

No. 17-72917

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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*In re* UNITED STATES OF AMERICA, *et al.*,  
Petitioners.

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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.

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**EMERGENCY MOTION FOR STAY**

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## CIRCUIT RULE 27-3 CERTIFICATE

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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.

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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,

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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  
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MARK B. STERN