

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

REBECCA BROWN, *et al.*,

Plaintiffs,

v.

TRANSPORTATION SECURITY
ADMINISTRATION, *et al.*,

Defendants.

Civil Action No. 2:20-cv-64

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
PARTIAL MOTION TO DISMISS
[ECF No. 155]**

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DEFENDANTS' PARTIAL MOTION TO DISMISS**

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<i>In re One2One Commc’ns, LLC</i> , 805 F.3d 428 (3d Cir. 2015).....	20

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U.S. CONST. art. III, § 2 12

OTHER AUTHORITIES

Alison Durkee,
Alison Durkee, *Trump Offers Automakers Tariff Reprieve—Latest Big Tariff Flip-Flop Since ‘Liberation Day’*, FORBES (Apr. 29, 2025, 1:08 PM),
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Congress.gov,
 PN26-11-119—Terrance Cole—Dep’t of Justice,
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DOJ Suspends DEA’s Controversial Asset Forfeiture Program in Airports,
 ABC ACTION NEWS (Dec. 27, 2024, 11:02 AM),
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INTRODUCTION

The DEA tries to bring a premature end to Plaintiffs’ Fourth Amendment claim based on a sweeping and incorrect view of Article III and prudential mootness. Because the DEA is in the exact same place it was when it asked the Court to enter the current stay of that claim—that is, the agency is still actively deciding whether to restart the challenged policy with the stroke of an administrative pen on any given day—the Court should reject the agency’s gambit and preserve the status quo in a manner that even the DEA acknowledges makes sense: a continued stay of Plaintiffs’ claim against the DEA.

Plaintiffs have long alleged that the DEA has an unconstitutional policy or practice of conducting suspicionless and non-consensual seizures of air travelers based solely on the knowledge or belief that they are traveling with a “large” amount of cash. Under that policy or practice, the DEA seized Plaintiffs and then their cash without reasonable suspicion or probable cause that they committed any crime. Plaintiffs have since spent five years of litigation seeking to vindicate their constitutional rights and the constitutional rights of all domestic air travelers. But then, in January 2025, the Biden Administration issued a memorandum that unilaterally ended the DEA’s interdiction program governing such purportedly “consensual” encounters at airports. Days after the DEA ended its interdiction program, the DEA told the Court that it would move to dismiss as moot Plaintiffs’ claim against the DEA.

Then the Trump Administration took office. The DEA quickly sought and obtained a 60-day stay of Plaintiffs’ claim against the DEA for the stated purpose of conferring with new leadership following the change in administration. Although the nascent Trump Administration continues to evaluate the DEA’s interdiction efforts and has not acted on the Biden Administration’s memorandum, the DEA hastily moves to dismiss Plaintiffs’ claim against the

DEA. Why? In the DEA's view, the Biden Administration's memorandum has rendered Plaintiffs' Fourth Amendment claim moot.

The DEA is wrong. For starters, the DEA comes nowhere close to carrying its burden under the voluntary cessation doctrine, which is an exception to mootness. Under that doctrine, the government can't moot a case after it's sued by simply issuing a memorandum that ends a program that it can revoke or rescind *at any time*—especially when the government continues to threaten to do just that. Were it otherwise, the government could avoid judicial review, reinstitute the program, and continue the unlawful conduct, thereby forcing Plaintiffs (and the Court) to start all over. As the Supreme Court reminded us just last term, the government carries a “formidable” and “heavy” burden to overcome voluntary cessation. Namely, the government must prove there is no reasonable expectation that it will return to its old ways. Yet, on this point, the DEA does not provide the Court with evidence or meaningful assurance that a comparable program will not take effect. In fact, all available evidence indicates the opposite. The DEA admits that the Trump Administration is still evaluating whether to reinstate the program. And according to the DEA, the Trump Administration could reinstate the same (and unchanged) interdiction program at any time. For similar reasons, the DEA's misguided reliance on “prudential mootness” falls short. No matter what doctrine the DEA tries to invoke, it cannot moot Plaintiffs' claim by unilaterally suspending its program and saying that the new administration hasn't decided yet, but it's *possible* they won't reinstate the same program.

That leads to the DEA's final, alternative request: an extended stay of Plaintiffs' claim against the DEA. Plaintiffs agree that an extended stay is warranted. Nothing has changed since the Court first stayed Plaintiffs' claim against the DEA earlier this year. And as the DEA acknowledges, an extended stay would preserve judicial and party resources. Plaintiffs agree.

There is little sense in dismissing a nearly fully developed claim, years in the making, while the current administration decides what it wants to do. Plus, Plaintiffs’ independent claims against the TSA—the other defendant in this case—are proceeding to summary judgment, meaning this action will continue regardless of the Court’s order on the DEA’s Motion to Dismiss. Thus, the Court should maintain the status quo by simply extending the stay.

In sum, the Court should deny the DEA’s Motion to Dismiss, continue the stay of Plaintiffs’ claim against the DEA, and require the DEA to provide periodic updates to the Court.

BACKGROUND

I. Plaintiffs’ Fourth Amendment Claim Against DEA.

Plaintiffs are three air travelers who each traveled with a “large” amount of cash. *See* 1st Am. Compl., ECF 43 ¶¶ 64–67, 72–80. It is legal to travel with any amount of cash—and it is neither suspicious nor indicative of criminal activity to do so. *Id.* ¶¶ 503–04. But despite that, the DEA has long had an unconstitutional policy or practice of conducting suspicionless and non-consensual interrogations and seizures of air travelers (which DEA calls “consensual” encounters) inside the secured area of commercial airports, based solely on the knowledge or belief that they may be traveling with a “large” amount of cash. *Id.* ¶¶ 414–36. Pursuant to that policy, the DEA seized two of the Plaintiffs and their cash without their consent and without reasonable suspicion or probable cause that they committed any crime. *Id.* ¶¶ 177–96, 261–77.

In response, Plaintiffs filed a Fourth Amendment claim against the DEA on behalf of a proposed class. *Id.* ¶¶ 500–16 (“Count III”). Plaintiffs asked the Court for “class-wide declaratory and injunctive relief” to stop the unlawful policy or practice, *see id.* ¶ 516, including a declaration that “DEA’s policy or practice of seizing air travelers at U.S. airports because of DEA agents’ knowledge or belief that they are traveling with a large amount of cash” is unconstitutional under the Fourth Amendment. *Id.* at 110, ¶ G.

The DEA moved to dismiss the Fourth Amendment claim, which the Court denied. As the Court explained, “Plaintiffs allege that DEA runs a national interdiction program called ‘Operation Jetway’ which seizes tens of millions of dollars per year from travelers at every major commercial airport.” R&R, ECF 66 at 11 (citing 1st Am. Compl., ECF 43 ¶¶ 401–09); *see also* ECF 78 (adopting the R&R’s recommendation to deny the DEA’s motion to dismiss Claim III). And, as Plaintiffs allege, that program trains DEA agents that large amounts of cash are “presumptively subject to seizure.” R&R, ECF 66 at 11 (citing 1st Am. Compl., ECF 43 ¶ 438). “Such a policy,” the Court explained, “would appear to violate the Fourth Amendment.” *Id.* at 12; *see also id.* at 9 (“The Government Defendants do not dispute that the Seizure Policies, if established, would be *ultra vires* and unconstitutional.”).

For the last five years, Plaintiffs have conducted extensive discovery to establish that very DEA policy or practice. That included the exchange of over 1,800 DEA-related documents and the depositions of key DEA officials. That discovery was nearing the finish line in late 2024, when the parties filed a Joint Status Report explaining the three outstanding discovery issues for the claim against the DEA: (1) the DEA still needed to produce some Phase 2 discovery documents; (2) Plaintiffs needed to produce their expert report; and (3) there were just a few remaining DEA depositions to schedule. ECF 134 at 6–10. The parties were on track to complete non-expert discovery about the DEA claim by February 28, 2025. *See* ECF 135.

II. The Institute for Justice Releases Video That Exposed the Challenged Policy.

On July 11, 2024, the Institute for Justice (“IJ”) released a video exposing the very practice that this lawsuit challenges. *See* IJ, *DEA Caught Red-Handed: Airport Intimidation*, YouTube (July 11, 2024), <https://www.youtube.com/watch?v=0XBzV0bDZdQ>. The 11-minute video showed previously unreleased footage of a DEA agent in Cincinnati conducting one of the agency’s purportedly “consensual” stops of an airline passenger. The video specifically talked

about Plaintiffs and this class-action lawsuit against the DEA. *Id.* at 9:45–10:00, 10:30–50. The video quickly amassed millions of viewers—including, as detailed below, the government.

III. The Biden Administration Suspends the Challenged Policy.

On November 12, 2024, the Biden Administration issued a memorandum titled “Transportation Facilities Interdiction Program Directive.” ECF 155-1 at 5. In this “November 12 Memo,” the Biden Administration “identified concerns with DEA’s use of consensual encounters unconnected to an existing investigation” at airports and other “mass transit facilities.” *Id.* These are the same “consensual” encounters that Plaintiffs challenge. *See* 1st Am. Compl., ECF 43 ¶¶ 424–40. Due to the Biden Administration’s concerns with the encounters, the DEA’s program was suspended and could “not be resumed absent explicit direction from the Deputy Attorney General.” ECF 155-1 at 5.

Then, on November 21, 2024, the November 12 Memo became public when the Office of the Inspector General issued an advisory memorandum to the Attorney General’s office and the DEA. *Id.* at 8–28. This “OIG Memo” flagged “serious concerns” about the DEA’s interdiction efforts at airports, including how the DEA was performing “consensual” encounters with travelers. *Id.* at 8. As the memo explained, the OIG initiated its evaluation “[i]n response to various recent allegations[] and to follow up on our 2015 cold consent encounters report.” *Id.* at 10. As an example, the OIG Memo specifically referenced Plaintiff Rebecca Brown *and this lawsuit*. *See id.* at 13 n.6 (citing Justin Jouvenal, *The DEA Seized Her Father’s Life Savings at an Airport Without Alleging Any Crime Occurred, Lawsuit Says*, WASH. POST (Jan. 15, 2020) (“Brown . . . filed a federal, class action Wednesday against the DEA, Transportation Security Administration and agency officials, claiming the agencies violate the Constitution’s ban on unlawful search and seizures by taking cash from travelers without probable cause.”), *available at* <https://tinyurl.com/OIG-Cites-Rebecca-Brown>).

The OIG Memo also described, at length, the video that IJ released earlier in 2024. ECF 155-1 at 11 (“The traveler made a video and audio recording of this encounter on a personal recording device, and an edited version of the video and audio has been made public.”). News outlets quickly connected the dots between this lawsuit, the YouTube video, and the Biden Administration’s decision to end the challenged policy. *See, e.g.*, Tim Kephart & Kylie McGivern, *DOJ Suspends DEA’s Controversial Asset Forfeiture Program in Airports*, ABC ACTION NEWS (Dec. 27, 2024, 11:02 AM), <https://tinyurl.com/ABCnews-DOJ-Decision>; Brett Rowland, *DOJ Suspends DEA Searches at Airports Over Civil Rights Concerns*, N.Y. POST (Nov. 23, 2024, 10:38 AM), <https://nypost.com/2024/11/23/us-news/doj-suspends-dea-searches-at-airports-over-civil-rights-concerns/>; Hanna Ray Lambert, *Justice Department Halt’s DEA’s Random Searches of Airport Travelers After Report Finds ‘Serious Concerns’*, FOX NEWS (Nov. 22, 2024, 1:40 PM), <https://tinyurl.com/FoxNews-DOJ-Decision>.

Following the OIG Memo, the DEA issued a memorandum on January 8, 2025, which addressed the agency’s interdiction program. ECF 155-1 at 3–4. The “January 8 Memo” immediately ceased the challenged program and redeployed the program’s resources and officers elsewhere. *Id.* at 4. In doing so, however, the Biden Administration still lauded the alleged successes of the interdiction program and explained that it was simply pivoting to what the DEA saw as more “effective way[s] to utilize our limited resources.” *See id.* at 3–4. The January 8 Memo also left open the possibility that some “consensual” encounters could continue to occur at airports if the DEA approved the encounter and gave “prompt notice” to the AG’s office. *Id.* at 4.

On January 16, 2025, the DEA told the Court about these developments and that it intended to move to dismiss the claims against the DEA “on the grounds of mootness.” Joint Mot. to Modify Scheduling Or., ECF 146 at 4. Plaintiffs indicated that they would oppose the motion.

IV. The Trump Administration Is Still Deciding Whether to Revert Back to the Challenged Policy.

Less than two weeks later, the Trump Administration officially replaced the Biden Administration. This included the resignation of DEA Administrator Anne Milgram, who authored the January 8 Memo. *See* ECF 155-1 at 3; *see also* DEA, *Career Special Agent Derek S. Maltz Appointed to Lead U.S. Drug Enforcement Administration* (Jan. 21, 2025), <https://tinyurl.com/DEA-Admin-Milgram-Out> (“Maltz replaces Anne Milgram who departed the agency last week.”). Shortly thereafter and “[i]n light of the change in Administration,” the DEA asked the Court for a 60-day stay of all DEA-related deadlines, including its deadline to file a motion related to the Biden Administration’s policy change. *See* ECF 153. This additional time, the DEA said, was necessary “to confer with new leadership within the Department and at the relevant agencies about this matter.” *Id.* The Court granted the DEA’s request. ECF 154.

The DEA is still reviewing, and may revert any day. According to the DEA’s own Motion to Dismiss, the Trump Administration continues to “reconsider[] DEA interdiction efforts” at airports. ECF 155 at 21. And the current administration has not issued any further public guidance about Operation Jetway or DEA’s interdiction efforts at airports. Nor has it confirmed (or rescinded) the Biden Administration’s January 8 Memo. In other words, the jury is still out on what, if anything, the current administration will do about the challenged policy.

The lack of clarity from the DEA is no surprise. The Senate has yet to confirm a new DEA Administrator to lead the agency. After President Trump’s first pick for DEA Administrator was rescinded, he nominated Terrance Cole. *See* Haisten Willis, *Trump Names New DEA Pick After Pulling Original Choice Over Backlash*, WASH. EXAM. (Feb. 11, 2025, 1:38 PM), <https://tinyurl.com/DEA-Second-Pick>. Mr. Cole’s nomination was referred to the Judiciary Committee, which held his committee hearing on April 30, 2025. *See* Congress.gov, PN26-11-119

— Terrance Cole — Dep’t of Justice, <https://www.congress.gov/nomination/119th-congress/26/11> (last visited May 5, 2025). So, at this point, there is zero guidance from the DEA (or even permanent leadership within the DEA) to decide whether to rescind or keep the policy change from the outgoing Biden Administration.

But not all supporters of the current administration have been silent about the DEA’s interdiction policies and practices at airports. High-profile Senators recently called on the Trump Administration to reinstate the program and rescind the Biden Administration’s January 8 Memo. *See, e.g.*, Letter from Marsha Blackburn & Ted Cruz, Senators, U.S. Senate, to Todd Blanche, Deputy Attorney Gen, U.S. Dep’t of Justice (Mar. 31, 2025), *available at* <https://tinyurl.com/Senators-Call-to-Rescind>. According to these Senators, the challenged policy’s “success cannot be disputed” and “[a]llowing for this critical interdiction program to continue at our nation’s airports and other hubs will continue [President Trump’s] good work to rid America of the poison of fentanyl and other deadly narcotics.” *Id.* at 1–2. Thus, the Senators “strongly urge[d] [the Trump Administration] to reinstate this successful program.” *Id.* at 2.

For its part, it appears that the DEA considers reinstatement of the policy a very real possibility. In its Motion to Dismiss, the DEA repeatedly hedged its mootness argument by urging the Court to dismiss Plaintiffs’ claim “even if the terminated interdiction program was reinstated unchanged.” ECF 155 at 23. In other words, the DEA is saying the quiet part out loud. Even if the Court dismisses the claim against the DEA, there is nothing preventing the Trump Administration from instantly resuming the same policy in the next hour, the next day, or the next week. That is particularly concerning from an administration that (1) has already flip-flopped on policies several times during its short tenure, *see, e.g.*, Alison Durkee, *Trump Offers Automakers Tariff Reprieve—Latest Big Tariff Flip-Flop Since ‘Liberation Day’*, FORBES (Apr. 29, 2025, 1:08 PM),

<https://tinyurl.com/Trump-Flip-Flops-Forbes>; and (2) continues boasting about rescinding the previous administration's executive actions: "In just two months, President Trump has rescinded more executive actions than the total number of executive orders President Biden signed in his entire first year." The White House, *Fact Sheet: President Donald J. Trump Rescinds Additional Harmful Biden Executive Actions* (Mar. 14, 2025), <https://tinyurl.com/Countless-Rescinded-Policies>. Indeed, the new Attorney General, Pam Bondi, has already rescinded many policy decisions of the Biden Administration. See Quinta Jurecic, *Justice Dep't Releases Slate of Memos from Attorney General Bondi*, LAWFARE (Feb. 6, 2025, 2:26 PM), <https://tinyurl.com/AG-Bondi-Rescinds-Biden>. As a result, it appears that the DEA finds itself in a small 3–6 month window where the Biden-era policy is still in effect only before new leadership in the DEA decides whether to rescind it.

Meanwhile, Plaintiffs continue to litigate their claims against the TSA. The parties have completed TSA-related discovery, including all scheduled depositions, and the parties are actively working towards the briefing of dispositive motions, which are scheduled for May through August 2025. See ECF 159. So no matter what happens with the claim against the DEA, Plaintiffs and the TSA will continue to litigate this case.

ARGUMENT

I. The Court Should Continue the Stay of Plaintiffs' Claim Against the DEA.

The Court should maintain the status quo by continuing to stay Plaintiffs' claim against the DEA. Nothing has changed since the Court entered the stay, and a continued stay would preserve resources and result in no prejudice to the DEA. As detailed below, periodic status reports will help ensure that the claim does not enter a state of limbo.

A court may lift a stay when circumstances have changed such that the reasons for granting the stay no longer apply. *Canady v. Erbe Elektromedizin GmbH*, 271 F. Supp. 2d 64, 74 (D.D.C.

2002). Here, nothing has changed since the Court originally stayed Plaintiffs' claim against the DEA. Recall that the DEA moved to stay because, "[i]n light of the change in Administration," it was necessary "to confer with new leadership within the Department and at the relevant agencies about this matter[.]" See ECF 153 at 1. After all, a "change in the Administration raises the possibility of divergence of interest or a shift during litigation." See *W. Energy All. v. Zinke*, 877 F.3d 1157, 1169 (10th Cir. 2017) (internal quotation marks and citation omitted). Since the Court granted the DEA's requested stay, the new administration continues to reconsider the DEA's interdiction efforts, the DEA has offered no further guidance, and the nominee for DEA Administrator has not even been confirmed. Indeed, the DEA acknowledges that it is *still* considering a new version of the paused program, including simply reinstating the interdiction policy unchanged. See ECF 155 at 1, 16. Perhaps recognizing these realities, the DEA alternatively requests that the Court stay Count III "pending the conclusion of the ongoing program review discussed above to avoid unnecessary expenditure of party and judicial resources." *Id.* at 16. Because circumstances have not changed and there is continued uncertainty about the DEA's next steps with respect to its policies and practices at issue in this case, the Court should continue the stay. See, e.g., *Chinatown Serv. Ctr. v. U.S. Dep't of Health & Hum. Servs.*, No. 21-331 (JEB), 2021 WL 8316490, at *2 (D.D.C. Oct. 13, 2021) (reimposing a stay because the circumstances had not changed since the original stay).

Continuing the stay would also align with other courts. Federal courts routinely stay cases in light of changes in administration. See, e.g., *N. Coast Rivers All. v. U.S. Dep't of the Interior*, No. 1:16-CV-00307-DAD-SKO, 2021 WL 1721698, at *2–3 (E.D. Cal. Apr. 30, 2021) (staying a case after recognizing that courts have stayed cases in other matters in light of a change in administration). The Eastern District of California, for example, has stayed a case to allow a new

administration time to review cases. *Pac. Coast Fed'n of Fishermen's Ass'ns v. Raimondo*, No. 1:20-CV-00426-DAD-EPG, 2022 WL 789122, at *7 (E.D. Cal. Mar. 11, 2022). The D.C. District Court has also declined to lift a stay after a party previously agreed to a stay to assess how the administration will proceed. *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, No. 20-1630 (JEB), 2021 WL 4033072, at *1 (D.D.C. Sept. 3, 2021). Similarly, here, the new administration took power three months ago and the DEA is still evaluating next steps.

Maintaining the stay would further preserve resources and result in no prejudice. A court can stay a case after considering judicial and party economy. *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). Plaintiffs and the DEA agree that a stay would preserve judicial and party resources. *See* ECF 155-2 at 16. Further, if the Court prematurely dismisses Plaintiffs' claim against the DEA and the DEA begins a new policy or practice that is materially indistinguishable from the policy or practice at issue in this suit, Plaintiffs (and the Court) would be forced to start over from scratch. Meanwhile, there is no identifiable prejudice from continuing to stay Plaintiffs' claim against the DEA. That includes the fact that this case will remain open and active, even if the claim against the DEA remains stayed, because of the ongoing claims against the TSA.

In sum, Plaintiffs agree with the DEA and request that the Court continue to stay the claim against it. *See* ECF 155 at 16–17. To ensure the claim does not sit in limbo the Court should order periodic status updates from the DEA, every 30 or 60 days. Such updates would allow the Court to evaluate whether mootness actually becomes a proper course at some point (which it is currently not, as explained below), or whether the stay should be lifted so that the constitutionality of the challenged policy can be assessed.

II. Plaintiffs' Claim Against the DEA is Not Constitutionally Moot.

If the Court decides to reach the merits of the DEA's motion to dismiss, it should deny the motion because the DEA cannot moot the claim against it by making a voluntary, unilateral, and

easily rescindable policy change—without ever disclaiming the lawfulness of the paused policy or the likelihood of its resumption. To be sure, the DEA is right about one thing: “The Constitution grants federal courts jurisdiction to decide ‘Cases’ or ‘Controversies.’” *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 240 (2024) (quoting U.S. CONST. art. III, §§ 1, 2); *see also* ECF 155 at 6 (same). And when a court has jurisdiction, it has “a ‘virtually unflagging obligation’ to hear and resolve questions properly before it.” *Fikre*, 601 U.S. at 240 (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). This Court has already decided that it has jurisdiction to hear and resolve Plaintiffs’ claim against the DEA. *See* ECF 66 at 3–6, 11–12.

But now, the DEA says things have changed, so the claim against it is moot. This is where the DEA gets it wrong. When it comes to mootness, the question of *how* circumstances allegedly changed matters. Under the bedrock doctrine of voluntary cessation, “[i]t is well settled that ‘a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.’” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982)). Thus, the executive branch cannot moot a case by making a voluntary policy change that it can revoke or rescind whenever it wants. “Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013).

The DEA concedes, as it must, that it voluntarily stopped the challenged program. ECF 155 at 10–11 (“Accordingly, the alleged practice and policies that Plaintiffs challenge (assuming *arguendo* that they ever existed) have now been terminated by direction of the [former]

Administrator of the DEA[.]”). And as just discussed, the DEA cannot “automatically moot a case by the simple expedient of suspending its challenged conduct after it is sued.” *Fikre*, 601 U.S. at 241 (internal quotation marks omitted). Rather, as the Supreme Court unanimously confirmed just last year, “a defendant’s voluntary cessation of a challenged practice will moot a case only if the defendant can show that the practice cannot reasonably be expected to recur.” *Id.* (quoting *Friends of the Earth, Inc.*, 528 U.S. at 189) (internal quotation marks omitted). Such a showing is a “formidable burden” to overcome, where “a defendant must prove no reasonable expectation remains that it will return to its old ways.” *Id.* at 241–42 (cleaned up). That heavy burden “holds for governmental defendants no less than for private ones.” *Id.* (collecting cases); *see also West Virginia v. Env’t Prot. Agency*, 597 U.S. 697, 719 (2022) (concluding that the federal government could not satisfy its “heavy” burden under the voluntary cessation doctrine).¹ And yet here, the DEA does not even *pretend* that there is no reasonable expectation that it will return to its old ways. Rather, the agency expressly reserves that very possibility. Such doublespeak is precisely the kind of gamesmanship the Supreme Court has made clear the judiciary must not abide.

To properly satisfy such a “heavy” and “formidable burden,” the government must typically show that one of two things happened. First, a case can become moot if there has been an intervening statutory or legislative change. *Khodara Env’t, Inc. ex rel. Eagle Env’t L.P. v. Beckman*, 237 F.3d 186, 194 (3d Cir. 2001) (Alito, J.). That’s what happened in *Khodara*, where the plaintiffs challenged an FAA regulation about landfills near airports. *Id.* at 189. During the

¹ Nevertheless, the DEA cites two circuit-court decisions to suggest that the Court should apply some reduced burden just because it is a government entity. *See* ECF 155 at 10. But—to state the obvious—the Supreme Court’s decisions in *Fikre* and *West Virginia v. EPA*, which both say the “heavy burden” applies equally to government entities, applies over any old and conflicting non-binding cases from sister circuits. *See Sczesny v. Murphy*, No. 24-1676, 2025 WL 816153, at *2 (3d Cir. Mar. 14, 2025) (citing *West Virginia*, 597 U.S. at 719, and applying the “heavy burden” standard to the government).

appeal process, Congress “enacted legislation” that “substantially modif[ie]d” the challenged policy. *Id.* at 192. For the Third Circuit, that type of statutory change, which “discontinue[s] a challenged practice,” was “enough to render [the] case moot” under the voluntary cessation doctrine even if Congress technically had the power to “reenact the statute after the lawsuit is dismissed.”² *Id.* at 194. That makes sense. With a new statute that is materially different, it is clear “that the allegedly wrongful behavior could not reasonably be expected to recur.” *West Virginia*, 597 U.S. at 720.

That, of course, has not happened here. Congress has not passed any legislation related to the DEA’s interdiction program or civil asset forfeiture. Rather, the now-former DEA Administrator (under the Biden Administration) just unilaterally issued a memorandum that could be rescinded at any time. And the DEA admits that the policy could return unchanged. *See* ECF 155 at 23. There is simply nothing permanent from Congress—or even the agency itself—that can come close to the statutory change in *Khodara* that satisfied the government’s heavy burden to show that its wrongful behavior wouldn’t happen again.

² The same is true in much of the COVID-era litigation. *See, e.g., Maryville Baptist Church v. Beshear*, 132 F.4th 453, 454–55 (6th Cir. 2025) (explaining that a Kentucky case challenging a COVID restriction on churches was dismissed as moot after “the Governor allowed places of worship to reopen” *and* “the Kentucky General Assembly limited the Governor’s authority to issue similar COVID-19 orders in the future”). The COVID-era cases are also factually unique under the voluntary cessation doctrine and should apply only to other COVID-related cases. As the Third Circuit explained, “it is hard to imagine that we could once again face anything quite like what confronted us” in the “dark days of March 2020.” *Clark v. Governor of N.J.*, 53 F.4th 769, 778 (3d Cir. 2022). Since then, everything has changed—from “[o]ur knowledge of the virus” to “our response to it”—and so, “[t]he accumulation of those changed circumstances thus make the return of the same pandemic and the same restrictions unlikely.” *Id.* (collecting cases); *see also Eden, LLC v. Justice*, 36 F.4th 166, 171–72 (4th Cir. 2022) (echoing the same observations). As such, the voluntary withdrawal of an executive policy paired with changed COVID circumstances could potentially moot a case. But evolving policy changes during COVID is a *very* different situation than the DEA under an outgoing administration issuing a unilateral memorandum about its interdiction efforts at airports that can be simply rescinded at any time. So to the extent the COVID-era cases apply at all, the Court should limit them to their facts, which simply do not apply here.

Second, a case can also become moot if there has been an intervening Supreme Court decision paired with the defendant changing its conduct. That's what happened in both of the cases DEA relies on, *Clark v. Governor of New Jersey*, 53 F.4th 769 (3d Cir. 2022), and *Hartnett v. Pennsylvania State Education Ass'n*, 963 F.3d 301 (3d Cir. 2020). In *Clark*, for instance, a church challenged New Jersey's COVID-era policy that prohibited in-person gatherings except for certain "essential" businesses like grocery stores, but not "religious worship gatherings." 53 F.4th at 771. But by the time the case made it to the Third Circuit, the Supreme Court had issued two "significant" and "intervening" decisions that "provided state officials with crucial guidance in shaping any future COVID restrictions." *Id.* at 780 (citing cases). And New Jersey "conceded" that it was already obeying those decisions, which was evidenced by the new scope of the restrictions that did not discriminate against churches. *See id.* at 772–74, 780. With that intervening guidance from the Supreme Court, the church's challenge to the old policy was moot.

The Supreme Court also intervened in *Hartnett*. In that case, a group of public-school teachers challenged a policy that forced nonunion members to pay a portion of union dues. 963 F.3d at 304. But while the case was pending, the Supreme Court decided *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018), which conclusively determined that forcing nonunion members to pay union dues violated the First Amendment. *Hartnett*, 963 F.3d at 304–05. As a result, "the very day the Supreme Court issued its decision, the Pennsylvania State Education Association notified public schools of the decision and told them to stop deducting agency fees from teachers' paychecks" and "also set up [refund] procedures." *Id.* at 305. When the teacher-plaintiffs in *Hartnett* still wanted a declaratory judgment about their specific policy, the Third Circuit confirmed that the case was moot. *Id.* at 305–08. In doing so, it explained that "the touchstone of the voluntary-cessation doctrine is not how willingly the defendant changed course," but rather,

“the focus is on whether the defendant made that change unilaterally.” *Id.* at 307. And where the defendant was compelled by an intervening Supreme Court decision (similar to the enactment of a new statute), so that the defendant is no longer free to return to its old ways, the case is actually moot. *Id.*

For its part, the DEA tries to use *Hartnett* to say that DEA’s challenged policy, like the union-dues policy, was “terminated by directive of the relevant legal authority” (here, the DEA; in *Hartnett*, the Supreme Court). ECF 155 at 16. But the DEA is trying to compare apples to oranges. For the DEA’s comparison to work, it would need to be the Pennsylvania State Education Association that voluntarily rescinded its union-dues policy, not the Supreme Court deciding *Janus*. Here, if the Supreme Court said that suspicionless and non-consensual seizures of travelers with “large” amounts of cash did not violate the Fourth Amendment *in a different case*, that intervening decision could moot this claim. That’s what actually happened in *Hartnett*. Everyone agreed that the Supreme Court’s decision in *Janus* rendered the Pennsylvania policy unconstitutional. So when the defendant “voluntarily” stopped the policy in light of *Janus*, the case was moot. *Hartnett*, 963 F.3d at 308.

But that is not what happened here. There has been no intervening Supreme Court decision; the DEA just unilaterally issued its own memorandum. And it is blackletter law that when the government simply issues a memorandum rescinding its own policy, a case does *not* become moot. *See, e.g., Texas v. Biden*, 20 F.4th 928, 941–42 (5th Cir. 2021) (recognizing that the government issuing a memorandum, alone, does not moot a case), *rev’d and remanded on other grounds*, 597 U.S. 785 (2022); *see also id.* at 956–57 (concluding the case was not moot after distinguishing the repeal of a statute from the issuance of a new memorandum); *Flynn v. Big Spring Sch. Dist.*, No. 1:22-CV-00961, 2024 WL 4244832, at *6 (M.D. Pa. Sept. 19, 2024) (concluding the government

failed to carry its burden with respect to voluntary cessation because the government “merely sets forth that the policy has been changed” and “does not proffer any evidence that there is no reasonable expectation that it will revert” back to the previous policy). That’s because “bald assertions of a defendant—whether governmental or private—that it will not resume a challenged policy fail to satisfy any burden of showing that a claim is moot.” *Wall v. Wade*, 741 F.3d 492, 498 (4th Cir. 2014). Or, as this Court recently put it, to moot a case under *Fikre*, “Defendants would essentially have to guarantee that the [scrapped and replaced policy] would never be reinstated[.]” *Molina v. Little*, No. 1:23-CV-00257, 2024 WL 3548453, at *2 n.1 (W.D. Pa. July 26, 2024); see also *We the Patriots, Inc. v. Grisham*, 119 F.4th 1253, 1256 n.2 (10th Cir. 2024) (concluding the expiration of the governor’s order did not moot the case because there was no “assurance that a comparable order would not be issued in the future”). That guarantee doesn’t happen when the government voluntarily rescinds a program and simply evaluates next steps. See *Fikre*, 601 U.S. at 242 (“Put simply, the government’s sparse declaration falls short of demonstrating that it cannot reasonably be expected to do again in the future what it is alleged to have done in the past.”). But here, that’s exactly what the DEA is trying to do. Even worse, the DEA is outright admitting it “is [still] considering whether to adopt a new program,” including whether to reinstate “the terminated interdiction program . . . unchanged.” ECF 155 at 8, 14, 23.

The DEA’s other points also fail to moot the case. Take the DEA’s argument about timing. The DEA claims that the voluntary cessation doctrine shouldn’t apply because, according to the DEA, it did not terminate the policy in response to this litigation. *Id.* at 17. To start, timing alone does not supplant the rest of the voluntary cessation doctrine. In fact, the lone case DEA cites on this point, *Diamond v. Pennsylvania State Education Ass’n*, was another post-*Janus* case that was mooted after the Supreme Court “clearly changed the law of the land.” 399 F. Supp. 3d 361, 386

(W.D. Pa. 2019). Indeed, the “reason” the defendants voluntarily changed their policy was “to comply with *Janus*.” *Id.* at 391 (“[B]ecause [the] Defendants acted to comply with *Janus* as opposed to acting to avoid an undesirable decision by this Court, the purpose of the voluntary-cessation exception would not be served by applying the exception to this case.”). And even if that weren’t the case, the timing here was at least in part the result of this litigation and Plaintiffs’ efforts. As detailed above, *supra* pp. 4–6, the OIG Memo specifically references this lawsuit, one of the Plaintiffs *by name*, and the video that IJ released exposing the challenged practice and specifically referencing this lawsuit. In other words, the timing very much suggests that the Biden Administration’s cessation of the challenged conduct was at least in part the result of Plaintiffs’ actions. And, if anything, these timing concerns are heightened when, as here, the policy change was made by the outgoing Biden Administration—the work of which the new administration relishes dismantling. *See supra* pp. 5–9.

The DEA is also wrong about the relief that the Court can grant. *See* ECF 155 at 14. The entire purpose of the voluntary cessation doctrine is that courts can still grant declaratory and injunctive relief despite the alleged mootness. In *Fikre*, for example, a passenger alleged that the government violated his due process rights when it placed him on the “No Fly List.” 601 U.S. at 239. “By way of relief, he sought a declaratory judgment confirming that the government had violated his rights, as well as an injunction prohibiting it from keeping him on the No Fly List.” *Id.* But after the plaintiff filed his lawsuit, the government voluntarily removed him from the No Fly List. *Id.* The Supreme Court, however, said that the case was not moot despite almost *eight years* passing without the passenger being on the No Fly List. *Id.* at 239, 243–44. Likewise, here, the Court can still grant meaningful relief that would declare the DEA’s policy or practice

unconstitutional and enjoin the DEA from following that policy or practice going forward. *See* ECF 43 at 110, ¶¶ G–J.

Finally, the DEA is also wrong that there is just “speculation” that the DEA will reinstate the challenged policy. *See* ECF 155 at 20. For one, this argument flips the DEA’s “heavy” and “formidable” burden to prove mootness on its head—a burden the DEA cannot meet—and the argument conflicts with modern Supreme Court precedent that says the opposite. *See Fikre*, 601 U.S. at 243 (“[I]t is the defendant’s ‘burden to establish’ that it cannot reasonably be expected to resume *its* challenged conduct.”). Indeed, that’s why, in the modern cases DEA cites, courts within the Third Circuit repeatedly rely on intervening Supreme Court precedent to moot a case—not the government’s word that it won’t “repeat the alleged harm.” *Solid Rock Baptist Church v. Murphy*, 555 F. Supp. 3d 53, 61 (D.N.J. 2021); *Clark*, 53 F.4th at 781 (“Given [two Supreme Court cases], the State is now on notice that religious exercise cannot be disfavored relative to comparable secular activity.”).

Second, as a factual matter, it *is* a very real possibility that the Trump Administration will reinstate the challenged policy, especially when his supporters in the Senate are calling for it. *See supra* p. 8. And as the Third Circuit has explained, “[w]hen there is a voluntary cessation of a *policy*, a claim will not be rendered moot if there remains the *possibility* that plaintiffs will be disadvantaged ‘in the same fundamental way.’” *Sutton v. Rasheed*, 323 F.3d 236, 248 (3d Cir. 2003) (emphasis added) (quoting *Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 (1993)). That’s the precise situation here. The DEA cannot moot Plaintiffs’ claim by voluntarily rescinding the policy and claiming it’s now “speculative” whether the DEA will decide to change its mind (while the DEA is thinking about changing its mind). Plaintiffs’ claim against the DEA is not moot.

III. Dismissing the Claim Against the DEA is Neither Prudential nor Compelled.

In a last-ditch effort, the DEA argues that prudential mootness compels dismissal of Count III. *See* ECF 155 at 20–23. But the DEA is wrong. The doctrine of prudential mootness is an extremely narrow and limited exception that is generally cabined to preventing “perverse outcome[s]” in bankruptcy cases. *See In re One2One Commc’ns, LLC*, 805 F.3d 428, 433–44 (3d Cir. 2015). Outside the bankruptcy context, the doctrine is used only when “the court could not provide **any** of the relief sought.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 43 (D.C. Cir. 2015) (emphasis added) (citing *Sierra Club v. U.S. Army Corps of Eng’rs*, 277 F. App’x 170, 173 (3d Cir. 2008)). For instance, in the *Sierra Club* case that the DEA cites, the plaintiffs sought an injunction to stop the infill of certain wetlands. 277 F. App’x at 171. But during the litigation, the wetlands were destroyed and could not be restored. *Id.* at 173. Thus, it was literally impossible for the court to grant the requested relief—i.e., the preservation of something already destroyed. So, the court applied the doctrine of prudential mootness.

In contrast, prudential mootness is **not** a substitute for satisfying the DEA’s “heavy” and “formidable” burden under the voluntary cessation doctrine. *See Int’l Bhd. of Boilermakers, Loc. Lodge D-522*, 815 F.2d 912, 915 (3d Cir. 1987). But that’s exactly what the DEA is trying to do. The DEA simply parrots the same argument for prudential mootness that it does for Article III mootness—namely, the termination of the interdiction program ended the policy and practice at issue in this case. *Compare, e.g.*, ECF 155 at 13, *with id.* at 21. But that policy decision does not make the requested declaratory and injunctive relief “impossible,” “perverse,” or “meaningless,” which is needed to trigger prudential mootness. *See Sierra Club*, 803 F.3d at 43–44. Instead, there is **nothing** preventing the Trump Administration from reinstating the challenged policy. *See supra* pp. 5–9. *Fikre* was not moot even eight years after Mr. Fikre’s removal from the No Fly List. *See* 601 U.S. at 242–43. Here, the policy change has been in place for mere months, the DEA is still

threatening to revert back, and it can do so with the stroke of a pen. Only relief from this Court could stop it from doing so. That situation bears no resemblance to asking a court to order the impossible task of preserving wetlands that no longer exist. *See Sierra Club*, 803 F.3d at 43–44. Here, the Court can absolutely declare unconstitutional and enjoin the challenged DEA policies and practices at issue.

What’s more, accepting the DEA’s gamesmanship would allow it to sidestep its burden with respect to voluntary cessation merely by cloaking the DEA’s position in the words “prudential mootness.” Not only is that outcome incompatible with the law of voluntary cessation, but it is also irreconcilable with the Court’s obligation to resolve questions properly before it. *See Fikre*, 601 U.S. at 240. Again, “a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Nike, Inc.*, 568 U.S. at 91 (citation omitted). And under both the doctrine of voluntary cessation *and* the doctrine of prudential mootness, the DEA falls well short of satisfying that burden.

Most strikingly, the DEA offers only its own bare statement that a “new program, process, or enforcement guidance for DEA interdiction efforts would *obviously* result in a modification of past practice that is no longer in effect.” *See* ECF 155 at 21 (emphasis added). But it is far from “obvious[.]” that the DEA will issue a materially different program. If anything, the available evidence indicates it’s likely that the new administration will reinstate the program unchanged, at the urging of key supporters in Congress. *See supra* pp. 7–9. In such a situation, courts refuse to apply the doctrine of prudential mootness. *See, e.g., Joyce v. Jaguar Land Rover N. Am., LLC*, No. 23-cv-04281, 2025 WL 675888, at *10 (D.N.J. Mar. 3, 2025).

Finally, courts also decline to apply prudential mootness when applying the doctrine would not actually save “judicial resources.” *Id.* at *10. For reasons already explained, *see supra* pp. 9–11, the most prudent course would be to simply continue the stay of the DEA claim because, regardless of what the Court does with it, Plaintiffs and the TSA will continue to litigate this case. Thus, continuing the stay *would* actually save “judicial resources” and the parties’ years-long effort, including substantial discovery that has already been conducted. In such a situation, courts routinely reject the prudential mootness doctrine. *See, e.g., Burbank v. BMW of N. Am., LLC*, No. 21-01711 (KM) (ESK), 2022 WL 833608, at *4 (D.N.J. Mar. 21, 2022) (recognizing the court could ultimately provide relief notwithstanding a change in circumstances “since the case was filed”); *McMahon v. Volkswagen AG*, No. 22CV01537 (EP) (JSA), 2023 WL 4045156, at *9 (D.N.J. June 16, 2023) (relying on the plaintiffs’ allegations that a recall “may be insufficient” because the court did not want to risk leaving the plaintiffs without a remedy by prematurely dismissing the case). For all these independent reasons, the Court should reject DEA’s prudential mootness argument.

CONCLUSION

For the above reasons, this Court should deny the government’s Motion to Dismiss, continue the stay of Plaintiffs’ claim against the DEA, and require the DEA to provide periodic updates to this Court to determine whether and when the stay should be lifted and the claim decided on the merits.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2025, a true and correct copy of the foregoing document was served via electronic mail upon all counsel of record.

/s/ Dan Alban