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Local 521

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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.

CASE NO. 17-CV-05211-WHA

**PLAINTIFFS' MOTION FOR
JUDICIAL NOTICE AND TO
SUPPLEMENT THE RECORD**

Judge: Honorable William Alsup
Hearing: February 8, 2018, 8:00 a.m.
Courtroom: 12, 19th Floor

STATE OF CALIFORNIA, STATE OF MAINE,
STATE OF MARYLAND, STATE OF MINNESOTA,

Plaintiffs,

v.

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

Defendants.

CASE NO. 17-CV-05235-WHA

CITY OF SAN JOSE, a municipal corporation,

Plaintiff,

v.

DONALD J. TRUMP, President of the United States, in
his official capacity, ELAINE C. DUKE, in her official
capacity, and the UNITED STATES OF AMERICA,

Defendants.

CASE NO. 17-CV-05329-WHA

DULCE GARCIA, MIRIAM GONZALEZ AVILA,
SAUL JIMENEZ SUAREZ, VIRIDIANA CHABOLLA
MENDOZA, NORMA RAMIREZ, and JIRAYUT
LATTHIVONGSKORN,

Plaintiffs,

v.

UNITED STATES OF AMERICA, DONALD J.
TRUMP, in his official capacity as President of the
United States, U.S. DEPARTMENT OF HOMELAND
SECURITY, and ELAINE DUKE, in her official
capacity as Acting Secretary of Homeland Security,

Defendants.

CASE NO. 17-CV-05380-WHA

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

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, JEFFERSON
BEAUREGARD SESSIONS, in his official capacity as
Attorney General of the United States; ELAINE DUKE,
in her official capacity as Acting Secretary of the
Department of Homeland Security; and U.S.
DEPARTMENT OF HOMELAND SECURITY,

Defendants.

CASE NO. 17-CV-05813-WHA

1 PLEASE TAKE NOTICE that at 8:00 a.m. on February 8, 2018, at 450 Golden Gate Avenue,
2 Courtroom 12, San Francisco, California, Plaintiffs The Regents of the University of California, Janet
3 Napolitano, in her official capacity as President of the University of California, the States of California,
4 Maine, Maryland, and Minnesota, Dulce Garcia, Miriam Gonzalez Avila, Saul Jimenez Suarez,
5 Viridiana Chabolla Mendoza, Norma Ramirez, Jirayut Latthivongskorn, City of San Jose, County of
6 Santa Clara and Service Employees International Union Local 521 (collectively, "Plaintiffs") will, and
7 hereby do, move for judicial notice of, and to supplement the record on their motion for provisional
8 relief and opposition to defendants' motion to dismiss with, significant evidence that only recently
9 became available.

10 Plaintiffs request, pursuant to Rule 201 of the Federal Rules of Evidence, that the Court take
11 judicial notice of Exhibit A to the Davidson Declaration, filed in support of this motion, which is a true
12 and correct copy of a tweet sent by President Trump at 5:16 a.m. EST on December 29, 2017, available
13 at <https://twitter.com/realDonaldTrump/status/946731576687235072>.

14 The tweet states:

15 The Democrats have been told, and fully understand, that there can be no DACA without
16 the desperately needed WALL at the Southern Border and an END to the horrible Chain
17 Migration & ridiculous Lottery System of Immigration etc. We must protect our Country
at all cost!"

18 Davidson Decl., Ex. A. Plaintiffs further request to supplement the record on their Motion for
19 Provisional Relief (ECF No. 111) and their Opposition to Defendants' Motion to Dismiss (ECF No.
20 205) with Exhibit A. Plaintiffs' requests are supported by good cause as follows:

21 In these lawsuits, plaintiffs challenge defendants' September 5, 2017, rescission of the Deferred
22 Action for Childhood Arrivals ("DACA") program and bring claims under, *inter alia*, the
23 Administrative Procedure Act ("APA") and the Fifth Amendment to the U.S. Constitution. On
24 November 1, 2017, plaintiffs filed their Motion for Provisional Relief and defendants filed their Motion
25 to Dismiss. On December 20, 2017, the Court heard oral argument on the motions.

26 A Court "must take judicial notice" of adjudicative facts "if a party requests it and the court is
27 supplied with the necessary information." Fed. R. Evid. 201(c)(2). The Court can judicially notice any
28 "fact that is not subject to reasonable dispute because it: . . . can be accurately and readily determined

1 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Exhibit A is a
2 tweet posted by the President on his Twitter account. As a general matter, “[i]t is not uncommon for
3 courts to take judicial notice of factual information found on the world wide web.” *O’Toole v. Northrop*
4 *Grumman Corp.*, 499 F.3d 1218, 1224 (10th Cir. 2007). Courts in this circuit regularly take notice of
5 statements made on social media accounts. *See, e.g., Veronica Foods Co. v. Ecklin*, No. 16-CV-07223-
6 JCS, 2017 WL 2806706, at *4 (N.D. Cal. June 29, 2017) (“The Court takes judicial notice of exhibits
7 showing [plaintiff’s] own disclosures through its websites and social media accounts, because the Court
8 can readily determine what [plaintiff] has disclosed by accessing those publicly available online
9 sources.”); *Lindora, LLC v. Limitless Longevity LLC*, No. 15-CV-2847-JAH (KSC), 2016 WL 6804443,
10 at *3 (S.D. Cal. Sept. 29, 2016) (granting request for judicial notice of defendants’ social media
11 account); *see also, e.g., U.S. Supp. Submission & Further Resp. 2, 4, James Madison Proj. v. Dep’t of*
12 *Justice*, No. 1:17-cv-00144 (D.D.C. Nov. 13, 2017), ECF No. 29 (“The government is treating the
13 [President’s tweets] as official statements of the President of the United States”). Because Exhibit A
14 satisfies the criteria of Rule 201(b) of the Federal Rules of Evidence, the Court must take judicial notice
15 of it pursuant to Rule 201(c)(2) of the Federal Rules of Evidence.

16 Plaintiffs also request that the Court exercise its discretion to supplement the record with the
17 President’s tweet, which is germane to the Motion for Provisional Relief. *See, e.g., Steven N.S. Cheung,*
18 *Inc. v. United States*, No. 04-2050-RSM, 2006 U.S. Dist. LEXIS 51755, at *6 (W.D. Wash. July 28,
19 2006) (granting motion to supplement record when “new facts have come to light and the Court would
20 benefit from having the most complete record available to it when resolving the instant motion”).
21 Specifically, in their Motion for Provisional Relief, plaintiffs demonstrate that the government’s stated
22 rationale for the Rescission—purported “litigation risk”—is pretextual, insofar as the evidence reveals
23 that one of the true rationales for the Rescission was “to make DACA recipients a bargaining chip in
24 order to secure support for harsh immigration legislation from members of Congress who support
25 DACA recipients and would not otherwise support the administration’s immigration agenda.” Pls.’
26 Opening Br. 30. The President’s tweet in Exhibit A explicitly proposes a trade of DACA for anti-
27 immigration legislation and a border wall, and thereby further supports the inference that defendants
28 rescinded DACA not for the reasons they stated, but to create this bargaining opportunity.

1 Moreover, defendants have moved to dismiss plaintiffs' claim brought under the substantive
2 component of the Due Process Clause, which prohibits conduct that "shocks the conscience" or
3 interferes with rights implicit in the concept of ordered liberty. Exhibit A is relevant to the Court's
4 analysis of this motion, as it further underscores that the Rescission was fundamentally unfair and did
5 not further any compelling government interest, but instead was a tactic used to gain leverage to enact
6 the administration's immigration agenda. *See* Pls.' Opp'n to Defs.' Mot. to Dismiss 30-33. Using
7 DACA recipients as a bargaining chip for political objectives having nothing to do with the program and
8 exploiting the recipients' reasonable reliance upon representations made in the course of disclosing
9 intimate, personal information "d[oes] not comport with traditional ideas of fair play and decency."
10 *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998) (quotations omitted).

11 WHEREFORE, plaintiffs respectfully request that this Court (1) take judicial notice of Exhibit A
12 to the Davidson Declaration; (2) allow plaintiffs to supplement the record with Exhibit A; and
13 (3) consider this additional evidence in addressing the parties' pending motions.

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1 Dated: January 2, 2018

Respectfully submitted,

2
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CLARA AND SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 521*

ATTESTATION

I, Jeffrey M. Davidson, hereby attest, pursuant to Civil L.R. 5-1, that I have received authorization to electronically sign and file this document from each of the persons identified in the signature block.

Dated: January 2, 2018

/s/ Jeffrey M. Davidson

Jeffrey M. Davidson

*Counsel for Plaintiffs The Regents of
the University of California and
Janet Napolitano, in her official
capacity as President of the University of
California*

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Local 521

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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.

CASE NO. 17-CV-05211-WHA

**DECLARATION OF JEFFREY
M. DAVIDSON IN SUPPORT
OF PLAINTIFFS' MOTION
FOR JUDICIAL NOTICE AND
TO SUPPLEMENT THE
RECORD**

STATE OF CALIFORNIA, STATE OF MAINE, STATE OF MARYLAND, STATE OF MINNESOTA,

Plaintiffs,

v.

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

Defendants.

CASE NO. 17-CV-05235-WHA

CITY OF SAN JOSE, a municipal corporation,

Plaintiff,

v.

DONALD J. TRUMP, President of the United States, in his official capacity, ELAINE C. DUKE, in her official capacity, and the UNITED STATES OF AMERICA,

Defendants.

CASE NO. 17-CV-05329-WHA

DULCE GARCIA, MIRIAM GONZALEZ AVILA, SAUL JIMENEZ SUAREZ, VIRIDIANA CHABOLLA MENDOZA, NORMA RAMIREZ, and JIRAYUT LATTHIVONGSKORN,

Plaintiffs,

v.

UNITED STATES OF AMERICA, DONALD J. TRUMP, in his official capacity as President of the United States, U.S. DEPARTMENT OF HOMELAND SECURITY, and ELAINE DUKE, in her official capacity as Acting Secretary of Homeland Security,

Defendants.

CASE NO. 17-CV-05380-WHA

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

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, JEFFERSON BEAUREGARD SESSIONS, in his official capacity as Attorney General of the United States; ELAINE DUKE, in her official capacity as Acting Secretary of the Department of Homeland Security; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Defendants.

CASE NO. 17-CV-05813-WHA

1 I, JEFFREY M. DAVIDSON, DECLARE:

2 1. I am an attorney at the law firm of Covington and Burling LLP, and counsel to Plaintiffs
3 The Regents of the University of California and Janet Napolitano, in her official capacity as President of
4 the University of California, in the above-captioned matter. In this position I have personal knowledge
5 of the matters set forth herein. I submit this declaration in support of Plaintiffs' Motion for Judicial
6 Notice and to Supplement the Record.

7 2. Attached hereto as Exhibit A is a true and correct copy of a Tweet sent by President
8 Trump at 5:16 am on December 29, 2017, available at
9 <https://twitter.com/realDonaldTrump/status/946731576687235072>.

10 I declare under penalty of perjury that to the best of my knowledge, information and belief, the
11 foregoing statements are true and correct.

12 Executed on this 2nd day of January 2018 in San Francisco, California.

13
14 DATED: January 2, 2018

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26 *President of the University of California*
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EXHIBIT A



Donald J. Trump 
@realDonaldTrump

[Follow](#)



The Democrats have been told, and fully understand, that there can be no DACA without the desperately needed WALL at the Southern Border and an END to the horrible Chain Migration & ridiculous Lottery System of Immigration etc. We must protect our Country at all cost!

5:16 AM - 29 Dec 2017

22,617 Retweets **88,569** Likes



 27K  23K  89K

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE REGENTS OF THE 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.

CASE NO. 17-CV-05211-WHA

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR JUDICIAL NOTICE AND TO SUPPLEMENT THE RECORD

STATE OF CALIFORNIA, STATE OF MAINE, STATE OF MARYLAND, and STATE OF MINNESOTA,

Plaintiffs,

v.

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

Defendants.

CASE NO. 17-CV-05235-WHA

CITY OF SAN JOSE, a municipal corporation,
Plaintiff,

v.

DONALD J. TRUMP, President of the United States, in his official capacity, ELAINE C. DUKE, in her official capacity, and the UNITED STATES OF AMERICA,

Defendants.

CASE NO. 17-CV-05329-WHA

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DULCE GARCIA, MIRIAM GONZALEZ AVILA, SAUL JIMENEZ SUAREZ, VIRIDIANA CHABOLLA MENDOZA, NORMA RAMIREZ, and JIRAYUT LATTHIVONGSKORN,

Plaintiffs,

v.

UNITED STATES OF AMERICA, DONALD J. TRUMP, *in his official capacity as President of the United States*, U.S. DEPARTMENT OF HOMELAND SECURITY, and ELAINE DUKE, *in her official capacity as Acting Secretary of Homeland Security*,

Defendants.

CASE NO. 17-CV-05380-WHA

COUNTY OF SANTA CLARA and SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official capacity as President of the United States*; JEFFERSON BEAUREGARD SESSIONS, *in his official capacity as Attorney General of the United States*; ELAINE DUKE, *in her official capacity as Acting Secretary of Homeland Security*; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Defendants.

CASE NO. 17-CV-05813-WHA

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Having considered Plaintiffs’ Motion For Judicial Notice and to Supplement the Record (“Plaintiffs’ Motion”), IT IS HEREBY ORDERED THAT:

- 1) The Court takes judicial notice of Exhibit A to the Davidson Declaration submitted with Plaintiffs’ Motion.
- 2) Plaintiffs may supplement the record with Exhibit A.
- 3) The Court will consider the additional evidence in Exhibit A in addressing the parties’ pending motions.

SO ORDERED, this __ day of _____, 2018.

Honorable William H. Alsup
United States District Judge