

1 Jennifer S. Romano (SBN 195953)
jromano@crowell.com
2 Emily T. Kuwahara (SBN 252411)
ekuwahara@crowell.com
3 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
4 Los Angeles, California 90071
Telephone: 213.622.4750

5 A. Marisa Chun (SBN 160351)
mchun@crowell.com
6 Molly A. Jones (SBN 301419)
mojones@crowell.com
7 CROWELL & MORING LLP
8 3 Embarcadero Center, 26th Floor
San Francisco, California 94111
9 Telephone: 415.986.2800

10 Thomas A. Lorenzen (*pro hac vice* forthcoming)
tlorenzen@crowell.com
11 Daniel W. Wolff (*pro hac vice* forthcoming)
dwolff@crowell.com
12 CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
13 Washington, D.C. 20004-2595
Telephone: 202.624.2500

14 *Attorneys for Non-Party*
15 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19 THE STATE OF CALIFORNIA,

20 Plaintiff,

21 v.

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

27 Defendants.
28

Charles F. Robinson (SBN 113197)
charles.robinson@ucop.edu
Margaret L. Wu (SBN 184167)
margaret.wu@ucop.edu
Allison M. Woodall (SBN 178533)
allison.woodall@ucop.edu
Sonya U. Sanchez (SBN 247541)
sonya.sanchez@ucop.edu
UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL COUNSEL
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Telephone: 510.987.9800

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

1 **I. INTRODUCTION**

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

9 **II. DISCUSSION**

10 On July 6, 2020, Defendant United States Immigration and Customs Enforcement (“ICE”)
11 announced that it was rescinding prior ICE policy with respect to COVID-19 related exemptions
12 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
13 requirements for nonimmigrant students who are in this country pursuant to F-1 and M-1 visas,
14 respectively (the “Directive”).¹ As a result, if ICE’s new policy is implemented, the F-1 and M-1
15 visa students would no longer be permitted to take a full course of study through online classes in
16 excess of the limits set forth in the above regulations, as previously permitted “for the duration of
17 the [COVID-19] emergency”;² further, those students already in the country who take an entirely
18 online course load for fall 2020 would be required to leave the United States or, if not presently
19 here, would not be permitted to return to this country for their studies. Moreover, designated
20 school officials must issue, by August 4, 2020, new Forms I-20 with respect to each F-1 and M-1
21 student attending schools in the United States this Fall 2020, certifying that the school is not
22 operating entirely online, that the student is not taking an entirely online course load for the Fall
23 2020 semester, and that the student is taking the minimum number of online classes required to

24 _____
25 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).

26 ² See “COVID-19: Guidance for SEVP [Student and Exchange Visitor Program] Stakeholders,”
27 U.S. Immigration and Customs Enforcement, Student and Exchange Visitor Program, dated
28 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

By: /s/ Jennifer S. Romano

Jennifer S. Romano
Attorneys for Non-Party
THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

1 Jennifer S. Romano (SBN 195953)
jromano@crowell.com
2 Emily T. Kuwahara (SBN 252411)
ekuwahara@crowell.com
3 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
4 Los Angeles, California 90071
Telephone: 213.622.4750

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mchun@crowell.com
6 Molly A. Jones (SBN 301419)
mojones@crowell.com
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San Francisco, California 94111
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tlorenzen@crowell.com
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dwolff@crowell.com
12 CROWELL & MORING LLP
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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO/OAKLAND DIVISION

19 THE STATE OF CALIFORNIA,
20 Plaintiff,

21 v.

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

27 Defendants.
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Charles F. Robinson (SBN 113197)
charles.robinson@ucop.edu
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margaret.wu@ucop.edu
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allison.woodall@ucop.edu
Sonya U. Sanchez (SBN 247541)
sonya.sanchez@ucop.edu
UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL COUNSEL
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Telephone: 510.987.9800

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

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

7 **IT IS SO STIPULATED.**

8
9 On July 13, 2020

CROWELL & MORING LLP

10 /s/ Jennifer S. Romano

JENNIFER S. ROMANO

11 Attorneys for Non-Party
The Regents of the University of California

12 On July 13, 2020

DAVID L. ANDERSON

13 United States Attorney for the Northern District of
California

14 /s/ Sara Winslow

15 SARA WINSLOW

16 Chief, Civil Division

Attorneys for Defendants

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

19 On July 13, 2020

XAVIER BECERRA

Attorney General of California

20 /s/ Lee I. Sherman

21 Lee I. Sherman

22 Deputy Attorney General

Attorney for Plaintiff State of California

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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