No. 21-11715

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

STATE OF FLORIDA

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida
No. 8:21-cv-541-CEH-SPF

BRIEF FOR *AMICUS CURIAE* IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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CERTIFICATE OF INTERESTED PARTIES

In addition to those persons listed in Plaintiff-Appellant's Statement of Interested Persons, the following persons have an interest in this *amicus curiae* brief:

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Dated: June 17, 2021

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CORPORATE DISCLOSURE STATEMENT AND STATEMENT OF *AMICUS CURIAE*

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1) For non-governmental corporate parties please list all parent corporations: **None.**

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All parties have consented to the filing of this *amicus curiae* brief. No party or party's counsel authored any part of this brief. No person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to this brief's preparation or submission.

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INTEREST OF AMICI CURIAE

Amicus curiae Immigration Reform Law Institute ("IRLI") is a non-profit 501(c)(3) public interest law firm dedicated to litigating immigration-related cases on behalf of, and in the interests of, United States citizens and lawful permanent residents, and also to assisting courts in understanding and accurately applying federal immigration law. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of cases, including *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017); *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 924 F.3d 375 (7th Cir. 2019); and *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016).

SUMMARY OF THE ARGUMENT

Although Congress has granted the Department of Homeland Security ("DHS") some discretion in setting immigration policies and enforcement priorities, it has constrained that discretion with respect to certain classes of aliens against whom Congress has mandated certain enforcement actions be taken. Specifically, Congress amended the Immigration and Nationality Act ("INA") to mandate the detention of certain criminal aliens pending adjudication of their immigration proceedings and removal. Congress also mandated the detention of aliens who attempt to enter the United States through misrepresentation or without documentation. Upon taking office, the Biden administration established

immigration enforcement priorities that contradict those set by Congress and restrict enforcement actions that are mandated by statute.

The district court erred in concluding that DHS's action in establishing the interim enforcement priorities is not final agency action. Relying on its interim enforcement priorities, DHS is refusing to enforce the detention mandate set forth in the INA. Because DHS's enforcement priorities conflict with those mandated by Congress, the Court should reverse the district court and enjoin DHS's enforcement priorities.

ARGUMENT

I. Legal Background and Statutory Framework

The power to regulate immigration is one of the most important inherent sovereign powers entrusted to Congress. *See* U.S. CONST. Art. I, § 8, cl. 4 (granting Congress the power to "establish an uniform Rule of Naturalization"); *see also Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (noting that Congress possesses the power to exclude aliens, to prescribe the terms and conditions upon which aliens may come to the United States, and to have its policy enforced). This power is important because laws governing immigration are fundamental exercises of national sovereignty.

Congress has exercised this power by enacting the INA, which establishes a comprehensive and uniform immigration system governing who may enter and

remain in the United States. The INA specifies many classes of aliens who are either inadmissible or removable from the United States.

Section 1182(a) of Title 8 of the United States Code describes classes of aliens who are inadmissible, including: aliens with communicable diseases (§ 1182(a)(1)), aliens who have been convicted of specified crimes (§ 1182(a)(2)), aliens who are a threat to national security (§ 1182(a)(3)), aliens who are likely to become a public charge (§ 1182(a)(4)), alien workers who would adversely affect the wages and working conditions of American workers (§ 1182(a)(5)), aliens who are present in the United States without being admitted or who enter the United States by fraud or misrepresentation (§ 1182(a)(6)), aliens who do not possess a valid entry document (§ 1182(a)(7)), aliens who are permanently ineligible for citizenship due to draft evasion (§ 1182(a)(8)), aliens who apply for admission within a certain period after being removed (§ 1182(a)(9)), and various other aliens such as polygamists, unlawful voters, and individuals who renounced U.S. citizenship in order to avoid taxes (§ 1182(a)(10)).

Section 1227 of Title 8 of the United States Code defines certain classes of aliens who are deportable (that is, removable) from the United States. These deportable classes of aliens include: aliens who were inadmissible at the time of entry, have violated the terms of their status (visa overstays), participated in human smuggling, or engaged in marriage fraud (§ 1227(a)(1)), aliens who have been

convicted of specified crimes (§ 1227(a)(2)), aliens who fail to comply with registration requirements, falsify immigration documents, or falsely claim citizenship (§ 1227(a)(3)), aliens who are a threat to national security or have engaged in terrorist activities (§ 1227(a)(4)), aliens who have become a public charge (§ 1227(a)(5)), and aliens who unlawfully vote in the United States (§ 1227(a)(6)).

Congress has charged the DHS "with the administration and enforcement" of "laws relating to the immigration and naturalization of aliens" except to the extent that the law "relate[s] to the powers, functions, and duties conferred upon" other executive branch officers. 8 U.S.C. § 1103(a)(1). The DHS Secretary is also responsible for securing the nation's borders against illegal immigration. *See* 6 U.S.C. § 202 ("The [DHS] Secretary shall be responsible for … (2) [s]ecuring the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States …."); 8 U.S.C. § 1103(a)(5) (the DHS Secretary "shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens").

Although Congress has granted DHS some discretion in enforcing immigration law, Congress has constrained the agency's discretion with respect to certain matters. For instance, Congress has mandated the detention of certain aliens pending adjudication of their immigration proceedings or removal. *See* 8 U.S.C.

§§ 1225(b)(1)(B)(ii), (iii)(IV) (requiring the detention of aliens who attempt to enter the United States by misrepresentation or without entry documents and who claim asylum), 1225(b)(2) (requiring the detention of aliens who are applicants for admission but are "not clearly and beyond a doubt entitled to be admitted"), 1226(c) (requiring the detention of certain criminal or terrorist aliens), 1231(a)(2) (requiring the detention of certain criminal or terrorist aliens). Congress also mandates the removal of all aliens who are the subject of a final removal order within 90 days of the entry of such order. *See* 8 U.S.C. § 1231(a)(1)(A).[1]

II. The Biden Administration's Abdication of Immigration Enforcement

On President Biden's first day in office, his administration immediately began dismantling the programs and policies in place to secure the nation's borders and enforce the INA. For example, President Biden issued Executive Order 13993, 86 Fed. Reg. 7051 (Jan. 25, 2021), revising immigration enforcement priorities, and Proclamation 10142, 86 Fed. Reg. 7225 (Jan. 27, 2021), terminating border wall construction. DHS also announced the termination of the Migrant Protection Protocols program, which is commonly referred to as the "Remain in Mexico"

[1] Similarly, although Congress granted DHS the authority to grant certain types of relief from removal, it constrains the agency from granting relief to certain classes of aliens. *See*, *e.g.*, 8 U.S.C. § 1229b(a)(3) (barring cancellation of removal for aliens who have convicted of an aggravated felony), (b)(1)(C) (barring cancellation of removal for aliens who have been convicted of any crime described under sections 1182(a)(2) or 1227(a)(2)).

policy. *See* DHS Press Release: *DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program*, available at: https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program (last visited June 16, 2021). Finally, DHS issued a memorandum entitled "Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities," dated January 20, 2021 (the "January Memo"), in which it announced an immediate 100-day pause of all removals and extremely narrow immigration enforcement priorities. *See* DE 4-3.

This case involves the enforcement priorities established by the January Memo, which drastically restricts enforcement actions that immigration officers can take. In section A of the January Memo, the acting Secretary ordered a Department-wide review of policies and practices concerning immigration enforcement. *Id.* at 2. In section B, the acting Secretary established interim enforcement priorities focused on National Security, Border Security, and Public Health. *Id.* In section C, the acting Secretary announced an immediate 100-day pause of all removals, subject to narrow exceptions.[2] *Id.* at 3.

[2] On January 26, 2021, a federal district court entered a nationwide temporary restraining order against the 100-day pause of removals, and on February 23, the court converted the TRO into a preliminary injunction. *Texas v. United States*, 2021 U.S. Dist. LEXIS 33890, *9, *147-48, 2021 WL 723856 (S.D.

On February 18, 2021, the Acting Director of Immigration and Customs Enforcement ("ICE") issued an interim guidance memorandum in support of the January Memo. DE 4-4 (the "February Memo"). This memorandum largely reiterated the enforcement priorities set forth in the January 20 Memo. *Id.* at 4-5. Although the February Memo stressed that "the interim priorities do not require or prohibit the arrest, detention, or removal of any noncitizen," *id.* at 3, it requires an immigration officer to make a written justification for a proposed enforcement action and to receive preapproval from a Field Office Director or Special Agent in Charge before the officer may take an enforcement action against a non-priority alien. *Id.* at 6. Thus, prior to the issuance of the February Memo, an immigration officer had the authority conferred by the INA and the implementing regulations to take enforcement actions against any individual who is present in the United States in violation of the immigration laws. After the issuance of the February Memo, however, an immigration officer must seek permission from a supervisor in writing before enforcing the law against any non-priority alien.

Collectively, these actions by the Biden administration sent a clear signal to potential border-crossers that the government was no longer securing our border, and resulted in the ongoing surge of migrants at the southern border. Indeed, the

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Tex. 2021). The government continues to follow the interim guidance with respect to enforcement priorities.

actions by the Biden administration reflect a conscious decision to cease effective immigration enforcement policies and pursue a policy of non-enforcement going forward. This case arises in the context of the executive branch's ongoing abdication of its duty to enforce the nation's immigration laws.

III. The District Court Erred in Concluding that the Interim Guidance is Not Subject to Judicial Review

The district court below denied Florida's motion for a preliminary injunction because it concluded that the interim enforcement guidance established by the January and February Memos did not constitute final agency action under the Administrative Procedures Act ("APA"). DE 38 at 20-22. Alternatively, the district court ruled that even if the memos constitute final agency action, they are not reviewable because the prioritization of immigration enforcement actions are committed to agency discretion by law. *Id.* at 22-23. The district court erred in both respects.

A. The Memos Constitute Final Agency Action

Although both Memos describe the guidelines as "interim," they are final for purposes of APA review. *See* 5 U.S.C. § 704 (requiring agency action to be final). The standard used to determine whether an agency action is final requires that two conditions to be satisfied. "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. Second, the action must be one by which rights or obligations

have been determined, or from which legal consequences will flow." *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 136 S. Ct. 1807, 1813 (2016) (citation omitted).

Florida demonstrates that the interim guidelines established by the memos satisfy both conditions. Brief of Appellant State of Florida ("Fla. Br.") at 25-27. The immediacy of the implementation of the February Memo demonstrates that DHS's decision is final and has been put into effect. Florida has shown that DHS has already declined to take enforcement actions against criminal aliens due to the interim guidance by refusing to issue immigration detainers or to take criminal aliens into custody as required by 8 U.S.C. § 1226(c). DE 4-1; DE 29-1. Thus, contrary to the district court's conclusion that the memos "do not determine anyone's legal rights" and "do not change any person's legal status," DE 38 at 21, the fact that Florida has identified several criminal aliens whose detention status has been determined by the interim guidance shows that such aliens' legal status has been determined by the memos. Indeed, as Florida points out, DHS encourages detained aliens to "request a case review" if they believe they no longer fall within an enforcement priority category. Fla. Br. at 26 (citing DE 4-17 at 3). "The 'core question' about finality 'is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.'" *Canal A Media Holding, LLC v. United States Citizenship &*

Immigration Servs., 964 F.3d 1250, 1255 (11th Cir. 2020) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992)).

The district court appears to have conflated the lack of change in an alien's immigration status with any change in their legal rights or obligations, concluding that since an alien's immigration status has not changed, their legal rights have not been affected by the memos. But the mere fact that an alien has been released from or has avoided immigration detention shows that the legal rights of such aliens have been affected by the prioritization policy established by the memos.

In addition to Florida's obligation to supervise such undetained aliens as a result of DHS's actions, *see* Fla. Br. at 26, the interim guidance has affected the rights and obligations of federal immigration officers. Indeed, DHS has explicitly relied upon the memos in declining to fulfill its statutory obligation to detain certain criminal aliens under 8 U.S.C. § 1226(c). *See* DE 4-1; DE 29-1.

The preapproval process established by the February Memo also constrains the discretion conferred upon immigration officers by the INA and implementing regulations. The INA establishes the powers of immigration officers, which include the authority to take certain actions without warrant, to administer oaths and take evidence, and to detain aliens in specified situations. *See* 8 U.S.C. § 1357. The implementing regulations grant certain authorized immigration officers the "[p]ower and authority to interrogate[;] [to] patrol the border[;] to arrest[;] to

conduct searches[;] to execute warrants[;] [and] to carry firearms." 8 C.F.R. § 287.5. Authorized officers are those "who have successfully completed basic immigration law enforcement training" and generally include:

> border patrol agents; air and marine agents; special agents; deportation officers; CBP officers; immigration enforcement agents; supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and immigration officers who need the authority to arrest persons under [8 U.S.C. § 1357(a)(4)] in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of the USCIS.

8 C.F.R. § 287.5(c).

The February Memo, however, limits the authority of immigration officers to take enforcement actions by requiring such officers to seek written pre-approval for non-priority enforcement actions. The February Memo provides that "[a]ny civil immigration enforcement or removal actions that do not meet the . . . criteria for presumed priority cases will require preapproval." DE 4-4 at 6. Furthermore, such approval, if obtained, only applies to the alien it references and does not extend to any aliens "encountered during an [approved] operation if" such aliens are not in one of the priority categories. *Id.* Thus, immigration officers who previously had the authority to interrogate and arrest aliens without a warrant have been stripped of such authority and may now only exercise it in "exigent circumstances." *Id.* at 6.

Such officers are also prevented from taking enforcement actions against aliens with final orders of removal who do not meet DHS's priority criteria. *Id.* Any officer who takes an enforcement action against a non-priority alien without the preapproval required by the new DHS policy must subsequently submit paperwork for such approval. *Id.* It is unclear what consequences will follow should such retroactive preapproval be denied.

In sum, the prioritization scheme established by the memos directly affects the legal rights or obligations both of criminal aliens and of federal immigration officers. The fact that the policy could soon be altered does not render it non-final for judicial review purposes. *See Hawkes Co.*, 136 S. Ct. at 1814 (noting that the ability to revise an agency action based on new information "is a common characteristic of agency action[] and does not make an otherwise definitive decision nonfinal"); *Sackett v. EPA*, 566 U.S. 120, 127 (2012) ("The mere possibility that an agency might reconsider in light of 'informal discussion' and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal.").

B. The Prioritization Scheme is Not Committed To Agency Discretion By Law

The district court concluded that even if the memos constitute final agency action for purposes of the APA, the "prioritization of immigration enforcement cases" represents "discretionary agency decisions" that are "presumptively not

subject to judicial review." DE 38 at 22. The district court stressed that the memos "in no way prohibit any enforcement action" and merely "prioritize the cases of immigration enforcement given the resources available in light of what DHS deems most pressing." *Id.* The district court's determination that DHS has the discretion to adopt the prioritization scheme set forth in the memos is untenable.

First, the district court flipped the presumption of judicial review on its head. As Florida points out, the APA creates a presumption of judicial review, and the exception for action that is "committed to agency discretion by law" is very narrow. *See* Fla. Br. at 27-28; *see also Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 410 (1971); 5 U.S.C. § 701(a)(2).

Second, the district court erred in stating that the memos "in no way prohibit any enforcement action." DE 38 at 22. As demonstrated above, requiring immigration officers to obtain prior written approval for any non-priority enforcement action limits the discretion afforded to such officers by the INA and the implementing regulations. *See also* Fla. Br. at 34-35 (quoting former Acting ICE Director Homan, who describes the written approval process as "meaningless" and attests that the practical effect of that process will be to prevent enforcement actions from being taken). These restricted enforcement actions include: issuing a detainer; issuing, serving, filing, or cancelling a Notice to Appear; stopping, questioning, or arresting a noncitizen for an immigration violation; deciding

whether to detain or release an alien from custody; deciding whether to grant deferred action; and executing a removal order. DE 4-4 at 3.

Finally, Congress constrained DHS's discretion in setting enforcement priorities by mandating certain enforcement actions. Focusing on 8 U.S.C. § 1226(c), Florida demonstrates that Congress requires the detention of certain criminal aliens and that DHS does not have the discretion to ignore this statutory command. *See* Fla. Br. at 28-30. Although 8 U.S.C. § 1226(c) requires the detention of a broad range of criminal aliens,[3] the interim guidance established by the memos only prioritize enforcement actions against a subset of these criminal aliens—those criminal aliens who have been convicted of an aggravated felony.[4]

Although Florida focuses on 8 U.S.C. § 1226(c) to show how DHS's priorities contradict those adopted by Congress, the priorities set forth in the memos contradict other parts of the INA. For instance, just as the blanket 100-day pause on removals runs afoul of 8 U.S.C. § 1231(a)(1)(A), so does DHS's

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[3] Specifically, detention is required for aliens who have committed many crimes other than aggravated felonies, including crimes of moral turpitude, crimes involving controlled substances, human trafficking, money laundering, and certain firearms offenses. *See generally* 8 U.S.C. §§ 1182(a)(2), 1227(a)(2). Aliens who have engaged in terrorist activities must be detained under both 8 U.S.C. § 1226(c)(1)(D) and the interim guidelines. *See* DE 4-4 at 4.

[4] The enforcement priorities identified under the memos consist of: 1) terrorists, spies, or other national security risks; 2) recent arrivals (defined as those aliens who enter or attempt to enter the United States on or after November, 1, 2020); and 3) aggravated felons or criminal gang members who pose a risk to public safety. DE 4-4 at 4-5.

determination not to enforce removal orders for aliens who do not fall within one of its three enforcement priority categories. 8 U.S.C. § 1231(a)(1)(A) states: "[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." By its terms, it applies to every alien who is issued a removal order, and section 1231(a)(1)(A) commands the removal of all such aliens. The interim guidance ignores the statutory command to remove such aliens. *See Texas*, 2021 U.S. Dist. LEXIS 33890 at *92-106 (determining that "shall" in section 1231(a)(1)(A) means "must").

In addition to sections 1226(c) and 1231(a)(1)(A), Congress has restricted DHS's discretion regarding certain enforcement actions in other areas of the INA. 8 U.S.C. § 1225(a)(1) provides: "An alien present in the United States who has not been admitted or who arrives in the United States … *shall* be deemed for purposes of this chapter an 'applicant for admission.'" (emphasis added). Section 1225(b)(2)(A), in turn, specifies that subject to subparagraphs (B) and (C),[5] if the examining immigration officer determines that an "applicant for admission" is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a

[5] Subparagraph (B) specifies that subparagraph (A) does not apply to crewmen, aliens subject to expedited removal under 8 U.S.C. § 1225(b)(1), or stowaways. Subparagraph (C) states: "In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

proceeding under section 1229a of this title.[6] Thus, Congress has commanded immigration officers to initiate removal proceedings against any alien who is present in the United States without being admitted unless the alien can show that he or she is "clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Section 1229(d) similarly requires immigration officers to initiate removal proceedings against certain aliens. That statute states: "In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General *shall* begin any removal proceeding as expeditiously as possible after the date of the conviction." 8 U.S.C. § 1229(d)(1) (emphasis added).[7] Courts routinely interpret "shall" as creating a mandatory duty. *See*, *e.g.*, *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1320 (2020) ("Unlike the word 'may,'

[6] "[S]ection 1229a of this title" refers to removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. So long as the alien is not removable as a criminal alien, he may be released from custody on bond or conditional parole pending a decision on whether the alien is to be removed. 8 U.S.C. § 1226(a)(2).

[7] 8 U.S.C. § 1229(d)(2) states: "Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person." Although 8 U.S.C. § 1229(d)(2) seems to preclude judicial review of subsection (d), this language merely bars aliens from raising a claim to compel DHS to initiate removal proceedings at a particular time. *Cf. Texas*, 2021 U.S. Dist. LEXIS 33890 at *69-77 (holding that the term "party" in nearly identical section 1231(h) does not include states such as Texas, but instead is limited to "aliens who have been ordered removed from the U.S." and who are seeking to "be removed at a particular time or to a particular place" under section 1231).

which implies discretion, the word 'shall' usually connotes a requirement."); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) ("[T]he mandatory 'shall' . . . normally creates an obligation impervious to judicial discretion."); *United States v. Chinchilla*, 987 F.3d 1303, 1309 (11th Cir. 2021) ("Generally, an alien must be physically removed from the United States within ninety days of a final removal order.") (citing 8 U.S.C. § 1231(a)(1)(A)).

Thus, Congress has established clear enforcement priorities in the INA that mandate specific enforcement actions against a much broader and/or different classes of aliens than those identified in the DHS memos. But DHS is powerless to adopt enforcement priorities contrary to those clearly expressed by Congress. *City of Arlington v. FCC*, 569 U.S. 290, 296 (2013) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.").

In sum, the district court erred in concluding that the DHS memos are not subject to judicial review. Further, because the prioritization scheme set forth in the memos exceeds the discretion that Congress afforded the agency in the INA, the Court should enjoin the prioritization scheme set forth in the memos. *See* 5 U.S.C. §706(2)(B)-(C); *Manhattan Gen. Equip. Co. v. Comm'r*, 297 U.S. 129, 134 (1936) (holding that a "regulation [that] … operates to create a rule out of harmony with the statute, is a mere nullity" because an agency's "power … to

prescribe rules and regulations … is not the power to make law" but rather "the power to adopt regulations to carry into effect the will of Congress as expressed by the statute").

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the Court should grant Florida's request for a preliminary injunction.

DATED: June 17, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. The foregoing brief complies with the word limitation of FED. FED. R. APP. P. 29(a)(5) because:

This brief contains 4,197 words, including footnotes, but excluding the parts of the brief exempted by FED. R. APP. P. 32(f).

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DATED: June 17, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 17, 2021, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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