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Via ECF

Michael E. Gans
Clerk of Court
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street
St. Louis, MO 63102

Re: *Bhatti v. Federal Housing Finance Agency*, No. 18-2506

Dear Mr. Gans:

The Supreme Court’s decision in *Seila Law v. CFPB*, No. 19-7 (U.S. June 29, 2020), disposes of most of FHFA’s arguments against vacatur of the Net Worth Sweep.

Like the CFPB, FHFA is “an independent agency that wields significant executive power and is run by a single individual who cannot be removed by the President unless certain statutory criteria are met.” *Seila Law*, Slip Op. at 2. The Supreme Court held in *Seila Law* that this arrangement violates the separation of powers, and it can no longer be credibly argued that FHFA’s structure is constitutional. *See* Br. of Defs.-Appellees Federal Housing Finance Agency and Melvin L. Watt at 6–38 (Nov. 14, 2018) (“FHFA Br.”).

The district court dismissed Plaintiffs’ claims relating to this issue on the theory that the Net Worth Sweep would have happened even if FHFA had been constitutionally structured. *See* FHFA Br. 15–17. After *Seila Law*, there is no doubt that this was error: “We have held that a litigant challenging governmental action as void on the basis of the separation of powers is not required to prove that the Government’s course of conduct would have been different in a ‘counterfactual

world’ in which the Government had acted with constitutional authority.” *Seila Law*, Slip Op. at 10 (quoting *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 512 n.12 (2010)).

Finally, in *Seila Law*, the Supreme Court remanded the case so that the lower courts could decide in the first instance whether the civil investigative demand at issue in that case had been properly ratified. *Seila Law*, Slip Op. at 30–31, 37. This remand presupposes the availability of backward-looking relief in presidential removal cases, thus foreclosing FHFA’s argument that the *only* remedy for a violation of the President’s removal power is to prospectively sever the unconstitutional statutory provision. FHFA Br. 18–20.

Respectfully submitted,

/s/ David H. Thompson
David H. Thompson

Counsel for Appellants

cc: Counsel of Record (by ECF)