IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO, and COUNTY OF SANTA CLARA, Plaintiffs-Appellees, v. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al., Defendants-Appellants.	No. 19-17213
STATE OF CALIFORNIA, et al., Plaintiffs-Appellees, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al., Defendants-Appellants.	No. 19-17214
STATE OF WASHINGTON, et al., Plaintiffs-Appellees, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al., Defendants-Appellants.	No. 19-35914

CONSOLIDATED OPPOSITION TO
PETITIONS FOR REHEARING EN BANC

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: **Page(s)**

Statutes:

Rule:

Legislative Material:

Other Authorities:

INTRODUCTION AND SUMMARY

Plaintiffs seek en banc review of an order granting a stay pending appeal. Their request for that extraordinary relief should be denied. Full court review is particularly unwarranted in light of the Second Circuit's recent denial of the government's request for a stay of two nationwide preliminary injunctions barring enforcement of the Rule. Given that the Rule will not go into effect unless the Second Circuit issues a new order or the Supreme Court grants a stay (which the government plans to request in short order), rehearing en banc is not warranted.

Plaintiffs in any event present no issue worthy of en banc review. The panel faithfully applied the factors governing stays pending appeal; plaintiffs are just dissatisfied with the result. In particular, the panel appropriately assessed the likelihood that the government will prevail on the merits and balanced that likelihood against plaintiffs' alleged harms. That the panel's analysis was especially thorough is hardly a justification for en banc review.

STATEMENT

1. The Immigration and Nationality Act (INA) provides that "[a]ny alien who, . . . in the opinion of the [Secretary of Homeland Security] at the time of application for admission or adjustment of status, is likely at any time to become a

public charge is inadmissible." 8 U.S.C. § 1182(a)(4)(A).[1] That assessment "shall at a minimum consider the alien's (I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills." *Id.* § 1182(a)(4)(B). A separate provision renders deportable an alien in and admitted to the United States who, within five years of the date of entry, "has become a public charge from causes not affirmatively shown to have arisen" within that time. *Id.* § 1227(a)(5).

2. Congress has never defined the term "public charge," instead leaving the term's definition and application to the Executive's discretion. The challenged Rule is the first time the Executive Branch has defined the term in a final rule following notice and comment. A never-finalized rule proposed in 1999 would have defined "public charge" to mean an alien "who is likely to become primarily dependent on the Government for subsistence as demonstrated by either: (i) the receipt of public cash assistance for income maintenance purposes, or (ii) institutionalization for long-term care at Government expense." 64 Fed. Reg. 28,676, 28,681 (May 26, 1999). Simultaneously issued "field guidance" adopted that proposed rule's definition. 64 Fed. Reg. 28,689 (May 26, 1999) (1999 Guidance).

In August 2019, the Department of Homeland Security (DHS) promulgated the Rule at issue. The Rule defines "public charge" to mean "an alien who receives

[1] The statute refers to the Attorney General, but in 2002, Congress transferred the Attorney General's authority to make inadmissibility determinations in the relevant circumstances to the Secretary of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

one or more [specified] public benefits . . . for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)." 84 Fed. Reg. 41,292, 41,501 (Aug. 14, 2019). The specified public benefits include cash assistance for income maintenance and certain noncash benefits, including most Medicaid benefits, Supplemental Nutrition Assistance Program benefits, and federal housing assistance. *Id.* As DHS explained, the Rule's definition of "public charge" differs from the 1999 Guidance's definition in that: (1) it incorporates certain noncash benefits; and (2) it replaces the "primarily dependent" standard with the 12-month/36-month measure of dependence. The Rule also sets forth a framework for evaluating whether, considering the "totality of an alien's circumstances," the alien is inadmissible as "[l]ikely at any time in the future to become a public charge." *Id.* at 41,369, 41,501-04. The Rule's effective date was October 15, 2019.

3. In three suits filed in two district courts (two in the Northern District of California, one in the Eastern District of Washington), plaintiffs—nineteen States, the District of Columbia, the City and County of San Francisco, and the County of Santa Clara—challenged the Rule, alleging, as relevant here, that it is not a permissible construction of "public charge," and is arbitrary and capricious. *See City & Cty. of San Francisco v. USCIS*, 944 F.3d 773, 784-86 (9th Cir. 2019) (*Stay Op.*).

On October 11, 2019, the district courts issued preliminary injunctions barring DHS from implementing the Rule. *Stay Op.*, 944 F.3d at 784-86. Both courts

concluded that plaintiffs had standing based on anticipated costs associated with aliens' disenrollment from public benefits in response to the Rule. *Id.* The courts also concluded that plaintiffs were within the zone of interests protected by the public-charge provision because the provision was designed to protect state and local government fiscs. *Id.*

On the merits, both courts concluded that plaintiffs were likely to prevail on their claims that the Rule's definition of "public charge" was not a reasonable interpretation of the statute and that DHS acted arbitrarily and capriciously in failing to adequately address the Rule's potential costs. *Stay Op.*, 944 F.3d at 784-86. The Washington court issued a nationwide injunction, while the Northern District of California court issued an injunction limited to the plaintiffs in its cases. *Id.* at 784-86.

4. After seeking stays from both district courts without obtaining relief, the government filed a motion in this Court for a stay pending appeal on November 15. On December 5, this Court granted the government's motion in a published opinion. The panel concluded that DHS had demonstrated a "strong likelihood of success on the merits." *Stay Op.*, 944 F.3d at 781. The panel agreed with the district courts that plaintiffs had Article III standing, *id.* at 787-88, but declined to decide whether plaintiffs' fell within the public-charge statute's zone of interests, explaining that the question was "close" and its resolution unnecessary, *id.* at 786 n.8.

Turning to the merits, the panel concluded that DHS was likely to succeed in establishing that the Rule was consistent with the INA. *Stay Op.*, 944 F.3d at 790.

The panel determined that the statutory term "public charge" was "ambiguous" and "capable of a range of meanings," *id.* at 792, that Congress had granted the Executive Branch broad discretion to define the term, and that the Executive Branch had, in fact, historically interpreted the term differently, *id.* at 792-97. The panel held that the Rule was "easily" a reasonable interpretation of the statute, particularly in light of Congress's express intent that its 1996 welfare-reform and immigration-reform legislation would help ensure that "aliens within the Nation's borders not depend on public resources to meet their needs." *Id.* at 799 (quoting 8 U.S.C. § 1601(2)).

The panel similarly concluded that plaintiffs were not likely to prevail on their arbitrary-and-capricious claim. *Stay Op.*, 944 F.3d at 800-01. The panel emphasized that "DHS addressed at length the costs and benefits associated with the Final Rule," acknowledged the costs the Rule might impose, modified the Rule to mitigate those costs, and reasonably concluded that the Rule's benefits outweighed its potential costs. *Id.* at 801-05.

The panel concluded that the government would experience irreparable harm absent a stay because it would be required to grant adjustment of status to aliens who otherwise would have been rendered inadmissible under the Rule. *Stay Op.*, 944 F.3d at 805-06. The panel recognized that the financial, public-health, and administrative harms plaintiffs were likely to experience were "significant." *Id.* at 807. But given that DHS had made a strong showing of likelihood of success and irreparable harm,

the panel concluded that the public interest weighed in favor of a stay, despite potential harms to plaintiffs. *Id.*

Judge Owens dissented in relevant part, stating that the stay should be denied because the legal issues were "opaque[]," the government had not shown irreparable harm "at this early stage," and there was a likelihood of substantial injury to plaintiffs. *Stay Order*, 944 F.3d at 809-10.

Merits briefing is underway and will be complete on February 7.

5. Three other courts of appeals are considering challenges to the Rule. The Fourth Circuit issued a stay pending appeal of a nationwide injunction against the Rule. Order, *CASA de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019), *pet. for reh'g pending*. The Seventh Circuit denied the government's motion for a stay of an injunction barring the Rule's enforcement in Illinois. Order, *Cook County v. Wolf*, No. 19-3169 (7th Cir. Dec. 23, 2019). The Second Circuit denied the government's motions to stay two nationwide injunctions against the Rule. *See* Order, *New York v. DHS*, No. 19-3591 (2d Cir. Jan. 8, 2020); Order, *Make the Road New York v. Cuccinelli*, No. 19-3595 (2d Cir. Jan. 8, 2020). The Rule thus will not go into effect unless the Second Circuit issues a new order or the Supreme Court grants a stay.

ARGUMENT

1. Even if en banc review would otherwise have been appropriate, review is not warranted now that the Second Circuit has denied the government's request for a stay of two nationwide injunctions barring enforcement of the Rule. The Rule will

not go into effect unless the Second Circuit issues a new order or the Supreme Court issues a stay, and the likelihood that the Supreme Court will soon weigh in on the appropriateness of a stay further undermines plaintiffs' argument that rehearing is warranted at this time.

Nor would there be any reason for the full Court to review the panel's stay order even absent the Second Circuit's decision. Review of the panel's application of the stay factors is not necessary "to secure and maintain uniformity of the court's decisions." Fed. R. App. P. 35(b)(1)(A). And because review of the panel stay by the full Court would involve an assessment of the likelihood of success on the merits, en banc review of the stay would, in effect, needlessly displace the merits panel. *See, e.g.*, *California ex rel. Becerra v. Azar*, 928 F.3d 1153 (9th Cir. 2019) (agreeing to rehear stay order en banc and leaving stay in place); Order, No. 19-15974 (Aug. 1, 2019) (ordering parties in case to address the merits on the underlying preliminary injunction, not just the stay, before the en banc panel).

2. Even apart from the unusual procedural posture, en banc review would not be justified. Plaintiffs' primary argument is that the panel failed to assess adequately the harms a stay will cause the parties. The panel's careful balancing of the harms does not warrant review by the full Court.

Plaintiffs describe the federal government's asserted harm as simply being "temporarily prevented from implementing a new policy preference." SF Pet. 11; *see also* Cal. Pet. 10; Wash. Pet. 12-13. But plaintiffs do not dispute that DHS currently

has no practical means of revisiting public-charge inadmissibility determinations once made, and thus do not contest that grants of applications for adjustments of status while the Rule is enjoined will, in effect, be permanent. Plaintiffs cite no case in which a similar claim of irreparable harm was rejected. *See Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (concluding that the government presented "no evidence" of any harm absent a stay other than "an institutional injury" to its interest in implementing its policies); *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 778 (9th Cir. 2018) (same); *Regents of the Univ. of Cal. v. USDHS*, 908 F.3d 476, 500 (9th Cir. 2018) (reviewing preliminary injunction entered against the government without addressing irreparable harm).

Plaintiffs quote the California district court's statement that DHS "conceded that it would suffer no hardship if a preliminary injunction issued." Cal. Pet. 10 (citing Cal. PI Op. 86). As is clear from context, the court was merely stating that the government would be able to continue to administer the public-charge provision under the interpretation that the Rule superseded. That statement is accurate, but it misses the fundamental point that the injunction causes the precise harm that Congress sought to avoid—allowing aliens to obtain lawful-permanent-resident status even though the Executive Branch would conclude that they are likely to become public charges under the Secretary's reasonable interpretation of the term.

Plaintiffs assert that the panel "ignored," Wash. Pet. 9, or "reject[ed]," SF Pet. 14, the district courts' factual findings with regard to the harms plaintiffs anticipate

experiencing as a result of the Rule. But the panel *agreed* with the district courts that the harms plaintiffs were likely to experience were "significant." *Stay Op.*, 944 F.3d at 809. And far from "writ[ing] the public interest factor out of the stay analysis," SF Pet. 17, the panel simply concluded that, on balance, the public interest and equities favored the government in light of the government's strong likelihood of success on the merits and its irreparable harm. *Stay Order*, 944 F.3d at 809; *see also Nken v. Holder*, 556 U.S. 418, 434 (2009) (likelihood of success and irreparable harm are "the most critical" stay factors). Plaintiffs have not presented an adequate reason for the full Court to conduct that balancing anew.

3. Plaintiffs fare no better in asserting that the panel broke from this Court's precedent by inappropriately "pre-adjudicat[ing]" the merits of the case. SF Pet. 7; Cal Pet. 7; Wash Pet. 9. The panel was required to evaluate the likelihood of the government's success on the merits, *Nken*, 556 U.S. at 433-34, and was thus required to assess the merits of the dispute. It would be anomalous to suggest that a panel assessing a stay motion is prohibited from candidly evaluating the strength of the parties' merits positions, particularly where, as here, the panel deemed plaintiffs' harms "significant" and needed to ensure that the strength of the government's case justified a stay notwithstanding plaintiffs' alleged harms. Far from supporting plaintiffs' remarkable position that a panel should be faulted for conducting a searching review on the merits, the case relied on by plaintiffs merely suggests that in some circumstances a stay may be warranted even on a less robust showing than the

panel found here. *See Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) ("[T]o justify a stay, petitioners need not demonstrate that it is more likely than not that they will win on the merits.").

Plaintiffs' observation that the panel decided the relevant issues "without adequate briefing and argument," SF Pet. 7, appears to suggest that stays pending appeal should never be granted based on the stay papers filed under this Court's rules. And here, unlike in most cases, three sets of plaintiffs each made their own filings in this Court, supported by a number of amici. Plaintiffs' argument that the panel should not have published its opinion, *see* Cal. Pet. 11, does not warrant en banc review and cannot be reconciled with the numerous published opinions granting or denying stays issued by this Court, some at the behest of plaintiffs here. *See, e.g.*, *Sierra Club v. Trump*, 929 F.3d 670 (9th Cir. 2019); *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018); *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017); *Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1123 (9th Cir. 2008).

4.a. Plaintiffs' merits arguments are similarly unpersuasive. Several related statutory provisions support the Rule's definition. For example, Congress has required many aliens seeking adjustment of status to obtain affidavits of support, and authorized states and the federal government to seek reimbursement from the sponsor for means-tested public benefits. *See* 8 U.S.C. §§ 1182(a)(4)(C), (D), 1183a. Aliens who fail to obtain a required affidavit of support are subject to the public-charge ground of inadmissibility regardless of their individual circumstances, *id.*

§ 1182(a)(4), such that the mere *possibility* that an alien might obtain unreimbursed, means-tested public benefits in the future can render certain aliens subject to the public-charge ground of inadmissibility. Congress also presumed that DHS would ordinarily consider past receipt of benefits when it prohibited DHS from considering such receipt if the alien "has been battered or subjected to extreme cruelty in the United States by [specified persons]." 8 U.S.C. § 1641(c); *see also id.* § 1182(a)(4)(E), 1182(s). Plaintiffs offer no response.

Nor do plaintiffs address Congress's express statements of national immigration policy, on which the panel relied. *See Stay Op.*, 944 F.3d at 799. Congress expressed concern about the "increasing" use by aliens of "public benefits [provided by] Federal, State, and local governments." 8 U.S.C. § 1601(3). Congress emphasized that "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes," *id.* § 1601(1), and reaffirmed the policy that "(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and (B) the availability of public benefits not constitute an incentive for immigration to the United States," *id.* § 1601(2). Consistent with these pronouncements, Congress expressly equated a lack of "self-sufficiency" with the receipt of public benefits by aliens, *id.* § 1601(3), which it defined broadly to include any "welfare, health, disability, public or assisted housing . . . or any other similar benefit," *id.* § 1611(c) (defining "federal public benefit").

Ignoring these provisions, which strongly support the government's interpretation of the public-charge inadmissibility provision, plaintiffs assert that the term "public charge" has a long-established meaning with which the Rule is inconsistent. Cal. Pet. 4; SF Pet. 3; Wash. Pet. 1. But Congress has never defined the phrase. Rather, as the panel correctly recognized, *Stay Op.*, 944 F.3d at 796-97, the defining feature of Congress's approach to the public-charge inadmissibility provision over the last 135 years has been its repeated and intentional decision to leave the term's definition to the Executive Branch's discretion. In an extensive report that formed the foundation of the INA, the Senate Judiciary Committee emphasized that because "the elements constituting likelihood of becoming a public charge are varied, there should be no attempt to define the term in the law." S. Rep. No. 81-1515, at 349 (1950). The report also recognized that "[d]ecisions of the courts have given varied definitions of the phrase 'likely to become a public charge,'" *id.* at 347, and that "different consuls, even in close proximity with one another, have enforced [public-charge] standards highly inconsistent with one another." *Id.* at 349. But instead of adopting a definition of public charge—much less the one plaintiffs urge—the report concluded that the public-charge inadmissibility determination properly "rests within the discretion of" Executive Branch officials. *Id.*

Plaintiffs plainly err in arguing that the panel failed to consider their claim that Congress did not authorize DHS to interpret the public-charge provision. SF Pet. 8. The panel squarely addressed the question of DHS's rulemaking authority, correctly

concluding that "Congress granted DHS the power to adopt regulations to enforce the provisions of the INA," including the public-charge provision. *Stay Op.*, 944 F.3d at 792 (citing 8 U.S.C. § 1103(a)(1), (3)).

Plaintiffs further assert that the term "public charge" cannot include aliens who receive public benefits only temporarily or in modest amounts. Cal. Pet. 12; SF Pet. 9; Wash. Pet. 5. But as explained, the statute itself requires exclusion of certain aliens on the public-charge ground because they lack an affidavit of support, based on the mere possibility that they will use *any* benefits. *See* 8 U.S.C. § 1182(a)(4)(C), (D). And a variety of legal authorities over the years—including Black's Law Dictionary—defined "public charge," as used in immigration legislation, as *any* expense to the public. *See Public Charge*, Black's Law Dictionary (3d ed. 1933); Black's Law Dictionary (4th ed. 1951); *see also Ex parte Kichmiriantz*, 283 F. 697, 698 (N.D. Cal. 1922). Moreover, Congress itself made clear that it sought to ensure that aliens within the country "not depend on public resources to meet their needs," 8 U.S.C. § 1601(2)(A), with no suggestion that it considered a modest dependence was acceptable. And in any event, the Rule does not define "public charge" to include aliens who receive any public benefits, but instead limits the term to aliens who receive more than 12 months of benefits in a 36-month period. Plaintiffs are not entitled to second-guess the agency's line-drawing.

Administrative interpretations likewise belie plaintiffs' assertion. Since at least 1948, the Attorney General has taken the authoritative position that an alien may

qualify as a "public charge" for deportability purposes if the alien fails to repay a public benefit upon a demand for repayment, even where the benefit at issue is not the alien's primary means of support. *Matter of B-*, 3 I. & N. Dec. 323, 325-26 (BIA and AG 1948).

Plaintiffs attempt to discount *Matter of B-* because it had to do with deportability, rather than admissibility. Wash. Pet. 15. Plaintiffs do not explain why the Executive Branch would be entitled to disregard the assertedly unambiguous meaning of "public charge" in the deportability context any more than in the admissibility context. And in any event, administrative decisions have long applied "public charge" provisions in the deportation context more narrowly, making *Matter of B-* even more persuasive. *See Matter of Harutunian*, 14 I. & N. Dec. 583, 588 (BIA 1974).

Plaintiffs mistakenly suggest that the BIA's decision in *Matter of Harutunian* stated that aliens cannot be public charges based on their receipt of non-cash benefits, because they are "supplementary." Wash. Pet. 16. But that case contrasted "supplementary benefits, directed to the general welfare of the public as a whole," on the one hand, with "individualized public support to the needy," on the other. 14 I. & N. Dec. at 589. The non-cash benefits at issue in the Rule would fall in the latter category.

Lacking textual and historical support for their narrow definition, plaintiffs rely on failed legislative proposals from 1996 and 2013. Cal. Pet. 15 n.5; Wash. Pet. 16-18.

The principle that failed legislative proposals are a dubious means of interpreting a statute is particularly applicable here. *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 160 (2001). Congress did not "discard[]" the Rule's definition "in favor of other language" eventually enacted. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 443 (1987). Rather, Congress declined to define the term, preserving the longstanding discretion of the Executive Branch.

Plaintiffs also assert that the Rule is unreasonable because it "would sweep in 'able-bodied, working age individual[s]' who are 'willing to engage in honest work.'" Cal. Pet. 15. But DHS cited a hypothetical alien who is "young, healthy, employed, attending college, and not responsible for providing financial support for any household members" as an example of an individual who "would not be found inadmissible" under the Rule. 83 Fed. Reg.51,178, 51,215 (Oct. 10, 2018).

b. Plaintiffs assert that the panel erred in concluding that DHS was likely to prevail in demonstrating that the Rule was not arbitrary and capricious. Wash. Pet. 18-19; SF Pet. 10; Cal. Pet. 15-17. Plaintiffs allege that DHS failed to adequately address the costs that the Rule was expected to impose on plaintiffs. But, as the panel held, DHS discussed the costs and benefits of the Rule at length—including the potential costs to plaintiffs—modified the Rule to mitigate those costs, and ultimately reasonably concluded that the benefits obtained from promoting the longstanding self-sufficiency goals set forth by Congress outweighed the Rule's potential costs. *See*

Stay Op., 944 F.3d at 801-05. The panel's thorough analysis does not warrant further review.

Plaintiffs assert that the panel erred in failing to address their claim that DHS unreasonably asserted that it believed the Rule "will ultimately strengthen public safety, health, and nutrition" by "denying admission or adjustment of status to aliens who are not likely to be self-sufficient," 84 Fed. Reg. at 41,314. SF Pet. 10; Cal. Pet. 17. The agency's long-term prediction that denying admission or adjustment of status to aliens unlikely to be able to support themselves would be beneficial is unobjectionable and consistent with Congress's findings, but it was not, in any event, the justification for the Rule. Rather, as the panel noted, the agency justified the Rule on the ground that it better accords with congressional intent and congressional pronouncement of national immigration policy. *See Stay Op.*, 944 F.3d at 804.

Finally, to refute the government's argument that it is likely to succeed on the merits, plaintiffs would also need to prevail on the standing issues in the case, one of which the panel described as "close" and declined to resolve. *See Stay Op.*, 944 F.3d at 786 n.8. Plaintiffs seek to further an interest—greater use of public benefits by aliens—that is diametrically opposed to the interest Congress sought to protect through the public-charge provision. That independent ground presents a further reason that en banc review is not warranted.

5. Plaintiffs do not even attempt to defend the nationwide injunction imposed by the Washington court. This Court's precedents demand that an injunction be no

more burdensome to the government than necessary "to remedy the specific harm shown." *East Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1028-29 (9th Cir. 2019). An injunction barring the Rule's enforcement in plaintiffs' jurisdictions would be sufficient to remedy plaintiffs' alleged injuries, and plaintiffs provide no basis for concluding otherwise.

CONCLUSION

The petitions for rehearing should be denied.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General
DAVID L. ANDERSON
United States Attorney
DANIEL TENNY
s/ Gerard Sinzdak
GERARD SINZDAK
JOSHUA DOS SANTOS
Attorneys, Appellate Staff
Civil Division, Room 7242
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-0718
gerard.j.sinzdak@usdoj.gov

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the type-volume limitation of this Court's December 20, 2019 Order because it contains 4,197 words.

/s/ Gerard Sinzdak

Gerard Sinzdak
Counsel for the United States
gerard.j.sinzdak@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2020, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

s/ *Gerard Sinzdak*

Gerard Sinzdak
Counsel for the United States
gerard.j.sinzdak@usdoj.gov