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Mr. Mark J. Langer
Clerk, United States Court of Appeal
for the District of Columbia Circuit
United States Courthouse
Room 5423
Third & Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *American Hospital Association, et al. v. Azar*, Nos. 19-5048, 18-5198
Oral argument heard on November 8 before Judges Srinivasan, Millett, and Pillard

Dear Mr. Langer:

We write to clarify an issue of deference that arose at oral argument. In district court, the government argued that HHS's interpretation of the Medicare provision at issue here is entitled to *Chevron* deference, assuming that judicial review is not barred by the statute's express preclusion of review. *See* Dkt. No. 14 at 28. Plaintiffs did not dispute the applicability of the *Chevron* framework; they argued that HHS's interpretation is "clearly foreclosed by the OPPS statute" and that *Chevron* deference does not apply for that reason. Dtk. No. 16 at 16 n.9. The district court declared the agency's interpretation *ultra vires* and therefore did not apply the *Chevron* framework. In our opening brief on appeal, we focused on the errors in the district court's reasoning. In reply, after plaintiffs argued in the alternative that the preclusion provision is inapplicable, we urged that "HHS's interpretation of the statutes that it is charged with administering is . . . correct and, at a minimum, reasonable." Reply Br. 12. In other words, the government has asked for *Chevron* deference in the event that the preclusion provision is ruled inapplicable.

Respectfully submitted,

/s/ Alisa B. Klein

Alisa B. Klein
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