IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA DE MARYLAND, INC., *et al.*, Plaintiffs, v. MAYORKAS, *et al.*, Defendant.	Case No. 20-cv-02118-PX

MOTION TO STAY

Defendants, the United States Department of Homeland Security ("Homeland Security") and Alejandro Mayorkas ("Mayorkas"), in his official capacity as Secretary of Homeland Security (collectively, the "Government," "Defendants," or "Agency"[1]), by and through undersigned counsel, Erek L. Barron, United States Attorney for the District of Maryland, and Patrick G. Selwood, Assistant United States Attorney for that district, submit this motion to inform the Court of a series of developments that are pertinent to this matter, and to request that this case, including the briefing schedule, be temporarily stayed. In support thereof, Defendants state as follows:

I. BACKGROUND

A. Procedural Overview

Plaintiffs initiated the above-captioned case by complaint filed July 7, 2020, *see* ECF No. 1 (the "Complaint"), challenging two rules: *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, 85 Fed. Reg 37,502 (June 22, 2020) (the "Timeline

1 Unless otherwise indicated, references to the Agency necessarily include the Citizenship and Immigration Services office ("USCIS"), of component within Homeland Security that is generally tasked with administering lawful immigration to the United States.

Repeal Rule"), and *Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg. 38,532 (June 26, 2020)(the "Broader Asylum EAD Rule")(collectively, these two rules are referred to herein as "EAD Rules"). The EAD Rules were promulgated under the authority of then-Acting Secretary of Homeland Security, Chad Wolf. *Id.* Invoking the Administrative Procedure Act ("APA"), the Federal Vacancies Reform Act ("FVRA"), and the Homeland Security Act ("HSA"), the Complaint seeks the total vacatur of the EAD Rules *See generally* ECF No. 1, 69 (discussing the Complaint).

Plaintiffs subsequently moved for a preliminary injunction. ECF Nos. 23-24. On September 11, 2020, the Court granted in part, and denied, in part Plaintiff's motion, enjoining the Timeline Repeal Rule and portions of the Broader Asylum EAD Rule for all members of CASA de Maryland ("CASA") and the Asylum Seeker Advocacy Project ("ASAP"), two of the five organizational Plaintiffs (the "Preliminary Injunction" or "PI"). ECF Nos. 69-70.[2]

On November 10, 2020, Defendants noticed an interlocutory appeal of the Court's order granting the PI. ECF No. 88. On November 23, 2020, Plaintiffs filed a cross-appeal. ECF No. 92. On March 22, 2021, the Parties voluntarily dismissed the appeal and cross-appeal. Case No. 20-2217, ECF Nos. 22, 23. During the pendency of the appeals, the Parties agreed for the Court to hold the proceedings in abeyance. ECF Nos. 83, 91, 96.

Following a succession of status reports, the Parties filed cross motions for summary judgment. On April 20, 2021, Plaintiffs moved for summary judgment on their HAS claim related to the Broader Asylum EAD Rule, arguing that all named Plaintiffs had established Article III standing, and that Chad Wolf's tenure as Acting Secretary violated the HSA. *See* ECF No. 107 (as modified by

2 No answer to the Complaint was filed in this case. *See* ECF Nos. 88-106.

ECF No. 118). In that motion, Plaintiffs also sought to modify the partial PI with respect to the Timeline Repeal Rule such that rule would be enjoined nationwide, not just for CASA and ASAP members. *Id.* On June 15, 2021, Defendants moved for summary judgment on all of Plaintiffs' claims regarding the Timeline Repeal Rule. ECF No. 127. On June 29, 2021, Plaintiffs did the same, filing a Memorandum of Law opposing Defendant's Motion for Summary Judgment, and supporting Plaintiff's Motion for Summary Judgment on all their claims concerning the Timeline Repeal Rule. ECF No. 130. All three motions were ripe as of July 27, 2021, *see* ECF Nos. 107, 121, 125, 127, 133, 134, 135, and oral argument was held on January 18, 2022, *see* ECF No. 159.

On February 7, 2022, the United States District Court for the District of Columbia (the "*Asylumworks* Court") vacated the EAD Rules in their entirety—the very same rules in this action, which the Complaint sought to have vacated and the PI and the motion to modify the PI sought to have enjoined. *See Asylumworks v. Mayorkas*, No. 20-cv-03815 (BAH), ECF Nos. 41-42, 2022 WL 355213 (D.D.C. Feb. 7, 2022) (the "*Asylumworks* vacatur").[3] Following a recorded status conference on February 14, 2022, the Court entered an order staying this action until April 12, 2022, in order to allow for the possibility of an appeal during the 60-day window provided under FED. R. APP. P. 4(a). ECF Nos. 164, 166.

Following the expiration of that 60-day window, the Government informed the Court it did not intend to appeal the *Asylumworks* decision, and a recorded status conference was held on April 12, 2022. ECF Nos. 168-169. During that conference, the Court opined and the Parties expressly agreed that, in light of the *Asylumworks* vacatur, the challenged rules central to this action were vacated in their entirety and were no longer operative, and further the Parties agreed that the cross motions for

3 The *Asylumworks* order and memorandum opinion are attached as **Exhibit A**.

summary judgment were now moot. ECF Nos.169, 170. The Court agreed to provide Plaintiffs with additional time to evaluate whether this action still presented a case-or-controversy. *Id.* The Court subsequently issued an order memorializing that conference and formally denying as moot the three motions for summary judgment. ECF No. 170.

B. Recent developments in this matter

The Parties still fundamentally disagree on the legal question(s) of whether in light of the *Asylumworks* vacatur this Court still has subject matter jurisdiction in this case, and (relatedly) whether the PI remains viable. Despite this disagreement, in the weeks that followed, the Government, under no legal obligation, has gone to considerable efforts to understand, discuss, and (where possible) resolve the various concerns and inquiries Plaintiffs have claimed about the Government's efforts to implement the *Asylumworks* vacatur.[4] The Court also held two recorded tele-conferences, on June 13, 2022 and July 18, 2022, to discuss these matters with the Parties. ECF Nos. 175, 181.[5] Following which, the Parties continued to communicate and have tele-conferences among themselves during the months of July and August. ECF No. 182.

These communications and various conferences have clarified Plaintiffs' concerns. Specifically, in the aftermath of *Asylumworks*, Plaintiffs worry that:

(1) CASA and ASAP will no longer receive the same prioritization they once did and that they will be grouped with the other similarly situated I-765(c)(8) applicants, resulting in the greater likelihood that their applications are not processed within 30 days, *see* Ex. B at pp. 1, 2-3, 4, 10-11;

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4 Defendants have already provided the Court with correspondence, highlighting the Parties' respective positions. *See* ECF Nos. 180-1, 180-2. Those communications are provided here again, along with email communications from Plaintiffs' counsel, as **Exhibit B**. Citations to this exhibit rely on the pagination (red font) that has been added.

5 A transcript of the June 13, 2022 tele-conference is attached hereto as **Exhibit F**. Undersigned counsel has not yet been able to obtain a transcript of the July 18, 2022 tele-conference.

(2) the current I-765 Form contains several misstatements of law in light of the *Asylumworks* vacatur, including instructions that "asylum seekers must pay the biometrics fee," that applicants are subject to the One-Year Filing Deadline bar, and that applicants must wait 365-day calendars days to be eligible to apply for an initial EAD, *see* Ex. B at pp. 1-2, 3, 6-7, 10-11, 14;

(3) "USCIS has continued to issue rejection notices instructing applicants to resubmit their applications with the (no longer in effect) biometric fee or fee waiver," *see id.* at pp. 1-2, 4, 14;

(4) "USCIS also recently notified the public of its intention to continue using the current version of Form I-765—which was designed to implement the now-vacated rule changes and requires the collection of information now unnecessary to adjudicate any EAD application," *see id.* at pp. 1, 9-10;

(5) "USCIS's online "Case Inquiry" tool continues to list two drop-down options for I-765 category (c)(8) applications: "I765 – Based on a pending asylum application [(c)(8)]" and "I765 – Based on a pending asylum application [(c)(8)] and member of Rosario/CASA/ASAP." When applicants who are not members of CASA or ASAP select the first option and attempt to report delayed application processing, the tool returns a message that the application "is currently within the posted processing times" and "[a]n inquiry may not be created at this time," *see id.* at pp. 2, 8, 14; and

(6) the Code of Federal Regulations ("CFR"), and its electronic version ("e-CFR") have not been updated to reflect the now vacated rules, *see id.* at pp. 1, 2, 4, 7-8, 14.

As shown in the Government's responses, which were only partially discussed during the hearings with the Court, at least two of these concerns (numbers (1) and (3)) have been addressed. As it relates to Issue (1), the Government's position, which the Court reiterated and fully adopted during both tele-conferences, is that USCIS's compliance with the 30-day adjudication timeline is primarily controlled by the permanent injunction issued in *Rosario*, and Plaintiffs should review that decision and consult with *Rosario* counsel regarding compliance matters. Ex. B at p. 6; *see also* Ex. F at pp. 14-15, 16-19 (the Court discussing the applicability of *Rosario* to Plaintiffs' concern about 30-day compliance); *id.* at p. 18 (Judge Xinis stating: "But again,…just for an example, you gave me the 30-day processing rule. *Rosario* is squarely on point, and that was the only reason I raised it…I understand

that *Rosario* had, for a while, a separate track for the asylees who are under the injunction in this case. But in my mind that was pre-*Asylumworks*. And I thought after Asylum works now… the *Rosario* posture has changed nationwide… all asylee applicants are back in with respect to that class action.").

And for Issue (3), USCIS was made aware of these rejection notices and has confirmed that, effective Monday, June 6, 2022, these notices will no longer be sent out. This was brought to the Court's attention during the June 13th Hearing, and, having received no further objection or inquiry from Plaintiffs or any other party, USCIS believes this matter is resolved. *Id.* at pp. 3, 4, 8.

As for the remainder of these concerns, the Government has provided Plaintiff with thorough explanations as to why the Agency's website, the I-765 Form instructions, the "Case inquiry tool," and CFR/e-CFR have not been updated.[6] *Id.* at pp. 2-3, 6-7. In both writing and verbal discussions, the Agency has walked Plaintiffs through the legal process that must be followed for these matters to be addressed, explaining what the Agency has done and the legal requirements that need to be complied with by the Agency and external, unrelated (and non-party) agencies within the federal government. *Id.* at pp. 2-5, 6-8. In good faith and an earnest desire to avoid wasting judicial resources, the Agency continues to engage with Plaintiffs by providing status updates and constantly responding to Plaintiffs' concerns about the Agency's implementation of the *Asylumworks* vacatur. ECF No. 182.

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6 As explained on numerous occasions to Plaintiffs' counsel, the "Case inquiry" or "e-Request" tool is a component of USCIS's Case Status Online landing page, which broadly allows for individuals to check on the status of a benefit request, not just c(8) EAD applicants. The tool permits individuals to submit an online inquiry about a case or request other services—such as an accommodation request, or for information about correcting an error on an applicant's notice. Significantly, it is only an inquiry tool to aid the public in obtaining information—the tool is not germane to, nor does it have any legal effect or bearing on, the adjudication of immigration benefit(s) requested, including Form I-765 c(8) EAD applications. Moreover, the tool is an online form subject to the Paperwork Reduction Act ("PRA"), *see* 44 U.S.C. §§ 3501-3520, 8 C.F.R. §§ 1320.1-18. As such, it is currently going through PRA clearance to ensure quality, accuracy, and compliance with various federal requirements.

The Government's continued willingness to engage in dialogue with Plaintiffs and keep them apprised of the Agency's efforts to implement the *Asylumworks* vacatur have not resolved Plaintiffs' concerns. With no agreement or informal resolution having been reached, a briefing schedule was entered in this case allowing for the Government to file a motion to dismiss, Plaintiffs to file a motion to enforce the PI, and for the Parties to file their respective oppositions. ECF Nos. 183, 184.

C. Recent developments in *Asylumworks* and *Rosario*

On July 22, 2022, the plaintiffs in *Asylumworks* filed a "Motion to Enforce Judgment or for Additional Injunctive Relief" (the "Enforcement Motion"), contending that the Government has failed to implement the vacatur. *See Asylumworks*, No. 20-cv-03815 (BAH), ECF No. 47 at p. 1 ("Defendants have failed to comply with this Court's order vacating and voiding ab initio the Rules.").[7] The nature of the plaintiffs' grievance is captured by the relief they seek. Specifically, the Enforcement Motion requests that the *Asylumworks* Court enter an order or issue injunctive relief: (1) "requiring immediate amendment of the e-CFR to reflect the regulations now in effect"; (2) "compelling [d]efendants to immediately revise the I-765 Form, accompanying Form Instructions, and relevant agency guidance;" and (3) "directing [d]efendants to process applications in accordance with the effective rules, including by instructing that all applications be adjudicated within thirty days of their filing date or within fifteen days of this Court's order for any application that has been pending for longer than thirty days." *Id.* at pp. 2-3. Additionally, and of particular pertinence here, the *Asylumworks* plaintiffs are requesting the court issue an order "clarifying that EAD processing does not depend on ASAP or CASA membership[.]" *Id.* at pp. 24-25.

7 A copy of the Enforcement Motion is attached hereto as **Exhibit C**. There are five declarations--totaling 676 pages—submitted in support of the Enforcement Motion; however, they have not been included with Exhibit C.

In their recently filed opposition, the Government argues that it has complied with the *Asylumworks* vacatur, and that all reasonable efforts have been and continue to be made to implement the vacatur consistent with the Government's statutory and regulatory obligations, as well as with regard to compliance with obligations established under the *Rosario* permanent injunction. *See Asylumworks*, No. 20-cv-03815 (BAH), ECF No. 54 (the "Enforcement Opposition").[8] In opposing the relief requested in the Enforcement Motion, the Government has provided the *Asylumworks* Court with a thorough explanation of the operational efforts the Agency has undertaken since the vacatur order issued, as well as the statutory, regulatory, and procedural requirements that must be followed in the context of revising the CFR, the forms, and the form instructions affected by *Asylumworks* vacatur. The Government also explained the efforts undertaken to resolve the backlog of cases that was created as a consequence of the *Asylumworks* vacatur—a backlog, the Enforcement Opposition notes, that has adversely impacted the Government's compliance with the 30-day adjudication timeline for adjudicating initial asylum-based EAD applicants. *Id.* at p. 5.

Among other things, the Enforcement Opposition explains that following the vacatur, "USCIS ceased enforcing the challenged Rules immediately after the Court vacated them," and instead "returned to processing initial asylum-based EAD applications under the Rules that had been in force before the challenged Rules had taken effect." *Id.* at p. 11; *see also id.* at pp. 11-12 (providing a litany of operational changes that the Government has undertaken in order to comply with the vacatur and the

8 A copy of the Enforcement Opposition is attached hereto as **Exhibit D**. There are five attachments to that filing, three of which (54-1, 51-2, 54-3) are included in Exhibit D. They consist of two supporting declarations, and a compilation of monthly reports provided to the plaintiffs in the *Rosario* case. The two attachments to the Enforcement Opposition (54-4, 54-5) that are not included in Exhibit D consist of the Complaint in this case, and an attachment regarding the *Asylumworks* plaintiffs' concurrent Motion for Attorneys' Fees.

rules that have now come back into effect).[9] The Government also explains that "[o]ne consequence of this Court's vacatur order was the immediate creation of a significant backlog of cases to which the 30-day processing timeframe suddenly applied," noting that "the number of applications to which the 30-day processing timeframe applied thus immediately swelled from about 8,138 to about 93,639." *Id.* at p. 13. But since that sudden deluge, "USCIS has increased resources for processing initial asylum-based EAD applications by hiring new staff, pulling existing staff from other work, and offering overtime pay," and as a result of such efforts, "USCIS has substantially increased the number of monthly initial asylum-based EAD adjudications subject to the 30-day processing timeframe that it has been able to complete." *Id.* at p. 5.

The Enforcement Opposition details the very same issues that Plaintiffs continue to bring to this Court's and the Government's attention in this matter. For each issue, the Enforcement Opposition advises the *Asylumworks* Court of the legal and practical process that must be followed for the requested updates to be made, the required involvement and input from outside agencies of the federal government, what steps and efforts the Agency has already taken, what steps remain, and (where possible) an informed prediction as to when such updates will be completed. *See id.* at pp. 11-14 (discussing USCIS's operational changes, logistical difficulties, and all efforts being taken to come into full compliance with the relevant legal authorities), pp. 14-16 (discussing the current status and the Government's efforts to amend the CFR and e-CFR), pp. 16-17 (discussing the current status and USCIS's efforts to revise Form I-765 and its instructions). Fundamentally, the Government asserts that much of what the *Asylumworks* plaintiffs complain of is the result of legally-mandated compliance,

9 When citing to the Enforcement Opposition, undersigned counsel uses the CM/ECF electronic pagination, which is inconsistent with the pagination that appears on the bottom of that filing.

which cannot simply be side-stepped or hurried because the plaintiffs find it undesirable. *See id.* at p. 18 ("**Plaintiffs may characterize compliance with these congressional and presidential restraints on regulatory action as 'bureaucracy,' but it is simply the price of making regulatory change consistent with the rule of law**. Defendants are likewise on track to process most of their backlog of applications that have been pending for over 30 days by the end of September 2022, having markedly improved their rate of adjudication. Although Defendants understand Plaintiffs' frustration with this progress's pace, [Defendants] are undertaking reasonable efforts considering the significant resource and workload constraints under which they are operating.") (emphasis added) (quoting Enforcement Motion at p. 15).

Lastly, there has been a significant development in *Rosario v. USCIS*, No. 15-cv-00813-JLR (W.D. Wash.) (the "*Rosario* Court").[10] Just yesterday afternoon, August 25, 2022, the plaintiffs filed a "Motion for Civil Contempt and to Enforce Permanent Injunction" (the "Contempt Motion"), arguing that USCIS has been non-compliant with the *Rosario* court's permanent injunction, *supra* note 10, and requesting that the court intervene to ensure greater compliance with the mandate that USCIS process all asylum EAD applications within 30-days. *Rosario*, No. 15-cv-00813-JLR at ECF No. 196.[11] The Contempt Motion requests that the court order the government to eliminate the backlog of initial asylum-based EAD applications, resume compliance with the 30-day processing timeline by

10 Again, *Rosario* was a class action comprised of individual asylum applicants —brought prior to the promulgation of the Timeline Repeal Rule—challenging USCIS' failure to process EAD applications within the 30-day deadline set for itself. *See Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2017). The *Rosario* plaintiffs prevailed, as the court granted both preliminary and permanent injunctive relief, on July 26, 2018, requiring that USCIS process work applications within the 30-day processing period. *Id.* at 1158; *see also Rosario*, No. 15-cv-00813-JLR, ECF Nos. 125-126.

11 A copy of the Contempt Motion is attached hereto as **Exhibit D**. This exhibit includes the proposed order, and the two supporting declarations filed with it, but the attachments included with the declarations.

September 30, 2022, establish a 30-day timeline compliance benchmark, and continue to provide *Rosario* plaintiffs with monthly reports. *Id.*

The issues addressed and the scope of and relief sought in the *Asylumworks* Motion to Enforce and in the pending *Rosario* Contempt Motion will substantially—if not entirely—address Plaintiffs concerns in the present matter.

II. ARGUMENT

Common sense and fundamental principles of judicial economy and comity make clear that a temporary stay of the briefing schedule in this matter is appropriate and the wisest use of time and litigation resources. As illustrated above, most if not all of Plaintiffs' grievances are currently being litigated in the *Asylumworks* Court, which issued the vacatur order, and the *Rosario* Court, which issued the permanent injunction controlling compliance with the 30-day timeline for adjudicating initial asylum-based EAD applications that the vacatur order revived. Proceeding with litigation of the same or substantially similar issues in this matter not only causes an unnecessary drain on resources, but it risks imposing inconsistent legal mandates on the Government. The *Asylumworks* and *Rosario* Courts have far stronger claims for jurisdiction, and there is simply no foreseeable prejudice that would result from waiting until both courts resolve the pending motions. Rather, this Court and the Parties would benefit from considering any resolution that results from those cases in the context of this Court's further deliberations. The scope of any future orders controlling Government action, as well as decisions relating to compliance with the *Asylumworks* vacatur, revision of forms and form instructions, regulatory action necessary to revise the CFR, would help to inform this Court's further deliberations, and would reframe and potentially resolve substantial areas of disagreement between the Parties.

A. General principles

It is well established that, subject to some limitations, "[a] district court has broad discretion to stay proceedings as part of its inherent power to control its own docket." *Hunt Valley Baptist Church, Inc. v. Baltimore Co., Maryland*, No. 1:17-cv-804, 2018 WL 1570256, at *2 (D. Md. Mar. 29, 2018) (Hollander, J.) (citing *Landis v. North American*, 299 U.S. 248, 254 (1936); *In re Sacramento Mun. Utility Dist.*, 395 Fed. Appx. 684, 687 (Fed. Cir. 2010)). In considering a motion to stay, district courts "weigh competing interests and maintain an even balance." *Buas Sands Hotel, LLC v. Liberty Mutual Insurance Company*, No. 1:21-cv-1214, 2021 WL 4310956, at *5 (D. Md. Sept. 22, 2021) (Hollander, J.) (citing *Landis*, 299 U.S. at 255); *see also United States v. Ga. Pac. Corp.*, 562 F.2d 294, 296 (4th Cir. 1977) ("The determination by a district judge in granting or denying a motion to stay proceedings calls for an exercise of judgment to balance the various factors relevant to the expeditious and comprehensive disposition of the causes of action on the court's docket.").

In achieving a proper balance, federal courts "typically examine three factors: (1) the impact on the orderly course of justice, sometimes referred to as judicial economy, measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected from a stay; (2) the hardship to the moving party if the case is not stayed; and (3) the potential damage or prejudice to the non-moving party if a stay is granted." *Buas Sands*, 2021 WL 4310956, at *5 (citing *Int'l Refugee Assistance Project v. Trump*, 323 F. Supp. 3d 726, 731 (D. Md. 2018) (Chuang, J.); *CX Reinsurance Co. Limited v. Johnson*, 8:18-cv-2355, 2020 WL 406936, at *3 (D. Md. Jan. 24, 2020) (Hazel, J.)). Moreover, of equal import, this Court has noted, are the considerations of "**the length of the requested stay and whether proceedings in another matter involve similar issues**." *Buas Sands*,

2021 WL 4310956, at *5 (emphasis added) (citing *Stone v. Trump*, 402 F. Supp. 3d 153, 160 (D. Md. 2019) (Russell, J.))

B. Judicial economy weighs strongly in favor of issuing a stay in this matter.

The *Asylumworks* Enforcement Motion and the *Rosario* Contempt Motion encompass most, if not all, of the same grievances that Plaintiffs have expressed to both the Government and this Court—the very same issues that would be at the forefront of Plaintiff's motion to enforce. Thus, proceeding with the current briefing schedule would force the Parties and this Court to spend their time, focus, and resources on addressing issues that are already in active litigation in other federal courts.

Duplicative litigation adds no value to the resolution of the pending issues. To the contrary, it would only create uncertainty and the possibility of inconsistent court orders. The *Asylumworks* Court is the proper court to explain what its own vacatur order means, to determine whether USCIS is compliant with the order, and if necessary, to fashion orders or remedies to ensure compliance. Likewise, as this Court has already recognized, in light of the *Rosario* Court's permanent injunction, matters relating to compliance with the 30-day processing timeline for initial asylum-based EAD applications are matters for the *Rosario* court to address. Ex. F at pp. 14-15, 16-19. Those very issues are presently pending before the *Rosario* court because of the pending Contempt Motion. Plaintiffs do not, and should not, have an alternative special basis for compelling 30-day compliance or some other special remedy for their clients that is not available to other asylum EAD applicants (particularly those who have been waiting for longer).

At the conclusion of the four rounds of briefing currently envisioned by the current briefing schedule in this case, the Court would likely need to opine on the matter of jurisdiction, which (put

most charitably) is a murky proposition.[12] This is particularly so, because the question of jurisdiction would be put before this Court during a time when the alleged grievances or harms are very much in a fluid state. The *Asylumworks* Court and the *Rosario* Court could very well resolve (entirely or substantially) pending issues related to the Government's regulatory and form revisions resulting from the vacatur, as well as matters related to 30-day initial asylum-based EAD adjudication timeline. Indeed, these issues could certainly be resolved in a manner that would put to rest all or substantially all of Plaintiffs' concerns. And even if Plaintiffs are not satisfied with the outcome of those pending motions, their resolution will nevertheless be relevant to any issues that remain to be resolved by this Court. It is simply a wasteful and risky proposition for this Court to address such matters when they are presently pending for resolution by Courts that have much clearer grounds for jurisdiction over those issues. *See, e.g., Degen v. United States,* 517 U.S. 820, 823 (1996) ("Courts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities."); *Marshall v. Local Union No. 639, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Inc.,* 593 F.2d 1297, 1302 (D.C.Cir.1979) ("The power of a federal court to protect and enforce its judgments is unquestioned."); *SAS Inst., Inc. v. World Programming Ltd.*, 952 F.3d 513, 521 (4th Cir. 2020) ("If courts lacked the ability to enforce their judgments, the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.") (citations and quotations omitted).

12 Mindful that this is not the focus of this motion, and without wading into the merits of a jurisdictional dispute, the Government merely notes that it finds absurd the theory that a federal district court can avoid dismissing a case for lack subject matter jurisdiction, where it is virtually impossible to grant the relief sought in the complaint, and where the plaintiffs have already conceded that their motions for summary judgment and to modify a preliminary injunction should be denied as moot.

C. The Government could be exposed to inconsistent legal obligations were duplicative litigation to occur.

Not only would such duplicative litigation be an unnecessary waste of judicial and party resources, but it could also create conflicting legal obligations for the Government. For instance, in the *Asylumworks* Enforcement Motion, the plaintiffs seek an order compelling the Government to, in part, "[a]dopt EAD processing procedures to ensure compliance with the mandatory processing times that were restored by the vacatur of the aforementioned Rules, **including by clarifying that EAD processing does not depend on ASAP or CASA membership**[.]" *Asylumworks*, No. 20-cv-03815 (BAH), ECF No. 47 at pp. 24-25 (emphasis added). Yet in this matter, Plaintiffs have complained that the Government is no longer prioritizing CASA and ASAP member applications—it is fair to assume their proposed motion to enforce will likely request judicial relief to address that concern. Accordingly, were the Court to agree with Plaintiffs (which it should not do) and issue an order instructing USCIS to re-start the process of prioritizing CASA and ASAP applicants, or perhaps an order requiring that CASA and ASAP member applications be adjudicated first and always within 30 days, then the Government would be confronted with two conflicting orders, assuming the *Asylumoworks* Court grants the requested relief as well. Simply put, if the plaintiffs from both this case and from *Asylumoworks* obtain the relief described above, then this Court's order will necessarily be in conflict with or impacted by an order issued in *Asylumoworks* (and perhaps even *Rosario*).

This scenario—and many others that could occur—plainly shows the potential for conflicting orders. The Government could be placed in an impossible situation, where it would be necessary to resolve discrepancies between competing and inconsistent orders, or else face the possibility that complying with one order would result in violation of another. This is exactly the type of scenario in which federal courts often exercise their discretion by electing to stay a case so as to avoid such

unnecessary conflicts. *See Popoola v. MD-Individual Practice Ass'n*, 8:2000-cv-2496, 2001 WL 579774, at *2 (D. Md. May 23, 2001) (Chasanow, J.) (citing 5C Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure (3d ed.) § 1360 Preliminary Motions Not Enumerated in Rule 12(b) ("Nonetheless, relying on their inherent power, federal courts often consider these motions in an effort to maximize the effective utilization of judicial resources and to minimize the possibility of conflicts between different court…A motion to stay also may be justified when a similar action is pending in another court… In these situations the court's objectives are to avoid conflicting judicial opinions and to promote judicial efficiency.")).

D. The risk of harm or prejudice to Plaintiffs is nominal, if it exists at all.

It is hard to imagine how temporarily delaying the briefing schedule could be prejudicial. Plaintiffs are seeking to enforce a PI that was issued nearly two years ago, in a case where they have abandoned their claims for judgment because the very relief they request has already been granted in another case (*Asylumworks*) and can no longer be ordered by this Court (or any other).

Oral arguments concluded in late-January and the *Asylumworks* vacatur was issued just a few weeks later, in early-February of 2022. That was more than seven months ago. Since then, Plaintiffs have made no efforts to seek enforcement of the PI. Quite the opposite, really—Plaintiffs willingly conceded as moot both of their motions for summary judgment, as well as their motion to modify or extend the PI. Such concessions accompanied by their 7-month period of inactivity evinces: that Plaintiffs lack some dire urgency to alter their present circumstances; that they have no legal basis to seek the relief requested in their Complaint; that their primary legal claims have been resolved, or at least largely overcome by events in other cases; and that the key concerns they have raised regarding

their clients' present interests, post *Asylumworks* vacatur, are currently being litigated in two other courts, both of which have more plausible claims to primacy over those issues.

Additionally, the stay requested in this motion would likely be in effect for a relatively short period of time. The pending *Asylumworks* Enforcement Motion will become ripe on September 20, 2022, the date of the plaintiff's deadline to file a reply. *See* No. 20-cv-03815 (BAH), ECF No. 55 (consent motion granted by minute order). While it would be folly to try and predict the exact timeline for the Enforcement Motion to be adjudicated, a simple review of the *Asylumworks* docket shows that the case is moving expeditiously, and there is no indication that a decision would require an inordinate amount of time. *Cf. Asylumworks,* No. 20-cv-03815 (BAH), ECF No. 16-22 (it took the D.C. Court in *Asylumworks* **less than three weeks** to adjudicate a motion to stay, which included six different filings). Given its recentness, predicting an exact adjudication date for the pending *Rosario* Contempt Motion is even more difficult. But if history is of any indication, the wait will not likely be long. The *Rosario* Court previously resolved a similar contempt motion, once ripe, **in only nine days**. *Cf. Rosario*, No. 15-cv-00813-JLR, ECF Nos. 171, 181-184.

To put these times in context, assuming no further extensions are sought and granted in this case, the motions contemplated in the current briefing schedule would not become ripe until October 7, 2022. ECF No 184-1.[13] Thus, it is quite possible that this Court will be considering the Parties' motions, when one or both of the *Asylumworks* and *Rosario* decisions are issued.

13 Though it has not been ruled upon, the Government respectfully anticipates the pending consent motion for an extension to be granted. ECF No. 184.

III. CONCLUSION

In sum, the Government respectfully requests that the Court grant this motion and stay this matter pending the adjudication of the pending motions in *Asylumworks* and *Rosario*. A proposed order accompanies this motion.

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Respectfully submitted,

Erek L. Barron
United States Attorney

/s/ Patrick G. Selwood
Patrick G. Selwood
Assistant United States Attorney
United States Attorney's Office, District of Maryland
36 South Charles Street, Fourth Floor
Baltimore, Maryland, 21201
Telephone: (410) 209-4892
Email: Patrick.Selwood@usdoj.gov

Counsel for the Defendants

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