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VIA ELECTRONIC FILING

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 Seventh Street
San Francisco, CA 94103

Re: Plaintiffs' Notice of Supplemental Authority Pursuant to Rule 28(j) in *Karnoski v. Trump*, No. 18-35347 (9th Cir.)

Dear Ms. Dwyer:

Plaintiffs write to inform the Court of *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, No. 18-15068 (9th Cir. Nov. 8, 2018).

First, *Regents* confirms that *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), does not apply here and did not purport to disturb settled equal protection law requiring heightened scrutiny for Plaintiffs' equal protection claim. *Regents* involved a policy that—like the one in *Hawaii*—was facially neutral. Nevertheless, *Regents* found *Hawaii* inapplicable, holding that plaintiffs had stated a valid equal protection claim. Op. 89 (*Hawaii* is distinguishable on numerous legal and factual grounds and does not require rational basis review). In even starker contrast to *Hawaii*, the policy here is not facially neutral. It expressly targets transgender individuals for different treatment. *A fortiori*, *Hawaii* is inapplicable here. Indeed, *Hawaii* contrasted the facially neutral policy before the Court with the facially discriminatory policy in *Korematsu*, which *Hawaii* found unconstitutional. As Plaintiffs noted (Dkt. 76), had *Hawaii* confronted a proclamation titled, "Muslim

Admission Policy," it would have been resolved differently.

Second, *Regents* rebuts the government's claims that it has created a "new" policy that should be considered alone and without regard to the President's 2017 directives—which had ordered implementation of that very policy. Op. 87–88 (considering the policy's "unusual history" and both "pre-presidential and post-presidential statements by President Trump … even though the directive … was issued from Attorney General Sessions").

Third, even if the government had demonstrated any basis for dissolving the "nationwide" scope of the preliminary injunction it could not have raised in its previously abandoned appeal, *Regents* confirms that the district court did not abuse its discretion. *Regents* held that where—as here—a plaintiff challenges a policy of "broad applicability," the remedy "is that the rule is invalidated, not simply that the court forbids its application to a particular individual." Op. 71–72. Moreover, *Regents* shows that broad relief is particularly appropriate where—as here—there is a need for uniformity and a military-wide injunction is required "to provide complete relief to the plaintiffs, including the entity plaintiffs." *Id.* 72.

Respectfully submitted,

/s/ *Stephen R. Patton*

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2018, the attached letter was filed electronically through the Court's CM/ECF system, and was provided by electronic mail to all counsel of record.

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