

1 BRETT A. SHUMATE
Assistant Attorney General
2 Civil Division
ELIANIS N. PEREZ
3 Assistant Director
MARY L. LARAKERS
4 Senior Litigation Counsel
5 TIM RAMNITZ
Senior Litigation Counsel
6 CAROLYN D. DILLARD
Trial Attorney
7 OLGA Y. KUCHINS
8 Trial Attorney
AYSHA T. IQBAL
9 Trial Attorney
U.S. Department of Justice
10 Office of Immigration Litigation
General Litigation and Appeals Section
11 P.O. Box 878, Ben Franklin Station
12 Washington, DC 20044
202-451-7672
13 Aysha.T.Iqbal@usdoj.gov
Attorneys for Defendants
14

15 IN THE UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED FARM WORKERS, et al.,
18 Plaintiffs,
19 v.
20 KRISTI NOEM, Secretary of the United States
21 Department of Homeland Security, et al.,
22 Defendants.
23

No. 1:25-cv-00246-JLT-CDB

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO STAY LITIGATION PENDING
APPEAL**

Date: No Hearing
Time: N/A
Place: N/A
Judge: Hon. Jennifer L. Thurston

24
25
26
27
28

REPLY MEMORANDUM OF POINTS AND AUTHORITIES

1
2 This Court should stay further proceedings in this case pending the Defendants’ Ninth Circuit
3 appeal of this Court’s Preliminary Injunction Order (“PI”) (ECF No. 47), pursuant to *Coinbase, Inc. v.*
4 *Bielski*, 599 U.S. 736, 741 (2023) and *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982).
5 Defendants’ Motion for a Stay of Proceedings (ECF No. 115) (“Defendants’ Motion”), promptly filed in
6 this Court following the filing of Defendants’ Opening Brief in the Ninth Circuit (No. 25-4047), relies on
7 the common-sense principle, and jurisdictional requirement, that while the question of the District Court’s
8 jurisdiction over the claims underlying the PI is pending before the Court of Appeals, this Court should
9 stay further proceedings on those claims, given that “whether ‘the litigation may go forward in the district
10 court is precisely what the court of appeals must decide.’” *Coinbase, Inc.*, 599 U.S. at 741 (citing *Bradford-*
11 *Scott Data Corp. v. Physician Computer Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997)). Supreme Court
12 precedent not only mandates a stay of the claims underlying the preliminary injunction while the appeal
13 is pending, but considerations of judicial economy and the balance of factors also suggest that staying the
14 remaining claims is warranted as a matter of discretion. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

15 Plaintiffs contend that Defendants’ request for a stay is for the purpose of evading their discovery
16 obligations.¹ However, it is well documented that Defendants continue to comply with their discovery
17 obligations—as evidenced by the Greenberg Declaration (ECF No. 118-1 at ¶ 8-10) and the Cantu
18 Declaration (ECF No. 115-1, at ¶ 6-10)—and they are also continuing to negotiate discovery search terms,

19
20 ¹ Plaintiffs make broad, contradictory claims regarding Defendants’ “evasion of discovery.” ECF
21 No. 115 at 3. Yet their evidence cites the steps Defendants have taken to comply with their discovery
22 obligations. ECF No. 115-1. First, Defendants moved to vacate the scheduling conference and set aside
23 the Joint Scheduling Report and Rule 26 requirements because it is Defendants’ position that this case is
24 exempt from regular pretrial proceedings because this is an action for review, on an administrative record,
25 of the policy and practice that Plaintiffs challenge. ECF No. 50. While the Court declined to vacate the
26 requirements, Defendants’ position was grounded in good faith and remains valid. Plaintiffs then claim
27 Defendants have delayed further discovery negotiations. On September 18, 2025, Defendants participated
28 in a meet and confer with Plaintiffs (ECF No. 118-1 at ¶ 8), where Defendants did not *refuse* to
substantively discuss search terms, custodians, or repositories as Plaintiffs claim, but took the questions
and issues presented by Plaintiffs back to their client and then provided a substantive, written response to
Plaintiffs on October 22, 2025 (ECF No. 118-1 at ¶ 10). The Parties remain in negotiations regarding the
search terms and the protective order, and the general scope of discovery. Defendants continue to comply
with discovery obligations and need not apprise Plaintiffs of every step they take toward litigating this
matter. Plaintiffs’ claim of discovery evasion is disingenuous and without merit according to their own
declaration. ECF No. 118-1.

1 the terms of the protective order, and the Electronically Stored Information Protocol—the latest drafts of
2 which are currently with Plaintiffs as of the date of this filing, pending further discussions between the
3 parties. Defendants’ request to stay proceedings is not for duplicitous purposes, but to potentially
4 streamline litigation upon insight from the Ninth Circuit on how this matter should proceed. Despite
5 Plaintiffs’ alternative interpretation, courts within and outside of the Ninth Circuit have applied *Coinbase*
6 or *Griggs*, in the context of a variety of cases not limited to the arbitration context, to stay litigation where
7 it is required, and moreover, sensible. *See infra* at 8. This Court, too, should stay this litigation pending
8 the Ninth Circuit appeal, because the appeal concerns this Court’s jurisdiction to issue preliminary relief
9 on claims I-III, the very claims on which Plaintiff seek permanent relief. ECF No. 1; Prayer for Relief. On
10 claim IV, and alternatively on claims I-III, this Court should stay proceedings as a matter of discretion.

11 *I. The Issues on Appeal Directly Impact the Issues Before this Court*

12 *i. Subject Matter Jurisdiction is a Dispositive, Threshold Issue*

13 The Supreme Court’s decision in *Coinbase*, applying the *Griggs* principle, applies squarely to this
14 case and requires that this Court stay proceedings while the court of appeals considers the threshold
15 jurisdictional questions at the heart of this litigation. *Coinbase, Inc.*, 599 U.S. at 741 (citing *Griggs*, 459
16 U.S. at 58). While Defendants appeal the jurisdictional issues in the context of the PI order, the Ninth
17 Circuit’s opinion will inform this Court’s jurisdiction over claims I-III, arguments Defendants have also
18 put forth in their Motion to Dismiss. *See* Defs.’ Mot. At 6; ECF No. 64. Defendants have established that
19 because the appeal considers threshold legal, jurisdictional issues that will govern how this case proceeds
20 in the district court, the “the entire case is essentially ‘involved in the appeal.’” *Coinbase, Inc.*, 599 U.S.
21 at 741 (citing *Griggs*, 459 U.S. at 58). Plaintiffs argue that because the underlying dispute in *Coinbase*
22 concerned whether or not arbitration should occur—which is distinct from what is being litigated in this
23 case—it is inapposite. However, Plaintiffs’ interpretation disregards case law applying *Coinbase* and the
24 *Griggs* principle in a variety of contexts beyond arbitration, including decisions from the Ninth Circuit.
25 *See infra* at 8; Defs.’ Mot. at 7 citing (*Newsom v. Trump*, No. 25-cv-04870-CRB, 2025 WL 2609917 (N.D.
26 Cal., Sept. 9, 2025)). A reasonable interpretation and application of Supreme Court precedent and common
27 sense mandate a stay in this case.

28 First, the basis for Defendants’ Motion to Stay is straightforward: because the PI appeal concerns

1 the scope of this Court’s jurisdiction to issue relief on Claims I-III, a decision in that appeal will impact
2 the entirety of the case, including whether the case may even proceed, because jurisdiction is a threshold
3 dispositive issue that Defendants also challenge via their Motion to Dismiss (ECF No. 64). *See Davis v.*
4 *Federal Election Com’n*, 554 U.S. 724, 734 (2008) (citations omitted) (“while the proof required to
5 establish standing increases as the suit proceeds . . . the standing inquiry remains focused on whether the
6 party invoking jurisdiction had the requisite stake in the outcome when the suit was filed.”). The Court’s
7 PI orders preliminary relief on the same claims on which Plaintiffs seek permanent relief. Compare ECF
8 No. 1, Prayer for Relief and ECF No. 47, Order. If Plaintiffs did not establish jurisdiction to seek the
9 preliminary relief on the same claims that they seek the same permanent relief, then it reasonably follows
10 that they did not establish jurisdiction over the claims altogether. *See Pacific Radiation Oncology, LLC v.*
11 *Queen’s Medical Center*, 810 F.3d 631, 636 (9th Cir. 2015) (citations omitted) (“The relationship between
12 the preliminary injunction and the underlying complaint is sufficiently strong where the preliminary
13 injunction would grant ‘relief of the same character as that which may be granted finally.’”). Therefore,
14 Defendants *have* identified the specific impact that a possible reversal of the PI will have on this litigation:
15 it would inform this Court’s jurisdiction to preside over the case, especially considering the fact that
16 Defendants have raised the same jurisdictional arguments (standing and mootness) on all of Plaintiffs
17 claims, including the Fifth Amendment claim not previously addressed by the Court’s PI. *See* Defs.’ Mot.
18 At 6-8; ECF No. 64; *Rogers v. Sacramento*, No. 2:24-cv-00237, 2024 WL 266504, at *2 (E.D. Cal.,
19 2024) citing *Offshore Inc. v. Greenpeace, Inc.*, 864 F. Supp. 2d 839, 842 (D. Alaska 2012), *aff’d*, 709 F.3d
20 1281 (9th Cir. 2013) (“A district court may not grant a preliminary injunction if it lacks subject matter
21 jurisdiction over the claim before it.”).

22 Next, contrary to Plaintiffs’ position that “[e]ven the jurisdictional issues Defendants raise on
23 appeal are not, *at this stage*, dispositive because they are inherently *factual*,” Pls.’ Opp. at 6, basic tenets
24 of civil procedure establish that jurisdiction is a dispositive issue properly raised at the pleadings stage (or
25 at any time thereafter throughout litigation), and it is Defendants’ position that Plaintiffs cannot establish
26 standing over their claims or demonstrate their claims are not moot. *See* FRCP 12(b)(1); *Thalheimer v.*
27 *City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011) (“the burden of proof at the preliminary injunction
28 phase tracks the burden of proof at trial.”). Plaintiffs assert that the standing issue on appeal is not

1 dispositive because prospective standing includes a factual inquiry, and because these proceedings are still
2 at the pleadings stage, perhaps they will later establish sufficient facts for prospective standing. Pls.’ Mot.
3 at 6. But Plaintiffs’ burden requires them to establish standing at every stage of proceedings, including the
4 pleadings stage, and they are not permitted to kick the can down the road and fish for facts establishing
5 standing that they lacked at the outset. *See Ministerio Roca Solida v. U.S. Dept. of Fish and Wildlife*, 288
6 F.R.D. 500, 506 (D. Nev., 2013) (citing *Morongo Band of Mission Indians v. Cal. State Bd. of*
7 *Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988) (“As ‘[s]ubject matter jurisdiction must exist as of the
8 time the action is commenced,’ permitting plaintiff to engage in discovery in an attempt to establish
9 jurisdiction is inappropriate.”); *Davis*, 554 U.S. at 732-733. And subject matter jurisdiction is a threshold
10 issue that cannot be manufactured. *See Bland v. Kadow*, No. 2:24-cv-2346, 2025 WL 18993, at *3 (E.D.
11 Cal., Jan. 2, 2025) (citing *Morongo Band of Mission Indians*, 858 F.2d at 1380) (“If jurisdiction is lacking
12 at the outset, the district court has ‘no power to do anything with the case except dismiss.’”). If the Ninth
13 Circuit were to decide there was no jurisdiction to issue the preliminary injunction on claims I-III because
14 Plaintiffs lacked standing and the claims were moot, then there would be no jurisdiction over claims I-III
15 generally, given that Plaintiffs ultimately seek the same, but permanent, relief on the same claims. Defs.’
16 Mot. at 6, 9. Defendants have advanced jurisdictional defenses to all of Plaintiffs’ claims, both before the
17 Ninth Circuit on the Fourth Amendment claims, and before this Court on both the Fourth and Fifth
18 Amendment claims. As such, the *Griggs* principle, later extended by *Coinbase* provides a legal basis for
19 a stay, because the appeal “divests the district court of its control over those aspects of the case involved
20 in the appeal.” *Griggs*, 459 U.S. at 56; *see also Morgan Stanley & Co., LLC v. Couch*, No. 1:15-cv-1291;
21 2015 WL 7271717, at *3 (E.D. Cal., 2015) (finding the notice of appeal divests the court of jurisdiction
22 over the case where the PI appeal challenges the court’s jurisdiction to enjoin the challenged action, and
23 citing cases following *Griggs* that have “winnowed down *Plotkin*’s broad holding”).²

24 *ii. Coinbase and Griggs Apply Beyond the Arbitration Context*

25 The Supreme Court’s reasoning in *Coinbase* supports its application in the instant case. While
26

27 ² *See* Pls.’ Opp. at 1 (“This request flouts the well-settled rule that ‘an appeal from an interlocutory
28 order does not divest the trial court of jurisdiction to continue with other phases of the case.’” *Plotkin v.*
Pac. Tel. & Tel. Co., 688 F.2d 1291, 1293 (9th Cir. 1982)).

1 *Coinbase* considered the distinct question of whether a district court must stay a matter while the court of
2 appeals considers a ruling on arbitration, the underlying basis for the Court’s decision is universal. In both
3 *Coinbase* and the instant action, the court is tasked with deciding whether a case should proceed in district
4 court while the court of appeals deliberates and may ultimately decide the case may not proceed in district
5 court. In *Coinbase*, the reason the case may not proceed in district court is because it belongs in arbitration.
6 *Coinbase, Inc.*, 599 U.S. at 741. In the instant action, the reason the case may not proceed is because this
7 court lacks jurisdiction over claims I-III. As is the case in an appeal concerning the Court’s jurisdiction
8 “when a party appeals the denial of a motion to compel arbitration, whether ‘the litigation may go forward
9 in the district court is precisely what the court of appeals must decide.” *Coinbase, Inc.*, 599 U.S. at 741
10 citing *Bradford-Scott Data Corp.*, 128 F.3d at 506. Indeed, under other circumstances, an appeal of a
11 preliminary injunction may resolve only a fraction of the claims and merits of a case, as Plaintiffs point
12 out (Pls.’ Opp. at 6), but here, Defendants’ appeal of the PI has the potential to dispose of the Fourth
13 Amendment claims altogether in the event that the Ninth Circuit concludes Plaintiffs did not establish
14 subject matter jurisdiction at the outset based on the facts in the complaint.³ Therefore, like in *Coinbase*,
15 the issue pending before the Court of Appeals will inform nearly every aspect of this case, beginning with
16 the very threshold question of whether there exists proper subject matter jurisdiction for a majority of
17 Plaintiffs’ claims. The *Coinbase* holding applies to the question before this Court.

18 Next, Plaintiffs cannot reasonably dismiss the legal implications of *Coinbase* merely because it
19 addressed subject matter different from that involved in this case. *See Chalamalesetty v. Jaddou*, 2023
20 WL 6387976, at *3 (D. Neb., 2023) (an immigration case concluding it had jurisdiction to resolve the
21 jurisdictional issues, but acknowledging “the general principle that an appeal, including an interlocutory
22 appeal, divests the district court of its control over those aspects of the case involved in the appeal,” and
23 citing to *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915, 1919 (2023)). Plaintiffs ask this Court to read
24 *California by and through Harrison v. Express Scripts, Inc.*, 139 F.4th 763 (9th Cir. 2025) as precluding
25

26 ³ It is for this very reason that “dispositive motions which raise issues of the court’s jurisdiction,
27 venue, or immunity are commonly situations in which the court determines that staying discovery pending
28 a ruling on a dispositive motion is appropriate.” *Zabeti v. Arkin*, No. 2:14-cv-00018, 2014 WL 1764358,
at *3 (D. Nev., Apr. 28, 2014) (citing *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981)).

1 application of *Coinbase* outside of the arbitration context, but *California* declined to apply *Coinbase* in
2 the federalism context for reasons irrelevant to this case. *See* Pls. Opp. At 7; Defs.’ Mot. At 6-7. The
3 introduction of the Ninth Circuit’s opinion in *California* explicitly reduces the matter to one that answers
4 the question of whether “*Coinbase*’s logic should extend to the federal officer removal context . . .”
5 *California*, 139 F.4th at 766 (emphasis added). Other Courts in the Ninth Circuit have applied *Griggs* or
6 *Coinbase* (following the decision in *California*) in contexts outside of arbitration. *See, e.g., Newsom*, No.
7 25-cv-04870-CRB, 2025 WL 2609917, at *2; *S.L. et al. v. Cnty. of Riverside et al.*, No. 5:24-cv-00249,
8 2025 WL 2652874, at *4-7 (C.D. Cal., Sept. 15, 2025). To be sure, the court in *California* also decided
9 that “*Coinbase* does not abrogate *Nken v. Holder* beyond the arbitration context.” *California*, 139 F.4th at
10 768. But despite this broad language, the Court’s reasoning thereafter was “crucially” reliant on the unique
11 “federalism concerns” at issue in the federal officer removal context. *Id.* *Nken* should continue to apply in
12 this context, the Court explained, because a more flexible approach is needed in order to prevent
13 “infring[ing] upon the rights of state courts.” *Id.* At 768-69. Consequently, any application of *California*
14 beyond the federal officer removal context, or a context involving principles of comity, makes little sense,
15 as it is not supported by the Court’s reasoning.

16 Then, Plaintiffs pivot to an unpersuasive attempt to discount *Newsom*. Pls.’ Opp. At 7. But there
17 is no need to complicate *Newsom* based on an examination of its procedural history when the reasoning
18 and holding provide the requisite insight sought here. In *Newsom*, the District Court for the Northern
19 District of California concluded that the issues before the Ninth Circuit were “inextricably tied up with
20 the merits of Plaintiffs’ new motion.” *See Newsom*, No. 25-cv-04870-CRB, 2025 WL 2609917, at *2
21 (citing *Coinbase* and staying further proceedings). Yes, in *Newsom*, the court initially issued a temporary
22 restraining order (“TRO”) that was stayed by the Ninth Circuit. *Id.* at *1. Yes, the Ninth Circuit stayed
23 that TRO pending appeal. *Id.* Yes, the plaintiffs then filed a separate preliminary injunction on the same
24 legal basis, the event that then triggered the defendants’ motion to stay proceedings. *Id.* at *2. But just like
25 in this case, the issues underlying the preliminary injunction were to be informed by the decision of the
26 Ninth Circuit in the pending TRO appeal. So ultimately: *Newsom* (a case not concerning arbitration)
27 applied *Coinbase* to stay all proceedings related to a motion related to the matter pending a Ninth Circuit
28 appeal, and this Court, too, should apply *Coinbase*. It is a stretch to demand that legal support mirror a

1 case procedurally or substantively for it to serve as precedent or persuasive authority.⁴

2 Plaintiffs ask this Court to look to the court’s order on the motion to stay in *Perdomo* (See ECF
3 No. 15-1, Greenberg Decl. Ex. A (*Perdomo* MTS Order)), Pls’ Opp. at 1-2, but as the order in that case
4 explains, the Defendants in *Perdomo* sought a stay based on an distinct legal theory (*Trump v. Boyle*, 606
5 U.S. ____ (2025)), arguing that because the Supreme Court stayed their Fourth Amendment TRO pending
6 appeal, the District Court should stay Fourth Amendment litigation, because in *Trump*, the Supreme Court
7 issued a stay of an order pending appeal based on its reasoning for issuing a stay of another court’s
8 identical order pending appeal. ECF No. 15-1 at 9. The court denied the stay in *Perdomo*, and then went
9 on to issue an indicative ruling indicating that it would *dissolve* the Fourth Amendment TRO on appeal,
10 and cited to the potential absence of an appeal in its decision to deny a stay (“there would be harm to the
11 Plaintiffs of not being permitted to develop the record factually—particularly if no active appeal is
12 pending.” *Id.* at 12). The order in that case does not even address *Coinbase*. In fact, the court’s order cites
13 to the fact that the Supreme Court noted in the *Perdomo* stay order that the plaintiffs, at the very least,
14 retained standing to seek damages, so the district court decided it inappropriate to stay all proceedings
15 when standing on some claims and relief remain. *Id.* at 11 (citing *Noem v. Vasquez Perdomo*, No. 25A169,
16 606 U.S. ____ (2025)). Here, no damages are sought (see ECF No. 1, Prayer for Relief), and it is
17 Defendants’ position that a decision from the Ninth Circuit will resolve the question of jurisdiction for the
18 claims underlying the PI. While the stay request in that case may bear some similarities, that order is not
19 instructive here.

20 _____
21 ⁴ Plaintiffs also attempt to discount *S.L. v. County of Riverside*, No. 5:24-cv-00249-CAS-SPx,
22 2025 WL 2652874, at *4-7 (C.D. Cal. Sept. 15, 2025) on the basis that the stay in that case was
23 discretionary and not mandatory, per *Coinbase*. Pls.’ Opp. at 13 n4. Defendants specified that in that case,
24 the court ordered both an automatic stay, citing the *Griggs* principle, and a discretionary stay on the
25 remaining claims. See Defs.’ Mot. at 7. Plaintiffs attempt to discount *BioCorRx, Inc. v. Calista*
26 *Therapeutics, Inc.*, No. 8:24-cv-00640-JVS-JDE, 2024 WL 4472376, at *3 (C.D. Cal., Aug. 14, 2024) on
27 the same basis. Pls.’ Opp. at 13 n4. Defendants specified that in that case, per the *Griggs* principle, the
28 court found it lacked jurisdiction over issues involved in the appeal and also stayed aspects of the case not
involved in the appeal to promote economy of time and efficiency. Defs.’ Mot. at 8. Plaintiffs attempt to
discount *American Encore v. Fontes*, No. CV-24-01673-PHX-MTL, 2025 WL 1839464, at *2 (D. Ariz.
June 26, 2025) because the Court applied the discretionary stay factors (Pls.’ Opp. At 13 n4), but the court
in that case also decided that “the *Griggs* divestiture rule also supports a stay.” See Defs.’ Mot. at 7-8
citing cases decided both before and after *California*, that apply the *Griggs* principle, or *Coinbase*, and
order an automatic stay in conjunction with a discretionary stay on the remaining claims.

1 This Court can, instead, look to courts in other districts that have analyzed and applied *Coinbase*
2 in a variety of contexts to extend the *Griggs* principle where it is appropriate. *See Murray v. King Cnty.*
3 *Court*, No. 24-cv-00239, 2025 WL 754524 (W.D. Wash., 2025); *Black v. West Virginia State Police*, No.
4 3:22-cv-0096, 2023 WL 6850027 (S.D. W. Va., Oct. 17, 2023); *Dressen v. AstraZeneca AB*, No. 2:24-cv-
5 00337, 2025 WL 252793 (D. Utah, Jan. 21, 2025); *Global Innovative Concepts, LLC v. Division of*
6 *Emergency Management*, No. 5:23-CV-69, 2023 WL 8099111 (E.D.N.C., Nov. 21, 2023). In fact,
7 Plaintiffs themselves cite case law that supports a more universal application of *Coinbase* and the *Griggs*
8 principle, *Schultz v. Emory Univ.*, erroneously arguing that the court there declined to extend *Coinbase*.
9 Pls.’ Mot. at 7. That court declined to stay appellate briefing and decided to exercise jurisdiction over a
10 class action certification while a motion to decertify was simultaneously pending before the district court.
11 No. 23-12929, 2024 WL 4534428 (11th Cir. Oct. 21, 2024). But that court, citing *Coinbase*, also specified
12 that it is “*mindful*” (emphasis added) that “a clear background principle” in appellate jurisprudence is that
13 “[a]n appeal, including an interlocutory appeal, ‘divests the district court of its control over those aspects
14 of the case involved in the appeal.’” *Id.*, at *3 (citing *Coinbase, Inc.* 143 S. Ct. at 1919) (quoting *Griggs*,
15 459 U.S. at 58). Because *Coinbase* did not preclude the court from exercising jurisdiction in that case does
16 not compel the conclusion that the court declined to consider *Coinbase* at all. Plaintiffs put forth no
17 genuine basis for the rejection of *Coinbase* and the *Griggs* principle. As such, this Court should conclude
18 that because the preliminary injunction appeal challenges this Court’s subject matter jurisdiction, a
19 decision which will impact the entirety of the litigation, *Coinbase* and *Griggs* require the Court to stay
20 litigation pending the appeal.

21 *II. Defendants Have Established a Stay is Warranted as a Matter of Discretion*

22 Defendants have established that a stay is warranted, in the alterative, and on the Fifth Amendment
23 Claim that is not subject to the PI appeal, as a matter of discretion pursuant to the *CMAX* factors. *See*
24 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-55)⁵. All factors,

25 ⁵ Plaintiffs suggest that because this Court’s decision in *Flores v. Bennett*, 675 F. Supp. 3d 1052,
26 1057 (E.D. Cal. 2023) predates *California*, and because *California* applies the *Nken* factors as opposed to
27 the *CMAX* factors when considering a discretionary stay, that there is a split on which standard should
28 apply in this context. But *Flores* clearly distinguishes the standard for a **stay of proceedings** (*CMAX*
factors) versus the standard for a **stay of an order** (*Nken* factors) (*See Flores*, 675 F. Supp. 3d at 1057),

1 including: “the possible damage which may result from the granting of a stay, the hardship or inequity
2 which a party may suffer in being required to go forward, and the orderly course of justice measured in
3 terms of the simplifying or complicating of issues, proof, and questions of law which could be expected
4 to result from a stay,” *CMAX, Inc.*, 300 F.2d at 268, balance in favor of granting a stay of proceedings,
5 and Plaintiffs fail to put forth any persuasive argument to the contrary. *See* Pls.’ Opp. At 11-13. As such,
6 because Defendants have established the *CMAX* factors favor a stay this Court should grant a stay. Defs.’
7 Mot. at 9-10.

8 As to the first factor, there is no possible damage which may result from the granting of a stay.
9 Not only have Plaintiffs obtained preliminary relief as to their Fourth Amendment claims, but also, they
10 cannot establish *ongoing* harm as to their Fourth or Fifth Amendment claims for the purposes of
11 establishing standing. *See* MTD, ECF No. 64; Pls.’ Opp. At 11. Further, on July 11, 2025, USBP issued a
12 Voluntary Return Muster recommitting to consistently informing aliens of their right to a hearing before
13 an immigration judge and the consequences of alternatively choosing to voluntarily depart, which renders
14 Plaintiffs’ Fifth Amendment claim moot. *See Id.* And when considering a stay, courts are “generally
15 unwilling to presume delay is harmful without specific supporting evidence.” *Aliphcom v. Fitbit, Inc.*, 154
16 F. Supp. 3d 933, 938 (N.D. Cal., 2015). Further, Plaintiffs can resume discovery on the alleged unlawful
17 policies and practices that they challenge once there is clarity on whether they even have standing and
18 subject matter jurisdiction to pursue their claims, and Plaintiffs do not allege any time constraints in that
19 regard. Given that the Ninth Circuit appeal is pending, and that Defendants request *expedited*
20 *consideration* in their opening brief, a stay would likely be short in duration. *North River Ins. Co. v.*
21 *Leffingwell Ag Sales Co., Inc.*, 2011 WL 304579, at *7 (E.D. Cal., 2011) (citing *Leyva v. Certified Grocers*
22 *of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979)) (“general policy favoring stays of short, or at least

23 _____
24 and *California* concerned an appeal of a motion to stay a **remand order** to state court. *See California by*
25 *and through Harrison*, 139 F. 4th at 767. Following *California*, Courts continue to cite to *CMAX* and
26 *Landis* when deciding whether to **stay proceedings**. *See Peoples v. Western Refining Retail, LLC*, No.
27 1:25-cv-00480, 2025 WL 2762449, at *6 (E.D. Cal., Sept. 26, 2025); *California High-Speed Rail*
28 *Authority, v. U.S. Dep’t of Transportation, et al.*, 2025 WL 3013980, at *2 (E.D. Cal., Oct. 28, 2025);
Mirabelli v. Olson, et al., No.: 3:23-cv-768, 2025 WL 2998373, at *2 (S.D. Cal., Oct. 24, 2025); *ZIIP Inc.*
v. Carol Cole Co., No. 25-cv-02281, 2025 WL 2988365, at *2 (S.D. Cal., Oct. 23, 2025); *Sulton v. Trate*,
No. 1:23-cv-00709, 2025 WL 2979626, at *1 (E.D. Cal., Oct. 22, 2025).

1 reasonable duration”). As such, there is no projected harm to Plaintiffs from a short stay of litigation.

2 On the other hand, Defendants submit the Cantú Discovery Declaration (ECF No. 115-1), which
3 represents the burden class-wide discovery presents at this juncture, a burden that may be mooted, or even
4 narrowed, once a decision on subject matter jurisdiction from the Ninth Circuit informs the remainder of
5 this litigation, and contrary to Plaintiffs’ arguments (Pls.’ Opp. At 10), this Court has found that this is a
6 valid basis for a stay. *See Peoples v. Western Refining Retail, LLC*, 2025 WL 2762449, at *6 (E.D. Cal.,
7 2025) citing (*Vance v. Google LLC*, No. 20-cv-04696-BLF, 2021 WL 534363, at *5 (N.D. Cal. Feb. 12,
8 2021)) (“Where a denial of stay would cause both parties to incur significant expenses on litigation that
9 may be rendered moot, ‘the potential hardship from denying the stay weighs slightly in favor in granting
10 it.’”). A stay is in the interest of judicial economy. And on that note, Defendants have established that the
11 orderly course of justice also favors a stay. Defs.’ Mot. at 9-10. While the appeal here does not consider
12 the merits of the claims, the appeal considers jurisdictional issues that are indeed potentially dispositive.
13 *Finder v. Leprino Foods Co.*, No. 1:13-CV-02059-AWI-BAM, 2017 WL 1355104, at *4 (E.D. Cal. Jan.
14 20, 2017) (citation omitted) (granting a stay where “the court expects that the resolution of the issues now
15 pending before the Ninth Circuit will dramatically simplify the questions of law and potentially the
16 questions of proof now pending before the court.”). The factors balance in favor of granting a discretionary
17 stay of the Fifth Amendment claim, and in the alternative, of all claims and proceedings.

18 CONCLUSION

19 For the compelling reasons discussed above, the Court should stay this litigation pending appeal.

20
21 DATED: November 10, 2025

Respectfully submitted,

22 BRETT A. SHUMATE
23 Assistant Attorney General
24 Civil Division

25 ELIANIS N. PEREZ
26 Assistant Director

27 MARY L. LARAKERS
28 Senior Litigation Counsel

/s/ Aysha T. Iqbal
AYSHA T. IQBAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation, GLA
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Tel.: (202) 451-7672
Fax: (202) 305-7000
Email: Aysha.T.Iqbal@usdoj.gov
DC Bar No. 241424
Attorneys for Defendants

CERTIFICATE OF SERVICE

On November 10, 2025, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Eastern District of California, using the electronic case filing system of the Court. I hereby certify that I have served counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Aysha T. Iqbal
AYSHA T. IQBAL
Trial Attorney