

**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

MOTION TO CLARIFY THE JUDGMENT

Plaintiff Mayor and City Council of Baltimore (“Plaintiff”) respectfully moves to clarify that this Court’s February 14, 2020 memorandum opinion, ECF No. 93, and order, ECF No. 94, entering judgment in favor of Plaintiff necessarily VACATED AND SET ASIDE the final rule entitled *Compliance with Statutory Program Integrity Requirements*, 84Fed. Reg. 7,714 (Mar. 4, 2019) by operation of law. *See* 5 U.S.C. § 706 (“The reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”); *See Nat’l Min. Ass’n v. U.S. Army Corps of Engineers*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (“When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated.” (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C.Cir.1989) (Wald, J.))).

Plaintiff respectfully requests that the Court clarify that the Rule is VACATED by entering a minute order on the docket so specifying.

Dated: February 24, 2020

By: /s/ Andre M. Davis
Andre M. Davis #00362
City Solicitor

Suzanne Sangree #26130
*Senior Counsel for Public Safety &
Director of Affirmative Litigation*

CITY OF BALTIMORE
DEPARTMENT OF LAW
City Hall, Room 109
100 N. Holliday Street
Baltimore, MD 21202
443-388-2190
andre.davis@baltimorecity.gov
suzanne.sangree2@baltimorecity.gov

Priscilla J. Smith (*pro hac vice*)
Faren M. Tang (*pro hac vice*)
REPRODUCTIVE RIGHTS &
JUSTICE PROJECT
YALE LAW SCHOOL
319 Sterling Place
Brooklyn, NY 11238
priscilla.smith@ylsclinics.org
127 Wall Street
New Haven, CT 06511
faren.tang@ylsclinics.org

Respectfully submitted,

**ARNOLD & PORTER
KAYE SCHOLER LLP**

Andrew T. Tutt (*pro hac vice*)
Drew A. Harker (*pro hac vice*)
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
(202) 942-5999 (fax)
andrew.tutt@arnoldporter.com
drew.harker@arnoldporter.com

Stephanie Toti (*pro hac vice*)
LAWYERING PROJECT
25 Broadway, Fl. 9
New York, NY 10004
646-490-1083
stoti@lawyeringproject.org

Counsel for Mayor and City Council of Baltimore

CERTIFICATE OF SERVICE

I certify that on February 24, 2020, I filed the foregoing with the Clerk of the Court using the ECF System which will send notification of such filing to the registered participants identified on the Notice of Electronic Filing.

/s/ Andre M. Davis _____

Andre M. Davis
City Solicitor

CITY OF BALTIMORE
DEPARTMENT OF LAW
City Hall, Room 109
100 N. Holliday Street
Baltimore, MD 21202
443-388-2190
andre.davis@baltimorecity.gov