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

East Bay Sanctuary Covenant, *et al.*,

Plaintiffs,

v.

Donald J. Trump, President of the United
States, *et al.*,

Defendants.

Civil Action No. 4:19-cv-04073-JST

RESPONSE TO REQUEST FOR CLARIFICATION

Defendants oppose Proposed Intervenor’s (“intervenor”) request for clarification seeking permission to file a third brief in support of their motion to intervene and for temporary restraining order and preliminary injunction. Should the Court nevertheless clarify that intervenors may file a third brief, Defendants respectfully request that they be granted an opportunity to file a sur-reply addressing matters raised for the first time in intervenor’s third brief to which the government has not had an opportunity to respond.

Intervenor filed a single, combined motion styled as a “Motion for Leave to Intervene and Motion for Temporary Restraining Order and Preliminary Injunction” on October 16, 2020. *See*

1 Dkt. 95. This Court granted the temporary restraining order on October 17, 2020, and ordered that
2 “Defendants’ opposition to Proposed Intervenor’s motion for a preliminary injunction is due
3 October 23, 2020,” that “Proposed Intervenor’s reply is due October 26, 2020,” and that “[a]
4 hearing on this motion will take place on Thursday, October 29, 2020, at 9:30 a.m.”

5 On October 23, 2020, Defendants filed their opposition, a document titled “Opposition to
6 Motions to Intervene and for Temporary Restraining Order and Preliminary Injunction Preventing
7 Removal” that addressed intervenors’ likelihood of success on the merits of their motion to
8 intervene and entitlement to an injunction in response to their single omnibus filing. Dkt. 110.
9 Plaintiffs responded to that opposition on October 26. Dkt. 112. Although they titled their motion
10 a “Reply Memorandum and Points of Law in Further Support of Motion for Preliminary
11 Injunction,” that motion responded to the government’s opposition in full, including whether
12 intervenors satisfy Rule 24(a) or 24(b) so as to be entitled to intervention as of right or to
13 permissive intervention, Dkt. 112 at 4-13, and whether this Court has subject matter jurisdiction
14 over intervenors’ claims, both for purposes of permitting intervention or for purposes of granting
15 a preliminary injunction. Dkt. 112 at 9-12. Accordingly, intervenors have filed an opening and a
16 reply brief, and Defendants have filed a single opposition brief, and briefing is considered closed.
17 See Local Rule 7-3((d) (“Once a reply is filed, no additional memoranda, papers or letters may be
18 filed without prior Court approval.”).

19 Intervenor’s apparently believe that because they styled their reply as a “Reply
20 Memorandum and Points of Law in Further Support of Motion for Preliminary Injunction,”
21 without explicitly mentioning the term “Intervention,” that therefore they have not yet filed a reply
22 in support to their motion for intervention, which they believe they are entitled to file by November
23 6, 2020. But they filed one omnibus motion—to which Defendants responded—and then replied
24 in full to the arguments Defendants made in their opposition brief concerning the motion to
25 intervene, and so have already submitted their reply brief.¹ A third brief would unfairly prejudice
26 Defendants by providing intervenors an opportunity to file a brief addressing issues raised in

27 ¹ Plaintiffs requested supplemental briefing at oral argument, a request that this Court did not grant.
28 That request indicates that Plaintiffs believed that they had filed all the briefing in the matter to
which they were entitled.

1 Defendants' opposition that intervenors consciously chose not to address in their reply brief, or to
2 address issues raised at oral argument to which Defendants have had no opportunity to respond.

3 Should the Court nevertheless issue an order clarifying that intervenors may file a third
4 brief, Defendants respectfully request that they be granted an opportunity to file a sur-reply
5 addressing matters raised for the first time in intervenors' third brief or in response to the oral
6 argument before the Court on October 29, 2020, that the government has not had an opportunity
7 to respond to.

8 Respectfully submitted,

9 JEFFREY BOSSERT CLARK
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10 WILLIAM C. PEACHEY
11 Director

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18 Dated: November 2, 2020

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2020, 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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