

1 BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

2 SARAH S. WILSON
3 Assistant Director

4 CHRISTINA P. GREER
Senior Litigation Counsel

5 U.S. Department of Justice
6 Civil Division
7 Office of Immigration Litigation
8 P.O. Box 878, Ben Franklin Station
9 Washington, D.C. 20044
Telephone: (202) 598-8770
Christina.P.Greer@usdoj.gov

Attorneys for Defendants

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

14 Centro Legal de la Raza, *et al.*,) CASE NO. 3:21-cv-00463-SI
15 Plaintiffs,)
16 v.) JOINT STATUS REPORT AND [PROPOSED]
17 Executive Office for Immigration) ORDER
18 Review, *et al.*,)
19 Defendants.)

20 **STATUS REPORT**

21 The parties by and through their undersigned counsel hereby notify the Court that the Rule at
22 issue in this case, Appellate Procedures and Decisional Finality in Immigration Proceedings;
23 Administrative Closure, 85 Fed. Reg. 81,588 (Dec. 16, 2020) (“the Rule”), remains under review by
24 Defendants. Defendants have represented to Plaintiffs and hereby inform the Court that the Department
25 has made substantial progress towards the publication of a Notice of Proposed Rulemaking (“NPRM”)
26 that would, once final, materially affect the Rule at issue in this case, Appellate Procedures and
27 Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81,588 (Dec. 16,

2020). The Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions included significantly more information about the potential upcoming NPRM than previous Unified Agendas. Specifically, the Agenda included the following:

On December 16, 2020, the Department amended the regulations related to processing of appeals and administrative closure. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (RIN 1125-AA96). In light of Executive Orders 14010 and 14012, 86 FR 8267 (Feb. 2, 2021) and 86 FR 8277 (Feb. 2, 2021), the Department reconsidered its position on those matters and now issues this proposed rule to revise the regulations accordingly and make other related amendments. This proposed rule clarifies immigration judge and [Board of Immigration Appeals] authority, including providing general administrative closure authority and the ability to sua sponte reopen and reconsider cases. The proposed rule also revises [Board of Immigration Appeals] standards involving adjudication timelines, briefing schedules, self-certification, remands, background checks, administrative notice, and voluntary departure. Lastly, the proposed rule removes the [Executive Office for Immigration Review] Director's authority to issue decisions in certain cases, removes the ability of immigration judges to certify cases for quality assurance, and revises procedures for the forwarding of the record on appeal, as well as other minor revisions.

See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1125-AB18>.

Since publishing this description of the upcoming proposed rule, the Department has submitted a draft NPRM for review by the Office of Information and Regulatory Affairs (“OIRA”) of the Office of Management and Budget, which was received on April 7, 2023. The status of that review is available here: <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>. Because the website is dynamic, the Department includes the below screenshot to show the status of the NPRM with OIRA as of the date of filing:

AGENCY: DOJ-EOIR	RIN: 1125-AB18	Status: Pending Review
TITLE: Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure		
STAGE: Proposed Rule	SECTION 3(f)(1) SIGNIFICANT: No	
RECEIVED DATE: 04/07/2023	LEGAL DEADLINE: None	

Additionally, the parties continue to discuss what actions Defendants are able to take to alert the public that the Rule is preliminarily enjoined and its provisions are not currently in effect. Although the parties are collaborating on ways to mitigate Plaintiffs' concerns, as discussed below, Plaintiffs remain unsatisfied with Defendants' efforts.

DEFENDANTS' STATEMENT

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2 Defendants' counsel have prepared the attached document, Exhibit A – OIL's Currently
3 Effective Regulations Handout, which they have shared with Plaintiffs for review for correctness, to
4 identify regulations published by the Executive Office for Immigration Review ("EOIR") that are
5 currently in effect. This document is used by attorneys for the Office of Immigration Litigation—
6 Appellate Section when briefing immigration cases and has been shared with Plaintiffs and Plaintiffs'
7 counsel in several cases challenging these enjoined rules in the spirit of collaboration to assist counsel
8 with identifying the currently effective regulations. Now that Plaintiffs have had the opportunity to
9 review the document for correctness, Defendants' counsel intends to share this document with circuit
10 courts for their reference. Defendants' counsel intends to update this document as new rules are
11 published and will share those updated documents with Plaintiffs and circuit courts.

PLAINTIFFS' STATEMENT

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13 Plaintiffs wish to alert the Court to an ongoing issue — federal court orders to enjoin or stay
14 immigration regulations have not been uniformly recognized by the courts and by practitioners.
15 Following the issuance of the Court's March 21, 2021 order in this case, practitioners and courts have
16 frequently and mistakenly cited regulations enjoined by this case and in other similar cases as good law,
17 resulting in subsequent amended opinions, motions to amend, and notices of errata. *See, e.g., Perez-*
18 *Camacho v. Garland*, 54 F.4th 597 (9th Cir. 2022), *amending and superseding* 42 F. 4th 1103 (9th Cir.
19 2022) (amending opinion in response to a government motion after erroneously citing to enjoined
20 regulation 8 C.F.R. § 1003.(2)(c)); *Bravo-Bravo v. Garland*, 54 F.4th 634 (9th Cir. 2022), *amending and*
21 *superseding* 40 F. 4th 911 (9th Cir. 2022) (amending opinion in response to a government motion after
22 erroneously citing to enjoined regulation 8 C.F.R. § 1003.23(b)(1)); *Chen v. Garland*, 43 F.4th 244 (2d
23 Cir. 2022) (acknowledging enjoined rule but stating that Second Circuit was not bound by *Centro Legal*
24 *injunctio*); *Oluwajana v. Garland*, 33 F. 4th 411 (7th Cir. 2022), *amending and superseding* 27 F.4th
25 1309 (7th Cir. 2022) (amending opinion in response to a government motion to remove citation to
26 enjoined version of 8 C.F.R. § 1003.3(c)(1)); Respondents' Response to Order to Show Cause at 17, *UC*
27 *v. Kaiser*, No. 22-CV-04369-CRB, 2022 WL 9496434 (N.D. Cal. Oct. 14, 2022), ECF No. 14

1 (erroneously quoting enjoined regulation 8 C.F.R. § 1003.1(d)(3)(iv)(C)); Notice of Errata, *Uc v. Kaiser*,
2 No. 22-CV-04369-CRB, 2022 WL 9496434 (N.D. Cal. Oct. 14, 2022), ECF No. 16 (requesting that
3 respondents' erroneous quote and citation to enjoined regulation 8 C.F.R. § 1003.1(d)(3)(iv)(C) be
4 stricken).

5 Plaintiffs believe that these issues stem, in part, from the fact that the Government has failed to
6 provide accurate information about applicable laws on official government websites. In particular,
7 www.ecfr.gov and other public websites commonly accessed by practitioners do not alert the public that
8 the regulations posted at those sites have been enjoined and are not operative.

9 While Plaintiffs appreciate Defendants' efforts in preparing the attached chart, Plaintiffs are
10 concerned that the chart will be insufficient. Plaintiffs' counsel have prepared the attached document,
11 Exhibit B, an additional chart of currently effective regulations, which they have shared with Defendants
12 for review. Plaintiffs' chart contains hyperlinks to the currently operative versions of each provision at
13 www.ecfr.gov and the current status of each regulation.

14 Government websites will continue to fail to inform the public about which regulations have
15 been enjoined. Moreover, static documents like Exhibits A and B will not reflect subsequent changes in
16 the law. Plaintiffs continue to believe that providing real-time information through government websites
17 is the best solution and what is required by the Government's obligations to provide accurate
18 information to the public about applicable laws. The Government's failure to update its websites has
19 real and significant consequences for Plaintiffs, who have spent substantial resources trying to educate
20 practitioners and correct errors caused by the Government's failure to update the e-CFR website to
21 indicate which rules have been enjoined by the courts.

22 CONCLUSION

23 Although Plaintiffs intend to continue pressing Defendants for changes to Government websites,
24 the parties continue to agree that the case should remain in abeyance to allow the regulatory process to
25 proceed. Given the parties' agreement that the proceedings should remain in abeyance to allow the
26 regulatory process to proceed, the parties request that the Court continue the abeyance and propose
27 submitting another joint status report in 90 days.

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Respectfully submitted,

By: /s/ Naomi A. Igra
Naomi A. Igra
Litigation Counsel
Sidley Austin LLP
555 California Street, Suite 2000
San Francisco, CA 94104
Tel. (415) 772-7495
Naomi.igra@sidley.com

Counsel for Plaintiffs

By: /s/ Christina P. Greer
CHRISTINA P. GREER
Senior Litigation Counsel
U.S. Department of Justice, Civil Division
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Tel. (202) 598-8770
Christina.P.Greer@usdoj.gov

Counsel for Defendants

Dated: May 3, 2023

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[PROPOSED] ORDER

The parties are ordered to submit a status report within 90 days of this order.

DATED: May __, 2023

HON. SUSAN ILLSTON
United States District Judge