



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW, Rm. 7260
Washington, D.C. 20530-0001

Tel: (202) 514-3388

September 1, 2021

By ECF

David J. Smith
Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth Street NW
Atlanta, GA 30303
(404) 335-6100

Re: *State of Florida v. United States of America*, No. 21-11715
(oral argument scheduled for September 24, 2021)

Dear Mr. Smith:

We write in response to appellant's August 24 letter notifying this Court of a recent decision in *Texas v. United States*, 2021 WL 3683913 (S.D. Tex. Aug. 19, 2021).

In that case, the district court preliminarily enjoined the government from implementing the priorities framework at issue here, although that injunction was stayed on August 23, 2021. The court concluded that the plaintiff States were likely to succeed on their arguments that they had standing; their claims were reviewable; and the priorities violated the APA's procedural requirements and two provisions of the INA, 8 U.S.C. §§ 1226(c) and 1231(a)(2), only the former of which is at issue in this case. The government disagrees with the district court's reasoning, and appealed the order. *Texas v. United States*, No. 21-40618 (5th Cir.). The district court issued an administrative stay to allow the court of appeals to consider the government's emergency stay motion, and the Fifth Circuit administratively stayed the order while it considers that motion.

As our response brief explained, appellant's arguments fail at every step. Florida has not demonstrated a cognizable injury sufficient for standing,

much less the irreparable harm necessary to support a preliminary injunction (Resp. Br. 17-27); the memoranda are unreviewable under the APA (Resp. Br. 27-42); and the memoranda in any event comply with the INA and the APA's procedural requirements (Resp. Br. 42-54). The *Texas* district court's contrary conclusions are incorrect. Moreover, the *Texas* court applied a different circuit's precedent, further diminishing any persuasive value.

Sincerely,

H. THOMAS BYRON III
MICHAEL SHIH

/s/ Sean Janda

SEAN JANDA

Attorneys

Civil Division, Appellate Staff

U.S. Department of Justice

950 Pennsylvania Avenue NW

Room 7260

Washington, D.C. 20530

(202) 514-3388