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By CM/ECF

February 4, 2020

Molly Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103-1526

RE: *State of Washington, et al., v. U.S. Dept. of Homeland Security, et al.*
Cause No. 19-35914

Dear Ms. Dwyer:

This responds to the Rule 28(j) letter submitted by Appellants on January 28, 2020. Contrary to Appellants' view, the Supreme Court's January 27, 2020 order in a related case affirms the need for en banc review in this appeal.

The Supreme Court's order anticipates appellate court rulings, such as this Court's. The order stayed injunctions pending the disposition by the United States Court of Appeals for the Second Circuit of the federal government's appeal, which has been expedited. Case No. 19-3591, Dkt. 87 and Case No. 19-3959, Dkt. 45 (briefing to be completed by February 14, 2020). The Supreme Court's order expressly anticipated the expedited decision by the Second Circuit and "the [Federal] Government's writ of certiorari, if such a writ is timely sought." Order at 1.

In light of the Supreme Court's preference for "permitting several courts of appeals to explore a difficult question before [the] Court grants certiorari," *United States v. Mendoza*, 464 U.S. 154, 160 (1984), the Court will benefit not only from an expedited decision by the Second Circuit. This Court too should expeditiously

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resolve this appeal, without constraint by a rushed motions panel order that applied the wrong standard of appellate review to incorrectly resolve the merits of the appeal. See Dkt. 34 at 7-13.

The motions panel's order should be vacated at least as to the Plaintiff states pending the already expedited appeal, or alternatively, the Court should order initial hearing of this appeal en banc.

Sincerely,

s/ Jeffrey T. Sprung
JEFFREY T. SPRUNG

JTS:gs

cc: Counsel of record (via CM/ECF)