



U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20530

March 6, 2018

Via ECF and by Fax

The Hon. Naomi Reice Buchwald
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: *Knight First Amendment Institute at Columbia University, et al. v. Trump, et al.*,
No. 17-cv-5205 (NRB)**

Dear Judge Buchwald:

In preparing for Thursday's argument in the above-captioned matter, counsel for Defendants identified the inadvertent omission of subsequent history from a citation to a district court decision in their opening brief. Defendants cited the case, *National Association of Internal Revenue Employees v. Nixon*, 349 F. Supp. 18 (D.D.C. 1972), at page 9 of their opening brief (ECF No. 35) as part of a string cite in support of the proposition that "courts routinely reject demands to enjoin the President's discretionary conduct, regardless of the claim." Defendants inadvertently omitted that this decision was subsequently reversed on appeal *sub nom. National Treasury Employees Union v. Nixon* ("*Treasury Employees*"), 492 F.2d 587 (D.C. Cir. 1974).¹ In reversing, the appellate court did not decide whether courts can enjoin the President's discretionary conduct. Rather, it held that the President had a ministerial, non-discretionary duty to act, and that the court could enter equitable relief with respect to such a ministerial duty. *Id.* at 607, 616.

Respectfully submitted,

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¹ The D.C. Circuit has since indicated that *Treasury Employees* itself may no longer be good law. See *Swan v. Clinton*, 100 F.3d 973, 978 (D.C. Cir. 1996) (citing *Franklin v. Massachusetts*, 505 U.S. 788, 802 (1992)).

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