

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO**

STATE OF ARIZONA; STATE OF	:	
MONTANA; and STATE OF OHIO,	:	
<i>Plaintiffs,</i>	:	Case No. 3:21-cv-314
	:	
v.	:	Judge Michael J. Newman
JOSEPH R. BIDEN, et al.,	:	
<i>Defendants.</i>	:	
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**PLAINTIFFS’ OPPOSITION TO ADMINISTRATIVE STAY**

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The States of Ohio, Arizona, and Montana oppose DHS’s motion for an administrative stay. There are three principal reasons why.

*First*, while DHS says it needs a couple of weeks to review its options, it has no valid excuse for having been caught flatfooted. The States brought this case in November, meaning DHS had four months to prepare for a preliminary injunction. Further, the Southern District of Texas had previously enjoined the Permanent Guidance’s predecessor policy, *see Texas v. United States*, — F. Supp.3d —, 2021 WL 3683913, at \*2 (S.D. Tex., Sept. 15, 2021), and a challenge to the Permanent Guidance has been pending in the same court for months, *see Op.*, R.44, PageID#1080. DHS could not have been, or at least *should not* have been, unprepared for an adverse decision.

*Second*, DHS does not need two weeks to wind down its illegal conduct. All the Court’s opinion does is enjoin DHS from imposing non-statutory barriers in the way of ICE officials who would otherwise arrest criminal aliens under 8 U.S.C. §1226(c)(1) or remove aliens with final orders of removal under 8 U.S.C. §1231(a). DHS responded to an injunction of an earlier policy

with an email directing a return to normal operations. R.4-4, PageID#149 (“Accordingly, until further notice, in order to comply with the TRO, U.S. Immigration and Customs Enforcement employees should return to normal removal operations as prior to the issuance of the January 20, 2021 memorandum.”) It can do the same thing here.

*Finally*, DHS is estopped from arguing that the Court’s injunction causes it any hardship. In its briefing before this Court, it represented that an injunction would not meaningfully affect its operations. R.29, PageID#708. It cannot now claim otherwise.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system.

*/s/ Benjamin Flowers*

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