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OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF APPEALS & OPINIONS

**By CM/ECF**

February 10, 2021

Hon. Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals  
for the Second Circuit  
40 Foley Square  
New York, New York 10007

Re: *State of New York v. United States Dep't of Homeland Sec.*, No. 20-2537

Dear Ms. Wolfe:

The Office of the Attorney General of the State of New York writes on behalf of the States of New York, Connecticut, Vermont, and the City of New York, government plaintiffs-appellees in the above-referenced appeal, to advise the Court of a recent Executive Order directing the relevant agencies to reconsider the Public Charge Rule at issue in this appeal.

On February 2, 2021, President Joseph R. Biden issued an Executive Order entitled Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans ("EO"). Exec. Order No. 14,012, 86 Fed. Reg. 8277 (Feb. 2, 2021) (attached as Exhibit A).<sup>1</sup> The EO states that immigrants and their family members "fuel our economy," including by working as "essential workers helping to keep our economy afloat and providing important services to Americans during a global pandemic." *Id.* § 1. The EO further provides that it is "essential to ensure that our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them." *Id.*

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<sup>1</sup> Available at <https://www.whitehouse.gov/briefing-room/presidentialactions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigrationsystems-and-strengthening-integration-and-inclusion-efforts-for-newamericans/>.

To that end, the EO directs the Secretary of Homeland Security and the heads of other relevant agencies to review “all agency actions related to the implementation of the public charge ground of inadmissibility.” *Id.* § 4. In “considering the effects and implications of public charge policies,” the EO requires the Secretary to “consult with the heads of relevant agencies, including the Secretary of Agriculture, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development.” *Id.* Within sixty days of the EO, the Secretary must provide a report to the President describing any agency actions the Department of Homeland Security intends to take or has taken consistent with the EO’s directives. *Id.* § 4(a)-(b).

Defendants have submitted to the district court a letter notifying that court of the EO and proposing to confer with plaintiffs and submit to the district court by February 19, 2021, a status report about “the implications of the Executive Order for this litigation.” Letter from Keri L. Berman to Hon. George B. Daniels, *New York v. United States Dep’t of Homeland Sec.*, No. 19-7777 (Feb. 3, 2021), ECF No. 274 (attached as Exhibit B). Government plaintiffs-appellees will update this Court after receiving that status report.

Respectfully submitted,

/s/ Judith N. Vale

Judith N. Vale

*Senior Assistant Solicitor General*

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cc (via CM/ECF):

All counsel of record

# Exhibit A

BRIEFING ROOM

# Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans

FEBRUARY 02, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Over 40 million foreign-born individuals live in the United States today. Millions more Americans have immigrants in their families or ancestry. New Americans and their children fuel our economy, working in every industry, including healthcare, construction, caregiving, manufacturing, service, and agriculture. They open and successfully run businesses at high rates, creating jobs for millions, and they contribute to our arts, culture, and government, providing new traditions, customs, and viewpoints. They are essential workers helping to keep our economy afloat and providing important services to Americans during a global pandemic.

They have helped the United States lead the world in science, technology, and innovation. And they are on the frontlines of research to develop coronavirus disease 2019 (COVID-19) vaccines and treatments for

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those afflicted with the deadly disease.

Consistent with our character as a Nation of opportunity and of welcome, it is essential to ensure that our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them. Our Nation is enriched socially and economically by the presence of immigrants, and we celebrate with them as they take the important step of becoming United States citizens. The Federal Government should develop welcoming strategies that promote integration, inclusion, and citizenship, and it should embrace the full participation of the newest Americans in our democracy.

Sec. 2. Role of the Domestic Policy Council. The role of the White House Domestic Policy Council (DPC) is to convene executive departments and agencies (agencies) to coordinate the formulation and implementation of my Administration's domestic policy objectives. Consistent with that role, the DPC shall coordinate the Federal Government's efforts to welcome and support immigrants, including refugees, and to catalyze State and local integration and inclusion efforts. In furtherance of these goals, the DPC shall convene a Task Force on New Americans, which shall include members of agencies that implement policies that impact immigrant communities.

Sec. 3. Restoring Trust in our Legal Immigration System. The Secretary of State, the Attorney General,

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and the Secretary of Homeland Security shall review existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that may be inconsistent with the policy set forth in section 1 of this order.

(a) In conducting this review, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall:

(i) identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers, as appropriate and consistent with applicable law; and

(ii) identify any agency actions that fail to promote access to the legal immigration system — such as the final rule entitled, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 85 Fed. Reg. 46788 (Aug. 3, 2020), in light of the Emergency Stopgap USCIS Stabilization Act (title I of division D of Public Law 116-159) — and recommend steps, as appropriate and consistent with applicable law, to revise or rescind those agency actions.

(b) Within 90 days of the date of this order, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a plan to the President describing the steps their respective agencies will take to advance the policy set forth in section 1 of this order.

(c) Within 180 days of submitting the plan described in subsection (b) of this section, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a report to the President describing the progress of their respective agencies

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towards implementing the plan developed pursuant to subsection (b) of this section and recognizing any areas of concern or barriers to implementing the plan.

**Sec. 4. Immediate Review of Agency Actions on Public Charge Inadmissibility.** The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the heads of other relevant agencies, as appropriate, shall review all agency actions related to implementation of the public charge ground of inadmissibility in section 212(a)(4) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(4), and the related ground of deportability in section 237(a)(5) of the INA, 8 U.S.C. 1227(a)(5). They shall, in considering the effects and implications of public charge policies, consult with the heads of relevant agencies, including the Secretary of Agriculture, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development.

(a) This review should:

(i) consider and evaluate the current effects of these agency actions and the implications of their continued implementation in light of the policy set forth in section 1 of this order;

(ii) identify appropriate agency actions, if any, to address concerns about the current public charge policies' effect on the integrity of the Nation's immigration system and public health; and

(iii) recommend steps that relevant agencies should take to clearly communicate current public charge policies and proposed changes, if any, to reduce fear and confusion among impacted communities.

(b) Within 60 days of the date of this order, the Secretary of State, the Attorney General, and the

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Secretary of Homeland Security shall each submit a report to the President describing any agency actions identified pursuant to subsection (a)(ii) of this section and any steps their agencies intend to take or have taken, consistent with subsection (a)(iii) of this section.

**Sec. 5. Promoting Naturalization.**

(a) Improving the naturalization process. The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall, within 60 days of the date of this order, develop a plan describing any agency actions, in furtherance of the policy set forth in section 1 of this order, that they will take to:

- (i) eliminate barriers in and otherwise improve the existing naturalization process, including by conducting a comprehensive review of that process with particular emphasis on the N-400 application, fingerprinting, background and security checks, interviews, civics and English language tests, and the oath of allegiance;
- (ii) substantially reduce current naturalization processing times;
- (iii) make the naturalization process more accessible to all eligible individuals, including through a potential reduction of the naturalization fee and restoration of the fee waiver process;
- (iv) facilitate naturalization for eligible candidates born abroad and members of the military, in consultation with the Department of Defense; and
- (v) review policies and practices regarding denaturalization and passport revocation to ensure that these authorities are not used excessively or inappropriately.

(b) Implementing improvements to the

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naturalization process. Within 180 days of the issuance of the plan developed pursuant to subsection (a) of this section, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a report to the President describing the progress in implementing the plan, any barriers to implementing the plan, and any additional areas of concern that should be addressed to ensure that eligible individuals are able to apply for naturalization in a fair and efficient manner.

(c) Strategy to promote naturalization. There is established an Interagency Working Group on Promoting Naturalization (Naturalization Working Group) to develop a national strategy to promote naturalization. The Naturalization Working Group shall be chaired by the Secretary of Homeland Security, or the Secretary's designee, and it shall include the heads of the following agencies, or senior-level officials designated by the head of each agency:

- (i) the Secretary of Labor;
- (ii) the Secretary of Health and Human Services;
- (iii) the Secretary of Housing and Urban Development;
- (iv) the Secretary of Education;
- (v) the Secretary of Homeland Security;
- (vi) the Commissioner of Social Security; and
- (vii) the heads of other agencies invited to participate by the Working Group chair.

(d) Within 90 days of the date of this order, the Naturalization Working Group shall submit a strategy to the President outlining steps the Federal Government should take to promote naturalization, including the potential development of a public awareness campaign.

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**Sec. 6. Revocation.** The Presidential Memorandum of May 23, 2019 (Enforcing the Legal Responsibilities of Sponsors of Aliens), is revoked. The heads of relevant agencies shall review any investigations or compliance actions initiated pursuant to that memorandum and shall determine whether to suspend, as appropriate, any investigations or compliance actions inconsistent with the policy set forth in section 1 of this order. The heads of relevant agencies shall review any agency actions developed pursuant to that memorandum and, as appropriate, issue revised guidance consistent with the policy set forth in section 1 of this order.

**Sec. 7. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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**JOSEPH R. BIDEN JR.**

**THE WHITE HOUSE,  
February 2, 2021.**

# Exhibit B



**U.S. Department of Justice**  
Civil Division, Federal Programs Branch

Keri Berman  
Trial Attorney

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February 3, 2021

Hon. George B. Daniels  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1310  
New York, NY 10007

Re: Presidential Action Pertinent to *New York v. U.S. Department of Homeland Security*, No. 19-7777, and *Make the Road New York v. Renaud*<sup>1</sup>, No. 19-7993

Dear Judge Daniels:

I represent the defendants in the above-captioned case. The defendants wish to advise the plaintiffs and the Court that, on February 2, 2021, the President issued an Executive Order addressing issues pertinent to this action, titled Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-on-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>.

The Executive Order states that it is “essential to ensure that our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them.” The Order goes on to direct that the Executive Branch “should develop welcoming strategies that promote integration, inclusion, and citizenship, and it should embrace the full participation of the newest Americans in our democracy.”

To that end, the Executive Order directs action on issues pertinent to this case: Section 4 of the Executive Order specifically directs heads of relevant agencies, including the Secretary of Homeland Security, to review agency actions related to implementation of the public charge ground of inadmissibility, 8 U.S.C. § 1182(a)(4)(A), in light of the policy set forth in the

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<sup>1</sup> Tracy Renaud, Senior Official Performing the Duties of the Director of USCIS, is substituted as defendant under Rule 25(d) of the Federal Rules of Civil Procedure.

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Executive Order and certain other considerations. Section 3 of the Executive Order directs the Secretary of Homeland Security to review other agency actions that may be inconsistent with the policy set forth in the Executive Order.

The defendants intend to confer with plaintiffs about the implications of the Executive Order for this litigation. The defendants propose to file a joint status report with the Court by February 19, 2021.

Respectfully submitted,

/s/

Keri L. Berman

CC: All Counsel of record via ECF.