



April 24, 2026

The Honorable Sonia Sotomayor
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Second Circuit
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

**Re: Bruckauf et al. v. Aviles-Ramos et al., 2nd Circuit Docket No. 25-2127
Motion for Reconsideration of Denial of Rule 22 Application**

Dear Justice Sotomayor:

Applicants respectfully move for reconsideration of the April 15, 2026 denial of their Rule 22 application in light of material and substantial post-denial developments that confirm the urgency of temporary administrative relief pending disposition of the accompanying Rule 20 petition.

As Applicants had previously explained, No. 25-2127 is the broader, fully briefed appeal in which the student-by-student pendency bases are already set out, the District Court has denied every meaningful enforcement vehicle, and the Court of Appeals is now the only timely federal forum left. See Appellants' Br. at 14–28, *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 24.1 (2d Cir. Dec. 9, 2025); Appellees' Br., *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 31.1 (2d Cir. Mar. 10, 2026); Appellants' Reply Br., *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 39.1 (2d Cir. Mar. 31, 2026); Appellants' Mem. of Law in Supp. of Renewed Mot. to Expedite Briefing at 14–20, *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 45.2 (2d Cir. Apr. 6, 2026). Applicants had further explained in their April 9, 2026 clarification letter that, after the Court of Appeals denied expedited oral argument, Applicants were also seeking expedited disposition on the fully briefed appeal or such other prompt process as the Court deemed appropriate. Letter from Jeffrey Arlen Spinner at 1–3, *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 49.1 (2d Cir. Apr. 9, 2026). There still has been no response to that request for prompt action on the fully briefed case.

The District Court posture has only further confirmed the same point. On April 20, 2026, Judge Failla denied Defendants' motion to dismiss for lack of jurisdiction, explaining that the pending appeal divested the District Court of jurisdiction over the aspects of the case involved in that appeal. *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF), ECF No. 72 (S.D.N.Y. Apr. 20, 2026). Plaintiffs then sought only the limited relief Rule 62.1 permits: an indicative ruling that the court would grant targeted emergency relief upon remand, or at minimum that the motion raised a substantial issue. See Pls.' Mot. for Emergency Relief and Indicative Ruling Under Fed. R. Civ. P. 62.1, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF), ECF No. 68 (S.D.N.Y. Apr. 17, 2026); Decl. of Zeal Patel, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF), ECF No. 69 (S.D.N.Y. Apr. 17, 2026). On April 21, 2026, Judge Failla expressly denied that request, stating:

“Additionally, the Court declines to exercise its discretion to issue an indicative ruling under Federal Rule of Civil Procedure 62.1.” *Bruckauf*, ECF No. 72.

Subsequently and on April 22, 2026, the District Court denied the same Rule 62.1 request once again “for substantially the reasons set forth in Defendants’ response,” and expressly found persuasive Judge Liman’s reasoning in *Ramos v. Samuels*, No. 26-cv-3128 (LJL), Dkt. 18 (S.D.N.Y. Apr. 21, 2026). *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF), ECF No. 74 (S.D.N.Y. Apr. 23, 2026). In *Ramos*, Judge Liman in turn relied on Judge Oetken’s March 12, 2026 order in *Nicholls* for the proposition that ordering immediate pendency relief “would effectively result in the service providers being fully paid and therefore risk undermining the purpose of the pending appeals.” *Ramos v. Samuels*, No. 26-cv-3128 (LJL), Dkt. 18, at 5 (S.D.N.Y. Apr. 21, 2026) (quoting *Nicholls v. Aviles-Ramos*, No. 25-cv-07569 (JPO), ECF No. 52 (S.D.N.Y. Mar. 12, 2026)). Thus, a new District Court pendency doctrine is now being built in real time—*Nicholls* to *Ramos* to *Bruckauf*—under which DOE may effectively pause stay-put implementation while it appeals, even though Judge Oetken cited no case at all for that proposition, and despite the fact that decades of Second Circuit and Supreme Court authority recognize that stay-put functions as an automatic injunction thereby preserving the child’s educational status quo at public expense during review. See *Honig v. Doe*, 484 U.S. 305, 323 (1988); *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982); *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199–200 (2d Cir. 2002); *Mackey ex rel. Thomas M. v. Bd. of Educ. for Arlington Cent. Sch. Dist.*, 386 F.3d 158, 160–63 (2d Cir. 2004); *Ventura de Paulino v. N.Y.C. Dep’t of Educ.*, 959 F.3d 519, 529 n.50 (2d Cir. 2020); *Mendez v. Banks*, 65 F.4th 56, 63–65 (2d Cir. 2023). That development reinforces, rather than diminishes, the need for this Court’s intervention: there is not merely no timely relief available below, but an emerging line of District Court decisions citing one another instead of the governing appellate law while No. 25-2127 remains unresolved.

The facts on the ground have likewise worsened considerably. In the Rule 62.1 motion filed on April 17, 2026, Applicants advised the District Court that iBRAIN’s Chief Operating Officer had informed families on April 15, 2026 that, “due to current staffing limitations, school will be closed tomorrow,” and that iBRAIN was “actively working to stabilize staffing and operations.” *Bruckauf*, ECF No. 68, at 1–2; Patel Decl. ¶¶ 4–6, *Bruckauf*, ECF No. 69. That same filing further explained that, before that closure notice was sent, counsel had already been advised that DOE’s continued withholding of pendency funding had placed iBRAIN’s broader program in jeopardy, including inability to cover payroll that came due on April 15, 2026 for more than 200 staff members together with simultaneous rent-demand issues involving two landlords. *Bruckauf*, ECF No. 68, at 1–2; Patel Decl. ¶¶ 9–12, *Bruckauf*, ECF No. 69. Those developments were no longer a prediction of possible harm; they were, as Applicants told the District Court, “actual collapse facts affecting the Plaintiff-Students’ ability to access school.” *Bruckauf*, ECF No. 68, at 2.

The problem did not stop there. In a letter filed today in No. 25-2127, Applicants advised the Court of Appeals that DOE then sent materially similar emails to iBRAIN parents asserting that iBRAIN was “closed indefinitely” and attaching DOE public-school placement offers, and that DOE school personnel followed up on those communications by inviting parents to tour the proposed public-school sites and complete registration steps. Letter from Jeffrey Arlen Spinner

at 3–4, *Bruckauf v. Aviles-Ramos*, No. 25-2127 (2d Cir. Apr. 24, 2026). Applicants further advised the Court of Appeals that, even after parents’ counsel informed DOE on April 23–24, 2026 that iBRAIN had reopened and directed DOE to cease and desist from its transition outreach to parents, DOE continued that outreach. *Id.* at 4–5. Thus, DOE has not merely continued to withhold pendency implementation while the broader appeal remains unresolved; it has attempted to use the disruption caused by that withholding in order to steer families toward DOE placements.

That development matters greatly because it confirms what Applicants have been warning all along. The consequences of continued nonpayment are no longer merely threatened; they have become operationally real. And DOE is now attempting to convert the consequences of their nonpayment into a practical litigation advantage. The Supreme Court has long held that the clean-hands maxim “closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.” *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). And as Your Honor recently put the point in modern terms, “[g]iven its conduct in these proceedings, the Government’s posture resembles that of the arsonist who calls 911 to report firefighters for violating a local noise ordinance.” *Dep’t of Homeland Sec. v. D. V. D.*, 606 U.S. ___, ___ (2025) (Sotomayor, J., dissenting from grant of stay) (slip op. at 13). Your Honor further explained that “[n]o litigant, not even the Government, may satisfy the irreparable harm requirement if the harm complained of is self-inflicted.” *Id.* at ___ (slip op. at 12). That principle applies with equal force here. DOE withheld pendency funding, the students’ placement destabilized and temporarily closed, and DOE then used the resulting disruption that it created in order to pressure families toward DOE placements while the broader appeal remains unresolved.

These developments strengthen the basis for reconsideration of the denial of the Rule 22 application. Applicants still seek only narrow, preservative relief: temporary administrative relief requiring Respondents to preserve and implement the already-established stay-put status quo for all plaintiff-students pending disposition of the Rule 20 petition. As Applicants have already explained, that request is tethered to prior final administrative decisions and the existing record; it does not ask the Circuit Justice to decide the merits of No. 25-2127 in the first instance. Application for Temporary Administrative Relief Pending Disposition of Petition for Writ of Mandamus at 1–3, 31–33, *Bruckauf v. Aviles-Ramos*, No. 25-2127 (U.S. Apr. 9, 2026); Pet. for Writ of Mandamus at 2–10, 26–31, *In re Bruckauf*, No. ___ (U.S. Apr. 9, 2026). Rather, it asks only that the already-established stay-put status quo not be defeated by continued delay while no timely forum remains below and the fully briefed broader appeal continues to languish unresolved. See also Letter from Jeffrey Arlen Spinner, *Bruckauf v. Aviles-Ramos*, No. 25-2127 (2d Cir. Apr. 14, 2026) (supplementing record with payroll and rent jeopardy) and Letter from Jeffrey Arlen Spinner, *Bruckauf v. Aviles-Ramos*, No. 25-2127 (2d Cir. Apr. 24, 2026) (advising of Rule 62.1 denials, school closure, and DOE outreach to parents after reopening).

Applicants respectfully submit this motion for reconsideration only to ensure that the Circuit Justice has the most current factual and procedural record while considering whether temporary administrative relief is now necessary to preserve the status quo pending disposition of the Rule 20 petition.

Respectfully submitted,

/s/ Jeffrey Arlen Spinner

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