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10 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 **OAKLAND DIVISION**

12 East Bay Sanctuary Covenant, *et al.*,
13
14 Plaintiffs,
15
16 v.
17 Donald J Trump, *et al.*,
18 Defendants.

No. 4:18-cv-06810-JST

**JOINT CASE
MANAGEMENT
STATEMENT**

Conference: June 28, 2022
Time: 2:00 PM
Judge: Hon. Jon S. Tigar

19 East Bay Sanctuary Covenant, *et al.*,
20
21 Plaintiffs,
22
23 v.
24 William Barr, *et al.*,
25 Defendants.

No. 4:19-cv-04073-JST

**JOINT CASE
MANAGEMENT
STATEMENT**

Conference: June 28, 2022
Time: 2:00 PM
Judge: Hon. Jon S. Tigar

1 The parties respectfully suggest that the Court continue the stays entered in both these
2 cases pending review of the rules at issue by the government, subject to 60-day recurring status
3 reports. The Court granted the parties' previous request to continue the then-pending case
4 management conference on March 22, 2022, moving it to June 28, 2022. Dkt. 138.

5 The government presently continues to pursue rulemaking with respect to the two rules at
6 issue in these cases, an interim final rule, "Aliens Subject to a Bar on Entry Under Certain
7 Presidential Proclamations; Procedures for Protection Claims," 83 Fed. Reg. 55,934 (November
8 9, 2018) ("entry" rule), and the final rule titled "Asylum Eligibility and Procedural
9 Modifications," 85 Fed. Reg. 82,260 (December 17, 2020) ("transit" rule). The entry rule was
10 preliminarily enjoined by this Court in 2018. In a separate challenge, the entry rule was vacated
11 by the U.S. District Court for the District of Columbia on August 2, 2019. *See O.A. v. Trump*,
12 404 F. Supp. 3d 109 (D.D.C. 2019). And the transit rule was enjoined by this Court last year.
13 Consistent with President Biden's Executive Order issued February 2, 2021, which directed the
14 agencies to review and determine whether to rescind these two rules, and which also vacated the
15 presidential proclamation related to the entry rule, *see* Executive Order 14010, Executive Order
16 on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to
17 Manage Migration Throughout North and Central America, and to Provide Safe and Orderly
18 Processing of Asylum Seekers at the United States Border (the "Executive Order"), § 4.a.ii.C, 86
19 Fed. Reg. 8257, 8269-70 (Feb. 5, 2021), both rules are under review for possible rescission. The
20 Spring 2022 Unified Agenda indicates both rules are being "modif[ied] or rescind[ed]" consistent
21 with the President's order. *See*
22 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1615-AC34> (entry
23 rule) (last accessed June 21, 2022),
24 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1615-AC69>
25 (transit rule) (last accessed June 21, 2022).

26 Given this ongoing review of the entry and transit rules and the likelihood those rules will
27 be modified or rescinded in the future, the parties respectfully request that the Court continue to
28 hold these cases in abeyance pending the conclusion of the Departments' review of the rules. *See*

1 *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (“The District Court has broad discretion to stay
2 proceedings as an incident to its power to control its own docket.”). If, following their review, the
3 Departments elect to promulgate new rules that are different from the interim and final rules or
4 to rescind them entirely, that could obviate the need for judicial review of both rules. *See*
5 *California v. Azar*, 911 F.3d 558, 569 (9th Cir. 2018). Accordingly, holding these cases in
6 abeyance will serve judicial economy and prevent potentially unnecessary expenditures of the
7 resources of the Court and the parties.

8 No party will be prejudiced by an abeyance under the current circumstances. As to the
9 government, “[a]n initial agency interpretation is not instantly carved in stone. On the contrary,
10 the agency must consider varying interpretations and the wisdom of its policy on a continuing
11 basis, for example, in response to changed factual circumstances, or a change in administration.”
12 *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).
13 An abeyance would permit the agencies to finish consideration of the wisdom of the entry and
14 transit rules, as directed by the President’s February 2, 2021 Executive Order, without the need
15 to meet simultaneous litigation deadlines. *See, e.g., Save Jobs USA v. Dep’t of Homeland Sec.*,
16 942 F.3d 504, 508 (D.C. Cir. 2019) (previously holding “the case in abeyance, initially to allow
17 the incoming administration time to consider the case and later because the Department expected
18 to begin the process of rescinding the rule”). In addition, Plaintiffs are not harmed by continuing
19 to stay proceedings at this time, as the Court’s injunctions remain in effect, preventing the rules
20 from being applied nationwide.

21 The parties further propose that the government file a status report every 90 days updating
22 the Court on the status of the rulemakings.

23 Should the Court nevertheless wish to proceed with litigation in these two cases, the
24 parties hereby submit their Joint Case Management Statement for these related cases under Rule
25 26(f) of the Federal Rules of Civil Procedure, Local Rule 26-1, and the Court’s Scheduling Order
26 of June 22, 2022. This statement is identical to the statement filed on March 22, 2022.

1 The parties conferred via telephone and electronic mail. The parties agreed that telephonic
2 and electronic-mail communication were the most efficient manner in which to conduct the
3 conference under the current circumstances.

4 **(1) Jurisdiction and Service.**

5 This Court has subject matter jurisdiction pursuant to 5 U.S.C. § 701 (provision of the
6 Administrative Procedure Act allowing for judicial review) and 28 U.S.C. § 1331. Venue properly
7 lies in this Court pursuant to the provisions of 28 U.S.C. §1391(e). There do not exist any issues
8 regarding personal jurisdiction and no parties remain to be served.

9 **(2) Facts.**

10 These cases involve Administrative Procedure Act (“APA”) challenges to an interim final
11 rule and final rule, both of which rendered ineligible for asylum most persons entering the United
12 States at the southern border who cross the border between ports of entry or who did not first
13 apply for and receive a denial of protection from persecution or torture while in a third country
14 through which they transited en route to the United States.

15 **(3) Legal Issues.**

16 The issues in this case are whether the entry and transit rules are lawful.

17 **(4) Motions**

18 *Prior Motions:* The court issued a preliminary injunction enjoining the entry rule on
19 December 19, 2018 (ECF # 98, Case No. 18-cv-6810), and the transit rule on February 16, 2021
20 (ECF # 138, Case No. 19-cv-4073). The court granted stays of further proceedings in both cases
21 pending further appellate review, and subsequently granted a stay of the challenge to the transit
22 rule based on administrative review of that rule.

23 *Pending Motions:* There are no currently pending motions awaiting decision.

24 *Anticipated Motions:* Defendants’ deadline to respond to Plaintiffs’ Complaint in both
25 case is presently stayed.

26 **(5) Amended Pleadings**

27 The parties agree that there is currently no anticipated amendment to the pleadings,
28 addition of parties, or motions to transfer venue.

1 **(6) Evidence Preservation**

2 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
3 Stored Information and have met and conferred pursuant to Fed. R. Civ. P. 26(f) to ensure that
4 reasonable and proportionate steps are taken to preserve evidence relevant to the issues reasonably
5 evident in this action. The parties note however that the cases involve review of an administrative
6 record, which has been submitted in both cases.

7 **(7) Disclosures**

8 The parties agree that this case is exempt from initial disclosures under Federal Rule of
9 Civil Procedure 26(a)(1)(B)(i). The only parties in this case are the Plaintiffs and the Defendants.
10 The key documents in this case are the pleadings and those within the administrative records that
11 Defendants have filed with the Court, or would file with respect to the transit rule should litigation
12 proceed.

13 **(8) Discovery Plan.**

14 At this time, the parties agree that discovery is not necessary outside the administrative
15 record. Thus, the parties agree that a Rule 26(f) Discovery Plan is unnecessary.

16 **(9) Class Certification.**

17 This is not a class action and the parties agree that class certification is not applicable to
18 this case.

19 **(10) Related Cases.**

20 Other than the two cases in which this filing is being submitted, the parties are not aware
21 of any related cases in this jurisdiction. The entry rule is at issue in *O.A. v. Trump*, 404 F. Supp.
22 3d 109 (D.D.C. 2019), the appeal of which is presently stayed pending review of the underlying
23 rule by the agency.

24 **(11) Relief**

25 Plaintiffs seek injunctive and declaratory relief in the form of a judgment from this Court
26 declaring the entry and transit rules unlawful, contrary to law, or arbitrary and capricious and
27 enjoining Defendants from implementing them against Plaintiffs and their respective members.
28 No further relief is sought.

1 **(12) Settlement Efforts and Alternate Dispute Resolution.**

2 No settlement discussions between the parties are ongoing. The parties, however, agree
3 that this case is not suitable for Alternative Dispute Resolution.

4 **(13) Consent to Magistrate for All purposes**

5 The parties do not consent to have a magistrate judge conduct all further proceedings
6 including trial and entry of judgment. The case has been assigned to an Article III Judge.

7 **(14) Other Reference**

8 The parties agree that this case is not suitable for reference to binding arbitration, a special
9 master, or the Judicial Panel on Multidistrict Litigation.

10 **(15) Narrowing of Issues**

11 The parties agree that this case presents no unusual legal issues. Further, neither party has
12 any proposals regarding severance, bifurcation, or other ordering of proof.

13 **(16) Expedited Trial Procedure**

14 The parties agree that the Expedited Trial Procedure of General Order No. 64 are
15 inapplicable to this case.

16 **(17) Scheduling**

17 Defendants' deadline to respond to the Complaint in both cases is presently stayed. Should
18 litigation commence, Defendants do not presently know if they will file an answer or a motion to
19 dismiss. In either event, it is unnecessary to schedule any additional deadlines at this time.

20 **(18) Trial**

21 The parties agree that no trial is necessary in this case.

22 **(19) Disclosure of Non-Party Interested Entities or Persons**

23 Both parties are in full compliance with Civil Local Rule 3-15 regarding the identification
24 of interested entities or persons and have not identified any interested persons or entities not
25 already party to this suit.

26 **(21) Professional Conduct**

27 All attorneys of record for the parties have reviewed the Guidelines for Professional
28 Conduct for the Northern District of California.

1 **(22) Other Matters**

2 As discussed above, the parties jointly request that the Court continue the stays in both
3 cases pending review of the two rules for possible modification or rescission, consistent with the
4 President’s executive order.

5
6 Respectfully submitted,

7 BRIAN M. BOYNTON
8 Principal Deputy Assistant Attorney General

9 WILLIAM C. PEACHEY
10 Director

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20 Dated: June 21, 2022

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Dated: June 21, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of for the Northern District of California by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

By: /s/ Erez Reuveni
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