NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YUHUA ZHU, an individual and a Chinese citizen; et al., Plaintiffs-Appellants, v. UNITED STATES DEPARTMENT OF STATE; et al., Defendants-Appellees.	No. 22-55129 D.C. No. 2:21-cv-07066-FMO-PVC MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted November 18, 2022[**]
San Jose, California

Before: SCHROEDER, GRABER, and FRIEDLAND, Circuit Judges.

Plaintiffs are Chinese citizens who seek to compel the United States Citizenship and Immigration Services ("USCIS") and the United States Department of State ("State Department") to either adjudicate their applications or

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

issue visas to them under the EB-5 Immigrant Investor Regional Center Program. Plaintiffs appeal from the district court's order granting the government's motion to dismiss. We affirm.

Plaintiffs filed Form I-526 petitions for EB-5 immigrant visas through the old Regional Center Program, which expired on June 30, 2021, by the terms of the statute. See Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, § 610(a), 106 Stat. 1828, 1874 (1992), as amended by, Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, Div. O, § 104, 134 Stat 1182, 2148 (2020). The State Department and the USCIS suspended adjudication of pending Regional Center forms after that statutory authorization expired. On March 15, 2022, the President signed the EB-5 Reform and Integrity Act into law, which repealed the prior authorization but created a new Regional Center Program. See Consolidated Appropriations Act of 2022, Pub. L. No. 117-103, § 103, 136 Stat. 49, 1075–1100 (2022).

1. On de novo review, Wolfson v. Brammer, 616 F.3d 1045, 1053 (9th Cir. 2010), we hold that the district court correctly dismissed Plaintiffs' action as moot. Without congressional authorization, the agencies cannot adjudicate Plaintiffs' petitions under the expired Regional Center Program. See W. Coast Seafood Processors Ass'n v. Nat. Res. Def. Council, Inc., 643 F.3d 701, 704 (9th Cir. 2011)

("An appeal is moot if there exists no present controversy as to which effective relief can be granted." (citation and internal quotation marks omitted)).

Plaintiffs' request for declaratory relief does not change that analysis. See Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc., 404 U.S. 412, 414–15 (1972) (per curiam) (holding that declaratory relief is inappropriate where the statute at issue has been repealed); Bunker Ltd. P'ship v. United States (In re Bunker Ltd. P'ship), 820 F.2d 308, 311 (9th Cir. 1987) ("Where intervening legislation has settled a controversy involving only injunctive or declaratory relief, the controversy has become moot.").

The "voluntary cessation" exception to mootness does not apply here. Because Congress replaced the lapsed statutory authority with new legislation, and the agencies have resumed adjudicating applications or issuing EB-5 visas, it is "absolutely clear that the allegedly wrongful behavior"—the agencies' decision to cease adjudicating applications and issuing visas under the old Regional Center Program—"could not reasonably be expected to recur." Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 189 (2000) (citation and internal quotation marks omitted). Nor does the "capable of repetition, yet evading review" exception apply. Protectmarriage.com-Yes on 8 v. Bowen, 752 F.3d 827, 836 (9th Cir. 2014) (internal quotation marks omitted). The agencies' conduct was not of "inherently limited duration," id., and on this record Plaintiffs have no

expectation that they will be subject to the same action again, see Kingdomware Techs., Inc. v. United States, 579 U.S. 162, 170 (2016).

2. Plaintiffs' assertion that the district judge exhibited bias is unpersuasive. Because Plaintiffs raise this issue for the first time on appeal, we review for plain error the judge's failure to recuse. United States v. Bosch, 951 F.2d 1546, 1548 (9th Cir. 1991). Plaintiffs present no facts to suggest that the judge's impartiality may "reasonably be questioned" or that he had a "personal bias" toward one party. 28 U.S.C. § 455(a), (b)(1); see Hasbrouck v. Texaco, Inc., 842 F.2d 1034, 1045–46 (9th Cir. 1987) ("The bias must stem from an extrajudicial source and not be based solely on information gained in the course of the proceedings.").

AFFIRMED.