

Nos. 24-6338 & 24-6603
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEFFREY POWERS, et al.,

Plaintiffs,

v.

DENIS RICHARD MCDONOUGH, et al.,

Defendants.

Appeal from the Central District of California,
Case No. 2:22-cv-08357, Hon. David O. Carter

**THE REGENTS' MOTION FOR LEAVE TO FILE
OPPOSITION AND OPPOSITION TO MOTION IN
PARALLEL APPEAL TO LIFT COURT'S ORDER
STAYING JUDGMENT PENDING APPEAL**

Kasey J. Curtis
Corinne Fierro
REED SMITH LLP
515 South Flower Street,
Suite 4300
Los Angeles, CA 90071
Tel: (213) 457-8000
Fax: (213) 457-8080
kcurtis@reedsmith.com
cfierro@reedsmith.com

Raymond A. Cardozo
REED SMITH LLP
101 Second Street
Suite 1800
San Francisco, CA 94105
Tel: (415) 543-8700
Fax: (415) 391-8269
rcardozo@reedsmith.com

Counsel for Appellant
The Regents of the University of California

Pursuant to Federal Rule of Appellate Procedure Rule 27, Appellant The Regents of the University of California (“The Regents”) requests that the Court accept briefing from The Regents in opposition to Plaintiff-Appellees’ Motion to Lift Court’s Order Staying Judgment Pending Appeal, filed November 17, 2025. (No. 24-6576, Dkt. No. 119.1).

Appellees’ Motion asks this Court to lift the Stay Order this Court entered on November 25, 2024 staying the judgment pending appeal (No. 24-6576, Dkt. No. 43.1; No. 24-6338, Dkt. No. 29), which this Court clarified on June 30, 2025 also stays the judgment as to the UCLA lease (No. 24-6338, Dkt. No. 71.1).

Although Appellees did not file their Motion in The Regents’ appeals, the Motion directly implicates The Regents’ rights on appeal and the UCLA lease. Indeed, Appellees reference the UCLA lease repeatedly and detail the procedural history that led to this Court’s confirmation that its Stay Order applies to UCLA. (Motion at 4, fn.3).

As such, The Regents respectfully requests that this Court accept briefing from The Regents concerning Appellees’ Motion. The Regents’ proposed brief in opposition is attached.

Dated: November 25, 2025.

Respectfully submitted,

/s/ Raymond A. Cardozo

Raymond A. Cardozo
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
rcardozo@reedsmith.com
Tel: (415) 543-8700
Fax: (415) 391-8269

Kasey J. Curtis
Corinne Fierro
REED SMITH LLP
515 South Flower Street,
Suite 4300
Los Angeles, CA 90071
Tel: (213) 457-8000
Fax: (213) 457-8080

Counsel for Appellant

OPPOSITION

Pursuant to Federal Rule of Appellate Procedure Rule 27, Appellant The Regents of the University of California (“The Regents”) hereby opposes Plaintiff-Appellees’ Motion to Lift Court’s Order Staying Judgment Pending Appeal, filed November 17, 2025 (the “Motion,” No. 24-6576, Dkt. No. 119.1) in the appeal that is parallel to these appeals. That Motion, in part, seeks to lift the portion of the stay pending appeal that pertains to The Regents’ long term, Congressionally-authorized lease at issue in these appeals, yet Appellees did not file their Motion in The Regents’ appeal. To ensure that The Regents is heard with regard to this effort to lift a stay that pertains to The Regents’ lease, The Regents is moving this Court for leave to file this opposition in both these appeals, and the parallel appeals, so that The Regents is heard on this point in whichever appeal the Court takes it up.

Appellees also attack The Regents’ lease in their November 11, 2025 letter (“Letter”), submitted in response to the Government’s Rule 28(j) letter of November 7, 2025 (No. 24-6576, Dkt. No. 114.1) that submitted to this Court the VA’s Congressionally Mandated Report for 2024 (“2024 Report”). Although Appellees’ Motion and Letter both attack The Regents’ lease, Appellees filed both only in VA’s appeal, to which The Regents is not a party. This continues a pattern that has plagued this litigation: Appellees continuously have sought (and have

succeeded temporarily) to deprive The Regents of a written and Congressionally-authorized leasehold property interest without joining The Regents into their submissions. To protect its leasehold, The Regents submits this response to the Motion in all of the appeals, and refers this Court to VA's appeal, No. 24-6576, for more background.

Further, the briefing and oral argument on appeal has demonstrated that the district court's order voiding the UCLA lease at issue was legally erroneous and Constitutionally impermissible (*see* The Regents' Opening Brief (No. 24-6338, Dkt. No. 39-1); The Regents' Reply Brief (No. 24-6338, Dkt. No. 50)), and The Regents have filed a pending but not yet adjudicated motion for a stay pending appeal of that portion of the district court's order and judgment that invalidated the UCLA lease (No. 24-6338, Dkt. No. 19.1). In light of The Regents' swiftly approaching December 22, 2025 deadline to exercise its option to renew the UCLA lease at issue, The Regents respectfully requests that this Court confirm that its stay pending appeal includes a stay of the portion of the ruling below that invalidated the UCLA lease.

A. The Motion Usurps The Discretion Congress Expressly Conferred On The VA Secretary To Establish The Terms Of A Lease To The Regents And Determine Compliance With Those Terms

As an initial matter, Appellees' Motion fails to confront the fundamental jurisdictional problem that defeats not only their Motion

arguments, but their entire position in The Regents' appeal: the statute that expressly authorized VA to enter the Regental lease at issue vests discretion in the Secretary of Veterans' Affairs ("VA Secretary") over the issues that Appellees seek to raise with the Court in their Motion.

In their Motion, Appellees contend that the 2024 Report establishes that the UCLA lease is not compliant with the 2016 West Los Angeles Leasing Act ("2016 Leasing Act"), and therefore a stay pending appeal is no longer required. (Motion at 10). Not only does The 2024 Report say the opposite—The Report makes clear the Regental lease complies with the 2016 Leasing Act—but that Act vests discretion in the VA Secretary in the first instance to make that determination. The 2016 Leasing Act expressly states the VA Secretary may lease the ten-acre parcel to The Regents with the *Secretary alone* having discretion to determine the extent and manner of additional services and support that The Regents must provide as part of the lease agreement. (See Pub. L. No. 114-226, § 2(a);(b)(3) ("The Secretary of Veterans Affairs may carry out leases described in subsection (b) at the Department of Veterans Affairs West Los Angeles Campus in Los Angeles, California....A lease of real property for a term not to exceed 10 years to The Regents of the University of California, a corporation organized under the laws of the State of California, on behalf of its University of California, Los Angeles (UCLA) campus (hereinafter in

this section referred to as ‘The Regents’), if-...The Regents expressly agrees to provide, during the term of the lease and to an extent and in a manner that the Secretary considers appropriate, additional services and support (for which The Regents is not compensated by the Secretary or through an existing medical affiliation agreement)....”).

Appellees’ contention that the UCLA lease is not compliant is thus an issue over which the Secretary alone has jurisdiction in the first instance. Recall that in 2016, the VA Secretary exercised its Congressionally-authorized discretion under Section 2(b)(3)(c) of the Act, to approve a lease with UCLA that provides that UCLA must pay annual rent of \$300,000 and provide an average annual minimum of \$1,350,000 of in-kind, uncompensated services to Veterans. Since then, as multiple Congressionally-mandated Reports repeatedly have found, UCLA has paid all rent specified in the written lease agreement,¹ and has provided *pro bono* services that exceed the lease’s average annual requirements. As The 2024 Report shows, this includes services in 2024 totaling \$3,267,757—more than double the minimum average that the lease requires. (*See* No. 24-6576, Dkt. No. 114.1, Exhibit A).

¹ With the exception of certain payments that were not made during the period in which the VA, based upon the reversibly erroneous orders of the district court, had summarily evicted The Regents from its leasehold.

The VA Secretary has never determined that The Regents' lease does not comply. Throughout this entire litigation in the district court and this appeal, Appellees have never provided any authority that permits them to bypass Congress' express conferral of discretion on the VA Secretary and to substitute Appellees' own views on lease compliance without any VA Secretary determination for a court to review. This jurisdictional problem both warrants reversal in this appeal of the orders and judgment that voided the lease, and more to the point here, warrants denial of that portion of the Motion that seeks to lift the stay pending appeal that involves this Regental lease.

B. Appellees Mischaracterize The 2024 VA Report, Which Further Demonstrates That The Regents' Lease Has Always Complied With The Statutory Provisions That Expressly Authorize That Lease

Even if this Court had jurisdiction to bypass the Secretary and consider lease compliance ahead of the Secretary, The 2024 Report does not “admit,” as Appellees inaccurately represent in their Motion, that the UCLA lease is non-compliant.² Quite the opposite, The 2024 Report notes *other* leases—but not The Regents' lease—were found non-compliant by OIG in the past, and states VA is now evaluating all leases for compliance. The 2024 Report states “VA is undertaking a comprehensive review and reassessment of the existing land-use

² Appellees make similar inaccurate distortions in their Letter.

agreements found non-compliant by the 2018 OIG audit report, the 2021 OIG audit report, and the 2024 U.S. District Court opinion”, and acknowledges “[a]t a minimum, VA’s ongoing comprehensive review and reassessment has disclosed that the leases invalidated by the U.S. District Court in *Powers* may well fail to comply with the WLA Act by failing to principally benefit Veterans and their families *or, in UCLA’s case, by failing to provide services to Veterans as the predominant focus of UCLA’s overall activities on Campus during the lease.*” (No. 24-6576, Dkt. No. 114.1 at 13-14, *emph. added*).

This statement highlights one of the district court’s critical errors of law at issue in The Regents’ pending appeals. As The Regents has noted in its appellate briefing, the 2018 and 2021 OIG reports found *other leases* non-compliant, but both of those reports found compliant The Regents’ lease—which is governed by the distinct “predominant focus” statutory provision that applies only to The Regents’ lease. Without joining UCLA as a party into the action below, Plaintiffs filed an operative pleading that on its face only challenged the *other leases* that OIG had found non-compliant. (7-ER-1474-1601). That operative pleading did not even mention the distinct “predominant focus of the activities of The Regents at the [VA] Campus” statutory provision that applied only to The Regents’ lease,³ much less assert that The Regents’

³ As compared to the 2016 Leasing Act provision applying to all other non-University leases, which requires for such other leases that the

lease failed to comply with that provision. Then at a trial in which The Regent was not present, based on an operative pleading that did not challenge The Regents' lease, Plaintiffs sought at the close of trial to "amend to conform to proof" to challenge The Regents' lease. (5-ER-1191). They did so even though the trial had focused on the "principally benefit" Veterans standard that applied only to the other leases and had failed to adequately explore the distinct "predominant focus" statutory term that applied only to The Regents' lease. The district court then entered orders voiding The Regents' lease that made clear the court erroneously had relied on the "principally benefit veterans" legal standard that did not apply to The Regents' lease.

Unlike the district court's erroneous rulings, made under the wrong statutory provision, The 2024 Report states it is evaluating the correct statutory standard—the "predominant focus" provision that applies only to The Regents' lease. Since the district court did *not* perform the correct analysis, but VA says it is *now* doing that, this Court should not lift the stay until VA provides informed conclusions as to whether The Regents' lease complies with the statutory provision that applies uniquely to that lease.

purpose of the leased property itself (far narrower focus than all activities on the broader VA Campus) be to provide "services that principally benefit veterans and their families" (Pub. L. No. 114-226, § 2(b)(2)).

Beyond the fundamental jurisdictional bar to Appellees' proposition that they can usurp the Secretary's discretion, there also is no basis to lift the stay and disturb a lease that Congress explicitly has authorized. Unless or until Congress amends the 2016 Leasing Act and changes the terms under which VA may lease the parcel to UCLA, there is no basis to interfere in The Regents' lease—which the 2018 and 2021 Reports each found complies with the statute, and which The 2024 Report states is still under evaluation.

Although the courts do not have jurisdiction and it is premature to evaluate lease compliance as long as the Secretary is doing so, it should be noted that the Congressionally-authorized Regents lease complies with the statute and suggestions to the contrary are meritless. Exhibit A to The 2024 Report establishes that UCLA has met and exceeded its obligations under the Act and its lease. VA's statements that it is evaluating these points do not include any evidence or any assertions that contradict Exhibit A. After the VA Secretary exercised the discretion conferred under Section 2(b)(3)(c) of the Act to set the terms of a long-term lease with The Regents, The Regents entered a written long-term lease that required the provision of compensated medical services at the VA Campus, payment of annual rent of \$300,000 and the provision of an average annual minimum of \$1,350,000 of in-kind, uncompensated services to Veterans. Since then, UCLA has provided

the requisite compensated medical services, paid the specified amount of rent and has provided *pro bono* services that exceed the lease's average annual requirements, including providing services in 2024 totaling \$3,267,757—more than double the minimum average that the lease requires. (*See* No. 24-6576, Dkt. No. 114.1, Exhibit A). The 2024 Report does not identify any evidence to the contrary or anything that amounts to non-compliance with the statute.

And, crucially, The 2024 Report does nothing to change the due process violations or legal errors that gave rise to this appeal and that warrant continuation of the stay until this Court issues its mandate.

The last thing that *anyone* needs at this juncture is to repeat the chaos that preceded the stay pending appeal. Recall that, after the district court *summarily evicted* UCLA from a *long-term written and Congressionally-authorized lease* with minimal notice or opportunity to correct the district court's errors, the affected UCLA student-athletes and baseball program were thrown into turmoil for no reason whatsoever—there was no irreparable harm in continuing to allow the use of the land that UCLA has leased for 60 years, and no competing plan or intent to use that land for any other purpose, yet the district court summarily enjoined use of the facilities nonetheless. (5-ER-982-85; 1-ER-2-19, 1-ER-23, 1-ER-46; 3-ER-570 at ¶ 3; 2-ER-49-53). The summary eviction triggered a blizzard of filings in the district court and

an Emergency Motion in this Court until, mercifully, the district court modified its injunction to allow UCLA to continue to use the leased parcel (2-ER-49-50), and this Court entered its stay pending appeal.

There is no reason to return to the former chaos. This Court should maintain an orderly process by leaving in place its stay pending appeal until it decides The Regents' appeals and issues its mandate.

CONCLUSION

This Court should deny the portion of Appellees' Motion that pertains to The Regents' UCLA lease, leaving that portion of the stay intact until this Court issues its mandate. This Court should likewise confirm that its Stay Order encompasses the portion of the district court's order invalidating the UCLA lease.

Dated: November 25, 2025.

Respectfully submitted,

/s/ Raymond A. Cardozo

Raymond A. Cardozo

REED SMITH LLP

101 Second Street, Suite 1800

San Francisco, CA 94105

rcardozo@reedsmith.com

Tel: (415) 543-8700

Fax: (415) 391-8269

Kasey J. Curtis

Corinne Fierro

REED SMITH LLP

515 South Flower Street,

Suite 4300

Los Angeles, CA 90071

Tel: (213) 457-8000

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

This Motion complies with FED. R. APP. P. 27(d)(2)(A) because it is 2,430 words.

This Motion complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word for Microsoft 365 MSO in 14-point Century Schoolbook font.

Date: November 25, 2025

/s/ Raymond A. Cardozo

Raymond A. Cardozo

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing THE REGENTS' MOTION FOR LEAVE TO FILE OPPOSITION AND OPPOSITION TO MOTION IN PARALLEL APPEAL TO LIFT COURT'S ORDER STAYING JUDGMENT PENDING APPEAL with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: November 25, 2025

/s/ Raymond A. Cardozo

Raymond A. Cardozo