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**pro hac vice granted*

Attorneys for Plaintiff State of Montana

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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

18 Plaintiffs,

19 v.

20 United States Department of Homeland
21 Security; United States of America;
22 Alejandro Mayorkas, in his official
23 capacity as Secretary of Homeland
24 Security; Troy Miller, in his official
25 capacity as Acting Commissioner of
26 United States Customs and Border
27 Protection; Tae Johnson, in his official
28 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

**PLAINTIFFS' 3-PAGE
SUPPLEMENT TO THEIR
SUPPLEMENTAL BRIEF [DKT. 64]**

**(Hearing Set for May 27, 2021, at
10:00 a.m.)**

1 Discovery has uncovered additional evidence supporting Plaintiffs’ burden, further
2 demonstrating both likely success on the merits and irreparable injury in the absence of
3 preliminary relief. This brief supplements the factual record.

4 A core factual dispute here is whether the Interim Guidance merely tells ICE
5 employees to work on certain “priority” cases first and then use remaining time on “other
6 priority” cases with preapproval (*i.e.* a true procedural rule of prioritization based on
7 limited resources), or whether it sets substantive categories of aliens for whom
8 enforcement is presumptively disfavored irrespective of resources.¹ Closely related to
9 this, Plaintiffs contend the limited-resources rationale is pre-textual for the *actual*
10 changes at issue. Dkt. 64 at 10-11. And unlike the mine run non-enforcement challenge,
11 Congress has unequivocally commanded that once an alien receives a final removal
12 order, DHS “shall remove the alien” within 90 days. 8 U.S.C. §1231(a)(1)(A).²

13 If Plaintiffs’ are correct about the Interim Guidance’s purpose and effect, then it is
14 hardly distinguishable from Section C of the January 20 Memorandum, which established
15 a 100-day moratorium on removals for all but certain categories of aliens and was swiftly
16 enjoined by a federal court because it was contrary to §1231(a)(1)(A), arbitrary and
17 capricious, and improperly issued without notice and comment, Dkt. 12-1 at 32-39—
18 conclusions Defendants did not appeal. While ICE, like everyone, operates under limited
19 resources, that truism does not confer *carte blanche* to ignore Title 8 statutes or the APA.

20 **First**, Plaintiffs have already established through the administrative record that
21 (1) the Interim Guidance is unsupported by any tenable rationale, and (2) the scant
22 limited-resources explanation that was given is demonstrably pretextual. Dkt. 64 at 2-4;
23 *see also* Exhibit CC. The January 20 Memorandum was promulgated with no analysis by
24 DHS whatsoever. Section C was swiftly enjoined, at which point ICE briefly returned to

25
26 ¹ *E.g.*, Dkt. 64 at 12 (A rule is not procedural if it “encodes a substantive value judgment”
27 thereby “putting a stamp of [agency] approval or disapproval on a given type of
28 behavior.”); *Colwell v. HHS*, 558 F.3d 1112, 1124 (9th Cir. 2009) (procedural rule must
“*genuinely* leave[] ... decision-makers free to exercise discretion” (emphasis added)).

² Dkt. 70 at 8 (non-enforcement is reviewable when agency has adopted a general policy
that amounts to an abdication of its statutory responsibilities).

1 “normal removal operations,” including removal flights. Dkt. 64 at 3. That quickly upset
2 certain activist groups, who concluded it was “thwart[ing] the new administration’s
3 priorities,” particularly in light of Black History month. *Id.* Then, in the dead of night on
4 2/4, the Acting ICE Director (on whose orders it is unclear) sent an unmistakable signal
5 to senior ICE leadership: “Effective immediately ... only those who meet the [Section B]
6 priorities will be removed.” *Id.* And that substantive value judgment was carried forward
7 to the 2/18 Interim Guidance. Nowhere in the record did DHS actually analyze resource
8 constraints on removals, how the priority categories relate to those constraints, or
9 consider alternatives. *Id.* at 7-8.

10 **Second**, statistical evidence and testimony from Acting Phoenix ICE Director
11 Albert Carter confirm that the changes imposed by the Interim Guidance caused a “big
12 drop off” in various core ICE missions, harming public safety. In February 2021, ICE
13 was only conducting book-ins at 41% and removals at 55% of pre-February 2021 levels.
14 Dkt. 64 at 4-5 (citing Exhibits S, T). And it was only issuing immigration detainers at a
15 similarly small fraction. Dkt. 70 at 4 (citing Exhibit BB). Director Carter’s testimony³
16 confirmed these drop-offs and the Interim Guidance as their sole cause:

17 ICE Arrests: He agreed there was a “big drop-off in ICE arrests from before” 2/2021
18 to after 2/2021. Ex. DD 73:10-14. He confirmed that, prior to 2/2021, ICE was
19 already prioritizing arrests of aliens who threaten national security, were more recent
20 entrants into the country, or have significant criminal records. *Id.* at 73:21-74:7. He
21 agreed with data showing 86% and 92% of ICE arrests in recent years were for aliens
22 with criminal convictions or charges. *Id.* at 67:19-23, 157:14-22. Importantly, he
23 testified that, other than the Interim Guidance priorities, he cannot think of any new
24 factor that was in effect in 2/2021 that could account for the sudden dropoff, including
25 COVID-19. *Id.* at 74:15-75:15. And he confirmed that he has sufficient monetary
and other resources to effect his mission. *Id.* at 76:10-16, 77:15-22. Finally, he agreed
that if ICE is not booking in as many people, there is a high likelihood the number of
removals will go down, as there is a direct correlation. *Id.* at 77:23-78:6.

26 ³ Acting ICE Phoenix Field Office Director Albert Carter is a career law enforcement
27 officer and prior to that served in the Army. Ex. DD at 18:15-19:19. Approximately a
28 week before his deposition, he resumed serving as Deputy Phoenix ICE Director, a
position he has held since 2009, but his first-hand experience as Acting Director spans
the relevant time period, December 2020 to early-May 2021. *Id.*; see also *id.* at 15:20-24.

1 ICE Immigration Detainers Lodged: He explained a detainer is lodged when an ICE
 2 officer encounters someone in a correctional or jail institution and determines
 3 probable cause the person is amenable to arrest by ICE. *Id.* at 79:9-15. He agreed
 4 there was a “big drop-off in immigration detainers being issued from before” 2/2021
 to after 2/2021. *Id.* at 81:10-82:8; *id.* at 82:14-83:12 (Phoenix-specific). He
 confirmed the only factor for the change was the Interim Guidance. *Id.* at 83:13-84:5.

5 ICE Removal of Criminal Aliens: He testified that the drop off of removals in March
 6 2020 was due to the COVID-19 pandemic. *Id.* at 86:1-24. And on top of the
 7 “substantially down” number of removals due to COVID-19, he agreed there was a
 8 further “big drop off in removals from from before” 2/2021 to after 2/2021. *Id.* at
 87:1-88:1. He agreed pre-2/2021, ICE was already prioritizing removals of aliens
 9 who threatened national security, with significant criminal records, and more recent
 entrants. *Id.* at 88:9-19. He testified the “only factor” he could think of for the drop-
 10 off in 2/2021 was the enforcement priorities, he did not observe any contributing
 factor, and further that resource constraints were not responsible. *Id.* at 88:20-89:11.⁴

11 **Third**, relevant to standing and irreparable injury, Director Carter testified ICE’s
 12 core missions are “absolutely” important to public safety and reducing these missions
 13 will likely harm public safety. *Id.* at 66:22-67:14 (arresting crim. aliens); 79:16-24
 14 (lodging of immigration detainers); 85:9-18 (removing crim. aliens); 89:15-90:4 (at-large
 15 arrests and serving crim. warrants); *see also id.* at 157:23-158:10 (“Absolutely” agreeing
 16 that removing aliens with criminal charges is important to public safety and if interior
 17 removals drop, aliens with convictions/charges are not going to be removed). He
 18 confirmed all of the missions on the “day in the life chart” are important to public safety.
 19 *Id.* at 90:5-8; Exhibit EE (day in the life). Finally, as relevant to ADCRR, he stated ICE
 20 is releasing detainers for aliens who do not fit Interim Guidance priorities, and when
 21 detainers are released, jails have to put aliens on supervisory release or just release them
 22 into the community. Ex. DD at 84:6-14. Carter’s testimony thus further supports
 23 Plaintiffs’ standing and incurrence of irreparable harm.

24
 25 ⁴ The tiny number of removal requests produced further supports Plaintiffs: only 17
 26 requests for “other priority” as opposed to “priority” removal cases in Phoenix for the
 27 entire discovery period (2/22/21 to 4/15/21)—about 9 per month. Ex. FF. Although
 28 Mr. Carter testified he thought there *should* be more (perhaps 3/day), that still would only
 be around 90/month (and also proof-less). But Phoenix had a drop-off in removals of
 about 330-month post-2/2021, Ex. DD at 94:25-95:15; *id.* at 90:23-95:23—far in excess
 of any requests for “other priority” removals. This comparatively small number of
 requests shows ICE officers are not in fact genuinely able to exercise discretion.

1 RESPECTFULLY SUBMITTED this 18th day of May, 2021.

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

5 By /s/ Brunn W. Roysden III

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12 *Attorneys for Plaintiffs Arizona and Arizona*
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15 **ATTORNEY GENERAL OF MONTANA**

16 /s/ David M.S. Dewhirst (with permission)

17 David M.S. Dewhirst*

18 *Solicitor General*

19 **Pro hac vice granted*

20 *Attorneys for Plaintiff State of Montana*

21 CERTIFICATE OF SERVICE

22 I hereby certify that on May 18, 2021, I emailed the attached document to counsel
23 for Defendants. I further hereby certify that on May 20, 2021, I electronically
24 transmitted the attached document to the Clerk's office using CM/ECF System for filing.
25 Notice of this filing is sent by email to all parties by operation of the Court's electronic
26 filing system.

27 /s/ Brunn W. Roysden III

Exhibit CC

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

STATE OF ARIZONA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants.

2:21-cv-00186-SRB

**UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT
ADMINISTRATIVE RECORD FOR
FEBRUARY 18, 2021 INTERIM
GUIDANCE**

INDEX TO ADMINISTRATIVE RECORD

<u>DOCUMENT</u>	<u>PAGE</u>
1. Interim Guidance: Civil Immigration Enforcement and Removal Priorities (February 18, 2021)	AR_AZ_00000001
2. Revision of Civil Immigration Enforcement Policies and Priorities, Executive Order 13993 (Jan. 20, 2021).	AR_AZ_00000008
3. Department of Homeland Security, Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities, Memorandum from Acting Secretary David Pekoske (January 20, 2021).	AR_AZ_00000010
4. Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities, Email from Enrique M. Lucero (Jan. 21, 2021), with attachment of DHS Acting Secretary David Pekoske January 20, 2021 Memorandum.	AR_AZ_00000015
5. Detention Data, Email from Tae Johnson with attachments Detention Inventory Report 1.22.21 and Current Detained by FY21 CEIP_LESA-STU (Jan. 22, 2021).	AR_AZ_00000016
6. Attachment: Detention Inventory Report (Jan. 22, 2021)- Redacted.	AR_AZ_00000020

7. Attachment: Current Detained by FY21 CEIP_LESA-STU- Redacted.	AR_AZ_00001574
8. [Redacted], Request to Continue Removal on 01/29/2021, Email from Matthew Baker (Jan. 25, 2021), with attachment [Redacted].	AR_AZ_00004612
9. [Redacted]- HIGH PROFILE REMOVAL OPERATION PLAN, Email from Lynette A. Sumait (Jan. 25, 2021), with attachments High Profile Removal Operational Plan and Order of Judicial Removal.	AR_AZ_00004617
10. HIGH PROFILE REMOVAL OPERATION PLAN (Jan. 20, 2021).	AR_AZ_00004618
11. Order of Judicial Removal, <i>United States v. Ahmed</i> , No. 12-CR-00661 (E.D.N.Y filed Jan. 27, 2016).	AR_AZ_00004629
12. Notification to ICE Employees- Temporary Restraining Order Issued in Texas v. United States, No. 21-00003 (S.D. Tex. Filed Jan. 22, 2021), Email from Matthew Allen (Jan. 26, 2021), with attachments of DHS January 20, 2021 Memorandum and Order Granting Plaintiff's Emergency Application for a Temporary Restraining Order, <i>Texas v. United States</i> , No. 21-00003 (S.D. Tex.) (issued Jan. 26, 2021).	AR_AZ_00004631
13. Re: Request for DHS to comply with its agreement with the Arizona Attorney General's Office before instituting "pause on removals", Letter from Arizona Attorney General Mark Brnovich to DHS Acting Secretary David Pekoske, (Jan. 26, 2021).	AR_AZ_00004657
14. AGREEMENT BETWEEN THE DEPARTMENT OF HOMELAND SECURITY AND THE ARIZONA ATTORNEY GENERAL'S OFFICE AND THE ARIZONA DEPARTMENT OF LAW (Jan. 8, 2021).	AR_AZ_00004660
15. ERO Historical book-in data to new DHS memo and PEP, Email from Enrique M. Lucero (Jan. 27, 2021) (with attachments).	AR_AZ_00004670
16. FY 2021 YTD ICE Book-Ins by FY CEIP Priorities, Attachment to Enrique M. Lucero Email (Jan. 27, 2021).	AR_AZ_00004673
17. In Re: The recent Refusal of the Department of Homeland Security to acknowledge Immigration and Customs Enforcement Detainers (W.D. Tex., Jan. 28, 2021), General Order.	AR_AZ_00004675
18. Guidance for Compliance with the Temporary Restraining Order Issued in Texas v. United States, -- F.Supp.3d --, 2021 WL 247877 (S.D. Tex. Jan. 26, 2021), Memorandum from DHS Acting Secretary David Pekoske (Jan. 31, 2021).	AR_AZ_00004677

19. Letter, ICE is Doubling Down on Cruelty. It Has to Stop, from Haitian Bridge Alliance (Feb. 1, 2021).	AR_AZ_00004679
20. Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, Executive Order 14010 (Feb. 2, 2021).	AR_AZ_00004681
21. Establishment of Interagency Task Force on the Reunification of Families, Executive Order 14011 (Feb. 2, 2021).	AR_AZ_00004686
22. Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, Executive Order 14012 (Feb. 2, 2021).	AR_AZ_00004689
23. FW: ERO DEN's 48 Hour Notification of Subject in Custody: LPR [Redacted], Email from Jesse Williams II (Feb. 3, 2021).	AR_AZ_00004693
24. Letter re release of people from ICE custody pursuant to January 20 memorandum, Email from Jordan Wells ACLU, with attachment Letter (Feb. 2, 2021).	AR_AZ_00004694
25. Attachment: Letter, Release of people from ICE custody pursuant to January 20 memorandum, from ACLU (Feb. 2., 2021).	AR_AZ_00004695
26. ICE's Removal Priorities, Email from Tae Johnson (Feb. 4, 2021).	AR_AZ_00004699
27. New Biden rules for ICE point to fewer arrests and deportations, and a more restrained agency, The Washington Post (Feb. 7, 2021).	AR_AZ_00004701
28. <i>Texas v. United States</i> , No. 21-00003 (Feb. 8, 2021), Order Extending Temporary Restraining Order (issued Feb. 8, 2021).	AR_AZ_00004705
29. Notification to ICE Employees- Temporary Restraining Order Issued in <i>Texas v. United States</i> , No. 21-00003 (S.D. Tex. filed Jan. 22, 2021), Email from Matthew Allen (Feb. 10, 2021).	AR_AZ_00004711
30. Letter, NGO Letter Urging Affirmative ICE Custody Review Process (dated Feb. 11, 2021).	AR_AZ_00004712
31. Department of Homeland Security, Department Policy Regarding Investigative Data and Event Deconfliction, Policy Directive 045-04 (Oct. 18, 2016).	AR_AZ_00004721
32. Guidance to OPLA Attorneys Regarding Implementation of the President's Executive Orders and the Secretary's Directives on Immigration Enforcement, Memorandum from Tracy Short (Aug. 15, 2017).	AR_AZ_00004726
33. Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removeable Aliens, USCIS Policy Memorandum PM-602-0050 (Nov. 7, 2011).	AR_AZ_00004735

34. Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, USCIS Policy Memorandum PM-602-0050.1 (Jun. 28, 2018).	AR_AZ_00004744
35. Interim Guidance for Civil Immigration Enforcement and Removal Operations, Email from Tae Johnson (Feb. 18, 2021).	AR_AZ_00004755
36. Frequently Asked Questions re: Interim Civil Immigration Enforcement and Removal Policies and Priorities (Feb. 18, 2021).	AR_AZ_00004756
37. For AD1 Review: [Redacted], Email from William Joyce (Jan. 25, 2021).	AR_AZ_00004760
38. Renewing Meeting Request (Implementation of Interim Priorities) + Process Proposal for Escalation, Email Chain from Heidi Altman from National Immigrant Justice Center (Feb. 5, 2021), with attachment Letter: NGO proposal case escalations- stop gap 2.5.21.	AR_AZ_00004762
39. Attachment, NGO proposal case escalations- stop gap 2.5.21, Letter from NIJC (Feb. 4. 2021).	AR_AZ_00004764

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

STATE OF ARIZONA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants.

2:21-cv-00186-SRB

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Matthew C. Allen, pursuant to 28 U.S.C. §1746, declare under penalty of perjury as follows:

I. I am the Senior Official performing the duties of the Deputy Director for U.S. Immigration and Customs Enforcement (“ICE”). I have held this position since January 17, 2021. In this capacity, I am the second highest ranking official within ICE and oversee all of its component groups, including the day-to-day operations of the agency, an annual budget of over \$8 billion, and more than 20,000 employees. Prior to this current position, I was the Acting Executive Associate Director for Homeland Security Investigations (HSI) from January 1, 2021 to January 17, 2021. I have also held positions at ICE Headquarters as the Deputy Executive Associate Director, the Assistant Director for Domestic Operations, and the Assistant Director for HSI’s Investigative programs Division. I was also the Special Agent in Charge for HSI Phoenix from 2008 until 2016. In total, I have over 31 years of federal law enforcement experience, including the U.S. Customs Service and HSI.

2. The facts attested to herein are based upon my personal knowledge or upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

3. The documents listed in the accompanying Administrative Record Index and contained in the files annexed hereto, constitute to the best of my knowledge and belief, a true and complete copy of all documents and materials considered by ICE in issuing the February 18, 2021 Interim Guidance, titled *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of April, 2021 in Washington, D.C.



Matthew C. Allen
Senior Official Performing the Duties of the
Deputy Director
U.S. Immigration and Customs Enforcement

Exhibit DD

Albert Edward Carter - May 14, 2021

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,)	
)	
vs.)	No. 2:21-cv-00186-SRB
)	
United States Department of)	
Homeland Security, et al.,)	
)	
Defendants.)	
_____)	

DEPOSITION OF ALBERT EDWARD CARTER

Phoenix, Arizona

May 14, 2021

AMENDED

Prepared By:
Colette E. Ross, CR
Certified Reporter #50658

<p style="text-align: right;">Page 6</p> <p>1 APPEARANCES: 2 For the Defendants: 3 U.S. Department of Justice 4 Civil Division, Federal Programs Branch 5 By Mr. Joshua E. Gardner and Ms. Laura Smith, via 6 videoconference 7 1100 L Street, NW, Room 12008 8 Washington, D.C. 20530 9 202-514-0271 10 Joshua.E.Gardner@usdoj.gov 11 12 Also present: Mr. Brian Boyd, Esq., ICE Agency, via 13 videoconference 14 Mr. Ferdinand Mercado, Esq., ICE Agency, 15 via videoconference 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>09:49:32-09:50:30</p> <p>1 So I would like to cover some basic ground 2 rules. Do you understand that you are under oath today 3 and testifying just as if you were physically present in 4 court? 5 A. I do, yes, sir. 6 Q. So that we have a clear transcript, I will try 7 not to talk over you. Please also try to let me finish my 8 questions before answering. Does that make sense? 9 A. Yes, sir. 10 Q. Also, I will try my best to ask understandable 11 questions. But if you do not understand a question, 12 please let me know, and I will try to rephrase. Does that 13 make sense? 14 A. Yes, sir, it does. 15 Q. If you don't ask me to rephrase or repeat a 16 question, I will assume you heard and understood my 17 question. Is that fair? 18 A. Yes, sir. 19 Q. Also, we will probably take a break 20 approximately every hour and can take additional breaks at 21 any time. If you need a break, please just let me know. 22 My only request is that, if we have a pending question, 23 you answer my question before we break. Is that fair? 24 A. Works for me, yes, sir. 25 Q. And, finally, are you under the influence of any</p>
<p>09:48:27-09:49:21</p> <p style="text-align: right;">Page 7</p> <p>1 ALBERT EDWARD CARTER, 2 called as a witness herein, having been first duly sworn 3 by the Certified Reporter to speak the truth and nothing 4 but the truth, was examined and testified as follows: 5 6 EXAMINATION 7 BY MR. NAPOLITANO: 8 Q. Good morning. 9 A. Good morning. 10 Q. Will you please state your full name for the 11 record. 12 A. My name is Albert Edward Carter. 13 Q. Good morning, Mr. Carter. My name is Tony 14 Napolitano, and I am an attorney for the State of Arizona 15 and other plaintiffs in this case. 16 Mr. Carter, have you ever had your deposition 17 taken or otherwise testified under oath before? 18 A. I have. 19 Q. Approximately how many times? 20 A. Well, under oath before grand jury, at trial, 21 and EEO appearances, probably approximately 20 times. 22 Q. Okay. And do you remember how many depositions 23 in particular? 24 A. I believe there is one deposition in particular. 25 Q. Thank you.</p>	<p style="text-align: right;">Page 9</p> <p>09:50:44-09:51:56</p> <p>1 medication that could impair your testimony or is there 2 any other reason why you cannot give your best testimony 3 today? 4 A. No, sir, there is not. 5 Q. All right. Thank you. 6 So we are showing on screen an exhibit, 7 Exhibit 1, the deposition notice. Do you recognize this 8 document? 9 A. You are moving a little fast. But if it is one 10 that required my appearance, then I did see that. 11 Q. Okay. Are you here today testifying pursuant to 12 this deposition notice? 13 A. I am. 14 Q. Do you understand this case generally involves 15 an ICE policy issued by acting director Tae Johnson on 16 February 18, 2021, styled Interim Civil -- Interim 17 Guidance Civil Immigration Enforcement and Removal 18 Priorities? 19 A. Yes. 20 Q. If I refer to that policy as the interim 21 guidance, will you understand what I mean? 22 A. Yes, but -- yes. 23 Q. So if I say interim guidance, you understand I 24 am referring to that February 18th document that I just 25 referenced?</p>

09:52:18-09:53:22 Page 10

1 A. Yes, sir.
 2 Q. Thank you.
 3 I am going to show you a second document, marked
 4 Exhibit 2, and it is Bates labeled as AR_AZ_1-7. Do you
 5 recognize this document?
 6 A. I do, yes, sir.
 7 Q. And how would you describe it?
 8 A. Excuse me?
 9 Q. How would you describe this document, meaning
 10 what is this document?
 11 A. It appears to be the interim guidance document
 12 that you just spoke of.
 13 Q. Can we agree this is the interim guidance to
 14 which we were just referring?
 15 A. Yes, sir.
 16 Q. Are you also aware of a memorandum that was
 17 issued by acting secretary Pecoske on January 20th, 2021
 18 that was titled Review of and Interim Revision to Civil
 19 Enforcement -- Civil Immigration Enforcement and Removal
 20 Policies and Priorities?
 21 A. I am, yes, sir.
 22 Q. We are going to show you a document marked as
 23 Exhibit 3, Bates labeled AR_AZ_10-14. Do you recognize
 24 this document?
 25 A. I do, yes, sir.

09:53:37-09:54:58 Page 11

1 Q. Is this that same January 20th memorandum that I
 2 described in my previous question?
 3 A. I believe so, yes, sir.
 4 Q. Thank you.
 5 Did you spend any time preparing for your
 6 deposition?
 7 A. I did.
 8 Q. How much time?
 9 A. Approximately six hours.
 10 Q. Okay. And we have on the Zoom call three
 11 gentlemen from the Department of Justice. There are --
 12 actually, it is just -- is it three Department of Justice?
 13 Are these your attorneys for purposes of this deposition?
 14 A. Is that question for me?
 15 Q. Sorry. Let me clarify. I see Joshua Gardner,
 16 and he is on this call. Is he your attorney for purposes
 17 of this deposition?
 18 A. He is.
 19 Q. Is there anyone else on this, the Zoom call, who
 20 is your attorney for the purposes of this deposition?
 21 A. I would defer to counsel for that, sir.
 22 Q. Did you speak to any nonattorneys for
 23 preparation for today?
 24 A. For the preparation, no, sir. The call was with
 25 the attorneys.

09:55:18-09:56:47 Page 12

1 Q. Just the attorneys. And to which attorneys did
 2 you speak?
 3 A. It would be Mr. Gardner, I think Mr. Boyd from
 4 ICE, and a member of the Office of General Counsel by the
 5 first name of Laura, I believe, and others. I don't
 6 recall who all was on the prep session.
 7 Q. Okay. Approximately how many people were
 8 involved in the prep session?
 9 A. Approximately five to six, I believe. I would
 10 have to look at the calendar invite. It was primarily
 11 with Mr. Gardner and, I want to say, Mr. Boyd primarily.
 12 Q. Okay. Separate from meeting with your
 13 attorneys, did you review any documents in preparation for
 14 your deposition today?
 15 A. I reviewed the interim guidance primarily, so
 16 the Tae Johnson memo and the Pecoske.
 17 Q. Were there any other documents?
 18 MR. GARDNER: Objection, objection. Again, you
 19 are asking him about documents he reviewed with counsel.
 20 That's privileged. I instruct the witness not to answer.
 21 If he reviewed documents without the presence of attorney,
 22 he can answer the question.
 23 BY MR. NAPOLITANO:
 24 Q. Let me clarify. I do believe my question was
 25 separate from meeting with your attorneys. Did you review

09:57:06-09:58:32 Page 13

1 any documents in preparation for your deposition today?
 2 A. My preparation, no, outside of the preparation.
 3 Q. Okay. Thank you.
 4 What is your current title within the US
 5 Department of Homeland Security?
 6 A. I am the deputy field office director for the
 7 Immigration and Customs Enforcement, Enforcement and
 8 Removal Operations Phoenix field office.
 9 Q. And how long have you held this position?
 10 A. I have been in this position since May of 2009.
 11 Q. Can you please briefly summarize your current
 12 duties.
 13 A. My current duties as of today are to oversee
 14 detention and mission support for the Phoenix field
 15 office.
 16 Q. Can you describe that a little bit more in
 17 detail, please.
 18 A. I provide oversight for all detention operations
 19 in Arizona, immigration detention in the State of Arizona.
 20 I oversee the mission support, the logistical side, or the
 21 logistical programs for the ERO Phoenix field office.
 22 Q. And are you in an acting position right now?
 23 A. I was. Right now I am -- my acting field office
 24 director position ended approximately a week ago.
 25 Q. So approximately one week ago you were the

<p>09:58:51-10:00:00 Page 14</p> <p>1 acting field office director. When did you initially 2 start in that role as acting field officer? 3 A. I assumed that role approximately December of 4 2020. 5 Q. And is there any distinction and 6 responsibilities between being an acting field office 7 director and field office director? 8 A. Yes, sir, there is. 9 Q. Will you please describe those. 10 A. The acting field office director is responsible 11 for all the operations within the ERO Phoenix field 12 office. The deputy field office director that I currently 13 encumber covers the areas that we discussed, detention 14 operations and -- the immigrations detention operations in 15 Arizona as well as mission support responsibility. 16 Q. Okay. And is there a difference between being 17 the field office director and being the acting field 18 office director? 19 A. There are. 20 Q. Will you please describe those differences in 21 terms of your responsibilities, please. 22 A. The responsibilities of the field office 23 director is ultimately responsible for all operations. 24 They have the authority to make the decisions for the 25 final decision for the field office. The deputy field</p>	<p>10:01:39-10:03:03 Page 16</p> <p>1 interact with the communities in Arizona where ICE ERO is 2 conducting operations? 3 A. I would physically go out and interact not so 4 much. A lot of my outreach, due to the pandemic, was 5 telephonic, virtually, or whatever the case may be. 6 Q. Did you interact with community members in some 7 form, telephonic or via teleconference technology? 8 A. If you are referring to the community members as 9 elected officials, part of our attorneys and such, I have, 10 yes, sir. 11 Q. Aside from those individuals, elected officials, 12 attorneys, did you talk to other community members? 13 A. I don't recall right off. You know, 14 unfortunately it is a fast-paced position and I speak with 15 a lot of people throughout the day. So narrowing it down 16 and definitively say, I couldn't say so. 17 Q. Do you try to observe what is going on in the 18 communities where ICE ERO is conducting operations? 19 MR. GARDNER: Objection, vague. 20 BY MR. NAPOLITANO: 21 Q. As acting field office director, how did you 22 keep yourself informed of relevant issues in the area 23 where ICE ERO was conducting operations? 24 A. I mean I am a community member as well. You 25 know, I try to keep up through the news, you know, looking</p>
<p>10:00:15-10:01:19 Page 15</p> <p>1 office director answers to the field office director, as 2 the field office director will be the first line 3 supervisor for the deputy field office director. 4 Q. Thank you. 5 I apologize. I think we might have a slight 6 miscommunication. I am asking, asking just about your 7 role as acting field office director as opposed to being a 8 field office director who is not in an acting capacity, 9 meaning if someone is a field office director in full as 10 opposed to acting field office director. 11 A. Oh. 12 Q. So with that distinction in mind, is there a 13 difference between being the acting field office director 14 and being the field office director, not acting, just 15 field office director? 16 A. My apologies. No, sir. The acting field office 17 director has all the signatory authorities to accomplish 18 the mission. 19 Q. Okay. Thank you. 20 And when you were the acting field office 21 director, were you generally aware of what was going on in 22 the operations under the jurisdiction of the field office, 23 the Phoenix field office, on a day-to-day basis? 24 A. I like to think so, yes, sir. 25 Q. And as part of your duties, did you go out and</p>	<p>10:03:25-10:04:50 Page 17</p> <p>1 at, you know, information online, field briefs, and what 2 have you. 3 Q. Okay. So you mentioned reading news information 4 online. Would it -- the information online would be 5 referring to news or would there be other sources of 6 information that you would be looking at online? 7 A. It would be a variety of things, you know. You 8 know, I surf the net on occasion. But if I am reading or 9 if I am looking at a media website, then, you know, I am 10 looking at the news. And when ICE comes across, I am very 11 interested. I don't read every one of those articles, 12 but, you know, when I see my agency in the news, you know, 13 I like to stay up to date. 14 Q. Okay. Thank you. 15 Is it fair to say, as the acting director, you 16 had firsthand knowledge of how the actions of the Phoenix 17 field office impacted local communities in Arizona? 18 A. I would say to a degree. 19 Q. Would you please elaborate on that. 20 A. I think once you -- what you read and sometimes 21 what you hear is in the eye of the beholder. You know, 22 there are different opinions on both sides. The media, as 23 I think we all know, is very biased these days. So, you 24 know, getting a sense of what the, what the tone is is 25 very hard to distinguish.</p>

<p>10:05:11-10:07:12 Page 18</p> <p>1 But ICE is a divisive issue. I understand that. 2 But ICE enforces the law, so... 3 Q. And could you please briefly describe your 4 federal employment history prior to serving in your 5 current role -- sorry -- prior to serving as the acting 6 field office director. I believe your current role has 7 changed slightly now. 8 A. Yes, sir. I have just shy of four years time in 9 the US Army from 1993 to 1997. I started with the -- 10 MR. NAPOLITANO: Mr. Carter, I believe I lost 11 your audio. 12 THE WITNESS: Okay. My extension timed out. 13 Can you hear me now? 14 BY MR. NAPOLITANO: 15 Q. Let's start at the beginning of the question. 16 Could you please describe your federal employment history 17 prior to service as acting field office director for 18 Phoenix. 19 A. Yes. I served just shy of four years in the 20 United States Army from 1993 to 1997. I did a year with 21 the Virginia National Guard from '97 to '98. After that, 22 I worked for the Immigration Naturalization Service from 23 April of 2000 until the ICE merger. And since the ICE 24 merger, I have been with the agency. 25 Now, when I started with the Immigration and</p>	<p>10:09:03-10:10:33 Page 20</p> <p>1 THE REPORTER: Spell the last name, please. 2 THE WITNESS: Flores, F-L-O-R-E-S, hyphen, Lund, 3 L-U-N-D. 4 THE REPORTER: Thank you. 5 BY MR. NAPOLITANO: 6 Q. And is that the person to whom you report now? 7 A. That is correct, yes, sir. 8 Q. Is there anyone else above you within the 9 Phoenix field office currently? 10 A. No, sir. 11 Q. And would you please briefly describe your 12 educational background. 13 A. I have a high school diploma and two years of 14 college, no degrees. 15 Q. Thank you. 16 Okay. We are going to show you Exhibit 4. It 17 is a two-page document. Do you recognize this document, 18 Exhibit 4? 19 A. I do not recall ever seeing it. But can you go 20 to the top, please. Okay. 21 Q. So this is a printout of a page on the ICE.gov 22 website styled The Organizational Structure. On page 1 of 23 this document, does this accurately represent the current 24 leadership of ICE? 25 A. I would say in part, yes.</p>
<p>10:07:36-10:08:45 Page 19</p> <p>1 Naturalization Service, I was a special agent until 2006; 2 go through the merge. I worked as a special agent until 3 approximately May of 2006. And then I transferred to ICE 4 headquarters as a detention agent officer with Enforcement 5 and Removal Operations, or Detention and Removal 6 Operations at the time. 7 After that I have held the position of acting 8 interim deputy chief of staff for the ERO director, the 9 chief of staff for the ERO deputy director until May of 10 2009 when I became the deputy field office director for 11 ICE here in Phoenix. 12 Q. Okay. And you said as of roughly one week ago 13 you were current to that role as the deputy field office 14 for Phoenix, is that correct? 15 A. Yes. I have had multiple stints over my tenure 16 as deputy field office director, as the acting field 17 office director. But as mentioned earlier, my acting 18 field office director time this last time was from 19 approximately December 2020 until approximately last week. 20 Q. And is there anyone who is currently serving as 21 the acting field office director for Phoenix? 22 A. There is an interim field office director that 23 is serving in that role as of today. 24 Q. And what is this person's name? 25 A. It is Simona Flores-Lund.</p>	<p>10:10:57-10:11:52 Page 21</p> <p>1 Q. What is it missing? 2 A. All the other program director. 3 Q. Okay. On page 2 there is a header titled 4 Directorates. Is this a more complete list of those 5 directorates? 6 A. It appears to be, yes, sir. 7 Q. Are there any directors that you believe are 8 missing? 9 A. That, at first look, I would say no, sir. 10 Q. What does directorates mean in this context? 11 A. It would be a program, i.e. Enforcement or 12 Removal Operations, which I am a part of, Homeland 13 Security Investigation, and various other programs within 14 ICE. 15 Q. And is it accurate that ICE has five 16 directorates as reflected in the top row of blue boxes on 17 page 2 of this exhibit? 18 A. I would say so, yes, sir. 19 Q. Are you employed within the Enforcement and 20 Removal Operations directorate? 21 A. I am, yes, sir. 22 Q. If we use the acronym ERO today to refer to the 23 Enforcement and Removal Operations directorate, would you 24 understand what I am referring to? 25 A. Yes, sir. And my apologies for using ERO</p>

<p>11:34:55-11:36:19 Page 62</p> <p>1 deportation officers that have regular contact, as well as 2 enforcement removal systems. 3 So it is, you know, not to, not to be overly 4 complex, but there are a lot of hands in the pot so to 5 speak. There is a lot of coordination that goes into 6 having a successful flight and ensuring that the mission 7 goals are met. So it is a big system, sir. 8 Q. Okay. And would the Phoenix field office keep 9 records of which individuals are placed on removal flights 10 from its area of operations? 11 A. I believe we do. But, again, you know, any 12 records such as that I would refer to the removal division 13 in headquarters. 14 Q. You previously stated that the Phoenix field 15 office manages busing to the US-Mexico border, is that 16 correct? 17 A. That is correct, yes, sir. 18 Q. Okay. Are you aware of any new resource 19 constraints since February 2021 compared to immediately 20 before February 2021 that require reducing the number of 21 bus trips? 22 A. I am not, no, sir. 23 Q. Okay. And has the number of bus trips since 24 February 2021 compared to immediately before February 2021 25 been reduced?</p>	<p>11:38:20-11:39:59 Page 64</p> <p>1 to Mexico and what have you. So it is a, it is a 2 difficult question to actually quantify, in my opinion. 3 BY MR. NAPOLITANO: 4 Q. Order removed by who? 5 A. A variety of sources. You know, an individual 6 can be ordered removed by an immigration officer. An 7 individual could be ordered removed by an immigration 8 judge or a district court judge, or whatever, primarily 9 those three areas, so any of those means. 10 Q. Okay. And would you acknowledge that the 11 restraints of COVID have been around, have been affecting 12 busing operations since the spring of 2020? 13 A. I would say to a degree, yes, sir. 14 Q. And has there been a change in how those COVID 15 concerns have affected these busing operations in terms of 16 the resource constraints during that time? 17 A. I would say whether -- would say no for the most 18 part. You know, there are a lot of -- you know, COVID 19 causes a lot of resources to be expensed, you know, 20 mitigating an exposure and things like that to COVID. So, 21 you know, it has been pretty consistent. 22 You know, again, as I stated earlier, from a 23 resource standpoint, the Phoenix field office is situated 24 in an appropriate way from a resource standpoint. 25 Q. Under the interim guidance, was it your role as</p>
<p>11:36:37-11:37:59 Page 63</p> <p>1 MR. GARDNER: Objection, lack of foundation. 2 THE WITNESS: And I would say not that I am 3 aware of, sir. You know, our operations are moving, you 4 know, at a constant, steady state. So there are no 5 resource restrictions, you know, that we have at this time 6 to carry out our mission. 7 BY MR. NAPOLITANO: 8 Q. Okay. And in that same time period, 9 February 2021 and after, compared to immediately before 10 February 2021, have the buses been less full on those 11 removal bus trips? 12 MR. GARDNER: Objection, lack of foundation. 13 THE WITNESS: And I would add to that that not 14 that I am aware of, you know, again, understanding we are 15 in a dynamic situation where, you know, we COVID test 16 everyone that's being released or removed from ICE 17 custody. So those things can have an impact. 18 As far as the removals, generally if they are 19 subject to an order of removal, they should still go, even 20 with the positive test, as long as we coordinate with the 21 government of Mexico. 22 So I couldn't tell you for sure, sir. But 23 numbers do fluctuate drastically based on, you know, the 24 pace of due process, you know, depending on how many 25 individuals are ordered removed, that are ordered removed</p>	<p>11:40:20-11:42:14 Page 65</p> <p>1 the acting field office director to approve other priority 2 removals? 3 A. It was, yes, sir. 4 Q. Okay. Then if you don't know how full the buses 5 are, how can you determine whether there is the capability 6 to remove an individual via busing? 7 A. Say that again, please. 8 Q. When you -- let me rephrase the question. When 9 you make those approvals or denials for other priority 10 removals, do you take into consideration the availability 11 of space on removal bus trips? 12 A. I do not, no. 13 Q. And when you approve or reject nonpriority -- 14 sorry. Excuse me. 15 When you approve or reject the other priority 16 removals, do you take into consideration how full or 17 empty, how much space there is on removal flights? 18 A. I do not, sir, no. 19 Q. Okay. Thank you. 20 All right. Let's move on to Exhibit 10. 21 Exhibit 10 is titled An Average Day in the Life 22 Enforcement and Removal Operations. Do you recognize this 23 document? 24 A. I am still getting there. 25 I do not, sir.</p>

11:42:28-11:43:44 Page 66

1 Q. Okay. This is a printout from the ICE.gov
2 website.
3 A. Okay.
4 Q. And if you look in the middle column, you will
5 see criminal aliens arrested. The second box down is 337
6 criminal aliens arrested.
7 In terms of ERO activities generally, what does
8 it mean for ICE to arrest a criminal alien?
9 A. It would be an individual that is encountered
10 that has a criminal history or a criminal conviction.
11 Q. What division of ERO are involved in arresting a
12 criminal alien?
13 A. It can be the criminal alien program. It could
14 be the fugitive operations program, the alternatives to
15 detention program, whatever. Basically any sworn law
16 enforcement officer that conducts an arrest and in
17 furtherance of their duties.
18 Q. Okay. Is the mission of arresting criminal
19 aliens important for public safety for the communities
20 where those aliens are located?
21 A. Absolutely, I believe so.
22 Q. Will reducing arrests of criminal aliens likely
23 harm public safety for the communities in which the aliens
24 are located?
25 MR. GARDNER: Objection, calls for speculation.

11:45:32-11:47:07 Page 68

1 so you may pull a calculator out or anything like that if
2 it would help with the discussion.
3 A. Okay.
4 Q. What divisions of ERO are involved in arresting
5 aliens?
6 A. Again, I mean it is kind of a vague question. I
7 would say any division that has a sworn law enforcement
8 officer assigned to the division would technically be able
9 to carry out those duties. So to clarify it to which
10 division I think is, with all due respect, I think it is a
11 rather vague question. And beyond that, I wouldn't be
12 able to really quantify it.
13 Q. So would it be correct that multiple divisions
14 of ERO are involved in arresting aliens?
15 A. Yes, sir, absolutely.
16 Q. Okay. What is considered a full caseload in
17 terms of the number of arrests per month for an ICE law
18 enforcement officer in this area?
19 A. Sir, I mean that varies. You know, the officers
20 that are assigned to those enforcement functions develop
21 leads through a variety of means. So, you know, there is
22 really no set number that they are required to encounter
23 or anything like that. It is, you know, they are assigned
24 to identify arrests and, you know, place individuals in
25 the immigration cycle. So, you know, as far as

11:44:05-11:45:16 Page 67

1 THE WITNESS: It is --
2 Do you want me to answer the question as worded
3 or --
4 MR. GARDNER: Yes, you can answer.
5 THE WITNESS: As a career law enforcement, I
6 believe arresting those that violate the law is a critical
7 element of public safety.
8 BY MR. NAPOLITANO:
9 Q. Okay. So then, in your expertise, does a
10 criminal law enforcement office -- as a career law
11 enforcement officer, does reducing the arrests of
12 criminals likely harm public safety?
13 MR. GARDNER: Objection, calls for speculation.
14 THE WITNESS: I would say that it does.
15 BY MR. NAPOLITANO:
16 Q. Okay. Directly above the box we were just
17 speaking about, it shows 392 arrested. Do you see that?
18 A. I do.
19 Q. If 337 out of 392 arrests are criminal aliens,
20 that would suggest that about 86 percent of ICE arrests
21 were for criminal aliens in fiscal year 2019. Does that
22 sound right?
23 A. I have no reason to doubt the data.
24 Q. Okay. And if you would like, sir, we are all on
25 computers, we are going to be talking about some numbers,

11:47:28-11:48:51 Page 69

1 quantifying it, there really is no quantifying. They are
2 to do their job and do their job to the best of their
3 ability.
4 Q. Would it be more than one arrest per month?
5 MR. GARDNER: Objection --
6 THE WITNESS: Again --
7 MR. GARDNER: Sorry. Objection, misstates the
8 witness's testimony.
9 THE WITNESS: Again, you know, again, it varies.
10 And, you know, there is really, you know, based on my
11 experience, no quantifiable requirement to do. They are
12 to do their job. And, you know, productivity is always --
13 is an issue. But it is, it is dependent on so many
14 factors.
15 BY MR. NAPOLITANO:
16 Q. As the acting field office director, did you
17 oversee ICE law enforcement officers who conducted
18 arrests?
19 A. Yes, sir.
20 Q. And in prior years, would an ICE law enforcement
21 officer typically, the typical officer, have a caseload
22 that involved more than one arrest per month?
23 A. I would say yes, absolutely.
24 Q. And would the typical law, ICE law enforcement
25 officer be able to maintain a caseload of more than one

<p>11:49:13-11:50:45 Page 70</p> <p>1 arrest per month, other than during the, during 2020 after 2 the spring when COVID restrictions were in place? 3 A. Yes, sir. 4 Q. Okay. I would like to turn back to Exhibit 5. 5 That was that spreadsheet. So can you please open that 6 up. It was AZMT007826. 7 A. Are we going to refer back to the one or do I 8 need to leave it open? 9 Q. To this exhibit? We may come back to 10 Exhibit 10. 11 A. Okay. 12 Q. Okay. Do you have that? 13 A. I have that. 14 Q. Okay. Before we move on, would the average ICE 15 officer, ICE law enforcement officer, conducting arrests 16 conduct more than five arrests per month? 17 A. Sir, again, it varies. There are a lot of 18 factors going into it, you know, the number of leads 19 coming in, you know, whether the officer is on leave for 20 part of the month, or whatever the case may be. So there 21 is really no set, set goal or average that I am aware of. 22 You know, again, as a field office director, I 23 evaluate my programs. But whether, whether one officer is 24 conducting one arrest or whether one officer is, you know, 25 effecting five, you know, as long as the units are</p>	<p>11:52:44-11:54:08 Page 72</p> <p>1 would cause you to want to look into why they were 2 underperforming? It might be less than ten, less than 3 five, less than two? 4 A. I would, I mean I would probably ask the 5 question if it was, you know, just a couple. But, you 6 know, really, before I even get that far in, you know, is 7 it a pattern, is it, you know, are there factors outside 8 the norm, again, keeping in mind that, you know, even as 9 the acting field office director, if there was a question 10 of any of the programmatic areas that I had questions 11 about, I am talking to the, you know, the managers that 12 oversee those programs, potentially the first line 13 supervisors who are overseeing those officers and what 14 have you. But, you know, as far as drilling down on 15 specific criteria that I would look at, it is not 16 necessarily an accurate representation of how I managed 17 the field office when I was the acting field office 18 director. 19 Q. Okay. So let's go back -- thank you for that 20 answer -- back to Exhibit 5. And if you click on the 21 third tab, titled Detention FY21, YTD... 22 A. Yes, sir. 23 Q. If you look at the table at I18, titled ICE 24 initial book-ins by arresting agency and month, FY2021, 25 YTD --</p>
<p>11:51:02-11:52:25 Page 71</p> <p>1 producing, they are producing. 2 You know, again, if an officer conducts 3 20 arrests in a month, then I am going to recognize that 4 individual for exceptional service or whatever. But, you 5 know, it varies. It truly does. 6 Q. Okay. You said that, you know, 20 arrests might 7 be exceptional service. Is there a number that would be, 8 that would be unacceptable service? 9 A. Yes, you know, there would, you know, if there 10 are times to where, you know, the numbers aren't 11 necessarily meeting, you know, a reasonable expectation. 12 But, you know, in that event you are going to look and see 13 what the circumstances were. And that's why I said there 14 is no quantifiable way. 15 There are always extenuating, there is always 16 circumstances that lead to various things. If an officer 17 is working, you know, the entire time and they are just 18 not producing, we are going to look at that. We are going 19 to evaluate that. But, you know, at the end of the day, 20 it is a process and it is a team effort. So, again, 21 quantifying it to that degree I think is not indicative 22 of, you know, what, as the acting field office director, 23 what my expectation was for the units. 24 Q. For a normal -- an officer who is normally 25 operationally active for a month, is there a number that</p>	<p>11:54:36-11:55:44 Page 73</p> <p>1 A. Okay. 2 Q. -- do you see in October, November, December, 3 and January there were 6,804, 5,978, 6,071, and 5,118 ICE 4 arrests respectively? 5 A. I do, yes, sir. 6 Q. And do you see that in February, March, and 7 April there are 1,985, 2,343, and 2,156 arrests 8 respectively? 9 A. I do. 10 Q. Would you agree that that represents a big 11 dropoff in ICE arrests from before February 2021, after 12 February 2021? 13 MR. GARDNER: Objection, lack of foundation. 14 THE WITNESS: I would agree. 15 BY MR. NAPOLITANO: 16 Q. Did you observe a similar dropoff in ICE arrests 17 in the Phoenix field office during your responsibility 18 during that time? 19 A. And I don't have the data to support that at 20 this time. 21 Q. Okay. Prior to February 2021, was ICE ERO 22 prioritizing arrests at aliens that threaten national 23 security? 24 A. I would say yes. 25 Q. Prior to February 2021 was ICE ERO prioritizing</p>

<p>11:56:03-11:57:38 Page 74</p> <p>1 arrests of aliens who were more recent entrants to the 2 country? 3 A. I would say yes. 4 Q. Prior to February of 2021, was ICE ERO 5 prioritizing arrests of aliens with significant criminal 6 records? 7 A. I would say yes. 8 Q. Why did the number of ICE arrests drop off so 9 much as shown in this spreadsheet? 10 MR. GARDNER: Objection, lack of foundation. 11 THE WITNESS: I would say it is a matter of 12 opinion. There are a variety of reasons, variety of 13 factors that changed in roughly that time frame. 14 BY MR. NAPOLITANO: 15 Q. Can you please elaborate on what factors changed 16 during that time frame. 17 A. The enforcement priorities came into effect 18 roughly around that time frame. 19 Q. Was there anything else? 20 A. I can't think of anything else. I mean the, you 21 know, I am sure COVID had a part in it as well 22 potentially. You know, there are numerous factors, again, 23 that caused ups and downs with status, either from the 24 status prior, you know, in some of the prior months. So, 25 you know, it would be those factors that were present, as</p>	<p>11:59:27-12:00:52 Page 76</p> <p>1 terms of number of arrests per month for an ICE law 2 enforcement officer in this area? 3 A. Again, it varies. You know, as the acting field 4 office director, I did not assign, you know, specific 5 numbers that individuals had to, had to meet. I evaluated 6 those programmatic areas as programmatic areas. You know, 7 I did look at individuals and things like that, but the 8 overall success of the program and of the field office I 9 looked at from an overall, overarching standpoint. 10 Q. Okay. Do you have the same funding for officers 11 conducting arrests in the Phoenix field office 12 pre-February 2021 and post-February 2021? 13 A. Pre and post? The allotment of the budget 14 varies significantly. But I have enough funding to effect 15 my mission. 16 Q. Okay. Does the budget vary significantly month 17 to month or is it based on fiscal year? 18 A. That's, it is a dynamic question, sir. It 19 varies all the way around. It depends on the 20 circumstances of the budget, are we in a continuing 21 resolution, are we in a, you know, permanent budget where 22 we know the amounts, does the ICE headquarters, you know, 23 provide the quarterly funding or are they breaking it down 24 monthly. 25 The practice over the last little bit has been</p>
<p>11:57:53-11:59:01 Page 75</p> <p>1 well as, you know, the new factor of the priorities going 2 into effect. 3 Q. So you mentioned COVID specifically, that that 4 was one of the factors that was present prior to the new 5 priorities -- 6 A. Correct. 7 Q. -- is that correct? 8 A. Yeah. I am saying that, you know, all those 9 other factors that were present before were also factors 10 in the subsequent months as well. 11 Q. Okay. Was, other than the interim guidance 12 priorities, was there any other new factor that that was 13 in effect after February of 2021, to your knowledge? 14 A. I can't think of any specifically right now. 15 Q. Okay. Thank you. 16 Do you have the same number of officers 17 responsible for conducting arrests in the Phoenix field 18 office pre-February 2021 and post-February 2021? 19 A. Our numbers fluctuate, but I would say, you 20 know, for the most part we have the same number. We are 21 still authorized the same number that we were previously. 22 Q. And how many such officers do you have? 23 A. I would say, without divulging sensitive data, 24 it is approximately 350. 25 Q. Okay. And what is considered a full caseload in</p>	<p>12:01:17-12:02:45 Page 77</p> <p>1 to -- well, actually it has varied. Sometimes it will be 2 month to month. Other times it will be quarterly. So it 3 does vary. I can say that from a budget standpoint I have 4 had no disruption that has caused any interference with my 5 mission whatsoever. 6 Q. Okay. So if the budget did not cause a 7 disruption in mission, would you include the arrests as 8 part of the mission so the budget was not, the budget -- 9 would you say it is correct the budget was not causing a 10 drop in the number of arrests? 11 MR. GARDNER: Objection, vague. 12 THE WITNESS: I am sorry, sir. I don't 13 understand, I don't understand the question. 14 BY MR. NAPOLITANO: 15 Q. Are arrests part of the mission for which you 16 have funds budgeted? 17 A. Absolutely, yes, sir. 18 Q. Okay. Were there other resource, sorry, other 19 limited resources that might have caused the drop in 20 arrests, to your knowledge? 21 A. Sir, as it stands right now, I have enough 22 resources to effect my mission. 23 Q. If you reduce the number of book-ins, that will 24 necessarily reduce the number of people for whom you can 25 carry out removal, is that correct?</p>

<p>12:03:01-12:04:32 Page 78</p> <p>1 MR. GARDNER: Objection, calls for speculation, 2 hypothetical. 3 THE WITNESS: I would say if we are not booking 4 in as many people, then there is a high likelihood that 5 that the number of removals would go down, yes. I think 6 there is a direct correlation. 7 BY MR. NAPOLITANO: 8 Q. In your position have you seen a correlation 9 between the number of book-ins and the number of people 10 who are being removed or are potentially to be removed? 11 A. It is a dynamic -- well, it is a dynamic 12 question, sir. You know, from a managerial standpoint, my 13 managerial style is not necessarily to look at the number 14 of book-ins. It is, you know, it is the other 15 programmatic areas that I look at, you know, the number of 16 arrests, the number of removals, and what have you. 17 You know, book-ins are just part of that as far 18 as, you know, how many people are coming into custody. 19 Book-ins can encompass a lot of different things anyway. 20 We can book in an individual and later determine that they 21 are not amenable to arrest, they are not amenable to 22 removal at the time and they are booked out. 23 So book-ins is a very generic facet of the 24 statistical data and is really, you know, it is a -- it 25 can tell you a lot of things and paint a lot of different</p>	<p>12:06:34-12:07:57 Page 80</p> <p>1 Q. What division of ERO are involved in lodging 2 immigration detainees? 3 A. Again, primarily the criminal alien division, 4 but any sworn law enforcement officer, any ERO, and 5 Homeland Security Investigations for that matter, can 6 lodge immigration -- any immigration law enforcement 7 officer. 8 Q. Are many immigration detainees initiated by the 9 local law enforcement sending information to ICE? 10 A. I am sorry, sir. 11 Q. Are many immigration detainees initiated by 12 local law enforcement sending information to ICE? 13 A. It varies. Yes, you know, when an individual is 14 booked into custody, if there is interoperability, you 15 know, just by the nature of the interoperability, that 16 information goes to the various ICE offices. But 17 detainees can also be lodged by individuals that ICE 18 officers actually encounter physically in those jails as 19 well. 20 Q. Okay. Has there been a dropoff in local law 21 enforcement agencies in Arizona sending information to ICE 22 since February of 2021? 23 MR. GARDNER: Objection, lack of foundation. 24 THE WITNESS: I can't say for sure. You know, 25 the interoperability, to my knowledge, has not changed.</p>
<p>12:04:59-12:06:18 Page 79</p> <p>1 pictures. So, again, my style, I don't worry about the 2 book-ins as much as I do the other enforcement areas that 3 are captured statistically. 4 Q. So, now, let's turn back to Exhibit 10, please. 5 A. Okay. 6 Q. Do you see where it says 453 detainees lodged, 7 the first column, second box? 8 A. I do, yes, sir. 9 Q. In terms of ERO activities, generally what does 10 it mean to have an immigration detainee lodged? 11 A. From a very general standpoint, it is, when an 12 officer encounters someone in a correctional or jail 13 institution and determines probable cause that the 14 individual is an amenable to arrest, then they will place 15 the detainee. 16 Q. Okay. Is the mission of lodging immigration 17 detainees important to public safety in the communities 18 where those aliens are located? 19 A. I would say yes, sir, absolutely. 20 Q. Will reducing the lodging of immigration 21 detainees likely harm public safety for communities in 22 which the aliens are ultimately released? 23 MR. GARDNER: Objection, calls for speculation. 24 THE WITNESS: I would say absolutely. 25 BY MR. NAPOLITANO:</p>	<p>12:08:20-12:09:54 Page 81</p> <p>1 You know, so that's still there. I still have officers 2 in, you know, various, in various jail settings. So, you 3 know, operationally or mechanically, those things are 4 still in place. 5 BY MR. NAPOLITANO: 6 Q. Okay. Has there been a dropoff in ICE sending 7 officers into state and local jails and prisons to 8 interview inmates for that purpose you just described? 9 A. Not in the Phoenix field office, no, sir. 10 Q. Okay. So I want to show you Exhibit 11. If you 11 would, open that up. This is defendants' responses to 12 written discovery in this case. Please turn to page 5. 13 A. Okay. 14 Q. Do you see the table at the bottom titled ERO 15 Detainee FY2020 to 2021 YTD? 16 A. I do. 17 Q. And the first one says filtered to 1/1/2020 to 18 5/1/2021. 19 A. Okay. 20 Q. Do you see the second row of that table that 21 shows for October 2020, November 2020, December 2020, and 22 January 2021 the number of immigration detainees being 23 issued as 11,433, 10,173, 9,525, and 9,570? 24 A. I do. 25 Q. Do you see the second row of that table, it</p>

<p>12:10:14-12:11:51 Page 82</p> <p>1 shows for February 2021, March 2021, and April 2021 the 2 number of immigration detainees being issued as 5,023, 3 2,233, and 2,323? 4 A. I do. 5 Q. Would you agree that's a big dropoff in 6 immigration detainees being issued from before 7 February 2021 to after February 2021? 8 A. I would agree so, yes, sir. 9 Q. Did you observe a similar dropoff in immigration 10 detainees being issued from the Phoenix field office 11 during your responsibility while you were the acting 12 director? 13 A. I don't have the data at this time. 14 Q. Okay. If you take a look at the second table, 15 you see that this is filtered for Arizona. 16 A. Okay. 17 Q. And you will see that in October of 2020, 18 November of 2020, December of 2020, and January of 2021, 19 there were 298, 305, 291, and 225 detainees respectively. 20 Do you see that? 21 A. I do. 22 Q. And for February 2021, March 2021, and April 23 2021, there are 86, 63, and 91 detainees respectively. 24 A. Yes, sir. I see that. 25 Q. Looking in general at that table, would you</p>	<p>12:13:53-12:15:24 Page 84</p> <p>1 A. I can't think of any at this time. 2 Q. Were there any new resource constraints that 3 affected, to your knowledge, the detainees issued from 4 February 2021 to April 2021? 5 A. No, there was not. 6 Q. Is it correct that ICE is releasing immigration 7 detainees for aliens who do not fit within the priority 8 categories under the interim guidance? 9 A. That is correct. 10 Q. When detainees are lifted, state and local jails 11 end up having to put the aliens whose detainer was lifted 12 on supervisory release or simply release them out into the 13 community, is that correct? 14 A. That is correct. 15 Q. All right. If we turn back to Exhibit 10, do 16 you see where it says 475 criminal aliens removed, the 17 third column? 18 A. I do. 19 Q. In terms of ERO activities, generally what does 20 it mean to remove a criminal alien? 21 A. It means an alien with a criminal conviction is 22 actually removed from the country. 23 Q. Okay. Is it accurate that some removals involve 24 final orders of removal and others are voluntary? 25 A. It is semantics. You know, voluntary return is</p>
<p>12:12:24-12:13:34 Page 83</p> <p>1 agree that from the period from January of 2019 to 2 January of 2021, there are approximately 300 detainees 3 issued per month? 4 A. Say that again, sir. 5 Q. So -- 6 A. You are saying the average for 2021? 7 Q. The average is approximately 300 detainees per 8 month? 9 A. Yes, sir. 10 Q. And would you note that from February 2021 11 through April 2021, that average is well below 100? 12 A. I would agree. 13 Q. Why did the number of detainees issued drop off 14 so much in February 2021? 15 MR. GARDNER: Objection, lack of foundation. 16 THE WITNESS: I would say that would go back to 17 your earlier question. You know, there are various 18 factors that could go into play that were, that were 19 prior. But, you know, another factor that was present 20 during the time in question would have been the 21 enforcement priorities. 22 BY MR. NAPOLITANO: 23 Q. Okay. Other than the enforcement priorities, 24 can you identify any new factors that arose in 25 February 2021 through --</p>	<p>12:15:56-12:17:03 Page 85</p> <p>1 a return; it is not a formal removal. But I don't know, 2 again, you know -- this slide is not mine -- I don't know, 3 you know, how they arrived at the data. But when I see 4 criminal aliens removed, I take that to be criminal aliens 5 to have a final order of removal. 6 Q. Okay, thank you. 7 A. But, again, I don't have the methodology work 8 for those particular numbers. 9 Q. Is the mission of removing criminal aliens 10 important to public safety for communities where those 11 aliens are located? 12 A. I would say absolutely. 13 Q. Will reducing removals of criminal aliens likely 14 harm public safety for the communities in which the aliens 15 are located? 16 MR. GARDNER: Objection, calls for a 17 hypothetical, speculation. 18 THE WITNESS: I would say yes. 19 BY MR. NAPOLITANO: 20 Q. What division of ERO are involved in removing an 21 alien with a final order of removal? 22 A. It can be all of them. You know, removal being, 23 you know, a core function of ERO, you know, all the 24 programs work together in some form or fashion. So I 25 would say all of them. I would say multiple divisions.</p>

<p>12:17:26-12:18:37 Page 86</p> <p>1 Q. Okay. I would like to turn now to Exhibit 12, 2 please. This is Defendants' Responses to Plaintiffs' 3 First Written Discovery Requests. 4 A. Okay. 5 Q. If you go to page 6 of that document, there is a 6 table that shows removals per month in fiscal year 2020 7 and fiscal year 2021. 8 A. At the top of the page? 9 Q. Yes, sir. 10 A. Okay. 11 Q. Do you see in fiscal year 2020 for January, 12 February, and March there were 23,270, 22,353, and 19,249 13 removals? 14 A. I do. 15 Q. Then it drops beginning April 2020 to less than 16 10,000 removals, correct? 17 A. It does, yes, sir. 18 Q. What happened in March of 2020 that caused a 19 dropoff in removals? 20 MR. GARDNER: Objection, lack of foundation, 21 calls for speculation. 22 THE WITNESS: I would say in March of 2020 23 was -- you know, the pandemic had a large part to do with 24 the decline. 25 BY MR. NAPOLITANO:</p>	<p>12:20:09-12:21:02 Page 88</p> <p>1 A. I would. 2 Q. Did you observe a similar dropoff in ICE 3 removals in the Phoenix field office during your 4 responsibility? 5 MR. GARDNER: Objection. 6 THE WITNESS: Again, I don't have the data in 7 front of me. 8 BY MR. NAPOLITANO: 9 Q. Okay. Prior to February 2021, was ICE ERO 10 prioritizing removals of aliens that threatened national 11 security? 12 A. Yes, sir. 13 Q. Prior to 2021 was ICE ERO prioritizing removal 14 of aliens with significant criminal records? 15 A. Yes, sir. 16 Q. Prior to February 2021 was ICE ERO prioritizing 17 removal of aliens who are more recent entrants into the 18 country? 19 A. Yes, sir. 20 Q. Why did the number of ICE removals drop off so 21 much in February 2021 beyond already reduced pre-COVID-19 22 levels pre-February 2021? 23 MR. GARDNER: Objection, lack of foundation. 24 THE WITNESS: The only factor that I can think 25 of is the one that we discussed previously.</p>
<p>12:18:56-12:19:55 Page 87</p> <p>1 Q. Okay. Looking now at the row that corresponded 2 to fiscal year 2021, do you see that in November, 3 December, and January there were 5,840, 5,886, and 5,732 4 removals? 5 A. I do. 6 Q. So the number of removals was already 7 substantially down because of COVID-19, correct? 8 MR. GARDNER: Objection, calls for speculation, 9 lack of foundation. 10 THE WITNESS: I would say that that would be a 11 reasonable assumption. 12 BY MR. NAPOLITANO: 13 Q. To your knowledge and experience, is there 14 anything else besides COVID-19 that would have brought 15 those numbers down? 16 MR. GARDNER: Objection, calls for speculation, 17 lack of foundation. 18 THE WITNESS: Not that I am aware of, sir. 19 BY MR. NAPOLITANO: 20 Q. Okay. And do you see that in February, March, 21 and a portion of April reported here there were 3,180, 22 3,687, and 1,448 removals? 23 A. Yes, sir. 24 Q. Would you agree that's a big dropoff in removals 25 from before February 2021 to after February of 2021?</p>	<p>12:21:13-12:22:24 Page 89</p> <p>1 BY MR. NAPOLITANO: 2 Q. Which is that, sir? 3 A. The enforcement priorities. 4 Q. As an acting field office director, did you 5 observe any other major change in that time period that 6 would account for such a dropoff? 7 A. I did not, no, sir. 8 Q. Was there a dropoff in resource constraints -- 9 excuse me. Were resource constraints responsible for the 10 dropoff in February 2021? 11 A. No, sir. 12 Q. Okay. All right. Let's return again to 13 Exhibit 10. 14 A. Okay. 15 Q. In the left-hand column there is a number at 16 large arrests. What are at large arrests? 17 A. At large arrests would be individuals that are 18 arrested in the communities. 19 Q. Okay. And are these at large arrests important 20 to public safety? 21 A. I would say they definitely are. 22 Q. Okay. You also see there are a number of 23 20 criminal warrants served on the left-hand column. What 24 are criminal warrants served? 25 A. Criminal warrant would be a criminal arrest</p>

<p>12:22:44-12:39:34 Page 90</p> <p>1 warrant obtained through the US courts and served on those 2 individuals. 3 Q. Okay. Are these important to public safety? 4 A. Absolutely. 5 Q. Which of the various boxes on this page show the 6 missions of ICE ERO that are not important to public 7 safety? 8 A. I don't see any, sir. 9 MR. NAPOLITANO: All right. Thank you. 10 We have been going for just over a little over 11 an hour. Would you like to take a break? 12 THE WITNESS: I am good if you guys are. 13 MR. ROYSDEN: Maybe we could take a short 20 to 14 30-minute break and then reconvene. 15 MR. GARDNER: I prefer not to do 20 or 30 16 minutes. That's awfully long. Do you want to say five or 17 ten minutes? 18 MR. ROYSDEN: Sure. Ten is fine with me, if 19 that's fine with the court reporter. 20 We can go off the record to discuss the break. 21 (A recess ensued from 12:24 p.m. to 12:39 p.m.) 22 BY MR. NAPOLITANO: 23 Q. Let's go back on the record. Mr. Carter, I am 24 going to show you a document marked 13. Do you recognize 25 this document?</p>	<p>12:41:23-12:42:29 Page 92</p> <p>1 removals for fiscal year 2019, is that correct? 2 A. Yes, sir. 3 Q. Okay, thank you. I appreciate you clarifying 4 that error. 5 And do you see the national total for fiscal 6 year 2019 is 267,258? 7 A. I do. 8 Q. That suggests that the Phoenix field office is 9 responsible for about 12.5 percent of removals, is that 10 correct? 11 A. I would say that's probably a fair assumption, 12 without doing the math. 13 Q. Okay. Again, if you would like to pull the 14 calculator to confirm these, we are more than happy. 15 A. I trust your math, sir. 16 Q. All right. Does 12.5 percent of the total 17 removals sound correct to you in terms of the percentage 18 of removals that the Phoenix field office is normally 19 responsible for? 20 A. I would say that's accurate. 21 Q. All right. If you turn to page 6, there is a 22 table titled Convicted Criminal. Do you see that? 23 A. Yes, sir. 24 Q. Do you see that Phoenix is responsible for 25 18,665 convicted?</p>
<p>12:40:00-12:41:05 Page 91</p> <p>1 A. Which one? 2 Q. Exhibit 13. 3 A. Oh, Exhibit 13. 4 Q. It is titled at the very bottom ERO Fiscal Year 5 2019 Local Statistics. 6 A. The Exhibit 13 that I have is the ERO FY2019 7 Local -- yeah, it shows Exhibit 5 on the first page. 8 Q. Correct. 9 A. Yes, sir. I have it. 10 Q. If you turn to PDF page 5, which will say page 4 11 on the bottom, it is the fifth page of PDF because of the 12 cover page. 13 A. Yes, sir. 14 Q. There is a table there showing removals by field 15 office in months. Do you see that? 16 A. I do. 17 Q. Do you see that the total in Phoenix fiscal year 18 2019 is 33,655? 19 A. 665, yes, 33,665. 20 Q. 655, excuse me. So 33,655 total for Phoenix, is 21 that correct? 22 A. I see 33,665. 23 Q. You see 65? I am sorry. I need to pull this 24 up. 25 665, yes, 33,665 total, for Phoenix total</p>	<p>12:42:42-12:43:47 Page 93</p> <p>1 A. I do. 2 Q. Sorry. Can you repeat that. 3 A. I do, yes, sir. 4 Q. Thank you. 5 And do you see that the total for that fiscal 6 year 2019 is 150,141? 7 A. I do. 8 Q. So that would suggest Phoenix accounts for about 9 12.4 percent of criminal removals, is that correct? 10 A. I believe so. 11 Q. Does 12.4 percent sound correct to you in terms 12 of the percentage of removals that the Phoenix field 13 office is normally responsible for? 14 A. I would say so. 15 Q. So -- 16 A. Well, let me clarify. That we are responsible 17 for or that occurred? I mean everyone is responsible for 18 their share, but that sounds about right as far as what we 19 contribute. 20 Q. Okay. What you contribute, that's appropriate, 21 right. 22 So both in terms of overall removals and 23 criminals removed, then would you say that Phoenix 24 accounts for about 12.5 percent of the total nationwide? 25 A. I would say that's a fair assumption, yes, sir.</p>

<p>12:44:04-12:45:21 Page 94</p> <p>1 Q. Okay. And, to your knowledge, is that 12.5 2 percent number a good number estimate for Phoenix's 3 percentage for overall removal in fiscal year 2020 as 4 well? 5 A. Without seeing the data, I would say that there 6 is high likelihood that that percentage stays 7 approximately the same. 8 Q. Okay. And would the same hold true, that 9 12.5 percent is a good number estimate for Phoenix's 10 percentage of overall removals in fiscal year 2021 to 11 date? 12 A. Given the numbers as they are laid out in this 13 chart, they seem to be in line with prior averages. 14 Q. Okay. So if you turn back to Exhibit 12, 15 page 6 -- 16 A. Okay. 17 Q. -- we have a drop in removals from about 5,800 a 18 month nationally in the three months prior to 19 February 2021 to about 3200 a month nationally in 20 February, March, and April 2021, is that correct? 21 MR. GARDNER: Objection, mischaracterizes the 22 document. 23 THE WITNESS: Can you say that again anyway. 24 BY MR. NAPOLITANO: 25 Q. Sure. So on Exhibit 12, page 6, we see that the</p>	<p>12:47:34-12:48:58 Page 96</p> <p>1 nationally a decrease of about 2600 a month. And so if 2 Phoenix is accounting for 12.5 percent of removals, then 3 it would be fair to say that roughly 330 a month would be 4 the number for Phoenix's decrease? 5 MR. GARDNER: Objection, calls for speculation. 6 THE WITNESS: If we are dropping 2600 a month 7 and we do 12 percent, I think that's closer to about 8 24 percent, right? Or 240 instead of the 330, right? If 9 you drop 2600 times 12 -- times .125 -- no, you are 10 correct. I am sorry, sir. It is 325 roughly. 11 BY MR. NAPOLITANO: 12 Q. Okay. So an estimate would be, because of that 13 12.5, we are saying about 325, 330 a month generally, is 14 that correct? 15 MR. GARDNER: Objection, calls for speculation. 16 THE WITNESS: I would say, I would say it is a 17 fair assumption. 18 BY MR. NAPOLITANO: 19 Q. Okay. Thank you. 20 Is the idea that since February of 2021 the 21 Phoenix field office has been responsible for about 330 22 fewer deportations per month than the few months prior to 23 2021 consistent with your firsthand knowledge and 24 observation? 25 A. I see no reason to doubt the numbers.</p>
<p>12:45:52-12:47:08 Page 95</p> <p>1 nationwide removals for three months prior to February of 2 2021 are roughly 5,800 per month, is that correct? 3 A. Yes, sir. 4 Q. Okay. And then we see that in February, March, 5 and April of 2021, that number drops to roughly 3200 6 nationally, is that correct, keeping in mind that April 7 number is only a partial month's reporting? 8 A. I would say that's a fair assumption. 9 Q. Okay. That's a decrease of about 2600 a month 10 nationally, is that correct? 11 A. Yes, sir, approximately. 12 Q. And if Phoenix accounts for about 12.5 percent 13 of removals, it is a decrease just for Phoenix of about 14 330 a month. Does that sound right to you? 15 A. I have no reason to doubt your math, sir. 16 Q. Okay. Would you have reason to believe that 17 Phoenix's removal numbers would generally follow the 18 national removal numbers? 19 MR. GARDNER: Objection, foundation. 20 THE WITNESS: I would say, based on Exhibit 13, 21 you know, our numbers are in line and our ranking within 22 all the field offices is pretty much in line with years 23 past. 24 BY MR. NAPOLITANO: 25 Q. Okay. And so just to reaffirm, we saw</p>	<p>12:49:28-12:50:39 Page 97</p> <p>1 Q. Okay. As the acting field office director, did 2 you have firsthand knowledge and observation of the number 3 of removals from the Phoenix field office? 4 A. I don't doubt the statistics, but, you know, 5 there has been a decline. I haven't paid attention to the 6 number necessarily. There is a drop. I think that's fair 7 to say. 8 Q. Okay. So it is fair to say that that rough 9 estimate of about 320 to 330 a month decrease is what the 10 Phoenix field office had based on what you saw? 11 MR. GARDNER: Objection, mischaracterizes the 12 witness's testimony. 13 THE WITNESS: I would say it is fair to say that 14 we have had a drop. Again, I have no reason to doubt the 15 statistics but I don't have them in front of me. 16 BY MR. NAPOLITANO: 17 Q. Okay. So the drop that you did observe, was 18 that due to resource constraints? 19 A. No, sir, it was not. 20 Q. All right. What was that due to? 21 A. Again, as previously mentioned, the only other 22 factor that I can think of off the top of my head would be 23 the enforcement priorities. 24 Q. All right. Thank you. 25 Are you familiar with the arrest approval</p>

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1 last -- second to last line on the first paragraph, it
 2 says employee should return to normal removal operations
 3 as prior to the issuance of the January 20, 2021
 4 memorandum. Do you see that, sir?
 5 A. I do.
 6 Q. Is that a directive to ICE employees from
 7 someone with authority to give that direction?
 8 A. Say again? I am sorry, sir.
 9 Q. Is this directive to remove -- to resume or
 10 return to normal removal operations, is that essentially
 11 an order from someone with the authority to give that
 12 order?
 13 A. Yes, sir. It is --
 14 MR. GARDNER: Form.
 15 THE WITNESS: -- from Matthew Allen, who is the
 16 acting director or the senior official performing the
 17 duties of the deputy director.
 18 BY MR. NAPOLITANO:
 19 Q. Were you the acting field office director at the
 20 time that this order was given?
 21 A. Yes, sir, I sure was.
 22 Q. And what did that mean to you --
 23 A. It means that --
 24 Q. -- that order mean to you?
 25 A. It means that removals were, to me, I took it as

02:45:13-02:46:54 Page 155

1 that the 100-day pause was lifted and that removals would
 2 continue.
 3 Q. Okay. All right. And would that, that state of
 4 removal operations differ from the state of removal
 5 operations since February 2021 under the interim guidance?
 6 MR. GARDNER: Objection, vague.
 7 THE WITNESS: Can you repeat the question, sir.
 8 BY MR. NAPOLITANO:
 9 Q. How would that state of operations differ from
 10 the state of operations in February 2021 than after that,
 11 after the interim guidance?
 12 MR. GARDNER: Same objection.
 13 THE WITNESS: As per the -- after the lifting,
 14 understand that the removal operations wouldn't change.
 15 Mechanically they would not change.
 16 BY MR. NAPOLITANO:
 17 Q. So what would change, sir?
 18 A. What would change would be the -- well, I mean,
 19 you know, if you would just clarify the question.
 20 I mean, again, the removal portion would not
 21 change. Regardless of the, you know the priorities or
 22 not, mechanically, if an individual is amenable to removal
 23 and they are in custody or, you know, ready to be removed
 24 by ICE, they are going to be removed. So from that
 25 standpoint, again, mechanically the removal operations

02:47:13-02:48:50 Page 156

1 stay the same. I mean I think it is a, it is somewhat of
 2 a vague question. I am not 100 percent sure what you are
 3 looking for.
 4 Q. Would the level of removal activity on your
 5 normal removal operations after this 100-day pause was
 6 lifted differ from the amount of or level of removal
 7 activity seen after the interim guidance has been issued?
 8 MR. GARDNER: Objection, vague.
 9 THE WITNESS: I would say that it would. You
 10 know, again, mechanically it stays the same. The
 11 difference in the individuals being arrested would make
 12 it, would make a change.
 13 BY MR. NAPOLITANO:
 14 Q. What difference?
 15 A. If, if the priorities -- I mean it is a math
 16 issue. If you are arresting fewer people, then, you know,
 17 the number, it would stand to reason that it would be
 18 reduced as well. So, you know, that would be the primary
 19 difference.
 20 Q. It would be a reduction in numbers compared to
 21 normal removal operations, is that correct?
 22 A. Potentially. You know, again, I mean removal
 23 operations are very dynamic, sir. There are a lot of
 24 things that feed into it. So, you know, it is hard to
 25 say. The -- you know, again, if you are targeting fewer,

02:49:15-02:50:46 Page 157

1 fewer individuals, that would be a fair assumption.
 2 Q. All right. Thank you.
 3 Let's turn to Exhibit 32, please.
 4 A. Okay.
 5 Q. Do you recognize this document?
 6 A. I do not.
 7 Q. Okay. This is a printout from the ICE.gov
 8 website titled ICE Removes Mexican Fugitive Wanted in
 9 Sonora for Possession for Military Firearms.
 10 A. Okay.
 11 Q. And if you look in the middle of page 2, there
 12 appears to be a quote from you, is that correct?
 13 A. There does.
 14 Q. Okay. And if you continue down to the top of
 15 page 3, you will see it says the vast majority -- this is
 16 the bottom of that first paragraph -- the vast majority of
 17 ICE ERO interior removals, 92 percent have criminal
 18 convictions or pending criminal charges, is that correct?
 19 A. That's what it says, yes.
 20 Q. Okay. Does that number sound correct to you?
 21 A. I would assume so, yes. I have no reason to
 22 doubt the information.
 23 Q. Do you agree that ICE removing aliens through
 24 final orders of removal, 92 percent of whom have criminal
 25 charges, is important to public safety for the communities

02:51:02-02:52:33 Page 158

1 in which those aliens are located?
2 A. Absolutely.
3 Q. So if 92 percent of interior removals have
4 criminal convictions or pending criminal charges, and
5 those removals are going to drop, then does that mean
6 people with criminal convictions or charges aren't being
7 removed?
8 MR. GARDNER: Objection, calls for speculation.
9 THE WITNESS: I would say that's an accurate
10 statement.
11 BY MR. NAPOLITANO:
12 Q. Okay. In total, these are numbers from that
13 same page, it says ICE ERO conducted 185,884 removals,
14 well, from fiscal year 2020, is that correct?
15 A. ICE conducted 185,884 -- where are you at, sir?
16 Q. That first paragraph of the third page.
17 A. Third page, 103,300 -- 103,603 administrative
18 arrests in 2020?
19 Q. Correct.
20 A. Yes, sir.
21 Q. Then it goes on to say that in total ICE ERO
22 conducted 185,884 removals in that year, is that correct?
23 A. Yes, sir.
24 Q. Okay. And if you look at the second page of
25 this, you will notice that the individual discussed was

02:53:05-02:54:24 Page 159

1 arrested for possession of dangerous drugs and drug
2 paraphernalia?
3 A. Yes, sir.
4 Q. And listed at the top, it says he was also
5 wanted by Mexican authorities for possession of military
6 firearms, is that correct?
7 A. That's correct.
8 Q. Okay.
9 A. But he was wanted in his country for carrying
10 firearms and being in possession of firearm cartridges
11 that were exclusive for use of the Mexican military, yes,
12 sir.
13 Q. Reading from that quote from you, it says:
14 Criminals who attempt to evade their home country's law
15 enforcement reached out -- law enforcement reach will not
16 find refuge in Arizona. Is that correct?
17 A. That's correct.
18 Q. Okay. Would this individual, based on
19 information presented here, qualify for priority removal?
20 MR. GARDNER: Objection, calls for speculation.
21 THE WITNESS: I think at face value the
22 individual would. But, again, not having all the facts
23 from the case, you know, it is hard to judge. Each case
24 is reviewed on a case-by-case basis on the totality of the
25 facts.

02:54:39-02:55:59 Page 160

1 BY MR. NAPOLITANO:
2 Q. What, in your opinion, if this was presented to
3 you as, you know, when you were the acting field office
4 director, would make this a priority?
5 MR. GARDNER: Object, calls for speculation,
6 hypothetical.
7 THE WITNESS: As far as reviewing it as an other
8 priority, you know, just the level of his criminal
9 activity. You know, there is a lot of unknowns as -- you
10 know, this is speculative. If -- you know, it would
11 depend, you know, with the current case they were arrested
12 for, would it result in a conviction, or whatever the case
13 may be.
14 So, again, I mean there is a lot of missing
15 information that, you know, makes it inconclusive at this
16 point. At face value we are going to review the case and
17 see if it does rise to the level. But, you know, an
18 individual like that would cause for a good level of
19 review.
20 BY MR. NAPOLITANO:
21 Q. This individual was arrested in America for
22 possession of dangerous drugs and drug paraphernalia.
23 Would that criminal activity be the only basis for his
24 priority categorization or would interim guides allow for
25 his warrant for military firearms in Mexico to be

02:56:25-02:57:39 Page 161

1 considered for priority as well?
2 A. At face value, it would look like an other
3 priority consideration. And, again, you know, the
4 totality of the facts of the entire case go into that
5 consideration. You know, the warrant in their home
6 country, the arrest, and the subsequent conviction would
7 be taken into account, as well as those mitigating
8 circumstances as well.
9 So, you know, again, a case, when it comes to
10 the field office director, should be complete and paint,
11 you know, an accurate representation of all the facts in
12 the case.
13 Q. So is it correct that he would be an other
14 priority and not Priorities 1, 2, or 3?
15 MR. GARDNER: Objection, calls for speculation,
16 hypothetical.
17 THE WITNESS: And, again, it would be just for
18 the fact that, you know, we don't have all the facts. You
19 know, if it looks like this individual was removed in
20 December, if he came back, now he would be a priority
21 under border security. So, you know, again, I mean it is
22 the totality of all the facts.
23 BY MR. NAPOLITANO:
24 Q. So discounting border security and the date that
25 this individual might have come in, you said it would be,

02:58:04-02:58:21 Page 162

1 it would be other priority or it would be priority?
2 MR. GARDNER: Same objection, calls for
3 speculation, hypothetical.
4 THE WITNESS: Based on the facts in the, in the
5 exhibit, it does not appear to be one of the three
6 priorities. So, yes, it would have to be considered as an
7 other priority based on the information in the exhibit.
8 MR. NAPOLITANO: Okay. Thank you.
9 All right. I think that's all we have.
10 MR. GARDNER: Yeah, no, I have no questions.
11 Just the witness will read and sign the deposition
12 transcript.
13 (The deposition adjourned at 2:58 p.m.)
14
15

16 _____
17 ALBERT EDWARD CARTER
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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
3
4 BE IT KNOWN that the foregoing deposition was
5 taken before me, COLETTE E. ROSS, CR, Certified Reporter
6 No. 50658 for the State of Arizona, and by virtue thereof
7 authorized to administer an oath; that the witness before
8 testifying was duly sworn by me to testify to the whole
9 truth; pursuant to request, notification was provided that
10 the deposition is available for review and signature; that
11 the questions propounded by counsel and the answers of the
12 witness thereto were taken down by me in shorthand and
13 thereafter transcribed into typewriting under my
14 direction; that the foregoing pages contain a full, true,
15 and accurate transcript of all proceedings and testimony
16 had, all to the best of my skill and ability.
17 I FURTHER CERTIFY that I am not related to nor
18 employed by any of the parties hereto and have no interest
19 in the outcome thereof.
20 DATED at Phoenix, Arizona, this 16th of May,
21 2021.
22

23 _____
24 COLETTE E. ROSS, CR
25 Certified Reporter No. 50658

Exhibit EE

AN AVERAGE DAY IN THE LIFE

ENFORCEMENT AND REMOVAL OPERATIONS



 **50,165** In Custody

 **392** Arrested

 **732** Removals

 **453** Detainers Lodged

 **337** Criminal Aliens Arrested

 **476** Criminal Aliens Removed

 **98** At-Large Arrests

 **1,400** Aliens Booked into Custody

 **7** Chartered Flights

 **20** Criminal Warrants Served

 **\$761,644** Spent on Detainee Health Care

 **15** Known or Suspected Gang Members Removed



U.S. Immigration and Customs Enforcement

WWW.ICE.GOV/SOCIAL



Exhibit FF

Requests for Preapproval for Removal in PHX FOD 2/22 to 4/15 (53 days; 7 weeks 4 days)

	Bates #	Alien Last Name	Alien First and Middle Names	Request Date	Approved/Denied
1	AZ_00000134	[REDACTED]	[REDACTED]	2/22/2021	Approved
2	AZ_00000671	[REDACTED]	[REDACTED]	3/3/2021	Approved
3	AZ_00000671	[REDACTED]	[REDACTED]	3/4/2021	Approved
4	AZ_00000005	[REDACTED]	[REDACTED]	3/10/2021	Denied
5	AZ_00000009	[REDACTED]	[REDACTED]	3/10/2021	Denied (Duplicate AZ_00000177)
6	AZ_00000001	[REDACTED]	[REDACTED]	3/10/2021	Denied
7	AZ_00000018	[REDACTED]	[REDACTED]	3/15/2021	Initially Denied; converted to priority on 3/15/21 AZ_00000271
8	AZ_00000024	[REDACTED]	[REDACTED]	3/17/2021	Initially Denied; converted to priority on 3/18/21 AZ_00000333
9	AZ_00000029	[REDACTED]	[REDACTED]	3/29/2021	Denied
10	AZ_00000085	[REDACTED]	[REDACTED]	3/29/2021	Approved
11	AZ_00000089	[REDACTED]	[REDACTED]	3/31/2021	Approved
12	AZ_00000096	[REDACTED]	[REDACTED]	4/2/2021	Approved
13	AZ_00000100	[REDACTED]	[REDACTED]	4/5/2021	Approved
14	AZ_00000104	[REDACTED]	[REDACTED]	4/6/2021	Approved
15	AZ_00000034 AZ_00000039	[REDACTED]	[REDACTED]	4/12/2021 4/13/2021	Initially Denied; converted to priority on 4/6/21 AZ_00000527
16	AZ_00000129	[REDACTED]	[REDACTED]	4/15/2021	Approved
17	AZ_00000123	[REDACTED]	[REDACTED]	4/15/2021	Approved

Totals

17 requests total

10 approved

3 initially denied, then converted to priority

4 denied