

1 Stephen P. Berzon (SBN 46540)  
 2 Scott A. Kronland (SBN 171693)  
 3 Jonathan Weissglass (SBN 185008)  
 4 Linda Lye (SBN 215584)  
 5 Danielle E. Leonard (SBN 218201)  
 6 ALTSHULER BERZON LLP  
 7 177 Post Street, Suite 300  
 8 San Francisco, CA 94108  
 9 Telephone: (415) 421-7151  
 10 Facsimile: (415) 362-8064  
 11 Email: skronland@altshulerberzon.com  
 12 Email: llye@altshulerberzon.com  
 13 Email: dleonard@altshulerberzon.com

8 *Attorneys for Plaintiffs*

9 Jonathan P. Hiatt (SBN 63533)  
 10 James B. Coppess (*Pro Hac Vice* Application forthcoming)  
 11 Ana L. Avendaño (SBN 160676)  
 12 AFL-CIO  
 13 815 Sixteenth Street, N.W.  
 14 Washington, D.C. 20006  
 15 Telephone: (202) 637-5053  
 16 Facsimile: (202) 637-5323  
 17 Email: aavendan@aficio.org

14 *Attorneys for Plaintiff AFL-CIO*

15 (Counsel list continued on next page)

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA

18 AMERICAN FEDERATION OF LABOR AND )  
 19 CONGRESS OF INDUSTRIAL ORGANIZATIONS; )  
 20 SAN FRANCISCO LABOR COUNCIL; SAN )  
 21 FRANCISCO BUILDING AND CONSTRUCTION )  
 22 TRADES COUNCIL; and CENTRAL LABOR COUNCIL )  
 23 OF ALAMEDA COUNTY, )  
 24 Plaintiffs, )  
 25 v. )  
 26 MICHAEL CHERTOFF, Secretary of Homeland Security; )  
 27 DEPARTMENT OF HOMELAND SECURITY; )  
 28 JULIE MYERS, Assistant Secretary of Homeland )  
 Security; U.S. IMMIGRATION AND CUSTOMS )  
 ENFORCEMENT; MICHAEL ASTRUE, Commissioner )  
 of Social Security; and SOCIAL SECURITY )  
 ADMINISTRATION, )  
 Defendants. )

Case No. \_\_\_\_\_

**EX PARTE APPLICATION FOR  
 TEMPORARY RESTRAINING  
 ORDER AND ORDER TO SHOW  
 CAUSE WHY PRELIMINARY  
 INJUNCTION SHOULD NOT  
 ISSUE**

1 (Counsel list continued from first page)

2 Linton Joaquin (SBN 73547)  
3 Marielena Hincapié (SBN 188199)  
4 Monica T. Guizar (SBN 202480)  
5 NATIONAL IMMIGRATION LAW CENTER  
6 3435 Wilshire Blvd., Suite 2850  
7 Los Angeles, CA 90010  
8 Telephone: (213) 674-2850  
9 Facsimile: (213) 639-3911  
10 Email: guizar@nilc.org

11 Lucas Guttentag (SBN 90208)  
12 Jennifer C. Chang (SBN 233033)  
13 Mónica M. Ramirez (SBN 234893)  
14 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
15 Immigrants' Rights Project  
16 39 Drumm Street  
17 San Francisco, CA 94111  
18 Telephone: (415) 343-0770  
19 Facsimile: (415) 395-0950  
20 E-mail: jchang@aclu.org

21 Omar C. Jadwat (*Pro Hac Vice* Application forthcoming)  
22 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
23 Immigrants' Rights Project  
24 125 Broad Street, 18th Floor  
25 New York, NY 10004  
26 Telephone: (212) 549-2620  
27 Facsimile: (212)-549-2654  
28 Email: ojadwat@aclu.org

29 Alan L. Schlosser (SBN 49957)  
30 Julia Harumi Mass (SBN 189649)  
31 ACLU FOUNDATION OF NORTHERN CALIFORNIA  
32 39 Drumm Street  
33 San Francisco, CA 94111  
34 Telephone: (415) 621-2493  
35 Facsimile: (415) 255-1478  
36 E-mail: aschlosser@aclu.org

37 *Attorneys for Plaintiff Central Labor Council of Alameda County*

38 David A. Rosenfeld (SBN 58163)  
39 Manjari Chawla (SBN 218556)  
40 WEINBERG, ROGER & ROSENFELD  
41 A Professional Corporation  
42 1001 Marina Village Parkway, Suite 200  
43 Alameda, California 94501-1091  
44 Telephone: (510) 337-1001  
45 Facsimile: (510) 337-1023  
46 Email: drosenfeld@unioncounsel.net

47 *Attorneys for Plaintiffs San Francisco Labor Council,*  
48 *San Francisco Building and Construction Trades Council,*  
*and Central Labor Council of Alameda County*

1       **EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER**  
2       **TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

3           Plaintiffs hereby request, pursuant to FRCP 65 and Civil Local Rules 7-10 and 65-1, that the  
4       Court issue a temporary restraining order and an order to show cause why a preliminary injunction  
5       should not issue.

6                               **NEED FOR TEMPORARY RESTRAINING ORDER**

7           On August 15, 2007, the Department of Homeland Security (“DHS”) published a Final Rule  
8       that would commandeer the Social Security tax system for immigration-enforcement purposes. The  
9       new rule would place millions of U.S. citizens and non-citizens with work authorization at risk of  
10      losing their jobs because of discrepancies in the Social Security Administration (“SSA”) tax  
11      database. The new rule becomes legally effective on September 14, 2007, but DHS and SSA plan to  
12      jump the gun by beginning on September 4, 2007 to mail SSA “no-match” letter packets to  
13      employers that will include a separate DHS guidance letter about compliance with the new rule.

14           The SSA generates no-match letters to employers when names and Social Security Numbers  
15      (“SSNs”) submitted by the employer on Forms W-2 cannot be matched with SSA records. The  
16      DHS guidance letter will inform employers that they face civil and criminal liability under the  
17      immigration laws unless they address the no-match letter and that workers should be fired if the no-  
18      match cannot be resolved with SSA within 90 days.

19           The initial round of SSA/DHS mailings to employers is scheduled to run from September 4  
20      to November 9, 2007. This round of mailings would reach about 140,000 employers and affect  
21      about eight million employees. It would be the first time that the SSA’s Earnings Suspense File, an  
22      error-prone database that contains more than 255 million mismatched records, has been used as an  
23      immigration-enforcement tool. The SSA receives about 8 to 11 million earnings reports per year  
24      that fail to match with SSA records. There are many reasons for mismatches that are unrelated to  
25      unauthorized work, so a no-match is not an indication of immigration status. When the SSA has  
26      been able to reconcile no-matches, most involved U.S. citizens.

27           This lawsuit contends that the new DHS rule is invalid because it is contrary to the  
28      governing statute adopted by Congress. This lawsuit further contends that DHS and SSA are





1 employees, and attorneys, and all persons acting by, through, under, or in concert with them, from  
2 taking any action to implement the Final Rule adopted by the Department of Homeland Security  
3 entitled "Safe Harbor Procedures For Employers Who Receive a No-Match Letter," 77 Fed. Reg.  
4 45611 (Aug. 15, 2007), including by causing to be mailed Social Security Administration no-match  
5 letters that are accompanied by the Department of Homeland Security guidance letter about the  
6 Final Rule.

7 2. The Court should issue an order to show cause why a preliminary injunction should  
8 not issue to enjoin Defendants from implementing the Final Rule and set a hearing on the motion for  
9 a preliminary injunction for before September 14, 2007, when the Final Rule would become legally  
10 effective.

#### 11 **SUPPORTING DOCUMENTS**

12 The motion is based on this Ex Parte Application and the following documents that are  
13 being filed herewith: the Complaint For Injunctive And Declaratory Relief; the Memorandum of  
14 Points and Authorities in Support of Motion for Temporary Restraining Order and Preliminary  
15 Injunction; the Declarations of Kenneth S. Apfel, Ana Avendaño, Linda Chavez-Thompson, Laura  
16 Foote Reiffe, Tyler Moran, Nik Theodore in Support of Temporary Restraining Order and  
17 Preliminary Injunction; the Declaration of Notice to Opposition; the Request for Judicial Notice; the  
18 Declaration in Support of Request for Judicial Notice; the Motion to Exceed Page Limitations; the  
19 Declaration in Support of Motion to Exceed Page Limitations; the [Proposed] Order Granting  
20 Motion to Exceed Page Limitations; and the accompanying [Proposed] Temporary Restraining  
21 Order And Order To Show Re: Preliminary Injunction; the complete files and records of this action;  
22 and such other and further matters as the Court may properly consider.

23  
24 Dated: August 28, 2007

Respectfully submitted

25 Stephen P. Berzon  
26 Scott A. Kronland  
27 Jonathan Weissglass  
28 Linda Lye  
Danielle E. Leonard  
ALTSHULER BERZON LLP

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Jonathan P. Hiatt  
James B. Coppess  
Ana Avendaño  
AFL-CIO

Linton Joaquin  
Marielena Hincapié  
Monica T. Guizar  
NATIONAL IMMIGRATION LAW CENTER

Lucas Guttentag  
Jennifer C. Chang  
Mónica M. Ramírez  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION

Omar C. Jadwat  
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Alan L. Schlosser  
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ACLU FOUNDATION OF NORTHERN CALIFORNIA

David A. Rosenfeld  
Manjari Chawla  
WEINBERG, ROGER & ROSENFELD

by:   
Scott A. Kronland

Attorneys for Plaintiffs