

1 BREE BERNWANGER - # 331731
bbernwanger@aclunc.org
2 MICHELLE (MINJU) Y. CHO - # 321939
mcho@aclunc.org
3 LAUREN DAVIS - # 357292
ldavis@aclunc.org
4 SHILPI AGARWAL - # 270749
sagarwal@aclunc.org
5 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
6 CALIFORNIA
39 Drumm Street
7 San Francisco, CA 94111
Telephone: (415) 621-2493

8 MAYRA JOACHIN - # 306065
mjoachin@aclusocal.org
9 EVA BITRAN - # 302081
ebitran@aclusocal.org
10 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
11 CALIFORNIA
1313 West 8th Street
12 Los Angeles, CA 90017
Telephone: (213) 977-5000

14 BRISA VELAZQUEZ OATIS - # 339132
bvoatis@aclu-sdic.org
15 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SAN DIEGO &
16 IMPERIAL COUNTIES
P.O. Box 87131
17 San Diego, CA 92138-7131
Telephone: (619) 398-4199

18 *Attorneys for Plaintiffs*

19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF CALIFORNIA
21 FRESNO DIVISION

22 UNITED FARM WORKERS, et al.,

23 Plaintiffs,

24 v.

25 KRISTI NOEM, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE
26 DEPARTMENT OF HOMELAND
SECURITY; et al.,

27 Defendants.

AJAY S. KRISHNAN - # 222476
akrishnan@keker.com
JASON GEORGE - # 307707
jgeorge@keker.com
JULIA L. GREENBERG - # 333864
jgreenberg@keker.com
REAGHAN E. BRAUN - # 340526
rbraun@keker.com
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Plaintiffs

MARIO MARTINEZ - # 200721
mmartinez@farmworkerlaw.com
EDGAR IVAN AGUILASOCHO - # 285567
eaguilasocho@farmworkerlaw.com
MARTINEZ AGUILASOCHO LAW, INC.
900 Truxtun Avenue, Suite 300
Bakersfield, CA 93301
Telephone: (661) 859-1174
Facsimile: (661) 840-6154

Attorneys for Plaintiff United Farm Workers

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

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO STAY
LITIGATION PENDING APPEAL**

Date: December 1, 2025
Time: 9:00 AM
Dept.: Courtroom 4, 7th Floor
Judge: Hon. Jennifer L. Thurston

Date Filed: February 26, 2025

Trial Date: None set

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

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PROCEDURAL BACKGROUND.....	2
A. The Preliminary Injunction and Appeal.....	3
B. Ongoing District Court Litigation and Defendants’ Evasion of Discovery.....	3
III. ARGUMENT	4
A. Neither <i>Coinbase</i> nor <i>Griggs</i> compels a stay of proceedings.....	4
B. There is no basis for a discretionary stay under any standard.	9
1. The <i>Nken</i> factors weigh decisively against a stay.....	9
2. Defendants are not entitled to a stay under <i>CMAX</i>	11
IV. CONCLUSION.....	13

TABLE OF AUTHORITIES

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

Page(s)

Cases

American Encore v. Fontes,
No. CV-24-01673-PHX-MTL, 2025 WL 1839464 (D. Ariz. June 26, 2025)8

Avery v. TEKsystems, Inc.,
757 F. Supp. 3d 973 (N.D. Cal. 2024)8

Badon v. Berry's Reliable Res., L.L.C.,
No. 23-30345, 2025 WL 2206972 (5th Cir. Aug. 4, 2025)7

BioCorRx, Inc. v. Calista Therapeutics, Inc.,
No. 8:24-cv-00640-JVS-JDE, 2024 WL 4472376 (C.D. Cal., Aug. 14, 2024)8

Brown v. Google, LLC,
No. 4:20-cv-03664-YGR, 2024 WL 5682633 (N.D. Cal., Nov. 8, 2024)8

Brown v. Taylor,
No. CV 22-09203-MEM-FKS, 2024 WL 1600314 (C.D. Cal. Apr. 3, 2024)6

California by & through Harrison v. Express Scripts, Inc.,
139 F.4th 763 (9th Cir. 2025) (“*California ex rel*”) *passim*

California Trout, Inc. v. United States Bureau of Reclamation,
115 F. Supp. 3d 1102 (C.D. Cal. 2015)11

California v. Health & Hum. Servs.,
No. 17-CV-05783-HSG, 2018 WL 11671579 (N.D. Cal. Dec. 13, 2018)8

Cheverez v. Plains All Am. Pipeline,
LP, No. CV15-4113 PSG, 2016 WL 4942328 (C.D. Cal. Feb. 25, 2016).....11

City of Martinsville, Virginia v. Express Scripts, Inc.,
128 F.4th 265 (4th Cir. 2025)7

City of Sacramento v. Wells Fargo & Co.,
No. CV 18-cv-00416-KJM-GGH, 2019 WL 11093495 (E.D. Cal. Nov. 20,
2019)11

CMAX, Inc. v. Hall,
300 F.2d 265 (9th Cir. 1962)9, 11, 12

Coalition on Homelessness v. City and County of San Francisco,
No. 22-cv-05502-DMR, 2024 WL 815552 (N.D. Cal. Feb. 23, 2024).....12

Coinbase, Inc. v. Bielski,
599 U.S. 736 (2023)..... *passim*

1 *Doe #1 v. Trump*,
 2 957 F.3d 1050 (9th Cir. 2020)10

3 *Electric Solidus, Inc. v. Proton Management Ltd.*,
 4 No. 2:24-cv-08280, 2025 WL 1712363 (C.D. Cal., May 27, 2025).....12

5 *Finder v. Leprino Foods Company*,
 6 No. 1:13-CV-02059-AWI-BAM, 2017 WL 1355104 (E.D. Cal., Jan. 20, 2017)12

7 *Flores v. Bennett*,
 8 675 F. Supp. 3d 1052 (E.D. Cal. 2023).....9, 10

9 *FTC v. Standard Oil Co. of Cal.*,
 10 449 U.S. 232 (1980).....10

11 *Gilbert v. 7-Eleven, Inc.*,
 12 No. 2:21-cv-01984 WBS KJN, 2023 WL 8477959 (E.D. Cal., Dec. 7, 2023).....12

13 *Griggs v. Provident Consumer Discount Co.*,
 14 459 U.S. 56 (1982)..... *passim*

15 *Landis v. N. Am.Co.*,
 16 299 U.S. 248 (1936).....8, 9

17 *Leiva-Perez v. Holder*,
 18 640 F.3d 962 (9th Cir. 2011)9

19 *Manchester Farms, Inc. v. Supremas, Inc.*,
 20 165 F. Supp. 3d 1366 (M.D. Ga. 2016)11

21 *Melendres v. Arpaio*,
 22 695 F.3d 990 (9th Cir. 2012)11

23 *Newsom v. Trump*,
 24 No. 25-CV-04870-CRB, 2025 WL 2609917 (N.D. Cal. Sept. 9, 2025).....7, 8

25 *Nken v. Holder*,
 26 556 U.S. 418 (2009).....2, 8, 9, 10

27 *Nken v. Holder*,
 28 566 U.S. 418 (2009).....9

Noem v. Perdomo,
 606 U.S. ___, 2025 WL 2585637 (2025)10

Noem v. Perdomo,
 606 U.S. ___, 2025 WL 2586537 (2025)9

Pandolfi v. Aviagames, Inc.,
 No. 23-CV-05971-EMC, 2024 WL 4951258 (N.D. Cal. Dec. 3, 2024).....8

1 *Plotkin v. Pac. Tel. & Tel. Co.*,
 2 688 F.2d 1291 (9th Cir. 1982)1

3 *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t*
 4 *of Agr.*,
 499 F.3d 1108 (9th Cir. 2007)6

5 *Renard v. San Diego Unified Port Dist.*,
 6 No. 06-CV-2665 H (BLM), 2007 WL 9724156 (S.D. Cal. Mar. 20, 2007)8

7 *S. Or. Barter Fair v. Jackson County*,
 8 372 F.3d 1128 (9th Cir.2004)6

9 *S.L. v. County of Riverside*,
 10 No. 5:24-cv-00249-CAS-SPx, 2025 WL 2652874 (C.D. Cal. Sept. 15, 2025)8

11 *Schultz v. Emory Univ.*,
 12 No. 23-12929, 2024 WL 4534428 (11th Cir. Oct. 21, 2024)7

13 *Shouldertap Techs, Inc. v. Fizz Social Corp.*,
 14 No. 25 CIV. 1487 (ALC) (SLC), 2025 WL 2371152 (S.D.N.Y. Aug. 14, 2025)10

15 *Song v. MTC Fin., Inc.*,
 16 812 F. App'x 609 (9th Cir. 2020).....4

17 *United States v. Hansen*,
 18 40 F.4th 1049 (9th Cir. 2022) (Gould, J., concurring).....10

19 *Vasquez Perdomo v. Noem*,
 20 No. 2:25-cv-05605-MEMF-SP (C.D. Cal. Oct. 10, 2025)..... *passim*

21 *Vasquez Perdomo v. Noem*,
 22 No. 25-431210

23 **Statutes**

24 8 U.S.C. § 1357(a)(2).....12

25 **Other Authorities**

26 8 C.F.R. § 287.8(c)(2)(ii).....12

27 Fed. R. Civ. Proc. 233

28 Fed. R. Civ. Proc. 26(f).....3

1 **I. INTRODUCTION**

2 For the third time in as many weeks, Defendants ask the Court to stay this litigation. And
3 for the third time, Defendants offer no legal basis for their request.

4 Defendants filed a notice of appeal four months ago. They have since repeatedly sought
5 affirmative relief from this Court, including through their pending motion to dismiss. Yet now,
6 for the first time, Defendants claim that the filing of their interlocutory appeal of the Preliminary
7 Injunction Order (“PI Appeal”) unilaterally (and automatically) divests this Court of jurisdiction
8 **over the entire case**. This request flouts the well-settled rule that “an appeal from an interlocutory
9 order does not divest the trial court of jurisdiction to continue with other phases of the case.”
10 *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982).

11 Defendants’ Motion is based on two arguments. Both fail. **First**, Defendants argue that a
12 stay is mandatory based on *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023) and *Griggs v.*
13 *Provident Consumer Discount Co.*, 459 U.S. 56 (1982). Neither case supports their position.
14 *Coinbase’s* holding exclusively concerned **arbitration**. Specifically, the Court held an automatic
15 stay is triggered by an interlocutory appeal of the denial of a motion to compel arbitration. 599
16 U.S. at 742–44. By its own terms, *Coinbase* is inapposite. And to the extent any ambiguity
17 remained about its scope, the Ninth Circuit resolved it, expressly declining to extend *Coinbase*
18 beyond the arbitration context. *See California by & through Harrison v. Express Scripts, Inc.*, 139
19 F.4th 763, 768 (9th Cir. 2025) (“*California ex rel*”) (“*Coinbase* read in conjunction with relevant
20 Supreme Court precedent counsels in favor of limiting the *Coinbase* holding to the arbitration
21 context.”). *Griggs*, too, offers Defendants no relief. *Griggs* stands for the principle that district
22 courts should not attempt to simultaneously adjudicate the **same issues** that are pending before a
23 court of appeals. *See* 459 U.S. at 58. But Plaintiffs do not seek adjudication of any such issues.

24 The impetus of Defendants’ Motion appears not to be genuine concern about conflicting
25 rulings but instead a desire to avoid ordinary discovery. But as the district court in *Pedro Vasquez*
26 *Perdomo et al v. Kristi Noem et al.* recently explained in denying a similar stay request, “there
27 can be no serious argument that this Court does not have jurisdiction to handle the merits of the
28 underlying case just because an appeal of temporary, preliminary relief is pending.” Greenberg

1 Decl. Ex. A (Minute Order at 8, *Vasquez Perdomo v. Noem*, No. 2:25-cv-05605-MEMF-SP,
2 (C.D. Cal. Oct. 10, 2025), ECF No. 220 (“Perdomo MTS Order”). The Court should reach the
3 same result here.

4 **Second**, Defendants argue in the alternative that they are entitled to a discretionary stay
5 because Plaintiffs will suffer no harm and Defendants will incur discovery burdens. Mot. at 9-10.
6 Wrong again. Plaintiffs face continuing and imminent violations of their constitutional rights and,
7 as explained in Plaintiffs’ Motion to Enforce (Dkt. 81), the PI Order alone has not deterred
8 Defendants from continuing to commit constitutional violations. As for burden, Defendants fail to
9 cite any legally-cognizable harm they will incur absent a stay, pointing only to the inconvenience
10 of standard civil discovery. But the case, including discovery, will proceed regardless of the
11 outcome of the PI Appeal. And if Defendants have a genuine claim of burden, they can avail
12 themselves of the normal meet-and-confer and discovery processes. Defendants refuse to do so.
13 Thus, Defendants have failed to justify a grant of a discretionary stay. *See* Greenberg Decl. Ex. A
14 (*Perdomo* MTS Order) at 8 (holding that a stay of all proceedings was unwarranted because
15 “there would be harm to the Plaintiffs of not being permitted to develop the record factually” and
16 “there is no identified hardship or inequity for the Defendants in being required to go forward in
17 this litigation just as it is required to go forward in myriad other litigation”).

18 A stay is an “intrusion” into the judicial process and “is not a matter of right, even if
19 irreparable injury might otherwise result[.]” *Nken v. Holder*, 556 U.S. 418, 427 (2009).
20 Defendants have not justified the extraordinary relief they seek. The Court should see
21 Defendants’ motion for what it is: yet another attempt to avoid civil discovery and this Court’s
22 judicial review all while their immigration enforcement activities push forward. The Motion
23 should be denied.

24 **II. PROCEDURAL BACKGROUND**

25 This lawsuit challenges the U.S. Border Patrol’s unlawful policies, patterns, and practices
26 of conducting stops without reasonable suspicion, effecting warrantless arrests without evaluating
27 probable cause of flight risk, and expelling people from the U.S. via administrative voluntary
28 departure without a knowing and voluntary waiver of rights. Dkt. 1 ¶¶ 326-350. These practices

1 violate the Fourth and Fifth Amendments, federal law, and federal regulations. *Id.*

2 **A. The Preliminary Injunction and Appeal**

3 After a series of immigration raids across the Bakersfield region, Plaintiffs filed suit on
4 February 26, 2025. Dkt. 1. Plaintiffs moved to provisionally certify two classes and for a
5 preliminary injunction on their Fourth Amendment, statutory, and regulatory claims. Dkt. 15.
6 Plaintiffs submitted nearly a dozen declarations from putative class members—including a United
7 States citizen and longtime lawful permanent resident—who Border Patrol agents had stopped
8 without reasonable suspicion or arrested without any evaluation of flight risk during the raids.
9 Plaintiffs did not move for preliminary relief on their Fifth Amendment claims related to
10 voluntary departure and have not yet moved to certify the class related to those claims.

11 On April 29, 2025, the Court provisionally certified the classes associated with Plaintiffs’
12 stop and arrest claims and granted Plaintiffs’ motion for preliminary injunction. Dkt. 47. As the
13 Court noted, Defendants “d[id] not challenge the sufficiency of Plaintiffs’ evidence to show a
14 likelihood of success on the merits” in its opposition to Plaintiffs’ motion for preliminary
15 injunction. *Id.* at 76. Nor did Defendants argue that the alleged conduct complied with the law.
16 Instead, Defendants argued that the Court lacked jurisdiction and the matter was moot. *Id.*

17 Defendants appealed the preliminary injunction four months ago, on June 27, 2025. Dkt.
18 59. After seeking two extensions from the Ninth Circuit, Defendants filed their opening brief on
19 September 26, 2025, raising issues of standing, mootness, jurisdiction, and the form of the
20 injunction. No. 25-4047, (9th Cir. Sept. 26, 2025) Dkt 12.1 (“Def.’s Opening Brief”) (also
21 available at Dkt. 117-9); *see also* Mot. at 4. On appeal, Defendants do not challenge Plaintiffs’
22 substantive claims under the Fourth Amendment or federal law and do not challenge class
23 certification under Rule 23. *Id.*

24 **B. Ongoing District Court Litigation and Defendants’ Evasion of Discovery**

25 Since the start, Defendants have dragged their feet on discovery and have repeatedly
26 refused to comply with basic discovery obligations. Less than a month after this Court granted
27 Plaintiffs’ Motion for a PI, Defendants filed an emergency *ex parte* motion seeking to relieve
28 themselves of the Rule 26(f) conference, the mandatory scheduling conference, and all civil

1 discovery obligations beyond producing the administrative record. Dkt. 50. Judge Baker denied
 2 the motion, noting that “it is inconceivable that Plaintiffs’ . . . claims are amenable to adjudication
 3 based exclusively on an existing, administrative record.” Dkt. 56.

4 Despite Judge Baker’s clear directive, Defendants continue to stonewall. For instance,
 5 Plaintiffs served their first set of document requests on June 27, 2025. Greenberg Decl. ¶ 3. And
 6 yet, to date, Defendants have not produced a single responsive document, beyond their purported
 7 Administrative Record, *id.* ¶ 5, although Defendants have agreed to do so, *id.* ¶¶ 4-5, and Mr.
 8 Cantú’s declaration makes clear they have identified thousands, Dkt. 115-1 ¶¶ 7-8. As another
 9 example, Defendants have also delayed negotiations on search terms and custodians. Greenberg
 10 Decl. ¶ 5. Indeed, the first time Defendants let on that they had even run search terms was when
 11 they ***filed this Motion***. *See id.* ¶ 11, Dkt. 115-1 ¶¶ 6-9.¹ To the extent Defendants have concerns
 12 about specific requests or search terms, Plaintiffs have repeatedly offered to meet and confer, *see*
 13 Greenberg Decl. ¶¶ 6-9, and continue to be available to try to narrow any disputes.

14 Meanwhile, Defendants have not shied away from motion practice before this Court.
 15 Since filing their appeal, Defendants have filed multiple motions, including to stay discovery on
 16 other grounds. *See* Dkt. 64 (motion to dismiss); Dkt. 86 (motion to seal); Dkt. 88 (motion to
 17 extend time); Dkt. 100 (motion to exceed page limit); Dkt. 103 (motion to stay during
 18 government shutdown); Dkt. 107 (motion to clarify whether stay denial applied to discovery). In
 19 the months since Defendants filed their appeal, they did not so much as hint at the meritless
 20 position that they advance now: that the notice of appeal filed four months ago stripped this Court
 21 of jurisdiction and automatically stayed this litigation in its entirety.

22 **III. ARGUMENT**

23 **A. Neither *Coinbase* nor *Griggs* compels a stay of proceedings.**

24 “[I]t is firmly established that an appeal from an interlocutory order does not divest the
 25 trial court of jurisdiction to continue with other phases of the case.” *Song v. MTC Fin., Inc.*, 812
 26 F. App’x 609, 610 (9th Cir. 2020) (citing *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d 1291, 1293

27
 28 ¹ Mr. Cantú’s declaration is notably silent as to when Defendants ran searches and whether Defendants
 ever actually began the document review he describes. Dkt. 115-1.

1 (9th Cir. 1982).) In *Coinbase*, the Supreme Court carved out a narrow exception, holding that
2 district courts must stay proceedings during the appeal of a denied ***motion to compel arbitration***.
3 599 U.S. at 742-44. Since then, the Ninth Circuit has expressly “limit[ed] the *Coinbase* holding to
4 the arbitration context.” *California ex rel*, 139 F.4th at 768.

5 By its own terms, *Coinbase* is limited to arbitration denials. In *Coinbase*, “[t]he sole
6 question [was] whether a district court must stay its proceedings while an interlocutory appeal on
7 ***arbitrability*** is ongoing.” 599 U.S. at 740.² The Court answered in the affirmative, relying on
8 *Griggs*, which held that an appeal “divests the district court of its control over those ***aspects of***
9 ***the case involved in the appeal.***” *Id.* at 740, 143 (quoting *Griggs*, 459 U.S. at 58). Because the
10 question on appeal in the arbitration context “is whether the case belongs in arbitration or instead
11 in the district court, the ***entire case*** is essentially ‘involved in the appeal.’” *Id.* at 741 (quoting
12 *Griggs*, 459 U.S. at 58). The Court reasoned that “[i]f the district court could move forward with
13 pre-trial and trial proceedings while the appeal on arbitrability was ongoing, then many of the
14 asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like)
15 would be irretrievably lost.” *Id.* at 743; *California ex rel*, 139 F.4th at 770 (noting the “unique
16 features of arbitration [] help explain *Coinbase*’s contention that a denial of a motion to compel
17 arbitration makes it so the entire case is essentially involved in the appeal”). Thus, *Coinbase* rises
18 and falls within the arbitration context.

19 Although this case bears none of the “unique features of arbitration,” Defendants
20 nonetheless argue that, like the appeal in *Coinbase*, their appeal also involves “the entire case”
21 because it concerns the “scope of this Court’s jurisdiction.” Mot. at 6. This argument
22 misunderstands *Coinbase* as well as the nature of their own appeal. *Coinbase* did not implicate
23 the district court’s jurisdiction, much less create an automatic-stay rule for all cases with
24 jurisdiction-related appeals. Indeed, *California ex rel* (an appeal of an order remanding a case to
25 state court) ***did*** raise jurisdictional issues, and yet ***declined*** to apply *Coinbase*. See 139 F.4th at
26 768. Instead, as the Ninth Circuit explained, the touchstone for whether an automatic stay applies
27 is whether the appeal involves issues that, if successful, would provide an “entitlement to avoid

28 ² All emphasis has been added unless otherwise noted.

1 litigation altogether.” *Id.* at 771 n.7.

2 Not so here. As Defendants concede, their appeal does not involve Plaintiffs’ Fifth
3 Amendment claim, so that claim will necessarily proceed. *See* Mot. at 8. On the Fourth
4 Amendment claims, Defendants have not challenged the underlying merits. *See id.* at 6. Even the
5 jurisdictional issues Defendants raise on appeal are not, **at this stage**, dispositive because they are
6 inherently **factual**. For instance, a ruling from the Ninth Circuit on the preliminary record about
7 whether Plaintiffs have shown a likelihood of proving future harm for standing purposes would
8 not foreclose an alternative result on a different (and further developed) record. *See* Greenberg
9 Decl. Ex. A (*Perdomo* MTS Order) at 6-7 (“[I]t seems anomalous to stay all proceedings—and
10 prohibit further factual development—when there is a significant possibility that the Supreme
11 Court’s decision was based upon a determination based upon the preliminary factual record.”).
12 Likewise, even if the Ninth Circuit were to find the circumstances that gave rise to the PI are
13 moot (they are not), that ruling would not foreclose Plaintiffs’ ability to seek relief based on
14 different facts or alternative theories (i.e., their Fifth Amendment claim). *See id.* at 7. And of
15 course, a determination regarding the scope of the injunction will not resolve the underlying
16 merits of Plaintiffs’ constitutional claims.

17 Indeed, Defendants themselves seem unable to identify any effect that a reversal of the
18 preliminary injunction would have on this litigation other than vague speculation that a reversal
19 of the PI “is sure to impact the proceedings in this case.” Mot. at 6. That is a far cry from the
20 effect of the appeal in *Coinbase*, which could have transformed litigation into arbitration. *See*
21 *Brown v. Taylor*, No. CV 22-09203-MEM-FKS, 2024 WL 1600314, at *4 (C.D. Cal. Apr. 3,
22 2024) (denying *Coinbase* stay pending PI appeal because “regardless of whether [the plaintiff]
23 won [the PI], the case would eventually proceed to the MSJ stage.”). By contrast, the Ninth
24 Circuit’s ruling will not determine the outcome of the litigation because “[a] ruling on [a] motion
25 for a preliminary injunction leaves open the final determination of the merits of the case.”
26 *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agr.*, 499
27 F.3d 1108, 1114 (9th Cir. 2007); *see also S. Or. Barter Fair v. Jackson County*, 372 F.3d 1128,
28 1136 (9th Cir.2004). Thus, the concerns that animated the *Coinbase* decision—that the appellant

1 would avoid discovery altogether if successful on appeal—do not apply here.

2 The Court should therefore reject Defendants’ attempt to frame *California ex rel* as the
 3 exception and *Coinbase* as the rule. The cases make plain that the opposite is true. *See California*
 4 *ex rel Harrison*. 139 F.4th at 768, 773 “[T]he Supreme Court’s decision in *Coinbase* . . . merely
 5 represents **a carve-out in favor of arbitration**.”). And Defendants’ argument that *California ex rel*
 6 was based solely on “federalism concerns” inherent in removal orders wholly ignores the fact that
 7 the panel expressly stated a broader concern that an expansive reading of *Coinbase* would lead to
 8 stays in a wide variety of cases. *California ex rel*, 139 F.4th at 767 n.5 (expressing concern that
 9 the defendants’ view “would ostensibly sweep . . . areas of litigation . . . [that] *Coinbase* [did not]
 10 mention . . .”). Indeed, adopting Defendants’ position here would suggest that virtually all
 11 appeals of preliminary injunctions would result in automatic case-wide stays. Nothing in
 12 *Coinbase* suggests that it was meant to have such far-reaching effects. And *California ex rel*
 13 forecloses Defendants’ attempt to rely on the Fourth Circuit’s view that *Coinbase* applies more
 14 broadly. Mot. at 7 (citing *City of Martinsville, Virginia v. Express Scripts, Inc.*, 128 F.4th 265,
 15 270-71 (4th Cir. 2025)). The Ninth Circuit already considered and rejected the Fourth Circuit’s
 16 analysis, noting that it diverged from a consensus of circuit courts refusing to extend *Coinbase*.
 17 139 F.4th at 767 & n.2.³ Thus, *City of Martinsville* is not persuasive (let alone binding) authority.

18 None of the other cases Defendants cite offer any persuasive reason for this Court to adopt
 19 the sweeping rule they propose. Defendants point to *Newsom v. Trump*, No. 25-CV-04870-CRB,
 20 2025 WL 2609917, at *1 (N.D. Cal. Sept. 9, 2025), mischaracterizing it as a case where the court
 21 “stay[ed] litigation” pending an interlocutory appeal. Mot. at 7. But that is not what the court did.
 22 In *Newsom*, the district court issued a temporary restraining order barring a National Guard
 23 deployment, which the Ninth Circuit stayed pending appeal. *Id.* at *1. Plaintiffs then sought a
 24 preliminary injunction against a subsequent threatened deployment on the same legal theory. *Id.*
 25 at *2. Citing *Coinbase* and *Griggs*, the district court in *Newsom* held that it was “not the typical

26 ³ Indeed, numerous other circuit courts have similarly declined to extend *Coinbase* to other contexts. *See*
 27 *id.* at 767 & n.2 (collecting cases); *see also Schultz v. Emory Univ.*, No. 23-12929, 2024 WL 4534428, at
 28 *3 (11th Cir. Oct. 21, 2024) (exercising jurisdiction over class certification appeal while district court
 decided motion to decertify); *Badon v. Berry's Reliable Res., L.L.C.*, No. 23-30345, 2025 WL 2206972, at
 *4 (5th Cir. Aug. 4, 2025) (denying stay request under *Coinbase*).

1 case” because the Ninth Circuit had “stayed” the previously issued TRO and the question was
 2 whether “*Plaintiffs’ motion for a preliminary injunction*” could proceed. *Id.* at *2-*3. The case
 3 did not involve a run-of-the-mill appeal of a preliminary injunction order with no express
 4 appellate stay; nor was it a request to stay the entire litigation like that at issue here. And even in
 5 *Newsom*, the other claims not up on appeal proceeded to a full bench trial. *Id.* at *1. Nothing in
 6 *Newsom* supports a blanket stay.

7 Defendants also cite cases where a court declined to exercise jurisdiction over a *specific*
 8 motion that overlapped with an issue on appeal, but none of those cases support the proposition
 9 that an interlocutory appeal divests the district court of jurisdiction over the entire case. *See* Mot.
 10 7-8; *Brown v. Google, LLC*, No. 4:20-cv-03664-YGR, 2024 WL 5682633, at *2 (N.D. Cal., Nov.
 11 8, 2024) (staying settlement approval while intervenors who oppose settlement appeal denial of
 12 motion to intervene); *Renard v. San Diego Unified Port Dist.*, No. 06-CV-2665 H (BLM), 2007
 13 WL 9724156, at *1 (S.D. Cal. Mar. 20, 2007) (denying plaintiff’s motion to reconsider denial of
 14 preliminary injunction where plaintiff had already appealed denial); *California v. Health & Hum.*
 15 *Servs.*, No. 17-CV-05783-HSG, 2018 WL 11671579, at *1 (N.D. Cal. Dec. 13, 2018) (denying
 16 motion to lift a stipulated stay to amend complaint because the proposed amendments had already
 17 been raised by the defense on appeal).

18 To the contrary, courts regularly *deny* blanket stays based on interlocutory appeals, as
 19 “there can be no serious argument that [district courts] do[] not have jurisdiction to the handle the
 20 merits of the underlying case just because an appeal of temporary, preliminary relief is pending.”
 21 *See* Greenberg Decl. Ex. A (*Perdomo* MTS Order) at 8; *see also Pandolfi v. Aviagames, Inc.*, No.
 22 23-CV-05971-EMC, 2024 WL 4951258, at *4 (N.D. Cal. Dec. 3, 2024) (holding that
 23 interlocutory appeal of aspects of RICO claim did not require stay of entire claim); *Avery v.*
 24 *TEKsystems, Inc.*, 757 F. Supp. 3d 973, 977 (N.D. Cal. 2024) (holding that interlocutory appeal
 25 did not require stay of entire case).⁴ The same result is warranted here.

26 _____
 27 ⁴ Defendants’ other cases involve discretionary stays. *See S.L. v. County of Riverside*, No. 5:24-cv-00249-
 28 CAS-SPx, 2025 WL 2652874, at *4-7 (C.D. Cal. Sept. 15, 2025) (holding that *Griggs* principle divested
 district court of jurisdiction over one claim on appeal and applying *Nken* factors to stay proceedings);
American Encore v. Fontes, No. CV-24-01673-PHX-MTL, 2025 WL 1839464, at *2 (D. Ariz. June 26,
 2025) (applying *Landis* factors to stay proceedings); *BioCorRx, Inc. v. Calista Therapeutics, Inc.*, No.

1 **B. There is no basis for a discretionary stay under any standard.**

2 Defendants also do not come close to satisfying the standard(s) for a discretionary stay. As
 3 an initial matter, the case law is split on which standard applies. The Ninth Circuit’s decision in
 4 *California ex rel* suggests that cases seeking discretionary stays pending appeals are to be decided
 5 by the test set forth in *Nken v. Holder*, 566 U.S. 418, 434 (2009). See 139 F.4th at 768 (“*Coinbase*
 6 does not abrogate *Nken v. Holder* beyond the arbitration context”). However, some courts have
 7 suggested that the *Landis* test, as adapted in *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir. 1962), is
 8 the appropriate test to apply, where, as here, the movant seeks to stay the entire case (as opposed
 9 to individual orders or judgments). See *Flores v. Bennett*, 675 F. Supp. 3d 1052, 1057 (E.D. Cal.
 10 2023).⁵ Under either standard, Defendants’ motion fails.

11 **1. The *Nken* factors weigh decisively against a stay.**

12 Under *Nken*, courts weigh “(1) whether the stay applicant has made a strong showing that
 13 he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a
 14 stay; (3) whether issuance of the stay will substantially injure the other parties interested in the
 15 proceeding; and (4) where the public interest lies.” 556 U.S. at 434. Although “[t]he first two
 16 factors . . . are the most critical,” a stay “is not a matter of right, even if irreparable injury might
 17 otherwise result.” 556 U.S. at 433-34. The third and fourth factors merge when the government is
 18 a party. *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011).

19 All four factors weigh decisively in Plaintiffs’ favor. **First**, Defendants have not made any
 20 showing—let alone a strong one—that they are likely to succeed on the merits of their appeal.
 21 Such an argument is necessarily a motion to reconsider this Court’s PI Order, which found
 22 Plaintiffs, **not** Defendants, likely to succeed on the merits. And the Supreme Court’s unreasoned
 23 order staying a temporary restraining order in *Noem v. Perdomo*, 606 U.S. ___, 2025 WL 2586537
 24 (2025) does not change the calculus. The motion to stay the *Perdomo* TRO raised different

25 _____
 26 8:24-cv-00640-JVS-JDE, 2024 WL 4472376, at *3 (C.D. Cal., Aug. 14, 2024) (holding that *Griggs*
 27 divested district court of jurisdiction over one claim and issuing discretionary stay of remaining
 28 proceedings).

⁵ This Court’s decision in *Flores v. Bennett*, 675 F. Supp. 3d 1052, 1057 (E.D. Cal. 2023) predates
California ex rel Harrison, and so may not reflect this Court’s current approach. But because Defendants
 fail to satisfy either standard, the Court need not reach the issue to resolve this Motion.

1 factual and legal issues than the issues raised on appeal in this case.⁶ While both appeals raised
 2 issues of standing, the full Court in *Noem v. Perdomo*, 606 U.S. ___, 2025 WL 2585637 (2025) did
 3 not reach the issue of standing. And Defendants’ argument that Justice Kavanagh’s concurrence,
 4 which was not joined by a single other Justice, “signals” their likelihood of success on the merits
 5 of appeal is misplaced. Mot at 6. As Plaintiffs explain more fully in their Sur-reply in Opposition
 6 to Defendants’ Motion to Dismiss, Dkt. 116, Justice Kavanagh’s concurrence considered a
 7 different record, conflicts with binding Ninth Circuit law, and “does not make precedent[.]”
 8 *United States v. Hansen*, 40 F.4th 1049, 1057 (9th Cir. 2022) (Gould, J., concurring); *see also*
 9 Greenberg Decl. Ex. A (*Perdomo* MTS Order) at 7 (“There is no basis for this Court to conclude
 10 that if the factual record were different that [Justice Kavanagh] or any other Justice would
 11 necessarily reach the same result.”). This factor weighs against a stay.

12 **Second**, Defendants will not suffer any legally-cognizable irreparable harm absent a stay
 13 “during the period before the appeal is decided.” *Doe #1 v. Trump*, 957 F.3d 1050, 1058–59 (9th
 14 Cir. 2020). Defendants complain that they will have to spend time and resources on discovery.
 15 Mot. at 9. But, under *Nken* and its progeny, “[m]ere litigation expense, even substantial and
 16 unrecoupable cost, does not constitute irreparable injury.” *FTC v. Standard Oil Co. of Cal.*, 449
 17 U.S. 232, 244 (1980), *quoted with approval in Coinbase*, 599 U.S. 736 (2023) (discussing
 18 discretionary stays); *see also Flores v. Bennett*, 675 F.Supp.3d 1052, 1060 (E.D. Cal. 2023) (this
 19 Court denying stay of PI and noting that legal costs in discovery were not irreparable harm under
 20 *Nken*).

21 Defendants’ claim of burden also lacks credibility when they have not produced any
 22 documents to date and repeatedly delayed substantive discussions related to Plaintiffs’ requests.
 23 *See* Greenberg Decl. ¶¶ 6-10; *see also Shouldertap Techs, Inc. v. Fizz Social Corp.*, No. 25 CIV.
 24 1487 (ALC) (SLC), 2025 WL 2371152, at *1 (S.D.N.Y. Aug. 14, 2025) (a party’s “first remedy”
 25 when confronted with “overly broad” discovery requests is to “meet and confer . . . to narrow the

26 ⁶ Compare *Vasquez Perdomo v. Noem*, No. 25-4312, Emergency Motion Under Circuit Rule 27-3 For Stay
 27 Pending Appeal and Immediate Administrative Stay, ECF No. 6.1 (9th Cir. July 14, 2025) (raising
 28 standing, the Fourth Amendment, and the district-wide scope of the injunction) *with* Mot. at 4 (listing
 standing, mootness, irreparable harm, and the issuance of a “follow the law injunction” as the issues on
 appeal here).

1 requests.”). Defendants cannot manufacture irreparable harm out of their desire to avoid the
2 discovery process. Defendants cite no cognizable harm that could justify a stay.

3 ***Third and fourth***, a stay of proceedings will substantially injure the Plaintiffs and the
4 public interest. Defendants argue that a stay will not prejudice Plaintiffs because the PI will
5 remain in place, Mot. at 9, but the PI does not cover Plaintiffs’ Fifth Amendment claims, which
6 seek relief for two Plaintiffs who are ***currently*** languishing in Mexico as a result of Defendants’
7 unlawful conduct. Dkt. 1 ¶ 9-12, 125, 162; *see e.g., City of Sacramento v. Wells Fargo & Co.*,
8 No. CV 18-cv-00416-KJM-GGH, 2019 WL 11093495, at *3 (E.D. Cal. Nov. 20, 2019) (ongoing
9 harm to plaintiffs from Defendants’ alleged unlawful actions weighs against stay); *Cheverez v.*
10 *Plains All Am. Pipeline, LP*, No. CV15-4113 PSG (JEMX), 2016 WL 4942328, at *5 (C.D. Cal.
11 Feb. 25, 2016) (ongoing harm from plaintiffs’ loss of livelihoods weighs against stay of
12 litigation). Nor does the PI protect members of the putative Voluntary Departure Class, who face
13 a risk of future harm because Defendants’ unlawful voluntary departure practices remain
14 unchecked.⁷ *See California Trout, Inc. v. United States Bureau of Reclamation*, 115 F. Supp. 3d
15 1102, 1117 (C.D. Cal. 2015) (risk of future harm to plaintiffs weighs against stay of litigation).

16 Indeed, Defendants are ***currently*** violating the PI, including provisions protecting the
17 Fourth Amendment rights of the Suspicionless Stop Class. *See* Dkt. 81. A stay will strip
18 Plaintiffs’ ability to hold Defendants to the PI and will halt discovery on issues (ones that
19 Defendants have put into contention) regarding their non-compliance. *See* Dkt. 117 at 1 & n.8;
20 *see also Manchester Farms, Inc. v. Supremas, Inc.*, 165 F. Supp. 3d 1366, 1371 (M.D. Ga. 2016)
21 (an injunction that cannot be enforced is “effectively meaningless”). And “it is always in the
22 public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*,
23 695 F.3d 990, 1002 (9th Cir. 2012) (internal citations omitted). Thus, the public interest aligns
24 with Plaintiffs’ and weighs against a stay.

25 **2. Defendants are not entitled to a stay under CMAX.**

26 Plaintiffs also prevail under the test articulated in *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th

27
28 ⁷ As explained in Plaintiffs’ Opposition to Defendants’ Motion to Dismiss, Defendants’ vague and piecemeal muster on voluntary departure does not mitigate this harm. Dkt. 74.

1 Cir. 1962), which balances the “competing interests” that could be affected by a stay, including
 2 (1) “the hardship or inequity which a party may suffer in being required to go forward” and (2)
 3 “the orderly course of justice,” including whether a stay will narrow legal and factual issues in a
 4 case. *Id.* at 268. If there is even a “fair possibility [a stay] will work damage to someone else,” the
 5 moving party must “make out a clear case of hardship or inequity in being required to go
 6 forward.” *Id.* (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)).

7 Defendants’ motion fails this test at the gate. As explained above, Defendants cite *no*
 8 legally-cognizable injury they would incur without a stay, let alone the “clear case of hardship or
 9 inequity” required in the face of the potential harm to Plaintiffs. *Id.* Defendants also overstate the
 10 impact their PI appeal will have on the remainder of this litigation. Unlike their cited cases, which
 11 concern appeals with a potentially dispositive effect on the *merits* of a case or motion, the appeal
 12 here does not address any of Plaintiffs’ substantive legal claims. *See* Mot. at 10; *Finder v. Leprino*
 13 *Foods Company*, No. 1:13-CV-02059-AWI-BAM, 2017 WL 1355104, at *1, *4 (E.D. Cal., Jan.
 14 20, 2017) (interlocutory appeal would determine applicable standard for half of plaintiffs’ lost
 15 wage claims); *Gilbert v. 7-Eleven, Inc.*, No. 2:21-cv-01984 WBS KJN, 2023 WL 8477959, at *1
 16 (E.D. Cal., Dec. 7, 2023) (staying only motion for attorneys’ fees when appeal would be
 17 dispositive on entitlement to fees); *Coalition on Homelessness v. City and County of San*
 18 *Francisco*, No. 22-cv-05502-DMR, 2024 WL 815552, *9 (N.D. Cal. Feb. 23, 2024) (staying case
 19 pending appeal of precedential cases on which Plaintiffs’ claims depended).⁸

20 Defendants close their brief with the alternative argument that the Court “must stay further
 21 litigation on the Fourth Amendment, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.8(c)(2)(ii).” Mot.
 22 at 10. But their appeal does not challenge this Court’s ruling on the merits of those claims, and
 23 any ruling on standing or mootness will be confined to the preliminary factual record before the
 24 Ninth Circuit. *See* Def.’s Opening Brief (see Dkt. 117-9). Defendants have provided no basis to
 25 preclude Plaintiffs from further developing that record in the interim. Defendants fail to meet any

26
 27 ⁸ Nor does this case create the risk of duplicative procedures at issue in *Electric Solidus, Inc. v. Proton*
 28 *Management Ltd.*, No. 2:24-cv-08280, 2025 WL 1712363, at *4 (C.D. Cal., May 27, 2025), Mot. at 10,
 where some parties may have had a right to defend against the plaintiffs’ claims in arbitration, but others
 did not, and the interlocutory appeal would determine whether the claims should be split between the two
 tribunals, or all proceed in district court.

1 standard for a discretionary stay in whole or in part, and this Court should deny their motion.

2 **IV. CONCLUSION**

3 For the foregoing reasons, this Court should deny Defendants’ motion.

4

5 Dated: October 31, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA

6

7

8 By: /s/ Bree Bernwanger
(as authorized on October 31, 2025)

BREE BERNWANGER
MICHELLE (MINJU) Y. CHO
LAUREN DAVIS
SHILPI AGARWAL

9

10

11

12 Dated: October 31, 2025

13 By: AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
CALIFORNIA

14

15

/s/ Mayra Joachin
(as authorized on October 31, 2025)

MAYRA JOACHIN
EVA BITRAN

16

17

18

19 Dated: October 31, 2025

20 By: AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SAN DIEGO &
IMPERIAL COUNTIES

21

22

/s/ Brisa Velazquez Oatis
(as authorized on October 31, 2025)

BRISA VELAZQUEZ OATIS

Attorneys for Plaintiffs

23

24 Dated: October 31, 2025

KEKER, VAN NEST & PETERS LLP

25

26

27 By: /s/ Natalie Heim

AJAY S. KRISHNAN
JASON GEORGE
JULIA L. GREENBERG
REAGHAN E. BRAUN

28

Attorneys for Plaintiffs

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

Dated: October 31, 2025

By: MARTINEZ AGUILASOCHO LAW,
INC.

/s/ Edgar Ivan Aguilasocho
(as authorized on October 31, 2025)

MARIO MARTINEZ
EDGAR IVÁN AGUILASOCHO

Attorneys for Plaintiff United Farm
Workers