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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' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF NOVEMBER 21, 2018 COURT ORDERED STAY OF PROCEEDINGS

Expedited Consideration Requested

Oral Argument Requested

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF NOVEMBER 21, 2018 COURT ORDERED STAY OF PROCEEDINGS

I. ARGUMENT

The temporary stay of all proceedings issued by this Court on November 21 and the temporary stay of trial issued by the Ninth Circuit on November 8 have lifted and, thus, this Court should resume jurisdiction as described below. In light of the Ninth Circuit's orders of December 26 and this Court's November 21 Order, Plaintiffs request this Court clarify how this case will move forward in the district court pending the interlocutory appeal. It is within this Court's discretion to so decide.

As Defendants state in their opposition brief, this "Court stayed proceedings to maintain the status quo while the Ninth Circuit decides whether to accept an appeal. Nov. 21, 2018 Order 6, ECF No. 444." Opp. at 5. Specifically, this Court held: "Accordingly, this case is STAYED pending a decision by the Ninth Circuit Court of Appeals." Doc. 444. Plaintiffs believe this Court's stay of proceedings has lifted now that the two Petitions pending in the Ninth Circuit have been resolved. Thus, this Court should resume exercising its jurisdiction over issues still remaining for the district court to decide.

In a split decision yesterday, the Ninth Circuit panel issued an order, with Judge Friedland dissenting, granting Defendants' "petition for permission to appeal pursuant to 28 U.S.C. § 1292(b)." *Juliana v. U.S.*, No. 18-80176, Dkt. 8 (9th Cir. Dec. 27, 2018) (attached hereto as Attachment 1). The Ninth Circuit issued a second order that denied Defendants' Petition for Writ of Mandamus as moot, and denied Plaintiffs' motion to lift the stay of trial imposed on November 8 also as moot because, by denying the mandamus petition, the stay imposed on November 8 has been lifted. *See United States v. U.S. District Court*, No. 18-73014, Dkt. 3 (9th Cir. Nov. 8, 2018) ("Petitioners' motion for a temporary stay of district court proceedings [contained in Docket Entry No. 1] is granted in part. ***Trial is stayed pending this court's consideration of this petition for***

writ of mandamus.") (emphasis added); Dkt. 15 (attached hereto as Attachment 2) ("The petition for a writ of mandamus is denied as moot. All other pending motions are denied as moot.").

Presently, the Ninth Circuit has ordered no further stay of proceedings pending interlocutory appeal, nor is there any motion pending before them to do so. *See Juliana v. U.S.*, No. 18-80176, Dkt. 8 ("The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is granted. Within 14 days after the date of this order, petitioners shall perfect the appeal in accordance with Federal Rule of Appellate Procedure 5(d). All pending motions are denied as moot."). In both Case No. 18-73014 and Case No. 18-80176, "all pending motions" have been "denied as moot," including Plaintiffs' motion to the Ninth Circuit to lift the stay of trial ordered in Case No. 18-73014.

Once the Ninth Circuit issued its decision, Plaintiffs believe this Court's temporary stay was no longer in effect. While Plaintiffs believe their motion seeking reconsideration of this Court's temporary stay is mooted by the Ninth Circuit's orders denying mandamus and granting interlocutory appeal over unspecified issues, this Court should nonetheless issue an order clarifying that proceedings may resume given Defendants' "repeated efforts to bypass normal litigation procedures" and recalcitrance to participate in discovery.[1] *See Juliana v. U.S.* No. 18-80176, Dkt. 8 ("It is also concerning that allowing this appeal now effectively rewards the Government for its repeated efforts to bypass normal litigation procedures by seeking mandamus relief in our court and the Supreme Court. If anything has wasted judicial resources in this case, it was those efforts.") (J. Friedland, dissenting).

[1] If Plaintiffs' motion seeking reconsideration of this Court's temporary stay is not mooted by the Ninth Circuit orders, Plaintiffs respectfully request expedited consideration of their motion and that this Court lift the stay it put in place on November 21.

Proceedings may continue in the district court because the Ninth Circuit order does not divest this Court of jurisdiction as to matters not on appeal. This Court retains jurisdiction over the case and "possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001); ECF 444. Further, "[a]n appeal from an interlocutory order does not automatically stay the proceedings, as 'it is firmly established that an appeal from an interlocutory order does not divest the trial court of jurisdiction to continue with other phases of the case.'" *Finder v. Leprino Foods Co*., No. 1:13-cv-02059- AWI-BAM, 2017 WL 1355104, *1 (E.D. Cal. Jan. 20, 2017) (*quoting Plotkin v. Pacific Tel. and Tel. Co*., 688 F.2d 1291, 1293 (9th Cir. 1982)). The Ninth Circuit's Order (Attachment 1) "confers jurisdiction on the court of appeals and divests the district court of its control over *those aspects of the case involved in the appeal*." *Griggs v. Provident Consumer Discount Co*., 459 U.S. 56, 58 (1982) (emphasis added). Indeed, the only matters the Ninth Circuit should be reviewing on interlocutory appeal are controlling matters of law, on which this Court has already made final decisions.

The following matters remain within this Court's jurisdiction and for its resolution notwithstanding the Ninth Circuit's order:

1. Supervising the completion of the minimal outstanding discovery.
2. Resolving pretrial motions.
3. Hearing a motion for preliminary injunctive relief pending interlocutory appeal and trial, which Plaintiffs are preparing and intend to file in the district court. This Court is more familiar with the record and better suited to decide questions of fact going to irreparable harm, the public interest considerations for injunctive relief, and the factual

merits issues than the Ninth Circuit, and could hear live testimony from experts on that motion, whereas the Ninth Circuit cannot.

4. Presiding at trial to decide questions of fact related to standing, something the Ninth Circuit cannot do. This Court correctly concluded that standing raises a factual inquiry that must be addressed at trial. *Juliana v. United States*, No. 6:15-CV-01517-AA, 2018 WL 4997032, at *25 (D. Or. Oct. 15, 2018). The Ninth Circuit is not equipped to hear testimony regarding the ongoing disputes over causation and redressability specifically.

5. Presiding at trial to decide the questions of whether Plaintiffs' fundamental rights to life, liberties (personal security and family autonomy), and property have been infringed by Defendants. There is no question of controlling law regarding the existence of those express and recognized fundamental rights. The only outstanding questions are whether the evidence supports Plaintiffs' claims of Fifth Amendment violation. Defendants did not move for dismissal or summary judgment as to those claims, this Court's orders that have been certified for interlocutory appeal did not address these claims, and, thus, they are not at issue in the pending interlocutory appeal and this Court retains jurisdiction over them.

6. Presiding at trial to decide the question of whether Plaintiffs, as a class of children, have been discriminated against with respect to their recognized fundamental rights to personal security and family autonomy in violation of their rights of equal protection under the law.

7. Presiding at trial to decide the question of whether children are a quasi-suspect class entitled to a heightened level of protection from government conduct that harms them, and whether such harm has occurred here.

None of these issues is a matter before the Ninth Circuit on interlocutory appeal.[2] Further delay is unnecessary and prejudicial to Plaintiffs. As this Court said in its November 21 Order, "[t]he Court notes again that this three-year-old case has proceeded through discovery and dispositive motion practice with only trial remaining to be completed." Doc. 444. Plaintiffs' opening motion provides evidence and argument supporting the extreme urgency of this case proceeding to trial and the harm to Plaintiffs of any further delay.

Judge Friedland's dissenting opinion also makes clear why this Court should exercise its discretion in a manner consistent with its prior rulings and its views about efficient resolution of the case:

> [T]he district court's statements prevent us from permitting this appeal.
>
> Reading the certification order as a whole, however, I do not believe that the district court was actually "of the opinion" that "an immediate appeal from [these orders] [would] materially advance the ultimate termination of the litigation"—nor did it meaningfully "so state." 28 U.S.C. § 1292(b). . . .
>
> [I]t appears that the court felt compelled to make that declaration even though—as the rest of its order suggests—the court did not believe that to be true. This is very concerning, because § 1292(b) reserves for the district court the threshold determination whether its two factors are met. . . .
>
> the district court—having, among other things, direct experience with the parties, knowledge of the status of discovery, and the ability to sequence issues for trial—is far better positioned to assess how to resolve the litigation most efficiently. Neither we nor the Supreme Court had expressed a view on that second requirement, but it seems the district court interpreted our orders as mandating certification anyway.

See Juliana v. U.S., No. 18-80176, Dkt. 8 (J. Friedland, dissenting).

[2] While Defendants assert they moved to dismiss and for summary judgment on all of Plaintiffs' claims, Opp. at 12, the text of their moving papers fails to address Plaintiffs' claims of Fifth Amendment violations as well as whether Plaintiffs, as a class or a quasi-suspect class, have been the victims of discrimination in violation of their rights of equal protection.

Defendants failed to satisfy any of the requirements warranting a stay of these proceedings. Even in opposing Plaintiffs' Motion for Reconsideration, Defendants failed to proffer a shred of evidence showing a legitimate ounce of harm that would necessitate a stay.[3] Every stay issued in this case has been based on a complete lack of evidence offered by Defendants. The Ninth Circuit has already ruled that participation in discovery and trial is not irreparable harm. *In re United States*, 884 F.3d 830, 836 (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.").

In contrast, Plaintiffs' Motion for Reconsideration sets forth some of the overwhelming evidence in the record that Plaintiffs will suffer substantial harm from any further delay in resolving their claims. Any delay in exercising the Court's jurisdiction will result in irrevocable harm to Plaintiffs and increased future litigation burdens. Plaintiffs cannot continue to wait to get to trial, while their injuries worsen and the window of opportunity to redress the injuries closes. The uncontroverted evidence shows Plaintiffs are in dire need of prompt relief. According to Defendants' Fourth National Climate Assessment ("NCA4"): "***Decisions made today*** determine risk exposure for current and future generations and will either broaden or limit options to reduce the negative consequences of climate change. NCA4 Chapter 1 (emphasis added).

For the reasons stated above, Plaintiffs respectfully request the Court immediately issue an order clarifying that pre-trial and trial proceedings may resume, and, in the alternative, reconsider and modify its November 21 Order and lift the stay in this case, if that stay has not already lifted as a result of the Ninth Circuit orders issued yesterday.

[3] In their Opposition Brief, Defendants concede that litigation decisions "are not irreparable harms." Opp. at 12.

DATED this 27th day of December, 2018.

/s/ Julia A. Olson

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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Eugene

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Quality; SHAUN DONOVAN, in his official capacity as Director of the Office of Management and the Budget; JOHN HOLDREN, Dr., in his official capacity as Director of the Office of Science and Technology Policy; ERNEST MONIZ, Dr., in his official capacity as Secretary of Energy; U.S. DEPARTMENT OF THE INTERIOR; SALLY JEWELL, in her official capacity as Secretary of Interior; U.S. DEPARTMENT OF TRANSPORTATION; ANTHONY FOXX, in his official capacity as Secretary of Transportation; UNITED STATES DEPARTMENT OF AGRICULTURE; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; UNITED STATES DEPARTMENT OF COMMERCE; PENNY PRITZKER, in her official capacity as Secretary of Commerce; UNITED STATES DEPARTMENT OF DEFENSE; ASHTON CARTER, in his official capacity as Secretary of Defense; UNITED STATES DEPARTMENT OF STATE; JOHN F. KERRY, in his official capacity as Secretary of State; GINA MCCARTHY, in her official capacity as Administrator of the EPA; OFFICE OF THE PRESIDENT OF THE UNITED STATES; U.S. ENVIRONMENTAL PROTECTION AGENCY; U.S. DEPARTMENT OF ENERGY; DONALD J. TRUMP, in his official capacity as President of the United States,

Defendants-Petitioners.

BEFORE: THOMAS, Chief Judge, and BERZON and FRIEDLAND, Circuit Judges.

The district court certified this case for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), finding "that each of the factors outlined in § 1292(b) have been met . . . ." Thus, the district court "exercise[d] its discretion" in certifying the case for interlocutory appeal, noting that it did "not make this decision lightly."

An interlocutory appeal under 28 U.S.C. § 1292(b) is authorized when a district court order "'involves a controlling question of law as to which there is substantial ground for difference of opinion' and where 'an immediate appeal from the order may materially advance the ultimate termination of the litigation.'" *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 687–88 (9th Cir. 2011) (quoting 28 U.S.C. § 1292(b)). The district court properly concluded that the issues presented by this case satisfied the standard set forth in § 1292(b) and properly exercised its discretion in certifying this case for interlocutory appeal.

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is granted. Within 14 days after the date of this order, petitioners shall perfect the appeal in accordance with Federal Rule of Appellate Procedure 5(d). All pending motions are denied as moot.

Juliana v. United States, No. 18-80176

FRIEDLAND, Circuit Judge, dissenting:

In the process of granting certification, the district court expressed that it does not actually think that the criteria for certification are satisfied. Because I read 28 U.S.C. § 1292(b) to give discretion to district judges to determine whether an immediate appeal will promote judicial efficiency—and to authorize only those interlocutory appeals that the district judge believes will do so—I think the district court's statements prevent us from permitting this appeal.

Appellate review is ordinarily available only after a district court has entered a final judgment. 28 U.S.C. § 1291. As the Supreme Court has explained, this foundational default rule serves "important purposes," including "emphasiz[ing] the deference that appellate courts owe to the trial judge as the individual initially called upon to decide the many questions of law and fact that occur in the course of a trial," "avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals," and "promoting efficient judicial administration." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981) (internal quotation marks and citations omitted). And while § 1292(b) allows departures from that rule in limited instances, certification of interlocutory appeals should be granted only in "exceptional circumstances." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978).

A district court may certify an order for interlocutory appeal under § 1292(b) only if it is "of the opinion" that (1) the "order involves a controlling question of law as to which there is substantial ground for difference of opinion," and (2) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). The Supreme Court indicated that it believes this case involves controlling questions as to which there are substantial grounds for difference of opinion. *United States v. U.S. District Court*, 139 S. Ct. 1 (July 30, 2018) (mem) ("The breadth of

respondents' claims is striking, however, and the justiciability of those claims presents substantial grounds for difference of opinion."); *see also United States v. U.S. District Court*, — S. Ct. —, 2018 WL 5778259, at *1 (Nov. 2, 2018) (mem) (referencing the Court's July 30th order as "noting that the 'striking' breadth of plaintiffs' claims 'presents substantial grounds for difference of opinion'"). We referenced that assessment in our own order granting Petitioners' motion for a temporary stay to allow time for consideration of pending motions. Order, *United States v. U.S. District Court*, No. 18-73014, Dkt. 3 (9th Cir. Nov. 8, 2018).

Apparently in response, the district court certified its motion to dismiss, judgment on the pleadings, and summary judgment orders for immediate appeal. Reading the certification order as a whole, however, I do not believe that the district court was actually "of the opinion" that "an immediate appeal from [these orders] [would] materially advance the ultimate termination of the litigation"—nor did it meaningfully "so state." 28 U.S.C. § 1292(b). The district court emphasized that "[t]rial courts across the country address complex cases involving similar jurisdictional, evidentiary, and legal questions as those presented here without resorting to certifying for interlocutory appeal," and the court said that it stood "by its prior rulings on jurisdictional and merits issues, as well as its belief that this case would be better served by further factual development at trial." *Juliana v. United States*, No. 6:15-CV-01517-AA, 2018 WL 6303774, at *3 (D. Or. Nov. 21, 2018). But the court then suggested that, because of the Supreme Court's statements and our repetition thereof in what the court called an "extraordinary Order," it was "find[ing] that each of the factors outlined in § 1292(b) [were] met." *Id.*

Although the district court's statement that the § 1292(b) factors were met would ordinarily support certification, here it appears that the court felt compelled to make that declaration even though—as the rest of its order suggests—the court did not believe that to be true. This is very concerning, because § 1292(b) reserves for the district court the threshold determination whether its

two factors are met. The statutory scheme makes particular sense with respect to the second factor, because although we and the Supreme Court may be as well-positioned as the district court to consider whether § 1292(b)'s purely legal first requirement is satisfied, the district court—having, among other things, direct experience with the parties, knowledge of the status of discovery, and the ability to sequence issues for trial—is far better positioned to assess how to resolve the litigation most efficiently. Neither we nor the Supreme Court had expressed a view on that second requirement, but it seems the district court interpreted our orders as mandating certification anyway.[1]

Section 1292(b) respects the district court's superior vantage point and its particular, critical role in the judicial process by allowing an interlocutory appeal only when the district court is "of the opinion"

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[1] It is also concerning that allowing this appeal now effectively rewards the Government for its repeated efforts to bypass normal litigation procedures by seeking mandamus relief in our court and the Supreme Court. If anything has wasted judicial resources in this case, it was those efforts. *See* Petition for Writ of Mandamus to the United States District Court for the District of Oregon and Request for Stay of Proceedings in District Court, *United States v. U.S. District Court*, No. 17-71692, Dkt. 1 (9th Cir. June 9, 2017) (requesting a stay of district court proceedings and relief from the Ninth Circuit); Petition for a Writ of Mandamus and Emergency Motion for a Stay of Discovery and Trial Under Circuit Rule 27-3, *United States v. U.S. District Court*, No. 18-71928, Dkt. 1 (9th Cir. July 5, 2018) (same); Application for a Stay Pending Disposition by the United States Court of Appeals for the Ninth Circuit 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, *United States v. U.S. District Court*, No. 18A65 (U.S. July 17, 2018) (requesting a stay from the Supreme Court pending Ninth Circuit review of mandamus petition); Petition for a Writ of Mandamus Requesting a Stay of District Court Proceedings Pending Supreme Court Review, Emergency Motion Under Circuit Rule 27-3, *United States v. U.S. District Court*, No. 18-72776, Dkt. 1 (9th Cir. Oct. 12, 2018) (requesting a stay of district court proceedings from the Ninth Circuit pending Supreme Court review of mandamus petition); 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, *In re United States, Applicants*, No. 18A410 (U.S. Oct. 18, 2018) (bypassing the Ninth Circuit and requesting mandamus relief from the Supreme Court); Petition for a Writ of Mandamus and Emergency Motion Under Circuit Rule 27-3, *United States v. U.S. District Court*, No. 18-73014, Dkt. 1 (9th Cir. Nov. 5, 2018) (requesting a stay of district court proceedings and relief from the Ninth Circuit).

that both of the section's requirements are met. 28 U.S.C. § 1292(b). We have accordingly held that we lack jurisdiction when a district court grants certification but simultaneously expresses that it does not think the requirements of § 1292(b) are satisfied. *See Couch v. Telescope, Inc.*, 611 F.3d 629, 632 (9th Cir. 2010). Because that is the situation we face here, I believe we should allow the case to proceed to trial.[2] We could then resolve any novel legal questions if and when they are presented to us after final judgment.

For these reasons, I respectfully dissent.

[2] In *Couch*, after explaining that interlocutory appeal was precluded by the district court's assessment of the § 1292(b) requirements, we went on to also discuss why we believed the district court was correct in that assessment. 611 F.3d at 633-34. That further discussion, which related to § 1292(b)'s first requirement, seems to have been unnecessary to our holding regarding application of § 1292(b), which turns solely on the *district judge's* opinion whether the two factors are satisfied. But, in any event, I do not think the district court's conclusion here that "this case would be better served by further factual development at trial" than by immediate appeal represents an abuse of discretion. *Juliana*, 2018 WL 6303774, at *3; *cf. United States v. W.R. Grace*, 526 F.3d 499, 509, 516 (9th Cir. 2008) (en banc) (emphasizing that "district courts have inherent power to control their dockets" and that we review pretrial case management and discovery orders for abuse of discretion); *Gen. Signal Corp. v. MCI Telecommc'ns Corp.*, 66 F.3d 1500, 1507 (9th Cir. 1995) ("This court reviews issues relating to the management of trial for an abuse of discretion.").

FILED

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MOLLY C. DWYER, CLERK
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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: UNITED STATES OF AMERICA; CHRISTY GOLDFUSS; SHAUN DONOVAN; JOHN HOLDREN; ERNEST MONIZ; U.S. DEPARTMENT OF THE INTERIOR; SALLY JEWELL; U.S. DEPARTMENT OF TRANSPORTATION; ANTHONY FOXX; U.S. DEPARTMENT OF AGRICULTURE; THOMAS J. VILSACK; UNITED STATES DEPARTMENT OF COMMERCE; PENNY PRITZKER; UNITED STATES DEPARTMENT OF DEFENSE; ASHTON CARTER; U.S. DEPARTMENT OF STATE; JOHN F. KERRY; GINA MCCARTHY; OFFICE OF THE PRESIDENT OF THE UNITED STATES; U.S. ENVIRONMENTAL PROTECTION AGENCY; U.S. DEPARTMENT OF ENERGY; DONALD J. TRUMP, in his official capacity as President of the United States,

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UNITED STATES OF AMERICA; CHRISTY GOLDFUSS, in her official capacity as Director of Council on Environmental Quality; SHAUN DONOVAN, in his official capacity as Director of the Office of Management and Budget; JOHN HOLDREN, Dr., in his official capacity as Director of the Office of Science and Technology Policy; ERNEST MONIZ, Dr., in his official

No. 18-73014

D.C. No. 6:15-cv-01517-AA
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Eugene

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capacity as Secretary of Energy; UNITED STATES DEPARTMENT OF INTERIOR; SALLY JEWELL, in her official capacity as Secretary of Interior; UNITED STATES DEPARTMENT OF TRANSPORTATION; ANTHONY FOXX, in his official capacity as Secretary of Transportation; UNITED STATES DEPARTMENT OF AGRICULTURE; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; UNITED STATES DEPARTMENT OF COMMERCE; PENNY PRITZKER, in her official capacity as Secretary of Commerce; UNITED STATES DEPARTMENT OF DEFENSE; ASHTON CARTER, in his official capacity as Secretary of Defense; UNITED STATES DEPARTMENT OF STATE; JOHN F. KERRY, in his official capacity as Secretary of State; GINA MCCARTHY, in her official capacity as Administrator of the EPA; OFFICE OF THE PRESIDENT OF THE UNITED STATES; U.S. ENVIRONMENTAL PROTECTION AGENCY; U.S. DEPARTMENT OF ENERGY; DONALD J. TRUMP,

Petitioners,

v.

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Respondent,

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Real Parties in Interest.

KELSEY CASCADIA ROSE JULIANA; XIUHTEZCATL TONATIUH M., through

No. 18-80176

his Guardian Tamara Roske-Martinez; ALEXANDER LOZNAK; JACOB LEBEL; ZEALAND B., through his Guardian Kimberly Pash-Bell; AVERY M., through her Guardian Holly McRae; SAHARA V., through her Guardian Toa Aguilar; KIRAN ISAAC OOMMEN; TIA MARIE HATTON; ISAAC V., through his Guardian Pamela Vergun; MIKO V., through her Guardian Pamel Vergun; HAZEL V., through her Guardian Margo Van Ummerson; SOPHIE K., thourgh her Guardian Dr, James Hansen; JAIME B., through her Guardian Jamescita Peshlakai; JOURNEY Z., through his Guardian Erika Schneider; VICTORIA B., through her Guardian Daisy Calderon; NATHANIEL B., through his Guardian Sharon Baring; AJI P., through his Guardian Helaina Piper; LEVI D., through his Guardian Leigh-Ann Draheim; JAYDEN F., through her Guardian Cherri Foytlin; NICHOLAS V., through his Guardian Marie Venner; EARTH GUARDIANS, a nonprofit organization; FUTURE GENERATIONS, through their Guardian Dr. James Hansen,

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Defendants-Petitioners.

Before: THOMAS, Chief Judge, and BERZON and FRIEDLAND, Circuit Judges.

The petition for a writ of mandamus is denied as moot. All other pending motions are denied as moot.