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

Re: *New York v. U.S. Department of Homeland Security*, No. 19-3591  
*Make the Road New York v. Cuccinelli*, No. 19-3595  
(Argued March 2, 2020)

Dear Ms. O'Hagan Wolfe:

During oral argument in the above cases, Judge Leval asked the government to respond to the amicus brief filed by the Institute for Policy Integrity at New York University School of Law, which argues that the public-charge Rule is invalid because the Department of Homeland Security failed to consider adequately the Rule's public-health and economic consequences. The amicus brief was timely filed on January 31, 2020, and the government addressed the relevant argument on pages 45-48 of its opening brief and pages 20-21 of its reply brief.

As the government's briefs explain, the Rule acknowledges the potential adverse public-health and economic consequences identified by the Institute and other commenters, details the steps DHS took to mitigate those costs in the final Rule, and explains why the agency believed the Rule was justified notwithstanding its potential costs. *See also City & Cty. of San Francisco v. USCIS*, 944 F.3d 773, 800-05 (9th Cir. 2019) (stating that DHS assessed the potential costs of the Rule "at length" and emphasizing that "DHS not only addressed [comments raising public-health] concerns directly, it changed its Final Rule in response to the comments"); *Department of Commerce v. New York*, 139 S. Ct. 2551, 2571 (2019) (where a court "second-guess[es] the [agency's] weighing of risks and benefits," it improperly "substitutes [its] judgment for that of the agency"). Indeed, the agency's assessment of the costs and benefits of

the Rule is far “more detailed than,” *Trump v. Hawaii*, 138 S. Ct. 2392, 2409 (2018), the brief analysis that accompanied the Immigration and Naturalization Service’s 1999 Guidance. *See* 64 Fed. Reg. 28689 (Mar. 26, 1999).

Sincerely,

/s/ Gerard Sinzdak

Gerard Sinzdak

Attorney for the Defendants-Appellants