



***1.b. What effect will the new guidance have on the January 20 and February 18 Memoranda?***

Because the new guidance will supersede the January 20 and February 18 Memoranda, those Memoranda will no longer be in effect once the new guidance takes effect. *See* ICE Interim Guidance at 1 (“This interim guidance will remain in effect until Secretary Mayorkas issues new enforcement guidelines.”).

***2. Will the issuance of this new guidance impact the claims raised by the Plaintiffs in the case before this Court? If so, how?***

Defendants expect Plaintiffs’ challenge to the January 20 and February 18 Memoranda will become moot once the memoranda “expire[] by [their] own terms.” *Trump v. Int’l Refugee Assistance Project*, 138 S. Ct. 353 (2017); *Burke v. Barnes*, 479 U.S. 361, 363 (1987) (challenge to validity of bill became moot when “that bill expired by its own terms”); *Spell v. Edwards*, 962 F.3d 175, 179 (5th Cir. 2020) (finding that “a law’s automatic expiration” moots the case). Here, the memoranda by their own terms will expire and be superseded upon the Secretary’s issuance of new enforcement guidance.

The substance of the new guidance is a matter of ongoing deliberations, and the Department of Homeland Security (DHS) is not in a position to make representations about the impending guidance until it completes its deliberative process. Indeed, DHS’s experience with the interim guidance will help inform the issuance of any new guidelines. *See* Declaration of Thomas Decker, Acting Assistant Director for Field Operations for Enforcement and Removal Operations (ERO) component of ICE (May 18, 2021), ECF No. 42-6, ¶ 15 (“The interim guidance issued by Acting Director Johnson seeks to facilitate a dialogue between ICE’s field offices, senior leadership, and

DHS HQ, about what DHS's immigration enforcement priorities should be, and how they should be implemented.”).

Although Plaintiffs may challenge the new guidance and could include claims based on legal theories similar to the issues they have raised in this case, any agency action in the future necessarily “would be the result of a new proceeding on a new record.” *S. Cal. All. of Publicly Owned Treatment Works v. EPA*, 2015 WL 2358620, at \*2 (E.D. Cal. May 15, 2015) (finding claims moot even if the same issue may arise in the future because the agency action would be based on new proceedings). “Should such a subsequent dispute arise, it is a matter for another lawsuit.” *See Allied Home Mortg. Corp. v. U.S. Dep’t of Hous. & Urb. Dev.*, 618 F. App’x 781, 787 (5th Cir. 2015) (citing *Texas Office of Pub. Util. Counsel v. F.C.C.*, 183 F.3d 393, 414 (5th Cir.1999) (“We cannot assume jurisdiction to decide a case on the ground that it is the *same* case as one presented to us, when it is admitted that it is not and when it presents different issues.”)). Here, by definition, any new enforcement guidelines will present different issues as they are being developed in different circumstances than the ones at issue in this case.

***3. Do the Defendants have any additional information as to when this new guidance will be published?***

Defendants recognize that their anticipated timeline for the issuance of the new guidance is longer than their original expectation, but the deliberative process for developing the new guidance is extensive and involved. *See, e.g.*, Decker Decl. ¶ 15. The policymaking process is dynamic and is responsive to both new events and new information; new priorities may issue either before or after this current expected timeline depending on the needs of the agency and other contingencies. With that in mind, Defendants’ current expectation is that the Secretary will issue

new immigration enforcement priorities by the end of August or the beginning of September.

Defendants caution that this is only their current expectation.

Dated: June 28, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

BRIGHAM J. BOWEN  
Assistant Branch Director

/s/ Adam Kirschner

ADAM D. KIRSCHNER

Attorney-in-charge

IL Bar. No. 6286601

Senior Trial Counsel

BRIAN C. ROSEN-SHAUD

ME Bar No. 006018

MICHAEL F. KNAPP

CA Bar No. 314104

KUNTAL CHOLERA

DC Bar No. 1031523

Trial Attorneys

United States Department of Justice

Civil Division, Federal Programs Branch

Tel: (202) 353-9265

Fax: (202) 616-8460

Email: Adam.Kirschner@usdoj.gov

Brian.C.Rosen-Shaud@usdoj.gov

Michael.F.Knapp@usdoj.gov

Kuntal.Cholera@usdoj.gov

Mailing Address:

Post Office Box 883

Washington, D.C. 20044

Courier Address

1100 L Street NW, Room 11020

Washington, D.C. 20005

EREZ REUVENI

CA Bar No. 264124

Assistant Director  
U.S. Department of Justice  
Civil Division, Office of Immigration Litigation  
P.O. Box 868, Ben Franklin Station  
Washington, D.C. 20044  
202-307-4293 (telephone)  
Email: Erez.R.Reuveni@usdoj.gov

*Counsel for Defendants*

DANIEL DAVID HU  
Assistant United States Attorney  
Chief, Civil Division  
State Bar No. 10131415  
S.D. I.D. 7959  
Southern District of Texas  
1000 Louisiana, Suite 2300 Houston, TX 77002  
Tel: (713) 567-9000  
Fax: (713) 718-3300  
Daniel.Hu@usdoj.gov

*Local Counsel*

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically  
(via CM/ECF) on June 28, 2021.

/s/ Adam D. Kirschner  
ADAM D. KIRSCHNER