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

East Bay Sanctuary Covenant, *et al.*,

Plaintiffs,

v.

Donald J Trump, *et al.*,

Defendants.

No. 4:18-cv-06810-JST

STATUS REPORT

East Bay Sanctuary Covenant, *et al.*,

Plaintiffs,

v.

William Barr, *et al.*,

Defendants.

No. 4:19-cv-04073-JST

STATUS REPORT

1 We write to provide the Court with a status update concerning the Departments of
2 Homeland Security and Justice’s review of the rules at issue in these cases, consistent with the
3 Court’s order issued June 24, 2022, keeping these cases in abeyance pending that review, and prior
4 status reports in these cases.

5 On February 23, 2023, the Departments published a Notice of Proposed Rulemaking
6 (“NPRM”) that would, if finalized, rescind the two rules at issue in these cases. *See* Circumvention
7 of Lawful Pathways, 88 Fed. Reg. 11,704 (Feb. 23, 2023), *available at*
8 [https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-](https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways)
9 [pathways](https://www.federalregister.gov/documents/2023/02/23/2023-03718/circumvention-of-lawful-pathways). That NPRM proposes to “address the reality of unprecedented migratory flows” and
10 “potential surge of migration at the southwest border [] of the United States following the eventual
11 termination of the Centers for Disease Control and Prevention’s (‘CDC’) public health Order” by
12 “establish[ing] a presumptive condition on asylum eligibility for certain noncitizens who fail to
13 take advantage of” “existing and expanded lawful pathways to enter the United States, including
14 the opportunity to schedule a time and place to present at a port of entry and thus seek asylum or
15 other forms of protection in a lawful, safe, and orderly manner, or to seek asylum or other
16 protection in one of the countries through which they travel on their way to the United States.” *Id.*
17 at 11,704, 11,706. The NPRM further proposes that the final rule be in effect for a period of two
18 years. *Id.* at 11,726.

19 As part of the NPRM, “[t]he Departments propose rescinding prior rules establishing bars
20 to asylum,” specifically Aliens Subject to a Bar on Entry Under Certain Presidential
21 Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55,934 (Nov. 9, 2018) and Asylum
22 Eligibility and Procedural Modifications, 85 Fed. Reg. 82,260 (Dec. 17, 2020). *Id.* at 11,727-28.
23 “The Departments have reconsidered the approaches taken in those rules and now believe that the
24 tailored, time-limited approach proposed here—which couples mechanisms for individuals to
25 enter lawfully (and as appropriate make protection claims) with new conditions on asylum
26 eligibility for those who enter without taking advantage of these and other lawful processes—is
27 better suited to address increased flows across the” Southwest Border. *Id.* at 11,728.

28 The NPRM provides for a comment period to permit the Departments “to be in a position

1 to finalize the proposed rule, as appropriate, before the Title 42 public health Order is lifted” on
2 May 11, 2023. *Id.* at 11,708. The comment period closes on March 27, 2023.

3 The Departments will submit another status report within 90 days of this filing or sooner
4 if there are new developments in light of changed circumstances.

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6 Respectfully submitted,

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8 Principal Deputy Assistant Attorney General

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10 Director

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28 Dated: February 23, 2023

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2023, 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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