

1 BRIAN M. BOYNTON
 Principal Deputy Assistant Attorney General
 2 Civil Division
 3 WILLIAM C. PEACHEY
 Director
 4 Office of Immigration Litigation
 5 District Court Section
 EREZ REUVENI
 6 Assistant Director
 7 ELISSA FUDIM
 Trial Attorney
 8 P.O. Box 868, Ben Franklin Station
 Washington, D.C. 20044
 9 Tel.: (202) 598-6073
 10 Email: elissa.p.fudim@usdoj.gov

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 12 *Attorneys for Defendants*

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 14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF ARIZONA**

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 17 _____
 17 Mark Brnovich, in his official capacity as
 18 Attorney General of Arizona, *et. al*,
 18 *Plaintiffs,*

19 v.

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 21 Joseph R. Biden in his official capacity as
 22 President of the United States, *et. al*
 23 *Defendants.*

Civil Action No. 2:21-CV-1568-MTL

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 26 **DEFENDANTS' NOTICE OF NEW POLICY DOCUMENT**
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1 Defendants submit this Notice to advise the Court that one of the policy documents
2 referred to tangentially in Defendants' Motion to Dismiss (ECF NO. 146) has been
3 superseded by a new policy document. This development does not change any arguments
4 made in the Motion to Dismiss, but further highlights the mootness of Plaintiff's claims
5 and requests for relief challenging the Notices to Report (NTR) guidance.

6 As the Court is aware, in the Third Amended Complaint (TAC), Plaintiff challenged
7 Defendants' now-discontinued use of NTRs in lieu of Notices to Appear (NTA). TAC at
8 ¶¶ 133-135.¹ On November 2, 2021, CBP issued a memorandum terminating the use of
9 NTRs, prioritizing the use of NTAs, and authorizing, in limited circumstances a parole plus
10 alternatives to detention program (Parole + ATD). ECF No. 146, at 4. Defendants argued
11 in the Motion to Dismiss that Plaintiff's claims with respect to the NTR guidance were
12 moot based on the November 2 memorandum. ECF No. 146, at 6.

13 Defendants write to advise the Court that the November 2 memorandum has been
14 superseded by a July 18 memorandum specifying the circumstances under which the use
15 of Parole + ATD may now be used. The creation of the July 18 memorandum does not
16 change anything in this case, as Plaintiff does not challenge the use of Parole + ATD in its
17 TAC, and Defendants' argument that Plaintiff's challenge to the NTR policy is moot
18 remains unaffected by the July 18 memorandum. Regardless, because the actual NTR
19 policy Plaintiff challenges is now twice since rescinded, the Court should dismiss all claims
20 and requests for relief challenging the NTR Policy as moot.

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25 ¹ By way of reminder, beginning in March 2021, Customs and Border Protection (CBP)
26 temporarily authorized the use of NTRs to relieve overcrowding in congregate settings and
27 to better protect its workforce and noncitizens in CBP custody when noncitizen encounters
28 were consistently high, operational capacity strained, and COVID-19 acute. NTRs were
permitted in place of NTAs, the issuance of which are considerably more time consuming
due to the necessary interagency coordination for initiating removal proceedings and
creating an administrative record for the proceeding. *See* ECF No. 146, at 3-4.

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Dated: July 22, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

WILLIAM C. PEACHEY
Director

EREZ REUVENI
Assistant Director

/s/ Elissa Fudim
ELISSA FUDIM
Trial Attorney
U.S. Department of Justice, Civil Division
Office of Immigration Litigation,
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 598-6073
Email: elissa.p.fudim@usdoj.gov

Counsel for Defendants