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December 10, 2019

Catherine O'Hagan Wolfe, Esq.,  
Clerk of Court  
U.S. Court of Appeals for the Second Circuit  
40 Foley Square  
New York, NY 10007

Re: *New York v. Department of Homeland Security*, No. 19-3591

Dear Ms. Wolfe:

This letter responds to appellants' FRAP 28(j) letter, dated December 6, regarding *City & County of San Francisco v. USCIS*, Nos. 19-17213, 19-17214, 19-35914 (9th Cir. 2019). *USCIS* does not support appellants' request for a stay pending appeal because the panel's reasoning is incorrect and fails to address critical issues supporting the district court's order here.

First, as the dissent correctly explained, the panel ignored the disruption to the status quo that a stay here would cause. As the panel acknowledged, the Final Rule marks a major departure from both (a) the public-charge framework that has applied since at least 1999 (*id.* at 11-14), and (b) the original nineteenth-century understanding of "public charge," which was much narrower than this Rule's (*id.* at 38-40). While the panel purported to identify some flexibility in the meaning of "public charge" in the intervening century (*id.* at 40-44), there is no dispute that the Rule's definition is unprecedented. Allowing appellants to immediately implement their novel rule would disrupt a status quo that has persisted for over a century—and at minimum for two decades—and cause substantial harm. The equities weigh heavily against such a precipitous change when, in a few months, the Court can adjudicate this expedited appeal upon full consideration of the merits.

Second, the panel did not address several points that the district court here relied on. For example, the panel did not address the supplementary nature of the benefits targeted by the Rule, which increase health and economic mobility for many working individuals rather than provide primary subsistence. Nor did the panel address many of the arbitrary aspects of the Rule, including (a) its reliance on factors that lack any rational connection to the public-charge analysis—such as credit scores, English-language proficiency, and family size; and (b) its stacking system, which counts each benefit used in a single month as a separate month of benefits use under the Rule’s twelve-month threshold. Accordingly, the Court should reject appellants’ motion and preserve the status quo pending appeal.<sup>1</sup>

Respectfully submitted,

*/s/ Judith Vale*

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cc (via CM/ECF):

All counsel of record

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<sup>1</sup> At the Court’s request, appellees are willing to provide a supplemental brief to address *USCIS*.