



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW
Washington, DC 20530

Tel: (202) 514-3388

June 14, 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 13, 2022, regarding the nationwide vacatur order entered in *Texas v. United States*, No. 21-cv-16 (S.D. Tex., June 10, 2022). The federal government strongly disagrees with the district court's reasoning and has appealed the order to the Fifth Circuit. The government has also filed an emergency motion asking the Fifth Circuit to stay the order pending appeal.

Plaintiffs state that, if permitted to conduct discovery, they "anticipate developing evidence similar to that which was developed by the plaintiffs in *Texas*." June 13 Letter, at 1. But the *Texas* plaintiffs' evidence—which is not in the record here—does not suffice to overcome any of the multiple independent grounds on which plaintiffs' claims fail, as our papers in that case explain. Among other things, no evidentiary showing can overcome the reality that §§ 1226(c) and 1231(a) do not "create[] a judicially enforceable mandate that [DHS] arrest or remove certain noncitizen." *Arizona v. Biden*, 31 F.4th 469, 480 (6th Cir. 2022).

The vacatur order also illustrates the fundamental unfairness of the nationwide relief that plaintiffs seek. If the Fifth Circuit does not stay the district court's order vacating DHS's enforcement guidance nationwide, a district court in Texas will have usurped this Court's prerogative to decide whether the guidance should apply within the borders of the States that are plaintiffs here, who

are not parties to the *Texas* case. And if the Fifth Circuit *does* stay the vacatur order, two other groups of plaintiffs seeking nationwide relief are waiting in the wings. See *Coe v. Biden*, No. 3:21-cv-168 (S.D. Tex.); *Alabama v. Mayorkas*, No. 4:22-cv-418 (N.D. Ala.). The government’s “hope of implementing” the enforcement guidance must therefore “face the long odds of a straight sweep,” as “[a] single loss” means that the guidance will “go on ice[.]” *Department of Homeland Sec. v. New York*, 140 S. Ct. 599, 601 (2020) (mem.) (Gorsuch, J., concurring). That result is antithetical to the rule of law. See *Arizona v. Biden*, 31 F.4th 480, 485 (6th Cir. 2022) (Sutton, C.J., concurring).

Sincerely,

/s/ Sean R. Janda
Sean R. Janda

cc: All counsel (via CM/ECF)