

FILED

FOR PUBLICATION

NOV 21 2017

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

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.

Before the court is the government’s emergency motion for a stay of our order of November 16, 2017, which denied the government’s petition for a writ of mandamus and lifted a temporary stay that we had previously imposed. As the order denying mandamus relief was effective immediately upon its issuance, *see Ellis v. U.S. Dist. Court*, 360 F.3d 1022, 1023 (9th Cir. 2004) (en banc), jurisdiction now lies with the district court, and not with this court. *Compare Daimler-Benz Aktiengesellschaft v. U.S. Dist. Court*, 805 F.2d 340, 341–42 (10th Cir. 1986) (ordering a stay of district court proceedings *before* any order denying or granting mandamus had issued). If the government seeks further relief from this court, it must do so in a new petition for mandamus. The government’s emergency motion for a stay is therefore DISMISSED.

IT IS SO ORDERED.