

1 STEPHANIE M. HINDS (CABN 154284)  
Acting United States Attorney  
2 SARA WINSLOW (DCBN 457643)  
Chief, Civil Division  
3 VALERIE E. SMITH (NYBN 5112164)  
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055  
5 San Francisco, California 94102-3495  
Telephone: (415) 436-6985  
6 FAX: (415) 436-6748  
Valerie.smith2@usdoj.gov

7 Attorneys for Defendants

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11  
12 LIZBETH LUZ ROSALES, et al.,  
13 Plaintiffs,  
14 v.  
15 JOSEPH R. BIDEN, et al.,  
16 Defendants.  
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Case No. 21-cv-00261-EMC

**ADMINISTRATIVE MOTION TO  
CONSOLIDATE MOTION  
HEARINGS FOR PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION AND CLASS  
CERTIFICATION WITH  
DEFENDANTS’ MOTION TO  
DISMISS AND MOTION TO  
TRANSFER VENUE**

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20 Pursuant to Local Rule 7-11, Defendants, through their undersigned counsel, respectfully submit  
21 this Administrative Motion seeking to consolidate the motion hearings for Plaintiffs’ motion for  
22 preliminary injunctive relief and second renewed motion for class certification with Defendants’ motion  
23 to dismiss or in the alternative to transfer venue.

24 1. On June 22, 2021, Plaintiffs filed a Second Amended Complaint (“SAC”) which included  
25 approximately 367 selectees of the 2021 Diversity Visa (“DV2021”) lottery as plaintiffs as well as a  
26 proposed putative class of DV2021 selectees. (ECF 100). On June 22, 2021, Plaintiffs simultaneously  
27 filed a second renewed motion for preliminary injunctive relief (ECF 102), and a renewed motion for class  
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1 certification. (ECF 101). Defendants were ordered to respond to the SAC and motions by July 2, 2021.  
2 (ECF No. 91). On July 2, 2021, Defendants filed oppositions to Plaintiffs' motion for a preliminary  
3 injunction and for class certification. Defendants also simultaneously filed a motion to dismiss, or in the  
4 alternative to transfer venue. (ECF No. 108). Defendants moved, *inter alia*, to dismiss the SAC pursuant  
5 to Fed. R. Civ. P. 12(b)(3) in that venue was improperly laid in the Northern District of California.

6 2. In accordance with Civil Local Rule 7-2, the Defendants' motion was noticed for August  
7 12, 2021 at 1:30 p.m. This hearing date also accommodates Civil Local Rule 7-3, which provides  
8 Plaintiffs with fourteen (14) days to respond and Defendants' with seven (7) days to file a reply.  
9 Defendants now request that the motion hearing for Plaintiffs' motions for class certification and  
10 preliminary injunctive relief be continued from July 15, 2021 to August 12, 2021, so that the Court may  
11 hear the threshold issue of venue issue first before ruling on a preliminary injunction or class certification.

12 3. On July 2, 2021, Defendant contacted Plaintiffs' counsel and proposed consolidating the  
13 motions hearing for all pending motions and proposed the following briefing scheduled: Plaintiffs'  
14 Response for the Motion to Dismiss due by July 16, 2021; Defendants' Reply due by July 23, 2021 and a  
15 consolidated Motions hearing for the motion to dismiss, the class certification, and the preliminary  
16 injunction on August 6, 2021.

17 4. On July 6, 2021, Plaintiffs' responded that they would not stipulate to the proposed  
18 scheduling order and "are comfortable with the scheduled dictated by local rules." As such, a stipulation  
19 could not be obtained and as a result, Defendants now file this Administrative Motion.

20 5. Defendants submit that the "the issue of venue must be resolved prior to any other  
21 procedural or substantive issues in this case." *Graham Tech. Sols. v. Thinking Pictures*, 949 F. Supp. 1427,  
22 1428 (N.D. Cal. 1997); *Richmond Techs., Inc. v. Aumtech Bus. Sols.*, No. 11-CV-02460-LHK, 2011 U.S.  
23 Dist. LEXIS 71269, at \*75 (N.D. Cal. July 1, 2011) ("The Court expedited the hearing on Defendants'  
24 motion to dismiss for improper venue in order to ascertain whether venue in [the] District was proper  
25 before ruling on Plaintiff's motion for temporary restraining order and preliminary injunction."); *Larson*  
26 *v. Galliher*, No. 2:06-CV-1471-RCJ-GWF, 2007 U.S. Dist. LEXIS 2069, at \*3 (D. Nev. Jan. 5, 2007)  
27 (Before reaching the merits of request for injunctive relief, the Court must first decide the threshold issue  
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1 if jurisdiction and venue is appropriate in this matter.”); *Marr v. E. State Hosp.*, No. CS-02-0067-WFN,  
2 2002 U.S. Dist. LEXIS 28460, at \*3-4 (E.D. Wash. Apr. 29, 2002) (deciding motion to transfer venue  
3 before Plaintiffs motion for a Preliminary Injunction and Motion for Class Certification. Court did not  
4 rule on those two motions before transferring the case).

5 6. Accordingly, Defendants respectfully requests that the motions hearings for Plaintiffs’  
6 motions for class certification and preliminary injunctive relief be continued from July 15, 2021 to August  
7 12, 2021, so that all pending motions may be heard at one time and the Court may decide the threshold  
8 issue of venue prior to deciding any substantive issues in this case.

9  
10 DATED: July 7, 2021

Respectfully submitted,

11  
12 STEPHANIE M. HINDS  
Acting United States Attorney

13 /s/ Valerie E. Smith  
14 VALERIE E. SMITH  
Assistant United States Attorney

15 Attorney for Defendants  
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DEFS.' NOTICE OF MOTION AND MTD OR ALTERNATIVELY TO TRANSFER  
CASE NO. 4:20-cv-07183-EMC

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9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

12 Case No. 21-cv-00261-EMC

13 LIZBETH LUZ ROSALES, et al.,  
14 Plaintiffs,  
15 v.  
16 JOSEPH R. BIDEN, et al.,  
17 Defendants.

**DECLARATION OF VALERIE E.  
SMITH ISO ADMINISTRATIVE  
MOTION TO CONSOLIDATE  
MOTIONS HEARINGS**

18 I, Valerie E. Smith, declare and state as follows:

- 19 1. I am an Assistant United States Attorney in the Northern District of California and counsel of  
20 record for Defendants in the above-captioned action.
- 21 2. On July 2, 2021, Defendants filed their motion to dismiss or in the alternative to transfer venue,  
22 their opposition to Plaintiffs' renewed motions for class certification and preliminary injunctive relief.
- 23 3. In accordance with Civil Local Rule 7-2, Defendants' noticed their motion to dismiss for August  
24 12, 2021.
- 25 4. On July 2, 2021, I also emailed Plaintiffs' counsel Curtis Morrison to inquire whether Plaintiffs  
26 oppose continuing the hearing on Plaintiffs' renewed motions for class certification and preliminary  
27 injunctive relief so that they may be heard with Defendants' motion to dismiss.

1 5. Defendants proposed a briefing schedule wherein Plaintiff's' opposition to Defendants' motion to  
2 dismiss would be due by July 16, 2021, Defendants' reply would be due by July 23, 2021, and a  
3 consolidated motions hearing would be scheduled for August 6, 2021.

4 6. On July 6, 2021, Plaintiffs indicated that they do not consent to this request because they "are  
5 comfortable with schedule dictated by local rules."

6 I declare under penalty of perjury under the laws of the United States of America that the foregoing  
7 is true and correct.

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9 Dated: July 7, 2021

10 /s/ Valerie E. Smith  
11 VALERIE E. SMITH  
12 Assistant United States Attorney  
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Case No. 21-cv-00261-EMC  
[PROPOSED] ORDER

1  
2 **[PROPOSED] ORDER**

3 Defendant's Administrative Motion to consolidate the motions hearing for Plaintiffs' renewed  
4 motions for class certification and preliminary injunctive relief with Defendants' motion to dismiss or in  
5 the alternative to transfer venue such that all motions will be heard on August 12, 2021 at 1:30 p.m. is  
6 before this Court. In light of the jurisdictional issue raised by Defendants, the Court hereby GRANTS  
7 Defendants' Administrative Motion to consolidate the motions hearings so that the Court may rule on the  
8 jurisdictional issue before any substantive issues in this case. As such, the hearings on Plaintiffs' renewed  
9 motions for class certification and preliminary injunctive relief are continued from July 15, 2021 to August  
10 12, 2021.

11 IT IS SO ORDERED.

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13 DATED: \_\_\_\_\_

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15 HONORABLE EDWARD M. CHEN  
16 United States District Court Judge  
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