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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12
 13 AMERICAN FEDERATION OF LABOR AND)
 CONGRESS OF INDUSTRIAL)
 14 ORGANIZATIONS, et al.,)

Case No. 07-4472 CRB

15 Plaintiffs,)

**MOTION
 TO VACATE STATUS
 CONFERENCE**

16 SAN FRANCISCO CHAMBER)
 17 OF COMMERCE, et al.,)

18 Plaintiffs-Intervenors,)

19 and)

20 UNITED FOOD AND COMMERCIAL)
 21 WORKERS INTERNATIONAL UNION, et al.,)

22 Plaintiffs-Intervenors)

23 v.)
 24)

25 MICHAEL CHERTOFF, Secretary of Homeland)
 Security, et al.,)

26 Defendants.)
 27)
 28

1 1. On October 15, 2007, this Court entered a Preliminary Injunction against Defendants.
2 Doc. #137. On November 23, 2007, Defendants filed a Motion to Stay Proceedings Pending
3 New Rulemaking in light of its decision “to conduct additional rulemaking proceedings to
4 address the issues raised by the Court.” Doc. #142. Plaintiffs did not oppose the motion. Doc.
5 #144 (Nov. 27, 2007). On December 14, 2007, this Court granted Defendants’ Motion to Stay
6 Proceedings Pending New Rulemaking (Doc. # 149) and the Court has continued that stay and
7 vacated scheduled Status Conferences four times since then, permitting rulemaking proceedings
8 to continue. Currently, there is a Status Conference Scheduled for October 31, 2008.
9

10 2. On October 23, 2008, Michael Chertoff, Secretary of the Department of Homeland
11 Security, announced the completion of the additional rulemaking proceedings on the Safe Harbor
12 Rule, with the adoption of a Supplemental Final Rule. The Secretary has elected to reaffirm the
13 Safe Harbor Rule, but, in the preamble accompanying the Supplemental Final Rule, the Secretary
14 has addressed the three concerns identified by this Court in its Preliminary Injunction ruling.
15 First, the Secretary has provided a detailed rationale for what the Court perceived as a change in
16 policy as to the relevance of no-match letters to immigration law compliance. Second, the
17 Supplemental Final Rule removes any statements purporting to interpret the anti-discrimination
18 provisions of the immigration laws, the enforcement of which is delegated to the Department of
19 Justice. Third, the Secretary has published a detailed Regulatory Flexibility Analysis, which was
20 subject to public comment, discussing potential costs of the rule to small entities.
21

22 3. After the Supplemental Final Rule has been published in the Federal Register (within
23 approximately two weeks), defendants intend to file the Administrative Record of these
24 supplemental rulemaking proceedings and then move the Court to vacate the injunction and
25 simultaneously to move for summary judgment. Consequently, defendants submit that the status
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1 conference scheduled for October 31, 2008 should be vacated.^{1/}

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3 DATED: October 23, 2008

Respectfully submitted,

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5 GREGORY G. KATSAS
Assistant Attorney General
6 THOMAS H. DUPREE JR.
Deputy Assistant Attorney General

7
8 JOSEPH P. RUSSONIELLO
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9 /s/ Daniel Bensing

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25 ^{1/} Defendants have conferred with counsel for the AFL-CIO plaintiffs and the Chamber
26 plaintiffs on this motion. These parties do not oppose vacating the status hearing set for October 31,
27 2008, but believe that the status hearing should be rescheduled for a date in November. For
28 scheduling purposes, these plaintiffs and the government agreed on November 12th or 21st as
acceptable dates for a status conference, if the Court concludes that a status conference is necessary.
Defendants were unable to contact counsel for the UNITE HERE plaintiffs.

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Certificate of Service

I hereby certify that on this 23rd day of October 2008, I caused to be served by the electronic case filing system a copy of Defendants' Unopposed Motion to Vacate Status Conference upon the following counsel:

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/s/ Daniel Bensing
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Case No. 07-4472 CRB

**[PROPOSED] ORDER
 GRANTING DEFENDANTS'
 MOTION TO
 VACATE STATUS
 CONFERENCE**

**[PROPOSED] ORDER GRANTING DEFENDANTS'
UNOPOSED MOTION TO VACATE STATUS CONFERENCE**

UPON CONSIDERATION of Defendants' Motion to Vacate Status Conference, and for
good cause shown, it is

HEREBY ORDERED that Defendants' Motion to Vacate Status Conference is GRANTED;
and it is

FURTHER ORDERED that the Status Conference scheduled for October 31, 2008 at 8:30
a.m. is hereby vacated.

DATED: _____

UNITED STATES DISTRICT JUDGE

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