

JULIA A. OLSON (OR Bar 062230)  
julia@ourchildrenstrust.org  
Our Children's Trust  
1216 Lincoln Street  
Eugene, OR 97401  
Tel: (415) 786-4825

ANDREA K. RODGERS (OR Bar 041029)  
andrea@ourchildrenstrust.org  
Our Children's Trust  
3026 NW Esplanade  
Seattle, WA 98117  
Tel: (206) 696-2851

PHILIP L. GREGORY (*pro hac vice*)  
pgregory@gregorylawgroup.com  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062  
Tel: (650) 278-2957

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**KELSEY CASCADIA ROSE JULIANA;**  
**XIUHTEZCATL TONATIUH M.,** through his  
Guardian Tamara Roske-Martinez; et al.,

Plaintiffs,

v.

**The UNITED STATES OF AMERICA;** et al.,

Defendants.

Case No.: 6:15-cv-01517-AA

**DECLARATION OF JULIA A. OLSON in  
Support of Plaintiffs' Opposition to  
Defendants' Motion for Extension of Time  
to Respond to Plaintiffs' Motion for Leave  
to File an Amended Complaint**

I, Julia A. Olson, hereby declare and if called upon would testify as follows:

1. I am an attorney of record in the above-entitled action. I make this Declaration in support of Plaintiffs' Opposition to Defendants' Motion for Extension of Time to Respond to Plaintiffs' Motion for Leave to File an Amended Complaint ("Motion to Amend"). I have personal knowledge of the facts stated herein, except as to those stated upon information and belief, and if called to testify, I would and could testify competently thereto.
2. On March 5, 2021, immediately after the Ninth Circuit issued the mandate, Doc. 461, Phil Gregory and I met and conferred via telephone with attorney Andy Mergen, our primary DOJ contact at the time, regarding our Motion to Amend. Immediately that day, upon Andy Mergen's recommendation, we contacted Sean Duffy to further meet and confer. I, along with Phil Gregory and Andrea Rodgers, then met and conferred with Sean Duffy and Frank Singer at their earliest convenience on March 8 regarding Plaintiffs' Motion to Amend. On March 11, Phil Gregory and I also met and conferred with Sean Duffy and Erika Norman regarding Defendants' Motion for Extension.
3. During the March 8, 2021 meet and confer concerning Plaintiffs' Motion to Amend, counsel for Defendants stated that Defendants would oppose Plaintiffs' Motion. Again during the March 11, 2021 meet and confer, Sean Duffy reiterated that Defendants would still oppose the motion. When I inquired, Sean Duffy indicated that the Supreme Court's decision in *Uzuegbunam v. Preczewski* did not alter Defendants' position, that he would advise his clients to oppose the motion, and did not believe consultation would result in a change of position.
4. Defendants have four trial attorneys working on this matter (Sean Duffy, Frank Singer, Erika Norman and Clare Boronow), as well as at least three attorneys in the appellate

division of the Environment and Natural Resources Division (ENRD), the acting Assistant Attorney General for ENRD, and attorneys in the Solicitor General's office.

5. Plaintiffs are under time constraints in needing a prompt decision on their Motion to Amend because, should this Court deny amendment, Plaintiffs intend to file a Petition for a Writ of Certiorari to the Supreme Court, which is due on July 12. Plaintiffs considered moving to expedite their Motion to Amend in light of that July 12 deadline and forewent that motion to expedite in order to allow Defendants their full two weeks to consider and respond to the Motion to Amend per local rules, and the Court time to carefully review the briefing.
6. On January 20, 2021, counsel for Plaintiffs sent a letter to the Department of Justice ("DOJ") asking for a meeting with the relevant decision-makers in the new administration about this case to see if their defense of the case and legal position on standing might change. The letter is attached as Exhibit A.
7. On January 29, 2021, counsel for Plaintiffs sent a follow-up letter to the DOJ after President Biden signed his Executive Order on Tackling the Climate Crisis, again asking for a meeting with decision-makers and our clients to discuss the case going forward. The letter is attached as Exhibit B. Counsel for Plaintiffs understand from DOJ counsel Andy Mergen that these communications have been forwarded to the relevant decision-makers.
8. Notwithstanding these attempts to communicate with the new administration, Plaintiffs have not received a response to their outreach. On information and belief, we are aware that in dozens of other climate and environmental cases in the federal courts, the DOJ has promptly filed papers to reverse the position of the prior administration and met with plaintiffs bringing those cases. Plaintiffs remain interested in and willing to meet with

Defendants to discuss narrowing the issues in dispute in the next steps in this litigation as well as exploring the prospect of settlement discussions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 17, 2021.

Respectfully submitted,

/s/ Julia A. Olson  
Julia A. Olson

# Exhibit A



January 20, 2021

*Via Email Only*

Andrew C. Mergen  
Sommer H. Engels  
Robert J. Lundman  
Environment and Natural Resources Division  
U.S. Department of Justice  
andy.mergen@usdoj.gov  
sommer.engels@usdoj.gov  
robert.lundman@usdoj.gov

**Re: Juliana v. United States, No. 18-36082, Request for Client Meeting and Settlement**

Dear Andy, Sommer, and Robert,

We are writing to you on behalf of our youth clients, Kelsey Cascadia Rose Juliana and her 20 co-plaintiffs and Earth Guardians, to request a meeting with the Department of Justice and the incoming principals who will assume positions as defendants or defendant representatives in the constitutional climate case, *Juliana v. United States*. Our youth clients have listened closely to the promises of the incoming administration. Based on those assurances to the youth of our nation to address the climate crisis, we would like this meeting to discuss our clients' request that your clients agree to enter into settlement discussions utilizing the Ninth Circuit Alternative Dispute Resolution Program or a settlement judge at the district court. Given the Biden-Harris administration's understanding of the climate crisis, we believe a meeting would assist the parties in determining whether the constitutional infringements to these 21 young people can be resolved by agreement of the parties and an order of the court, or whether the youth must continue seeking to secure their rights through litigation.

As you know, *Juliana* has an *en banc* petition pending before the Ninth Circuit Court of Appeals, Case No. 18-36082, since March 2020. This petition follows a 2-1 interlocutory appeal decision that found the plaintiffs "presented compelling evidence" that the government is causing the youth's climate injuries sufficient to overcome the government's motion for summary judgment on standing, but that the youth did not satisfy the redressability requirement for Article III standing. On redressability, the majority ruled, in the face of a striking dissenting opinion, that a declaratory judgment to resolve the ongoing constitutional controversy over the youths' alleged Fifth Amendment infringements did not suffice for Article III standing. On all other issues raised in the interlocutory appeal, the youth plaintiffs prevailed.

We believe incoming defendants from the Biden-Harris administration and DOJ should agree to meet with the youth in this critically important case and correct the wrongful legal

positions of the prior administration and the resulting adverse opinion in the Ninth Circuit for the following reasons:

1. These young Americans, who continue to be increasingly harmed by our government's role in causing the climate crisis, have a live controversy with their government over their Fifth Amendment substantive due process rights to life, liberty, property, and equal protection of the law. Declaratory relief has long served to resolve such constitutional controversies. Declaratory relief in a constitutional case has been a stalwart of our democracy since *Marbury v. Madison*. Indeed, Congress passed the Declaratory Judgment Act ("DJA") in 1934 to codify the power of Article III courts to "declare the rights and other legal relations of any interested party seeking such declaration, **whether or not further relief is or could be sought.**" 28 U.S.C. § 2201.
2. By reversing the prior administration's strategy of closing the courthouse doors to children and denying parties an opportunity to create an evidentiary record at trial, the Biden-Harris administration can re-legitimize the judiciary as a place where facts and science matter, and where "separation of powers" is used as a constitutional check on the political branches of government to better preserve liberty, rather than insulating the political branches from judicial review when their conduct invades liberty.
3. The rights and health of children deserve special consideration and must be at the forefront of legal and policy decisions made by the Biden-Harris administration. Only a court order, after trial or by consent decree, can withstand the test of time for these children's rights. As Youth Poet Laureate, Amanda Gorman, beautifully stated at today's historic inauguration of President Joseph R. Biden and Vice President Kamala D. Harris:

*When day comes, we ask ourselves:  
Where can we find light  
In this never-ending shade?  
The loss we carry, a sea we must wade.*

President Joseph R. Biden, in his inaugural speech today, echoed the sentiment of dissenting Judge Josephine L. Staton, who wrote:

*Were we addressing a matter of social injustice, one might sincerely lament any delay, but take solace that "the arc of the moral universe is long, but it bends towards justice." The denial of an individual, constitutional right— though grievous and harmful—can be corrected in the future, even if it takes 91 years. And that possibility provides hope for future generations.*

*Where is the hope in today's decision? Plaintiffs' claims are based on science, specifically, an impending point of no return. If plaintiffs' fears, backed by the government's own studies, prove true, history will not judge us kindly. When the seas envelop our coastal cities, fires and droughts haunt our interiors, and storms ravage everything between, those remaining will ask: Why did so many do so little?*

*I would hold that plaintiffs have standing to challenge the government's conduct, have articulated claims under the Constitution, and have presented sufficient evidence to press those claims at trial. I would therefore affirm the district court.*

*With respect, I dissent.*

The incoming administration committed to address the climate crisis, the issue President Biden called “the existential challenge that’s going to determine our future as a country for our children, our grandchildren, and our great grandchildren.” Confronting the climate crisis is one of the Biden-Harris administration’s top four priorities. Our clients respectfully request that your clients come to a virtual meeting to listen to the youths’ evidence and consider the meaningful step of agreeing to settlement talks with the *Juliana* youth plaintiffs and their experts as one of the administration’s first significant acts to tackle the climate crisis and environmental injustice. To that end, we urge you to address this matter as soon as possible given that the *Juliana* case is currently in the Ninth Circuit awaiting a decision on a petition for *en banc* rehearing.

We attach the 2-1 Ninth Circuit decision and the *Juliana* youths’ petition for rehearing *en banc* for your new clients’ review and consideration. We respectfully request that this letter also be transmitted to the members of the President’s climate task force.

Thank you for your prompt attention on this important matter. We and our clients look forward to working with the Department of Justice and the Biden-Harris administration to resolve this constitutional controversy and begin redressing the climate crisis forthwith.

Best regards,

/s/

Julia A. Olson  
Philip L. Gregory  
Andrea Rodgers

Counsel for the *Juliana* Plaintiffs

#### Attachments

cc:	Kelsey Juliana	Kiran Oommen	Journey Zephier
	Xiuhtezcatl Martinez	Tia Hatton	Vic Barrett
	Alex Loznak	Isaac Vergun	Nathan Baring
	Jacob Lebel	Miko Vergun	Aji Piper
	Zealand B.	Hazel V.	Levi D.
	Avery M.	Sophie Kivlehan	Jayden F.
	Sahara V.	Jaime Butler	Nick Venner



## Exhibit B



January 29, 2021

*Via Email Only*

Jean Williams, Acting Deputy Assistant Attorney General  
Andrew C. Mergen  
Sommer H. Engels  
Robert J. Lundman  
Environment and Natural Resources Division  
U.S. Department of Justice  
jean.williams@usdoj.gov  
andy.mergen@usdoj.gov  
sommer.engels@usdoj.gov  
robert.lundman@usdoj.gov

Re: ***Juliana v. United States, No. 18-36082, and EO 13990, Executive Order on Tackling the Climate Crisis at Home and Abroad***

Dear Deputy Williams, Mr. Mergen, Ms. Engels, and Mr. Lundman,

We first wanted to thank you for your attention to our letter of January 20, 2021 in which we requested a meeting between our respective clients and counsel to discuss settlement and the position of the Biden-Harris administration on Article III standing and the availability of declaratory relief in the constitutional controversy raised in *Juliana v. United States*.

Since our January 20 letter, we have reviewed Executive Order 13990 and the January 27, 2021 Executive Order on Tackling the Climate Crisis at Home and Abroad (“Climate Crisis EO”). The Biden-Harris administration’s policies and directives set forth in these Executive Orders provide additional support for our requested meeting and the Department of Justice’s obligation to reevaluate its legal position in *Juliana*.

The Climate Crisis EO declares that the United States faces “a profound climate crisis” with a “narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents.” It admits “we face a climate crisis that threatens our people and communities, public health and economy, and, starkly, **our ability to live on planet Earth**. . . . [and] the peril [ ] is already evident.” Sec. 201 (emphasis added). The Climate Crisis EO confirms that “we must combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government” by deploying “the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy.” Sec. 201. It calls for all of the named defendants in *Juliana* to work in a coordinated effort and with comprehensive planning to use existing authorities to address the crisis. Sec. 202-211. Importantly, the Climate Crisis EO calls for securing environmental justice for communities and people that

have historically borne the overburdens of climate harms, pollution, and health impacts. Sec. 219. Many of the *Juliana* plaintiffs, of whom 11 are Brown, Black and Indigenous, are youth who have experienced these disproportionate harms in their communities and as a function of their status as children who are physiologically and developmentally more vulnerable to these injuries.

Significantly, the Climate Crisis EO makes repeated calls to “listen to science” and to “put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050” and U.S. leadership to achieve the objective of “a safe global temperature.” See Sec. 201. However, the Climate Crisis EO does not define what U.S. emission reductions or sequestration targets should be and does not define “net zero” or “safe global temperature.” A science-based, targeted “approach to combat the climate crisis” is the heart of the constitutional claims in *Juliana* because these young plaintiffs know that their fundamental constitutional rights to life, liberty, and property depend on science-based energy and climate policy tied to “safe global temperature” and atmospheric carbon dioxide levels that will restore Earth’s energy balance and stabilize the climate system. These youth have been pursuing vindication of their Fifth Amendment rights for over five years as the narrow moment to pursue action to avoid the most catastrophic impacts of the climate crisis is swiftly closing. All the while, their government perpetuated the systemic harm to their rights and the prior administration, under the leadership of former Assistant Attorney General of ENRD Jeffrey Bossert Clark, skirted ordinary litigation processes to move *Juliana* into the appellate courts’ “Shadow Dockets.” The young plaintiffs’ fundamental rights, already infringed, their lives and ability to safely live on planet Earth, already harmed, implore a meeting of the parties to explore redress. While the Executive Orders are a strong step in the right direction, as we have learned during the Trump Administration, they amount to unimplemented policy subject to political change, not enforceable constitutional rights that will withstand the test of time and the fierce urgency of now.

Regarding the Department of Justice’s specific role in carrying out the policy directives of the Executive Orders, the Climate Crisis EO directs the Attorney General to have the ENRD coordinate with the EPA and other client agencies to “provide timely remedies for systemic environmental violations . . . and injury to natural resources” and “ensure comprehensive attention to environmental justice.” Sec. 222(c). Further, Executive Order 13990, Section 1, provides policy directive that applies to the Department of Justice that “Our Nation has an abiding commitment to . . . promote and protect our public health and the environment. . . . Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice. In carrying out this charge, the Federal Government must be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making. It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; . . . to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change. . . .”

Section 1 further provides: “To that end, this order directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.”

Section 2(d) “The Attorney General may, as appropriate and consistent with applicable law, provide notice of this order and any actions taken pursuant to section 2(a) of this order to any court with jurisdiction over pending litigation related to those agency actions identified pursuant to section (2)(a) of this order, and may, in his discretion, request that the court stay or otherwise dispose of litigation, or seek other appropriate relief consistent with this order, until the completion of the processes described in this order.”

Given the admissions in the Executive Orders that align with the factual and legal allegations in *Juliana*, and given the evidence of viable federal remedies and the directive to all Defendants and the Department of Justice to address the “actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis,” we ask the Department to set a meeting of the parties in *Juliana* to discuss the status of the litigation and options for redressing the constitutional climate claims forthwith.<sup>1</sup> As you know, since March 2020, *Juliana* has an *en banc* petition pending before the Ninth Circuit Court of Appeals, Case No. 18-36082, which may be decided any day now. Before ruling, the Court should hear from the Justice Department on the viability of redress in this constitutional case via declaratory relief and beyond. The parties also could agree to utilize the Ninth Circuit Alternative Dispute Resolution Program (<https://www.ca9.uscourts.gov/mediation/>) or a settlement judge at the district court (<https://ord.uscourts.gov/index.php/attorneys/adr>).

President Biden made an imperative, unequivocal assertion: “We must listen to science -- and act.” Sec. 210. Science informs both the determination of whether the youths’ constitutional rights have been infringed and the standard that would cabin and guide government conduct to act within constitutional bounds. The declaration of that right can be made by the courts or as the result of settlement by the parties.

On January 27, 2021, before signing the Climate Crisis EO, President Biden announced: “My message to those young people is: You have the full capacity and power of the federal government. Your government is going to work with you.”

In the spirit of the Climate Crisis EO, our young clients and we as their counsel look forward to working with our government and the Department of Justice to resolve this constitutional controversy presented in *Juliana* and begin redressing the climate crisis forthwith.

Best regards,

/s/

Julia A. Olson  
Philip L. Gregory  
Andrea Rodgers

Counsel for the *Juliana* Plaintiffs

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<sup>1</sup> Letter from Melissa A. Hoffer, Acting General Counsel of EPA, to Jean E. Williams and Bruce S. Gelber, Deputy Assistant Attorneys General (Jan. 21, 2021).

cc: Kelsey Juliana  
Xiuhtezcatl Martinez  
Alex Loznak  
Jacob Lebel  
Zealand B.  
Avery M.  
Sahara V.

Kiran Oommen  
Tia Hatton  
Isaac Vergun  
Miko Vergun  
Hazel V.  
Sophie Kivlehan  
Jaime Butler

Journey Zephier  
Vic Barrett  
Nathan Baring  
Aji Piper  
Levi D.  
Jayden F.  
Nick Venner