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Via Electronic Filing

August 7, 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, before Judges Wardlaw, Nguyen, Owens).

Dear Ms. Dwyer:

Pursuant to Rule 28(j), the University of California plaintiffs write to respond to the letter submitted by defendants on August 3, 2018.

The Court's recent decision in *San Francisco v. Trump*, No. 17-17478 (Aug. 1, 2018) provides no basis for vacating the preliminary injunction here. That case did not involve Administrative Procedure Act claims, which this case does. Under the APA, the typical remedy is for unlawful agency action to be "set aside" without regard to geographic scope. 5 U.S.C. § 706(2)(A); *accord Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) ("the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed"). Thus, nationwide relief is not disfavored in APA cases; to the contrary, "[t]he nationwide injunction . . . is compelled by the text of the Administrative Procedure Act." *Earth Island v. Ruthenbeck*, 490 F.3d 687, 699 (9th Cir. 2007). Nationwide *provisional* relief in APA cases therefore corresponds with the nationwide *final* relief contemplated by the APA itself. *See* Dkt. 44 at 69-72.

Moreover, *San Francisco v. Trump* did not hold that injunctions with nationwide effect are categorically improper or even improper in that case. Slip op. at 35 ("We are unpersuaded by the Administration's arguments in favor of a blanket restriction on all nationwide injunctions."). Instead, it remanded "for a more searching inquiry into whether this case justifies the breadth of the injunction imposed." *Id.* Here, plaintiffs have satisfied any such inquiry. Unlike the single county suing in *San Francisco v. Trump*, the cases before this Court were brought on behalf of four States, a county, a city, a university system, and six affected individuals. The extensive record submitted in support of the preliminary injunction established nationwide harm. *See, e.g.*, SER 353-60, 442-55, 522-36, 1069-81, 1138-67 (expert reports showing nationwide harms). And the University of California demonstrated that its interests in recruiting, educating, and hosting students, staff, and scholars from throughout the United States cannot be vindicated without a nationwide injunction. *See* Dkt. 44 at 70-72.

Respectfully submitted,

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 August 7, 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