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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **GENESIS B.**, a minor, by and through
16 her Guardian, G.P.; et al.

17 **Plaintiffs,**

18 **vs.**

19 **The UNITED STATES**
20 **ENVIRONMENTAL PROTECTION**
21 **AGENCY;** et al.

22 **Defendants.**

23 **Case No.: 2:23-CV-10345-MWF-**
24 **AGR**

25 **PLAINTIFFS’ RESPONSE TO**
26 **DEFENDANTS’ NOTICE OF**
27 **SUPPLEMENTAL AUTHORITY**
28 **[47]**

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1 The May 1 Ninth Circuit order in *Juliana v. United States*, No. 24-684 (May
2 1, 2024), does not control the redressability analysis of Plaintiffs’ ongoing and
3 prospective injuries and claims for relief in the present case for several reasons.¹

4 *First*, as opposed to the Complaint in the instant action, the *Juliana* Ninth
5 Circuit panels of January 2020 and May 2024 reviewed, after the district court’s
6 order on summary judgment:

- 7 • a different complaint,
- 8 • with different injuries,
- 9 • with different bases for causation,
- 10 • challenging different actions of the defendants there, and,
- 11 • critically, focused on the *Juliana* plaintiffs’ *past* injuries.

12 *Second*, the May 1 Ninth Circuit order describes the *Juliana* plaintiffs’ claims
13 as the United States government “failing to adequately respond to the threat of
14 climate change.” Mandamus Order at 2. In January 2020, the Ninth Circuit majority
15 described the actions challenged as “beneficial tax provisions, permits for imports
16 and exports, subsidies for domestic and overseas projects, and leases for fuel
17 extraction on federal land.” *Juliana v. United States*, 947 F.3d 1159, 1167 (9th Cir.
18 2020). The January 2020 opinion delineated:

19 The programs and policies identified by the plaintiffs include: (1) the
20 Bureau of Land Management’s authorization of leases for 107 coal
21 tracts and 95,000 oil and gas wells; (2) the Export-Import Bank’s
22 provision of \$14.8 billion for overseas petroleum projects; (3) the
23 Department of Energy’s approval of over 2 million barrels of crude oil
24 imports; (4) the Department of Agriculture’s approval of timber cutting
25 on federal land; (5) the under valuing of royalty rates for federal
26 leasing; (6) tax subsidies for purchasing fuel-inefficient sport-utility
27 vehicles; (7) the “intangible drilling costs” and “percentage depletion
28 allowance” tax code provisions, 26 U.S.C. §§ 263(c), 613; and (8) the

¹ The Juliana Plaintiffs are preparing a petition for rehearing *en banc* of the
mandamus order.

1 government's use of fossil fuels to power its own buildings and
2 vehicles.

3 *Id.* at 1167 n.4. Here, the *Genesis* Plaintiffs challenge the *ongoing* ubiquitous
4 discriminatory discounting and other economic practices of the U.S. EPA that
5 substantially disadvantage children and the disparate harm to Plaintiffs (and
6 Children as a group) from EPA intentionally allowing life-threatening levels of
7 climate pollution through its systematic programs and practices. Compl. ¶¶ 104, 278-
8 306. Plaintiffs' Complaint here does not challenge "a failure to respond to climate
9 change," but EPA's substantial role in causing climate change. Plaintiffs here allege,
10 "Defendants intentionally discriminate against Children by discounting the value of
11 their lives and their future when making decisions about climate pollution." Compl.
12 ¶ 348. "The decades-long systemic pattern and practice of using discount rates that
13 discriminate against Children has contributed to decisions by EPA that have allowed
14 and continue to allow high levels of climate pollution to enter the air." Compl. ¶ 289.
15 Without a declaration that these ubiquitous discriminatory practices and
16 substantially disparate effects are a violation of the Equal Protection Clause, going
17 forward, "Children's health will decline further. Each of the injuries detailed [in the
18 Complaint] will worsen substantially as our Nation bakes." Compl. ¶ 324; *See also*
19 MTD Hr'g Tr. at 17-18 (comparing worsening injuries and necessary court
20 intervention to Flint water crisis). "The unfairness of the treatment of Children and
21 the higher burden of harm they bear than adults results in unjustified inequality and
22 violates any notion of fairness." Compl. ¶ 349. The Ninth Circuit opinions do not
23 speak to these allegations or claims.

24 *Third*, the only way to read the Ninth Circuit's January 2020 and May 2024
25 opinions in a manner that conforms with longstanding Supreme Court precedent on
26 declaratory judgments, and *Uzuegbunam v. Preczewski*, 592 U.S. 279 (2021), is that
27 these decisions held declaratory relief would not remediate the *Juliana* plaintiffs'

1 *past* climate change injuries. *Juliana*, 947 F.3d at 1170 (citing *Steel Co.*). The May
2 1 Order makes this point clear: “[t]he Juliana plaintiffs do not seek damages but seek
3 only prospective relief [for past injuries.]” Mandamus Order at 4 (implying their
4 analysis would have been different for nominal damages). The May 1 Order also
5 held the Court “could not ‘step into the[] shoes’ of the political branches to provide
6 the relief the Juliana plaintiffs sought,” which was a comprehensive remedial plan,
7 relief not sought in this case. Mandamus Order at 3; *see Juliana*, 947 F.3d at 1170
8 (“The crux of the plaintiffs’ requested remedy is an injunction requiring the
9 government . . . to prepare a plan subject to judicial approval to draw down harmful
10 emissions.”); Compl. Prayer (seeking specific declarations to resolve constitutional
11 controversies at issue and end the unconstitutional discriminatory practices toward
12 Children going forward).

13 *Fourth*, the January 2020 and May 2024 opinions did not address the
14 redressability of Equal Protection Clause violations at all or any claims regarding
15 intentional discrimination and disparate impact against Children as a group entitled
16 to constitutional sensitivity, as alleged in the instant case. *See* Compl. ¶¶ 128-35. Nor
17 do the Ninth Circuit opinions address the unique and vulnerable characteristics of
18 Children, as alleged here, who unlike adults do not possess economic influence or
19 the requisite degree of political power to influence the Executive and Legislative
20 branches. *See* Compl. ¶¶ 132, 180, 344; compare *Juliana*, 947 F.3d at 1175 (referring
21 plaintiffs to the electorate at large, of which children under 18 are not a part, to
22 “change the composition of the political branches through the ballot box.”). To
23 foreclose a judicial solution to these Children, who cannot escape the discriminatory
24 practices of EPA and the forthcoming climate pollution it allows, is to create an
25 impenetrable barrier to ending ongoing violations of their fundamental rights to life
26 and equal protection of the law. Compl. ¶¶ 145, 166, 175, 214, 214, 218, 245-47,
27

1 348-49, 340 (“Plaintiffs, as Children, will face an insurmountable burden in securing
2 their rights.”)

3 *Fifth*, the May 1 Order affirms that “[d]eclaratory relief is prospective,” Order
4 at 4, and prospective declaratory relief is what Plaintiffs seek here. Compl. ¶ 334.
5 Plaintiffs allege EPA is discriminating against Children by EPA’s exclusive control
6 and management of present and future air pollution, which includes using a discount
7 rate that values the lives of children as less than adults. Compl. ¶¶ 104-05; MTD
8 Hr’g Tr. at 8. Plaintiffs face ongoing and prospective harm that is substantially likely
9 to be mitigated by declaratory relief because “[t]he discount rates EPA has used in
10 its RIAs, and continues to use, purposely devalue the long-term harm of climate
11 pollution, and the benefit of controlling and abating that pollution, on Children.”
12 Compl. ¶ 289, 354 (“Plaintiffs will continue to be harmed in worsening ways over
13 the course of their young lives, depriving them of equal protection of the law.”). If
14 EPA ceases using discount rates that devalue Children and long-term harms of
15 climate pollution, in compliance with a declaratory judgment, then greenhouse gas
16 pollution will decrease. Compl. ¶¶ 329-34. As alleged and to be taken as true here,
17 every ton of climate pollution reduced lessens Plaintiffs’ ongoing and prospective
18 physical, developmental injuries, and constitutional harms. *See* Compl. ¶ 320. Our
19 federal courts know how to review government conduct that treats one group of
20 people as worth less than others under the Equal Protection Clause and our federal
21 courts know how to apply special constitutional sensitivity when Children are
22 injured from systems of discrimination.

23 In conclusion, declaratory judgment in the instant case would require EPA, at
24 minimum, to cease its discriminatory actions against Children, including its
25 application of the discriminatory discount rate in “ubiquity,” a judgment that would
26 require no “further court action” because EPA concedes “the government complies
27 with declaratory judgments entered by the courts.” MTD at 16, ECF No. 37;

1 Mandamus Order at 3; MTD Reply at 11, ECF No. 43.² As both Plaintiffs’ brief and
2 oral argument established, courts routinely hear cases alleging discrimination as
3 Plaintiffs ask this Court to do here. Opp’n to MTD at 15, ECF No. 37; MTD Hr’g
4 Tr. at 21-22. Both *Juliana* panels focused on different types of government conduct,
5 different Defendants, past injuries, and did not review or decide whether a
6 declaratory judgment here, holding that EPA’s concrete discriminatory practices
7 violate the Equal Protection Clause and Plaintiffs’ right to life, would provide
8 significant prospective redress to these Children’s risk of future injury. It would end
9 the discriminatory and life-threatening practices against Children, including
10 Plaintiffs. Nothing in the May 1 Order or the January 2020 *Juliana* opinion overturn
11 long-standing precedent and foreclose Article III courts from reviewing
12 discriminatory governmental practices where plaintiffs seek declaratory relief to
13 alleviate ongoing and prospective injuries.

14
15 DATED this 3rd day of May, 2024.

16
17 Respectfully submitted,

18 s/ Julia A. Olson

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22 ² Here, on a motion to dismiss, without a fully developed factual record, the
23 Plaintiffs need not show precisely how their prospective injuries will be redressed
24 by EPA stopping its discriminatory practices, but merely that the declaratory relief
25 requested is “likely” to at least partially redress some of Plaintiffs’ injuries. *Larson*
26 *v. Valente*, 456 U.S. 228, 243 n.15 (1982). The allegations support, and discovery
27 will bear out, that declaring Plaintiffs’ rights and EPA’s discrimination against
28 Children, will provide enormously meaningful relief for how these Children are
treated going forward when it comes to climate pollution EPA allows.

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