IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO, *et al.*, *Plaintiffs-Appellees*, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *et al.*, *Defendants-Appellants*.	No. 19-17213 D.C. No. 4:19-cv-4717-PJH Northern District of California, Oakland
STATE OF CALIFORNIA, *et al.*, *Plaintiffs-Appellees*, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Defendants-Appellants*.	No. 19-17214 D.C. No. 4:19-cv-4975-PJH Northern District of California, Oakland
STATE OF WASHINGTON, *et al.*, *Plaintiffs-Appellees*, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Defendants-Appellants*.	No. 19-35914 D.C. No. 4:19-cv-5210-RMP Eastern District of Washington, Richland

UNOPPOSED MOTION OF U.S. HOUSE OF REPRESENTATIVES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS *AMICUS CURIAE* IN SUPPORT OF THE PLAINTIFFS

Pursuant to Federal Rule of Appellate Procedure 29(a)(8), the United States House of Representatives respectfully requests leave to participate in the oral argument in the above-captioned appeals. The House requests that the Court enlarge the argument time by 5 minutes per side and that the additional 5 minutes for the plaintiffs be allocated to the House. Counsel for the parties in all three appeals take no position on this request. The House is filing this motion in all three appeals.

1. These appeals involve the Department of Homeland Security's (DHS's) new "public charge" rule, which seeks to redefine a historically narrow ground for inadmissibility to the United States as a broad exclusion of prospective immigrants without significant means. As the House's brief explains, for more than 100 years, courts and Executive Branch agencies understood the "public charge" provision to extend only to individuals who are likely to become primarily dependent on public assistance for a significant period. In 1996, Congress reenacted the provision without material change, thereby retaining that long-settled understanding. Congress that same year affirmed that noncitizens admitted to the United States were eligible for certain public benefits. In 1996 and 2013, Congress also rejected legislative proposals that would have given "public charge" the kind of expansive meaning DHS now seeks to impose by rule.

2. The House has a strong institutional interest in resisting DHS's incursion on the role of the Legislative Branch. The Constitution authorizes Congress to "establish an uniform Rule of Naturalization." U.S. Const., Art. I, § 8, cl 4. The formulation of "[p]olicies pertaining to the entry of [noncitizens] and their right to remain here … is entrusted exclusively to Congress." *Galvan v. Press*, 347 U.S. 522, 531 (1954) (citation omitted). By departing from the meaning Congress adopted and embracing a meaning Congress rejected, DHS's new "public charge" rule would reshape an important area of federal immigration law by executive fiat.

This case also involves principles of statutory interpretation with important implications for the House. Congress often relies on the prior understanding of a statutory term or phrase when it reenacts legislation. When it uses a statutory phrase that has been consistently understood by the other Branches, it intends to carry through that understanding. Congress likewise trusts that the other Branches will not give a statutory term a meaning that Congress has considered and rejected. The House respectfully submits that its presentation of oral argument will aid the Court in its consideration of these issues.

3. The Second, Fourth, and Seventh Circuits each granted the House's motion to present oral argument as *amicus curiae* in similar appeals involving challenges to the public charge rule. The House participated in all three oral arguments.

The Supreme Court has also recently granted oral argument time to Congressional *amici*. *See, e.g.*, *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct.

991 (2020) (Mem.) (granting motion of U.S. House of Representatives); *Dep't of Commerce v. New York*, 139 S. Ct. 1543 (2019) (mem.) (granting motion of U.S. House of Representatives); *United States v. Texas*, 136 S. Ct. 1539 (2016) (mem.) (granting motion of U.S. House of Representatives); *NLRB v. Noel Canning*, 134 S. Ct. 811 (2013) (mem.) (granting motion of group of 45 Senators). The same practice should be followed here.

4. This Court has consolidated the three above-captioned appeals for a single oral argument scheduled for September 15, 2020. The Court has allocated 40 minutes of argument time per side, which counsel for the parties in the three appeals are to allocate among themselves as appropriate.

The House respectfully requests that the Court enlarge the oral argument by 5 minutes per side, and that the Court grant the House 5 minutes of the resulting 45 minutes allocated to the plaintiffs. Given the numerous complex issues presented in this case—including threshold standing questions, zone-of-interest questions, and questions on the merits—a modest enlargement of the oral argument time by 5 minutes per side is warranted.

Counsel for the plaintiffs and for the defendants have been informed of our intent to file this motion. The plaintiffs in all three cases take no position on the House's request on the condition that it does not reduce their allotted argument time. The defendants take no position on the House's request and do not intend to file a response in opposition.

CONCLUSION

For the foregoing reasons, the Court should enlarge the argument time by 5 minutes per side and grant the House 5 minutes of argument time.

Respectfully submitted,

/s/ Douglas N. Letter

Douglas N. Letter
General Counsel
Todd B. Tatelman
Megan Barbero
Josephine Morse
Adam A. Grogg
William E. Havemann
OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, DC 20515
(202) 225-9700

Counsel for Amicus Curiae

Robert M. Loeb
Thomas M. Bondy
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005

August 4, 2020

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 746 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E) and Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) and Cir. R. 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Garamond 14-point font.

/s/ Douglas N. Letter
Douglas N. Letter

CERTIFICATE OF SERVICE

I certify that on August 4, 2020, I caused the foregoing motion to be filed via the U.S. Court of Appeals for the Ninth Circuit CM/ECF system, which I understand caused a copy to be served on all registered parties.

/s/ Douglas N. Letter
Douglas N. Letter