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11 *University of California and Janet Napolitano, in*
12 *her official capacity as President of the University*
13 *of California*

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26 *Latthivongskorn*

27 [Additional Counsel Listed on Signature Page]

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Attorneys for Plaintiff City of San Jose

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

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

Plaintiffs,

v.

U.S. 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' EMERGENCY MOTION TO
SHORTEN TIME FOR BRIEFING ON
MOTION TO COMPLETE
ADMINISTRATIVE RECORD**

Judge: Honorable William Alsup

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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

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

1 Pursuant to Civil Local Rule 6-3, Plaintiffs move on an emergency basis to shorten the time for
2 briefing on Plaintiffs' Motion to Complete the Administrative Record in Accordance with 5 U.S.C. §
3 706 ("Motion"), filed concurrently herewith. As set forth in Plaintiffs' Motion, the government's
4 production of the administrative record on October 6, 2017, was utterly inadequate, leaving out wide
5 swaths of crucial documents, such as internal agency communications, emails, documents from within
6 the Department of Justice, and communications from the White House. The government wasted weeks
7 preparing a wholly deficient administrative record that contains only documents that were already
8 public. The government further withheld documents based on assertions of privilege, without providing
9 any privilege log. The Plaintiffs have therefore moved to compel the government to complete the
10 administrative record. Plaintiffs' motion is not a discovery motion; because the administrative record is
11 the keystone of the APA issues in this case, the motion goes to the foundational issue of what will be
12 adjudicated. The normal motion cycle would result in a hearing date on November 13, 2017, at the
13 earliest. Such timing would render adjudication of this case impossible because, under the Court's case
14 management order, the Parties' motions for summary judgment, provisional relief, or to dismiss are due
15 on November 1, 2017.

16 Indeed, this November 1 deadline is just three weeks from today. Given these exigent
17 circumstances, Plaintiffs ask that their motion be heard with extraordinary dispatch, with a briefing
18 schedule that will position the motion for hearing this week. Plaintiffs recognize the imposition on this
19 Court's time and resources, but as the Court is well aware, the tight deadlines in this case result from
20 Defendants' decision to end the Deferred Action for Childhood Arrivals ("DACA") program
21 precipitously. *See* Tr. of Proceedings (Sept. 21, 2017) at 23:22-23, 24:2-5 (Dkt. #52) [hereinafter
22 "09/21/17 Tr. "] (the Court rejecting Defendants' proposal to have opening briefs due on December 1,
23 2017 because "[b]y then the March 5 [date for ending DACA renewals] will have come and gone"; "I
24 don't like the idea that we're fiddling while Rome burns and then suddenly the program is expired. I
25 think we've got to have a decision well in advance of March 5 so that this can go to the Court of
26 Appeals").

27 Defendants are now attempting to squeeze the time for judicial review of DACA's rescission on
28 the front end as well. At the September 21, 2017 hearing, Defendants said that "discovery at this point

1 would be premature and unnecessary and really inappropriate” and “will likely be a fishing expedition”
2 *Id.* at 22:3-5, 22:15-16. Defendants also pushed for a week-long extension to file the administrative
3 record, which the Court correctly recognized was unnecessary. *Id.* at 17:-4-18. Defendants also
4 proposed that Plaintiffs “offer precise suggestions about what they think should be in the administrative
5 record by letter.” *Id.* at 35:21-23. Plaintiffs proceeded to comply with Defendants’ proposal in a letter
6 dated October 1, 2017. In this letter, Plaintiffs advised Defendants that they were “required to produce
7 an administrative record that includes every document and communication considered within any
8 component of the Executive Branch as part of the process of determining whether to continue, modify,
9 or rescind” the DACA Program, as well as an accompanying privilege log. Ex. 1 to Decl. of J. Davidson
10 in Support of Plaintiffs’ Motion to Complete the Administrative Record in Accordance with 5 U.S.C. §
11 706, Letter from J. Davidson, Covington & Burling LLP, to B. Shumate & B. Rosenberg, U.S. Dep’t of
12 Justice, at 1-2 (Oct. 1, 2017). As the Court correctly predicted, Defendants chose to simply “reject the[]
13 suggestions,” 09/21/17 Tr. at 35:24, producing a patently inadequate administrative record and refusing
14 to produce a privilege log.

15 Defendants’ obstruction requires motion practice to be conducted with extraordinary dispatch.
16 An order to produce an adequate administrative record and privilege log entered this Friday, giving the
17 government a week to comply, would leave only 10 days before the merits briefing in this case. That
18 timetable already gives the government some benefit from their decision to shortcut the administrative
19 record; any additional time would result in serious prejudice to the Court’s ability to receive full merits
20 briefing with the benefit of an adequate administrative record.

21 Accordingly, Plaintiffs request that the Court set an expedited briefing schedule on the Motion
22 as follows:

- 23 • Opposition due **Tuesday, October 10, 2017**; and
 - 24 • Reply due **Wednesday, October 11, 2017**;
 - 25 • Hearing this **Thursday, October 12, 2017**, or at the Court’s earliest convenience.
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1 As set forth in the accompanying Declaration of Jeffrey Davidson, Plaintiffs certify that they
2 unsuccessfully attempted to secure Defendants' agreement to the relief sought herein.¹
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19 ¹ Defendants did not agree to the schedule requested in this motion and stated as follows: "Defendants
20 do not anticipate being able to substantively respond within 24 hours of plaintiffs' filing of their motion,
21 as plaintiffs propose. Among other things, defendants have a reply brief due to be filed in the DACA
22 litigation pending in the Eastern District of New York on October 10, have to appear in-person for a
23 status conference in the Eastern District of New York on October 11, and have seven sets of objections
24 to discovery requests that are due on October 10 and/or 11 relating to the DACA litigation in that court.
25 Moreover, because defendants have not yet even seen plaintiffs' proposed filing, they cannot commit to
26 responding within a 24-hour period, and requiring defendants to do so would be severely prejudicial.
27 Accordingly, defendants believe that this Court should hold its hearing on plaintiffs' forthcoming
28 motion on October 19, and set the due date for defendants' opposition brief for October 16.
Alternatively, at minimum, to the extent the Court holds its hearing on October 12, defendants should be
permitted until 5 p.m. Pacific Daylight Time on October 11 to file their opposition brief." Ex. 2 to Decl.
of J. Davidson, Email #1 from B. Rosenberg to J. Davidson (Oct. 9, 2017). Defendants later stated as
follows: "Defendants also request the opportunity to appear telephonically at the hearing, should the
court schedule a hearing." Ex. 3 to Decl. of J. Davidson, Email #2 from B. Rosenberg to J. Davidson
(Oct. 9, 2017).

1 Dated: October 9, 2017
2 Xavier Becerra
3 Attorney General of California
4 Michael L. Newman
5 Supervising Deputy Attorney General

6 /s/ James F. Zahradka II
7 James F. Zahradka II
8 Deputy Attorney General
9 1515 Clay Street, 20th Floor
10 P.O. Box 70550
11 Oakland, CA 94612-0550
12 Telephone: (510) 879-1247

13 *Attorneys for Plaintiff State of California*

14 /s/ Julianna F. Passe
15 Lori Swanson
16 Attorney General
17 State of Minnesota
18 Julianna F. Passe (*pro hac vice*)
19 Assistant Attorney General
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21 St. Paul, Minnesota 55101-2128
22 Telephone: (651) 757-1136
23 Email: julianna.passe@ag.state.mn.us

24 *Attorneys for Plaintiff State of Minnesota*

25 /s/ Susan P. Herman
26 Janet T. Mills
27 Attorney General of Maine
28 Susan P. Herman (*pro hac vice*)
Deputy Attorney General
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Attorneys for Plaintiff State of Maine

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Attorneys for Plaintiff City of San Jose

Respectfully submitted,
COVINGTON & BURLING LLP

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*Attorneys 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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*Attorneys for Plaintiffs Dulce Garcia, Miriam
Gonzalez Avila, Saul Jimenez Suarez, Viridiana
Chabolla Mendoza, Norma Ramirez, and
Jirayut Latthivongskorn*

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: October 9, 2017

/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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11 *University of California and Janet Napolitano, in*
12 *her official capacity as President of the*
13 *University of California*

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Michael L. Newman
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Attorneys for Plaintiff City of San Jose

17
18 **UNITED STATES DISTRICT COURT**
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

20 THE REGENTS OF THE UNIVERSITY OF
21 CALIFORNIA and JANET NAPOLITANO,
22 *in her official capacity as President of the*
23 *University of California,*

24 Plaintiffs,

25 v.

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

Defendants.

Case No. 3:17-cv-05211-WHA

**DECLARATION OF JEFFREY M. DAVIDSON
IN SUPPORT OF PLAINTIFFS'
EMERGENCY MOTION TO SHORTEN TIME
FOR BRIEFING ON MOTION TO
COMPLETE ADMINISTRATIVE RECORD**

Judge: Honorable William Alsup

1 I, Jeffrey M. Davidson, hereby declare as follows:

- 2 1. I am an attorney at Covington & Burling LLP and serve as outside counsel for Plaintiffs The
3 Regents of the University of California and Janet Napolitano, in her official capacity as President
4 of the University of California, in the above-captioned matter. In this position I have personal
5 knowledge of the matters set forth herein.
- 6 2. On October 8, 2017, I emailed counsel for Defendants to inform them that Plaintiffs' intended
7 motion to complete the administrative record--which the Parties had earlier discussed--would
8 "need[] to be heard on very short time given the deficiencies in the record and the timetable we
9 are operating under." My email proposed the briefing schedule set forth in Plaintiffs' Motion to
10 Shorten Time for Briefing on Motion to Complete the Administrative Record. I asked whether
11 Defendants would stipulate to this schedule and said that, otherwise, Plaintiffs would proceed
12 with a motion to shorten time. Attached hereto as Exhibit 1 is a true and correct copy of this
13 email, which I sent to Brad P. Rosenberg, U.S. Department of Justice.
- 14 3. On October 9, 2017, counsel for Defendants responded that Defendants would not stipulate to
15 Plaintiffs' proposed briefing schedule. Counsel for Defendants requested that Defendants'
16 position be represented as follows: "Defendants do not anticipate being able to substantively
17 respond within 24 hours of plaintiffs' filing of their motion, as plaintiffs propose. Among other
18 things, defendants have a reply brief due to be filed in the DACA litigation pending in the
19 Eastern District of New York on October 10, have to appear in-person for a status conference in
20 the Eastern District of New York on October 11, and have seven sets of objections to discovery
21 requests that are due on October 10 and/or 11 relating to the DACA litigation in that court.
22 Moreover, because defendants have not yet even seen plaintiffs' proposed filing, they cannot
23 commit to responding within a 24-hour period, and requiring defendants to do so would be
24 severely prejudicial. Accordingly, defendants believe that this Court should hold its hearing on
25 plaintiffs' forthcoming motion on October 19, and set the due date for defendants' opposition
26 brief for October 16. Alternatively, at minimum, to the extent the Court holds its hearing on
27 October 12, defendants should be permitted until 5 p.m. Pacific Daylight Time on October 11 to
28

1 file their opposition brief.” Attached hereto as Exhibit 2 is a true and correct copy of this email,
2 sent by Brad P. Rosenberg, U.S. Department of Justice, to me.

- 3 4. Later on October 9, 2017, Counsel for Defendants requested that the following language be
4 added to the statement of Defendants’ position: “Defendants also request the opportunity to
5 appear telephonically at the hearing, should the court schedule a hearing.” Attached hereto as
6 Exhibit 3 is a true and correct copy of this email, sent by Brad P. Rosenberg, U.S. Department of
7 Justice, to me.
- 8 5. As the above-captioned matter was only very recently initiated, the Court has not previously
9 granted any time modifications in this case, nor have the Parties stipulated to any such time
10 modification to date.
- 11 6. The requested time modification will have no effect on any other Court-ordered case deadlines.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct and that this declaration is executed this 9th day of October, 2017, in San Francisco,
15 California.

16
17 DATED: October 9, 2017

By: /s/ Jeffrey M. Davidson
Jeffrey M. Davidson

EXHIBIT 1

From: Davidson, Jeffrey
Sent: Sunday, October 08, 2017 10:53 AM
To: Rosenberg, Brad (CIV)
Cc: Beckenhauer, Eric (CIV); Pezzi, Stephen (CIV); Bailey, Kate (CIV); Lynch, Mark; James Zahradka; Nancy Fineman; Dettmer, Ethan; Boutrous Jr., Theodore J.; Berengaut, Alexander
Subject: RE: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record
Importance: High

Dear Brad,

As discussed on Friday, we will be filing a motion to require the government to complete the administrative record. The motion needs to be heard on very short time given the deficiencies in the record and the timetable we are operating under. We therefore propose that we will file our motion tomorrow, the government will respond on Tuesday, we will reply on Wednesday, and a hearing will occur Thursday morning on the Court's usual motion calendar. Let us know if the government will stipulate to this schedule; otherwise we will proceed with a motion to shorten time.

Best regards,
Jeff

Jeffrey Davidson

Covington & Burling LLP
One Front Street, San Francisco, CA 94111-5356
T +1 415 591 7021 | j davidson@cov.com
www.cov.com

COVINGTON

From: Rosenberg, Brad (CIV) [<mailto:Brad.Rosenberg@usdoj.gov>]
Sent: Thursday, October 05, 2017 8:03 PM
To: Davidson, Jeffrey <j davidson@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>; Nancy Fineman <NFineman@cpmlegal.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>
Cc: Beckenhauer, Eric (CIV) <Eric.Beckenhauer@usdoj.gov>; Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>; Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>
Subject: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Dear Jeff, James, Nancy, and Theodore:

Please see the attached correspondence regarding the N.D. Cal. DACA cases.

Thanks,
-Brad

Brad P. Rosenberg
Senior Trial Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
(202) 514-3374

EXHIBIT 2

From: Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>
Sent: Monday, October 09, 2017 6:55 AM
To: Davidson, Jeffrey
Cc: Beckenhauer, Eric (CIV); Pezzi, Stephen (CIV); Bailey, Kate (CIV); Lynch, Mark; James Zahradka; Nancy Fineman; Dettmer, Ethan; Boutrous Jr., Theodore J.; Berengaut, Alexander
Subject: RE: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Dear Jeff:

Thank you for reaching out to us about this. Unfortunately, the schedule that plaintiffs have proposed – with defendants’ response to plaintiffs’ motion due literally the very next day after plaintiffs’ filing – would be prejudicial to the defendants and simply unworkable. Accordingly, defendants do not agree to plaintiffs’ proposed schedule.

If plaintiffs do file a motion to shorten the schedule, please represent the defendants’ position as follows:

Defendants do not anticipate being able to substantively respond within 24 hours of plaintiffs’ filing of their motion, as plaintiffs propose. Among other things, defendants have a reply brief due to be filed in the DACA litigation pending in the Eastern District of New York on October 10, have to appear in-person for a status conference in the Eastern District of New York on October 11, and have seven sets of objections to discovery requests that are due on October 10 and/or 11 relating to the DACA litigation in that court. Moreover, because defendants have not yet even seen plaintiffs’ proposed filing, they cannot commit to responding within a 24-hour period, and requiring defendants to do so would be severely prejudicial. Accordingly, defendants believe that this Court should hold its hearing on plaintiffs’ forthcoming motion on October 19, and set the due date for defendants’ opposition brief for October 16. Alternatively, at minimum, to the extent the Court holds its hearing on October 12, defendants should be permitted until 5 p.m. Pacific Daylight Time on October 11 to file their opposition brief.

Thanks,
-Brad

From: Davidson, Jeffrey [mailto:jdavidson@cov.com]
Sent: Sunday, October 08, 2017 1:53 PM
To: Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>
Cc: Beckenhauer, Eric (CIV) <EBeckenh@civ.usdoj.gov>; Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Lynch, Mark <mlynch@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>;

Nancy Fineman <NFineman@cpmlegal.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>; Berengaut, Alexander <aberengaut@cov.com>

Subject: RE: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Importance: High

Dear Brad,

As discussed on Friday, we will be filing a motion to require the government to complete the administrative record. The motion needs to be heard on very short time given the deficiencies in the record and the timetable we are operating under. We therefore propose that we will file our motion tomorrow, the government will respond on Tuesday, we will reply on Wednesday, and a hearing will occur Thursday morning on the Court's usual motion calendar. Let us know if the government will stipulate to this schedule; otherwise we will proceed with a motion to shorten time.

Best regards,
Jeff

Jeffrey Davidson

Covington & Burling LLP
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www.cov.com

COVINGTON

From: Rosenberg, Brad (CIV) [<mailto:Brad.Rosenberg@usdoj.gov>]

Sent: Thursday, October 05, 2017 8:03 PM

To: Davidson, Jeffrey <jdavidson@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>; Nancy Fineman <NFineman@cpmlegal.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>

Cc: Beckenhauer, Eric (CIV) <Eric.Beckenhauer@usdoj.gov>; Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>; Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>

Subject: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Dear Jeff, James, Nancy, and Theodore:

Please see the attached correspondence regarding the N.D. Cal. DACA cases.

Thanks,
-Brad

Brad P. Rosenberg
Senior Trial Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
(202) 514-3374

EXHIBIT 3

From: Berengaut, Alexander
Sent: Monday, October 09, 2017 10:29 AM
To: Scalzo, Kayleigh; Mincer, Jonathan
Subject: FW: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Importance: High

From: Rosenberg, Brad (CIV) [mailto:Brad.Rosenberg@usdoj.gov]
Sent: Monday, October 09, 2017 1:29 PM
To: Davidson, Jeffrey <jdavidson@cov.com>
Cc: Beckenhauer, Eric (CIV) <Eric.Beckenhauer@usdoj.gov>; Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>; Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>; Lynch, Mark <mlynch@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>; Nancy Fineman <NFineman@cpmlegal.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>; Berengaut, Alexander <aberengaut@cov.com>
Subject: RE: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record
Importance: High

Jeff:

Can you also include the following language at the end of defendants' paragraph:

Defendants also request the opportunity to appear telephonically at the hearing, should the court schedule a hearing.

Thanks,
-Brad

From: Davidson, Jeffrey [mailto:jdavidson@cov.com]
Sent: Monday, October 09, 2017 11:37 AM
To: Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>
Cc: Beckenhauer, Eric (CIV) <EBeckenh@civ.usdoj.gov>; Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Lynch, Mark <mlynch@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>; Nancy Fineman <NFineman@cpmlegal.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>; Berengaut, Alexander <aberengaut@cov.com>
Subject: RE: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Dear Brad:

Thank you for your response. We will include the government's position in our papers.

Best regards,
Jeff

Jeffrey Davidson

Covington & Burling LLP
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www.cov.com

COVINGTON

From: Rosenberg, Brad (CIV) [<mailto:Brad.Rosenberg@usdoj.gov>]
Sent: Monday, October 09, 2017 6:55 AM
To: Davidson, Jeffrey <jdavidson@cov.com>
Cc: Beckenhauer, Eric (CIV) <Eric.Beckenhauer@usdoj.gov>; Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>; Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>; Lynch, Mark <mlynch@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>; Nancy Fineman <NFineman@cpmlegal.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>; Berengaut, Alexander <aberengaut@cov.com>
Subject: RE: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Dear Jeff:

Thank you for reaching out to us about this. Unfortunately, the schedule that plaintiffs have proposed – with defendants’ response to plaintiffs’ motion due literally the very next day after plaintiffs’ filing – would be prejudicial to the defendants and simply unworkable. Accordingly, defendants do not agree to plaintiffs’ proposed schedule.

If plaintiffs do file a motion to shorten the schedule, please represent the defendants’ position as follows:

Defendants do not anticipate being able to substantively respond within 24 hours of plaintiffs’ filing of their motion, as plaintiffs propose. Among other things, defendants have a reply brief due to be filed in the DACA litigation pending in the Eastern District of New York on October 10, have to appear in-person for a status conference in the Eastern District of New York on October 11, and have seven sets of objections to discovery requests that are due on October 10 and/or 11 relating to the DACA litigation in that court. Moreover, because defendants have not yet even seen plaintiffs’ proposed filing, they cannot commit to responding within a 24-hour period, and requiring defendants to do so would be severely prejudicial. Accordingly, defendants believe that this Court should hold its hearing on plaintiffs’ forthcoming motion on October 19, and set the due date for defendants’ opposition brief for October 16. Alternatively, at minimum, to the extent the Court holds its hearing on October 12, defendants should be permitted until 5 p.m. Pacific Daylight Time on October 11 to file their opposition brief.

Thanks,
-Brad

From: Davidson, Jeffrey [<mailto:jdavidson@cov.com>]
Sent: Sunday, October 08, 2017 1:53 PM
To: Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>
Cc: Beckenhauer, Eric (CIV) <EBeckenh@civ.usdoj.gov>; Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Lynch, Mark <mlynch@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>; Nancy Fineman <NFineman@cpmlegal.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>; Berengaut, Alexander <aberengaut@cov.com>
Subject: RE: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record
Importance: High

Dear Brad,

As discussed on Friday, we will be filing a motion to require the government to complete the administrative record. The motion needs to be heard on very short time given the deficiencies in the record and the timetable we are operating under. We therefore propose that we will file our motion tomorrow, the government will respond on Tuesday, we will reply on Wednesday, and a hearing will occur Thursday morning on the Court's usual motion calendar. Let us know if the government will stipulate to this schedule; otherwise we will proceed with a motion to shorten time.

Best regards,
Jeff

Jeffrey Davidson

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COVINGTON

From: Rosenberg, Brad (CIV) [<mailto:Brad.Rosenberg@usdoj.gov>]
Sent: Thursday, October 05, 2017 8:03 PM
To: Davidson, Jeffrey <jdavidson@cov.com>; James Zahradka <James.Zahradka@doj.ca.gov>; Nancy Fineman <NFineman@cpmlegal.com>; Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com>
Cc: Beckenhauer, Eric (CIV) <Eric.Beckenhauer@usdoj.gov>; Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>; Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>
Subject: N.D. Cal. DACA Cases -- Letter Regarding Administrative Record

Dear Jeff, James, Nancy, and Theodore:

Please see the attached correspondence regarding the N.D. Cal. DACA cases.

Thanks,
-Brad

Brad P. Rosenberg
Senior Trial Counsel
U.S. Department of Justice

Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
(202) 514-3374

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10 *Attorneys for Plaintiffs The Regents of the*
11 *University of California and Janet Napolitano, in*
12 *her official capacity as President of the*
13 *University of California*

14 GIBSON, DUNN & CRUTCHER LLP
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Attorneys for Plaintiff City of San Jose

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

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

Plaintiffs,

v.

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

Defendants.

CASE NO. 17-CV-05211-WHA

**PROPOSED ORDER GRANTING
PLAINTIFFS' EMERGENCY MOTION TO
SHORTEN TIME FOR BRIEFING ON
MOTION TO COMPLETE THE
ADMINISTRATIVE RECORD**

Judge: Honorable William Alsup

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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

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

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Having considered the Motion of Plaintiffs The Regents of the University of California and Janet Napolitano, in her official capacity as President of the University of California, to Shorten Time for Briefing on Motion to Complete the Administrative Record in Accordance with 5 U.S.C. § 706 (“Plaintiffs’ Motion”),

IT IS HEREBY ORDERED THAT:

- 1) Plaintiffs’ Motion is hereby granted;
- 2) The briefing schedule on Plaintiffs’ Motion to Complete the Administrative Record in Accordance with 5 U.S.C. § 706 shall be as follows: any Opposition to the Motion shall be filed on or before **October 10, 2017**, and any Reply by Defendants shall be filed on or before **October 11, 2017**. Hearing on Plaintiffs’ Motion is set for **October 12, 2017** at **8 A.M.**

SO ORDERED, this __ day of _____, 2017.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE