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

Re: *State of New York v. Department of Homeland Security*, No. 19-3591

Dear Ms. O'Hagan Wolfe:

The Seventh Circuit's split decision in *Cook County v. Wolf* does not support affirmance of the district court's injunction. The Seventh Circuit unanimously rejected plaintiffs' central argument here—that the term "public charge" has a longstanding meaning that Congress has implicitly adopted. "Never," the court explained, "did [Congress] define 'public charge' or explain what degree of reliance on government aid brands someone as" a public charge. Op. 20. Instead, the majority properly recognized that "[w]hat has been consistent is the delegation from Congress to the Executive Branch of discretion" to make public-charge determinations. Op. 25.

The majority nonetheless concluded that the Rule was unlawful because it was in "tension[]" with provisions of the Welfare Reform Act that authorize some aliens to obtain public benefits covered by the Rule. Op. 29-30. As the dissent explained, the majority's reasoning was flawed in several respects. *See* Dissent 59-69. Among other things, the majority improperly dismissed as irrelevant "obviously significant" statutory provisions which strongly support the Rule. Dissent 59-66. Moreover, the majority's conclusion that DHS cannot consider benefits authorized by Congress would render the public charge provision "a dead letter," as the provision presupposes that an alien is eligible for public support. Dissent 67. And the view that Congress desired the admission of aliens who the government expected to use the public benefits authorized by the Welfare Reform Act is a "totally implausible"

interpretation of the Act, which was designed to ensure that aliens not rely on public benefits to meet their needs. Dissent 68.

Plaintiffs emphasize the majority's statement that it would do "violence to the English language" to interpret "public charge" to cover an alien who receives "a single benefit on one occasion." Op. 30. But as the majority recognized, *id.*, the Rule does not do so.

The majority also addressed the relevance of the Rehabilitation Act and an arbitrary-and-capricious challenge, which the parties had briefed only in passing. For the reasons the government has explained, those arguments are meritless. *See* DHS Br. 41-52; *City & Cty. of San Francisco v. USCIS*, 944 F.3d 773, 779-805 (9th Cir. 2019).

Sincerely,

/s/ Gerard Sinzdak
Gerard Sinzdak
Attorney for the Defendants-Appellants