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7 **THE DISTRICT COURT OF GUAM**
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9 GUAM CONTRACTORS ASSOCIATION, *et*
10 *al.*,

11 Plaintiffs-Petitioners,

12 vs.

13 JEFFERSON B. SESSIONS, III,
Attorney General of the United States, *et al.*,

14 Defendants-Respondents.
15

CIVIL CASE NO. 16-00075

**ORDER FOR ADDITIONAL BRIEFING;
ORDER SETTING HEARING ON
OBJECTIONS TO R&R AND MOTION
TO DISMISS**

16 Plaintiffs moved for a preliminary injunction in this case, requesting an order that their
17 visa applications on behalf of prospective employees be reopened and granted as this case makes
18 its way through the court, and the court referred the motion to the Magistrate Judge for report
19 and recommendation (“report”). *See* ECF No. 14. The Magistrate Judge has now issued his
20 report, Plaintiffs have filed objections, and Defendants have responded to the objections. *See*
21 ECF Nos. 61, 66, 67. In the interim, Defendants have also filed a motion to dismiss all of
22 Plaintiffs’ claims, contending no judicial review is available here and adding that even were
23 review available, Plaintiffs have failed to state claims for which relief may be granted. *See* ECF
24 Nos. 30, 31. Plaintiffs have since responded and Defendants have replied. *See* ECF Nos. 43, 47.

1 The court notes the responses to the report focus largely on its evaluation of Plaintiffs' likelihood
2 of success on the merits—an inquiry potentially closely linked to the court's resolution of the
3 pending motion to dismiss. In the interests of economy and informed review of the pending
4 questions, the court will hear argument on the report and the motion to dismiss at the same time.

5 Based on preliminary review of the filings associated with the pending motions, the court
6 believes additional briefing with respect to the following questions may be useful:

- 7 (1) What deference, if any, is to be given to decisions on H-2B visa applications;
- 8 (2) What deference, if any, is to be given to an interpretive rule guiding this kind of
9 decision;
- 10 (3) What deference, if any, is to be given to a change in an interpretive rule guiding this
11 kind of decision;
- 12 (4) What showing must be made to establish the existence of an interpretive rule, the
13 application of an interpretive rule, and the change of an interpretive rule;
- 14 (5) How, and when, a change in interpretive rule might appropriately account for “serious
15 reliance interests”;
- 16 (6) What constitutes a “serious reliance interest” in the context of visa applications, and
17 specifically, H-2B applications; and
- 18 (7) Whether this case, featuring claims focusing on denials of FY 2015 and FY 2016 visa
19 applications, may now be moot.

20 The parties shall **file** with the court brief answers to these questions, along with citations
21 of all relevant authority, no later than **Thursday, November 2, 2017, at 3:00 p.m.** The court
22 will **hear argument** on the objections to the report and recommendation (ECF Nos. 61, 66) and
23 the motion to dismiss (ECF No. 30) on **Thursday, November 9, 2017, at 2:30 p.m.**

24 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Oct 25, 2017