

1 Lawrence VanDyke
 2 Deputy Assistant Attorney General
 3 Marissa A. Piropato (MA Bar No. 651630)
 4 United States Department of Justice
 5 Environment & Natural Resources Division
 6 Natural Resources Section
 7 150 M Street NE
 8 Washington, DC 20002
 9 (202) 305-0470
 10 marissa.piropato@usdoj.gov

11 *Attorneys for Defendants*

12 UNITED STATES DISTRICT COURT
 13 DISTRICT OF ARIZONA
 14 TUCSON DIVISION

15 DR. CHRISTIAN ROBERT KOMOR,

16 *pro se* Plaintiff,

17 v.

18 UNITED STATES OF AMERICA, *et al.*,

19 Defendants.
20

No. CV-19-00293-TUC-RCC

**DEFENDANTS’ MOTION FOR
STAY PENDING THE NINTH
CIRCUIT’S DECISION IN
JULIANA v. UNITED STATES**

21
 22 Defendants hereby move for a stay of this case pending the Ninth Circuit’s
 23 resolution of the pending appeal in *Juliana v. United States*, No. 6:15-cv-1517-AA, 2018
 24 WL 6303774 (D. Or. Nov. 21, 2018), *appeal docketed*, No. 18-36082 (9th Cir. Dec. 27,
 25 2018). The grounds for this motion are set forth in the memorandum submitted herewith.
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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR STAY

Introduction

This case should be stayed because the plaintiff, Dr. Robert Komor, asserts claims that are identical in all material respects to those currently pending before the Ninth Circuit Court of Appeals in another case, *viz.*, *Juliana v. United States*, No. 6:15-cv-1517-AA, 2018 WL 6303774 (D. Or. Nov. 21, 2018), *appeal docketed*, No. 18-36082 (9th Cir. Dec. 27, 2018). In *Juliana*, the United States filed dispositive motions raising various jurisdictional and legal defenses that are equally applicable to the claims asserted here. The district court denied those motions, but later certified its orders for interlocutory appeal, and the Ninth Circuit heard oral argument on June 4, 2019. A stay pending the Ninth Circuit’s decision will allow both the parties and this Court to avoid wasting time and resources on issues and arguments that will likely be refined, called into question, or disposed of by the Ninth Circuit’s decision.

I. Background

A. The Complaint

Dr. Christian Robert Komor, proceeding *pro se*, filed a Complaint on May 29, 2019 against numerous Defendants, including the United States, the President of the United States, the Office of Management and Budget, the Council on Environmental Quality, the Office of Science and Technology Policy, the Environmental Protection Agency, and the Departments of Energy, the Interior, Transportation, Agriculture, Commerce, Defense, and State. Compl. ¶¶ 10–39, ECF No. 1 (“Compl.”).

Dr. Komor alleges that increases in atmospheric carbon dioxide (CO₂) concentrations have caused a broad variety of climate change impacts,¹ and he contends

¹ Specifically, Dr. Komor alleges that increased atmospheric CO₂ concentrations are causing the loss of Arctic sea ice, Compl. ¶ 133; rising seas, *id.* ¶ 134; rising ocean temperatures, *id.* ¶ 124; ocean acidification, *id.* ¶ 139; human displacement, *id.* ¶ 125; sea level rise, *id.* ¶ 126; “[i]ncreased wildfires, shifting precipitation patterns, higher

1 that Defendants bear responsibility for these impacts. Compl. ¶¶ 172-187. He alleges
2 that Defendants must “phase out CO₂ emissions in order to restore Earth’s atmospheric
3 balance,” “cease permitting and authorizing fossil-fuel projects,” and “initiate a large-
4 scale project for active atmospheric carbon removal” to reduce global CO₂
5 concentrations. *Id.* ¶¶ 184–186.

6 Dr. Komor claims that Defendants: (1) have violated his substantive Fifth
7 Amendment rights under the Due Process Clause by directly causing “atmospheric CO₂
8 [concentrations] to rise to levels that dangerously interfere with a stable climate system,”
9 thus endangering “Plaintiffs’ lives [sic], liberties, and property,” *id.* ¶ 190; (2) have
10 violated equal protection principles in the Fourteenth Amendment, because Defendants’
11 laws and actions that have the effect of preventing a stable climate system have
12 disproportionately affected children, *id.* ¶¶ 201–203; (3) have violated implied climate-
13 related rights protected by the Ninth Amendment, *id.* ¶¶ 211–213; and (4) and have
14 violated the Federal “public trust,” by failing “to manage the atmosphere in the best
15 interests of the present and future beneficiaries of the trust property, including . . .
16 Plaintiffs [sic],” *id.* ¶ 218.

17 As relief, Dr. Komor seeks judicial orders directing Defendants to “prepare a
18 consumption-based inventory of U.S. CO₂ emissions,” *id.* ¶ 223; directing Defendants to
19 “implement an enforceable national remedial plan to phase out fossil-fuel emissions,”
20 *id.* ¶ 224; and retaining jurisdiction “to monitor and enforce the Defendants’ compliance
21 with the national remedial plan.” *Id.* ¶ 231.

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25 temperatures, and drought conditions,” *id.* ¶¶ 127, 141; more frequent and extreme heat
26 waves, *id.* ¶¶ 128, 137; more frequent, extreme, and costly floods and hurricanes,
27 *id.* ¶ 140; more frequent mudslides, *id.* ¶ 131; reduced winter snowpack in high altitude
28 and latitude regions, *id.* ¶ 142; loss of mountain glaciers, *id.* ¶ 143; increased permafrost
melt, *id.*; increased air pollution, *id.* ¶ 135; increased risk of infectious disease, *id.* ¶ 136;
and species extinction, *id.* ¶¶ 138, 144.

1 B. The *Juliana* Proceedings

2 Well before Dr. Komor initiated this lawsuit, a group of youth plaintiffs filed a
3 virtually identical lawsuit in the District of Oregon. *Juliana v. United States*, No. 6:15-
4 cv-1517 (D. Or.). In the operative complaint in that case, the *Juliana* plaintiffs brought
5 the same four claims against the United States and the same federal agencies and officials
6 that are sued in this case. See Decl. of Julia A. Olson, Ex. 1 at ¶¶ 98–130, 277–310, ECF
7 No. 27-1 (“*Juliana Compl.*”).²

8 Like the present Complaint, the *Juliana* complaint alleges that Defendants are
9 causing unsustainable CO₂ emissions and increased CO₂ atmospheric levels and
10 associated impacts by permitting increases in fossil fuel production and combustion,
11 *Juliana Compl.* ¶¶ 151–170, 185–191, subsidizing the fossil fuel industry, *id.* ¶¶ 171–178,
12 and allowing interstate and international transport of fossil fuels, *id.* ¶¶ 179–184.

13 The *Juliana* plaintiffs brought the identical four claims that Dr. Komor brings in
14 this case. First, they claim that Defendants’ aggregate acts violate their “substantive Fifth
15 Amendment rights [under the Due Process Clause] because Defendants directly caused
16 atmospheric CO₂ to rise to levels that dangerously interfere with a stable climate system,”
17 thus “endanger[ing] Plaintiffs’ lives, liberties, and property.” *Id.* ¶ 279. The *Juliana*
18 plaintiffs allege that Defendants acted with deliberate indifference by failing to
19 “implement[] their own plans for climate stabilization or any other comprehensive policy
20 measures to effectively reduce CO₂ emissions to levels that would adequately protect
21 Plaintiffs from the dangerous situation of climate destabilization.” *Id.* ¶ 285.

22 Second, the *Juliana* plaintiffs allege that Defendants’ acts violate “the equal
23 protection principles of the Fourteenth Amendment, embedded in the Due Process Clause

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25 ² Three of the youth plaintiffs in the *Juliana* litigation have moved to intervene as
26 Intervenor-Defendants in this litigation. Proposed Intervenor-Defs.’ Mot. & Mem. in
27 Supp. of Mot. to Intervene, ECF No. 27. In connection with that motion, they submit a
28 declaration from their counsel, who attaches the operative complaint from the *Juliana*
case as an exhibit. All references to that complaint in this brief refer to the paragraph
numbers in the complaint itself.

1 of the Fifth Amendment.” *Id.* ¶ 291. They claim that they must be treated as a protected
2 class for purposes of equal protection analysis, and that “federal laws and actions that
3 disproportionately discriminate against and endanger them must be invalidated.”

4 *Id.* ¶ 297.

5 Third, the *Juliana* plaintiffs bring suit under the Ninth Amendment, on the ground
6 that “[f]undamental to our scheme of ordered liberty . . . is the implied right to a stable
7 climate system and an atmosphere and oceans that are free from dangerous levels of
8 anthropogenic CO₂,” *id.* ¶ 304, and that Defendants’ acts have infringed on those
9 unenumerated rights, *id.* ¶ 306.

10 Lastly, the *Juliana* plaintiffs claim to be “beneficiaries of rights under the public
11 trust doctrine” that “protect the rights of present and future generations” to “vital natural
12 resources” such as air and water quality, biological diversity, and intact shorelines.

13 *Id.* ¶ 308. They allege that Defendants “failed in their duty of care as trustees to manage
14 the atmosphere in the best interests of the present and future beneficiaries of the trust
15 property,” including the *Juliana* plaintiffs. *Id.* ¶ 310.

16 As in this case, the *Juliana* plaintiffs seek a declaratory judgment that Defendants’
17 acts have violated the Constitution and a public trust. *Id.* at 94. They also seek an
18 injunction prohibiting future constitutional and public trust violations, and court orders
19 requiring the United States and Defendant agencies to “prepare a consumption-based
20 inventory of U.S. CO₂ emissions,” and to “implement an enforceable national remedial
21 plan to phase out fossil fuel emissions and draw down excess atmospheric CO₂.” *Id.*
22 And they ask the court in the District of Oregon to retain jurisdiction to monitor the
23 compliance with the plan to phase out CO₂ emissions. *Id.*

24 C. Pending Ninth Circuit Appeal in *Juliana*

25 In November 2015, Defendants moved to dismiss the *Juliana* complaint in its
26 entirety. Defendants identified several grounds for dismissal, including lack of standing,
27 failure to state a cognizable constitutional claim, and failure to state a claim on a public
28

1 trust theory. In November 2016, the district court denied that motion, and the court later
2 declined to certify its denial for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

3 The United States then moved for judgment on the pleadings and for summary
4 judgment, arguing that the *Juliana* plaintiffs' claims should be dismissed in their entirety
5 and that the *Juliana* court should enter judgment in favor of the government on all of
6 Plaintiffs' claims. The district court largely denied these dispositive motions in October
7 2018, and once again declined to certify its ruling for interlocutory appeal. *Juliana v.*
8 *United States*, 339 F. Supp. 3d 1062 (D. Or. 2018).

9 Shortly thereafter, the United States moved the *Juliana* court to reconsider its prior
10 orders insofar as it had declined to certify its orders on the three dispositive motions for
11 interlocutory appeal. The *Juliana* court granted the motion for reconsideration in
12 November 2018, certified its orders for interlocutory appeal pursuant to 28 U.S.C.
13 § 1292(b), and stayed the proceedings pending a decision by the Ninth Circuit Court of
14 Appeals. The Ninth Circuit granted the United States' petition to appeal in December
15 2018. In so doing, both the district court and Ninth Circuit necessarily concluded that the
16 district court orders on appeal "involve[] a controlling question of law as to which there
17 is substantial ground for difference of opinion and that an immediate appeal from the
18 order[s] may materially advance the ultimate termination of the litigation." 28 U.S.C.
19 § 1292(b). Since that time, the *Juliana* appeal has been fully briefed, and oral arguments
20 took place on June 4, 2019. The parties now await a decision on the appeal.

21 **II. Legal Standard**

22 District courts have broad discretion to stay proceedings. "[T]he power to stay
23 proceedings is incidental to the power inherent in every court to control the disposition of
24 the causes on its docket with economy of time and effort for itself, for counsel, and for
25 litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In determining whether to
26 issue a stay, "the competing interests which will be affected by the granting or refusal to
27 grant a stay must be weighed." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).
28 These interests include

1 the possible damage which may result from the granting of a stay, the
2 hardship or inequity which a party may suffer in being required to go
3 forward, and the orderly course of justice measured in terms of the
4 simplifying or complicating of issues, proof, and questions of law which
could be expected to result from a stay.

5 *Id.* “A trial court may, with propriety, find it is efficient for its own docket and the fairest
6 course for the parties to enter a stay of an action before it, pending resolution of
7 independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of Cal.,*
8 *Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). Such discretion is appropriately used when the
9 resolution of another matter will have a direct impact on the issues before the court,
10 substantially simplifying issues presented. *Mediterranean Enters., Inc. v. Ssangyong*
11 *Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983).

12 **III. Argument**

13 A stay of this case is appropriate pending the Ninth Circuit’s decision in *Juliana v.*
14 *United States* because the issues in this case are virtually identical to those in *Juliana*, and
15 the Ninth Circuit’s ruling in *Juliana* will almost certainly impact the law governing this
16 case and the parties’ positions. *See* 28 U.S.C. § 1292(b).

17 The complaints are also nearly identical. The plaintiffs in *Juliana* sue the same
18 Defendants that are sued here: the United States, the President of the United States, the
19 heads of three entities within the Executive Office of the President, eight Cabinet-level
20 agencies, and the heads of those agencies. The *Juliana* plaintiffs also assert the same
21 claims and legal theories as are asserted here. Specifically, both plaintiffs contend that
22 the federal government’s aggregate (and unspecified) actions and inactions over a period
23 of over fifty years have caused and contributed to climate change, thereby violating,
24 among other things, their substantive due process right to a climate system capable of
25 sustaining human life. Finally, both plaintiffs seek virtually identical relief, *i.e.*, for the
26 presiding judge to impose an enforceable national remedial plan to phase out fossil fuel
27 emissions and draw down excess atmospheric CO₂. *Compare* Compl. ¶ 224 *with* *Juliana*
28 *Compl.* 94. Indeed, the two actions are so similar that the *Juliana* plaintiffs have taken

1 the extraordinary step of seeking intervention in this case to complain that Dr. Komor
2 “plagiarized” the complaint in *Juliana*. ECF No. 27 at 13.

3 As Defendants have explained to the Ninth Circuit in *Juliana*, none of the claims
4 in that case have merit, and the case should be dismissed, because: (1) the *Juliana*
5 plaintiffs lack standing; (2) their claims are not cognizable under Article III; (3) they
6 failed to assert their claims under the Administrative Procedure Act; (4) the alleged rights
7 they seek to vindicate are not protected by the Fifth Amendment; and (5) no federal
8 public trust doctrine creates a right to particular climate conditions. *See* Appellants’
9 Opening Br., Dkt. Entry 16, *Juliana v. United States*, No. 18-36082 (9th Cir. filed Feb. 1,
10 2019), attached hereto as Exhibit 1. Because the arguments and issues in *Juliana* overlap
11 so substantially with those in this case, and any order issued by the Ninth Circuit would
12 be binding upon this Court, the Ninth Circuit’s decision is likely to significantly narrow
13 and possibly resolve the issues in dispute in this case. Rather than expend resources
14 evaluating the same issues that the Ninth Circuit is currently considering and is likely to
15 rule upon soon, this Court should stay proceedings pending the Ninth Circuit’s decision
16 in *Juliana*.

17 A stay will not prejudice Dr. Komor. This case has only just begun. Thus, the
18 only pending deadlines that will be affected by a stay are the August 19 deadline to file a
19 response to the Complaint and the August 13 deadline to respond to the *Juliana*
20 plaintiffs’ intervention motion.³ Moreover, Dr. Komor cannot claim any urgency in
21 having his claims litigated sooner than the months it will likely take the Ninth Circuit to
22 issue a decision. Dr. Komor did not file the Complaint until after briefing in the Ninth
23 Circuit in *Juliana* was completed. And the Complaint itself alleges that knowledge of
24 climate change has been around for more than a century, Compl. ¶ 61, that the United
25 States has known of it for decades, *id.* ¶¶ 62–78, and that harms from climate change
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27
28 ³ The United States will separately move to stay the August 13 and 19 deadlines pending
resolution of this stay motion.

1 have been occurring for many years, *id.* ¶¶ 122–168. Given that Dr. Komor did not find
 2 these issues sufficiently pressing to file this case until May 2019, he cannot credibly
 3 claim prejudice from a brief stay of proceedings.

4 Courts routinely grant stays in situations like this where a pending decision in
 5 another case could inform or resolve key issues. *See, e.g., Campbell v. Or. Dep’t of State*
 6 *Lands*, No. 16-cv-01677-SU, 2017 WL 3367094 (D. Or. Aug. 4, 2017) (stay pending
 7 Ninth Circuit decision in unrelated case where both cases involved question of whether
 8 federal mining law preempts a particular state law); *Ramsden v. Ocwen Loan Servicing,*
 9 *LLC*, No. CV 17-03464 BRO (ASx), 2017 WL 10543558, at *3 (C.D. Cal. Aug. 16,
 10 2017) (stay pending D.C. Circuit’s resolution of separate case involving related issues
 11 where “a decision by the D.C. Circuit could come at any moment” and thus “the risk of
 12 possible damage caused by granting a stay is not high”); *Karoun Dairies, Inc. v. Karlacti,*
 13 *Inc.*, No. 08cv1521 AJB (WVG), 2013 WL 4716202, at *5 (S.D. Cal. Sept. 3, 2013) (stay
 14 entered where “it appears the issues before the Ninth Circuit may have a direct impact on
 15 the issues currently before this Court”); *McConnell v. Lassen Cty.*, No. 05-cv-0909, 2007
 16 WL 4170622, at *2–3 (E.D. Cal. Nov. 20, 2007), *as amended* (Nov. 26, 2007) (stay
 17 pending Ninth Circuit’s *en banc* rehearing in separate case that involved related issues).
 18 This Court should do likewise.

19 Conclusion

20 Because a stay would help clarify, if not resolve, the issues before this Court and
 21 avoid wasting resources on arguments and issues that may shortly be addressed by the
 22 Ninth Circuit, the Court should stay the case pending resolution of the pending appeal in
 23 *Juliana*.

24 Dated: August 7, 2019

Respectfully submitted,

25 LAWRENCE VANDYKE
 26 Deputy Assistant Attorney General

27 /s/ Marissa A. Piropato
 28 MARISSA A. PIROPATO

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United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
150 M Street NE
Washington, DC 20002
ph: (202) 305-0470
marissa.piropato@usdoj.gov

Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2019, I electronically filed the foregoing Motion for Stay Pending the Ninth Circuit’s Decision in *Juliana v. United States* with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record and sent a paper copy via Federal Express to Plaintiff.

/s/ Marissa A. Piopato
Attorney for Defendants