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20 UNITED STATES DISTRICT COURT  
21 DISTRICT OF ARIZONA

22 Aita Darjee on her own behalf and on  
23 behalf of her minor child N. D.; and Alma  
24 Sanchez Haro on behalf of themselves and  
25 all others similarly situated,

26 Plaintiffs,

27 v.

28 Thomas Betlach, Director of the Arizona  
Health Care Cost Containment System, in  
his official capacity,

Defendant.

**No. CV 16-00489 DTF**

**LODGED: PROPOSED PLAINTIFFS'  
MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

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25 **INTRODUCTION**

26 Plaintiffs are low-income Arizona immigrant residents who are eligible to receive  
27 full-scope medical assistance through Arizona's Medicaid program, the Arizona Health  
28 Care Cost Containment System ("AHCCCS"). These persons have a variety of serious

1 medical conditions including diabetes, asthma, high blood pressure and major depression.  
2 To stabilize their medical conditions and prolong their lives, Plaintiffs require  
3 prescription medications and doctor supervision.

4 Plaintiffs challenge as a violation of the Social Security Act, the Medicaid Act and  
5 due process the Defendant's policies and practices that improperly reduce the health  
6 coverage of immigrants eligible for full-scope AHCCCS from full-scope AHCCCS to  
7 emergency-only AHCCCS when they renew or recertify and the Benefits and Services  
8 notices AHCCCS sends to inform the immigrants of their eligibility for emergency-only  
9 AHCCCS. As a result of Defendant's policies and practices, immigrants eligible for full-  
10 scope AHCCCS medical benefits are being denied medical care. The result is that  
11 Medicaid-eligible persons are not fully able to participate in the AHCCCS program, and  
12 their health is being adversely affected.

13 In this motion, Plaintiffs ask the Court to issue a preliminary injunction enjoining  
14 Defendant Betlach from (1) transferring refugees and other qualified immigrants who  
15 have been found eligible for full-scope AHCCCS benefits to emergency-only AHCCCS  
16 when they renew their eligibility; and (2) sending Medicaid beneficiaries a Benefits and  
17 Services notice stating the person is only eligible for emergency-only eligibility in  
18 violation of the Medicaid Act and due process protections under the federal constitution.  
19 Plaintiffs also seek an order that Defendant Betlach prospectively reinstate all immigrants  
20 who were sent or received the improper eligibility notice until a lawful proper notice is  
21 sent to each person.

## 22 **FACTUAL BACKGROUND**

### 23 **1. Background on the Medicaid Program**

24 Congress created the Medicaid program in 1965 by adding Title XIX to the Social  
25 Security Act, 42 U.S.C. §§ 1396-1396w-5. The purpose of Medicaid is to enable each  
26 State, as far as practicable, "to furnish . . . medical assistance on behalf of families with  
27 dependent children and of aged, blind, or disabled individuals, whose income and  
28 resources are insufficient to meet the costs of necessary medical services." 42 U.S.C.

1 § 1396-1.

2 To participate in Medicaid, a state must operate its program through a state plan  
3 which has been submitted to and approved by the Secretary of the U.S. Department of  
4 Health and Human Services. *See* 42 U.S.C. §§ 1396-1 and 1396a(b). The state must  
5 provide methods of administration necessary for the proper and effective operation of the  
6 state plan. 42 U.S.C. § 1396a(a)(4).

7 Arizona participates in Medicaid through the program known as the Arizona  
8 Health Care Cost Containment System (“AHCCCS”). A.R.S. §§ 36-2901-36-2972. The  
9 AHCCCS administration contracts with the Arizona Department of Economic Security  
10 (“DES”) to process most applications and recertifications for Medicaid eligibility. DES  
11 is the agent of AHCCCS and AHCCCS is responsible for DES’ actions. *See* 42 C.F.R.  
12 § 431.10 (e)(1)(i); 42 C.F.R. § 431.10 (c)(3)(ii).

13 The Medicaid Act requires AHCCCS to furnish medical assistance “with  
14 reasonable promptness to all eligible individuals.” 42 U.S.C. § 1396a(a)(8). The  
15 Medicaid regulation implementing the statute requires AHCCCS to “continue to furnish  
16 Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42  
17 C.F.R. § 435.930(b). In addition, the state must also provide an opportunity for persons  
18 whose claim for medical assistance is denied or reduced to have a fair hearing. 42 U.S.C.  
19 § 1396a(a)(3).

20 Once a person is found eligible for AHCCCS, their eligibility must be renewed  
21 every 12 months. 42 C.F.R. § 435.916(a). State agencies must use an “*ex parte*” review  
22 process for the recertifications. 42 C.F.R. § 435.916(a) and (b). For the *ex parte* review  
23 process, AHCCCS “must make a redetermination of eligibility *without requiring*  
24 *information from the individual* if able to do so based on reliable information contained in  
25 the [case file] or other more current information available to the agency, including but not  
26 limited to information accessed through data bases...” 42 C.F.R. § 435.916(a)(2)  
27 (emphasis added). If the available information is not sufficient to determine eligibility,  
28 then the agency must use a “pre-populated renewal form” that only seeks the information

1 missing. *Id.* § (a)(3). For these cases, an in-person interview is not required. *Id.*  
2 § (a)(3)(iv). The purpose of the *ex parte* process is to cut down on errors that occur at  
3 renewal or recertification, lessen the burden on beneficiaries to submit duplicative or  
4 unchanging information, and reduce the number of eligible persons who are cut-off  
5 improperly from Medicaid. 77 Fed. Reg. 17144, 17197-98.

## 6 **2. Federal Provisions Governing Immigrant Eligibility**

7 Some immigrants cannot receive public benefits, including Medicaid, unless they  
8 came to the U.S. before 1996 or have a qualified immigration status for five years. 8  
9 U.S.C. § 1613(a). Under federal law, refugees and other immigrants are entitled to full  
10 public benefits without meeting the entry date or five-year requirement. 8 U.S.C. §  
11 1613(b). In Arizona, “aliens” who meet an exception to the five-year requirement under  
12 8 U.S.C. § 1613(b) are entitled to “full” AHCCCS. A.R.S. § 36-2903.03(B)(1). A  
13 qualified immigrant who entered the U.S. before August 22, 1996, is not required to meet  
14 the 5-year status requirement. 8 U.S.C. § 1613(a). Full-scope AHCCCS benefits provide  
15 all medically necessary care. Arizona Administrative Code (“A.A.C.”) R9-22-202.

16 Immigrants who do not qualify for a 8 U.S.C. § 1613(b) exception or who have  
17 not yet met the five-year requirement are entitled only to “emergency-only” AHCCCS,  
18 which is restricted to covering only care for conditions that place the person’s health in  
19 serious jeopardy, cause serious impairment of bodily function, or serious dysfunction of a  
20 bodily organ or part. A.A.C. R9-22-217(A).

## 21 **3. Constitutional and Medicaid Due Process Requirements**

22 The Due Process Clause of the Fourteenth Amendment to the United States  
23 Constitution prohibits the State from terminating a beneficiary’s health services without  
24 first providing the individual adequate notice and an adequate hearing. U.S. Const.  
25 Amend. XIV; *Goldberg v. Kelly*, 397 U.S. 254 (1970).

26 The Medicaid Act requires AHCCCS to provide “an opportunity for a fair hearing  
27 before the State agency to any individual whose claim for medical assistance under the  
28 plan is denied or is not acted upon with reasonable promptness . . . .” 42 U.S.C.

1 § 1396a(a)(3). Any time AHCCCS takes an action that affects a claim for medical  
2 assistance, it must provide a written notice that includes the statement of what action the  
3 State intends to take, the reasons for that action, the specific legal authority for that  
4 action, the right to a hearing to challenge that action and an explanation of the right to  
5 continued benefits if a hearing is requested. 42 C.F.R. § 431.210.

6 Any time AHCCCS takes an action that affects a claim for medical assistance, it  
7 must inform every applicant and beneficiary in writing of her right to a hearing, how to  
8 request a hearing, and her options for representation. 42 C.F.R. § 431.206(c). The federal  
9 regulations also require that AHCCCS make a copy of the specific policy materials  
10 available to applicants or beneficiaries so that they may determine whether to request a  
11 hearing and how to prepare for such a hearing. 42 C.F.R. § 431.18(e). In addition, the  
12 agency must make current rules and policies available to its beneficiary population. 42  
13 C.F.R. § 431.18(d). These materials must be available without charge. 42 C.F.R. §  
14 431.18(g). Moreover, the applicant must be given the opportunity to examine the content  
15 of her case file and all the documents and records to be used by the state at her hearing.  
16 42 C.F.R. § 431.242(a).

## 17 ARGUMENT

### 18 I. THIS COURT SHOULD ENTER A PRELIMINARY INJUNCTION

19 In the Ninth Circuit, there are two sets of criteria for preliminary injunctive relief.  
20 Under the “traditional” criteria, plaintiffs must show: (1) a likelihood of success on the  
21 merits; (2) the likelihood of irreparable injury to the plaintiffs if injunctive relief is not  
22 granted; (3) the balance of hardships favors the plaintiffs; and (4) an injunction is in the  
23 public interest. *Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7, 20  
24 (2008).

25 In the alternative, these factors are applied on a sliding scale so that a stronger  
26 showing of one element can offset a weaker showing of another. *Alliance for the Wild*  
27 *Rockies v. Cottrell*, 632 F.3d 1127, 1131(9th Cir. 2011). Thus, “a stronger showing of  
28

1 irreparable harm to plaintiff may offset a lesser showing of likelihood of success on the  
2 merits.” *Id.* (citation omitted). The recently reaffirmed test in the Ninth Circuit is:

3 [s]erious questions going to the merits and a balance of  
4 hardships that tips sharply towards the plaintiff can support  
5 issuance of a preliminary injunction, so long as the plaintiff  
6 also shows that there is a likelihood of irreparable injury and  
that the injunction is in the public interest.

7 *Id.* at 1134-35; *see also Towery v. Brewer*, 672 F.3d 650, 657 (9th Cir. 2012) (“[A]  
8 stronger showing on one element may offset a weaker showing of another.”); *Rodde v.*  
9 *Bonta*, 357 F.3d 988, 994 (9th Cir. 2004) (applying this test in case involving Medicaid  
10 benefits); *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9th Cir. 1983) (Social Security);  
11 *Beltran v. Meyers*, 677 F.2d 1317, 1319 (9th Cir. 1982) (Medicaid). As shown below,  
12 regardless of which set of criteria the Court applies, these factors favor entry of a  
13 preliminary injunction.

14 **A. Plaintiffs are Suffering Irreparable Harm**

15 This case concerns access to necessary health care. Defendant Betlach’s improper  
16 reduction of Plaintiffs’ medical benefits from full-scope AHCCCS to emergency-only  
17 AHCCCS has already caused irreparable harm by delaying access to medically necessary  
18 treatment and medication. “[I]t is . . . clear that medical care is as much ‘a basic  
19 necessity of life’ to an indigent as welfare assistance.” *Mem’l Hosp. Servs. v. Maricopa*  
20 *Cty. Hosp.*, 415 U.S. 250, 259 (1974). Indeed, Medicaid is the Plaintiffs’ and class  
21 members’ lifeline to health care. Defendant Betlach’s improper reduction of full-scope  
22 AHCCCS benefits for immigrants eligible for full-scope benefits to emergency-only  
23 AHCCCS benefits terminates Plaintiffs’ and class members’ access to their regular  
24 healthcare providers, medical treatment for chronic conditions, and prescription drugs.

25 *Beltran v. Meyers*, 677 F.2d 1317, 1322 (9th Cir. 1982), establishes circuit  
26 precedent recognizing that irreparable injury is established when enforcement of a  
27 Medicaid rule “may deny [plaintiffs] needed medical care.” In *Newton-Nations v.*  
28 *Rogers*, 316 F.Supp.2d 883 (D. Ariz. 2004), the court noted that the challenged AHCCCS

1 copayment policy allowed health care providers to deny care to persons unable to pay the  
2 copayment. *Id.* at 888. Citing *Beltran*, the court found irreparable harm because  
3 “Plaintiffs may be denied medical care.” *Id.*; *see also M.R. v. Dreyfus*, 663 F.3d 1100,  
4 1114 (9th Cir. 2011) (noting that the Ninth Circuit “ha[s] several times held that  
5 beneficiaries of public assistance may demonstrate a risk of irreparable injury by showing  
6 that enforcement of a proposed rule may deny them needed medical care” and finding  
7 that reduction in Medicaid home care hours would cause irreparable injury to persons  
8 who needed medical care for conditions such as diabetes, depression, neuropathy, and  
9 high blood pressure); *Id.* (collecting cases); *Independent Living Ctr. v. Shewry*, 543 F.3d  
10 1047, 1049-50 (9th Cir. 2008) (finding irreparable harm in case where state policy could  
11 deprive Medicaid recipients of access to prescription drugs); *Beno v. Shalala*, 30 F.3d  
12 1057, 1063 n. 10 (9th Cir. 1994) (explaining that for “people on the economic margin of  
13 existence,” such as families on public benefits, “even reductions of a relatively small  
14 magnitude, impose irreparable harm” (internal citations omitted). *See also, e.g.,*  
15 *Massachusetts Association of Older Americans v. Sharp*, 700 F.2d 749, 753 (1st Cir.  
16 1983) (“Termination of benefits that causes individuals to forego such necessary medical  
17 care is clearly irreparable harm.”).

18 Plaintiffs have submitted declarations that show the harm that Defendant Betlach’s  
19 improper reductions of AHCCCS benefits are causing. Plaintiff Aita Darjee is a 30-year-  
20 old female living in Tucson with her husband and minor children. This is the second  
21 time in a year AHCCCS reduced her, her husband and one child’s medical benefits to  
22 emergency only. Declaration of Aita Darjee in Support of Plaintiffs’ Motion for Class  
23 Certification, ¶¶ 2, 7, 10, and 18 (“Darjee Decl.”).<sup>1</sup> They are refugees from Nepal, *Id.* ¶  
24 2, and are eligible for full-scope AHCCCS. 8 U.S.C. §1613 (b)(1)(a). Her husband has  
25

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26 <sup>1</sup> Plaintiffs filed a Motion for Class Certification on July 22, 2016. In support of the  
27 motion, Plaintiffs submitted several declarations that also provide factual support for  
28 Plaintiffs’ Motion for Preliminary Injunction. Plaintiffs incorporate all the declarations  
referred to in this memorandum into the Motion for Preliminary Injunction and this  
Memorandum in Support.



1 uncontrolled diabetes, asthma, high blood pressure and high cholesterol. *Id.* ¶ 8. They  
2 cannot afford to pay for medications and doctor appointments and without his  
3 medications, he becomes dizzy, angry and his heartbeat goes up. *Id.* ¶ 11. The thought  
4 of not being able to see their doctors and getting their prescriptions caused them a lot of  
5 worry. *Id.* ¶ 17. Although legal aid advocacy in the Darjees’ case resulted in the  
6 restoration of their benefits, they went approximately 20 days without access to full  
7 medical care, their supply of needed medications was running out and they could not take  
8 their child to the doctor for his pre-school examination which caused them immense  
9 anxiety. *Id.* ¶¶ 11, 14, 17.

10 Plaintiff Alma Sanchez Haro is a 48-year-old female living in Tucson Arizona.  
11 Declaration of Alma Sanchez Haro in Support of Plaintiffs’ Motion for Class  
12 Certification, ¶ 1 (“Sanchez Haro Decl.”). She entered the U.S. before 1996 and was a  
13 victim of domestic violence while in this country. *Id.* ¶¶ 1, 2, 4. She received the  
14 Benefits and Services Notice AHCCCS sends to inform persons they are only eligible for  
15 emergency services, but she did not understand the notice. *Id.* ¶ 6. She was told her  
16 benefits were reduced because she had not been a legal permanent resident for five years  
17 – but the five year requirement does not apply to her because she entered the U.S. before  
18 1996. *Id.* ¶ 7. 8 U.S.C. § 1613(a).

19 Plaintiff Sanchez Haro has several medical conditions including severe depression,  
20 anxiety, diabetes and high blood pressure, for which she needs several medications. *Id.* ¶  
21 10. When AHCCCS reduced her medical benefits to emergency-only benefits, she had  
22 no money to pay to see her doctors or to get her medication. She went without her  
23 medications for almost three weeks. Those weeks were “horrible” for her. She was  
24 trembling, sweating, shaky, vomiting and her head burned. She is very depressed about  
25 her conditions and suicidal. *Id.* ¶ 21. Although the pharmacy started to give her her  
26 medications, they could stop at any time. This has caused her a lot of worry. Without her  
27 medications, she thinks she “would die.” *Id.* 19. In addition, she sees a mental health  
28

1 professional monthly and this care also could stop at any time because she cannot pay for  
2 her doctor appointments. *Id.* 22.

3 Class member Stephanie Nyirandekeyaho is a 53-year-old female who lives in  
4 Phoenix. Declaration of Stephanie Nyirandekeyaho in Support of Plaintiffs' Motion for  
5 Class Certification ("Nyirandekeyaho Decl.") ¶ 1. She is a refugee from the Congo. *Id.* ¶  
6 2, and eligible for full-scope AHCCCS. 8 U.S.C. §1613 (b)(1)(a). Although she  
7 received a notice that her AHCCCS benefits would be reduced to emergency only  
8 AHCCCS, she did not understand the notice. *Id.* ¶ 6. She has several medical conditions  
9 including a heart condition, swollen legs and constant severe pain throughout her body.  
10 On many days, she cannot walk or leave her home. Her doctors prescribed medications  
11 for her and are running tests to diagnose her conditions. *Id.* ¶¶ 11, 12, 13. She has no  
12 money and cannot pay for her medications that are about to run out. *Id.* ¶¶ 15, 17. If  
13 her full medical benefits are not restored, she thinks she "will die." She is worried that  
14 her heart condition will not be treated and will get worse. Not having full AHCCCS has  
15 caused her to be very worried and stressed. *Id.* ¶¶ 15, 16, 20.

16 Plaintiffs have established not just the possibility of harm, but the existence of it.  
17 This clearly is a case of preventable human suffering where "[r]etroactive restoration of  
18 benefits would be inadequate to remedy these hardships." *Lopez v. Heckler*, 713 F.2d  
19 1432, 1437 (9th Cir. 1983), *stay granted on other grounds*, 463 U.S. 1328 (1983). Only  
20 the issuance of a preliminary injunction enjoining Defendant Betlach's from continuing  
21 to improperly reduce AHCCCS benefits for immigrants eligible for full-scope benefits to  
22 emergency-only benefits and requiring Defendant Betlach to prospectively reinstate all  
23 immigrants who were improperly transferred who were sent or received the improper  
24 notice of eligibility until a lawful proper eligibility notice is sent to each person would  
25 end the harm experienced by Plaintiffs and the class.

#### 26 **B. Plaintiffs are Likely to Succeed on the Merits of Their Case**

27 Defendant Betlach's policies and practices of unlawfully reducing AHCCCS  
28 benefits for immigrants eligible for full-scope AHCCCS and sending legally deficient

1 notices that violate federal law and constitutional due process rights make it highly  
2 probable that the Plaintiffs will succeed on the merits of their case.

3 **1. Defendant Betlach’s policies and practices violate reasonable**  
4 **promptness**

5 By reducing AHCCCS benefits for eligible immigrants from full-scope coverage  
6 to emergency-only, Defendant Betlach is not providing AHCCCS with reasonable  
7 promptness as required by law. The Medicaid Act requires AHCCCS to furnish medical  
8 assistance with “reasonable promptness to all eligible individuals.” 42 U.S.C. §  
9 1396a(a)(8). The Medicaid Act provision at 42 U.S.C. § 1396a(a)(8), has been relied  
10 upon in an analogous case to find the state improperly terminated benefits. *Romano v.*  
11 *Greenstein*, 2012 WL 1745526 (E.D. La 2012), *aff’d*, 721 F.3d 373 (5th Cir. 2013). In  
12 *Romano*, the plaintiff claimed that the state agency did not use the correct seven-step  
13 process to determine whether she continued to be eligible for Medicaid and did not  
14 review all the evidence in the file. The court held that § 1396a(a)(8) creates a private  
15 right of action enforceable under § 1983 and applies “*to all eligible individuals.*” *Id.* at  
16 8. (emphasis added). The court stated that the Medicaid regulation requires the state to  
17 “continue to furnish Medicaid regularly to all eligible individuals until they are found to  
18 be ineligible,” 42 C.F.R. § 435.930(b), and concluded that this provision implies that  
19 assistance may not be terminated until an individual is *properly* found ineligible. *Id.* The  
20 court found the state did not consider all the available evidence in the file and did not  
21 apply the proper sequential process and therefore, the state had violated plaintiff’s right  
22 under § 1396a(a)(8) to receive Medicaid until properly found ineligible. *Id.* at 9.

23 The reasonable promptness requirement has been relied on in another public  
24 benefits context. In the Aid to Families with Dependent Children (“AFDC”) cases—the  
25 statute had a reasonable promptness requirement that was imported into the Medicaid  
26 Act—and denial of benefits to eligible persons was held to violate the reasonable  
27 promptness requirement. *King v. Smith*, 392 U.S. 309, 333 (1968) (“In denying AFDC  
28 assistance to appellees on the basis of this invalid [man in the house] regulation, Alabama

1 has breached its federally imposed obligation to furnish ‘aid to families with dependent  
2 children ... with reasonable promptness to all eligible individuals....’”); *Townsend v.*  
3 *Swank*, 404 U.S. 282, 285-86 (1971)(the “all eligible” provision limits federal agency  
4 discretion to interpret the statute in ways that would deny eligibility to students who were  
5 eligible under the terms of the federal statute); cf. *Jefferson v. Hackney*, 406 U.S. 535,  
6 544-45, 92 S. Ct. 1724, 1730-31 (1972) (adverse ruling but relevant discussion).

7 **a. AHCCCS Fails to Process Immigrant Renewals Pursuant to the**  
8 **Medicaid Act and Ex Parte Process**

9 Defendant unlawfully reduces AHCCCS benefits in whole or in part due to his  
10 unlawful policies and/or programming of the computer eligibility system. In response to  
11 a letter Plaintiffs’ counsel sent AHCCCS in October 2015, AHCCCS claimed that the  
12 reduction of benefits for eligible immigrants from full-scope to emergency-only was  
13 caused by computer programming and worker errors. Declaration of Anne Ryan in  
14 Support of Plaintiffs’ Motion for Class Certification (“Ryan Decl.”) ¶ 10. As an  
15 example, AHCCCS admitted that its new computer system Health-e Arizona Plus  
16 (“HEAPlus”) was programmed to require the five-year status requirement in cases for  
17 immigrants who did not need to meet that requirement to get full-scope benefits. For  
18 example, if a refugee who is entitled to full AHCCCS becomes a legal permanent  
19 resident (“LPR”), she is still not required to meet or restart the five-year requirement and  
20 her entitlement to full-scope AHCCCS is not affected. On information and belief, in the  
21 eligibility renewal or recertification process, the AHCCCS computer program reduced  
22 benefits from full-scope to emergency-only because it did not recognize the person as a  
23 refugee exempt from the five-year requirement. *Id.* Instead, HEAPlus computer was  
24 programmed to incorrectly looked at her solely as an LPR who did not have five years in  
25 that immigration status. *Id.*

26 Subsequent to Plaintiffs’ counsel’s letter, AHCCCS admitted it identified over  
27 3500 immigrants improperly transferred and had reinstated these persons to full-scope  
28 AHCCCS. *Id.* ¶ 6 However, ten months later AHCCCS continues to improperly reduce

1 benefits from full-scope to emergency-only benefits for eligible immigrants in whole or  
2 in part because of computer eligibility programming or case worker errors. *Id.* ¶ 8. As  
3 2016 progressed, the improper reductions of immigrant medical benefits continued with  
4 AHCCCS improperly reducing some immigrants’ benefits a second time. Darjee Decl. ¶  
5 ¶ 7, 18; Ryan Decl. ¶ 17. In one case, the recipients’ medical benefits were reduced two  
6 times in three months. *Id.*

7 On information and belief, currently, applications and recertifications for food  
8 stamps or supplemental nutrition assistance – which also has a five-year requirement for  
9 immigrants, with the same exceptions – are processed through the older AZTECS  
10 computer system by DES, the agency that also processes AHCCCS recertifications.  
11 Ryan Decl. ¶9. On information and belief, applications and recertifications for AHCCCS  
12 are processed through the newer HEAPlus computer system. *Id.* ¶ 10. Although  
13 thousands of immigrants who were qualified for full-scope AHCCCS were improperly  
14 transferred to emergency-only AHCCCS, on information and belief, the immigrants’ food  
15 stamp applications were properly processed through the AZTECS computer system and  
16 they were found eligible for food stamps. *Id.* ¶ 16. Thus, the programming of the  
17 HEAPlus computer eligibility system is not consistent with the immigrant eligibility  
18 categories in the federal law and programmed in the AZTECS system. *Id.* ¶¶ 15, 16.

19 The Arizona Administrative Code (“A.A.C.”) R9-22-306(C)(1) provides that for  
20 recertification of continuing Medicaid eligibility, AHCCCS “shall renew eligibility  
21 without requiring information from the individual if able to do so based on reliable  
22 information available to the agency, including through an electronic data match.” This  
23 rule is not as comprehensive as the federal regulation or is not implemented consistent  
24 with the federal requirements, which requires that AHCCCS “make a redetermination of  
25 eligibility *without requiring information from the individual* if able to do so based on  
26 reliable information contained in the [case file] or other more current information  
27 available to the agency, including but not limited to information accessed through data  
28 bases....” 42 C.F.R. § 435.916(a)(2) (emphasis added).

1 In addition, although AHCCCS rule requires the case worker to use the Systematic  
2 Alien Verification for Entitlements (“SAVE”) database to verify qualified immigration  
3 status, A.A.C. R9-22-306(A)(12), AHCCCS policies and practices allow the agency to  
4 ask about immigration status and alien number when that information is in the case file or  
5 obtainable from other DES computer system such as AZTECS that contains the food  
6 stamp (supplemental nutritional assistance) information or from the federal SAVE  
7 database. These unnecessary requests for information cause errors that result in  
8 immigrants who are eligible for full-scope AHCCCS being transferred to emergency only  
9 AHCCCS. *Id.* ¶¶ 13, 14.

10 On information and belief, AHCCCS routinely asks about immigration status for  
11 all immigrants causing errors although this information is in the case file or could be  
12 obtained through SAVE using the alien number in the case file. *Id.* 14. The AHCCCS  
13 administration publishes a policy manual that both tells workers how to process cases and  
14 provides the public with information about AHCCCS’ policies and practices. The  
15 AHCCCS policy manual section on renewals does not comply with federal law. The  
16 policy lists some information that does not need to be obtained at each renewal, such as a  
17 social security number. Declaration of Ellen Katz in Support of Plaintiffs’ Motion for  
18 Class Certification, ¶ 4, Exhibit C (“Katz Decl.”). Omitted from the list of information  
19 that does not to be obtained again is an immigrant’s alien number, which is like a social  
20 security number because once an immigrant obtains an alien number, the number stays  
21 with the person for life. Ryan Decl. ¶ 13. Although an AHCCCS beneficiary’s alien  
22 number may be obtainable and verifiable in both local and federal databases, on  
23 information and belief, caseworkers continue to unnecessarily ask for this number at  
24 renewal or recertification. This excessive request introduces human error to the renewal  
25 process because both caseworkers and beneficiaries may miswrite or input wrong  
26 information into the computer system causing errors that lead to the person losing their  
27 full-scope AHCCCS and being improperly transferred to emergency-only AHCCCS.  
28 Ryan Decl. ¶13. In addition, the policy lists “non-citizen status” as not needing to be

1 verified at renewal unless there has been a change in immigration status. Katz Decl. ¶4,  
2 Exhibit C. The policy allows for the question about immigration status at each  
3 recertification. Thus, as another example, an immigrant may improperly note that their  
4 immigration status as “other” when the AHCCCS file contains the person’s correct  
5 immigration status. The “other” immigration status is used and the person is found  
6 eligible only for emergency services. Ryan Decl. ¶ 14. These unnecessary requests for  
7 information cause the very errors that the *ex parte* process was intended to avoid.

## 8 **2. AHCCCS Eligibility Notices Violate the Medicaid Act and** 9 **Constitutional Due Process Rights**

10 The AHCCCS notices to Plaintiffs and class members violate due process and  
11 statutory notice requirements because the notices fail to adequately explain the agency  
12 action or the reasons for that action, they do not give the specific laws and regulations  
13 relied on to make the decision, and they do not adequately explain the person’s rights on  
14 appeal. The vast majority of AHCCCS recipients are low-income and unrepresented.  
15 Many immigrants speak a language other than English. They do not know program  
16 eligibility requirements and do not know their rights. Ryan Decl. ¶ 21.

17 Federal law and constitutional protections place the obligation on AHCCCS to  
18 provide notices that protect the claimants’ property interests in their medical benefits.  
19 The Medicaid Act and constitutional due process require a meaningful explanation of the  
20 reasons for the agency action so the recipient can both understand what has happened and  
21 make an informed decision whether to challenge the agency decision. In *Barnes v.*  
22 *Healy*, 980 F.2d 572, 579 (9th Cir. 1992), the issue was what information was necessary  
23 to explain the reason child support payments the state collected were not passed through  
24 to the custodial parent. The court concluded that a meaningful notice of the reason that  
25 child support was not passed through to the parent was not provided by the conclusory  
26 statement that “any money that was collected was not current support.” The court held  
27 due process required the state provide the parents with sufficient information to  
28 determine if they were receiving the support they were entitled to receive. Thus, the

1 court required the state to provide the date of each child support collection, the amount  
2 collected and a specific reason for denial of each pass through. The court noted this was  
3 information the agency maintained in its system and could be added to the notice. *Id.* at  
4 577-579.

5 In *Ortiz v. Eichler*, 794 F.2d 889 (3rd Cir. 1986), plaintiffs challenged the  
6 agency's denial and termination notices for public benefits, including Medicaid. The  
7 court held that notices of budgetary changes must explain the specific calculations of  
8 each individual's changed circumstances. *Id.* at 894-95. The court upheld the district  
9 court finding that adequate notices concerning Medicaid benefits must at a minimum:

10 provide a *detailed individualized* explanation of the reason(s)  
11 for the action being taken which includes, *in terms*  
12 *comprehensible to the claimant*, an explanation of why the  
action is being taken . . . .

13 *Id.* at 892 (emphasis added). It also is insufficient to list in general those changed  
14 circumstances that may have affected the claimant's eligibility. Due process requires  
15 individualized facts. *K.W. v. Armstrong*, 298 F.R.D. 479, 489-491 (D. Idaho 2014),  
16 *aff'd*, 789 F.3d 962 (9th Cir. 2015).

17 Arizona federal courts also have evaluated insufficient Medicaid notices and held  
18 that the agency must provide meaningful information "detailing" the reason for the action  
19 so the claimant can determine the correctness of the decision and whether to appeal.  
20 *Rodriguez v. Chen*, 985 F.Supp. 1189, 1193-94 (D. Ariz. 1996). In *Rodriguez*, the court  
21 held statements that claimant "is now in a new category for his age and no longer eligible  
22 due to household excess income" and "net income exceeds maximum allowable" were  
23 vague and failed to provide "any basis upon which to test the accuracy of the decision."  
24 *Id.* at 1194. The court noted the notices are "exceedingly general boilerplate" and failed  
25 to comply with the letter and spirit of the Constitution and the Medicaid provision. The  
26 court held that the public interest in assuring that health benefits were not erroneously  
27 terminated or denied outweighed the state's competing fiscal and administrative  
28 concerns. *Id.* at 1195. In addition, court concluded notices must cite to the state and



1 federal statutes and regulations and explain where a copy of the legal authority may be  
2 obtained, and warned against the use of string cites. *Id.* at 1195-96.

3 The totality of these requirements is that the agency must provide claimants  
4 meaningful information so the claimant can fully understand the action the agency  
5 intends to take, the reason for the action, evaluate whether to file an appeal, how to  
6 appeal the decision and their due process rights during the appeal process. As explained  
7 below, AHCCCS notices fail these requirements.

8 AHCCCS sends out a “Benefits and Services” notices when an AHCCCS  
9 beneficiary’s medical eligibility has been changed from full-scope AHCCCS to  
10 emergency-only AHCCCS the notices states the person’s “Medical Assistance Changed.”  
11 Katz Decl. ¶2, Exhibit A, page 2. This is a boilerplate notice. The notice states each  
12 person’s “full medical services” will “stop” and “Federal Emergency Services” will  
13 “start.” The reason for this action is “your immigration status does not let you get full  
14 medical services.” The person’s purported immigration status and which qualifying  
15 immigration statuses that would be eligible for full-scope AHCCCS are not provided.  
16 There is no explanation of what “emergency” medical services are and how they compare  
17 to “full” medical services.<sup>2</sup> For person’s whose eligibility purportedly changed, there is  
18 no meaningful explanation for this change. As a result of the lack of meaningful  
19 information, the recipient would not understand the differences in medical coverage, the  
20 reason she is not eligible for full-scope AHCCCS, whether AHCCCS made a mistake  
21 about her immigration status, or whether the list of eligible immigration statuses had  
22 changed. These omissions are critical because all these persons previously received full-  
23 scope AHCCCS.

24 Similarly, this notice also is used when a new applicant is initially found eligible  
25 for emergency-only AHCCCS. *See* Katz Decl. ¶ 2, Exhibit A, page 1. In this case, the

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26  
27 <sup>2</sup> In a recent eligibility notice, there is a section on what emergency benefits cover  
28 but there is still is no explanation of how this compares to full-scope AHCCCS. The  
person reading the notice would not understand that prescription medications and regular  
doctor visits are not covered by emergency-only AHCCCS.

1 notice states “Medical Assistance Approved - Federal Emergency Services Only.” The  
2 reason provided is “[y]ou cannot get full medical services because of your immigration  
3 status.” The person’s purported immigration status and which qualifying immigration  
4 statuses that would be eligible for full AHCCCS are not provided. The notice states,  
5 “You can get emergency services coverage only.” There is no explanation of what  
6 “emergency services” means. As a result of the lack of meaningful information, the  
7 recipient or reader would not understand the differences in medical coverage, why he or  
8 she was not eligible for full AHCCCS, and whether AHCCCS made a mistake.

9       There are other deficiencies in these notices. They include that for the legal  
10 authority in the notices, AHCCCS uses legal citations with no explanation and provides  
11 more citations than are applicable, thereby confusing the reader. *Id.* pages 3-4.  
12 AHCCCS fails to make the policy or legal materials available to the recipient. Instead,  
13 the recipient is told he or she can find the laws at a public library or on the internet. *Id.*  
14 page 4. The notice incorrectly informs the person that they can review “portions of the  
15 case file necessary for proper presentation of your case,” when the person has a right to  
16 review the whole case file, not just what the agency determines is necessary for the  
17 presentation of the case. *Id.* Finally, the information about the right to continue to  
18 receive benefits when a hearing is requested is very confusing. *Id.* page 5. Under the  
19 section “Options to Continue Benefits” the notice states the person can “also ask to keep  
20 getting the benefits and/or paying the premium amount you were before this decision.”  
21 The date to make this selection is “before the date your benefits end or the premium goes  
22 up.” This notice has nothing to do with premiums going up and adding this issue to the  
23 section on continued benefits is very confusing. The totality of the statutory and  
24 constitutional due process deficiencies in the notice is that the recipient immigrant is not  
25 provided meaningful information to understand their rights to benefits, whether  
26 AHCCCS made an error and their rights to appeal.

27       While the Medicaid class argues they have demonstrated a probability of  
28 succeeding on the merits, at this juncture it is clear that, at the very least, their claims

1 raise “serious” legal questions. *Alliance*, 632 F.3d at 1131; *Beltran*, 677 F.2d at 1322  
2 (finding that although plaintiffs had not established a probability of success on the merits  
3 of the claim, they raised a serious legal question); *Walker v. Pierce*, 665 F.Supp. 831, 837  
4 (N.D. Cal. 1987) (same).

5 Therefore, the Plaintiffs are likely to succeed on the merits that Defendant  
6 unlawfully reduces immigrant benefits in whole or in part due to illegal policies and/ or  
7 programming of the AHCCCS eligibility computer system. First, the reduction of  
8 benefits from full-scope to emergency-only AHCCCS is a violation of the Medicaid  
9 statute’s requirement to provide medical coverage with reasonable promptness. In  
10 addition, AHCCCS requests immigration information at each recertification that is  
11 already in the case file, in some cases for years, or could be obtained through the federal  
12 SAVE database causing errors in eligibility determinations, although federal regulation  
13 clearly requires that AHCCCS fully utilize the *ex parte* process. Finally, the notices  
14 used fail to provide meaningful information about the reduction of their medical benefits  
15 from full-scope AHCCCS to emergency-only AHCCCS and are deficient. The standard  
16 for issuance of a preliminary injunction has been met.

17 **C. The Balance of Hardships and Public Interest Strongly Favor Plaintiffs**

18 The injury to Plaintiffs and the class members, described in Section I.A., *supra*,  
19 outweighs any potential injury to Defendant Betlach. Thus, the balance of hardship  
20 strongly favors Plaintiffs. Any purported state financial concerns are not sufficient when  
21 medical care is at stake. *See Indep. Living Ctr. of Southern California v. Maxwell-Jolly*,  
22 572 F.3d 644, 657-58 (9th Cir. 2009), *vacated and remanded on other grounds*, 132 S.Ct.  
23 1204 (2012) (financial hardship to plaintiffs/appellants in being denied medical services  
24 versus financial hardship to the state tips balance of hardship sharply in plaintiffs’ favor);  
25 *Rodde*, 357 F.3d at 999; *Beltran*, 677 F.2d at 1322. *See also Lopez*, 713 F.2d at 1437  
26 (Social Security benefits). Certainly, the Director cannot show any harm to him if the  
27 improper reductions in medical benefits are enjoined because the Plaintiffs and class  
28 members are in fact eligible for full-scope AHCCCS services and the cost to restore full

1 benefits and send notices are nominal in comparison to the cost of not being able to  
2 access medical care.

3 “In cases where the public interest is involved, the district court must also  
4 examine whether the public interest favors the plaintiff.” *Rodde*, 357 F.3d at 994  
5 (citation omitted). Moreover, the Ninth Circuit has recognized that:

6 State budgetary considerations do not therefore, in social  
7 welfare cases, constitute a critical public interest that would  
8 be injured by the grant of preliminary relief. In contrast, there  
9 is a robust public interest in safeguarding access to health  
10 care for those eligible for Medicaid, whom Congress has  
11 recognized as ‘the most needy in the country.’

12 *Indep. Living Ctr.*, 572 F.3d at 659 (citations omitted). In the context of public benefits,  
13 the court makes an independent judgment as to the public interest and must consider the  
14 harm to society when persons are denied their rights to benefits even when government  
15 funds are expended. *Lopez*, 713 F.2d at 1437. The Ninth Circuit repeatedly has  
16 concluded that “[f]aced with [ ] a conflict between financial concerns and preventable  
17 human suffering, we have little difficulty concluding that the balance of hardship tips  
18 decidedly in plaintiffs’ favor.” *Rodde*, 357 F.3d at 999 (citation omitted). In addition:

19 It is not only the harm to the individuals involved that we  
20 must consider in assessing the public interest. Our society as  
21 a whole suffers when we neglect the poor, the hungry, the  
22 disabled, or when we deprive them of their rights or  
23 privileges. Society's interest lies on the side of affording fair  
24 procedures to all persons, even though the expenditure of  
25 governmental funds is required. It would be tragic, not only  
26 from the standpoint of the individuals involved but also from  
27 the standpoint of society, were poor, elderly, disabled people  
28 to be wrongfully deprived of essential benefits for any period  
of time.

26 *Id.* As in *Rodde* and *Lopez*, the public interest is served by Plaintiffs and the class  
27 receiving the medical services for which they are eligible and that are essential to  
28 maintain their health. *See Newton-Nations v. Rogers*, 316 F.Supp.2d at 890 (increased

1 copayment could act to deny plaintiffs medical services shows public interest is in their  
2 favor); *Dodson v. Parham*, 427 F. Supp. 97, 109 (N.D. Ga. 1977) (“the public will be  
3 better served by the entry of an injunction . . . Medicaid recipients will continue to have  
4 . . . drugs deemed medically necessary by their physicians. . . .”); *see also, e.g., Golden*  
5 *Gate Rest. Assn v. City and County of San Francisco*, 512 F.3d 1112, 1126 (9th Cir.  
6 2008) (“Faced with a . . . conflict between financial concerns and preventable human  
7 suffering, we have little difficulty concluding that the balance of hardships tips decidedly  
8 in favor of the latter.” (quotation marks and citations omitted). Thus, when the public  
9 interest is considered, the balance in favor of Plaintiffs is overwhelming.

#### 10 **D. The Availability of Prospective Injunctive Relief**

11 Plaintiffs seek prospective reinstatement of full-scope AHCCCS benefits for those  
12 Plaintiffs and class members who were sent or received the deficient notice. The request  
13 for prospective reinstatement of benefits is not seeking monetary compensation for the  
14 Medicaid recipients who, as a result of the practices alleged in the complaint, experienced  
15 termination of their full-scope Medicaid services in the past. Rather, the Prayer for Relief  
16 is asking the court to prospectively reinstate coverage for medical services that were  
17 improperly reduced until the illegal due process practices are corrected by the Defendant.  
18 The relief requested here is precisely the type of injunctive relief that courts recognize  
19 plaintiffs may obtain when the state Medicaid agency’s practices violate federal due  
20 process requirements. In *Kimble v. Solomon*, 599 F.2d 599, 604-05 (4th Cir. 1979), the  
21 court discussed the availability of prospective relief when an improper termination notice  
22 was provided. The Fourth Circuit found no Eleventh Amendment bar to the plaintiffs’  
23 request for “prospective restoration of benefits.” *Id.* at 600. The Court ordered the  
24 Medicaid agency to restore Medicaid to class members and continue this prospective  
25 restoration of benefits until after the state had complied with the federal due process  
26 notice requirements. *Id.* at 605. The court found that this relief was consistent with the  
27 Eleventh Amendment because it was not “the award of an accrued monetary liability....”  
28 *Id.*

1           *Kimble* has been followed in other federal circuits, including the Ninth Circuit. In  
2 *K.W. v. Armstrong*, 789 F.3d 962, 974 (9th Cir. 2015) the court approved prospective  
3 relief:

4           The classwide injunction grants only prospective relief  
5 allowed under the Eleventh Amendment, by restoring class  
6 members to the individualized budgets they had prior to the  
7 Department's defective 2011 Budget Notice. The injunction  
8 does not compensate class members for any loss of services  
that occurred prior to the date it was entered. Thus, the relief  
granted is not measured in terms of a past monetary loss.

9           *See also Turner v. Ledbetter*, 906 F.2d 606, 609–10 (11th Cir. 1990); *Coalition for Basic*  
10 *Human Needs v. King*, 654 F.2d 838, 842 (1st Cir. 1981) (“[W]e see no Eleventh  
11 Amendment impediment to an order which enjoins the state defendants to resume  
12 payment of AFDC benefits prospectively.”).

13           Thus, the prospective reinstatement of full-scope AHCCCS to the Plaintiffs and  
14 the class is appropriate relief in this case.

## 15 **II. NO BOND SHOULD BE REQUIRED**

16           Plaintiffs have requested that this Court not require them to post any cash bond.  
17 Despite the language of Fed. R. Civ. P. 65(c), this Court clearly has discretion to issue the  
18 preliminary relief sought without requiring Plaintiffs to provide security. *See, e.g.,*  
19 *People ex rel. Van de Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325-26,  
20 *modified*, 775 F.2d 998 (9th Cir. 1985). A central factor supporting the exercise of such  
21 discretion is the public interest nature of this litigation. *Pharmaceutical Soc’y of N.Y. v.*  
22 *New York State Dept. of Soc. Serv.*, 50 F.3d 1168, 1174 (2nd Cir. 1995).

23           Courts have used their discretion to waive the bond requirement for indigent  
24 plaintiffs. *See, e.g., Newton-Nations v. Rogers*, 316 F.Supp.2d at 891; *Bass v.*  
25 *Richardson*, 338 F. Supp. 478, 490 (E.D.N.Y. 1971) (“It is clear . . . that indigents, suing  
26 individually or as class plaintiffs, ordinarily should not be required to post a bond under  
27 Rule 65(c).”); *Denny v. Health and Social Services Board of State Wisconsin*, 285 F.  
28 Supp. 526, 527 (E.D. Wis. 1968) (“[P]oor persons . . . are by hypothesis unable to furnish

1 security as contemplated in Rule 65(c), and the court should order no security in  
2 connection with this preliminary injunction.”).

3 A district court can waive the posting of a bond where important federal rights are  
4 involved (*see, e.g., Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011)), or where  
5 giving security would effectively deny access to judicial review. *See also Save Our*  
6 *Sonoran v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005), *abrogated on other grounds by*  
7 *Winter v. National Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

8 Because Plaintiffs in the instant case are indigent, in need of medical care, and  
9 seek only injunctive and declaratory relief to vindicate their federal statutory and  
10 constitutional rights, this case implicates the public interest and the balance of hardships  
11 tips sharply in favor of Plaintiffs. Therefore, this Court should not require Plaintiffs to  
12 give security.

### 13 CONCLUSION

14 For all the above reasons, Plaintiffs request issuance of a preliminary injunction.  
15 Plaintiffs and the class are suffering or will suffer irreparable harm from Defendant  
16 Betlach’s (1) improper transfer of immigrants in Arizona eligible for full-scope AHCCCS  
17 benefits who have been or will be required to renew or recertify their benefits and whose  
18 benefits have been or will be improperly reduced from full-scope AHCCCS to  
19 emergency-only AHCCCS; and (2) use of deficient notices of eligibility for emergency  
20 only AHCCCS. Until the issues can be finally resolved, Plaintiffs ask the Court to issue a  
21 preliminary injunction enjoining Defendant Betlach from (1) reducing health benefits for  
22 Plaintiffs and the immigrant class who have been found eligible for full-scope AHCCCS  
23 benefits to emergency-only AHCCCS when they renew or recertify their eligibility in  
24 violation of the Medicaid Statute; and (2) sending Benefits and Services notices to  
25 Plaintiffs and the class about eligibility for emergency only AHCCCS that violate the  
26 Medicaid Act and constitutional due process. In addition, Plaintiffs seek an order that  
27 Defendant Betlach prospectively reinstate Plaintiffs and class members who were sent or  
28 received the improper eligibility notice until a lawful proper notice is sent to the person.

1 Finally, the Plaintiffs ask that no bond be required.

2 Respectfully submitted this 27<sup>th</sup> day of July 2016.

3 NATIONAL HEALTH LAW PROGRAM

4 WILLIAM E. MORRIS INSTITUTE FOR  
5 JUSTICE

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12  
13  
14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the 27<sup>th</sup> day of July, I caused the foregoing document to be  
16 electronically transmitted to the Clerk's Office using the CM/ECF System for filing.

17  
18 /s/ Ellen Sue Katz  
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