PRELIMINARY STATEMENT

1. This case challenges the ongoing efforts of the Executive Branch to bypass the legislative process and act unilaterally to "comprehensively transform" Medicaid, the cornerstone of the social safety net. Purporting to invoke a narrow statutory waiver authority that allows experimental projects "likely to assist in promoting the objectives" of Medicaid, the Executive Branch has instead effectively rewritten the statute, ignoring congressional restrictions, overturning a half century of administrative practice, and threatening irreparable harm to the health and welfare of the poorest and most vulnerable in our country.

2.

2018, citing the Dear State Medicaid Director Letter, the Secretary approved the Arkansas Works Amendment, and Arkansas began implementing the Amendment on June 1, 2018.

8. The Secretary's issuance of the letter to State Medicaid Directors and approval of Arkansas' request sharply deviate from the congressionally established requirements of the Medicaid program and vastly exceed any lawful exercise of the Secretary's limit

14. Plaintiff Marisol Ardon is a 44-year-old woman who lives is Siloam Springs, Benton County, Arkansas with her adult daughter. Ms. Ardon is enrolled in the Arkansas Medicaid program.

15. Defendant Alex M. Azar II is the Secretary of the

services” and to provide “rehabilitation and other services to help such families and individuals

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27. To be eligible for federal Medicaid funding, states must cover, and may not exclude from Medicaid, individuals who: (1) are part of a mandatory population group; (2) meet the minimum financial eligibility criteria applicable to that population group; (3) are residents of the state in which they apply; and (4) are U.S. citizens or certain qualified immigrants. *Id.* §§ 1396a(a)(10)(A), 1396a(b)(2), (3); 8 U.S.C. §§ 1611, 1641.

28. The mandatory Medicaid population groups include children; parents and certain other caretaker relatives; pregnant women; and the elderly, blind, or disabled. 42 U.S.C. § 1396a(a)(10)(A)(i).

29. In 2010, Congress passed, and the President signed, comprehensive health insurance reform legislation, the Patient Protection and Affordable Care Act ("ACA"). Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029. "The Act aims to increase the number of Americans covered by health insurance and decrease the cost of health care." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012).

30. As part of the effort to ensure comprehensive health insurance coverage, Congress amended the Medicaid Act to add an additional mandatory population group. Effective January 1, 2014, the Medicaid Act requires participating states to cover adults who are under age 65, not eligible for Medicare, do not fall within another Medicaid eligibility category, and have household income below 133% of the federal poverty level ("FPL"). 42 U.S.C. §

31. States receive enhanced federal reimbursement rates for medical assistance provided to the Medicaid expansion population: 94% federal dollars in 2019, and 90% for 2020 and each year thereafter. *Id.* § 1396d(y).

32. The Supreme Court's decision in *National Federation of Independent Business v. Sebelius* barred HHS from terminating Medicaid funding to states that choose not to extend Medicaid coverage to the expansion population. 567 U.S. 519 (2012).

33. States that cover the expansion population submit state plan amendments electing to provide this coverage. To date, 34 states, including Arkansas, and the District of Columbia have approved state plans covering the expansion population.

34. Once a state elects to expand coverage to the expansion population, it becomes a mandatory coverage group. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII).

35.

37. States cannot impose additional eligibility requirements that are not explicitly allowed by the Medicaid Act. *See id.* § 1396(a)(10)(A).

38. In addition to addressing *who* is eligible for medical assistance, the Medicaid Act delineates how states must make and implement eligibility determinations to ensure that all eligible people who apply are served and get coverage.

39. The Medicaid Act requires states to "provide such safeguards as may be necessary to assure that eligibility . . . and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients." *Id.* § 1396a(a)(19).

40. The ACA requires states to use a streamlined Medicaid eligibility process so that individuals "may apply for enrollment in, receive a determination of eligibility for participation in, and continue participation in, [Medicaid]." 42 U.S.C. § 18083(a). Individuals must be able to file streamlined eligibility forms online, in person, by mail, or by telephone. *Id.* § 18083(b)(1)(A); *see also* 42 U.S.C. § 1396w-3 (requiring participating states to streamline and simplify process for persons to remain enrolled in Medicaid); 42 C.F.R. §§ 435.907(a) (requiring states to accept applications and any documentation required to establish eligibility by internet, telephone, mail, and in person); 435.908(a) (requiring states to provide assistance with applications and renewals in person, over the telephone, and online).

41. Since its enactment, the Medicaid Act has required states to determine eligibility and provide medical assistance to all eligible individuals with "reasonable promptness." Social Security Amendments of 1965, Pub. L. No. 89-97, § 1902(a)(8), 79 Stat. 286, 344 (codified at 42 U.S.C. § 1396a(a)(8)); 42 C.F.R. §§ 435.906 (requiring states to allow individuals to apply without delay); 435.912(c)(3) (requiring states to determine eligibility within 90 days for individuals who apply on the basis of disability and 45 days for all other individuals).

42. Through so-called "presumptive" eligibility, the Medicaid Act gives states a mechanism to provide immediate, temporary coverage to individuals who appear to their health care provider to be Medicaid eligible based on preliminary information. 42 U.S.C. § 1396a(a)(47). Under the ACA, states must allow qualified hospitals to provide presumptive eligibility to their patients. *See* Pub. L. 111-148, 124 Stat. 119, 291, § 2202 (codified at 42 U.S.C. § 1396a(a)(47)(B) (eff. Jan. 1, 2014). *See* Ctrs. for Medicare & Medicaid Servs., *Medicaid & CHIP FAQs: Implementing Hospital Presumptive Eligibility Programs* (2014), https://[(t)-2 (e/Footer /Type /Paginat &)4 ( )-.00(pt(gi)i)3 (b)2 (s)1 al-i(75 0Td [(A,)s(,)1 (ge)-(()-2 J 0 TA)7 (C

C. The Secretary's Section 1115 Waiver Authority

44. Section 1115 of the Social Security Act, codified at 42 U.S.C. § 1315, grants the Secretary authority to waive a state's compliance with certain requirements of the Medicaid Act under certain conditions.

45. The Secretary may grant a Section 1115 Medicaid waiver only in the case of an "experimental, pilot, or demonstration project which . . . is likely to assist in promoting the objectives" of the Medicaid Act. *Id*. § 1315(a).

46. The Secretary may only waive requirements of Section 1396a for Section 1115 projects relating to Medicaid. *Id*. § 1315(a)(1).

47. The Secretary may not waive compliance with requirements that Congress has placed outside of Section 1396a.

48. The Secretary may grant a Section 1115 waiver only to the extent and for the period necessary to enable the state to carry out the experimental, pilot, or demonstration project. *Id*.

49. The costs of such a project, upon approval, are included as expenditures under the State Medicaid plan. 42 U.S.C. § 1315(a)(2).

50. The Secretary must follow certain procedural requirements before he may approve a Section 1115 project. *Id*. § 1315(d); 42 C.F.R. §§ 431.400 to 431.416. In particular, after receiving a complete application from a state (following a state-level public comment period), the Secretary must provide a 30-day public notice and comment period. 42 U.S.C. § 1315(d); 42 C.F.R. § 431.416.

51. The Secretary does not have the authority under Section 1115 to waive compliance with other federal laws, such as the United States Constitution, the Americans with Disabilities Act, or other federal statutes.

52. For example, the Fair Labor Standards Act ("FLSA") requires that all individuals, including individuals receiving public benefits, be compensated at least the minimum wage in exchange for hours worked. *See* 29 U.S.C. § 206(a)(1)(C); Dep't of Labor, *How Workplace Laws Apply to Welfare Recipients* at 2 (1997), http://nclej.org/wp-content/uploads/2015/11/LaborProtectionsAndWelfareReform.pdf. Notably, the Supplemental Nutrition Assistance Program ("SNAP") and Temporary Assistance for Needy Families ("TANF") statutes specifically refer to work requirements and further describe how the benefits interact with the FLSA minimum wage protections. *See* 7 U.S.C. § 2029(a)(1) (SNAP); 42 U.S.C. § 607 (TANF). There is no such reference or description in the Medicaid Act. According to the Department of Labor, medical assistance, unlike SNAP and TANF cash benefits, may not be substituted for a wage. *L 41 ( )]TJ 05 (aw)2 (s*

group: 94% federal dollars in 2019, and 90% for 2020 and each year thereafter. 42 U.S.C. § 1396d(y).

56. Arkansas implemented the Medicaid expansion through a Section 1115 project called the "Arkansas Health Care Independence Program" ("HCIP"). *See* Letter from Marilyn Tavenner, Admin., Ctrs. for Medicare & Medicaid Servs., to Andy Allison, Dir., Arkansas Dep't of Human Servs. (Sept. 27, 2013) (approving HCIP through December 31, 2016), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/Health-Care-Independence-Program-Private-Option/ar-private-option-app-ltr-09272013.pdf (last visited Aug. 8, 2018).

57. HCIP allowed the State to cover most of the expansion population through a "private option." Under the private option, individuals receive health coverage, *i.e.*, medical assistance, through a private health plan, and the Medicaid program covers the enrollees' portion of the premiums and cost sharing. *Id*. Because the private plans do not cover all of the services that the Medicaid Act requires Arkansas to provide to the expansion population, enrollees continue to receive some services through the State on a fee-for-services basis. *See id.* at Special Terms and Conditions ¶ 36-37.

58. In 2014 and 2015, more than 225,000 individuals received coverage through HCIP. Arkansas Ctr. for Health Improvement, *Arkansas Health Care Independence Program ("Private Option") Section 1115 Demonstration Waiver Interim Report* 16, 21 (2016), http://www.achi.net/Content/Documents/ResourceRenderer.ashx?ID=347. During that same time period, Arkansas saw "a reduction in the uninsured rate for adults from 22.5 percent to 9.6 percent, the largest reduction observed nationwide." *Id*. at 20.

59. Medicaid expansion in Arkansas

determinations and redeterminations are completed on a timely basis;" and (3) implementation of

68. CMS held a public comment period on the proposed A

Work and Community Engagement Requirements

74. As noted above, the Medicaid Act requires a participating state to furnish Medicaid to *all* members of covered population groups. The state may not cover only subsets of a population group described in the Medicaid Act. *See* 42 U.S.C. §§ 1396a(a)(10)(A)-(B).

75. States cannot impose additional eligibility requirements that are not explicitly allowed by the Medicaid Act.

76. The Arkansas Works

applied at the time of termination and their inability to fulfill the requirement "was the result of a catastrophic event or circumstances beyond [their] control." *Id*.

81. According to the State, the purpose of the work requirement is to "incentivize enrollees to work and encourage personal responsibility" and "encourage individuals to climb the economic ladder." Arkansas Works Amendment at p. 55. The State also described the goal of the

use the reference number to link their insurance account to the reporting portal. Once the link is established, individuals must click through multiple different screens to report their work activities each month. The portal is only accessible to beneficiaries between the hours of 7 a.m. and 9 p.m. Sometimes, DHS schedules online maintenance of the portal during these operating hours. Enrollees must report work activities for a given month by the 5th of the following month, or the activities will not be counted for purposes of determining compliance. *See generally* Arkansas Works Information, https://ardhs.sharepointsite.net/ARWorks/default.aspx.

86. To claim an exemption, Arkansas Works beneficiaries use the online portal to make an attestation based on their understanding of the exemption. The State plans to review exemption attestations as part of a quality review process, which may result in retroactive removal of months of exemption or compliance. If the retroactive removal leaves an enrollee with three months of non-compliance in a calendar year, the individual's Arkansas Works case will be closed and referred for investigation as potential fraud and overpayment. Implementation Plan at 13.

87. After the March 5, 2018 approval, the Arkansas Medicaid agency publicly estimated that "approximately 69,000 out of 278,734 individuals currently enrolled in Arkansas Works will be expected to participate in monthly approved work activities" once the requirement is fully implemented. This estimate did not include an estimate of Arkansans who would not be able to meet the requirement and would thus lose Medicaid coverage for the year. Implementation Plan at 1, 6.

88. The State estimates there are 125,242 Arkansas Works beneficiaries in the 30 to 49 age group. *Id.* at 6. The State began rolling out the work requirement to this group in June 2018, announcing that 25,815 of these enrollees needed

93. Under the approved Arkansas Works Amendment, retroactive eligibility coverage as required by the statute is terminated. Instead, the State will only pay for services received during the 30 days before an individual submits an application. Amendment Approval at Ex. 2 at 11, 21.

F.

Services Sylvia Burwell, *Hearing on The President's Fiscal Year 2017 Budget*, Responses to Additional Questions for the Record, U.S. House of Rep. Energy & Commerce Health Subcommittee at 35 (Feb. 24, 2016), http://docs.house.gov/meetings/IF/IF14/20160224/104521/HHRG-114-IF14-Wstate-BurwellS-20160224-SD002.pdf.

96. In 2016, CMS denied Arkansas' request to institute a work requirement in Medicaid, stating in part: "[C]onsistent with the purposes of the Medicaid program, we cannot approve a work requirement." Letter from Sylvia Burwell, Sec'y of Health & Human Services, to Asa Hutchinson, Governor of Arkansas (Apr. 5, 2016) (attached as Exhibit 5, hereto).

97. The current HHS abruptly reversed course to revise its use of the Section 1115 waiver authority and to authorize work requirements in Medicaid as part of President Trump's vow to "explode" the ACA and its Medicaid expansion. *See* Amy Goldstein & Juliet Eilperin, *Affordable Care Act Remains "Law of the Land," but Trump Vows to Explode It*, Wash. Post, Mar. 24, 2017, https://www.washingtonpost.com/national/health-science/affordable-care-act-remains-law-of-the-land-but-trump-vows-to-explode-it/2017/03/24/4b7a2530-10c3-11e7-ab07-07d9f521f6b5_story.html.

98. When he took office, President Trump signed an Executive Order calling on federal agencies to undo the ACA "[t]o the maximum extent permitted by law." Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal*, 82 Fed. Reg. 8351 (Jan. 20, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-01-24/pdf/2017-01799.pdf.

99. On March 14, 2017, Defendant Seema Verma was sworn in as the Administrator of CMS. Defendant Verma and former Secretary Price immediately issued a letter to state Governors announcing CMS's disagreement with the purpose and objectives of the Medicaid Act,

stating that "[t]he expansion of Medicaid through the Affordable Care Act ('ACA') to non-disabled, working-age adults without dependent children was a clear departure from the core, historical mission of the program." *See* Sec'y of Health and Human Servs., Dear Governor Letter, at 1, https://www.hhs.gov/sites/default/files/sec-price-admin-verma-ltr.pdf.

100. Since then, Defendant Verma has made repeated public statements criticizing the expansion of Medicaid to "able

103. On November 10, 2017, Defendant Verma gave an interview in which she declared that one of the "major, fundamental flaws in the Affordable Care Act was putting in able bodied adults," declaring that Medicaid was "not designed for an able bodied person," and announcing that CMS is "trying" to "restructure the Medicaid program." Wall Street Journal, *The Future of: Health Care* (Nov. 10, 2017), http://www.wsj.com/video/the-future-of-health-care/D5B767E4-B2F2-4394-90BB-37935CCD410C.html.

104. In or around early November 2017, CMS revised its website to invite states to submit Section 1115 waivers that would:

1. Improve access to high-quality, person-centered services that produce positive health outcomes for individuals;

2. Promote efficiencies that ensure Medicaid's sustainability for beneficiaries over the long term;

3. Support coordinated strategies to address certain health determinants that promote upward mobility, greater independence, and improved quality of life among individuals;

4. Strengthen beneficiary engagement in their personal healthcare plan, including incentive structures that promote responsible decision-making;

5. Enhance alignment between Medicaid policies and commercial health insurance products to facilitate smoother beneficiary transition; and

6. Advance innovative delivery system and payment models to strengthen provider network capacity and drive greater value for Medicaid.

Medicaid.gov, *About Section 1115 Demonstrations*, https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html.

105. On January 11, 2018, well after the federal comment period for the Arkansas Works Amendment had closed, Defendant CMS issued a letter to State Medicaid Directors ("Dear State Medicaid Director Letter"), attached as Exhibit 6, herteo, titled "Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries."

106. The nine-page document "announc[es] a new policy" that allows states to apply "work and community engagement" requirements to certain Medicaid recipients—specifically, "non-elderly, non-pregnant adult Medicaid beneficiaries who are eligible for Medicaid on a basis other than disability." Dear State Medicaid Director Letter at 1, https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf.

107. The Dear State Medicaid Director Letter acknowledges that allowing states to implement work requirements "is a shift from prior agency policy." *Id.* at 3.

108. The Dear State Medicaid Director Letter outlines the "guidelines" for states to consider in submitting applications containing work requirements.

109. The Dear State Medicaid Director Letter was not submitted for notice and public comment and was not published in the Federal Register.

110.

111. NHeLP requested that CMS re-open public comment on the Arkansas Works project to allow the public a meaningful opportunity to comment. Defendants ignored this request.

112. On or about January 18, 2018, CMS further emphasized that it disagrees with the legislative expansion of Medicaid under the ACA and that it had announced the "new policy guidance" to support state implementation of work requirements intended to target that expansion population. CMS, Community Engagement Initiative Frequently Asked Questions, https://www.medicaid.gov/medicaid/section-1115-demo/community-engagement/index.html (last visited August 13, 2018).

113. When Defendant Verma announced approval of the Arkansas Works Amendment on March 5, 2018, she tied it to the Dear State Medicaid Director Letter, tweeting, "#ArkansasWorks is the 3rd community engagement demonstration we've approved since releasing guidance in January. @CMSgov has 9 pending applications with similar demonstration applications and several states have expressed interest in exploring these reforms. #TransformingMedicaid." Seema Verma, Administrator, Ctrs. for Medicare & Medicaid Servs. (@SeemaCMS), Twitter (Mar. 5, 2018, 9:45 AM), https://twitter.com/SeemaCMS/status/970716905379123205.

114. In approving the Arkansas work and community engagement requirement, CMS cited the Dear State Medicaid Director Letter and imposed a number of terms and conditions on the State. Amendment Approval at Ex. 2 at 3-4. Several of those terms and conditions require that Arkansas follow requirements set out in the Dear State Medicaid Director Letter. *See, e.g.*, *id.* at 27 (exempting from work requirement enrollees with an acute medical condition that would prevent compliance); *id.* (exempting enrollees participating in substance use disorder treatment); id (exempting enrollees who are exempt from SNAP/TANF work requirements); *id.* at 20-21

(requiring reasonable modifications for enrollees with ADA-protected disabilities, including exemption from participation); *id.* at 32 (promising that Arkansas will assess areas with limited economies and/or educational activities or higher barriers to participation to determine whether further exemptions or modifications are needed to the work requirement).

115. Each waiver approval including work requirements that has come after the Dear State Medicaid Director Letter—Kentucky, Arkanasas, Indiana, and New Hampshire—invokes the Dear State Medicaid Director Letter and reflects its requirements.

116. In July 2018, Defendant Azar stated: "We are undeterred. We are proceeding forward… We're fully committed to work requirements and community participation in the Medicaid program… we will continue to litigate, we will continue to approve plans, we will continue to work with states. We are moving forward." Colby Itkowitz, *The Health 202: Trump administration 'undeterred' by court ruling against Medicaid work requirements*, Wash. Post, July 25, 2018, https://www.washingtonpost.com/news/powerpost/paloma/the-health-202/2018/07/27/the-health-202-trump-administration-undeterred-by-court-ruling-against-medicaid-work-requirements/5b5a10bb1b326b1e64695577/?utm_term=.7ba76e8a0719.

G. The Constitution's Take Care Clause

117. The United States Constitution provides that "All legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const., art. I, § 1. Congress is authorized to "make all laws which shall be necessary and proper for carrying into Execution" its general powers. *Id.* §§ 1, 8.

118. After a federal law is duly enacted, the President has a constitutional duty to "take Care that the Laws be faithfully executed." *Id.* art. II, § 3.

119. The Take Care Clause is judicially enforceable against presidential action that undermines statutes enacted by Congress and signed into law. *See, e.g., Angelus Milling Co. v. Comm'r*

129. The Secretary's action approving the Arkansas Works Amendment will cause harm to Plaintiffs. Specifically:

130. Plaintiff Charles Gresham is a 37-year-old man who lives with his fiancé in Harrison, Arkansas. Mr. Gresham's fiancé works at a fast food restaurant earning about $9 an hour with a gross income of about $1100 per month. She currently supports Mr. Gresham financially and is his source of transportation.

131. Mr. Gresham has his GED and has largely worked in the food service industry. In 2015, he went to work as a labor hand with a local construction company but was let go after about a year because he began having seizures on the job. Mr. Gresham went back to the food service industry and other service jobs, but has lost those jobs due to issues related to his seizures, including missing work.

132. Although Mr. Gresham would like to work, he is not working at this time because he has had trouble finding and keeping a job. Despite his health conditions, he can do some types of work but needs a flexible schedule because he may not be able to work all day and he needs times for doctors' appointments.

133. Mr. Gresham has medical conditions that need to be monitored and treated. He has a seizure disorder, extreme social anxiety, and asthma. With Medicaid coverage through Arkansas Works, he has been able to the get the treatment and services he needs, including doctors and therapists.

134. Mr. Gresham has been covered by Medicaid through Arkansas Works since 2015. When he has questions or needs help in renewing his coverage, Mr. Gresham has gone to the local Arkansas Department of Human Services office in Boone County. He is not comfortable with computers and generally requires help from other peop-2 (5e1)-2 1(e)-5 (e1( )Tj do t)-2 (e)4 (l4 (l)-2 (l)- T

something out or send in information. Mr. Gresham recently tried to navigate the Access Arkansas website and could not report his work activities online without assistance from his fiancé and Legal Aid of Arkansas. Up until recently, Medicaid coverage has been mostly easy for him to obtain, but the Arkansas Works notices and materials he has received in the past few months have been confusing and difficult to understand.

135. In May 2018, Mr. Gresham received a notice that he would be subject to the work requirement for Arkansas Works. He was unable to meet the work requirement in June and July 2018 because he has been unable to find and maintain a job. He cannot meet the requirement through volunteering or searching for jobs consistently because he does not have his own transportation, is not comfortable with computers, and may not be able to do an activity as scheduled.

136. Mr. Gresham received a letter from DHS stating he was exempt from the work requirements due to receiving unemployment benefits. He is no longer receiving unemployment benefits and has notified DHS that his situation has changed. Mr. Gresham does not currently have an exemption to the work requirement and does not expect his situation to change in the coming months such that he will be able to meet the requirements.

137. Mr. Gresham has previously had gaps in health care coverage that caused him to go without the care he needed. In April 2018, he had a month-long gap that caused him to miss a therapist visit and three doctors' appointments. Although during that gap he had enough medications to get him through, if he were immediately cut off from his medications, his seizure

138. The threat of losing his health coverage has increased Mr. Gresham's anxiety as he worries that without medical coverage his conditions will get worse and that he may suffer irreversible harm or die before he has an opportunity to figure out what is causing his seizures.

139. Plaintiff Cesar Ardon is a 40-year-old man who lives in Siloam Springs, Arkansas.

140. Mr. Ardon worked as a welder for fifteen years until he had a tumor surgery in May 2017. Currently, Mr. Ardon works in construction as a self-employed handyman doing mostly outdoor work. His income and hours fluctuate greatly from month to month. He earned about $1,200 in July 2018 but typically earns less during other times of year.

141. As a self-employed handyman, Mr. Ardon's work hours change from week to week based on the type of work he gets. Sometimes he is able to work 20 hours a week; other times, especially in the fall and winter when work is slower, he works less.

142. Prior to receiving Medicaid in 2017, Mr. Ardon often did not get the medical care that he needed. For example, he did not get treatment for carpal tunnel, arthritis, and vision issues because he could not afford it.

143. In 2017, Mr. Ardon had major surgery to remove a baseball-sized tumor on his side. He also currently has medical conditions that require monitoring, such as high cholesterol. With Medicaid, he is able to get the treatment and services he needs, as well as annual check-ups.

144. In May 2018, Mr. Ardon received a notice stating he would have to work at least 80 hours a month to keep his Medicaid coverage. Mr. Ardon did not have enough hours to meet the work requirement in June 2018 and received a notice from DHS in July 2018 that he failed to comply with the work requirements for June.

145. In July 2018, Mr. Ardon was able to work enough hours to meet the work requirement. Although he met the hours requirement, Mr. Ardon had trouble accessing the online

portal to report his hours.

Her back pain is associated with a 25-pound non-cancerous tumor in her midsection that she had removed in July 2017.

151. Ms. Ardon uses her Medicaid coverage to get her four daily medications, regular doctor visits with her primary care doctor and specialists, and to get annual checkups.

152. Ms. Ardon has not worked since about March 2017 because of her health issues at the time. She does not currently have income

157. The Administrative Procedure Act provides that a reviewing court may "hold unlawful and set aside" agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"; or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D)

158. The approval of the Arkansas Works Amendment was explicitly based in substantial part on the policy announced in the Dear State Medicaid Director Letter. Amendment Approval at Ex. 2 at 2.

159. The Dear State Medicaid Director Letter was required to be, but was not, issued through notice and comment rulemaking. *See* 5 U.S.C. § 553.

160. In issuing the Dear State Medicaid Director Letter, the Defendants purported to act pursuant to Section 1115 of the Medicaid Act.

161. Authorization of work and community engagement requirements is categorically outside the scope of the Secretary's Section 1115 waiver authority.

162. In the Dear State Medicaid Director Letter, the Defendants relied on factors that Congress has not intended them to consider, entirely failed to consider several important aspects of the problem, and offered an explanation for their decision that runs counter to the evidence.

163. The Defendants' issuance of the Dear State Medicaid Director Letter exceeded the Secretary's Section 1115 waiver authority; otherwise violated the Medicaid Act; was arbitrary and capricious and an abuse of discretion; and ran counter to the evidence in the record.

COUNT TWO: VIOLATION OF ADMINISTRATIVE PROCEDURE ACT (ARKANSAS WORKS AMENDMENT APPROVAL)

164. Plaintiffs repeat and incorporate herein by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

165. The Administrative Procedure Act provides that a reviewing court may "hold unlawful and set aside" agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"; or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

166. The Secretary's decision to approve the Arkansas Works Amendment as described herein exceeded his authority under 42 U.S.C. § 1315, otherwise violated the Medicaid Act, was arbitrary and capricious and an abuse of discretion, and ran counter to the evidence in the record.

167. Plaintiffs will suffer irreparable injury if the Secretary's actions approving the Arkansas Works Amendment are not declared unlawful because those actions have harmed and will continue to harm Plaintiffs.

168. Plaintiffs are in danger of suffering irreparable harm and have no adequate remedy at law.

COUNT THREE: VIOLATION OF THE TAKE CARE CLAUSE, ARTICLE II, SECTION 3, CLAUSE 5

169. Plaintiffs repeat and incorporate herein by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein. 1 (i)3 (n t)-2 (he)-1 (r)-2 (e)4 (c)-3h51 (pr)-2 (

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172. The Defendants' actions, as described herein, seek to undermine the ACA, including its expansion of Medicaid, and represent a fundamental alteration to those statutes.

173. Accordingly, the Defendants' actions are in violation of the Take Care Clause and are ultra vires.

174. Plaintiffs will suffer irreparable injury if the Secretary's actions following the President's Executive Orders are not declared unlawful and unconstitutional because those actions have injured or will continue to harm Plaintiffs.

175. Plaintiffs are in danger of suffering irreparable harm and have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask that this Court:

1. Declare that Defendants' issuance of the Dear State Medicaid Director Letter violates the Administrative Procedure Act, the Social Security Act, and the United States Constitution in the respects seavro 53g1 (e)e0eoDa