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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

East Bay Sanctuary Covenant, *et al.*,

Plaintiffs,

v.

William Barr, *et al.*,

Defendants.

Civil Action No. 4:19-cv-04073-JST
**ADMINISTRATIVE MOTION
TO FILE PORTIONS OF GUIDANCE
DOCUMENTS UNDER SEAL**

Pursuant to Civil Local Rules 7-11 and 79-5, Defendants submit this administrative motion requesting an order allowing Defendants to file portions of the following documents originally filed in redacted form with the Defendants' opposition to the motion for a renewed injunction and (ECF Nos. 65) under seal:

- Exhibit A (Executive Office of Immigration Review ("EOIR")), *Ninth Circuit Stay Order - Asylum Transit Interim Final Rule Litigation* (ECF No. 65-1); and
- Exhibit C (Immigration and Customs Enforcement ("ICE")), *Broadcast Message: UPDATED GUIDANCE - Asylum Eligibility and Procedural Modifications IFR* (ECF No. 65-3).

The redacted versions of these documents appear presently on the docket at ECF Nos. 65-1 and 65-3. The two documents submitted as Exhibit B to ECF 66 (ECF Nos. 66-1 and 66-2) contain no redactions and so are not subject to this motion.

For the reasons set forth below, this Motion should be granted.

1. Plaintiffs in this lawsuit are challenging the Interim Final Rule titled "Asylum Eligibility and Procedural Modifications," 84 Fed. Reg. 33,829 (July 16, 2019) ("Rule"). *See* ECF Nos. 1, 3.

2. As part of their opposition to Plaintiffs' renewed motion for a nationwide injunction (ECF No. 63), Defendants have attached guidance documents illustrating how Defendants are implementing the injunction.

3. Two of the guidance documents issued by EOIR and ICE respectively, *see* Exhibits A, C (ECF Nos. 65-1 and 65-3 respectively), contain privileged attorney-client and work-product information, as well as personal identifying information. *See* Declaration of Erez Reuveni ("Reuveni Decl.") ¶¶ 4-6.

4. The Ninth Circuit requires compelling reasons to seal records. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Here, the “compelling reasons” standard is met. The attorney client privilege shields “communications made in confidence” by a “client” to his or her “attorney” in order to “encourage clients to confide fully in their attorneys without fear of future disclosure of such confidences.” *In re Fischel*, 557 F.2d 209, 211 (9th Cir. 1977). The work product privilege “protects from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation.” *In re Grand Jury Subpoena (Mark Tort/Torf Env. Mgmt.)*, 357 F.3d 900, 906 (9th Cir. 2004); *see also* Federal Rule of Civil Procedure 26(b)(3). As the guidance documents themselves reflect, they are clearly marked as privileged pursuant to the attorney-client and work-product privileges. *See* ECF Nos. 65-1 and 65-3. The portions of the guidance documents that are redacted clearly meet the standards for being privileged under both the attorney-client and work-product privileges, as they contain attorney-client communications and were explicitly authored in connection with the pending litigation and in response to the preliminary injunction entered by this Court, as modified by the Ninth Circuit. *See* Reuveni Decl. ¶¶ 4-5. Not partially sealing these documents would result in Defendants divulging their litigation strategies, in contravention of the rationales behind both privileges.

5. In addition, the guidance documents contain third party personal identifying information; such private information including “names,” are protected from disclosure. *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003). *See* Reuveni Decl. ¶ 6.

6. Plaintiffs take no position on this motion. *See* Reuveni Decl. ¶ 7.

7. Consistent with Rule 79-5, Defendants, along with this motion, are filing a declaration (Reuveni Decl.), a proposed order, and the two unredacted documents submitted in

1 redacted form at ECF Nos. 65-1 and 65-3.

2 8. Accordingly, given the amount of specific, protected information in the EOIR and
3 ICE guidance documents, Defendants request an order allowing the submission of those
4 documents under partial seal, as redacted in ECF 65-1 and 65-3, and as attached here to this
5 document as exhibits.

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7 DATED: September 3, 2019

Respectfully submitted,

8 JOSEPH H. HUNT
9 Assistant Attorney General

10 WILLIAM C. PEACHEY
11 Director

12 /s/ Erez Reuveni
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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2019, 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
Erez Reuveni
Assistant Director
United States Department of Justice
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