pineda v. Garland*, 992 F.3d 682, 685 (8th Cir. 2021), were harmless). The three new citations are harmless for the same reason—although the Rule's amendment changed who bears the burden to show internal relocation for those who established past persecution, it did not change the analysis for those seeking to establish only a well-founded fear of future persecution, which is the fact pattern in all three of these cases. *See Carmona-Gonzalez v. Garland*, No. 23-3317, 2023 U.S. App. LEXIS 11826, at *5 (6th Cir. May 12, 2023) (denying a stay in part because the noncitizen did not establish past persecution and did not show it was unreasonable for him to relocate within Mexico to avoid future persecution); *Fuad v. Garland*, No. 22-845, 2023 WL 3335725, at *2 (9th Cir. May 10, 2023) (placing the burden on Fuad to show unreasonableness of relocation to establish future persecution); *Escobar Guerra v. Garland*, No. 21-70292, 2022 WL 563246, at *1 (9th Cir. Feb. 24, 2022) (burden was placed on the noncitizen to establish that he could not reasonably relocate for the purpose of claim based on future fear).

None of the cases Plaintiffs cite show the Rule's enjoined status has caused judicial confusion materially affecting the outcome of a case. Indeed, in these cases the courts cited enjoined provisions for propositions that have long been the status quo—not for the change that was made by the Rule. Likewise, Plaintiffs fail to show how a ruling in their favor would resolve purported judicial confusion about the applicable rules; as noted multiple times throughout this

[8] Plaintiffs also cite to paragraph 10 of the declaration at ECF No. 47-2, but that paragraph does not provide any additional discussion regarding courts citing to enjoined provisions.

opposition and the Departments' opposition to Plaintiffs' prior motion, a vacatur order would not itself alter the Code of Federal Regulations text that Plaintiffs claim is causing the confusion.

Fifth, Plaintiffs claim that the uncertainty over the Rule makes it difficult to assess the future viability of cases and thus "accurately assess how much work should be expected for each case." Pls.' Mot. 23; *see also id.* at 24 ("the continued uncertainty around the law precludes Plaintiffs from providing a number [of cases Plaintiffs can commit to handling] that would benefit their applications" for grant funding). But those circumstances existed prior to the stay, and a ruling from the Court on this motion would not mitigate them. There will continue to be uncertainty about the future of immigration law, including what rules the Departments may adopt in the future.

Sixth, and finally, Plaintiffs' claims of lost time from seeking to keep up with the Departments' upcoming rulemakings and the state of the regulations, Pls.' Mot. 24, ignores the fact that the Departments have an interest in ensuring Plaintiffs are aware of developments so they can be shared in the hopes of resolving this litigation after the completion of rulemaking.[9] In other words, counsel for the Departments will inform Plaintiffs of any developments on the rulemaking front. And Plaintiffs frequently comment on all immigration-related rules, so the existence of this stay would not appear to alter that aspect of their already existing practice.[10]

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[9] The Departments note that counsel has shared in other litigation attorney-created resources, which have been made publicly available, explaining the current status of DOJ regulations from the end of the prior Administration that were the subject of legal challenges. *See* https://nipnlg.org/work/resources/enjoined-asylum-regulations-cheat-sheet, [https://perma.cc/Q9JW-Q5LC] (landing page); https://nipnlg.org/sites/default/files/2023-05/2023_3May-EOIR-regs-chart.pdf [https://perma.cc/2P58-48V2] (OIL-created chart). A more updated version incorporating the changes made by the Lawful Pathways Rule, is attached to this filing as Exhibit A.

[10] For example, both Plaintiffs commented on the Lawful Pathways Rule, *see*

In sum, Plaintiffs overstate the harms they allege are exacerbated by the continued stay in this case. Accordingly, Plaintiffs fail to show that lifting the stay would alleviate any harm that purportedly exists.

B. An Order Vacating All or Part of the Rule Would Harm Defendants.

Lifting the stay to litigate some of Plaintiffs' claims could result in an order that would harm Defendants and the rulemaking Plaintiffs want. Most importantly, the time spent litigating this case would impede Defendants' ability to work on the rulemaking as some personnel are involved with both and will be forced to spend time on the litigation that could have been spent on the rulemaking. Plaintiffs claim "[t]his is not plausible," Pls.' Mot. 18, because they assert that the only issues that need be briefed are those relating to Former Acting Secretary Wolf's authority and that this "can be briefed and argued by Department of Justice litigators who need only be familiar with the law concerning appointments and vacancies along with the details of Chad Wolf's tenure—issues that have been litigated by the Department of Justice in at least fifteen other cases already." Pls.' Mot. 18.

But Plaintiffs overlook the many other issues that the Court would have to address before reaching the merits of that issue. First, Plaintiffs myopically focus throughout their motion on the FVRA claims without acknowledging that there are multiple other novel issues relating to standing and remedy here. *See supra* Part I.B; Pls.' Mot. 19, 25–26. Litigating this case will require coordination within and between DOJ and DHS, which consumes significant resources. Indeed,

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https://www.regulations.gov/comment/USCIS-2022-0016-12546 (Tahirih); https://www.regulations.gov/comment/USCIS-2022-0016-12528 (Ayuda), and Tahirih responded to calls for comments on both the Asylum Processing IFR and prior NPRM, https://www.regulations.gov/comment/USCIS-2021-0012-4320 (comment on the NPRM); https://www.regulations.gov/comment/USCIS-2021-0012-5285 (comment on the IFR).

it is not only the attorneys who appear in court or sign briefs who expend time on litigation but also personnel from the Defendant agencies who work with and advise the litigators. Considering the novel issues and the extent of coordination required in a case such as this, requiring litigation would harm the Departments' rulemaking effort.

Finally, a vacatur order, which would not itself change the text of the regulations, would not provide the clarity for the parties and the public Plaintiffs claim is necessary, and would be at best duplicative of the *Pangea* preliminary injunction issued more than two years ago—at worst, it could add further complication if the Court only vacates the application of provisions not covered by 8 U.S.C. § 1252(f)(1).

IV. The Stay of Proceedings Remains Reasonable.

In their prior motion, Plaintiffs claimed that circumstances had changed such that a stay was no longer appropriate. ECF No. 37 at 8–12. Plaintiffs now argue that the Departments are asking for an indefinite stay and that the government must prove a "pressing need" for such a stay, Pls.' Mot. 15–17, citing to precedent "recogni[zing] that '[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.'" *Belize*, 668 F.3d at 732 (quoting *Landis*, 299 U.S. at 255). Not only is this case law distinguishable from the circumstances here, but it supports the Departments' position that a stay remains reasonable and warranted.

At the outset, the cases Plaintiffs cite regard stays in cases to await the resolution of litigation elsewhere and where staying the case could impede a litigant's ability to vindicate their rights. Indeed, all of the cases they cite involve stays pending litigation in another fora of claims related to those brought by the plaintiffs. *See Landis*, 299 U.S. 248 (considering an order staying all proceedings in a suit brought by two holding companies to restrain enforcement pending final disposition (including appeals) of another suit brought by the SEC to compel enforcement); *Belize*,

668 F.3d 724 (reviewing the grant of a stay in suit brought to enforce the monetary portion of a foreign arbitration award against the Government of Belize where the district court granted Belize's request for a stay pending resolution of the parties' case before the Belize Supreme Court); *Trujillo v. Conover & Co. Commc'ns, Inc.*, 221 F.3d 1262 (11th Cir. 2000) (reviewing a court's sua sponte order staying proceedings in civil case to await resolution of a related case in the Bahamas); *McSurely v. McClellan*, 426 F.2d 664 (D.C. Cir. 1970) (reviewing stay entered in civil case to await the resolution of criminal case, including all appeals).

The cases they cite applying these precedents not only involve stays to await the outcome of other pending litigation but also show that the length of the stay alone is not determinative. Rather, courts weigh the competing interests of "possible hardship[s]" and "judicial economy," *Belize*, 668 F.3d at 733, "in the light of the particular circumstances of the case," *Dresser*, 628 F.2d at 1375. In *United States v. Philip Morris USA Inc.*, 841 F. Supp. 2d 139, 141–42 (D.D.C. 2012), the United States brought suit against tobacco companies seeking a corrective statement remedy for fraudulent statements the companies made, and the district court denied a request to stay the action to await resolution of litigation challenging Food and Drug Administration regulations. Although the court relied in part on the possible length of the stay requested, it also found that the issues in the other litigation were "very different substantively . . . and are governed by different statutory standards[,]" and that the "public interest" in a corrective action statement remedy "outweighs any concern about judicial economy." *Id.* at 142.

Similarly, in *SEC v. Deloitte Touche Tohmatsu CPA Ltd.*, 940 F. Supp. 2d 10 (D.D.C. 2013), the court denied the defendant corporation's request to stay an SEC subpoena due to a pending administrative proceeding, concluding that "[t]here is no significant burden placed on Deloitte by requiring it to litigate these two very different proceedings simultaneously[,]" "[t]here

is no overlap of issues that would justify staying this case for 'judicial efficiency[,]" and "the SEC has effectively demonstrated that this case is the only way it can obtain the documents it needs to conduct" an investigation. And in *Asylumworks v. Mayorkas*, No. 20-cv-3815 (BAH), 2021 WL 2227335, at *5–7 (D.D.C. June 1, 2021), the court denied a stay in a suit challenging two DHS rules where, in addition to concerns about the length of the stay, the court noted that the preliminary injunction issued against the rule in another litigation did not apply to the plaintiffs, it was not clear whether the injunction would extend to plaintiffs, and DHS had not provided any indication that it planned to alter or repeal the rules at issue.

Unlike in *Philip Morris*, *Deloitte*, and *Asylumworks*, here the stay is not premised on the resolution of another judicial or agency adjudication, the length and nature of which may render any resolution of the case speculative. And unlike in those cases, Plaintiffs are not being denied relief that would remedy their alleged harms. Litigating to vacatur would leave Plaintiffs in the same place they are currently because a vacatur order will not remove the Rule's amendments from the Code of Federal Regulations. Finally, Plaintiffs' concerns about confusion over the currently effective regulations are in no way similar to the harms cited in those three cases.

At bottom, when considering a stay, the Court must "'weigh competing interests and maintain an even balance' between the court's interests in judicial economy and any possible hardship to the parties." *Belize*, 668 F.3d at 732–33 (quoting *Landis*, 299 U.S. at 254–55). Judicial economy clearly favors a stay as litigating this case would require the litigation of multiple novel issues in a case where the Departments are engaged in rulemaking that would moot the suit. This outweighs the Plaintiffs' claims of confusion from the Rule remaining on the books, which would not be resolved through vacatur here. Under these circumstances, a stay remains reasonable and warranted.

CONCLUSION

For these reasons, the Court should deny Plaintiffs' motion to partially lift the stay. If the Court grants Plaintiffs' motion, the Departments request that the Court allow the case to proceed on the claims Plaintiffs have identified, not to summary judgment, but rather along the normal process for a civil case—including the opportunity for Defendants to file any motions to dismiss or answer the Complaint.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

AUGUST E. FLENTJE
Special Counsel

DAVID M. MCCONNELL
Director

LINDSAY M. VICK
Senior Litigation Counsel

s/Christina P. Greer
CHRISTINA P. GREER
Senior Litigation Counsel
U.S. Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Tel: (202) 598-8770
Email: Christina.P.Greer@usdoj.gov

Attorneys for Defendants

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