

No. 17-15589

IN THE  
**United States Court of Appeals  
for the Ninth Circuit**

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STATE OF HAWAII, *et al.*,

*Plaintiffs-Appellees,*

v.

DONALD J. TRUMP, *et al.*,

*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the District of Hawaii, No. 1:17-cv-00050-DKW-KSC  
District Judge Derrick K. Watson

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**PLAINTIFFS-APPELLEES' MOTION FOR LEAVE TO SUPPLEMENT  
THE RECORD**

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Pursuant to Federal Rule of Appellate Procedure 10(e), Federal Rule of Evidence 201, and this Court's inherent powers, Plaintiffs-Appellees move to supplement the record to include the attached declaration by Risa E. Dickson, Vice President for Academic Planning and Policy at the University of Hawaii System, updating the facts relevant to the State of Hawaii's claim that it has Article III standing based on the harm to the University of Hawaii. We have conferred with defendants regarding this motion. The government defendants do not oppose the plaintiffs' supplementing of the record with this material. The government defendants do intend to file a response to the motion, addressing the relevance of

the material to the issues before the Court.

Federal Rule of Appellate Procedure 10(e)(2) permits supplementation of the record on appeal where a material fact has been “omitted.” In addition, a federal court of appeals may, and sometimes must, exercise its inherent equitable authority to supplement the record with facts relevant to the courts’ subject matter jurisdiction. *See, e.g., Johnson v. Rancho Santiago Comm. Coll. Dist.*, 623 F.3d 1011, 1020 n.3 (9th Cir. 2010) (“[W]e exercise our discretion to supplement the record on appeal so that we may determine whether we have jurisdiction . . . .”); *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (“[C]onsideration of new facts may even be mandatory, for example, when developments render a controversy moot and thus divest us of jurisdiction.” (citation omitted)). In related contexts, the Supreme Court has also emphasized that it is important to supplement the record with facts relevant to jurisdiction when they arise. *See Pennell v. City of San Jose*, 485 U.S. 1, 8 (1988) (“We strongly suggest that \* \* \* parties litigating in the Court \* \* \* take pains to supplement the record in any manner necessary to enable us to address with as much precision as possible any question of standing that may be raised.” ).

In granting the preliminary injunction, the District Court held that the State of Hawaii had standing in part because it had “sufficiently identified monetary and intangible injuries to the University of Hawaii.” Preliminary Injunction Op. at 9

(Dist. Ct. Doc. 270). In its earlier opinion, granting the temporary restraining order (“TRO”), the District Court specifically pointed to the fact that “prospective recruits who are without visas \* \* \* will not be able to travel to Hawaii to attend the University” and “[a]s a result, the University will not be able to collect the tuition that those students would have paid.” TRO Op. at 18 (Dist. Ct. Doc. 219). The District Court’s decisions relied primarily on the Declaration and Supplemental Declaration of Risa Dickson. Plaintiffs seek to update those declarations so that they accurately reflect the current facts regarding the University’s recruitment efforts.

In her Supplemental Declaration, Ms. Dickson stated that “[g]iven the new Executive Order, the University’s ability to recruit and enroll students and graduate students, and recruit and hire visiting faculty from the six affected countries, is constrained.” E.R. 121 (Supp. Dickson Decl. ¶ 7). Because the District Court litigation was taking place in the middle of admissions season and because of concerns regarding academic privacy, Ms. Dickson was not able to disclose particular numbers at that time. But, as the attached Second Supplemental Declaration of Risa E. Dickson explains, the University can now confirm that—as of May 12—at least three students from the six targeted countries have accepted offers of admission to the University of Hawaii for the coming academic year. Two of those students are required to report to the University at dates between

August 1 and August 10. Because August 10 is less than 90 days away, if the Order goes into effect anytime between now and August 10, it will impede the ability of these students to get the visas they will need to begin classes.

In addition, there are still at least eleven outstanding offers of admission to students in the six targeted countries. Under University policy, those students must make an enrollment decision within thirty days of receiving their offer, unless their respective graduate programs extend that deadline.

Because the impact on the University's admissions was directly relevant to the District Court's holding that there was standing, Plaintiffs-Appellees respectfully request that the Court of Appeals supplement the record to include these, and the other facts, contained in the attached Second Supplemental Declaration of Risa E. Dickson.

Respectfully submitted,

DOUGLAS S. CHIN  
Attorney General of the State of Hawaii  
CLYDE J. WADSWORTH  
Solicitor General of the State of Hawaii  
DEIRDRE MARIE-IHA  
DONNA H. KALAMA  
KIMBERLY T. GUIDRY  
ROBERT T. NAKATSUJI  
Deputy Attorneys General  
DEPARTMENT OF THE ATTORNEY  
GENERAL, STATE OF HAWAII  
425 Queen Street  
Honolulu, HI 96813

/s/ Neal Kumar Katyal  
NEAL K. KATYAL  
COLLEEN ROH SINZDAK  
MITCHELL P. REICH  
ELIZABETH HAGERTY  
HOGAN LOVELLS US LLP  
555 Thirteenth Street NW  
Washington, DC 20004  
Telephone: (202) 637-5600  
Email: neal.katyal@hoganlovells.com

THOMAS P. SCHMIDT  
HOGAN LOVELLS US LLP  
875 Third Avenue

Telephone: (808) 586-1500

New York, NY 10022

*Counsel for the State of Hawaii*

SARA SOLOW  
ALEXANDER B. BOWERMAN  
HOGAN LOVELLS US LLP  
1835 Market St., 29th Floor  
Philadelphia, PA 19103  
Telephone: (267) 675-4600

*Counsel for Plaintiffs-Appellees*

### **CERTIFICATE OF SERVICE**

I certify that 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 on May 19, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Neal Kumar Katyal  
Neal Kumar Katyal

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**SECOND SUPPLEMENTAL DECLARATION OF RISA E. DICKSON**

I, Risa E. Dickson, do solemnly swear and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy at the University of Hawai‘i System. I began this role in February 2015. As Vice President, I have overall responsibility for leadership, planning, and intercampus coordination of academic affairs, student affairs, and academic policy and planning, among other things.
2. On April 20, 2017, the University of Hawai‘i (“University”) posted a story on-line about the number of international students admitted to the University for the 2017-2018 school year. *UH a popular destination for international*

*students*, UH News (Apr. 20, 2017), <http://www.hawaii.edu/news/2017/04/20/uh-a-popular-destination-for-international-students/>.


3. As reported in the story, as of that date, 11 graduate students, each of whom are from one of the six countries affected by the March 6, 2017 executive order, had received offers of admission from their respective programs at the University, for the 2017-2018 school year, and an additional 21 total graduate students from the six affected countries were still being considered for admission by their respective programs.
4. Since this on-line story was posted, as of May 12, 2017, the University's records reflect that at least three graduate applicants, each from one of the six affected countries, have accepted their respective offers of admission and thus committed to attend the University in the Fall. The University's records reflect that each of these students is a national of one of the six affected countries.
5. In addition, since the on-line story was posted, as of May 12, 2017, the University's records reflect that three additional offers of admission were extended to graduate applicants, each of whom is from one of the six affected countries. Therefore, as of May 12, 2017, there are 11 graduate applicants, each from one of the six designated countries, with pending offers of admission for the 2017-2018 school year.



6. Classes begin for the upcoming school year on August 21, 2017. All students, campus-wide, need to be present by at least that date to begin their classes. Additionally, many students at UH have mandatory orientation, registration, or other activities that begin before the classes start.
7. Campus-wide graduate student orientation begins August 14, 2017, but is optional. However, each program has its own requirements for when new graduate students must arrive on campus. Of the three students who have accepted their offers of admission noted above, at least one of them must be on campus by August 1, 2017 and another must be on campus by August 10, 2017.
8. In general, graduate student applicants who receive offers of admission are asked to respond within 30 days of receipt of the offer letter. However, graduate programs may extend that deadline. As a result, the process of admitting new graduate students extends over the summer until classes begin.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, May 18, 2017.

  
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Risa E. Dickson