Jeffrey M. Davidson (SBN 248620)
Alan Bersin (SBN 63874)
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,
abersin@cov.com
Attorneys for Plaintiffs The Regents of the University of California and Janet Napolitano, in her official capacity as President of the University of California

Theodore J. Boutrous, Jr. (SBN 132099)
Ethan D. Dettmer (SBN 196046)
Jesse S. Gabriel (SBN 263137)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
Email: tboutrous@gibsondunn.com,
edettmer@gibsondunn.com,
jgabriel@gibsondunn.com
Attorneys for Plaintiffs Dulce Garcia, Miriam Gonzalez Avila, Saul Jimenez Suarez, Viridiana Chabolla Mendoza, Norma Ramirez, and Jirayut Latthivongskorn

XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Supervising Deputy Attorney General
JAMES F. ZAHRADKA II (SBN 196822)
Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550
Telephone: (510) 879-1247
E-mail: James.Zahradka@doj.ca.gov
Attorneys for Plaintiff State of California

Joseph W. Cotchett (SBN 36324)
Justin T. Berger (SBN 250346)
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
Email: jberger@cpmlegal.com
Attorneys for Plaintiff City of San Jose

Jonathan Weissglass (SBN 185008)
Stacey M. Leyton (SBN 203827)
Eric P. Brown (SBN 284245)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
Email: jweissglass@altber.com
Attorneys for Plaintiffs County of Santa Clara and Service Employees International Union 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 TO STAY IMPLEMENTATION OF THE COURT'S OCTOBER 17, 2017 AND NOVEMBER 16, 2017 ORDERS IN ORDER TO RESOLVE THE PENDING MOTIONS WITHOUT FURTHER INTERLOCUTORY APPEALS BY DEFENDANTS

Judge: Honorable William Alsup
Hearing: December 28, 2017, 8:00 a.m.

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

NOTICE OF MOTION AND MOTION TO STAY IMPLEMENTATION OF THE COURT'S OCTOBER 17, 2017 AND NOVEMBER 16, 2017 ORDERS IN ORDER TO RESOLVE THE PENDING MOTIONS

WITHOUT FURTHER INTERLOCUTORY APPEALS BY DEFENDANTS

Please take notice that on December 28, 8:00 a.m., at 450 Golden Gate Avenue, San Francisco, California, Courtroom 8, or such other time as the Court deems appropriate, Plaintiffs in the above-captioned actions will, and hereby do, move for a stay of the Court's October 17, 2017 Order RE Motion to Complete the Administrative Record and the portion of the Court's November 16, 2017 Order requiring Defendants to file and serve their augmented record by November 22. This motion is based on the memorandum of points and authorities, and exhibits hereto, and such additional arguments the parties may make.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants have filed in the Court of Appeals an Emergency Motion for Stay of the Court of Appeals' Order denying the Defendants' Petition for Mandamus (Exhibit 1). That motion also states that Defendants "will file an application seeking a further stay of all discovery and record expansion pending a petition for mandamus or writ of certiorari from the Supreme Court no later than November 20, 2017." Defendants also have informed Plaintiffs that they intend to file a similar motion seeking a stay pending Supreme Court review in this Court. At the same time, there are pending in this Court Plaintiffs' Motion for Provisional Relief and Defendants' Motion to Dismiss, which will be fully briefed by December 8 and heard by this Court on December 20, 2017. Defendants' continued pursuit of interlocutory review of the Court's well-founded October 17 and November 16 Orders is unfortunate and distracts from this Court's effort to reach a prompt judgment on the merits. However, the immediate and vital issue before the Court is Plaintiffs' Motion for Provisional Relief, as that motion, if granted, will enjoin the Rescission of DACA and thereby avoid disruption in the lives of hundreds of thousands of people.

In order to remove the distraction of further interlocutory appellate proceedings and to permit the Court and the parties to focus on the paramount issue of whether the DACA Rescission should be enjoined, Plaintiffs move this Court to stay Defendants' obligation to file and serve an amended

administrative record in compliance with the Court's October 17 and November 16 Orders until the Court rules on Plaintiffs' Motion for Provisional Relief and Defendants' Motion to Dismiss. Plaintiffs anticipate that the Court's rulings on those motions will either moot or clarify the issues on which Defendants have indicated they will seek emergency review in the Supreme Court.

First, the stay requested by the instant motion, and a ruling on the Motion to Dismiss, will moot Defendants' contention that this Court must assess and find subject matter jurisdiction before ordering completion of the Administrative Record or permitting discovery. The jurisdictional issues have been squarely raised in Defendants' Motion to Dismiss, will be fully briefed by December 8 and will be heard by this Court on December 20. A decision on those issues will eliminate Defendants' concern that the Court should rule on subject matter jurisdiction before requiring production of the complete Administrative Record or permitting additional discovery.

Second, the requested stay, and further briefing and rulings by this Court, will clarify the issues on review. Defendants argue—and the dissenting judge in the Court of Appeals agreed—that it is improper to require expansion of the Administrative Record, beyond what is presented by Defendants, unless there is a finding of bad faith or improper conduct by Defendants. Although Plaintiffs disagree, the issue of bad faith is squarely presented in Plaintiffs' Motion for Provisional Relief. (Dkt. 111, pp. 29-31.) In that motion, Plaintiffs set forth clear and convincing evidence that the stated reason for the DACA Rescission—the Attorney General's view that DACA was established without statutory authority and was an unconstitutional exercise of authority by the Executive Branch and therefore is at risk of being overturned by the courts—was not only unsupported, but also a pretext. Evidence demonstrating this fact is described in Plaintiffs' pending Motion for Provisional Relief:

- The very same day as the Rescission, the President tweeted: "Congress now has 6 months to legalize DACA (something the Obama Administration was unable to do). If they can't, I will revisit this issue!"[1] But if the rationale for the Rescission were a genuine belief that DACA was illegal, there would be no basis to "revisit this issue" and possibly reinstate an illegal policy.

[1] *See* Donald J. Trump (@realDonaldTrump), Twitter (Sept. 5, 2017, 8:38 PM), https://twitter.com/realDonaldTrump/status/905228667336499200.

- DHS did not immediately terminate DACA. Instead, it announced that it would continue processing renewal applications for an additional month for benefits that expired between September 5, 2017 and March 5, 2018, and would recognize DACA grants already conferred, leaving the program in place for at least an additional six months. If DACA were illegal, DHS would have no basis to leave it in place for months and years.

- On October 18, 2017, the Attorney General testified to Congress that DACA could be legal under *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), if it were implemented "on an individualized basis." *Oversight of the U.S. Department of Justice: Hearing before the S. Comm. on the Judiciary*, 115th Cong. (2017) (testimony of Jefferson B. Sessions, Att'y Gen. of the United States), *available at* goo.gl/MgT97u. But the government did not implement, or apparently even consider, an alternative program that by their own admission is legal.

- The Senior Counselor to the Acting Secretary of DHS, who *drafted* the Rescission, undercut the litigation risk justification when he testified that a policy of reacting to litigation threats would be the "craziest policy you could ever have" because "you could never do anything if you were always worried about being sued." App. at 1929 (Hamilton Dep. 208:5-11).

- In their Motion to Dismiss, Defendants contend that the rescission of DACA is not reviewable under the APA and that the notice and comment requirement, 5 U.S.C. § 553, does not apply to the Rescission. However, if Defendants really believed that the *Texas* decision presented an unmanageable litigation risk, they also must believe that the *Texas* decision correctly held that a program like DACA is reviewable and that the notice-and-comment requirement applies.

- On October 8, 2017, President Trump sent a letter to Congressional leaders setting forth the "Immigration Principles and Policies" that he said "must be included as part of any legislation addressing the status of [DACA] recipients." App. at 1990-99 (Policies and Principles). The *New York Times* described the "Principles and Policies" as "a long list of hard-line immigration measures," including funding for a border wall. App. at 2004 (*NYTimes*). This evidence, linking the Rescission to the administration's legislative strategy, suggests that the decision to rescind DACA was an effort to make DACA recipients a bargaining chip to secure support for immigration legislation from members of Congress who support DACA recipients, and would not otherwise support the administration's immigration agenda.

Defendants will have their opportunity to contest this evidence when they file their opposition to Plaintiffs Motion for Preliminary Injunction on November 22, and the Court will be in a position to decide the issue of pretextuality when it rules on Plaintiffs' motion. Plaintiffs respectfully request that the Court make specific findings on the issue of pretextuality in that ruling.[2] If the Court finds that the stated reason for the Rescission was a pretext, there is no dispute—even under the dissenting judge's view of the law—that expansion of the Administrative Record and discovery of DHS is appropriate.

---

[2] If the Court would prefer that Plaintiffs make a separate motion on the issue of pretextuality, Plaintiffs will do so.

Furthermore, Defendants' counsel have informed Plaintiffs that they need approximately three more weeks to complete the Administrative Record and an additional week beyond that to complete the log of documents that will be withheld from the Administrative Record on grounds of privilege. Thus, if the Court's October 17 and November 16 Orders are not stayed, there will be another distracting battle about whether Defendants can comply with the Court's schedule and perhaps over what the repercussions should be if they do not, and the issues may not be resolved until the pending motions are under submission in any event.

Finally, in order to obviate Defendants' efforts to obtain a stay from the Supreme Court, Plaintiffs agree not to recommence discovery pending the Court's rulings on Plaintiffs' Motion for Provisional Relief and Defendants' Motion to Dismiss. Nonetheless, the parties will continue to meet and confer to develop a discovery plan in the event the Court rules that it has subject matter jurisdiction, including by proposing how and when to present any discovery disputes for adjudication.

CONCLUSION

For the reasons stated above, the Court should stay Defendants' obligation to file and serve an amended administrative record in compliance with the Court's October 17 and November 16 Orders pending its rulings on Plaintiffs' Motion for a Preliminary Injunction and Defendants' Motion to Dismiss. Such a stay will eliminate any need for emergency review of the October 17 and November 16 Orders by the Supreme Court, and the Court's rulings on the pending motions may further confirm the correctness of that Order and moot Defendants' objections to it.

Dated: November 19, 2017

Respectfully submitted,

COVINGTON & BURLING LLP

/s/ Jeffrey M. Davidson
Jeffrey M. Davidson (SBN 248620)
Alan Bersin (SBN 63874)
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 (*pro hac vice*)
Mark H. Lynch (*pro hac vice*)
Alexander A. Berengaut (*pro hac vice*)
Megan A. Crowley (*pro hac vice*)
Ashley Anguas Nyquist (*pro hac vice*)
Jonathan Y. Mincer (Bar No. 298795)
Ivano M. Ventresca (*pro hac vice*)
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
Facsimile: (202) 662-6291
E-mail: lbreuer@cov.com, mlynch@cov.com, aberengaut@cov.com, mcrowley@cov.com, anyquist@cov.com, jmincer@cov.com, iventresca@cov.com

Mónica Ramírez Almadani (SBN 234893)
COVINGTON & BURLING LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
Telephone: (424) 332-4800
Facsimile: (424) 332-4749
Email: mralmadani@cov.com

Erika Douglas (SBN 314531)
COVINGTON & BURLING LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94061-1418
Telephone: (650) 632-4700
Facsimile: (650) 632-4800
Email: edouglas@cov.com

XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Supervising Deputy Attorney General

/s/ James F. Zahradka II
JAMES F. ZAHRADKA II (SBN 196822)
Deputy Attorney General

CHRISTINE CHUANG
REBEKAH A. FRETZ
RONALD H. LEE
KATHLEEN VERMAZEN RADEZ
SHUBHRA SHIVPURI
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550
Telephone: (510) 879-1247

Attorneys for Plaintiff State of California

JANET T. MILLS
Attorney General of Maine
SUSAN P. HERMAN (*pro hac vice*)
Deputy Attorney General
6 State House Station
Augusta, Maine 04333
Telephone: (207) 626-8814
Email: susan.herman@maine.gov

Attorneys for Plaintiff State of Maine

BRIAN E. FROSH
Attorney General of Maryland
STEVEN M. SULLIVAN (*pro hac vice*)
Solicitor General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Telephone: (410) 576-6325
Email: ssullivan@oag.state.md.us

Attorneys for Plaintiff State of Maryland

LORI SWANSON
Attorney General State of Minnesota
JULIANNA F. PASSE (*pro hac vice*)

Charles F. Robinson (SBN 113197)
Margaret Wu (Bar No. 184167)
Julia M. C. Friedlander (SBN 165767)
Sonya Sanchez (SBN 247541)
Norman Hamill (SBN 154272)
Harpreet Chahal (SBN 233268)
Michael Troncoso (SBN 221180)
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

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

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

Attorneys for Plaintiff State of Minnesota

GIBSON, DUNN & CRUTCHER LLP

/s/ Theodore J. Boutrous, Jr.

THEODORE J. BOUTROUS, JR., SBN 132099
tboutrous@gibsondunn.com
KATHERINE M. MARQUART, SBN 248043
kmarquart@gibsondunn.com
JESSE S. GABRIEL, SBN 263137
jgabriel@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

ETHAN D. DETTMER, SBN 196046
edettmer@gibsondunn.com
555 Mission Street
San Francisco, CA 94105
Telephone: (415) 393-8200
Facsimile: (415) 393-8306

PUBLIC COUNSEL
MARK D. ROSENBAUM, SBN 59940
mrosenbaum@publiccounsel.org
JUDY LONDON, SBN 149431
jlondon@publiccounsel.org

COTCHETT, PITRE & McCARTHY, LLP
OFFICE OF THE CITY ATTORNEY
/s/ *Justin T. Berger*

JUSTIN T. BERGER
BRIAN DANITZ (SBN 247403)
bdanitz@cpmlegal.com
TAMARAH P. PREVOST (SBN 313422)
tprevost@cpmlegal.com
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

RICHARD DOYLE (SBN 88625)
NORA FRIMANN (SBN 93249)
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 Address: cao.main@sanJoséca.gov

Attorneys for Plaintiff City of San Jose

610 South Ardmore Avenue
Los Angeles, CA 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

BARRERA LEGAL GROUP, PLLC
LUIS CORTES ROMERO, SBN 310852
lcortes@barreralegal.com
19309 68th Avenue South, Suite R102
Kent, WA 98032
Telephone: (253) 872-4730
Facsimile: (253) 237-1591

LAURENCE H. TRIBE, SBN 39441
larry@tribelaw.com Harvard Law School
**Affiliation for identification purposes only*
1575 Massachusetts Avenue
Cambridge, MA 02138
Telephone: (617) 495-1767

ERWIN CHEMERINSKY, *pro hac vice* forthcoming
echemerinsky@law.berkeley.edu
University of California, Berkeley School of Law
**Affiliation for identification purposes only*
215 Boalt Hall
Berkeley, CA 94720-7200
Telephone: (510) 642-6483

LEAH M. LITMAN, *pro hac vice* forthcoming llitman@law.uci.edu
University of California, Irvine School of Law
**Affiliation for identification purposes only*
401 East Peltason Drive Irvine, CA 92697
Telephone: (949) 824-7722

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

/s/ James R. Williams

JAMES R. WILLIAMS, County Counsel
GRETA S. HANSEN

/s/ Eric P. Brown

JONATHAN WEISSGLASS
jweissglass@altber.com

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

Attorneys for Plaintiff COUNTY OF SANTA CLARA

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

Attorneys for Plaintiffs COUNTY OF SANTA 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: November 19, 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

Exhibit 1

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. MOOPPAN
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@sanJoséca.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

CHAD A. READLER
Principal Deputy Assistant Attorney General

BRIAN STRETCH
United States Attorney

HASHIM M. MOOPPAN
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. MOOPPAN
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

Jeffrey M. Davidson (SBN 248620)
Alan Bersin (SBN 63874)
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,
abersin@cov.com
Attorneys for Plaintiffs The Regents of the University of California and Janet Napolitano, in her official capacity as President of the University of California

Theodore J. Boutrous, Jr. (SBN 132099)
Ethan D. Dettmer (SBN 196046)
Jesse S. Gabriel (SBN 263137)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
Email: tboutrous@gibsondunn.com,
edettmer@gibsondunn.com,
jgabriel@gibsondunn.com
Attorneys for Plaintiffs Dulce Garcia, Miriam Gonzalez Avila, Saul Jimenez Suarez, Viridiana Chabolla Mendoza, Norma Ramirez, and Jirayut Latthivongskorn

XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Supervising Deputy Attorney General
JAMES F. ZAHRADKA II (SBN 196822)
Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550
Telephone: (510) 879-1247
E-mail: James.Zahradka@doj.ca.gov
Attorneys for Plaintiff State of California

Joseph W. Cotchett (SBN 36324)
Justin T Berger (SBN 250346)
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
Email: jberger@cpmlegal.com
Attorneys for Plaintiff City of San Jose

Jonathan Weissglass (SBN 185008)
Stacey M. Leyton (SBN 203827)
Eric P. Brown (SBN 284245)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
Email: jweissglass@altber.com
Attorneys for Plaintiffs County of Santa Clara and Service Employees International Union 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

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO STAY IMPLEMENTATION OF THE COURT'S OCTOBER 17, 2017 AND NOVEMBER 16, 2017 ORDERS IN ORDER TO RESOLVE THE PENDING MOTIONS WITHOUT FURTHER INTERLOCUTORY APPEALS BY DEFENDANTS

Judge: Honorable William Alsup

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

Having considered Plaintiffs' Motion to Stay Implementation of the Court's October 17, 2017 and November 16, 2017 Orders In Order to Resolve the Pending Motions Without Further Interlocutory Appeals By Defendants ("Plaintiffs' Motion"),

IT IS HEREBY ORDERED THAT:

1) Plaintiffs' Motion is granted;

2) Pending this Court's ruling on Plaintiffs' Motion for a Provisional Relief (ECF No. 111) and Defendants' Motion to Dismiss (ECF No. 114):

a) Defendants' obligation to file and serve an amended administrative record in compliance with the Court's October 17, 2017 Order RE Motion to Complete the Administrative Record (ECF No. 79) and its November 16, 2017 Order to File Completed Administrative Record and Propose Schedule (ECF No. 188) is hereby STAYED;

b) Discovery is hereby STAYED, but the parties are instructed to continue to meet and confer to develop a discovery plan in the event the Court rules that it has subject matter jurisdiction, including the timing of and manner for presenting any discovery disputes for adjudication;

3) All other deadlines in this case remain in effect. The Court may address scheduling obligations regarding discovery and compilation of the administrative record in a forthcoming order after hearing the parties' views.

SO ORDERED, this __ day of _____, 2017.

_____
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE