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June 20, 2024

Via E-filing

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

**Re: No 23-3396, Al Otro Lado, Inc. v. Mayorkas,
Argued and Submitted May 13, 2024 (Collins, Thomas, Johnstone)
Notice of Supplemental Authority Rule 28(j)**

Dear Ms. Dwyer:

On June 3 2024, President Biden issued a proclamation titled “Securing the Border” (the “Proclamation”). *See* Exhibit A. The Proclamation suspends and limits entry of noncitizens at the U.S. southern border until 14 calendar days after the Secretary of Homeland Security determines that there has been a 7-consecutive-calendar day average of less than 1,500 daily encounters, not including certain encounters described in the Proclamation.

The next day, U.S. Department of Homeland Security and Department of Justice issued an interim final rule (the “IFR”). *See* Exhibit B, published at 89 Fed. Reg. 48710



(July 7, 2024).¹ The IFR imposes restrictions on asylum eligibility during times when the Proclamation is in effect.

On June 5, 2024, Defendants-Appellees also filed a Notice of Presidential Proclamation in the district court, which included copies of the Proclamation and two agency memoranda:

- Implementing Presidential Proclamation, *Securing the Border*, DHS, June 3, 2024 (Exhibit C)
- Implementation of Presidential Proclamation, *Securing the Border* and Interim Final Rule, *Securing the Border*, CBP (Exhibit D).

See Al Otro Lado, Inc. v. Mayorkas, No. 23-cv-01367-AGS-BLM, ECF No. 78. The district court requested supplemental briefing from Plaintiffs-Appellants by June 20, and a response from Defendants-Appellees by June 27. No. 23-cv-01367-AGS-BLM, ECF No. 79.

The issues in this appeal remain live, even though the Binding Guidance temporarily cannot be enforced. The Proclamation and other guidance temporarily supersede the

¹<https://www.federalregister.gov/documents/2024/06/07/2024-12435/securing-the-border>.



Binding Guidance on which Appellants' *Accardi* claim is based. *See* Opening Br. at 8, 32-33. But temporary changes in official policy do not moot an appeal. *See Fikre v. Fed. Bureau of Investigation*, 904 F.3d 1033, 1037 (9th Cir. 2018). The Proclamation and related guidance are temporary by their own terms, and will end when border encounters fall below a specified threshold. Proclamation §2(a); Exhibit D at 1. Thus, it is not “absolutely clear . . . that the activity complained of will not reoccur.” *Fikre*, 904 F.3d at 1039 (cleaned up).

Plaintiffs-Appellants have also requested copies of additional guidance referenced in Exhibit D, which Defendants-Appellees have refused to provide. If that guidance impacts this appeal, Plaintiffs-Appellants will promptly inform this panel.

Sincerely,

/s/ *Stephen M. Medlock*
Stephen M. Medlock



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/s/ Stephen M. Medlock

Stephen M. Medlock

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2024, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I CERTIFY that all participants in the case are registered CM/ECF users and that the service will be accomplished by the appellate CM/ECF system.

/s/ Stephen M. Medlock

Stephen M. Medlock

Exhibit A

Exhibits A-D omitted
from document