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Biden Admin. Ditches Texas, Ariz. Immigration Deals With DHS

By **Jennifer Doherty**

Law360 (February 4, 2021, 9:41 PM EST) -- The U.S. Department of Homeland Security has renounced agreements requiring it to consult with Texas and Arizona before making changes to its immigration enforcement activities after the states expressed opposition to a 100-day pause on most deportations.

In a Feb. 2 letter made public on Wednesday, former DHS acting Secretary David Pekoske told Arizona Attorney General Mark Brnovich that the department had no interest in upholding the Sanctuary for Americans First Enactment, or SAFE, an agreement the department entered into with Arizona in the last days of the Trump administration.

The letter became public as an exhibit attached to Brnovich's Wednesday **complaint** against the department.

"The document is void, not binding, and unenforceable. ... This letter also provides notice, on behalf of DHS, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services, that DHS, CBP, ICE and USCIS rescinds, withdraws, and terminates the document, effective immediately," Pekoske wrote.

DHS shared an identical letter Pekoske issued to Texas Attorney General Ken Paxton, also dated Feb. 2, with Law360 on Thursday. In both letters, DHS referenced a memorandum it filed last month in the Texas case, asserting that the power the deals gave to the states — and took away from the department — to control immigration policy was "beyond the power of contract" and outside the scope of any federal statute.

The judge in the Texas case **blocked** the deportation pause nationwide for two weeks starting Jan. 26, but has so far declined to weigh in on the legitimacy of the DHS deal.

In his complaint, Brnovich characterized the letter from Pekoske as "completely refusing to engage in any consultative process" or "provide any further reasoning as to why DHS adopted the 100-day pause."

A representative for the Arizona attorney general's office pointed to the agreement itself as the reason why the state's complaint did not reference DHS' renunciation in its complaint. The SAFE agreement outlines a 180-day notice period before any party can unilaterally terminate the deal.

"DHS seems to be trying to focus on the SAFE agreement because it does not want to address its disregard of federal law," spokesperson Katie Conner told Law360 on Thursday.

Pekoske issued his letter to Brnovich the same day Alejandro Mayorkas took over DHS as the first **Senate-confirmed** official to lead the department in almost two years.

Former acting DHS Secretary Chad Wolf, the Trump administration official in charge of the department at the time DHS entered into the agreements with Texas and Arizona, and Ken Cuccinelli, the former senior DHS official who signed them, came under fire last year after the U.S. Government Accountability Office determined that they occupied their posts **unlawfully**.

Multiple federal judges have rolled back Trump-era immigration policy based on Wolf's and Cuccinelli's involvement in the six months since the GAO report came out.

The government had not yet responded to Brnovich's complaint as of Thursday afternoon.

Earlier in the day, the judge assigned to the case, U.S. District Judge Douglas L. Rayes, an Obama appointee, recused himself without specifying a reason.

The case was randomly reassigned to Magistrate Judge Eileen S. Willett.

A representative for Judge Rayes did not respond to a request for comment and the clerk of court for the District of Arizona declined to comment beyond the contents of the recusal order.

Arizona is represented by Joseph A. Kanefield, Brunn W. Roysden III, Drew C. Ensign, Anthony R. Napolitano and Robert Makar of the Arizona Attorney General's Office.

Counsel information for the government was not immediately available Thursday.

The case is the State of Arizona et al. v. U.S. Department of Homeland Security et al., case number 2:21-cv-00186, in the U.S. District Court for the District of Arizona.

--Editing by Bruce Goldman.

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