

1 CHAD A. READLER
 Principal Deputy Assistant Attorney General
 2 BRIAN STRETCH
 United States Attorney
 3 JOHN. R. TYLER
 Assistant Branch Director
 4 BRAD P. ROSENBERG (DC Bar #467513)
 Senior Trial Counsel
 5 STEPHEN M. PEZZI (DC Bar #995500)
 KATE BAILEY (MD. Bar #1601270001)
 6 Trial Attorneys
 United States Department of Justice
 8 Civil Division, Federal Programs Branch
 20 Massachusetts Avenue, N.W.
 9 Washington, DC 20530
 Telephone: (202) 514-3374
 10 Facsimile: (202) 616-8460
 E-mail: brad.rosenberg@usdoj.gov
 11

12 *Attorneys for Defendants*

13
14 **UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

15
16 REGENTS OF UNIVERSITY OF
17 CALIFORNIA and JANET NAPOLITANO, in
her official capacity as President of the
18 University of California,

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT OF
22 HOMELAND SECURITY and ELAINE
DUKE, in her official capacity as Acting
23 Secretary of the Department of Homeland
Security,

24 Defendants.
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No. 3:17-cv-05211-WHA
No. 3:17-cv-05235-WHA
No. 3:17-cv-05329-WHA
No. 3:17-cv-05380-WHA
No. 3:17-cv-05813-WHA

**DEFENDANTS' EMERGENCY MOTION
TO STAY DISCOVERY AND RECORD
COMPLETION IN ALL DACA CASES**

Judge: Honorable William Alsup
Hearing: None Requested, or Thursday,
November 30, at 8:00 a.m. or as soon as
counsel may be heard
Courtroom 8

1 “complete” the administrative record in various respects, including through the disclosure of
2 privileged documents, and requires the submission of an additional privilege log and the
3 submission of additional documents identified as privileged for in-camera review. This Court
4 then entered an Order to Compile Supplement Forthwith. *See* ECF No. 80.

5 Defendants filed a petition for a writ of mandamus with the Ninth Circuit on October
6 20, 2017. *See* ECF No. 86. On October 24, 2017, the Ninth Circuit issued an order staying both
7 discovery and record supplementation in the district court. That stay was lifted when the Ninth
8 Circuit issued its order denying defendants’ mandamus petition on November 16, 2017. Shortly
9 thereafter, this Court issued an Order requiring the Defendants to complete the administrative
10 record by November 22, 2017, at Noon PST. ECF No. 188.

11 On November 17, 2017, Defendants filed a motion for a stay with the Ninth Circuit (9th
12 Cir. Stay Motion, attached hereto as Ex. A). That motion indicated that Defendants “will file an
13 application seeking a further stay of all discovery and record expansion pending a petition for
14 mandamus or a writ of certiorari from the Supreme Court no later than November 20, 2017.” *Id.*
15 The next day, the Ninth Circuit entered a scheduling order requiring a response to the stay
16 motion by noon PST on Monday, November 20, 2017, and an optional reply by 5:00 p.m. PST
17 on Monday, November 20, 2017. *See* Ninth Circuit Order, attached hereto as Ex. B. The court
18 also asked the parties to address “whether the court has jurisdiction to grant a stay of
19 proceedings, or whether the motion for a stay should instead be filed in the district court.” Ex. B
20 at 2 (citing *Ellis v. U.S. District Court*, 360 F.3d 1022 (9th Cir. 2004) (en banc)).

21 While Defendants continue to pursue a stay before the Ninth Circuit, Defendants are also
22 now seeking relief from this Court. In accordance with Supreme Court Rule 23.3, Defendants
23 respectfully request that this Court stay its Case Management Order to the extent that Order
24 requires the parties to engage in discovery (ECF No. 49), as well as its Order to Complete the
25 Administrative Record (ECF No. 79), as modified by its Order to Compile (ECF No. 80) and a
26 subsequent Order to File the Completed Record and Propose Schedule (ECF No. 188), pending
27 the Supreme Court’s resolution of Defendants’ forthcoming petition. In the alternative, and if
28 this Court does not otherwise grant the relief being requested herein or the relief being requested

1 by Plaintiffs in their separate stay motion, *see* ECF No. 190, Defendants request either a stay
2 pending the Supreme Court's disposition of a stay application to be presented to the Supreme
3 Court, or at minimum a stay until the end of the day on November 27, 2017, in order to allow the
4 Supreme Court to orderly determine whether it wishes to grant an administrative stay while it
5 considers Defendants' application. Defendants will provide this Court with the copy of their
6 Supreme Court filing and advise this Court promptly of any developments.

7 Defendants are aware that Plaintiffs have filed a separate motion to stay and will respond
8 to that motion no later than noon PST on Monday, November 20, 2017. Defendants may also
9 need to seek additional relief from this Court because they will not be in a position to file a
10 completed administrative record by November 22, 2017, but will seek any such relief via
11 separate motion if the Court does not otherwise provide relief pursuant to the parties' pending
12 stay motions.

13 Dated: November 19, 2017

Respectfully submitted,

14 CHAD A. READLER
15 Principal Deputy Assistant Attorney General

16 BRIAN STRETCH
17 United States Attorney

18 JOHN R. TYLER
19 Assistant Branch Director

20 /s/ Brad P. Rosenberg
21 BRAD P. ROSENBERG (DC Bar #467513)
22 Senior Trial Counsel
23 STEPHEN M. PEZZI (DC Bar #995500)
24 KATE BAILEY (MD. Bar #1601270001)
25 Trial Attorneys
26 United States Department of Justice
27 Civil Division, Federal Programs Branch
28 20 Massachusetts Avenue N.W.
Washington, DC 20530
Phone: (202) 514-3374
Fax: (202) 616-8460
Email: brad.rosenberg@usdoj.gov

Attorneys for Defendants

No. 17-72917

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re UNITED STATES OF AMERICA, *et al.*,
Petitioners.

UNITED STATES OF AMERICA; DONALD J. TRUMP, President of the United States; U.S.
DEPARTMENT OF HOMELAND SECURITY; and ELAINE DUKE, Acting Secretary of
Homeland Security,
Petitioners-Defendants,

v.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA,
Respondent,

REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, President of
the University of California; STATE OF CALIFORNIA; STATE OF MAINE; STATE OF
MARYLAND; STATE OF MINNESOTA; CITY OF SAN JOSE; DULCE GARCIA; MIRIAM
GONZALEZ AVILA; SAUL JIMENEZ SUAREZ; VIRIDIANA CHABOLLA MENDOZA;
NORMA RAMIREZ; JIRAYUT LATTHIVONGSKORN; COUNTY OF SANTA CLARA; and
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521,
Real Parties in Interest-Plaintiffs.

EMERGENCY MOTION FOR STAY

CHAD A. READLER
Principal Deputy Assistant Attorney General

BRIAN STRETCH
United States Attorney

HASHIM M. MOOPAN
Deputy Assistant Attorney General

MARK B. STERN
ABBY C. WRIGHT
THOMAS PULHAM
*Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-2000*

CIRCUIT RULE 27-3 CERTIFICATE

Counsel for Defendants:

Mark B. Stern (Mark.Stern@usdoj.gov)
Abby C. Wright (Abby.Wright@usdoj.gov)
Thomas Pulham (Thomas.Pulham@usdoj.gov)
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530
Telephone: (202) 514-2000
Fax: (202) 514-8151

Counsel for Plaintiffs:

Regents of the University of California et al.:

Jeffrey M. Davidson
Covington & Burling LLP
One Front Street, 35th Floor
San Francisco, CA 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091
Email: jdavidson@cov.com

Lanny A. Breuer
Mark H. Lynch
Alexander A. Berengaut
Megan A. Crowley
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
Facsimile: (202) 662-6291
Email: lbreuer@cov.com,
mlynch@cov.com,
aberengaut@cov.com,
mcrowley@cov.com

Mónica Ramírez Almadani
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
Telephone: (424) 332-4800
Facsimile: (424) 332-4749
Email: mralmadani@cov.com

Charles F. Robinson
Margaret Wu
University of California
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Telephone: (510) 987-9800
Facsimile: (510) 987-9757
Email: charles.robinson@ucop.edu

States of California, Maine, Maryland, and Minnesota:

Michael J. Mongan
Deputy Solicitor General
California Department of Justice
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-3660
(415) 703-2548
Email: michael.mongan@doj.ca.gov

Julianna F. Passe
Assistant Attorney General
State of Minnesota
445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
Telephone: (651) 757-1136
Email: julianna.passe@ag.state.mn.us

Susan P. Herman
Deputy Attorney General
6 State House Station
Augusta, Maine 04333
Telephone: (207) 626-8814
Email: susan.herman@maine.gov

Steven M. Sullivan
Solicitor General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Telephone: (410) 576-6325
Email: ssullivan@oag.state.md.us

City of San Jose:

Nancy L. Fineman
nfineman@cpmlegal.com
Brian Danitz
bdanitz@cpmlegal.com
Tamarah P. Prevost
tprevost@cpmlegal.com
COTCHETT, PITRE & MCCARTHY, LLP
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Richard Doyle
Nora Frimann
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, California 95113
Telephone: (408) 535-1900
Facsimile: (408) 998-3131
Email: cao.main@sanJoseca.gov

Dulce Garcia, Miriam Gonzalez Avila, Saul Jimenez Suarez, Viridiana Chabolla Mendoza, Norma Ramirez, and Jirayut Latthivongskorn:

Theodore J. Boutrous, Jr.
tboutrous@gibsondunn.com
Kirsten Galler
kgaller@gibsondunn.com
Jesse S. Gabriel
jgabriel@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

Ethan D. Dettmer
edettmer@gibsondunn.com
555 Mission Street
San Francisco, CA 94105
Telephone: (415) 393-8200
Facsimile: (415) 393-8306

Mark D. Rosenbaum
mrosenbaum@publiccounsel.org
Judy London
jlondon@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, CA 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

Luis Cortes Romero
lcortes@barreralegal.com
BARRERA LEGAL GROUP, PLLC
19309 68th Avenue South, Suite R102
Kent, WA 98032
Telephone: (253) 872-4730
Facsimile: (253) 237-1591

Laurence H. Tribe
larry@tribelaw.com
Harvard Law School*
1575 Massachusetts Avenue
Cambridge, MA 02138
Telephone: (617) 495-1767

Erwin Chemerinsky
echemerinsky@law.berkeley.edu
University of California, Berkeley
School of Law
215 Boalt Hall
Berkeley, CA 94720-7200
Telephone: (510) 642-6483

Leah M. Litman
llitman@law.uci.edu
University of California, Irvine School
of Law
401 East Peltason Drive
Irvine, CA 92697
Telephone: (949) 824-7722

County of Santa Clara and Service Employees International Union Local 521:

James R. Williams, County Counsel
Greta S. Hansen
Laura S. Trice
laura.trice@cco.sccgov.org
Marcelo Quiñones
marcelo.quinones@cco.sccgov.org
Office of the County Counsel
County of Santa Clara
70 West Hedding Street
East Wing, Ninth Floor
San Jose, CA 95110-1770
Telephone: (408) 299-5900
Facsimile: (408) 292-7240

Jonathan Weissglass
jweissglass@altber.com
Stacey M. Leyton
sleyton@altber.com
Eric P. Brown
ebrown@altber.com
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

Defendants request urgent relief on this matter because this Court has denied their mandamus petition, and the district court has ordered the defendants to file a new administrative record that contains privileged material by November 22. The government asks the Court to stay its order pending the Supreme Court's resolution of its forthcoming application and ensuing petition.

Counsel for plaintiffs were notified of this motion on November 17, 2017, and plaintiffs—Real Parties in Interest—take no position at this time, but will review the motion when it is filed. Service will be accomplished via the Appellate CM/ECF system.

No. 17-72917

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re UNITED STATES OF AMERICA, *et al.*,
Petitioners.

UNITED STATES OF AMERICA; DONALD J. TRUMP, President of the United States; U.S.
DEPARTMENT OF HOMELAND SECURITY; and ELAINE DUKE, Acting Secretary of
Homeland Security,
Petitioners-Defendants,

v.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA,
Respondent,

REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET NAPOLITANO, President of
the University of California; STATE OF CALIFORNIA; STATE OF MAINE; STATE OF
MARYLAND; STATE OF MINNESOTA; CITY OF SAN JOSE; DULCE GARCIA; MIRIAM
GONZALEZ AVILA; SAUL JIMENEZ SUAREZ; VIRIDIANA CHABOLLA MENDOZA;
NORMA RAMIREZ; JIRAYUT LATTHIVONGSKORN; COUNTY OF SANTA CLARA; and
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521,
Real Parties in Interest-Plaintiffs.

EMERGENCY MOTION FOR STAY

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United States Attorney

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Deputy Assistant Attorney General

MARK B. STERN
ABBY C. WRIGHT
THOMAS PULHAM
*Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-2000*

This Court's November 16, 2017, order denied the government's mandamus petition and vacated the stay of discovery and record expansion that had been entered. Following this Court's order, the district court ordered the government to file an augmented administrative record by November 22, at noon. The government will file an application seeking a further stay of all discovery and record expansion pending a petition for mandamus or a writ of certiorari from the Supreme Court no later than November 20, 2017.

In accordance with Supreme Court Rule 23.3, the government respectfully requests that this Court stay its order pending the Supreme Court's resolution of its forthcoming application and ensuing petition. In the alternative, we request that this Court enter a stay pending the Supreme Court's disposition of the application, or at a minimum an administrative stay until the end of the day on November 27th in order to allow the Supreme Court to orderly determine whether it wishes to grant an administrative stay while it considers our application.

We will provide this Court with a copy of our Supreme Court filing and advise it promptly of any developments.

Plaintiffs—Real Parties in Interest—take no position at this time, but will review the motion when it is filed.

Respectfully submitted,

CHAD A. READLER

Principal Deputy Assistant Attorney General

BRIAN STRETCH

United States Attorney

HASHIM M. MOOPAN

Deputy Assistant Attorney General

MARK B. STERN

ABBY C. WRIGHT

THOMAS PULHAM

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

(202) 514-2000

NOVEMBER 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the word limit of Federal Rule of Appellate Procedure 21(d)(1) because the motion contains 257 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared using Microsoft Word 2013 in a proportionally spaced typeface, 14-point Garamond font.

s/ Mark B. Stern

MARK B. STERN

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished through that system.

The district court has been provided with a copy of this reply.

s/ Mark B. Stern

MARK B. STERN

FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: UNITED STATES OF AMERICA;
DONALD J. TRUMP; U.S.
DEPARTMENT OF HOMELAND
SECURITY; ELAINE C. DUKE.

No. 17-72917

D.C. Nos. 3:17-cv-05211-WHA
3:17-cv-05235-WHA
3:17-cv-05329-WHA
3:17-cv-05380-WHA
3:17-cv-05813-WHA

UNITED STATES OF AMERICA;
DONALD J. TRUMP; U.S.
DEPARTMENT OF HOMELAND
SECURITY; ELAINE C. DUKE, in her
official capacity as Acting Secretary of the
Department of Homeland Security,

Northern District of California,
San Francisco

Petitioners,

ORDER

v.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SAN FRANCISCO,

Respondent,

REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO,
In her official capacity as President of the
University of California; STATE OF
CALIFORNIA; STATE OF MAINE;
STATE OF MINNESOTA; STATE OF
MARYLAND; CITY OF SAN JOSE;
DULCE GARCIA; MIRIAM GONZALEZ
AVILA; VIRIDIANA CHABOLLA
MENDOZA; NORMA RAMIREZ;
COUNTY OF SANTA CLARA;

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 521;
JIRAYUT LATTHIVONGSKORN;
SAUL JIMENEZ SUAREZ,

Real Parties in Interest.

Before: WARDLAW, GOULD, and WATFORD, Circuit Judges.

The court has received the government's November 17, 2017 emergency stay motion. The response to the motion is due Monday, November 20, 2017, at 12:00 p.m. PST, and the optional reply is due Monday, November 20, 2017, at 5:00 p.m. PST.

In addition to all other issues the parties wish to raise in the response and reply, the parties shall address whether this court has jurisdiction to grant a stay of proceedings, or whether the motion for a stay should instead be filed in the district court. *See Ellis v. U.S. Dist. Court*, 360 F.3d 1022 (9th Cir. 2004) (en banc).

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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

REGENTS OF UNIVERSITY OF CALIFORNIA and JANET NAPOLITANO, in her official capacity as President of the University of California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY and ELAINE DUKE, in her official capacity as Acting Secretary of the Department of Homeland Security,

Defendants.

No. 3:17-cv-05211-WHA
No. 3:17-cv-05235-WHA
No. 3:17-cv-05329-WHA
No. 3:17-cv-05380-WHA
No. 3:17-cv-05813-WHA

[PROPOSED] ORDER

Defendants in the five related DACA cases have filed a motion to stay this Court’s Case Management Order (ECF No. 49) to the extent it requires the parties to engage in discovery, as well as this Court’s Order to Complete the Administrative Record (ECF No. 79), as modified by a subsequent Order to Compile (ECF No. 80) and an Order to File the Completed Record and Propose Schedule (ECF No. 88), pending potential Supreme Court review. For good cause shown, Defendants’ motion shall be, and it hereby is, GRANTED. All discovery, as well as the requirement that Defendants take steps to compile, complete, or file the Administrative Record, are hereby STAYED. The stay shall remain in effect until the Supreme Court has resolved Defendants’ forthcoming petition for mandamus or a writ of certiorari. IT IS SO ORDERED.

William Alsup
United States District Judge

Date