

1 **MARK BRNOVICH**  
2 **ATTORNEY GENERAL**  
3 (Firm State Bar No. 14000)  
4 Joseph A. Kanefield (No. 15838)  
5 Brunn W. Roysden III (No. 28698)  
6 Drew C. Ensign (No. 25463)  
7 Anthony R. Napolitano (No. 34586)  
8 Robert Makar (No. 33579)  
9 2005 N. Central Ave  
10 Phoenix, AZ 85004-1592  
11 Phone: (602) 542-8958  
12 [Joe.Kanefield@azag.gov](mailto:Joe.Kanefield@azag.gov)  
13 [Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)  
14 [Anthony.Napolitano@azag.gov](mailto:Anthony.Napolitano@azag.gov)  
15 [Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)  
16 [Robert.Makar@azag.gov](mailto:Robert.Makar@azag.gov)  
17 *Attorneys for Plaintiffs*

12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF ARIZONA**

14 STATE OF ARIZONA and MARK  
15 BRNOVICH, in his official capacity as  
16 Attorney General of Arizona,  
17 Plaintiffs,  
18 v.

19 UNITED STATES DEPARTMENT OF  
20 HOMELAND SECURITY; UNITED  
21 STATES OF AMERICA; ALEJANDRO  
22 MAYORKAS, in his official capacity as  
23 Secretary of Homeland Security; TROY  
24 MILLER, in his official capacity as  
25 Acting Commissioner of United States  
26 Customs and Border Protection; TAE  
27 JOHNSON, in his official capacity as  
28 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. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1  
2 1. This is a suit to enforce bedrock requirements of immigration and  
3 administrative law, as well as binding commitments made by the U.S. Department of  
4 Homeland Security (“DHS”) to Arizona’s law enforcement community, through its  
5 Attorney General.

6 2. On January 20, 2021, DHS’s Acting Secretary announced a policy that  
7 flouts entire swaths of immigration law for 100 days. Exhibit A. Specifically,  
8 Defendants intend to halt nearly all deportations during that time, including all or nearly  
9 all deportations of unauthorized aliens not lawfully present in Arizona. As long as those  
10 unauthorized aliens have not committed crimes related to terrorism and espionage, they  
11 are not subject to deportation under this policy.<sup>1</sup> And because DHS detention capacity is  
12 limited, on information and belief, a necessary consequence of DHS’s policy is that  
13 individuals will be released into Arizona communities. On information and belief, DHS  
14 has already admitted that some aliens were released in the very first days of the 100-day  
15 moratorium.

16 3. Arizona, as a border state, will be directly impacted by Defendants’  
17 decision to flout their legal obligations. Arizona’s law enforcement community is  
18 particularly concerned that aliens who have been charged or convicted of crimes will be  
19 released as a result of DHS’s 100-day moratorium. Moreover, Arizona’s law  
20 enforcement community is particularly concerned that releasing individuals during the  
21

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22  
23 <sup>1</sup> While the DHS has created a limited exception for aliens for whom “removal is  
24 required by law,” that requires an “individualized determination” by the Acting Director  
25 of ICE following consultation with the General Counsel, which is unlikely to encompass  
26 more than a very small group of people. Also, while the memorandum also provides an  
exception (at 4 n.2) for “voluntary waiver,” which it states “encompasses noncitizens  
who stipulate to removal as part of a criminal disposition,” that would not apply to aliens  
who refuse to stipulate to removal. The fact that DHS has not included serious violent  
crimes within the express exceptions to its policies indicates that DHS has not excluded  
unauthorized aliens that have committed such crimes from its 100-day moratorium.

1 COVID-19 pandemic will further stress hospitals and social services at the local and  
2 county level.

3 4. Federal law on this issue is clear: “[W]hen an alien is ordered removed,  
4 the Attorney General *shall* remove the alien from the United States within a period of 90  
5 days.” 8 U.S.C. § 1231(a) (emphasis added). But, in Defendants’ view, “shall” does not  
6 really mean “shall” or “must,” but instead merely “may.” In other words, despite a clear  
7 mandate of federal statutory law, Defendants believe that there are literally no  
8 constraints whatsoever on their authority, and they may release individuals, including  
9 those charged with or convicted of crimes, even when immigration courts have already  
10 ordered their removal from the United States.

11 5. A federal court in Texas has already considered similar claims brought by  
12 the State of Texas. *See Texas v. United States*, Case No. 6:21-cv-00003 (S.D. Tex., filed  
13 January 22, 2021). That court concluded that Defendants likely violated applicable legal  
14 requirements and entered a 14-day nationwide temporary restraining order on January  
15 26, 2021. Dkt. No. 21, \_\_ F. Supp. 3d. \_\_\_, 2021 WL 247877 (S.D. Tex. Jan. 26, 2021),  
16 attached as Exhibit B. This suit raises many of the same claims asserted by Texas,  
17 including those that the Southern District of Texas concluded are likely meritorious. *Id.*  
18 at \*3-\*5.

19 6. This challenged policy is called the “Immediate 100-Day Pause on  
20 Removals” by DHS, which was promulgated by the “Review of and Interim Revision to  
21 Civil Immigration Enforcement and Removal Policies and Priorities” memorandum  
22 issued January 20, 2021 by Acting Secretary Pekoske (the “Memorandum”), attached as  
23 Exhibit A.

24 7. Although the moratorium is purportedly for 100 days, no apparent limiting  
25 factor is explained: if this action is permitted to stand, DHS could re-assert this  
26 suspension power for a longer period or even indefinitely, thus allowing the current

1 Administration to unilaterally amend the immigration laws as applied to the vast  
2 majority of the removable or inadmissible aliens in this country without the required  
3 congressional act. The Constitution and controlling statutes prevent such a seismic  
4 change to this country's immigration laws by mere memorandum.

### 5 **PARTIES**

6 8. Plaintiff State of Arizona is a sovereign state of the United States of  
7 America represented by Arizona Attorney General Mark Brnovich. The Attorney  
8 General is the chief legal officer of the State of Arizona, and has the authority to  
9 represent the State in federal court.

10 9. Mark Brnovich is the Attorney General of Arizona. He directs and  
11 controls the Arizona Attorney General's Office and Arizona Department of Law, which  
12 are parties to the "Agreement Between the Department of Homeland Security and the  
13 Arizona Attorney General's Office and the Arizona Department of Law" effective  
14 January 8, 2021 (the "Agreement"), attached as Exhibit C.

15 10. Defendant United States Department of Homeland Security is a federal  
16 agency.

17 11. Defendant the United States of America is sued under 5 U.S.C. §§ 702–  
18 703 and 28 U.S.C. § 1346.

19 12. Defendant Alejandro Mayorkas is the Secretary of Homeland Security and  
20 therefore the "head" of DHS with "direction, authority, and control over it." 6 U.S.C.  
21 § 112(a)(2). Defendant Mayorkas is sued in his official capacity.

22 13. Defendant Troy Miller serves as Senior Official Performing the Duties of  
23 the Commissioner of U.S. Customs and Border Protection. Defendant Miller is sued in  
24 his official capacity.



1           21. DHS recognized in the Agreement that Plaintiffs are “directly and  
2 concretely affected by changes to DHS rules and policies that have the effect of easing,  
3 relaxing, or limiting immigration enforcement. Such changes can negatively impact  
4 [Plaintiff]’s law enforcement needs and budgets ... [and] other important health, safety,  
5 and pecuniary interests of the State of Arizona.” Ex. C at 1.

6           22. DHS specifically recognized that “a decrease or pause on ... removals of  
7 removable or inadmissible aliens” “result[s] in direct and concrete injuries to  
8 [Plaintiff].” Ex. C at 2.

9           23. Plaintiff committed to “provide information and assistance to help DHS  
10 perform its border security, legal immigration, immigration enforcement, national  
11 security, and other law enforcement missions in exchange for DHS’s commitment to  
12 consult [Plaintiff] and consider its views before taking any action ... that could: ... pause  
13 or decrease the number of returns or removals of removal or inadmissible aliens from  
14 the country.” Ex. C at 2.

15           24. Specifically, DHS is to “[p]rovide [Plaintiff] with 180 days’ written notice  
16 ... of the proposed action and an opportunity to consult and comment on the proposed  
17 action, before taking any such action.” Ex. C at 4.

18           25. In the event of doubt, the Agreement commits DHS to “err on the side of  
19 consulting with” Plaintiff. Ex. C at 4.

20           26. The Agreement specifically entitles its parties to injunctive relief “if the  
21 parties fail to comply with any of the obligations ... imposed” by the Agreement. Ex. C  
22 at 5.

23           27. On January 20, 2021, Acting Secretary Pecoske issued the Memorandum,  
24 purporting to institute an “Immediate 100-Day Pause on Removals.” Ex. A at 3.  
25  
26







42. Federal statute requires “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A).

43. Each removal order affected by, and not individually exempted from, the “pause” is incapable of being fulfilled within the required statutory period.

44. 8 U.S.C. § 1231 does not empower Defendants to alter the 90-day deadline, and compliance with the deadline may only be excused based on malfeasance by the alien. *See* 8 U.S.C. § 1231(a)(1)(C).

45. The Memorandum therefore violates the APA, as it is both “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. § 706(2)(A), (C).

### COUNT III

## Failure To Follow Notice And Comment

46. The allegations in the preceding paragraphs are reincorporated herein.

47. The Memorandum is a rule obligated to follow notice-and-comment rulemaking under the APA. 5 U.S.C. § 553.

48. The Memorandum is not an interpretive rule, a general statement of policy, nor is it a rule of agency organization, procedure, or practice otherwise exempt from notice-and-comment rulemaking.

49. Thus, the Memorandum must be “held unlawful and set aside” as it was promulgated “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

## COUNT IV

## Arbitrary and Capricious Agency Action

50. The allegations in the preceding paragraphs are reincorporated herein.

51. APA prohibits agency actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).



1 F. Awarding Plaintiffs their reasonable fees, costs, and expenses, including  
2 attorneys' fees, pursuant to 28 U.S.C. § 2412; and

3 G. Granting any and all other such relief as the Court finds appropriate.  
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5 RESPECTFULLY SUBMITTED this 3rd day of February, 2021  
6

7 **MARK BRNOVICH**  
8 **ATTORNEY GENERAL**

9 By /s/ Brunn W. Roysden III

10 Joseph A. Kanefield (No. 15838)

11 Brunn W. Roysden III (No. 28698)

12 Drew C. Ensign (No. 25463)

13 Anthony R. Napolitano (No. 34586)

14 Robert J. Makar (No. 33579)

15 *Assistant Attorneys General*

16 *Attorneys for Plaintiffs*  
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