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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

State of Arizona; State of Montana; and
Mark Brnovich, in his official capacity as
Attorney General of Arizona,

Plaintiffs,

v.

United States Department of Homeland
Security; United States of America;
Alejandro Mayorkas, in his official
capacity as Secretary of Homeland
Security; Troy Miller, in his official
capacity as Acting Commissioner of
United States Customs and Border
Protection; Tae Johnson, in his official
capacity as Acting Director of United
States Immigration and Customs
Enforcement; and Tracy Renaud, in her
official capacity as Acting Director of U.S.
Citizenship and Immigration Services,

Defendants.

No. 2:21-cv-00186-SRB

**MOTION FOR PRELIMINARY
INJUNCTION**

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INTRODUCTION

States, including Arizona and Montana, necessarily must depend on the federal government to enforce the immigration laws and protect against the negative impacts of unlawful immigration on public safety, public health, and government finances. The federal government, to the exclusion of the States, “has broad, undoubted power over the subject of immigration and the status of aliens.” *See Arizona v. United States*, 567 U.S. 387, 394-95 (2012). Given the States’ compelled reliance on the federal government in the immigration context, Congress unsurprisingly has enacted measures to ensure the executive branch actually takes steps to enforce federal immigration law. One such requirement is the mandate that the Secretary of Homeland Security “shall remove” an alien within 90 days after a final order of removal. *See* 8 U.S.C. § 1231(a)(1)(A). And the strains that COVID-19 has put on States heighten the need for federal protection as required by law, so that healthcare systems and jails are not further burdened by failures in the immigration system at this perilous time.

But to Defendants, the unambiguous “shall” command in § 1231 actually means essentially “won’t.” The Acting DHS Secretary effected a major policy change on the new administration’s first day in office through a memorandum titled “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities.” Exhibit A (the “Memorandum”).¹ Section C established an “immediate pause on removals of any noncitizen with a final order of removal (except as noted [in the Memorandum]) for 100 days to go into effect as soon as practical and no later than January 22, 2021.” *Id.* at 3 (the “Removal Moratorium”). Statutory violations are rarely so plain as reading “shall” to mean “shall not.”

Equally plain are Defendants’ patent violations of the Administrative Procedure Act (“APA”). As an initial matter, the Removal Moratorium is self-evidently a rule issued without notice and comment, and does not even attempt to invoke the good-cause exception (which must be asserted contemporaneously with the rule). The Removal

¹ Exhibits A-K are filed in this matter at Dkt. 12-1. Pursuant to LRCiv 7.1(d)(1), Dkt 12-1 Exhibits A-K are incorporated herein and will not be refiled.

1 Moratorium is thus invalid on that basis alone.

2 Even more striking, DHS's decision-making was so slipshod that it cannot state
3 *who* actually made the decision at issue. Specifically, DHS has been forced to admit that
4 it does not even know who "authored" the Memorandum prior to its issuance.² It is clear
5 from administrative record, however, that the unknown decision-maker did not engage
6 in *any* prior consultation with *anyone*—inside or outside the federal government—about
7 the anticipated effects and costs of the Removal Moratorium, including the number of
8 aliens with final removal orders who will be released from ICE custody and the
9 detrimental impacts on public safety, health, and state and local finances from such
10 releases. *See* Admin. Record at AR_000001-7, *Texas v. United States*, No. 6:21-cv-
11 00003 (S.D. Tex. Feb. 3, 2021), ECF No. 59-1 (hereinafter Admin. Record). It is
12 uncertain whether any federal court ever encountered this particular species of arbitrary-
13 and-capricious decision-making in the modern era, where the parties cannot even
14 identify *who* made the decision, let alone what that person's reasoning was.

15 Even if anyone were willing to acknowledge their authorship of the Removal
16 Moratorium, it would remain substantively indefensible. The administrative record here
17 is paper-thin: literally just seven pages in the Texas suit, consisting of just the Biden
18 Executive Order and the Memorandum itself. This flimsy record is fatal since it is a
19 "fundamental rule of administrative law ... that a reviewing court ... must judge the
20 propriety of [agency] action solely by the grounds invoked by the agency." *SEC v.*
21 *Chenery Corp.*, 332 U.S. 194, 196 (1947). Here, the administrative record has no
22 genuine reasoning, and Defendants accordingly have no genuine defense.

23 Undoubtedly recognizing that the initial Removal Moratorium is legally
24 untenable, Defendants have begun *post hoc* patching of the Order's most obvious
25 deficiencies, but those efforts are both too little and too late. Specifically, on February
26

27 ² It further has had to "acknowledge[] that the .pdf version of the [Memorandum] on the
28 DHS website purports to identify Esther M. Olavarria as an 'author' of the document" but
claims to "lack[] knowledge as to what role, if any, Ms. Olavarria had," other than
vaguely stating she "provid[ed] substantive input." Ms. Olavarria appears to be a White
House staffer, not anyone working at DHS.

18, 2021, the Acting Director of ICE then issued “Interim Guidance” that purported to supersede the Memorandum to the extent the two conflict. *See* Exhibit G at 1. But this Interim Guidance was simply an attempt to quickly paper over the sparse administrative record without changing the Removal Moratorium’s substance. It further cannot cure the illegalities of the initial Removal Moratorium—which remains in place today—since it is clearly pretextual in nature. *See Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2573 (2019) (uncontested that decision resting on “pretextual basis” “warrant[s] a remand to the agency”). Whatever reasoning Defendants belatedly offer, it is obvious that the true *and sole* reason for the Removal Moratorium is simply “because the White House told us to do so.” And it still is insufficient substantive reasoning if accepted at face value (to say nothing of the still uncured notice-and-comment violation).

This Court should preliminarily enjoin the Removal Moratorium (including as embodied in the Interim Guidance).³ Plaintiffs are likely to prevail on their claims for four reasons. **First**, the Removal Moratorium is arbitrary and capricious under 5 U.S.C. § 706(2)(A), because DHS did not consider harms and alternatives to a nearly blanket pause on removals that would still allow it to effect its stated goal of comprehensively reviewing enforcement policies and priorities. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020) (*Regents*); *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 51 (1983) (*State Farm*).

Second, the Removal Moratorium squarely violates the APA’s notice-and-comment requirement for rulemaking, *see* 5 U.S.C. §§ 553, 706: it plainly is a legislative rule and Defendants have not even tried to invoke the good-cause exception.

Third, the Removal Moratorium is contrary to law in violation of 5 U.S.C. § 706(2)(A), (C). Many aspects of our immigration system afford “broad discretion [to] immigration officials.” *Arizona*, 567 U.S. at 396. But this case does not arise in one. Nor is the Removal Moratorium an exercise of discretion in any sense of that word; rather, it is a prohibition on immigration officials’ exercising their discretion, and it

³ Except as otherwise noted, “Removal Moratorium” herein refers both to that moratorium in the Memorandum and in the subsequent Interim Guidance.

1 establishes a policy to violate 8 U.S.C. § 1231(a)(1)(A)’s unequivocal mandate to
 2 process final orders of removal within 90 days. And while this “pause” purports to be
 3 for 100 days, there is no explanation provided why it could not be extended.

4 **Fourth**, even if the Removal Moratorium is not subject to notice-and-comment
 5 rulemaking, DHS agreed to “consult [Plaintiffs] and consider [their] views before taking
 6 any action ... that could: ... pause or decrease the number of returns or removals of
 7 removal or inadmissible aliens from the country.”⁴ The Agreements contain an express
 8 severability clause, Ex. C at 6 and Ex. H at 6, and at minimum DHS can be held to
 9 “[c]onsider[ing]” Plaintiffs input and “provid[ing] a detailed written explanation of the
 10 reasoning behind any decision to reject [that] input before taking any action.” *Id.* at 4.

11 Plaintiffs are also able to establish the other factors warranting injunctive relief.

12 **FACTUAL BACKGROUND**

13 On January 20, 2021, Acting Secretary Pekoske issued the Removal Moratorium
 14 “directing an immediate pause on removals of any noncitizen with a final order of
 15 removal (except as noted below) for 100 days.” Ex. A at 3 (footnote omitted).

16 The Removal Moratorium includes only four narrow exceptions. “The pause on
 17 removals applies to any noncitizen present in the United States when [the Memorandum]
 18 takes effect with a final order of removal except one who:

- 19 1. According to a written finding by the Director of ICE, has engaged in or is
 20 suspected of terrorism or espionage, or otherwise poses a danger to the
 national security of the United States; or
- 21 2. Was not physically present in the United States before November 1, 2020; or
- 22 3. Has voluntarily agreed to waive any rights to remain in the United States,
 23 provided that he or she has been made fully aware of the consequences of
 waiver and has been given a meaningful opportunity to access counsel prior
 to signing the waiver; or
- 24 4. For whom the Acting Director of ICE, following consultation with the
 25 General Counsel, makes an individualized determination that removal is
 required by law.”

26 *Id.* at 3-4 (footnote omitted). The Memorandum provided that the Removal Moratorium

27 ⁴ See Agreement Between DHS and the Arizona Attorney General’s Office and the
 28 Arizona Department of Law (the “AZ Agreement”), Ex. C at 3-4; Agreement Between
 DHS and the State of Montana, CITE (the “MT Agreement”). The AZ Agreement and
 MT Agreement are collectively referred to as the “Agreements.”

1 will “go into effect as soon as practical and no later than January 22, 2021.” *Id.* at 3.
2 When in effect, the Removal Moratorium prohibits immigration officials from carrying
3 out any other removals even after the issuance of final removal orders.

4 DHS made no attempt to follow the APA’s notice-and-comment procedures in
5 issuing the Memorandum/Removal Moratorium. Indeed, the Acting Secretary (in whose
6 name the memorandum was issued) did not solicit Plaintiffs’ (or anyone else’s) input
7 regarding the effects of the Removal Moratorium or alternatives to that moratorium. *See*
8 Admin. Record at AR_000001-7.⁵ That seven-page record consists in its entirety of
9 Executive Order 13993 and the Memorandum. Executive Order 13993 does not itself
10 call for any sort of 100-day pause on processing removals pursuant to 8 U.S.C. § 1231.
11 Instead, it provides “(a) Nothing in this order shall be construed to impair or otherwise
12 affect (i) the authority granted by law to an executive department or agency, or the head
13 thereof” and “[t]his order shall be implemented consistent with applicable law.” *Id.* at
14 AR_000001. As for the Memorandum, it does not consider any of the significant harms
15 that Plaintiffs will likely face as a result of DHS largely suspending the removal of
16 aliens with final removal orders. *See id.* at AR_000003-7. Nor did it provide a reasoned
17 explanation for the sudden change in DHS policy or why 100 days, as opposed to 50,
18 200, or some other number of days, was necessary for DHS’s stated goal of
19 comprehensively reviewing enforcement policies and priorities. *See id.*

20 DHS previously entered into the AZ Agreement with the Arizona Attorney
21 General’s Office and Arizona Department of Law, which are agencies of Plaintiff State
22 of Arizona under the direction and control of Plaintiff Arizona Attorney General
23 Brnovich. *See* Exhibit C. DHS also previously entered into the MT Agreement with
24 Governor Greg Gianforte and Montana Attorney General Austin Knudsen. Exhibit H.

25 ⁵ DHS had to admit that even looking outside of the administrative record, the Acting
26 Secretary consulted only with his Chief of Staff, two Deputy Chiefs of Staff, the
27 Assistant Secretary for Border Security and Immigration Policy, and two members of the
28 Biden-Harris Transition’s “DHS Agency Review Team.” Exhibit 19 to Reply In Support
of Preliminary Injunction at 4-5, *Texas v. United States*, No. 6:21-cv-00003 (S.D. Tex.
Feb. 16, 2021), ECF No. 84-1. In other words, the Acting Secretary did not even directly
consult with the Acting Director of ICE before imposing a Removal Moratorium that
effectively prohibits ICE’s exercise of discretion in carrying out removals.

1 DHS did not follow the procedures outlined in the Agreements before issuing the
 2 Memorandum. Among other things, DHS did not notify Plaintiffs that it was
 3 considering such changes, did not consult with Plaintiffs about such changes, and did not
 4 provide an explanation in writing rejecting Plaintiffs' input about such changes.⁶

5 On January 26, 2021, the U.S. District Court for the Southern District of Texas
 6 issued a nationwide TRO of the Memorandum's Removal Moratorium. *See* Ex. B
 7 (providing copy of Court's Order). DHS admitted that prior to the TRO, it released 27
 8 aliens in the Phoenix area with final orders of removal in the few days that the Removal
 9 Moratorium was in effect. *See* Declaration of Robert Guadian at 5 ¶10, *Texas v. United*
 10 *States*, No. 6:21-cv-00003 (S.D. Tex. Feb. 8, 2021), ECF No. 40-1. The District Court
 11 extended its TRO through February 23, 2021, and subsequently issued a preliminary
 12 injunction on that date. *Texas v. United States*, No. 6:21-cv-00003, 2021 WL 723856
 13 (S.D. Tex. Feb. 23, 2021), attached as Exhibit K. The Interim Guidance, which is not
 14 covered by the Texas Court's Order but is challenged here in the Amended Complaint
 15 and this Motion, does not purport to rescind the Memorandum and states that it applies
 16 separately from the Texas Court's injunction. Ex. G at 3 n.3.

17 **LEGAL STANDARD**

18 Plaintiffs seek a preliminary injunction under Rule of Civil Procedure 65(a) for
 19 the purpose of "preserv[ing] the relative positions of the parties until a trial on the merits
 20 can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). As the moving
 21 party, a plaintiff can obtain a preliminary injunction by showing that (1) it is likely to
 22 succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of
 23 preliminary relief, (3) the balance of equities tips in [its] favor, and (4) an injunction is in
 24 the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
 25 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).⁷

26 ⁶ DHS entered into similar agreements with Alabama, Indiana, Louisiana, South
 27 Carolina, West Virginia, and the Sheriff of Rockingham County in North Carolina.
 28 Exhibit 19 to Reply In Support of Preliminary Injunction at 4-5, *Texas v. United States*,
 No. 6:21-cv-00003 (S.D. Tex. Feb. 16, 2021), ECF No. 84-1.

⁷ The APA also empowers a "reviewing court" to "issue all necessary and appropriate
 process to postpone the effective date of an agency action or to preserve status or rights

ARGUMENT

I. Plaintiffs are Likely to Prevail on the Merits of Their Claims

Plaintiffs are likely to succeed on the merits of their challenges to the Removal Moratorium. First, the Removal Moratorium is arbitrary and capricious because it was issued without a reasoned justification and indication that DHS considered alternative approaches representing a more limited policy or the costs of adopting it. Second, DHS failed to follow notice-and-comment requirements under the APA in issuing the Removal Moratorium. Third, making it official DHS policy not to remove aliens with final orders of removal violates the mandatory statutory command *to remove* such aliens within 90 days under 8 U.S.C. § 1231. Notably, the Southern District of Texas held these three claims have a substantial likelihood of success as to the Memorandum’s Removal Moratorium. *Texas*, 2021 WL 723856, at *39-48. Fourth, DHS issued the Removal Moratorium without notice or consultation, despite the AZ and MT Agreements.

A. DHS’s Failure to Consider Alternatives Was Arbitrary and Capricious

The Removal Moratorium violates the APA’s prohibition on agency actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Courts require that “an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.” *State Farm*, 463 U.S. at 42. The Removal Moratorium is arbitrary and capricious because DHS issued it without considering more limited, alternative policies and because DHS failed to weigh the costs of its adoption or provide other sufficient reasoned justification.

DHS’s failure to consider more limited alternative policies in issuing the Removal Moratorium renders it arbitrary and capricious. As the Supreme Court explained, “when an agency rescinds a prior policy[,] its reasoned analysis must consider the “alternative[s]” that are “within the ambit of the existing [policy].” *Regents*, 140 S.

pending conclusion of the review proceedings.” 5 U.S.C. § 705. A stay of the Memorandum and Interim Guidance’s effective date should issue “to the extent necessary to prevent irreparable injury” and “[o]n such conditions as may be required.” *Id.*

1 Ct. at 1913 (quoting *State Farm*, 463 U.S. at 51). There, DHS issued a policy change by
2 memorandum that “contain[ed] no discussion of” important alternative options and
3 “[t]hat omission alone render[ed]” the “decision arbitrary and capricious.” *Id.*

4 Although it had just recently lost *Regents*, DHS remarkably failed to heed
5 *Regents*’ admonition. The “Memorandum not only fails to consider potential policies
6 more limited in scope and time, but it also fails to provide any concrete, reasonable
7 justification for a 100-day pause on deportations.” *Texas*, 2021 WL 247877, at *4 (S.D.
8 Tex. Jan. 26, 2021). It creates a default *against* removal following a final removal order,
9 despite federal immigration law requiring removal following such an order. The
10 Memorandum does not explain how adopting a broad no-removal policy with only a few
11 narrow terrorism-based exceptions advances the stated interests that precipitated it, nor
12 does it explain why other exceptions—that is, additional enforcement of duly enacted
13 immigration laws—would harm those interests. Because the Memorandum is wholly
14 devoid of explanation as to why DHS has deemed enforcement categorically
15 inappropriate, let alone why highly restricted enforcement is preferable to more limited
16 restrictions on ICE officials’ discretion, the Removal Moratorium is arbitrary and
17 capricious under the Supreme Court’s *Regents* and *State Farm* standard.

18 Additionally, the Removal Moratorium is arbitrary and capricious because it fails
19 to consider important costs of a new policy and because it fails to, in general, provide
20 other sufficient reasoned explanation for its adoption. “[A]gency action is lawful only if
21 it rests ‘on a consideration of the relevant factors.’” *Michigan v. EPA*, 135 S. Ct. 2699,
22 2706 (2015). DHS ignored the harms its policy will cause. The Memorandum and
23 Interim Guidance do not mention those impacts at all. Considering such policy concerns
24 “was the agency’s job, but the agency failed to do it.” *Regents*, 140 S. Ct. at 1914.

25 Because the Memorandum and Interim Guidance do not sufficiently justify itself,
26 DHS acted arbitrarily and capriciously. Any new explanations that may be provided to
27 this Court by DHS’s counsel are irrelevant. “The grounds upon which an administrative
28 order must be judged are those upon which the record discloses that its action was

1 based.” *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943).

2 Similarly, the Interim Guidance is simply an attempt to quickly paper over the
3 sparse administrative record without changing the Removal Moratorium’s substance,
4 and it does not—and cannot—cure the underlying procedural defects. *See Dep’t of*
5 *Commerce*, 139 S. Ct. at 2573 (uncontested that decision resting on “pretextual basis”
6 “warrant[s] a remand to the agency”). The Supreme Court in *Department of Commerce*
7 rejected an agency’s rationale it deemed to be *post hoc* and contrived. *See id.* at 2573-
8 76. As discussed, DHS’s Removal Moratorium was arbitrary and capricious because it
9 failed to consider more limited policies, consider important costs, and provide a
10 reasoned explanation for its adoption. The only explanations for the Removal
11 Moratorium provided by DHS in either document are opaque references to DHS’s
12 limited resources. *See Ex. A* at 3. Absent, however, is any evidence that DHS
13 considered resource constraints when enacting the Moratorium. Moreover, at no point
14 did DHS explain how halting all removals for 100 days accomplishes its stated goals
15 under these allegedly unique circumstances. As the *Texas* Court found:

16 [T]he law *does* require DHS to explain why a 100-day pause is needed by
17 showing how the policy is logically and reasonably connected to DHS’s
18 asserted reasons. This, DHS did not do. And without that rationale
explained—or even at least apparent—in the record, the choice is arbitrary
and capricious.

19 2021 WL 723856 at *42.

20 Additionally, even if the Interim Guidance were to provide sufficient justification
21 for the Removal Moratorium, it would create an impermissible mismatch between the
22 evidence in the administrative record and the new rationale presented to the reviewing
23 court. *See Dep’t of Commerce*, 139 S. Ct. 2575-76. Thus, DHS is now precluded from
24 offering an explanation, reasoned or otherwise, that justifies the incongruence between
25 the Memorandum and the administrative record. *See id.* at 2575.

26 **B. DHS Also Failed To Comply with Notice-And-Comment Requirements**

27 Plaintiffs are also likely to prevail because the APA required DHS to provide
28 notice and an opportunity to comment before issuing the Removal Moratorium, which it

1 failed to do. *See* 5 U.S.C. §§ 553, 706. Nor does the Removal Moratorium fall within
 2 any of the exceptions to notice-and-comment rulemaking under the APA.

3 **1. The Removal Moratorium Is a “Rule” Under the APA, and**
 4 **DHS’s Creation Of The Memorandum Was “Rulemaking”**

5 The Removal Moratorium is a substantive rule that is required to undergo notice
 6 and comment under the APA. The APA defines a “rule” as:

7 the whole or a part of an agency statement of general or particular
 8 applicability and future effect designed to implement, interpret, or prescribe
 9 law or policy or describing the organization, procedure, or practice
 requirements of an agency

10 5 U.S.C. §551(4). A rule “includes ‘nearly every statement an agency may make.’” *Milk*
 11 *Indus. Found. v. Glickman*, 949 F. Supp. 882, 893 (D.D.C. 1997) (quoting *Ctr. for Auto*
 12 *Safety v. NHTSA*, 710 F.2d 842, 846 (D.C. Cir. 1983)). “The breadth of this definition
 13 cannot be gainsaid.” *Batterton v. Marshall*, 648 F.2d 694, 700 (D.C. Cir. 1980).

14 The Removal Moratorium, as embodied in both the Memorandum and Interim
 15 Guidance, is a statement directing a mandatory change in DHS operations with an
 16 immediate effective date. Ex. A at 3; Ex. G at 1. Its application is comprehensive to all
 17 cases that do not fall within the narrow exceptions it draws. And it does not allow for
 18 deviation or variance except where ICE’s Director makes a “written finding” that the
 19 individual “has engaged in or is suspected of terrorism or espionage” or otherwise makes
 20 “an individualized determination.” The Removal Moratorium is thus a rule.

21 Finally, because the Removal Moratorium is a “rule” under the APA, it necessarily
 22 follows that the DHS’s process of creating the memorandum was a “rulemaking” under
 23 the APA. *See* 5 U.S.C. §551(4) (defining “rule making” simply as an “agency process
 24 for formulating, amending, or repealing a rule”).

25 **2. The Removal Moratorium Does Not Fall Within The Subject-**
 26 **Matter Exclusion Or Good-Cause Exception**

27 While the APA provides exceptions where an agency statement does not require
 28 notice and comment, neither applies to the Removal Moratorium. These are:

1 (1) “interpretive rules, general statements of policy, or rules of agency organization,
 2 procedure, or practice” and (2) “when the agency for good cause finds ... that notice and
 3 public procedure thereon are impracticable, unnecessary or contrary to the public
 4 interest.” 5 U.S.C. § 553(b)(3)(A)-(B).

5 The APA distinguishes between legislative and interpretive rules. “Legislative
 6 rules, also known as substantive rules, are those which effect a change in existing law or
 7 policy, ... or which impos[e] general, extra-statutory obligations pursuant to authority
 8 properly delegated by the legislature.” *Reno-Sparks Indian Colony v. U.S. E.P.A.*, 336
 9 F.3d 899, 909 (9th Cir. 2003) (internal quotation marks omitted). “Interpretive rules on
 10 the other hand, ‘merely clarify or explain existing law or regulations.’” *Id.* (quoting
 11 *Powderly v. Schweiker*, 704 F.2d 1092, 1098 (9th Cir. 1984). The Ninth Circuit
 12 “construe[s] narrowly the APA’s interpretive rule exception.” *Id.*

13 The Removal Moratorium not a mere interpretive rule because it changes DHS
 14 policy by immediately halting normal agency removal operations and formalizing nearly
 15 blanket non-compliance with the 90-day removal provisions of 8 U.S.C. § 1231. As an
 16 official announcement that DHS will cease complying with the statute directing one of its
 17 primary operations, the removal of aliens who have been ordered removed from the
 18 United States, the Removal Moratorium cannot be classified as “interpretive” of that
 19 statute. Rather it “effects a change in existing law or policy” and thus is a substantive
 20 rule that cannot escape the APA’s notice and comment requirements. *Id.*; 5 U.S.C. § 553.

21 For similar reasons, the Removal Moratorium cannot be considered a general
 22 statement of policy. “[A] ‘general statement of policy’ is one that does not impose any
 23 rights and obligations.” *Community Nutrition Institute v. Young*, 818 F.2d 943, 946 (D.C.
 24 Cir. 1987). General statements of policy “advise the public prospectively of the manner
 25 in which the agency proposes to exercise a discretionary power.” *Mada-Luna v.*
 26 *Fitzpatrick*, 813 F.2d 1006, 1012-13 (9th Cir. 1987). Far from “prospectively” advising
 27 the public, the Removal Moratorium affects rights of those who arrived pre-November 1,
 28 and it creates costs for states immediately upon becoming effective. Ex. A at 3.

1 The Removal Moratorium also is not a rule of agency organization, procedure, or
 2 practice. Procedural rules “are those that are ‘legitimate means of structuring [the
 3 agency’s] enforcement authority.’” *Erringer v. Thompson*, 371 F.3d 625, 633 n. 15 (9th
 4 Cir.2004) (alteration in original) (quoting *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037,
 5 1055 (D.C.Cir.1987)). “In general, a procedural rule does not itself ‘alter the rights or
 6 interests of parties.’” *Elec. Privacy Info. Ctr. v. U.S. Dept. of Homeland Sec.*, 653 F.3d 1,
 7 5 (D.C. Cir. 2011) (quotation marks and citation omitted). “Procedural rules ... are
 8 ‘primarily directed toward improving the efficient and effective operations of an agency,
 9 not toward a determination of the rights [or] interests of affected parties.’” *Mendoza v.*
 10 *Perez*, 754 F.3d 1002, 1023 (D.C. Cir. 2014) (quoting *Batterton v. Marshall*, 648 F.2d
 11 694, 702 (D.C. Cir. 1980)). By contrast, “[s]ubstantive rules are ones which grant rights,
 12 impose obligations, or produce other significant effects on private interests.” *American*
 13 *Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987).

14 At a minimum, the Removal Moratorium effectively grants this entire class of
 15 aliens-ordered-removed—persons who prior to the Memorandum had no right to remain,
 16 especially not after the statutory removal period—an illegal blanket extension on their
 17 removal order, which must otherwise have been executed within 90 days. *See* 8 U.S.C.
 18 § 1231(a)(1)(A). As the states in which these individuals remain are obliged to provide
 19 medical and social services to these individuals, the Removal Moratorium has the effect
 20 of granting rights and creating obligations regarding those services. *See, e.g.*, 42 C.F.R. §
 21 440.255; *Plyler v. Doe*, 457 U.S. 202 (1982) (states are constitutionally obligated to
 22 provide free education to unlawfully present aliens). This is no mere internal efficiency
 23 measure but a substantive rule widely impacting private, state, and local interests.

24 Finally, DHS also cannot avail itself of the APA’s good-cause exception. To do
 25 so, DHS would have needed to have “incorporate[d] the [good cause] finding and a brief
 26 statement of reasons therefor in the rules issued.” 5 U.S.C. §553(b)(3)(B). They did not
 27 do so here, precluding any reliance on that exception. *United States v. Picciotto*, 875
 28 F.2d 345, 348 (D.C. Cir. 1989).

1 **C. The Removal Moratorium Is Contrary to 8 U.S.C. § 1231(a)(1)(A)**

2 The Removal Moratorium also violates DHS’s statutory obligations. 5 U.S.C.
3 § 706(2)(A), (C). Federal immigration law requires that “when an alien is ordered
4 removed, the Attorney General *shall* remove the alien from the United States within a
5 period of 90 days.” 8 U.S.C. § 1231(a)(1)(A) (emphasis added). That obligation has
6 been transferred to the Secretary of Homeland Security. *See Clark v. Martinez*, 543 U.S.
7 371, 375 n.1 (2005). Now, “DHS has a statutory duty to effect removal within the 90-
8 day period, if possible.” *Ulysse v. Dep’t of Homeland Sec.*, 291 F. Supp. 2d 1318, 1325
9 (M.D. Fla.2003). But “by ordering a 100-day pause on all removals of aliens already
10 subject to a final order of removal, it appears that the Memorandum is clearly not in
11 accordance with, or is in excess of, the authority accorded to the Attorney General
12 pursuant to 8 U.S.C. § 1231(a)(1)(A).” *Texas*, 2021 WL 247877, at *3.

13 Reading § 1231(a)(1)(A)’s “shall remove ... within a period of 90 days” language
14 to simultaneously allow DHS to issue a blanket pause exceeding that time period
15 “contravenes the unambiguous text.” *Id.* “[T]he word ‘shall’ usually connotes a
16 requirement’ ... Here, ‘shall’ means *must*.” *Id.* (quoting *Me. Cmty. Health Options v.*
17 *United States*, ___ U.S. ___, 140 S.Ct. 1308, 1320 (2020) and *Tran v. Mukasey*, 515
18 F.3d 478, 481-82 (5th Cir. 2008) (“[W]hen a final order of removal has been entered
19 against an alien, the government *must* facilitate that alien’s removal from the United
20 States within ninety days.”)). The Removal Moratorium contravenes the specific
21 statutory mandate in § 1231(a)(1)(A) and goes far beyond the discretion afforded an
22 agency tasked with carrying out such a clear and direct command. *Id.* (“Where Congress
23 uses specific language within its immigration statutes to direct the Attorney General
24 toward a specific result, courts are not free to assume based on a matrix of principles,
25 statutes, and regulations that the Attorney General’s authority is simply ‘a matter of
26 discretion.’” (quoting *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001))).

27 The Removal Moratorium is not designed to help DHS comply with its statutory
28 obligations but rather to make compliance impossible. By “pausing” removals for 100

1 days, DHS has ensured it cannot meet the 90-day removal deadline for numerous aliens
 2 already ordered removed or ordered removed within the first ten days of the Removal
 3 Moratorium's effective period. This is a violation of 8 U.S.C. § 1231(a)(1)(A).

4 **D. DHS Did Not Follow the Agreements with Arizona and Montana,**
 5 **Resulting in Agency Action Contrary to Law**

6 The Agreements require DHS to notify and consult with the Arizona Attorney
 7 General and the State of Montana before “pausing or decreasing the number of returns or
 8 removals of removable or inadmissible aliens from the country.” Ex. C § III.A.2.c; Ex.
 9 H § III.A.2.c. But DHS did not notify or consult with the Attorney General before
 10 “directing an immediate pause on removals” in the Removal Moratorium. Ex. A at 3.
 11 As a result, the Removal Moratorium is invalid, and Plaintiffs are entitled to injunctive
 12 relief. *See* Ex. C § VI; Ex. H § VI.

13 The Memorandum provides no explanation for failing to follow the Agreements,
 14 nor any acknowledgement of it. (As discussed below, that is an independent problem
 15 under the APA. *See infra* Part I.B.2.) DHS's disregard of the Agreement in the Removal
 16 Moratorium is inconsistent with its earlier statement that the Agreement is “a binding
 17 and enforceable commitment between DHS and [Plaintiffs].” Ex. C § II; Ex. H § II.⁸

18 **II. Plaintiffs will Suffer Irreparable Harm if an Injunction is not Granted**

19 Plaintiffs are also likely to suffer irreparable harm in the absence of the requested
 20 preliminary injunction and demonstrate this in two ways: First, DHS admitted that
 21 policies like the Removal Moratorium irreparably injure Plaintiffs. Second, Plaintiffs
 22 are submitting declarations quantifying some of the unrecoverable financial costs of
 23 incarceration of unremoved alien criminals, the increased drug trade and related crime,
 24 law enforcement activity in cooperation with the U.S. Border Patrol, and providing
 25 emergency medical care to unauthorized aliens, which will be increased by the Removal

26
 27 ⁸ This defect also causes the Removal Moratorium to violate of 5 U.S.C. § 706(2)(A), (D).
 28 For this reason, the APA requires the Court to “hold unlawful and set aside” the Removal
 Moratorium. *Id.* § 706(2). In the alternative, the Court should enjoin the individual
 defendants from enforcing the Removal Moratorium because such enforcement would be
ultra vires and beyond the authority the agency defendants could delegate.

1 Moratorium, irreparably harming Plaintiffs.⁹

2 To establish irreparable harm, Plaintiffs must show “a sufficient causal
3 connection between the alleged irreparable harm and the activity to be enjoined,” but
4 “need not further show that the action sought to be enjoined is the exclusive cause of the
5 injury.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 819 (9th
6 Cir. 2018) (internal quotation marks omitted). Irreparable harm exists where there is no
7 adequate legal remedy to cure the harm. *See Arizona Recovery Hous. Ass’n v. Arizona*
8 *Dep’t of Health Services*, 462 F. Supp. 3d 990, 997 (D. Ariz. 2020). Further, “where
9 parties cannot typically recover monetary damages flowing from their injury—as is
10 often the case in APA cases—economic harm can be considered irreparable” and
11 “[i]ntangible injuries may also qualify as irreparable harm, because such injuries
12 ‘generally lack an adequate legal remedy.’” *E. Bay Sanctuary Covenant v. Trump*, 950
13 F.3d 1242, 1280 (9th Cir. 2020) (quoting *California v. Azar*, 911 F.3d 558, 581 (9th Cir.
14 2018) and *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014)). “The
15 mere fact that the damages are susceptible to quantification ... does not necessarily
16 mean that a [PI] will not lie,” so unrecoverable costs stemming from the impact of the
17 Removal Moratorium are suitable to establish that Plaintiffs will face irreparable harm
18 without injunctive relief. *Ariz. Recovery Hous. Ass’n*, 462 F. Supp. 3d at 997.

19 Indeed, in *City & County of San Francisco v. United States Citizenship &*
20 *Immigration Services*, 981 F.3d 742, the Ninth Circuit examined a DHS rule that it
21 found “violates the standards of the APA in that it is both contrary to law and arbitrary
22 and capricious.” 981 F.3d at 762. There, the plaintiffs faced the harm of likely having

23
24 ⁹ For all of the reasons that Plaintiffs satisfy the more-demanding requirement of
25 showing likely irreparable harm, they have Article III standing *a fortiori*. As States
26 and their executives, Plaintiffs also have special solicitude standing arising from the
27 Removal Moratorium’s injury to their sovereign and quasi-sovereign interests, including
28 “the power to create and enforce a legal code.” *Texas v. U.S.*, 809 F.3d 134, 153 (5th
Cir. 2015) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601
(1982)); *See also, Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1241-42 (10th
Cir. 2008) (acknowledging “the ‘special solicitude’ the Massachusetts Court afforded to
states” in determining “Wyoming has Article III standing” where the federal
government’s actions “interfere[] with Wyoming’s ability to enforce its legal code.”)
(quoting *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007)).

1 to bear “heavy financial costs” of supporting an increased number of immigrants “on
 2 state and local programs” as a consequence of the rule. *Id.* The circuit held “[t]here is
 3 no dispute that such economic harm is sufficient to constitute irreparable harm because
 4 of the unavailability of monetary damages.” *Id.* (citing *Azar*, 911 F.3d at 581).

5 **A. DHS Admitted in the Agreements that Plaintiffs Face Irreparable Injury**

6 DHS has already acknowledged that policies like the Removal Moratorium cause
 7 Plaintiffs irreparable harm. Plaintiffs are “directly and concretely affected by changes to
 8 DHS rules and policies that have the effect of easing, relaxing, or limiting immigration
 9 enforcement. Such changes can impact [Plaintiff]’s law enforcement, housing,
 10 education, employment, commerce, and healthcare needs and budgets.” Ex. C § II; Ex.
 11 H § II. Indeed, DHS has specifically admitted that “a decrease or pause on returns or
 12 removals of removable or inadmissible aliens” would “result in concrete injuries” to
 13 Plaintiffs. Ex. C § II; Ex. H § II. Plaintiffs face particular harm because the rushed
 14 implementation of the Removal Moratorium deprived Plaintiffs of the option of
 15 adjusting its policies in light of the federal shift. As DHS itself has acknowledged,
 16 “[t]he harm ... is particularly acute” where Plaintiffs’ “budget has been set months or
 17 years in advance and it has no time to adjust its budget to respond to DHS policy
 18 changes.” Ex. C § II; Ex. H § II. And it admitted “an aggrieved party will be irreparably
 19 damaged and will not have an adequate remedy at law.” Ex. C. § VI; Ex. H § VI.

20 **B. Plaintiffs Will Be Forced to Spend Money That Will Not Be**
 21 **Reimbursed For Healthcare and Law Enforcement Services for**
Unauthorized Aliens Present in the State

22 The State of Arizona will be irreparably injured as a result of the Removal
 23 Moratorium’s implementation because it will increase the State’s unreimbursed costs
 24 related to the unauthorized alien population, including but not limited to incarceration
 25 and healthcare costs. The Removal Moratorium will directly increase the number of
 26 aliens with final orders of removal who remain in Arizona because they will not have
 27 been removed by DHS. Additionally, knowledge that DHS has issued a blanket
 28 moratorium on removals will encourage additional unauthorized immigration to

1 Arizona, and this increase in population will increase Arizona's incurred law
 2 enforcement and healthcare services costs related to them. The U.S. Supreme Court
 3 recognizes that a state may assert injuries based on "the predictable effect of
 4 Government action on the decisions of third parties." *Dept. of Commerce v. New York*,
 5 139 S. Ct. 2551, 2565-66 (2019). The majority of these costs are not reimbursed by the
 6 U.S. Government. And as discussed above, these unrecoverable financial injuries
 7 constitute "irreparable harm" when analyzing the factors for a preliminary injunction.
 8 *E.g., E. Bay Sanctuary Covenant*, 950 F.3d at 1280; *supra* Part II. These costs,
 9 therefore, sufficiently demonstrate Plaintiffs' irreparable harm.

10 **1. A Pause In Removals Will Increase Incarceration Costs Because** 11 **Some Unremoved Aliens Would Be Detained In Arizona**

12 Arizona also incurs millions of dollars each year on the expenses of incarcerating
 13 criminals who are unauthorized aliens. DHS reports that in fiscal year 2019, it removed
 14 33,665 aliens from the Phoenix Area of Responsibility alone who were either convicted
 15 criminals, pending criminal charges, or "Other Immigration Violator[s]," with convicted
 16 criminals making up the majority of these at 18,665 removals. DHS, ERO FY2019
 17 Local Statistics at 5-8, *Texas v. United States*, No. 6:21-cv-00003 (S.D. Tex. Feb. 3,
 18 2021), ECF No. 63-5. This makes Phoenix the Area of Responsibility with the second
 19 highest number of convicted criminal removals in the United States. *Id.* The average
 20 per capita cost of incarceration in Arizona's state prisons and county jails is roughly \$70
 21 per day—over \$25,000 per inmate per year. Declaration of Mark Lamb at ¶ 7, attached
 22 as Exhibit N; *See also, e.g.,* Arizona Dept. of Corrections, FY 2017 Operating Per Capita
 23 Cost Report at 8, available at <https://tinyurl.com/djus39n4>.

24 The Removal Moratorium is likely to increase the number of aliens subject to
 25 removal who must be incarcerated in Arizona due to the criminal recidivism of
 26 individuals who would have otherwise been removed but were instead released into the
 27 community. Upon completion of criminal sentences, aliens subject to immigration
 28 detainers are typically transferred directly to ICE custody, but if ICE fails to accept

1 custody or releases them rather than pursuing removal, the criminal alien must be
 2 released. The population of criminal aliens subject to immigration detainers has a high
 3 rate of recidivism, 70% in some jurisdictions, and therefore is likely to commit further
 4 crimes upon release. Decl. of B. Waybourn at ¶ 8, *Texas v. U.S.*, No. 6:21-cv-00003
 5 (S.D. Tex. Feb. 3, 2021), ECF No. 63-11. When such unremoved individuals recidivate
 6 in Arizona, law-enforcement resources will be spent on their apprehension and at least
 7 some of them are likely to be incarcerated again. This will directly result in increased
 8 costs to the state that would not have been incurred had the individuals been removed.

9 Additionally, it is not uncommon for criminal aliens subject to removal to be
 10 given reduced or suspended sentences in reliance on ICE taking the individual into
 11 custody and initiating removal proceedings against them.¹⁰

12 **2. The Removal Moratorium Encourages Greater Unauthorized** 13 **Traffic Leading To Greater Law Enforcement Expenditures** **And Investigations in Plaintiff States**

14 In addition to incarceration of individuals already in the United States, the
 15 Removal Moratorium will increase Arizona's law enforcement expenses related to the
 16 flow and traffic of individuals across the border. Cameras along Arizona's border show
 17 that roughly one in four individuals who attempt illegal border crossings are
 18 apprehended by the Border Patrol. Declaration of Mark D. Napier at ¶ 4, attached as
 19 Exhibit L. Hundreds of individuals attempting a border crossing ultimately perish in the
 20 Arizona desert each year. Ex. L at ¶ 5 ("From January through September 2020 there
 21 were 181 sets of human remains recovered in the border region of Arizona's desert.").
 22 The Removal Moratorium is likely to lead to an increase in attempted border crossings
 23

24 ¹⁰ See, e.g., *State v. Nunez-Diaz*, 444 P.3d 250, 252 ¶¶ 2, 4-5 (S.Ct. Ariz. 2019), *cert.*
 25 *denied* (Where defendant was charged with two class 4 felonies, the "State offered a plea
 26 deal that would reduce the charges ... to a single count of possession of drug
 27 paraphernalia, a class 6 undesignated felony. ... the trial court suspended sentencing ...
 28 Nunez-Diaz was transferred to the custody of [ICE] ... because of his plea, he could not
 bond out of custody and would be deported."). This practice directly reduces the number
 of individuals that must be incarcerated in Arizona's correctional facilities. But where
 removals are no longer being carried out, this option would no longer be available and
 criminal aliens who might have otherwise been turned over to federal custody would
 instead have to be incarcerated locally. This increases Arizona's costs of incarcerating
 aliens subject to removal.

1 because it eliminates one of the disincentives to being caught. Ex. L at ¶ 8. With an
2 increase in the number of individuals attempting a crossing, a corresponding increase in
3 deaths is expected. Ex. L at ¶ 8. Each of these discoveries of remains requires the
4 expense of law enforcement resources including (1) recovering the remains, (2)
5 investigating the death, which must be treated as a potential homicide, and (3) engaging
6 the Office of the Medical Examiner in the investigation. Ex. L at ¶ 5. Additionally,
7 sheriff's offices often respond to calls by migrants "in serious distress lost in the remote
8 areas" of the state and in need of assistance. Ex. L at ¶ 6. Such operations "often [lead]
9 to significant expenditures of county ... resources to affect rescue in the hope of
10 preventing additional migrant deaths." Ex. L at ¶ 6. These direct costs will increase as
11 the number of individuals who attempt to cross the border and find themselves in
12 distress, or even succumb to the naturally perilous journey, also increases. Ex. L at ¶ 8.

13 But natural hazards are not the end. Drug cartels or "transnational criminal
14 organizations" engage in illicit profiteering via border traffic, and victimize migrants
15 attempting to cross the border through areas these organizations "control." Ex. L at ¶ 7-
16 8. Illegal drugs smuggled into the United States across the border with Mexico impact
17 multiple states, including Montana. Declaration of Bryan Lockerby at ¶ 8, attached as
18 Ex. M. The majority of methamphetamine and heroin in Montana comes from drug
19 cartels in Mexico, and Montana law enforcement organizations have discovered a
20 "Mexican drug cartel presence in the State." Ex. M at ¶¶ 9-11. "The influx of illicit
21 drugs, as well as the gangs and cartels that traffic it across the southern border, have led
22 to a sharp increase in drug use and drug-related crime in Montana." Ex. M at ¶ 12. The
23 criminal activity related to these drugs coming from Mexico has led to a 48% rise in
24 violent crimes across Montana and an 88% rise in violent crime in its largest city,
25 Billings. Ex. M at ¶¶ 13-16. Increased drug activity and availability poses a health
26 danger to Montana's citizens and impact the Montana State Crime Lab, which handles
27 overdose deaths. Ex. M at ¶¶ 17-18. Montana and its citizens also suffer the costs of
28 property crime related to this drug activity, and "also indirect and intangible costs for

1 communities such as reduction in property values, fear, pain and suffering, and reduction
2 in quality of life.” Ex. M at ¶ 19. The traffic of drugs into Montana is facilitated by
3 some of the aliens who illegally cross into the United States from Mexico, and “pausing
4 their removal for any amount of time ... will likely increase the infusion of drugs into
5 Montana, increase drug-related violent and property crimes, and harm the State’s efforts
6 to promote public safety and health.” Ex. M at ¶ 20. “Additionally, the federal
7 government’s enforcement pause will encourage other aliens who transport and traffic
8 illegal drugs to enter the country illegally and remain indefinitely, which will likely
9 contribute to the increase in the drug-related public safety problems in Montana as
10 described above.” Ex. M at ¶ 20.

11 In addition to the effects of the illicit drug trade on Plaintiffs, the direct response
12 to illegal immigration itself impacts the budgets of Arizona’s local and state law
13 enforcement agencies. Pinal County, Arizona, for instance contains “a large section of
14 desert through which unauthorized aliens often attempt to travel,” and the Pinal County
15 Sheriff’s Office has “recorded a surge in the number of pursuits of suspected
16 unauthorized aliens ... since the beginning of the year.” Ex. N at ¶¶ 3-4. These pursuits
17 are costly and consume a variety of resources including personnel, vehicle and aviation
18 costs, and administrative and special investigation costs. Ex. N at ¶ 5. Personnel costs
19 are among the easiest to track directly, and the Pinal County Sheriff’s Office expended
20 377 man-hours on these pursuits of unauthorized aliens in January and February 2021
21 alone, which “represents a roughly 71% increase in costs” compared to “the same time
22 period last year.” Ex. N at ¶ 5-6. Change in the federal government’s border
23 enforcement and immigration policies impacts the behavior of those who may decide to
24 illegally cross into the United States. Ex. N at 8. The pause or decrease in removals due
25 to the Removal Moratorium will “incentivize individuals to illegally cross the border
26 into Arizona,” and is thus likely to “increase the number of unauthorized crossings and
27 further exacerbate the current increase in law enforcement costs.” Ex. N at ¶ 8. These
28 costs are direct, irreparable harms.

3. Some Unremoved Aliens Would Use Emergency Medical Services In Arizona Without Federal Reimbursement

Federal law requires that, as a condition of participating in Medicaid, Arizona hospitals provide emergency services to individuals regardless of immigration status. *See* 42 U.S.C. § 1395dd; 42 C.F.R. § 440.255. This means that Arizona spends money to provide these services to unauthorized aliens and aliens subject to removal where they require emergency care. Just one southern Arizona facility near the border, Yuma Regional Medical Center (YRMC), recorded \$546,050 in unreimbursed costs of delivering care to aliens in ICE custody in a six-month period. Declaration of Robert J. Trenchel, DO, MPH, FACHE at ¶ 7, attached as Exhibit O. This figure covers 1,293 adults in ICE custody but does not include care provided to children, to undocumented migrants not in ICE custody, or the “substantial care expenses for the multiple mothers who delivered babies at YRMC while under ICE custody.” Ex. O at ¶ 5, 8. So the actual figure for provision of medical services to all unauthorized aliens is likely higher. However, the focus on adults in ICE custody is particularly relevant to this case.

First, the fact that the individual was in ICE custody helps to confirm that YRMC’s statistics cover unauthorized aliens rather than leaving the hospital to estimate which patients were documented and which were not. Second, the ICE custodial population represents unauthorized aliens who are already in the United States and who may be released into the community should the Removal Moratorium go into effect and efforts at their removal be paused or discontinued. The YRMC data establishes that these individuals have a need for medical services, and that these services pose a significant cost. There is no reason to believe that their need for medical help would suddenly disappear if they were released into the community; they would just have to reach the hospital on their own or through the additional provision of local EMS resources rather than being escorted by ICE.

The data also demonstrates that even if ICE maintained custody of all these individuals and merely prolonged their detention while pausing removals, Arizona would still suffer the unavoidable costs of providing medical services to them. When

1 these individuals are removed per DHS’s longstanding policy, they may receive medical
 2 care in the country to which they are removed. But by pausing those removals, DHS is
 3 keeping individuals who would otherwise be removed in this country, instead, where
 4 local medical facilities such as YRMC must provide care at unreimbursed costs that for
 5 YRMC alone exceed a rate of \$1,000,000 per year. By pausing the removal of aliens
 6 subject to removal, the Removal Moratorium directly increases Arizona’s costs of
 7 providing medical care to these individuals during their extended stay in the U.S.

8 **4. Courts Have Previously Found Similar Evidence Sufficient to** 9 **Show Irreparable Injury**

10 In *Texas v. United States*, in issuing an injunction, the court found substantially
 11 similar evidence of unreimbursed state expenditures stemming from DHS’s refusal to
 12 remove aliens with final orders of removal “demonstrate[s] a substantial threat of
 13 irreparable injury” to the State. 2021 WL 723856 at * 48, Ex. K at 39.

14 Courts in this circuit have also found the irreparable injury requirement to be
 15 satisfied in APA challenges to federal agency rulemaking where the state faces potential
 16 economic harm, even where that harm involves the reactions of third parties. *E.g.*,
 17 *Washington v. DeVos*, 466 F.Supp.3d 1151, 1169-70 (E.D. Wash. 2020) (State’s
 18 anticipated loss of tuition due to anticipated student disenrollment where federal grants
 19 became unavailable was “particularly persuasive” evidence of irreparable harm). And
 20 such reasoning has been upheld by the Ninth Circuit in APA challenges multiple times.
 21 *E.g.*, *California v. Azar*, 911 F.3d at 581 (“it is reasonably probable that the states will
 22 suffer economic harm from the [interim final rules] ... such harm is irreparable because
 23 the states will not be able to recover monetary damages connected to the IFRs.”) and *E.*
 24 *Bay Sanctuary Covenant*, 950 F.3d at 1280 (“But where parties cannot typically recover
 25 monetary damages flowing from their injury—as is often the case in APA cases—
 26 economic harm can be considered irreparable.”). Thus Plaintiffs’ evidence of economic
 27 loss due to the Removal Moratorium here establishes irreparable harm sufficient to
 28 justify the requested preliminary injunction.

Moreover, Defendants’ unlawful denial of an opportunity to provide comments *before* the Removal Moratorium issued caused irreparable harm. *Northern Mariana Islands v. United States*, 686 F.Supp.2d 7, 17-19 (D.D.C. 2009). Such harm occurs when a party is “depriv[ed] of a procedural protection to which [they] are entitled” under the APA, including, in that case, the opportunity to shape the rules through notice and comment. *Id.* (citing *Sugar Cane Growers Cooperative of Florida v. Veneman*, 289 F.3d 89, 94-95 (D.C. Cir. 2002)). That harm is particularly acute as “[o]nce the program structured by the Rule has begun operation ... DHS is far less likely to be receptive to comments.” *Id.* And the Ninth Circuit has recognize that

III. A Preliminary Injunction Would Not Harm Defendants or the Public

The third and fourth *Winter* factors, the balance of the equities and public interest factors, also weigh in favor of Plaintiffs, and are properly considered together here. “When the Government is a party ... the balance of the equities and public interest factors merge.” *Doe #1 v. Trump*, 984 F.3d 848, 861-62 (9th Cir. 2020) (cleaned up).

The “purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *Doe #1 v. Trump*, 957 F.3d 1050, 1068 (9th Cir. 2020). Here, as “often happens ... this purpose is furthered by the status quo,” which in this case is the normal operation of immigration enforcement activities prior to the Removal Moratorium’s 100-day “pause” on removals. *Doe #1*, 957 F.3d at 1068. In *Doe #1*, plaintiffs challenged a presidential proclamation affecting immigration policy and obtained a preliminary injunction. In reviewing the federal government’s request for a stay of the injunction, the Ninth Circuit held that “it was the Proclamation that altered the *status quo*,” rejecting the federal government’s argument that the status quo is the “Proclamation as implemented.” *Id.* The same analysis controls here as the Removal Moratorium represents an anomaly in the normal course of DHS business both before its publication and after its implementation was enjoined by the Southern District of Texas within days of its initial effective date. *Texas*, 2021 WL 247877, at *8.

1 And maintaining this law-enforcement-as-usual status quo through a preliminary
 2 injunction poses no harm to DHS. They have no legitimate interest in the
 3 implementation of an unlawful memorandum. *See N.Y. Progress & Prot. PAC v. Walsh*,
 4 733 F.3d 483, 488 (2d Cir. 2013) (recognizing that government officials “do[] not have
 5 an interest in the enforcement of an unconstitutional law”). And even if Defendants had
 6 a legitimate interest in the Removal Moratorium, they face no substantial prejudice from
 7 its delayed implementation. *See, e.g., Doe #1*, 957 F.3d at 1068-69 (“lack of irreparable
 8 harm to the United States” due to delay in immigration policy implementation by “a
 9 preliminary injunction”). It is immaterial to this analysis that the policy change
 10 represented by the Removal Moratorium happens to be a “pause” in DHS carrying out
 11 its statutory duties rather than a policy change to taking some other unlawful action: It is
 12 the change itself that disrupts the status quo. “[I]t sometimes happens that the status quo
 13 is a condition not of rest, but of action, and the condition of rest is exactly what will
 14 inflict the irreparable injury upon complainant.” *Golden Gate Restaurant Ass’n v. City*
 15 *& Cty. of San Francisco*, 512 F.3d 1112, 1116 (quoting *Friends for All Children, Inc. v.*
 16 *Lockheed Aircraft Corp.*, 746 F.2d 816, 830 n. 21 (D.C. Cir. 1984)). The Removal
 17 Moratorium’s policy of dereliction of DHS’s duty to act on final removal orders within
 18 the statutory timeframe is the brand of harmful inaction recognized in *Golden Gate*.

19 DHS has already acknowledged that any costs from delaying new policies is
 20 outweighed by the benefits of consultation and more reasoned decision making. *See Ex.*
 21 *C § II; Ex. H § II*. In contrast, as demonstrated—and expressly recognized by DHS—
 22 Plaintiffs will face irreparable harm should the Removal Moratorium be implemented
 23 during the pendency of this litigation. Where Plaintiffs face irreparable harm without an
 24 injunction while DHS faces none if the status quo is maintained, the public interest and
 25 balance of equities favor granting the Motion. *E.g., Doe #1*, 957 F.3d at 1069.

26 CONCLUSION

27 Plaintiffs respectfully request that the Court issue a preliminary injunction
 28 preventing Defendants from implementing the Removal Moratorium.

1 RESPECTFULLY SUBMITTED this 8th day of March, 2021.

2
3 **MARK BRNOVICH**
4 **ARIZONA ATTORNEY GENERAL**

5 By /s/ Anthony R. Napolitano

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18 *Solicitor General*

19 **Pro hac vice application forthcoming*

20 *Attorneys for Plaintiff State of Montana*

Exhibit L

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

State of Arizona; State of Montana; and
Mark Brnovich, in his official capacity
as Attorney General of Arizona,
Plaintiffs,

v.

United States Department of Homeland
Security; United States of America;
Alejandro Mayorkas, in his official
capacity as Secretary of Homeland
Security; Troy Miller, in his official
capacity as Acting Commissioner of
United States Customs and Border
Protection; Tae Johnson, in his official
capacity as Acting Director of United
States Immigration and Customs
Enforcement; and Tracy Renaud, in her
official capacity as Acting Director of U.S
Citizenship and Immigration Services,
Defendants.

Case No: 2:21-cv-00186-SRB

DECLARATION OF MARK D. NAPIER

I, Mark D. Napier, declare as follows:

1. I am competent to testify as to the matters contained herein and make this declaration based on my own personal and professional knowledge, law enforcement expertise, and the information available to me in my positions in public service.

2. I currently serve as the Chief of Staff for the Cochise County Sheriff's Office in Cochise County, Arizona. I previously served as the Sheriff of Pima County, Arizona, from January 2017 to December 2020. I began my enforcement career in 1981.

3. I am also the current Chair of the Executive Committee of the Arizona High Intensity Drug Trafficking Area (AZ HIDTA), a program established in 1990 to facilitate, support, and enhance collaborative drug control efforts among federal and local law enforcement agencies and community-based organizations with the goal of

1 significantly reducing the impact of illegal trafficking and use of drugs throughout
2 Arizona.

3 4. Cochise County operates a sophisticated camera system that views remote
4 areas of the border region across a large section of southern Arizona. For the period from
5 July 2020 to January 2021, this system viewed 13,528 suspected undocumented persons
6 crossing the border. Only 3,740 were known to be apprehended by Border Patrol. This
7 represents a probable capture rate of only 27.6%.

8 5. From January through September 2020 there were 181 sets of human
9 remains recovered in the border region of Arizona's desert. Each of these recoveries
10 results in the tremendous expenditure of law enforcement resources. Generally, each
11 must be treated as a potential homicide, requiring the commitment of personnel and
12 financial resources to investigate and otherwise attempt to resolve the matter.
13 Additionally, each requires the expenditure of resources at the Office of the Medical
14 Examiner. Moreover, many of the remains will never be identified. This leaves some
15 family in some part of the world left to only wonder what befell a loved one. As a person
16 who has dedicated his life to the service of others and is a staunch humanitarian, I am
17 troubled by the undeniable fact that these crossings are also potentially deadly to these
18 migrants.

19 6. Migrants abandoned by transnational criminal organizations trafficking in
20 humans on the north side of the border frequently call local law enforcement in distress.
21 The harsh environment and significant distances to be traveled lead to urgent requests for
22 assistance. When I was Pima County Sheriff approximately 80% of the time my
23 department contacted Border Patrol it was due to a call for assistance by a migrant in
24 serious distress lost in the remote areas of the county. These often led to significant
25 expenditures of county and Border Patrol resources to affect rescue in the hope of
26 preventing additional migrant deaths.

27 7. Undocumented migration will likely require the migrant(s) to engage
28 transnational criminal organizations who control the ingress points into the United States.

1 All indications are that this leads to financial, criminal, and even sexual victimization of
2 migrants. No matter how well-intended or seemingly compassionate the posture toward
3 undocumented immigration on the north side of the border we cannot ameliorate the
4 perils and victimization faced by migrants on the south side of the border.

5 8. In my professional opinion, a pause or significant decrease in ICE removals
6 will incentivize undocumented immigration. This will most certainly encourage an
7 increase in the number of migrants who attempt to illegally cross the border into Arizona.
8 We are seeing this presently with record numbers of crossers. This will likely increase
9 the number of those who perish in the desert, as they seek to enter undetected through
10 less traditional means. Further, it is reasonable to assume that this current posture may
11 allow transnational criminal organizations to engage in increased profiteering from the
12 trafficking of humans to the border and increase the victimization of migrants. The
13 recovery of human remains will continue to place additional strains on law enforcement
14 and leave more families in Mexico and Central America grieving. As a life-long public
15 servant, humanitarian, father and grandfather it pains me to see that the current policies
16 toward undocumented immigration will likely lead to increased, although perhaps
17 unintended, humanitarian suffering and exploitation of those persons arguably only
18 coming here for a better life.

19 I declare under penalty of perjury that the foregoing is true and correct to the best
20 of my knowledge, and that this declaration was issued on March 8, 2021, in Benson,
21 Arizona.

22
23 

24 _____
25 Mark D. Napier
26 Chief of Staff
27 Cochise County Sheriff's Office
28

Exhibit M

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

STATE OF ARIZONA et al.,
Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY et al.,
Defendants.

Case No.2:21-cv-00186-SRB

DECLARATION OF BRYAN LOCKERBY

I, Bryan Lockerby, make this Declaration consistent with 28 U.S.C. § 1746 and under penalty of perjury and declare that all statements herein are true and accurate to the best of my knowledge. I am of sound mind, capable of making this Declaration, and have personal knowledge and expertise of the matters stated herein.

1. I currently serve as Administrator of the Division of Criminal Investigation (DCI) at the Montana Department of Justice.

2. I have served in this position since January 20, 2013. Prior to that, I served for over 31 years in law enforcement at the Great Falls Police Department, Montana. My career included service as a patrol officer, general case detective, drug task force officer with the U.S. Drug Enforcement Administration, special response team member and commander, patrol sergeant, patrol lieutenant, captain of patrol, and captain of investigations. I have a combined law enforcement experience of 39 years.

3. The DCI Administrator has a number of responsibilities, including oversight of the Narcotics Bureau, a statewide drug enforcement agency that initiates and conducts all types of dangerous-drug investigations throughout the state. The Narcotics Bureau leads some local task forces provides investigative assistance at the request of city, county, state and federal law enforcement agencies within Montana and in neighboring states. Narcotics Bureau agents also investigate organized criminal activity and assist other DCI bureaus in their investigations.

4. The DCI Administrator oversees the state fusion center for law enforcement, referred to as the Montana Analysis and Technical Information Center (MATIC). Fusion centers provide a mechanism for information and intelligence sharing between law enforcement agencies, to include all types of crime, narcotics smuggling, homeland security threats and terrorism.

5. As DCI Administrator, I am a member of the Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) Executive Board and have served in the role since my appointment. I have served as Montana Chairman, Budget Chairman for both Montana and the Rocky Mountain region, and recently completed a term as Chairman of RMHIDTA in 2020. I am currently a member of the RMHIDTA Intelligence Committee.

6. I am Chairman of the Rocky Mountain Information Network (RMIN). RMIN serves Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming, as well as parts of Canada. RMIN facilitates information sharing within the law enforcement community and assists member agencies in combating multi-jurisdictional criminal activities and conspiracies that pose a threat to public safety.

7. I am an Executive Board member of the Association of State Criminal Investigative Agencies (ASCIA), a professional association consisting of senior executives of the statewide criminal investigative agencies in the United States. ASCIA represents the concerns and issues of its members but also works with the major law enforcement associations on national issues of mutual concern.

8. Massive quantities of illegal drugs are illicitly transported into the United States across the country's southern border. These drugs end up in many states, including the State of Montana ("State").

9. Nearly all the methamphetamine available in Montana originates in Mexico from drug cartels. The supply of methamphetamine in Montana has become so abundant and widely available that that prices have steadily dropped over the last few years.

10. Moreover, law enforcement has encountered an actual Mexican drug cartel presence in the State. Arrests made over the past few years have confirmed

that cartel members were smuggling methamphetamine into the State or managed distribution points out of major cities.

11. The majority of heroin that is brought into Montana also originates in Mexico.

12. The influx of illicit drugs, as well as the gangs and cartels that traffic it across the southern border, have led to a sharp increase in drug use and drug-related crime in Montana. Drug trafficking and drug activity are a threat to public safety and negatively affect communities across the State. There is a strong correlation between drug activity and violent crime.

13. Violent crimes across the state of Montana have increased 48% from 2013 to 2019, according to the FBI.

14. In the last several years, the State has continued to suffer a significant increase in drug related crimes especially related to methamphetamine. These crimes significantly impact all communities in Montana—especially low-income areas—and disproportionately affect young people.

15. Methamphetamine activity is especially dangerous. It is the drug that most contributes to violent and property crime. In my experience, when officers make an arrest or encounter a violent crime, quite often methamphetamine is either involved in the crime or has been ingested by the perpetrator.

16. In the State's largest city, Billings, violent crime, frequently meth-driven, has increased by 88% percent from 2013 to 2019, according to the FBI.


17. The methamphetamine originating in Mexico from the cartels is also more dangerous for users than the methamphetamine produced locally because the purity level is so high.

18. The increased availability of heroin has resulted in an increase in overdose deaths in the State. From 2015 to 2019, the number of heroin overdose death cases handled by the Montana State Crime Lab more than doubled.

19. Increased drug activity results in a greater amount of property crimes as those suffering from drug addiction steal to support their addictions. Property crimes also negatively affect public safety. They have direct economic costs in the

form of property loss and/or damage, but also indirect and intangible costs for communities such as reduction in property values, fear, pain and suffering, and reduction of quality of life.

20. Some aliens illegally crossing the southern border and illegally present in the country facilitate the trafficking of dangerous drugs like methamphetamine and heroin. By pausing their removal for any amount of time, the federal government will likely increase the infusion of drugs into Montana, increase drug-related violent and property crimes, and harm the State's efforts to promote public safety and health. Additionally, the federal government's enforcement pause will encourage other aliens who transport and traffic illegal drugs to enter the country illegally and remain indefinitely, which will likely contribute to the increase the drug-related public safety problems in Montana as described above.


Bryan Lockerby
Administrator
Division of Criminal Investigation
Montana Department of Justice

Subscribed this 5th day of March, 2021.

Exhibit N

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

State of Arizona; State of Montana; and
Mark Brnovich, in his official capacity
as Attorney General of Arizona,

Plaintiffs,

v.

United States Department of Homeland
Security; United States of America;
Alejandro Mayorkas, in his official
capacity as Secretary of Homeland
Security; Troy Miller, in his official
capacity as Acting Commissioner of
United States Customs and Border
Protection; Tae Johnson, in his official
capacity as Acting Director of United
States Immigration and Customs
Enforcement; and Tracy Renaud, in her
official capacity as Acting Director of
U.S. Citizenship and Immigration
Services,

Defendants.

Case No: 2:21-cv-00186-SRB

DECLARATION OF MARK LAMB

I, Mark Lamb, declare as follows:

1. I am competent to testify as to the matters contained herein and make this declaration based on my own personal and professional knowledge, law enforcement expertise, and the information available to me in my positions in public service.
2. I currently serve as Sheriff of Pinal County, Arizona, and have been a law enforcement officer for over 14 years.
3. Pinal County, Arizona, includes a large section of desert through which unauthorized aliens often attempt to travel. Pinal County Sheriff's Office

1
2 routinely works with the U.S. Border Patrol and other federal authorities in the
3 pursuit and capture of such individuals.

4 4. My office has recorded a surge in the number of pursuits of suspected
5 unauthorized aliens it has been involved in since the beginning of the year
6 compared to the same months in previous years. We have been involved in 24
7 such pursuits in January and February 2021. We only had 10 in 2019 and 14 in
8 2020.

9 5. The 24 pursuits this year required an estimated 377 man-hours at an
10 average personnel cost of \$30 per hour, totaling a cost of \$11,310 to my office, not
11 including other expenses such as vehicle and aviation wear and tear, vehicle and
12 aviation fuel costs, administrative costs, and investigative costs from specialty
13 units.

14 6. This represents a roughly 71% increase in costs over the estimated
15 \$6,597.50 in personnel costs experienced during the same time period last year.

16 7. Additionally, where these pursuits result in arrests, the Pinal County
17 Sheriff's Office incurs the cost of incarcerating the individual. Our records
18 indicate an average jail stay of 25-29 days at an average cost of \$70 per day. This
19 represents an additional cost of \$1,750 per booking on average.

20 8. In my professional opinion, the increase in incidents, and therefore increase
21 in costs, my office is experiencing is at least in part directly related to announced
22 changes in federal border enforcement and alien removal policies. A pause or
23 significant decrease in ICE removals will serve to incentivize individuals to
24 illegally cross the border into Arizona because, among other things, it removes one
25 of the chief consequences that deters such actions. This will, in turn, increase the
26 number of unauthorized crossings and further exacerbate the current increase in
27 law enforcement costs we are experiencing.
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2 I declare under penalty of perjury that the foregoing is true and correct to the best
3 of my knowledge, and that this declaration was issued on March 7th, 2021, in San Tan
4 Valley, Arizona.
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7 Mark Lamb

8 Sheriff

9 Pinal County Sheriff's Office
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Exhibit O

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

State of Arizona; State of Montana; and
Mark Brnovich, in his official capacity
as Attorney General of Arizona,
Plaintiffs,

v.

United States Department of Homeland
Security; United States of America;
Alejandro Mayorkas, in his official
capacity as Secretary of Homeland
Security; Troy Miller, in his official
capacity as Acting Commissioner of
United States Customs and Border
Protection; Tae Johnson, in his official
capacity as Acting Director of United
States Immigration and Customs
Enforcement; and Tracy Renaud, in her
official capacity as Acting Director of U.S.
Citizenship and Immigration Services,
Defendants.

Case No: 2:21-cv-00186-SRB

**DECLARATION OF ROBERT J.
TRENSCHEL, DO, MPH, FACHE**

I, Dr. Robert J. Trenchel, declare as follows:

1. I am competent to testify as to the matters contained herein and make this declaration based on my own personal and professional knowledge and the information available to me in the course of business.

2. I currently serve as the President and Chief Executive Officer of Yuma Regional Medical Center (YRMC).

3. YRMC is a 406-bed, not-for-profit hospital serving Yuma, Arizona, and the surrounding area.

4. YRMC regularly provides emergency medical services to undocumented migrants, including such migrants brought to YRMC under the custody of U.S. Immigrant and Customs Enforcement (ICE).


1 5. From January through June 2019, YRMC records show that an estimated
2 1,293 adult patients were brought to YRMC while in ICE custody. This number does not
3 include children brought to YRMC by ICE or non-custodial visits by undocumented
4 migrants who obtained care at YRMC.

5 6. The estimated cost of care in that six-month period for the 1,293
6 individuals mentioned above was \$810,433 according to our business records.

7 7. YRMC has only received \$264,383 in reimbursement for the care it
8 provided, leaving a \$546,050 unreimbursed gap for that six-month period alone.

9 8. These cost estimates also do not include the substantial care expenses for
10 the multiple mothers who delivered babies at YRMC while under ICE custody during
11 that timeframe.

12 I declare under penalty of perjury that the foregoing is true and correct to the best
13 of my knowledge, and that this declaration was issued on March 5, 2021, in Yuma,
14 Arizona.

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16 
Robert Trenchel (Mar 5, 2021 18:46 PST)

17 Robert J. Trenchel
18 President and Chief Executive Officer
19 Yuma Regional Medical Center
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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF ARIZONA**

7 State of Arizona; State of Montana; and
8 Mark Brnovich, in his official capacity as
9 Attorney General of Arizona,

10 Plaintiffs,

11 v.

12 United States Department of Homeland
13 Security; United States of America;
14 Alejandro Mayorkas, in his official
15 capacity as Secretary of Homeland
16 Security; Troy Miller, in his official
17 capacity as Acting Commissioner of
18 United States Customs and Border
19 Protection; Tae Johnson, in his official
20 capacity as Acting Director of United
21 States Immigration and Customs
22 Enforcement; and Tracy Renaud, in her
23 official capacity as Acting Director of
24 U.S. Citizenship and Immigration
25 Services,

26 Defendants.

No.2:21-cv-00186-SRB

[PROPOSED] ORDER

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Upon consideration of Plaintiffs' Motion for Preliminary Injunction (Dkt. No. 13), as well as all exhibits and the entire record in this case, the Court grants the motion. Therefore, IT IS HEREBY ORDERED pursuant to Rule 65(a) of the Rules of Civil Procedure and 5 U.S.C. §§ 553, 706 as follows:

1. Defendants and all their respective officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with them are hereby **ENJOINED** and **RESTRAINED** from enforcing and implementing the policies

1 described in the January 20, 2021 Memorandum in Section C entitled “Immediate 100-
2 Day Pause on Removals” (Dkt. No. 12-1 at ECF Page Nos. 4–5) or described in the
3 February 18, 2021 “Interim Guidance: Civil Immigration Enforcement and Removal
4 Priorities” in the Sections entitled “Civil Immigration Enforcement and Removal
5 Priorities” and “Enforcement and Removal Actions: Approval, Coordination, and Data
6 Collection” (Dkt. No. 12-1 at ECF Page Nos. 42–46).

7 2. This preliminary injunction is granted on a nationwide basis and prohibits
8 enforcement and implementation of the policies described in Paragraph 1 of this Order
9 in every place Defendants have jurisdiction to enforce and implement the January 20,
10 2021 Memorandum or February 18, 2021 Interim Guidance.

11 3. This preliminary injunction shall remain in effect pending a final
12 resolution of the merits of this case or until a further Order from this Court, the United
13 States Court of Appeals for the Ninth Circuit, or the United States Supreme Court.

14 4. This Order does not prohibit Defendants from carrying out or adhering to
15 the January 20, 2021 Memorandum’s other sections, entitled “A. Comprehensive
16 Review of Enforcement Policies and Priorities,” “B. Interim Civil Enforcement
17 Guidelines,” or “D. No Private Right Statement.”
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