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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

LAS AMERICAS IMMIGRANT ADVOCACY CENTER, et al., Plaintiffs, v. JOSEPH R. BIDEN, et al.,[1] Defendants.	CASE NO. 3:19-cv-02051-IM **UNOPPOSED MOTION TO STAY CASE FOR 90 DAYS**

[1] Under Federal Rule of Civil Procedure 25(d), President Joseph R. Biden is automatically substituted for the former president as a Defendant in this case.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7-1

Counsel for the parties conferred on this request for a 90-day stay of this case on April 9 and April 12, 2021. Plaintiffs' counsel stated that they do not oppose this motion to temporarily hold this case in abeyance, subject to the one exception noted below.

MOTION TO STAY CASE FOR 90 DAYS

The government respectfully moves the Court for an order staying this case for 90 days. There is good cause for this temporary stay.

Plaintiffs filed this case in 2019 to challenge policies and practices of the former administration related to the operation of the immigration courts, including immigration judge performance metrics and a memorandum related to tracking and completion of "family unit" cases, Policy Memorandum (PM) 19-04, Tracking and Expedition of "Family Unit" (FAMU) cases. *See* Dkt. 1. On December 9, 2020, the Court issued a Case-Management Order that set deadlines for the government to produce administrative records related to those policies and practices, for plaintiffs to provide the government with any objections that they may have to the administrative record, and for the parties to meet and confer. *See* Dkt. 97. The government subsequently produced agency records related to the immigration judge performance metrics and the "family unit" memorandum, plaintiffs provided objections to those records, and the parties met and conferred. The Court also ordered the parties to file a joint status report after that conferral. *See* Dkt. 97. The parties filed that joint status report on April 14, 2021. *See* Dkt. 102. There are no other deadlines in this case in the next 90 days.

Good cause exists for staying this case for 90 days. There is now new leadership at the Department of Justice including at the Executive Office for Immigration Review (EOIR), which oversees the nation's immigration courts, and President Biden has issued several Executive Orders that specifically direct agencies, including EOIR, to review prior policies and practices related to

immigration. Based on these executive orders, EOIR is currently reviewing the policies and practices at issue in this case. *See* Executive Order 14010, *Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*, 86 Fed. Reg. 8267 § 4(c)(i) ("within 180 days of the date of this order, conduct a comprehensive examination of current rules, regulations, precedential decisions, and internal guidelines governing the adjudication of asylum claims…."); Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 86 Fed. Reg. 8277 § 1 (asking agencies to ensure that "immigration processes and other benefits are delivered effectively and efficiently"), § 3(a)(i) (asking the Attorney General to "identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits…").

In light of the foregoing, the government respectfully submits that a temporary abeyance of this case is warranted to allow new leadership at the agency to continue its review of the policies and practices at issue in this case and to consider whether it wants to modify or rescind them. If the agency modifies or rescinds the challenged policies and practices it will render Plaintiffs' challenges to those policies and practices moot. *See, e.g., City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 111 (1983); *Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1152 (9th Cir. 2019); *Wash. Alliance of Tech. Workers v. United States Dep't of Homeland Security*, 650 Fed. Appx. 13, 14 (D.C. Cir. 2016) (dismissing case as moot and explaining that case challenging agency regulation is "moot" when the challenged policy "is no longer in effect").

An order holding this case in abeyance will thus serve judicial economy and prevent unnecessary expenditure of resources by the Court and the parties. *See Landis v. N. Am. Co*., 299

U.S. 248, 254, 57 S. Ct. 163, 166 (1936) (noting that the power to stay is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"); *Save Jobs USA v. Dep't of Homeland Sec.*, 942 F.3d 504, 508 (D.C. Cir. 2019) (holding "case in abeyance, initially to allow the incoming administration time to consider the case and later because the Department expected to begin the process of rescinding" the challenged policy); *Am. Lung Ass'n v. Envtl. Prot. Agency*, No. 19-1140, 2021 WL 162579, at *9 (D.C. Cir. Jan. 19, 2021) (recognizing abeyance may be warranted when the agency "reassesse[s] its position" after a change in administrations); *Lamar Co., LLC v. Continental Cas. Co.*, 2007 WL 81876, at *3 (E.D. Wash. Jan. 8, 2007) ("stay warranted" where there was a "distinct possibility" that the case would become moot, such that "continuing to litigate the captioned matter will ultimately be all for naught and constitute a significant waste of time and effort by the parties, their counsel, and the court"). A "change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations" and "[a]s long as the agency remains within the bounds established by Congress, it is entitled to assess administrative records and evaluate priorities in light of the philosophy of the administration." *Nat'l Ass'n of Home Builders v. E.P.A.*, 682 F.3d 1032, 1043 (D.C. Cir. 2012).

The government thus respectfully requests that the Court enter an order staying this case until July 14, 2021, 90 days from the date of this motion, to prevent the parties and the Court from potentially unnecessarily expending resources resolving disputes related to agency policies and practices before the agency has determined whether it intends to continue to maintain those policies and practices. As set out in the parties' Joint Status Report, Plaintiffs do not oppose this

motion so long as they can file their anticipated motion to seek discovery while the stay is in place. *See* Dkt. 102 at 2-3.

Dated: April 15, 2021

Respectfully submitted,

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