

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CASA DE MARYLAND, INC., et al.,

Plaintiffs,

v.

No. 8:19-cv-2715-PWG

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

CITY OF GAITHERSBURG, MARYLAND, et al.,

Plaintiffs,

v.

No. 8:19-cv-2851-PWG

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants.

**NOTICE OF SUPPLEMENTAL AUTHORITY
SUPPORTING PLAINTIFFS' CONSOLIDATED MEMORANDUM
IN OPPOSITION TO DEFENDANTS' CONSOLIDATED MOTION TO DISMISS**

Plaintiffs submit the following notice of supplemental authority regarding the recent decision of the Ninth Circuit in *City & County of San Francisco v. U.S. Citizenship & Immigration Services*, --- F.3d ---, No. 19-17213 (9th Cir. Dec. 2, 2020). In the attached decision, the Ninth Circuit affirmed preliminary injunctions issued by the Northern District of California and the Eastern District of Washington against the Department of Homeland Security (DHS)'s Public Charge Rule.

Like this Court did in granting the *CASA* Plaintiffs' Motion for a Preliminary Injunction, the Ninth Circuit held that the Public Charge Rule is contrary to Immigration and Nationality Act. Slip Op. at 35. In addition, and relevant to Defendants' pending Consolidated Motion to Dismiss, the Ninth Circuit also held that the DHS acted arbitrarily and capriciously in adopting the Rule. *Id.* at 42. Specifically, as Plaintiffs have alleged in this case, the Ninth Circuit held that DHS failed to adequately address the Rule's chilling effect or its negative impact on public health, *id.* at 37–40, or to adequately explain its departure from the primarily-dependent standard that the 1999 Field Guidance formalized or consider the serious reliance interests that policy had engendered, *id.* at 40–42. With the Ninth Circuit's decision, appellate courts that have reviewed arbitrary-and-capricious claims against the Public Charge Rule are unanimous in holding that DHS failed to engage in reasoned decisionmaking. *See New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 81 (2d Cir. 2020); *Cook County v. Wolf*, 962 F.3d 208, 233 (7th Cir. 2020).¹ The Ninth Circuit also joined the consensus among appellate courts that municipalities like Baltimore and Gaithersburg have standing to challenge the Public Charge Rule. Slip Op. at 26–27; *accord New York*, 969 F.3d at 57, 63 (grouping states and a municipality together and concluding that they collectively had standing); *Cook County*, 962 F.3d at 218–19.

Accordingly, this Court should not dismiss Plaintiffs' arbitrary-and-capricious claims or dismiss the municipalities on standing grounds, as Defendants have requested.

¹ This opinion displaces the contrary analysis of a Ninth Circuit motions panel that had stayed the lower courts' preliminary injunctions without the benefit of complete briefing or oral argument and on a truncated timeline. *See City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 944 F.3d 733 (9th Cir. 2019).

Respectfully submitted,

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Dated: December 4, 2020

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2020, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Jonathan L. Backer
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