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VIA CM/ECF

November 20, 2018

Ms. Molly C. Dwyer  
Clerk, United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

RE: *Karnoski v. Trump*, No. 18-35347 (argued October 10, 2018 before Judges Fisher, Clifton, and Callahan)

Dear Ms. Dwyer:

We write in response to plaintiffs' letter concerning *Regents of the University of California v. U.S. Department of Homeland Security*, No. 18-15068 (9th Cir. Nov. 8, 2018), which addressed an immigration enforcement policy known as Deferred Action for Childhood Arrivals (DACA).

Contrary to plaintiffs' assertion, *Regents* does not implicate the government's argument that the 2018 policy must be assessed on its own terms when evaluating plaintiffs' likelihood of success on the merits. *Regents* held that the plaintiffs plausibly stated an equal-protection claim, accepting as true their allegations regarding prior presidential statements and the supposedly "unusual history behind the rescission" of DACA. Op.86-89. The present case is on appeal from a preliminary injunction, not a motion to dismiss, so there is no basis for "constru[ing] [plaintiffs' allegations] in the light most favorable to [them]." Op.86. The facts before this Court demonstrate that the President "revoke[d]" his prior memorandum to allow the military to implement a new, substantively different policy that is the product of the Secretary of Defense's "independent judgment." ER.158; *see also* ER.161. In these circumstances, the 2018 policy must be assessed on its own terms, not in light of a distinct, revoked policy.

The decision in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), supports this conclusion. Gov't.Reply.9-11. Plaintiffs note that *Regents* distinguished *Hawaii*, but fail to acknowledge that it did so based, in part, on a “lack of a national security justification” for the DACA rescission, Op.89—a justification that the Secretary of Defense invoked when explaining that the 2018 policy “will place the Department of Defense in the strongest position to protect the American people.” ER.162. Plaintiffs’ claim that the 2018 policy is “facially discriminatory” is baseless. *See* Gov't.Reply.4-5, 11.

Finally, in affirming the scope of the injunction in *Regents*, this Court expressly relied on its view that nationwide relief “is commonplace in APA cases” and “promotes uniformity in immigration enforcement.” Op.71-73. Neither feature is present in this case, where a “narrower injunction ... would provide complete relief to the plaintiffs.” Op.72; *see* Govt.Br.54-55; Govt.Reply.26-27.

In any event, the government is seeking Supreme Court review of *Regents*.

Sincerely,

s/ Tara S. Morrissey

Tara S. Morrissey

Attorney

cc: all counsel (via CM/ECF)

## CERTIFICATE OF SERVICE

I hereby certify that on November 20, 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/Tara S. Morrissey*  
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TARA S. MORRISSEY