

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS, *et al.*,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants-Appellants.

No. 21-40618

**UNOPPOSED MOTION FOR 30-DAY EXTENSION
OF TIME TO FILE REPLY BRIEF**

Pursuant to Federal Rule of Appellate Procedure 26(b), the government respectfully moves for a 30-day extension of time, to and including February 2, 2022, in which to file its reply brief. Plaintiffs do not oppose this motion. The government respectfully requests that the Court act on this motion by December 27, 2021.

1. This appeal involves plaintiffs' challenge to portions of two memoranda issued by the then-Acting Secretary of Homeland Security and the Acting Director of U.S. Immigration and Customs Enforcement that provide interim guidance to agency officials regarding their exercise of prosecutorial discretion when enforcing the immigration laws. *See* Stay Mot. Add. 162-65, 168-74. The district court granted

plaintiffs' motion for a preliminary injunction of those interim guidelines, *see* Stay Mot. Add. 1, and defendants appealed that denial to this Court.

After the interim priorities were issued, DHS reviewed its current policies, solicited input from relevant stakeholders, and reviewed the interim priorities' effectiveness. Following that process, on September 30, 2021, DHS issued a memorandum adopting revised immigration-enforcement guidance. DHS, *Guidelines for the Enforcement of Civil Immigration Law* (Sept. 30, 2021) (Revised Guidance), <https://go.usa.gov/xe2CP>. The revised guidance became effective on November 29, 2021. *See* DHS, *DHS Begins Implementation of Immigration Enforcement Priorities* (Nov. 29, 2021), <https://go.usa.gov/key6b>. Upon that date, the guidance "rescind[ed]" the DHS and ICE memoranda at issue in this case. Revised Guidance 6.

2. The government filed its opening brief on November 8, 2021, shortly before the revised guidance became effective. On December 6, 2021, following that guidance's effective date, the government moved with the consent of the plaintiff States to voluntarily dismiss this appeal under Fed. R. App. P. 42(b). That motion remains pending. Meanwhile, on December 13, 2021, the plaintiffs filed their response brief. Under the briefing schedule currently in effect, the government's reply brief is currently due by January 3, 2022. The government respectfully requests that this deadline be extended by thirty days, to and including February 2, 2022.

3. As noted above, the government has filed a motion to voluntarily dismiss this appeal, and that motion has been consented to by plaintiffs. The Court

should grant the pending motion to dismiss promptly. When it does so, the appeal will terminate and no further briefing or other proceedings will be required. The requested extension will permit the Court additional time to consider and act on the motion before the parties and the Court expend additional resources related to the government's reply brief.

4. In addition, this additional time is necessary to allow the government adequate time to prepare and review its brief. The attorneys with principal responsibility for this matter are Michael Shih and Sean Janda, and the attorney with supervisory responsibility is H. Thomas Byron III. Given the holiday season, each of those attorneys has preplanned leave scheduled for parts of the next two weeks. In addition, each of those attorneys has recently been occupied with a number of other pressing matters. For example, Mr. Shih is responsible for *Data Marketing Partnership, L.P. v. U.S. Department of Labor*, No. 20-11179 (5th Cir.) (oral argument scheduled for January 5), *Pinto-Lugo v. United States*, No. 21-1283 (1st Cir.) (response brief due January 7, as twice extended), and many other internal matters. Mr. Janda also has recently been occupied with other pressing matters for which he has principal responsibility, including *Reyes-Caparros v. Garland*, No. 20-1792 (1st Cir.) (oral argument scheduled for January 3); *Martin v. United States* and *Marrs v. United States*, Nos. 18-1354, 21-2255 (Fed. Cir.) (combined response and reply brief due January 18); *United States v. Honeywell International, Inc.*, No. 21-5179 (D.C. Cir.) (response brief due January 19, on extension); and a number of additional internal matters. And Mr.

Byron also has supervisory responsibility on other ongoing appellate matters, including *Wikimedia v. NSA*, No. 20-1191 (4th Cir.) (response to en banc petition filed December 9); *Kordash v. United States*, No. 21-12151 (11th Cir.) (response brief filed December 13); *Humane Society of the United States v. Department of Agriculture*, No. 20-5291 (D.C. Cir.) (response brief due January 7); *Deripaska v. Yellen*, No. 21-5152 (D.C. Cir.) (response brief due January 18); and additional matters with internal deadlines.

5. Plaintiffs have stated that they do not oppose this motion.

Respectfully submitted,

H. THOMAS BYRON III
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s/ Sean Janda

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DECEMBER 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 701 words, according to the count of Microsoft Word.

s/ Sean Janda

Sean Janda