

**U.S. Department of Justice**

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VIA CM/ECF

June 26, 2020

Ms. Patricia S. Connor
Office of the Clerk
United States Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: *Mayor and City Council of Baltimore v. Azar*, Nos. 19-1614 & 20-1215

Dear Ms. Connor:

We write in response to plaintiff's June 22, 2020 letter pursuant to Federal Appellate Rule 28(j) regarding *Dep't of Homeland Sec'y v. Regents of Univ. of Cal.*, No. 18-587, 2020 WL 3271746 (U.S. June 18, 2020).

Plaintiff incorrectly argues that *Regents* establishes that vacatur is a nationwide remedy. Letter 1. The Supreme Court did not resolve the question of the scope of vacatur under the APA—a question that was neither briefed nor expressly addressed in that case. Indeed, it is implausible that the Court resolved that question *sub silentio* in a footnote in *Regents*, when the Court is considering that precise question in a different case that has not yet been decided. *See Reply, Trump v. Pennsylvania*, No. 19-454 (U.S. Apr. 26, 2020). Rather, in *Regents*, the Court explained in a footnote that the Court's decision to affirm a vacatur of agency action—a decision that would have nationwide effect *as a matter of Supreme Court precedent*—rendered it unnecessary to address the scope of the particular preliminary injunctions at issue there. *Id.*, at *17 n.7.

As explained in our briefing and consistent with *Regents*, the Rule is not arbitrary and capricious because the agency adequately explained its reasons for the Rule, considered reliance interests, and weighed the costs and benefits of the Rule and alternatives. *See id.*, *9-*10, *13-*14. *Regents* confirms, rather than undermines, that conclusion. *See, e.g., id.* at *15 (noting that the APA permits an agency to “conclude that reliance interests in benefits that it views as unlawful are entitled to no or diminished weight” or determine “that other interests and policy concerns outweigh any reliance interests”).

Sincerely,

s/ Jaynie Lilley

Jaynie Lilley

Attorney

cc: all counsel (via CM/ECF)

CERTIFICATE OF COMPLIANCE

This letter complies with the word count limitation of Fed. R. App. 28(j), as its body contains 272 words as automatically totaled by Microsoft Word.

s/ Jaynie Lilley

JAYNIE LILLEY