

1 Lee Gelernt*
2 Omar C. Jadwat*
3 Anand Balakrishnan*
4 Ming Cheung**
5 ACLU FOUNDATION
6 IMMIGRANTS' RIGHTS PROJECT
7 125 Broad Street, 18th Floor
8 New York, NY 10004
9 T: (212) 549-2660
10 F: (212) 549-2654
11 *lgelernt@aclu.org*
12 *ojadwat@aclu.org*
13 *abalakrishnan@aclu.org*
14 *mcheung@aclu.org*

Katrina Eiland (SBN 275701)
Cody Wofsy (SBN 294179)
Spencer Amdur (SBN 320069)
Morgan Russell (SBN 296137)
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-0770
F: (415) 395-0950
keiland@aclu.org
cwofsy@aclu.org
samdur@aclu.org
mrussell@aclu.org

Attorneys for Plaintiffs
(Additional counsel listed below)

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

East Bay Sanctuary Covenant, et al.,

Plaintiffs,

v.

Robert M. Wilkinson, et al.,

Defendants.

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

**PLAINTIFFS' REPLY IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION AND STAY OF FINAL
RULE'S EFFECTIVE DATE
PURSUANT TO 5 U.S.C. § 705**

1 The Court should grant Plaintiffs’ motion and preliminarily enjoin the Final Rule and/or stay
2 its effective date pending review pursuant to 5 U.S.C. § 705. As explained in Plaintiffs’ motion, the
3 Ninth Circuit’s binding decision affirming this Court’s prior injunction, *E. Bay Sanctuary Covenant*
4 *v. Barr*, 964 F.3d 832 (9th Cir. 2020), dictates that the Final Rule—like the Interim Final Rule—is
5 contrary to 8 U.S.C. § 1158 and arbitrary and capricious; and that the equitable factors favor
6 granting preliminary relief. ECF No. 131-1 at 6-13, 21-23. In their response, Defendants
7 acknowledge (1) that the Final Rule “adopt[s] almost verbatim the interim final rule this Court
8 previously enjoined on July 24, 2019”; (2) that “the Ninth Circuit’s published decision affirming this
9 Court’s injunction—including its statutory authority ruling—is controlling law of the circuit”; and
10 (3) “that this Court and the Ninth Circuit have both held that the other preliminary-injunction factors
11 support Plaintiffs’ prior motion.” ECF No. 136 at 1-2; *accord id.* at 1 (“[T]he government
12 acknowledges that the Ninth Circuit’s decision is law of the circuit and therefore controlling in this
13 case.”). Accordingly, there is no dispute that, under binding Ninth Circuit precedent, the materially
14 identical Final Rule is contrary to law for the reasons previously identified by this Court and the
15 Ninth Circuit. Moreover, Defendants do not contest that the equitable preliminary injunction and
16 stay factors continue to favor granting Plaintiffs preliminary relief.

17 While Plaintiffs maintain that the Final Rule is unlawful for the additional reasons identified
18 in their motion, Plaintiffs agree that it would be sufficient for the Court to grant preliminary relief
19 “on the statutory-authority holding in the Ninth Circuit’s precedential decision” in this case. *See*
20 Response, ECF No. 136 at 2.

21 Accordingly, for these reasons and those set forth in Plaintiffs’ motion, Plaintiffs respectfully
22 request that the Court preliminarily enjoin the Final Rule and/or stay its effective date pursuant to 5
23 U.S.C. § 705, to prevent further harm to Plaintiffs. Given the lack of dispute between the parties,
24 Plaintiffs are not requesting oral argument on the motion.
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Dated: February 2, 2021

Respectfully submitted,

Lee Gelernt*
Omar Jadwat*
Anand Balakrishnan*
Ming Cheung**
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
lgelernt@aclu.org
ojadwat@aclu.org
abalakrishnan@aclu.org
mcheung@aclu.org

/s/ Katrina Eiland
Katrina Eiland (SBN 275701)
Cody Wofsy (SBN 294179)
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Morgan Russell (SBN 296137)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
keiland@aclu.org
cwofsy@aclu.org
samdur@aclu.org
mrussell@aclu.org

Melissa Crow*
SOUTHERN POVERTY LAW CENTER
1101 17th Street, NW Suite 705
Washington, D.C. 20036
T: (202) 355-4471
F: (404) 221-5857
melissa.crow@splcenter.org

Vasudha Talla (SBN 316219)
Angélica Salceda (SBN 296152)
AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
T: (415) 621-2493
F: (415) 255-8437
vtalla@aclunc.org
asalceda@aclunc.org

Baher Azmy**
Angelo Guisado**
Ghita Schwarz**
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
Telephone: (212) 614-6464
Facsimile: (212) 614-6499
bazmy@ccrjustice.org
aguisado@ccrjustice.org
gschwarz@ccrjustice.org

Attorneys for Plaintiffs

* Admitted pro hac vice

**Pro hac vice application forthcoming