IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

THE STATE OF LOUISIANA, By and through its Attorney General, JEFF LANDRY, et al., PLAINTIFFS, v. JOSEPH R. BIDEN, JR. in his official capacity as President of the United States, et al., DEFENDANTS.	CIVIL ACTION NO. 1:21-cv-3867-DDD-JPM

PLAINTIFF STATES' MEMORANDUM IN OPPOSITION TO MOTION TO STAY

This Court should deny Defendants' motion to stay. Contrary to Defendants' representations, "courts routinely grant follow-on injunctions against the Government, even in instances when an earlier nationwide injunction has already provided plaintiffs in the later action with their desired relief." *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 485 F. Supp. 3d 1, 60 (D.D.C. 2020). At any moment, the Eleventh Circuit can vacate or stay the Georgia district court's injunction. In light of such concerns, courts have not hesitated to issue multiple nationwide injunctions against the same Executive Branch measure. Indeed, this has been a regular occurrence. *See, e.g.*, *id.* at 60 (collecting cases). Instead of staying this case, this Court should immediately enter a nationwide injunction against the Contractor Mandate.

"[T]he existence of another injunction—particularly one in a different circuit that could be overturned or limited at any time—does not negate [a State's] claimed irreparable harm." *California v. Health & Hum. Servs.*, 390 F. Supp. 3d 1061, 1066 (N.D. Cal. 2019). And courts have consistently "[r]ecogniz[ed] that 'overlapping injunctions appear to be a common outcome

of parallel litigation.'" *Whitman-Walker Clinic*, 485 F. Supp. 3d at 60. It makes sense to follow this well-established practice here because this Court has no "power over or knowledge of whether and, if so, when [the Georgia] injunction[] will be lifted or modified." *Cook Cty., Illinois v. McAleenan*, 417 F. Supp. 3d 1008, 1030 (N.D. Ill. 2019). And "[e]ven a temporary lag between the lifting of both injunctions and the entry of a preliminary injunction by this court would entail some irreparable harm to" Plaintiff States. *Id.*

As Defendants acknowledge, they are vigorously contesting the Georgia injunction in the Eleventh Circuit. Defendants have filed motions for immediate stays in both the district court and Eleventh Circuit. Defendants have also filed motions to restrict the geographic scope of the nationwide injunction. At any moment, either of those courts could issue a stay. Or they could restrict its geographic scope. *Cf. Whitman-Walker Clinic, Inc.*, 485 F. Supp. 3d at 59 ("restriction of [injunction's] geographic scope" would cause irreparable harm).

This exact scenario is why district courts have refused to stay proceedings or find irreparable harm undermined because of the existence of another nationwide injunction. *See Regeneron Pharms., Inc. v. United States Dep't of Health & Hum. Servs.*, 510 F. Supp. 3d 29, 41 n.4 (S.D.N.Y. 2020) (because another circuit "could alter the injunction at any moment," follow-on nationwide injunction appropriate to prevent plaintiff from "sustain[ing] irreparable harm immediately, before the Court could decide the merits of its claims"); *Nw. Immigrant Rts. Project v. United States Citizenship & Immigr. Servs.*, 496 F. Supp. 3d 31, 81 (D.D.C. 2020) ("Defendants have not committed to stand down in the parallel litigation, leaving the prospect that the injunction in that case could be stayed or set aside by the Ninth Circuit (or the Supreme Court)."); *Mayor & City Council of Baltimore v. Azar*, 392 F. Supp. 3d 602, 618-19 (D. Md. 2019) ("The Government argues that there is no imminent threat of irreparable harm because a nationwide injunction has

already been issued. However, the Government has also advised this Court that it is appealing the nationwide injunctions and has requested stays of the injunctions pending appeal. Should the stays be granted or the appeals succe[ed], [Plaintiff] remains at risk and is not a party to the other cases. The earlier granting of a nationwide injunction does not prevent this Court from entering an overlapping injunction if all of the preliminary injunction factors are met in this case."); *California v. Health & Hum. Servs.*, 390 F. Supp. 3d 1061, 1066 (N.D. Cal. 2019) ("[B]ecause of the routine basis upon which federal courts grant parallel injunctions and the immediacy of the harm were the nationwide injunction to be lifted, the Court finds that these arguments do not preclude granting a preliminary injunction."); *State v. Azar*, 385 F. Supp. 3d 960, 970 (N.D. Cal. 2019), *vacated on other grounds* 950 F.3d 1067 (9th Cir. 2020) ("The recent injunction issued against Defendants' implementation of the Final Rule by Judge Bastian ... does not obviate this Court's duty to resolve the dispute before it."); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 435 (E.D.N.Y. 2018), *vacated on other grounds* 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020) ("Defendants argue that Plaintiffs have not shown that irreparable harm is 'imminent, or even likely, given the preliminary injunction recently issued' in *Regents*. [] Defendants are, however, vigorously contesting that injunction before both the U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court. If Judge Alsup or the Ninth Circuit were to lift the injunction in Regents, then Plaintiffs would no doubt suffer irreparable harm. Defendants cite no authority for the proposition that Plaintiffs cannot establish irreparable harm simply because another court has already enjoined the same challenged action.").[1]

[1] For other examples of overlapping follow-on injunctions, see, e.g., *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 217 (D.D.C. Oct. 30, 2017) (granting national injunction against President Trump's transgender military rule); *Stone v. Trump*, 280 F. Supp. 3d 747, 771 (D. Md. Nov. 21, 2017) (same); *Karnoski v. Trump*, 2017 WL 6311305 (W.D. Wash. Dec. 11, 2017) (same); *Stockman v. Trump*, 2017 WL 9732572 (C.D. Cal. Dec. 22, 2017) (same); *Washington v. Azar*,

Additionally, "because this Court is governed by the law of a different circuit ... a stay or decision on the merits from the [Eleventh] Circuit ... would [not] resolve this case." *Nw. Immigrant Rts. Project*, 496 F. Supp. 3d at 81; *see also Regeneron Pharms.*, 510 F. Supp. 3d at 41 n.4 (same). And as multiple courts have found, "[i]f courts were to conclude, as Defendants suggest, that an order granting a nationwide, preliminary injunction in one district was sufficient to shut down all other, similar litigation, the resolution of important questions would be left to a single district court and to a single circuit, losing the benefit of the 'airing of competing views' on difficult issues of national importance." *Nw. Immigrant Rts. Project*, 496 F. Supp. 3d at 81 (quoting *DHS v. New York*, 140 S. Ct. 599, 600, (2020) (Gorsuch, J., concurring in the grant of stay)); *Regeneron Pharms.*, 510 F. Supp. 3d at 41 n.4 (same).

Defendants can cite only scattered examples to the contrary. But those examples are not on point for two reasons. First, when courts enter stays, it is generally because an in-circuit district court has already entered an injunction and the other court wishes to allow the circuit court to establish binding authority. *See Regeneron Pharms.*, 510 F. Supp. 3d at 41 n.4 ("By contrast, where courts have stayed proceedings, it has been pending decisions that would establish controlling authority.").[2] Second, the Eleventh Circuit's recent opinion in *Florida v. Department of Health & Human Services* provides yet another reason for entering a preliminary injunction in this case.

376 F.Supp.3d 1119 (E.D. Wash. 2019) (nationwide injunction issued against the Protect Life Rule); *Oregon v. Azar*, 389 F.Supp.3d 898 (D. Or. 2019) (same); *California v. Azar*, 385 F.Supp.3d 960 (N.D. Cal. 2019) (same); *City & Cty. of Baltimore v. Azar*, 392 F.Supp.3d 602 (D. Md. 2019) (same).

[2] Defendants cannot rely on the Southern District of Texas's stay. It is unclear why the stay was entered, only a minute entry is currently available. Minute Order of Dec. 10, 2021, *Texas v. Biden*, No. 3:21-cv-309-JVB (S.D. Tex.). It may just as well be that the Southern District is waiting on this Court, another in-circuit court, to rule. *Cf. Nw. Immigrant Rts. Project*, 496 F. Supp. 3d at 81 (noting different concerns arising from in-circuit nationwide injunctions and out-of-circuit nationwide injunctions).

2021 WL 5768796 (11th Cir. Dec. 6, 2021). There, the Eleventh Circuit specifically and extensively attacked the nationwide scope of Judge Doughty's injunction of the CMS Vaccine Mandate. *Id.* at *7 ("None of these considerations supported the nationwide injunction imposed by the Western District of Louisiana."). The court went on to reject many central premises that underly the Georgia district court's nationwide Contractor Mandate injunction, including by holding that the major question doctrine does not apply. *Id.* at *12. This hostility, in a published opinion, to both the nationwide scope of COVID-19 mandate injunctions and to the same major questions doctrine reasoning relied upon by the Georgia district court to enjoin the Contractor Mandate, *Georgia v. Biden*, 2021 WL 5779939, at *9 (S.D. Ga. Dec. 7, 2021), demonstrate an imminent threat of the Georgia court's injunction being stayed, dissolved, or narrowed.

Because the possibility of the Eleventh Circuit or Georgia court lifting the injunction represents an imminent threat of the irreparable harms cited in Plaintiff States' briefing, this Court retains its duty to resolve Plaintiff States' preliminary injunction motion. Additionally, it is hard to see how a stay would preserve judicial resources in this case. The motion is briefed. Plaintiff States have put together an extensive record. A hearing has been held. Accordingly, the motion is fully presented for decision and delay would not further judicial economy. And contrary to Defendants' representation, Plaintiff States continue to be threatened with imminent irreparable harm absent a ruling. *See supra*; *see also Texas v. Brooks-LaSure*, No. 6:21-CV-00191, 2021 WL 5154219, at *4 (E.D. Tex. Aug. 20, 2021) ("[I]n the analogous context of one district court issuing a stay pending review of an action under review by another district court, the federal government itself has recognized that the stay in one case does 'not moot' the other case.").

In sum, the Georgia district court's nationwide injunction does not obviate this Court's duty to decide Plaintiff States' preliminary injunction motion.

Respectfully submitted,

Dated: December 13, 2021

/s/ Elizabeth B. Murrill

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**Pro Hac Vice admission application forthcoming*