

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Case No. 26-236

A.C.R., *et al*,

Plaintiffs-Appellants,

v.

MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security (official
capacity), *et al*.

Defendants-Appellees.

**PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS APPEAL
AS MOOT**

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This appeal is not moot because tens of thousands of recipients of Special Immigrant Juvenile Status will receive deferred action adjudications or renewal decisions under a standard to be determined by this Court. The underlying action challenges the Government’s 2025 rescission of a 2022 policy of automatically considering recipients of Special Immigrant Juvenile Status (“SIJS”) for deferred action, applying the “Strong Factors Standard”; under this Standard, SIJS approvals and underlying eligibility determinations weighed as “strong positive factors” in favor of granting deferred action (the “SIJS Deferred Action Policy”). The Government accomplished the 2025 rescission first by simply ceasing to comply with the SIJS Deferred Action Policy, and then by issuing a policy alert and revised Policy Manual formally terminating the Policy (collectively, the “2025 Rescission Policy”). This appeal challenges the District Court’s decision to stay only parts of the 2025 Rescission Policy, leaving the rescission of the Strong Factors Standard in place. The effect of the decision below is to consign tens of thousands of SIJS beneficiaries to deferred action determinations without the application of the Strong Factors Standard, which will result in improper and unlawful denials of deferred action and subject this vulnerable population to detention, deportation, and labor exploitation.

In April 2026, the Government issued a new policy aimed at rescinding the 2022 SIJS Deferred Action Policy. This new rescission policy took effect on May

10, 2026; by its own terms, it is “prospective” and does not apply to the tens of thousands of SIJS beneficiaries who are currently subject to deferred action determinations *without* the Strong Factors Standard pursuant to the District Court’s decisions. Indeed, in a May 6, 2026 email, the Government informed Plaintiffs’ counsel that U.S. Citizenship and Immigration Services (“USCIS”) would not apply the Strong Factors Standard in adjudicating deferred action for these individuals—confirming that USCIS is still failing to apply the 2022 SIJS Deferred Action Policy and continuing to follow the District Court’s order leaving the 2025 Rescission Policy partially in effect. The Government’s refusal to apply the 2022 SIJS Deferred Action Policy’s Strong Factors Standard continues to affect the legal rights of tens of thousands of SIJS beneficiaries who are entitled to consideration for deferred action under that Standard. Accordingly, there remains a live controversy in this appeal notwithstanding the issuance of the new, forward-facing rescission, and the motion to dismiss the appeal as moot should be denied.

I. BACKGROUND

A. USCIS Creates, and Then Rescinds, a Deferred Action Program for Special Immigrant Juveniles.

Congress created SIJS to protect noncitizen children in the United States as to whom a state court has made findings of abuse, neglect, or abandonment by a parent and determined that it would not be in the child’s best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11. Individuals granted

SIJS are eligible to apply for lawful permanent residence, but they may do so only when an immigrant visa becomes immediately available. 8 U.S.C. §§ 1153(b)(4), 1255(a). Because visas in the relevant category are subject to annual limits, SIJS beneficiaries must wait years in a visa backlog before they can apply for adjustment of status, during which time they remain at risk of deportation and are not legally authorized to work. As of March 2025, more than 150,000 SIJS beneficiaries were estimated to be waiting in this backlog. A-196–197 ¶ 20; SPA-4.

In response to this problem, USCIS created the SIJS Deferred Action Policy by announcing in a March 7, 2022, Policy Alert that it was “updating the USCIS Policy Manual” to require adjudicators to automatically consider all individuals with an approved SIJS petition for deferred action. A-258–260. A grant of deferred action would protect a SIJS beneficiary from removal for four years, with renewal terms available if the individual was still waiting in the visa backlog at the end of that period, and make recipients eligible to apply for employment authorization pursuant to 8 C.F.R. § 274a.12(c)(14).

USCIS effectuated the SIJS Deferred Action Policy with changes to its Policy Manual, which designated an approved SIJS petition as a “particularly strong positive factor that weighs heavily in favor of granting deferred action,” and the eligibility criteria for SIJS as “generally strong positive factors in such a [deferred action] determination, including that a juvenile court determined that it was in the

best interest of the SIJ not to be returned” to their country of origin. Pre-Rescission Policy Manual, A-265. In addition to setting forth this “Strong Factors Standard,” the Pre-Rescission Policy Manual included a renewal process for individuals whose deferred action grants were expiring. *Id.*

On or around April 7, 2025, USCIS stopped following the SIJS Deferred Action Policy without public announcement and ceased conducting automatic deferred action determinations upon approval of SIJS petitions. SPA-7–8. Then on June 6, 2025, the agency formally rescinded the SIJS Deferred Action Policy, announcing by policy alert (the “2025 Policy Alert”) that it was again updating its Policy Manual to reflect that (1) it would no longer automatically conduct deferred action determinations for noncitizens with SIJS unable to adjust their status due to visa backlogs; (2) it would not consider applications for employment authorization based on SIJS deferred action; and (3) previously granted deferred action would remain valid only through the current eligibility period. SPA-8–9.

B. The District Court Partially Stays the 2025 Rescission of the 2022 Deferred Action Policy.

On July 17, 2025, Plaintiffs filed this action in the United States District Court for the Eastern District of New York. ECF No. 1. Plaintiffs alleged that USCIS’s abandonment of the SIJS Deferred Action Policy from April 7 to June 5, 2025, as well as its express rescission of the Policy on June 6, 2025, violated the Administrative Procedure Act (“APA”). *Id.* at 4. Plaintiffs claimed this Rescission

Policy was arbitrary and capricious because the agency had departed from established procedures in the sub silentio abandonment of the SIJS Deferred Action Policy, and then failed to consider SIJS beneficiaries' reliance interests and ignored reasonable alternatives to total rescission in expressly rescinding the policy. *Id.* Plaintiffs simultaneously moved to stay the 2025 Rescission Policy pending a final decision on the merits. ECF No. 5.

On November 19, 2025, the District Court granted Plaintiffs' motion in part and stayed elements of the 2025 Rescission Policy under Section 705 of the APA. SPA-1–2. The District Court held that Plaintiffs had shown a likelihood of success on the merits of the claims described above. SPA-24–40. Through its partial stay, the District Court restored the pre-rescission framework under which USCIS would automatically consider SIJS beneficiaries for deferred action. SPA-44–48.

In a footnote, however, the District Court stated that the stay did *not* require USCIS to follow the Pre-Rescission USCIS Policy Manual by applying the Strong Factors Standard or any “*presumption* in favor of granting deferred action to SIJS beneficiaries.” SPA-45 n.24 (emphasis omitted). In other words, the District Court declined to stay the rescission of the Strong Factors Standard, leaving that element of the 2025 Rescission Policy in place pending a final ruling on the merits.

The District Court subsequently denied Plaintiffs' motion for clarification or reconsideration of the footnote that declined to stay the rescission of the Strong

Factors Standard. Docket Order, Jan. 5, 2026; SPA-50–59. However, the District Court recognized that individuals who received SIJS approvals between April 7 and June 5, 2025, inclusive (the proposed “*Accardi* Subclass”), are entitled to application of the Strong Factors Standard when their deferred action is adjudicated under the Court’s stay order. SPA-56 n.7. The District Court explained that it “reach[ed] a different conclusion” as to this group of SIJS beneficiaries because they were denied adjudications of deferred action before the Government formally rescinded the SIJS Deferred Action Policy, in violation of the *Accardi* doctrine. *Id.*

This appeal followed.

C. USCIS Issues a New Rescission Memo Effective May 10, 2026.

On April 10, 2026, USCIS issued a new memo rescinding the 2022 SIJS Deferred Action Policy (the “2026 Rescission Policy”). Mot., Dkt. No. 63.1, Ex. B. The 2026 Rescission Policy became effective May 10, 2026, was not retroactive, and by its express terms, terminates the 2022 Deferred Action Policy rather than the partially stayed 2025 Rescission Policy. *Id.* at 1 (describing the 2026 Rescission Policy as announcing “the decision to terminate the [2022] policy”). Further, it states that the policy change “is prospective” such that SIJS petitions that were “submitted or approved before its effective date will be subject to the [2022 SIJS Deferred Action] policy that this memorandum terminates.” *Id.* at 7. By email to Plaintiffs’ counsel dated April 15, 2026, the Government confirmed that the new policy is also

prospective as to SIJS beneficiaries who seek to renew previous deferred action grants (“DA renewal applicants”): “SIJS beneficiaries who submit requests for new periods of deferred action . . . before May 10, 2026, will be considered for deferred action under the 2022 policy.” Declaration of Joseph Elie-Meyers, Ex. A at 5.

Despite this, the Government continues to treat the Strong Factors Standard as though it had been rescinded in considering deferred action for young people whose SIJS petitions were approved on or after June 6, 2025, and were filed before May 10, 2026, and for SIJS beneficiaries with deferred action who filed a renewal request before May 10, 2026 (collectively, the “Affected SIJS Beneficiaries”). On May 6, 2026, the Government confirmed by email to Plaintiffs’ counsel that the rescission of the Strong Factors Standard remains in effect, stating that “all SIJs who are not in the *Accardi* subclass [i.e., the subclass denied deferred action adjudication prior to the formal announcement of the 2025 Rescission Policy] will be automatically considered for SIJ deferred action if a visa is unavailable, per the 2022 policy, *but the factors considered and the weight given to them will not be the same as for the Accardi subclass.*” Decl. of Joseph Elie-Meyers, Ex. A at 2 (emphasis added). In other words, entirely irrespective of the new 2026 Rescission Policy, the Government continues to implement the District Court orders that form the basis of this appeal; the new rescission policy has no effect on the partial stay of the 2025 Rescission Policy that is currently in effect.

D. The Government's Refusal to Apply the Strong Factors Standard Affects Tens of Thousands of SIJS Beneficiaries.

Whether USCIS applies the Strong Factors Standard will affect whether tens of thousands of SIJS beneficiaries and DA renewal applicants receive protection from removal and eligibility for work authorization through deferred action. The most recent data published by USCIS show that as of September 30, 2025, there were 33,693 pending SIJS petitions.¹ And in the four months prior to September 30, 2025, an additional 19,356 SIJS petitions were granted. *Id.* As of the end of September 2025, therefore, there were a total of 53,049 *SIJS petitioners and beneficiaries* subject to the policies in effect *before* the May 10 effective date of the 2026 Rescission Policy. Given that, on average, approximately 5,000 SIJS petitions were approved each month of fiscal year 2025, *id.*, in the more than seven months between October 1, 2025, and May 10, 2026, tens of thousands more SIJS petitions have presumably been granted. This does not account for the additional applications to renew SIJS deferred action that were also filed in the period leading up to May 10, 2026. All of these individuals depend on the outcome of this appeal to determine

¹ USCIS, *Form I-360, Petition for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) Pending, Completions, Processing Time, Requests for Evidence and Notice of Intent to Deny by Fiscal Year and Quarter* (Fiscal Year 2025, Quarter 4), https://www.uscis.gov/sites/default/files/document/data/i360_sij_congressional_fy_2025_q4_v1.xlsx (last visited May 22, 2026).

whether USCIS must apply the Strong Factors Standard in adjudicating their deferred action.

On May 15, the Government filed the present motion to dismiss the appeal as moot, which Plaintiffs now oppose.

II. LEGAL STANDARD

The mootness doctrine is derived from the Constitution’s Article III requirement that a live case or controversy must exist at all stages of federal court proceedings. *Neurological Surgery Prac. of Long Island, PLLC v. United States Dep’t of Health & Hum. Servs.*, 145 F.4th 212, 223 (2d Cir. 2025). “A case becomes moot only when it is impossible for a court to grant ‘any effectual relief whatever’ to the prevailing party.” *Am. Freedom Def. Initiative v. Metro. Transp. Auth.*, 815 F.3d 105, 109 (2d Cir. 2016) (quoting *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012)); accord *Cook v. Colgate Univ.*, 992 F.2d 17, 19 (2d Cir. 1993). “[A]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” *Ellis v. Bhd. of Ry., Airline & Steamship Clerks, Freight Handlers, Express & Station Emps.*, 466 U.S. 435, 442 (1984).

III. ARGUMENT

This appeal is not moot because tens of thousands of SIJS beneficiaries and DA renewal applicants will receive deferred action adjudications under a standard

to be determined by this appeal. The 2025 Rescission Policy at issue here—which includes both the sub silentio abandonment and formal rescission of the SIJS Deferred Action Policy—has not been fully superseded, as the Government continues to treat the Strong Factors Standard as having been rescinded. This concretely affects the rights and legal interests of SIJS beneficiaries entitled to automatic deferred action adjudications. As such, there remains “a live controversy” for which this Court can grant “effectual relief whatever to the prevailing party.” *Knox*, 567 U.S. at 307 (citation modified). The Government presents no argument or authority to the contrary, instead relying on mischaracterizations of the facts and the effect of the new 2026 Rescission Policy. The motion to dismiss the appeal as moot must be denied. *See ABN Amro Verzekeringen BV v. Geologistics Am., Inc.*, 485 F.3d 85, 94 (2d Cir. 2007) (case was not moot where “[t]he parties continued to have a personal stake in a practical dispute, and a legally cognizable interest in the litigation”).

A. The District Court Order Did Not Stay Central Elements of the 2025 Rescission Policy, Which Continue to Affect the Rights and Legal Interests of Plaintiffs.

The 2025 Rescission Policy purported to revoke the 2022 SIJS Deferred Action Policy in its entirety, terminating both automatic consideration for deferred action and the Strong Factors Standard under which those adjudications had been conducted. Yet even while holding that the 2025 Rescission Policy was likely

arbitrary and capricious, the District Court’s stay order under APA Section 705 left undisturbed the portion of that policy rescinding the Strong Factors Standard as set forth in the Pre-Rescission USCIS Policy Manual. This appeal seeks redress for that error, which continues to affect the legal rights and interests of parties such that Plaintiffs maintain a “legally cognizable interest [and] practical personal stake” in the outcome of this appeal. *Tanasi v. New All. Bank*, 786 F.3d 195, 200–01 (2d Cir. 2015) (citation modified).

The Strong Factors Standard that the District Court allowed the Government to abandon is the core feature that distinguishes SIJS deferred action from the more general form of deferred action available to all noncitizens on narrow grounds, usually to address medical or family emergencies. ECF No. 6, Pls.’ Br. at 20–21; *see also* USCIS Policy Manual, Vol. I, Pt. I, Ch. 5 (May 8, 2026) (stating that USCIS considers deferred action requests only in “extraordinary and compelling situations”), <https://www.uscis.gov/policy-manual/volume-1-part-i-chapter-5>. The elimination of the Strong Factors Standard has life-altering effects and profound legal consequences for the tens of thousands of Affected SIJS Beneficiaries, by removing from consideration the factors designed to take account of their unique circumstances and vulnerabilities. Pls.’ Br. at 29–34.

Yet, regardless of its claim that the 2026 Rescission Policy fully superseded the 2025 Policy, the Government has specifically acknowledged its continuing

refusal to apply the Strong Factors Standard to the Affected SIJS Beneficiaries. Indeed, the Government is restricting application of the Strong Factors Standard only to those protected by the District Court's order: the proposed *Accardi* subclass. The Government will strip all others of the benefits of this Standard, as the District Court allowed: "[A]ll SIJs who are not in the *Accardi* subclass will be automatically considered for SIJ deferred action if a visa is unavailable, per the 2022 policy, but the factors considered and the weight given to them will not be the same as for the *Accardi* subclass." Decl. of Joseph Elie-Meyers, Ex. A at 2. In other words, the Government persists in its challenged policy of discounting SIJS and its eligibility criteria as strong factors when adjudicating deferred action for tens of thousands of SIJS beneficiaries.

The outcome of this appeal will therefore continue to determine whether the Strong Factors Standard should be applied to these individuals (or should have been applied to those for whom an adjudication will have been made before the resolution of this appeal), an outcome with both legal and practical consequences for them. The appeal therefore is not moot. *Tanasi*, 786 F.3d at 200–01. *See also Alharbi v. Miller*, 829 F. App'x 570, 571–72 (2d Cir. 2020) (APA action seeking to compel adjudication and issuance of certain visas was not mooted by widespread issuance of sought visas, because those denied visas "continue to seek an order on the merits compelling the Government to issue visas to them").

B. The 2025 Rescission Policy and the District Court Orders Continue to Harm Plaintiffs and Other SIJS Beneficiaries.

The 2026 Rescission Policy does not supersede the challenged 2025 Rescission Policy. None of the Government's cited authority supports its claim that an APA action is automatically mooted by subsequent agency action when the original, challenged action has continuing legal and practical effect. And the undeveloped argument that the District Court's stay order has itself been superseded is completely meritless. The motion should be denied.

1. The 2026 Policy Does Not Supersede the 2025 Policy.

The Government's motion hinges on the effect of the 2026 Rescission Policy, which the Government claims "supersedes the previous rescission" such that the 2025 Rescission Policy at issue "no longer exists." Dkt. No. 63, Mot. at 12. This argument fails as a matter of fact and law. The plain language of the 2026 Rescission Policy, and the Government's own admissions, make clear that the challenged 2025 Rescission Policy has not itself been superseded: the termination of the Strong Factors Standard remains operative and continues to have legal effect. And the Government does not and cannot point to any authority supporting its erroneous position that a subsequent agency action moots a prior agency action that it does not expressly supersede or practically displace.

First, the 2026 Rescission Policy does not supersede or otherwise nullify the challenged 2025 rescission of the SIJS Deferred Action Policy, including the Strong

Factors Standard, as the Government claims. Mot. at 12. To the contrary, the 2026 Rescission Policy became effective on May 10, 2026, and did not purport to supersede the 2025 Rescission Policy. *Id.* at 1, 7, 9. Because the 2026 Rescission Policy “is prospective” only, Mot., Ex. B, at 7, the Government’s refusal to apply the Strong Factors Standard to the Affected SIJS Beneficiaries—all of whom filed their SIJS petitions or renewal applications *before* the effective date of the 2026 Rescission Policy—can only be by operation of the Government’s sub silentio or express abandonment of the Strong Factors Standard, which together constitute the challenged 2025 Rescission Policy. This appeal challenges exactly those elements of the 2025 policy change that continue to have legal effect. *See Tanasi*, 786 F.3d at 200–01.

Second, the Government’s argument is wrong as a matter of law: subsequent agency action, without more, does not automatically displace prior agency action or moot challenges to the same. The Government’s lead case in fact clarifies why this appeal is not moot. Mot. at 8–9. In *Biden v. Texas*, 597 U.S. 785, 808 (2022), the Supreme Court held that new agency action superseded a prior action when the agency “dealt with the problem afresh,” but that was because the new memorandum made clear “by its own terms” that it superseded the prior memo challenged through litigation: the memo expressly stated that it “hereby supersede[d] and rescind[ed] the [previous] memorandum.” *Id.* Here, in contrast, the 2026 Rescission Policy does

not supersede the 2025 Policy at issue, either by its own terms or by its practical effect.

No other case cited by the Government supports the remarkable proposition that new agency action, without more, supersedes, and thereby moots challenges to, a prior agency action that continues to have legal and practical effect. *Department of Homeland Security v. Regents of the University of California*, Mot. at 8, certainly does not: there, the subsequent memo the Supreme Court considered did not involve any new agency action at all, but rather “provide[d] further explanation” for the original rescission policy. 591 U.S. 1, 19–21 (2020).

In each of the Government’s other cases, unlike here, there was no factual or legal dispute that the new agency action wholly superseded the prior agency action challenged through litigation. *See* Mot. at 9–10; *Citizens for Resp. & Ethics in Wash. v. Wheeler*, 352 F. Supp. 3d 1, 11 (D.D.C. 2019) (revised records management policy replaced old policy entirely); *Akiachak Native Cmty. v. U.S. Dep’t of the Interior*, 827 F.3d 100, 107–11, 113–14 (D.C. Cir. 2016) (new regulation addressing the district court’s injunction against the previous regulation completely eliminated the elements of the prior regulation that had been found unlawful, and no claim for relief remained live after new regulation was promulgated); *Gulf of Me. Fishermen’s All. v. Daley*, 292 F.3d 84, 88 (1st Cir. 2002) (originally challenged regulation entirely “defunct” as it was completely replaced by a series of other regulations, such that

every issue in the original lawsuit was now governed by new regulations); *Ozinga v. Price*, 855 F.3d 730, 734 (7th Cir. 2017) (challenge to contraception mandate of Affordable Care Act mooted by regulatory accommodation that “remove[d] the complained-of defect” such that “the mandate no longer posed a prospective harm to the company, and there was no longer any action for the court to take”).

The remaining cases the Government relies on are also inapposite because, in each of those cases, there remained no means of redress for the defects in the superseded agency action. Mot. at 10. That was the case in *Wyoming v. U.S. Department of Agriculture*, 414 F.3d 1207, 1212 (10th Cir. 2005) (challenged prohibition on road construction eliminated during pendency of the appeal, such that determination of issue on appeal would not “‘have some effect in the real world’” (citation omitted)); in *Wheeler*, 352 F. Supp. 3d at 11 (after issuance of new policy and departure of agency head, no remaining remedy for challenge to agency failure to create and maintain certain records); in *Akiachak*, 827 F.3d at 107–111 (no remaining relief to be granted to intervenor state after promulgation of expressly superseding regulation); and in *Frank v. Minnesota Newspaper Association, Inc.*, 490 U.S. 225, 227 (1989) (plaintiffs agreed to “forgo any further claim” to declaratory or injunctive relief in light of the government’s concession that the challenged statute did not apply to the conduct at issue). Mot. at 10.

Here, in contrast, a decision on the issue on appeal will have legal and practical effects on the standard applied in considering deferred action for thousands of SIJS beneficiaries. This appeal is not moot.

2. The District Court’s Stay Order Has Not Been Lifted.

The Government also gestures at arguing that the District Court’s order was *itself* superseded by the 2026 Deferred Action Policy. Mot. at 7–8. As explained above, those portions of the District Court’s orders that permit the Government to ignore the Strong Factors Standard continue to have legal and practical consequences for the Affected SIJS Beneficiaries.

And to the extent the Government argues that the stay itself was vacated by the promulgation of “a valid rescission policy,”² thus also mooting this appeal, that argument is plainly incorrect: lifting the stay would simply ensure that the 2025 Rescission Policy continues to deprive Affected SIJS Beneficiaries of adjudication under the Strong Factors Standard. In any case, the District Court stay is a judicial order that no court has dissolved or modified. Judicial orders do not automatically sunset upon changed circumstances: a party seeking dissolution must move the court

² The Government’s unilateral assessment of the new policy as “valid” is also without merit. There has been no judicial determination regarding the validity of the new rescission policy, which is not at issue in this litigation. And even if the prospective new policy is subject to an APA challenge in the future, that will not address or resolve whether the Strong Factors Standard must be applied to deferred action determinations for the tens of thousands of young people with SIJS who will not be subject to the new policy.

for relief. *See, e.g., Weight Watchers Int’l, Inc. v. Luigino’s, Inc.*, 423 F.3d 137, 141 (2d Cir. 2005) (“The decision whether to modify a preliminary injunction involves an exercise of the same discretion that a court employs in an initial decision to grant or deny a preliminary injunction.”); *Washington v. United States Dep’t of Housing & Urban Development*, 171 F.4th 473, 491 (1st Cir. 2026) (holding it is a movant’s “obligation to demonstrate to the district court that an intervening change in fact or law ‘warrant[ed] the discontinuation’ of the preliminary injunctions” (citation omitted)) (cleaned up); *Karnoski v. Trump*, 926 F.3d 1180, 1198 (9th Cir. 2019) (“A party seeking modification or dissolution of an injunction bears the burden of establishing that a significant change in facts or law warrants revision or dissolution of the injunction.” (citation omitted)).

C. The Government’s Request to Stay the Briefing Schedule Should Be Denied for the Same Reasons Explained in the Motion to Expedite.

This Court should also deny the Government’s request to stay the briefing deadlines. In granting Plaintiffs’ motion to expedite, this Court made a considered judgment that prompt resolution of this appeal serves the interests of justice. More specifically, this Court implicitly agreed that good cause existed to expeditiously resolve the applicable standard under which USCIS is adjudicating and will adjudicate tens of thousands of deferred action determinations for vulnerable SIJS beneficiaries. *See* ECF No. 31.1; ECF No. 25.1. The Government now disregards

this judgment and seeks, without offering any legal or factual basis, a stay of the expedited briefing deadlines this Court ordered. ECF No. 63.1. But the stay of a court-ordered briefing schedule is discretionary relief that must be affirmatively justified; it does not automatically follow from the filing of a motion to dismiss. *See* Local Rule 27.1(f)(1) (“A deadline for a brief remains in effect unless the court orders otherwise.”). The Government has presented no such justification: it has not shown it would be prejudiced by the merits briefing proceeding as scheduled, demonstrated that its motion to dismiss presents a clear jurisdictional defect on mootness or any other grounds, or presented authority of any kind that would warrant overriding the considered judgment of the Court in expediting the appeal.³

To the extent that this Court determines that the Government has presented a serious question about the Court’s jurisdiction over this appeal by arguing that it is moot, the Court can readily resolve that question with the benefit of full briefing on the merits. A stay, by contrast, would reward the Government for filing a meritless mootness motion, penalize the tens of thousands of SIJS beneficiaries already at risk of immigration enforcement, and effectively give the Government the delay they seek without any showing that they are entitled to it. Further delay increases the risk of widespread and possibly irreversible unlawful agency action leading to

³ Apparently assuming that its request for an extension was sufficient to secure one, the Government failed to file its responsive brief on the court-ordered due date of May 22. Dkt. No. 31.1.

irreparable harm, and this Court should deny the Government's request to stay the briefing schedule.

IV. CONCLUSION

The Court should deny the Government's motion to dismiss the appeal and request to stay the briefing schedule.

DATED: May 26, 2026

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CERTIFICATE OF COMPLIANCE

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May 26, 2026

/s/ John Magliery
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