

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 26-236

Caption [use short title]

Motion for: Leave to File Sur Reply

A.C.R. et al., v. Markwayne Mullin, et al

Set forth below precise, complete statement of relief sought:

Plaintiffs respectfully seek leave to file a sur reply  
in further opposition to Defendants' motion to dismiss  
the appeal as moot, in order to address new arguments  
raised for the first time in Defendants' reply brief.

MOVING PARTY: A.C.R. et al.

OPPOSING PARTY: Markwayne Mullin et al.

☒ Plaintiff

☐ Defendant

☐ Appellant/Petitioner

☐ Appellee/Respondent

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Court- Judge/ Agency appealed from: Eastern District of New York; Judge Eric Komitee

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is the oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ Natalie J. Kraner

Date: 06/05/2026

Service : ☒ Electronic ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

Case No. 26-236

**PLAINTIFFS' UNOPPOSED  
MOTION FOR LEAVE TO FILE  
SUR-REPLY IN FURTHER  
OPPOSITION TO MOTION TO  
DISMISS APPEAL AS MOOT**

Plaintiffs respectfully move this Court for leave to file a sur-reply in further opposition to Defendants' motion to dismiss the appeal as moot, solely to address arguments raised for the first time in Defendants' reply brief. Plaintiffs' proposed sur-reply is attached as Exhibit A, and a declaration in support of the proposed sur-reply is attached as Exhibit B. In accordance with 2d Cir. LR 27.1, Plaintiffs' counsel informed counsel for Defendants on June 4, 2026, of the relief sought by this motion and requested Defendants' position. On June 5, 2026, counsel for Defendants stated that they do not oppose the relief sought by this motion.

This Court has previously granted permission to file sur-replies when warranted, including when a party's reply brief raises new arguments. *See, e.g., Plotch v. Wells Fargo Bank, N.A.*, 758 F. App'x 221 (2d Cir. 2019) (summary order);

*Ferrick v. Diable*, No. 18-1702, 2018 WL 6431410 (2d Cir. Oct. 9, 2018) (citing Fed. R. App. P. 2); *Atkins v. Chappius*, No. 20-3914, 2021 WL 2011197 (2d Cir. Apr. 13, 2021); *Rolle v. Shields*, No. 16-2307, 2017 WL 6759305 (2d Cir. Apr. 26, 2017).

Here, having never raised this issue in their motion to dismiss or any time prior, Defendants argue in their reply brief that this appeal is moot because its outcome will supposedly no longer benefit the nine Individual Plaintiffs, some of whom were granted deferred action during the pendency of the appeal and others of whom cannot currently renew their deferred action. Dkt. 66.1 at 8–10. And, Defendants continue, the tens of thousands of SIJS beneficiaries and deferred action renewal applicants whose deferred action adjudications will be impacted by this Court’s ruling on the appeal are purportedly irrelevant for purposes of mootness, as the District Court has not yet ruled on Plaintiffs’ fully briefed class certification motion or determined whether the Organizational Plaintiffs have standing. *Id.* at 8.<sup>1</sup>

By contrast, Defendants’ sole argument in their motion to dismiss was that the 2026 Rescission Policy superseded both the 2025 Rescission Policy and the District Court’s APA stay. Dkt. 63.1 at 7. Nowhere did Defendants raise the purported mootness of Individual Plaintiffs’ interests in the appeal—even though relevant

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<sup>1</sup> All capitalized terms not otherwise defined herein have the meanings ascribed in Plaintiffs’ Opposition to Motion to Dismiss Appeal, Dkt. 64.1.

events occurred long before Defendants filed their motion to dismiss—nor did they claim that the putative class members’ and organizational plaintiffs’ interests are supposedly irrelevant for purposes of the appeal.

Accordingly, Plaintiffs respectfully request that the Court exercise its discretion and grant them the opportunity to file the proposed sur-reply briefly responding to Defendants’ new arguments, which are wrong.

DATED: June 5, 2026

Respectfully submitted,  
/s/ Natalie J. Kraner

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## **CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) this document contains 445 words. Pursuant to Fed. R. App. P. 27(d)(1)(E), this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14-point font.

/s/ Natalie J. Kraner  
NATALIE J. KRANER

# EXHIBIT A

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.

**[PROPOSED] SUR-REPLY IN  
FURTHER OPPOSITION TO  
MOTION TO DISMISS APPEAL  
AS MOOT**

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In their reply, Defendants argue for the first time that this appeal is moot because its outcome will no longer benefit the nine Individual Plaintiffs, some of whom were granted deferred action during the pendency of the appeal, others of whom cannot currently renew their deferred action. Dkt. No. 66.1 at 8–10. Defendants are wrong. The APA stay entered by the District Court impacts all individuals affected by Defendants’ unlawful 2025 Rescission Policy, not just the Individual Plaintiffs.<sup>1</sup> Given the inherently transitory nature of the claims in this putative class action, the Individual Plaintiffs need not have actively pending deferred action adjudications or renewal requests to represent the interests of the tens of thousands of others who are unquestionably impacted by this appeal. And because the claims of one Plaintiff are capable of repetition, yet would otherwise evade review, they are exempt from mootness regardless. Finally, although the District Court did not decide this issue, there can be no question that the Organizational Plaintiffs have standing to pursue this appeal, as well.

### **RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs—nine individuals and two organizations—brought a putative class action lawsuit on July 17, 2025, seeking injunctive and declaratory relief, as well as APA vacatur of the 2025 Rescission Policy. ECF No. 1. Plaintiffs simultaneously

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<sup>1</sup> All capitalized terms not otherwise defined herein have the meanings ascribed in Plaintiffs’ Opposition to Motion to Dismiss Appeal, Dkt. No. 64.1.

moved for preliminary relief on behalf of three putative classes they sought to certify: the Deferred Action Class (including the later-defined *Accardi* Subclass), Renewal Class, and EAD (Employment Authorization Document) Subclass.<sup>2</sup> The District Court granted an APA stay, thereby postponing the effective date of the 2025 Rescission Policy as to all putative class members. SPA-44–45 (“[T]he SIJS-DA rescission will be stayed pursuant to Section 705 of the APA. The government must therefore conduct deferred-action and employment-authorization adjudications pursuant to the 2022 Policy Alert, pending promulgation of a valid rescission policy or further order from this Court.”).

Given the breadth of this relief, the District Court concluded that it did not need to decide Plaintiffs’ class certification motion, which remains pending. SPA-48 (“Class certification is unnecessary for purposes of seeking a stay and eventual vacatur under APA Sections 705 and 706”) (footnote omitted); *see also id.* at n.25 (acknowledging that “*Trump v. CASA* expressly left open the possibility that

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<sup>2</sup> The Deferred Action Class refers to SIJS beneficiaries who were denied consideration for deferred action under the 2025 Rescission Policy. The *Accardi* Subclass comprises members of the Deferred Action Class who were denied consideration for deferred action before the Government publicly announced the 2025 Rescission Policy. The Renewal Class includes SIJS beneficiaries who have deferred action but who are ineligible to renew their deferred action because of the 2025 Rescission Policy. The EAD Subclass comprises members of the Renewal Class who have applied for or will apply for an employment authorization document (EAD) but whose applications will not be adjudicated because of the 2025 Rescission Policy. ECF No. 60 at 10.

plaintiffs could obtain universal injunctive relief by seeking vacatur under the APA.”) (citing 606 U.S. 831, 847 n.10 (2025)); SPA-47 (concluding that the “other requested injunctive relief” Plaintiffs sought on behalf of the putative class members “is largely superfluous given the APA stay”). Similarly, having determined that the Individual Plaintiffs all had standing to bring the case, the District Court concluded that it was unnecessary to decide the issue of the Organizational Plaintiffs’ standing. SPA-13 n.9.

However, the District Court clarified that its stay, while restoring the right to deferred action adjudications for all putative class members, would not restore adjudication under the Strong Factors Standard required by the Pre-Rescission USCIS Policy Manual. SPA-45 n.24. In denying Plaintiffs’ subsequent motion to reconsider that aspect of its order, the District Court further made clear that in fact only one distinct putative subclass, the “*Accardi* subclass,” would benefit from the Strong Factors Standard during the pendency of the stay. SPA-59. Whether the District Court erred by granting different relief among the different putative class members under its APA stay is the issue on appeal before this Court.

Since the District Court issued the stay, and since this appeal has been pending, much has changed for putative class members: some in the putative Deferred Action Class, like Individual Plaintiffs A.C.R., J.G.V., E.A.R., and C.V.R., were granted deferred action as a direct result of the stay. Dkt. No. 67.1 at 3–10. Others in the

putative Renewal Class, like Y.A.M., J.C.B., and B.R.C., became eligible for lawful permanent residence after the filing of this appeal, and thus—at least at the moment—may not be eligible to renew their deferred action. *Id.* at 16, 19, 22.

However, because of the nature of the SIJS visa backlog and the State Department’s monthly Visa Bulletin on which it depends, SIJS beneficiaries’ eligibility for deferred action is by definition temporary, unpredictable, and shifting. Eventually, nearly all SIJS beneficiaries will get out of the backlog as their “priority date” (the date they applied for SIJS) becomes “current” under the Visa Bulletin. But not only do the monthly Visa Bulletin’s listed dates move forward, they can also move backward from one month to the next, such that a noncitizen could be out of the backlog one month and back in the next. This phenomenon is called “visa retrogression” and it happens with some frequency and more often during the last months of the USCIS fiscal year, which ends on September 30 each year.<sup>3</sup> Indeed, in an explanatory note repeated in each Visa Bulletin from March to June, the Department of State warns that the Visa Bulletin may retrogress: “Note that as additional immigrant visa demand materializes, or administration actions are

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<sup>3</sup> See USCIS, Visa Retrogression (Oct. 11, 2024), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/visa-retrogression> (“Retrogression typically occurs toward the end of the fiscal year as visa issuance approaches the annual category, or per-country limitations. Sometimes a priority date that meets the cut-off date one month will not meet the cut-off date the next month.”).

amended, retrogression may be necessary in the upcoming months to keep issuances within annual limits.”<sup>4</sup>

The constantly shifting nature of the Visa Bulletin is illustrated by the experience of Y.A.M., J.C.B., and B.R.C. themselves: at the time this appeal was filed, their priority dates were not current; then, they became current; and now, they are likely to retrogress. They, and tens of thousands of other putative class members outside the *Accardi* subclass, still need or will likely need deferred action. The District Court’s decision to deprive the Affected SIJS Beneficiaries<sup>5</sup> of adjudication for deferred action under a standard that accounts for their distinct circumstances thus continues to affect thousands, and this appeal is not moot.

### ARGUMENT

Defendants’ belated mootness arguments fail. “[T]he burden of showing mootness logically falls on a defendant because, ‘by the time mootness is an issue, the case has been brought and litigated, often (as here) for years. To abandon the case at an advanced stage may prove more wasteful than frugal.’” *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016) (citation omitted).

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<sup>4</sup> See, e.g., Dep’t of State, *Visa Bulletin* (June 2026), Dkt. No. 68.1 at 8–9.

<sup>5</sup> As explained in Plaintiff-Appellants’ Opposition to Motion to Dismiss Appeal, the “Affected SIJS Beneficiaries” include putative class members whose SIJS petitions were approved on or after June 6, 2025, and filed before May 10, 2026, as well as those who applied to renew their preexisting grants of deferred action by May 10, 2026. Dkt. No. 64.1 at 11.

Moreover, “the Supreme Court has viewed mootness claims skeptically when they are not timely raised.” *Id.* at 604 (citing *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 288 (2000)). Here, Defendants’ newly raised arguments cannot carry their burden. For each of the reasons below, the Court should reject Defendants’ arguments and deny their motion to dismiss.

### **I. The Claims on Behalf of the Putative Classes Are Not Moot.**

To suggest that the District Court did not order relief covering all putative class members and that the claims and interests of the thousands subject to the stay are moot is not tethered to the facts or procedural history of this case, nor to the settled law governing relief available to an uncertified class.

*First*, Defendants incorrectly claim that there are only “nine individual plaintiffs in this lawsuit who stood to benefit from the District Court’s preliminary injunction and Stay.” Dkt. No. 66.1 at 8. As explained above, the District Court issued an APA stay directly applicable to and for the purpose of providing relief to all SIJS beneficiaries who were harmed by the unlawful 2025 Rescission Policy. *See supra* 2–3. In its decision granting the APA stay, the District Court recognized that the Individual Plaintiffs, as representatives of the putative classes, faced irreparable harm and that the APA claims—all pled as class claims—are likely to succeed on the merits. SPA-24–43. The District Court’s order made clear that the APA stay postponed the 2025 Rescission Policy as to *all* SIJS beneficiaries, not just the

Individual Plaintiffs. SPA-44–45. Moreover, the District Court explained that it deferred ruling on Plaintiffs’ pending class certification motion precisely because it viewed “[c]lass certification [a]s unnecessary for purposes of seeking a stay and eventual vacatur under APA Sections 705 and 706,” SPA-48, which relief would benefit all Affected SIJS Beneficiaries.

Thus, it is beyond dispute that the District Court’s APA stay provides relief to the putative classes. Indeed, the District Court crystallized the classwide nature of the relief in the Orders on appeal, which expressly apply to one subclass and not others. The District Court held that the Strong Factors Standard applies to the *Accardi* subclass and explained that putative class members outside this narrow subclass do not benefit from that same standard. *Supra* 3–4. The differential treatment of the two categories of SIJS beneficiaries who are subject to the APA stay is the genesis of this appeal. *Id.*

*Second*, Defendants’ contention that the District Court needed to rule on Plaintiffs’ class certification motion before issuing classwide relief is incorrect. Courts have consistently recognized that named plaintiffs may seek relief that benefits a putative class before certification—particularly when seeking an APA § 705 stay. *See, e.g., Doe v. Noem*, --- F.Supp.3d ----, 2026 WL 1192079, at \*9 (S.D.N.Y. May 1, 2026) (granting an APA § 705 stay, without certifying the class, to postpone the effective date of the termination of Yemenis’ Temporary Protected

Status designation in putative class action brought by 16 plaintiffs on behalf of themselves and more than 3,200 Yemeni nationals); *Cabrera v. U.S. Dep’t of Lab.*, 792 F. Supp. 3d 91, 106-07 (D.D.C. 2025), *appeal dismissed*, No. 25-5340, 2025 WL 3635881 (D.C. Cir. Dec. 15, 2025) (issuing an APA stay in a putative class action without certifying a class); *Doe v. Noem*, No. 25 C 15483, --- F. Supp. 3d ---, 2026 WL 184544, at \*26 (N.D. Ill. Jan. 23, 2026) (same); *see also Sharif by Salahuddin v. N.Y. State Educ. Dept.*, 709 F.Supp. 345, 359 (S.D.N.Y. 1989) (“A court need not certify a class prior to granting a preliminary injunction.”). As this Court recognized in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012), plaintiffs with individual standing may seek relief that benefits a putative class before certification. Because the District Court’s APA stay granted relief covering the putative classes, the putative class members have an ongoing and very live interest in this appeal and the issues presently before this Court.<sup>6</sup>

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<sup>6</sup> Indeed, even in cases that are not brought as class actions, APA § 705 stays operate to prevent unlawful agency action as to all impacted individuals, not just individual plaintiffs. *See, e.g., Make the Rd. N.Y. v. Noem*, No. 25-5320, 2025 WL 3563313, at \*34–36 (D.C. Cir. Nov. 22, 2025) (rejecting argument that APA stay should be limited to parties before the court and noting that the Supreme Court has twice in recent years stayed agency actions in their entirety under § 705 “without narrowing its relief to the parties at hand”); *Louisiana ex rel. Murrill v. FDA*, 175 F.4th 310, 323 (5th Cir. 2026) (acknowledging that APA stays may, “as a practical matter, have a nationwide effect”) (citation omitted); *cf. Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 830–31 (2024) (Kavanaugh, J., concurring) (“Over the decades, th[e] Court has affirmed countless decisions that vacated agency

*Third*, Defendants’ argument that this appeal should be dismissed because some of the Individual Plaintiffs received deferred action determinations in accordance with the APA stay is likewise fatally flawed. Dkt. No. 66.1 at 8. The Individual Plaintiffs filed a class action complaint and accompanying certification motion in July 2025—months before A.C.R., J.G.V., E.A.R., and C.V.R. were granted deferred action pursuant to the District Court’s stay. This case therefore implicates the well-established Second Circuit precedent that inherently transitory class claims relate back to the time of filing. This remains the rule even when a class has not yet been certified. Individual Plaintiffs can therefore continue to represent the interests of the putative class members who are entitled to deferred action determinations under the APA stay and litigate the class claims on their behalf.

In *Robidoux v. Celani*, for example, named plaintiffs brought a class action suit against defendant government officials for delaying adjudication of social welfare benefits for which they had applied, and defendants awarded the benefits after the plaintiffs filed for class certification but before the court ruled on the motion. 987 F.2d 931, 934 (2d Cir. 1993). This Court held that some of the plaintiffs maintained standing because, *at the time the complaint was filed*, they had suffered injuries that were likely to be redressed by the requested relief. *Id.* at 938. Therefore,

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actions . . . rather than merely providing injunctive relief that enjoined enforcement of the rules against the specific plaintiffs.”).

even though the plaintiffs received their benefits after the litigation commenced, “the termination of a class representative’s claim does not moot the claims of the unnamed members of the class,” when, as here, the claims are inherently transitory and the timing is controlled by the Government’s own actions. *Id.* at 938–39 (citing *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975); *Sosna v. Iowa*, 419 U.S. 393, 401–02 (1975)); *see also Amador v. Andrews*, 655 F.3d 89, 100–01 (2d Cir. 2011) (finding that the putative class claims of prisoners who challenged failures to protect female inmates from sex offenses were not mooted by named plaintiffs’ release from prison).

In fact, “[e]ven where the class is not certified until after the claims of the individual class representatives have become moot, certification may be deemed to relate back to the filing of the complaint in order to avoid mooting the entire controversy.” *Robidoux*, 987 F.2d at 939 (citing *Cty of Riverside v. McLaughlin*, 500 U.S. 44, 50–51 (1991)); *see also Patton v. Fitzhugh*, 131 F.4th 383, 397–98 (6th Cir. 2025) (confirming that the filing of a class action complaint and a fully briefed class certification motion is sufficient for the inherently transitory exception to apply) (collecting cases).

Here too, the putative classes’ claims are inherently transitory: those who filed for SIJS before May 10, 2026, will become eligible for deferred action only if and when their SIJS petitions are approved, which is entirely in Defendants’ control, as

in *Robidoux*; Defendants also control the timing of deferred action adjudications for those already granted SIJS and for those seeking deferred action renewals; and all are subject to the vagaries of the Visa Bulletin, which determines when they will become eligible (and then often again ineligible) for lawful permanent residence, which may disqualify them for SIJS deferred action. The resolution of any individual claims therefore does not moot the claims of the putative class members whom they represent. Tens of thousands of those members are still awaiting deferred action determinations and will be impacted by the resolution of the issues in this appeal. The putative classes' claims are thus very much live, and the Individual Plaintiffs continue to have standing to litigate those claims on behalf of the classes.

In sum, whether Individual Plaintiffs are still awaiting their deferred action determinations or are eligible for deferred action renewal while the appeal is pending is irrelevant to the broader question of whether there is a live controversy before the Court. There undoubtedly is, given the tens of thousands of members of the putative classes who are impacted by the stay because they are awaiting deferred action adjudications under a standard to be determined by this Court.

## **II. Plaintiff Y.A.M.'s Claims Are Not Moot Because They Are Capable of Repetition While Evading Review.**

Even setting aside that tens of thousands of putative class members are relevant to this Court's jurisdiction, the "capable of repetition, yet evading review" exception blocks Defendants' argument that Plaintiff Y.A.M.'s claims are moot

because she has a currently available visa and thus will not be considered for SIJS deferred action at this time, despite her pending renewal application. Dkt. No. 66.1 at 10; Declaration of Stephanie E. Norton, Ex. A. What Defendants fail to acknowledge is that Y.A.M. may lose her visa availability in the coming months due to visa “retrogression,” making her once again eligible for, and in need of, SIJS deferred action as her wait for an available visa resumes. *See supra* 4–5.

As of September 2025 (the most recent month for which data is publicly available), more than 240,000 people were awaiting availability of EB-4 visas.<sup>7</sup> Given this demand for the limited visas allocated for the fiscal year ending September 30, 2026, retrogression is likely to cut off visa availability for Y.A.M.—and untold others. With her adjustment of status process again on hold, Y.A.M. would again be eligible for consideration for SIJS deferred action, *see supra* 4–5, and this appeal would determine the outcome of the adjudication of her pending renewal application.

Although a claim may become moot “when interim relief or events have eradicated the effects of the defendant’s act or omission,” *Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 647 (2d Cir. 1998), Defendants’ assertion of mootness

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<sup>7</sup> USCIS, *All USCIS Application and Petition Form Types (Fiscal Year 2025, Quarter 4)*, <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (last visited June 5, 2026).

fails because “a case is not moot if the underlying dispute between the two parties is ‘capable of repetition, yet evading review,’” *id.* (finding exception to mootness where permit denial occurred with insufficient time for judicial review before annual parade date and was capable of repetition). Plaintiffs “need not show a ‘demonstrated probability’ of recurrence” so long as there is “at least a ‘reasonable expectation’ of repetition.” *Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet*, 260 F.3d 114, 120 (2d Cir. 2001). This is not a case entailing “[m]ere speculation that the parties will be involved in a dispute over the same issue.” *Id.* The State Department has expressly signaled the potential for an upcoming retrogression in visa availability that will subject Y.A.M. to a deferred action renewal determination under a currently uncertain standard. *Supra* n.3. This exception to mootness will not permit Defendants to evade review when an Individual Plaintiff herself reasonably anticipates needing a deferred action adjudication under a standard to be determined in this appeal.

### **III. In Defense of Its Jurisdiction on Appeal, This Court Has Authority to Find That the Organizational Plaintiffs Have Standing.**

“[A] federal court always has jurisdiction to determine its own jurisdiction.” *United States v. Ruiz*, 536 U.S. 622, 628 (2002); *see also Brownback v. King*, 592 U.S. 209, 218–19 (2021) (same); *LeChase Constr. Servs., LLC v. Argonaut Ins. Co.*, 63 F.4th 160, 171 (2d Cir. 2023) (same). In defense of its jurisdiction on appeal, therefore, this Court has the authority to decide whether the Organizational Plaintiffs

have standing, even though the District Court did not rule on this question. *Strubel v. Comenity Bank*, 842 F.3d 181, 187 (2d Cir. 2016) (“Although Comenity challenges Strubel’s standing for the first time on appeal, because standing is necessary to our jurisdiction, we are obliged to decide the question at the outset.”); *Floyd v. City of N.Y.*, 302 F.R.D. 69, 115–16 (S.D.N.Y. 2014) (“Standing is jurisdictional, and courts always have jurisdiction to decide their own jurisdiction.”).

To carry their burden of establishing mootness, *Mhany Mgmt*, 819 F.3d at 603, Defendants would have to show that the Organizational Plaintiffs lack standing. Yet, Defendants do not even argue this point here, resting only on the fact that “the District Court deferred ruling on whether the organizational plaintiffs have standing.” Dkt. No. 66.1 at 8.

In any event, the Organizational Plaintiffs have standing to pursue this appeal. In *FDA v. Alliance for Hippocratic Medicine*, the Supreme Court affirmed the longstanding rule that organizations have standing where they are “not only . . . an issue-advocacy organization, but also operate[] [other] service[s]” and defendant’s actions “directly affect[] and interfere[] with [plaintiff’s] core business activities . . . .” 602 U.S. 367, 395 (2024) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 368, 379 (1982)). Organizational Plaintiffs here readily satisfy this test. Both are service providers—not merely “issue-advocacy” organizations—whose “core business activities” include providing legal representation and/or social service

support for young people seeking lawful immigration status. The many clients for whom the Organizational Plaintiffs have secured SIJS now face detention and removal, as well as deepening poverty and educational barriers, because they lack access to deferred action and employment authorization under the challenged 2025 Rescission Policy. As a result, the Organizational Plaintiffs must cut back on full-scope representation and/or social service assistance for other clients. *See generally* ECF No. 9-9 ¶¶ 22–24, 26–38, ECF No. 9-10 ¶¶ 15–17, 19–27. This is sufficient to establish organizational standing. *See Havens Realty*, 455 U.S. at 379; *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 110 (2d Cir. 2017).

### **CONCLUSION**

Because the Individual Plaintiffs continue to represent the interests of the tens of thousands of putative class members impacted by this appeal; one has individual claims that are capable of repetition; and the Organizational Plaintiffs have standing, this appeal remains live. Defendants’ motion to dismiss must therefore be denied.

DATED: June 5, 2026:

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limit of Local Rule 32.1(a)(4)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) this document contains 4,185 words.

Pursuant to Fed. R. App. 27(d)(1)(E), this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14-point font.

/s/ Natalie J. Kraner  
NATALIE J. KRANER

# EXHIBIT B

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

Case No. 26-236

**DECLARATION OF  
STEPHANIE E. NORTON IN  
SUPPORT OF PLAINTIFFS'  
SUR-REPLY IN OPPOSITION  
TO MOTION TO DISMISS  
APPEAL**

I, Stephanie E. Norton, declare under penalty of perjury and pursuant to 28 U.S.C. 1746 that the following is true and correct:

1. I am a Senior Staff Attorney at the National Immigration Project for the National Lawyer's Guild ("National Immigration Project"), counsel for Plaintiffs. I submit this declaration in support of Plaintiffs' Sur-Reply in Opposition to Defendants' Motion to Dismiss the Appeal. I have personal knowledge of the matters stated herein and I am competent to testify.

2. Attached as **Exhibit 1** is a true and correct copy of Plaintiff Y.A.M.'s Form I-797C, Notice of Action, confirming receipt by U.S. Citizenship and Immigration Services ("USCIS") of her Form G-325A, the application to renew her

deferred action and employment authorization. This document has been redacted in accordance with the District Court's protective order, ECF No. 66.

3. Also included as part of Exhibit A is a print-out of the results of searching Y.A.M.'s Form G-325A receipt number in USCIS's online case status search, which I did on today's date. The USCIS case status search indicates that Y.A.M.'s Form G-325A "is still being processed." This document has also been redacted in accordance with the District Court's protective order, ECF No. 66.

Executed this 5<sup>th</sup> day of June, 2026, in Laramie, Wyoming.

/s/ Stephanie E. Norton  
STEPHANIE E. NORTON

# EXHIBIT 1

**THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.**

|                              |                                           |                                                                   |
|------------------------------|-------------------------------------------|-------------------------------------------------------------------|
| Receipt Number<br>[REDACTED] | USCIS Online Account Number<br>[REDACTED] | Case Type<br>G325A - BIOGRAPHIC INFORMATION (FOR DEFERRED ACTION) |
| Received Date<br>12/22/2025  | Priority Date<br>12/22/2025               | Applicant<br>[REDACTED]                                           |
| Notice Date<br>01/30/2026    | Page<br>1 of 1                            |                                                                   |

Notice Type: Receipt Notice

Thank you for submitting your application, petition, or request. Our office is currently processing it.

This notice serves as the receipt notice for your Form G-325A, as well as your request for an Employment Authorization Document selected in Part 3.

Please verify your personal information listed above. If you need to make any changes, immediately notify the USCIS Contact Center using the phone number below.

**Next Steps:**

- We will schedule you for an appointment at a USCIS Application Support Center (ASC) for you to provide your fingerprints, photograph and/or signature.
- We will mail you a separate biometrics appointment notice with the specific date, time, and ASC location. Please wait until you receive your appointment notice before going to the ASC.

Be advised that this notice does **NOT** serve as notification of your biometrics appointment.

If you have any questions or comments regarding this notice or the status of your case, please contact the USCIS Contact Center toll free at 1-800-375-5283. If you are hearing impaired, please call the Contact Center TDD at 1-800-767-1833.

If you have questions about immigration benefits, services, filing information, or forms, please visit our website at [www.uscis.gov](http://www.uscis.gov) or call the NCSC.

If your mailing address changes while your case is pending, please update it through your USCIS Online Account or by calling the USCIS Contact Center.

You will be notified separately about any other application, petition, or request you may have filed with us.  
Please note that if a priority date appears on this notice, it does not reflect any earlier retained priority dates.

Please see the additional information on the back. We will notify you separately about any other cases you have filed.

USCIS encourages you to sign up for a USCIS online account. To learn more about creating an account and the benefits, go to <https://www.uscis.gov/file-online>.

National Benefits Center  
U.S. CITIZENSHIP & IMMIGRATION SVC  
P.O. BOX 25920  
Overland Park KS 66225

USCIS Contact Center: [www.uscis.gov/contactcenter](http://www.uscis.gov/contactcenter)

If you are visiting a field office and need directions, including public transportation directions, please see [www.uscis.gov/fieldoffices](http://www.uscis.gov/fieldoffices) for more information.

### **Notice for Customers with Disabilities**

To request a disability accommodation:

- Go to [uscis.gov/accommodations](http://uscis.gov/accommodations) to make your request online, or
- Call the USCIS Contact Center at 1-800-375-5283 (TTY 1-800-767-1833) for help in English or Spanish.

If you need a sign language interpreter, make your request as soon as you receive your appointment notice. The more advance notice we have of your accommodation request, the better prepared we can be and less likely we will need to reschedule your appointment. For more information about accommodations, visit [uscis.gov/accommodationsinfo](http://uscis.gov/accommodationsinfo).