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March 23, 2023

Via CM/ECF

Lyle W. Cayce, Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
600 South Maestri Place
New Orleans, LA 70130

RE: *Texas v. Yellen*, No. 22-10560 (set for argument April 3, 2023)

Dear Mr. Cayce:

I write regarding two developments since this case was fully briefed.

First, on January 18, the government sought rehearing en banc of the Sixth Circuit's decision in *Kentucky v. Yellen*, 54 F.4th 325 (6th Cir. 2022), which incorrectly held the Offset Provision to be unenforceable "[a]s a matter of statutory interpretation," *id.* at 347. On March 13, the Sixth Circuit directed the plaintiff States to respond to the rehearing petition by March 27.

Second, on January 20, the Eleventh Circuit decided *West Virginia v. Department of the Treasury*, 59 F.4th 1124 (11th Cir. 2023), holding that the plaintiff States established jurisdiction over their challenge to the Offset Provision and that the provision is unconstitutional. The government has petitioned for rehearing en banc of the Eleventh Circuit's decision.

Sincerely,

/s/ Daniel Winik
Daniel Winik

cc: All counsel (via CM/ECF)