Vinson&Elkins

Stephen Medlock smedlock@velaw.com
Tel +1.202.639.6578 **Fax** +1.202.879.8939

June 20, 2024

<u>Via E-filing</u>

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

**Re: Nos. 22-55988, 56036 *Al Otro Lado, Inc. v. Mayorkas*,
       Argued and Submitted November 28, 2023 (Owens, Friedland, Nelson)
       Notice of Supplemental Authority Rule 28(j)**

Dear Ms. Dwyer:

On June 3 2024, President Biden issued a proclamation titled "Securing the Border"
(the "Proclamation"). *See* Exhibit A. The Proclamation suspends and limits entry of
noncitizens at the U.S. southern border until 14 calendar days after the Secretary of
Homeland Security determines that there has been a 7-consecutive-calendar day average
of less than 1,500 daily encounters, not including certain encounters described in the
Proclamation.

The next day, U.S. Department of Homeland Security and Department of Justice
issued an interim final rule (the "IFR"). *See* Exhibit B, published at 89 Fed. Reg. 48710

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(July 7, 2024).[1] The IFR imposes restrictions on asylum eligibility during times when the Proclamation is in effect.

On June 5, 2024, Defendants-Appellants filed a notice in a separate case, which included copies of the Proclamation and two agency memoranda:

- Implementing Presidential Proclamation, *Securing the Border*, DHS, June 3, 2024 (Exhibit C)

- Implementation of Presidential Proclamation, *Securing the Border* and Interim Final Rule, *Securing the Border*, CBP (Exhibit D).

See Al Otro Lado, Inc. v. Mayorkas ("*AOL II*"), No. 23-cv-01367-AGS-BLM, ECF No. 78. That district court requested supplemental briefing from the *AOL II* Plaintiffs by June 20, and a response from the *AOL II* Defendants by June 27. No. 23-cv-01367-AGS-BLM, ECF No. 79.

The Proclamation and IFR may be relevant to aspects of this appeal. For example, the Government has argued here that Plaintiffs' Section 706(2) challenge to the metering guidance became moot when the Government enacted its November 2021 guidance. Gov't

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[1] https://www.federalregister.gov/documents/2024/06/07/2024-12435/securing-the-border.

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Reply Br. at 35-37. The Proclamation and related guidance may impact and temporarily supersede that November 2021 guidance, which would negate the Government's mootness arguments. Plaintiffs-Appellees have requested more information from Defendants-Appellants to understand the impact of the Proclamation and other guidance.[2] Plaintiffs-Appellees would be happy to provide supplemental briefing on this issue if the court would find it helpful.

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Sincerely,

/s/ Stephen M. Medlock
Stephen M. Medlock

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[2] Defendants-Appellants' filing in the *AOL II* district court lacked two memoranda referenced in Exhibit C that are not publicly available. Plaintiffs-Appellees have requested these memoranda so that they can provide the courts with a fully-informed position.

Certificate of Compliance With Type-Volume Limit

This document complies with the word limit of Fed. R. App. P. 28(j) because this document contains 341 words.

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/s/ *Stephen M. Medlock*
Stephen M. Medlock

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2024, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I CERTIFY that all participants in the case are registered CM/ECF users and that the service will be accomplished by the appellate CM/ECF system.

/s/ *Stephen M. Medlock*
Stephen M. Medlock

Exhibit A

Exhibits A-D omitted from document