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11 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12
13 CENTER FOR BIOLOGICAL
14 DIVERSITY; and CENTER FOR
15 FOOD SAFETY,

16 *Plaintiffs,*

17 *v.*

18 U.S. FISH AND WILDLIFE SERVICE;
19 BRIAN NESVIK, in his official capacity
20 as Director of the U.S. Fish and Wildlife
21 Service; and DOUG BURGUM, in his
22 official capacity as Secretary of the U.S.
23 Department of the Interior,

24 *Defendants.*

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26
27
28 Case No. 3:26-cv-01281

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR
3 FOOD SAFETY (the “Centers”) bring this case challenging the U.S. FISH AND WILDLIFE
4 SERVICE’s (the “Service”) failure to issue a final rule for the monarch butterfly, in violation of
5 the Endangered Species Act’s (“ESA” or “Act”) nondiscretionary, congressionally mandated
6 deadline. The Service’s failure to meet the ESA deadline for the monarch butterfly delays
7 lifesaving protections for the butterfly, increasing its risk of extinction.

8 2. Plaintiffs bring this lawsuit for declaratory and injunctive relief, seeking an
9 Order declaring that the Service violated section 4(b)(6)(A) of the ESA, 16 U.S.C. §
10 1533(b)(6)(A), by failing to timely issue a final listing rule for the monarch butterfly and
11 directing the Service to issue the final rule by a date certain.

12 **JURISDICTION**

13 3. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c), (g)
14 (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has authority
15 to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. § 1540(g); 28 U.S.C.
16 §§ 2201–2202; and 5 U.S.C. § 706(2).

17 **NOTICE**

18 4. Plaintiffs provided Defendants with 60-days’ notice of their ESA violations, as
19 required by 16 U.S.C. § 1540(g)(2)(C), by a letter to the Service dated December 12, 2025.
20 Defendants have not remedied the violations set out in the notice letter, and an actual
21 controversy exists between the parties within the meaning of the Declaratory Judgment Act, 28
22 U.S.C. § 2201.

23 **VENUE**

24 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because Plaintiff
25 CENTER FOR FOOD SAFETY resides in this judicial district.

DIVISIONAL ASSIGNMENT

6. This case is properly assigned to the San Francisco Division or the Oakland Division under Civil L.R. 3-2(c) because plaintiffs and many of their members are located in counties within those districts.

PARTIES

7. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, nonprofit conservation organization with more than 101,000 members that works through science, law, and policy to protect imperiled wildlife and their habitat. The Center for Biological Diversity is headquartered in Tucson, Arizona, with offices throughout the United States.

8. Plaintiff CENTER FOR FOOD SAFETY is a nationwide nonprofit with over 1 million members dedicated to empowering people, supporting farmers, and protecting the earth from the harmful impacts of industrial agriculture, including protecting the monarch butterfly. The Center for Food Safety is headquartered in San Francisco, California, with other offices throughout the United States.

9. The Centers bring this action on behalf of their members who derive recreational, educational, scientific, professional, and other benefits from the monarch butterfly and its habitat. Plaintiffs' members' interests in protecting and recovering the butterfly and its habitat are directly harmed by the Service's failure to issue a timely final rule, delaying critical protections under the ESA that can put the monarch butterfly on a path to recovery.

10. For example, CENTER FOR BIOLOGICAL DIVERSITY member Bryan Newman is an amateur naturalist and wildlife photographer, based in Minnesota, committed to the conservation of monarch butterflies. Every year Mr. Newman grows milkweed plants in his yard for the purpose of attracting monarch butterflies. Mr. Newman also spends significant time recreating in other monarch habitat in the Midwest with his family, and he regularly hikes in native prairies near his home specifically to view monarchs, especially in the fall when the butterflies gather to prepare for their migration to Mexico. He visited multiple monarch reserves in Michoacán, Mexico in February 2019 specifically to view clusters of overwintering monarchs. Every year he views monarchs when they return from migration and then breed and

1 feed on his property. Mr. Newman's recreational and aesthetic interests are harmed by the
2 Service's failure in finalizing protections for the monarch butterfly because the potential loss of
3 the butterfly lessens his experience in nature and joy in sharing these encounters with others. He
4 and his family have dedicated significant resources to making their backyard attractive to
5 monarchs by growing milkweed to feed monarch larvae and having other accessible nectar
6 sources to sustain monarch butterflies during their long migration.

7 11. Defendants' violation of the ESA's deadline has delayed ESA protections for the
8 monarch butterfly. This inaction harms the Centers' members' interests in the monarch butterfly
9 by permitting the species' continued trajectory toward extinction, thereby decreasing the
10 likelihood that the Centers' members will encounter the species as part of their personal and
11 professional excursions. These injuries are actual, concrete injuries presently suffered by the
12 Centers' members, are directly caused by Defendants' acts and omissions, and will continue
13 unless the Court grants relief. The relief sought would redress these injuries by providing ESA
14 protection for the monarch butterfly, thus promoting its conservation and recovery. The Centers
15 and their members have no other adequate remedy at law.

16 12. Defendant U.S. FISH AND WILDLIFE SERVICE is the agency within the
17 Department of the Interior charged with implementing the ESA for the monarch butterfly. The
18 Secretary of the Interior has delegated administration of the ESA to the Service. 50 C.F.R. §
19 402.01(b).

20 13. Defendant BRIAN NESVIK is the Director of the Service and is charged with
21 ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his official
22 capacity.

23 14. Defendant DOUG BURGUM is the Secretary of the U.S. Department of the
24 Interior ("Secretary") and has the ultimate responsibility to administer and implement the
25 provisions of the ESA. Defendant Burgum is sued in his official capacity.

26 **STATUTORY FRAMEWORK**

27 15. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is "the most
28 comprehensive legislation for the preservation of endangered species ever enacted by any

1 nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes are “to
 2 provide a means whereby the ecosystems upon which endangered species and threatened
 3 species depend may be conserved [and] to provide a program for the conservation of such
 4 endangered species and threatened species.” 16 U.S.C. § 1531(b).

5 16. The ESA defines a “species” as including “any subspecies of fish or wildlife or
 6 plants, and any distinct population segment of any species of vertebrate fish or wildlife which
 7 interbreeds when mature.” *Id.* § 1532(16).

8 17. A species is “endangered” when it “is in danger of extinction throughout all or a
 9 significant portion of its range.” *Id.* § 1532(6). A species is “threatened” when it is “likely to
 10 become an endangered species within the foreseeable future throughout all or a significant
 11 portion of its range.” *Id.* § 1532(20).

12 18. The ESA requires the Service to determine whether any species is endangered or
 13 threatened because of any one of, or combination of, the following factors: (A) the present or
 14 threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization
 15 for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D)
 16 the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors
 17 affecting its continued existence. *Id.* § 1533(a)(1).

18 19. If the Service determines that the species is not endangered throughout all its
 19 range, the ESA requires the agency to examine whether it is endangered or threatened
 20 throughout any “significant portion” of its range. *Id.* §§ 1532(6), (20).

21 20. The Service must base all listing determinations “solely on the basis of the best
 22 scientific and commercial data available.” *Id.* § 1533(b)(1)(A).

23 21. To ensure the timely protection of species at risk of extinction, Congress set forth
 24 a detailed process whereby citizens may petition the Service to list a species as endangered or
 25 threatened. *Id.* § 1533(b)(3). In response, the Service must publish a series of three decisions
 26 according to statutory deadlines. First, within 90 days of receipt of a listing petition, the Service
 27 must publish an initial finding as to whether the petition, “presents substantial scientific or
 28 commercial information indicating that the petitioned action may be warranted.” *Id.* §

1 1533(b)(3)(A). If the Service determines that the petition does not present substantial
2 information indicating that listing may be warranted, the petition is rejected, and the process
3 concludes.

4 22. If the Service determines that a petition presents substantial information
5 indicating that listing “may be warranted,” the agency must publish that finding and proceed
6 with a scientific review of the species’ status, known as a “status review.” *Id.*

7 23. Upon completing the status review, and within 12 months of receiving the
8 petition, the Service must publish a “12-month finding” with one of three listing determinations:
9 (1) listing is “warranted”; (2) listing is “not warranted”; or (3) listing is “warranted but
10 precluded” by other proposals for listing species, provided certain circumstances are met. *Id.* §
11 1533(b)(3)(B).

12 24. If the Service determines that listing is “warranted,” the agency must publish that
13 finding in the Federal Register along with the text of a proposed regulation to list the species as
14 endangered or threatened and to designate critical habitat for the species. *Id.* § 1533(a)(3)(A),
15 (b)(3)(B)(ii). Within one year of publication of the proposed listing rule, the Service must
16 publish in the Federal Register the final rule implementing its determination to list the species
17 and designate critical habitat. *Id.* § 1533(b)(6)(A).

18 25. If the Service instead issues a finding that listing the species is “not warranted,”
19 the process concludes, and that finding is a final agency action subject to judicial review. *Id.* §
20 1533(b)(3)(C)(ii).

21 26. The ESA has a suite of substantive and procedural legal protections that apply to
22 species once they are listed as endangered or threatened. For example, section 4(a)(3) of the Act
23 requires the Service to designate “critical habitat” for each endangered and threatened species.
24 *Id.* § 1533(a)(3).

25 27. In addition, ESA section 7(a)(2) requires all federal agencies to ensure that their
26 actions do not “jeopardize the continued existence” of any endangered or threatened species or
27 “result in the destruction or adverse modification” of any listed species’ critical habitat. *Id.* §
28 1536(a)(2).

1 28. ESA section 9 prohibits, among other actions, “any person” from causing the
2 “take” of any protected fish or wildlife without lawful authorization from the Service. *Id.* §§
3 1538(a)(1)(B), 1539; see also *id.* § 1532(19) (defining “take”). Other provisions require the
4 Service to “develop and implement” recovery plans for listed species, *id.* § 1533(f); authorize
5 the Service to acquire land for the protection of listed species, *id.* § 1534; and authorize the
6 Service to make federal funds available to states to assist in the conservation of endangered and
7 threatened species, *id.* § 1535(d).

FACTUAL BACKGROUND



Photo Credit: Tierra Curry

21 29. The monarch butterfly (*Danaus plexippus*, pictured above) is culturally and
22 ecologically important across North America. The monarch's migration is legendary — a
23 journey of up to 3,000 miles from Mexico to Canada, undertaken by animals weighing less than
24 a gram.

25 30. Recent studies have found that the monarch butterfly could face migratory
26 collapse in less than 20 years because climate change is making butterflies' winter habitat
27 unsuitable. In the past three decades monarchs have declined by 90%.

1 31. Monarchs have also lost an estimated 165 million acres of breeding habitat in the
2 United States to industrial agriculture's herbicide spraying and development. The monarch
3 butterfly's caterpillars only eat milkweed, but the milkweed plant has been devastated by
4 herbicides sprayed "over-the-top" of corn and soybean crops genetically engineered to tolerate
5 them, mainly "Roundup Ready" crop systems, with its active ingredient glyphosate.

6 32. In addition, monarchs are threatened by neonicotinoid insecticides that are toxic
7 to young caterpillars. Monarchs are also threatened by invasive milkweed that grows year-round
8 and confuses migration cues—along with disease, vehicle collisions, and other dangers the
9 butterflies encounter as they navigate fragmented and poisoned habitats across North America.
10 Conversion of the monarchs' overwintering forests in Mexico for agriculture is another growing
11 threat to the species.

LISTING PETITION AND RESPONSE

13 33. The Centers, and partners, petitioned the Service to list the monarch butterfly in
14 2014. The Centers' petition documented threats to the monarch butterfly, primarily from
15 modification and degradation of its habitat due to pesticide use in and near monarch habitat,
16 pesticide-resistant crop systems that kill milkweeds and nectar sources that the monarchs
17 depend on, and from development, logging, and climate change. The primary threat facing the
18 monarch is the drastic loss of milkweed. Other threats the Centers identified include disease,
19 predation, overutilization for commercial and recreational uses, the inadequacy of existing
20 regulatory mechanisms, and other factors that threaten the monarch's existence including
21 extreme weather that can cause massive mortality of caterpillars and adult monarchs and
22 invasive species.

23 34. Long after its decision was due, the Service published a 12-month finding that
24 listing the monarch as an endangered or threatened species was warranted but precluded by
25 higher priorities. *See* 85 Fed. Reg. 81813 (Dec. 17, 2020).

26 35. On December 12, 2024, over ten years after receiving the Centers' ESA listing
27 petition, the Service proposed to list the monarch butterfly as a threatened species under the
28 ESA. Concurrently with the proposed rule, the Service proposed designating 4,395 acres (1,778

1 hectares) of critical habitat in Alameda, Marin, Monterey, San Luis Obispo, Santa Barbara,
2 Santa Cruz, and Ventura Counties, California. The deadline for issuing a final listing rule and
3 critical habitat designation was due a year from the proposed rule or December 12, 2025.
4 Therefore, the deadline for publishing the final listing rule has passed.

CLAIM FOR RELIEF

Violation of the ESA for Failure to Issue a Final Listing Rule for the Monarch Butterfly

7 36. Plaintiffs re-allege and incorporate all allegations set forth in the preceding
8 paragraphs.

9 37. Within one year of the proposed listing rule, the ESA requires the Service to
10 publish a final rule implementing its determination or notice that the one-year deadline is being
11 extended. 16 U.S.C. § 1533(b)(6)(A).

12 38. In response to the Centers' petition to list the monarch butterfly, the Service
13 proposed to list the monarch butterfly as a threatened species on December 12, 2024, and thus
14 the final listing rule was due on December 12, 2025.

15 39. Defendants have not finalized and published the statutorily required final listing
16 rule for the monarch butterfly.

17 40. Defendants failed to perform their nondiscretionary duty to timely issue a final
18 listing rule in violation of the ESA. 16 U.S.C. § 1533(b)(6)(A).

REQUEST FOR RELIEF

20 WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment providing
21 the following relief:

- 22 1. Declare that Defendants violated the ESA by failing to issue a timely final rule in
23 response to the Centers' petition to list the monarch butterfly under the ESA;
24 2. Provide injunctive relief compelling Defendants to issue the final rule by a date
25 certain;
26 3. Retain continuing jurisdiction to review Defendants' compliance with all judgments
27 and orders herein;

- 1 4. Grant Plaintiffs their reasonable attorneys' fees and costs as provided by the ESA, 16
2 U.S.C. § 1540(g)(4); and
3 5. Provide such other relief as the Court deems just and proper.

4 DATED: February 12, 2026

Respectfully submitted,

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