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July 8, 2020

*Via CM/ECF*
Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *City and County of San Francisco and County of Santa Clara v. United States Citizenship and Immigration Services, et al.*, No. 19-17213

Dear Ms. Dwyer:

In their recent 28(j) letter, plaintiffs identify as supplemental authority the Supreme Court's decision in *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020). That decision does not call into question the Department of Homeland Security's (DHS) public charge rule. In *Regents*, the Supreme Court held that DHS's decision to rescind the Deferred Action for Childhood Arrivals (DACA) program was arbitrary and capricious because the agency "failed to consider … important aspects" of that decision, including certain reliance interests and alternatives to rescission. 140 S. Ct. at 1910-14.

Plaintiffs do not suggest that holding has any bearing on this case. Instead, plaintiffs focus on dicta discussing an argument that the Supreme Court declined to reach: whether DHS was wrong to conclude that DACA was unlawful. 140 S. Ct. at 1910 (declining to "evaluate the claims challenging the explanation and correctness of the illegality conclusion"). In discussing that issue, the Court noted that, by statute, a "determination and ruling" by the Attorney General "shall be controlling" on DHS with respect to questions of law. *Id.* (citing 8 U.S.C. § 1103(a)(1)).

That discussion has no bearing on this case. Plaintiffs do not suggest that the Attorney General has authoritatively spoken on the meaning of "public charge" in a

way that conflicts with the Rule. Instead, plaintiffs claim—as they did in their answering brief—that the mere possibility that the Attorney General might issue a determination regarding the meaning of "public charge" strips DHS of the rulemaking authority granted to it by Congress. *See* 8 U.S.C. § 1103(a)(1) & (3) (granting DHS authority to "establish such regulations as [it] deems necessary" to administer and enforce the immigration laws). This Court has already correctly recognized that DHS has the authority to define ambiguous terms in the INA, and *Regents* does not call that holding into question. *See, e.g.*, *City & Cty. of San Francisco v. USCIS*, 944 F.3d 773, 792 (9th Cir. 2019) ("Congress granted DHS the power to adopt regulations to enforce the provisions of the INA.").

Sincerely,

*/s/ Daniel Tenny*
Daniel Tenny
Attorney for the Defendants-Appellants