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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

LAS AMERICAS IMMIGRANT  
ADVOCACY CENTER; ASYLUM  
SEEKER ADVOCACY PROJECT;  
CATHOLIC LEGAL IMMIGRATION  
NETWORK, INC.; INNOVATION LAW  
LAB; SANTA FE DREAMERS  
PROJECT; AND SOUTHERN POVERTY  
LAW CENTER,

Plaintiffs,

Case No. 3:19-cv-02051-IM

PLAINTIFFS' NOTICE OF ADDITIONAL  
AUTHORITY

v.

DONALD J. TRUMP, in his official capacity as President of the United States; WILLIAM BARR, in his official capacity as Attorney General of the United States; U.S. DEPARTMENT OF JUSTICE; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; AND JAMES MCHENRY, in his official capacity as EOIR Director of the United States,

Defendants.

Plaintiffs write to advise the Court that the U.S. Supreme Court’s recent decision in *Department of Homeland Security v. Regents of the University of California*, No. 18-587, 2020 WL 3271746 (S. Ct. June 18, 2020), is relevant to the issues raised in Defendants’ Motion to Dismiss. In *Regents*, the U.S. Supreme Court considered, among other questions, whether the Department of Homeland Security’s rescission the Deferred Action for Childhood Arrivals (DACA) program was arbitrary and capricious under the Administrative Procedure Act (APA). Before considering that question, however, the Supreme Court considered two threshold jurisdictional questions relevant to the issues raised in this case.

First, the Supreme Court in *Regents* held that jurisdiction over the plaintiffs’ APA and constitutional claims was not barred under 8 U.S.C. § 1252(b)(9). Slip Op. at 12. Specifically, the Supreme Court stated that § 1252(b)(9) “is certainly not a [jurisdictional] bar where, as here, the parties are not challenging any removal proceedings.” *Id.* The Court relied on its earlier decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), in which it held that § 1252(b)(9) does not present a jurisdictional bar where those bringing suit “are not asking for review of an order of removal,” and are not challenging “the decision . . . to seek removal,” or “the process by which their removability will be determined.” *Jennings*, 138 S. Ct. at 841 (plurality); Slip Op. at 12 (quoting *Jennings*, 138 S. Ct. at 841 (plurality); *id.* at 876 (Breyer, J., dissenting)). Here, as in *Regents*, Plaintiffs—legal service providers that are not even subject to the INA’s removal procedures—do not seek review of any order of removal, any decision to seek removal, or the process by which their removability will be determined. Section 1252(b)(9) therefore “is certainly not a bar” to review. *See id.*

Second, the Supreme Court in *Regents* held that 8 U.S.C. § 1252(g) “is similarly narrow.” *Id.* Consistent with its decision in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), the Court held that because the programmatic agency action at issue—the DACA rescission, “which revokes a deferred action program with associated benefits”—“is not a

decision to ‘commence proceedings,’ much less to ‘adjudicate’ a case or ‘execute’ a removal order,” § 1252(g) did not bar review. Slip Op. at 12–13; *see also id.* at 12 (noting that § 1252(g) “limits review of cases ‘arising from’ decisions ‘to commence proceedings, adjudicate cases, or execute removal orders’”). For the reasons that Plaintiffs explained in their Response in Opposition to Defendants’ Motion to Dismiss at 22–23, § 1252(g) likewise does not preclude review of Plaintiffs’ claims, which challenge the lawfulness of Defendants’ programmatic policies and practices governing the administration of the immigration court system.

DATED: June 25, 2020

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