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July 29, 2021

By ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119
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Re: *State of Arizona v. U.S. Department of Homeland Security*, No.
21-16118, Reply to Response to Order of July 27, 2021

Dear Ms. Dwyer:

This letter constitutes defendants' reply to plaintiffs' response to the Court's order of July 27, 2021 directing the parties to address whether these proceedings should be held in abeyance pending the district court's resolution of the pending motion for reconsideration, and whether there is appellate jurisdiction over this case. At the time that plaintiffs filed their notice of appeal, defendants believe that there was uncertainty over whether plaintiffs were intending to pursue only an appeal of the district court's denial of their motion for a preliminary injunction under 28 U.S.C. § 1292(a)(1) or were also intending to pursue an appeal of the district court's dismissal of plaintiffs' complaint without prejudice under 28 U.S.C. § 1291. And as noted in the order, there would have been a serious question whether a court of appeals would have jurisdiction over such an appeal of the dismissal of plaintiffs' complaint.

Nevertheless, in light of plaintiffs' subsequent representations, defendants understand that plaintiffs only intend to pursue an interlocutory appeal under § 1292(a)(1) and believe that, with that context in mind, plaintiffs' notice of appeal should be read as limited in scope to include only the denial of the preliminary injunction. Given that limitation, defendants

agree with plaintiffs that holding these proceedings in abeyance is unnecessary and that § 1292(a)(1) provides appellate jurisdiction over such an interlocutory appeal, substantially for the reasons set forth in plaintiffs' response to the order. In addition, defendants note that, to the extent that plaintiffs eventually pursue any appeal on the merits following a final judgment while this appeal remains pending, the court may consolidate such an appeal with this appeal in the interests of efficiency and judicial economy.

Sincerely,

H. THOMAS BYRON III
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/s/ Sean Janda
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