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

East Bay Sanctuary Covenant, *et al.*,

Plaintiffs,

v.

Robert M. Wilkinson, *et al.*,

Defendants.

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

JOINT MOTION TO STAY PROCEEDINGS

1 The parties respectfully move this Court to hold this case in abeyance pending the
 2 Department of Homeland Security's and the Attorney General's ("Departments") review of the
 3 rule at issue in this case, Asylum Eligibility and Procedural Modifications (the "final rule"). 85
 4 Fed. Reg. 82,260 (Dec. 17, 2020) (codified at 8 C.F.R. §§ 208, 1208). In support of this motion,
 5 the parties state as follows:

6 1. This case involves an Administrative Procedure Act ("APA") challenge to an interim final
 7 rule and final rule, both of which render ineligible for asylum most persons entering the United
 8 States at the southern border who did not first apply for and receive a denial of protection from
 9 persecution or torture while in a third country through which they transited en route to the United
 10 States.

11 2. The case was previously stayed pending resolution of the government's appeal from this
 12 Court's order issuing a preliminary injunction of the interim final rule, "Asylum Eligibility and
 13 Procedural Modifications, 84 Fed. Reg. 33,829 ("interim final rule"). Dkt. 93.

14 3. However, on December 17, 2020, Defendants issued the final rule, which superseded the
 15 interim final rule when it became effective on January 19, 2021.

16 4. On January 19, 2021, Plaintiffs filed a proposed amended complaint and a motion to lift
 17 the stay of proceedings to challenge the final rule. Dkt. 130. Plaintiffs subsequently filed a motion
 18 for a preliminary injunction of the final rule. Dkt. 131.

19 5. The Court lifted the stay on January 28, 2021, following the parties' stipulation that the
 20 stay should be lifted to allow Plaintiffs to amend their complaint to challenge the final rule. Dkt.
 21 128.

22 6. This Court preliminarily enjoined the final rule on February 16, 2021. Dkt. 138.

23 7. While Plaintiffs' motion for a preliminary injunction was pending, President Biden signed
 24 an Executive Order which directed "[t]he Attorney General and the Secretary of Homeland
 25 Security [to] promptly review and determine whether to rescind . . . the final rule titled 'Asylum
 26 Eligibility and Procedural Modifications,' 85 Fed. Reg. 82,260 (December 17, 2020), as well as
 27 any agency memoranda or guidance that were issued in reliance on th[at] rule[.]" See Executive
 28 Order 14010, Executive Order on Creating a Comprehensive Regional Framework to Address the

1 Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide
 2 Safe and Orderly Processing of Asylum Seekers at the United States Border (the “Executive
 3 Order”), § 4.a.ii.C, 86 Fed. Reg. 8257, 8269-70 (Feb. 5, 2021).

4 8. In light of the ongoing review of the final rule by the new administration, the parties
 5 respectfully request that the Court hold the case in abeyance pending the conclusion of the
 6 Departments’ review of the final rule. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997) (“The District
 7 Court has broad discretion to stay proceedings as an incident to its power to control its own
 8 docket.”). Given the President’s directive that “[t]he Attorney General and the Secretary of
 9 Homeland Security [] promptly review and determine whether to rescind the interim final rule,”
 10 Executive Order, § 4.a.ii.C, the rule may eventually be modified or rescinded. If, following their
 11 review, the Departments elect to promulgate a new rule that is different from the final rule or to
 12 rescind it entirely, that could obviate the need for judicial review of the final rule. *See California*
 13 *v. Azar*, 911 F.3d 558, 569 (9th Cir. 2018). Accordingly, holding the case in abeyance will serve
 14 judicial economy and prevent potentially unnecessary expenditures of the resources of the Court
 15 and the parties.

16 9. No party will be prejudiced by an abeyance under the current circumstances. As to the
 17 government, “[a]n initial agency interpretation is not instantly carved in stone. On the contrary,
 18 the agency must consider varying interpretations and the wisdom of its policy on a continuing
 19 basis,” for example, in response to changed factual circumstances, or a change in administration.”
 20 *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).
 21 An abeyance would permit the new administration time to reconsider the wisdom of the final rule,
 22 as directed by the President’s February 2, 2021 Executive Order, without the need to meet
 23 simultaneous litigation deadlines. *See, e.g., Save Jobs USA v. Dep’t of Homeland Sec.*, 942 F.3d
 24 504, 508 (D.C. Cir. 2019) (previously holding “the case in abeyance, initially to allow the incoming
 25 administration time to consider the case and later because the Department expected to begin the
 26 process of rescinding the rule”). In addition, Plaintiffs will not be harmed by a stay, so long as the
 27 Court’s preliminary injunction remains in effect, preventing the rule from being applied
 28 nationwide.

1 Dated: February 25, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2021, 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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