

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TOHONO O'ODHAM NATION, a federally
recognized Indian tribe,

Plaintiff,

v.

MARKWAYNE MULLIN, in his official capacity
as Secretary of U.S. Department of Homeland
Security; RODNEY SCOTT, in his official
capacity as Commissioner of U.S. Customs and
Border Protection; and ROSARIO VASQUEZ, in
his official capacity as Chief of U.S. Border Patrol,

Defendants.

Case No. 1:26-cv-02127-RJL

**BRIEF OF ARIZONA SENATE PRESIDENT WARREN PETERSEN AND ARIZONA
SPEAKER OF THE HOUSE OF REPRESENTATIVES STEVE MONTENEGRO AS
AMICI CURIAE IN SUPPORT OF DEFENDANTS AND IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

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INTEREST OF AMICUS CURIAE¹

Amici Curiae Warren Petersen—in his capacity as President of the Arizona Senate—and Steve Montenegro—in his capacity as Speaker of the Arizona House of Representatives (together, the “Legislative Leaders”)—respectfully submit this brief as amici curiae in support of Defendants and in opposition to Plaintiff’s Motion for Preliminary Injunction. The Legislative Leaders file this brief in their official capacities as the presiding officers of their respective chambers. *See* Ariz. Const. art. IV, pt. 2, § 8; Ariz. State Senate Rule 2(N); Ariz. House of Reps. Rule 4(K).

The Legislative Leaders submit this brief to assist the Court in assessing the balance of harms and the public interest factors relevant to Plaintiff’s request for a preliminary injunction. In this case, these factors (which merge when the government is the opposing party) tip heavily in favor of the United States, and the Legislative Leaders are particularly well positioned to explain why. The Legislative Leaders have extensive experience with the issues the State of Arizona and its residents have faced due to failed security at the United States’ southwestern border. Arizona shares approximately 372 miles of the United States’ 1,954-mile southwestern border with Mexico, representing about 19% of the total border.² Having previously dealt with the ramifications of an unsecured border, the Legislative Leaders have been at the forefront of decisions on how best to support the State. The Legislative Leaders have been involved with managing the millions of dollars that the State has spent to assist with border related security. And

¹ Pursuant to LCvR 7(o) and FRAP 29(a)(4)(E), no party or party’s counsel authored the brief in whole or in part; no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the amici curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

² *See Smart Wall Frequently Asked Questions*, U.S. Custom’s and Border Protection, <https://perma.cc/G82K-7ZDV> (archived June 26, 2026); *States that Border Mexico*, World Atlas, <https://perma.cc/2L5K-F4KJ> (archived June 26, 2026).

the Legislative Leaders have been involved with efforts to pass legislation to combat illegal border crossings and to curb border-related crimes.

SUMMARY OF ARGUMENT

Border security is essential to the public safety of the United States, especially to border states like Arizona. During the Biden Administration, there was a significant influx of inadmissible encounters at the southwest border—the encounters grew by the millions. And those numbers did not even account for the estimated millions of “gotaways,” meaning that millions of individuals entered the United States through the southwest border without any vetting for criminal, gang, or terrorist ties.

That complete breakdown in border security had a direct effect on Arizona’s public safety. In particular, Arizona has experienced the effects of dangerous high-speed flights from the border. Human and drug smugglers trying to evade law enforcement have engaged in 100+ mile per hour chases, some of which have resulted in crashes that have caused deaths to those in the vehicles and innocent drivers on the roads. Arizona has also felt the effects of fentanyl, which is primarily smuggled into the United States through the southwest border. This dangerous drug has grown to be the deadliest drug that the United States has faced. Arizona has paid a high cost to combat these rampant crimes.

Because of the border’s relation to national security and the safety of its citizens, the balance of the harms and the public interest here weigh heavily in favor of Defendants. Courts have denied similar requests for preliminary injunctions, recognizing that the interests of public safety and integrity of the border are difficult interests for plaintiffs to overcome.

Accordingly, the Court here should consider the interests of national security and deny Plaintiff’s request for a preliminary injunction.

ARGUMENT

I. The State of Arizona has experienced the adverse effects of a federal administration’s lax border security.

Arizona, like every other State, has a sovereign interest in a secure border, and the States surrendered their sovereignty to the federal government to primarily protect that interest in the absence of the State being “actually invaded.” *See* U.S. Const. art. I, § 10; *id.* art. IV, § 4.³ Prior to the current administration’s efforts to secure the border, Arizona and other states experienced firsthand the devastating consequences of a federal administration’s failure to maintain a secure southwestern border with Mexico. For example, in *Arizona v. United States*, the Court recognized:

Statistics alone do not capture the full extent of Arizona’s concerns. Accounts in the record suggest there is an “epidemic of crime, safety risks, serious property damage, and environmental problems” associated with the influx of illegal migration across private land near the Mexican border. Phoenix is a major city of the United States, yet signs along an interstate highway 30 miles to the south warn the public to stay away. One reads, “DANGER—PUBLIC WARNING—TRAVEL NOT RECOMMENDED/Active Drug and Human Smuggling Area/Visitors May Encounter Armed Criminals and Smuggling Vehicles Traveling at High Rates of Speed.” The problems posed to the State by illegal immigration must not be underestimated.

567 U.S. 387, 398 (2012) (citations omitted). And in *United States v. Texas*, Justice Gorsuch recognized in his concurrence that “the Guidelines [for the Enforcement of Civil Immigration Law] impose ‘significant costs’ on the States,” 599 U.S. 670, 688 (2023) (Gorsuch, J., concurring), while Justice Alito described the same federal policy as one that “inflicts substantial harm on the State and its residents,” *id.* at 709 (Alito, J., dissenting).

Under the Biden Administration, the number of reported inadmissible encounters at the southwest border increased dramatically from prior years. For example, U.S. Customs and Border Patrol (“CBP”) reported encountering 2.37 million individuals entering or attempting to enter the

³ *See also* Ariz. Att’y Gen. Op. No. I22-001, 2022 WL 508862 (Feb. 7, 2022).

United States through the southwest border from fiscal year 2017 through 2020, but more than 8.72 million encounters between fiscal years 2021 and 2024—an increase of over 5 million from the prior period.⁴ Because of the federal government’s reckless policies and lack of enforcement at the border during that time, individuals traveled from various parts of the world, not just from Mexico and nearby Central America, to enter the United States through the southwest border.⁵

While these figures are staggering on their own, it is even more concerning that these figures do not reflect the likely millions of “gotaways” that entered the United States, including in Arizona, without any reported encounter with CBP.⁶ That means that potentially millions of individuals entered through the southwest border without *any* vetting for criminal or terrorist connections—an alarming situation given that CBP reported an increase in terrorism-related encounters between ports of entry from 2021 to 2024, as well as an increase in the number of “criminal noncitizens encountered.”⁷ A former border patrol chief put it this way:

My concern is that every gotaway is a possible terrorist. Every gotaway is a possible criminal. Every gotaway is going to impact our communities with increased levels

⁴ See Mark E. Green, *Border Crisis Startling Stats* (Oct. 22, 2024), <https://perma.cc/H8H7-CJPZ>; see also *Southwest Land Border Encounters*, U.S. Customs and Border Protection, <https://perma.cc/KKP9-EGHJ> (archived June 26, 2026).

⁵ See Camilo Montoya-Galvez, *The facts behind the high number of migrants arriving at the border under Biden*, CBS News (August 31, 2022, at 12:19 ET), <https://perma.cc/2UVJ-J47Y>.

⁶ See *Border Sector Chiefs Confirm Operational Impacts of Border Chaos: Increased Gotaways, Closed Checkpoints, and Empowered Cartels*, U.S. House of Representatives Comm. on Homeland Sec. (Dec. 20, 2023), <https://perma.cc/WQ2H-HS8N>; *Homeland Security Committee Republicans Confirm the Cause of This Unprecedented Border Crisis: Secretary Alejandro Mayorkas*, U.S. House of Representatives Comm. on Homeland Sec. (Mar. 16, 2023), <https://perma.cc/JKE7-HLC2>.

⁷ *CBP Enforcement Statistics*, U.S. Customs and Border Protections, <https://perma.cc/J6TL-FE9L> (archived June 26, 2026); *Border Sector Chiefs Confirm Operational Impacts of Border Chaos: Increased Gotaways, Closed Checkpoints, and Empowered Cartels*, U.S. House of Representatives Comm. on Homeland Sec. (Dec. 20, 2023), <https://perma.cc/WQ2H-HS8N>.

of crime. It's going to put Americans at a greater risk of being a victim of violent crime. Every getaway is a possible drug load that poisons our communities.⁸

Although all States felt the effects of this mass influx at the southwest border,⁹ Arizona was one of the States on the front lines, directly facing increased public safety threats and the resultant increased costs.

A. Arizona has experienced increased public safety concerns due to border-related crimes.

Arizona is on the front lines when it comes to border-related criminal activity. In 2023, the county sheriff from Cochise County—a southern Arizona county that shares 83 miles of border with Mexico—testified in a congressional hearing and stated that “[b]order-related crime [is] at all-time high.”¹⁰ He emphasized death and murder investigations, aggravated acts against citizens, failures to yield, search and rescue/recovery efforts, and even assaults against law enforcement officials.¹¹ He further stated that his officers “continue to be placed in life-threatening scenarios as the Cartels show no regard for [his] citizens and/or those who wear a badge.”¹² Indeed, Arizona’s border counties have reported horrific crimes that have been committed against Arizona residents by individuals connected to border-related smuggling efforts.¹³

⁸ *Frontline Interview: U.S. Border Patrol Chief Michael W. Banks*, U.S. Customs and Border Protection, <https://perma.cc/XTD9-44NX> (archived June 26, 2026).

⁹ See, e.g., Press Release, Arizona Senate GOP, *Arizona Senate President Petersen Recaps Recent Visit to Southern Border* (June 9, 2024), <https://perma.cc/XWV3-MAZD> (state attorneys general discussing impacts across the country).

¹⁰ Sheriff Mark J. Dannels, *Opening Statement for Biden’s Border Crisis and its Effect on American Communities* (Aug. 8, 2023), <https://perma.cc/VL4X-EM29>.

¹¹ *Id.*

¹² *Id.*

¹³ See, e.g., Ted Robbins, *Ariz. Ranchers Caught Up In Mexican Drug Violence*, NPR (Apr. 12, 2010, at 12:00 ET), <https://perma.cc/94UB-23GZ>; Ainslee S. Wittig, *Jury finds Gaxiola guilty in Chiricahua assault*, Ariz. Range News (Mar. 22, 2017), <https://perma.cc/H8PR-XL27>.

Dangerous High-Speed Flights

One of the most frequent and dangerous border-related public safety concerns arises when smugglers engage in high-speed flight from the border or from law enforcement. Human smugglers have used social media to recruit Arizonans as drivers to transport illegal entrants from the southwest border to designated locations further north in Arizona.¹⁴ These smugglers offer large sums of money to drivers, attracting Arizonans often as young as 14 years of age.¹⁵ The Cochise County Sheriff said that during an 18-month period in 2022 and 2023, his office had apprehended over one hundred juveniles smuggling, “all the way to the age of 13 and 12 years of age ... driving grandma’s car, a friend’s car, or mom and dad’s car down here, and it’s social media.”¹⁶ And there have been reports that “teen smugglers have admitted to being threatened by the cartels if they pull over for law enforcement, so they flee.”¹⁷

While the smuggling itself is dangerous for those involved, when the drivers engage in high-speed flight from the border or from law enforcement, the drivers not only put those in the vehicles in danger, but they also put law enforcement and Arizonans going about their daily lives in harm’s way, as these flights often result in serious and even deadly crashes.¹⁸ For example, in

¹⁴ Press Release, U.S. Attorney’s Off., Dist. of Ariz., *22 Human Smugglers Using Social Media Charged in Law Enforcement Takedown* (Aug. 22, 2023), <https://www.justice.gov/usao-az/pr/22-human-smugglers-using-social-media-charged-law-enforcement-takedown-0>.

¹⁵ Ariz. Att’y General’s Off., *AZ Attorney General’s Office Warns About Teens Recruited to Drive Dangerous ‘Load Cars’ for Cartel* (May 23, 2022), <https://perma.cc/F3MX-NMMM>.

¹⁶ Kris Val Cleave, *Cochise County turning into a drug and human smuggling raceway as border crossings surge*, Arizona’s Family (Oct. 5, 2023, at 21:22 MST), <https://www.azfamily.com/2023/10/06/cochise-county-turning-into-drug-human-smuggling-raceway-border-crossings-surge/>.

¹⁷ Alexis Ramanjulu, *Seeing is believing: CCSO hosts JD Vance to show how activity at the border impacts Cochise County*, KGUN 9 Tucson (Aug 9, 2024, at 10:26 MST), <https://perma.cc/GH7Y-26B9>.

¹⁸ See, e.g., Press Release, U.S. Attorney’s Off., Dist. of Ariz., *Human Smuggle Sentenced to 101 Months for Causing Crash That Killed Passenger* (May 12, 2023), <https://perma.cc/29NT-PPD8>; Press Release, U.S. Attorney’s Off., Dist. of Ariz., *Phoenix Man Sentenced to 12 years for*

2021, when law enforcement attempted a traffic stop of a teenager involved in smuggling people from the border, the teen “suddenly hit the gas, driving over 100 miles per hour through small towns and quiet intersections on a mad dash to avoid apprehension,” and “[h]e eventually ran a red light, smashing into another vehicle and killing ... a local grandmother on her way to meet her son for her 65th birthday dinner.”¹⁹ And law enforcement officers around the state have continuously sought help in keeping their communities safe from these dangerous high-speed flights.²⁰

Deadly Fentanyl

Illicit fentanyl has flowed into the United States through the southwestern border,²¹ primarily at the hands of Mexican cartels.²² Fentanyl has grown to be “the deadliest drug threat the United States has ever faced.”²³ It is extremely potent, and just “[t]wo milligrams of fentanyl

Deadly Human Smuggling-Related Crash on the Tohono O’odham Nation (Nov. 14, 2024), <https://www.justice.gov/usao-az/pr/phoenix-man-sentenced-12-years-deadly-human-smuggling-related-crash-tohono-oodham-nation>; Press Release, U.S. Attorney’s Off., Dist. of Ariz., *Tucson Woman Sentenced to 10 Years for Fatal Crash While Transporting Illegal Aliens* (Oct. 24, 2023), <https://www.justice.gov/usao-az/pr/tucson-woman-sentenced-10-years-fatal-crash-while-transporting-illegal-aliens>; Press Release, U.S. Attorney’s Off., Dist. of Ariz., *Tucson Man Sentenced to 10 Years for Deadly Human Smuggling Related Crash Near Arivaca* (Mar. 10, 2026), <https://perma.cc/W8J3-KXE8>.

¹⁹ Adam Shaw et al, *Mexican cartels using social media to recruit smugglers amid historic border surge*, Fox News (Oct. 7, 2022, at 1:07 ET), <https://perma.cc/2XG8-KC7L>; see also Kris Van Cleave and Analisa Novak, *Cartels use social media to recruit American teens for drug, human smuggling in Arizona: “Uber for the cartels”*, CBS News (Oct. 5, 2023, at 11:14 ET), <https://perma.cc/K9CN-8HEF>.

²⁰ See, e.g., Emily Bregel, *Arizona deputies headed to Cochise County to tackle border-related crime*, Tucson.com (Dec. 1, 2024), <https://perma.cc/S97P-J6JB>; Press Release, Rep. Juan Ciscomani, *WTAS: Local Officials Praise Ciscomani’s Bill to Stiffen Federal Penalties on Smugglers* (Sep. 25, 2023), <https://perma.cc/HD6J-PE9A>.

²¹ *Facts About Fentanyl*, U.S. Drug Enf’t Admin., <https://perma.cc/2RQ7-E7K2> (archived June 26, 2026).

²² U.S. Drug Enf’t Admin., *2025 National Drug Threat Assessment*, <https://www.dea.gov/sites/default/files/2025-07/2025NationalDrugThreatAssessment.pdf>.

²³ U.S. Drug Enf’t Admin., *National Drug Threat Assessment 2024*, https://www.dea.gov/sites/default/files/2024-05/NDTA_2024.pdf.

can be lethal[.]”²⁴ In 2024, the federal Drug Enforcement Administration reported that along with other synthetic drugs like methamphetamine, fentanyl was “responsible for nearly all of the fatal drug overdoses and poisonings in” the United States.²⁵ The Arizona Department of Health reported that “[s]ynthetic opioids . . ., primarily illicit fentanyl, combined with stimulants like methamphetamine are responsible for an increasing number of overdose deaths in Arizona,” and “[i]n 2023, there were 1,928 opioid overdose deaths among Arizona residents.”²⁶

Arizona law enforcement works with federal authorities to intercept as much illicit fentanyl as possible. The Arizona Department of Public Safety (“DPS”) has frequently reported large seizures. For example, in January 2024, DPS reported a commercial vehicle stop that resulted “in the discovery of 208 pounds of fentanyl valued at over \$1 million.”²⁷ And the Legislative Leaders have consistently supported increased penalties under state law for those who deal high quantities of this dangerous drug.²⁸ In 2024, the Legislative Leaders sent the “Secure the Border Act” to the voters, who overwhelmingly approved it, including a provision increasing penalties for adults who sell a lethal dose of fentanyl that causes the death of another person. *See* Ariz. Rev. Stat. § 13-3424. Fentanyl trafficking certainly has had enormous impacts on Arizona’s public safety.

B. The threats to public safety come at a high cost to Arizona and its residents.

Arizona often pays the cost to protect its residents from the public safety threats posed by border-related crimes. In particular, during the times when the United States has failed to

²⁴ *Facts About Fentanyl*, U.S. Drug Enf’t Admin., <https://perma.cc/2RQ7-E7K2> (archived June 26, 2026).

²⁵ U.S. Drug Enf’t Admin., National Drug Threat Assessment 2024, https://www.dea.gov/sites/default/files/2024-05/NDTA_2024.pdf.

²⁶ Ariz. Dep’t of Health Servs., *Opioid Overdoses Surveillance Report, Arizona, 2023*, <https://perma.cc/8M2E-AMKY>.

²⁷ Press Release, Ariz. Dep’t of Pub. Safety, *Arizona State Troopers Seize More Than 1,500 Pounds of Fentanyl in Six-Month Period* (Apr. 2, 2024), <https://perma.cc/T6LE-R6L9>.

²⁸ *See, e.g.*, Press Release, Ariz. House of Representatives, *Arizona Enacts Tougher Fentanyl Sentences for Drug Traffickers* (Apr. 14, 2026), <https://perma.cc/R552-2NHP>.

adequately enforce border security, States have been left to fill the gap and shoulder additional expenses. For example, the Cochise County Sheriff reported that during an 18-month period in 2022 and 2023, the county handled over 2,300 border-related crimes, costing \$6 million.²⁹

Congress and the President recently recognized as much, creating a \$12 billion reimbursement fund for States that took actions “on or after January 21, 2021, to assist the Federal border security missions to enforce the immigration laws, including through detention and removal, and to combat the unlawful entry of persons and contraband.”³⁰ Given the immense harm it has suffered, Arizona submitted early requests for reimbursement of over \$700 million related to these expenses.³¹ And the majority of these expenses went to supporting local law enforcement in combatting border-related crimes.³²

Not only has Arizona felt the costs as they relate directly to border security, but Arizona has felt pipeline costs related to the influx of drugs that have entered the State. Arizona has spent millions combatting illicit fentanyl and its effects on Arizona’s residents. For example, in 2023, the Arizona Legislature created the “fentanyl prosecution, diversion and testing fund” to reimburse county attorneys, sheriffs, and courts for costs related to fentanyl prosecutions and to reimburse law enforcement agencies for costs related to fentanyl testing and fentanyl diversion activities.³³

²⁹ Emily Bregel, *Arizona deputies headed to Cochise County to tackle border-related crime*, Tucson.com (Dec. 1, 2024), <https://perma.cc/S97P-J6JB>.

³⁰ See H.R.1, 119th Congress (2025–2026) (enacted), <https://www.congress.gov/bill/119th-congress/house-bill/1/text/eh>; Press Release, U.S. Dep’t of Homeland Sec., *Secretary Noem Commends President Trump and One Big Beautiful Bill Signing into Law: Historic Win for the American People and the Rule of Law* (July 4, 2025), <https://perma.cc/9RDB-THP3>.

³¹ Press Release, *Governor Katie Hobbs Requests Federal Government Reimbursement for over \$700 Million in Border Security Spending* (July 31, 2025), <https://perma.cc/X7PS-ZMHP>; Letter from Warren Petersen and Steve B. Montenegro to the Honorable Kristi Noem (Sep. 10, 2025), <https://perma.cc/Y9H7-VWQN>.

³² See Press Release, *Governor Katie Hobbs Requests Federal Government Reimbursement for over \$700 Million in Border Security Spending* (July 31, 2025), <https://perma.cc/X7PS-ZMHP>.

³³ H.B. 1724, 2023 Leg., 56th Reg. Sess. (Ariz. 2023), <https://perma.cc/L2AY-AFG4>.

II. The balance of the equities and the public interest weigh in favor of the United States and against granting a preliminary injunction here.

Border security is an important aspect of national security and foreign relations. *See Mullin v. Al Otro Lado*, 609 U.S. ___, No. 25-5, 2026 WL 1825741, at *4 (June 25, 2026) (recognizing that in making an admissibility determination the federal executive considers “among other things, national security [and] foreign-policy concerns”); *Mullin v. Doe*, 609 U.S. ___, No. 25-1083, 2026 WL 1825840, at *11 (June 25, 2026) (recognizing the Executive’s assertion of “the connection between immigration policy and foreign relations”); *Egbert v. Boule*, 596 U.S. 482, 494 (2022) (“regulating the conduct of agents at the border unquestionably has national security implications”) (quoting *Hernandez v. Mesa*, 589 U.S. 93, 108 (2020)). And the President is entrusted with matters of national security—not the courts. *See Trump v. Hawaii*, 585 U.S. 667, 704 (2018) (“[J]udicial inquiry into the national-security realm raises concerns for the separation of powers by intruding on the President’s constitutional responsibilities in the area of foreign affairs.”) (citation modified); *In re Border Infrastructure Env’t Litig.*, 284 F. Supp. 3d 1092, 1135 (S.D. Cal. 2018) (“[T]he Executive Branch has independent and significant constitutional authority in the area of ‘immigration and border control enforcement and national security.’”), *aff’d*, 915 F.3d 1213 (9th Cir. 2019).

The Supreme Court has recognized that courts must give deference to the judgments of the political branches in matters of national security. *See Boumediene v. Bush*, 553 U.S. 723, 796–97 (2008); *see also Ctr. for Nat. Sec. Stud. v. U.S. Dep’t of Just.*, 331 F.3d 918, 926–27 (D.C. Cir. 2003) (“It is . . . well-established that the judiciary owes some measure of deference to the executive in cases implicating national security, a uniquely executive purview.”). Indeed, “[u]nlike the President and some designated Members of Congress, neither the [Supreme Court] nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation

and its people.” *Boumediene*, 553 U.S. at 797; *see Trump*, 585 U.S. at 704 (“[W]hen it comes to collecting evidence and drawing inferences on questions of national security, the lack of competence on the part of the courts is marked.”) (citation modified).

Accordingly, courts have recognized that the balance of harms and the public interest weigh in favor of denying a preliminary injunction when national security is implicated. *See Rosa v. McAleenan*, 583 F. Supp. 3d 850, 885–86 (S.D. Tex. 2019); *see also Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 581 (2017) (staying a preliminary injunction against the United States and noting that “[t]he interest in preserving national security is ‘an urgent objective of the highest order’”). For example, in *La Posta Band of Diegueno Mission Indians v. Trump*, the La Posta Tribe asked the court to preliminarily enjoin the Trump Administration from moving forward with plans to add border fencing to designated areas in California. No. 3:20-CV-01552-AJB-MSB, 2020 WL 14042584, at *5 (S.D. Cal. Sept. 9, 2020), *aff’d La Posta Band of Diegueno Mission Indians of La Posta Rsrv. v. Trump*, 828 F. App’x 489 (9th Cir. 2020). When the court there evaluated the balance of the equities and the public interest, it acknowledged the Supreme Court’s recognition of “‘compelling interests in safety and in the integrity of our borders.’” *Id.* at *19 (quoting *Nat’l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 672 (1989)). And the court further recognized that “an injunction would prohibit the Government from taking necessary steps to prevent the continuing surge of illegal drugs from entering the country.” *Id.* Ultimately, while the court acknowledged “irreparable harms on both sides,” it denied the preliminary injunction, noting that it was “not clear that the balance of equities tip[ped] in La Posta’s favor.” *Id.* at *20.

This Court should conclude the same. If the federal government has determined that this measure is needed at the border to protect national security and its citizens, then the balance of equities and public interest should tip heavily in favor of the United States and denying a

preliminary injunction. Plaintiff's assertion that the court should be skeptical of any claims that a border wall is needed for security because "border crossings on the Reservation are at historic lows" is unpersuasive. *See* Doc. 3-1 at 44. Plaintiff relies on the declaration of the Tohono O'odham Nation's Chief of Police who states as follows:

Calls coming in from our community members to report trespassers from across the border, smuggling activity, or other border-related incidents have almost disappeared. During the 18-month period between July of 2023 and December of 2024, [Tohono O'odham Police Department] incident reports recorded 766 incidents of illegal entry on the Reservation. During the last 17 months, from January 1 of 2025 through June 1 of [2026], that number has plummeted to 70 recorded incidents of illegal entry, which amounts to a roughly 90% decrease since the beginning of 2025.

Doc. 3-5 at ¶ 18.

Rather than supporting Plaintiff's position, these statistics cut against it. The decrease in "border-related incidents" to which Plaintiff refers corresponds directly to the change of executive administration—from one that failed at the border to one that has made border security a top priority. Any decrease in border-related incidents since the change of executive administrations does not tip the scales towards Plaintiff. To the contrary, it shows what happens when border security is not a top priority for an administration. And a future administration may return to the lax practices of prior administrations and choose to pull personnel from the border; to retract border security policies; and to again send an implied message to the world that the integrity of our border will not be enforced. The current decrease in incidents does not support a preliminary injunction. The people of Arizona, and of the United States more generally, should not be forced to wait for a failure at the border to happen again before additional efforts are taken to secure the border.

* * *

Without border security, the States, especially border States like Arizona, have been subject to an influx of criminal activity, harming its citizens. And the States have also had to expend

tremendous resources as a result. The balance of equities and the public interest here weigh heavily in favor of the United States and doing all that is necessary to ensure that our border continues to be secure for years to come.

CONCLUSION

For the foregoing reasons, amici curiae, the Arizona Legislative Leaders, respectfully request that this Court deny Plaintiff's motion for preliminary injunction.

Date: July 7, 2026

Respectfully submitted,

/s/ S. Lee Whitesell

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CERTIFICATE OF COMPLIANCE

Pursuant to LCvR 7(o), I hereby certify that this brief conforms to the requirements of LCvR 5.4, complies with the requirements set forth in Fed. R. App. P. 29(a)(4), and does not exceed 25 pages in length.

DATED this 7th day of July, 2026.

/s/ S. Lee Whitsell

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