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Via Electronic Filing

July 9, 2018

Ms. Molly Dwyer
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Regents of the University of California, et al. v. U.S. Department of Homeland Security, et al.*, Consolidated Case No. 18-15068 (argued May 15, 2018).

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), the University of California plaintiffs write to respond to the letter submitted by defendants on June 28, 2018 regarding *Trump v. Hawaii*, No. 17-965 (U.S. June 26, 2018).

Defendants' reliance on *Trump v. Hawaii* for their assertion that the rescission of DACA is "subject at most to extremely limited review" is misplaced. Plaintiffs here have asserted statutory claims under the Administrative Procedure Act (APA), which itself provides the appropriate standard of review. *See* 5 U.S.C. § 706(2)(A) (explaining that a reviewing court will set aside agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"). *Trump v. Hawaii* did not address the statutory standard under which this Court must review plaintiffs' APA claims.

Furthermore, the Supreme Court's deference to the President's Proclamation at issue in *Trump v. Hawaii* was motivated by purported national security concerns. *See* slip op. at 32 (concluding that the Court's "inquiry into matters of entry and national security is highly constrained").

Here, by contrast, defendants have never asserted that DACA was rescinded for any national security reason; instead, the rescission rested on a legal determination—that DACA exceeded the Executive’s authority under the INA and the Constitution—to which this Court owes no deference. *See, e.g., SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) (“[I]f the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law.”); *Massachusetts v. EPA*, 549 U.S. 497, 532-34 (2007) (setting aside an EPA decision premised on misinterpretation of its legal authority); *Negusie v. Holder*, 555 U.S. 511, 516 (2009) (remanding for agency to “confront the same question free of [its] mistaken legal premise”).

Accordingly, defendants are wrong to suggest that *Trump v. Hawaii* has any relevance to this Court’s consideration of plaintiffs’ APA claims.

Sincerely,

s/ Jeffrey M. Davidson

Jeffrey M. Davidson

*Counsel for Plaintiffs The
Regents of the University of
California and Janet
Napolitano, in her official
capacity as President of the
University of California*

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Jeffrey M. Davidson
Jeffrey M. Davidson