No. 14-10049

In the United States Court of Appeals for the Fifth Circuit

CHRISTOPHER L. CRANE; DAVID A. ENGLE; ANASTASIA MARIE CARROLL; RICARDO DIAZ; LORENZO GARZA; FELIX LUCIANO; TRE REBSTOCK; FERNANDO SILVA; SAMUEL MARTIN; JAMES D. DOEBLER; STATE OF MISSISSIPPI, BY AND THROUGH GOVERNOR PHIL BRYANT,
Plaintiffs-Appellants Cross-Appellees,

v.

JEH CHARLES JOHNSON, SECRETARY, DEPARTMENT OF HOMELAND SECURITY; SARAH R. SALDAÑA, IN HER OFFICIAL CAPACITY AS DIRECTOR OF IMMIGRATION & CUSTOMS ENFORCEMENT; LEÓN RODRÍGUEZ, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES,
Defendants-Appellees Cross-Appellants.

ON APPEAL FROM U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, CIVIL NO. 3:12-CV-3247, HON. REED O'CONNOR

AMICUS CURIAE BRIEF OF EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND, INC., IN SUPPORT OF PETITION FOR REHEARING *EN BANC*

Lawrence J. Joseph, D.C. Bar #464777
1250 Connecticut Ave, NW, Suite 200
Washington, DC 20036
Tel: 202-355-9452
Fax: 202-318-2254
Email: ljoseph@larryjoseph.com

Counsel for Amicus Curiae

CERTIFICATE OF INTERESTED PERSONS

The case number is 14-10049. The case is styled as *Christopher Crane, et al. v. Jeh Johnson, et al.* Pursuant to the fourth sentence of Circuit Rule 28.2.1, the undersigned counsel of record certifies that the parties' list of persons and entities having an interest in the outcome of this case is complete, to the best of the undersigned counsel's knowledge. The undersigned counsel also certifies that *amicus curiae* Eagle Forum Education & Legal Defense Fund is a nonprofit corporation with no parent corporation and that no publicly held corporation owns ten percent or more of its stock. These presentations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Dated: June 29, 2015

Respectfully submitted,

/s/ Lawrence J. Joseph

Lawrence J. Joseph, D.C. Bar #464777
1250 Connecticut Ave, NW, Suite 200
Washington, DC 20036
Tel: 202-355-9452
Fax: 202-318-2254
Email: ljoseph@larryjoseph.com

Counsel for Amicus Curiae Eagle Forum Education & Legal Defense Fund

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IDENTITY, INTEREST AND AUTHORITY TO FILE

Amicus curiae Eagle Forum Education & Legal Defense Fund ("Eagle Forum"), a nonprofit Illinois corporation, seeks leave to file this brief by motion.[1] As its motion explains, Eagle Forum consistently defends federalism and supports the state and local right to protect their communities. For these reasons, Eagle Forum has a direct and vital interest in the issues before this Court.

STATEMENT OF THE CASE

Ten federal law-enforcement agents (collectively, the "Agents") and the State of Mississippi sue federal officials responsible for immigration policy (collectively, the "Administration") to enjoin the implementation of the Deferred Action for Childhood Arrivals ("DACA") program, as well as federal agency action to implement the DACA program. Together, the challenged Administration policies purport to rely on prosecutorial discretion to avoid statutorily mandatory removal proceedings for illegal aliens and, instead, to provide employment benefits to DACA beneficiaries. The Administration adopted this DACA program without meeting the Administrative Procedure Act's notice-and-comment requirements, 5

[1] By analogy to FED. R. APP. P. 29(c)(5), the undersigned counsel certifies that: counsel for *amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than *amicus*, its members, and its counsel – contributed monetarily to this brief's preparation or submission.

U.S.C. §553(b)-(c), and the complaint challenges the DACA program not only as substantively invalid under immigration law, but also as violating procedural notice-and-comment requirements. *See* Amended Compl. at 23-24 (ROA.122-23).

SUMMARY OF ARGUMENT

In evaluating the Agents' standing, the panel erred by contradicting the Agents' merits views and (contrary to the uncontested proceedings in the district court) holding that the DACA program left the Agents' discretion intact. Contrary to that analysis, the Article III standing analysis requires reviewing courts to adopt *arguendo* the plaintiff's merits views (Section I.A). By failing to adopt the Agent's view that DACA denies them of discretion in its Article III analysis, the panel actually reached the merits in purporting to deny jurisdiction, which is precisely the opposite of what Article III requires of federal courts (Section I.B). Indeed, Circuit precedent not only requires courts to assume jurisdiction when standing and the merits intertwine, but also precludes their use of a motion to dismiss to resolve such cases. *Barrett Computer Services, Inc. v. PDA, Inc.,* 884 F.2d 214, 220 (5th Cir. 1989); *Clark v. Tarrant County, Texas,* 798 F.2d 736, 741-42 (5th Cir. 1986); *Montez v. Department of Navy,* 392 F.3d 147, 150 (5th Cir. 2004) (Section I.B). Finally, FED. R. CIV. P. 15(b)(2) entitles the Agents to rely on their showing in district court, even if the panel *sub silentio* found their pleadings insufficient with regard to the DACA program's eliminating their discretion (Section I.C).

With regard to Mississippi, the panel not only failed to lower Article III's redressability and immediacy requirements to account for the procedural injuries that Mississippi alleges in its complaint (Section II.A), but also failed to presume the specific facts needed to support the complaint's general claims, as *Bennett v. Spear*, 520 U.S. 154, 167-68 (1997), requires federal courts to do at the pleading stage (Section II.B). These two facets combine with the "special solicitude in standing analysis" required under *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007), to mandate better treatment for Mississippi at this stage of the litigation. *See* Pet. at 14-15.

ARGUMENT

Article III courts must establish their jurisdiction before addressing the merits: "every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). Indeed, "[f]or a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act *ultra vires.*" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998). While Article III requires dismissal of cases outside federal courts' jurisdiction, *id.*, the converse is also true: "a federal court's 'obligation' to hear and decide cases within its jurisdiction is virtually

unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S.Ct. 1377, 1386 (2014) (interior quotations omitted). For these reasons, traditional rules of appellate waiver do not apply to jurisdiction, which is either present or absent.

Indeed, Congress has recognized as much by providing that "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." 28 U.S.C. §1653. Accordingly, assuming that jurisdiction otherwise exists, federal courts cannot dismiss cases *within* their Article III jurisdiction any more than they can hear cases *outside* that Article III jurisdiction. The parties can neither expand nor contract that constitutional jurisdiction.

Significantly, Article III limits the ability of *federal courts* to hear a case; it neither limits the arguments that plaintiffs can make nor requires each plaintiff to have standing. First, "once a litigant has standing to request invalidation of a particular [government] action, [the litigant] may do so by identifying all grounds on which the agency may have failed to comply with its statutory mandate." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 & n.5 (2006); *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 78-81 (1978) (standing doctrine has no nexus requirement outside taxpayer standing). Second, it would suffice for Article III if one plaintiff has standing. *Massachusetts*, 549 U.S. at 518 ("[o]nly one of the petitioners needs to have standing to permit us to consider the petition for review"). Thus, if either the Agents or Mississippi has standing to challenge the

DACA program, each plaintiff can raise any argument against the DACA program.

Finally, while plaintiffs bear the burden of proving their standing, the burden that they bear depends on the stage of the litigation: "each element of Article III standing 'must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Bennett,* 520 U.S. at 167-68 (internal quotations omitted). While "specific facts" are required to support summary judgment, "at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice" because courts at that stage "presume that general allegations embrace those specific facts that are necessary to support the claim." *Id.* at 168 (internal quotations omitted).

I. THE AGENTS HAVE STANDING

The Administration's opening brief did not challenge the Agent's standing or the lower court's findings with respect to the Agents. Although the panel agreed that threatened employment sanctions against the Agents could qualify as an injury in fact, the panel rejected that injury based on an alternate reading of the DACA program: Slip. Op. at 15-16. In doing so, the panel perceived "a fundamental flaw in the Agents' argument" and held that "[t]he Agents' reading of the Directive – that they are always required to grant deferred action and cannot detain an alien who may meet the Directive's criteria – is erroneous." *Id.* at 15. In their petition,

the Agents request rehearing *en banc* for three reasons: (1) the panel gave insufficient deference to the district court's contrary findings; (2) the panel's findings differ from a subsequent Fifth Circuit panel's holding about a similar Administration program in *Texas v. United States*, No. 15-40238 (5th Cir. May 26, 2015); and (3) the panel ignored evidence of past threats and a veiled threat by the President to federal officers who fail to meet Administration policies. Pet. at 7-12. The Agents encapsulate this issue succinctly as asking the *en banc* Court to determine whether the DACA program and related policies "compel [the Agents] to refrain from detaining and removing aliens who satisfy [their] criteria." Pet. at 1.

Amicus Eagle Forum respectfully submits that questions do not come much easier to resolve than that, at least at the motion-to-dismiss phase. While it concurs with all that the Agents argue, *amicus* Eagle Forum offers additional arguments that support the Agents' standing.

A. To Evaluate the Agents' Standing, Federal Courts Must Assume the Agents' Merits Views

As indicated, the panel rejected the Agents' claim that the DACA program imposed a mandatory and unlawful elimination of removal proceedings for DACA-eligible illegal aliens. Simply put, the panel had no business questioning – much less *invalidating* – the Agents' view of the DACA program at the jurisdictional phase. Indeed, given that both the Agents and the Administration accepted the Agents' characterization of the DACA program below, Pet. at 7-8, the

panel has now essentially held for the Agents on the merits in the process of holding against the Agents on jurisdiction. That is not how Article III works.

Instead, "[courts] must assume the validity of a plaintiff's substantive claim at the standing inquiry." *City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir. 2003); *Catholic Social Service v. Shalala*, 12 F.3d 1123, 1126 (D.C. Cir. 1994) (courts "must assume the validity of a plaintiff's substantive claim at the standing inquiry," even if that "substantive claim may be difficult to establish"); *Southern Cal. Edison Co. v. F.E.R.C.*, 502 F.3d 176, 180 (D.C. Cir. 2007) ("in reviewing the standing question, the court… must therefore assume that on the merits the [plaintiffs] would be successful in [their] claims"); *Tyler v. Cuomo,* 236 F.3d 1124, 1133 (9th Cir. 2000) ("[w]hether a plaintiff has a legally protected interest (and thus standing) does not depend on whether he can demonstrate that he will succeed on the merits"); *Warth v. Seldin*, 422 U.S. 490, 500 (1975) ("standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal"); *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n,* 576 U. S. __, Slip Op. at 10 (2015) ("one must not confuse weakness on the merits with absence of Article III standing") (interior quotations and alterations omitted); *cf. Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 542 (5th Cir. 2008). In other words, the question is not what the law is, but assuming *arguendo* that the Agents are correct, whether there is a live case or controversy appropriate for the federal

judicial power.

Accordingly, "the Supreme Court [has] rejected the view that a plaintiff has standing only if it can show a protected legal interest," an "inquiry [that] goes to the merits" whereas "standing is a preliminary issue." *Rogers v. Brockette,* 588 F.2d 1057, 1062 n.9 (5th Cir. 1979). That preliminary inquiry is whether "the right of the petitioners to recover under their complaint will be sustained if the … laws of the United States are given one construction," and jurisdictionally it does not matter if that right "will be defeated if [the "laws of the United States"] are given another." *Bell v. Hood,* 327 U.S. 678, 685 (1946). The panel therefore erred in rejecting the Agents' theory of the case under Article III.[2]

The panel's approach "confuses standing with the merits." *Initiative & Referendum Institute v. Walker,* 450 F.3d 1082, 1092 (10th Cir. 2006); *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton,* 422 F.3d 490, 501 (7th Cir. 2005); *In re Columbia Gas Systems Inc.*, 33 F.3d 294, 298 (3d Cir. 1994); *cf. Cantrell v. City of Long Beach,* 241 F.3d 674, 682 (9th Cir. 2001). Contrary to

[2] When a claim is "solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous," federal courts can reject that claim as part of the jurisdictional analysis, *Hood,* 327 U.S. at 682-83; *Brockette,* 588 F.2d at 1062 n.9, but there is no basis for claiming – contrary to the Administration's concession below – that the DACA program's allegedly mandatory nature is "wholly insubstantial."

the panel's approach, the standing inquiry does inquire into the validity of plaintiffs' merits views. *McConnell v. FEC*, 540 U.S. 93, 227 (2003) (*citing Warth*, 422 U.S. at 500, quoted *supra*); *Southern Cal. Edison Co.*, 502 F.3d at 180 (quoted *supra*); *Tyler*, 236 F.3d at 1133 (quoted *supra*). Otherwise, every losing plaintiff would lose for lack of standing.

B. Courts Lack Authority to Resolve the Merits under FED. R. CIV. P. 12(b)(1)

When the merits and standing issues "intertwine," of course, federal courts must resolve the merits in conjunction with the jurisdictional issue. *Land v. Dollar*, 330 U.S. 731, 735 (1947). But this Circuit does not resolve intertwined merits-standing issues at the motion-to-dismiss phase when "considerations of standing" cannot "be severed from a resolution on the merits." *Barrett Computer Services, Inc. v. PDA, Inc.*, 884 F.2d 214, 220 (5th Cir. 1989); *Clark v. Tarrant County, Texas*, 798 F.2d 736, 741-42 (5th Cir. 1986). Instead, "where issues of fact are central both to subject matter jurisdiction and the claim on the merits, … the trial court must assume jurisdiction and proceed to the merits." *Montez v. Department of Navy*, 392 F.3d 147, 150 (5th Cir. 2004). The panel decision both violated Circuit precedent and short-circuited the Agents' due-process rights by denying them an appropriate day in court.

C. The Lower-Court Proceedings Supplement the Agents' Complaint

To the extent that the panel would read the Agents' complaint as failing to

allege that the DACA program eliminated the Agents' discretion, the panel was nonetheless bound by the lower-court proceedings for two reasons. First, as the Agents argue, Circuit precedent on standing issues requires this Court to review a lower court's determinations related to standing for clear error, *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981), notwithstanding that this Court reviews other jurisdictional issues *de novo*. Second, Rule 15(b) deems such arguments incorporated into the pleadings (whether or not the Agents moved to do so). FED. R. CIV. P. 15(b)(2); *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 445-48 (1993); *Banks v. Dretke*, 540 U.S. 668, 704 (2004); *In re Morrison*, 555 F.3d 473, 480-81 (5th Cir. 2009). Specifically, under Rule 15(b), "an issue not raised by the pleadings [that] is tried by the parties' … implied consent … must be treated in all respects as if raised in the pleadings." FED. R. CIV. P. 15(b)(2). Accordingly, given that the parties tried the discretion issue below, *see* Pet. at 7-8, the panel did not have the option of reading the Agents' complaint more narrowly.

II. MISSISSIPPI HAS STANDING

With respect to Mississippi, the district court found the state's arguments that the DACA program would impose increased costs on the state too speculative, and the panel agreed. Slip Op. at 10-11. In the petition, Mississippi requests rehearing *en banc* for two reasons: (1) the panel's findings differ from a

subsequent panel's holding about a similar Administration program in *Texas,* No. 15-40238; and (2) the panel failed to provide Mississippi the "special solicitude in standing analysis" required under *Massachusetts,* 549 U.S. at 520, when states protect sovereign or "quasi-sovereign interests" in federal court. Pet. at 12-15.

As with the Agents' arguments for standing, *amicus* Eagle Forum concurs with Mississippi's arguments and offers two additional arguments that buttress her standing. First, the procedural nature of Mississippi's notice-and-comment injuries lowers the bar on both immediacy and redressability under Article III. Second, the motion-to-dismiss stage requires reviewing courts to presume that the pleadings' "general allegations embrace those specific facts that are necessary to support the claim." *Bennett,* 520 U.S. at 168. Both of these issues – each of them solicitous of plaintiff Mississippi's case – combine with the *Massachusetts* "special solicitude" to make clear that Mississippi has standing at this stage of the litigation.

A. Mississippi's Procedural Injuries Should Have Lowered the Bar for Immediacy and Redressability under Article III

Mississippi's complaint clearly alleges procedural violations of the notice-and-comment requirements of the Administrative Procedure Act, (ROA.122-23), which lowers the bar posed by Article III for redressability and immediacy. For procedural standing, Article III's redressability and immediacy requirements apply to the *present procedural violation* (which may someday injure a concrete interest) rather than to the concrete future injury. *Lujan v. Defenders of Wildlife,* 504 U.S.

555, 571-72 & n.7 (1992); *U.S. v. Johnson*, 632 F.3d 912, 921 (5th Cir. 2011). As explained in the next section, that reduces the already-low showing that the motion-to-dismiss phase requires of plaintiffs. The question is whether Mississippi has standing to invalidate the DACA program under any theory;[3] the answer is yes.

Significantly, Mississippi need not show that undertaking notice-and-comment rulemaking would result in rules more to its liking: "If a party claiming the deprivation of a right to notice-and-comment rulemaking … had to show that its comment would have altered the agency's rule, section 553 would be a dead letter." *Sugar Cane Growers Co-op. of Fla. v. Veneman*, 289 F.3d 89, 95 (D.C. Cir. 2002). Instead, a judicial order vacating the DACA program would put the parties back in the position they should have been in all along, which provides enough redress even if the Administration *potentially could* promulgate the same DACA program on remand, leaving the plaintiff no better off. Remand redresses the injury "even though the agency (like a new jury after a mistrial) might later, in the exercise of its lawful discretion, reach the same result for a different reason." *FEC*

[3] The question is whether Mississippi has standing to invalidate the DACA program, and the procedural nature of the standing here poses no bar – vis-à-vis dismissal for lack of jurisdiction – to Mississippi's arguing only for the substantive merits in this appeal. As indicated, *supra*, the standing inquiry does not require a nexus between standing and legal theories: a party with standing to challenge a rule (*e.g.*, procedural standing) can argue the substance, procedure, or both to invalidate that rule. *DaimlerChrysler*, 547 U.S. at 353 & n.5; *Duke Power*, 438 U.S. at 78-81.

v. Akins, 524 U.S. 11, 25 (1998). When considered in the procedural-rights context, Mississippi clearly has standing.

B. The Panel Required Too Heavy a Burden of Proof on Mississippi at the Motion-to-Dismiss Phase

The panel was too quick to find Mississippi's financial injuries – which are borne out by past costs, ROA.113 (¶¶ 62-63) – to be speculative: "past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury." *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). As such, past injuries *can* support prospective injunctive relief. *Blum v. Yaretsky*, 457 U.S. 991, 1000-01 (1982) (*citing Littleton*, 414 U.S. at 496). This is such a case.

Mississippi provided evidence of past costs of a perennial nature (*e.g.*, health, education, law enforcement) and allegations of ongoing injury from DACA-authorized aliens. That should suffice to establish ongoing costs regardless of the specific amount of those costs. Whether the costs are as high as shown in Mississippi's 2006 audit or merely $5 (or $1) per person, an "identifiable trifle" suffices, *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 557 (5th Cir. 1996), and courts "have allowed important interests to be vindicated by plaintiffs with no more at stake … than a fraction of a vote, a $5 fine and costs, and a $1.50 poll tax." *U.S. v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.14 (1973) (citations omitted). The panel's contrary holding conflicts with Circuit and Supreme Court precedent.

In *Bennett*, ranch operators and irrigation districts challenged an agency action that reduced the water available – for all uses – from a river. The Supreme Court rejected the federal government's argument that the plaintiffs had failed to establish redressability, based on the uncertainty of whether those plaintiffs (as opposed to other water users) would get more water if the plaintiffs prevailed. *Bennett*, 520 U.S. at 168. In holding that the plaintiffs' claims were redressable, at least at the pleading stage, the Supreme Court elaborated on the types of supplementing facts that a court can presume in support of standing:

> [W]hile a plaintiff must set forth by affidavit or other evidence specific facts to survive a motion for summary judgment and must ultimately support any contested facts with evidence adduced at trial, [a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim. Given petitioners' allegation that the amount of available water will be reduced and that they will be adversely affected thereby, it is easy to presume specific facts under which petitioners will be injured-for example, the Bureau's distribution of the reduction pro rata among its customers. The complaint alleges the requisite injury in fact.

Bennett, 520 U.S. at 168 (interior quotations and citations omitted, second and third alterations in original). Using the same flexible analysis at the pleading stage here, "it is easy to presume" that reducing illegal aliens generally will reduce the costs that illegal aliens as a class impose on Mississippi.

This flexibility neither disputes nor negates the Administration's claiming that DACA may actually *save* Mississippi money by focusing federal efforts on the hardest cases. The Administration could raise that argument in summary-judgment proceedings.[4] At the motion-to-dismiss phase, however, Mississippi is entitled to rely on the assumption that reducing removal proceedings will increase the alien population and thus increase costs, assuming that costs are distributed – like water distribution in *Bennett* – somewhat equally. As such – and especially given the extra boosts from procedural standing and the *Massachusetts* solicitude – Mississippi has made a sufficient case for standing at the motion-to-dismiss phase.

CONCLUSION

For the foregoing reasons and those argued by the Agents and Mississippi in their petition, the *en banc* Court should rehear this action.

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[4] That said, however, it is meritless to argue that the DACA program may make Mississippi better off, considering all costs versus assumed benefits such as taxes. First, economic netting would not undercut Mississippi's standing from the additional *administrative burden* (as distinct from out-of-pocket costs), and it would not prevent discrete state agencies (*e.g.*, motor vehicles, health, education) from pressing *their* economic claims. Those agencies do not receive the alleged tax boon, even if some other state agency would. To the extent that these discrete agencies constitute necessary parties not subsumed with the nominal state party, these agencies can, of course, be joined, even on appeal. *Mullaney v. Anderson*, 342 U.S. 415, 416-17 (1952) ("dismiss[ing] the present petition and require[ing] the new plaintiffs to start over in the District Court would entail needless waste and runs counter to effective judicial administration"); *cf. Lynch v. Baxley*, 651 F.2d 387, 388 (5th Cir. 1981).

Dated: June 29, 2015

Respectfully submitted,

/s/ Lawrence J. Joseph

Lawrence J. Joseph
1250 Connecticut Ave. NW
Suite 200
Washington, DC 20036
Tel: 202-355-9452
Fax: 202-318-2254
Email: ljoseph@larryjoseph.com

Counsel for Amicus Curiae Eagle Forum Education & Legal Defense Fund

CERTIFICATE OF COMPLIANCE

No. 14-10049, *Christopher Crane, et al. v. Jeh Johnson, et al.*

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because:

This brief contains fifteen pages, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii) and Circuit Rule 32.2.

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: March 4, 2010

Respectfully submitted,

/s/ Lawrence J. Joseph

Lawrence J. Joseph, D.C. Bar #464777
1250 Connecticut Ave, NW, Suite 200
Washington, DC 20036
Tel: 202-355-9452
Fax: 202-318-2254
Email: ljoseph@larryjoseph.com

Counsel for Amicus Curiae Eagle Forum Education & Legal Defense Fund

CERTIFICATE OF SERVICE

No. 14-10049, *Christopher Crane, et al. v. Jeh Johnson, et al.*

I hereby certify that, on June 29, 2015, I electronically filed the foregoing *amicus* brief – together with the accompanying motion for leave to file – with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the Appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Lawrence J. Joseph
Lawrence J. Joseph