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Korematsu Center and other amici file Ninth Circuit *amicus* brief in *State of Hawai`i and Ismail Elshikh v. Trump et al.*

NEW YORK – Fred T. Korematsu Center for Law and Equality (Korematsu Center), the children of litigants in the Japanese relocation and incarceration cases from World War II, civil rights organizations, and national bar associations of color in filing an *amicus* brief on April 21, 2017 in *State of Hawai`i and Ismail Elshikh v. Trump et al.*, pending in the U.S. Court of Appeals for the Ninth Circuit. The brief supports a legal challenge to the Trump administration’s Executive Order 13780 (March 6, 2017), entitled “Protecting the Nation from Foreign Terrorist Entry into the United States”, which replaces Executive Order 13769 (January 27, 2017), of the same title.

The district court below held that the challengers had met their burden of establishing a strong likelihood of success on the merits that the Executive Order violates the First Amendment, that they would suffer irreparable injury if the restraining order was not granted, and the balance of equities and public interest was in their favor. On appeal, the federal government argues that the court should defer wholly to the executive branch because the Executive Order concerns immigration and courts have historically deferred to the executive branch on immigration issues and that the plaintiffs’ claims are not justiciable.

In their *amicus* brief, the Korematsu Center and joining *amici* assert that courts can and should review executive branch action on immigration. The “plenary power doctrine”—arguably conferring a blank check to the executive branch—is based on a string of overtly racist and outdated cases. During World War II, the federal government used arguments similar to those it has submitted in opposing the State of Hawai`i’s challenge. In accepting those arguments then, the Court acquiesced to the incarceration of Japanese Americans by executive order. Those arguments should have been rejected then and they should be rejected now—the 9th Circuit and the District Court for the Eastern District of Virginia have already rejected them in their review of the previous Executive Order.

With respect to the filing, Professor Robert S. Chang, executive director of the Korematsu Center, stated that “The Korematsu Center is proud to continue to stand with civil rights organizations and the bar associations of color, representing hundreds of thousands of lawyers, together with Jay Hirabayashi, Holly Yasui, and Karen Korematsu to speak out against this unjust Executive Order, which does nothing to correct or mitigate the harms imposed by its predecessor.”

Oral arguments in the *State of Hawai`i* case are scheduled for May 15, 2017 at 9:30 a.m. Pacific time.

The following individuals and organizations have joined the *amicus* brief: the Fred T. Korematsu Center for Law and Equality, Jay Hirabayashi, Karen Korematsu, Holly Yasui, Asian Americans Advancing Justice | AAJC, Asian Americans Advancing Justice | Asian Law Caucus, Asian Americans Advancing Justice | Atlanta, Asian Americans Advancing Justice | Chicago, Asian Americans Advancing Justice | Los Angeles, the Asian American Legal Defense and Education Fund (AALDEF), the Hispanic National Bar Association (HNBA), the Japanese American Citizens League of Hawaii, LatinoJustice PRLDEF, Inc., the National Bar Association, and the South Asian Bar Association of North America (SABA North America).

Hawai`i counsel includes Louise Ing and Claire Wong Black of Alston Hunt Floyd & Ing, as well as Eric Yamamoto of the University of Hawai`i Mānoa William S. Richardson School of Law. Attorneys from Akin Gump Strauss Hauer & Feld LLP, including Pratik Shah, co-head of Akin Gump’s Supreme Court and appellate practice, New York partners Robert Johnson and Alice Hsu, and Los Angeles litigation senior counsel Jessica Weisel serve as *pro bono* counsel on the brief. Stated Mr. Shah, “Justice Jackson warned in his dissent in *Korematsu* that the courts should never validate racial discrimination in the name of national security lest it become ‘like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.’ Our brief provides the historical background to help the Court avoid the temptation of reloading that weapon.”

The amicus brief is available [here](#).