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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

The United States of America,

Plaintiff,

v.

The State of Arizona, et al.,

Defendants.

The State of Arizona; and Janice K. Brewer, Governor of the State of Arizona, in her Official Capacity,

Counterclaimants,

v.

The United States of America; the United States Department of Homeland Security; the United States Department of Justice; and Janet Napolitano and Eric H. Holder, Jr., in their official capacities.

Counterdefendants.

No. 2:10-cv-1413-SRB

COUNTERDEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS COUNTERCLAIMS

INTRODUCTION

Arizona has used its Counterclaim as a vehicle to re-litigate a past loss – a loss which made clear that Arizona cannot demand a judicial resolution of claims of this nature. The United States' affirmative suit to prevent the enforcement of a preempted state law does nothing to alter the binding Ninth Circuit precedent on the precise claims now brought by Arizona. And Arizona's new statutory claims fare no better, as they seek general orders and declarations which would ignore congressional intent and withhold from the United States the discretion that is legally vested in its executive agencies.

ARGUMENT

I. Arizona's Constitutional and Enforcement Related Claims Are Foreclosed by its Prior Litigation Against the United States

Arizona has made no effort to meaningfully distinguish the claims it brought in *Arizona v. United States*, No. 94-866 (D. Ariz. 1997) ("*Arizona I*") from Counts II, III, and V of its Counterclaim. Its claims are barred by principles of collateral estoppel and are, in any event, foreclosed by the Ninth Circuit's rejection of these legal claims in the prior litigation and in a companion case brought by the state of California.[1]

Arizona urges several grounds for evading the bar of collateral estoppel, none of which is availing. *First*, the State argues that the number and impact of aliens unlawfully present in Arizona is greater now than at the time of its earlier suit. But such a change does not represent a "change[] in facts essential to [the prior] judgment" of the type that might "render collateral estoppel inapplicable in a subsequent action raising the same issues." *See Montana v. United* States, 440 U.S. 147, 159 (1979). The *Arizona I* ruling

[1] Arizona has admitted that it brought these counterclaims to "ask[ ] the 9th Circuit to take a second look" at "prior cases that went against [Arizona]." *See* Jerry Markon, "Arizona Files Countersuit Tied to Challenge of its Immigration Law," *The Washington Post*, February 14, 2011. In doing so, Arizona has effectively conceded that collateral estoppels applies, and that even if it were permitted to pursue this course of relitigation, this Court cannot overrule the Ninth Circuit's prior decisions in *Arizona I*.

in no way turned on the size of the group of aliens who happen to be present in Arizona or the impact of their presence. Rather, Arizona's earlier Invasion Clause claim was rejected because, as a categorical matter, determining whether an "invasion" has occurred presents a political question over which the courts lack jurisdiction. *See Arizona v. United States*, 104 F.3d 1095 (9th Cir. 1997) (affirming dismissal for reasons stated in *California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997)). Similarly, Arizona's prior allegation of insufficient federal immigration enforcement was dismissed because enforcement determinations were deemed unreviewable under *Heckler v. Chaney*, 470 U.S. 821 (1985), and Arizona's Tenth Amendment claim was rejected because there was no federal mandate requiring the state to pursue penal policies and expend funds in any particular manner. *See California*, 104 F.3d at 1092-94. Because these prior resolutions of Arizona's claims did not rely on any determination of the precise nature of illegal immigration in Arizona, collateral estoppel squarely applies.

Second, Arizona contends that it can escape collateral estoppel because the United States filed an action to prevent enforcement of a state statute on the ground that it is preempted by federal law. Arizona's reliance on the Supreme Court's *Moser* and *Montana* decisions to allow it to escape collateral estoppel is unavailing. These decisions make clear that where "the question arises in a subsequent action between the same parties upon the same claim or demand[,] . . . a judgment upon the merits constitutes *an absolute bar to the subsequent action*." *United States v. Moser*, 266 U.S. 236, 241 (1924) (emphasis added); *see also Montana*, 440 U.S. at 163. *Moser* and *Montana* thus compel preclusion of the claims here, because (i) the parties to this Counterclaim are the same as in *Arizona I*, and (ii) the claims – challenging the federal government's exercise of its discretion under the INA, and alleging that federal immigration policies have resulted in violations of the Invasion Clause and the Tenth Amendment – are identical to those raised and rejected in *Arizona I*. *See* U.S. Motion at 5-8. Arizona's suggestion that it should be allowed to re-litigate these very claims so as to "insist[] that the law is

otherwise," Arizona Opp. at 10, is meritless, because *Arizona I* and the Counterclaims do not involve "substantially unrelated claims." *Montana*, 440 U.S. at 162; *Moser*, 266 U.S. at 242 ("[A] fact, question or right distinctly adjudged in the original action cannot be disputed in a subsequent action . . . ."). Further, Arizona's vague assertion that "other special circumstances" warrant an exception to the normal rules of preclusion, Arizona Opp. at 10, is equally ill-founded, as Arizona has not alleged any defect in *Arizona I* which might warrant consideration of such an exception. *See Durkin v. Shea & Gould*, 92 F.3d 1510, 1515 (9th Cir. 1996) (describing *Montana's* "other special circumstances" exception as some "reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation," to ensure that the parties have a "full and fair opportunity to litigate" the prior matter).[2] Accordingly, Counts II, III, and V must be dismissed under the collateral estoppel doctrine.

Moreover, even if Arizona's claims were not precluded by collateral estoppel, this Court is nonetheless bound by the Ninth Circuit's reasoning in *California*, where these types of claims were categorically rejected. For example, Arizona introduces various arguments in support of its Invasion Clause claim (Count II), ranging from why the *Baker v. Carr* formulations might not apply, to questioning the viability of the political question doctrine itself. *See* Arizona Opp. at 17-22. Whatever force these arguments might have had in the first instance (and, notably, they have been rejected by every circuit to have addressed the issue, *see* U.S. Motion at 8-11), is totally irrelevant in light of the Ninth Circuit's on-point decision, holding that Invasion Clause claims are non-justiciable.[3] In

[2] Neither *Montana* nor *Moser* suggest that a suit to prevent enforcement of a preempted state law can lift the bar of collateral estoppel. In any event, the United States did not sue Arizona over the "very same crisis," Arizona Opp. at 9, for which Arizona sued the United States – the United States did not sue Arizona for some failing to prevent illegal immigration or otherwise bring a claim that might necessitate an adjudication of rights under the Invasion Clause or Tenth Amendment.

[3] Arizona also suggests that Congress has "recognized the credible threat that exists at the Arizona Border." Arizona Opp. at 21. It is unclear what the State means by this assertion; the Ninth Circuit has already made clear that the Invasion Clause does not

its only effort to distinguish *California*, Arizona argues that no prior case "involve[d] a suit by the Government against the state." Arizona Opp. at 18. But a non-justiciable question cannot become justiciable because it arises in a counterclaim, or, put otherwise, such a fundamental defect in jurisdiction cannot plausibly be waived. *See Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) ("[D]isputes involving political questions lie outside of the Article III jurisdiction of federal courts."); *United States v. Finn*, 239 F.2d 679, 682-83 (9th Cir. 1956) (holding that jurisdictional defects in counterclaims against the United States were not waived by its affirmative suit).[4]

Likewise, Arizona contends that it is entitled to challenge executive branch immigration enforcement decisions (Count III), notwithstanding the Ninth Circuit's direct holding to the contrary. *California*, 104 F.3d at 1094 (citing *Heckler*). Arizona's attempt to raise the specter that DHS has somehow "abdicated" its enforcement responsibilities because it prioritizes its enforcement efforts simply ignores the holding of *California*. Such prioritization in enforcement efforts is precisely what *Heckler* and *California* recognized to be committed to the enforcement discretion of the executive branch.[5]

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apply to claims relating to unlawfully present aliens. *California*, 104 F.3d at 1091 ("[T]he Invasion Clause . . . afford[s] protection in situations wherein a state is exposed to armed hostility from another political entity. . . . It was not intended to be used as urged by California."); *see e.g.*, *Padavan v. United States*, 82 F.3d 23, 28 (2d Cir. 1996).

[4] In any event, as the United States did not invoke the Invasion Clause or any other claim that would call for resolution of a political question in its challenge to SB 1070, the United States has not "attempt[ed] to use the political question issue as both a sword and a shield" or "consented to resolution of [Invasion Clause] issues," Arizona Opp. at 18.

[5] Arizona likewise goes too far in treating the Rule 12(b)(6) dismissal standard as a requirement that the Court entertain utterly baseless accusations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (even under Rule 12(b)(6), the "court need not [ ] accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. . . . Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"). Thus, statements that are obviously false and unsupported cannot prevent dismissal. *Compare* Arizona Opp. at 25 (claiming Government has "abdicated its responsibility to deport illegal aliens who have not committed aggravated offenses") *and id.* (claiming

Similarly unpersuasive is Arizona's attempt to resuscitate its Tenth Amendment claim (Count V) as one premised on political injuries caused by federal immigration policies, including the challenge to S.B. 1070 itself.[6]

II. Arizona Has Failed to State a Statutory Claim Under Count I

In Count I of its Counterclaim, Arizona requests that this Court order DHS (1) to "achiev[e] and maintain[] 'operational control' of the Arizona-Mexico border," and (2) to complete "700 miles of fencing along the Southwest border plus the additional infrastructure listed in [Section 102 of the Illegal Immigration Reform & Immigrant Responsibility Act ("IIRIRA")]." Counterclaim ¶ 157. This Count relies on a misreading of both the Secure Fence Act and IIRIRA, and fails to state a claim under the Administrative Procedure Act ("APA").

First, Arizona mischaracterizes the nature of the "operational control" provision in the Secure Fence Act. Contrary to Arizona's suggestion, Arizona Opp. at 14, the statute does not direct the Secretary to obtain "operational control" over the U.S. border within 18 months. Rather, the text provides that "[n]ot later than 18 months . . . the Secretary [ ] shall take all actions *the Secretary determines necessary and appropriate* to achieve and maintain operational control." Pub. L. No. 109-367, § 2, 120 Stat. 2638 (2006), 8 U.S.C.

Government has "abdicated its responsibility to provide information under 8 U.S.C. §§ 1373 and 1644") *with* http://www.ice.gov/doclib/about/offices/ero/pdf/ero-removals.pdf (removal statistics of criminal and *non-criminal* aliens), *and* July 28, 2010 Order at 17 (properly describing Government as arguing that a significant increase in requests to DHS's Law Enforcement Support Center under § 1373 would divert federal resources away from other responsibilities – not that it would refuse to respond to such requests).

[6] *See* U.S. Motion at 11-13 & n.6 (arguing that Arizona has no Tenth Amendment right to adopt a preempted law); *California*, 104 F.3d at 1092-93 (rejecting Tenth Amendment claim); *New Jersey v. United States*, 91 F.3d 463, 467 (3d Cir. 1996) ("[N]o precedent suggests that *inaction* by Congress or the Executive [ ] constitutes the kind of coercion that violates the Tenth Amendment . . . . [it] provides a shield against the federal exercise of powers reserved to the states, not a sword to compel federal action."); *see also Nuclear Energy Institute v. EPA*, 373 F.3d 1251, 1305 (D.C. Cir. 2004) (rejecting "extraordinary defect" and "isolation" claims); *Nevada v. Watkins*, 914 F.2d 1545, 1556 (9th Cir. 1990).

§ 1701 note (emphasis added). Congress has elsewhere confirmed that the Secure Fence Act seeks to vest the Secretary with wide discretion to determine appropriate border control strategies. *See* S. Rep. 111-31, at 38 (2009) ("The Committee *supports the Secretary's continued reconsideration and evaluation* of the proper mix of tactical infrastructure, including physical fencing, and technology . . . . the Committee *provides the Secretary with the flexibility* to determine the proper mix and location of these border security activities . . . .") (emphasis added). Plainly, then, the statute does not mandate a judicially reviewable result, but instead asks the Secretary to take whatever actions she determines should be taken to accomplish the broad directive.[7] *See, e.g., Webster v. Doe*, 486 U.S. 592, 600 (1988) (rejecting possibility of review where statute provided for termination when the Director of CIA "*deem[ed]* such termination necessary or advisable"); *see also Drake v. FAA*, 291 F.3d 59, 72 (D.C. Cir. 2002) (rejecting review where "the only statutory reference point is the Administrator's own beliefs").[8]

In any event, even under Arizona's reading of the "operational control" provision as a strict, time-bound mandate, judicial review of its claim is not available under the APA. Seemingly acknowledging that this Court should not provide "specific directions on how [DHS should] act," Arizona nonetheless argues that *Norton v. Southern Utah Wilderness Alliance* ("*SUWA*") allows this Court to issue a *general* order that DHS "take

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[7] Indeed, Congress's subsequent actions put to rest any claim that DHS was required to gain "operational control" over the entire border by specific date. Congress has described the "operational control" directive as a long-term goal that the government must continually strive to achieve and assess. *See* Appropriations Act, 2010, Pub. L. No. 111-83, 123 Stat. 2142, 2146 (requesting Secretary to review "the *progress* made by the program in terms of obtaining operational control of the entire border," and conduct an analysis of "*level of operational control*" in specific border segments) (emphasis added).

[8] As previously discussed, DHS has taken signification steps towards the goal of "operational control," including increasing the number of border patrol agents; using various ground and air based systems of surveillance; and continuing to build physical infrastructure, including fencing, where Border Patrol field commanders have determined it most appropriate and effective. *See* U.S. Mot. at 4 (citing congressional testimony of U.S. Border Patrol Chief Fisher and Secretary Napolitano).

action to achieve operational control." Arizona's Opp. at 15 (citing *SUWA*, 542 U.S. 55 (2004)). Arizona's claim ignores the central holding of *SUWA*: courts can only order "discrete" actions – such as the requirement that an agency promulgate a regulation by a date certain – but not compliance with a *non-discrete* statutory directive. *See* 542 U.S. at 63-65; *see generally Burton v. City of Belle Glade*, 178 F.3d 1175, 1201 (11th Cir. 1999) ("Appellants seek [an] injunction . . . [that] would do no more than instruct the City to 'obey the law[.]' [W]e believe that it would not satisfy the specificity requirements of Rule 65(d)."). Indeed, Arizona makes the same argument that was rejected in *SUWA*, where the plaintiffs alleged that because the Wilderness Act contained a "categorical imperative" to preserve certain wilderness lands, the court could "simply enter a general order compelling compliance with that mandate, without suggesting any particular manner of compliance." 542 U.S. at 66. The Supreme Court held that the judiciary lacked authority to enter such a general order, because the requested relief was not a "discrete" action of the sort that could be compelled under the APA. *Id*.; *see also Veterans for Common Sense v. Shinseki*, 2011 WL 1770944, *17-19 (9th Cir. 2011). But, as discussed above, the "operational control" provision does not mandate a "discrete" form of action recognized under the APA, but rather, calls upon the agency to pursue whatever it determines to be the appropriate mix of border enforcement techniques. Arizona – which asks this Court to "retain jurisdiction of this action" until DHS has "achieve[d] and maintain[ed]" operational control of the border – seeks to convert this Court into a permanent oversight board with either no authority to compel any particular action, or the pervasive authority – contrary to the statute's explicit endorsement of agency flexibility – to oversee every day-to-day decision. The APA simply does not contemplate such relief.

Second, Arizona requests this Court to order the completion of "700 miles of fencing along the Southwest border plus the additional infrastructure" pursuant to IIRIRA § 102. *See* Pub. L. No. 110-161, Div. E, § 564, codified at 8 U.S.C. § 1103 note.

Although phrased in terms of fencing on "the Southwest border" generally, Arizona – which lacks standing as a general matter, *see* U.S. Motion at 14, 18[9] – at most could only seek additional fencing along Arizona's border, as it does not (and could not) assert that fencing in another state would redress injuries it has alleged at its own border. But IIRIRA § 102 grants Arizona absolutely no entitlement to such additional fencing. Congress left it to the Secretary's discretion to determine where fencing would be most practical and effective – and explicitly rejected any requirement that the Secretary construct fencing in specific locations. *Compare* Pub. L. No. 109-367, § 3, *repealed and replaced by* Pub. L. No. 110-161, Div. E, § 564 ("[N]othing in this paragraph shall require [DHS] to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along [the] border . . . if the Secretary determines that the use or placement of such resources is not the most appropriate means . . . ."). Thus, Arizona's claim is fundamentally defective, as Congress precluded the very relief that it appears to seek – an order compelling construction of additional fencing in Arizona.

Further, even if Arizona had standing, it has failed to state a cognizable claim of "inaction" or "unreasonable delay" under the APA. It is Arizona's burden to allege in its Counterclaim the specific basis for concluding that DHS has entirely failed to act, or delayed in acting to such an extent as to constitute a "challengeable agency action" of statutory abdication. *See Ecology Ctr. v. U.S. Forest Serv.*, 192 F.3d 922, 926 (9th Cir.

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[9] Arizona relies on *Massachusetts v. EPA*, 549 U.S. 497 (2007), to defend its standing, Arizona Opp. at 6-8, but ignores a crucial distinction which renders *Massachusetts* inapplicable. In *Massachusetts*, the EPA had denied petitioners' request for rulemaking under the Clean Air Act and the petitioners argued that this denial – which amounted to an absolute refusal to regulate greenhouse gases – caused the State injury. The Court held that Massachusetts' standing derived from the rulemaking provision of the Clean Air Act that defined both the injury and causation. *See id.* at 516, 520n.17 ("Congress has . . . . authorized this type of challenge to EPA action. [ ] That authorization *is of critical importance to the standing inquiry*: Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.") (emphasis added). No comparable provision of the INA grants Arizona a "protectable" interest that might serve as a basis for standing.

1999); *ONRC Action v. BLM*, 150 F.3d 1132, 1137 (9th Cir. 1998). Here, it is undisputed that DHS has already completed 649 of the 700 miles – over 92% of the target that Congress set a little over three years ago without a deadline – and that much of this fencing covers the Arizona border. *See* U.S. Mot. at 4. And Congress, the branch that is best equipped to assess DHS's progress and which has been regularly apprised of the agency's continued efforts through hearings and reports, has repeatedly rejected the sort of absolute deadlines which Arizona seeks to impose. To the contrary, Congress has acknowledged that border infrastructure projects of this magnitude require serious evaluation and time, recognizing that the statute does not demand the construction of fencing for its own sake, but rather, deliberate consideration of where such measures "would be most practical and effective."[10] Against this backdrop, Arizona has failed to make out an APA claim of inaction or delay. *See Heckler v. Day*, 467 U.S. 104, 117-18 (1984) (rejecting delay claim, "[i]n light of Congress' continuing concern that mandatory deadlines would subordinate quality to timeliness, and its recent efforts to ensure the quality of agency determinations, it hardly could have contemplated that courts should have authority to impose the very deadlines it repeatedly has rejected").

Instead, where the challenged actions are not withheld, but in-progress, and where Congress has committed to the agency's discretion how, when, and where to place fencing and other measures, Arizona's claim of "inaction or delay" collapses into an impermissible challenge to the agency's methods of action, *i.e.*, that the agency is not acting in the *manner* that Arizona desires. *Cf. Ecology Ctr.*, 192 F.3d at 926 ("[We] refuse[] to allow plaintiffs to evade the finality requirement with complaints about the

[10] *See* S. Rep. 111-31, at 38 (noting "[t]he Committee is pleased [that DHS] is continuing to support securing the border through the proven triumvirate of fencing and tactical infrastructure, technology, and boots on the ground," and that the agency has reassessed projects and heightened standards, which have "pushed back the deployment schedule [of technology projects] . . . but it is important to get it done right"); H. Rep. 111-157 (2009) (instructing DHS to analyze "alternatives for effective control of the border," including agents, sensors, and cameras, before proposing additional fencing construction).

sufficiency of an agency action "dressed up as an agency's failure to act"). But Congress has left these decisions to the Secretary, subject only to Congressional reconsideration.[11]

III. Arizona Has Failed to State a Statutory Claim in Count IV

Arizona does not attempt to refute any of the United States' arguments against Count IV, including that all funds appropriated by Congress for the State Criminal Alien Assistance Program ("SCAAP") have been disbursed to the states (including Arizona); that the Attorney General cannot be compelled to make payments beyond those appropriations; and that 8 U.S.C. § 1231(i) commits to the Attorney General's discretion the precise method of calculating reimbursement amounts. *See* U.S. Mot. at 25-31. Nor does Arizona address the caselaw, which considered the same statutory provision at issue (previously codified as 8 U.S.C. § 1252(j)), and held that the SCAAP grant mechanism used by the Attorney General constitutes an appropriate contractual arrangement, that a state cannot challenge the Attorney General's decision to reimburse states on a *pro rata* basis, and that both the federal reimbursement and incarceration options provided for in the statute are limited by the amounts that Congress actually appropriates for those specific purposes. *See California v. DOJ*, 114 F.3d 1222, 1226 (D.C. Cir. 1997).[12]

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[11] Arizona makes various other assertions which never amount to a concrete claim. For example, Arizona claims that DHS "cancelled the SBI*net* program," but it is not clear what Arizona seeks regarding this program. *SBInet* is one of many surveillance technologies that DHS uses to monitor the border, and, as DHS explained to Congress, it decided not to expand the program, but will continue its limited use in certain areas. *See* March 15, 2011 Cong. Testimony of Michael Fisher, U.S. Border Patrol Chief, at 6, http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Fisher%2C%20Borkowski%2C%20Kostelnik.pdf . The use of SBI*net* is not required by any statute, and it is for DHS to determine what technologies should be used. *See* IIRIRA §102(b)(1)(D). The decision to limit this program falls squarely within what the Supreme Court has recognized as unreviewable action. *See Lincoln v. Vigil*, 508 U.S. 182, 192-94 (1993) (decision to discontinue program providing services to handicapped children in the Southwest for seven years, but which was not required by statute, was unreviewable).

[12] Arizona appears to suggest that SCAAP reimbursement decisions can be reviewed to ensure compliance with published 2010 and 2011 SCAAP guidelines. *See* Arizona Opp. at 26. Even if such guidelines could supply a basis for review, Arizona has failed to

Instead of defending or even articulating its claims regarding the SCAAP program, Arizona urges the Court to review actions that are committed to agency discretion by law on the ground that it is seeking an interpretation of statutory provisions under the Declaratory Judgment Act. This argument is difficult to fathom. *First*, the APA provides the relevant cause of action and waiver of immunity for a suit to determine whether an agency has properly interpreted or implemented a statute. The Declaratory Judgment Act would not provide a basis for bringing this suit in the absence of the APA and does not permit a Court to ignore the limitations on judicial review imposed by that statute.[13] That a suit also invokes the Declaratory Judgment Act adds nothing to the inquiry. *Second*, the statute providing for SCAAP funding does not provide any "rights" to Arizona about which it could even seek "various declarations and determinations," Arizona Opp. at 26. *See* 8 U.S.C. § 1231(h) ("Nothing in this section [(§ 1231)] 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 . . . ."). Arizona makes no effort to explain how any of the interpretations it seeks regarding § 1231(i) would affect any concrete controversy, and its attempt to have this Court answer a series of hypothetical questions regarding § 1231(i) is nothing more than a request for an advisory opinion. Accordingly, this Count should also be dismissed.

CONCLUSION

For the foregoing reasons, the Court should grant the United States' Motion to Dismiss the Counterclaims.

DATED: July 12, 2011

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suggest any variance from these guidelines. Indeed, these guidelines simply reiterate the need for *pro rata* distribution of available funding. *See* U.S. Motion at 26.

[13] *See, e.g., Davis v. United States*, 499 F.3d 590, 594 (6th Cir. 2007); *Jarrett v. Resor*, 426 F.2d 213, 216 (9th Cir. 1970); *Rueth v. EPA*, 13 F.3d 227, 231 (7th Cir. 1993) (refusing declaratory judgment where APA review was unavailable); *West Penn Power Co. v. Train*, 522 F.2d 302, 310 (3d Cir. 1975) (same).

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the CM/ECF registrants on record in this matter.

/s/ Varu Chilakamarri
Varu Chilakamarri