

**FOR PUBLICATION**

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

IN RE UNITED STATES OF  
AMERICA; DONALD J. TRUMP;  
U.S. DEPARTMENT OF  
HOMELAND SECURITY; ELAINE  
C. DUKE,

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

*Petitioners,*

v.

UNITED STATES DISTRICT  
COURT FOR THE NORTHERN  
DISTRICT OF CALIFORNIA, SAN  
FRANCISCO,

*Respondent,*

REGENTS OF THE UNIVERSITY  
OF CALIFORNIA; JANET  
NAPOLITANO, in her official  
capacity as president of the

No. 17-72917

D.C. Nos.

3:17-cv-05211-WHA

3:17-cv-05235-WHA

3:17-cv-05329-WHA

3:17-cv-05380-WHA

3:17-cv-05813-WHA

**ORDER**

University of California;  
STATE OF CALIFORNIA; STATE  
OF MAINE; STATE OF  
MINNESOTA; STATE OF  
MARYLAND; CITY OF SAN  
JOSE; DULCE GARCIA; MIRIAM  
GONZALEZ AVILA; VIRIDIANA  
CHABOLLA MENDOZA; NORMA  
RAMIREZ; COUNTY OF SANTA  
CLARA; SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL  
521; JIRAYUT  
LATTHIVONGSKORN; SAUL  
JIMENEZ SUAREZ,  
*Real Parties in Interest.*

Filed December 21, 2017

Before: Kim McLane Wardlaw, Ronald M. Gould,  
and Paul J. Watford, Circuit Judges.

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**ORDER**

Pursuant to the Supreme Court's per curiam opinion of 12/20/2017, we instruct the district court to rule on the Government's threshold arguments that the Secretary's decision to rescind DACA is unreviewable as committed to agency discretion and that the Immigration and Nationality Act deprives the district court of jurisdiction. The district court should stay its order requiring completion of the administrative record until such time as it has ruled on these threshold issues. If the district court concludes that it has jurisdiction and that the decision to rescind DACA is reviewable, it should also consider arguments as to whether some narrowing of its order requiring completion of the administrative record is necessary and appropriate.

The district court shall also consider whether a certification of any issues for appeal under 28 U.S.C. § 1292(b) is appropriate. If a certification is made, the district court shall consider under established legal principles whether to stay proceedings pending resolution of the appellate issues. Further, "the District Court may not compel the Government to disclose any document that the Government believes is privileged without first providing the Government with the opportunity to argue the issue." \_\_\_ S. Ct. \_\_\_, 2017 WL 6505860, at \*2.

**IT IS SO ORDERED.**