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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EAST BAY SANCTUARY
COVENANT, et al.,

Plaintiffs,

vs.

WILLIAM BARR, et al.,

Defendants.

Case No. 4:19-cv-04073-JST

[Judge: Hon. Jon S. Tigar]

PROPOSED INTERVENORS'
NOTICE OF MOTION AND MOTION
FOR ADMINISTRATIVE STAY;
MEMORANDUM OF POINTS AND
AUTHORITIES

Date Action Filed: July 16, 2019

PROPOSED INTERVENORS' MOTION FOR ADMINISTRATIVE STAY

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE Proposed Plaintiff-Intervenors J.S.M.; D.M.S., a minor; S.L.V.; M.F.L., a minor; M.M.B.; N.M.M., a minor; M.M.V.; A.A.M.; a minor; I.F.L.; R.F.L., a minor; M.G.V.; A.R.G., a minor; R.P.F.; J.F.P., a minor; M.C.M.; S.M.C., a minor; M.A.A.; A.R.A., a minor; C.A.A., a minor; A.L.V.; I.G.L., a minor; A.G.L., a minor; M.R.A.; L.C.R., a minor; C.C.G.; E.C.G., a minor; K.N.E.; E.A.N., a minor; D.P.R.; S.B.P., a minor; R.L.A.; N.C.L., a minor; Y.V.O. E.P.V., a minor; S.L.R.; A.V.L., a minor; I.H.L.; S.R.H., a minor; S.J.A.; W.A.A., a minor; E.V.M.; A.V.M., a minor; M.P.O.; G.G.L., a minor; O.T.G.; T.T.G.; a minor; B.H.I.; D.M.H., a minor; N.V.; Z.F., a minor; J.H.R.; A.M.H., a minor; I.C.T.; V.T.P., a minor; C.N.; B.L.; B.L.N., a minor; P.M.; M.N.; H.M.N., a minor; N.P.; R.D.P., a minor; Y.U.; F.G.U, a minor; Y.O.T.; V.L.O., a minor; D.L.O., a minor; L.H.H.; Y.F.H., a minor; A.B.C.; E.C.B, a minor; K.P.P.; M.P.P., a minor; I.P.P., a minor; M.H.; J.M.H., a minor; B.C.A.; G.S.C., a minor; L.M.P.; Y.M.M., a minor; L.P.M, a minor; A.S.G., a minor; E.G.; J.G.M., a minor; B.G.C.; S.M.G., a minor; T.S.J.; L.P.S, a minor; G.S.J., a minor; I.C.A.; S.P.C., a minor; M.T.T.; Y.L.T., a minor; R.C.H.; E.P.C., a minor; L.M.B.; Z.R.M., a minor; E.R.M., a minor; C.H.G.; M.G.H., a minor; T.R.M.; J.R.R., a minor; M.P.A.; G.S.P., a minor; M.T.B.; A.V.B., a minor; W.A.B., a minor; I.F.; Z.M.F., a minor; E.G.F., a minor; J.M.F., a minor; M.P.T.; A.A.P., a minor; H.A.P., a minor; M.C.P.; J.C.P.; a minor; M.R.C., a minor; M.L.M.; J.R.L., a minor; M.Z.L; F.P.Z., a minor; F.F.A.; D.A.B.; A.A.B., a minor; R.S.J.; S.A., a minor; L.G.G.; W.C.G., a minor, (“Proposed Plaintiff-Intervenors”) by and through their counsel, Rapid Defense Network and Greenberg Traurig, LLP, will and hereby do make the following motion at Ronald V. Dellums Federal Building & United States Courthouse.

Proposed Plaintiff-Intervenors move for an emergency administrative stay pending the adjudication of their Motion to Intervene and Motion for a Temporary Restraining Order, filed October 16, 2020.

WHEREFORE, Proposed Plaintiff-Intervenors respectfully prays that the Court:

(a) Grant Proposed Plaintiff-Intervenors' Motion for an Administrative Stay

pending the adjudication of Proposed Plaintiff-Intervenors' motion to

intervene; and

(b) Enjoin Defendants from taking any action to remove Proposed Plaintiff-

Intervenors pending the adjudication of Proposed Plaintiff-Intervenors' motion

to intervene.

BASIS FOR MOTION: This Motion is based upon this Notice and the following Memorandum of Points and Authorities.

Respectfully submitted,

Dated: October 16, 2020

GREENBERG TRAURIG LLP

Adam Siegler

Jonathan K. Ogata

Caroline Heller (*Pro Hac Forthcoming*)

Steven G. Berringer (*Pro Hac Forthcoming*)

RAPID DEFENSE NETWORK

Gregory P. Copeland (*Pro Hac Forthcoming*)

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By /s/ Jonathan K. Ogata

Adam Siegler

Jonathan K. Ogata

Attorneys for Plaintiff-Intervenors

MEMORANDUM OF POINTS AND AUTHORITIES

Proposed Plaintiff-Intervenors ask this Court to maintain the status quo pending the adjudication of Proposed Plaintiff-Intervenors' motion to intervene and motion for a temporary restraining order, filed October 16, 2020.

Proposed Intervenors are mothers, fathers, and children who fled persecution in their home countries to seek asylum in the United States. Upon arrival in the United States, they were subjected to an interim final rule entitled "Asylum Eligibility and Procedural Modifications," 84 Fed. Reg. 33,829 (July 16, 2019) (the "Rule"), interviewed under the Rule's "reasonable fear" standards, were found not to have reasonable fear, and issued final orders of removal. Petitioners are detained either in the South Texas Family Residential Center in Dilley, Texas ("Dilley") or Berks Family Residential Center in Leesport, Pennsylvania ("Berks"), or have been released into the United States and are subject to ongoing orders of supervision, monitoring, and electronic custody.

Courts in this Circuit have issued stays of removal in order to preserve the status quo when the risk of deportation, as here, is present. *See Chaudhry v. Barr*, No. 19-CV-00682-TLN-DMC, 2019 WL 2009307, *5 (ED Cal. May 7, 2019) (granting Petitioner's a stay of removal "pending briefing and disposition of Petitioner's Motion for Preliminary Injunction, or until further order of this Court."); *Abdul Mehamed Sied v. Duke*, No. 17-CV-06785-LB, 2017 WL 6316821 (ND Cal. Dec. 11, 2017) (staying Petitioner's removal "pending the court's determination as to...jurisdiction."); *Jimenez v. Napolitano*, No. C-12-03558 RMW, 2012 WL 3144026, at *1 (N.D. Cal. Aug. 1, 2012) (granting motion for stay of removal pending disposition of petition for writ of habeas corpus).

Proposed Intervenors are informed and believe they face imminent deportation to countries where they fear persecution and torture. Declaration of Bridget Cambria, Esq. dated October 16, 2020 (Cambria Decl.) ¶¶ 8, 9; Declaration of Shalyn Fluharty, Esq. dated October 16, 2020 (Fluharty Declaration) ¶¶ 3,4; *D.A.M. v. Barr*, 20-CV-1321 (CRC), ECF No. 6. This deportation could occur prior to this Court's ruling on their

1 motion to intervene and as soon as 24 hours from the time the District of Columbia
2 Circuit's stay was dissolved this morning. *Id.*

3 Proposed plaintiff-intervenors in Dilley were recently clustered together in the
4 same "neighborhood" within the facility. ICE regularly moves families within the facility
5 when preparing them for removal. Fluharty Declaration ¶ 3. Additionally, **today, October**
6 **16, 2020**, ICE spoke with proposed plaintiff-intervenors to secure contact information for
7 the person who will receive them when they are removed and advised proposed plaintiff-
8 intervenors that this person should be immediately ready to receive them. *Id.*

9 Absent this Court's intervention, Proposed Intervenors will be removed to their
10 home countries where they fear persecution and torture. Specifically, these families will
11 be removed back to countries where they fear physical harm, sexual harms, psychological
12 harms and torture based on their status as women, as children, and based on their familial
13 associations and their political opinions. Cambria Decl. ¶ 9; Fluharty Decl. ¶ 4. Further,
14 Proposed Intervenors fear being killed, physical beatings and torture, sexual assaults and
15 rape, kidnappings, and other harms. *Id.* Should deportation occur, it would be the result
16 of an illegal and void rule, improperly promulgated and enforced by Defendants,
17 depriving Proposed Intervenors of the process due to them by law. *Id.* ¶¶ 7, 8.

18 Further, Proposed Intervenors removal would likely cause irreparable harm
19 because if it is ultimately determined that Proposed Intervenors are entitled to access the
20 asylum system, they will not be able to access such asylum relief in their home countries.
21 *See D.A.M.*, 2020 WL 5525056, at *14 (Proposed Intervenors demonstrated "a strong
22 likelihood that if the Court denies the TRO and allows the government to carry out their
23 removals, they will be unable to return, regardless of whether they are legally owed an
24 opportunity to continue seeking asylum from inside the U.S. Effectively, permanent
25 removal from the U.S. to countries from which Petitioners fled from to seek safety in the
26 United States would constitute irreparable injury."); *A.B.-B. v. Morgan*, 20-CV-846
27 (RJL), 2020 WL 51075 48, at *8 (D.D.C. Aug. 31, 2020) ("In the absence of preliminary
28

injunctive relief, plaintiffs would be subject to immediate removal from the United States to countries where they face significant risk of physical harm.... To say the least, this harm could not be remedied after the court has an opportunity to rule on the merits of plaintiffs' complaint.). For this reason, just as this Court and its sister district did in *Chaudhry*, *Sied*, and *Jimenez*, this Court too should enter a stay of removal, preventing Proposed Intervenor from suffering the irreparable harm of deportation prior to this Court's adjudication of Proposed Intervenor pending motion.

Proposed Plaintiff-Intervenor is informed and believe their removal is imminent and will occur before this Court has the opportunity to rule on Proposed Plaintiff-Intervenor's motion to intervene and motion for a temporary restraining order. Indeed, their removal will likely occur immediately, if not within days of this filing. Cambria Decl. ¶ 8; Fluharty Decl. ¶¶ 2-10. For this reason, absent this Court's intervention, the Proposed Intervenor face immediate irreparable harm absent an order from this Court.

For these reasons, Proposed Plaintiff-Intervenor respectfully request this Court grant their Motion for an Administrative Stay, pending the adjudication of Proposed Plaintiff-Intervenor's motion to intervene.

Dated: October 16, 2020

Respectfully submitted,

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