



**U.S. Department of Justice**  
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June 9, 2022

**Via CM/ECF**

Deborah S. Hunt, Clerk of Court  
U.S. Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, OH 45202

RE: *Arizona v. Biden*, No. 22-3272

Dear Ms. Hunt:

We respond to plaintiffs' letter of June 8, 2022. Contrary to plaintiffs' assertions, the fact that DHS operates with severely limited resources is not a "problem[] of its own making." Letter 2. Congress has never appropriated sufficient resources for any Administration to enforce the Nation's immigration laws as plaintiffs construe them. *See* Opening Br. 42.

The COVID-related injunction cited by plaintiffs, *see Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. Apr. 20, 2020), is just one of many constraints on DHS. As explained in the paragraph of the Bible Declaration on which plaintiffs rely, the *Fraihat* injunction is only one of several limitations on available beds that have resulted from the ongoing pandemic. Stay Mot. Add. A129. And neither the pandemic in general nor the *Fraihat* injunction in particular is the reason that, as plaintiffs concede, "DHS has limited resources and is probably incapable" of arresting, detaining, and removing every noncitizen described by §§ 1226(c) and 1231(a). Resp. Br. 43. That was the case before the pandemic began; the pandemic (and the injunction) merely exacerbated a longstanding resource constraint.

In any event, there is no merit to plaintiffs' criticism of DHS's litigation decisions in *Fraihat*. As discussed in the extension motion to which plaintiffs refer, the government is currently in mediation with the *Fraihat* plaintiffs, who do not intend to seek any further extensions. Although we cannot comment on

the substance or status of that mediation, the government's efforts to resolve the case without further litigation do not remotely reflect a "disinterest in using the agency's available resources to fulfill its duties." Letter 1.

Sincerely,

/s/ Sean R. Janda  
Sean R. Janda

cc: All counsel (via CM/ECF)

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2022, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

*s/ Sean R. Janda*  
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Sean R. Janda