

**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 TO PLAINTIFF'S NOTICE OF INTENT

Defendants hereby respond to Plaintiff's March 24, 2020 Notice of Intent to File Reply on the Schedule Provided by Standing Order 2020-05, ECF No. 105. Defendants understand that Plaintiff does not intend to file its reply in support of its Rule 59(e) motion until May 15, 2020, in accordance with Standing Order 2020-05. However, Defendants respectfully renew their request that the Court rule expeditiously on Plaintiff's Rule 59(e) motion, without awaiting Plaintiff's reply, especially in light of recent developments.

On February 24, 2020, Defendants appealed to the United States Court of Appeals for the Fourth Circuit this Court's order entering partial judgment in Plaintiff's favor. ECF No. 95. Since then, the Fourth Circuit granted initial hearing of Defendants' appeal en banc and established an expedited schedule for supplemental briefing. *See* ECF No. 112. Defendants' opening

supplemental brief is due this Friday, April 10, 2020, and briefing is set to conclude on May 1, 2020.

Jurisdiction vested in the Fourth Circuit when Defendants filed their notice of appeal on February 24, 2020. However, Plaintiff's later-filed motion to alter or amend this Court's judgment under Rule 59(e) renders the government's notice of appeal temporarily ineffective while the Rule 59(e) motion remains pending. *See* Fed. R. App. P. 4(a)(4)(B)(i). Accordingly, and particularly given that briefing on Defendants' appeal is now set to conclude before Plaintiff's reply brief in this Court is due, Defendants respectfully renew their request for an expeditious ruling on Plaintiff's Rule 59(e) motion to avoid interfering with the Fourth Circuit's jurisdiction to consider the issues presented on appeal.

The Court may proceed to rule on the Rule 59(e) motion without awaiting Plaintiff's reply. It is well established that a litigant cannot use Rule 59(e) to relitigate issues that have already been argued, considered, and decided. But that is precisely what Plaintiff uses its Rule 59(e) motion to accomplish by requesting that the Court give its judgment nationwide effect notwithstanding that the Court "has been explicit that the scope of the injunction is limited to the State of Maryland." ECF No. 102 at 1 n.1. And 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 for the reasons Defendants have explained previously, *see* Defs.' Resp. in Opp'n to Pls.' Mot. to Alter or Amend the J., ECF No. 104. Defendants respectfully request that the Court deny Plaintiff's motion expeditiously, and without awaiting Plaintiff's reply, so the parties may proceed to litigate the issues on appeal before the Fourth Circuit.

Dated: April 10, 2020

Respectfully submitted,

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/s/ Bradley P. Humphreys

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 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/ Bradley P. Humphreys
Bradley P. Humphreys