

District Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARIA SILVIA GUEVARA ENRIQUEZ,  
*et al.*,

Plaintiffs,

v.

U.S. CITIZENSHIP & IMMIGRATION  
SERVICES, *et al.*,

Defendants.

No. 2:23-CV-0097-TSZ

DEFENDANTS’ MOTION TO STAY  
PROCEEDINGS

Noted for Consideration: August 4, 2023

**INTRODUCTION**

Defendants respectfully move this Court to stay this matter pending a resolution by the U.S. Court of Appeals for the Ninth Circuit (the “Ninth Circuit”) of the pending appeal in *Mercado, et al. v. Miller, et al.*, No. 23-16007 (9th Cir.), which involves the precise question concerning this Court’s subject matter jurisdiction that is at issue in Defendants’ pending motion to dismiss. *See* ECF No. 36 at 9–12. A stay would preserve the resources of the Court and the

1 parties, allow the parties to avoid the risk of inconsistent judgments, and would be of a limited  
2 duration.<sup>1</sup>

### 3 PROCEDURAL BACKGROUND

#### 4 Guevara Enriquez

5 On January 23, 2023, Plaintiffs filed this putative class action lawsuit.<sup>2</sup> ECF No. 1. On  
6 February 17, 2023, Plaintiffs filed an amended class complaint, ECF No. 27, which asserts one  
7 cause of action pursuant to the Administrative Procedure Act (“APA”): unreasonable delay in  
8 deciding Form I-601A, Application for Provisional Unlawful Presence Waiver (“provisional  
9 unlawful presence waiver application”). *Id.* ¶¶ 77–88. Plaintiffs represent that they all filed  
10 provisional unlawful presence waiver applications prior to December 31, 2021. *See id.* ¶ 8.  
11 Plaintiffs further allege that their provisional unlawful presence waiver applications have been  
12 pending for at least 12 months. *Id.* In Plaintiffs’ Prayer for Relief, they request *inter alia* that the  
13 Court “compel[] Defendant [U.S. Citizenship and Immigration Services (“USCIS”)] to decide  
14 the provisional waiver applications of the individually named Plaintiffs, and others who are class  
15 members as of the date the order is issued, within 30 days . . . .” *Id.* ¶ F.

16 On March 31, 2023, Defendants filed a Motion to Dismiss Plaintiffs’ First Amended  
17 Complaint (the “Motion to Dismiss”). ECF No. 36. Pursuant to Federal Rule of Civil Procedure  
18 12(b)(1), Defendants’ Motion to Dismiss argues at the threshold that this Court lacks subject  
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23 <sup>1</sup> In the interest of preserving the Court’s and the parties’ limited resources, before filing  
24 this motion Defendants inquired whether Plaintiffs oppose staying this case pending a resolution  
25 by the Ninth Circuit of the *Mercado* appeal. Plaintiffs confirmed that they oppose Defendants’  
26 stay motion.

27 <sup>2</sup> On January 26, 2023, Plaintiffs filed a motion for class certification. ECF No. 17. On  
March 6, 2023, Defendants filed a response in opposition. ECF No. 31. On March 9, 2023,  
Plaintiffs filed their reply in support of their motion for class certification. ECF No. 33. Plaintiffs’  
motion for class certification is fully briefed and pending.

1 matter jurisdiction to hear this case.<sup>3</sup> *See id.* at 9–12. In particular, Defendants submit that this  
 2 Court lacks jurisdiction over Plaintiffs’ unreasonable delay claim regarding the processing of  
 3 their provisional unlawful presence waiver applications because the waiver’s enabling statute  
 4 expressly divests the Court of jurisdiction to review a “decision or action by the [Secretary of  
 5 Homeland Security]<sup>[4]</sup> regarding a waiver . . . .” 8 U.S.C. § 1182(a)(9)(B)(v); *see* ECF No. 36 at  
 6 9–12. Defendants’ Motion to Dismiss is fully briefed and pending. *See* ECF Nos. 39, 40.<sup>5</sup>

7  
 8 *Mercado*

9 On July 7, 2023, in *Mercado, et al. v. Miller, et al.*, No. 2:22-cv-02182-JAD-EJY, 2023  
 10 WL 4406292 (D. Nev. July 7, 2023), ECF No. 51-1, the United States District Court for the  
 11 District of Nevada granted a motion to dismiss a substantially similar case alleging unreasonable  
 12 delay in the processing of a provisional unlawful presence waiver for lack of subject matter  
 13 jurisdiction pursuant to 8 U.S.C. § 1182(a)(9)(B)(v). *Mercado*, 2023 WL 4406292, at \*1-3. The  
 14 *Mercado* plaintiffs sought “declaratory and injunctive relief under the . . . APA . . . and a writ of  
 15 mandamus ordering . . . USCIS . . . to complete its adjudication of Gustavo Mercado’s I-601A  
 16 application for a provisional-unlawful-presence waiver and the Department of State (DOS) to  
 17 schedule his consular visa interview.” *Id.* at \*1. As to the three U.S. Department of Homeland  
 18 Security officials who the *Mercado* plaintiffs sued, the District of Nevada granted Defendants’  
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 22 <sup>3</sup> Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants’ Motion to Dismiss  
 also argues that Plaintiffs’ operative complaint fails to state a claim of unreasonable delay. *See*  
 ECF No. 36 at 12-18.

23 <sup>4</sup> Although the statute refers to the Attorney General, in 2002, Congress transferred  
 24 enforcement of immigration laws to the Secretary of Homeland Security under the Homeland  
 Security Act of 2002, Pub. L. No. 107-296, § 402, 116 Stat. 2135, 2178 (2002).

25 <sup>5</sup> On May 31, 2023, the Court issued a Minute Order, which directed the parties in this  
 26 matter and two other cases to meet and confer *inter alia* as to whether this matter should be  
 consolidated with other, potentially related cases in the Western District of Washington and to  
 27 file a joint status report. ECF No. 44. The parties met and conferred and, on June 16, 2023, filed  
 a joint status report, which sets forth the parties’ respective positions. ECF No. 48.

1 motion to dismiss on the grounds that “§ 1182(a)(9)(B)(v) precludes judicial review of USCIS’s  
2 alleged delay in processing Gustavo’s I-601A application . . . .” *Id.* at \*3.<sup>6</sup> *Mercado* is the second  
3 district court decision to consider whether and to conclude that 8 U.S.C. § 1182(a)(9)(B)(v)  
4 precludes judicial review of claims of unreasonable delay in the processing of unlawful presence  
5 waiver applications by USCIS and the first such decision by a district court in the Ninth Circuit.<sup>7</sup>

6 On July 12, 2023, the *Mercado* plaintiffs noted an appeal. *Mercado, et al. v. Miller, et al.*,  
7 No. 2:22-cv-02182-JAD-EJY, ECF No. 20 (D. Nev.), which the Ninth Circuit has docketed as  
8 Case No. 23-16007. Pursuant to the Time Schedule Order, which the Ninth Circuit issued on July  
9 17, 2023, the *Mercado* Plaintiffs-Appellants’ opening brief is due by September 18, 2023; the  
10 *Mercado* Defendants-Appellees’ answering brief is due by October 18, 2023; and the *Mercado*  
11 Plaintiffs-Appellants’ optional reply brief is due within 21 days of the filing of Defendants-  
12 Appellees’ answering brief. *Mercado, et al. v. Miller, et al.*, No. 23-16007, Doc. No. 1-1 at 3 (9th  
13 Cir.). Consequently, the precise question concerning this Court’s subject matter jurisdiction that  
14 is at issue in Defendants’ pending motion to dismiss, *see* ECF No. 36 at 9-12, is now before the  
15 Ninth Circuit in an appeal that is scheduled to be fully briefed by November 8, 2023.  
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22 <sup>6</sup> As to the three DOS officials who the *Mercado* plaintiffs sued, the District of Nevada  
23 dismissed claims as to those defendants as well on the grounds that “there is no live case or  
24 controversy present [as to the DOS defendants] without the anchoring claim against USCIS for  
25 unreasonable delay in adjudicating Gustavo’s I-601A application.” *Mercado*, 2023 WL 4406292,  
at \*3.

26 <sup>7</sup> *Lovo, et al. v. Miller, et al.*, No. 5:22-cv-00067, 2023 WL 3550167 (W.D. Va. May 18,  
27 2023), a similar case where the district court also found that it lacked subject matter jurisdiction  
pursuant to 8 U.S.C. § 1182(a)(9)(B)(v), is currently on appeal to the Fourth Circuit. *See* ECF  
Nos. 43, 45.

## ARGUMENT

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2 “The District Court has broad discretion to stay proceedings as an incident to its power  
3 to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). The power to issue a stay  
4 derives from the Court’s “inherent” authority to “control the disposition of the causes on its  
5 docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am.*  
6 *Co.*, 299 U.S. 248, 254 (1936); *accord Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (recognizing “the  
7 inherent authority to manage their dockets and courtrooms with a view toward the efficient and  
8 expedient resolution of cases”). “This power includes staying an action ‘pending resolution of  
9 independent proceedings which bear upon the case.’” *Taie v. Ten Bridges LLC*, No. C21-0526-  
10 JCC, 2022 WL 17416056, at \*1 (W.D. Wash. Dec. 5, 2022) (quoting *Mediterranean Enters., Inc.*  
11 *v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983)). Thus, a district court’s decision to  
12 grant or deny a stay pursuant to its inherent authority to manage its docket is a matter of  
13 discretion. *See Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066  
14 (9th Cir. 2007). “‘The party requesting a stay bears the burden of showing that the circumstances  
15 justify an exercise of that discretion.’” *Taie*, 2022 WL 17416056, at \*1 (quoting *Nken v. Holder*,  
16 556 U.S. 418, 433–34 (2009)).

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19 In determining whether to grant a motion to stay, “the competing interests which will be  
20 affected by the granting or refusal to grant a stay must be weighed.” *Lockyer v. Mirant Corp.*,  
21 398 F.3d 1098, 1110 (9th Cir. 2005) (quotations and citation omitted). Those interests include  
22 “the possible damage which may result from the granting of a stay, the hardship or inequity which  
23 a party may suffer in being required to go forward, and the orderly course of justice measured in  
24 terms of the simplifying or complicating of issues, proof, and questions of law which could be  
25 expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *see Taie*,

1 2022 WL 17416056, at \*1 (“In determining whether to grant a stay pending the result of  
2 independent proceedings, courts consider three factors: (1) the orderly course of justice measured  
3 in terms of the simplifying or complicating of issues, proof, and questions of law which could be  
4 expected to result from a stay, (2) the hardship or inequity that a party may suffer in being  
5 required to go forward, and (3) the possible damage that may result from granting a stay.”)  
6 (quoting *Lockyer*, 398 F.3d at 1098) (citations and quotation marks omitted). The Court may  
7 “find it is efficient for its own docket and the fairest course for the parties to enter a stay of an  
8 action before it, pending resolution of independent proceedings which bear upon the case.”  
9 *Navigators Ins. Co.*, 498 F.3d at 1066 (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d  
10 857, 863–64 (9th Cir. 1979) (Kennedy, J.). “This rule applies whether the separate proceedings  
11 are judicial, administrative, or arbitral in character, and does not require that the issues in such  
12 proceedings are necessarily controlling of the action before the court.” *Leyva*, 593 F.2d at 863–  
13 64.  
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16 Here, the relevant factors strongly weigh in favor of staying this case pending the Ninth  
17 Circuit’s ruling in *Mercado*, which will resolve the threshold jurisdictional issue presented in this  
18 case that is a matter of first impression for the Ninth Circuit.

19 First, courts routinely grant stays when a higher court is considering a legal issue that  
20 bears upon the case. *See e.g., Ganezer v. DirectBuy, Inc.*, 571 F.3d 846 (9th Cir. 2009)  
21 (remanding to the district court with instructions to stay proceedings pending a decision by the  
22 Supreme Court in another matter); *Taie*, 2022 WL 17416056, at \*1 (granting a joint motion to  
23 stay proceedings, in part, “pending the final resolution of an appeal in . . . [a related Ninth Circuit  
24 appeal] . . . which involves allegedly similar underlying facts, legal issues, and claims to this  
25 case”); *Whittaker v. WinRed Tech. Servs. LLC*, No. CV-20-08150-PCT-JJT, 2021 WL 1102297,  
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1 at \*3 (D. Ariz. Mar. 23, 2021) (granting a stay pending a Supreme Court decision); *Aleisa v.*  
2 *Square, Inc.*, 493 F. Supp. 3d 806, 817 (N.D. Cal. 2020) (granting a stay pending a Supreme  
3 Court decision); *Zepeda v. United States*, No. CV1701229, 2019 WL 4573508, at \*1 (D. Ariz.  
4 Sept. 20, 2019) (granting a motion to extend a stay to simplify the issues and promote judicial  
5 economy where Ninth Circuit was anticipated to issue an en banc decision bearing on the case);  
6 *In re Sequenom, Inc. Stockholder Litig.*, No. 16-cv-02054-JAH-BLM, 2019 WL 1200091, at \*2  
7 (S.D. Cal. Mar. 13, 2019) (granting a stay because the Supreme Court’s decision in a pending  
8 case would directly affect the issues before the court); *Washington v. Trump*, No. C17-0141JLR,  
9 2017 WL 2172020, at \*5 (W.D. Wash. May 17, 2017) (granting “Defendants’ motion . . . for a  
10 stay in these proceedings pending the Ninth Circuit’s resolution of the appeal in *Hawaii v.*  
11 *Trump*”); *see also Yasa v. Esperdy*, 80 S. Ct. 1366, 1366 (1960) (noting “the Court of Appeals  
12 has granted a stay pending disposition of the petition for certiorari” in a case addressing a similar  
13 issue), *Wrenn v. District of Columbia*, 179 F. Supp. 3d 135, 139 (D.D.C. 2016) (“If it were *certain*  
14 that the D.C. Circuit’s resolution of the . . . appeal would resolve this case, then there would be  
15 a strong argument for staying the case pending that decision.” (emphasis in original)); *Michael*  
16 *v. Ghee*, 325 F. Supp. 2d 829, 831 (N.D. Ohio 2004) (citing *Landis*, 299 U.S. at 255) (stating that  
17 the fact that the “case on appeal to the Supreme Court may have a dispositive effect on the instant  
18 case . . . weighs heavily in favor of granting the stay”).

21 In this regard, the Supreme Court’s recent guidance in *Coinbase, Inc. v. Bielski*, 143 S.  
22 Ct. 1915 (2023) is instructive. In *Coinbase*, the Supreme Court considered whether a district  
23 court must stay its proceedings where the district court denied a motion to compel arbitration and  
24 the losing party sought interlocutory appeal pursuant to the Federal Arbitration Act. *Id.* at 1918.  
25 In reversing the Ninth Circuit, *id.* at 1923, the Supreme Court concluded that a district court must  
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1 stay its proceedings while an interlocutory appeal on the question of arbitrability remains  
2 ongoing. *Id.* at 1918. Notably, the Supreme Court explained that “[h]ere, as elsewhere, it makes  
3 no sense for trial to go forward while the court of appeals cogitates on whether there should be  
4 one.” *Id.* at 1920 (quotation marks and citation omitted). The same principle applies here, where  
5 the Ninth Circuit is considering whether district courts, including this one, have subject matter  
6 jurisdiction to consider claims alleging unreasonable delay in USCIS’s processing of provisional  
7 unlawful presence waiver applications.  
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9 To be sure, *Coinbase* addressed whether a district court should stay proceedings during  
10 the pendency of an interlocutory appeal in the same case that is expressly authorized by federal  
11 statute, *see Coinbase*, 143 S. Ct. at 1918–19, whereas here the Ninth Circuit is considering in a  
12 substantially identical case the precise question of subject matter jurisdiction that is at issue in  
13 Defendants’ pending Motion to Dismiss. *See* ECF No. 36 at 9-12. However, the underlying  
14 principle—that district courts should stay proceedings that may well end following an appellate  
15 court’s resolution of a pending appeal—remains the same.  
16

17 Second, waiting for the Ninth Circuit to resolve the issue of subject matter jurisdiction  
18 common to both this case and *Mercado* would both simplify the issues and reduce the burden of  
19 litigation on the parties and on the Court by sparing the parties and Court from engaging in work,  
20 which might be at best duplicative and potentially erroneous once the Ninth Circuit speaks on  
21 this issue. *See McMenemy v. Colonial First Lending Grp., Inc.*, No. 14-cv-1482, 2015 WL  
22 1137344, at \*2 (E.D. Cal. Mar. 12, 2015) (absent a stay, there is a “substantial risk of duplication  
23 of proceedings and waste of judicial resources”). Notably, notwithstanding this Court’s earlier  
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1 ruling in a similar pending case limiting any potential discovery to the administrative record,<sup>8</sup>  
2 Plaintiffs' position here is that they are entitled to wide-ranging discovery in this sole count APA  
3 case. Plaintiffs have repeatedly advocated for broad discovery in procedurally inappropriate  
4 filings.<sup>9</sup> See ECF No. 40 at 8–10 (discussing the *Guevara Enriquez* Plaintiffs' procedurally  
5 inappropriate efforts to advocate for discovery in their opposition to the pending Motion to  
6 Dismiss); ECF No. 48 at 10–11 (discussing the *Guevara Enriquez* Plaintiffs' procedurally  
7 inappropriate efforts to advocate for discovery in their portion of the joint status report that the  
8 Court ordered). Under Plaintiffs' discovery plan, should the Court deny Defendants' pending  
9 Motion to Dismiss, ECF No. 36, Plaintiffs will propound wide-ranging discovery demands  
10 beyond the administrative record, see ECF No. 41 § 5(B) (Plaintiffs' discovery plan), which are  
11 highly likely to precipitate discovery disputes that, in turn, will require the Court's and the  
12 parties' resources to litigate. These burdensome efforts may well be unnecessary if the Ninth  
13 Circuit, consistent with the only two district courts to have yet considered the issue, see *Lovo, et*  
14 *al. v. Miller, et al.*, No. 5:22-cv-00067, 2023 WL 3550167 (W.D. Va. May 18, 2023), *Mercado,*  
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17 <sup>8</sup> In this Court's Minute Order of April 11, 2023 in *Rosales Delgado*, it directed the parties  
18 to file a Joint Status Report that includes "[a] proposed deadline for filing of the *administrative*  
19 *record.*" 23-cv-00535-TSZ, ECF No. 3 ¶ 3 (emphasis added).

20 <sup>9</sup> Most recently, Plaintiffs filed a "Notice of Supplemental Facts Related to Defendants'  
21 Motion to Dismiss," ECF No. 50 (the "Notice of Supplemental Facts"), in which Plaintiffs aver  
22 that they "discovered," *id.* at 2, new relevant facts—apparently for the first time—based on  
23 publicly accessible information on USCIS's website and posted on GitHub, a third-party platform  
24 for cloud-based software development. See ECF 50-1 ¶¶ 4–5; GitHub Homepage,  
25 <https://github.com/> (last visited July 25, 2023). Once again, Plaintiffs aver that "discovery is  
26 critical . . . ." ECF No. 50. It is unclear whether Plaintiffs' Notice of Supplemental Facts, ECF  
27 No. 50, is an effort: (1) to amend the complaint yet again without obtaining Defendants' written  
consent or the Court's permission, see Fed. R. Civ. P. 15(a)(2); (2) to file a surreply in opposition  
to the Motion to Dismiss, ECF No. 36, that does not comply with LCR 7(g); or (3) to move to  
compel discovery without seeking first to meet and confer with Defendants, see Fed. R. Civ. P.  
37(a)(1), LCR 37(a)(1), and without alleging the Defendants have failed to satisfy their current  
discovery obligations. See generally Fed. R. Civ. P. 37. In any event, Plaintiffs' Notice of  
Supplemental Facts, ECF No. 50, is the latest in a line of procedurally inappropriate filings in  
which Plaintiffs seek wide-ranging discovery.

1 *et al. v. Miller, et al.*, No. 2:22-cv-02182-JAD-EJY, 2023 WL 4406292 (D. Nev. July 7, 2023),  
2 concludes that 8 U.S.C. § 1182(a)(9)(B)(v) precludes subject matter jurisdiction. *See generally*  
3 *Leyva*, 593 F.2d at 864 (holding that it would waste judicial resources and be burdensome upon  
4 the parties to permit discovery and take evidence on the merits of the case at the same time an  
5 arbitrator is going through a substantially parallel process); *Washington v. Trump*, 2017 WL  
6 2172020, at \*4 (concluding that where “neither this lawsuit, nor the discovery Plaintiffs seek is  
7 typical” and “will likely lead to multiple discovery disputes,” “the high respect owed to the  
8 Executive warrants a stay to protect Defendants from the burden of resource intensive discovery  
9 while the Ninth Circuit addresses issues that may inform the appropriateness, scope, and  
10 necessity of that discovery.”) (internal quotation marks and citations omitted); *Lopez v. Am.*  
11 *Express Bank, FSB*, No. Civ. 09-07335 SJO (MANx), 2010 WL 3637755, \*4 (C.D. Cal. Sept.  
12 17, 2010) (holding that it would be burdensome for the parties to spend much time, energy, and  
13 resources on pre-trial and discovery issues only to find issues moot within less than a year).

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16 Third, were this Court to find that it has subject matter jurisdiction to hear this case prior  
17 to resolution of *Mercado* by the Ninth Circuit, Defendants face a very real likelihood of being  
18 subject to overlapping and inconsistent judgments. Courts routinely stay cases to avoid imposing  
19 inconsistent judgments. *See, e.g., Bergh v. State of Wash.*, 535 F.2d 505, 507 (9th Cir. 1976)  
20 (“When an injunction sought in one federal proceeding would interfere with another federal  
21 proceeding, considerations of comity require more than the usual measure of restraint, and such  
22 injunctions should be granted only in the most unusual cases.”); *Posner v. Essex Ins. Co.*, 178  
23 F.3d 1209, 1224 (11th Cir. 1999) (holding that, among other factors, the risk of inconsistent  
24 judgments indicated that the district court should have stayed the case); *Hart Interior Design*  
25 *LLC 401(k) Profit Sharing Plan v. Recorp Invs. Inc.*, No. CV-16-02347-PHX-GMS, 2018 WL  
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1 1961643, at \*7 (D. Ariz. Apr. 26, 2018) (issuing stay to avoid the risk of inconsistent rulings);  
2 *Hawai’i v. Trump*, 233 F. Supp. 3d 850, 856 (D. Haw. 2017) (finding duplicative litigation and  
3 the risk of inconsistent rulings warranted stay); *see also SST Millennium LLC v. Mission St. Dev.*  
4 *LLC*, No. 18-cv-06681, 2019 WL 2342277, at \*5 (N.D. Cal. June 3, 2019) (finding risk that  
5 arbitration could find no liability while a simultaneous court action could find liability a “clear  
6 case of hardship or inequity”) (citation omitted). Inconsistent judgments would not only burden  
7 Defendants, but they may encourage plaintiffs in future, related cases to bring suit in the Western  
8 District of Washington, where such cases could or should be brought in other districts.<sup>10</sup>

9  
10 Finally, none of the stay factors counsel *against* staying this case until the  
11 Ninth Circuit issues its decision in *Mercado*. In the present context, “[t]he only potential damage  
12 that may result from a stay is that the parties will have to wait longer for resolution of this case”—  
13 a risk that courts have characterized as negligible in the context of stays where the same issues  
14 were pending appellate review. *Nationstar Mortg., LLC v. RAM LLC*, No. 15-cv-1776, 2017 WL  
15 1752933, at \*2 (D. Nev. May 4, 2017). Any “generalized risk of delayed litigation is minimized”  
16 if a parallel proceeding is progressing apace and resolving substantially similar claims and issues  
17 that will also bear on this case. *Aliphcom v. Fitbit, Inc.*, 154 F. Supp. 3d 933, 938 (N.D. Cal.  
18 2015) (granting a stay in light of a parallel proceeding); *see, e.g., Provo v. Rady Children’s Hosp.-*  
19 *San Diego*, No. 15-cv-81, 2015 WL 6144029, at \*2 (S.D. Cal. July 29, 2015) (“[T]he Supreme  
20 Court is likely to issue a decision within one year and neither party will be significantly  
21 prejudiced by a less than one year delay.”). Indeed, granting the stay might not “ultimately  
22 lengthen the life of this case” at all, given that an equal delay could result if the Court were to

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25 <sup>10</sup> In this regard, Defendants note that, although Plaintiffs submit that venue is proper based  
26 on the residency of two proposed representatives of the putative class, *see* ECF No. 27 ¶ 14,  
27 fewer than 10 of the approximately 300 Plaintiffs named in the operative complaint are allegedly  
residents of the State of Washington. *See id.* at 11–20.

1 proceed notwithstanding the pendency of appellate review and then “rebriefing or supplemental  
2 briefing [were] necessitated.” *Nationstar*, 2017 WL 1752933, at \*2. This is particularly true  
3 where, as here, this case remains in its procedural infancy without rulings on Defendants’ pending  
4 Motion to Dismiss, ECF No. 36, or Plaintiffs’ class certification motion, ECF No. 17; without  
5 consolidation with other related cases in this district, *see* ECF Nos. 44, 48; and before the parties  
6 have propounded discovery requests. *See Aleisa*, 493 F. Supp. 3d at 816 (“the early stage of this  
7 litigation weighs in favor of a stay”) (citation and quotation marks omitted).  
8

9 Defendants’ request for a stay is limited only until the Ninth Circuit rules on the *Mercado*  
10 appeal. As noted, under the briefing schedule that the Ninth Circuit recently issued, the *Mercado*  
11 appeal will be fully briefed by November 8, 2023. *See Mercado, et al. v. Miller, et al.*, No. 23-  
12 16007, Doc. No. 1-1 at 3 (9th Cir.). Consequently, to the extent that Plaintiffs maintain that they  
13 will be harmed by a delay in the resolution of this case, that comparatively brief delay will be  
14 limited to the pendency of the Ninth Circuit appeal in *Mercado*, for which the Ninth Circuit has  
15 already scheduled briefing deadlines.  
16

### 17 CONCLUSION

18 In the pending *Mercado* appeal, the Ninth Circuit will consider precisely the question of  
19 subject matter jurisdiction that is at issue Defendants’ pending Motion to Dismiss. *See* ECF No.  
20 36 at 9–12. Accordingly, a stay would preserve the resources of the Court and the parties, allow  
21 them to avoid the risk of inconsistent judgments, and would be of a reasonable, limited, duration.  
22 Plaintiffs will not be prejudiced by a stay that is likely to be limited in duration. For all these  
23 reasons and those set forth in further detail above, this Court should stay this case pending a  
24 decision by the Ninth Circuit in *Mercado*.  
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1 Dated: July 25, 2023

Respectfully submitted,

2 BRIAN M. BOYNTON  
Principal Deputy Assistant  
3 Attorney General

4 WILLIAM C. PEACHEY  
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6 WILLIAM C. SILVIS  
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8 CARA E. ALSTERBERG  
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9 JAMES J. WEN  
10 Trial Attorney

11 **I certify that this memorandum contains**  
12 **3,994 words, in compliance with the**  
13 **Local Civil Rules.**

14 */s/ Eric C. Steinhart*  
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District Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARIA SILVIA GUEVARA ENRIQUEZ,  
*et al.*,

Plaintiffs,

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U.S. CITIZENSHIP & IMMIGRATION  
SERVICES, *et al.*,

Defendants.

No. 2:23-CV-0097-TSZ

[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO STAY  
PROCEEDINGS

Upon consideration of Defendants' Motion to Stay Proceedings and finding good cause to GRANT it, the Court hereby ORDERS that the case is STAYED pending a final order by the U.S. Court of Appeals for the Ninth Circuit in *Mercado, et al. v. Miller, et al.*, No. 23-16007 (9th Cir.). Within 14 days of a final order by the Ninth Circuit in *Mercado*, Defendants SHALL file a status report advising the Court of the Ninth Circuit's resolution of *Mercado*.

1 Presented by:

2 /s/ Eric C. Steinhart

3 Eric C. Steinhart

4 Trial Attorney

5 U.S. Department of Justice

6 Civil Division

7 Office of Immigration Litigation

8 Dated this        day of        , 2023

9 \_\_\_\_\_  
10 UNITED STATES DISTRICT JUDGE