

July 9, 2018

VIA ELECTRONIC FILING

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 (9th Cir.) (oral argument May 15, 2018, before Judges Wardlaw, Nguyen, and Owens)

Dear Ms. Dwyer:

We write to respond to Defendants' June 28, 2018 letter about the effect of the Supreme Court's decision in *Trump v. Hawaii*, No. 17-965, on this case. We agree with the letter filed today by the Regents and write separately to address the effect of the Supreme Court's decision on our equal protection claims.

First, in setting the applicable standard of review, the Supreme Court emphasized that *Hawaii* concerned "a national security directive regulating the entry of aliens abroad," Slip Op. 29, and that "foreign nationals seeking admission have no constitutional right to entry," *id.* at 30. Those factors are not present here—national security was not the reason for the rescission, and the Dreamers already reside in the United States. Further, it is undisputed that the Equal Protection Clause (applicable here through the Due Process Clause of the Fifth Amendment) protects DACA recipients located in the United States. As this Court has explained, the Constitution "protect[s] every person within the nation's borders"—including those here "unlawful[ly]"—from "deprivation of life, liberty or property without due process of law." *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014) (en banc); *see also Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (confirming that once an immigrant enters U.S., his "constitutional status changes accordingly").

Second, Defendants' reliance on the Supreme Court's decision in *AADC* is misplaced. As previously explained (Dkt. 46 at 52-53), *AADC* does not support the argument that the rescission is subject to only limited judicial review. *Hawaii* cited *AADC* only in passing, Slip. Op. 24, and it did not apply *AADC* to a policy decision like the rescission.

July 9, 2018

Page 2

Third, even under the deferential standard employed in *Hawaii*, the Supreme Court *did* consider and weigh the President’s statements, as Defendants admit in their letter. Dkt. 185 at 2 (“The Court in [*Hawaii* . . . concluded that . . . it would ‘consider plaintiffs’ extrinsic evidence’ of the President’s statements . . .”). This Court therefore should consider the President’s animus-infected statements in assessing whether plaintiffs adequately pleaded their equal protection claims.

Sincerely,

s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.

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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/ Theodore J. Boutrous, Jr.
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