



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

Tel: (202) 514-3388

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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 30, 2022. The Supreme Court's recent decision in *Biden v. Texas*, No. 21-954 (June 30, 2022), supports the federal government in two principal respects.

First, *Texas* makes clear that the district court lacked authority to enjoin DHS's immigration-enforcement guidance. The Court reaffirmed that 8 U.S.C. § 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out" certain INA provisions, including 8 U.S.C. §§ 1226 and 1231. Slip Op. 8 (quoting *Garland v. Aleman Gonzalez*, No. 20-322, Slip Op. 5). And the Court held that the district court's injunction in that case "violated" § 1252(f)(1). Thus, the injunction at issue here—which was premised on the theory that the enforcement guidance violates §§ 1226 and 1231—is "barred" by § 1252(f)(1).

Second, *Texas* emphasized, as a reason for rejecting respondents' suggestion that a different INA provision imposed a mandatory and judicially enforceable mandate on the Executive, the "novelty of respondents' interpretation." Slip Op. 16. Plaintiffs' novel interpretation of §§ 1226 and 1231 is similarly flawed.

Plaintiffs wrongly contend that *Texas* held that any internal agency directive that binds agency personnel is final agency action. As the *Texas* Court explained, the October 29 termination of the Migrant Protection Protocols

(MPP) was final not only because it marked the consummation of the agency’s decision-making process but also because it determined the rights and obligations of regulated entities. Slip Op. 20. Specifically, the agency barred officers from returning certain noncitizens to Mexico pursuant to MPP to await the result of their removal proceedings. Slip Op. 2. By contrast, the enforcement guidance does not alter any noncitizen’s legal rights or obligations. An action with no legal effect “on regulated entities” does not become final simply because it provides “instruction[s] to [agency] staff.” *National Mining Ass’n v. McCarthy*, 758 F.3d 243, 250-53 (D.C. Cir. 2014).

Sincerely,

/s/ Sean R. Janda
Sean R. Janda

cc: All counsel (via CM/ECF)