



U.S. DEPARTMENT OF JUSTICE

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VIA ELECTRONIC CASE FILING

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103
(415) 355-8000

Re: *Garner, et al. v. Biden*, No. 21-15587

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j) and Ninth Circuit Rule 28-6, Appellee President Joseph R. Biden, Jr., submits this response to appellants' Rule 28(j) letter filed on January 28, 2022.

Appellants' letter cites eight court decisions. Each of those decisions involved a challenge to a federal regulation or executive order. *See Biden v. Missouri*, 142 S. Ct. 647 (2022) (per curiam) (upholding regulation issued by Department of Health & Human Services); *Nat'l Fed. of Independent Business v. Dep't of Labor*, 142 S. Ct. 661 (2022) (per curiam) (challenge to emergency rule issued by Department of Labor); *Texas v. Biden*, 20 F.4th 928 (5th Cir. 2021) (challenge to Migrant Protection Protocols created by the Department of Homeland Security); *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (challenge to executive order); *Feds for Medical Freedom v. Biden*, -- F. Supp. 3d --, 2022 WL 188329 (S.D. Tex. Jan. 21, 2022) (challenge to two executive orders); *Louisiana v. Biden*, -- F. Supp. 3d --, 2021 WL 2446010 (W.D. La. June 15, 2021) (challenge to executive order); *Mayor & City Council of Baltimore v. Trump*, 416 F. Supp. 3d 452 (D. Md. 2019) (challenge to revisions of State Department's Foreign Affairs Manual); *Aziz v. Trump*, 234 F. Supp. 3d 724 (E.D. Va. 2017) (challenge to executive order). For that reason, those decisions are inapposite to this appeal. The injuries appellants allege here do not arise from any action taken by the President or a federal agency. *See Ans. Br. at 2-7, 11-16.*

Respectfully submitted,

PHILLIP A. TALBERT
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By: /s/ Philip A. Scarborough
PHILIP A. SCARBOROUGH
Assistant United States Attorney

cc: All counsel of record via ECF