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November 20, 2020

The Honorable Scott Harris
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

Re: *United States Department of Homeland Security v. State of New York*,
No. 20-449

Dear Mr. Harris:

I write on behalf of respondents the States of New York, Connecticut, and Vermont and the City of New York (“Government Respondents”) to request an extension of time to oppose the petition for a writ of certiorari in this matter, which involves a challenge by respondents to the Department of Homeland Security’s Public Charge Rule.

Respondents seek a thirty-day extension of time to respond to the petition. The current deadline is December 9, 2020, and a thirty-day extension results in a deadline of January 8, 2021, to file an opposition. This is respondents’ second request for an extension.

Government Respondents seek additional time primarily to give each of the sovereign and municipal respondents sufficient time to conduct further deliberation, review the petition, and draft a response given the recent presidential election and its potential effects on this litigation. The incoming administration has publicly stated that it will reverse the Public Charge Rule within its first 100 days. See *The Biden Plan for Securing Our Values as a Nation of Immigrants*, joebiden.com/immigration/ (last visited Nov. 19, 2020). Government Respondents require additional time to consider the effects of this significant development on their response to the petition—a deliberation process that requires consultation with multiple government agencies and officials, including several layers of review.

Government Respondents also require additional time to consult with the private nonprofit organizations that brought a separate lawsuit, consolidated by the district court below, challenging the Public Charge Rule and that are also respondents here.

In addition to the need for consultation and deliberation, the press of other work and the commitments of the attorneys most knowledgeable about this case have made it difficult to prepare responses to the petition in the allotted time. The attorneys for the State of New York, who are lead counsel for the Government Respondents, have had multiple conflicting obligations in the past few months, including multiple expedited filings with this Court and preparation for oral argument in *Trump v. New York*, No. 20-366. The Office has also been engaged in fast-paced and ongoing litigation about the application of certain Covid-19-related state orders to houses of worship, including opposing motions to enjoin the orders pending appeal that were recently filed with this Court.

Counsel for petitioners have stated that they oppose this request on the ground that an extension would move the Court's consideration of the petition past the cut-off date for cases that could be argued this Term. Consideration of the petition at a later time will not prejudice petitioners, however, because the Court has already stayed the preliminary injunction that is the subject of petitioners' appeal until the Court either denies certiorari or issues a judgment. *See Department of Homeland Sec. v. New York*, 140 S. Ct. 599, 599 (2020). The requested extension will not affect that stay.

Thank you for your consideration.

Respectfully,



Barbara D. Underwood
Solicitor General

cc: Jeffrey B. Wall (counsel for petitioners)
Jonathan Hurwitz (counsel for private organization respondents)