IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff*, v. ALEX M. AZAR II, in his official capacity as the Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; DIANE FOLEY, M.D., in her official capacity as the Deputy Assistant Secretary, Office of Population Affairs; OFFICE OF POPULATION AFFAIRS, *Defendants*.	Case No. 1:19-cv-01103-RDB

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND THE JUDGMENT

Pursuant to Local Rule of Civil Procedure 105.2(a), Defendants respectfully submit this memorandum of law in opposition to Plaintiff's motion to alter or amend the judgment in the above-captioned action. *See* Pl.'s Mot. to Alter or Amend the J., ECF No. 103 ("Motion").

INTRODUCTION

The Court has agreed with Plaintiff that the Department of Health and Human Services (HHS) Final Rule entitled Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7714 (Mar. 4, 2019) (Rule), is arbitrary and capricious. On that basis, it vacated the Rule in the State of Maryland and enjoined Defendants from enforcing it in the State. The Court has made quite clear, however, that it does not agree with Plaintiff's contention, which Plaintiff has expressed repeatedly in this litigation, that the Court's judgment should have nationwide effect.

Rather, the Court has explicitly declined to award such relief and noted "skepticism regarding the increased issuance of nationwide injunctions by United States District Judges." Mem. Op. at 26 n.8, ECF No. 93 (SJ Opinion). Undeterred, Plaintiff moves pursuant to Federal Rule of Civil Procedure 59(e) to have the Court consider, once again, whether to issue a nationwide remedy in this case involving a single city as plaintiff. The Court can easily dispose of Plaintiff's motion because it is well established that a litigant cannot use Rule 59(e) to relitigate issues that have already been argued and decided. And in any event, because the Court was correct in declining to give its judgment nationwide effect, Plaintiff has identified no error in the Court's judgment, much less the kind of "clear error" or "manifest injustice" necessary to invoke the extraordinary remedy of Rule 59(e) relief. For these reasons, and those set forth more fully below, Defendants respectfully request that the Court deny Plaintiff's Motion and that it do so expeditiously, to eliminate any uncertainty about the scope of the judgment while the Fourth Circuit is considering the government's pending appeal and motion to stay.

BACKGROUND

Plaintiff filed its complaint on April 12, 2019, asserting ten causes of action and requesting that the Court "[s]et aside," "vacate," and issue "preliminary and permanent injunctive relief" against the Rule's enforcement. *See* Compl., Prayer for Relief, ECF No. 1. The Court granted Plaintiff's motion for a preliminary injunction on May 30, 2019, enjoining enforcement of the Rule only in "the State of Maryland." Order, ECF No. 44. In its opinion, the Court noted the existence of "skepticism regarding the increased issuance of nationwide injunctions by United States District Judges," cautioned against the "danger of nationwide injunctions leading to forum shopping," and emphasized that "[i]t is important that the federal judiciary not allow itself to become part of 'underlying policy debate,'" Mem. Op. at 27 n.12, ECF No. 43 (PI Opinion) (citations omitted).

Ultimately, a Fourth Circuit panel stayed the Court's preliminary injunction pending appeal. *Mayor & City Council of Baltimore v. Azar*, 778 Fed. Appx. 212 (4th Cir. 2019). The appeal remains pending, and the stay remains in place.

In the meantime, proceedings continued before this Court and the parties filed cross-motions for summary judgment. In its briefing, Plaintiff requested that the Court "vacate the Rule in its entirety." *E.g.*, Pl.'s Mem. in Opp'n to Defs.' Cross Mot. for Summ. J. & Reply in Supp. of Pl.'s Mot. for Summ. J. at 1, ECF No. 84. The Court granted in part and denied in part the parties' cross-motions and, as relevant here, entered judgment in Plaintiff's favor as to Counts VII and VIII, concluding that HHS acted arbitrarily and capriciously in promulgating the Rule. SJ Opinion; Order, ECF No. 94. The Court permanently enjoined Defendants from implementing or enforcing the Rule in the State of Maryland alone. *Id*. Plaintiff then filed a motion to "clarify" the Court's judgment, requesting that the Court specify that its order entering summary judgment in Plaintiff's favor necessarily "vacated and set aside" the Rule as well. *See* ECF No. 96. In response to an inquiry from chambers, Plaintiff's counsel submitted a proposed order that would have "vacated and set aside" the Rule without geographic limitation. *See* Exhibits A and B to the attached Declaration of R. Charlie Merritt. In an email exchange involving chambers and counsel for all parties, counsel for Defendants pointed out that if the Court adopted Plaintiff's proposed order, it would arguably be vacating the Rule nationwide, which would be both inappropriate and inconsistent with the Court's intent in expressly limiting relief to the State of Maryland. *Id*. The Court granted Plaintiff's motion, but declined to adopt its proposed order, instead making clear that the Rule is only "vacated" and "set aside," as well as enjoined, in the State of Maryland. ECF No. 99.

Defendants filed a notice of appeal from the portions of the Court's memorandum opinion and order granting judgment in favor of Plaintiff and permanently enjoining the Rule in Maryland, ECF No. 95, and moved for a stay of the Court's judgment pending appeal, ECF No. 100. In opposing that motion, Plaintiff included a lengthy footnote "urg[ing]" the Court to "clarify that the Rule has been vacated without limitation," and not with respect to "particular parties or particular geographic areas." Pl.'s Opp'n to Defs.' Mot. for Stay of J. Pending Appeal at 1 n.1, ECF No. 101 (Stay Opp'n). The Court denied Defendants' motion to stay the judgment, but also declined, again, Plaintiff's invitation to give the Court's judgment nationwide effect. There was nothing to "clarify" because, as the Court emphasized, "this Court has been explicit that the scope of the injunction is limited to the State of Maryland." Mem. Order at 1 n.1, ECF No. 102 (Order Denying Stay). On March 13, 2020, Plaintiff filed the instant motion pursuant to Federal Rule of Civil Procedure 59(e), renewing its request that the Court "set aside the challenged agency action without geographic limitation." Motion at 1.

ARGUMENT

Rule 59(e) permits a motion to alter or amend a judgment, but as the Fourth Circuit has cautioned, "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted). Reconsideration pursuant to Rule 59(e) may be granted "only in very narrow circumstances: '(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.'" *Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002) (citation omitted). Here, Plaintiff seeks relief under the third category, purportedly to "correct a clear error of law in the nature and scope of the remedy [the Court] ordered." Motion at 4. Unfortunately for Plaintiff, however,

"[m]ere disagreement does not support a Rule 59(e) motion," *United States ex rel. Becker v. Westinghouse Savannah River Co*., 305 F.3d 284, 290 (4th Cir. 2002) (citation omitted), and a Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment," *Pac. Ins. Co.*, 148 F.3d at 403 (citation omitted); *see also Fraternal Order of Police Metro Transit Police Labor Comm., Inc. v. WMATA*, No. 1:12-cv-01387 (LMB/JFA), 2014 WL 1317672, at *2 (E.D. Va. Mar. 27, 2014) ("When a motion for reconsideration 'raises no new arguments, but merely requests the district court to reconsider a legal issue or to change its mind, relief is not authorized.'" (quoting *Pritchard v. Wal-Mart Stores*, 3 Fed. Appx. 52, 53 (4th. Cir. 2001))).

Here, as detailed above, the Court has already decided the issue of the geographic scope of its order vacating and enjoining the Rule. Indeed, it has "been explicit that the scope of the injunction is limited to the State of Maryland," Order Denying Stay at 1 n.1, and that the Rule is only "vacated and set aside in the State of Maryland," ECF No. 99 at 1. This is despite Plaintiff urging, as it does again here, that the APA requires courts to vacate agency rules on a nationwide basis. *Compare* Stay Opp'n at 1 n.1 (arguing that "'vacatur in the administrative context acts the same way it acts when a higher court 'vacates' a lower court's ruling," that Plaintiff had "not located a case where vacatur was limited to a party or geographic area," and citing *Action on Smoking & Health v. Civil Aeronautics Bd.*, 713 F.2d 795, 797 (D.C. Cir. 1983), for the proposition that "[w]hen agency action is 'set aside,' it is 'vacate[d],' 'annul[led],' 'render[ed] void,' 'deprive[d] of force,' and 'ma[d]e of no authority or validity'"), *with* Motion at 5-6 (making same arguments and citing same case for same proposition).

In granting Plaintiff's summary judgment motion in part, the Court expressly considered what geographic scope to give its order, and determined that an injunction limited to the State of

Maryland "provided only the necessary relief for the particular Plaintiff in this case, Baltimore City." SJ Opinion at 26 n.8.[1] Moreover, in declining to issue a nationwide injunction, it noted the "basic flaw" with such orders issued by federal trial courts—"'they direct how the defendant must act toward persons who are not parties to the case,' but '[e]quitable remedies, like remedies in general, are meant to redress the injuries sustained by a particular plaintiff in a particular lawsuit.'" *Id*. (quoting *DHS v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring)). And in response to direct requests by Plaintiff to "clarify" that the Court actually intended to vacate the Rule on a nationwide basis, the Court declined to do so not once, but twice, limiting its vacatur of the Rule to the State of Maryland only, ECF No. 99, and rejecting Plaintiff's request to vacate the Rule "without limitation," ECF No. 102. Because the Court has "already considered and rejected" the arguments raised in Plaintiff's Rule 59(e) Motion, it should deny the Motion on that basis alone. *See Morris v. Levene*, Civil Action No. RDB-19-1351, 2020 WL 707193, at *2 (D. Md. Feb. 12, 2020) (Bennett, J.); *see also United States v. Wise*, Criminal Action No. 3:17-cr-00806-JMC-1, 2019 WL 2635744, at *2 ("Rule 59(e) motions cannot be used as opportunities to re-litigate issues already decided just because the litigant is not happy with the result.").

In any event, Plaintiff has not identified any "clear error" or "manifest injustice" in the Court's failure to issue nationwide relief that would merit relief from this Court's judgment under Rule 59(e). As Defendants have argued (and as the Court has recognized), the remedy in this case, as any equitable remedy, should be no broader than necessary to provide Plaintiff, the City of Baltimore, with relief. *See* Defs.' Reply in Supp. of Mot. for Summ. J. at 19 n.5, ECF No. 90;

[1] Defendants contend that the Court should have limited its judgment against the Rule to the City of Baltimore and not extended it to the entire State of Maryland, *see, e.g.*, Defs.' Mem. in Supp. of Mot. for Stay Pending Appeal at 11, ECF No. 100-1. That disagreement is irrelevant for purposes of the present motion, however, because the Court did not err in declining to vacate the Rule on a nationwide basis, and Plaintiff has thus failed to establish its entitlement to relief pursuant to Rule 59(e).

Defs.' Mem. in Opp'n to Pl.'s Mot. for Prelim. Inj. at 43-44, ECF No. 25. Contrary to Plaintiff's contention, the mere fact that it has decided to bring APA claims does not necessitate a nationwide remedy.

To the contrary, the Fourth Circuit has *rejected* the argument that the APA requires a reviewing court to set aside a rule that it deems unlawful "for the entire country," finding instead that "[n]othing in the language of the APA . . . requires [a court] to exercise such far-reaching power." *Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 393-94 (4th Cir. 2001), *overruled on other grounds by The Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012). As the Fourth Circuit explained, accepting the argument that under the APA, the proper remedy "is an order setting aside the unconstitutional regulation for the entire country" "would result in the same harm as upholding the nationwide injunction." *Id*. That alone is sufficient to preclude a finding of "clear error" or "manifest injustice" warranting reconsideration. And, moreover, the Fourth Circuit's position is correct. Although the APA instructs that unlawful agency action "shall" be "set aside," 5 U.S.C. § 706(2), it does not say, and should not be construed to require, that the agency action be set aside, not just as applied to the plaintiff in a particular case, but to everyone. Indeed, Plaintiff's attempted analogy to appellate court review of a district court's order confirms Plaintiff's error. *See* Mot. at 5. If a district court enters judgment against multiple parties and only one of them appeals, the general rule is that the judgment is set aside only as to the party who appealed, even if the judgment is equally invalid as applied to the non-appealing co-parties, because a party is not entitled to appellate relief unless it files a timely notice of appeal. *See, e.g.*, *Nat'l Ass'n of Broads. v. FCC*, 554 F.2d 1118, 1124 (D.C. Cir. 1976).

Even if the APA were ambiguous in this regard, it is axiomatic that equitable relief "does not follow from success on the merits as a matter of course" but rather is subject to "equitable

discretion," *Winter v. NRDC, Inc.*, 555 U.S. 7, 32 (2008), and that a court "do[es] not lightly assume that Congress has intended to depart from established principles" regarding equitable discretion, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982). The Supreme Court therefore has confirmed that, even in an APA case, "equitable defenses may be interposed." *Abbott Labs. v. Gardner*, 387 U.S. 136, 155 (1967). For these reasons as well, declining to award nationwide relief here was not clear error. *Cf. TFWS, Inc. v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009) (explaining that, when applying the "law of the case doctrine," a decision is not "clearly erroneous," nor does it work "a manifest injustice," if it is "just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old, unrefrigerated dead fish" (citation omitted)).

Given the high standard for clear error, Plaintiff goes particularly astray in heavily relying on a *dissenting* opinion in which Justice Blackmun noted that in "some cases" a single plaintiff "may obtain 'programmatic' relief." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 913 (1990) (Blackmun, J., dissenting). Putting aside both whether Plaintiff is correct in contending, based on out-of-circuit precedent, that Justice Blackmun "apparently express[ed] the view of all nine Justices," Motion at 7 (quoting *O.A. v. Trump*, 404 F. Supp. 3d 109, 153 (D.D.C. 2019)), and whether *this* is the type of case to which Justice Blackmun was referring, that *still* would not demonstrate—much less clearly demonstrate—that nationwide vacatur is *required* in every APA case. In all events, post-*Lujan*, the Fourth Circuit has flatly rejected any such requirement.

Extending nationwide effect to the Court's vacatur order here would be particularly inappropriate given that the en banc Ninth Circuit has declined to award nationwide relief against the same Rule in parallel litigation, including a case brought by 20 states (Maryland among them) and the District of Columbia. *See California v. Azar*, 950 F.3d 1067 (9th Cir. 2020). Rather than

effectively override that decision, the Court should instead deny Plaintiff's Motion. And especially given the Motion's clear lack of merit, Defendants respectfully request that the Court do so expeditiously, to eliminate any uncertainty about the scope of the judgment while the Fourth Circuit is considering the government's pending appeal and motion to stay. At a minimum, if the Court does grant Plaintiff's Motion and vacates the Rule nationwide, Defendants again respectfully request that the Court stay the effect of its order to allow the government to consider whether to seek emergency appellate relief.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's Motion.

Dated: March 20, 2020

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ R. Charlie Merritt
R. CHARLIE MERRITT
(VA Bar No. 89400)
BRADLEY P. HUMPHREYS
(D.C. Bar No. 988057)
Trial Attorneys, U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Phone: (202) 616-8098
E-mail: robert.c.merritt@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2020, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ R. Charlie Merritt
R. CHARLIE MERRITT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff*, v. ALEX M. AZAR II, in his official capacity as the Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; DIANE FOLEY, M.D., in her official capacity as the Deputy Assistant Secretary, Office of Population Affairs; OFFICE OF POPULATION AFFAIRS, *Defendants*.	Case No. 1:19-cv-01103-RDB

DECLARATION OF R. CHARLIE MERRITT IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND THE JUDGMENT

1. I am a Trial Attorney at the Department of Justice, Civil Division, Federal Programs Branch and counsel for the Defendants.

2. I submit this declaration in support of Defendants' Response in Opposition to Plaintiff's Motion to Alter or Amend the Judgment. I have personal knowledge of the contents of this declaration and would testify competently thereto if called upon to do so.

3. Attached hereto as Exhibit A is an email exchange dated February 25, 2020, involving myself, the Court, and counsel of record for all parties.

4. Attached hereto as Exhibit B is the proposed order that counsel for the Plaintiff submitted as an email attachment in response to the Court's inquiry, as described in the email exchange attached as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Charlottesville, Virginia on March 20, 2020.

/s/ R. Charlie Merritt
R. CHARLIE MERRITT
Trial Attorney (VA Bar No. 89400)
U.S. Department of Justice
Civil Division, Federal Programs Branch
919 East Main Street, Suite 1900
Richmond, VA 23219
Tel.: (202) 616-8098
Email: robert.c.merritt@usdoj.gov

Exhibit A

From:	Tutt, Andrew
To:	Humphreys, Bradley (CIV); Catherine Gamper; Deshields, Tarra (USAMD); adam@hochschildlaw.com; andre.davis@baltimorecity.gov; dcox@coxlawcenter.com; Harker, Drew A.; faren.tang@ylsclinics.org; jane.lewis@baltimorecity.gov; jonathan.ference-burke@ropesgray.com; White, Marisa; priscilla.smith@yale.edu; Merritt, Robert C. (CIV); stoti@lawyeringproject.org; suzanne.sangree2@baltimorecity.gov; will@consovoymccarthy.com
Subject:	RE: 19-01103-RDB Mayor and City Council Of Baltimore v. Azar et al
Date:	Tuesday, February 25, 2020 4:56:09 PM

Dear Ms. Gamper,

Plaintiff's understanding of the Court's February 14 opinion and order is that the Court already vacated the Rule. Plaintiff seeks only to clarify that is the case. If it is the case, the clarification motion does not require extensive briefing because Plaintiff's motion is clerical: vacatur is already the relief the Court entered, and the motion is directed to making the relief the Court has already granted clear. As the Government's email shows, the Government believes the Court did not vacate the Rule. Plaintiff believes the Court did vacate the rule. The Court seemed to say it was vacating and setting aside the rule (pages 14, 25, 34), vacatur is the standard remedy under the APA, and the Court entered judgment for Plaintiff.

It is also worth noting that vacating a rule is not similar to issuing a nationwide injunction and rules are vacated all the time in the D.C. Circuit. *See, e.g.*, *Gresham v. Azar*, No. 19-5094, 2020 WL 741278, at *8 (D.C. Cir. Feb. 14, 2020) (Sentelle, J.) ("Because the Secretary's approval of Arkansas Works was arbitrary and capricious, we affirm the district court's judgment vacating the Secretary's approval.").

Andrew

Andrew Tutt
Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5242
Andrew.Tutt@arnoldporter.com | www.arnoldporter.com

From: Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>
Sent: Tuesday, February 25, 2020 4:06 PM
To: Catherine Gamper <Catherine_Gamper@mdd.uscourts.gov>; Tutt, Andrew <Andrew.Tutt@arnoldporter.com>; Deshields, Tarra (USAMD) <Tarra.Deshields@usdoj.gov>; adam@hochschildlaw.com; andre.davis@baltimorecity.gov; dcox@coxlawcenter.com; Harker, Drew A. <Drew.Harker@arnoldporter.com>; faren.tang@ylsclinics.org; jane.lewis@baltimorecity.gov; jonathan.ference-burke@ropesgray.com; White, Marisa <Marisa.White@arnoldporter.com>; priscilla.smith@yale.edu; Merritt, Robert C. (CIV) <Robert.C.Merritt@usdoj.gov>; stoti@lawyeringproject.org; suzanne.sangree2@baltimorecity.gov; will@consovoymccarthy.com
Subject: RE: 19-01103-RDB Mayor and City Council Of Baltimore v. Azar et al

Ms. Gamper,

Defendants oppose Plaintiff's motion, first, because the Court lacks jurisdiction to grant it, given that Defendants filed their notice of appeal before Plaintiff filed its motion. *See, e.g.*, *United States v. Christy*, 3 F.3d 765, 767 (4th Cir. 1993). Defendants also believe that the clarification Plaintiff requests may substantively expand the scope of the relief the Court granted. The Court limited its injunction to the State of Maryland. However, if the Court were to adopt Plaintiff's proposed language, the Court would arguably be vacating the Rule on a nationwide basis, which does not seem to be what the Court intended. Nor do Defendants believe doing so would be appropriate. *See Virginia Soc'y for Human Life, Inc. v. Fed. Election Comm'n*, 263 F.3d 379, 393-94 (4th Cir. 2001), *overruled on other grounds by The Real Truth About Abortion, Inc. v. Fed. Election Comm'n*, 681 F.3d 544 (4th Cir. 2012).

Defendants also note that the en banc Ninth Circuit issued a decision yesterday, vacating several preliminary injunctions against the Rule entered in that circuit. *See California v. Azar*, No. 19-15974, 2020 WL 878528 (9th Cir. Feb. 24, 2020). If the Court here were to vacate the Rule without clarifying that the vacatur is limited to Maryland, the Court would effectively be overturning the Ninth Circuit decision pending any relief from the Fourth Circuit.

Defendants continue to believe that Plaintiffs are not entitled to relief even in Maryland and have therefore appealed. But the scope of the Court's ruling is a distinct issue, and Defendants separately oppose Plaintiff's proposal to modify the Court's order. We are happy to lay out our arguments more fully in an opposition to plaintiff's motion if the Court would find that helpful.

If the Court does grant Plaintiff's motion and vacates the Rule nationwide, Defendants respectfully ask, as we did at the summary judgment hearing, that the Court stay the effect of its order to allow the government to consider whether to seek emergency appellate relief.

Best,
Brad

From: Catherine Gamper <Catherine_Gamper@mdd.uscourts.gov>
Sent: Tuesday, February 25, 2020 1:02 PM
To: Humphreys, Bradley (CIV) <brhumphr@CIV.USDOJ.GOV>; Tutt, Andrew <Andrew.Tutt@arnoldporter.com>; Deshields, Tarra (USAMD) <TDeshields@usa.doj.gov>; adam@hochschildlaw.com; andre.davis@baltimorecity.gov; dcox@coxlawcenter.com; Harker, Drew A. <Drew.Harker@arnoldporter.com>; faren.tang@ylsclinics.org; jane.lewis@baltimorecity.gov; jonathan.ference-burke@ropesgray.com; White, Marisa <Marisa.White@arnoldporter.com>; priscilla.smith@yale.edu; Merritt, Robert C. (CIV) <rmerritt@CIV.USDOJ.GOV>; stoti@lawyeringproject.org; suzanne.sangree2@baltimorecity.gov; will@consovoymccarthy.com
Subject: RE: 19-01103-RDB Mayor and City Council Of Baltimore v. Azar et al

Judge Bennett understands that Defendants oppose his ruling and that they have noted an appeal, but he would like to know the basis for Defendants' opposition to Plaintiff's Motion to Clarify. The effect of Judge Bennett's Memorandum Opinion and Order (ECF Nos. 93 and 94), permanently

enjoining the entirety of the Final Rule in Maryland, is that the Final Rule is vacated and set aside.

From: Humphreys, Bradley (CIV) <Bradley.Humphreys@usdoj.gov>
Sent: Tuesday, February 25, 2020 12:27 PM
To: Tutt, Andrew <Andrew.Tutt@arnoldporter.com>; Catherine Gamper <Catherine_Gamper@mdd.uscourts.gov>; Deshields, Tarra (USAMD) <Tarra.Deshields@usdoj.gov>; adam@hochschildlaw.com; andre.davis@baltimorecity.gov; dcox@coxlawcenter.com; Harker, Drew A. <Drew.Harker@arnoldporter.com>; faren.tang@ylsclinics.org; jane.lewis@baltimorecity.gov; jonathan.ference-burke@ropesgray.com; White, Marisa <Marisa.White@arnoldporter.com>; priscilla.smith@yale.edu; Merritt, Robert C. (CIV) <Robert.C.Merritt@usdoj.gov>; stoti@lawyeringproject.org; suzanne.sangree2@baltimorecity.gov; will@consovoymccarthy.com
Subject: RE: 19-01103-RDB Mayor and City Council Of Baltimore v. Azar et al

Ms. Gamper –

For the Court's awareness, Defendants intend to oppose Plaintiff's motion to modify the Court's order. We would respectfully ask the Court to wait for Defendants' response before ruling. We are happy to submit our opposition on an expedited basis if the Court would like.

Many thanks,
Brad

From: Tutt, Andrew <Andrew.Tutt@arnoldporter.com>
Sent: Tuesday, February 25, 2020 11:47 AM
To: Catherine Gamper <Catherine_Gamper@mdd.uscourts.gov>; Deshields, Tarra (USAMD) <TDeshields@usa.doj.gov>; adam@hochschildlaw.com; andre.davis@baltimorecity.gov; Humphreys, Bradley (CIV) <brhumphr@CIV.USDOJ.GOV>; dcox@coxlawcenter.com; Harker, Drew A. <Drew.Harker@arnoldporter.com>; faren.tang@ylsclinics.org; jane.lewis@baltimorecity.gov; jonathan.ference-burke@ropesgray.com; White, Marisa <Marisa.White@arnoldporter.com>; priscilla.smith@yale.edu; Merritt, Robert C. (CIV) <rmerritt@CIV.USDOJ.GOV>; stoti@lawyeringproject.org; suzanne.sangree2@baltimorecity.gov; will@consovoymccarthy.com
Subject: RE: 19-01103-RDB Mayor and City Council Of Baltimore v. Azar et al

Dear Ms. Gamper,

Thank you for the email. Please find a proposed order attached.

Andrew

Andrew Tutt
Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5242

Andrew.Tutt@arnoldporter.com | www.arnoldporter.com

From: Catherine Gamper <Catherine_Gamper@mdd.uscourts.gov>
Sent: Tuesday, February 25, 2020 10:12 AM
To: Tarra.DeShields@usdoj.gov; adam@hochschildlaw.com; andre.davis@baltimorecity.gov; Tutt, Andrew <Andrew.Tutt@arnoldporter.com>; bradley.humphreys@usdoj.gov; dcox@coxlawcenter.com; Harker, Drew A. <Drew.Harker@arnoldporter.com>; faren.tang@ylsclinics.org; jane.lewis@baltimorecity.gov; jonathan.ference-burke@ropesgray.com; White, Marisa <Marisa.White@arnoldporter.com>; priscilla.smith@yale.edu; robert.c.merritt@usdoj.gov; stoti@lawyeringproject.org; suzanne.sangree2@baltimorecity.gov; will@consovoymccarthy.com
Subject: 19-01103-RDB Mayor and City Council Of Baltimore v. Azar et al

External E-mail

Good morning,

The Court is in receipt of Plaintiff's Motion to Clarify the Judgment (ECF No. 96). Please submit a proposed order at your earliest convenience for signature.

Thank you,

Catherine Gamper
Law Clerk to the Honorable Richard D. Bennett
U.S. District Court for the District of Maryland
catherine_gamper@mdd.uscourts.gov
410.962.4083

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MAYOR AND CITY COUNCIL OF BALTIMORE,	*	
Plaintiff,	*	
v.	*	Civil Action No.: RDB-19-1103
ALEX M. AZAR II, Secretary of Health and Human Services, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * *

ORDER

Upon review of Plaintiff's Motion to Clarify the Judgment, the Court clarifies that its February 14, 2020 memorandum opinion, ECF No. 93, and order, ECF No. 94, entering judgment in favor of Plaintiff VACATED AND SET ASIDE the final rule entitled *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7,714 (Mar. 4, 2019). The Rule is VACATED.

Richard D. Bennett
United States District Judge