

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS, STATE OF LOUISIANA)	
)	
v.)	No. 6:21-cv-00016
)	
UNITED STATES OF AMERICA, <i>et al.</i>)	
)	
Defendants.)	
)	

DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants submit this notice to advise the Court of a recent unanimous opinion from the U.S. Court of Appeals for the Sixth Circuit related to the issues in this case. As the Court is aware, a district court for the Southern District of Ohio entered a preliminary injunction partially enjoining the government from relying on the September Guidance. *See* Pls.’ Notice of Suppl. Auth. (ECF No. 226) (citing *Arizona v. Biden*, --- F.Supp.3d ----, No. 3:21-cv-314, 2022 WL 839672 (S.D. Ohio Mar. 22, 2022)). On April 12, 2022, the Sixth Circuit granted the governments’ motion to stay the preliminary injunction pending appeal. Order, *Arizona v. Biden*, No. 22-3272 (6th Cir. April 12, 2022) (attached). The Sixth Circuit, in an opinion by Chief Judge Sutton, reasoned (1) that the States likely lacked standing, *id.* at 5-8; (2) that the September Guidance likely is unreviewable under the Administrative Procedure Act because it is not final agency action, *id.* at 9-12; (3) that, even if it were reviewable, Defendants were likely to prevail on the merits because (a) the September Guidance likely is not “contrary to law,” *id.* at 12-15; (b) the September Guidance likely is not “arbitrary or capricious,” *id.* at 15-16; and (c) the September Guidance likely was not required to undergo notice-and-comment procedures, *id.* at 16. For the Court’s convenience, Defendants are attaching a copy of the Sixth Circuit’s opinion to this filing.

Date: April 13, 2022

Respectfully submitted.

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

BRIGHAM J. BOWEN
Assistant Branch Director

/s/ Adam Kirschner (by permission)

ADAM D. KIRSCHNER

Attorney-in-charge
IL Bar. No. 6286601
Senior Trial Counsel

BRIAN C. ROSEN-SHAUD

ME Bar No. 006018

MICHAEL F. KNAPP

CA Bar No. 314104

KUNTAL CHOLERA

DC Bar No. 1031523

Trial Attorneys

United States Department of Justice
Civil Division, Federal Programs Branch

Tel: (202) 353-9265

Fax: (202) 616-8460

Email: Adam.Kirschner@usdoj.gov

Brian.C.Rosen-Shaud@usdoj.gov

Michael.F.Knapp@usdoj.gov

Kuntal.Cholera@usdoj.gov

Mailing Address:

Post Office Box 883

Washington, D.C. 20044

Courier Address

1100 L Street NW, Room 11020

Washington, D.C. 20005

EREZ REUVENI

CA Bar No. 264124

Assistant Director

U.S. Department of Justice

Civil Division, Office of Immigration Litigation

P.O. Box 868, Ben Franklin Station

Washington, D.C. 20044

202-307-4293 (telephone)

Email: Erez.R.Reuveni@usdoj.gov

Counsel for Defendants

DANIEL DAVID HU
Assistant United States Attorney
Chief, Civil Division
State Bar No. 10131415
S.D. I.D. 7959
Southern District of Texas
1000 Louisiana, Suite 2300 Houston, TX 77002
Tel: (713) 567-9000
Fax: (713) 718-3300
Daniel.Hu@usdoj.gov

Local Counsel

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically
(via CM/ECF) on April 13, 2022.

/s/ Michael F. Knapp
MICHAEL F. KNAPP