

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023- CRC-GGK-DLF

PLAINTIFFS' RESPONSE TO DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully submit this response to Defendants' Notice of Supplemental Authority (ECF No. 82) filed earlier today. The court in *Useche v. Trump*, No. 8:20-cv-02225 (D. Md. Nov. 6, 2020), is the third consecutive three-judge panel to hold unanimously that the President's Memorandum is unlawful. Especially relevant here is *Useche*'s discussion of standing and ripeness on the basis of impending apportionment harms. *Id.*, slip. op. at 9-21.

As that court explained, "[t]here may have been a time when the government plausibly could argue that it was 'not known' whether any apportionment harm would befall the plaintiffs." But "the record now before us"—just over six weeks before the relevant statutory deadline—is very different from the record of several months ago. *Id.* at 10-11. Indeed, "the government's own [recent] sworn declarations and filings in parallel litigation" are "replete" with "evidence of concrete plans to provide the President with a number approximating the total number of undocumented immigrants in each state." *Id.* at 15.¹

¹ Since the close of briefing in this matter, Plaintiffs have supplemented the record with the same materials that the *Useche* court found decisive. See ECF No. 73, 76, 80.

On this basis, among others, the *Useche* court readily found the requisite “‘substantial risk’ that [the plaintiffs] will suffer the very apportionment harms the Memorandum is intended to inflict,” *id.* at 10, and further concluded that the case was ripe for decision, *id.* at 17-20.

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