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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
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15 Habeas Corpus Resource Center and the Office
of the Federal Public Defender for the District
16 of Arizona,

17 Plaintiffs,

18 v.

19 United States Department of Justice and Eric
H. Holder, in his official capacity as United
20 States Attorney General,

21 Defendants.
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Case No. 13-CV-4517-JCS

**PLAINTIFFS' EX PARTE MOTION
FOR (1) TEMPORARY RESTRAINING
ORDER; AND (2) ORDER TO SHOW
CAUSE FOR PRELIMINARY
INJUNCTION**

Date: TBD
Time: TBD
Dept: TBD
Judge: TBD

1 **TO: DEFENDANTS AND THEIR COUNSEL:**

2 PLEASE TAKE NOTICE that, at a time to be set by the Court, Plaintiffs Habeas Corpus
3 Resource Center (“HCRC”) and the Office of the Federal Public Defender for the District of
4 Arizona (“FDO-AZ”) (collectively the “Plaintiffs”), in the courtroom of an Article III Judge of
5 this Court as yet to be determined, will and hereby do apply pursuant to Rule 65 of the Federal
6 Rules of Civil Procedure and Local Rule 65-1 for a temporary restraining order and order to show
7 cause why a preliminary injunction should not be issued against Defendants United States
8 Department of Justice and Eric H. Holder, in his official capacity as United States Attorney
9 General (collectively the “Defendants”).

11 This motion is made on the grounds that (1) Plaintiffs are likely to succeed on the merits
12 in establishing that Defendants’ September 23, 2013 Final Rule regarding Certification of State
13 Capital Counsel Systems (the “Final Rule”), 78 Fed. Reg. 58,160 (effective Oct. 23, 2013) (to be
14 codified at 28 CFR pt. 26), is invalid for various violations of the Administrative Procedure Act
15 and Due Process Clause; (2) Plaintiffs will suffer immediate and irreparable harm unless the Final
16 Rule is enjoined; (3) the balance of hardships tips in favor of Plaintiffs; and (4) the public interest
17 supports the issuance of a temporary restraining order and order to show cause why a preliminary
18 injunction should not be entered.

20 This application is based on the accompanying Plaintiffs’ Memorandum in Support of
21 Motion for a Temporary Restraining Order; Supporting Declaration of Darren S. Teshima;
22 Supporting Declaration of Michael Laurence; Supporting Declaration of Dale Baich; (Proposed)
23 Temporary Restraining Order and Order to Show Cause; and on such argument and evidence as
24 may be presented at the hearing.

26 Notice of this motion has been given to counsel for Defendants by Darren Teshima on
27 October 3, 2013, via telephone and email. *See* Teshima Decl. ¶¶ 7-8, Ex. F. In addition, pursuant
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