UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KAROLINA RAI, *et al.*, Plaintiffs, v. ANTHONY J. BLINKEN, *et al.*, Defendants.	Civil Action No. 1:21-cv-00863

DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STAY

Defendants' motion for a stay does not ask the Court to set aside its ruling, rather, it respectfully asks that the Court recognize the extraordinary nature of the requirements found in the Court's preliminary injunction, and the unsettled legal foundation upon which that injunction is predicated. The Court's September 27, 2021 and October 20, 2021 preliminary injunction orders are built on the conclusion that the Immigration and Nationality Act ("INA") *prohibits* the Department of State from refusing to issue an entry permit—in this case, a diversity visa ("DV")—to someone who is clearly inadmissible into the United States by virtue of a Presidential Proclamation ("Proclamation"). As Defendants point out, such an interpretation of the INA runs contrary to the history of the INA, as supported by an understanding of Congressional intent given effect at the creation of the statutory provisions in question, and by decades of agency interpretation and Congressional acquiescence.

Defendants do not ask the Court to reconsider its rulings, but they do respectfully ask the Court to recognize the extraordinary nature of those rulings and to stay further

implementation of the Court's injunction orders until the pending appeal of the Court's rulings resolves the important questions posed. Those questions revolve around the President's authority under the INA, as well as the Court's authority to direct the Department of State to take action that runs contrary to the temporal limitations put in place by Congress through exercise of its plenary power over immigration. *Kleindienst v. Mandel*, 408 U.S. 753, 769–70 ("[P]lenary congressional power to make policies and rules for exclusion of aliens has long been firmly established.")

A stay will not extinguish Plaintiffs' remaining claims, nor will it terminate Plaintiffs' ability to immigrate to the United States if the D.C. Circuit agrees with the Court. However, given the myriad issues in this case, Defendants posit there is a real probability that the D.C. Circuit will disagree with the Court's conclusions, or the remedies implemented as a result. The absence of a stay will not only have resulted in the needless expenditure of limited resources by the Department of State, but will also cause needless harm to other immigrant visa petitioners and their beneficiaries patiently waiting to immigrate by virtue of their displacement in line. A stay will also ensure that visas are not issued to, and admission is not granted for, persons who, but for the court's order, would by law be ineligible for a visa and for admission to the United States. For all these reasons here, prudence is warranted, and Defendants respectfully request that the Court stay further effect of its orders until the appeal of those orders is resolved.

ARGUMENT

In support of their opposition, Plaintiffs point to the 2021 ruling analyzing a stay request in *Alabama Association of Realtors v. United States HHS*, 539 F. Supp. 3d 211 (D.D.C. 2021). *See* ECF No. 73 at 3. Plaintiffs correctly note that this opinion states that a

stay is an extraordinary remedy. *Id.* However, what Plaintiffs neglect to acknowledge is that the same court, after finding that the agency involved had not demonstrated a significant likelihood of success on the merits, also concluded that the agency's failure to do so did not prohibit a stay from issuing because the agency had raised a "serious legal question on the merits." *Ala. Ass'n of Realtors*, 539 F. Supp. 3d at 216 (internal quotations and citations omitted). Plaintiffs also fail to acknowledge that the D.C. Circuit upheld this grant of stay on appeal. *Ala. Ass'n of Realtors v. United States HHS*, No. 21-5093, 2021 U.S. App. LEXIS 16630, at *2–3 (D.C. Cir. June 2, 2021). Here, as in *Alabama Association of Realtors*, Defendants have at least raised several serious legal questions that necessitate resolution by the Circuit together with irreparable consequences if a stay is not issued.

Plaintiffs ignore the extraordinary nature of the Court's preliminary injunction against the Department of State. As Defendants noted in their motion, a preliminary injunction is "an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008). It is made all the more extraordinary when it is a mandatory injunction that would grant all the relief sought in the complaint and compel the government to take irreversible action it could not otherwise take. *Abdullah v. Bush*, 945 F. Supp. 2d 64, 66–67 (D.D.C. 2013) *Spadone v McHugh*, 842 F. Supp. 2d 295, 301 (D.D.C. 2012) (stating that "[i]n this Circuit, the power to issue a preliminary injunction, especially a mandatory one, should be sparingly exercised") (internal quotation omitted))); *Sierra Club v. Johnson*, 374 F. Supp. 2d 30, 33 (D.D.C. 2005) (stating that a mandatory injunction that changes the status quo "is an extraordinary remedy, especially when directed at the United States Government"). Here there can be no doubt that the Court's orders do more than maintain the status quo by reserving DVs for noncitizens that are no longer statutorily eligible. Instead, the orders

conclude that over thirty-five years of agency practice in implementing entry restrictions imposed by the President is unlawful and direct the Department of State to adjudicate DV applications after the expiration of the eligibility period set by Congress in 8 U.S.C. § 1154(a)(1)(I)(II) and to adjudicate a mandatory number of applications. ECF Nos. 54, 61. An order compelling the government to take action in direct contravention of a statute is of such an extraordinary nature that its mandate should sparingly issue, and a stay is appropriate to allow for the appeal of such an extraordinary order.

A. The Court's orders merit a stay, as they are extraordinary orders that raise significant legal issues on appeal.

While Defendants believe they have a strong likelihood of success on appeal, Defendants do not expect that the Court will summarily reject its own analysis rendered less than five months ago. And Defendants have not asked the Court to do so. However, Defendants do believe that the Court also recognizes the serious legal questions raised in this litigation and that a stay is merited until the Circuit resolves these questions.[1] For example, Defendants have raised the question of whether, when a noncitizen applicant for a visa to the United States is barred from entering the United States by a Proclamation issued under 8 U.S.C. § 1182(f), the Department of State's refusal to process or issue the visa to that applicant is arbitrary, capricious, and not in accordance with law, in violation

[1] Plaintiffs' argument regarding the government's decision not to pursue a cross-appeal in *Gomez v. Trump* (*Gomez II*), 485 F. Supp. 3d 276 (D.D.C. 2020), is irrelevant. ECF No. 73 at 13-14. As noted by the Supreme Court, the government is not an ordinary litigant and a decision to appeal or not is based upon a host of factors that differ from those facing private litigants. *United States v. Mendoza*, 464 U.S. 154, 161, (1984). As such, nothing in the government's decision to decline to appeal a matter precludes the government from continuing to litigate the issues involved. *Id.* What's more, the ruling at issue in *Gomez II* was a preliminary injunction that did not direct State to take any mandatory action to adjudicate DVs beyond the end of the fiscal year (unlike the Court's order here). *Compare Gomez v. Trump*, 490 F. Supp. 3d at 295, *with* ECF No. 61.

of the Administrative Procedure Act ("APA"). This question not only raises a legitimate question about the proper interpretation of a statute, but also a very serious question regarding the limits of the President's national security authority to preclude visa issuance to individuals barred from coming to the United States. As reflected in the record, over the last 37 years the President has periodically invoked his authority under 8 U.S.C. § 1182(f) to preclude various groups of individuals from coming to the United States. As a result, the Department of State routinely refuses to issue visas to such individuals, a practice that extends far beyond the context of the regional Proclamations in this case. For example, in the Proclamation at issue in *Trump v Hawaii*, 138 S. Ct. 2392 (2018)—the President invoked § 1182(f) to improve "the screening and vetting protocols and procedures associated with the *visa-issuance* process." 82 Fed. Reg. at 13,209 (Mar. 6, 2017) (emphasis added). The Supreme Court upheld this exercise of the Proclamation authority to improve vetting in the visa issuance process. *Id*. But under the Court's interpretation, visa issuance would have been required in that case. And, under the Court's interpretation, the Department of State would be unable to refuse to issue visas to foreign government officials who failed to combat human trafficking, as prohibited by Proclamation 8342. 74 Fed. Reg. 4,093, 4,094 (Jan. 21, 2009) (invoking § 1182(f) to suspend entry of such government officials, and delegating authority to the Secretary to implement the Proclamation).

Visas must also be issued under the Court's interpretation to Russian officials undermining the sovereignty and territorial integrity of Ukraine. *See* Executive Order on Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of

Ukraine, § 6 (Feb. 21, 2022).[2] Indeed, as recently as a few days ago on February 21, 2022, President Biden issued a new Proclamation under 8 U.S.C. § 1182(f) against individuals who threaten the "peace, stability, sovereignty, and territorial integrity of Ukraine," including a suspension of entry as immigrants and nonimmigrants.[3] Consistent with historical practice, the President delegated to the Secretary of State the authority to implement this Proclamation "as it applies to visas." *Id*. Under the Court's interpretation of relevant authorities the Department of State would have no choice but to issue a visa to those clearly covered under the Proclamations, undermining an important aspect of the President's authority in an important foreign policy matter.

Against this backdrop, the Court's legal interpretation of the INA places significant limits upon the Executive's foreign affairs authority that Defendants believe is not consistent with the INA. Defendants also believe that they have shown that, in the absence of a clear statutory prohibition in the INA, Defendants' decision not to process visas for individuals barred from entering the United States was both lawful and reasonable. ECF No. 30. Regardless, Defendants readily acknowledge that the Court has thus far determined otherwise, and that the Court's view is consistent with the views held by some other judges in the district. *See, e.g*., *Gomez, et al. v. Trump, et al.* ("*Gomez III*"), No. 1:20-cv-1419-APM, 2021 WL 3663535, at *12 (D.D.C. Aug. 17, 2021). But, just as significantly, Defendants have also provided examples of other courts in this district that stand in

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[2] *See* The White House, *Presidential Actions*, https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/ (last visited Feb. 22, 2022).

contravention with the Court's conclusions. ECF No. 70 at 14–15.[4] Given this, resolution of this question by the D.C. Circuit is necessary to ensure the consistent interpretation and application of the law. *See Ala. Ass'n of Realtors*, 539 F. Supp. 3d at 216– 17 (noting that, given the significance of the orders in question, diverging views in the District Court evidenced the existence of a significant legal question).

Defendants have also raised the serious legal question of the Court's ability to direct the Department of State to issue visas to individuals whose statutory period of eligibility has expired. 8 U.S.C. § 1154(a)(1)(I)(ii). This question raises significant separation of powers questions, given the fact that Congress has plenary power over immigration and has explicitly stated that people selected for the opportunity to receive a diversity visa "shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected only through the end of the specific fiscal year for which they

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[4] *See, e.g.*, *Serakova v. Biden, et al.*, No. 1:21-cv-02066-TNM, ECF No. 14; (denying plaintiff's preliminary-injunction motion because the court did not have authority to reserve visas, and even if it did, plaintiff did not show a likelihood of success on the merits on her APA claim); *Pushkar v. Blinken, et al.*, No. 1:21-cv-02297-CKK, ECF Nos. 20–21 (denying plaintiff's preliminary-injunction motion; holding plaintiff unlikely to succeed on unreasonable delay or unreasonable withholding of DV adjudication claims); *Nepal, et al. v. Blinken, et al.*, No. 1:21-cv-1073-TNM, ECF No. 36 (denying plaintiffs' preliminary-injunction motion; holding plaintiffs unlikely to succeed on unreasonable delay claim); *Gorgadze, et al. v. Blinken, et al.*, No. 1:21-cv-2421-JDB, ECF Nos. 23–24 (ruling no likelihood of success on the merits on plaintiffs' DV adjudication and unreasonable delay claims); *Omori, et al. v. Blinken, et al.*, No. 1:21-cv-02173-CKK, ECF Nos. 19–20 (denying plaintiffs' temporary restraining order motion; holding that because plaintiffs have no right to a visa, the court cannot provide the relief plaintiffs seek and plaintiffs are unlikely to succeed on DV adjudication claims). Other courts have also dismissed similar motions for preliminary injunctions and temporary restraining orders on justiciability grounds. *See, e.g., Aminjavaheri, et al. v. Biden*, *et al.*, No. 1:21-cv-02246- RCL, ECF Nos. 49–50 (dismissing plaintiffs' preliminary injunction motion for lack of standing); *Gjoci, et al. v. Dep't of State, et al.*, No. 1:21-cv-00294-RCL, ECF Nos. 46–47 (ruling that plaintiffs' claims are not justiciable because there is no effective relief that the Court can grant—the policies no longer govern processing and plaintiffs failed to show standing); *Mubarez, et al. v. Biden et al.*, No. 1:21-cv-2495-RBW, ECF No. 16 (dismissing as moot).

were selected." *Id*. Here, despite this clear limitation set by Congress, the Court has specifically directed the Department of State to adjudicate and issue visas after eligibility for those visas expired. *Id*.; ECF Nos. 53–54, 61–62. The Court's authority to do so poses a question not yet definitively answered by the D.C. Circuit. *See Almaqrami v. Pompeo*, 933 F.3d 774 (D.C. Cir. 2019).

Finally, Defendants have raised the serious legal question regarding the Court's authority to grant relief to individuals who are not parties to the case. Under Article III, "[a] plaintiff's remedy must be tailored to redress the *plaintiff's* particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (emphasis added). Equitable injunctions can "be no more burdensome to the defendant than necessary to provide complete relief to the *plaintiffs*." *Madsen v. Women's Health Ctr., Inc*., 512 U.S. 753, 765 (1994) (emphasis added). Here, the Court has entered a preliminary injunction in a case involving no more than nine remaining principal applicants and entered an extraordinary order of mandating the adjudication of 966 DV applications after the expiration of the statutory eligibility period. ECF Nos. 54, 56-1, 61. But this case is not a class action, and the Court does not know who these 966 applicants might be. Whether the Court's equitable authority reaches this far raises a significant legal question that ought to be resolved by the appeal now pending in the D.C. Circuit.

B. The Department of State's interests will be irreparably harmed absent a stay

Despite Plaintiffs' skepticism, irreparable injuries await the Department of State absent a stay of the Court's orders because the Department will undertake the irreversible action of processing and issuing FY 2021 DVs in violation of the INA, subjecting it to

additional operational burden, and requiring it to reorder its consular and administrative priorities.

1. Absent a stay, State will execute resource-intensive systems modifications that may become a needless waste

As an initial matter, Plaintiffs reference the timing of Defendants' Notice of Appeal, ECF No. 65, and Stay Motion, ECF No 70, in this matter. *See* ECF No. 73 at 19– 20. Defendants moved expediently to determine whether to appeal the Court's orders of September 27, 2021 and October 20, 2021, ECF Nos. 53–54, and 61–62. Federal regulations required the Office of the Solicitor General to make that determination, which required consideration of a number of complex factors. *See* 28 C.F.R. § 0.20(b); *Mendoza*, 464 U.S. at 161 ("[T]he Government's litigation conduct in a case is apt to differ from that of a private litigant. Unlike a private litigant who generally does not forgo an appeal if he believes that he can prevail, the Solicitor General considers a variety of factors, such as the limited resources of the Government and the crowded dockets of the courts, before authorizing an appeal."). The Office of the Solicitor General's determination in this case was particularly complex, as it required consideration of whether to appeal several related cases before the U.S. District Court for the District of Columbia, as well as coordinating multiple federal agencies with an interest in these cases. That process was necessary to ensure that the ultimate determination to appeal these cases reflected both the interests of the United States and the interests of justice. That this process took longer than Plaintiffs might wish does not diminish the irreparable harm that Defendants will face without a stay.

Plaintiffs focus on the agency time and resources necessary for the Department of the Department of State to modify its IT infrastructure and suggest that these harms are incidental. *See* ECF No. 73 at 27–28. This misses the mark. As a preliminary matter,

compliance with the Court's injunction requires the Department of State to continue to modify its IT infrastructure in an unprecedented fashion to permit the Department to process DVs from past FYs. *See* ECF No. 70-4. And, although an estimated cost of approximately $500,000 may appear modest in comparison to the Department of State's overall budget, *see* ECF No. 73 at 21, this sum represents a concrete and substantial monetary cost that the agency must incur to comply with the Court's order.[5] The impact upon the Department of State also stems from the Department's need to divert resources from implementing several high-priority IT projects, including the deployment of the National Vetting Center, which, in turn, affects border security and travel facilitation. ECF No. 70-4.

Plaintiffs' contentions that Defendants will not suffer irreparable harm without a stay because the Department of State has already expended considerable resources in complying with the Court's order fare no better. *See* ECF No. 73 at 23–24. As an initial matter, Defendants' diligent compliance with the Court's orders does not disqualify Defendants from seeking relief from the further implementation of those orders pending appeal. A stay is not the exclusive purview of litigants who fail to comply with a court order. Moreover, although the Department of State has undertaken substantial efforts to implement the IT modifications necessary to comply with the Court's orders, much work

[5] Moreover, Plaintiffs' noting of the Department of State's overall budget is largely inapposite. That budget is appropriated by Congress to support a *global* operation and infrastructure that must meet myriad national security and foreign policy demands. Put simply, the Department's budget is not a slush fund, and any unplanned expenses must be reprogrammed away from other planned expenditures. The needless expenditure of funds is not recoverable, and Defendants are not cavalier about the expenditure of U.S. taxpayer monies.

remains, and the Department of State currently estimates that it will not complete these IT modifications until April 18, 2022. *See* ECF No. 72-1 ¶ 4.

2. Absent a stay, the Department of State will irrevocably divert consular resources from other priorities

Without a stay, the Department of State will also be required to reorder its consular and administrative priorities at a time when the Department of State is attempting to return to pre-pandemic balances between IV and non-IV services and providing discretion to consular managers at U.S. embassies and consulates to determine how to prioritize visa services based on local conditions and demands. *See, e.g.*, ECF No. 70-4 ¶¶ 2, 5. The Court's orders, however, will distract and complicate those efforts, and will affect certain posts' abilities to implement other immigration-related priorities by diverting resources to process Plaintiffs' DV applications. *See*, *e.g.*, *id.* ¶¶ 7–13. For example, based upon geopolitical issues in Belarus, Russia, and Ukraine, the consular post in Warsaw, Poland, has had to absorb significant workload from consulates in those countries. However, the Court's orders wade into that thicket, negatively affecting the U.S. Embassy in Warsaw's ability to meet its many demands. ECF No. 70-5 ¶¶ 12–13. Should the Court's orders later be determined to have been beyond the Court's authority, that disruption could not be undone.

C. A stay will not harm Plaintiffs.

Defendants acknowledge that Plaintiffs want to benefit immediately from the Court's order, but a stay that permits appellate review of the Court's injunction will not harm Plaintiffs. A stay will not extinguish their claims, nor will it extinguish their opportunity to have their DVs adjudicated should the D.C. Circuit agree with the Court. And while Defendants are sympathetic to Plaintiffs' desires, Defendants must also note

that *none* of the Plaintiffs have ever been guaranteed a DV, which remains true even with the Court's ruling. ECF Nos. 54, 61. Defendants also have no control or responsibility for Plaintiffs' own decisions, or actions taken by other governments (*e.g.*, the decision to grant or deny a visa for a Plaintiff to remain in China, *see* ECF No. 73 at 30). Moreover, Defendants have repeatedly warned all DV selectees against making significant life decisions based upon their selection in the lottery. As the Department of State's public guidance makes clear, becoming a DV selectee does not guarantee that you will receive a diversity visa. To receive a DV to immigrate to the United States, selectees must still meet all eligibility requirements under U.S. law.[6] The public guidance further advises applicants that it is "important that you do not make arrangements such as selling your house, car or property, resigning from your job or making non-refundable flight or other travel arrangements until you have received your immigrant visa."[7]

Furthermore, any delay in waiting to receive an adjudication is a moderate harm that is reparable. Once again, the district court's analysis in *Alabama Association of Realtors* is instructive. In that case, an association of realtors challenged a U.S. Department of Health and Human Services ("HHS") eviction moratorium order, and the district court vacated the HHS directive. *Ala. Ass'n of Realtors*, 2021 U.S. Dist. LEXIS 85568 at *27. In response, HHS sought a stay from the district court. *Id.* at *2. Subsequently, plaintiffs demonstrated that a stay would cost them between "$13.8 and $19 billion each month in unpaid rent," all *directly* resulting from the HHS order. *Id.* at *12. Despite this "substantial

[6] *See* https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/diversity-visa-if-you-are-selected.html (last visited Feb. 16, 2022).

[7] *See* https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/diversity-visa-interview.html (last visited Feb. 16, 2022).

impact," the district court found that the harm was mostly reparable, and that the only real consequence of the stay was delay. *Id*. at *13. As a result, the district court found that this harm did not outweigh the other factors in the case, which presented significant legal questions for the D.C. Circuit to resolve. *Id.*

Similarly, Plaintiffs here, who were never guaranteed a DV, have not demonstrated any specific harm other than delay directly attributable to a stay.[8]

D. A stay would serve the public interest.

Plaintiffs ignore the significant impact of the Court's legal interpretation upon the national security and foreign affairs powers of the Executive, in which the public has an overwhelming interest. By implementing the Proclamation at the visa issuance stage, the Department of State continues to give meaningful effect to a visa issuance process long considered as the first line of defense against the travel of inadmissible noncitizens to the United States. *See* U.S. Dep't of State, *Visa Issuance: Our First Line of Defense Hearing before the S. Comm. on the Judiciary* (Sept. 30, 2003) (testimony of Maura Harty, Asst. Sec. of State, Bureau of Consular Affairs) ("[The Department of State's] visa work abroad constitutes the 'forward based defense' of the United States against terrorists and criminals who seek to enter the country to harm us."); S. Rep. 81-1515 (Apr. 20, 1950), at 327 ("If a

[8] Notably, other courts in the District have denied motions for preliminary-injunctions and temporary restraining orders based on plaintiffs' failure to show irreparable harm. *See, e.g.*, *Trynkova v. Blinken, et al.*, No. 1:21-cv-2498-RBW, ECF No. 18 (D.D.C. Oct. 6, 2021) (denying plaintiff's preliminary-injunction motion because plaintiff failed to show irreparable harm); *Nishihata v. Blinken*, No. 1:21-cv-02173-CKK, 2021 WL 4476750 (D.D.C. Sept. 30, 2021) (denying plaintiffs' temporary restraining order motion; plaintiffs failed to demonstrate an irreparable injury because they are not necessarily entitled to diversity visas—even if it were to reserve them); *Pushkar v. Blinken*, *et al.*, No. 1:21-cv-02297-CKK, 2021 WL 4318116 (D.D.C. Sept. 27, 2021) (ruling against plaintiff on likelihood of success on the merits, certainty of irreparable harm, and balance of equities).

double check was essential 25 years ago to protect the United States against criminals or other undesirables, it is the opinion of the subcommittee that it is even more necessary in the present critical condition of the world to use the double check to screen [noncitizens] seeking to enter the United States."). The authority of the President to act in this sphere is incredibly broad. *See Hawaii*, 138 S. Ct. at 2410. However, despite the INA containing no specific prohibition on the President's sweeping authority under 8 U.S.C. § 1182(f), the Court now reads into the INA a limitation on that authority that would significantly constrain the President's ability to effectively use this authority, including to respond to national security crises, such as the current crisis in Ukraine. The public's interest in preserving the President's ability to act through his national security apparatus, or at least to know definitively when he cannot, cannot be understated.

What's more, "visa processing during the pandemic is a zero-sum game with [The Department of State]'s limited resources. Processing one category of IVs necessarily results in diminished resources for processing another category of visas." *Gjoci v. Dep't of State*, No. 1:21-cv-0294 (RCL), 2021 WL 3912143, at *13 (D.D.C. Sept. 1, 2021). Without a stay, those with strong connections to the U.S., such as family members of U.S. citizen and lawful permanent resident petitioners and other immigrant visa applicants would be relegated behind Plaintiffs for the Department of State to adjudicate the reserved DVs in compliance with the Court's orders. *See* ECF No. 70-5 at ¶¶ 20–21. The same is true of FY 2022 DV selectees, who themselves are seeking visas before the expiration of their opportunity to obtain them on September 30, 2022.

Congress has also made it clear that family reunification is the priority in the INA. ECF No. 70-1 at 13 ("[The Department of State] also has an interest in aligning its policy

with Congress' emphasis on family reunification, which has long been reflected in immigration statutes."); *id.* at 11–15. Here, compliance with the Court's orders will necessarily affect other IV categories, most tied to reunifying U.S. citizens and lawful permanent residents with family members. ECF No. 70-5 ¶ 19. The U.S. public has an interest in ensuring resources are not diverted towards adjudications for DVs that Plaintiffs might be ineligible for, and instead, are prioritized towards reunification. There is also a public interest in having disputed visa eligibility requirements resolved by the D.C. Circuit before these visas are issued.

Finally, a stay serves the public interest by ensuring that persons who, but for the Court's orders, would be ineligible for the visas and for admission to the United States, are not issued these visas and admitted before the Circuit has the chance to opine. A stay would thus preserve the status quo of the orderly implementation of immigration law and avoid agency actions that would otherwise be contrary to the statutory scheme established by Congress.

* * *

The government previously indicated that it would seek appellate relief 14 days after filing its stay motion in this matter and two other similar cases. By setting that timeframe, the government did not intend to prevent the Court's complete consideration of a stay motion, but simply to provide a timing plan if the Court did not take any action or indicate that it needed further submissions or hearing relating to the government's request. *See* Fed. R. App. P. 8(a)(1); 8(a)(2)(A)(ii). In light of the Court's decision to provide for briefing and a hearing, the government now intends to seek a stay pending appeal from the D.C. Circuit on March 4, 2022, or earlier if warranted by the ruling of the Court.. This

action is needed to provide the D.C. Circuit adequate time to become familiar with the issues and act on a stay request without the need for an emergency filing and in advance of April 18, 2022, when the most substantial irreparable and irreversible injury will begin to accrue. *See* Circuit Rule 27(f).

CONCLUSION

For the foregoing reasons, the Court should grant a stay of its September 27, 2021 and October 25, 2021 orders (ECF Nos. 53–54 and 61–62) pending resolution of the government's appeal.

Dated: February 22, 2022

Respectfully submitted,

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