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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA; **XIUHTEZCATL TONATIUH M.**, through his Guardian Tamara Roske-Martinez; et al.,

Plaintiffs,

v.

The UNITED STATES OF AMERICA; et al.,

Defendants.

Case No.: 6:15-cv-01517-AA

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STAY LITIGATION

Expedited Hearing Opposed

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STAY LITIGATION

I. INTRODUCTION

It has been two years since this Court denied Defendants' Motion to Dismiss. Having once again failed to obtain premature relief from the Supreme Court, and a mere 31 days after their last stay motion in this Court, Defendants continue to file increasingly desperate motions in an attempt to prevent this case from going to trial. Defendants' Motion to Stay Litigation ("Motion to Stay"), Doc. 419, which seeks a stay of the entire litigation pending resolution of Defendants' Motion for Reconsideration (Doc. 418) and Petition for Mandamus to the Ninth Circuit (Doc. 420-1), should be denied to the extent that it has not been rendered moot by the Ninth Circuit's November 8, 2018 Order of a "temporary stay" of "trial" in this Case. *See* Declaration of Julia A. Olson in Support of Plaintiffs' Response in Opposition to Defendants' Motion to Stay Litigation ("Olson Dec."), Ex. 1 at 1.[1] Defendants yet again fail to satisfy the requirements for such a stay and fail to allege any new facts, circumstances, or material changes which, this time around, warrant a favorable finding on their behalf. Instead, Defendants treat cursory language from the Supreme Court that failed to grant a similar stay motion as a directive to file yet another frivolous dilatory motion with this Court. Doc. 419 at 3-4. Defendants' arguments were unavailing then and are unavailing now.

Defendants point to no new or further irreparable harm that, this time around, would give cause for a stay. Rather, Defendants again attempt to justify their position by recycling their legal arguments and by falsely claiming that "[w]ithout a stay, the United States and the public interest

[1] Plaintiffs intend to file their response to Defendants' Petition for Writ of Mandamus as quickly as possible and no later than November 16. Olson Dec. ¶8. Given the irreparable harm Plaintiffs face, and the waste of resources by the parties and the courts as a result of further delay, Plaintiffs also intend to request reconsideration from the Ninth Circuit of its November 8 Order of a temporary stay of trial. *Id.* The November 8 Order was issued without any briefing from Plaintiffs.

will be irreparably harmed because trial proceedings will move forward without allowing the opportunity for appellate review of the claims that the Supreme Court contemplated in its November 2 Order." Doc. 419 at 3. Defendants have not, and cannot, show that they would be unable to assert all of their arguments in the normal course of appellate review. *In re United States*, 884 F.3d 830, 837 (9th Cir. 2018); *see also In re United States*, 895 F.3d 1101, 1106 (9th Cir. 2018) ("The government's arguments as to the violation of the APA and the separation of powers fail to establish that they will suffer prejudice not correctable in a future appeal."). Defendants also cannot show that the typical expenses associated with complex civil litigation constitute irreparable harm. The Ninth Circuit has previously rejected this argument. *In re United States*, 884 F.3d at 836. Moreover, Defendants are predominantly responsible for these expenses as a result of their failure to stipulate to, *inter alia*, facts beyond those admitted in their Answer. *See, e.g.*, Declaration of Julia A. Olson in Support of Plaintiffs' Response in Opposition to Defendants' Motion in *Limine* to Exclude Certain Testimony of Six Experts, Doc. 410 at ¶2.

This Court, the Ninth Circuit, and the Supreme Court have repeatedly recognized the district courts have wide discretion to carefully manage and control their own dockets. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) ("[I]t is the prerogative of the district court to manage its workload."); *Juliana v. United States*, No. 6:15-CV-01517-AA, 2018 WL 4997032, at *32 (D. Or. Oct. 15, 2018). Defendants moved for a stay of litigation, including but not limited to trial, before this Court had the opportunity to consider Defendants' Motion for Reconsideration and, more importantly, before this Court even had the opportunity to set a new trial date or hold a status conference. While the issue of a stay of trial has been rendered moot by the Ninth Circuit, at least pending its disposition of Defendants' Petition, a broader stay of

litigation in this Court is unwarranted and would impose irreparable harm and severe costs on Plaintiffs above and beyond those already occasioned by the temporary stay of trial. Olson Dec. ¶¶9-10, 13-15.

This case has been pending on the Court's docket for over three years. Defendants' dispositive motions have been denied. All of the pre-trial filings have been completed. The case is ready for trial. Consistently and throughout the scope of this case, this Court has acted diligently and reasonably in addressing Defendants' copious, complex and cumulative motions. On five prior occasions, this Court has rejected Defendants' requests for stays. Defendants' latest Motion to Stay should meet a similar fate and be denied.

II. PROCEDURAL HISTORY

This Court is very familiar with the background and procedural history to this case. *See* Olson Dec. Ex. 5 at 8-30. For the purposes of this response brief, Plaintiffs offer a concise summary of Defendants' repeated attempts to delay and/or circumvent the ordinary course of litigation before this Court. Defendants have already filed six motions for a stay with this Court, raising arguments that almost entirely overlap with those presented in the present Motion to Stay:

1. Motion to Stay Litigation Pending Resolution of Motion for Interlocutory Appeal (Doc. 121);
2. Motion for a Protective Order and for a Stay of All Discovery (Doc. 196);
3. Motion to Stay Discovery Pending Resolution of Objections (Doc. 216);
4. Motion for a Stay Pending a Petition for Writ of Mandamus (Doc. 307);
5. Motion to Stay Discovery and Trial Pending Sup. Court Review (Doc. 361); and
6. the present Motion to Stay Litigation (Doc. 419).

Each of the first five motions was denied by this Court.

Before the Ninth Circuit Court of Appeals, Defendants have filed:

1. Two requests for a stay of discovery and trial, on June 9, 2017 (Doc. 177-1) and July 5, 2018 (Doc 308-1);

2. A document entitled "Petition for Writ of Mandamus Requesting a Stay of District Court Proceedings Pending Supreme Court Review" on October 12, 2018 (Doc. 365-1); and

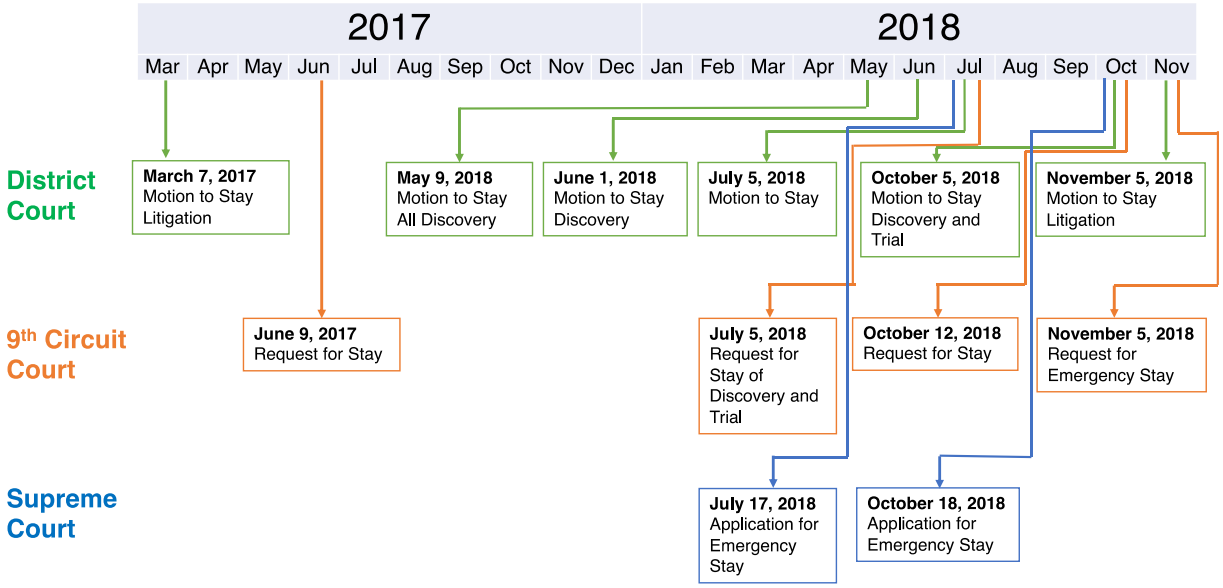
3. A "Petition for a Writ of Mandamus and Emergency Motion under Circuit Rule 27-3," concurrent with this Motion for Stay (Doc. 420-1) on November 5, 2018.

Although the Ninth Circuit granted Defendants' first stay request pending briefing, oral argument, and disposition of the underlying Petition, the Ninth Circuit ultimately denied the first Petition on March 7, 2018. *In re United States*, 884 F.3d 830. The Ninth Circuit also denied Defendants' second stay request on July 16, 2018, and denied Defendants' underlying Petition on July 20, 2018. *In re United States*, 895 F.3d 1101. On November 2, 2018 the Ninth Circuit denied Defendants' October 12, 2018 "Petition" as moot.[2] Olson Dec. Ex. 6. On November 8, 2018, the Ninth Circuit granted in part Defendants stay motion, stating: "Trial is stayed pending this court's consideration of this petition for writ of mandamus." Olson Dec. Ex. 1.

Before the United States Supreme Court, on July 17, 2018, Defendants filed an application for a stay of discovery and trial. Doc. 321-1. On July 30, the Supreme Court denied Defendants' first stay application. Doc. 330-1. On October 18, 2018, Defendants filed an application for a second stay application with the Supreme Court. Doc. 391-1. On October 19, Chief Justice Roberts ordered a temporary administrative stay of discovery and trial in this

[2] With respect to this "Petition," the Ninth Circuit stated "As the title indicates, no substantive Petition for Writ of Mandamus or other substantive pleading was filed with us. The only request was that although nothing substantive was or would be pending before us, we stay the trial, scheduled to begin on October 29, 2018, '[t]o assure that the Supreme Court has adequate time to consider the government's request for relief.'" Olson Dec. Ex. 6 at 1-2.

Court, pending receipt of Plaintiffs' response "and further order of the undersigned or of the [Supreme] Court." Doc. 399. Plaintiffs filed their response on October 22. *In re United States*, No. 18-410, Response Brief of Respondent Juliana, et al., to Petitioners' Application for a Stay Pending Disposition of a Petition for a Writ of Mandamus to the United States District Court for the District of Oregon and Any Further Proceedings in This Court and Request for an Administrative Stay (U.S. Oct. 22, 2018). On November 2, the Supreme Court denied Defendants' second stay application. Doc. 416.



Including the present Motion to Stay and the emergency motion filed in the Ninth Circuit, Defendants have now filed ***twelve*** motions seeking a stay since March 2017, not to mention multiple dispositive motions and Petitions for Writ of Mandamus and/or Certiorari seeking final dismissal of this case. All five of the stays filed in the District Court have been denied, three stays in the Ninth Circuit have been denied, and two stays in the Supreme Court have been denied. Plaintiffs expect that once the Ninth Circuit Panel reviews the briefing on the Petition for Writ of Mandamus, the temporary stay issued by the Ninth Circuit on November 8 will also be lifted, and Defendants' emergency stay motion accompanying their Petition denied.

Defendants' most recent Motion to Stay before this Court is no different than prior iterations in that it, too, fails to satisfy the requirements to prevail and instead restates, in unsubstantiated and conclusory terms, Defendants' flawed arguments previously rejected by this Court, the Ninth Circuit, and the U.S. Supreme Court. Each previous stay motion or Petition has argued that Defendants are clearly entitled to the relief they seek. Time and again that relief has been denied, as it should here.

III. LEGAL STANDARD

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Virginian R. Co.* v. *United States*, 272 U. S. 658, 672 (1926). Issuing a stay is instead "an exercise of judicial discretion," and "[t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id.* at 672-673. The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *See, e.g., Clinton v. Jones*, 520 U.S. 681, 708 (1997); *Landis v. North American Co.*, 299 U.S. 248, 255 (1936). Courts should consider four stringent requirements in the stay analysis:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009) (internal citations omitted).

"[I]f there is even a fair possibility that the stay . . . will work damage to someone else, the stay may be inappropriate absent a showing by the moving party of hardship or inequity." *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quotes and citation omitted).

IV. LEGAL ARGUMENT

1. Defendants Fail to Meet the Requirements for a Stay

Once again, Defendants have failed to discharge their burden of demonstrating that any of the four stringent requirements governing a stay motion weigh in their favor. To begin with, Defendants fail to show that they are likely to succeed on the merits. Defendants' argument here is essentially two-fold.

First, Defendants argue they are likely to succeed on the merits of their Motion for Reconsideration, in light of language contained within the Supreme Court's November 2 Order. Doc. 419 at 2-3. As further elaborated in Plaintiffs' opposition brief to Defendants' Motion for Reconsideration, Doc. 428 at 25-26 (§IV(B)(4)), Defendants' argument rests on an imaginative interpretation, bordering on gross overstatement, of the November 2 Order. Fundamentally, the November 2 Order vacating the stay underlines the impropriety of Defendants having sought a Writ of Mandamus and/or Certiorari in the Supreme Court before first seeking relief in the Ninth Circuit. Doc. 416 at 2-3. The November 2 Order is silent as to how the broad, unfettered discretion of the District Court in certifying interlocutory appeals should be exercised in this instance, let alone that it should be exercised by this Court in a manner different than on the four prior occasions. *See Juliana*, 2018 WL 4997032, at *32 (citing *Mowat Constr. Co. v. Dorena Hydro, LLC*, 2015 WL 5665302, at *5 (D. Or. Sept. 23, 2015)). The November 2 Order is similarly silent as to whether, aside from the availability of relief in the Ninth Circuit, such relief would be likely rather than merely possible. *In re United States, Applicant*, No. 18-410 (U.S. Nov. 2, 2018) at 2 ("adequate relief *may* be available in the United States Court of Appeals for the Ninth Circuit.") (emphasis added); *see also Leiva-Perez v. Holder*, 640 F.3d 967, 968 (9th Cir. 2011) (*per curiam*) (finding the "mere possibility" that relief will be granted inadequate). Crucially, the November 2 Order is also silent as to the other two mandatory factors governing

this Court's certification for interlocutory review, and Defendants fail to satisfy those factors. Doc. 428 at 14-26 (§IV). Furthermore, as this Court correctly determined, the law of the case doctrine governs its denial of interlocutory review. *Juliana*, 2018 WL 4997032, at *15. Defendants offer nothing substantive or new for this fifth go-around and thus fail to make the requisite "strong showing" of a likelihood of success on the merits and a "substantial case for relief." *Nken*, 556 U.S. at 426; *see also* Doc. 428 at 13-14 (§III).

Second, Defendants argue, implausibly, that they would be likely to succeed on the merits of their pending Petition for Writ of Mandamus in the Ninth Circuit "if this Court declines to certify its orders denying Defendants' dispositive motions for interlocutory appeal." Doc. 419 at 3. Defendants appear to be acknowledging that they have again prematurely petitioned the Ninth Circuit for a Writ of Mandamus. At present, there can be no strong showing that Defendants are likely to succeed on the merits of their Petition because – other *Bauman* factors aside – their Motion for Reconsideration was just filed and is still pending before this Court, such that Defendants have "other means" to "obtain the desired relief." *Bauman v. United States District Court*, 557 F.2d 650, 654 (9th Cir. 1977). Defendants cannot hope to obtain a stay in this Court when their own briefing concedes they have, once again, put the cart before the horse.[3] Neither does the Ninth Circuit's order of a temporary stay assist Defendants. *See Cobell v.*

[3] As shown in Plaintiffs' previous briefing before the Ninth Circuit on substantially-identical legal issues, and as will be shown in Plaintiffs' forthcoming response to Defendants' Emergency Stay Motion to the Ninth Circuit, Defendants are also unlikely to succeed on the merits of their fourth Petition for Writ of Mandamus to the Ninth Circuit. In particular, it is very likely that Defendants will ultimately fail on the merits of their Petition insofar as they challenge this Court's failure to certify interlocutory appeal, because a District Court's discretion in this area is both "unfettered" and "unreviewable." *See Mowat Const. Co. v. Dorena Hydro, LLC*, No. 6:14-CV-00094-AA, 2015 WL 5665302, at *5 (D. Or. September 23, 2015) (Aiken, C.J.); *Exec. Software N. Am., Inc. v. United States Dist. Ct. for the Cent. Dist. Of Cal.*, 24 F.3d 1545, 1550 (9th Cir. 1994), *overruled on other grounds by Cal. Dep't of Water Resources v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008); *see also* Doc. 428 at 3.

Norton, No. 03-5314, 2003 WL 22711642, at *1 (D.C. Cir. Nov. 12, 2003) ("The purpose of this administrative stay is to give the court sufficient opportunity to consider the merits of the motion for stay, and should not be construed in any way as a ruling on the merits of that motion.").

Defendants then make two broad arguments in support of their contention that they meet the remaining requirements for granting a stay – (1) irreparable injury to the applicant absent a stay; (2) substantial injury to the other parties; and (3) the public interest, *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). First, Defendants argue that Chief Justice Roberts' granting of a temporary, administrative stay of litigation in this Court is somehow in-itself evidence of the propriety of a further stay. Yet Defendants cite to no language in Chief Justice Roberts' October 19 order that would support such a contention. Nor could they, given the brevity of the order and inherently non-substantive nature of a temporary administrative stay. An administrative stay "*should not be construed in any way as a ruling on the merits*." *Cobell*, 2003 WL 22711642, at *1 (D.C. Cir. Nov. 12, 2003) (emphasis added). If anything, the Supreme Court made its position on the substance of Defendants' arguments clear in *denying* their emergency stay motion in its November 2 Order; that is, none of Defendants' arguments regarding alleged harms, the public interest, or the balance of equities overrode the impropriety of "leap-frogging" the Ninth Circuit.

Second, Defendants recycle arguments from prior briefing regarding the so-called harms they will suffer if a stay is not issued. Yet these harms are either (1) derivative of failed legal arguments that Defendants have made *ad nauseum* regarding the "separation of powers" and purported strictures of the Administrative Procedure Act, Doc. 419 at 3, arguments this Court has repeatedly rejected based on solid legal precedent, *see, e.g.*, *Juliana*, 2018 WL 4997032, at *11-16, *25-26; or (2) nothing more than the ordinary burdens of civil litigation in Federal Courts, to which the United States is routinely subject, *see In re United States*, 884 F.3d 835-836 ("[D]efendants must demonstrate some burden other than the mere cost and delay that are the

regrettable, yet normal, features of our imperfect legal system.") (internal quotations omitted and normalized). Defendants' claim that irreparable harm arises "because trial proceedings will move forward without allowing the opportunity for appellate review of the claims that the Supreme Court contemplated in its November 2 Order," is false, unsubstantiated, truly unprecedented, and already rejected by the Ninth Circuit. *Id*. at 836 ("The defendants argue that holding a trial on the plaintiffs' claims and allowing the district court potentially to grant relief would threaten the separation of powers. We are not persuaded that simply allowing the usual legal processes to go forward will have that effect in a way *not correctable on appellate review*." (emphasis added)). In short, the prospect of burdensome or expensive litigation "alone is not sufficient to demonstrate 'irreparable injury.'" *M.D. v. Perry*, No. C-11-84 (JGJ), 2011 WL 7047039, at *2 (S.D. Tex. July 21, 2011); *see also, e.g., Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974) ("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."); *Linden v. X2 Biosystems, Inc.*, No. C17-966 (RSM), 2018 WL 1603387, at *3 (W.D. Wash. Apr. 3, 2018); *In re Cobalt Int'l Energy, Inc. Sec. Litig.*, No. H-14-3428, 2017 WL 3620590, at *4 (S.D. Tex. Aug. 23, 2017); *In re: BP P.L.C. Sec. Litig.*, No. 4:10-CV-4214, 2016 WL 164109, at *2 (S.D. Tex. Jan. 14, 2016); *DL v. District of Columbia*, 6 F.Supp.3d 133, 135 (D.D.C. 2014).[4]

It borders on the absurd that denying Defendants their request to circumvent the normal procedures of litigation will leave "the United States and the public interest . . . irreparably

[4] Defendants' allegations of harm stemming from a "fifty-day" trial, Doc. 419 at 4, also are untenable given that both Defendants and Plaintiffs have by any estimate expended far more time and resources in briefing and oral argument over Defendants' repeated dilatory motions. Olson Dec. ¶19.

harmed."[5] Doc. 419 at 3. As Chief Judge Thomas of the Ninth Circuit recognized in oral argument on Defendants' first Mandamus Petition, such an argument contains "no logical boundary," and if accepted would flood federal district and appellate courts alike with frivolous motions and petitions. Olson Dec. Ex. 4, Oral argument Tr. 15-16 (Dec. 11, 2017); *see also In re United States*, 884 F.3d at 836 n.2. If anything, the notion that Defendants will suffer irreparable harm absent a stay of all discovery is even more far-fetched now than it was when first requested, as the parties have spent months conducting depositions and responding to written discovery and are only days away from completing it.[6] Olson Dec. ¶3.

In pursuing a stay, applicants "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Landis*, 299 U.S. at 255; *Leiva-Perez*, 640 F.3d at 968 (applicant must "show that an irreparable injury is the more probable or likely outcome."). Defendants plainly have not done so.[7] Indeed, even the relatively brief stay occasioned by Chief

[5] Remarkably, Defendants conflate themselves with the public interest, even though there is no evidence to suggest that Defendants are acting in the public interest with respect to how they have defended this case or conducted themselves vis-à-vis the rights of children. In fact, the history of Defendants' conduct in this case shows just the opposite. *See* Section IV(3), *infra*.

[6] The remaining discovery only involves the depositions of rebuttal experts (Dr. Akilah Jefferson; Dr. Karrie Walters; Dr. Jeffrey Sugar; Dr. James Sweeney (as to the Speth Rebuttal report); and Dr. David Victor (as to the Speth Rebuttal report)) and those five Plaintiffs not previously deposed who will testify at trial (Journey, Kiran, Levi, Nathan, and Sahara).

[7] In their latest Mandamus Petition, but not in their Motion to Stay, Defendants claim irreparable harm by setting out the finances and attorney hours expended on this case to-date. But these expenses are entirely proportionate to this litigation's complexity and the gravity of the constitutional violations alleged and are entirely unsupported by affidavits or other evidence. Moreover, Defendants are ultimately to blame for these expenses, due to their repeated dilatory motion practice, their failure to stipulate to facts beyond those admitted in their Answer, and their failure to stipulate to expert evidence that they simultaneously seek to exclude as cumulative. Doc. 410 at ¶2. Furthermore, Defendants' arguments are even less tenable in circumstances where they filed this Motion to Stay before a new trial date had been ordered and before even a status conference had been held. Olson Dec. ¶ 7.

Justice Roberts' October 19 order has resulted in considerable harm to Plaintiffs, as a result of the additional expense and logistical burden of rescheduling Plaintiffs' factual and expert trial testimony. Olson Dec. ¶¶7, 9.

A broadening of the temporary stay of trial ordered by the Ninth Circuit would only compound this harm and ultimately increase the litigation burden on both parties. *Id*. ¶¶9, 14. For instance, months of delay will lead to more supplemental information in expert reports, due to the constantly growing body of scientific information on climate change that is pertinent to expert testimony in this case. Olson Dec. ¶¶11-14. That in turn could lead to Defendants seeking to re-depose Plaintiffs' experts, which they have indicated they would seek to do in the case of supplemental reports. Olson Dec. ¶15. Demonstratives and exhibits Plaintiffs are preparing for trial could become outdated as carbon dioxide levels continue to rise, climate impacts worsen, and the very harms suffered by the youth Plaintiffs continue to grow and require new documentation so that this Court has the most up to date evidence at trial. Olson Dec. ¶13. The speed with which the documentation on climate danger changes signals the urgency of the trial so that Plaintiffs may seek to stop the irreparable harm they are already suffering, and which will only worsen. Olson Dec. ¶¶11-12, Ex. 2-3. Defendants thus fail to satisfy any of the requirements meriting a stay and this Court should deny Defendants' Motion.

2. **Plaintiffs Would Be Harmed if This Court Were to Order a Stay**

Defendants' failure to meet the requirements for a stay aside, ordering a stay at this point of the litigation would harm Plaintiffs. Incredibly, Defendants claim that Plaintiffs would not suffer harm from a stay because Plaintiffs have supposedly "waite[d] decades to seek relief for alleged violations of the Due Process Clause." Doc. 419 at 4. Such a claim is both bereft of any substantiating evidence and factually-incompatible with the ages of these Plaintiffs (who ranged from 8 to 19 years-old at the commencement of this litigation).

On the contrary, Plaintiffs would be substantially injured were this Court to order a stay, *Nken*, 556 U.S. at 433-34, in light of the copious, uncontradicted evidence before this Court of imminent harm from Defendants' conduct. *See, e.g.*, Docs. 256-269, 271, 272, 274, 275, 298. Indeed, Defendants' continuing violations of Plaintiffs' substantive due process rights under the Constitution easily meet the standard for irreparable injury. *Goldie's Bookstore, Inc. v. Superior Court of Cal*., 739 F.2d 466, 472 (9th Cir. 1984) ("An alleged constitutional infringement will often alone constitute irreparable harm."). "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987); *see also* Running Decl., Doc. 264, ¶¶ 12-14; Wanless Decl., Doc. 275-1, ¶¶ 16-22. Given Defendants' ongoing and pervasive actions to expand fossil fuel pollution amidst the urgency of the climate crisis, any stay is likely to result in substantial, irreparable injury to Plaintiffs. Doc. 274-1 at 41-43.

3. **Public Interest and Equitable Considerations Weigh Against Granting a Stay**

Similarly, the public interest and balance of equities are served by denying the Motion to Stay, and by the proper, timely adjudication of the factual dispute. The long procedural history of this case and Defendants' practically limitless motions practice evinces Defendants' intention to exhaust all avenues for preventing or circumventing what this Court has already recognized is essential to the proper disposition of this dispute: a fully-developed trial record allowing considered review of Plaintiffs' claims by both this court and any reviewing court. *See Juliana*, 2018 WL 4997032, at *27, *30, *33. The public interest is further served by allowing Plaintiffs to vindicate constitutional violations. *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013) (quoting *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). "[I]t 'is always in the public interest to prevent the

violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)); *see also Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017) (irreparable harm "through a likely unconstitutional process far outweighs the minimal administrative burdens to the government of complying with the injunction while this case proceeds").

A stay, in contrast, is "an intrusion into the ordinary processes of administration and judicial review." *Nken*, 556 U.S. at 427 (quotes and citations omitted). Defendants' repeated arguments that this Court has exceeded its equitable authority and usurped the other branches of government, Doc. 419 at 3-4, demonstrate a profound lack of respect for this Court and its processes, as well as the role of the federal judiciary as a guarantor of constitutional rights.

V. CONCLUSION

The parties are ready to commence trial. There is no basis for a stay. The Ninth Circuit's ordering of a temporary stay of trial is in no sense an indication of the merits of Defendants' fourth Petition for Writ of Mandamus against this Court. Rather, Defendants' stay motion, its twelfth in this litigation, fails on its own merits, and once again fails to satisfy any of the requirements warranting a stay or even allege any legitimate injury that would necessitate a stay. Such a stay could only damage Plaintiffs further and undermine public confidence in the independence of the judiciary. For the reasons stated above, Plaintiffs respectfully request the Court to deny Defendants' Motion to Stay Litigation.

DATED this 9th day of November, 2018.

/s/ Philip L. Gregory

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