**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

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| The STATE OF TEXAS, *et al.*, | ) | |
| *Plaintiffs,* | ) | |
| v. | ) | Civil Action No. 3:22-cv-00780-M |
| JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*, | ) | |
| *Defendants.* | ) | |

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants write to notify the Court of *Arizona v. Garland*, No. 6:22-cv-1130, 2024 WL 1645417 (W.D. La. Apr. 16, 2024), a recent decision concerning the Article III standing of states to challenge federal immigration policies. In that case, 19 states challenged an Interim Final Rule (IFR) altering asylum-processing procedures for certain noncitizens demonstrating a credible fear of persecution. *Procedures for Credible Fear Screening and Consideration of Asylum*, 87 Fed. Reg. 18078 (Mar. 29, 2022). The States there raised standing arguments very similar to those Plaintiff States raise in this case. After allowing jurisdictional discovery, the *Arizona* court evaluated whether the States could show evidence of harm, as required in a factual attack on standing. Even though those plaintiffs submitted far more evidence than Texas provided in this case, the court concluded the States could not show harm traceable to the IFR and dismissed the case for lack of Article III standing. 2024 WL 1645417 at *16.

In assessing standing, the *Arizona* court first found the plaintiffs were "required to submit facts through some evidentiary method" and had "the burden of proving by a preponderance of the

evidence that the trial court has subject matter jurisdiction" because discovery was permitted and Defendants advanced a "factual attack" on jurisdiction. *Id.* at *4. *Arizona* then applied the standard requiring the plaintiffs to show "a concrete and particularized injury that is either actual or imminent," "fairly traceable" to the IFR, and would be "redressed by a favorable decision." *Id.* at *9 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The court noted that "'harm' in the immigration context is understood and evaluated as 'relative to the status quo, and relative to Plaintiff's position absent the challenged policy.'" *Id.* at *11 (citing *Texas v. DHS*, No. 6:23-CV-00007, 2024 WL 1021068 (S.D. Tex. Mar. 8, 2024) (finding Texas lacked standing to challenge certain DHS policies)). The court held that a plaintiff may not simply rely on its pleadings in a factual attack on standing but rather must establish that "the number of aliens, and the associated costs attributable to them, increased relative to those same numbers prior to the implementation of the challenged program." *Id*. The court clarified that standing turned not on "whether the Plaintiff States have been harmed by the cumulative effect of this administration's immigration policies" but "whether the Asylum IFR, specifically, has caused an economic injury in fact" to the states. *Id.* at *12.

Plaintiffs in *Arizona* relied on alleged injuries to Louisiana and Florida to assert standing. The court concluded neither state had shown harm attributable to the IFR. Louisiana was unable to show any noncitizens processed under the IFR had used state services or caused additional costs to the state and, like Texas's inability to trace any alleged costs to parolees under Central American Minors (CAM) program, Louisiana was unable to "produce[ ] data or statistics showing that it has sustained any specific monetary cost … on behalf of aliens processed under the Asylum IFR." *Id.* The court similarly noted Florida could not point to any evidence of additional costs for education, healthcare, or other state services for noncitizens processed under the IFR. *Id*. at *13-14. Key to

the court's analysis was Florida's concession, like Texas regarding CAM parolees here, ECF No. 123 at 19, that the state does not track the immigration status of its service recipients in a way that would let it determine whether any had been granted asylum or parole under the IFR. *Arizona*, 2024 WL 1645417 at *13.

The *Arizona* court found the 19 plaintiff states "lack[ed] standing to bring their claims challenging the Asylum IFR" because even "where the Asylum IFR's asylum-adjudication procedures have been applied, the Rule has not resulted in a higher rate of positive credible fear findings or asylum grants by asylum officers," and the states were "unable to otherwise demonstrate increased costs attributable to the implementation of the Asylum IFR relative to their costs before the Asylum IFR was implemented." *Id.* at 14. Because Texas, on behalf of Plaintiff States here, has been unable to demonstrate any increased state costs attributable to the reimplementation of the CAM parole program, the Court should similarly dismiss this case for lack of standing.

Date: April 19, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2024, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which provided an electronic notice and electronic link of the same to all attorneys of record.

By: */s/ Joseph A. Darrow*
JOSEPH A. DARROW
United States Department of Justice