FOR PUBLICATION

FILED

DEC 21 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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,

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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 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;

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
Northern District of California, San Francisco

ORDER

COUNTY OF SANTA CLARA; SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521; JIRAYUT LATTHIVONGSKORN; SAUL JIMENEZ SUAREZ,

Real Parties in Interest.

Before: WARDLAW, GOULD, and WATFORD, Circuit Judges.

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.