

Consolidated Case Nos. 18-15068, 18-15069, 18-15070,
18-15071, 18-15072, 18-15128, 18-15133, 18-15134

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

REPLY IN SUPPORT OF MOTION TO EXPEDITE

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In its motion to expedite, the government requested that a relatively minor adjustment (7 days) be made to the plaintiffs’ briefing schedule and that oral argument and decision be expedited to facilitate the Supreme Court’s potential review of the issues presented in this case. The government explained that these requests were made in an attempt to preserve the opportunity for the Supreme Court to issue any writ of certiorari prior to the summer recess. The Regents of the University of California (not joined by any other plaintiffs in these consolidated cases) have offered three reasons to support their opposition to the government’s request. None has merit.

First, the Regents suggest that there is no good cause to justify the request for expedited treatment. Opp. 1. But as the government explained in its motion, the Supreme Court indicated in its order denying (without prejudice) the government’s petition for writ of certiorari before judgment that these cases should proceed expeditiously. *See U.S. Dep’t of Homeland Security v. Regents of the University of California*, No. 17-1003 (Feb. 26, 2018). Surely the stated preference of the Supreme Court—not to mention the need to settle the nation’s immigration enforcement policies—provides sufficient cause for a minor change to a briefing schedule and expedited argument.

Second, the Regents suggest that they cannot write their brief in the 14 days provided under the government’s proposed schedule “[g]iven the number and complexity of the issues presented by these appeals.” Opp. 2. But the Regents’ reply

brief will address only the few claims that are the subject to their cross appeal; they will have already addressed all of other issues in these appeals in their principal and response brief. Indeed, Federal Rule of Appellate Procedure 28.1 establishes 14 days as the default time period for an appellee’s reply brief in a cross appeal. *See* Fed. R. App. P. 28.1(f)(4). The government’s requested schedule would therefore not result in any expedited treatment relative to the normal course. If the government is able to address all of the issues in these consolidated appeals in its response and reply brief in 21 days (9 fewer than the default set out in Rule 28.1), then surely the Regents can address a significantly reduced number of issues in 14 days.

Third, and finally, the Regents suggest that expediting argument and decision to allow the Supreme Court to consider a petition for certiorari before the summer recess “would deprive this Court of adequate time to deliberate and write a considered opinion.” Opp. 2. Recent experience demonstrates to the contrary. For example, in *Hawaii v. Trump*, No. 17-17168, this Court held argument and issued a very thorough opinion on complicated issues on December 22, 2017, within a month of the filing of the government’s reply brief, and the Supreme Court granted a petition for certiorari less than a month after that, on January 19, 2018. If briefing in these appeals were concluded on April 17, as requested by the government, it would leave over two months before the end of the Supreme Court’s current term—longer than the time period between the end of briefing and Supreme Court action in *Hawaii v. Trump*. Similarly, in these very cases, the Supreme Court issued an order on the government’s

petition for writ of mandamus on December 20, 2017, two months after the *beginning* of briefing in this Court (on October 20), an even shorter timeline. *See In re United States of America*, No. 17-72917.

For the foregoing reasons, as well as those stated in the government's motion, the government respectfully requests that the Court adopt the requested schedule for expedited briefing and argument.

Respectfully submitted,

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MARCH 2018

CERTIFICATE OF COMPLIANCE

I hereby certify that this reply complies with the word limit of Federal Rule of Appellate Procedure 21(d)(1) because the motion contains 608 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 March 12, 2018, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished automatically by the appellate CM/ECF system on all other counsel.

s/ Mark B. Stern

MARK B. STERN