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February 27, 2020

VIA CM/ECF

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

RE: *State of New York v. U.S. DHS*, No. 19-3591 (2d Cir.)

Dear Ms. Wolfe:

In their recent 28(j) letter, plaintiffs identify an updated policy manual issued by defendant U.S. Citizenship and Immigration Services (USCIS) on February 5, 2020. Pls. Ltr., Ex. A. Plaintiffs point out that the manual now instructs USCIS officers to consider the fact that an alien seeks adjustment of status as a lawful permanent resident as negative factor. This change neither “alter[s]” the Rule’s public-charge analysis nor reflects a “sweeping view” of the Government’s authority to deem aliens inadmissible as a public charge. Pls. Ltr. 1-2.

Congress provided that an alien who is “likely *at any time* to become a public charge is inadmissible.” 8 U.S.C. § 1182(a)(4) (emphasis added). An alien who intends to remain in the United States for a longer amount of time is, all else remaining equal, more likely to become a public charge “at any time” during their stay. That is particularly true for LPRs because many Federal public benefits are only available to aliens if they become LPRs. *See* 8 U.S.C. §§ 1611, 1641 (LPRs, unlike other aliens, are generally “qualified aliens” for purposes of receiving Federal public benefits). The Rule therefore specified that an “alien’s prospective immigration status and expected period of admission” were factors DHS would

consider in making public-charge inadmissibility determinations. 84 Fed. Reg. at 41,504. USCIS's updated policy manual implements that aspect of the Rule and recognizes the common-sense reality that an individual applying for permanent residency is differently situated for public-charge purposes than an individual visiting the United States on a two-week vacation.

Sincerely,

s/ Jack Starcher
Jack Starcher
Attorney for the United States

cc (via CM/ECF): Counsel of Record