Twitter Thread by César



César
@crimmigration

I just read the federal court's decision to stop the 100-day deportation pause. The court granted a temporary restraining order blocking the Biden administration from implementing its 100-day deportation pause. The TRO applies for 14 days.

The court concluded that Texas is likely to win its argument that the pause 1) violates the Immigration & Nationality Act's requirement that migrants ordered removed from the USA be removed within 90 days, and...

2) DHS acted arbitrarily & capriciously by suddenly shifting immigration policy from the prior administration.

As a preliminary matter, the court found that Texas has standing to sue because it provided evidence "of damage to its public fisc by causing it to increase its spending on public services to illegal aliens."

In particular, the court pointed to state expenses on emergency Medicaid, the Family Violence Program, the state's health insurance program for children, and educational costs.

The court was also swayed by the state's claim that the 100-day pause would impose costs on Texas "because of those who may find their way to Texas from other states in the near future."

On the first substantive point, the court jettisoned existing regulations and procedures that inject flexibility into the removal process.

Instead, the court says that federal law "clearly accords no discretion to the Attorney General to blatantly disregard the 90-day removal rule without finding that an enumerated exception applies."

Because DHS has no discretion to ignore this requirement, the January 20 Memo "appearing to do so is reviewable."

On the second point, the court acknowledged DHS did provide some reasons for adopting a pause on removals, from Covid-19 to "operational challenges at the southwest border."

However, the court found that DHS acted arbitrarily and capriciously by failing to provide a reasoned explanation for choosing 100 days. In the court's words, "DHS did not state or explain why 100 days specifically is needed to accomplish these goals."

Since the court found that unauthorized migrants might move to Texas from other states, it concluded that a nationwide injunction was appropriate.

As the court put it, "many individuals who are subject to an order of removal in other states whose removal is delayed or ultimately deferred may migrate to Texas."

The court did not decide this based on the weird agreement that the Trump DHS entered into with Texas. That's interesting because that was the basis of the lawsuit. Instead, the court turned to standard administrative law doctrine.

It took issue with the blanket pause & downplayed the 4 exemptions listed in the January 20 memo. In this way, the decision reminds me of the challenges against DACA, which shouldn't come as a surprise given that Paxton is also leading that effort.