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September 11, 2020

**Via ECF**

Molly C. Dwyer, Clerk of Court  
United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103

Re: John Doe #1, et al. v. Donald Trump, et al., No. 19-36020  
Oral Argument on Merits of Preliminary Injunction: September 3, 2020  
Panel Members: Judge Collins, Judge Tashima, Judge Bybee

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellees write to notify the Court of supplemental authorities pertinent to a point raised in Defendants-Appellants' rebuttal argument. Judge Collins asked whether an immigrant could, consistent with the Proclamation, establish an intent to purchase coverage under a Proclamation-approved insurance plan within 30 days of her arrival, and thereafter enroll in unapproved subsidized coverage on an Affordable Care Act exchange. Appellants' counsel replied that "the Proclamation does not bar that at all" and that lawful immigrants may, "shortly after they arrive in the United States, get the subsidized care" on an ACA exchange. Oral Arg. at 40:15–41:22.

That reply failed to mention that taking these steps could subject an immigrant to removal proceedings and deportation. The Proclamation declares that any immigrant who "circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security." Proclamation § 3(c). A misrepresentation is material if it "tends to shut off a line of [consular] inquiry that is relevant to the alien's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa." *Matter of D-R*, 27 I. & N. Dec. 105, 113 (BIA 2017).<sup>1</sup>

Contrary to Appellants' representation on rebuttal, an immigrant visa applicant who tells a consular officer that she will purchase a Proclamation-approved insurance plan shuts off a line of inquiry about how she intends to pay for health care after arrival. If she then procures the visa, enters the United States, and enrolls in an unapproved subsidized ACA plan, the immigrant

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<sup>1</sup> The BIA's definition of materiality is binding on the agencies responsible for deportation. 8 C.F.R. § 1003.1(g)(1).

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subjects herself to a charge of deportability. Moreover, under § 3(c) of the Proclamation, the immigrant would be a “priority for removal.” In this way, the Proclamation keeps subsidized ACA coverage out of reach for lawful immigrants even after they arrive in the United States.

Sincerely,

*s/ Tacy F. Flint*

Tacy F. Flint

cc: All Counsel of Record via CM/ECF