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Attorneys for Non-Party
THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

THE STATE OF CALIFORNIA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in his
official capacity as Acting Secretary of the
United States Department of Homeland
Security; and MATTHEW ALBENCE, in his
official capacity as Acting Director of U.S.
Immigration and Customs Enforcement,

Defendants.

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Case No. 4:20-cv-04592-JST

**THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
CASES SHOULD BE RELATED**

**[Civ. L.R. 3-12(b); Filed Concurrently with
Stipulation and [Proposed] Order]**

Complaint filed: July 9, 2020

I. INTRODUCTION

Pursuant to Civil Local Rules 3-12(b) and 7-11, Non-Party The Regents of the University of California (“The Regents”) respectfully request that the Court consider whether the action *The Regents of the University of California v. U.S. Department of Homeland Security et al.*, No. 3:20-cv-04621-JSW (the “University of California Action”), should be related to the instant case, *State of California v. U.S. Department of Homeland Security et al.*, 4:20-cv-04592-JST (the “State of California Action”). A Joint Stipulation and Proposed Order, as well as a copy of the complaint in the University of California Action, is being concurrently filed in support of this Motion.

II. DISCUSSION

On July 6, 2020, Defendant United States Immigration and Customs Enforcement (“ICE”) announced that it was rescinding prior ICE policy with respect to COVID-19 related exemptions to 8 C.F.R. § 214.2(f)(6)(i)(G) and 8 C.F.R. § 214.2(m)(9)(v), which relate to in-person learning requirements for nonimmigrant students who are in this country pursuant to F-1 and M-1 visas, respectively (the “Directive”).¹ As a result, if ICE’s new policy is implemented, the F-1 and M-1 visa students would no longer be permitted to take a full course of study through online classes in excess of the limits set forth in the above regulations, as previously permitted “for the duration of the [COVID-19] emergency”;² further, those students already in the country who take an entirely online course load for fall 2020 would be required to leave the United States or, if not presently here, would not be permitted to return to this country for their studies. Moreover, designated school officials must issue, by August 4, 2020, new Forms I-20 with respect to each F-1 and M-1 student attending schools in the United States this Fall 2020, certifying that the school is not operating entirely online, that the student is not taking an entirely online course load for the Fall 2020 semester, and that the student is taking the minimum number of online classes required to

¹ See “Broadcast Message: COVID-19 and Fall 2020,” available at <https://www.ice.gov/doclib/sevis/pdf/bcm2007-01.pdf> (last visited July 12, 2020).

² See “COVID-19: Guidance for SEVP [Student and Exchange Visitor Program] Stakeholders,” U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program, dated March 13, 2020, available at https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf (last visited July 12, 2020).

1 make normal progress in their degree program.

2 Both the State of California and The Regents, on behalf of California public universities,
3 are challenging the same July 6, 2020 Directive rescinding ICE's prior policy on substantially
4 similar grounds against the same Defendants, in their respective actions. In this district, cases are
5 related when: "(1) [t]he actions concern substantially the same parties, property, transaction or
6 event; and (2) [i]t appears likely that there will be an unduly burdensome duplication of labor and
7 expense or conflicting results if the cases are conducted before different Judges." Civil L.R. 3-
8 12(a). The University of California Action and the State of California Action are related under
9 this standard.

10 *First*, both actions are based on the same events and the same (or similar) legal theories
11 against all of the same defendants. On July 9, 2020, the State filed suit, on behalf of the California
12 Community Colleges and the California State University, alleging that the rescission of the in-
13 person learning exemption for F-1 and M-1 visa students in the July 6 Directive violates the
14 Administrative Procedure Act ("APA"), because (1) the rescission of the March 13 Guidance is
15 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and (2) the
16 rescission of the March 13 Guidance is an agency action subject to notice and comment
17 rulemaking, which Defendants failed to undertake. On July 10, 2020, The Regents filed suit, as
18 the corporation authorized and empowered to administer the University of California and its ten
19 campuses, alleging that the rescission of the in-person learning exemption for F-1 visa students in
20 the July 6 Directive violates the APA on the same or similar grounds.

21 Both cases name as defendants U.S. Department of Homeland Security ("DHS"), ICE,
22 Acting Secretary of DHS Chad F. Wolf, and Acting Director of ICE Matthew Albence. Plaintiff
23 in the State of California Action challenges the same Directive by bringing suit against the same
24 Defendants. These cases therefore concern substantially the same parties and events.

25 *Second*, both actions request virtually identical relief. Both cases bring two causes of
26 action under the APA challenging the Directive on the basis that it is arbitrary and capricious
27 (Count I) and violates the APA's requirement of notice and comment rulemaking for proposed
28 substantive rules (Count II). Both cases seek a declaration that the Directive was unlawful and an

1 injunction preventing Defendants from implementing or enforcing it. Therefore, there is
 2 substantial overlap in the claims raised and relief sought in these actions.

3 Given the same or similar parties, events, and legal issues involved, as well as the similar
 4 relief sought in these cases, requiring another Judge of this District to separately consider the
 5 issues presented in the University of California Action would create an “unduly burdensome
 6 duplication of labor and expense” and would also create the risk of “conflicting results.” *See* Civil
 7 L.R. 3-12(a). Moreover, counsel for the Defendants also agrees that the University of California
 8 Action should be related to the State of California Action, in order to promote judicial economy
 9 and to prevent unduly burdensome duplication of labor and expense for all parties involved.
 10 Accordingly, a Joint Stipulation by the parties in the University of California Action and a
 11 proposed Order accompanies this Motion, pursuant to Civil Local Rule 7-11.

12 **III. CONCLUSION**

13 For the foregoing reasons, The Regents of the University of California respectfully request
 14 that this Court order that its case be related to the State of California Action.

15
 16 Dated: July 13, 2020

Respectfully submitted,

CROWELL & MORING LLP

18 By: /s/ Jennifer S. Romano

Jennifer S. Romano

Attorneys for Non-Party

THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA

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THE REGENTS OF THE UNIVERSITY OF
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

THE STATE OF CALIFORNIA,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
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official capacity as Acting Secretary of the
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Case No. 4:20-cv-04592-JST

**STIPULATION AND [PROPOSED]
ORDER GRANTING THE REGENTS
OF THE UNIVERSITY OF
CALIFORNIA'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
CASES SHOULD BE RELATED**

**[Civ. L.R. 3-12(b); Filed Concurrently with
Administrative Motion to Relate Cases]**

Complaint filed: July 9, 2020

On July 13, 2020, Non-Party The Regents of the University of California filed an Administrative Motion to Consider Whether Cases Should Be Related pursuant to Civil Local Rule 3-12(b). Plaintiff the State of California and Defendants U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Acting Secretary of the U.S. Department of Homeland Security Chad F. Wolf, and Acting Director of U.S. Immigration and Customs Enforcement Matthew Albence, hereby stipulate that the cases should be related.

IT IS SO STIPULATED.

On July 13, 2020

CROWELL & MORING LLP

/s/ Jennifer S. Romano

JENNIFER S. ROMANO

Attorneys for Non-Party

The Regents of the University of California

On July 13, 2020

DAVID L. ANDERSON

United States Attorney for the Northern District of California

/s/ Sara Winslow

SARA WINSLOW

Chief, Civil Division

Attorneys for Defendants

U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Chad F. Wolf, and Matthew Albence

On July 13, 2020

XAVIER BECERRA

Attorney General of California

/s/ Lee I. Sherman

Lee I. Sherman

Deputy Attorney General

Attorney for Plaintiff State of California

FILER'S ATTESTATION

Pursuant to Local Rule 5-1(h)(3), I attest under penalty of perjury that concurrence in the filing of the document has been obtained from each of the other Signatories.

Respectfully submitted,

Dated: July 13, 2020

/s/ Jennifer S. Romano

Jennifer S. Romano

[PROPOSED] ORDER

Having considered the papers and pleadings on file, the Court GRANTS the Regents of the University of California's Administrative Motion to Consider Whether Cases Should Be Related and ORDERS that the following cases be related:

- *State of California v. U.S. Department of Homeland Security, et al.*, Case No. 4:20-cv-04592-JST and
- *The Regents of the University of California v. U.S. Department of Homeland Security, et al.*, Case No. 3:20-cv-04621

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2020

THE HONORABLE JON S. TIGAR
UNITED STATES DISTRICT JUDGE