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February 2, 2017

Mr. Mark Langer
Clerk of the Court
U.S. Court of Appeals for the
District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue N.W.
Washington, DC 20001

Re: *Perry Capital LLC v. Lew*, Nos. 14-5243, 14-5254, 14-5260, 14-5262
Oral argument held on April 15, 2016, before
Judges Brown, Millett, and Ginsburg

Dear Mr. Langer:

Plaintiffs' recent 28(j) letter references the Federal Circuit's decision in *In re United States*, No. 17-104 (Fed. Cir. Jan. 30, 2017), in which the court granted the United States mandamus relief with respect to certain privileged documents that the Court of Federal Claims had ordered disclosed. Of the sixteen documents it considered, the Federal Circuit concluded that the trial court had clearly abused its discretion in ordering the disclosure of eight of them. The appeals court found that "the Claims Court's decision reflect[ed] a clear misunderstanding" of the deliberative process privilege and the standard governing the presidential communications privilege. Op. 13, 17. The court also found "no basis in the record" for the trial court's conclusion that Plaintiffs needed the requested documents, and emphasized that the information contained in the documents was "available from other sources." Op. 11, 14, 17. With respect to the other eight documents, the Federal Circuit concluded only that the mandamus relief was not warranted, not that their compelled disclosure was appropriate. Op. 18-20.

None of the materials Plaintiffs have obtained or hope to obtain through litigation in the Court of Federal Claims has any bearing on this lawsuit. The administrative record is irrelevant to the threshold legal issues presented here, *see* Treasury Br. 55-57, and the existing record is in any event properly certified and entitled to a presumption of correctness.

Moreover, contrary to Plaintiffs' assertion, the Federal Circuit's decision does not "strongly suggest" that the government will be required to produce additional privileged materials on remand. Plaintiffs' 28(j) Letter 1. Just the opposite. By taking the "drastic and extraordinary" step of granting mandamus relief, *see Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 379 (2004), the Federal Circuit has made clear that the governmental privileges at issue are substantial and cannot be easily overcome.

Sincerely,

/s/ Gerard Sinzduk

Gerard Sinzduk

Counsel for Defendant-Appellee

cc: Plaintiffs (via CM/ECF)