No. 20-36052

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEOBARDO MORENO GALVEZ, *et al.*,

Plaintiffs-Appellees,

v.

TRACY RENAUD, *et al.*;

Defendants-Appellants.

DEFENDANTS-APPELLANTS' OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other

I. INTRODUCTION

Congress delegated authority to U.S. Citizenship and Immigration Services (USCIS) to administer the Special Immigrant Juvenile (SIJ) program, which provides certain immigrant juveniles a pathway to lawful permanent residence. As the agency charged with the administration of the SIJ program, USCIS adjudicates tens of thousands of SIJ petitions each year and creates SIJ policy. In 2008, Congress amended the SIJ statute, adding a provision that USCIS adjudicate SIJ petitions within 180 days of filing. USCIS, as the agency responsible for promulgating SIJ regulations and policy, interprets the 180-day provision in line with its long-standing regulation, which permits USCIS to toll adjudication deadlines when USCIS requires additional evidence or information from the petitioner to adjudicate the application. USCIS applies this interpretation nationwide to benefit SIJ petitioners so that they have adequate time to respond to USCIS's request. Plaintiffs-Appellees challenged USCIS's interpretation of the 180-day deadline, alleging that USCIS delayed adjudication of their SIJ petitions beyond 180 days, and requested an injunction ordering USCIS to adjudicate all Washington state SIJ petitions within 180 days. In the end, the district court rejected USCIS's administrative expertise and created its own permanent policy for SIJ adjudications.

The district court abused its discretion by permanently enjoining USCIS to adjudicate all Washington state SIJ petitions within 180 days without any leeway for extenuating circumstances. Disagreeing with USCIS's longstanding regulations regarding the timing of adjudications, the district court held that any tolling for Requests for Evidence (RFE) was unlawful. The district court then applied a novel interpretation that is not grounded in the statute or regulations and ordered that USCIS toll the statutory deadline only when an SIJ petitioner waived his or her right to have their petition adjudicated within 180 days. In determining whether an injunction was necessary, however, the district court abused its discretion because it failed to consider the hardship or nationwide inconsistencies that USCIS would encounter in implementing the permanent injunction. Now, to comply with the permanent injunction, USCIS must prioritize the adjudication of Washington state SIJ petitions over the thousands of SIJ petitions from the other 49 states. Because the district court failed to consider the effect that its order would have on other SIJ petitions, as well as the effect that its order would have on USCIS operations, it abused its discretion in ordering permanent injunctive relief.

Beyond the unbalanced equities, the district court also abused its discretion by relying upon stale evidence from the *preliminary* injunction proceedings to find irreparable harm. Indeed, there is no evidence in the record indicating that Plaintiffs-Appellees continue to suffer or are likely to suffer irreparable harm

absent injunctive relief given their current situation: the evidence in the record indicated that USCIS had adjudicated all class members' SIJ petitions within 180 days unless a novel or complex issue prevented adjudication, with a 93 percent approval rate. Because Plaintiffs-Appellees must show a likelihood of irreparable harm rather than just the possibility of irreparable harm, the district court abused its discretion in its irreparable-harm analysis by relying upon stale evidence and not acknowledging evidence of Plaintiffs-Appellees' current situation.

The district court also abused its discretion in determining the scope of relief. The order strips USCIS of its discretion in administering the SIJ program, prioritizes Washington state petitioners over petitioners from the 49 other states, and will ultimately prevent certain SIJ petitioners from obtaining SIJ classification. If the order stands, SIJ petitioners will lose the opportunity to submit additional evidence if USCIS determines that the petitioners did not meet their burden of proof toward the end of the 180-day deadline, and USCIS will have to deny their petitions. This is especially critical for SIJ petitioners who are approaching 21 years of age, as SIJ petitioners may only file for SIJ classification if they are under the age of 21. Although the district court attempted to avoid this situation by adopting Plaintiffs-Appellees' proposed tolling exception, this was also an abuse of discretion. The district court held that *any* tolling of the 180-day deadline was unlawful, but nonetheless allowed tolling whenever a petitioner requests it, without

any analysis as to whether such tolling is permissible under the SIJ statute or why this proposal was preferable over the proposal of USCIS—the agency charged with the administration of the SIJ program.

Because the district court failed to consider relevant evidence and ordered injunctive relief that is detrimental to nationwide operations, this Court should vacate the district court's order regarding the 180-day provision and remand for further proceedings or, alternatively, vacate the portion of the district court's order that permanently enjoins USCIS from tolling adjudications when it requires additional evidence.

II. STATEMENT OF JURISDICTION

On October 5, 2020, the district court granted summary judgment in favor of Plaintiffs-Appellees and entered a permanent injunction against Defendants-Appellants. Because no issues remain pending before the district court, the district court's October 5, 2020 decision is final, and this Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

III. STATEMENT OF THE ISSUES

(1) Did the district court abuse its discretion when it issued a permanent injunction requiring USCIS to adjudicate all SIJ petitions of Washington

state petitioners within 180 days without considering the hardship that USCIS would face in implementing the injunction?

(2) Did the district court abuse its discretion by relying upon stale evidence of injury when it determined that Plaintiffs-Appellees established that they were likely to suffer irreparable harm?

(3) Did the district court abuse its discretion in crafting the scope of the permanent injunction given that the injunctive relief prioritizes Washington state petitioners over SIJ petitioners from the other 49 states and the district court adopted Plaintiffs-Appellees' tolling proposal without analyzing whether their proposal was permissible under the SIJ statute?

IV. PERTINENT STATUTES AND REGULATIONS

Pertinent statutes are reproduced in the addendum to this brief.

V. STATEMENT OF THE CASE

A. Legal Background

i. History of the Special Immigration Juvenile Statute

In 1990, Congress created the Special Immigrant Juvenile (SIJ) classification to aid certain non-citizen juveniles physically present in the United States who were declared dependent on state courts and were eligible for long-term foster care in the United States. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (Nov. 29, 1990). Classification as an SIJ is a pathway to

lawful permanent residence: if the individual's SIJ petition is approved, the individual may apply to adjust his status to that of a lawful permanent resident once his priority date[1] is current. *See* 8 U.S.C. § 1255(a), (h).

In December 2008, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457, § 235, 122 Stat. 5044 (Dec. 23, 2008), which expanded the availability of SIJ classification in three notable ways. First, Congress replaced a prior requirement that an SIJ petitioner be "eligible for long-term foster care" with the requirement that a juvenile court determine that "reunification with one or both parents is not viable." TVPRA, Pub. L. No. 110-457, § 235, 122 Stat. 5044 (Dec. 23, 2008). Second, Congress added a provision that USCIS may not deny a petitioner SIJ classification based on age as long as the petitioner is under the age of 21 at the *time of filing* for SIJ classification. *Id.* Third, Congress provided that USCIS must adjudicate all SIJ petitions within 180 days. *Id.* Thus, under the current SIJ statute,

[1] The Immigration and Nationality Act (INA) sets the maximum number of immigrant visas available each year, including numerical limitations for SIJs. *See* 8 U.S.C. § 1153(b)(4). When the demand is higher than the number of immigrant visas available for a given year, the government allocates the availability of immigrant visas according to a priority date, which is generally the date that the foreign national filed his or her petition. *See* USCIS, Visa Availability and Priority Dates, available at https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates. When the priority date becomes current, the foreign national may apply for adjustment of status and obtain lawful permanent residence, if otherwise eligible. *Id.*

SIJ classification is available to "an immigrant who is present in the United States":

> (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
>
> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
>
> (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status...

8 U.S.C. § 1101(a)(27)(J)(i)-(iii).

ii. USCIS's 2018 Legal Guidance

After the 2008 TVPRA amendments, various states began changing their child-welfare laws so that 18-to-20-year-old immigrants could qualify for SIJ classification. Relevant here, in 2017, the Washington State Legislature created a "vulnerable youth guardianship," which allowed 18-to-20-year-olds to obtain a guardianship for the purpose of obtaining federal SIJ classification. RCW § 13.90.901(d). The state legislature further found that the vulnerable youth guardianships may be appropriate for individuals between eighteen and twenty-one

years old, although a vulnerable youth "retains the rights of an adult under Washington law." RCW § 13.90.901(g).

In response to the new state laws permitting guardianships over legal adults for the purpose of SIJ classification, in February 2018, USCIS's Office of Chief Counsel (OCC) issued legal guidance to adjudicators. ER-129–30. The guidance stated that if a court does not have jurisdiction to reunify the SIJ petitioner with his parent(s), then the underlying court order does not qualify as a "juvenile court" order to establish SIJ eligibility (the "2018 Legal Guidance"). *Id.* In April 2018, the USCIS Field Operations Directorate adopted the language of the 2018 Legal Guidance in its Consolidated Handbook of Adjudication Procedures, and subsequently began issuing RFEs, Notices of Intent to Deny (NOIDs), or denials to SIJ petitioners whose underlying court order was issued after the petitioner became a legal adult under state law. ER-206. USCIS paused adjudication of any SIJ petitions that could be affected by the 2018 Legal Guidance, causing delays in adjudication beyond the 180-day timeframe in 8 U.S.C. § 1232(d)(2). ER-122–23, 127.

iii. AAO Adopted Decisions and Proposed Rule

In mid-October 2019, USCIS issued three Administrative Appeals Office

(AAO) "adopted" decisions,[2] announcing that it was abandoning the 2018 Legal Guidance. The adopted decisions stated that, "USCIS does not require that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification." *Matter of D-Y-S-C*, Adopted Decision 2019-02 at 6, n.4 (AAO Oct. 11, 2019). In addition, USCIS incorporated the reasoning underlying the AAO decisions into its Policy Manual, which is a centralized online repository used by the agency's SIJ adjudicators. *See* USCIS, Policy Manual, Vol. 6, Pt. J, Ch. 2 https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2 ("USCIS reaffirmed for officers that the agency no longer requires that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s)..."). USCIS simultaneously re-opened the public-comment period for a proposed SIJ rule that was initially published in September 2011. Special Immigrant Juvenile Petitions, 84 Fed. Reg. 55,250 (Oct. 16, 2019); Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54,978 (Sept. 6, 2011). In line with USCIS's Policy Manual and Adopted Decisions, the proposed rule requires that an SIJ petitioner submit a state-court order determining that reunification with one or both parents is not

[2] AAO "adopted" decisions "provide policy guidance to USCIS employees in making determinations on applications and petitions for immigration benefits." USCIS, AAO Practice Manual, https://www.uscis.gov/tools/practice-manual/chapter-3-appeals.

viable, which "is a question that lies within the expertise of the juvenile court, applying relevant State law." 76 Fed. Reg. 54,978-01.

The proposed rule also sets forth USCIS's interpretation of the 180-day-adjudication provision included in the 2008 TVPRA amendment, 8 U.S.C. § 1232(d)(2) ("all [SIJ petitions] shall be adjudicated . . . not later than 180 days after the date on which the application is filed."). The proposed rule states that USCIS intends to adhere to the 180-day timeframe, while taking into account the existing USCIS regulations pertaining to receipting of petitions, evidence and processing. 76 Fed. Reg. 54,978-01. The 180-day timeframe "begins when the SIJ petition is receipted, as reflected in the receipt notice sent to the SIJ petitioner." *Id.* However, in line with USCIS's longstanding regulation, USCIS tolls this timeframe if USCIS issues an RFE. *Id.* (citing 8 C.F.R. § 103.2(b)(10)(i)). If USCIS issues an RFE, the 180-day timeframe will "stop as of the date USCIS sends the request, and will resume once USCIS receives a response from the SIJ petitioner." *Id.* (citing 8 C.F.R. § 103.2(b)(10)(i), which states, "[i]f USCIS requests that the applicant or petitioner submit additional evidence . . . any time limitation imposed on USCIS for processing will be suspended as of the date of request [and] will resume at the time same point where it stopped when USCIS received the requested evidence or response, or a request for a decision based on the evidence."). Also in line with the regulations, USCIS does not toll the

timeframes for delays attributable to the petitioner or his or her representative. 76 Fed. Reg. 54,978-01 ("USCIS will not count delay attributable to the petitioner or his or her representative within the 180-day timeframe."); 8 CFR § 103.2(b)(8)(iv) ("Additional time to respond to a request for evidence or notice of intent to deny may not be granted."). The period for public comment closed on November 15, 2019. 84 Fed. Reg. 55,250.

B. Factual Background

At the time Plaintiffs-Appellees filed their complaint in 2019, named Plaintiff-Appellee Leobardo Moreno Galvez, a citizen of Mexico, was 20 years old. ER-196. Following an arrest in 2016, he fell under the jurisdiction of the Skagit County Juvenile Court. *Id.* On October 20, 2016, the Juvenile Court entered a "SIJS Order" finding that Moreno Galvez had been "legally committed to or placed in the custody of a state agency or department"; that reunification with both of his parents was not viable due to abuse, neglect, or abandonment; and that it was not in his best interest to return to Mexico. ER-145–46. On December 2, 2016, Moreno Galvez submitted his I-360, Petition for SIJS to USCIS. ER-164. On December 20, 2018, USCIS issued a denial because Moreno Galvez failed to show that the state court had jurisdiction under state law to make a legal conclusion regarding parental reunification. ER-164–65. On August 20, 2019, USCIS reopened and approved Moreno Galvez's SIJ petition. ER-39.

Plaintiff Jose Luis Vicente Ramos, a citizen of Guatemala, was 20 years old at the time the complaint was filed, who entered the United States without inspection on July 3, 2016. ER-196. On June 1, 2018, the Pierce County Superior Court appointed a cousin as Ramos' Vulnerable Youth Guardian, and entered an "SIJS order" finding that Ramos' reunification with his parents was not viable and that it was not in his best interest to return to his home country. ER-170–71. On June 11, 2018, Ramos filed his Form I-360, Petition for Special Immigrant Juvenile Status. ER-181. On February 5, 2019, USCIS denied his petition because he did not establish that the state court had jurisdiction under state law to make a legal conclusion about parental reunification. ER-182. On August 19, 2019, USCIS reopened and approved his SIJ petition. ER-45.

Named Plaintiff-Appellee Angel de Jesus Muñoz Olivera, a citizen of Mexico, was 19 years old at the time the complaint was filed. ER-196. On November 3, 2017, while Olivera was detained in immigration custody, the Pierce County Superior Court appointed Olivera's cousin as his Vulnerable Youth Guardian and entered an "SIJS order." ER-188–89. On November 15, 2017, Olivera submitted his Form I-360 to USCIS. ER-196. On August 15, 2019, USCIS approved his SIJ petition. ER-58.

C. Procedural History

In April 2019, six months before USCIS abandoned the 2018 Legal Guidance, Plaintiffs-Appellees filed a motion for a preliminary injunction and a motion for class certification, challenging the 2018 Legal Guidance under the Administrative Procedure Act (APA). *Moreno Galvez v. Cuccinelli*, 2:19-cv-321 (W.D. Wash.), Dkt. Nos. 2, 3. Specifically, Plaintiffs-Appellees challenged USCIS's decisions denying SIJ classification to proposed-class members based on the 2018 Legal Guidance as well as adjudication delays beyond the 180-day statutory timeframe, which Plaintiffs-Appellees alleged were caused by the 2018 Legal Guidance. *See id.*, Dkt. No. 3 at 16–26, 29.

On July 17, 2019, the district court certified the following class: "All individuals who have been issued predicate SIJ Status orders by Washington state courts after turning [18] but prior to turning [21] and have submitted or will submit SIJ[] petitions to USCIS prior to turning [21] years old." *Moreno Galvez v. Cuccinelli*, No. C19-0321RSL, 2019 WL 3219418, at *2 (W.D. Wash. July 17, 2019). It also granted Plaintiffs-Appellees' request for a preliminary injunction, holding that the 2018 Legal Guidance violated the APA. *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1219 (W.D. Wash. 2019). The district court preliminarily enjoined USCIS from denying SIJ petitions on account of a Washington state court's lack of jurisdiction to reunify an 18-to-20-year old with

her parent(s). *Id.* The court further ordered USCIS to adjudicate all SIJ petitions with a Washington-state-court order within 180 days, unless "novel or complex" issues arose that necessitated more time for adjudication. *Id.*

In May of 2020, seven months after USCIS had rescinded the 2018 Legal Guidance (*see* Section V(A)(iii), *supra.*), the parties cross-moved for summary judgment. *Moreno Galvez v. Cuccinelli*, 2:19-cv-321 (W.D. Wash.), Dkt. Nos. 64–75. Plaintiffs sought a permanent injunction requiring USCIS to adjudicate SIJ petitions within 180 days without any tolling for RFEs, NOIDs, or complex/novel issues. *Id.* Dkt. No. 64 at 19–24. Defendants argued that the 180-day statutory provision should not be strictly enforced, but, if the court were to enforce it, that the court should adopt USCIS's proposed regulation and permit USCIS to toll the timeframe when it issues RFEs and NOIDs. *Id.* Dkt. No. 66 at 23–24.

D. District Court Order

On October 5, 2020, the district court granted Plaintiffs' motion for summary judgment. ER-1. First, the district court held that Plaintiffs' APA challenge to the 2018 Legal Guidance was not moot under the voluntary-cessation doctrine. ER 9–12. It held that the AAO decision's language rescinding the 2018 Legal Guidance was "clear, unequivocal, and address[ed] plaintiffs' objections," but found that the government "fail[ed] to acknowledge the unlawfulness of its prior policy." ER-11. It concluded that because USCIS "is free to return to its old

ways," and only made its policy change due to the strain of litigation, the APA challenge to the 2018 Legal Guidance was not moot under the voluntary-cessation exception. ER-12.

The court then turned to the 180-day issue and found that delaying SIJ petitions beyond 180 days is unlawful. ER-14. It stated that, to determine whether an agency has acted within a "reasonable time" under the APA, "the timeline established by Congress serves as the frame of reference." ER-14. (citing *In re Pesticide Action Network N. Am., Nat. Res. Def. Council, Inc.*, 798 F.3d 809, 813 (9th Cir. 2015)). Although the district court recognized that the Ninth Circuit articulated a "six factor test" for determining unreasonable delay in *In re Pesticide*, the district court only referred to and analyzed the second factor—the timeline established by Congress. ER-15. Based on this factor alone, the court determined that any delay beyond 180 days is unreasonable, because Congress required that SIJ petitions be adjudicated within 180 days. ER-15.

The district court also rejected USCIS's interpretation of the 180-day adjudication period, which would permit USCIS to toll the 180-day deadline during the response time for RFEs or NOIDs, opining that USCIS's proposed regulation was "unlawful" because it treated the 180-day deadline as a "benchmark." ER-17. The district court, however, did not acknowledge that USCIS's interpretation stems from its longstanding regulation, 8 C.F.R.

§ 103.2(b)(10)(i), which permits USCIS to toll statutory deadlines for RFEs and NOIDs. ER-15–17.

In terms of relief, the district court declared the 2018 Legal Guidance unlawful, declared that USCIS unlawfully delayed SIJ petitions, and permanently enjoined USCIS to adjudicate SIJ petitions based on a Washington state court order within 180 days of the filing date, "inclusive of any requests for additional evidence or notices of intent to deny that USCIS may issue to a petitioner . . . " ER-20. Thus, unlike the preliminary injunction, the court declined to include the "novel and complex" exception to the 180-day deadline, and the court explicitly rejected any tolling of the deadline for RFEs or NOIDs. Instead, the district court adopted Plaintiffs-Appellees' proposed tolling exception, which allowed tolling upon the petitioner's request when it will take the petitioner "an extended period of time to obtain information responsive to a timely request for evidence or notice of intent to deny[.]" ER-19–20.

VI. SUMMARY OF THE ARGUMENTS

The district court abused its discretion by permanently enjoining USCIS from delaying any Washington state SIJ adjudications beyond 180 days, and precluding USCIS from tolling the 180-day period except upon a petitioner's request. First, the court did not consider USCIS's evidence of operational hardship or the public interest when permanently ordering USCIS to adjudicate all

Washington state SIJ petitions within 180 days without tolling for RFEs and NOIDs. Even though USCIS explained that ordering a permanent injunction would prioritize petitions with Washington state court orders, thereby penalizing other states' SIJ petitioners and creating operational difficulties, the district court did not acknowledge this hardship. The district court's failure to consider the operational hardship and the prioritization of Washington state SIJ petitions when analyzing the balance of equities and public interest was an abuse of discretion that warrants remand.

Further, the district court abused its discretion by relying on stale evidence when it concluded that Plaintiffs-Appellees have suffered an irreparable injury. The district court referred to its findings about the stress and fear arising from SIJ denials that Plaintiffs-Appellees faced during the April 2019 "preliminary injunction" proceedings, which was no longer the reality for the Plaintiffs-Appellees as USCIS had reopened and approved their SIJ petitions. Indeed, USCIS provided evidence that all known class members had their SIJ petitions adjudicated without regard to the 2018 Legal Guidance, with a 93 percent approval rate, as well as evidence that USCIS had abandoned the 2018 Legal Guidance nationwide. Plaintiffs-Appellees also failed to provide any evidence that USCIS continues to unreasonably delay class members' SIJ petitions. The harms that Plaintiffs-Appellees had once faced simply no longer existed when the district court issued

its decision; thus, the district court's finding of ongoing irreparable harm lacked sufficient factual support.

In addition to failing to consider USCIS's evidence, the district court also abused its discretion in determining the scope of the injunction. The permanent injunction orders USCIS to adjudicate all Washington state petitioners' SIJ petitions within 180 days even though USCIS provided evidence of a nationwide adjudication backlog during the summary-judgment proceedings, thereby prioritizing Washington state SIJ petitioners over SIJ petitioners from the other 49 states. Because the injunction places Washington state petitioners "at the head of the queue," the strict 180-day order is improper. *In re Barr Laboratories, Inc.*, 930 F.2d 72, 75 (D.C. Cir. 1991). Moreover, the district court's reasoning for rejecting USCIS's proposal that USCIS be permitted to toll the 180-day deadline for RFEs and NOIDs stemmed solely from the district court's holding that any delay beyond 180 days is unreasonable. But, because a statutory violation—by itself—does not entitle a party to injunctive relief, *Monsato Co. v. Geertson Seed Farms*, 561 U.S. 139, 157–58 (2010), the district court's decision to reject USCIS's tolling proposal was an abuse of discretion. Yet, despite its holding that it could not agree to USCIS's proposal because all delays beyond 180 days was unreasonable, the district court adopted Plaintiffs-Appellees' tolling proposal, which permits Washington state SIJ petitioners to request additional time to respond to an RFE by

"waiving" their "right" to adjudication within 180 days. The district court's decision, which contradicts its holding that *any* delay contravenes the SIJ statute, was an abuse of discretion because it stripped USCIS of its discretion in deciding how to comply with the 180-day deadline and failed to provide any analysis as to whether Plaintiffs-Appellees' tolling proposal was statutorily permissible or why it was preferable to USCIS's proposal.

Finally, the scope of the injunction will undoubtedly harm Washington state SIJ petitioners. If USCIS comes across derogatory evidence shortly before the 180-day period expires, or if USCIS determines that a petitioner has not met her burden of proof, USCIS will be forced with two options: either violate the permanent injunction and issue an RFE or NOID, or deny the petition. Such a denial is particularly harsh for individuals who have turned 21 since filing their petition, as they would be precluded from filing another petition and would therefore lose SIJ eligibility. To avoid this situation and ensure the smooth and fair nationwide administration of the SIJ program, USCIS requests that this Court vacate the district court's permanent injunction.

VII. STANDARD OF REVIEW

This Court reviews permanent injunctions under three standards: "factual findings for clear error, legal conclusions de novo, and the scope of the injunction

for abuse of discretion." *United States v. Washington*, 853 F.3d 946, 962 (9th Cir. 2017).

VIII. ARGUMENT

The district court abused its discretion by entering a permanent injunction that requires USCIS to adjudicate all SIJ petitions with a Washington state court order within 180 days, because it did not consider USCIS's evidence of operational hardship or the public interest, and it relied upon stale evidence to find that Plaintiffs-Appellees would suffer irreparable injury. In addition, the district court abused its discretion in fashioning the scope of the injunction because the injunction infringes on USCIS's administration of the SIJ program, harms SIJ petitioners, and lacks analysis as to why the district court adopted Plaintiffs-Appellees' tolling proposal. Accordingly, USCIS requests that this Court vacate the district court's preliminary injunction order and remand for further consideration, or, alternatively, vacate the district court's order enjoining USCIS from tolling the 180-day timeframe when it requests additional evidence.

A. The district court abused its discretion by failing to consider USCIS's evidence of operational hardship and competing priorities.

Despite USCIS's evidence of operational hardship, the district court abused its discretion by failing to consider USCIS's equities when it issued the permanent injunction. Courts must consider the following factors when determining whether to issue a permanent injunction: (1) whether the plaintiffs have suffered an

irreparable injury; (2) whether remedies available at law are inadequate to compensate for that injury; (3) whether, considering the balance of the hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) whether the public interest would not be disserved by a permanent injunction. *eBay, Inc. v. MercExchange, L.L.C*, 547 U.S. 388, 391 (2006). When the government is a party to a case, the balance of the equities and public-interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). If a district court does not discuss a fact that is "relevant to weighing the equities of the case," the Ninth Circuit will generally vacate the injunction and remand to the district court for reconsideration. *E.g. La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 880 (9th Cir. 2005) (vacating the injunction and remanding for reconsideration because the Court failed to consider one of the defendant's equities in balancing the hardships); *DISH Network Corp. v. F.C.C.*, 653 F.3d 771, 776 (9th Cir. 2011) (holding that the appellate court "must consider whether the [district court's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.").

Here, the district court did not discuss USCIS's evidence that a permanent injunction requiring USCIS to adjudicate Washington state petitions within 180 days would cause USCIS substantial operational hardship and would put Washington state petitioners ahead of SIJ petitioners from the 49 other states.

Defendants-Appellants argued that "continuing to impose a judicially-mandated deadline for adjudicating SIJ petitions at this juncture will cause substantial hardship to USCIS," citing to USCIS Deputy Director Michael Valverde's declaration ("Valverde Declaration"), which was an exhibit to the government's summary judgment motion. *Moreno Galvez*, 19-cv-321 (W.D. Wash.), Dkt. No. 66 at 23.[3] In the Valverde Declaration, USCIS explained that it would need to "permanently assign" adjudicators to "work on WA cases ahead of all other cases" to comply with the court's order, which is especially difficult given that USCIS only has 59 SIJ adjudicators nationwide. ER-25. USCIS stated that assigning adjudicators to solely work on Washington state petitions would not only be "prejudicial" to SIJ petitioners from the other 49 states, but would also "exacerbate the backlog nationwide, with the exception of Washington-based SIJ petitions." ER-25. Despite USCIS's description of the operational hardship and prejudice that would result from a permanent injunction requiring USCIS to adjudicate

[3] Deputy Director Valverde also provided a declaration in support of the Government's Motion for Reconsideration of the district court's preliminary injunction order (Dkt. No. 46), which Plaintiffs-Appellees attached as an exhibit to their Motion for Summary Judgment. ER-100. In that declaration, Deputy Director Valverde explained that USCIS strives to meet the 180-day timeframe, but is often hamstrung by "limited resources, competing court orders, the increased number of annual SIJ petitions [USCIS] receives, and the complexities of and varying levels of evidentiary material presented with each SIJ petition." ER-109. The district court did not consider this declaration, although it considered evidence form Plaintiffs-Appellees' previous filings. *See generally* ER-17–20.

Washington state petitions within 180 days, the district court did not acknowledge USCIS's competing priorities or the agency's limited resources in its analysis. *See generally* ER-17–20. The district court's failure to consider the hardship on USCIS's operations and on SIJ petitioners from the other 49 states against Plaintiffs-Appellees' alleged hardship in determining the balance of equities and public interest was an abuse of discretion that warrants remand. *La Quinta Worldwide LLC*, 762 F.3d at 880.

B. The district court's irreparable-injury finding was an abuse of discretion because the court relied upon stale evidence and Plaintiffs-Appellees provided no evidence of ongoing or future irreparable injury.

Because Plaintiffs-Appellees did not provide any evidence of ongoing injury or an irreparable injury absent permanent injunctive relief, and instead relied upon stale evidence presented in the preliminary-injunction context, the district court abused its discretion in finding that Plaintiffs-Appellees demonstrated irreparable harm.

First, the district court abused its discretion by relying upon stale evidence from the preliminary injunction briefing rather than considering the circumstances as they existed at the time of the district court's order. A defendant's "cessation of the alleged misconduct" is relevant in determining whether the plaintiff can show irreparable harm. *Lofton v. Verizon Wireless (VAW) LLC*, 586 F. App'x 420, 421 (9th Cir. 2014) (ruling that the plaintiff could not show irreparable harm because

the defendant's new policy prevented the challenged conduct, and there was no "likelihood" that the defendant would reinstate the challenged conduct) (citing *TRW, Inc. v. F.T.C.,* 647 F.2d 942, 953–54 (9th Cir. 1981)). Likewise, because "injunctive relief is drafted in light of what the court believes will be the future course of events, a court must never ignore significant changes in the law or circumstances underlying an injunction lest the decree be turned into an instrument of wrong." *Salazar v. Buono*, 559 U.S. 700, 714–15 (2010) (citation and internal quotation omitted). The district court ignored changes in circumstances here.

The district court referred to its findings in the "preliminary injunction" context, and did not address the evidence that USCIS submitted demonstrating that it had consistently adjudicated SIJ petitions of Washington state petitioners within 180 days absent novel or complex issues requiring additional adjudication time. ER-18–19. The district court also failed to acknowledge that Plaintiffs-Appellees no longer face the same harms that they faced at the onset of the case, which were caused by the now-defunct 2018 Legal Guidance. Indeed, the stress and fear "arising from the increased possibility that they will be placed in removal proceedings and/or deported before obtaining an SIJ designation" (ER-19) was no longer a threat at the time the court issued the permanent injunction because USCIS had abandoned the 2018 Legal Guidance. All of the class members—individuals who had been or could have been subject to the 2018 Legal

Guidance[4]— had their SIJ petitions adjudicated without regard to the 2018 Legal Guidance, with a 93 percent approval rate. *See* ER-24 (confirming that USCIS reopened all previously denied petitions and approved them, and that USCIS had approved 230 of 247 class members' SIJ petitions); *see also* ER-39, ER-45, ER-58 (approval notices of the named Plaintiffs' SIJ petitions). Thus, the harms that Plaintiffs-Appellees allegedly faced during the preliminary-injunction proceedings were no longer a threat, and the district court abused its discretion by relying on this stale evidence.

Second, the district court's finding that prolonged adjudication delays were a regular practice of USCIS and not caused by the 2018 Legal Guidance lacked support. [5] In fact, Plaintiffs-Appellees alleged in their complaint that the prolonged

[4] The court certified the following class: "All individuals who have been issued predicate Special Immigrant Juvenile Status ("SIJS") orders by Washington state courts after turning eighteen years old but prior to turning twenty-one years old and have submitted or will submit SIJS petitions to USCIS prior to turning twenty-one years old." Dkt. No. 41 at 4. The district court found that the requirements of Fed. R. Civ. P. 23(b)(3) were met because answering questions "common to the class" will "determine the viability of the February 2018 policy and its applicability to every member of the proposed class." *Id.*

[5] The district court's factual finding that there was "no dispute" that USCIS "regularly delays" adjudication of SIJ petitions "well beyond the 180-day period" (ER-17) was clearly erroneous. Indeed, USCIS did not concede that it "regularly delays" SIJ petitions "well beyond the 180-day period"; rather, USCIS presented evidence that it had adjudicated all but five class members' SIJ petitions within 180 days. ER-24.

delays in adjudication were caused by USCIS holding petitions due to the 2018 Legal Guidance, and that before 2017 they did not experience such delays. ER-192 ("Until a recent and unlawful [USCIS] policy targeting youth who have reached the age of 18, each Plaintiff would have been found eligible for SIJ[] within 180 days after filing their application . . . ."); ER-206 ("Since 2017, USCIS has routinely and as a matter of practice delayed the adjudication of SIJS petitions for months beyond this statutory deadline."). Although USCIS requested some flexibility to toll for RFEs, this tolling is limited in duration to 12 weeks for RFEs and 30 days for NOIDs—it would not prolong adjudication by multiple months or years as the named Plaintiffs-Appellees experienced due to the 2018 Legal Guidance. 8 C.F.R. §103.2(b)(8)(iv). Thus, the district court abused its discretion by not considering USCIS's abandonment of the 2018 Legal Guidance as a significant change in circumstances affecting whether Plaintiffs-Appellees could establish irreparable harm.

Likewise, the district court's finding that the class members would lose the benefits associated with SIJ classification absent a permanent injunction lacked support given the change in circumstances. The district court did not cite any evidence supporting its assertion that class members "lost" or will lose the benefits that are associated with SIJ classification, and there is no evidence of this in the record. To the contrary, USCIS provided evidence that the vast majority of class

members' SIJ petitions were approved, which would give them the opportunity to apply for lawful permanent residence once their priority date is current. ER-24. In fact, the Valverde Declaration stated, under the penalty of perjury, that USCIS had adjudicated all but 5 petitions—out of 247—within 180 days, and those five petitions were either awaiting responses to RFEs or were referred for background/security checks. ER-24. Despite the then-current evidence that USCIS was consistently adjudicating class members' SIJ petitions within 180 days absent novel or complex circumstances and had approved almost all class members' petitions, the district court relied upon Plaintiffs-Appellees' stale evidence from the preliminary injunction and stated that Defendants-Appellants did not address the irreparable harms caused by delays in adjudication. ER-18. But USCIS *did* address Plaintiffs-Appellees' complaints: it rescinded the 2018 Legal Guidance; it reopened and re-adjudicated class members' SIJ petitions without applying the 2018 Legal Guidance; and it adjudicated class members' SIJ petitions within 180 days, absent unique circumstances. ER-24. Because the class members no longer faced prolonged delays in adjudication caused by the 2018 Legal Guidance and their SIJ petitions were generally approved, there was no evidence that they would lose the opportunity to obtain "benefits that go along with SIJ" classification. ER-18. Thus, the district court abused its discretion in relying on evidence that was not representative of the current situation. *Salazar*, 559 U.S. at 714–15

Further, because most SIJ petitioners must wait until their priority date is current before they can apply for lawful permanent residence, delays in adjudication generally do not jeopardize their ability to obtain lawful status in the United States. Congress limited the number of immigrant visas available to SIJ petitioners annually (*see* 8 U.S.C. § 1153(b)(4)), and the number of SIJ petitions that USCIS receives annually far exceeds that number.[6] Consequently, many SIJ petitioners must wait years to obtain lawful status even after their SIJ petition is approved. As of today, SIJ petitioners whose countries of nationality or origin are Honduras, El Salvador, or Guatemala have about a three-year waiting period, and SIJ petitioners whose country of nationality is Mexico have a two-year waiting period. *See* Dep't of State, Travel Bulletin, Employment-Based Visas, Fourth Preference, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-may-2021.html (last accessed June 3, 2021). However, once an SIJ petition is filed, it retains its original priority date when USCIS issues an RFE or NOID. *See, e.g.*, 8 C.F.R. §103.2(b)(10)(i) ("The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or a request for other evidence."). Thus, even if USCIS tolls the

[6] For example, in FY 2020, USCIS received over 18,000 SIJ petitions. In FY 2019, USCIS received over 20,000 SIJ petitions. *See* https://www.uscis.gov/sites/default/files/document/reports/I360_sij_performancedata_fy2020_qtr4.pdf.

adjudication of an SIJ petition while awaiting a petitioner's RFE response, the tolling does not cause the petitioner to lose any immigration benefits associated with SIJ classification. Accordingly, because tolling the 180-day deadline would not cause SIJ petitioners irreparable harm and because the district court did not consider the significant changes in circumstances that occurred since the preliminary-injunction proceedings, the district court abused its discretion.

C. The scope of the injunctive relief was an abuse of discretion.

i. The district court's order stripped USCIS of its discretion to allocate its resources and manage competing priorities.

The district court abused its discretion in crafting the scope of the injunctive relief because it removed USCIS's discretion in how it will satisfy the 180-day statutory deadline when novel or complex circumstances arise. The D.C. Circuit[7] has emphasized the "importance of 'competing priorities' in assessing the reasonableness of an administrative delay." *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1100–01 (D.C. Cir. 2003) (citing *In re Barr Laboratories*, 930 F.2d 72, 75 (D.C. Cir. 1991)). Where a court order would put the petitioners "at the head of the queue" while moving "all others back one

[7] This Court has referred to the D.C. Circuit when determining unreasonable-delay cases. *See In re A Cmty. Voice*, 878 F.3d 779, 788 (9th Cir. 2017) ("We also look to the D.C. Circuit, which has more frequently dealt with unreasonably delayed rulemakings."); *id.* at 787 (reviewing a number of cases from the D.C. Circuit to determine how many years of delay is considered unreasonable).

space," the court should refuse to grant relief. *In re Barr Laboratories, Inc.,* 930 F.2d at 75 (refusing to grant relief, even though all the other unreasonable-delay factors favored the appellants, because the order would simply put the petitioners at the front of the line, and the real issue for the delays stemmed from a lack of resources). This is because courts generally "have no basis for reordering agency priorities," as the agency is "in a unique—and authoritative—position to view its projects as a whole, estimate the prospects for each, and allocate its resources the optimal way." *Id.* at 76.

Here, the district court's issuance of a permanent injunction that simply places Washington state petitioners in the front of the queue and removes USCIS's ability to allocate its resources in an optimal way to benefit all SIJ petitioners was an abuse of discretion. As explained in Section VIII(A) *supra.*, strictly imposing the 180-day timeline without tolling for RFEs and NOIDs or other unique circumstances prejudices agency activities of higher or competing priority as well as SIJ petitioners from the other 49 states. Accordingly, the district court abused its discretion in granting a permanent injunction precluding USCIS from tolling the 180-day timeline for RFEs and NOIDs. *In re Barr Laboratories, Inc.,* 930 F.2d at 76.

ii. The district court's reasoning for adopting Plaintiffs-Appellees' proposal lacks legal and evidentiary support.

The district court's reasoning for strictly imposing the 180-day deadline—while simultaneously permitting SIJ petitioners to request additional time to respond to RFEs and NOIDs—contravenes the standard for issuing injunctive relief and lacks support in the record. The reason that the district court rejected USCIS's proposal to toll the 180-day deadline for RFEs and NOIDs hinges on the district court's holding that *any* adjudicative delay beyond 180 days is unreasonable. The district court explained that USCIS's proposal was "inconsistent with the governing statute," and therefore adopted Plaintiffs-Appellees' proposal without any additional analysis. ER-19. However, a statutory violation does not entitle a plaintiff to injunctive relief. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157–58 (2010) (holding that a violation of the National Environmental Policy Act did not automatically entitle the plaintiff to injunctive relief and that the district court must still apply the four-factor test). Even when a court finds that a delay is unreasonable under the APA, the delay does not always justify judicial intervention. *In re Barr Lab'ys, Inc.*, 930 F.2d 72, 75 (D.C. Cir. 1991). An injunction is still "a matter of equitable discretion" that "does not follow from success on the merits as a matter of course." *Winter*, 555 U.S. 7, 32 (2008); *cf.*

Biodiversity Legal Found. v. Badgley,[8] 309 F.3d 1166, 1177 (9th Cir. 2002) (recognizing that a "statutory violation does not always lead to the automatic issuance of an injunction."); *cf. Nat'l Wildlife Fed'n v. Espy*, 45 F.3d 1337, 1343 (9th Cir. 1995) (holding that a court "is not required to set aside every unlawful agency action" because the decision to grant or deny injunctive relief under APA "is controlled by principles of equity."). Because a statutory violation, by itself, does not authorize a court to order an injunction, the district court abused its discretion in rejecting USCIS's scope-of-relief proposal solely based upon the district court's holding that any delay violated the SIJ statute.

The district court's decision to adopt Plaintiffs-Appellees' proposal was also an abuse of discretion. Although a district court may compel an agency to comply with a statutory mandate, it "cannot eliminate agency discretion as to how it satisfies the [statutory] requirement." *Firebaugh Canal Co. v. United States*, 203 F.3d 568, 578 (9th Cir. 2000). Here, the district court adopted Plaintiffs-Appellees' proposal over USCIS's proposal—even though USCIS is the federal agency charged with the administration of the SIJ program and is best suited for

[8] *Biodiversity* was issued before the Supreme Court issued its *Winter* decision. Thus, to the extent that *Biodiversity* conflicts with *Winter*, this Court should follow the *Winter* reasoning and holding. *Miller v. Gammie,* 335 F.3d 889, 900 (9th Cir. 2003) (en banc) (holding that, where Supreme Court precedent "undercut[s] the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable," the prior circuit precedent is no longer binding).

determining how to prioritize its internal operations. It ordered USCIS to adjudicate SIJ petitions within 180 days, "unless the SIJ petitioner requests additional time to respond," thereby dictating how USCIS must comply with Congress's 180-day deadline and eliminating USCIS's discretion as to how it should carry out the statute. The district court therefore abused its discretion by specifying how USCIS must satisfy the statutory deadline. *Firebaugh*, 203 F.3d at 578.

Further, the district court failed to analyze why Plaintiffs-Appellees' proposal was the appropriate scope of relief. "A district court's failure to exercise discretion constitutes an abuse of discretion." *Miller v. Hambrick,* 905 F.2d 259, 262 (9th Cir. 1990) (citing *Taylor v. Soc. Sec. Admin.*, 842 F.2d 232, 233 (9th Cir. 1988)). Similarly, when a court fails to analyze and explain what the proper scope of injunctive relief should be, it abuses its discretion. *Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 n.4 (9th Cir. 2019) ("[T]he three sentences that the district court provided to support the imposition of a nationwide injunction—none of which explains why it believed a nationwide injunction was necessary in this case—make clear that it failed to undertake the analysis necessary before granting such broad relief."). "It is not enough for a court considering a request for injunctive relief to ask whether there is a good reason why an injunction should *not* issue; rather, a court must determine that an injunction *should* issue

under the traditional four-factor test set out above." *Monsanto Co.*, 561 U.S. at 158 (emphasis in original).

Despite siding with Plaintiffs-Appellees rather than the agency that oversees the SIJ program, the district court did not provide any analysis as to why it found that Plaintiffs-Appellees' proposal was a reasonable one that USCIS could operationally implement. Instead, the district court hung its hat on that fact that USCIS did not provide any reason as to why it could not implement Plaintiffs-Appellees' proposal. Yet, the district court's order requiring USCIS to toll the deadline upon the petitioner's request contravenes USCIS's proposed SIJ regulation and existing regulations. 76 Fed. Reg. 54,978-01 ("USCIS will not count delay attributable to the petitioner or his or her representative within the 180-day timeframe."); 8 C.F.R. § 103.2(b)(8)(iv) ("Additional time to respond to a request for evidence or notice of intent to deny may not be granted."). And, considering that the district court found that *any* delay beyond 180 days was unreasonable, its failure to explain why a delay waived by the petitioner would be permitted under the SIJ statutory scheme, whereas a delay caused by the need for additional evidence would not be permitted, was an abuse of discretion.

iii. Strict adherence to the 180-day deadline without tolling for RFEs and NOIDs will harm SIJ petitioners.

In addition, the court's permanent injunction will likely harm SIJ petitioners. Generally, the delays beyond 180 days occur because USCIS requires more

evidence before it can make a decision on a petitioner's SIJ petition. USCIS, Policy Manual, Vol. 6, Pt. J, Ch. 4, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4 (stating that USCIS adjudicates SIJ petitions within 180 days but tolls the petition when it requires additional evidence). If USCIS is approaching the end of the 180-day mark and determines that the petitioner's initial filing has not demonstrated SIJ eligibility, the agency is unable to give the petitioner an opportunity to address the insufficient or derogatory evidence without tolling. In that situation, USCIS must deny the SIJ petition. Such a denial is detrimental to individuals who are approaching their 21st birthday when they file their SIJ petition, as the SIJ statute bars them from filing another petition once they turn 21. Tolling the 180-day deadline would prevent the SIJ petitioner in these circumstances from losing his eligibility to apply for SIJ classification. Accordingly, the district court's order requiring USCIS to strictly adhere to the 180-day deadline without tolling for RFEs will likely harm SIJ petitioners who are close to aging out of the SIJ program.

USCIS's tolling proposal makes sense: it requires adjudicators to adjudicate within 180 days but allows tolling when USCIS must issue a RFE and/or a NOID so that the petitioner has sufficient time to respond to any missing or derogatory evidence necessary to carry the petitioner's burden of demonstrating eligibility. *See* USCIS, Policy Manual, Vol. 6, Pt. J, Ch. 4, https://www.uscis.gov/policy-

manual/volume-6-part-j-chapter-4 ("The 180-day timeframe begins on the . . . receipt date. If the petitioner has not submitted sufficient evidence to establish his or her eligibility for SIJ classification, the clock stops the day USCIS sends a [RFE] and resumes the day USCIS receives the requested evidence.") (citing 8 C.F.R. § 103.2(b)(10)). USCIS's interpretation is also in line with its longstanding regulation, 8 C.F.R. § 103.2(b)(10), which permits the agency to toll the deadline while awaiting a response to an RFE or NOID. In a nutshell, this policy decision, which has its roots in longstanding immigration policy, is intended to benefit SIJ petitioners—not harm them or delay their ability to obtain lawful status.

Further, because USCIS must provide an SIJ petitioner the opportunity to respond to "derogatory" evidence under its own regulation (*see* 8 C.F.R. § 103.2(b)(16)(i)), if USCIS becomes aware of derogatory evidence near the end of the 180-day timeframe, USCIS may find itself in a catch-22: violate the injunction or violate the regulation. For example, if USCIS issues an RFE to an SIJ petitioner 80 days after the filing date—which is well within the adjudication timeline—and provides the SIJ petitioner the full 84 days to respond under the regulation, USCIS may not receive the petitioner's response until day 170, after including mailing time. USCIS would then have less than 10 days to review the newly submitted evidence (or less if the response arrives on the weekend). If the adjudicator finds that the newly submitted evidence contains derogatory information later that week

on day 175, the adjudicator would not have sufficient time to draft the request, mail it out, and wait for the petitioner's response before the 180-day timeframe expires. To avoid this kind of situation, USCIS reasonably requested to toll the 180-day timeframe while a petitioner responds to evidentiary requests, which in turn benefits SIJ petitioners and allows USCIS to maintain a fair adjudication system for SIJ petitioners from all 50 states. Thus, the district court's decision to disregard the agency's proposal or provide USCIS any leeway for unique or complex cases was an abuse of discretion.

IX. CONCLUSION

Because the district court failed to consider USCIS's evidence and misapplied the permanent-injunction factors, the Court should vacate the district court's injunction and remand proceedings to the district court for further consideration. Alternatively, because the scope of the injunction was an abuse of discretion, the Court should narrow the permanent injunction so that USCIS determines how to best utilize its resources to meet the statutory deadline while maintaining a fair administration of the SIJ program for petitioners nationwide.

Dated: July 20, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 20, 2021.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

9th Cir. Case Number(s) 20-36052

The undersigned attorney or self-represented party states the following:

[X] I am unaware of any related cases currently pending in this court.

[ ] I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.

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Signature s/ Katelyn Masetta-Alvarez **Date July 20, 2021**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

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This brief contains 8,586 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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Signature s/ Katelyn Masetta-Alvarez **Date July 20, 2021**

ADDENDUM

8 C.F.R. § 103.2(b)(10)

Effect of a request for initial or additional evidence for fingerprinting or interview rescheduling—
(i) Effect on processing. The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If a benefit request is missing required initial evidence, or an applicant, petitioner, sponsor, beneficiary, or other individual who requires fingerprinting requests that the fingerprinting appointment or interview be rescheduled, any time period imposed on USCIS processing will start over from the date of receipt of the required initial evidence or request for fingerprint or interview rescheduling. If USCIS requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on USCIS for processing will be suspended as of the date of request. It will resume at the same point where it stopped when USCIS receives the requested evidence or response, or a request for a decision based on the evidence.
(ii) Effect on interim benefits. Interim benefits will not be granted based on a benefit request held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while a benefit request to extend or obtain status while in the United States is pending. The USCIS may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current benefit request may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

8 U.S.C. § 1101(a)(27)(J)

(J) an immigrant who is present in the United States--
(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that--
(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

8 U.S.C. § 1232(d)(2)

(2) Expeditious adjudication
All applications for special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed.