No. 20-36052

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Leobardo MORENO GALVEZ, Jose Luis VICENTE RAMOS, Angel de Jesus MUNOZ OLIVERA, on behalf of themselves and others similarly situated,

Plaintiffs-Appellees,

v.

Ur JADDOU, Director, U.S. Citizenship & Immigration Services, Alejandro MAYORKAS, Secretary, U.S. Department of Homeland Security, DIRECTOR, National Benefits Center, U.S. Citizenship & Immigration Services, U.S. DEPARTMENT OF HOMELAND SECUIRTY, U.S. CITIZENSHIP & IMMIGRATION SERVICES,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Washington
No. 2:19-cv-0321-RSL – Judge Robert S. Lasnik

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INTRODUCTION

The district court appropriately granted Plaintiffs-Appellees' (Plaintiffs) motion for summary judgment. The record demonstrated Defendant-Appellant U.S. Citizenship and Immigration Services' (USCIS) policies and practices violated Congress's explicit command that the agency expedite adjudications of Plaintiffs' Special Immigrant Juvenile (SIJ) status petitions. As the evidence before the district court showed, by failing to comply with the statute, Defendants-Appellants (Defendants) place Plaintiffs in peril of detention, removal, and separation from essential support services. In this appeal, Defendants argue that the district court "created its own permanent policy for SIJ adjudications," Op. Br. 1, failing to acknowledge that all the court did was order USCIS to comply with the unambiguous timeline mandated by Congress. Accordingly, this Court should affirm the judgment below.

Plaintiffs Leobardo Moreno Galvez, Jose Luis Vicente Ramos, and Angel de Jesus Muñoz Olivera represent a certified class of vulnerable immigrant youth from Washington state who have applied for SIJ status. SIJ status is a form of humanitarian relief that Congress provided for abandoned, abused, and neglected immigrant youth, and provides them with a path to long-term legal status in the United States following certain state court proceedings. 8 U.S.C. § 1101(a)(27)(J) (SIJ statute). Before the district court, Plaintiffs challenged an ultra vires policy

that USCIS introduced in 2018 that deprived class members of this humanitarian relief. That policy required agency adjudicators to deny SIJ petitions unless the petitioner could show that a state court had the power to return the youth to the custody of their parents. That 2018 reunification policy effectively barred Washington state youth aged 18 to 20 who are in state court proceedings from seeking SIJ status, even though Congress has explicitly provided that such relief be available for youth up to 21 years of age.

Plaintiffs also challenged the agency's failure to comply with the statutory deadline established by Congress, requiring USCIS to adjudicate SIJ petitions within 180 days. *See* 8 U.S.C. § 1232(d)(2). Plaintiffs contended that beginning in 2017, USCIS routinely delayed the adjudication of SIJ petitions for months beyond the statutory deadline. That practice left petitioners in a prolonged state of uncertainty and increased vulnerability.

After initially entering a preliminary injunction, the district court granted Plaintiffs' motion for summary judgment, providing both declaratory and injunctive relief. In doing so, the court permanently enjoined Defendants' 2018 reunification policy, as had other courts. The district court also found that Defendants violated the express statutory deadline and enjoined USCIS from continuing to disregard the timeline established by Congress.

Defendants do not appeal either the declaratory relief or permanent injunction ordered by the district court with respect to the 2018 reunification policy. Nor do they meaningfully contest the district court's holding that the agency violated the law by disregarding the mandatory timeline for adjudicating SIJ petitions. Instead, Defendants argue that the district court abused its discretion by requiring them to continue complying with the statute moving forward. Defendants effectively seek to circumvent the statutory deadline by arguing that, even if a permanent injunction is imposed, the district court should defer to the agency's proposed application of the statute, permitting the statutory deadline to be tolled or restarted whenever the agency requests the petitioner provide additional materials. Finally, in challenging the scope of the injunction, Defendants erroneously claim that the district court's order "prioritizes Washington state petitioners over petitioners from the 49 other states." Op. Br. 3.

As a preliminary matter, the record showed that USCIS repeatedly and egregiously violated the statutory deadline apart from any tolling periods and beyond the bounds of the 2018 reunification policy. That evidence underscored the need for injunctive relief. Moreover, Defendants' proposed interpretation would render the statutory deadline "nothing more than a target adjudication date that can be delayed, repeatedly and for extended periods of time, at the whim of the agency." ER-16. Indeed, Defendants' proposed interpretation would incorporate a

general tolling provision applicable to all other immigration benefit applications, something Congress expressly intended to avoid by setting a specific deadline for SIJ petitions. Given the demonstrated violations of the statute and USCIS's clear intent to continue violating it, the record provided ample basis for injunctive relief that rejected USCIS's proposed interpretation. Any other course of action would have left SIJ petitioners at the whims of the agency's perceived discretion as to its operational priorities. But as this Court recently stated, "Congress did not leave [petitioners] . . . 'at the mercy of *noblesse oblige*.' Instead, it codified a guarantee, which we decline to make meaningless." *Torres v. Barr*, 976 F.3d 918, 931 (9th Cir. 2020) (en banc) (quoting *United States v. Stevens*, 559 U.S. 460, 480 (2010)). The evidence and the statutory text demonstrate that the district court properly exercised its discretion in requiring Defendants to comply with the statute.

Finally, the district court's order does not indicate that USCIS should in any way prioritize Washington state SIJ petitions over other SIJ petitions. Defendants ignore that Congress, not the district court, established the mandatory deadline for all SIJ petitions. As a result, it is Congress, not the district court, that ordered USCIS to prioritize and expedite SIJ petitions by imposing a clear, statutory deadline for adjudicating SIJ petitions, distinct from other immigration applications. While that principle applies to all SIJ petitioners, the district court appropriately confined the injunction to Washington state petitions. This Court

should accordingly affirm the judgment of the district court.

STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the district court correctly concluded that an injunction is appropriate to ensure that Defendants comply with the express statutory timeline requiring SIJ petitions to be adjudicated within 180 days?

2. Whether the district court abused its discretion in determining that the evidence demonstrated Plaintiffs faced irreparable injury and that the balance of the hardships supported a need for injunctive relief?

3. Whether the district court abused its discretion in requiring USCIS to comply with the plain language of the statute mandating adjudication of SIJ petitions within 180 days, rather than allowing the agency to stop and restart the 180-day period at its own discretion?

4. Whether the district court abused its discretion in limiting the scope of the injunction to Washington state SIJ petitions?

STATEMENT OF THE CASE

I. Legal Background

In 1990, Congress created SIJ status to provide abused, abandoned, or

neglected immigrant children in foster care a pathway to lawful permanent resident (LPR) status. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978, 5005-06 (codified at 8 U.S.C. § 1101(a)(27)(J)) (defining "special immigrant" in part as a child who "has been declared dependent on a juvenile court . . . and has been deemed eligible by that court for long-term foster care"). The Immigration and Nationality Act (INA) defines a child for purposes of SIJ status to be "an unmarried person under twenty-one years of age." 8 U.S.C. § 1101(b)(1). Accordingly, the former Immigration and Naturalization Service and later, USCIS, have long recognized that all unmarried children and youth under the age of 21 meet the age requirement for SIJ classification. 8 C.F.R. § 204.11(c)(1); *see also* USCIS Policy Manual, vol. 6, pt. J, ch. 2(B) (last updated Sept. 16, 2021), https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2 ("[A] juvenile may seek SIJ classification if he or she is under 21 years of age and unmarried at the time of filing the petition with USCIS.").

Since its creation in 1990, Congress has expanded the scope of SIJ eligibility for children and youth beyond just those in foster care. In 1994, Congress extended SIJ relief to any juvenile "legally committed to, or placed under the custody of, a[] [state] agency or department." Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 219, 108 Stat. 4305, 4316 (codified at 8 U.S.C. § 1101(a)(27)(J)(i)). By doing so, Congress expanded the type of

proceedings in which state courts could enter SIJ findings.

In 2008, Congress again expanded SIJ eligibility by removing placement in foster care from the definition of a special immigrant juvenile and ensuring that SIJ status is available to all children who have "been declared dependent on a juvenile court . . . or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court." 8 U.S.C. § 1101(a)(27)(J)(i); *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d)(1)(A), 122 Stat. 5044, 5079 (codified at 8 U.S.C. § 1101(a)(27)(J)(i)) (TVPRA). The 2008 TVPRA amendments also ensured that USCIS could not deny a SIJ petition on the basis of age so long as the petitioner was under 21 at the time of filing, regardless of the petitioner's age when USCIS adjudicated the petition. TVPRA § 235(d)(6), 122 Stat. at 5080.

Thus, under the current SIJ statute, petitioners must be (1) under 21 years of age at the time the petition is filed; (2) unmarried; (3) declared dependent on a state or juvenile court, or placed in the custody of a state agency or individual appointed by such a court; and (4) the subject of specific findings that (a) reunification with one or more parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, and that (b) it is not in the child's best interest to return to his or her home country (SIJ findings). *See* 8 U.S.C. §§ 1101(b)(1), 1101(a)(27)(J),

1232(d)(6). Every SIJ petition submitted to USCIS must include a predicate state court order containing these findings (SIJ order). The SIJ statute confers all fact-finding authority on the state court. *See id.* § 1101(a)(27)(J)(i)-(ii) (requiring state juvenile courts to make predicate SIJ findings).

Finally, the TVPRA also implemented a statutory timeline requiring USCIS to prioritize SIJ petitions by instructing the agency to expeditiously adjudicate "all" SIJ petitions within 180 days:

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

TVPRA § 235(d)(2), 122 Stat. at 5080 (codified at 8 U.S.C. § 1232(d)(2)).

II. USCIS Policy on SIJ Orders Issued to 18- to 20-Year-Old Youth

In 2018, USCIS radically changed its adjudication practices for SIJ petitions submitted by youth who obtained predicate SIJ orders after turning 18 but before turning 21. Specifically, USCIS began denying SIJ petitions filed by youth 18 and older. ER-6; SER-135, 189. In February 2018, Defendant DHS issued new internal guidance to USCIS stating that "in order for a court order to be valid for the purpose of establishing SIJ eligibility, the court must have competent jurisdiction to determine both whether a parent could regain custody and to order reunification,

if warranted." ER-130. USCIS subsequently incorporated the policy into its Consolidated Handbook of Adjudications Procedures (CHAP), which is distributed to USCIS employees. ER-133-34. However, the agency did not alter the publicly available USCIS Policy Manual. *See* USCIS Policy Manual, vol. 6, pt. J, ch. 2; *see also* USCIS Policy Manual, Updates (last updated Sept. 16, 2021), https://www.uscis.gov/policy-manual/updates.

Pursuant to this 2018 reunification policy, USCIS categorically denied SIJ petitions filed by youth who obtained SIJ findings in Washington state after turning 18 but before turning 21. *See, e.g.*, ER-163-66 (stating that "[b]ecause [Plaintiff Moreno Galvez] reached the age of majority," the court issuing his SIJ order did not have "authority to determine whether [his] parent should regain or lose custody"); ER-181-84; SER-167, 189. Before its sudden imposition of this new requirement for SIJ petitions, USCIS and the Administrative Appeals Office (AAO) routinely accepted the jurisdiction of state courts to make SIJ findings for petitioners who are 18- to 20-years-old. *See* ER-6 (describing policy change); USCIS Policy Manual, vol. 6, pt. J, ch. 2(C) ("Examples of state courts that may meet this definition include:. . . guardianship, probate, and youthful offender courts."); *see also* Amy Taxin & Deepti Hajela, *Young Immigrants Seeking Refuge From Abuse Face Denials*, U.S. News & World Report (Jan. 2, 2019), https://bit.ly/2T8NAdJ (discussing policy shift from approving the "overwhelming

majority" of SIJ petitions to sending "a flurry of denial notices" to petitioners age 18 and older).

III. USCIS Practice Regarding Statutory Timeline

As noted above, beginning in 2008 with the enactment of TVPRA, Congress required USCIS to adjudicate SIJ petitions within 180 days of filing. 8 U.S.C. § 1232(d)(2). Until 2017, USCIS generally complied with this provision. However, the evidence submitted to the district court demonstrated that USCIS began to systematically violate the statute in 2017. Plaintiffs submitted declarations from several Washington practitioners showing that Defendants regularly violated the 180-day deadline. SER-189 (noting that the Northwest Immigrant Right Projects had approximately twenty-five SIJ petitions on behalf of 18-to-20-year-olds that have been or were pending for six months or more); SER-167 (noting the serious delays in the adjudication of SIJ petitions). Moreover, the named Plaintiffs' personal experiences further underscored that USCIS was violating the statutory timeframe for adjudication. *Infra* pp. 16-20. In response to Plaintiffs' request for relief regarding the statutory timeline, Defendants submitted a declaration acknowledging that most SIJ petitions from Washington state have been pending for more than 150 days. ER-107.

IV. Procedural History

Plaintiffs filed their complaint on March 5, 2019, along with a motion for

class certification on behalf of similarly situated youth residing in Washington state, and a motion for preliminary injunctive relief. The complaint asserted claims for relief as to both the ultra vires policy and the statutory timeframe for adjudicating SIJ petitions. ER-215-19. On July 17, 2019, the district court certified the following class:

> All individuals who have been issued predicate Special Immigrant Juvenile Status ("SIJS") orders by Washington state courts after turning eighteen years old but prior to turning twenty-one years old and have submitted or will submit SIJS petitions to United States Citizenship and Immigration Services ("USCIS") prior to turning twenty-one years old.

SER-146. On the same date, the court also granted Plaintiffs' motion for preliminary injunctive relief, finding that "plaintiffs are likely to succeed on the merits of their claim that the new policy is 'not in accordance with law.'" SER-137 (citing 5 U.S.C. § 706(2)(A)).

With respect to the statutory timeline, the district court issued a preliminary injunction requiring USCIS to comply with the plain language of 8 U.S.C. § 1232(d)(2). Accordingly, the court ordered that all class members' petitions "be adjudicated within the 180-day period set forth in the statute in the absence of an affirmative showing that the petition raises novel or complex issues which cannot be resolved within the allotted time." SER-145. The court's order provided USCIS a grace period of thirty days to adjudicate all pending petitions that were outside of or nearing the statutory timeline at the date of the order. *Id.* Plaintiffs subsequently

stipulated to a seven-day extension of this deadline. SER-126. On appeal, Defendants contend that after that date they largely complied with the preliminary injunction, stating that "USCIS had adjudicated all class members' SIJ petitions within 180 days unless a novel or complex issue prevented adjudication, with a 93 percent approval rate." Op. Br. 3.[1]

Following entry of the preliminary injunction order, the agency issued a proposed regulation that would stop the 180-day period or allow the agency to restart the 180-day period whenever it determined in its discretion that additional information was needed. *See* Special Immigrant Juvenile Petitions, 84 Fed. Reg. 55250 (proposed Oct. 16, 2019) (reopening comment period for Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978 (proposed Sept. 6, 2011)). While that regulation has not been approved, Defendants maintained that it appropriately incorporated standards from a longstanding regulation, 8 C.F.R. § 103.2, under which USCIS can "toll adjudication deadlines when USCIS requires additional evidence or information from the petitioner to adjudicate the application." *See* Op. Br. 1. That regulation in turn addresses all immigration benefit applications, even though there are no statutory deadlines for the vast majority of such applications,

[1] Defendants initially appealed the order granting the motion for preliminary injunction on October 21, 2019, SER-117, but moved to voluntarily dismiss the appeal on February 28, 2020. The appeal was then dismissed with prejudice on March 4, 2020. SER-116.

in contrast to SIJ petitions. *See* 8 C.F.R. § 103.2.

The parties then agreed to file cross-motions for summary judgment, stipulating that "the case now presents pure legal issues that do not require further fact develop[ment]." SER-113. Plaintiffs moved for declaratory and permanent injunctive relief to require USCIS to comply with the statutory timeline and continue to refrain from employing the 2018 reunification policy targeting youth who became eligible for SIJ status after they turned 18.

In addition to repeating their arguments as to the 2018 reunification policy, Plaintiffs again highlighted evidence of Defendants' failures to comply with the statutory timeframe before the preliminary injunction. *See supra* pp. 8-11. That evidence included declarations from named Plaintiffs, Washington immigration practitioners, and even USCIS itself, to show that USCIS was regularly violating the statute. *Id.*

Plaintiffs also submitted evidence to show that USCIS issues Requests for Evidence (RFEs) near that statutory deadline for adjudication to request evidence that is (1) already in the record, (2) not required by the statute or regulations, and/or (3) nonsensical. For example, USCIS regularly uses RFEs to impose additional, non-statutory requirements on SIJ petitioners that simply slow down the application process. *See, e.g.*, SER-54-56. In some cases, USCIS has issued RFEs for information addressed by already submitted materials. SER-43, 77. Other RFEs

raise unfounded questions about the evidence accompanying the SIJ petition. For example, one Washington practitioner detailed that USCIS requested that the petitioner resolve discrepancies in their name and birthdate, even though the record only ever showed one name and birthdate. SER-16-17. In that case, USCIS also asked for a birth certificate from Bangladesh, even though petitioner had provided one from India, his actual country of birth. SER-18. Notably, practitioners stated that USCIS issued these RFEs near the 180-day deadline or after it had passed, SER-42-43; *see also* SER-16, demonstrating how USCIS abuses the 180-day statutory deadline by tolling.

In response to Plaintiffs' motion for summary judgment, USCIS defended both its 2018 reunification policy and its adjudication timeline practices. With respect to the 2018 policy, Defendants argued that the claim was now moot, pointing to an unpublished decision from the AAO that was issued after the district court's order granting preliminary injunctive relief. SER-99-102. Yet, at the same time, Defendants maintained their authority to reimpose the requirement and defended its lawfulness. SER-103-07.

With respect to the statutory timeline, Defendants argued that no permanent injunction was required because there would no longer be delays attributable to the 2018 policy. SER-102, 108-11. In addition, they argued that any permanent injunction should allow USCIS "discretion to toll the 180-day SIJ adjudication

period as needed." SER-12. Notably, Defendants did not assert that Plaintiffs' request for permanent injunctive relief regarding the statutory timeline was moot.

Following briefing, the district court granted Plaintiffs' motion for summary judgment, providing both declaratory and injunctive relief. The Court first declared unlawful both "the reunification requirement and the unreasonable delays in adjudicating SIJ petitions." ER-17. The district court then went on to grant injunctive relief from both the 2018 reunification policy and the agency's failure to comply with the statutory timeline. ER-21-22.

In granting injunctive relief mandating compliance with the statutory timeline, the court again found that Plaintiffs established irreparable injury and that the balance of harms and public interest weighed in favor of injunctive relief. The court noted the irreparable harm caused by the delays, including preventing Plaintiffs from "access[ing] the benefits that go along with SIJ status," such as "access to federally-funded education and preferential status for employment-based green cards." ER-19 (citation omitted). In addition, the court noted that these delays prevented SIJ petitioners from applying for lawful permanent residence. *Id.* The court found these benefits provide "relief from or make less likely removal from the United States and the loss of the relationships and support systems these vulnerable youth have cobbled together in this country." *Id.* The district court also found additional ways the delayed adjudications established irreparable harm,

noting that

> class members may be detained while their petitions are pending, a loss of liberty that is also irreparable. Finally, plaintiffs provided evidence of their stress, devastation, fear, and depression arising from the increased possibility that they will be placed in removal proceedings and/or deported before obtaining an SIJ designation. Such emotional and psychological harms will not be remedied by an award of damages and are, therefore, irreparable.

SER-19-20 (citing *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988)).

Defendants then filed the instant appeal.

V. Named Plaintiffs' SIJ Petitions

Plaintiff Moreno Galvez

Plaintiff Leobardo Moreno Galvez is a 20-year-old citizen of Mexico. SER-1. Growing up, Leobardo suffered severe physical abuse by his father. SER-208. He was forced to drop out of school when he was 8 years old and began working at 12 years old. SER-208-09. When he turned 14, he came to the United States on his own and has since lived with relatives and friends. SER-209. In 2016, Leobardo was placed in juvenile offender proceedings after being arrested for Minor in Possession as a 17-year-old. *Id*. The Skagit County Superior Court adjudicating the offense extended its jurisdiction past Leobardo's eighteenth birthday. *Id*. On October 20, 2016, when Leobardo was 18 years old, the Skagit County Superior Court placed him in the custody of a state agency or department and entered SIJ findings. ER-145-46.

On December 2, 2016, Leobardo submitted his Form I-360, Petition for Special Immigrant Juvenile Status to USCIS. ER-163-64. On August 23, 2018, almost two years after he filed his petition, USCIS issued a Notice of Intent to Deny (NOID), stating that "the evidence you submitted does not establish that the state court had jurisdiction under state law to make a legal conclusion about returning you to your parent(s)' custody." *Id*. On October 31, 2018, USCIS issued a second NOID on the same basis. ER-155-56. Leobardo submitted timely responses to these notices. SER-209-10. On December 20, 2018, more than two years after he filed the application, USCIS denied his I-360 pursuant to its new policy, claiming that "the evidence . . . does not establish that the state court had jurisdiction under state law to make a legal conclusion about returning you to your parent(s)' custody." ER-164. Additionally, the denial notice stated that Leobardo "[is] not lawfully present in the United States" and that if he "do[es] not depart within 33 days of this letter, USCIS may issue [him] a Notice to Appear and commence removal proceedings against [him]." ER-165. After the district court issued the preliminary injunction in July 2019, Leobardo's I-360 was reopened and then approved on August 20, 2019. ER-37-38, 40.

Plaintiff Muñoz Olivera

Plaintiff Angel de Jesus Muñoz Olivera is a 22-year-old citizen of Mexico. SER-192. When Angel was around 10 years old, his father, who was abusive to

Angel's mother, abandoned the family. *Id*. Angel's mother, in turn, would hit Angel with a belt, clothes hangers, and her cell phone. SER-193. In August 2017, Angel's mother disappeared and was later discovered dead. *Id*. Shortly after their mother's death, Angel and his younger brother fled to the United States, fearing for their lives. *Id*. Upon presenting themselves at the border on August 30, 2017, Angel was separated from his brother and detained for over three months. *Id*. On November 3, 2017, the Pierce County Juvenile Court appointed Angel's relative as his guardian and entered SIJ findings. ER-188-89. Angel then submitted his Form I-360, Petition for Special Immigrant Juvenile Status to USCIS on November 15, 2017. SER-194. He never received a request for additional evidence, yet his application remained pending for almost two years, until the district court issued the preliminary injunction. Following the court's order, on July 11, 2019, his I-360 was finally approved. ER-59. Angel continued to reside with his guardian following his SIJ approval and, with her support, graduated from high school in the spring of 2019.

Plaintiff Vicente Ramos

Plaintiff Jose Luis Vicente Ramos is a 22-year-old Guatemalan citizen. *See* SER-199. While growing up, both parents physically abused Jose. SER-199-200. His mother threw rocks at him, punched him in the head with closed fists, and beat him with sticks and the television antennae. *Id*. His father habitually drank alcohol

and punched, slapped, and beat him using belts and cords from electric appliances. SER-200. On one occasion, his father kicked him to the ground and began beating him with the butt of a rifle. *Id*. As a result, Jose fled from his home when he was 17 years old and entered the United States as an unaccompanied child on July 3, 2016. SER-200-01. Jose was initially placed in a shelter for unaccompanied minors but later released to live with his cousin in Vancouver, Washington. SER-201.

In February 2018, U.S. Immigration and Customs Enforcement (ICE) detained Jose and placed him in custody at the Northwest Detention Center. SER-202. On June 1, 2018, the Pierce County Superior Court appointed his cousin as his guardian and entered SIJ findings. ER-170-73. On June 11, 2018, Jose submitted his Form I-360, Petition for Special Immigrant Juvenile Status to USCIS. SER-201-02. On February 5, 2019, almost eight months later, USCIS denied Jose's SIJ petition on the basis that "the evidence you submitted does not establish that the state court had jurisdiction under state law to make a legal conclusion about returning you to your parent(s)' custody." ER-175, 181-82.

After the district court issued the preliminary injunction in July 2019, Jose's I-360 was reopened and approved on August 19, 2019. ER-43, 46. In light of that decision, on September 25, 2019, ICE released Jose pursuant to a parole request and on October 10, 2019, the Board of Immigration Appeals remanded Jose's case to the immigration court in light of the approval of SIJ status. ER-49, 54-55. Since

his release from immigration custody, he has returned to live with his guardian in Washington state, where he has been able to enroll in local community college classes to work towards his GED, as his high school education was disrupted when ICE detained him in February 2018. *See* ER-58.

SUMMARY OF ARGUMENT

In granting Plaintiffs' motion for summary judgment, the district court correctly decided that a permanent injunction is necessary to ensure that Defendants comply with the express statutory timeline requiring SIJ petitions to be adjudicated within 180 days. Without challenging the legal holding of the district court, Defendants erroneously assert that that the injunction infringes upon USCIS's discretion, failing to acknowledge that the unambiguous language of 8 U.S.C. § 1232(d)(2) affords the agency no discretion to extend the 180-day deadline. Defendants' challenges to the permanent injunction are unsupported by both the record before the district court and governing case law.

The district court did not abuse its discretion in finding that Plaintiffs faced irreparable harm and satisfied all other requisite factors for permanent injunctive relief. Contrary to Defendants' argument, the district court did not overlook relevant evidence of alleged hardship to the agency. In fact, Defendants did not even properly preserve their hardship argument. To the extent they presented that claim below, the district court did consider the alleged operational hardship to the

agency, but correctly found that the factors for injunctive relief weigh in Plaintiffs' favor. The district court also did not abuse its discretion in considering evidence of irreparable harm to Plaintiffs.

Additionally, the district court did not abuse its discretion by considering Defendants' past violations of the statutory timeline prior to the preliminary injunction. Defendants themselves conceded and provided supporting data of their systematic failure to adjudicate SIJ petitions within the 180-day deadline. The district court also properly took into account Defendants' proposed rule, which seeks to codify a tolling period that permits USCIS to extend or reset the statutory timeline at its whim. Given the evidence of Defendants' past violations and clear indication of their intent to continue violating the statutory timeframe, the district court appropriately granted permanent injunctive relief to give effect to the statutory mandate.

The district court also did not abuse its discretion in establishing the scope of its injunction. Defendants rely on inapposite case law to argue that the permanent injunction infringes upon their discretion to allocate agency resources and manage competing priorities. But, as this Court held in *National Resources Defense Council, Inc. v. EPA*, executive agencies may not "bypass explicit congressional deadlines." 966 F.2d 1292, 1299 (9th Cir. 1992). Accordingly, the district court also correctly enjoined USCIS from applying its general tolling framework for

immigration benefits applications because Defendants' proposal sought to nullify the statute and give USCIS discretion to disregard the congressionally mandated timeline for SIJ petitions. Injunctive relief was thus necessary to give effect to the plain language of the statute. In addition, the district court's injunction does not harm class members, as the order allows for tolling where SIJ petitioners request additional time to submit necessary evidence.

Finally, that the district court limited the scope of its injunction to Washington state SIJ petitions also does not constitute an abuse of discretion. The statutory 180-day adjudication deadline applies in full force to all SIJ petitioners. As a result, the district court's order merely ensures compliance with the statute and does not prioritize Washington state petitioners above others. Moreover, the scope of the district court's injunction was appropriately tailored to remedy the wrong presented to it.

In sum, Defendants have failed to establish any ground for vacating the district court's injunction. Accordingly, this Court should affirm the district court's order providing injunctive relief.

STANDARD OF REVIEW

This Court reviews permanent injunctions "under three standards," *United States v. Washington*, 853 F.3d 946, 962 (9th Cir. 2017), since a "district court's decision to grant a permanent injunction involves factual, legal, and discretionary

components," *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 653 (9th Cir. 2002) (citation omitted). Specifically, it reviews "factual findings for clear error, legal conclusions de novo, and the scope of the injunction for abuse of discretion." *Washington*, 853 F.3d at 962.

ARGUMENT

The district court correctly held that Defendants violated the INA's statutory timeline and fashioned appropriate relief for Plaintiffs by granting their request for permanent injunctive relief. A party seeking permanent injunctive relief must "demonstrate[] that: (1) it is likely to suffer irreparable injury that cannot be redressed by an award of damages; (2) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (3) that the public interest would not be disserved by a permanent injunction." *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1243 (9th Cir. 2018) (internal quotation marks and citation omitted). For the reasons outlined below, Defendants have failed to demonstrate that the district court abused its discretion in finding that Plaintiffs satisfied the requisites for a permanent injunction.

I. Plaintiffs Are Entitled to a Permanent Injunction Requiring USCIS to Adjudicate SIJ Petitions within the Statutorily Mandated Timeline.

As the district court recognized, the plain text of 8 U.S.C. § 1232(d)(2) provides an unambiguous timeline for adjudicating Plaintiffs' petitions. On appeal, Defendants do not contend that the district court erred in declaring their practice of

delaying adjudication of class members' SIJ petitions unlawful. Nor do Defendants contest that starting in 2017, USCIS routinely failed to comply with the congressional mandate that the agency complete adjudications within 180 days. Indeed, Defendants acknowledged that the majority of class members' petitions remained pending beyond the statutory timeline. ER-107-08. Defendants only challenge the relief that the district court provided, asserting that the court abused its discretion in enjoining future violations. However, as Plaintiffs demonstrate below, the record and case law amply support the district court's order.

A. On the Merits, the District Court Correctly Concluded That 8 U.S.C. § 1232(d)(2) Establishes a Mandatory Timeline for Adjudicating All SIJ Petitions.

With respect to the statutory timeline, the district court correctly ruled "that USCIS's delayed consideration of SIJ petitions for periods well past the 180 days specified in the governing statute is also unlawful." ER-15. Defendants do not directly challenge the district court's legal holding, which follows from the express language of the TVPRA. That statute provides for the expeditious adjudication of "all" SIJ petitions and mandates a firm deadline of 180 days:

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

TVPRA § 235(d)(2), 122 Stat. at 5080 (codified at 8 U.S.C. § 1232(d)(2)).

In opposing an injunction that requires them to abide by the statutorily-mandated deadline at 8 U.S.C. § 1232(d)(2), Defendants barely address the text of that statute or even the district court's conclusion that they violated it. Instead, Defendants assert in conclusory fashion that the district court's injunction unlawfully "stripped USCIS of its discretion to allocate it resources and manage competing priorities." Op. Br. 29. While Defendants attempt to frame this issue one that concerns whether the injunction was an abuse of discretion, it is actually a question that goes to the statutory interpretation issue—the merits of which Defendants do not contest.

Nor could they, as the plain language of the statute demonstrates that Congress did not bestow any such discretionary authority upon the agency. The Supreme Court has consistently recognized that Congress's use of "shall" in statutory text is a mandate that leaves no room for discretion or a different "interpretation" at USCIS's whim, as Defendants claim here. *See Lopez v. Davis*, 531 U.S. 230, 241 (2001); *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 661 (2007); *see also* SER-111. Indeed, as the Court has explained, Congress's use of "shall" imposes a "discretionless obligation[]." *Lopez*, 531 U.S. at 241. This is particularly true with respect to congressional deadlines. An agency cannot avoid "precise deadlines," as "practical difficulties . . . do not justify

departure from [a statute's] plain text." *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 509 (2014); *Cont'l Airlines, Inc. v. U.S. Dep't of Transp.*, 856 F.2d 209, 216 (D.C. Cir. 1988) (rejecting agency effort to "circumvent the stringent time limits" established by Congress); *Sierra Club v. EPA*, 294 F.3d 155, 160 (D.C. Cir. 2002) (holding that EPA violated law and was without authority to extend deadline where the "plain terms of the Act preclude an extension of the sort the EPA granted here"). In addition, Congress titled subsection (d)(2), "Expeditious Adjudication," further confirming that USCIS must prioritize the adjudication of SIJ petitions. *See Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (explaining that "the title of a statute and heading of a section" are tools that can resolve doubt about a statute's meaning (quoting *Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947)).

B. Injunctive Relief was Appropriate to Secure Plaintiffs' Statutory Rights to Expeditious Adjudications.

As this Court has long held, district courts may issue an injunction to cure an agency's refusal to abide by a deadline where that "injunction is necessary to effectuate the congressional purpose behind the statute." *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 (9th Cir. 2002). In *Badgley*, the Ninth Circuit affirmed a district court's injunction mandating that the U.S. Fish and Wildlife Service comply with the Endangered Species Act's twelve-month statutory deadline for determining whether to list a species as endangered. *Id.* at 1170, 1176-

77. Defendants argue without explanation that "*Biodiversity* was issued before the Supreme Court issued [*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)]. Thus, to the extent that *Biodiversity* conflicts with *Winter*, this Court should follow the *Winter* reasoning and holding." Op. Br. 32 n.8. Yet there is nothing in *Biodiversity* that is in tension—let alone irreconcilable—with *Winter*. *See Aleman Gonzalez v. Barr*, 955 F.3d 762, 768-69 (9th Cir. 2020) (explaining that a Supreme Court decision only overrules a decision of this Court if the two decisions are "clearly irreconcilable" and "so fundamentally inconsistent with our prior cases that our prior cases cannot stand" (citations omitted)).

Moreover, contrary to Defendants' arguments as to *Winter*, *see* Op. Br. 31-32, the district court never held or even insinuated that Plaintiffs were entitled to an injunction "as a matter of course" simply because they prevailed on the merits. Plaintiffs provided evidence of systematic violations of the statutory timeline from named Plaintiffs and immigration practitioners. *Supra* p. 10. As the district court noted, two of the three named Plaintiffs "waited three or four times the number of days Congress allowed before receiving an agency determination." ER-16. Similarly, Defendants' own declarations acknowledged that they routinely failed to comply with the congressional mandate. ER-110; ER-115. Ultimately, Defendants do not contest that they violated the law in delaying the adjudication of Plaintiffs' SIJ petitions beyond the 180-day timeline dictated by Congress. Defendants'

argument that the district court abused its discretion in requiring future compliance with the 180-day adjudication timeframe amounts to no more than an attempt to avoid accountability to the statutory timeline.

Moreover, as the district court recognized, Defendants sought to fundamentally undercut the statutory timeline by adopting an interpretation that would allow the 180-day period to be restarted or tolled at the agency's discretion. *See, e.g.*, ER-19 (noting that Defendants' proposed tolling framework would "codify . . . delays" and "treat[] the clear and mandatory deadline Congress set . . . as a mere 'benchmark' that is subject to unlimited extensions at the whim of the agency"); ER-16-17 (similar). And as detailed below, Plaintiffs satisfied the other permanent injunction factors, such as a showing of irreparable injury, with the balance of harms and public interest further tipping in their favor. The district court thus did not abuse its discretion in enjoining the agency from future violations of the statute.[2]

[2] While this Court has made clear that the balancing factors established in *Telecommunications Research & Action Center v. FCC* (*TRAC*), 750 F.2d 70, 80 (D.C. Cir. 1984) are not determinative where "Congress has specifically provided a deadline for performance," *Badgley*, 309 F.3d at 1177 n.11, they nonetheless further demonstrate that an injunction is warranted. The first and second factors strongly support requiring the agency to adjudicate petitions within 180 days, as that is the timetable Congress has imposed. The next *TRAC* factor also strongly favors requiring Defendants to respect the statutory deadline, as the entire purpose of SIJ status is to provide abandoned, abused, and neglected youth with a pathway to lawful status and stability in the United States. Similarly, the fourth factor favors

C. Plaintiffs Satisfied All Requisite Factors for Injunctive Relief.

Defendants have not demonstrated the district court abused its discretion by either failing to consider the operational hardship to the agency or by acting on "stale evidence." Op. Br. 23. To the contrary, the court demonstrated that it addressed all claims and carefully reviewed the evidence. In erroneously asserting that the district overlooked relevant evidence, Defendants themselves fail to acknowledge key evidence fatal to their claims.

1. The district court properly considered the parties' hardships.

Before the district court, Defendants failed to meaningfully present any arguments of the alleged hardship or competing priorities that USCIS faces in complying with the timeline mandated by Congress. Nonetheless, this argument now surfaces twice in Defendants' brief: first, as a reason that the district court

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Plaintiffs, as Congress's decision to set a deadline indicates that it sought to prioritize SIJ petitions, given that most other immigration benefits do not contain specific deadlines. The next factor takes into account the nature and extent of the interest prejudiced by the delay, which again supports Plaintiffs: as they established, USCIS's failure to timely adjudicate petitions can prolong an individual's detention or result in their removal—some of the most serious interests that courts have recognized. *See, e.g.*, *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) ("[D]eportation may result in the loss of all that makes life worth living." (internal quotation marks and citation omitted)); *Rodriguez v. Marin*, 909 F.3d 252, 256-57 (9th Cir. 2018) (discussing the importance of freedom from civil detention). Finally, the last *TRAC* factor notes that a "court need not find any impropriety lurking behind agency lassitude" to grant relief. *TRAC*, 750 F.2d at 80. Thus, while the court was not required to apply the *TRAC* factors given the express statutory mandate, the above analysis further demonstrates injunctive relief is appropriate.

improperly weighed evidence of the balance of hardships and public interest, *see* Op. Br. 20-23, and second, as an argument that the injunction's scope was inappropriate, *see id*. at 29-30.

Yet Defendants dedicated only a single sentence to this argument in the summary judgment briefing below. *See* SER-110. In their cross-motion for summary judgment, Defendants stated in conclusory fashion that ordering compliance with the statute would "cause substantial hardship to USCIS, which is tasked with overseeing the review of countless immigration programs," followed by a citation to USCIS Deputy Director Michael Valverde's declaration. *Id*. This sole reference to the agency's hardship constitutes the entirety of Defendants' argument on this point in the court below, yet now constitutes their lead contention on appeal. Before the district court, rather than arguing the point they now assert, Defendants instead emphasized that the hardships the named class members faced no longer existed, because Defendants were complying with the district court's preliminary injunction enjoining the 2018 reunification policy. *See* SER-109; SER-74. Defendants asserted that for this reason the balance of hardships and public interest no longer favored Plaintiffs at the time they sought a permanent injunction requiring compliance with § 1232(d)(2).

Defendants' isolated sentence cannot satisfy their burden to demonstrate that the district court abused its discretion by allegedly not considering the agency's

operational hardships and competing priorities. As this Court has repeatedly explained, an issue is not properly preserved if it is "not supported by argument." *Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1100 (9th Cir. 2007); *see also Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992) (same). Instead, courts "require contentions to be accompanied by reasons." *Indep. Towers of Washington v. Washington*, 350 F.3d 925, 930 (9th Cir. 2003). Lawyers—least of all those representing the United States government—cannot "skip the substance of their argument." *Id.* at 929.[3] However, this is exactly what Defendants did here, dedicating only a sentence below to an issue which now constitutes their primary claim on appeal. As such, they inappropriately ask this Court to vacate the lower court's injunction based on its alleged failure to address arguments that were not properly presented. Accepting such a claim would create an incentive for litigants to hide the ball, with the hopes that if all else fails they can simply challenge the lower court's ruling for failure to address buried claims. Accordingly, this Court

[3] *See also Boothe v. Berryhill*, No. C17-5507 RSL, 2018 WL 1071654, at *2 (W.D. Wash. Feb. 27, 2018) ("Here, it is not enough merely to present an argument in the skimpiest way, leaving the Court to do counsel's work of framing the argument and putting flesh on its bones through a discussion of the applicable law and facts. *See*[,] *e.g.*[,] *Vandenboom v. Barnhart*, 421 F.3d 745, 750 (8th Cir. 2005) (rejecting out of hand conclusory assertion that ALJ failed to consider whether claimant met Listings because claimant provided no analysis of relevant law or facts regarding Listings)"); *Perez v. Barnhart*, 415 F.3d 457, 462 n.4 (5th Cir. 2005) (deeming argument "waived due to inadequate briefing"); *cf. Murrell v. Shalala*, 43 F.3d 1388, 1389 n.2 (10th Cir. 1994) ("perfunctory complaints fail to frame and develop issue sufficiently to invoke appellate review")).

should reject Defendants' effort to belatedly raise this argument.

Moreover, even assuming arguendo that Defendants did adequately present this claim below, the district court's decisions demonstrate it considered Defendants' alleged hardship. For example, at the preliminary injunction stage, the Court addressed the alleged hardship following Defendants' motion for reconsideration. In denying that motion, the Court reasoned that it "took . . . into consideration" Defendants' "current backlog of SIJ applications, its backlog of other benefits applications, the number of trained adjudicators, and/or the fact that prioritizing class members' applications will impact the remainder of USCIS' workload" when "fashioning a remedy." SER-124.

Later, the Court again directly rejected the argument, noting that "defendants offer no evidence suggesting that SIJ petitions are factually or legally complex or otherwise require more than 180 days to review, investigate, and adjudicate."[4] ER-19. The Court also noted that it had "reviewed the evidence submitted by the parties" prior to addressing the arguments each side raised. ER-13.[5] As a result, the

[4] The Court's statement that Defendants failed to provide evidence of these issues only further underscores that they have waived any claim about the alleged hardship the agency faces.

[5] In their brief, Defendants cite two cases where this Court vacated and remanded a permanent injunction because a district court failed to address a relevant factor in assessing the parties' hardships. *See* Op. Br. 21 (citing *La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 880 (9th Cir. 2005) and *DISH Network Corp. v. FCC*, 653 F.3d 771, 776 (9th Cir. 2011)). These cases are inapposite, as

district court did not abuse its discretion by purportedly failing to consider Defendants' hardship.

2. Defendants, not the district court, failed to consider the record before the court regarding the harm.

Defendants further contend that the district court abused its discretion by relying on "stale evidence." Op. Br. 23. However, Defendants did not contest this evidence in the underlying proceedings, nor did they explain how it was no longer relevant. Indeed, Defendants stipulated to the district court that the matter should be resolved on cross-motions for summary judgment as "the case now presents pure legal issues that do not require further fact develop[ment]." SER-113. Instead, as the district court noted, it is Defendants that "have not acknowledged, much less addressed, the irreparable harms associated with a delay in obtaining the protections afforded by the SIJ designation." ER-20.

Plaintiffs presented ample evidence of these irreparable harms to the class resulting from USCIS delays. And as the court found, these delays can prolong a youth's detention, delay the ability to obtain lawful permanent resident status and employment authorization, result in their removal, or delay their access to important benefits. ER-18-19 (citing various forms of irreparable harm that

(1) Defendants have waived any claim to the hardship factor they now highlight on appeal, and (2) even if they did not waive it, the district court addressed this argument.

Plaintiffs will suffer if an injunction was denied); *see also* SER-190 (explaining benefits of lawful permanent resident status, which Defendants' delays prevent many class members from obtaining); SER-181-83 (lack of SIJ status prevented class members from pursuing schooling); SER-190 (SIJ adjudication delays can prolong time in immigration detention)]; SER-202 (named Plaintiff's time in detention was extended because of delayed SIJ adjudication); SER-168 (explaining how class member was deported because of lack of SIJ status); SER-156-58 (identifying several harms that flow from lack of SIJ status and adjudication delays, including lack of access to benefits or inability to obtain employment authorization). The evidence shows that delays cause unmistakable, irreparable harms that would result absent the court's intervention. Defendants fail to address the facts presented and the clear findings of the district court, which amply demonstrated both irreparable harm to Plaintiffs and that the balance of hardships tips sharply in their favor.

Further, Defendants' assertion that delays generally do not prejudice SIJ petitioners because petitioners from three countries—Guatemala, Honduras, and El Salvador—must wait until their priority date becomes current to apply for lawful permanent residence is unavailing.[6] First, Defendants ignore that SIJ petitioners

[6] Defendants state that SIJ petitioners from Honduras, El Salvador, or Guatemala have about a three-year waiting period to obtain lawful status and SIJ petitioners,

from every other country in the world can qualify for lawful permanent residence immediately upon approval of their SIJ petition. In addition, approval of the SIJ petition itself provides status that entails benefits even if a petitioner's priority date is not current. For example, SIJ status approval can provide a defense against removal, and a basis to seek release from immigration detention. *See, e.g.*, Memorandum from John Trasviña, Principal Legal Advisor, to All OPLA Attorneys, Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities, at 9 (May 27, 2021) (providing guidance on the use of prosecutorial discretion and dismissal of proceedings for immigrants in removal proceedings, including for "a child who appears prima facie eligible to pursue special immigrant juvenile status under INA section 101(a)(27) and 8 C.F.R. § 204.11").

Defendants argue that the district court should have considered that Plaintiffs "no longer face the same harms that they faced at the onset of the case" since Defendants were no longer applying the 2018 reunification policy to class members and as such, SIJ petitions were no longer being delayed on account of the

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while those from Mexico have a two-year waiting period. *See* Op. Br. at 28-29. However, these dates rapidly fluctuate. Indeed, according to USCIS's October 2021 visa bulletin, priority dates for SIJ petitioners from Mexico are now current, which means that SIJ petitioners from Mexico will be able to immediately request lawful permanent residence upon SIJ approval. *See* U.S. Dep't of State, Visa Bulletin, *Immigrant Numbers for October 2021*, Vol. X, No. 58 (Sept. 7, 2021), https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_october2021.pdf.

policy. Op. Br. 24. But Defendants ignore that Plaintiffs filed a separate and independent claim challenging USCIS's failure to comply with the statutory timeline for adjudicating SIJ petitions. ER-218-19. The district court correctly rejected this same argument below, observing that "the plaintiff class opposed two separate policies, the first related to the unlawful reunification requirement and the second related to the unlawful delays in adjudication." ER-18-19. Further, as the court then went on to explain,

> A declaration that the reunification requirement is unlawful in no way ensures the timely adjudication of future SIJ petitions: in fact, the agency feels it has the right to toll the statutory deadline at will and is currently considering a rule that expressly authorizes delays in the resolution of SIJ petitions.

ER-19.

Moreover, before the district court, Defendants faulted Plaintiffs for providing evidence of delays that were unrelated to the 2018 reunification policy. SER-12. Again, the district court correctly recognized that "[i]f the only reason there were delays was because USCIS was holding petitions while it hammered out details of the reunification requirement, defendants' argument might have merit. But the delays are a function of USCIS policy that is entirely separate from, and not contingent upon, the reunification requirement." ER-18.

Defendants also claim the district court erred by not focusing on the fact that they were currently complying with the order preliminarily enjoining them from

further violations of the statutory timeline. Op. Br. 23-24. In support of this argument, they cite to an unpublished case, *Lofton v. Verizon Wireless (VAW) LLC*, 586 F. App'x 420 (9th Cir. 2014). That case held that the plaintiff could not show irreparable harm where the defendant had changed their policy so as to prevent the challenged conduct. *Lofton*, 586 F. App'x at 421-22. The unpublished decision Defendants cite is a far cry from the current situation, where, but for the district court's intervention, Defendants would return to their practice of disregarding the statutory timeline. As such, it is disingenuous for Defendants to contest "the district court's factual finding that there was 'no dispute' that USCIS 'regularly delays' adjudication of SIJ petitions 'well beyond the 180-day period.'" Op. Br. 25 n.5. In asserting the district court erred, Defendants point to a declaration from the agency confirming only that Defendants modified their behavior to comply with the preliminary injunction. *See* ER 25.[7] But they offer no evidence to contest the court's finding as to their conduct prior to the injunction. As the Supreme Court has made clear, "[t]he relevant question is whether an ongoing exercise of the court's equitable authority is supported by the prior showing of illegality, judged

[7] Defendants also misstate the record in asserting that "USICS had adjudicated all but 5 petitions—out of 247—within 180 days." Op. Br. 27 (citing ER-24). Rather, the cited declaration confirms that USCIS complied with the district court's injunction, requiring that USCIS complete adjudication within thirty days of all class members' petitions that were already pending beyond 180 days, as well as those that would reach 180 days within that 30-day period. ER-25-24.

against the claim that changed circumstances have rendered prospective relief inappropriate." *Salazar v. Buono*, 559 U.S. 700, 718 (2010).

In addition, contrary to Defendants' claims, published case law makes clear that conduct prior to the entry of a preliminary injunction matters when determining whether to issue a permanent injunction. This Court has recognized as much, looking in previous cases at a defendant's "*past and* present misconduct" to affirm permanent injunctive relief. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 564 (9th Cir. 1990) (emphasis added). Other courts have observed the same. *See, e.g.*, *Coleman v. Wilson*, 912 F. Supp. 1282, 1311 (E.D. Cal. 1995) (granting permanent injunction because "[t]he history of defendants' response to th[e] issue . . . demonstrates a recalcitrant refusal to address the serious issues underlying the preliminary injunction until forced to do so under pressure of this litigation"); *U.S. Dep't of Justice v. Daniel Chapter One*, 89 F. Supp. 3d 132, 144-45 (D.D.C. 2015) ("It is well established . . . that current compliance does not preclude the entry of a permanent injunction, and a permanent injunction is justified if 'there exists some cognizable danger of recurrent violation' or 'some reasonable likelihood of future violations.'" (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953))); *cf. Vitek v. Jones*, 445 U.S. 480, 486-87 (1980) (holding that a defendant's voluntary cessation of challenged conduct does not render a claim moot if cessation results from the issuance of an injunction).

In fact, USCIS conceded that it "regularly delays" SIJ petitions "well beyond the 180-day period" as the district court found. ER-17; *see* ER-107 (explaining that most class members' SIJ petitions "have been pending for 150 days or more"). Defendants' own data in this case further demonstrates that they have delayed adjudicating petitions long past the 180-day deadline. *See id.*; *see also* ER-115 (stating that 23,589 SIJS petitions were pending over 180 days as of September 24, 2018). Plaintiffs' evidence likewise makes this clear. *See, e.g.*, SER-179, 189; *see also supra* 16-20 (describing years-long delays in adjudication of named Plaintiffs' applications).

Moreover, as the district court aptly noted, while Defendants opposed a permanent injunction with respect to the 2018 reunification policy by arguing that the issue was moot (because the agency had abandoned the policy after the district court issued its preliminary injunction), they made no such argument with respect to their failure to timely adjudicate the SIJ petitions. *See* ER-13 ("As USCIS implicitly recognizes, plaintiffs' claims regarding the delay in adjudicating SIJ petitions is also not moot."); ER-9 n.3 ("USCIS does not argue that plaintiffs' claims regarding unlawful delay are moot.").

Notably, Defendants effectively concede that their current practice does not prioritize SIJ petitions to ensure that they are adjudicated within 180 days, even though Congress expressly required such prioritization. As noted above,

Defendants' opening brief cites to the agency declaration acknowledging that there is a nationwide backlog of SIJ petitions. *See* Op. Br. 22. Similarly, Defendants stated in a declaration to the district court that the injunction causes significant operational hardship because "[t]he agency's ongoing compliance would entail creating a permanent system whereby WA SIJ petitions are treated differently than all other SIJ petitions in the United States." ER-25-26. But there would be no need to differentiate Washington state SIJ petitioners if USCIS regularly complied with the statutory timeline for all SIJ petitioners, as the statute requires. 8 U.S.C. § 1232(d)(2) ("*All* applications [for SIJ status] shall be adjudicated . . . not later than 180 days after the date on which the application is filed." (emphasis added)). Further, in Defendants' cross-motion for summary judgment, they submitted a supporting declaration from USCIS, in which they conceded there is a nationwide backlog of SIJ petitions. ER-25. As such, Defendants have no basis to assert that the district court abused its discretion and issued its injunction based on stale evidence.

Finally, as discussed further below, the district court correctly observed that USCIS's proposed rule additionally demonstrates that injunctive relief is appropriate:

> [USCIS] does not believe it is obliged to make a determination within 180 days of the date on which the petitioner files his or her petition. The proposed rule that is currently under consideration would codify these delays, 76 Fed. Reg. at 54983

> (citing 8 C.F.R. 103.2(b)(10)(i)), treating the clear and mandatory deadline Congress set for the "expeditious adjudication" of these petitions as a mere "benchmark" that is subject to unlimited extensions at the whim of the agency. 76 Fed. Reg. at 54983.

ER-18. Indeed, the proposed rule demonstrates that absent an injunction, Defendants intend to systematically violate the statutory mandate that governs Plaintiffs' petitions. As a result, Plaintiffs' uncontested evidence, Defendants' own arguments and supporting declarations, and Defendants' proposed rule provided more than sufficient support for the district court's determination that injunctive relief was—and is—appropriate.

II. The District Court Did Not Abuse its Discretion in Establishing the Scope of the Injunction.

The district court found USCIS's practice of leaving SIJ petitioners to languish without a decision well beyond the 180-day timeline constituted a violation of Congress's "clear and mandatory deadline." ER-15. As a result, the court crafted injunctive relief designed to give effect to the statutory timeline and afford relief to members of the class certified before the court. While Defendants frame this second set of arguments as one about the "scope" of the injunction, Op. Br. 29-37, they again refuse to acknowledge that it is Congress, not the court, that imposed a 180-day timeline to adjudicate "[a]ll applications for special immigrant status under [8 U.S.C. § 1101(a)(27)(J)]." 8 U.S.C. § 1232(d)(2). And here again, Defendants make the same erroneous assertion that the district court's injunction

impinges on their discretion to determine how they may comply with that mandate. In doing so, they gloss over the fact that the proposed tolling provisions do not actually seek to satisfy the 180-day timeline, but instead undermine it by affording Defendants the liberty of extending that timeline as they see fit. Finally, Defendants also err in asserting the district court abused its discretion by specifying that the injunctive relief covers only Washington state SIJ petitions.

A. The District Court Did Not Infringe on Defendants' Discretion as to How to Implement the 180-Day Timeline.

Defendants' assertion that the scope of the district court's injunction impedes on USCIS's discretion as to how to comply with the congressional timeline relies on the mistaken premise that USCIS's proposed and existing regulations are in accordance with the congressional mandate itself. As the district court correctly noted in shaping the injunction, they are not. See ER-14-16. Instead, USCIS purports to rely on 8 C.F.R. § 103.2 and the proposed SIJ regulation to impermissibly toll adjudication of SIJ petitions beyond 180 days despite the clear congressional mandate to the contrary. *Id.*

Before the district court, Defendants complained that "Plaintiffs' request for a permanent injunction mandating USCIS adjudicate SIJ petitions within 180 days relies heavily on the text of 8 U.S.C. § 1232(d)(2)." SER-110. Defendants are correct; Plaintiffs do in fact rely on the plain language of the statute. Rather than also addressing the statutory language, Defendants contend that the district court's

injunction unduly interferes with USCIS's "discretion to allocate its resources and manage competing priorities." Op. Br. 29. However, the case law they cite to make this argument—*Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094 (D.C. Cir. 2003) and *In re Barr Laboratories, Inc.*, 930 F.2d 72 (D.C. Cir. 1991)), in fact supports the district court's order.

First, *Mashpee Wampanoag Tribal Council, Inc.* is expressly distinguishable because of the differences between the statutes at issue. That case involved the appellee's petition for federal recognition as an Indian Tribe. The district court had granted relief under the Administrative Procedure Act (APA), ordering Defendants to act on the petition within one year. *Id.* at 1097. The D.C. Circuit reversed, but in doing so, explicitly noted that "[n]o statute or regulation specifies how quickly the queue must move along—in contrast to the timeframe for processing a petition once it is under active consideration." *Id.* By contrast, Congress has explicitly prioritized expeditious adjudication of SIJ petitions over all other immigration benefits applications.

Second, Defendants fail to acknowledge that this Court explicitly addressed *In re Barr Laboratories* in its decision in *Natural Resources Defense Council, Inc. v. EPA*, 966 F.2d 1292 (9th Cir. 1992). In *Natural Resources Defense Council*, this Court held that the EPA's extension of a statutory deadline scheme was unlawful, noting that the "EPA does not have the authority to ignore unambiguous deadlines

by Congress." *Nat. Resources Def. Council, Inc.*, 966 F.2d at 1299 (citations omitted). In arguing otherwise, the EPA had pointed to various cases, including *In re Barr*, which "recogniz[e] factors indicating that equitable relief may be inappropriate." *Id.* (citations omitted). This Court was not persuaded, reiterating that such factors

> do not grant an executive agency the authority to bypass explicit congressional deadlines. The deadlines are not aspirational—Congress set them and expected compliance. This court must uphold adherence to the law and cannot condone the failure of an executive agency to conform to express statutory requirements.

Id. at 1300 (internal citation omitted). This Court ultimately declined to implement additional injunctive relief in the case on discretionary grounds, as it could involve "extraordinary supervision." *Id.* However, it made clear that "the EPA does not have the authority to predicate future rules or deadlines in disagreement with this opinion." *Id*. In contrast, injunctive relief in this case is necessary to reinforce the concrete deadline established by Congress, given Defendants' expressed intent to violate the statute absent an injunction.

Moreover, *In re Barr Laboratories* is readily distinguished on the facts. The case involved Food and Drug Administration delays of generic drug applications beyond the statutory timeline. In applying the *TRAC* factors and addressing the fourth factor—the effect on competing agency priorities—the court found that granting an injunction would allow Barr to jump the line among all similarly-

situated generic drug applicants.[8] 930 F.2d at 75. But that is not the situation here. Pursuant to the statute, all SIJ petitioners are entitled to expedited adjudication. By contrast, nearly all other immigration benefits applications are not governed by an express statutory mandate, differentiating SIJ petitions from others.[9] Similarly, relief on behalf of the class ensures that all class members are treated equally. Thus, the instant case is not comparable to a context in which an individual applicant files a claim challenging delay in her case, and requests that her application be placed "at the head of the queue" while moving "all others back one space." *Id.* Nor can USCIS simply point to the fact that there are other types of immigration benefits applications that may be impacted, because other USCIS

[8] As noted, *supra* p. 28 n.2, this Court has already held that the *TRAC* factors are inapplicable where Congress has established a statutory deadline. Further, in *In re Barr Laboratories*, the D.C. Circuit found that the overlapping third and fifth *TRAC* factors—regarding human health and welfare or economic regulation—were "elusive," as the company's interest was commercial, even though the product helped provide medicine to sick people. *In re Barr Laboratories*, 930 F.2d at 75. By contrast, here Plaintiffs' safety and welfare are at stake, which Congress recognized when it prioritized SIJ petitions via a statutory deadline.

[9] For example, there is no statutory deadline for I-130 family visa petitions, I-130 employer visa petitions, I-485 adjustment applications, I-360 self-petitions for widows, divorced or abused spouses, I-751 petitions to remove conditions on residence (including on the basis of battery or extreme cruelty by a U.S. citizen spouse), I-765 applications for employment authorization, I-589 applications for asylum, I-914 applications for survivors of human trafficking, I-918 petitions for survivors of qualifying crimes, I-821 applications for temporary protected status, and N-400 applications for naturalization. In the context of N-400 applications for naturalization, there is only a timeline indicating how soon USCIS must render a decision *after* the naturalization interview. 8 U.S.C. § 1447(b).

applicants are not similarly-situated.

B. Defendants' Regulatory Interpretations Contradict the Express Statutory Language.

Defendants also object to the district court's refusal to permit USCIS to apply its general rule that allows the agency to stop or restart any timeline if the agency requests additional evidence. However, the district court correctly determined that Defendants' interpretation failed to give effect to the clear statutory deadline. The existing regulation applies generally to the submission and adjudication of all immigration benefits requests, without taking into account the statutorily-mandated timeline specific to SIJ petitions. Yet, by applying it to the SIJ context, Defendants seek to permit USCIS to restart the 180-day clock when the agency requests initial evidence after a petition has already been filed, and to further allow USCIS to "suspend[]" "any time limitation imposed on USCIS for processing" when it requests additional evidence or response, until it receives that evidence and/or response. 8 C.F.R. § 103.2(10)(i). The proposed rule Defendants cite seeks to expressly adopt this regulatory scheme for SIJ petitions. *See* 76 Fed. Reg. at 54893.

The district court correctly assessed this proposal for what it was: a transparent attempt to nullify the statutory deadline by giving USCIS discretion to disregard it whenever convenient. As the court explained, the plain language of both the proposed and existing regulations unlawfully permit USCIS to impose

"periods of tolling . . . unlimited in both number and duration," thereby "effectively nullif[ying] the statutory deadline." ER-16.

Accordingly, the district court did not abuse its discretion in shaping injunctive relief that merely requires USCIS to comply with the law. Instead, it recognized that such relief was necessary given that USCIS impermissibly sought to "to apply its general regulation addressing the effect of an agency request for initial or additional evidence to the SIJ context, despite the specific and mandatory adjudication deadline Congress imposed in 8 U.S.C. § 1232(d)(2)." *Id.* Defendants' only response to this is to assert that the district court "removed" Defendants' discretion in determining how to satisfy the congressionally-mandated 180-day adjudication timeline. See Op. Br. 29, 32-33. Yet, as discussed *supra*, the existing and proposed regulations fail to track the statutory timeline, and instead seek to expand the agency's authority to adjudicate petitions well-beyond the 180-days dictated by the statute. Defendants simply do not have the discretion to ignore a congressional mandate.

This Court's decision in *Firebaugh Canal Co. v. United States*, 203 F.3d 568 (9th Cir. 2000) provides no support for Defendants' contention, but instead reaffirms the district court's decision. In *Firebaugh*, this Court confirmed the district court's finding that the Department of Interior had "a duty to provide drainage service under the San Luis Act," but that subsequent congressional action

had given the Department discretion in how to comply with that duty. 203 F.3d at 578. This Court thus affirmed the district court's holding that the agency had unlawfully withheld agency action in violation of the APA by failing to provide that drainage service. *Id.* However, the Court also held that the district court's order overreached in specifying how the Department should comply with the statute. *Id.* In doing so, the Court explained that the relief was overbroad, since Congress had specifically afforded the Department discretion "in creating and implementing a drainage solution." *Id.*

In contrast, Defendants' restarting and tolling provisions—far from implementing the 180-day statutory timeline—directly defy it. The regulations do not seek to ensure that SIJ petitions be expedited. Instead, they purport to apply the same scheme applied to all other applications, permitting USCIS to either restart or toll the 180-day timeline at its discretion. Unlike the Department of Interior in *Firebaugh*, Defendants have failed to propose a plan to implement their statutory mandate that does not, in and of itself, also constitute a statutory violation.

In sum, the district court was correct to reject Defendants' proposal to simply adopt their proposed regulations. Instead of responding to the statute's text, Defendants ask the Court to allow USCIS to "rewrite [the] statute as it pleases" and endorse an interpretation that contravenes the plain language of the statutory mandate. *Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018). But the district court

appropriately relied on the statute's plain language to reject Defendants' contention. Indeed, the proposed rule only further underscored the need for the clear terms laid out in the permanent injunction, which in turn give effect to the express timeline mandated by Congress. Far from abusing its discretion, the district court ordered relief that requires Defendants to comply with their statutory duty.

C. The District Court Did Not Abuse its Discretion in Adopting Plaintiffs' Proposed Tolling Provision.

Defendants also contend the district court abused its discretion in adopting Plaintiffs' proposed tolling provision. But as the district correctly noted, Defendants did not provide any reason as to why Plaintiffs' proposal was either impractical or burdensome. ER-19-20. Defendants concede as much on appeal, admitting that "USCIS did not provide any reason as to why it could not implement Plaintiffs-Appellees' proposal." Op. Br. 34. Now however, despite failing to respond below, and despite acknowledging that failure on appeal, they criticize the district court for "dictating how USCIS must comply with Congress's 180-day deadline and eliminating USCIS's discretion as to how it should carry out the statute." Op. Br. 33. But Defendants did not propose to the district court any plan other than allowing them to continue to apply a regulatory scheme that "is inconsistent with the governing statute." ER-19. Defendants pointedly did not ask the Court to implement the same terms ordered under the preliminary injunction, which required strict compliance with the 180-day period unless USCIS made "an

affirmative showing that the petition raises novel or complex issues which cannot be resolved within the allotted time." SER-145. Instead of addressing this provision or demonstrating why Plaintiffs' proposal was unworkable or failed to comply with the law, Defendants dug in their heels, asserting that they have discretion to determine the time period required for adjudicating SIJ petitions. In adopting Plaintiffs' proposal, the district court reasonably adopted the only viable remedy submitted.[10]

Defendants' assertion that the adopted tolling provision contradicts the district court's conclusion that "any" delay beyond 180 days would be unreasonable, Op. Br. 34, or "unlawful", Op. Br. 3, misapprehends the district court's ruling. The district court clearly held to the contrary: "Under governing case law, [the 180-day] deadline is not absolute, but it provides the frame of reference for determining what is reasonable." ER-15.[11] Far from concluding that "any" delay beyond 180 days would be unreasonable, the district court merely

[10] For the first time on appeal, Defendants make the additional argument that tolling upon an SIJ petitioner's request contravenes the proposed and existing regulations, Op. Br. 34. However, as they failed to raise this issue below, their argument is waived. *See, e.g.*, *Rattlesnake Coal.*, 509 F.3d at 1100; *see also supra* pp. 30-32 & 33 n.3 (discussing waiver).

[11] Moreover, the district court's preliminary injunction provided that SIJ petitions "shall be adjudicated within the 180-day period set forth in the statute *in the absence of an affirmative showing that the petition raises novel or complex issues which cannot be resolved within the allotted time*." SER-145 (emphasis added). Defendants did not ask the court to include this exception in the briefing on cross-motions for summary judgment. *See* SER-12-14; SER-108-11.

rejected tolling provisions that, based on the evidence before it, resulted in systematic unreasonable delays.[12] That Defendants failed to put forward a viable alternative tolling provision does not render the district court's adoption of Plaintiffs' provision—which proposed a remedy to address USCIS's concerns—an abuse of discretion.

Further, Plaintiffs' tolling provision is consistent with the statutory purpose, which imposed strict requirements on the adjudicating agency. In doing so, Congress recognized that SIJ petitioners are a uniquely vulnerable population necessitating expedited decisions. Defendants' argument that "strict adherence to the 180-day deadline" will harm SIJ petitioners is unavailing, as the district court's order allows for tolling if petitioners themselves request additional time. Thus, contrary to Defendants' proposed tolling provisions, the court's order is reasonable and balances SIJ petitioners' occasional need for time to submit additional materials with the congressional mandate that the petitions be expedited to protect this vulnerable population.[13]

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[12] Moreover, as detailed above, the evidence before the district court demonstrated that USCIS regularly issues RFEs close to the statutory deadline, to request plainly irrelevant evidence, or to request evidence that makes no sense or is already in the record. *Supra* p. 13-14. Defendants never responded to this evidence, simply claiming it was "irrelevant." SER-12.

[13] Defendants also misstate the regulation when they assert that any tolling would be "limited in duration to 12 weeks for RFEs and 30 days for NOIDs [and thus] it would not prolong adjudication by multiple months or years as the named

Defendants also overstate the complexity of these applications. As the district court correctly noted, "defendants offer no evidence suggesting that SIJ petitions are factually or legally complex or otherwise require more than 180 days to review, investigate, and adjudicate." ER-19. Unlike most other immigration applications, there is no discretionary component, as SIJ status does not, in and of itself, provide lawful permanent residence. *See* 8 U.S.C. § 1101(a)(27)(J). Instead, the SIJ petitioner must subsequently apply for lawful permanent residence. At this point, the agency must evaluate all criminal and immigration violations to determine if the petitioner is admissible, qualifies as a matter of discretion, or qualifies for any discretionary waivers if they are inadmissible. *See* 8 U.S.C. § 1255(a), (h); 8 C.F.R. § 245.1(e)(3).

But for purposes of the initial SIJ petition, which is the subject of 8 U.S.C. § 1232(d)(2), the adjudication is straightforward, as USCIS must only verify that that (1) the petitioner is under 21 years of age at the time the petition is filed; (2) the petitioner is unmarried; (3) the petitioner has been declared dependent on a state or

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Plaintiffs-Appellees experienced." Op. Br. 26 (citing 8 C.F.R. § 103.2(b)(8)(iv)). The regulation that they cite to would permit the agency to either toll the 180-day period or *restart* the period all together if the agency classifies the evidence requested as "initial" evidence. *See* 8 C.F.R. § 103.2(b)(10)(i) ("[A]ny time period imposed on USCIS processing will start over from the date of receipt of the required initial evidence or request for fingerprint or interview rescheduling."). As such, the 180-day clock could start all over again for SIJ petitions that may already have been pending for several months.

juvenile court, or placed in the custody of a state agency or individual appointed by such a court; and (4) the state has found that (a) the petitioner's reunification with one or more parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law, and that (b) it is not in the petitioner's best interest to return to his or her home country. *See* 8 U.S.C. §§ 1101(b)(1), 1101(a)(27)(J), 1232(d)(6). There is no determination regarding admissibility and no review of a criminal record or prior immigration violations, as those matters have no bearing on a petitioner's eligibility.[14]

And while USCIS suggests it may need to address "derogatory evidence" when adjudicating SIJ petitions, Op. Br. 35, it never provides an example of such evidence or explains its bearing on the adjudication timeframe. Given the straightforward nature of SIJ petitions as compared to other immigration applications, an adjudicator can quickly assess whether evidence is missing and issue an RFE accordingly. *Compare* 8 U.S.C. § 1101(a)(27)(J) *with C.J.L.G. v. Barr*, 923 F.3d 622, 631 (9th Cir. 2019) (en banc) (observing that "asylum cases" involve "law [that] is complex and developing"). Indeed, even if USCIS were to issue such an RFE two months after receiving the petition and provide the

[14] The high approval rates among SIJ petitioners further highlights this point. Defendants acknowledge that 93% of class members' petitions were approved. Op. Br. 3. Such high rates result from the fact that SIJ petitions are straightforward and do not involve review of past records to determine whether the petitioner merits the benefit as a matter of discretion.

petitioner 84 days to respond—the maximum amount permitted under its current regulation, *see* 8 C.F.R. § 103.2(b)(8)(iv)—that would still leave the agency more than a month to review the response. Congress left USCIS ample time to adjudicate such petitions.

D. The District Court Did Not Prioritize Washington State Petitioners Over other SIJ Petitioners.

Finally, Plaintiffs note that the 180-day statutory adjudication deadline applies in full force to all SIJ petitioners nationwide, regardless of class membership. While the injunction only demands compliance on behalf of Washington state SIJ petitioners, the plain language of the statute requires USCIS to adjudicate all SIJ petitions within 180 days. *See* 8 U.S.C. § 1232(d)(2). Defendants thus err in asserting that "to comply with the permanent injunction, USCIS must prioritize the adjudication of Washington state SIJs petitions over the thousands of SIJ petitions from the other 49 states." Op. Br. 2. The district court's order does not require that class members' petitions be prioritized over other SIJ petitioners, but instead appropriately provides a remedy for the Washington state SIJ petitioners before the court.

Strangely, in attacking the scope of the injunction as inappropriately providing relief to Washington state petitioners, Defendants cite to *East Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 n.4 (9th Cir. 2019). Op. Br. 33. In that case, this Court rejected the government's request to stay the enforcement

of an injunction issued against the Department of Homeland Security. *Id.* at 1028. Specifically, this Court affirmed in part the injunction preventing the agency from giving effect to a new rule addressing eligibility for asylum. *Id.* However, the Court stayed the injunction to the extent it applied beyond the Ninth Circuit, explaining that "the district court failed to discuss whether a nationwide injunction is necessary to remedy Plaintiffs' alleged harm." *Id.* at 1029.

By contrast, here, the district court limited the injunction to Washington state petitioners. As a result, rather than abusing its discretion by ordering nationwide relief, the district court ensured that the injunction was "narrowly tailored to remedy the specific harm shown." *Id.* (quoting *City & Cnty. of San Francisco*, 897 F.3d at 1244. Nor did the district court prioritize Plaintiffs over other SIJ petitioners. It is USCIS that chooses to disregard the congressional mandate as to other SIJ petitioners across the country, but to whom the statute and its protections equally apply. *See* 8 U.S.C. § 1232(d)(2).

Moreover, by Defendants' own admission, SIJ petitions nationwide constitute less than 0.1 percent of the total number of applications submitted to USCIS. ER-113. As noted above, for nearly all of these other applications, Congress has not imposed a statutory deadline. *Supra* p. 45 n.9. As a result, Defendants cannot seriously contend that compliance with the congressional mandate will have a serious impact on their other operations.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court uphold the district court's injunction requiring USCIS to comply with federal law and dismiss Defendants' appeal.

Dated: September 20, 2021

s/ Matt Adams
Matt Adams

s/ Aaron Korthuis
Aaron Korthuis

s/ Leila Kang
Leila Kang

s/ Margot Adams
Margot Adams

s/ Tim Warden-Hertz
Tim Warden-Hertz

s/ Olivia Saldaña-Schulman
Olivia Saldaña-Schulman

STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, Plaintiffs-Appellees state that they know of no related cases pending in this Court.

Dated: September 20, 2021

Signature: s/ Aaron Korthuis
Aaron Korthuis

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Circuit Rule 32-1(a) because this brief contains 13,278 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word's Times New Roman 14-point font.

Dated: September 20, 2021

Signature: s/ Aaron Korthuis
Aaron Korthuis

CERTIFICATE OF SERVICE

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

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: September 20, 2021

Signature: s/ Aaron Korthuis
Aaron Korthuis