

Nos. 19-17501, 19-17502, 20-15044

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIERRA CLUB, et al.,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,
Defendants-Appellants.

STATE OF CALIFORNIA, et al.,
Plaintiffs-Appellees/ Cross-Appellants,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,
Defendants-Appellants/ Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of California

APPELLANTS' EXCERPTS OF RECORD
VOLUME 3 OF 3, pp. 227-432

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INDEX

<u>Clerk's Record No.</u>	<u>Document Description</u>	<u>Page</u>
	[Volume 1 of 3, pp. 1-48]	
259	Judgment, filed Dec. 11, 2019	ER1
257	Order Granting In Part And Denying In Part Plaintiffs' Motions For Partial Summary Judgment And Denying Defendants' Motions For Partial Summary Judgment, filed Dec. 11, 2019	ER2
	[Volume 2 of 3, pp. 49-226]	
260	Notice of Appeal, filed Dec. 13, 2019	ER49
[259 in <i>California v. Trump</i>	Notice of Appeal, filed Dec. 13, 2019]	ER51
[262 in <i>California v. Trump</i>	Notice of Cross-Appeal, filed Jan. 7, 2020]	ER53
249	Defendants' Response To The Court's November 20, 2019 Order Requesting Additional Information About Military Installations, filed Nov. 25, 2019	ER60
249-1	Exh. 1: Second Declaration of Alex A. Beehler, filed Nov. 25, 2019	ER66

Exhibits to Motion for Partial
Summary Judgment Regarding
Border Barrier Projects
Undertaken Pursuant to 10 U.S.C.
§ 2808 and Opposition to Plaintiffs'
Motion for Partial Summary Judgment

236-5	Exh. 5: Deputy Secretary of Defense Memorandum for Secretary of the Army, dated Dec. 4, 2001, filed Oct. 25, 2019	ER71
236-7	Exh. 7: Army General Order No. 2019-36, dated Oct. 8, 2019, filed Oct. 25, 2019	ER74
236-9	Exh. 9: Third Declaration of Millard F. Lemaster, dated Oct. 23, 2019, filed Oct. 25, 2019	ER76
206	Notice Of Filing Of Administrative Record For Border Barrier Projects Undertaken Pursuant To 10 U.S.C. § 2808, filed Sept. 16, 2019	ER81
206-1	Certification of Administrative Record, dated Sept. 13, 2019, filed Sept. 16, 2019	ER83
206-2	Administrative Record, Part 1, pp. 1-54, filed Sept. 16, 2019	ER84
206-3	Administrative Record, Part 2, pp. 55-73, filed Sept. 16, 2019	ER138
206-4	Administrative Record, Part 3, pp. 74-143 filed Sept. 16, 2019	ER157

[Volume 3 of 3, pp. 227-432]

26	First Amended Complaint For Declaratory And Injunctive Relief, filed March 18, 2019	ER227
[47 in <i>California v. Trump</i>	First Amended Complaint For Declaratory And Injunctive Relief, filed March 13, 2019]	ER267
	District Court Docket Entries, <i>Sierra Club v. Trump</i> , No. 4:19-cv-00892-HSG	ER349
	District Court Docket Entries, <i>California v. Trump</i> , No. 4:19-cv-00872-HSG	ER386

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NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO-OAKLAND DIVISION**

SIERRA CLUB and SOUTHERN BORDER
COMMUNITIES COALITION,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States, in his official capacity; PATRICK M.
SHANAHAN, Acting Secretary of Defense, in his
official capacity; KIRSTJEN M. NIELSEN,
Secretary of Homeland Security, in her official
capacity; and STEVEN MNUCHIN, Secretary of
the Treasury, in his official capacity,

Defendants.

Case No.: 4:19-cv-00892-HSG

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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INTRODUCTION

1
2 1. On February 15, 2019, President Donald Trump invoked his authority under the
3 National Emergencies Act, 50 U.S.C. §§ 1601–1651, to declare a national emergency and divert
4 billions of dollars appropriated for other purposes to carry out his campaign promise to build a wall
5 along the U.S.-Mexico border.

6 2. The President’s declaration was made solely out of disagreement with Congress’s
7 decision about the proper funding level, location, and timetable for constructing a border wall. On
8 the same day that President Trump signed his declaration, he also signed an act of Congress
9 appropriating only \$1.375 billion for the border wall. The law Congress passed not only denied the
10 President the additional billions he had demanded, but also imposed substantial restrictions on the
11 location and timing of border wall construction.

12 3. In announcing his declaration of a national emergency, the President stated, “I don’t
13 need to do this,” but explained that he preferred to build the border wall faster than Congress’s
14 appropriation would allow.

15 4. The President’s declaration plainly states that the invocation of an emergency is to
16 address a “long-standing” problem of “large-scale unlawful migration through the southern border”
17 and the President’s opinion that the number of families seeking asylum at the U.S.-Mexico border
18 presents an “emergency.” In fact, there was and is no national emergency to justify the President’s
19 action, only his disagreement with Congress’s duly enacted decisions on the extent and pace of
20 spending on the border wall.

21 5. On its face, the declaration does not meet the requirements of the statutory
22 authorization that the President invokes, 10 U.S.C. § 2808. That law, duly enacted by Congress,
23 provides that the President may declare an emergency to deploy military construction funds “that are
24 necessary to support such [emergency] use of the armed forces.” The declaration does not set forth
25 any actual emergency, any use of the armed forces required to address such an emergency, or how a
26 diversion of military construction funds is necessary to support the use of the armed forces of the
27 United States. The President has also instructed his subordinates to divert additional sources of
28

1 Departments of Defense and Treasury funds that Congress restricted for other purposes, in an effort
2 to secure the appropriations that Congress denied him for the border wall.

3 6. Neither a declaration of emergency nor the Defense and Treasury funding statutes the
4 administration has invoked permit the President to disregard Congress's enacted appropriations
5 legislation. The President's actions violate both those statutes and the Constitution.

6 7. Plaintiffs Sierra Club and Southern Border Communities Coalition are harmed by the
7 President's unlawful declaration of a national emergency and bring this action seeking declaratory
8 and injunctive relief and other remedies as set forth below.

9 JURISDICTION AND VENUE

10 8. This case arises under the Consolidated Appropriations Act of 2019, Pub. Law No.
11 116-6; Article I, section 9, clause 7 of the U.S. Constitution; Article I, section 7 of the U.S.
12 Constitution; the National Environmental Policy Act, 42 U.S.C. § 4332; the Administrative
13 Procedures Act, 5 U.S.C. §§ 701–706, and other acts of Congress. This Court has subject matter
14 jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1361 (mandamus), 1651 (All Writs Act) and
15 2201 (declaratory relief).

16 9. Venue is proper under 28 U.S.C. § 1391(e)(1) because the defendants are agencies of
17 the United States and officers of the United States acting in their official capacity and (1) at least one
18 plaintiff resides in this district; and/or (2) a substantial part of the events or omissions giving rise to
19 the claims occurred in this district.

20 10. In addition to the harm caused to Plaintiff Sierra Club described below, the
21 challenged action will have an impact throughout the Northern District of California, including in
22 Contra Costa County and Monterey County, where the Department of Defense maintains several
23 bases and facilities. The challenged action jeopardizes millions of dollars of Department of Defense
24 funding for constructions projects at military bases in this District.

25 PARTIES

26 11. Plaintiff Sierra Club is incorporated in the State of California as a nonprofit public
27 benefit corporation with headquarters in Oakland, California. Sierra Club is a national organization
28 with 67 chapters and more than 825,000 members dedicated to exploring, enjoying, and protecting

1 the wild places of the earth; to educating and enlisting humanity to protect and restore the quality of
2 the natural and human environment; and to using all lawful means to carry out these objectives.
3 Many of Sierra Club's members reside, work, recreate, and/or enjoy areas along the border of the
4 United States and Mexico. Sierra Club has more than 400,000 members in California, over 9,700 of
5 whom belong to its San Diego Chapter. Sierra Club's Grand Canyon Chapter, which covers the State
6 of Arizona, has more than 16,000 members. Sierra Club's Rio Grande Chapter includes over 10,000
7 members in New Mexico and West Texas. Sierra Club's Lone Star Chapter, which covers the State
8 of Texas, has more than 26,100 members, more than 440 of whom live in the Lower Rio Grande
9 Valley.

10 12. Sierra Club's nationwide advocacy includes educating and mobilizing the public on
11 issues of habitat destruction, divided local communities, land use, and myriad other human and
12 environmental impacts associated with border wall construction activities. Sierra Club is committed
13 to the protection of threatened and endangered species that inhabit the areas surrounding the
14 proposed border walls as well as their habitat. Sierra Club has been actively involved in protecting
15 habitat along the southern border for many years, including work to promote conservation on state,
16 federal, and private lands along and adjacent to the border, and its members regularly use and enjoy
17 areas along the border. Sierra Club members live near and regularly visit the California-Mexico
18 border around San Diego for hiking, birdwatching, photography, and other recreational and aesthetic
19 uses, and have worked to promote conservation of wildlife and habitat along the border.

20 13. Sierra Club brings this action on its own behalf and on behalf of its members. Sierra
21 Club members live near and frequently visit the parks, refuges, and other public lands along the
22 United States-Mexico border for hiking, birdwatching, photography and other professional,
23 scientific, recreational, and aesthetic uses. Among the areas visited by Sierra Club members are: the
24 Tijuana Estuary (California), the Otay Mountain Wilderness (California), the Jacumba Wilderness
25 Area (California), the Sonoran Desert (Arizona), Cabeza Prieta National Wildlife Refuge (Arizona),
26 the Chihuahuan Desert (New Mexico), Santa Ana National Wildlife Refuge (Texas), the Lower Rio
27 Grande Valley National Wildlife Refuge (Texas), Bentsen-Rio Grande Valley State Park (Texas), La
28 Lomita Historical Park (Texas), and the National Butterfly Center (Texas). Sierra Club members

1 also reside, work, and recreate in and around cities and towns affected by the border wall, including
2 but not limited to Santa Teresa, New Mexico; San Ysidro and Imperial Beach, California; Roma,
3 Texas; Rio Grande City, Texas; Escobares, Texas; La Grulla, Texas; and Salineño, Texas.

4 14. Sierra Club's members obtain recreational, professional, scientific, educational, and
5 aesthetic benefits from their activities in these areas, and from wildlife dependent upon habitat that
6 includes these areas. Sierra Club and its members have been and will continue to be injured by the
7 construction of a border wall and related infrastructure. Such injuries are particularly significant
8 because the U.S. Department of Homeland Security is proceeding with border work without first
9 complying with decades-old environmental and public safety laws and regulations that were enacted
10 for the very purpose of protecting the places, species, and values Sierra Club members work to
11 protect. The requested relief will redress these injuries.

12 15. Sierra Club has devoted and continues to devote substantial resources to advocacy
13 opposing the Department of Homeland Security's border wall construction, intended to avoid the
14 injuries to Sierra Club's interests described above. Those efforts include formation of Sierra Club
15 Borderlands, a coalition intended to investigate the environmental and social impacts of the border
16 wall, and educate the public regarding those impacts. Sierra Club also devoted substantial staff and
17 other resources towards legislative advocacy leading up to the appropriations bill passed by
18 Congress in February 2019, specifically directed towards securing Congress's denial of substantial
19 funding to the border wall. Because of President Trump's emergency declaration, Sierra Club has
20 been forced to redirect resources to continue and amplify its advocacy—despite Congress's decision
21 to limit funding for near-term construction. For example, Sierra Club has allocated staff and
22 volunteers within its national headquarters in Oakland to support veterans who intend to travel to
23 Texas to oppose continued wall construction. As a result of the President's emergency declaration,
24 Sierra Club has also redirected staff and volunteers within its California offices to investigate and
25 assess the extent of construction activities along the border in those areas outside those delineated by
26 congressional appropriations, and the impacts of those activities.

27 16. Plaintiff Southern Border Communities Coalition ("SBCC") is a program of Alliance
28 San Diego, a nonprofit public benefit corporation with headquarters in San Diego, California. SBCC

1 brings together 60 organizations from California, Arizona, New Mexico, and Texas to promote
2 policies and solutions that improve quality of life in border communities, including fair border
3 enforcement policies that respect human dignity and human rights and prevent loss of life, as well as
4 rational and humane immigration-reform policies affecting the border region. Additionally, SBCC
5 engages in oversight of U.S. Customs and Border Protection and its components, including Border
6 Patrol, and advocates for accountability and transparency in the government policies and practices
7 that impact border communities.

8 17. SBCC brings this action on behalf of its members and on its own behalf. SBCC's
9 members live in and around the border lands impacted by the President's declaration of a national
10 emergency, in California, Arizona, New Mexico, and Texas. They recreate in and derive other
11 benefits from public lands, including areas for which border barrier funding has not been
12 appropriated or for which the deployment of funds has been prohibited. The ongoing and imminent
13 construction of border infrastructure, including the border wall and fencing, will restrict members'
14 access to these and other lands, degrading their quality of life. It has additional negative
15 consequences: dividing and fragmenting the communities in which SBCC members live; dividing
16 the binational character of these communities by increasing members' fears about traveling back-
17 and-forth across the border; heightening racial division and promoting hostility towards immigrants
18 and communities of color in border communities; and decreasing eco- and other forms of tourism
19 that generate significant revenue.

20 18. President Trump's declaration also exposes SBCC's membership to heightened risk
21 from flooding, as well as risks to clean water, clean air and other natural resources. These threats are
22 magnified by the government's refusal to comply with constitutional and statutory limits on
23 construction. The border wall directly harms members economically, culturally, recreationally,
24 aesthetically, and religiously. The requested relief would redress these injuries.

25 19. Further, the declaration of a national emergency and the improper diversion of funds
26 has already and will continue to impair SBCC's mission and divert SBCC's resources. SBCC has
27 mobilized its staff and its affiliates to monitor and respond to the diversion of funds and the
28 construction caused by and accompanying the national emergency declaration. It has organized,

1 supported, or participated in grassroots advocacy to respond to ongoing and imminent construction
2 throughout the border lands, including in San Diego, Tucson, Las Cruces, El Paso, and the Rio
3 Grande Valley, and will continue to do so in response to new construction caused by the President's
4 declaration. SBCC has responded locally and nationally to the President's declaration to highlight
5 the impacts it will have on border communities. It has engaged in rapid-response political outreach
6 and advocacy, including traveling to Washington, D.C., to educate legislators about the perils to
7 border communities of the construction caused by and accompanying the national emergency
8 declaration. It has responded to several calls from local officials, communities of faith, members of
9 Congress and congressional staff, and the public about the President's national emergency
10 declaration and the impacts it will have on the border lands and on border communities. In doing so,
11 it has provided information, guidance, and support to organizations and individuals that depend on
12 SBCC, and has led tours for groups requesting to see for themselves the "national emergency" that
13 has been proclaimed. Since the President's declaration of emergency, these activities have consumed
14 the majority of SBCC staff's time, thereby interfering with SBCC's core advocacy regarding border
15 militarization, Border Patrol law-enforcement activities, and immigration reform. SBCC must take
16 these actions in furtherance of its mission to protect and improve the quality of life in border
17 communities.

18 20. Defendant DONALD J. TRUMP is the President of the United States, and is sued in
19 his official capacity.

20 21. Defendant PATRICK M. SHANAHAN, Acting Secretary of Defense, is sued in his
21 official capacity. Acting Secretary Shanahan is responsible for ensuring that Department of Defense
22 actions comply with applicable laws. Acting Secretary Shanahan is responsible for carrying out the
23 diversion of military construction funds for the construction of the border wall under President
24 Trump's declaration of national emergency.

25 22. Defendant KIRSTJEN M. NIELSEN, Secretary of Homeland Security, is sued in her
26 official capacity. Secretary Nielsen is responsible for ensuring that Department of Homeland
27 Security actions comply with applicable laws. Secretary Nielsen is responsible for carrying out the
28

1 construction of the border wall and otherwise implementing President Trump’s declaration of
2 national emergency.

3 23. Defendant STEVEN MNUCHIN, Secretary of the Treasury, is sued in his official
4 capacity. Secretary Mnuchin is responsible for carrying out the diversion of Treasury funds for the
5 construction of the border wall under President Trump’s declaration of national emergency.

6 7 **FACTUAL ALLEGATIONS**

8 24. On February 15, 2019, President Trump declared a national emergency in order to
9 secure funding for his border wall. The President’s declaration came after a weeks-long stalemate
10 between the President and Congress, during which the President repeatedly threatened to declare a
11 national emergency if Congress did not fund the construction of the border wall to the extent and at
12 the pace the President preferred.

13 25. Contrary to the appropriations bills duly enacted by Congress for construction of
14 border barriers, which included specific limitations and “carve-out” areas, President Trump has
15 repeatedly stated that he will build a “big, beautiful” 1,000 mile-long wall along the U.S.-Mexico
16 border.

17 26. Congress’s latest appropriation for the border wall—enacted specifically in response
18 to the President’s call for action to end an impasse that included a six-week government shutdown—
19 included only \$1.375 billion. In announcing his declaration of national emergency, however,
20 President Trump expressly disagreed with Congress’s appropriation decision and instead called for
21 more than \$8 billion for border wall construction.

22 **President Trump Has Repeatedly Failed to Secure from Congress his Desired Level of** 23 **Appropriations for Wall Construction.**

24 27. Since taking office in 2017, President Trump and his executive branch officials have
25 sought appropriations to fund construction of the border wall. In its repeated appropriation requests,
26 the Trump administration has acknowledged that it cannot build a border wall without congressional
27 authorization.

28. In March 2017, the President asked Congress for \$1.4 billion for the border wall for the remainder of fiscal year 2017, and an additional \$2.6 billion for fiscal year 2018. On May 1, 2017, Congress agreed on a bipartisan bill to fund the government through September 30, 2017. Congress rejected the President's request for wall funding, but increased spending on border security by \$1.5 billion. Three days after tweeting that the country "needs a good 'shutdown' in September," the President signed the bill on May 5, 2017.

29. On March 23, 2018, Congress rejected the President's request for \$1.6 billion to build a border wall in the Rio Grande Valley in South Texas. Congress instead allocated \$1.6 billion for border security including new technology and repairs to existing barriers, as well as \$641 million for about 33 miles of new fencing that had been authorized by the Secure Fence Act of 2006, Public Law 109-367.

30. Congress did not accede to the President's requests for more border wall funding throughout the remainder of 2018.

President Trump Refuses to Sign a Congressional Appropriations Package that Does Not Include his Desired Amount of Border Wall Funding and Threatens to Declare a National Emergency.

31. On December 11, 2018, during his latest round of budget negotiations with Congress, the President announced that he would be "proud" to shut down the government if he did not receive his requested \$5.7 billion in wall funding. When it was clear that both chambers of Congress would pass funding legislation necessary to keep the federal government open, President Trump declared that he would not sign any funding legislation—including legislation unanimously approved by the Senate to keep the government funded through February 8, 2019—without \$5 billion to build his proposed border wall.

32. On December 21, 2018, the United States entered into a partial government shutdown. The shutdown would last 35 days, making it the longest in the nation's history. President Trump threatened to draw the shutdown out for "a very long period of time—months or even years"—unless Congress gave him the money he was demanding for the border wall.

1 33. On January 6, 2019, the Acting Director of the Office of Management and Budget
2 communicated to the congressional Committees on Appropriation that “[t]he President requests \$5.7
3 billion for construction of a steel barrier for the Southwest border,” which would “fund construction
4 of a total of approximately 234 miles of new physical barrier and fully fund the top 10 priorities in
5 CBP’s Border Security Improvement Plan.” The letter stated that “a physical barrier—wall—creates
6 an enduring capability that helps field personnel stop, slow down, and/or contain illegal entries.”

7 34. Frustrated by Congress’s consistent rejection of his demand for funding, President
8 Trump threatened to declare a national emergency and build a wall without congressional approval.
9 According to the President, he could “call a national emergency and build it very quickly.”

10 35. For several weeks, President Trump repeated his threat to invoke a national
11 emergency to circumvent Congress’s funding authority. On January 9, 2019, he stated that “I have
12 an absolute right to do national emergency if I want,” and revealed that his “threshold” for invoking
13 the emergency would be if he “can’t make a deal with people that are unreasonable.”

14 36. On January 10, 2019, the President referred to ongoing negotiations with the House
15 and the Senate and said “If this doesn’t work out, probably I will [declare a national emergency]. I
16 would almost say definitely.” He explained that “[i]f we don’t make a deal, I would say 100 percent,
17 but I don’t want to say 100 percent,” and that “[i]f we don’t make a deal, I would say it would be
18 very surprising to me that I would not declare a national emergency and just fund it through the
19 various mechanisms.”

20 37. Despite encouragement from Senate Republicans to agree to reopen the government
21 for a short period to negotiate with Democrats, President Trump promised to remain steadfast in his
22 demands for a wall along the United States-Mexico border. He would not declare a national
23 emergency “so fast,” he said, because, although “[i]t’s the easy way out, . . . Congress should do it.”

24 38. As the shutdown ground on, President Trump attempted to strike a compromise. He
25 announced on January 19, 2019, that he was willing to temporarily extend the Deferred Action for
26 Childhood Arrivals and Temporary Protected Status programs in exchange for \$5.7 billion for a
27 border wall. Democratic leaders rejected the proposal as a “non-starter” that merely put forth
28

1 previously rejected offers. They urged the President to open the government before beginning
2 negotiations over border security.

3 39. On January 25, 2019, faced with worsening national gridlock as a result of the 35-day
4 shutdown, President Trump agreed to sign legislation that would keep the government open until
5 February 15, 2019. This stopgap legislation did not include any funding for a border wall and had
6 previously been rejected by the President.

7 40. In ending the government shutdown, the President stated that if he were unable to
8 “work with the Democrats and negotiate,” then “obviously we’ll do the emergency because that’s
9 what it is. It’s a national emergency.”

10 41. After the shutdown ended, a bipartisan committee of negotiators from the House and
11 Senate began work on a compromise appropriations bill that would include some funding for border
12 security. President Trump publicly expressed his skepticism that negotiations would be fruitful,
13 declaring that the negotiators were “wasting their time” and that he would “get [the wall] built one
14 way or the other.”

15 42. On January 31, 2019, President Trump stated that “we’ve set the stage for what’s
16 going to happen on February 15 if a deal is not made.” The next day, he said “I think there’s a good
17 chance that we’ll have to do” an emergency proclamation.

18 43. As House and Senate negotiators deliberated over a deal to avert another government
19 shutdown, Trump administration officials started laying the groundwork for a possible national
20 emergency declaration. Acting White House Chief of Staff Mick Mulvaney stated that “[w]e’ll take
21 as much money as [Congress] can give us and then we’ll go off and find the money someplace
22 else...but [the wall] is going to get built with or without Congress.”

23 44. On February 11, 2019, congressional negotiators finalized a funding deal. The
24 agreement included \$1.375 billion for fencing and other physical barriers along 55 miles of the U.S.-
25 Mexico border and included numerous restrictions on the timing and location of construction.

26 45. President Trump stated that he was “not happy” with Congress’s compromise deal
27 and would find “other methods” to finance a wall without explicit approval from Congress.
28

Congress Considered and Specifically Rejected the President's Wall Funding Demands in Enacting the Consolidated Appropriations Act of 2019.

46. On February 14, 2019, Congress passed the Consolidated Appropriations Act of 2019.

47. Congress's enactment of the Consolidated Appropriations Act of 2019 occurred against a backdrop of its consideration and rejection of the President's \$5.7 billion border wall demand. On December 20, 2018, the House of Representatives had passed a continuing resolution that met the President's request for \$5.7 billion in border wall funding. The Senate did not pass the same legislation. When both houses of Congress came to an agreement and enacted the Consolidated Appropriations Act of 2019, they elected to exclude the President's requested \$5.7 billion in wall funds.

48. The House Appropriations Committee Chair, Representative Nita Lowey, confirmed that congressional negotiators considered, and "frankly, . . . denie[d] the President billions of dollars in funding for the concrete wall that he demanded." Senator Patrick Leahy, Vice Chairman of the Senate Appropriations Committee, who was actively involved in negotiations on the 2019 Consolidated Appropriations Act, stated "[t]he agreement does not fund President Trump's wasteful wall." 165 Cong. Rec. S1362 (daily ed. Feb 14, 2019).

49. Congress's appropriations judgment, as expressed in the law that passed both chambers, is that only \$1.375 billion should be used to construct a border wall, and that such a wall must be limited geographically to the Rio Grande Valley Sector. The bill provided only a fraction of the \$5.7 billion that the President demanded for the border wall, allocating \$1.375 billion for roughly 55 miles of pedestrian fencing in the Rio Grande Valley Sector of the southern border. The appropriations act includes numerous carve-outs that prevent wall construction in parks and wildlife areas, and requires the approval of local officials and a public comment period before initiating construction in cities situated along the border.

50. Congress specifically prohibited the use of any appropriated funds in specific sections of the Rio Grande Valley, forbidding the use of any funds to construct a barrier "(1) within the Santa Ana Wildlife Refuge; (2) within the Bentsen-Rio Grande Valley State Park; (3) within La Lomita Historical Park; (4) within the National Butterfly Center; or (5) within or east of the Vista del Mar

1 Ranch tract of the Lower Rio Grande Valley National Wildlife Refuge.” Pub. Law No. 116-6,
2 Division A § 231.

3 51. In addition, Congress forbade the use of appropriated funds for construction within
4 the city limits of Roma, Texas; Rio Grande City, Texas; Escobares, Texas; La Grulla, Texas; and
5 within Salineño, Texas, until local elected officials and the public have had an opportunity to
6 comment on any plans for construction. Pub. Law No. 116-6, Division A § 232.

7 52. Finally, Congress imposed a prohibition on the use of any appropriated funds to
8 “increase . . . funding for a program, project, or activity as proposed in the President’s budget request
9 for a fiscal year until such proposed change is subsequently enacted in an appropriation Act”
10 Pub. Law No. 116-6, Division D § 739. The only exception to this prohibition is for changes “made
11 pursuant to the reprogramming or transfer provisions of this or any other appropriations Act.”

12
13 **President Trump Declares a National Emergency, Instructing his Secretaries of Defense and
Homeland Security to Construct his Wall in the Absence of Congressional Authorization.**

14 53. President Trump stated that he would sign the appropriations bill and simultaneously
15 declare a national emergency. According to the President, \$1.375 billion from Congress is “not so
16 much” for a border wall and the emergency declaration would allow him to supplement what
17 Congress has authorized “[s]o we have a chance of getting close to \$8 billion [and] . . . build a lot of
18 wall.”

19 54. On February 15, 2019, President Trump declared a national emergency in order to
20 secure his preferred level of funding for his border wall. *See* “Presidential Proclamation on
21 Declaring a National Emergency Concerning the Southern Border of the United States” (“the
22 Proclamation”).

23 55. In announcing his declaration of national emergency, President Trump stated that he
24 decided to declare an emergency because he was dissatisfied with the pace of Congress’s spending.
25 The President acknowledged that he “went through Congress . . . made a deal . . . got almost \$1.4
26 billion” and was “successful, in that sense.” But, he explained, “I want to do it faster. I could do the
27 wall over a longer period of time. I didn’t need to do this, but I’d rather do it much faster.”
28

1 56. While admitting that the appropriations bill provided him with a substantial amount
2 of border wall funding, the President declared that he was still “not happy with it” because “on the
3 wall, [Congress] skimped.”

4 57. The President also expressed his disdain for Congress’s decision to include carve-out
5 areas where wall construction is prohibited, and emphasized the importance of a contiguous wall.
6 “The only weakness is they [individuals crossing the southern border] go to a wall and then they go
7 around the wall. They go around the wall and in . . . They go through areas where you have no
8 wall.”

9 58. The President’s senior policy advisor, Stephen Miller, confirmed that emergency and
10 supplemental funding would allow for the construction of “hundreds of miles” of border wall by
11 September 2020—much faster than congressionally authorized funding would allow.

12 59. In describing the nature of the purported national emergency, the text of the
13 Proclamation (attached and incorporated herein as Exhibit A) refers to a “long-standing” problem of
14 “large-scale unlawful migration through the southern border” that has “worsened” in recent years
15 due to “sharp increases in the number of family units entering and seeking entry to the United States
16 and an inability to provide detention space” for them. It further states that these family units “are
17 often released into the country and are often difficult to remove from the United States because they
18 fail to appear for hearings, do not comply with orders of removal, or are otherwise difficult to
19 locate.”

20 60. The Proclamation states that “[b]ecause of the gravity of the current emergency
21 situation, it is necessary for the Armed Forces to provide additional support to address the crisis.”
22 The Proclamation further states “that this emergency requires use of the Armed Forces and, in
23 accordance with section 301 of the National Emergencies Act (50 U.S.C. § 1631), that the
24 construction authority provided in section 2808 of title 10, United States Code, is invoked and made
25 available, according to its terms, to the Secretary of Defense.”

26 61. The Proclamation directs the Secretary of Defense, pursuant to 10 U.S.C. § 2808, to
27 order members of the Ready Reserve to “assist and support the activities of the Secretary of
28 Homeland Security at the southern border” and orders the Secretaries of Defense and Homeland

Security, “if necessary,” to take action for “transfer and acceptance of jurisdiction over border lands.”

62. According to a “fact sheet” issued by the White House, entitled “President Donald J. Trump’s Border Security Victory,” the President has identified \$3.6 billion to be reallocated from Department of Defense military construction projects pursuant to 10 U.S.C. § 2808, \$601 million to be reallocated from the Treasure Forfeiture Fund, and \$2.5 billion to be reallocated from Department of Defense funds for counterdrug activities. The use of such funds was duly limited by Congress to specific purposes pursuant to its authority under the Constitution.

63. The President intends to spend approximately \$8.1 billion for construction of the border wall, many times the \$1.375 billion appropriated by Congress.

64. The President’s unlawful reallocation of military construction funds will jeopardize construction projects at military bases and sites across the country, including in this District and throughout California.

Congress Passes an Unprecedented Disapproval Resolution of the President’s Emergency Declaration.

65. The National Emergencies Act, 50 U.S.C. §§ 1601–1651, sets out a procedure whereby Congress may terminate the national emergency if a resolution is passed by both houses of Congress and becomes law. 50 U.S.C. § 1622.

66. Congress had never before passed such a resolution.

67. On February 26, 2019, the House of Representatives passed H.J. Res. 46, voting 245 to 182 to terminate the President’s declaration of emergency.

68. On March 14, 2019, the Senate likewise passed the disapproval resolution, voting 59 to 41 to terminate the President’s declaration of emergency.

69. Numerous senators explained that their vote was motivated by the President’s usurpation of Congressional power. Senator Lamar Alexander of Texas stated that “[a]ny appreciation for our structure of government means that no president should be able to use the National Emergencies Act to spend money that Congress refuses to provide.” Senator Pat Toomey of Pennsylvania stated, “I don’t think that the focus of the National Emergency Act is to circumvent

1 what the Congress and the president agreed to.” Senator Mitt Romney of Utah described the
2 disapproval vote as “a vote for the Constitution and for the balance of powers that is at its core.”

3 70. On March 15, 2019, President Trump vetoed the disapproval resolution.
4

5 **The Government Initiates the Process of Diverting Funds to Build President Trump’s Wall.**

6 71. On February 15, 2019, the Department of Treasury notified Congress that it would
7 transfer \$242 million from the Treasury Forfeiture Fund to DHS to support law enforcement border
8 security efforts conducted by CBP. The notification stated that these funds would be available for
9 obligation as of March 2, 2019, with the remaining \$359 million to be transferred and available for
10 obligation at a later date.

11 72. On February 26, 2019, the White House issued a Fact Sheet entitled “The Funds
12 Available to Address the National Emergency at Our Border.” The Fact Sheet states that “DOD will
13 augment existing counterdrug funds by transferring up to \$2.5 billion from other DOD accounts” so
14 as to “direct needed funds to the border” through the FY 2019 Drug Interdiction and Counter-Drug
15 Activities account.

16 73. On March 6, 2019, Secretary Nielsen testified before the House of Representatives’
17 Homeland Security Committee that the proposed border wall would involve constructing a “little
18 more than 700” miles of barriers.

19 74. On March 8, 2019, President Trump wrote on Twitter: “The Wall is being built and is
20 well under construction. Big impact will be made. Many additional contracts are close to being
21 signed. Far ahead of schedule despite all of the Democrat Obstruction and Fake News!”

22 75. On March 9, 2019, President Trump wrote on Twitter that “Major sections of Wall
23 are being built” and that “MUCH MORE” would “follow shortly.”

24 76. On March 11, 2019, Senators on the Appropriations Committee, and the
25 Appropriations Subcommittees on Defense and on Military Construction and Veterans Affairs
26 released a letter stating that “Defense officials informed members of Congress that they are
27 preparing a transfer of funds into the Drug Interdiction and Counter-Narcotics Activities, Defense
28

1 account. This is necessary because the Department has obligated in excess of 90 percent of the
2 \$881.5 million appropriated for that purpose in fiscal year 2019.”

3 77. On March 14, 2019, President Trump wrote on Twitter that “the Wall” is “already
4 under major construction.”

5 **The President Issues a Fiscal Year 2020 Budget Request Seeking an Increase in Funding for**
6 **his Wall Project.**

7 78. On March 11, 2019, the White House Office of Management and Budget released the
8 President’s Fiscal Year 2020 Budget Request.

9 79. The President states that “finishing the border wall is an urgent national priority,” and
10 that “[m]y Budget continues to reflect these priorities.” Accordingly, the fiscal year 2020 “Budget
11 requests \$5 billion to construct approximately 200 miles of border wall along the U.S. Southwest
12 border.”

13 80. On March 12, 2019, the Department of Defense released its fiscal year 2020 budget
14 proposal, which requested “\$9.2 billion of emergency funding for unspecified military construction.”
15 Of that figure, \$3.6 billion would be allocated “to build border barriers,” and an additional \$3.6
16 billion would be used to “backfill funding reallocated in FY 2019 to build border barriers.”

17
18 **Construction of President Trump’s Wall Will Have Devastating Effects on the Environment.**

19 81. Through the expenditure of diverted funds in 2019, the administration expects to
20 complete construction of far more of the President’s wall than Congress authorized. This includes
21 areas for which the Department of Homeland Security plans have been announced, contracts have
22 been awarded, resources have been mobilized, or waivers have been issued.

23 82. According to the Department of Homeland Security, in 2019 it will commence
24 construction of 215 new miles of border wall. This construction will occur in ecologically sensitive
25 habitats and other border lands known for their outstanding hiking, wildlife viewing, photography,
26 and wilderness values. For example, the Department of Homeland Security has notified the public it
27 intends to commence wall construction in California’s San Diego and El Centro Sectors; Arizona’s
28 Yuma Sector; New Mexico’s El Paso Sector; and, Texas’s Laredo and Rio Grande Valley Sectors.

83. Examples of the environmental consequences can be seen in California's San Diego and El Centro Sectors, where border wall construction would be devastating. Any new wall construction in these areas would be in or near the Otay Mountain Wilderness Area and the Jacumba Wilderness Area. These areas are habitat to more than 100 sensitive plant and animal species that are listed as "endangered," "threatened," or "rare" under the federal Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*, and/or the California Endangered Species Act, Cal. Fish & Game Code § 2050 *et seq.* For example, the federally and state-endangered Peninsular Desert Bighorn sheep has a range that includes mountainous terrain in Mexico near the United States-Mexico border and extends north across the border through the Jacumba Wilderness to California's Anza-Borrego State Park.

84. Likewise, construction is imminent in the Rio Grande Valley in Texas, notwithstanding Congress's decision to prevent the Trump administration from building a wall in five areas nationally recognized for their ecological and recreational value. The administration's commitment to construct border walls in the Rio Grande Valley Sector means these areas are threatened with irreversible damage despite express Congressional direction to preserve them. Initial construction activities include accessing the project area with heavy equipment, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors. As a result of border wall construction, local communities would be more vulnerable to flooding, divided by border wall infrastructure, and suffer irreparable damage to cultural, historic, and recreational sites.

85. In addition to ongoing and imminent construction, the President's diversion of funds not appropriated by Congress to expand and expedite the border wall has injured the Sierra Club and SBCC. Both organizations have been compelled to respond to the declared emergency to safeguard their and their members' interests, including by diverting resources from the organizations' campaigns to unveil ongoing and imminent construction, educate their members, and respond to threats to their organizational missions. Staff and affiliates have participated in grassroots advocacy, engaged in rapid-response political outreach and advocacy with congressional and local elected officials, and responded to requests from their members, the public, and elected officials about the

1 threat and implementation of unlawful expedited construction. The circumvention of legal processes,
 2 lack of transparency, notice, and consultation, have frustrated the organizations' efforts to work
 3 towards their missions on behalf of their members.

4 86. Defendants have not conducted a public review of these activities' impacts on the
 5 environment and local communities that complies with NEPA.

6 LEGAL BACKGROUND

7 **The Constitution Vests Congress with Exclusive Authority to Determine the Appropriation of** 8 **Public Funds.**

9 87. The Constitution bans the expenditure of any public funds by any branch of the
 10 federal government, including the Executive Branch, absent enactment of a law appropriating such
 11 funds: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by
 12 Law" U.S. Const. art. I, § 9, cl. 7. The Constitution thus vests Congress, and only Congress,
 13 with the power to spend public funds, and it must do so by passing identical appropriations bills in
 14 both the House and the Senate. Public funds may only be expended as specified in such duly enacted
 15 appropriations laws. Except as specifically authorized by Congress, the Executive Branch has no
 16 authority to expend public funds that have not been thus appropriated.

17 88. The Appropriations Clause, in Article I, section 9, clause 7 of the Constitution,
 18 provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations
 19 made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public
 20 Money shall be published from time to time."

21 89. The Appropriations Clause "assure[s] that public funds will be spent according to the
 22 letter of the difficult judgments reached by Congress as to the common good and not according to
 23 the individual favor of Government agents or the individual pleas of litigants." *Office of Pers. Mgmt.*
 24 *v. Richmond*, 496 U.S. 414, 428 (1990).

25 90. Congress also may enact authorization legislation to establish, continue, or modify an
 26 agency, program, or government function. Congressional authorization of a program, however, does
 27 not confer power on the Executive Branch to expend public funds. Only a specific appropriations
 28 law can do that.

1 91. Although Congress may combine an authorization and an appropriation in a single
 2 bill, it may (and most often does) enact them separately. In keeping with its broad constitutional
 3 authority, Congress may choose not to appropriate funds for an authorized program, or Congress
 4 may appropriate a different amount of money than the amount (if any) provided for in an
 5 authorization. Congress also may limit the purposes for which appropriated funds may be used.

6 92. Appropriations laws generally take one of two forms: (a) temporary appropriations,
 7 which typically are enacted on an annual basis, and (b) permanent appropriations, which are few in
 8 number and which (i) remain in effect until Congress repeals or modifies them, and (ii) permit
 9 federal agencies to expend public funds without the need for passage of a temporary appropriations
 10 bill in the current Congress. For an appropriation to be considered permanent, the law must clearly
 11 and expressly so provide.

12 93. By providing funding to the Executive Branch through temporary (typically annual)
 13 appropriations, Congress ensures Executive Branch accountability by forcing the Executive Branch
 14 to return to Congress each year to seek continued funding for authorized agencies, programs, and
 15 government functions. This process provides Congress the opportunity to determine a suitable
 16 amount of funding after careful consideration.

17 94. Temporary appropriations also reinforce and further Congress' constitutional
 18 responsibility to oversee the Executive Branch, and thereby act as a check upon the Executive
 19 Branch, as the Framers intended.

20
 21 **The Constitution Does Not Allow Appropriations to be Made by Executive Fiat, Rather than
 By Law.**

22 95. "It is for Congress, proceeding under the Constitution, to say what amount may be
 23 drawn from the Treasury in pursuance of an appropriation." *Hoe v. United States*, 218 U.S. 322,
 24 333 (1910). If the Executive Branch spends money in violation of an appropriation law, "it would be
 25 drawing funds from the Treasury without authorization by statute and thus violating the
 26 Appropriations Clause." *United States v. McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016).

27 96. No statute can provide the President with authority to spend in excess of
 28 congressional limitations, or to draw money from the Treasury by executive declaration in a manner

1 that contravenes the appropriations that have been made by law. “Any exercise of a power granted
2 by the Constitution to one of the other branches of Government is limited by a valid reservation of
3 congressional control over funds in the Treasury.” *Office of Pers. Mgmt.*, 496 U.S. at 425.

4 97. Nor can Congress endow the President with the power to reallocate money within the
5 federal budget by executive emergency declaration. “The Constitution is a compact enduring for
6 more than our time, and one Congress cannot yield up its own powers, much less those of other
7 Congresses to follow.” *Clinton v. City of New York*, 524 U.S. at 452 (Kennedy, J., concurring).

8
9 **The Constitution’s Presentment Clause Requires that the President Either Approve a Bill or
Return it to Congress with Objections.**

10 98. The Presentment Clause, Article I, Section 7, Clause 2, provides that “[e]very Bill
11 which shall have passed the House of Representatives and the Senate, shall, before it become a Law,
12 be presented to the President of the United States: If he approve he shall sign it, but if not he shall
13 return it, with his Objections to that House in which it shall have originated, who shall enter the
14 Objections at large on their Journal, and proceed to reconsider it.”

15 99. The President has no constitutional authority to modify the appropriations bills passed
16 by Congress. “There is no provision in the Constitution that authorizes the President to enact, to
17 amend, or to repeal statutes.” *Clinton v. City of New York*, 524 U.S. at 438. This restriction dates
18 back to the founding: “Our first President understood the text of the Presentment Clause as requiring
19 that he either approve all the parts of a Bill, or reject it in toto.” *Id.* at 440 (quotation marks omitted).

20 100. “Where the President does not approve a bill, the plan of the Constitution is to give to
21 the Congress the opportunity to consider his objections and to pass the bill despite his disapproval.”
22 *Wright v. United States*, 302 U.S. 583, 596 (1938).

23
24 **Congress Has Strictly Restricted the Use of Appropriated Funds for Emergency Military
Construction Authority Under 10 U.S.C. § 2808.**

25 101. Congress imposed binding restrictions on the President’s emergency powers to use
26 military construction funds for non-appropriated projects. Specifically, Congress limited the use of
27 emergency military construction funds only for projects (a) undertaken during a national emergency
28

1 “that requires use of the armed forces,” and (b) that “are necessary to support such use of the armed
2 forces.” 10 U.S.C. § 2808.

3 102. For purposes of Section 2808, Congress defines the term “military construction” as
4 including “any construction, development, conversion, or extension or any kind carried out with
5 respect to a military installation . . . or any acquisition of land or construction of a defense access
6 road.” Congress defined “military installation” as a “base, camp, post, station, yard, center, or other
7 activity under the jurisdiction of the Secretary of a military department” 10 U.S.C. § 2801(a).

8 103. The emergency construction authority under 10 U.S.C. § 2808 has been used in the
9 past only for military construction directly linked to a military installation connected to war efforts
10 abroad and for protection of weapons of mass destruction.

11
12 **Congress Has Expressly Restricted the Use of Appropriated Funds for Military Construction
of Border Fencing Under 10 U.S.C. § 284.**

13 104. Congress imposed binding restrictions on the Secretary of Defense’s authority to
14 provide support for construction of border fences. Specifically, Congress authorized the use of
15 Department of Defense support only for “[c]onstruction of roads and fences and installation of
16 lighting to block drug smuggling corridors across international boundaries of the United States,”
17 rather than across an entire international border. 10 U.S.C. § 284(b)(7).

18 105. In addition, Congress blocked the Secretary of Defense from redetermining the
19 funding balance struck by Congress by requiring that the Secretary of Defense seek reimbursement
20 of support provided by the Department of Defense to other agencies. Accordingly, 10 U.S.C. § 277
21 provides that “to the extent otherwise required by section 1535 of title 31 (popularly known as the
22 “Economy Act”) or other applicable law, the Secretary of Defense shall require a civilian law
23 enforcement agency to which support is provided under this chapter to reimburse the Department of
24 Defense for that support.”

Congress Has Expressly Restricted the Secretary of Defense's Authority to Transfer or Reprogram Funds Under Both Section 8005 of the Department of Defense Appropriations Act and 10 U.S.C. § 2214.

106. Congress has restricted the Secretary of Defense's reprogramming and transfer powers to ensure that transfer authorities do not provide an end run around Congress's role in determining funding levels.

107. To transfer funds under Section 8005 of the 2019 Department of Defense Appropriations Act, Pub. Law No. 115-245, the Secretary of Defense must make a determination "that such action is necessary in the national interest" and obtain the approval of the Office of Management and Budget. He must also promptly notify Congress of any such transfer. *See also* 10 U.S.C. § 2214(c).

108. According to its terms, authority to transfer funds pursuant to Section 8005 "may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress."

109. Congress likewise limited the transfer of non-construction Department of Defense funds in 10 U.S.C § 2214(b) to transfers that (1) "provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated;" and (2) are not for "an item for which Congress has denied funds."

Congress Did Not Permit the President to Use the Treasury Forfeiture Fund as an Unrestricted Slush Fund.

110. Congress established the Department of the Treasury Forfeiture Fund to permit the use of forfeited funds for specifically delineated law enforcement purposes. *See* 31 U.S.C. § 9705.

111. These purposes range from the payment of "compensation to informers," "payment for services of experts and consultants needed by a Department of Treasury law enforcement organization to carry out the organization's duties relating to seizure and forfeiture," and similar expenditures relating to the seizure and forfeiture program. 31 U.S.C § 9705(a).

112. Congress did not authorize use of the Treasury Forfeiture Fund to pay for construction of a border wall.

The National Environmental Policy Act Requires Agencies to Consider and Make Public the Environmental Impact of Their Actions.

113. NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a) (1978). It was enacted with the ambitious objectives of “encourag[ing] productive and enjoyable harmony between man and his environment . . . to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulating the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation” 42 U.S.C. § 4321.

114. In order to achieve these goals, NEPA contains several “action forcing” procedures, most significantly the mandate to prepare an environmental impact statement (“EIS”) on major federal actions “significantly affecting the quality of the human environment.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989); 42 U.S.C. § 4332(2)(C).

115. The Council on Environmental Quality (“CEQ”) was created to administer NEPA and has promulgated NEPA regulations, which are binding on all federal agencies. See 42 U.S.C. §§ 4342, 4344; 40 C.F.R. §§ 1500–1508 (1978).

116. When a federal agency is not certain whether an EIS is required, it must prepare a briefer document, known as an environmental assessment (“EA”). 40 C.F.R. § 1508.9 (1978). If the agency concludes in an EA that an action may have significant impacts on the environment, then an EIS must be prepared. *Id.* § 1501.4. If an EA concludes that there are no significant impacts to the environment, the federal agency must provide a detailed statement of reasons why the action’s impacts are insignificant and issue a Finding of No Significant Impact (“FONSI”). *Id.* § 1508.13.

117. The Supreme Court has found that the preparation and public circulation of EISs and EAs promotes NEPA’s broad environmental objectives in two primary ways: “It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Methow Valley Citizens Council*, 490 U.S. at 349.

118. NEPA requires that “agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid

delays later in the process, and to head off potential conflicts.” 40 C.F.R. § 1501.2 (1978); *id.* § 1502.5 (“An agency shall commence preparation of an [EIS] as close as possible to the time the agency is developing or is presented with a proposal . . .”). The Ninth Circuit has interpreted these regulations as requiring the NEPA process to be conducted “before any irreversible and irretrievable commitment of resources.” *Connor v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1998).

119. A “[p]roposal exists at that stage in the development of an action when an agency . . . has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.” 40 C.F.R. § 1508.23. Actions are defined to “include new and continuing activities including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies,” and include “[a]pproval of specific projects, such as construction or management activities located in a defined geographic area,” as well as “actions approved by permit or other regulatory decision as well as federal and federally assisted activities.” *Id.* §§ 1508.18(a) & (b)(4).

120. For activities covering multiple landscape types and jurisdictions, agencies may prepare a programmatic EIS (“PEIS”). A PEIS evaluates the effects of broad proposals or planning-level decisions that may include any or all of the following: a wide range of individual actions; implementation over a long timeframe; and/or implementation across a large geographic area.

121. The Department of Homeland Security has not promulgated regulations to implement NEPA, but has issued an Instruction Manual. Instruction Manual 023-01-001-01, Revision 01, Implementation of NEPA (Nov. 6, 2014) (“DHS NEPA Manual”). The Manual specifically includes “proposed construction, land use, activity, or operation that has the potential to significantly affect environmentally sensitive areas” as an action “normally requiring” the preparation of at least an EA.

122. Echoing the general NEPA requirements regarding the need to conduct NEPA early in the process, the DHS NEPA Manual directs the Department of Homeland Security to “integrate[] the NEPA process with other planning efforts at the earliest possible stage so that environmental factors are considered with sufficient time to have a practical influence on the decision-making process before decisions are made.” DHS NEPA Manual, at p. IV-1. The Manual directs that agency components that process applications for Department of Homeland Security funding or approval,

1 “have a responsibility to integrate NEPA requirements early in the application process,” and to
2 ensure that “completion of the NEPA process occurs before making a decision to approve” the
3 proposal.

4 123. NEPA requires that the Agencies involve the public in preparing and considering
5 environmental documents that implement the Act. 40 C.F.R. § 1506.6; *id.* § 1506.6(b)(1) (requiring
6 federal agencies to “[p]rovide public notice of NEPA-related hearings, public meetings, and the
7 availability of environmental documents so as to inform those persons and agencies who may be
8 interested or affected”).

9 124. The CEQ regulations further direct federal agencies to “insure that environmental
10 information is available to public officials and citizens before decisions are made,” and mandate that
11 “public scrutiny [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

12 125. In analyzing an action’s environmental effects, an agency must also consider the
13 effects of both: “connected actions,” meaning those that are “[c]losely related,” including actions
14 that “[c]annot or will not proceed unless other actions are taken previously or simultaneously,” and
15 actions that are “interdependent parts of a larger action and depend on the larger action for their
16 justification”; and “cumulative actions,” meaning those that “when viewed with other proposed
17 actions have cumulatively significant impacts.” 40 C.F.R. § 1508.25.

18 126. The Ninth Circuit has held that a “complete failure to involve or even inform the
19 public” about the agency’s preparation of a NEPA document violates the statute’s public
20 participation requirements. *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 970
21 (9th Cir. 2003).

22 127. Underlying all of NEPA’s procedural requirements is the mandate that agencies take
23 a “hard look” at all of the environmental impacts and risks of a proposed action. As stated by the
24 Ninth Circuit, “general statements about ‘possible effects’ and ‘some risk’ do not constitute a ‘hard
25 look’ absent a justification regarding why more definitive information could not be provided.” *Blue*
26 *Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998) (internal citations
27 omitted).

Fiscal Law Forbids Mixing and Matching Sources of Funding to Evade Spending Limits.

128. Congressional appropriations occur against the backdrop of rules and interpretations established by the General Accountability Office (“GAO”), which guide the executive branch’s use of appropriated funds.

129. Among the authorities the GAO interprets are statutes governing the permissible use of appropriated funds. These statutes include the Anti-Deficiency Act, the Purpose Statute, and the Transfer Statute.

130. The Anti-Deficiency Act prohibits spending funds in excess of appropriations, unless authorized by statute. *See* 31 U.S.C. § 1341(a)(1)(A) (officers and employees may not “make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation”). It also prohibits the executive branch from involving the United States government “in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.” *Id.* § 1341(a)(1)(B).

131. The Purpose Statute mandates that appropriated funds may be used only for the purpose of the appropriation, unless authorized by statute. *See* 31 U.S.C. § 1301(a) (“Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”).

132. The Transfer Statute prohibits transfer of funds from one account to another, unless authorized by statute. *See* 31 U.S.C. § 1532 (“An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law.”). “Transfers without statutory authority are equally forbidden whether they are (1) transfers from one agency to another, (2) transfers from one account to another within the same agency, or (3) transfers to an interagency or intra-agency working fund.” GAO, *Principles of Federal Appropriations Law: Fourth Edition*, Chapter 2, GAO-16-464SP, pp. 2-38–2-39. In addition to violating the Transfer Statute, “an unauthorized transfer would violate 31 U.S.C. § 1301(a) (which prohibits the use of appropriations for other than their intended purpose), would constitute an unauthorized augmentation of the receiving appropriation, and could, if the transfer led to

1 overobligating the receiving appropriation, result in an Antideficiency Act (31 U.S.C. § 1341)
2 violation as well.” *Id.* at 2-38.

3 133. Courts frequently give “special weight to [GAO’s] opinions” due to its “accumulated
4 experience and expertise in the field of government appropriations.” *Nevada v. Dep’t of Energy*, 400
5 F.3d 9, 16 (D.C. Cir. 2005).

6 134. Many of the GAO’s rules protect a key function of congressional appropriations
7 judgment: setting a maximum authorized program level by specifically appropriating a finite set of
8 funds for a particular project. *See* SBA’s Imposition of Oversight Review Fees on PLP Lenders, B-
9 300248 (Comp. Gen. Jan. 15, 2004) (“In addition to providing necessary funds, a congressional
10 appropriation establishes a maximum authorized program level, meaning that an agency cannot,
11 absent statutory authorization, operate beyond the level that can be paid for by its appropriations.”).
12 “Allowing an agency to exceed this level with funds derived from some other source would usurp
13 congressional prerogative and undercut the congressional power of the purse.” Availability of
14 Receipts from Synthetic Fuels Projects for Contract Admin. Expenses of the Dep’t of Treasury,
15 Office of Synthetic Fuels Projects, B-247644, 72 Comp. Gen. 164, 165 (Apr. 9, 1993).

16 135. According to longstanding GAO authority, an agency may not combine multiple
17 appropriations to complete a project when neither appropriation is sufficient on its own for the
18 project. *See* Department of Homeland Security—Use of Management Directorate Appropriations to
19 Pay Costs of Component Agencies, B-307382 (Comp. Gen. Sept. 5, 2006). An agency cannot “elect
20 to use (or exhaust) first one and then the other of the two appropriations for the same class of
21 expenditures.” *Id.* (citing 10 Comp. Gen. 440, 447 (1931)).

22 136. In addition, “specific appropriations preclude the use of general ones even when the
23 two appropriations come from different accounts.” *Nevada*, 400 F.3d at 16 (citing 4 Comp. Gen. 476
24 (1924)). In other words, where Congress has allocated a specific amount of funding for an activity,
25 an agency cannot use funding from a more general fund to accomplish the specific goal.

26 137. Finally, under the so-called “pick and stick rule,” when two appropriations are
27 available for the same purpose, the agency must select which to use—and once it has made
28

an election, the agency may not make use of funds from a different appropriation for the same purpose, unless the agency, at the beginning of the fiscal year, informs Congress of its intent to change for the next fiscal year. *See* Department of Homeland Security—Use of Management Directorate Appropriations to Pay Costs of Component Agencies, B-307382; *see also* 68 Comp. Gen. 337 (1989); 59 Comp. Gen. 518 (1980).

DECLARATORY AND INJUNCTIVE RELIEF

138. Plaintiffs will suffer irreparable injury if Defendants take action to build a wall in reliance on the Proclamation, or in implementing the President’s direction to use funds pursuant to 10 U.S.C. §§ 284, 2808 and 31 U.S.C § 9705, and Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(The Consolidated Appropriations Act of 2019, Pub. Law No. 116-6)

139. Neither the President nor any other federal official can take an action that exceeds the scope of their constitutional and/or statutory authority.

140. Congress has explicitly limited Defendants’ authority to construct a border wall through exercise of its constitutional appropriations power in the Consolidated Appropriations Act of 2019. Congress’s appropriations judgment is that only \$1.375 billion should be used to construct a border wall, that such a wall must be limited geographically to 55 miles within the Rio Grande Valley Sector, and that construction of a border wall should not proceed at this time with respect to numerous areas specifically described in the law.

141. Congress enacted the Consolidated Appropriations Act of 2019 against the backdrop of the President’s continued demand for \$5.7 billion in unrestricted border wall funding for construction of a contiguous barrier between the United States and Mexico. “Congress has expressed its will to withhold this power from the President as though it had said so in so many words.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 602 (1952) (Frankfurter, J., concurring).

142. The President has nonetheless instructed the Secretaries of Homeland Security and Defense to act beyond the limitations imposed by Congress by spending approximately \$8.1 billion

1 to build a wall across the border, in purported reliance on a patchwork of older, more general statutes
2 that are silent on wall construction.

3 143. The statutes the President purports to rely on, 10 U.S.C. §§ 284, 2808 and 31 U.S.C.
4 § 9705, do not authorize wall construction outside of the limited geographic, monetary, and
5 scheduling bounds set by Congress in the Consolidated Appropriations Act of 2019.

6 144. “[T]he meaning of one statute may be affected by other Acts, particularly where
7 Congress has spoken subsequently and more specifically to the topic at hand.” *F.D.A. v. Brown &*
8 *Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). “This is particularly so where the scope of the
9 earlier statute is broad but the subsequent statutes more specifically address the topic at hand.” *Id.* at
10 143. Therefore, “a specific policy embodied in a later . . . statute should control [judicial]
11 construction of the [earlier broad] statute, even though it ha[s] not been expressly amended.” *Id.*
12 (quotations and citations omitted; brackets in original).

13 145. Use of funds under 10 U.S.C. § 2808 in accordance with the President’s Proclamation
14 to construct the border wall violates the Consolidated Appropriations Act of 2019. It funds the wall
15 in excess of the amount established by Congress and it denies funds from other projects that
16 Congress chose to fund.

17 146. The President’s Proclamation does not meet the conditions required for invocation of
18 10 U.S.C. § 2808 because it does not identify an emergency requiring use of the armed forces.

19 147. The President’s Proclamation additionally does not meet the conditions required for
20 invocation of 10 U.S.C. § 2808 because construction of a border wall is not a military construction
21 project supporting the armed forces.

22 148. Use of funds under 10 U.S.C. § 284 to construct the border wall violates the
23 Consolidated Appropriations Act of 2019.

24 149. The Department of Defense’s use of funds under 10 U.S.C. § 284 to construct a
25 contiguous fence across the international boundaries of the United States is contrary to Congress’s
26 requirement that construction under that statute must be limited to drug smuggling corridors.

27 150. Congress did not delegate to the Secretary of Defense the decision to construct a
28 contiguous fence across the southern border through a bill providing for military support of law

1 enforcement activities. Interpretation of statutes “must be guided to a degree by common sense as to
2 the manner in which Congress is likely to delegate a policy decision of such economic and political
3 magnitude” *Brown & Williamson Tobacco Corp.*, 529 U.S. at 133.

4 151. In addition, use of funds under 10 U.S.C. § 284 to construct the border wall is
5 contrary to Congress’s judgment in the Consolidated Appropriations Act of 2019 because funds not
6 appropriated for wall construction cannot be reimbursed to the Department of Defense under 10
7 U.S.C. § 277.

8 152. Use of the Treasury Forfeiture Fund under 31 U.S.C. § 9705 to construct the border
9 wall violates the Consolidated Appropriations Act of 2019. Congress did not authorize use of the
10 Treasury Forfeiture Fund to pay for construction of a border wall, and any general authorization for
11 use of funds in that statute must be interpreted against Congress’s more specific passage of the
12 Consolidated Appropriations Act of 2019.

13 153. In addition, the use of funds in excess of the \$1.375 billion authorized in the
14 Consolidated Appropriations Act of 2019 for construction of a border barrier violates Division D,
15 Section 739 of the Act because it would represent an “increase [in] . . . funding for a program,
16 project, or activity as proposed in the President’s budget request for a fiscal year” before “such
17 proposed change is subsequently enacted in an appropriation Act.”

18 154. The President has proposed an increase of funding by several billion dollars in his
19 budget request for fiscal year 2020, and such proposed change has not been enacted in an
20 appropriation act.

21 155. The only exception to the Section 739 prohibition on increases in funding is for
22 increases “made pursuant to the reprogramming or transfer provisions of this or any other
23 appropriations Act.” Neither 10 U.S.C. § 2808 nor 10 U.S.C. § 284 is an appropriations act, so the
24 use of either authority to increase funding for the President’s wall construction is prohibited.

25 156. Defendants are acting ultra vires in using funds to construct the border wall beyond
26 the restrictions Congress imposed in the Consolidated Appropriations Act of 2019.

SECOND CLAIM FOR RELIEF

(Separation of Powers, Article I, Section 9, Clause 7 of the Constitution)

157. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

158. Defendants may not “draw[] [Money] from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7.

159. Congress has explicitly limited Defendants’ authority to construct a border wall through exercise of its constitutional appropriations power in the Consolidated Appropriations Act of 2019.

160. The President has nonetheless instructed the Secretaries of Defense and Homeland Security to act beyond the limitations imposed by Congress by spending approximately \$8.1 billion to build a wall across the border.

161. “It is one thing to draw an intention of Congress from general language and to say that Congress would have explicitly written what is inferred, where Congress has not addressed itself to a specific situation. It is quite impossible, however, when Congress did specifically address itself to a problem . . . to find secreted in the interstices of legislation the very grant of power which Congress consciously withheld. To find authority so explicitly withheld is not merely to disregard in a particular instance the clear will of Congress. It is to disrespect the whole legislative process and the constitutional division of authority between President and Congress.” *Youngstown*, 343 U.S. at 609 (Frankfurter, J., concurring).

162. Because the statutes the President purports to rely on, 10 U.S.C. §§ 284, 2808, and 31 U.S.C § 9705, do not authorize wall construction outside of the limited geographic, monetary, and scheduling bounds set by Congress in the Consolidated Appropriations Act of 2019, the use of those statutes to fund border wall construction usurps Congress’s legislative authority and violates the Constitution’s separation of powers.

THIRD CLAIM FOR RELIEF

(Appropriations Clause, Article I, Section 9, Clause 7 of the Constitution)

163. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

164. The Constitution only permits money to be withdrawn from the Treasury by an appropriation made by law. U.S. Const. art. I, § 9, cl. 7.

165. In the Consolidated Appropriations Act of 2019, Congress has appropriated only \$1.375 billion for border wall construction.

166. The President asserts that he has independent authority under 10 U.S.C. §§ 284 and 2808 and 31 U.S.C § 9705 to order that billions more be spent on the wall than provided in those legislative appropriations. The President has ordered the Secretaries of Defense and Homeland Security to implement his determination that additional billions be spent on construction of the border wall.

167. Congress cannot give the President the authority to make an appropriation, including by statutes that provide authority for emergency proclamations.

168. Congress cannot give the President authority to contravene restrictions on the use of Treasury funds for construction of a border wall, contained within an appropriations law that Congress has passed and the President has signed.

169. To the extent that 10 U.S.C. §§ 284 and 2808 and 31 U.S.C § 9705 authorize the President to allocate money from the Department of the Treasury by executive proclamation, rather than by law, and in contravention of restrictions contained in Congress's appropriations' laws, they violate the Constitution.

FOURTH CLAIM FOR RELIEF
(Presentment Clause, Article I, Section 7, Clause 2)

170. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

171. The Presentment Clause requires that when Congress passes an appropriations bill, the President has only two options: he must sign it, or return it with his objections so that Congress may consider them.

172. Instead of following this mandatory requirement, the President signed a bill to which he objected, and announced that he would use the National Emergencies Act to reallocate funds to his liking.

173. Because the President has purported to modify or repeal the appropriations bill passed by Congress, including by improperly relying on an emergency proclamation to lift restrictions

1 Congress imposed on border wall funding in the appropriations bill, his actions violate the
2 Presentment Clause.

3 174. To the extent that 10 U.S.C. §§ 284 and 2808 and 31 U.S.C § 9705 authorize the
4 President to modify or repeal Congress's appropriations legislation by executive proclamation, rather
5 than by law, they violate the Constitution.

6
7 **FIFTH CLAIM FOR RELIEF**
(National Environmental Policy Act, 42 U.S.C. § 4332)

8 175. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

9 176. The Secretaries of Defense, Homeland Security, and the Treasury must ensure that
10 their agencies prepare an environmental impact statement on major Federal actions "significantly
11 affecting the quality of the human environment," and prepare an environmental assessment to
12 determine whether any such significant effects exist. *Robertson v. Methow Valley Citizen Council*,
13 490 U.S. 332, 348 (1989); *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000); 42 U.S.C. §
14 4332(2)(C). A federal agency "bears the primary responsibility to ensure that it complies with
15 NEPA." *Ilio 'Ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1092 (9th Cir. 2006). "When an agency
16 decides to proceed with an action in the absence of an EA or EIS, the agency must adequately
17 explain its decision." *Alaska Ctr. for Env't v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999).

18 177. NEPA requires that the Defendants involve the public in preparing and considering
19 environmental documents that implement the Act. 40 C.F.R. § 1506.6 (1978); *id.* § 1506.6(b)(1)
20 (requiring federal agencies to "[p]rovide public notice of NEPA-related hearings, public meetings,
21 and the availability of environmental documents so as to inform those persons and agencies who
22 may be interested or affected").

23 178. Border wall construction is a final agency action, for purposes of the Defendants'
24 obligations under NEPA.

25 179. To the extent that the Department of Homeland Security can waive aspects of its own
26 compliance with NEPA, that authority is absent with respect to the Department of Defense's use of
27 funds. Section 8113 of the 2019 Department of Defense Appropriations Act prohibits the payment of
28 salary to any officer or employee of the Department of Defense who "approves or implements the

1 transfer of administrative responsibilities or budgetary resources . . . to the jurisdiction of another
 2 Federal agency not financed by this Act without the express authorization of Congress.” The
 3 Department of Defense is obligated to comply with NEPA, and no Defense officer or employee may
 4 transfer to DHS the Department of Defense’s own responsibility to comply with NEPA.

5 180. As directed by Defendant Trump’s Proclamation, Defendants Shanahan, Nielsen, and
 6 Mnuchin violate NEPA and NEPA’s implementing regulations by authorizing border wall
 7 construction without first conducting the necessary environmental analysis of the impacts of the
 8 actions in an EA or EIS, or a programmatic EIS, in light of the potentially significant impacts that
 9 the action will have, including both cumulative effects and the effects of connected actions.

10 181. As directed by Defendant Trump’s Proclamation, Defendants Shanahan, Nielsen, and
 11 Mnuchin further violate NEPA and NEPA’s implementing regulations by failing to initiate and
 12 complete NEPA at the earliest possible time in the planning process.

13 182. As directed by Defendant Trump’s Proclamation, Defendants Shanahan, Nielsen, and
 14 Mnuchin have utterly failed and/or refused to involve the public in its decision-making processes for
 15 border construction. This failure to provide for any public participation in relation to their approval
 16 of border wall construction violates NEPA and its implementing regulations.

17
 18 **SIXTH CLAIM FOR RELIEF**
(Ultra Vires)

19 183. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

20 184. Defendants are acting ultra vires in seeking to divert funding or resources pursuant to
 21 50 U.S.C. § 1631 and 10 U.S.C. § 2808 for failure to meet the criteria required under those statutes.
 22 There is no emergency requiring the use of the armed forces along the U.S.-Mexico border,
 23 construction of a border wall is not a “military construction project,” and construction of a border
 24 wall is not “necessary to support such use of the armed forces.”

25 185. Defendants are acting ultra vires in seeking to divert funding or resources pursuant to
 26 10 U.S.C. § 284 for failure to meet the criteria required under that statute. Construction of the border
 27 wall does not constitute the construction of a road or fence to block “drug smuggling corridors.” In
 28 addition, use of funds under 10 U.S.C. § 284 to construct the border wall in the face of Congress’s

1 judgment that additional money should not be spent on the wall would violate the Consolidated
 2 Appropriations Act of 2019 because such money, having not been appropriated for wall
 3 construction, cannot be reimbursed to the Department of Defense under 10 U.S.C. § 277.

4 186. Defendants are also acting ultra vires in seeking to divert funding or resources
 5 pursuant to 10 U.S.C. § 284 by violating the restrictions in appropriations law, including the
 6 requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), the Purpose Statute, 31 U.S.C.
 7 § 1301(a), and the Transfer Statute, 31 U.S.C. § 1532, as correctly interpreted by the GAO. An
 8 agency cannot “elect to use (or exhaust) first one and then the other of the two appropriations for the
 9 same class of expenditures.” 10 Comp. Gen. 440, 447 (1931). Yet according to a White House fact
 10 sheet issued on February 15, Defendants intend to use different appropriations “sequentially and as
 11 needed.” In addition, “specific appropriations preclude the use of general ones even when the two
 12 appropriations come from different accounts.” *Nevada*, 400 F.3d at 16 (citing 4 Comp. Gen. 476
 13 (1924)). But Defendants have indicated that they will disregard the specific limitation Congress
 14 imposed by allocating only \$1.375 billion in funding for border barriers, and use additional, more
 15 general appropriations to fund further border wall construction. Finally, Defendants are violating the
 16 “pick and stick rule,” because the government previously relied on different appropriations than the
 17 Drug Interdiction and Counter-Narcotics Activities account to fund border barrier construction, and
 18 the fiscal year 2019 budget justification for this appropriation includes no mention of any plans to
 19 use the appropriation for walls or fences.

20 187. Defendants are acting ultra vires in seeking to transfer funds into the Drug
 21 Interdiction and Counter-Narcotics Activities account for the purpose of building a permanent border
 22 wall. Section 8005 of the 2019 Department of Defense Appropriations Act, Pub. Law No. 115-245,
 23 prohibits the transfer of Department of Defense funds “where the item for which funds are requested
 24 has been denied by the Congress,” and 10 U.S.C § 2214(b) similarly bars transfers in support of any
 25 “item for which Congress has denied funds.” Congress has denied funding for Defendants’ planned
 26 wall construction, thus barring the Department of Defense from using transfers to fund it.

27 188. In addition, Defendants are acting ultra vires in seeking to transfer funds into the
 28 Drug Interdiction and Counter-Narcotics Activities account for the purpose of building a permanent

border wall because Section 8005 of the 2019 Department of Defense Appropriations Act and 10 U.S.C § 2214(b) prohibit the transfer of Department of Defense funds except where the transfer is to support an item that is “based on unforeseen military requirements.” The diversion of funding to build a border wall or fence is not based on unforeseen military requirements, because it is based on claims that Defendant Trump has made for years, including prior to enactment of the 2019 Department of Defense Appropriations Act. Moreover, the building of a permanent border wall is not a “military requirement.” Instead, it is a Department of Homeland Security project. The Department of Defense is the lead agency only for “detection and monitoring of aerial and maritime transit of illegal drugs into the United States,” 10 U.S.C. § 124, with no mention of military responsibilities for securing U.S. land borders.

189. Defendants are acting ultra vires in seeking to transfer funds into the Drug Interdiction and Counter-Narcotics Activities account for the purpose of building a permanent border wall because Section 8005 of the 2019 Department of Defense Appropriations Act and 10 U.S.C § 2214(b) do not authorize the transfer of Department of Defense funds for the purpose of supporting another agency’s work. While 10 U.S.C. § 284 funds may, in appropriate circumstances, be used by the Department of Defense to support another agency’s counterdrug efforts, Congress has not authorized the Department of Defense to transfer additional Defense funds into the Drug Interdiction and Counter-Narcotics Activities account for the purpose of supporting another agency, rather than for military requirements.

190. Finally, Defendants are acting ultra vires in seeking to divert funding pursuant to 31 U.S.C. § 9705 because they fail to meet the criteria required under that statute. Congress did not authorize use of the Treasury Forfeiture Fund to pay for construction of a border wall, and the general authorization for use of funds in that statute is controlled by Congress’s more specific passage of the Consolidated Appropriations Act of 2019.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- (A) Declare the President's direction that Defendants Shanahan, Nielsen, and Mnuchin reallocate funds to support construction of a border wall under 10 U.S.C. §§ 2808 and 284, Section 8005 of the 2019 Department of Defense Appropriations Act, P.L. No. 115-245, and 31 U.S.C. § 9705 to be ultra vires, in excess of presidential authority under Article II of the Constitution, an infringement on legislative authority, a violation of the Presentment Clause, and invalid;
- (B) Enjoin Defendants Shanahan, Nielsen, and Mnuchin from taking action to build a border wall using funds or resources from the Defense Department or Treasury Asset Forfeiture Fund, or on any basis that depends on the President's unlawful emergency declaration;
- (C) Declare that Defendants Shanahan, Nielsen, and Nielsen have violated NEPA and its implementing regulations with respect to the border wall project by, inter alia, failing to conduct any NEPA analysis, failing to provide any opportunity for public participation, and failing to take a "hard look" at the potential environmental impacts of the border wall project;
- (D) Enjoin Defendants Shanahan, Nielsen, and Mnuchin from implementing the border wall project until and unless Defendants comply with NEPA, the Endangered Species Act, and the implementing regulations for those laws;
- (E) Award Plaintiffs their reasonable costs of litigation, including reasonable attorneys' fees and costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 and/or other authority; and
- (F) Grant such other and further relief as the Court may deem just and proper.

Dated: March 18, 2019

Respectfully submitted,

/s/ Dror Ladin

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

**STATE OF CALIFORNIA; STATE OF
COLORADO; STATE OF
CONNECTICUT; STATE OF
DELAWARE; STATE OF HAWAII;
STATE OF ILLINOIS; STATE OF
MAINE; STATE OF MARYLAND;
COMMONWEALTH OF
MASSACHUSETTS; ATTORNEY
GENERAL DANA NESSEL ON BEHALF
OF THE PEOPLE OF MICHIGAN;
STATE OF MINNESOTA; STATE OF
NEVADA; STATE OF NEW JERSEY;
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF OREGON;
STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN;**

Plaintiffs,

v.

Case No. 4:19-cv-00872-HSG

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

DONALD J. TRUMP, in his official capacity as President of the United States of America; **UNITED STATES OF AMERICA; U.S. DEPARTMENT OF DEFENSE; PATRICK M. SHANAHAN**, in his official capacity as Acting Secretary of Defense; **MARK T. ESPER**, in his official capacity as Secretary of the Army; **RICHARD V. SPENCER**, in his official capacity as Secretary of the Navy; **HEATHER WILSON**, in her official capacity as Secretary of the Air Force; **U.S. DEPARTMENT OF THE TREASURY; STEVEN T. MNUCHIN**, in his official capacity as Secretary of the Treasury; **U.S. DEPARTMENT OF THE INTERIOR; DAVID BERNHARDT**, in his official capacity as Acting Secretary of the Interior; **U.S. DEPARTMENT OF HOMELAND SECURITY; KIRSTJEN M. NIELSEN**, in her official capacity as Secretary of Homeland Security;

Defendants.

INTRODUCTION

1. The States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Wisconsin, the Commonwealths of Massachusetts and Virginia, and Attorney General Dana Nessel on behalf of the People of Michigan (collectively, “Plaintiff States”), bring this action to protect their residents, natural resources, and economic interests from President Donald J. Trump’s flagrant disregard of fundamental separation of powers principles engrained in the United States Constitution. Contrary to the will of Congress, the President has used the pretext of a manufactured “crisis” of unlawful immigration to declare a national emergency and redirect federal dollars appropriated for drug interdiction, military construction, military personnel, and law enforcement initiatives toward building a wall on the United States-Mexico border. This includes the diversion of funding that each of the Plaintiff States receive. Defendants must be enjoined from carrying out President Trump’s unconstitutional and unlawful scheme.

2. President Trump has veered the country toward a constitutional crisis of his own making. For years, President Trump has repeatedly stated his intention to build a wall across the United States-Mexico border. Congress has repeatedly rebuffed the President’s insistence to fund a border wall, recently resulting in a record 35-day partial government shutdown over the border wall dispute.¹ After the government reopened, Congress approved, and the President signed into law, a \$1.375 billion appropriation for fencing along a specific stretch of the southern border, but Congress made clear that funding could not be used to build President Trump’s proposed border wall.

3. After an agreement was reached on the spending bill to prevent another government shutdown, on February 15, 2019, President Trump declared an intention to redirect federal funds toward the construction of a border wall. On the same day, the Administration

¹ References to “border wall” in this First Amended Complaint (“Complaint”) refer to any barrier or border-related infrastructure and/or project relating to the construction of a barrier or border-related infrastructure along the southern border that President Trump has called for and has not been approved by Congress.

announced an executive action (“Executive Action”) to make up to \$6.7 billion in additional funding available for construction of the border wall, including through the declaration of a national emergency under the National Emergencies Act (“Emergency Declaration,” combined with the “Executive Action,” the “Executive Actions”).

4. Use of those additional federal funds for the construction of a border wall is contrary to Congress’s intent in violation of the U.S. Constitution, including the Presentment Clause and Appropriations Clause. This use would divert funding that has been appropriated to support Plaintiff States’ law enforcement and counter-drug programming efforts, as well as military construction and other Department of Defense projects in Plaintiff States, for the non-appropriated purpose of constructing a border wall. Even if the Administration could constitutionally redirect funds toward the construction of the border wall, the Administration does not satisfy the criteria in the statutes that it invokes to enable it to do so. In addition, Defendants’ actions to divert funding from state and local law enforcement, military construction, and other appropriated Department of Defense projects toward a border wall for which funding has not been appropriated by Congress is arbitrary and capricious and exceeds Defendants’ authority in violation of the Administrative Procedure Act (“APA”).

5. If the Administration were to use the funding sources identified in the Executive Actions for the purpose of building a border wall, Plaintiff States collectively stand to lose millions of dollars in federal funding that their national guard units receive for domestic drug interdiction and counter-drug activities, and millions of dollars received on an annual basis for law enforcement programs from the Treasury Forfeiture Fund, harming the public safety of Plaintiff States. The redirection of funding from authorized military construction and other Department of Defense projects located in Plaintiff States will cause damage to their economies. Plaintiff States will face harm to their proprietary interests by the diversion of funding from military construction projects or military pay for the States’ national guard units. And the diversion of any funding toward construction of a wall along California’s and New Mexico’s southern borders will cause irreparable environmental damage to those States’ natural resources.

6. There is also no objective basis for President Trump’s Emergency Declaration. By the President’s own admission, an emergency declaration is not necessary. The federal government’s own data prove there is no national emergency at the southern border that warrants construction of a wall. U.S. Customs and Border Protection (“CBP”) data show that unlawful entries are well below historic highs set nearly two decades ago. Border Patrol staffing and budgets have markedly increased in recent years, and undetected unlawful entries have plummeted; the Trump Administration itself has claimed that it is more difficult to illegally cross the southern border today than ever before. The U.S. State Department and intelligence agencies recognize that there is a lack of credible evidence that terrorists are using the southern border to enter the United States. Federal data confirm that immigrants are less likely to commit violent crimes than native-born Americans. CBP data demonstrate that dangerous drugs are much more likely to be smuggled through, not between, official ports of entry—rendering a border wall ineffectual at preventing their entry into this country.

7. Notwithstanding the illegality of and wholesale lack of necessity for the Emergency Declaration, the Trump Administration has expressed its intent to move quickly with the construction of the border wall. Many contracts are close to being signed. A senior advisor to the White House reportedly said the Administration will proceed with construction at a speed that will “shock” people. The thwarting of congressional intent to fund a vanity project that not only will fail to safeguard national security, but is positioned to cause significant harm to the public safety, public fisc, environment, and well-being of Plaintiff States and their residents, cries out for judicial intervention.

8. For these reasons, and those discussed below, the Court should declare that the Executive Actions directing the diversion of federal funds and other resources for border wall construction are unlawful and unconstitutional, and enjoin Defendants from taking any action in furtherance of President Trump’s Executive Actions.

JURISDICTION AND VENUE

9. This Court has jurisdiction because this action arises under the United States Constitution and the laws of the United States. Jurisdiction is proper under the judicial review

provisions of the APA, 5 U.S.C. sections 701-06. This Court also has jurisdiction under 28 U.S.C. sections 1331 and 2201.

10. An actual, present, and justiciable controversy exists between the parties within the meaning of 28 U.S.C. section 2201(a), and this Court has authority to grant declaratory and injunctive relief under 28 U.S.C. sections 2201 and 2202.

11. Venue is proper in this judicial district under 28 U.S.C. section 1391(e) because the California Attorney General and the State of California have offices at 455 Golden Gate Avenue, San Francisco, California and at 1515 Clay Street, Oakland, California, and therefore reside in this district, and no real property is involved in this action. This is a civil action in which Defendants are agencies of the United States or officers of such an agency.

12. Assignment to the San Francisco Division of this District is proper pursuant to Civil Local Rule 3-2(c)-(d) and 3-5(b) because Plaintiff State of California and Defendant United States both maintain offices in the District in San Francisco.

PARTIES

PLAINTIFF STATE OF CALIFORNIA

13. The State of California, represented by and through its Attorney General, is a sovereign state of the United States of America.

14. Attorney General Xavier Becerra is the chief law officer of the State of California and has the authority to file civil actions to protect California's rights and interests, the environment, and the natural resources of this State. Cal. Const., art. V, § 13; Cal. Gov't Code §§ 12511, 12600-12. This challenge is brought pursuant to the Attorney General's independent constitutional, common law, and statutory authority.

15. As head of the California Department of Justice, Cal. Gov't Code section 12510, Attorney General Becerra also has standing to bring this action because funding for law enforcement throughout the State is at stake. *See Pierce v. Sup. Ct.*, 1 Cal. 2d 759, 761-62 (1934) (Attorney General "has the power to file any civil action or proceeding directly involving the rights and interests of the state . . . and the protection of public rights and interest.").

1 16. Governor Gavin Newsom is the chief executive officer of the State. The Governor
2 is responsible for overseeing the operations of the State and ensuring that its laws are faithfully
3 executed. As the leader of the executive branch, the Governor is the chief of California's
4 executive branch agencies, including those whose injuries are discussed in this Complaint. Cal.
5 Const., art. V, § 1. Governor Newsom is the Commander-in-Chief of the California National
6 Guard. Cal. Const., art. V, § 7; Cal. Mil. & Vet. Code § 550 et seq.

7 17. California, as one of several affected states located within President Trump's
8 declared "national emergency" southern border area, has an interest in ensuring public safety
9 within its borders and protecting its economic interests and the rights of its residents. California
10 shares over 140 miles of its southern border with Mexico.² The orderly flow of goods and people
11 across the border is a critical element in California's success as the fifth-largest economy in the
12 world.

13 18. California is aggrieved by the actions of Defendants and has standing to bring this
14 action because of the injury due to the loss of federal drug interdiction, counter-narcotic, and law-
15 enforcement funding to the State caused by Defendants' diversion of funding and resources.

16 19. The threat of losing funding to conduct drug interdiction and counter-narcotic
17 activity prevents California from moving forward with critical criminal narcotics programs and
18 threatens the public safety of all Californians. The diversion of funding from the Treasury
19 Forfeiture Fund will harm public safety by impacting critically necessary funding for law
20 enforcement officers and their agencies.

21 20. California is aggrieved by the actions of Defendants and has standing to bring this
22 action because of the injury to the State and its residents caused by Defendants' reduction of
23 federal defense spending in California due to diversion of funding to the border wall.

24 21. California has an interest in protecting the economic health and well-being of its
25 residents. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982).

26
27
28 ² Janice Cheryl Beaver, *U.S. International Borders: Brief Facts*, Cong. Res. Serv. (Nov. 9, 2006), <https://tinyurl.com/y49jq9vv>.

22. California has an interest in preventing the diminution of specific tax revenues caused by reduced construction on California military installations and the corresponding reduction in economic activity. *Wyoming v. Oklahoma*, 502 U.S. 437, 448-50 (1992).

23. California has an interest in its exercise of sovereign power over individuals and entities within the State, including enforcement of its legal code. *Snapp*, 458 U.S. at 601; *Hawaii v. Trump*, 859 F.3d 741, 765 (9th Cir. 2017), *rev'd on other grounds*, 138 S. Ct. 2392 (2018).

24. The diversion of military construction and other Department of Defense funding for projects supporting or used by California's National Guard units harms the State. Any diversion of military funding intended for the California National Guard harms the State as well.

25. The diversion of military construction funding from projects in California will harm California's economy.

26. The State would suffer economic harm from diversion of funding from military construction projects on California bases. More defense contractor funding is spent in California than in any other state, and such funding generates significant state and local tax revenues, employment, and economic activity.

27. California has an interest in the natural resources of this State—such as wildlife, fish, and water—that are held in trust by the State for its residents and are protected by state and federal laws. *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1178 (9th Cir. 2011).

28. In the areas of California's borderlands where construction of a border wall will take place, dozens of sensitive plant and animal species that are listed as "endangered," "threatened," or "rare" will be seriously at risk.

29. Defendants' diversion of funding and resources to construct a wall along the southern border will create environmental harm and deprive California of its procedural right to protect its public trust resources.

30. Defendants' unconstitutional actions undermine California's sovereignty and harm the State through their effects on California residents, businesses, and the environment.

PLAINTIFF STATE OF COLORADO

31. The State of Colorado is a sovereign state of the United States of America.

32. The State of Colorado brings this action by and through its Attorney General, Philip J. Weiser. The Attorney General has authority to represent the State, its departments, and its agencies, and “shall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party.” Colo. Rev. Stat. § 24-31-101.

33. The State of Colorado will suffer injury because of the actions of Defendants and has standing to bring this action for at least three reasons.

34. First, Defendants intend to fund the wall using money from the Pentagon’s drug interdiction program, which will likely impact funding to Colorado and affect Colorado’s ability to address drugs illegal under state law in Colorado.

35. Second, Colorado is home to many major military bases, including the Air Force Academy, Buckley Air Force Base, Cheyenne Mountain Air Force Base, Peterson Air Force Base, Schriever Air Force Base, and Fort Carson Army Base. These military bases play a critical role in our nation’s defense and to the economy of the State of Colorado. The use of funding for a southern border wall rather than for necessary maintenance and repairs to these military bases harms Colorado and its economy.

36. Third, Colorado has received money from the Treasury Forfeiture Fund in the past, and expects to receive comparable monies in the future absent diversion to fund the construction of a wall. According to audits of the Treasury Forfeiture Fund, in 2018, Colorado received \$877,000 in equitable sharing from the Treasury Forfeiture Fund; in 2017, Colorado received \$316,000; in 2016, Colorado received \$303,000; in 2015, Colorado received \$1,746,000; and in 2014, Colorado received \$228,000.

PLAINTIFF STATE OF CONNECTICUT

37. The State of Connecticut, represented by and through its Attorney General, is a sovereign state of the United States of America.

38. Attorney General William Tong is the chief legal officer of the State of Connecticut and has the authority to file civil actions to protect Connecticut’s rights and interests. Conn. Const., art. IV, § 4; Conn. Gen. Stat. §§ 3-124 et seq. This challenge is brought pursuant to

1 the Attorney General's authority and responsibility to protect Connecticut's sovereign, quasi-
2 sovereign, and proprietary interests.

3 39. Governor Ned Lamont is the chief executive officer of the State. The Governor is
4 responsible for overseeing the operations of the State and ensuring that its laws are faithfully
5 executed. As the leader of the executive branch, the Governor is the chief of Connecticut's
6 executive branch agencies, including those whose injuries are discussed in this Complaint. Conn.
7 Const. art IV, § 5.

8 40. On information and belief, Connecticut is aggrieved by the actions of Defendants
9 and has standing to bring this action because of the injury caused by Defendants' unlawful and
10 unconstitutional diversion of funding from military construction projects in Connecticut to
11 construction of a border wall in Texas, Arizona, New Mexico, and California. Defendants'
12 actions will hurt Connecticut's economy and, by damaging the State's critical security
13 infrastructure, threaten the safety of Connecticut's National Guard and of all Connecticut
14 residents.

15 41. Further, on information and belief, Defendants' diversion of funding aimed at drug
16 interdiction and counter-narcotic activity threatens to hurt the State's law enforcement agencies
17 and compromise the public safety of all Connecticut residents. Connecticut has received and—
18 absent the unlawful and unconstitutional actions of Defendants—intends to continue to receive
19 equitable sharing funding through the Treasury Forfeiture Fund. Defendants' diversion of that
20 funding threatens the budgets of Connecticut law enforcement agencies and the public safety of
21 all Connecticut residents.

22 PLAINTIFF STATE OF DELAWARE

23 42. The State of Delaware, represented by and through its Attorney General, is a
24 sovereign state of the United States of America.

25 43. Attorney General Kathleen Jennings is the chief legal officer of the State of
26 Delaware and has the authority to file civil actions to protect Delaware's rights and the rights of
27 Delaware citizens. 29 Del. C. § 2504. The Attorney General's powers and duties include
28 litigating matters in our nation's federal courts on matters of public interest. The Attorney

1 General has the authority to file suit to challenge action by the federal government that threatens
2 the public interest and welfare of Delaware residents as a matter of constitutional, statutory, and
3 common law authority.

4 44. Governor John Carney is the chief executive officer of the State of Delaware. The
5 Governor is responsible for overseeing the operations of the State of Delaware and is required to
6 take care that Delaware's laws be faithfully executed. Del. Const., Art. III, §§ 1, 8.

7 45. Delaware is aggrieved by the actions of Defendants and has standing to bring this
8 action because of the injury due to loss of federal funding to the State caused by Defendants'
9 unconstitutional and unlawful diversion of funding discussed herein.

10 46. Defendants have and intend to continue to misappropriate equitable sharing funds
11 gained through forfeiture of assets in the context of Delaware's enforcement of state and federal
12 law. As such, Delaware will be deprived of such funds that are owed to it to carry on law
13 enforcement activities.

14 47. Delaware has received money from the Treasury Forfeiture Fund in the past, and
15 expects to receive comparable monies in the future absent diversion to fund the construction of a
16 wall. According to audits of the Treasury Forfeiture Fund, in 2018, Delaware received more than
17 \$1.3 million in equitable sharing from the Treasury Forfeiture Fund; in 2017, Delaware received
18 \$349,045; in 2016, Delaware received more than \$1.2 million; in 2015, Delaware received
19 \$331,134; and in 2014, Delaware received more than \$2.5 million. These resources are used to
20 supplement and enhance law enforcement agencies' state-appropriated funding.

21 48. With a federally funded budget of over \$1 million, any diversion of annual federal
22 funding intended for the Delaware National Guard's drug interdiction programs will harm
23 Delaware given the success of such programs resulting in the annual confiscation of illegal drugs
24 and by and through the support it provides to state and local law enforcement agencies for this
25 purpose.

26 49. Defendants' unlawful and unconstitutional diversion of funds away from projects
27 authorized and appropriated for disbursement and use within the State of Delaware will cause it
28 injury in fact, which is traceable to Defendants' conduct as set forth herein.

PLAINTIFF STATE OF HAWAII

50. The State of Hawaii, represented by and through its Attorney General, is a sovereign state of the United States of America.

51. Attorney General Clare E. Connors is the chief legal officer of the State of Hawaii and has authority to appear, personally or by deputy, for the State of Hawaii in all courts, criminal or civil, in which the State may be a party or be interested. Haw. Rev. Stat. § 28-1. The Department of the Attorney General has the authority to represent the State in all civil actions in which the State is a party. *Id.* § 26-7. This challenge is brought pursuant to the Attorney General's constitutional, statutory, and common law authority. *See* Haw. Const. art. V, § 6; Haw. Rev. Stat. Chapter 28; Haw. Rev. Stat. § 26-7.

52. As the chief law enforcement officer of the State of Hawaii, the Attorney General has ultimate responsibility for enforcing the penal laws of the State, and thus has a strong interest in protecting public safety. Haw. Rev. Stat. §§ 28-2 & 28-2.5; *Amemiya v. Sapienza*, 629 P.2d 1126, 1129 (Haw. 1981).

53. Hawaii has an interest in its exercise of sovereign power over individuals and entities within the State, including the enforcement of its legal code.

54. Hawaii is aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the loss of federal drug interdiction, counter-narcotic, and law enforcement funding to the State caused by Defendants' diversion of funds.

55. Hawaii participates in federally-funded drug interdiction and counter-narcotic programs, such as the National Guard Counterdrug Program. Diversion of this funding will reduce the funds available to Hawaii for accomplishing critical drug interdiction and counter-narcotic efforts, and will therefore threaten public safety in Hawaii.

56. State and local law enforcement agencies in Hawaii have received funds from the Treasury Forfeiture Fund in the past and anticipate doing so again in the future. Unless diverted, these funds would be available to Hawaii's state and local law enforcement agencies. Diversion of funding therefore will harm public safety by reducing the availability of critical funds for state and local law enforcement officers and their agencies.

57. Hawaii is aggrieved by the actions of Defendants, including Defendants' diversion of funds, and has standing to bring this action because of the injury to the State and its residents caused by the reduction of federal defense spending in Hawaii.

58. Hawaii has an interest in protecting its State economy and the economic health and well-being of its residents.

59. Diversion of funding from military construction projects in Hawaii will harm the State and its residents by injuring Hawaii's economy. Defense spending, which includes military construction projects, is the second-largest segment of Hawaii's economy and, as of 2017, represents 7.2 percent of the State's Gross Domestic Product—the second highest percentage in the nation. Hawaii has several major military installations, including Joint Base Pearl Harbor-Hickam, Schofield Barracks, Fort Shafter, Marine Corps Base Hawaii (Kaneohe Bay), Camp Smith, Tripler Army Medical Center, Wheeler Army Airfield, and the Pacific Missile Range Facility at Barking Sands. On information and belief, Hawaii is subject to losing in excess of \$311 million in military construction funds.

60. Defense spending in Hawaii contributes to economic activity, employment, and increased tax revenues, all of which would be harmed if that funding is diverted, thereby injuring the State of Hawaii. As of 2017, defense spending injects \$6.4 billion into Hawaii's economy, is responsible for 58,625 jobs, and accounts for \$4.6 billion in total payroll (and the associated income tax revenue).

PLAINTIFF STATE OF ILLINOIS

61. The State of Illinois is a sovereign state of the United States of America.

62. This action is being brought on behalf of the State by Attorney General Kwame Raoul, the State's chief legal officer. *See* Ill. Const., Art. 5, § 15; 15 Ill. Comp. Stat. 205/4.

63. J. B. Pritzker is the governor of Illinois, and under Illinois law has the "supreme executive power" and the duty to ensure "the faithful execution of the laws." Ill. Const., Art. V, § 8.

64. On information and belief, Illinois is aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the loss of federal funding to the

1 State from the Treasury Forfeiture Fund. The loss of funding for state and local law enforcement
2 operational needs threatens the public safety of all Illinois residents.

3 65. On information and belief, Illinois is aggrieved by the actions of Defendants and
4 has standing to bring this action because of the injury due to the loss of federal funding to the
5 State caused by Defendants' diversion of funding. The loss of funding to conduct drug
6 interdiction and counter-narcotics activity threatens the public safety of all Illinois residents.

7 66. On information and belief, Illinois is also aggrieved by the actions of Defendants
8 and has standing to bring this action because of the injury due to the loss of federal funding
9 resulting from the diversion of military construction projects from Illinois to the construction of a
10 border wall on the nation's southern border.

11 67. In filing this action, the Attorney General seeks to protect the residents and
12 agencies of Illinois from harm caused by Defendants' illegal conduct, prevent further harm, and
13 seek redress for the injuries caused to Illinois by Defendants' actions. Those injuries include
14 harm to Illinois's sovereign, quasi-sovereign, and proprietary interests.

15 **PLAINTIFF STATE OF MAINE**

16 68. The State of Maine, represented by and through its Attorney General, is a
17 sovereign state of United States of America.

18 69. The Attorney General of Maine, Aaron M. Frey, is a constitutional officer with the
19 authority to represent the State of Maine in all matters, and serves as its chief legal officer with
20 general charge, supervision, and direction of the State's legal business. Me. Const. art. IX, Sec.
21 11; 5 M.R.S., §§ 191 et seq. The Attorney General's powers and duties include acting on behalf
22 of the State and the people of Maine in the federal courts on matters of public interest. The
23 Attorney General has the authority to file suit to challenge action by the federal government that
24 threatens the public interest and welfare of Maine residents as a matter of constitutional, statutory,
25 and common law authority.

26 70. The Governor of Maine, Janet T. Mills, is the chief executive officer of the State.
27 The Governor is responsible for overseeing the operations of the State and ensuring that its laws
28 are faithfully executed. As the leader of the executive branch, the Governor is the chief of

1 Maine's executive branch agencies, including those whose injuries are discussed in this
2 Complaint. Me. Const. art V, § 1. Governor Mills is the Commander-in-Chief of the Maine
3 National Guard. 37-B M.R.S. §§ 103 et seq.

4 71. Maine is aggrieved by the actions of Defendants and has standing to bring this
5 action because of the injury due to the loss of federal funding to the State caused by Defendants'
6 diversion of funding.

7 72. Maine is aggrieved by the actions of Defendants and has standing to bring this
8 action because of the injury to the State and its residents caused by Defendants' reduction of
9 federal defense spending in Maine due to diversion of funding to the border wall.

10 73. Maine has an interest in protecting the health, safety, and well-being of its
11 residents, including protecting its residents from harms to their economic health.

12 74. Maine has an interest in the State's economic vitality and workforce.

13 75. Maine has an interest in preventing diminution of its tax revenues.

14 76. The diversion of military construction funding from authorized projects in Maine
15 will harm Maine's economy.

16 77. The State would suffer economic harm from diversion of funding from authorized
17 military construction projects in Maine.

18 78. Maine participates in the equitable sharing program, pursuant to which eligible
19 Maine law enforcement agencies are entitled to reimbursement from the Treasury Forfeiture Fund
20 for law enforcement agency expenditures associated with seizures and forfeitures, 31 U.S.C.
21 section 9705(a)(1)(B)(iii).

22 79. During the federal fiscal years 2009 through 2018, eligible law enforcement
23 agencies within the State of Maine were entitled to receive or received approximately \$4.9
24 million dollars in equitable sharing funds from the Treasury Forfeiture Fund account, or an
25 average of approximately \$490,000 annually.

26 80. In addition to the state-wide impact that loss of Treasury Forfeiture Funds would
27 have on all law enforcement agencies within Maine, the State of Maine, Department of Inland
28

1 Fisheries & Wildlife, Maine Warden Service (“Maine Warden Service”) will be impacted by the
2 non-payment of an approved pending claim for Treasury Forfeiture Fund equitable sharing.

3 81. By letter dated September 7, 2018, the Maine Warden Service was notified by the
4 Department of Treasury, Internal Revenue Service that the Maine Warden Service was entitled to
5 equitable sharing at the rate of 3 percent of \$238,956.42 (or \$7,168), the net amount available for
6 equitable sharing related to the liquidation of two parcels of land seized during a joint law
7 enforcement operation conducted in 2014.

8 82. To date, the Maine Warden Service has not received payment of its equitable
9 share.

10 83. The diversion of Treasury Forfeiture Funds will harm Maine by depriving Maine
11 of the proceeds of equitable sharing to which it is entitled and by impacting public safety
12 generally by reducing critically necessary funding for law enforcement officers and their agencies
13 within Maine.

14 **PLAINTIFF STATE OF MARYLAND**

15 84. The State of Maryland is a sovereign state of the United States of America.
16 Maryland is represented by and through its chief legal officer, Attorney General Brian E. Frosh.
17 Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the
18 Attorney General has the authority to file suit to challenge action by the federal government that
19 threatens the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); 2017
20 Md. Laws, J. Res. 1.

21 85. Maryland is aggrieved by the actions of Defendants and has standing to bring this
22 action due to the loss of federal funding to the State caused by Defendants’ diversion of federal
23 funds. The loss of funding to conduct drug interdiction and counter-narcotic activity would
24 threaten the public safety of all Marylanders.

25 86. Maryland is also aggrieved by the actions of Defendants and has standing to bring
26 this action because of the injury due to the diversion of funding for military construction projects.
27 On information and belief, Maryland stands to lose up to \$513 million in military construction
28 funding for currently planned projects at Fort Meade and Joint Base Andrews.

87. Additionally, Maryland has received money from the Treasury Forfeiture Fund in the past, and expects to receive comparable monies in the future absent diversion to fund the construction of a border wall. During the fiscal year that ended September 30, 2018, Maryland state and local law enforcement agencies received \$1.79 million in equitable sharing payments from the Treasury Forfeiture Fund for their participation in successful seizure and forfeiture activities; the previous year, that amount was \$1.32 million. The Maryland State Police has regularly received equitable sharing payments from the Treasury Forfeiture Fund for its contributions to operations that led to forfeitures. In 2018, the Maryland State Police received over \$429,000 in equitable sharing payments from the Treasury Forfeiture Fund. The Maryland State Police currently has over 50 requests pending with the Treasury Forfeiture Fund for equitable shares relating to forfeited assets worth over \$8.3 million. The diversion of funds from the Treasury Forfeiture Fund could deprive the Maryland State Police of its fair share of the forfeited assets, impacting its budget and hindering law enforcement activities, negatively affecting the public safety and welfare of Maryland citizens.

PLAINTIFF COMMONWEALTH OF MASSACHUSETTS

88. The Commonwealth of Massachusetts, represented by and through its Attorney General, is a sovereign state of the United States of America.

89. Attorney General Maura Healey is the chief law enforcement officer in Massachusetts and has both statutory and common-law authority to bring lawsuits to protect the interests of the Commonwealth of Massachusetts and the public interest of the people. *Feeney v. Commonwealth*, 366 N.E.2d 1262, 1265-66 (Mass. 1977); Mass. Gen. Laws Ch. 12, § 3, 10.

90. Massachusetts is aggrieved by the actions of Defendants and has standing to bring this action because of injury due to the probable loss of federal drug interdiction and counter-narcotic funding, asset forfeiture funds, and military construction funds to and in Massachusetts, caused by Defendants' unlawful diversion of funding to pay for border wall construction.

91. Losing drug interdiction and counterdrug activities funding would hamper Massachusetts' efforts to combat the opioid crisis, which continues to cause grave harm to Massachusetts residents and the public health.

1 92. The Department of Defense allocated \$2.3 million to Massachusetts for drug
2 interdiction and counterdrug activities in fiscal year (or “FY”) 2019. Of that allocation,
3 Massachusetts has not yet received more than \$965,000.

4 93. The Massachusetts National Guard uses these funds to combat drug trafficking
5 organizations operating in our communities, and to support federal, state, and local law
6 enforcement agencies in their efforts to decrease illicit drug supply and demand while reducing
7 opioid overdose deaths.

8 94. Specifically, the Massachusetts National Guard uses Department of Defense drug
9 interdiction and counter-narcotic funds to provide investigative case analysis support, linguist
10 services, transportation support, inter-agency training, and reconnaissance.

11 95. These funds are particularly important in Massachusetts, where the number of fatal
12 opioid-related overdoses has increased by over 420 percent from 2000 to 2018. Heroin and
13 fentanyl trafficking and consumption remain a major threat, due to widespread availability, high
14 demand, low costs, and high incidence of addiction. Local agencies often have neither the
15 resources nor the expertise to properly conduct extensive drug investigations, and illegal narcotics
16 are rarely manufactured, distributed and consumed all within the same municipality. The
17 Massachusetts National Guard drug interdiction and counter-narcotic programs provide critically
18 important support for these agencies in pursuing inter-agency and inter-jurisdictional work.

19 96. Massachusetts will also be harmed due to the loss of federal asset forfeiture funds
20 to state and local law enforcement agencies in Massachusetts.

21 97. Massachusetts receives Treasury Forfeiture Funds through equitable sharing when
22 participating in asset forfeiture activities with certain federal law enforcement agencies.

23 98. In fiscal year 2018, state and local law enforcement agencies in Massachusetts
24 received approximately \$307,000 in currency and \$34,000 in property through the Treasury
25 Forfeiture Fund’s equitable sharing program. These resources are used to supplement and
26 enhance law enforcement agencies’ state appropriated funding.

27 99. The Massachusetts State Police and Massachusetts Port Authority received a
28 combined \$481,822 in fiscal year 2017 and \$35,286 in fiscal year 2018 from the Treasury

1 Forfeiture Fund's equitable sharing program.

2 100. In fiscal year 2019, the Massachusetts State Police has already received \$13,980
3 through the Treasury Forfeiture Fund's equitable sharing program, and the Massachusetts Office
4 of the Attorney General has received \$17,313.

5 101. On information and belief, Massachusetts law enforcement agencies have
6 submitted requests for equitable sharing funds that remain pending with the Treasury Department.

7 102. Massachusetts will be additionally harmed due to the loss of funding for military
8 construction projects in Massachusetts.

9 103. Funds that could be diverted include, but may not be limited to, \$90 million
10 appropriated by Congress for a new compound semiconductor facility and microelectronics
11 integration facility at Hanscom Air Force Base's Lincoln Laboratory, which is affiliated with the
12 Massachusetts Institute of Technology, and \$42.6 million appropriated by Congress for
13 construction of a new hangar at Westover Air Force Base.

14 104. In addition, the Massachusetts National Guard has been allocated \$9.7 million in
15 funding for a multi-purpose machine gun range for fiscal year 2020. \$8.9 million of these funds
16 have not yet been obligated.

17 105. Not only are these military construction projects important to national security,
18 military readiness, and well-being of our service members, they are important generators of
19 economic activity for Massachusetts.

20 **PLAINTIFF ATTORNEY GENERAL DANA NESSEL ON BEHALF**

21 **OF THE PEOPLE OF MICHIGAN**

22 106. The People of Michigan are the sovereign of one of the states of the United States
23 and are represented by and through the Michigan Attorney General Dana Nessel.

24 107. Attorney General Dana Nessel is the chief legal officer of the State of Michigan
25 and her powers and duties include acting in federal court in matters of concern to the People of
26 Michigan, to protect Michigan residents. *Fieger v. Cox*, 734 N.W.2d 602, 604 (Mich. Ct. App.
27 2007); Mich. Comp. Laws §§ 14.28, 14.101. This action is brought to protect the interests of the
28 People of Michigan.

108. The Michigan National Guard has over 10,000 soldiers and airmen, employs over 700 state employees on a full-time basis through the Department of Military and Veterans Affairs, and operates over 40 facilities in the state. The Michigan Department of Military and Veterans Affairs receives a majority of its funding from the federal government. On information and belief, it performs missions training and prepares citizen soldiers and airmen to respond to, among other things, state emergencies, military support, and protection of local communities. Loss of funding negatively impacts this vital service for the People of Michigan.

109. The People of Michigan are aggrieved by the actions of Defendants and have standing to bring this action because of the injury due to the loss of federal funding to the People of Michigan caused by Defendants' diversion of funding. The loss of funding to conduct drug interdiction and counter-narcotic activity threatens the public safety of all Michigan residents.

110. Michigan receives Treasury Forfeiture Funds through equitable sharing when participating in asset forfeiture activities with certain federal law enforcement agencies.

111. Michigan has received money from the Treasury Forfeiture Fund in the past, and expects to receive comparable monies in the future absent diversion to fund the construction of a wall. According to audits of the Treasury Forfeiture Fund, in 2018, Michigan received \$375,000 in equitable sharing from the Treasury Forfeiture Fund; in 2017, Michigan received \$333,000; in 2016, Michigan received more than \$1.3 million; in 2015, Michigan received more than \$1.3 million; and in 2014, Michigan received more than \$2 million. These resources are used to supplement and enhance law enforcement agencies' state appropriated funding.

112. The People of Michigan will also be harmed due to the loss of federal asset forfeiture funds to state and local law enforcement agencies in Michigan.

PLAINTIFF STATE OF MINNESOTA

113. The State of Minnesota, represented by and through its Attorney General, is a sovereign state of the United States of America.

114. Attorney General Keith Ellison is the chief legal officer of the State of Minnesota and his powers and duties include acting in federal court in matters of State concern and to protect Minnesota residents. Minn. Stat. § 8.01. This action is brought to protect Minnesota's sovereign,

1 quasi-sovereign, and proprietary interests.

2 115. Governor Tim Walz is the chief executive officer of the State of Minnesota,
3 custodian of state property and federal funds made available to the State, and the Commander-in-
4 Chief of the state military. Minn. Const., art. V, § 3; Minn. Stat. §§ 4.01 & .07. As the chief
5 executive officer and Commander-in-Chief of the State of Minnesota, Governor Walz leads
6 executive branch agencies injured by the actions described in this Complaint.

7 116. The Minnesota National Guard has over 13,000 soldiers and airmen, employs
8 more than 2,000 people on a full-time basis, and operates over 60 facilities in the state. The
9 Minnesota National Guard receives more than 96 percent of its funding from the federal
10 government. It performs missions training and prepares citizen soldiers and airmen to respond to,
11 among other things, the Governor of Minnesota for state emergency response, military support,
12 and protection of local communities. Loss of funding negatively impacts this vital service for the
13 State of Minnesota.

14 117. For example, diverting federal funding for the Minnesota National Guard's
15 counterdrug programs and domestic drug interdiction activities to construct a wall along the
16 United States-Mexico border would harm Minnesota's law enforcement agencies and
17 compromise the health and safety of Minnesota residents.

18 118. In addition, diverting federal funding from necessary military construction projects
19 in Minnesota, including National Guard projects, to construct a wall along the United States-
20 Mexico border would also harm Minnesota, its economy, and its residents.

21 119. Law enforcement agencies in Minnesota, and the Minnesotans they protect and
22 serve, are also harmed by the diversion of funding from the Treasury Forfeiture Fund to construct
23 a wall along the United States-Mexico border. Law enforcement agencies in Minnesota
24 participate in the Treasury Forfeiture Fund's strategic mission "to use high-impact asset forfeiture
25 in investigative cases to disrupt and dismantle criminal enterprises."³ For example, in Fiscal Year

26
27 ³ See Off. of Inspector Gen., Dep't of the Treasury, *Audit of the Department of the*
28 *Treasury Forfeiture Fund's Financial Statements for Fiscal Years 2018 and 2017* at 2 (Dec. 13,
2018), <https://tinyurl.com/y6ovg5s3>.

2018, a Minnesota-based investigation and prosecution of a nationwide wire fraud scheme primarily targeting elderly Hmong people resulted in the forfeiture of \$1,612,451.84.⁴

120. Law enforcement agencies in Minnesota have pending requests for money from the Treasury Forfeiture Fund and will likely have additional requests in the future. The delay, reduction, or denial of payment resulting from the diversion of funding from the Treasury Forfeiture Fund to construct a wall along the United States-Mexico border harms these law enforcement agencies and compromises the health and safety of Minnesota residents.

PLAINTIFF STATE OF NEVADA

121. The State of Nevada, represented by and through its Attorney General, is a sovereign state of the United States of America.

122. Attorney General Aaron D. Ford is the chief legal officer of the State of Nevada and has the authority to commence actions in federal court to protect the interests of the State. Nev. Rev. Stat. 228.170.

123. Governor Stephen F. Sisolak is the chief executive officer of the State of Nevada. The Governor is responsible for overseeing the operations of the State and ensuring that its laws are faithfully executed. Nev. Const., art. 5, § 1. Governor Sisolak is the Commander-in-Chief of the Nevada state military forces. Nev. Const., art. 5, § 5.

124. On information and belief, Nevada is aggrieved by the actions of Defendants and has standing to bring this action because of the injury to the State and its residents caused by the reduction of federal funding to the State due to Defendants' diversion of funding to a southern border wall.

125. Any diversion of military construction funding from Nevada will harm the State's economy. Nevada is home to several military bases, including Nellis Air Force Base, Creech Air Force Base, Hawthorne Army Depot Base, and Naval Air Station Fallon. These military bases play a critical role in our nation's defense and to the State's economy. The use of funding for a southern border wall rather than for necessary expenses at these military bases harms Nevada and its economy.

⁴ *Id.* at 5.

126. Any diversion of federal counter-narcotic funding from Nevada will harm the State. The use of funding for a southern border wall rather than to conduct drug interdiction and counter-narcotic activity in the State threatens the public safety of all Nevadans.

127. Nevada is harmed by the diversion of funds from the Treasury Forfeiture Fund. Since State Fiscal Year (SFY) 2015, the Nevada Office of the Attorney General (OAG) has received approximately \$422,211.94 in equitable sharing from the Treasury Forfeiture Fund. This total includes equitable sharing payments of \$35,777.35 in SFY 2015; \$369,469.30 in SFY 2016; \$831 in SFY 2017; and \$16,134.29 in SFY 2018. The OAG has not received any equitable sharing payments in SFY 2019. These payments resulted from the OAG's participation in criminal investigations that resulted in successful seizure and forfeiture activities. The OAG has approximately six outstanding forfeiture requests where the office expects to receive between 10-35 percent of the value of seized and forfeited assets once those investigations are completed. The diversion of these funds from the Treasury Forfeiture Fund could deprive the OAG of its share of pending forfeited assets, impacting its future budget and hindering other law enforcement, training, and criminal prosecution activities.

128. Defendants' unconstitutional actions undermine Nevada's sovereignty and harm the State through their effects on Nevada's residents and its economy.

PLAINTIFF STATE OF NEW JERSEY

129. The State of New Jersey is a sovereign state of the United States of America.

130. This action is being brought on behalf of the State by Attorney General Gurbir S. Grewal, the State's chief legal officer. *See* N.J. Stat. Ann. § 52:17A-4(e), (g).

131. New Jersey is aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the loss of federal funding to the State caused by Defendants' diversion of funding. The threat of a loss of funding to conduct drug interdiction and counter-narcotic activity prevents critical criminal counter-narcotics programs and threatens the public safety of all New Jersey residents. The diversion of funding from the Treasury Forfeiture Fund will harm public safety by impacting critically necessary funding for law enforcement officials and their agencies.

132. New Jersey is aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the loss of federal funding to the State caused by Defendants' diversion of funding. The threat of a loss of funding to conduct drug interdiction and counter-narcotic activity prevents critical criminal counter-narcotics programs and threatens the public safety of all New Jersey residents.

133. New Jersey conducts joint law enforcement activity with federal agencies and receives equitable sharing payments through the Treasury Forfeiture Fund on a regular basis. The diversion of funding from the Treasury Forfeiture Fund will harm public safety by impacting critically necessary funding for law enforcement officials and their agencies.

134. In filing this action, the Attorney General seeks to protect the residents and agencies of New Jersey from harm caused by Defendants' illegal conduct, prevent further harm, and seek redress for the injuries caused to New Jersey by Defendants' actions. Those injuries include harm to New Jersey's sovereign, quasi-sovereign, and proprietary interests.

PLAINTIFF STATE OF NEW MEXICO

135. The State of New Mexico, represented by and through its Attorney General, is a sovereign state of the United States of America.

136. Attorney General Hector Balderas is the chief legal officer of the State of New Mexico. He is authorized to prosecute all actions and proceedings on behalf of New Mexico when, in his judgment, the interest of the State requires such action. N.M. Stat. Ann. § 8-5-2(B). This challenge is brought pursuant to Attorney General Balderas's statutory and common law authority.

137. Governor Michelle Lujan Grisham possesses the "supreme executive power" of the State of New Mexico. N.M. Const., art. V, § 4. She has the responsibility to execute the laws of the State and preserve the public peace. *Id.* She also has the authority to oversee the State's agencies that will be affected by Defendants' actions. N.M. Const., art. V, § 5.

138. New Mexico shares over 179 miles of its southern border with Mexico.⁵ This close relationship gives New Mexico a special interest in the economic and public safety

⁵ *U.S. International Borders*, *supra* note 2.

consequences of cross-border activity. Attorney General Balderas has worked with law enforcement counterparts in Mexico to facilitate international extraditions, implement technologies to combat human trafficking, and train prosecutors.⁶ Trade across New Mexico's southern border is a crucial component of the State's economy, with Mexico its largest export partner.⁷

139. New Mexico is aggrieved by Defendants' actions and has standing to bring this lawsuit. Defendants' diversion of federal funding to conduct drug-interdiction and counter-narcotics efforts threatens the safety and health of all New Mexicans.

140. New Mexico will also be harmed by Defendants' diversion of military construction funding. Some \$85 million of this funding currently is allocated to construct a MQ-9 Formal Training Unit at Holloman Air Force Base in Otero County, New Mexico.⁸ Another \$40 million is allocated to White Sands Missile Range in New Mexico to build an information systems facility.⁹ The loss of these projects would harm New Mexico's economy, particularly in the communities surrounding these military installations.

141. If Defendants use the diverted funding to construct any of their border wall in New Mexico, it will also impose environmental harm to the State. The environmental damage caused by a border wall in New Mexico would include the blocking of wildlife migration, flooding, and habitat loss.¹⁰ Further, this border wall would be constructed on state land, taking the State's

⁶ Ryan Boetel, *Attorney General Announces Pilot Project for Mexico Extraditions*, Albuquerque J. (July 25, 2018), <https://tinyurl.com/y2zdbc8h>; PR Newswire, *TrustStamp and the Conference of Western Attorneys General Alliance Partnership Introduce Technology to Ease Data Sharing Among Law Enforcement* (Aug. 30, 2018), <https://tinyurl.com/y2seu64t>; Carol Clark, *AG Balderas Trains Mexican Prosecutors, Forensic Scientists, Investigators in Effort to Stop Crime From Crossing Border*, Los Alamos Daily Post (Nov. 3, 2017), <https://tinyurl.com/y3mcvrms>.

⁷ Int'l Trade Admin., *New Mexico Exports, Jobs, & Foreign Investment* (Feb. 2018), <https://tinyurl.com/y25tsost>.

⁸ Alamogordo Daily News, *Holloman Getting \$85M for Construction Project* (Feb. 3, 2018), <https://tinyurl.com/y5u7vx4k>.

⁹ Miriam U. Rodriguez, *WSMR to Build State of the Art Information Systems Facility*, U.S. Army (Jan. 10, 2018), <https://tinyurl.com/y3yr24yr>.

¹⁰ See Robert Peters et al., *Nature Divided, Scientists United: US-Mexico Border Wall Threatens Biodiversity and Binational Conservation*, 68 *BioScience* 740, 743 (Oct. 2018), <https://tinyurl.com/y3t4ymfn>.

sovereign property.¹¹

PLAINTIFF STATE OF NEW YORK

142. The State of New York, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is New York State's chief law enforcement officer and is authorized to pursue this action pursuant to N.Y. Executive Law section 63.

143. Upon information and belief, New York is aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the loss of federal funding to the State caused by Defendants' diversion of federal funds. The loss of funding to conduct drug interdiction and counter-narcotic activity would injure the State's law enforcement agencies and threaten the public safety of all New Yorkers.

144. New York participates in the Treasury Forfeiture Fund through state law enforcement agencies, state prosecutorial agencies, and joint federal-state task forces, and regularly receives equitable sharing payments to state agencies from forfeitures generated by joint law enforcement operations with federal law enforcement. Defendants' unlawful diversion of funding from the Treasury Forfeiture Fund will harm the public safety of New York's residents by impacting critically necessary funding for law enforcement officers and their agencies.

145. Upon information and belief, Defendants' unlawful diversion of funding from military construction projects in New York to construction of a border wall will injure New York's economy and, by damaging the State's critical security infrastructure, threaten the safety of New York's National Guard and of all New York residents.

PLAINTIFF STATE OF OREGON

146. Plaintiff State of Oregon, acting through its Attorney General, Ellen Rosenblum, is a sovereign state in the United States of America.

147. Attorney General Rosenblum is the chief law officer of Oregon and is empowered to bring this action on behalf of the State of Oregon and the affected state agencies under ORS

¹¹ See Deming Headlight, *N.M. Land Commish Aubrey Dunn Rejects Settlement Offer from CBP* (Aug. 17, 2018), <https://tinyurl.com/y557wpcb>.

160.060, ORS 180.210, and ORS 180.220.

148. On information and belief, Oregon is aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the loss of federal funding to the State caused by Defendants' diversion of federal funds. The loss of funding to conduct drug interdiction and counter-narcotic activity, including funding that supports Oregon's work in this area with other States, would threaten the public safety of all Oregonians.

149. On information and belief, the diversion of military construction funds will harm Oregon. Defendants' diversion of funding from military construction projects in Oregon to construction of a border wall in Texas, New Mexico, Arizona, and California would impact Oregon's economy. In particular and without limitation, any diversion of funds from U.S. Army Corps of Engineers projects in Oregon would harm Oregon's environment and could cause flooding and other dangers to the health and safety of Oregonians.

150. Oregon has received money from the Treasury Forfeiture Fund in the past and expects to receive comparable monies in the future absent diversion to fund the construction of a wall. According to federal audits of the Treasury Forfeiture Fund in 2018, Oregon received more than \$9 million in equitable sharing from the Treasury Forfeiture Fund over the years 2008-2017. These resources are used to supplement and enhance law enforcement agencies' state-appropriated funding.

PLAINTIFF STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

151. The State of Rhode Island, represented by and through its Attorney General, is a sovereign state of the United States of America.

152. Attorney General Peter F. Neronha is the chief law officer of the State of Rhode Island and has the authority to file civil actions to protect Rhode Island's rights and the rights of Rhode Island citizens. The Attorney General has the authority to file suit to take legal action against the federal government for the protection of the public interest and welfare of Rhode Island citizens as a matter of constitutional, statutory, and common law authority. R.I. Const. art. IX, sec. 12; R.I. Gen. Laws §§ 42-9-1, et seq.; *see also State v. Lead Industries Ass'n*, 951 A.2d 428 (R.I. 2008).

153. The Governor of Rhode Island, Gina M. Raimondo, is the chief executive officer of the State of Rhode Island. The Governor oversees the operations of the State and is in charge of the State military, the Rhode Island National Guard, which is comprised of the Rhode Island Army National Guard, Rhode Island Air National Guard, and the Historic Rhode Island Militia.

154. The Rhode Island National Guard is the oldest military branch in the United States and consists of over 3,300 members (2,178 in the Army National Guard, 1,136 in the Air National Guard) and operates 14 armories, three air bases, two training sites, 10 support buildings, four organization maintenance facilities, and one combined support maintenance facility and is responsible for responding to statewide civil emergencies declared by the Governor, as well as supporting the defense of the nation and national security interests, including actively participating in counterdrug efforts.

155. The Rhode Island National Guard is financed with approximately 74 percent federal funds and federal equipment housed and secured at these facilities and is valued in excess of \$500 million. The estimated annual impact on the State attributed to National Guard programs exceeds \$238 million.¹²

156. The Rhode Island National Guard, Counterdrug Support program (“RING-CD”), coordinates and provides unique military skills and resources to support state and federal law enforcement and community-based organizations in their efforts to disrupt and dismantle various aspects of the illicit markets supporting the drug and narcotic trade.

157. RING-CD provides support to state and federal law enforcement agencies with embedded criminal intelligence analysts, the local offices of the U.S. Drug Enforcement Administration (“DEA”), the U.S. Postal Inspector Service (“USP”), the Food and Drug Administration Office of Criminal Investigations (“FDA”), the U.S. Internal Revenue Service (“IRS”), the U.S. Marshall Service, the Rhode Island State Police Narcotics, High Intensity Drug Trafficking Area (“HIDTA”), and Financial Crimes Units, and the Providence Police Department.¹³

¹² State of Rhode Island and Providence Plantations, *Fiscal Year 2019 Budget*, Vol. IV, 103-111 (Jan. 2018), <http://tinyurl.com/y3nucc5s>.

¹³ R.I. Nat’l Guard, *Joint Units*, <https://ri.ng.mil/Joint-Units/>.

158. RING-CD provides support to Rhode Island State Police and local law enforcement that is essential to combat illicit drug markets in Rhode Island, as well as ensuring the health and safety of officers, investigators, and other law enforcement personnel from the evolving dangers that the drug trade poses.¹⁴

159. For Fiscal Year 2018, the Rhode Island National Guard received approximately \$852,000 in connection with the U.S. Department of Defense National Guard Counterdrug program for state drug interdiction and counterdrug activities.

160. For Fiscal Year 2019, the U.S. Department of Defense allocated approximately \$900,000 to be paid in monthly installments to the Rhode Island National Guard in connection with the U.S. Department of Defense National Guard Counterdrug program for state drug interdiction and counterdrug activities.

161. For Fiscal Year 2019, the Rhode Island National Guard has received approximately \$450,000 under the National Guard Counterdrug program and approximately \$450,000 remains outstanding.

162. The Rhode Island State Police is a full-service, statewide law enforcement agency whose mission is to fulfill the law enforcement needs of the people with the highest degree of fairness, professionalism, and integrity, and protect the inherent rights of the people of Rhode Island to live in freedom and safety.

163. The Rhode Island State Police receives funds from the Treasury Forfeiture Fund in connection with law enforcement activities jointly performed by and between the Rhode Island State Police and federal law enforcement agencies.

164. In 2018, the Rhode Island State Police received approximately \$26,960.10 from the Treasury Forfeiture Fund in connection with joint law enforcement actions.

¹⁴ For example, in 2018 RING-CD procured a Liquid Chromatography Mass Spectrometer. This device supports Rhode Island's efforts to combat the dramatic effects of opioid abuse. The Rhode Island Department of Health Forensic Toxicology Laboratory previously identified a significant lag in confirming the presence of illicit trace evidence to the Law Enforcement Community. This device, and RING memorandum of agreement with the Department of Health, targets that capability gap. This system began supporting casework in Rhode Island during the last fiscal year. R.I. Nat'l Guard, *Annual Report 2018*, <http://tinyurl.com/y2qagky6>.

165. So far, in 2019, the Rhode Island State Police has received approximately \$19,305.77 from the Treasury Forfeiture Fund in connection with joint law enforcement actions.

166. At present, the Rhode Island State Police has 59 forfeiture requests pending for U.S. currency and property seized during investigations between the Rhode Island State Police and federal law enforcement agencies. The forfeitures seized in connection with these pending applications is estimated to be valued at approximately \$4,285,721.81 of which Rhode Island is entitled to a *pro rata* share.

167. Upon information and belief, the Executive Actions seek to divert some or all funds referenced in the prior paragraph from the Treasury Forfeiture Fund. These funds have been shared or distributed to Rhode Island in the past and Rhode Island presently has applications pending for equitable sharing relating to the Treasury Forfeiture Fund.

168. Rhode Island is aggrieved by the actions of Defendants and has standing to bring this action because of the loss of federal funding from the Treasury Forfeiture Fund.

169. Diversion of funds from the Treasury Forfeiture Fund will deprive Rhode Island of access to funds that would otherwise be available for law enforcement purposes, negatively impacting the public safety and welfare of Rhode Island citizens.

PLAINTIFF STATE OF VERMONT

170. The State of Vermont, represented by and through its Attorney General, is a sovereign state of the United States of America.

171. Attorney General Thomas J. Donovan is the chief legal officer of the State of Vermont and has the authority to file civil actions to protect Vermont's rights and interests. Vt. Stat. Ann. tit. 3, §§ 152, 157.

172. Vermont is aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the loss of federal drug interdiction, counter-narcotic, and law enforcement funding to the State caused by Defendants' diversion of funding. The threat of losing funding to conduct drug interdiction and counter-narcotic activity threatens the public safety of all Vermonters.

173. Vermont participates in the Treasury Forfeiture Fund through state and local law

1 enforcement agencies. These Vermont law enforcement agencies regularly receive equitable
2 sharing payments from the Treasury Forfeiture Fund and expect to receive comparable payments
3 in the future absent diversion to fund the construction of a wall.

4 174. The diversion of funding from the Treasury Forfeiture Fund will harm public
5 safety by impacting critical funding for these law enforcement agencies and their officers.

6 **PLAINTIFF COMMONWEALTH OF VIRGINIA**

7 175. The Commonwealth of Virginia is a sovereign state of the United States of
8 America.

9 176. The Commonwealth of Virginia brings this action by and through its Attorney
10 General, Mark R. Herring. The Attorney General has authority to represent the Commonwealth,
11 its departments, and its agencies in “all civil litigation in which any of them are interested.” Va.
12 Code Ann. § 2.2-507(A).

13 177. On information and belief, the Commonwealth of Virginia will be injured by the
14 diversion of funding from the Treasury Forfeiture Fund. The Commonwealth participates as an
15 equitable sharing partner in the Fund and, from 2013 to 2017, received over \$122 million in
16 distributions to state and local law enforcement. On information and belief, the announced
17 diversion of forfeiture funding will diminish the future funding available for the
18 Commonwealth’s participating law enforcement agencies, thereby decreasing the resources
19 available for future investigations to the detriment of the safety and welfare of Virginia’s citizens
20 and law enforcement officers.

21 178. On information and belief, the Commonwealth of Virginia will be injured by the
22 diversion of funding from the Treasury Forfeiture Fund. The Commonwealth participates as an
23 equitable sharing partner in the Fund and, in the past five years, has received over \$79 million in
24 distributions to state and local law enforcement. On information and belief, the announced
25 diversion of forfeiture funding will diminish the funding available for the Commonwealth’s
26 participating law enforcement agencies.

27 179. On information and belief, the Commonwealth of Virginia would likewise be
28 aggrieved if Defendants divert federal funding under the National Guard Drug Interdiction and

1 Prevention Program for use on a southern border wall. This loss of funding—to the tune of
2 approximately \$3 million for Virginia—to implement counter-narcotics and drug interdiction
3 measures would threaten the public safety of all Virginians.

4 **PLAINTIFF STATE OF WISCONSIN**

5 180. The State of Wisconsin is a sovereign state of the United States of America.

6 181. Governor Tony Evers is the chief executive officer of the State of Wisconsin and
7 has the duty to “take care that the laws be faithfully executed.” Wis. Const. art. V, §§ 1, 4. The
8 Governor is the commander-in-chief of the military and naval forces of the State, including the
9 Wisconsin National Guard. Wis. Const. art. V, § 1.

10 182. Attorney General Joshua L. Kaul is the chief legal officer of the State of
11 Wisconsin and has the authority to file civil actions to protect Wisconsin’s rights and interests.
12 *See* Wis. Stat. § 165.25(1m). The Attorney General’s powers and duties include appearing for
13 and representing the State, on the governor’s request, “in any court or before any officer, any
14 cause or matter, civil or criminal, in which the state or the people of this state may be interested.”
15 Wis. Stat. § 165.25(1m).

16 183. The State of Wisconsin brings this action by and through its Attorney General,
17 Joshua L. Kaul.

18 184. In filing this action, the Attorney General seeks to redress and prevent injuries to
19 the State and its residents caused by Defendants’ illegal diversion of federal funds to build the
20 border wall. These injuries include harms to Wisconsin’s sovereign, quasi-sovereign, and
21 proprietary interests.

22 185. Wisconsin has an interest in protecting the State’s economy and security, as well
23 as the health, safety, and welfare of its residents.

24 186. Wisconsin has an interest in protecting its tax revenues, including those resulting
25 from economic activity in communities near military bases in Wisconsin.

26 187. On information and belief, Defendants’ diversion of funds for the border wall
27 includes over \$29 million in military construction funding for projects currently planned in
28 Wisconsin.

188. Wisconsin is home to multiple military bases, which play a critical role in our nation's defense and in Wisconsin's economy. On information and belief, Defendants' diversion of funds from necessary maintenance and repairs at these military bases would harm Wisconsin's economy and the economic welfare of Wisconsin residents.

189. Additionally, the Wisconsin National Guard has over 10,000 soldiers and airmen who are trained to assist civil authorities in protecting life and property, and in preserving peace, order, and public safety during emergencies, as directed by the Governor of Wisconsin. The Wisconsin National Guard receives a majority of its funding from the federal government.

190. On information and belief, the diversion of military construction funding for projects supporting or used by the Wisconsin National Guard would interfere with the Wisconsin National Guard's ability to provide these services for the State, thereby injuring the State and its residents.

191. Further, on information and belief, Defendants' diversion of funds for the border wall also includes funds otherwise allocated to Wisconsin or its agencies for drug interdiction and counter-narcotics efforts.

192. On information and belief, Defendants' diversion of funds otherwise allocated for drug interdiction and counter-narcotics efforts in Wisconsin would prevent state law enforcement agencies from implementing critical programs and initiatives, thereby threatening the State's security and economic welfare, as well as the health, safety, and welfare of Wisconsin residents.

193. On information and belief, Defendants' diversion of funding from the Treasury Forfeiture Fund would harm public safety in Wisconsin by impacting critically necessary funding for law enforcement officers and their agencies.

DEFENDANTS

194. Defendant Donald J. Trump, the President of the United States of America, is responsible for the actions and decisions that are being challenged by Plaintiffs in this action and is sued in his official capacity.

195. Defendant United States of America is responsible for enforcing laws that are consistent with the United States Constitution.

1 196. Defendant Department of Defense (“DOD”) is the federal agency to which
2 Congress has appropriated the military construction and drug interdiction funding implicated by
3 the President’s Executive Actions. Defendant DOD is an executive department of the United
4 States of America pursuant to 5 U.S.C. section 101, and a federal agency within the meaning of
5 28 U.S.C. section 2671. As such, it engages in agency action within the meaning of 5 U.S.C.
6 section 702, and is named as a defendant in this action pursuant to 5 U.S.C. section 702.

7 197. Defendant Patrick M. Shanahan, acting Secretary of Defense, oversees the DOD
8 and is responsible for the actions and decisions that are being challenged by Plaintiffs in this
9 action. Defendant Shanahan is sued in his official capacity pursuant to 5 U.S.C. section 702.

10 198. Defendant Mark T. Esper, Secretary of the Army, oversees the United States Army
11 within DOD, and is responsible for the actions and decisions that are being challenged by
12 Plaintiffs in this action. Defendant Esper is sued in his official capacity pursuant to 5 U.S.C.
13 section 702.

14 199. Defendant Richard V. Spencer, Secretary of the Navy, oversees the United States
15 Navy within DOD, and is responsible for the actions and decisions that are being challenged by
16 Plaintiffs in this action. Defendant Spencer is sued in his official capacity pursuant to 5 U.S.C.
17 section 702.

18 200. Defendant Heather A. Wilson, Secretary of the Air Force, oversees the United
19 States Air Force within DOD, and is responsible for the actions and decisions that are being
20 challenged by Plaintiffs in this action. Defendant Wilson is sued in her official capacity pursuant
21 to 5 U.S.C. section 702.

22 201. Defendant Department of the Treasury (the “Treasury”) is the federal agency
23 responsible for the Treasury Forfeiture Fund that is implicated by the President’s Executive
24 Actions. Defendant the Treasury is an executive department of the United States of America
25 pursuant to 5 U.S.C. section 101, and a federal agency within the meaning of 28 U.S.C. section
26 2671. As such, it engages in agency action within the meaning of 5 U.S.C. section 702, and is
27 named as a defendant in this action pursuant to 5 U.S.C. section 702.

28 202. Defendant Steven T. Mnuchin, Secretary of the Treasury, oversees the Treasury

1 and is responsible for the actions and decisions that are being challenged by Plaintiffs in this
2 action. Defendant Mnuchin is sued in his official capacity pursuant to 5 U.S.C. section 702.

3 203. Defendant Department of Homeland Security (“DHS”) is the federal agency
4 responsible for providing border security along the United States-Mexico border in a manner that
5 is consistent with the laws and Constitution of the United States. Defendant DHS is an executive
6 department of the United States of America pursuant to 5 U.S.C. section 101, and a federal
7 agency within the meaning of 28 U.S.C. section 2671. As such, it engages in agency action
8 within the meaning of 5 U.S.C. section 702, and is named as a defendant in this action pursuant to
9 5 U.S.C. section 702.

10 204. Defendant Kirstjen M. Nielsen, Secretary of DHS, oversees DHS and is
11 responsible for the actions and decisions that are being challenged by Plaintiffs in this action.
12 Defendant Nielsen is sued in her official capacity pursuant to 5 U.S.C. section 702.

13 205. Defendant Department of the Interior (“DOI”) is the federal agency responsible for
14 managing federal lands.

15 206. Defendant David Bernhardt, acting Secretary of the Interior, oversees the
16 Department of the Interior, and is responsible for the actions that are being challenged by
17 Plaintiffs in this action. Defendant Bernhardt is sued in his official capacity.

18 **FACTUAL ALLEGATIONS**

19 **I. PRESIDENT TRUMP HAS LONG CLAIMED THAT A “CRISIS” AT THE BORDER** 20 **REQUIRES BUILDING A BORDER WALL, BUT HAS NOT DECLARED A NATIONAL** **EMERGENCY UNTIL NOW**

21 207. Dating back to at least August 2014, President Trump has advocated for a wall
22 along the southern border.¹⁵

23 208. In his speech announcing his candidacy for President in June 2015, President
24 Trump claimed that a border wall is needed to stop a tide of illegal immigration, and that he
25 would build it as President and have Mexico pay for the wall.¹⁶ In the same speech, he also

26 ¹⁵ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 5, 2014, 1:34 PM),
27 <https://tinyurl.com/ydre3ep>.

28 ¹⁶ Time, *Here’s Donald Trump’s Presidential Announcement Speech* (June 16, 2015),
<https://tinyurl.com/qzk4wrv>.

1 stated, “When Mexico sends its people, they’re not sending their best . . . They’re bringing drugs.
2 They’re bringing crime. They’re rapists.” This claim and his promise to build a wall and have
3 Mexico pay for it became a consistent theme of his campaign.

4 209. President Trump repeatedly stated that the border wall he planned to build would
5 help prevent terrorism, crime, and drug smuggling. For example, on October 4, 2014, President
6 Trump tweeted, “The fight against ISIS starts at our border. ‘At least’ 10 ISIS have been caught
7 crossing the Mexico border. Build a wall!”¹⁷ More recently, on February 3, 2019, President
8 Trump tweeted, “If there is no Wall, there is no Security. Human Trafficking, Drugs and
9 Criminals of all dimensions - KEEP OUT!”¹⁸

10 210. On July 13, 2016, President Trump tweeted, “We will build the wall and MAKE
11 AMERICA SAFE AGAIN!”¹⁹

12 211. On August 27, 2016, President Trump tweeted that “[h]eroin overdoses are taking
13 over our children and others in the MIDWEST. Coming in from our southern border. We need
14 strong border & WALL!”²⁰

15 212. In a speech shortly before the 2016 presidential election, President Trump stated
16 that “[o]n day one [of his Administration], we will begin working on an impenetrable, physical,
17 tall, power [sic], beautiful southern border wall” to “help stop the crisis of illegal crossings” and
18 “stop the drugs and the crime from pouring into our country.”²¹

19 213. As President, President Trump has continued to repeatedly mention the need for
20 the border wall and his intention to build it.

21 214. On January 27, 2017, President Trump discussed his proposed border wall with
22 Mexico’s then-President Enrique Peña Nieto, in which he reportedly pressured Mexico to pay for
23

24 ¹⁷ Donald J. Trump (@realDonaldTrump), Twitter (Oct. 8 2014, 2:26 PM),
25 <https://tinyurl.com/yxntlamo>.

26 ¹⁸ *Id.* (Feb. 3, 2019, 2:03 PM), <https://tinyurl.com/yywmw9yx>.

27 ¹⁹ *Id.* (Jul. 13, 2016, 2:56 PM), <https://tinyurl.com/gm8yty6>.

28 ²⁰ *Id.* (Aug. 27, 2016, 7:17 AM), <https://tinyurl.com/y3f6bp9s>.

²¹ N.Y. Times, *Transcript of Donald Trump’s Immigration Speech* (Sept. 1, 2016),
<https://tinyurl.com/yalom4hl>.

1 the border wall and stated that he “[has] been talking about it for a two-year period.”²²

2 215. On February 28, 2017, President Trump delivered an address to a joint session of
3 Congress in which he stated that in order to “restore integrity and the rule of law at our
4 borders . . . we will soon begin the construction of a great, great wall along our southern
5 border.”²³

6 216. Additional statements by President Trump regarding the border wall include a
7 campaign rally speech on August 22, 2017 (“[W]e are building a wall on the southern border
8 which is absolutely necessary.”),²⁴ and tweets on January 26, 2017 (“badly needed wall”),²⁵
9 February 23, 2018 (“MS-13 gang members are being removed by our Great ICE and Border
10 Patrol Agents by the thousands, but these killers come back in from El Salvador, and through
11 Mexico, like water. . . . We need The Wall!”),²⁶ June 21, 2018 (“We shouldn’t be hiring judges
12 by the thousands, as our ridiculous immigration laws demand, we should be changing our laws,
13 building the Wall, hire Border Agents and Ice [sic] and not let people come into our country
14 based on the legal phrase they are told to say as their password.”),²⁷ December 19, 2018
15 (“Because of the tremendous dangers at the Border, including large scale criminal and drug
16 inflow, the United States Military will build the Wall!”),²⁸ and December 31, 2018 (“I
17 campaigned on Border Security, which you cannot have without a strong and powerful Wall. Our
18 Southern Border has long been an ‘Open Wound,’ where drugs, criminals (including human
19 traffickers) and illegals would pour into our Country. Dems should get back here an [sic] fix
20 now!”).²⁹

21 ²² Greg Miller, *Trump Urged Mexican President to End His Public Defiance on Border*
22 *Wall, Transcript Reveals*, Wash. Post (Aug. 3, 2017), <https://tinyurl.com/y3gqdf2m>.

23 ²³ White House, *Remarks by President Trump in Joint Address to Congress* (Feb. 28,
2017), <https://tinyurl.com/y4kvpj7n>.

24 ²⁴ Time, *President Trump Ranted for 77 Minutes in Phoenix. Here’s What He Said* (Aug.
24 23, 2017), <https://tinyurl.com/ycxt2woc>.

25 ²⁵ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 26, 2017, 5:55 AM),
<https://tinyurl.com/zm26eaf>.

26 ²⁶ *Id.* (Feb. 23, 2018, 3:28 AM), <https://tinyurl.com/y9xypa55>.

27 ²⁷ *Id.* (June 21, 2018, 5:12 AM), <https://tinyurl.com/y3zaqk7d>.

28 ²⁸ *Id.* (Dec. 19, 2018, 5:43 AM), <https://tinyurl.com/y95cnd8r>.

²⁹ *Id.* (Dec. 31, 2018, 5:29 AM), <https://tinyurl.com/y6stmopr>.

217. Indeed, President Trump has made it clear that his plan to build the border wall would go forward regardless of the actual need for one. During a speech to the National Rifle Association, President Trump stated in the context of statistics showing a decrease in unauthorized border crossings that “we will build the wall no matter how low this number gets or how this goes. Don’t even think about it. Don’t even think about it.”³⁰

218. The salient facts regarding the ostensible “crisis” that President Trump repeatedly invoked in these numerous statements have not significantly changed since his inauguration as President in January 2017.

219. President Trump acknowledged this when he stated that the “emergency” at the border “began a long time [ago],” citing 2014 as the beginning of the ostensible “crisis at the border.”³¹

220. There is no evidence of change to the historic pattern of unauthorized immigrants committing crimes at substantially lower rates than native-born Americans.³²

221. The federal government’s own data also show that the vast majority of the drugs smuggled into the country that the President has singled out as dangerous (methamphetamine, heroin, cocaine, and fentanyl)³³ continue to come through, not between, ports of entry.³⁴

222. There continues to be a lack of credible evidence that terrorists are using the southern border as a means of entering the United States, as a State Department report produced under the Trump Administration makes clear.³⁵

³⁰ White House, *Remarks by President Trump at the National Rifle Association Leadership Forum* (Apr. 28, 2017), <https://tinyurl.com/y5dtnaej>.

³¹ White House, *Remarks by President Trump Before Marine One Departure* (Jan. 10, 2019), <https://tinyurl.com/yycw5dk>.

³² See, e.g., Alex Nowratch, *The Murder of Mollie Tibbetts and Illegal Immigrant Crime: The Facts*, Cato Institute (Aug. 22, 2018), <https://tinyurl.com/y5boc9me> (showing that “[t]he illegal immigrant conviction rate for homicide was 44 percent below that of native-born Americans in 2016 in Texas”) (emphasis in original).

³³ White House, *President Donald J. Trump’s Address to the Nation on the Crisis at the Border* (Jan. 8, 2019), <https://tinyurl.com/y5uloxyg>.

³⁴ CBP, *CBP Enforcement Statistics FY2018*, <https://tinyurl.com/y9c4c6ft> (showing that through August 2018, federal agents seized 88 percent of cocaine, 90 percent of heroin, 87 percent of methamphetamine, and 80 percent of fentanyl at ports of entry in this fiscal year).

³⁵ U.S. Dep’t of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2017*

223. In his own public statements, President Trump has made clear that his emergency declaration was triggered by his inability to secure funding for the border wall from Congress rather than an actual national emergency at the border.

224. When asked by the media about his plans to declare a national emergency relating to the border wall, President Trump stated his preference for “do[ing] the deal through Congress,” but that if the deal did not “work out” he would “almost . . . definitely” declare a national emergency.³⁶ While he reiterated his claims that the volume of drugs, criminals, and gangs coming through the border between ports of entry constituted a “crisis,” President Trump repeatedly cited the ongoing impasse with Congress as his rationale for the emergency declaration.³⁷

225. Around the same time, when asked by the media what his threshold was for declaring a national emergency, President Trump responded, “My threshold will be if I can’t make a deal with people that are unreasonable.”³⁸

226. On February 1, 2019, President Trump made clear in an interview that he was planning to wait until February 15, the deadline for a congressional conference committee to avert another government shutdown, before issuing an emergency declaration.³⁹ President Trump claimed he was already building the border wall, and strongly implied that he needed neither additional funding nor an emergency declaration to build it.⁴⁰

205 (Sept. 2018), <https://tinyurl.com/y93n5fes>.

³⁶ *Trump Remarks before Marine One Departure*, *supra* note 31.

³⁷ *Id.*

³⁸ George Sargent, *Trump: I Have the ‘Absolute Right’ to Declare a National Emergency if Democrats Defy Me*, Wash. Post (Jan 9, 2018), <https://tinyurl.com/y4vmtezb>.

³⁹ N.Y. Times, *Excerpt from Trump’s Interview with the New York Times* (Feb. 1, 2019), <https://tinyurl.com/y9gsosk4>; see also CBS, *Transcript: President Trump on “Face the Nation”* (Feb. 3, 2019), <https://tinyurl.com/y8l38g72> (President Trump describing emergency declaration as an “alternative” to the process that Congress was engaged in to avert another shutdown, which was to end on February 15).

⁴⁰ *New York Times Interview*, *supra* note 39 (President Trump stating: “I’m building the wall right now. . . . it’s been funded We’ll be up to, by the end of this year, 115 miles At least And that doesn’t include large amounts of wall that we’ll be starting before the end of the year. So we’ll be up to hundreds of miles of wall between new wall and renovation wall in a fairly short period of time And I’ll continue to build the wall, and we’ll get the wall

227. During a press conference that same day, when asked whether he would consider other options besides the emergency declaration, President Trump stated that “we will be looking at a national emergency, because I don’t think anything is going to happen [in Congress]. I think the Democrats don’t want border security.”⁴¹ President Trump also repeated his view that the wall was already being built “with funds that are on hand . . . we’re building a lot of wall right now, as we speak . . . [a]nd we’re getting ready to hand out some very big contracts with money that we have on hand and money that comes in.”⁴²

II. CONGRESS HAS APPROPRIATED LIMITED FUNDING TOWARD A BORDER BARRIER AND NO FUNDING TOWARD PRESIDENT TRUMP’S PROPOSED BORDER WALL

228. Congress has exercised its Article I powers by appropriating funds for the construction of border barriers and related infrastructure when Congress deemed it appropriate. During the period of 2005 through 2011, Congress appropriated funding for the construction of hundreds of miles of border barriers.⁴³ Currently, there is a total of 705 miles of primary, secondary, or tertiary fencing along 654 miles of the southwest border.⁴⁴

229. In the 115th Congress, between 2017 and 2018, Congress considered, but repeatedly declined to adopt, legislation appropriating funding for President Trump’s proposed border wall.⁴⁵

finished. Now whether or not I declare a national emergency, that you’ll see”); *see also* Donald J. Trump (@realDonaldTrump), Twitter (Jan. 31, 2019, 9:43 AM), <https://tinyurl.com/y56tevok> (“Wall is being built!”).

⁴¹ White House, *Remarks by President Trump in Meeting on Human Trafficking on the Southern Border* (Feb. 1, 2019), <https://tinyurl.com/y5ghp3eh>.

⁴² *Id.*

⁴³ Gov’t Accountability Office, *Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps*, GAO-17-331 (Feb. 16, 2017), at 7-10, <https://tinyurl.com/yaqbny6e>; Gov’t Accountability Office, *Secure Border Initiative Fence Construction Costs*, GAO-09-244R (Jan. 29, 2009), at 4-11, <https://tinyurl.com/y2kgefp5>.

⁴⁴ U.S. Border Patrol, *Mileage of Pedestrian and Vehicle Fencing by State* (Aug. 2, 2017), <https://tinyurl.com/y6f27h4e>.

⁴⁵ *See, e.g.*, The WALL Act of 2018, S. 3713, 115th Cong. (2018) (proposed \$25 billion appropriation for border wall; no committee action); 50 Votes for the Wall Act, H.R. 7073, 115th Cong. (2018) (proposed \$25 billion appropriation for funding for border wall; no committee action); Build the Wall, Enforce the Law Act of 2018, H.R. 7059, 115th Cong. (2018) (proposed

230. Near the end of the 115th Congress, Congress worked on a funding bill before the December 22, 2018 deadline when federal funding ran out for a number of federal departments. On December 11, 2018, President Trump held a televised meeting with the Democratic leaders of Congress (then-House Minority Leader Nancy Pelosi and Senate Minority Leader Chuck Schumer) to discuss the funding deadline. At that meeting, President Trump said he wanted \$5 billion to build a portion of the border wall. President Trump said at that meeting, “If we don’t get what we want one way or the other, whether it’s through you, through a military, through anything you want to call, I will shut down the government, absolutely.” President Trump reiterated that he would be “proud to shut down the government for border security.” At the meeting, Leaders Schumer and Pelosi said they disagreed with the President on providing funding for the border wall.⁴⁶

231. On December 19, 2018, the Senate passed by voice vote a bill to fund the government through February 8, 2019 that did not include any funding for a border wall. Department of Defense Appropriations Act of 2018, H.R. 695, 115th Cong. (2018).

232. After the Senate passed the temporary funding bill, on December 20, 2018, President Trump announced that “I’ve made my position very clear. Any measure that funds the government must include border security,” which he clarified must include funding for a wall.⁴⁷

\$16.6 billion appropriation for border wall; no committee action); Fund and Complete the Border Wall Act, H.R. 6657, 115th Cong. (2018) (proposed authorization of funding for border wall; no committee action); American Border Act, H.R. 6415, 115th Cong. (2018) (proposed \$16.6 billion appropriation for border wall; no committee action); Border Security and Immigration Reform Act of 2018, H.R. 6136, 115th Cong. (2018) (proposed \$16.6 billion appropriation for border wall; voted down by House 301 to 121); Securing America’s Future Act of 2018, H.R. 4760, 115th Cong. (2018) (proposed construction of physical barrier, including border wall; voted down by House 231-193); Border Security and Deferred Action Recipient Relief Act, S. 2199, 115th Cong. (2017) (proposal to make available \$38.2 million for planning for border wall construction; no action in Senate); Make America Secure Appropriations Act, H.R. 3219, 115th Cong. (2017) (proposed \$38.2 million appropriation for border wall; passed House of Representatives, but no action by Senate).

⁴⁶ CSPAN, *President Trump Meeting with Democratic Leaders* (Dec. 11, 2018), <https://tinyurl.com/ycalrz3x>.

⁴⁷ CNN, *Trump: “I’ve Made My Position Very Clear” on Spending Bill* (Dec. 20, 2018), <https://tinyurl.com/yy9cvzdd>.

233. On December 20, 2018, the House of Representatives approved a short-term funding bill appropriating \$5.7 billion for “U.S. Customs and Border Protection – Procurement, Construction, and Improvements.” Department of Defense Appropriations Act of 2018, H.R. 695, 115th Cong. (2018). The Senate never passed the House-approved version of the legislation.

234. With no agreement between Congress and the President on funding, on December 22, 2018, the federal government partially shut down.

235. On January 3, 2019, Nancy Pelosi became Speaker of the House. The day before, Speaker Pelosi reiterated in a televised interview that the House would be providing “[n]othing for the wall.”⁴⁸ On January 3, the House of Representatives approved a short-term funding bill without any funding for a border wall. Consolidated Appropriations Act of 2019, H.R. 21, 116th Cong. (2019). The Senate never passed the House-approved version of the legislation.

236. The Office of Management and Budget formally requested \$5.7 billion from Congress for the border wall on January 6, 2019.⁴⁹

237. On January 19, 2019, President Trump addressed the nation regarding the partial government shutdown and laid out his immigration proposal. In his remarks, he repeated his unsupported claims of an immigration enforcement crisis at the border in connection with his continued proposal for \$5.7 billion in funding for a wall, stating that “[a]s a candidate for president, I promised I would fix this crisis, and I intend to keep that promise one way or the other.”⁵⁰

238. When he announced the congressional agreement that ended the government shutdown on January 25, 2019, President Trump stated: “If we don’t get a fair deal from Congress, the government will either shut down on February 15th, again, or I will use the powers afforded to me under the laws and the Constitution of the United States to address this

⁴⁸ Tal Axelrod, *Pelosi on Negotiations with Trump: “Nothing for the Wall”*, The Hill, (Jan. 2, 2019), <https://tinyurl.com/y77o89hp>.

⁴⁹ Letter from Russell T. Vought, Acting Director, Off. of Mgmt. and Budget, to Sen. Richard Shelby (Jan. 6, 2019), <https://tinyurl.com/y224y59q>.

⁵⁰ White House, *Remarks by President Trump on the Humanitarian Crisis on our Southern Border and the Shutdown* (Jan. 19, 2019), <https://tinyurl.com/y7gdj6s8>.

1 emergency.”⁵¹

2 239. After weeks of negotiation, on February 14, 2019, Congress passed the
3 Consolidated Appropriations Act, 2019 (H.J. Res. 31) (the “2019 Appropriations Act”). The
4 2019 Appropriations Act provides \$1.375 billion for “construction of primary pedestrian fencing,
5 including levee pedestrian fencing, in the Rio Grande Valley Sector” of the border. H.J. Res. 31
6 § 230(a)(1). That is the only funding in the 2019 Appropriations Act that Congress designated for
7 the construction of a barrier.

8 240. The 2019 Appropriations Act also imposes limitations on how the fencing may be
9 constructed. The amount designated for fencing in the Rio Grande Valley Sector “shall only be
10 available for operationally effective designs deployed as of the date of the Consolidated
11 Appropriations Act, 2017 (Public Law 115-31), such as currently deployed steel bollard designs,
12 that prioritize agent safety.” *Id.* § 230(b). The Consolidated Appropriations Act of 2017 was
13 enacted on May 5, 2017. *See* Pub. L. No. 115-31. Thus, the 2019 Appropriations Act authorized
14 fencing only using designs already “deployed” nearly two years ago. The Consolidated
15 Appropriations Act of 2017 likewise does not authorize the construction of a concrete or any
16 other solid wall. *Id.*

17 241. Congress made clear its intent that it was not appropriating any funding toward the
18 construction of a wall. Senator Patrick Leahy, Vice Chairman of the Senate Appropriations
19 Committee, who was actively involved in negotiations on the 2019 Consolidated Appropriations
20 Act, stated, “The agreement does not fund President Trump’s wasteful wall.” 165 Cong. Rec.
21 S1362 (daily ed. Feb 14, 2019). Senator Schumer, the Senate Minority Leader, noted that, “The
22 agreement will provide smart border security, increasing support for technologies at our ports of
23 entry. It will not fund the President’s expensive, ineffective wall.” 165 Cong. Rec. S1363 (daily
24 ed. Feb. 14, 2019). The congressional record in the House of Representatives is no different.
25 *See, e.g.*, 165 Cong. Rec. H2019 (daily ed. Feb. 14, 2019) (statement of Rep. Price) (“This
26 agreement denies the President billions of dollars for an unnecessary wall.”); 165 Cong. Rec.

27 _____
28 ⁵¹ White House, *Remarks by President Trump on the Government Shutdown* (Jan. 25,
2019), <https://tinyurl.com/y4mplplb>.

1 H2020 (daily ed. Feb. 14, 2019) (statement of Rep. Aguilar) (“What this bill will not do is . . .
2 fund the President’s wall from sea to shining sea, a wall that he said Mexico would pay for.”).

3 242. On February 15, 2019, President Trump signed the 2019 Consolidated
4 Appropriations Act into law.

5 **III. PRESIDENT TRUMP’S EXECUTIVE ACTION AND EMERGENCY DECLARATION**

6 243. That same day, the Trump Administration announced that the President was taking
7 Executive Action to redirect funding beyond what was appropriated by Congress toward
8 construction of a border wall. The Administration outlined specific plans for the diversion of an
9 additional \$6.7 billion “that will be available to build the border wall once a national emergency
10 is declared and additional funds have been reprogramed.”⁵² The Administration identified the
11 following funding for diversion to “be used sequentially”:

- 12 • \$601 million from the Treasury Forfeiture Fund;
- 13 • Up to \$2.5 billion under the Department of Defense funds transferred for Support for
14 Counterdrug Activities (10 U.S.C. § 284); and
- 15 • Up to \$3.6 billion reallocated from Department of Defense military construction projects
16 under the President’s declaration of a national emergency (10 U.S.C. § 2808).⁵³

17 244. In conjunction with that announcement, the President also declared a national
18 emergency under the National Emergencies Act claiming that there is a “border security and
19 humanitarian crisis that threatens core national security interests and constitutes a national
20 emergency.” The Emergency Declaration claimed that the border is an entry point for “criminals,
21 gang members, and illicit narcotics.”⁵⁴ The Emergency Declaration continues: “The problem of
22 large-scale unlawful migration through the southern border is long-standing, and despite the
23 executive branch’s exercise of existing statutory authorities, the situation has worsened in certain
24 respects in recent years. In particular, recent years have seen sharp increases in the number of

25 ⁵² White House, *President Donald J. Trump’s Border Security Victory* (Feb. 15, 2019),
26 <https://tinyurl.com/y3empmay>.

27 ⁵³ *Id.*

28 ⁵⁴ Declaring a National Emergency Concerning the Southern Border of the United States,
84 Fed. Reg. 4949 (Feb. 15, 2019).

1 family units entering and seeking entry to the United States and an inability to provide detention
 2 space for many of these aliens while their removal proceedings are pending.”⁵⁵ The Emergency
 3 Declaration concludes that the difficulty in removing these family units justifies the declaration,
 4 but it does not make any connection to how the entry of these family units into the United States
 5 contributes to the flow of “criminals, gang members, and illicit narcotics” into the country.⁵⁶

6 245. The President invoked the National Emergencies Act and declared that the
 7 “emergency requires use of the Armed Forces” and “that the construction authority provided in
 8 section 2808 of title 10, United States Code, is invoked and made available, according to its
 9 terms, to the Secretary of Defense, and at the discretion of the Secretary of Defense, to the
 10 Secretaries of the military departments.”

11 246. The Emergency Declaration directs the Secretary of Defense or the Secretary of
 12 relevant military departments to “order as many units or members of the Ready Reserve to active
 13 duty as the Secretary concerned, in the Secretary’s discretion, determines to be appropriate to
 14 assist and support the activities of the Secretary of Homeland Security at the southern border.”⁵⁷
 15 The Emergency Declaration acknowledges that DOD had previously “provided support and
 16 resources to the Department of Homeland Security at the southern border” pursuant to President
 17 Trump’s April 4, 2018 memorandum.⁵⁸

18 247. The Emergency Declaration further directs the Secretaries of Defense, Interior,
 19 and Homeland Security to “take all appropriate actions, consistent with applicable law, to use or
 20 support the use of the authorities herein invoked.”⁵⁹

21 248. At a press conference announcing the Executive Actions, President Trump
 22 acknowledged that Congress provided more than enough funding for homeland security, and that
 23 the Administration has “so much money, we don’t know what to do with it.” In explaining his
 24 rationale for the Executive Actions, the President candidly admitted that the emergency

25 ⁵⁵ *Id.*

26 ⁵⁶ *Id.*

27 ⁵⁷ *Id.* § 1.

28 ⁵⁸ *Id.*

⁵⁹ *Id.* § 2.

1 declaration reflected his personal preference to construct the wall more quickly, rather than an
 2 actual urgent need for it to be built immediately: “I could do the wall over a longer period of time.
 3 I didn’t need to do this. But I’d rather do it much faster.”⁶⁰

4 249. Following the announcement of the Executive Actions, Defendants announced
 5 their plans in more specific detail. Based on information and belief, on February 15, 2019, the
 6 Treasury notified Congress that it would be transferring \$242 million from the Treasury
 7 Forfeiture Fund to DHS to support law enforcement border security efforts conducted by CBP to
 8 be available for obligation as of March 2, 2019, with the remaining \$359 million to be transferred
 9 and available for obligation at a later date.

10 250. On February 26, 2019, the White House released a “fact sheet” indicating that in
 11 order to accommodate the Executive Action’s directive to use \$2.5 billion from DOD’s drug
 12 interdiction account toward construction of a border wall, DOD “will augment existing
 13 counterdrug funds” through the Department’s transfer authority provided in section 8005 of the
 14 FY2019 Department of Defense Appropriations Act, P.L. No. 115-245.⁶¹ Based on information
 15 and belief, DOD has informed Congress that it immediately plans to divert \$1 billion in
 16 “underutilized” funds that were appropriated for military pay and pensions for the construction of
 17 the border wall.⁶²

18 **IV. LEGAL BACKGROUND**

19 **A. The National Emergencies Act (50 U.S.C. §§ 1601-1651)**

20 251. The National Emergencies Act (“NEA”), Pub. L. 94-412, 90 Stat. 1255, codified at
 21 50 U.S.C. sections 1601-1651, was enacted by Congress in 1976 to rein in, rather than expand,
 22 the power of the president. The NEA was designed to “insure” that the president’s
 23 “extraordinary” emergency powers would “be utilized only when emergencies actually exist.” S.
 24 Rep. No. 94-1168, at 2 (1976). Senator Frank Church, who was instrumental in the development

25 _____
 26 ⁶⁰ White House, *Remarks by President Trump on the National Security and Humanitarian*
Crisis on our Southern Border (Feb. 15, 2019), <https://tinyurl.com/y3jenqeu>.

27 ⁶¹ White House, *The Funds Available to Address the National Emergency at Our Border*
 (Feb. 26, 2019), <https://tinyurl.com/y3yu3pr8>.

28 ⁶² Andrew Taylor and Lisa Mascaro, *Pentagon May Tap Military Pay, Pensions for*
Border Wall, ABC News (Mar. 7, 2019), <https://tinyurl.com/y5pg7wtv>.

of the NEA, testified before the Senate Committee of Government Operations “that the President should not be allowed to invoke emergency authorities or in any way utilize the provisions of this Act for frivolous or partisan matters, nor for that matter in cases where important but not ‘essential’ problems are at stake.” *Hearing on H.R. 3884 Before the S. Comm. of Governmental Operations*, 94th Cong. 7 (1976) (statement of Sen. Frank Church). Senator Church continued that “[t]he Committee intentionally chose language which would make clear that the authority of the Act was to be reserved for matters that are ‘essential’ to the protection of the Constitution and the people.” *Id.*

252. The NEA allows the president to utilize emergency powers, as authorized by Congress in other federal statutes, when there is a national emergency, and one has been declared. 50 U.S.C. § 1621.

253. Under the NEA, the president must specify the statutory emergency authorities he intends to invoke upon issuing a national emergency. He must also publish the proclamation of a national emergency in the Federal Register and transmit it to Congress. 50 U.S.C. § 1631.

254. The NEA sets out a procedure whereby Congress may terminate the national emergency if a resolution is passed by both houses of Congress and becomes law. 50 U.S.C. § 1622. This procedure requires that the joint resolution be signed into law by the President, or if vetoed by the President, that Congress overrides the veto with a two-thirds vote in both chambers of Congress.

255. On February 26, 2019, the House of Representatives passed H.J. Res. 46 terminating the Emergency Declaration by a vote of 245 to 182. The Senate has yet to act on the resolution. President Trump has vowed to veto any resolution by Congress terminating the Emergency Declaration.⁶³

B. Section 2808’s Emergency Military Construction Authority (10 U.S.C. § 2808)

256. The President seeks to reallocate “[u]p to \$3.6 billion . . . from Department of

⁶³ Phil Helsel, *Trump Says He Will Veto Resolution Terminating National Emergency*, NBC News (Feb. 28, 2019), <https://tinyurl.com/y2a53xrz>.

1 Defense military construction projects under the President’s declaration of a national
2 emergency.”⁶⁴

3 257. Section 2808 states that when the president declares a national emergency “that
4 requires use of the armed forces,” the Secretary of Defense may “undertake military construction
5 projects . . . not otherwise authorized by law that are necessary to support such use of the armed
6 forces.” 10 U.S.C. § 2808(a).

7 258. Section 2808 limits the funds available for emergency military construction to “the
8 total amount of funds that have been appropriated for military construction . . . that have not been
9 obligated.” *Id.*

10 259. “Military construction” under Section 2808 includes “any construction,
11 development, conversion, or extension of any kind carried out with respect to a military
12 installation,” and “military installation” includes a “base, camp, post, station, yard, center, or
13 other activity under the jurisdiction of the Secretary of a military department.” 10 U.S.C. § 2801.

14 **C. Section 284’s Authority to Support Counter-Drug Activities (10 U.S.C.**
15 **§ 284) and Section 8005’s Transfer Authority**

16 260. The President seeks to use “[u]p to \$2.5 billion under the Department of Defense
17 funds transferred for Support for Counterdrug Activities.”⁶⁵ Defendants intend to transfer up to
18 \$2.5 billion from other DOD accounts into the Department’s account for counterdrug activities in
19 order to satisfy that directive.⁶⁶

20 261. Section 284 authorizes the Secretary of Defense to assist civilian law enforcement
21 with drug enforcement activities. 10 U.S.C. § 284. It states that the Secretary of Defense “may
22 provide support for the counterdrug activities or activities to counter transnational organized
23 crime” of any law enforcement agency. Such support may include “[c]onstruction of roads and
24 fences and installation of lighting to block drug smuggling corridors across international
25

26 ⁶⁴ *President Donald J. Trump’s Border Security Victory*, *supra* note 43 (citing 10 U.S.C. §
27 2808).

28 ⁶⁵ *Id.* (citing 10 U.S.C. § 284).

⁶⁶ *Funds Available to Address the National Emergency at Our Border*, *supra* note
61(citing section 8005 of the FY2019 Department of Defense Appropriations Act).

boundaries of the United States.” *Id.*

262. Use of Section 284 is not dependent on the president declaring a national emergency.

263. Congress has appropriated funding for interdiction and counterdrug activities to the DOD. For instance, in FY2019, Congress appropriated \$217,178,000 for National Guard counterdrug programs subject to specific limitations on how the Administration may expend these funds.⁶⁷ That funding is intended to support counterdrug operations at all levels of government, including on a state-wide basis.⁶⁸ According to a U.S. Government Accountability Office analysis, National Guard Counterdrug Program funding was planned for all fifty states plus Washington, D.C., Puerto Rico, the U.S. Virgin Islands, and Guam.⁶⁹

264. Section 8005 of the FY2019 Department of Defense Appropriations Act, P.L. No. 115-245 provides that “[u]pon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed \$4,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes and for the same time period, as the appropriation or fund to which transferred.”

265. The “funds made available” in the FY2019 Department of Defense Appropriations Act includes those funds for the States’ national guards such as over \$8.6 billion appropriated for Army National Guard personnel, almost \$3.7 billion appropriated for Air Force National Guard personnel, over \$7.1 billion appropriated for Army National Guard operations and maintenance, over \$6.4 billion appropriated for Air Force National Guard operations and maintenance, and \$1.3

⁶⁷ Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 (Sept. 28, 2018).

⁶⁸ Nat’l Guard, National Guard Counterdrug Program, <https://tinyurl.com/yx9whzd8> (last visited Feb. 17, 2019).

⁶⁹ Gov’t Accountability Off., *Drug Control, DOD Should Improve Its Oversight of the National Guard Counterdrug Program*, GAO-19-27 (Jan. 2019), <https://tinyurl.com/y4e6ocra>.

1 billion for procurement items for the reserve components of the Armed Forces, including the
2 National Guard.⁷⁰

3 266. Section 8005’s transfer authority is subject to several conditions, including
4 “prompt” notification to Congress. In addition, the Section 8005 transfer authority “may not be
5 used unless for higher priority items, based on unforeseen military requirements, than those for
6 which originally appropriated and in no case where the item for which funds are requested has
7 been denied by Congress.”

8 267. Defendants have not explained how diversion of DOD funds toward construction
9 of a border wall would “block drug smuggling corridors” as contemplated by 10 U.S.C. section
10 284. Neither have Defendants explained how transferring funding for a border wall is for a
11 “higher priority item” nor an “unforeseen military requirement.” Defendants have not provided
12 an explanation, nor could they, as to how diverting funding toward construction of a border wall
13 would not be transferring funds for a project for which Congress has already denied funding.

14 **D. Authority to Transfer Funds from Treasury Forfeiture Fund (31 U.S.C. §**
15 **9705)**

16 268. The President seeks to use “about \$601 million” from the Department of the
17 Treasury’s Forfeiture Fund.⁷¹

18 269. Section 9705(g)(4)(B) provides that after reserves and required transfers, the
19 Treasury Forfeiture Fund’s “unobligated balances . . . shall be available to the Secretary . . . for
20 obligation or expenditure in connection with the law enforcement activities of any Federal
21 agency. . . .”

22 270. Defendants have not provided any explanation justifying the diversion of funding
23 from the Treasury Forfeiture Fund toward construction of the border wall. Specifically,
24 Defendants have not provided any explanation to warrant using Treasury Forfeiture Funds for the
25 construction of a border wall as opposed to reimbursing the Plaintiffs States’ outstanding claims
26 from the Treasury Forfeiture Fund.

27 _____
28 ⁷⁰ H.R. 6157, 115th Cong. § 4 (2019).

⁷¹ *Border Security Victory*, *supra* note 52.

E. National Environmental Policy Act (“NEPA”)

271. NEPA, 42 U.S.C. section 4321 et seq., is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1 (a). NEPA contains several action-forcing procedures, most significantly the mandate to prepare an environmental impact statement (“EIS”) on major federal actions “significantly affecting the quality of the human environment.” *Robertson v. Methow Valley Citizen Council*, 490 U.S. 332, 348 (1989) (citing 42 U.S.C. § 4332 (2)(C)).

272. NEPA requires federal agencies to consider several factors relating to the “intensity” of the project, including: the “[u]nique characteristics of the geographic area such as proximity to . . . ecologically critical areas” (40 C.F.R. § 1508.27(3)); “[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973” (40 C.F.R. § 1508.27(9)); and “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27(10).

273. “NEPA requires that the evaluation of a project’s environmental consequences take place at an early stage in the project’s planning process.” *State of California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (citation omitted). A proposal subject to NEPA exists where an agency has a goal and is actively preparing to make a decision on the alternatives in accomplishing that goal, regardless of whether the agency declares that such a proposal exists: “An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal.” 40 C.F.R. § 1502.5. A “[p]roposal exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.” 40 C.F.R. § 1508.23.

V. THERE IS NO IMMIGRATION ENFORCEMENT “CRISIS” OR “INVASION” AT THE SOUTHERN BORDER TO SUPPORT THE DECLARATION OF EMERGENCY

A. There Is No Evidence That a Massive Influx of Migrants Is Overwhelming Government Resources at the Southern Border

274. President Trump’s continued claim that an unprecedented flood of migrants is

1 causing an immigration enforcement crisis amounting to a “national emergency” is not supported
2 by the facts.⁷²

3 275. As CBP statistics show, apprehensions at the border in recent months—while they
4 show increases stemming from an increase in migrant families seeking asylum—are well within
5 the historic range.⁷³

6 276. In recent years, apprehensions at the southwest border have been near historic
7 lows, with fewer than 400,000 apprehensions in FY2018 compared to over 1.6 million in
8 FY2000.⁷⁴

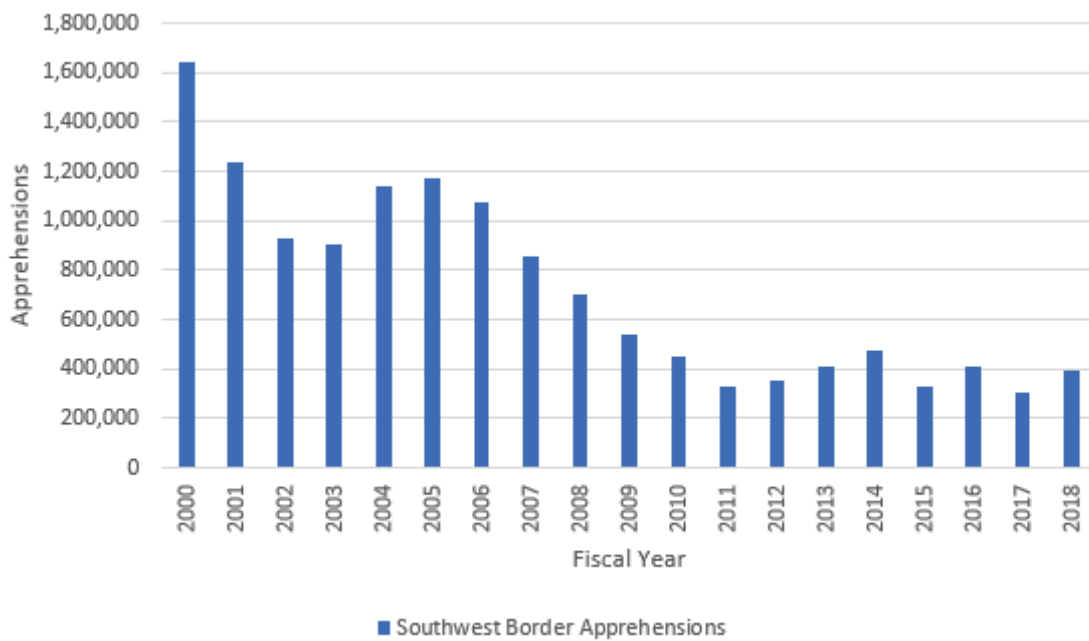
9 277. In FY2017, CBP made the fewest apprehensions since FY2000, and the number of
10 apprehensions in FY2018 was the fifth lowest since FY2000.⁷⁵

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21 ⁷² See 165 Cong. Rec. S1412 (daily ed. Feb. 25, 2019) (joint declaration of 58 former
22 United States senior government national security, defense, and diplomatic officials, including
23 former Cabinet Secretaries Madeline Albright, Chuck Hegel, John Kerry, and Leon Panetta,
hereafter “Former Gov’t Officials Decl.”) (stating that “there is no evidence of a sudden or
emergency increase in the number of people seeking to cross the southern border”).

24 ⁷³ CBP, *Southwest Border Migration FY2019*, <https://tinyurl.com/CBP-app-2019> (last
visited Feb. 17, 2019).

25 ⁷⁴ CBP, *Nationwide Illegal Alien Apprehensions Fiscal Years 1925-2017*,
26 <https://tinyurl.com/y2kysbr8> (last visited Feb. 17, 2019) (also showing over 1 million
27 apprehensions in each of fiscal years 1954, 1983-87, 1990-99, 2001, 2004-06, as well as over
800,000 apprehensions in each of fiscal years 1953, 1977-79, 1981-82, 1988-89, 2002, 2003, and
2007).

28 ⁷⁵ *Id.* (also the source of data for the graph included herein).



278. During this same time span, there were dramatic increases in the number of Border Patrol agents utilized to patrol the southwest border between the ports of entry. From 2000 to 2017, CBP increased its Border Patrol agent staffing nationwide by 111 percent, from 9,212 to 19,437 agents. CBP increased the number of Border Patrol agents assigned to the southwest border sectors by nearly 94 percent, from 8,580 to 16,605 agents during the 2000-2017 time period.⁷⁶

279. The number of Border Patrol agents have significantly increased over the past two decades, while illegal border crossings have dropped, causing the average annual number of apprehensions made by each Border Patrol agent to drop by almost 91 percent, from 192 in FY2000 to only 18 in FY2017.⁷⁷

280. The Border Patrol's budget has also significantly increased during this period, with Congress' appropriations increasing from \$1.055 billion in FY2000 to \$3.805 billion in FY2017, an increase of over 260 percent.⁷⁸

⁷⁶ CBP, *Border Patrol Agent Nationwide Staffing by Fiscal Year*, <https://tinyurl.com/yyazdqm7> (last visited Feb. 17, 2019).

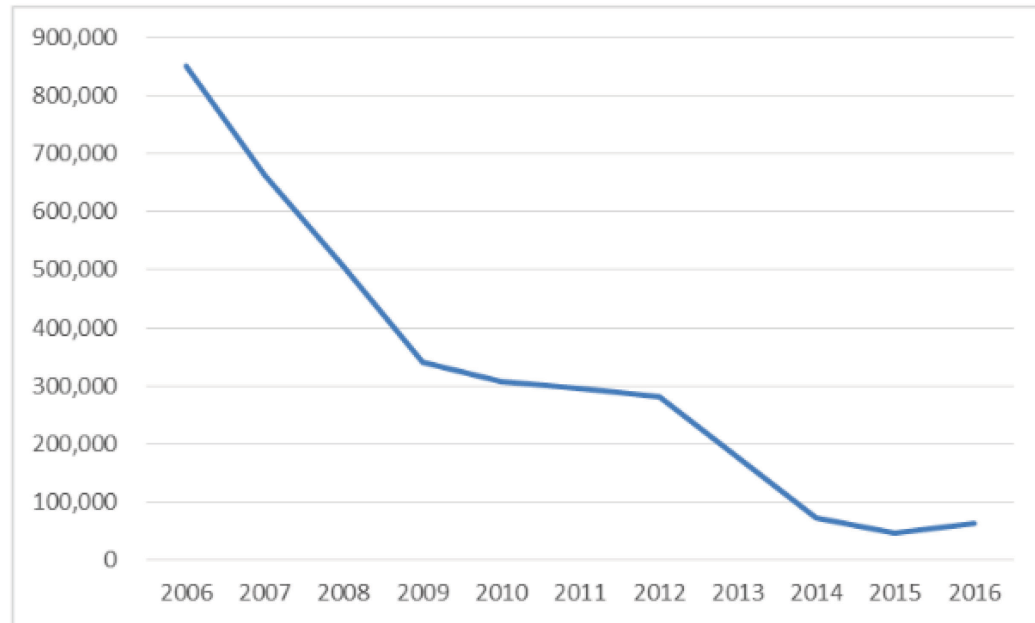
⁷⁷ *Id.*; CBP, *Total Illegal Alien Apprehensions by Fiscal Year*, <https://tinyurl.com/y73mzshs> (last visited Feb. 17, 2019).

⁷⁸ CBP, *Enacted Border Patrol Program Budget by Fiscal Year*,

281. In September 2017, DHS published a report in which it concluded that “the southwest land border is more difficult to illegally cross today than ever before.”⁷⁹

282. This difficulty is borne out in the precipitous drop in undetected unlawful entries, which, as a 2018 DHS study estimated, “fell from approximately 851,000 to nearly 62,000 [between FY2006 and 2016], a 93 percent decrease.”⁸⁰

Figure 2: Estimated Southwest Border Undetected Unlawful Entries, FY 2006 – FY 2016



283. That same DHS report contained data showing that probability of detection markedly increased during this time period, “from 70 percent in FY2006 (when an estimated 2.0 million unlawful border crossers were detected out of an estimated 2.9 million total unlawful border crossers) to 91 percent in FY2016 (611,000 detected out of 673,000 total estimated unlawful border crossers).”⁸¹

284. In general, the undocumented population in the United States has dropped

<https://tinyurl.com/yxw4bj4b> (last visited Mar. 12, 2019).

⁷⁹ DHS, Off. of Immigr. Stats., *Efforts by DHS to Estimate Southwest Border Security between Ports of Entry* (Sept. 2017), <https://tinyurl.com/y9gbn5js>.

⁸⁰ DHS, *Border Security Metrics Report* (May 1, 2018), <https://tinyurl.com/y2p96d2o> (2016 is the most recent year for which this data is available).

⁸¹ *Id.*

1 significantly in recent years, falling by about 1 million between 2010 and 2017.⁸²

2 285. The overall characteristics of individuals who are apprehended at the southwest
3 border have changed significantly, from predominantly adult male Mexican nationals entering the
4 United States alone, to increasing numbers of families from Central America.⁸³ Many of these
5 migrant families are requesting asylum upon entry into the United States.⁸⁴

6 286. The Director of National Intelligence's most recent "Worldwide Threat
7 Assessment" ("DNI Report") was produced on January 29, 2019. That report discusses several
8 topics germane to the Emergency Declaration, including migration, terrorism, and transnational
9 crime (including human and drug trafficking).⁸⁵

10 287. While the DNI Report notes that "high crime rates and weak job markets will spur
11 additional United States-bound migrants from the Northern Triangle—El Salvador, Guatemala,
12 and Honduras," the report contains no mention of a security threat at the southwest border.⁸⁶ The
13 report also discusses "transnational organized crime" as a driver of migration,⁸⁷ consistent with
14 research by federal officials indicating that most migrants from the Northern Triangle are "fleeing
15 violence at home" and seeking to claim asylum in the United States.⁸⁸

16 288. At the January 29, 2019, hearing of the Senate Intelligence Committee where the
17 report was presented, the heads of the Office of the Director of National Intelligence (DNI),
18 Federal Bureau of Investigation, and Central Intelligence Agency—all appointed by President

19 ⁸² Robert Warren, *U.S. Undocumented Population Continued to Fall from 2016 to 2017, and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year*,
20 Ctr. for Migration Studies (Jan. 16, 2019), <https://tinyurl.com/y7wa849r>; see also Former Gov't
21 Officials Decl., *supra* note 72, at S1412 ("The United States currently hosts what is estimated to
be the smallest number of undocumented immigrants since 2004").

22 ⁸³ Cong. Res. Serv., *The Trump Administration's "Zero Tolerance" Immigration*
23 *Enforcement Policy* (Jul. 20, 2018) <https://tinyurl.com/y6rxgipk>.

24 ⁸⁴ See, e.g., Nomaan Merchant, *Crush of Desperate Migrant Families Seek Asylum at*
25 *Border*, Associated Press (Jan. 23, 2019), <https://tinyurl.com/y4to9ykq>.

26 ⁸⁵ Daniel R. Coats, *Worldwide Threat Assessment*, Off. of the Dir. of Nat'l Intelligence
27 (Jan. 29, 2019), <https://tinyurl.com/y9r6kkhu>.

28 ⁸⁶ *Id.* at 41.

⁸⁷ *Id.* at 19.

⁸⁸ Max Ehrenfreund, *The Huge Immigration Problem That Donald Trump's Wall Won't*
27 *Solve*, Wash. Post (Dec. 18, 2015), <https://tinyurl.com/yxgw1x2q> (citing research by Federal
28 Reserve Bank of Dallas economist).

Trump—testified about international threats to the United States. During that hearing, none of these officials even mentioned issues relating to the southwest border; they also did not testify that the situation at the United States-Mexico border constituted a threat to the United States’ national security.⁸⁹

B. There Is No Evidence that Terrorists Are Infiltrating the United States via the Southern Border

289. The Trump Administration’s assertions that terrorism concerns justify its actions here are without factual basis.

290. President Trump and other members of his Administration, including DHS Secretary Nielsen, have repeatedly claimed that terrorists have attempted to infiltrate the United States via the southern border and that the border wall is needed to stop this from happening.⁹⁰

291. However, the federal government’s own reports, as well as credible third-party analysis, show that these claims are false.

292. In fact, while over 2,500 individuals on the Federal Bureau of Investigation’s terrorist watchlist attempted to travel to the United States in FY2017, the vast majority—over 2,100—attempted to do so by air.⁹¹

293. More generally, a 2018 U.S. State Department report finds that there is “no

⁸⁹ CSPAN, *Global Threats and National Security* (Jan. 29, 2019), <https://tinyurl.com/ydyaugm5>; see also Former Gov’t Officials Decl., *supra* note 72, at S1413 (“In a briefing before the House Armed Services Committee the next day, Pentagon officials acknowledged that the 2018 National Defense Strategy does not identify the southern border as a security threat”).

⁹⁰ See White House, *Remarks by Vice President Mike Pence at an America First Policies Tax Reform Event* (Feb. 17, 2018), <https://tinyurl.com/y54tmrzo> (claiming that “seven individuals a day who are either known or suspected terrorists” are apprehended at one Texas port of entry); Donald J. Trump (@realDonaldTrump), Twitter (Oct. 22, 2018, 5:37 AM), <https://tinyurl.com/mid-easterners-tweet> (asserting that “unknown Middle Easterners” are part of the Caravan, and that he has “alerted Border Patrol and Military that this is a National Emergency [sic.]”); see also Calvin Woodward, *AP FACT CHECK: Trump’s Mythical Terrorist Tide From Mexico*, ABC News (Jan. 7, 2019), <https://tinyurl.com/yyhewhrl> (collecting other statements by Administration officials asserting that large numbers of individuals with terrorist ties are apprehended at the Southern Border).

⁹¹ DHS and U.S. Dep’t of Justice, *Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report 9* (Jan. 2018), <https://tinyurl.com/yy6bg66j>.

credible evidence indicating that international terrorist groups have established bases in Mexico, worked with Mexican drug cartels, or sent operatives via Mexico into the United States.”⁹²

294. While noting that “[t]he U.S. southern border remains vulnerable to *potential* terrorist transit,” the report concluded that “terrorist groups likely seek other means of trying to enter the United States.”⁹³

295. A recent comprehensive study by the Cato Institute—using data going back to 1975—found that “there have been zero people murdered or injured in terror attacks committed by illegal border crossers on U.S. soil.”⁹⁴

296. In fact, almost every individual convicted of even planning a terrorist attack on the United States who entered the country illegally came over the Canadian border or jumped ship in American ports.⁹⁵

297. Only three individuals convicted of a terrorist plot entered illegally through the Mexican border, and they did so as children in the 1980s, decades before the planned attack was foiled in 2007.⁹⁶

298. Further, the Cato Institute noted that “[n]ot a single terrorist in any visa category came from Mexico or Central America during the 43-year period.”⁹⁷

299. The DNI Report contains a three-page discussion of terrorism. That discussion does not mention any threat of terrorists infiltrating the United States through the southwest border.⁹⁸ Indeed, terrorism is not discussed at all in the Western Hemisphere section of the

⁹² U.S. Dep’t of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2017* 205 (Sept. 2018), <https://tinyurl.com/y93n5fes>.

⁹³ *Id.* (emphasis added).

⁹⁴ David Bier & Alex Nowrasteh, *45,000 “Special Interest Aliens” Caught Since 2007, But No U.S. Terrorist Attacks from Illegal Border Crossers*, Cato Inst. (Dec. 17, 2018), <https://tinyurl.com/yddqwes3>.

⁹⁵ *Id.*; see also Former Gov’t Officials Decl., *supra* note 72, at S1412 (“Between October 2017 and March 2018, forty-one foreign immigrants on the terrorist watchlist were intercepted at the northern border. Only six such immigrants were intercepted at the southern border”).

⁹⁶ *Id.*

⁹⁷ Alex Nowrasteh, *Does the Migrant Caravan Pose a Serious Terrorism Risk?*, Cato Inst. (Oct. 23, 2018), <https://tinyurl.com/yap9uc9s>.

⁹⁸ *DNI Report*, *supra* note 85 at 10–13.

report.⁹⁹

300. At the January 29, 2019, Senate Intelligence Committee hearing about the report, none of the national security officials testified to terrorists infiltrating the United States through the southern border. The DNI's and Central Intelligence Agency Director's testimony focused on threats in the Middle East, Africa, and the Philippines.¹⁰⁰

301. Thus, while combating terrorism is an important national priority, illegal crossings at the southern border do not materially contribute to that problem and provide no factual justification for declaring an emergency requiring the diversion of funds to build a wall.

C. There Is No Evidence that a Border Wall Will Decrease Crime Rates

302. Studies have consistently shown that the connection that President Trump attempts to draw between unauthorized immigration and increased crime rates is false.

303. According to a 2018 Cato Institute study examining 2016 incarceration rates, unauthorized immigrants were 47 percent less likely to be incarcerated for crimes than native-born Americans.¹⁰¹

304. A 2018 Cato Institute report examining 2015 Texas crime statistics found that undocumented immigrants had a criminal conviction rate 50 percent below that for native-born Americans.¹⁰²

305. A 2018 study published in *Criminology* examining national crime rates from 1990 to 2014 found "that undocumented immigration does not increase violence" and in fact

⁹⁹ *Id.* at 40–42.

¹⁰⁰ Global Threats and National Security, *supra* note 89 (24:12–:21; 32:05–:50; 1:27:15–:50; 1:28:40–:29:57).

¹⁰¹ Michelangelo Landgrave & Alex Nowrasteh, *Incarcerated Immigrants in 2016*, Cato Inst. Res. and Pol'y Br. No. 7 (Jun. 4, 2018), <https://tinyurl.com/y2jn4e3x>; *see also* Former Gov't Officials Decl., *supra* note 72, at S1412 (stating that "in Texas, undocumented immigrants were found to have a first-time conviction rate 32 percent below that of native-born Americans; the conviction rates of unauthorized immigrants for violent crimes such as homicide and sex offenses were also below those of native-born Americans").

¹⁰² Alex Nowrasteh, *Criminal Immigrants in Texas*, Cato Inst. Res. and Pol'y Br. No. 4 (Feb. 26, 2018), <https://tinyurl.com/y62qjsa6>.

“[i]ncreases in the undocumented immigrant population within states are associated with significant decreases in the prevalence of violence.”¹⁰³

306. A 2017 study in the *Journal of Ethnicity in Criminal Justice* examining immigration and crime rates nationally over a 40-year period found that in the 10 cities where the immigrant population increased the most, crime levels in 2016 decreased to lower levels of crime than in 1980.¹⁰⁴ “The most striking finding from our research is that for murder, robbery, burglary and larceny, as immigration increased, crime decreased, on average, in American metropolitan areas.”¹⁰⁵ Large cities with substantial immigrant populations have *lower* crime rates, on average, than those with minimal immigrant populations.¹⁰⁶

307. A 2010 study showed that native-born American men between ages 18 to 39 with no high school diploma had triple the incarceration rate of immigrant men from Mexico, El Salvador, and Guatemala with the same age and education profile.¹⁰⁷

308. The Administration’s repeated claims that building a border barrier in El Paso, Texas reduced a previously high rate of violent crimes there are also false.¹⁰⁸

309. In fact, when the new border barrier was built in 2009, crime in El Paso had been dramatically decreasing since the 1990s, just as the violent crime rate decreased substantially nationwide from the 1990s through the present.¹⁰⁹ “From 2006 to 2011—two years before the

¹⁰³ Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent Crime?* Criminology (Mar. 25, 2018), <https://tinyurl.com/ycyzsf27>.

¹⁰⁴ Robert Adelman et al., *Urban crime rates and the changing face of immigration: Evidence across four decades*, J. of Ethnicity in Crim. Justice, Vol. 15 (2017), <https://tinyurl.com/y6czenh7>; see also Anna Flag, *The Myth of the Criminal Immigrant*, N.Y. Times (Mar. 30, 2018), <https://tinyurl.com/y9hcu6kp>.

¹⁰⁵ Charis Kubrin et al., *Immigrants Do Not Increase Crime, Research Shows*, Scientific American (Feb. 7, 2017), <https://tinyurl.com/h8xauk2>.

¹⁰⁶ *Id.*

¹⁰⁷ Walter Ewing, et al., *The Criminalization of Immigration in the United States*, Am. Immigr. Council Rep. (Jul. 13, 2015), <https://tinyurl.com/jxcv9aq>.

¹⁰⁸ See, e.g., White House, *President Donald J. Trump’s State of the Union Address* (Feb. 5, 2019), <https://tinyurl.com/y77nquv5> (“The border city of El Paso, Texas, used to have extremely high rates of violent crime—one of the highest in the entire country, and considered one of our nation’s most dangerous cities. Now, immediately upon its building, with a powerful barrier in place, El Paso is one of the safest cities in our country.”).

¹⁰⁹ Federal Bureau of Investigation, Uniform Crime Reports, Crime in the United States,

fence was built to two years after—the number of violent crimes recorded in El Paso increased by 17 percent.”¹¹⁰

310. CBP data show that as the mix of apprehended migrants has shifted to an increasing proportion of families as discussed above, the numbers of violent crimes committed by this group has also decreased.¹¹¹

D. There Is No Evidence that a Border Wall Will Impact the Smuggling of Dangerous Drugs into the United States

311. For years, the vast majority of the drugs smuggled into the country that the President has singled out as dangerous (methamphetamine, heroin, cocaine, and fentanyl)¹¹² have been smuggled through, not between, ports of entry.¹¹³

312. From 2012-2018, 86 percent of cocaine, 88 percent of heroin, and 84 percent of methamphetamine came through ports of entry.¹¹⁴

313. From 2017-2018, 83 percent of fentanyl came through legal border ports of entry.¹¹⁵

Table 1 (showing violent crime rate reduction from 567.6 violent crimes per 100,000 inhabitants in 1998 to 382.9 per 100,000 inhabitants in 2017), <https://tinyurl.com/yyvc6636> (last visited Feb. 17, 2019).

¹¹⁰ Madlin Mekelburg, *State of the Union: Facts Show Trump Wrong to Say El Paso Dangerous City until Fence*, El Paso Times (Feb. 5, 2019), <https://tinyurl.com/y9ol96az> (citing crime data from El Paso County Sheriff’s Office and FBI Uniform Crime Reports).

¹¹¹ Alex Nowrasteh, *There Is No National Emergency on the Border, Mr. President*, Cato Institute, <https://www.cato.org/blog/there-no-national-emergency-border-mr-president> (citing CBP data).

¹¹² *Trump Address on Crisis at Border*, *supra* note 33; see also White House, *President Donald J. Trump Is Committed to Working with Congress to Solve Our Urgent Immigration Crisis* (Feb. 5, 2019), <https://tinyurl.com/yyhzvrq9> (“Tens of thousands of Americans are killed by tons of deadly, illicit drugs trafficked into our country by criminal aliens, gangs, and cartels exploiting our porous border. The lethal drugs that flood across our border and into our communities include meth, heroin, cocaine, and fentanyl.”).

¹¹³ CBP, *Enforcement Statistics FY2018*, <https://tinyurl.com/y9c4c6ft> (showing that through August 2018, out of all the drugs seized by CBP in that fiscal year, 88 percent of cocaine, 90 percent of heroin, 87 percent of methamphetamine, and 80 percent of fentanyl were seized by Field Operations at ports of entry).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

314. For instance, CBP officers recently made what is being touted (including by President Trump¹¹⁶) as the largest seizure of fentanyl in history. Some 254 pounds of the drug and 395 pounds of methamphetamine were discovered hidden in a floor compartment of a truck loaded with cucumbers as the truck tried to enter through the port of entry at Nogales, Arizona.¹¹⁷

315. The most recent Drug Enforcement Agency (DEA) National Drug Threat Assessment affirms the CBP data showing that the bulk of dangerous illegal drugs flow through, not between, ports of entry.¹¹⁸

316. For example, in that report, the DEA states that “[a] small percentage of all heroin seized by CBP along the land border was between Ports of Entry (POEs).”¹¹⁹

317. As to fentanyl, the report states that “Mexican [Transnational Criminal Organizations] most commonly smuggle the multi-kilogram loads of fentanyl concealed in [privately owned vehicles] before trafficking the drugs through SWB POEs.”¹²⁰

318. Finally, the report notes that privately owned vehicles “remain the primary method used to smuggle cocaine across the SWB. Traffickers hide cocaine amongst legitimate cargo of commercial trucks or within secret compartments built within passenger vehicles.”¹²¹

319. The DNI Report discusses drug trafficking from Mexico; however, it contains no mention of smuggling between ports of entry.¹²²

320. In fact, the DNI Report notes that as to fentanyl—one of the drugs that President Trump has invoked in support of the border wall¹²³—“Chinese synthetic drug suppliers . . . probably ship the majority of US fentanyl, when adjusted for purity.”¹²⁴

¹¹⁶ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 31, 2019, 4:14 PM), <https://tinyurl.com/y4c4zxo3>.

¹¹⁷ Pete Williams, *Feds Make Largest Fentanyl Bust in U.S. History*, NBC News (Jan. 31, 2019), <https://tinyurl.com/y9zgnv7p>.

¹¹⁸ DEA, *2018 National Drug Threat Assessment* (Oct. 2018), <https://tinyurl.com/yaqyh3ld>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *DNI Report*, *supra* note 85.

¹²³ *Trump Address on Crisis at Border*, *supra* note 33.

¹²⁴ *DNI Report*, *supra* note 85 at 18; *see also* Former Gov’t Officials Decl., *supra* note 72,

E. There Is No Factual Basis to Support the Statutory Criteria for Diverting Funding

321. Building a border wall does not “require[] use of the armed forces” under 10 U.S.C. section 2808.¹²⁵

322. Construction of border fencing has been carried out by civilian contractors in recent years.

323. In fact, in 2007, the U.S. military informed DHS that “military personnel would no longer be available to build fencing.”¹²⁶

324. This, along with the desire to not take CBP agents away from their other duties, led CBP to decide to use “commercial labor for future infrastructure projects.”¹²⁷

325. This decision has been reflected in recent projects related to the border wall, including contract awards in California¹²⁸ and Arizona¹²⁹ in Fall 2018.

326. The construction of a border wall also does not constitute a “military construction” project, as defined in 10 U.S.C. section 2801. Since at least 2001, 10 U.S.C. section 2808 has only been invoked to justify military construction directly linked to a military installation.¹³⁰

327. In fact, with one exception, it has only been invoked in relation to construction at

at S1412 (noting that border wall will not “stop drugs from entering via international mail (which is how high-purity fentanyl, for example, is usually shipped from China directly to the United States)”).

¹²⁵ See also Former Gov’t Officials Decl., *supra* note 72, at S1412 (noting that “the composition of southern border crossings has shifted such that families and unaccompanied minors now account for the majority of immigrants seeking entry at the southern border; these individuals do not present a threat that would need to be countered with military force”).

¹²⁶ Gov’t Accountability Office, *GAO-09-244R Secure Border Initiative Fence Construction Costs* 7 (Jan. 29, 2009), <https://tinyurl.com/y2kgefp5>.

¹²⁷ *Id.*

¹²⁸ CBP, *Border Wall Contract Awards in California* (Dec. 21, 2018), <https://tinyurl.com/y3px9ubj> (announcing \$287 million contract with SLSCO Ltd. to build border barriers).

¹²⁹ CBP, *Border Wall Contract Award in Arizona* (Nov. 15, 2018), <https://tinyurl.com/y2t5u6pw> (announcing \$172 million contract with Barnard Construction Co. to build border barriers).

¹³⁰ Michael J. Vassalotti & Brendan W. McGarry, *Military Construction Funding in the Event of a National Emergency*, Cong. Res. Serv. (Jan. 11, 2019), <https://tinyurl.com/y23t8xbc>.

1 military installations outside the United States.¹³¹

2 328. That single instance related to securing domestic sites at which weapons of mass
3 destruction were sited.¹³²

4 329. Furthermore, the diversion of funding and resources for the proposed border wall
5 does not satisfy the requirements of 10 U.S.C. section 284, the Counterdrugs Activities statute
6 because the proposed border wall does not “block drug smuggling corridors,” 10 U.S.C. §
7 284(b)(7), as contemplated by the statute. Defendants also do not satisfy the criteria under
8 section 8005 of the FY2019 Department of Defense Appropriations Act to transfer other
9 Department of Defense funds toward construction of the border wall because it is not a “higher
10 priority item,” is not a “unforeseen military requirement,” and *is* an item for which Congress has
11 denied funding.

12 330. The diversion of Treasury Forfeiture Funds for construction of a border wall fails
13 to satisfy the criteria of 31 U.S.C. section 9705 because infrastructure construction is not within
14 the scope of the activities for which Treasury Forfeiture Funds may be used under that statute.

15 **F. Plaintiff States and their Residents Are Harmed by the Executive Actions**

16 **1. Harm caused by diversion of funding and other resources**

17 331. Plaintiff States and their residents are harmed by the Executive Actions and
18 Defendants’ unlawful actions undertaken to construct the border wall. *See* Parties section *supra*.

19 332. California will be harmed by the diversion of funds it receives from the federal
20 government for drug interdiction program funding, which will impact public safety and the
21 welfare of its residents.

22 333. California is typically allocated tens of millions of dollars in drug interdiction
23 funds from the federal government annually (for example, over \$25 million in FY2018-19). If
24 California loses this funding, there will be negative public safety impacts arising from the
25 impairment of the State’s criminal and narcotics operations.

26
27 ¹³¹ *Id.*

28 ¹³² *Id.*

334. Diversion of DOD funding from California's National Guard will likewise cause harm to the State. For FY2019-20, California expected to receive \$126.1 million in federal funds that are at risk due to the Executive Actions.¹³³ Any diversion of military funding intended for the California National Guard will also harm the State.

335. Diversion of funds from the Treasury's Forfeiture Fund will deprive the State of California and its local law enforcement agencies of access to millions of dollars of funds that would otherwise be available for law enforcement purposes, negatively impacting the public safety and welfare of California's residents.

336. The law enforcement agencies within the Plaintiff States received over 73 percent of the equitable shares paid to local and state agencies under the Treasury Forfeiture Fund's equitable share program in FY2018. California law enforcement agencies, many of which have participated in the equitable share program for over a decade, received \$53,304,000 in funding from the Treasury Forfeiture Fund in FY2018, more than any state.¹³⁴ Based on information and belief, California's state and local agencies, including the California Department of Justice, California Highway Patrol, and California National Guard, have millions of dollars in outstanding claims based on their previous participation in law enforcement activities.

337. California also will be harmed by diversion of funding for military construction.

338. More funds are spent on defense in California than in any other state, with \$48.8 billion in FY2017 alone.¹³⁵

339. California also leads the nation in defense contract spending, with \$35.2 billion that same year.¹³⁶ Plaintiff States collectively account for \$142.3 billion in defense contract spending, which represents 52 percent of all defense contract spending.

340. Three of the top ten defense contract spending locations in the nation are in

¹³³ State of California, *2019-20 Governor's Budget, Statewide Financial Information* at 29 (Jan. 10, 2019) (estimating \$126.1 million in federal funding for the California Military Department for FY2019-20), <https://tinyurl.com/y48pjdn1>.

¹³⁴ *Forfeiture Fund Audit*, *supra* note 3, at 67.

¹³⁵ DOD, Off. of Econ. Adjustment, *Defense Spending by State Fiscal Year 2017*, <https://tinyurl.com/yxcqugzr>.

¹³⁶ *Id.*

California (San Diego with \$9.2 billion, Los Angeles with \$5.3 billion, and Santa Clara County with \$4.8 billion).¹³⁷

341. This defense spending—including construction—in California generates significant economic activity, employment, and tax revenue.¹³⁸

342. In FY2016, this spending generated \$86.9 billion of direct economic activity in California, \$17.4 billion of economic activity created through the supply chain, and \$52 billion of “induced” economic activity created because of additional money in the economy.¹³⁹

343. This economic activity, in turn, generates employment for Californians. In FY2016, approximately 358,000 jobs were directly attributable to employment by defense agencies and their contractors, 84,000 were generated through the supply chain, and 324,000 resulted from economic activity induced by the additional money in the economy.¹⁴⁰

344. The economic activity generated by defense spending also resulted in significant tax revenues for California at the state and local level, estimated at \$5.8 billion total annually, including \$1.9 billion in income tax, \$1.7 billion in sales tax and \$1.3 billion in property tax.¹⁴¹

345. Certain regions of the state particularly rely on defense spending for employment, including Lassen County (with 18% of jobs reliant on defense spending) and San Diego (16%).¹⁴²

346. In a briefing with reporters on February 15, 2019, White House officials (Acting Chief of Staff John Michael Mulvaney, Defendant Nielsen, and Acting Director of the Office of Management and Budget Russell Vought) discussed the Administration’s plans to carry out the Emergency Declaration.¹⁴³ In response to a question regarding “which military construction projects will see the money moved for the border wall,” one Administration official stated during

¹³⁷ *Id.*

¹³⁸ Devin Lavelle, *California Statewide National Security Economic Impacts*, Cal. Res. Bureau (Aug. 2018), <https://tinyurl.com/yxqlw43b>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ White House, *Background Press Call on President Trump’s Remarks on the National Security and Humanitarian Crisis on Our Southern Border* (Feb. 15, 2019). This document was available on the White House website but then taken down that same day.

1 that briefing: “We would be looking at lower priority military construction projects. We would
2 be looking at ones that are to fix or repair a particular facility that might be able to wait a couple
3 of months into next year.”¹⁴⁴

4 347. A number of military construction projects that could fit this description, and for
5 which funds have been appropriated but are as yet unobligated, are planned in California.¹⁴⁵
6 These projects include repairs to existing military infrastructure. If Defendants determine that
7 these projects can wait, funding for them could be diverted to the border wall, and California
8 would be deprived of this federal funding and the resulting positive economic, employment, and
9 tax consequences.

10 348. If these types of projects are delayed due to the diversion of funding for border
11 wall construction, California stands to suffer economic harm.

12 349. Other Plaintiff States will suffer similar harms due to diversion of military
13 construction, drug interdiction, and drug forfeiture funding.

14 **2. Environmental harms to the States of California and New Mexico**

15 350. On December 12, 2018, DHS announced that if it received \$5 billion in additional
16 funding, it would use this funding to construct 330 miles of new barriers along the United States-
17 Mexico border in areas that the United States Border Patrol identified as “highest priority” in each
18 of the four border states. DHS specifically identified a five-mile barrier project in the CBP’s San
19 Diego Sector (California), a nine-mile project in the CBP’s El Centro Sector (California), and a
20 nine-mile project in the CBP’s El Paso Sector (New Mexico).¹⁴⁶

21 351. Following Defendant DHS’s December 12, 2018 announcement that it intended to
22 construct 330 miles of new barriers along the United States-Mexico border, DHS now intends to
23 construct hundreds more miles of new border barriers. During a March 6, 2019 hearing before
24 the House of Representatives’ Homeland Security Committee, Defendant Nielsen testified that

25
26 ¹⁴⁴ *Id.*

27 ¹⁴⁵ *E.g.*, DOD, *Construction Programs (C-1)*, Department of Defense Budget Fiscal Year
2019 (Feb. 2018), <https://tinyurl.com/yy85dch9>.

28 ¹⁴⁶ DHS, *Walls Work* (Dec. 12, 2018), <https://tinyurl.com/y7ca6byc>.

DHS now seeks to construct more than 700 miles of additional barriers along the southern border.¹⁴⁷

352. CBP's San Diego Sector is located in San Diego County, California and shares a 60-mile segment of the border with Mexico, 46 linear miles of which are already lined with primary fencing.¹⁴⁸ The only portions of the border located within the San Diego Sector that are not already lined with primary fencing are located in the southeastern portion of the county in or near the Otay Mountain Wilderness Area.¹⁴⁹ Thus, the only segment of the border within the San Diego Sector where DHS can construct new primary fencing, as it announced on December 12, 2018, are areas within or near the Otay Wilderness Area.

353. CBP's El Centro Sector is located within Imperial County, California, and shares a 70-mile segment of the border with Mexico, 59 linear miles of which are already lined by primary fencing.¹⁵⁰ The only portions of the border located within the El Centro Sector that are not already lined with primary fencing are located in the southwestern portion of Imperial County, which is comprised of a mountainous landscape and the Jacumba Wilderness Area.¹⁵¹ Thus, the only segment of the border within the El Centro Sector where DHS can construct new primary fencing, as it announced on December 12, 2018, are areas within or near the Jacumba Wilderness Area.

354. The Otay Mountain Wilderness and the Jacumba Wilderness areas are home to more than 100 sensitive plant and animal species that are listed as "endangered," "threatened," or "rare" under the federal Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq., and/or the

¹⁴⁷ CSPAN, *Immigration and Border Security* (Mar. 6, 2019), <https://tinyurl.com/y5fqdmma>.

¹⁴⁸ CBP, *San Diego Sector California* (Jan. 26, 2018), <https://tinyurl.com/y5zgvftf>; Gov't Accountability Off., *GAO-17-331, Southwest Border Security: Additional Actions Needed to Better Assess Fencing's Contributions to Operations and Provide Guidance for Identifying Capability Gaps* 48, <https://www.gao.gov/products/GAO-17-331>.

¹⁴⁹ CBP, *Border Fencing – California* (June 2011), <https://tinyurl.com/y24zbf4>; CBP, *FY17 U.S. Border Patrol Apprehensions (Deportable) & Fencing* (Dec. 6, 2017), <https://tinyurl.com/ydf146zk>.

¹⁵⁰ CBP, *El Centro Sector California* (Apr. 11, 2018), <https://tinyurl.com/y5kpbk2e>; *Southwest Border Security*, *supra* note 148.

¹⁵¹ CBP, *Border Fencing 2011 & 2017*, *supra* note 149.

California Endangered Species Act, Cal. Fish & Game Code § 2050 et seq. These species include the following federally and state endangered species: the Mexican flannel bush, Thornmint, the Quino Checkerspot Butterfly, the Southwestern Willow Flycatcher, and the Peninsular Desert Bighorn sheep.¹⁵² Some of the listed plant species, such as the Tecate Cypress and the Mexican flannel bush, are so rare they can only be found in these wilderness areas.¹⁵³ The federally and state-endangered Peninsular Desert Bighorn sheep has a range that includes mountainous terrain in Mexico near the United States-Mexico border and extends north across the border through the Jacumba Wilderness to California's Anza-Borrego State Park.¹⁵⁴

355. The construction of border barriers within or near the Jacumba Wilderness Area and the Otay Mountain Wilderness Area will have significant adverse effects on environmental resources, including direct and indirect impacts to endangered or threatened wildlife. These injuries to California's public trust resources would not occur but for Defendants' unlawful and unconstitutional diversion of funds.

356. The construction of a border wall in the El Paso Sector along New Mexico's southern border will have significant adverse effects on the State's environmental resources, including direct and indirect impacts to endangered or threatened wildlife.

357. If Defendants use the diverted funding announced in President Trump's February 15 Executive Actions to construct any of the border wall in New Mexico, it will impose environmental harm to the State. The environmental damage caused by a border wall in New

¹⁵² Cal. Dept. of Fish & Wildlife, *Threatened and Endangered Species*, <https://tinyurl.com/7l65784> (last visited Feb. 17, 2019); Wilderness Connect, *Jacumba Wilderness*, <https://tinyurl.com/y5yh23x5> (last visited Feb. 17, 2019); U.S. Bureau of Land Management, *Jacumba Wilderness* <https://tinyurl.com/y43hv424> (last visited Feb. 17, 2019); U.S. Bureau of Land Management, *Otay Mountain Wilderness* <https://tinyurl.com/y3zmvsh> (last visited Feb. 17, 2019); Wilderness Connect, *Otay Mountain Wilderness*, <https://tinyurl.com/y3ymkzn> (last visited Feb. 17, 2019).

¹⁵³ Wilderness Connect, *Otay Mountain*, *supra* note 152.

¹⁵⁴ Cal. Dept. of Fish & Wildlife, *Peninsular Desert Bighorn Sheep* <https://tinyurl.com/yyvu5kwa> (last visited Feb. 17, 2019).

Mexico would include the blocking of wildlife migration, flooding, and habitat loss.¹⁵⁵

358. The Chihuahuan desert bisected by the New Mexico-Mexico border is the most biologically diverse desert in the Western Hemisphere.¹⁵⁶ Species common along the border are a number of endangered, threatened, and candidate species including the beautiful shiner, Chiricahua leopard frog, jaguar, lesser long-nosed bat, loach minnow, Mexican long-nosed bat, Mexican spotted owl, Mexican wolf, narrow-headed gartersnake, New Mexican ridge-nosed rattle snake, northern aplomado falcon, northern Mexican gartersnake, southwestern willow flycatcher, spokedace, and yellow billed cuckoo.¹⁵⁷ A barrier built in the Chihuahuan desert is likely to disrupt or destroy habitat of these migratory animals, nesting birds and reclusive reptiles.

359. In particular, New Mexico's border is also home to the endangered Mexican gray wolf, the rarest subspecies of gray wolf in North America, which was nearly extirpated by the 1970s and only recently reintroduced.¹⁵⁸ A wall impossible to breach may make it impossible for the wolf to disperse across the border to reestablish recently extirpated populations or bolster small existing populations. On March 14, 2018, the New Mexico Department of Game and Fish signed an agreement with the U.S. Department of Fish and Wildlife to increase cooperation in reintroduction of this species to the wild, evidencing the State's commitment to preventing the extinction of this species.

360. The segment of New Mexico's border with Mexico that does not already have primary fencing is in the State's "bootheel" region.¹⁵⁹ If Defendants' diverted funding resulted in the construction of a barrier in New Mexico's bootheel, it would cause environmental harm in

¹⁵⁵ See Robert Peters et al., *Nature Divided, Scientists United: US-Mexico Border Wall Threatens Biodiversity and Binational Conservation*, BioScience (Oct. 2018), <https://tinyurl.com/y3t4ymfn>.

¹⁵⁶ Nat'l Park Service, *Chihuahuan Desert Ecoregion* (Sept. 20, 2018), <https://www.nps.gov/im/chdn/ecoregion.htm>.

¹⁵⁷ U.S. Fish & Wildlife Serv., *Species By County Report*, <https://tinyurl.com/yxmwz9qm> (Hidalgo County, NM); <https://tinyurl.com/y4ojwrtq> (Luna County, NM) (last visited Feb. 17, 2019).

¹⁵⁸ U.S. Fish & Wildlife Serv., *Mexican Wolf*, <https://tinyurl.com/y2hf5ea2> (last visited Feb. 17, 2019).

¹⁵⁹ CBP, *Border Fencing - New Mexico/West Texas* (June 2011), <https://tinyurl.com/y24zbf4>.

1 one of the State's most ecologically pristine and fragile regions. The bootheel is where temperate
2 and subtropical climates converge, making it another of the most biologically diverse regions in
3 the world, home to jaguars and wolves that coexist along the U.S.-Mexico border.¹⁶⁰ Recognizing
4 the ecological importance of this region, the U.S. Fish and Wildlife Service has designated large
5 segments of the bootheel's border with Mexico as critical habitat for the jaguar.¹⁶¹

6 361. Defendant DHS has not engaged in a public review of these adverse effects. By
7 failing to do so at the earliest possible stage of the project's planning process, DHS is violating
8 the requirements of NEPA. *Robertson v. Methow Valley Citizen Council*, 490 U.S. 332, 348-49
9 (1989); 40 C.F.R. §§ 1508.27(b)(9), (10). California and New Mexico have suffered, and will
10 continue to suffer, injuries to their procedural rights under NEPA and the APA, 5 U.S.C. section
11 551, and injuries to their concrete, quasi-sovereign interests relating to the preservation of wildlife
12 resources within their boundaries, including but not limited to wildlife on state properties.
13 *Massachusetts v. EPA*, 549 U.S. 497, 519-24 (2007); *Sierra Forest Legacy*, 646 F.3d at 1178.
14 These injuries to California's and New Mexico's procedural rights and quasi-sovereign interests
15 would not occur but for Defendants' unlawful and unconstitutional diversion of funds.

16 **DECLARATORY/INJUNCTIVE RELIEF**

17 362. Plaintiff States will suffer irreparable injury if Defendants take action to build the
18 border wall by diverting funds and resources in contravention of the United States Constitution
19 and several federal statutes, and Plaintiffs have no adequate remedy at law.

20 **FIRST CLAIM FOR RELIEF**

21 **VIOLATION OF CONSTITUTIONAL SEPARATION OF POWERS**

22 363. Plaintiff States incorporate the allegations of the preceding paragraphs by
23 reference.

24 364. Article I, Section 1 of the United States Constitution enumerates that "[a]ll
25 legislative Powers herein granted shall be vested in [the] Congress." Article I, Section 8 of the

26 ¹⁶⁰ Lauren Villagran, *Land That Time Forgot*, Albuquerque J. (Apr. 30, 2017),
27 <https://tinyurl.com/mxqht6r>.

28 ¹⁶¹ U.S. Fish & Wildlife Serv., *Jaguar (Panthera onca)*, <https://tinyurl.com/y6qpjdjl> (last
visited Feb. 17, 2019); 79 Fed. Reg. 12571 (Mar. 5, 2014).

1 United States Constitution vests exclusively in Congress the spending power to “provide for
2 the . . . General Welfare of the United States.”

3 365. Article I, Section 7, Clause 2 of the United States Constitution, known as the
4 Presentment Clause, requires that all bills passed by the House of Representatives and the Senate
5 be presented to the President for signature. The President then has the choice to sign or veto the
6 bill. Article II, Section 3 of the United States Constitution requires that the President “shall take
7 Care that the Laws be faithfully executed.”

8 366. The President acts at the lowest ebb of his power if he acts contrary to the
9 expressed or implied will of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,
10 637 (1952) (Jackson, J., concurring). Moreover, there is no provision in the United States
11 Constitution that authorizes the President to enact, amend, or repeal statutes, including
12 appropriations already approved by Congress and signed into law by the President. *Clinton v.*
13 *City of New York*, 524 U.S. 417, 438 (1998).

14 367. Defendants have violated the United States Constitution’s separation of powers
15 doctrine by taking executive action to fund a border wall for which Congress has refused to
16 appropriate funding. The 2019 Appropriations Act is an explicit denial of the President’s
17 requested funding for a border wall. Defendants have further violated the separation of powers
18 doctrine—specifically the Presentment Clause—by unilaterally diverting funding that Congress
19 already appropriated for other purposes to fund a border wall for which Congress has provided no
20 appropriations.

21 368. For the reasons stated herein, Plaintiffs are entitled to a declaration that
22 Defendants’ diversion of funding and resources toward the construction of a border wall is
23 unconstitutional, and the Court should enjoin Defendants’ implementation of the President’s
24 Executive Actions.

25 **SECOND CLAIM FOR RELIEF**

26 **VIOLATION OF APPROPRIATIONS CLAUSE**

27 369. Plaintiff States incorporate the allegations of the preceding paragraphs by
28 reference.

370. Article I, Section 9, Clause 7, known as the Appropriations Clause, provides that “[n]o Money shall be drawn from the treasury, but in Consequence of Appropriations made by Law.” The Appropriations Clause is a “straightforward and explicit command” that “no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.” *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990) (quoting *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937)).

371. Congress has not authorized or appropriated the funding that Defendants have diverted towards the construction of a border wall. Defendants have therefore violated the Appropriations Clause by funding construction of the border wall with funds that were not appropriated for that purpose.

372. For the reasons stated herein, Plaintiffs are entitled to a declaration that Defendants’ diversion of funding and resources toward the construction of a border wall is unconstitutional, and the Court should enjoin Defendants’ implementation of the President’s Executive Actions.

THIRD CLAIM FOR RELIEF

ULTRA VIRES

373. Plaintiff States incorporate the allegations of the preceding paragraphs by reference.

374. Neither the President nor an agency can take any action that exceeds the scope of their constitutional and/or statutory authority.

375. The President has acted ultra vires in seeking to divert funding pursuant to the National Emergencies Act because no emergency exists to warrant the invocation of that statute.

376. In addition, Defendants have acted ultra vires in seeking to divert funding pursuant to 10 U.S.C. section 2808 for failure to meet the criteria required under that statute. The construction of the border wall: (a) is not a “military construction project”; (b) does not “require[] use of the armed forces”; and (c) is not “necessary to support such use of the armed forces.”

377. Defendants have acted ultra vires in seeking to divert funding and resources pursuant to 10 U.S.C. section 284 for failure to meet the criteria required under that statute. The

statute does not contemplate the construction of a border wall as proposed by the President. Moreover, Defendants have acted ultra vires in seeking to transfer funding pursuant to section 8005 of the FY2019 Department of Defense Consolidated Appropriations Act to ultimately use for the construction of a border wall because it is not being transferred for: (a) a “higher priority item;” (b) “unforeseen military requirements;” or (c) an item for which Congress has not denied funding.

378. Defendants have acted ultra vires in seeking to divert funding pursuant to 31 U.S.C. section 9705 for failure to meet the criteria required under that statute.

379. For the reasons stated herein, Plaintiffs are entitled to a declaration that Defendants’ diversion of funding and resources toward the construction of a border wall is unlawful, and the Court should enjoin Defendants’ implementation of the President’s Executive Actions.

FOURTH CLAIM FOR RELIEF

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT (Constitutional Violation and Excess of Statutory Authority under 10 U.S.C. section 284, section 8005 of the FY2019 Department of Defense Appropriations Act, and 31 U.S.C. section 9705)

380. Plaintiff States incorporate the allegations of the preceding paragraphs by reference.

381. Defendants DOD and the Treasury are “agencies” under the APA, 5 U.S.C. section 551(1), and diversions of funding for construction of a border wall constitute “agency action” under the APA, *id.* section 551(13).

382. The diversion of federal funds toward construction of a border wall constitutes an “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court.” *Id.* § 704.

383. The APA requires that a court “hold unlawful and set aside agency action, findings, and conclusions found to be . . . contrary to constitutional right, power, privilege, or immunity,” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” *Id.* § 706(2)(B)-(C).

384. Defendants DOD and the Treasury’s diversion of funding and resources pursuant to 10 U.S.C. section 284, section 8005 of the FY 2019 Department of Defense Appropriations Act, and 31 U.S.C. section 9705 for construction of a border wall is unconstitutional because Defendants have: (a) overstepped their powers by exercising lawmaking authority that is solely reserved to Congress under Article I, Section I of the United States Constitution; (b) amended or cancelled appropriations that have already been approved by Congress; and (c) diverted funding and resources for the construction of a border wall that Congress did not appropriate for that purpose. Furthermore, these Defendants’ diversion of federal funding and resources pursuant to those statutes for construction of a border wall is ultra vires in excess of their statutory authority.

385. For the reasons stated herein, because Defendants DOD and the Treasury acted unconstitutionally and in excess of their statutory authority in diverting federal funds and resources toward construction of a border wall pursuant to the statutes described above, these actions are unlawful and should be set aside under 5 U.S.C. section 706. Moreover, the Court should enjoin Defendants’ implementation of the Executive Actions.

FIFTH CLAIM FOR RELIEF

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT (Arbitrary and Capricious actions under 10 U.S.C. section 284, section 8005 of the FY2019 Department of Defense Appropriations Act, and 31 U.S.C. section 9705)

386. Plaintiff States incorporate the allegations of the preceding paragraphs by reference.

387. Defendants DOD and the Treasury are “agencies” under the APA, 5 U.S.C. section 551(1), and their actions to divert funding for construction of a border wall constitute “agency action” under the APA, *id.* section 551(13).

388. The diversion of federal funds toward construction of a border wall constitutes an “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court.” *Id.* § 704.

389. The APA requires that a court “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or

otherwise not in accordance with law.” *Id.* § 706(2)(A).

390. Defendants DOD and the Treasury’s diversion of funding and resources pursuant to 10 U.S.C. section 284, section 8005 of the FY2019 Department of Defense Appropriations Act, and 31 U.S.C. section 9705 for construction of a border wall is arbitrary and capricious and an abuse of discretion because Defendants have relied on factors that Congress did not intend, failed to consider an important aspect of the problem the agency is addressing, and offered no explanation for the decision to divert funding and resources toward construction of a border wall that is consistent with the evidence that is before the agencies. *See Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

391. For the reasons stated herein, because Defendants DOD and the Treasury acted in an arbitrary and capricious manner in diverting federal funds and resources toward construction of a border wall pursuant to the statutes described above, these actions are unlawful and should be set aside under 5 U.S.C. section 706. Moreover, the Court should enjoin Defendants’ implementation of the Executive Actions.

SIXTH CLAIM FOR RELIEF

VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT

(For Plaintiff States California and New Mexico)

392. Plaintiff States incorporate the allegations of the preceding paragraphs by reference.

393. Defendant DHS is an “agency” under the APA, 5 U.S.C. section 552(1).

394. Defendant DHS has taken final agency action by proposing southern border wall development projects in “high priority” areas and has identified specific projects along the border in the El Centro, San Diego, and El Paso Sectors.¹⁶²

395. Defendants, through the Executive Actions, have taken steps to divert federal

¹⁶² The proposed projects are not located within areas covered by any existing waiver issued by DHS pursuant to section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (8 U.S.C. § 1103 note). 84 Fed. Reg. 2897 (February 8, 2019); 83 Fed. Reg. 3012 (January 22, 2018); 82 Fed. Reg. 42829 (September 12, 2017); 82 Fed. Reg. 35984 (August 2, 2017).

funding and other resources for those southern border wall construction projects.

396. NEPA compels federal agencies such as Defendant DHS to evaluate and consider the direct, indirect and cumulative effects that a proposed development project or program will have on the environment by requiring the agency to prepare an EIS that analyzes a reasonable range of alternatives and compares each alternative’s environmental impacts. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.27(b)(7). The EIS must also include an analysis of the affected areas and resources and the environmental consequences of the proposed action and the alternatives. 40 C.F.R. §§ 1502.10- 1502.19. The agency must commence preparation of the EIS “as close as possible to the time that the agency is developing or is presented with a proposal” so that the environmental effects of each alternative can be evaluated in a meaningful way. 40 C.F.R. § 1502.23.

397. Defendant DHS is in violation of NEPA and the APA because it failed to prepare an EIS concerning border wall development projects that will have adverse effects on the environment, including but not limited to direct, indirect and cumulative impacts on plant and animal species that are listed as endangered or threatened under the Endangered Species Act and/or California Endangered Species Act.

398. The imminent nature of this action is shown by the Trump Administration’s expression of its intent to move quickly with the construction of the border wall, DHS’s announcement designating priority areas for new border wall construction within the San Diego, El Centro, and El Paso Sectors, and Defendant Nielsen’s testimony regarding the intent to construct even more fencing than previously designated.¹⁶³ In addition, during his speech announcing the Emergency Declaration, President Trump spoke of his desire to build the wall “much faster” than he could otherwise,¹⁶⁴ and recently claimed that “[m]any additional contracts are close to being signed.”¹⁶⁵

¹⁶³ Rachael Bade et al., *‘A Recipe for Disaster’? Trump’s Border Emergency Drags the GOP into a Risky Fight Ahead of 2020*, Wash. Post (Feb. 15, 2019), <https://tinyurl.com/y413lu99>.

¹⁶⁴ White House, *President Trump’s Feb. 15, 2019, Remarks*, *supra* note 60.

¹⁶⁵ Donald J. Trump (@realDonaldTrump), Twitter (Mar. 8, 2019, 4:24 AM), <https://tinyurl.com/y3tsqmg1>.

399. The States of California and New Mexico have concrete and particularized interests in the protection of their own proprietary interests near the border as well as the protection of natural, historical, cultural, economic, and recreational resources within their jurisdictional boundaries. Defendants' failure to comply with NEPA and the APA injures and denies California's and New Mexico's procedural rights necessary to protect these interests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff States respectfully request that this Court enter judgment in their favor, and grant the following relief:

1. Issue a judicial declaration that the Executive Actions' diversion of federal funds and resources toward construction of a border wall is unconstitutional and/or unlawful because it: (a) violates the separation of powers doctrine; (b) violates the Appropriations Clause; (c) exceeds congressional authority conferred to the Executive Branch and is ultra vires; and (d) violates the Administrative Procedure Act;

2. The States of California and New Mexico seek a judicial declaration that Defendants violated the National Environmental Policy Act and Administrative Procedure Act and further seek an order enjoining DHS, requiring it to comply with the National Environmental Policy Act and Administrative Procedure Act—including preparing an EIS—before taking any further action pursuant to the Executive Actions;

3. Permanently enjoin Defendants from constructing a border wall without an appropriation by Congress for that purpose;

4. Permanently enjoin Defendants from diverting federal funding and resources toward construction of a border wall; and

5. Grant such other relief as the Court may deem just and proper.

1 Dated: March 13, 2019

Respectfully submitted,

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**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:19-cv-00892-HSG**

Sierra Club et al v. Trump et al
Assigned to: Judge Haywood S Gilliam, Jr
Relate Case Case: 4:19-cv-00872-HSG
Case in other court: Ninth Circuit Court of Appeals, 19-16102
Ninth Circuit Court of Appeals, 19-16300
Ninth Circuit Court of Appeals, 19-17501
Cause: 42:4321 Review of Agency Action-Environment

Date Filed: 02/19/2019
Jury Demand: None
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government Defendant

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Date Filed	#	Docket Text
02/19/2019	<u>1</u>	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF against Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (Filing fee \$ 400, receipt number 0971-13103766.). Filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet)(Wang, Cecillia) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>2</u>	Proposed Summons. (Wang, Cecillia) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>3</u>	Certificate of Interested Entities by Sierra Club, Southern Border Communities Coalition (Wang, Cecillia) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/20/2019	4	Case assigned to Magistrate Judge Kandis A. Westmore. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 3/6/2019. (jmlS, COURT STAFF) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/20/2019		<u>Electronic filing error</u> . A maximum of THREE summons will be issued. Please list all defendants on ONE summons or multiple defendants on THREE summons and re-file in its entirety Re: <u>2</u> Proposed Summons filed by Sierra Club, Southern Border Communities Coalition (jmlS, COURT STAFF) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/20/2019	<u>5</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 5/14/2019. Initial Case Management Conference set for 5/21/2019 01:30 PM. (jmlS, COURT STAFF) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/21/2019	<u>6</u>	MOTION for leave to appear in Pro Hac Vice Re: Dror Ladin (Filing fee \$310, receipt number 0971-13110184) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Ladin, Dror) (Filed on 2/21/2019) Modified on 2/22/2019 (cjlS, COURT STAFF). (Entered: 02/21/2019)
02/21/2019	<u>7</u>	MOTION for leave to appear in Pro Hac Vice Re: Hina Shamsi (Filing fee \$310, receipt number 0971-13110214) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Shamsi, Hina) (Filed on 2/21/2019) Modified on 2/22/2019 (cjlS, COURT STAFF). (Entered: 02/21/2019)

02/21/2019	<u>8</u>	MOTION for leave to appear in Pro Hac Vice Re: Noor Zafar (Filing fee \$310, receipt number 0971-13110258) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Zafar, Noor) (Filed on 2/21/2019) Modified on 2/22/2019 (cjlS, COURT STAFF). (Entered: 02/21/2019)
02/21/2019	<u>9</u>	MOTION for leave to appear in Pro Hac Vice Re: Omar Jadwat (Filing fee \$310, receipt number 0971-13110561) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Jadwat, Omar) (Filed on 2/21/2019) Modified on 2/22/2019 (cjlS, COURT STAFF). (Entered: 02/21/2019)
02/21/2019	<u>10</u>	MOTION for leave to appear in Pro Hac Vice Re: David Donatti (Filing fee \$310, receipt number 0971-13110632) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Donatti, David) (Filed on 2/21/2019) Modified on 2/22/2019 (cjlS, COURT STAFF). (Entered: 02/21/2019)
02/21/2019	<u>11</u>	Proposed Summons. (Wang, Cecillia) (Filed on 2/21/2019) (Entered: 02/21/2019)
02/22/2019	<u>12</u>	Summons Issued as to Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (cjlS, COURT STAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>13</u>	MOTION to Relate Case filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Declaration of Cecillia D. Wang, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Proposed Order, # <u>5</u> Certificate/Proof of Service)(Wang, Cecillia) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>14</u>	Order by Magistrate Judge Kandis A. Westmore granting <u>6</u> Motion for Pro Hac Vice as to Dror Ladin. (ivaS, COURTSTAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>15</u>	Order by Magistrate Judge Kandis A. Westmore granting <u>7</u> Motion for Pro Hac Vice as to Hina Shamsi. (ivaS, COURTSTAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>16</u>	Order by Magistrate Judge Kandis A. Westmore granting <u>9</u> Motion for Pro Hac Vice as to Omar Jadwat. (ivaS, COURTSTAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>17</u>	Order by Magistrate Judge Kandis A. Westmore granting <u>10</u> Motion for Pro Hac Vice as to David Donatti. (ivaS, COURTSTAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/25/2019	<u>18</u>	CLERK'S NOTICE. The Motion to Related Cases <u>13</u> was filed in the wrong case. Please refile the Motion in the lowest case number pursuant to the local rules which is case number 19-cv-0872 HSG. Docket number 13 is terminated and no action will be taken. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ivaS, COURTSTAFF) (Filed on 2/25/2019) (Entered: 02/25/2019)
02/26/2019	<u>19</u>	Order by Magistrate Judge Kandis A. Westmore denying without prejudice <u>8</u> Motion for Pro Hac Vice for Noor Zafar. (ivaS, COURTSTAFF) (Filed on 2/26/2019) (Entered: 02/26/2019)
02/27/2019	<u>20</u>	SUMMONS Returned Executed by Sierra Club, Southern Border Communities Coalition. All Defendants. (Ladin, Dror) (Filed on 2/27/2019) (Entered: 02/27/2019)
03/04/2019	<u>21</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13110258.) Filing fee previously paid on 2/21/2019 filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Zafar, Noor) (Filed on 3/4/2019) (Entered: 03/04/2019)
03/05/2019	<u>22</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Sierra Club, Southern Border Communities Coalition.. (Ladin, Dror) (Filed on 3/5/2019) (Entered: 03/05/2019)
03/06/2019	<u>23</u>	ORDER by Magistrate Judge Kandis A. Westmore granting <u>21</u> Motion for Pro Hac Vice as to Noor Zafar. (ivaS, COURTSTAFF) (Filed on 3/6/2019) (Entered: 03/06/2019)

03/06/2019	<u>24</u>	ORDER RELATING CASE TO 19-cv-0872-HSG. Signed by Judge Haywood S. Gilliam, Jr. on 3/6/2019. (nrsS, COURT STAFF) (Filed on 3/6/2019) (Entered: 03/06/2019)
03/06/2019		Case Reassigned to Judge Haywood S Gilliam, Jr. Magistrate Judge Kandis A. Westmore no longer assigned to the case. (ajsS, COURT STAFF) (Filed on 3/6/2019) (Entered: 03/06/2019)
03/07/2019	<u>25</u>	CLERK'S NOTICE SETTING CASE MANAGEMENT CONFERENCE FOR REASSIGNED CIVIL CASE. Notice is hereby given that a Case Management Conference has been set for May 21, 2019, before Judge Haywood S. Gilliam, Jr., at 2:00 p.m., in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA. Case Management Statement due by May 14, 2019. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. All future filings should reflect the case number as 4:19-cv-00892-HSG. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (nrsS, COURT STAFF) (Filed on 3/7/2019) (Entered: 03/07/2019)
03/18/2019	<u>26</u>	AMENDED COMPLAINT <i>for Declaratory and Injunctive Relief</i> against All Defendants. Filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Certificate/Proof of Service)(Ladin, Dror) (Filed on 3/18/2019) Modified on 3/19/2019 (jjbS, COURT STAFF). (Entered: 03/18/2019)
04/04/2019	<u>27</u>	**RE-FILED AS DOCKET NO. 28** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13230738.) Filing fee previously paid on 04/04/2019 filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Wang, Cecillia) (Filed on 4/4/2019) Modified on 4/5/2019 (jjbS, COURT STAFF). (Entered: 04/04/2019)
04/04/2019	<u>28</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13230738.) Filing fee previously paid on 04/04/2019 filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Certificate of Good Standing)(Hafetz, Jonathan) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>29</u>	MOTION for Preliminary Injunction filed by Sierra Club, Southern Border Communities Coalition. Motion Hearing set for 5/9/2019 02:00 PM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 4/18/2019. Replies due by 4/25/2019. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Certificate of Service)(Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>30</u>	Declaration of Albert Del Val in Support of <u>29</u> MOTION for Preliminary Injunction filed bySierra Club, Southern Border Communities Coalition. (Related document(s) <u>29</u>) (Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>31</u>	Declaration of Amanda Munro in Support of <u>29</u> MOTION for Preliminary Injunction filed bySierra Club, Southern Border Communities Coalition. (Related document(s) <u>29</u>) (Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>32</u>	Declaration of Vicki B. Gaubeca in Support of <u>29</u> MOTION for Preliminary Injunction filed bySierra Club, Southern Border Communities Coalition. (Related document(s) <u>29</u>) (Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>33</u>	Declaration of Christina Houle in Support of <u>29</u> MOTION for Preliminary Injunction filed bySierra Club, Southern Border Communities Coalition. (Related document(s) <u>29</u>) (Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>34</u>	Declaration of Kevin Bixby in Support of <u>29</u> MOTION for Preliminary Injunction filed bySierra Club, Southern Border Communities Coalition. (Related document(s) <u>29</u>) (Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>35</u>	Declaration of Elizabeth J. Walsh in Support of <u>29</u> MOTION for Preliminary Injunction filed bySierra Club, Southern Border Communities Coalition. (Related document(s) <u>29</u>) (Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>36</u>	Request for Judicial Notice re <u>29</u> MOTION for Preliminary Injunction filed bySierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit

		M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U)(Related document(s) <u>29</u>) (Ladin, Dror) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/05/2019		<u>Electronic filing error.</u> REMINDER TO COUNSEL: In the future, please attach all supporting documents to the Motion. ALSO, the proposed order is missing suffix to Judge's Name. Counsel need not re-file document, but should reference Hon. Judge Haywood S. Gilliam, Jr. in future filings if they wish to include reference to Judge's full assignment reference. Re: <u>33</u> Declaration in Support, <u>34</u> Declaration in Support, <u>31</u> Declaration in Support, <u>30</u> Declaration in Support, <u>35</u> Declaration in Support, <u>32</u> Declaration in Support, <u>29</u> MOTION for Preliminary Injunction. (jjbS, COURT STAFF) (Filed on 4/5/2019) (Entered: 04/05/2019)
04/05/2019	37	CLERK'S NOTICE. Notice is hereby given that counsel must re-notice not re-file the <u>29</u> motion for preliminary injunction. Hearing date of May 9, 2019, is vacated. The briefing schedule remains in effect. Counsel is directed to check the Court's scheduling notes before re-noticing the motion for a new hearing date. May 9th was not the Court's next available hearing date when this motion was e-filed. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (ndrS, COURT STAFF) (Filed on 4/5/2019) (Entered: 04/05/2019)
04/09/2019	<u>38</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>28</u> Motion for Pro Hac Vice as to Hafetz, Jonathan. (ndrS, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/09/2019)
04/09/2019	39	ORDER by Hon Haywood S. Gilliam, Jr. SETTING the following briefing and hearing schedule for Plaintiffs' <u>29</u> Motion for Preliminary Injunction: responses are due by April 25, 2019; replies are due by May 2, 2019; a hearing is scheduled for May 17, 2019 at 10:00 a.m. Plaintiffs' counsel is directed to serve Defendants with this order. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (hsglc3S, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/09/2019)
04/09/2019		Set Deadlines/Hearing as to <u>29</u> MOTION for Preliminary Injunction, See Docket No. 39 : Responses due by 4/25/2019; Replies due by 5/2/2019; and Motion Hearing set for 5/17/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S. Gilliam Jr. (ndrS, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/10/2019)
04/10/2019	<u>40</u>	CERTIFICATE OF SERVICE by Sierra Club, Southern Border Communities Coalition re 39 Order,, (Ladin, Dror) (Filed on 4/10/2019) (Entered: 04/10/2019)
04/10/2019	<u>41</u>	NOTICE of Appearance by Andrew Irwin Warden <i>on behalf of Defendants</i> (Warden, Andrew) (Filed on 4/10/2019) (Entered: 04/10/2019)
04/10/2019	<u>42</u>	STIPULATION WITH PROPOSED ORDER <i>For Order Extending Page Limits For Preliminary Injunction Briefs, Staying Defendants' Response to the Amended Complaints, and Staying Initial Case Management Activity</i> filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, Southern Border Communities Coalition, and Sierra Club. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 4/10/2019) Modified on 4/11/2019 (jjbS, COURT STAFF). (Entered: 04/10/2019)
04/11/2019	<u>43</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 67 in case 4:19-cv-00872-HSG and 42 in case 4:19-cv-00892-HSG) Stipulation For Order Extending Page Limits For Preliminary Injunction Briefs, Staying Defendants' Response to the Amended Complaints, and Staying Initial Case Management Activity. (ndrS, COURT STAFF) (Filed on 4/11/2019) (Entered: 04/11/2019)
04/12/2019	<u>44</u>	NOTICE of Appearance by Douglas N. Letter (Letter, Douglas) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/12/2019	<u>45</u>	Consent MOTION to File Amicus Curiae Brief filed by United States House of Representatives. Responses due by 4/26/2019. Replies due by 5/3/2019. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Exhibit Amicus Brief)(Letter, Douglas) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/15/2019	<u>46</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>45</u> Consent Motion to File Amicus Curiae Brief. Houses counsel is directed to file the amicus curiae brief on

		the docket in this matter. (ndrS, COURT STAFF) (Filed on 4/15/2019) (Entered: 04/15/2019)
04/15/2019	<u>47</u>	Brief of <i>Amicus Curiae</i> filed by United States House of Representatives. (Letter, Douglas) (Filed on 4/15/2019) (Entered: 04/15/2019)
04/22/2019	<u>48</u>	Joint ADMINISTRATIVE MOTION RELIEF FROM AUTOMATIC REFERRAL TO THE ADR MULTI-OPTION PROGRAM re <u>5</u> Initial Case Management Scheduling Order with ADR Deadlines filed by Sierra Club, Southern Border Communities Coalition. Responses due by 4/26/2019. (Attachments: # <u>1</u> Proposed Order)(Ladin, Dror) (Filed on 4/22/2019) (Entered: 04/22/2019)
04/22/2019	<u>49</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 74 in case 4:19-cv-00872-HSG and 48 in case 4:19-cv-00892-HSG) Joint Administrative Motion for Relief from Automatic Referral to the ADR Multi-Option Program. (ndrS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)
04/23/2019	<u>50</u>	MOTION for leave to appear in Pro Hac Vice <i>representing Amicus Brennan Center for Justice</i> (Filing fee \$ 310, receipt number 0971-13281381.) filed by Brennan Center for Justice. (Boyle, Joseph) (Filed on 4/23/2019) (Entered: 04/23/2019)
04/23/2019	<u>51</u>	MOTION for leave to appear in Pro Hac Vice <i>for Elizabeth Goitein representing Amicus Brennan Center for Justice</i> (Filing fee \$ 310, receipt number 0971-13281393.) filed by Brennan Center for Justice. (Boyle, Joseph) (Filed on 4/23/2019) (Entered: 04/23/2019)
04/23/2019	<u>52</u>	NOTICE of Appearance by David W. Evans. (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>53</u>	**RE-FILED AT DOCKET NO. 61 ** Amicus Curiae APPEARANCE entered by David W. Evans on behalf of John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/26/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>54</u>	**RE-FILED AT DOCKET NO. 62 ** Amicus Curiae APPEARANCE entered by David W. Evans on behalf of John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/26/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>55</u>	**RE-FILED AT DOCKET NO. 63 ** Amicus Curiae APPEARANCE entered by David W. Evans on behalf of John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/26/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>56</u>	**DISREGARD, RE-FILED AS DOCKET NO. 59 ** MOTION for Preliminary Injunction <i>Consent Motion For Leave</i> filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. Motion Hearing set for 5/17/2019 10:00 AM before Judge Haywood S Gilliam Jr.. Responses due by 5/7/2019. Replies due by 5/14/2019. (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>57</u>	**DISRGARD, RE-FILED AS DOCKET NUMBER 59 ** EXHIBITS re <u>56</u> MOTION for Preliminary Injunction <i>Consent Motion For Leave Amicus Memorandum In Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Related document(s) <u>56</u>) (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>58</u>	**DISREGARD, RE-FILED AS DOCKET NO. 59 ** Proposed Order re <u>56</u> MOTION for Preliminary Injunction <i>Consent Motion For Leave Proposed Order Granting Consent Motion for Leave to File Memorandum of Christopher Shays, et al.</i> by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)

04/24/2019		Electronic filing error. Incorrect event used. [err101]. Correct Event is "Motion for Leave to Appear Pro Hac Vice." Event can be found under Civil Events > Motions and Related Filings > Motions – General > Pro Hac Vice. The attorney requesting to appear pro hac vice must also file their own Motion using their own ECF login. Please re–file in its entirety. Re: <u>55</u> Amicus Curiae Appearance filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>53</u> Amicus Curiae Appearance filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>54</u> Amicus Curiae Appearance filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III (jjbS, COURT STAFF) (Filed on 4/24/2019) (Entered: 04/24/2019)
04/24/2019		Electronic filing error. Incorrect event used. [err101]. Correct event is "Motion for Leave to File Document." Event can be found under Civil Events > Motions and Related Filings > Motions – General > Leave to File Document. ALSO, please attach all supporting documents and proposed orders to the Motion. Please re–file the motion using the correct event with all supporting documents as attachments in its entirety. Re: <u>57</u> Exhibits, filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>56</u> MOTION for Preliminary Injunction <i>Consent Motion For Leave</i> filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>58</u> Proposed Order, filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III (jjbS, COURT STAFF) (Filed on 4/24/2019) (Entered: 04/24/2019)
04/24/2019	<u>59</u>	Consent MOTION for Leave to File Memorandum in Support of <u>29</u> Motion for a Preliminary Injunction <i>CORRECTION OF DOCKET # 56, 57, 58</i> filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Proposed Amicus Memorandum, # <u>2</u> Proposed Order)(Evans, David) (Filed on 4/24/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/24/2019)
04/25/2019	<u>60</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 84 in case 4:19–cv–00872–HSG and 59 in case 4:19–cv–00892–HSG) MOTION for Leave to File Memorandum in Support of 59 Motion for Preliminary Injunction. Counsel is directed to file the amici curiae brief of Christopher Shays et al. on the docket in this matter. (ndrS, COURT STAFF) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>61</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971–13290346.) filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Mancino, Richard) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>62</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971–13290423.) filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Hussein, Shaimaa) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>63</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971–13290488.) filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Dollan, Matthew) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>64</u>	OPPOSITION/RESPONSE (re <u>29</u> MOTION for Preliminary Injunction) filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit Index)(Westmoreland, Rachael) (Filed on 4/25/2019) (Entered: 04/25/2019)

04/30/2019	<u>65</u>	Amicus Brief filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit 1 to Amicus Brief of Christopher Shays, Christine Todd Whitman, Peter Keisler, Carter Phillips, John Bellinger III, Stanley Twardy and Richard Bernstein as Amici Curiae)(Evans, David) (Filed on 4/30/2019) Modified on 5/1/2019 (jjbS, COURT STAFF). Modified on 5/1/2019 (jjbS, COURT STAFF). (Entered: 04/30/2019)
05/01/2019	<u>66</u>	Consent MOTION for Leave to File <i>Brief of Former Members of Congress as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by Amici Curiae Former Members of Congress. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Amici Curiae Brief)(Winthrop, Douglas) (Filed on 5/1/2019) (Entered: 05/01/2019)
05/01/2019	<u>67</u>	**Duplicate Filing, See Docket Nos. <u>51</u> and <u>82</u> *** MOTION for leave to appear in Pro Hac Vice <i>representing Amicus Brennan Center for Justice</i> (Filing fee \$ 310, receipt number 0971-13281393.) Filing fee previously paid on April 23, 2019 filed by Brennan Center for Justice. (Attachments: # <u>1</u> Certificate of Good Standing)(Goitein, Elizabeth) (Filed on 5/1/2019) Modified on 5/2/2019 (ndrS, COURT STAFF). (Entered: 05/01/2019)
05/02/2019	<u>68</u>	Consent MOTION to File Amicus Curiae Brief in Support of <u>29</u> Motion for Preliminary Injunction filed by Erwin Chemerinsky, Michael C. Dorf, David A. Strauss, Stephen I. Vladeck. Responses due by 5/16/2019. Replies due by 5/23/2019. (Attachments: # <u>1</u> Proposed Amici Curiae Brief, # <u>2</u> Proposed Order)(Wydra, Elizabeth) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>69</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Consent (Docket Nos. 105 in case 4:19-cv-00872-HSG; and 68 in case 4:19-cv-00892-HSG) MOTION to File Amicus Curiae Brief. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>70</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Consent <u>66</u> MOTION for Leave to File Brief of Former Members of Congress as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>71</u>	NOTICE of Appearance by Gary T. Lafayette (Lafayette, Gary) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>72</u>	NOTICE of Appearance by Brian H. Chun (Chun, Brian) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>73</u>	Consent MOTION for Leave to File <i>Memorandum of 58 Religious Organizations as Amici Curiae in Support of Plaintiffs' Motion for a Preliminary Injunction</i> filed by 58 Religious Organizations. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Proposed Order)(Chun, Brian) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>74</u>	** RE-FILED AS DOCKET NO. <u>96</u> ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311888.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Mangi, Adeel) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>75</u>	**RE-FILED AS DOCKET NO. <u>97</u> ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311915.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Zalesin, Steven) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>76</u>	** RE-FILED AT DOCKET NO. <u>98</u> ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311937.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Kolodin, Zachary) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>77</u>	**RE-FILED AT DOCKET NO. <u>99</u> ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311974.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Badat, Mohammed)

		(Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>78</u>	NOTICE of Appearance by David Ramraj Singh <i>for Amici Curiae Brennan Center for Justice at NYU School of Law and CATO Institute</i> (Singh, David) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>79</u>	MOTION for Leave to File <i>Brief as Amici Curiae</i> filed by National Immigration Law Center, et al.. (Attachments: # <u>1</u> Proposed Amicus Brief, # <u>2</u> Proposed Order)(Espiritu, Nicholas) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>80</u>	MOTION for Leave to Present Argument in the Preliminary Injunction Hearing filed by United States House of Representatives. Responses due by 5/16/2019. Replies due by 5/23/2019. (Attachments: # <u>1</u> Proposed Order)(Letter, Douglas) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>81</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>50</u> Motion for Pro Hac Vice as to Boyle, Joseph. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>82</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>51</u> Motion for Pro Hac Vice for Elizabeth Goitein representing Amicus Brennan Center for Justice.(ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>83</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>61</u> Amended Motion for Pro Hac Vice as to Mancino, Richard. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>84</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>62</u> Motion for Pro Hac Vice as to Hussein, Shaimaa. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>85</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>63</u> Amended Motion for Pro Hac Vice as to Dollan, Matthew. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>86</u>	NOTICE of Appearance by Michael Nicole Turnage Young <i>on behalf of amicus curiae NAACP Legal Defense and Educational Fund, Inc.</i> (Turnage Young, Michael) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>87</u>	**DISREGARD, RE-FILED AT DOCKET NO. <u>90</u> ** Consent MOTION for Leave to File <i>Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. in Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by NAACP Legal Defense and Educational Fund, Inc.. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Proposed Order)(Turnage Young, Michael) (Filed on 5/2/2019) Modified on 5/2/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>88</u>	MOTION for Leave to File <i>Memorandum as Amici Curiae in Support of Motion for Preliminary Injunction</i> filed by Brennan Center for Justice at NYU School of Law, CATO Institute. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(Goitein, Elizabeth) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	89	ORDER by Hon. Haywood S. Gilliam, Jr., GRANTING the <u>80</u> motion for leave to present argument, in light of the unique institutional interests articulated by <i>amicus curiae</i> United States House of Representatives. No party arguing at the hearing will be permitted to present PowerPoint or similar visual presentations. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsglc3S, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>90</u>	Consent MOTION for Leave to File <i>Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. in Support of Plaintiffs' Motion for Preliminary Injunction</i> CORRECTION OF DOCKET # <u>87</u> filed by NAACP Legal Defense and Educational Fund, Inc.. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Proposed Order)(Turnage Young, Michael) (Filed on 5/2/2019) (Entered: 05/02/2019)

05/02/2019	<u>91</u>	REPLY (re <u>29</u> MOTION for Preliminary Injunction) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Supplemental Declaration of Christina Patino Houle, # <u>2</u> Supplemental Declaration of Kevin Bixby)(Ladin, Dror) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>92</u>	MOTION for leave to appear in Pro Hac Vice <i>re: Harold Hongju Koh</i> (Filing fee \$ 310, receipt number 0971-13314050.) filed by Former U.S. Government Officials. (Attachments: # <u>1</u> Good Standing Certificate)(Koh, Harold) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>93</u>	MOTION for leave to appear in Pro Hac Vice <i>re: Phillip M. Spector</i> (Filing fee \$ 310, receipt number 0971-13314057.) filed by Former U.S. Government Officials. (Attachments: # <u>1</u> Good Standing Certificate)(Spector, Phillip) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>94</u>	Consent MOTION for Leave to File <i>Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs Motion for a Preliminary Injunction</i> filed by Former U.S. Government Officials. (Attachments: # <u>1</u> Proposed Amicus Brief, # <u>2</u> Proposed Order)(Hartnett, Kathleen) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/03/2019	<u>95</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 103 in case 4:19-cv-00872-HSG; 79 in case 4:19-cv-00892-HSG) Motion for Leave to File as Amici Curiae. (ndrS, COURT STAFF) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>96</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311888.) Filing fee previously paid on 05/02/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Mangi, Adeel) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>97</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311915.) Filing fee previously paid on 05/02/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Zalesin, Steven) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>98</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311937.) Filing fee previously paid on 05/02/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Kolodin, Zachary) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>99</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13311974.) Filing fee previously paid on 05/02/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Badat, Mohammed) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>100</u>	Amicus Brief filed by National Immigration Law Center, et al.. (Espiritu, Nicholas) (Filed on 5/3/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/03/2019)
05/06/2019	<u>101</u>	MOTION to Consolidate Docket Entries for "Brennan Center for Justice" and "Brennan Center for Justice at NYU School of Law" filed by Brennan Center for Justice at NYU School of Law. Responses due by 5/20/2019. Replies due by 5/28/2019. (Attachments: # <u>1</u> Proposed Order)(Goitein, Elizabeth) (Filed on 5/6/2019) (Entered: 05/06/2019)
05/07/2019	<u>102</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>101</u> Motion to Consolidate Docket Entries for "Brennan Center for Justice" and "Brennan Center for Justice at NYU School of Law". (ndrS, COURT STAFF) (Filed on 5/7/2019) (Entered: 05/07/2019)
05/07/2019	<u>103</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13325615.) filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Bernstein, Richard) (Filed on 5/7/2019) (Entered: 05/07/2019)
05/08/2019	<u>104</u>	Brief filed by National Immigration Law Center, Asian Americans Advancing Justice-AAJC, Asian Americans Advancing Justice - Los Angeles, AALDEF, Black Alliance

		for Just Immigration, LatinoJustice PRLDEF. (Espiritu, Nicholas) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/08/2019	<u>105</u>	MOTION to Withdraw as Attorney filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. Responses due by 5/22/2019. Replies due by 5/29/2019. (Attachments: # <u>1</u> Proposed Order)(Dollan, Matthew) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/08/2019	<u>106</u>	Brief of <i>Former Members of Congress as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by Amici Curiae Former Members of Congress. (Winthrop, Douglas) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/09/2019	<u>107</u>	Brief of <i>Amici Curiae Federal Courts Scholars in Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by Erwin Chemerinsky, Michael C. Dorf, David A. Strauss, Stephen I. Vladeck. (Wydra, Elizabeth) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/09/2019	<u>108</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>105</u> Motion to Withdraw as Attorney. (ndrS, COURT STAFF) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/13/2019	<u>109</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>73</u> Consent MOTION for Leave to File Memorandum of 58 Religious Organizations as Amici Curiae in Support of Plaintiffs' Motion for a Preliminary Injunction. (ndrS, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>110</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>88</u> MOTION for Leave to File Memorandum as Amici Curiae in Support of Motion for Preliminary Injunction. Counsel is directed to file the brief on the docket. (ndrS, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>111</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>90</u> Consent MOTION for Leave to File Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. in Support of Plaintiffs' Motion for Preliminary Injunction. Counsel is directed to file the brief on the docket. (ndrS, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>112</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>94</u> Consent MOTION for Leave to File Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs Motion for a Preliminary Injunction. Counsel is directed to file the brief on the docket. (ndrS, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>113</u>	Brief of <i>58 Religious Organizations as Amici Curiae in Support of Plaintiffs' Motion for a Preliminary Injunction</i>] filed by 58 Religious Organizations. (Lafayette, Gary) (Filed on 5/13/2019) Modified on 5/14/2019 (cpS, COURT STAFF). (Entered: 05/13/2019)
05/13/2019	<u>114</u>	Brief of <i>Amicus Curiae NAACP Legal Defense and Educational Fund, Inc. in Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by NAACP Legal Defense and Educational Fund, Inc.. (Turnage Young, Michael) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>115</u>	Brief of the <i>Brennan Center for Justice at NYU School of Law and the CATO Institute as Amici Curiae in Support of Plaintiffs' Motion for a Preliminary Injunction</i> filed by Brennan Center for Justice at NYU School of Law, CATO Institute. (Goitein, Elizabeth) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>116</u>	ORDER by Hon. Haywood S. Gilliam, Jr., DIRECTING DEFENDANTS TO SUBMIT STATEMENT. (hsglc3S, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>117</u>	ORDER by Hon. Haywood S. Gilliam, Jr., ADVISING Defendants that the Court's <u>116</u> requested statement should only include updated factual information, and should not include further legal argument. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsglc3S, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)

05/13/2019	<u>118</u>	Second DECLARATION of Kenneth Rapuano (May 13, 2019) filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (Attachments: # <u>1</u> Exhibit Second Declaration of Kenneth Rapuano (dated May 13, 2019))(Warden, Andrew) (Filed on 5/13/2019) Modified on 5/14/2019 (cpS, COURT STAFF). (Entered: 05/13/2019)
05/14/2019	<u>119</u>	NOTICE of Appearance by Eric Grant <i>on behalf of Defendants</i> (Grant, Eric) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>120</u>	Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction filed by Former U.S. Government Officials. (Hartnett, Kathleen) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>121</u>	CLERK'S NOTICE. Notice is hereby given that any member of the press wishing to listen by telephone to the motions hearings scheduled for May 17th shall contact CourtCall at (866) 582-6878 to make arrangements to do so. No one is permitted to record the hearing. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>122</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>92</u> Motion for Pro Hac Vice re: Harold Hongju Koh. (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>123</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>93</u> Motion for Pro Hac Vice re: Phillip M. Spector. (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>124</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Amended <u>96</u> Motion for Pro Hac Vice as to Mangi, Adeel. (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>125</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Amended <u>97</u> Motion for Pro Hac Vice as to Zalesin, Steven. (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>126</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>98</u> Motion for Pro Hac Vice as to Kolodin, Zachary. (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>127</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Amended <u>99</u> Motion for Pro Hac Vice as to Badat, Mohammed. (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>128</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>103</u> Motion for Pro Hac Vice as to Bernstein, Richard. (ndrS, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/15/2019	<u>129</u>	MOTION to Withdraw as Attorney (Zachary Kolodin) filed by 58 Religious Organizations. Responses due by 5/29/2019. Replies due by 6/5/2019. (Attachments: # <u>1</u> Proposed Order)(Kolodin, Zachary) (Filed on 5/15/2019) Modified on 5/16/2019 (cpS, COURT STAFF). (Entered: 05/15/2019)
05/15/2019	<u>130</u>	NOTICE of Appearance by James Mahoney Burnham (Burnham, James) (Filed on 5/15/2019) (Entered: 05/15/2019)
05/15/2019	<u>131</u>	Response to the Court's May 13, 2019 Order <u>116</u> by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Warden, Andrew) (Filed on 5/15/2019) Modified on 5/16/2019 (cpS, COURT STAFF). (Entered: 05/15/2019)
05/16/2019	<u>132</u>	NOTICE of Appearance by Howard Michael Garfield (Garfield, Howard) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	<u>133</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 148 in case 4:19-cv-00872-HSG and 129 in case 4:19-cv-00892-HSG) Motion to Withdraw as Attorney. (ndrS, COURT STAFF) (Filed on 5/16/2019) (Entered: 05/16/2019)

05/17/2019	<u>134</u>	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Motion Hearing held on 5/17/2019. Total Time in Court: 2 hours and 40 minutes. Court Reporter: Pamela Batalo-Hebel. Plaintiff Attorney: Dror Ladin; Lee Sherman; Janelle Smith; Henry Kantor and Douglas Letter. Defendant Attorney: Andrew Warden; Eric Grant and James Burnham. Plaintiffs motions for preliminary injunction (docket nos. 59 in case no. 19-cv-872-HSG and 29 in case no. 19-cv-892-HSG) are argued and submitted by the parties and taken under submission by the Court. Parties are in agreement that the Court should rule on the motions for preliminary injunction without regard to the El Centro Sector and Tucson Sector Projects. Parties are directed to meet and confer and e-file a stipulation and proposed order setting briefing schedule regarding these projects. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 5/17/2019) (Entered: 05/17/2019)
05/19/2019	<u>135</u>	TRANSCRIPT ORDER for proceedings held on May 17, 2019 before Judge Haywood S Gilliam, Jr by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, for Court Reporter Pam Batalo. (Warden, Andrew) (Filed on 5/19/2019) (Entered: 05/19/2019)
05/20/2019	<u>136</u>	TRANSCRIPT ORDER for proceedings held on 05/17/2019 before Judge Haywood S Gilliam, Jr by Amici Curiae Former Members of Congress, for Court Reporter Pam Batalo. (Winthrop, Douglas) (Filed on 5/20/2019) (Entered: 05/20/2019)
05/20/2019	<u>137</u>	TRANSCRIPT ORDER for proceedings held on May 17, 2019 before Judge Haywood S Gilliam, Jr by United States House of Representatives, for Court Reporter Pam Batalo. (Letter, Douglas) (Filed on 5/20/2019) (Entered: 05/20/2019)
05/20/2019	<u>138</u>	Transcript of Proceedings held on 05/17/19, before Judge Gilliam. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamelabatalo-hebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (156 in 4:19-cv-00872-HSG) Transcript Order, (137 in 4:19-cv-00892-HSG) Transcript Order, (158 in 4:19-cv-00872-HSG) Transcript Order) Redaction Request due 6/10/2019. Redacted Transcript Deadline set for 6/20/2019. Release of Transcript Restriction set for 8/19/2019. (Batalo, Pam) (Filed on 5/20/2019) (Entered: 05/20/2019)
05/21/2019	<u>139</u>	Letter from Douglas N. Letter, General Counsel, U.S. House of Representatives . (Letter, Douglas) (Filed on 5/21/2019) (Entered: 05/21/2019)
05/22/2019	<u>140</u>	STIPULATION WITH PROPOSED ORDER <i>For Supplemental Briefing Schedule For El Centro and Tucson Border Barrier Projects</i> filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 5/22/2019) (Entered: 05/22/2019)
05/23/2019	<u>141</u>	TRANSCRIPT ORDER for proceedings held on 05/17/2019 before Judge Haywood S Gilliam, Jr by Sierra Club, Southern Border Communities Coalition, for Court Reporter Pam Batalo. (Ladin, Dror) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	<u>142</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 162 in case 4:19-cv-00872-HSG and 140 in case 4:19-cv-00892-HSG) Stipulation For Supplemental Briefing Schedule For El Centro and Tucson Border Barrier Projects. (ndrS, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019		Set Deadlines/Hearing: Motions due by 5/29/2019; Responses due by 6/10/2019 and Replies due by 6/13/2019. (ndrS, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	<u>143</u>	TRANSCRIPT ORDER for proceedings held on 05/17/2019 before Judge Haywood S Gilliam, Jr for Court Reporter Pam Batalo. (oh, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/24/2019	<u>144</u>	ORDER by Hon. Haywood S. Gilliam, Jr., GRANTING IN PART and DENYING IN PART <u>29</u> Plaintiffs Motion for Preliminary Injunction, and

		SETTING case management conference for June 5, 2019 at 2:00 p.m. Case management statement is due by May 31, 2019. (hsglc3S, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/24/2019)
05/24/2019		Set Deadline/Hearing: Case Management Statement due by 5/31/2019 and Further Case Management Conference set for 6/5/2019 02:00 PM in Oakland, Courtroom 2, 4th Floor. (ndrS, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/28/2019)
05/29/2019	<u>145</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. Appeal of Order on Motion for Preliminary Injunction, <u>144</u> (Appeal fee FEE WAIVED.) (Warden, Andrew) (Filed on 5/29/2019) (Entered: 05/29/2019)
05/29/2019	<u>146</u>	MOTION to Stay re <u>144</u> Order on Motion for Preliminary Injunction, <i>Pending Appeal</i> filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. Responses due by 6/12/2019. Replies due by 6/19/2019. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Proposed Order)(Warden, Andrew) (Filed on 5/29/2019) Modified on 5/30/2019 (cpS, COURT STAFF). (Entered: 05/29/2019)
05/29/2019	<u>147</u>	MOTION to Shorten Time <i>To Hear Defendants' Motion To Stay Preliminary Injunction Pending Appeal</i> filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order)(Warden, Andrew) (Filed on 5/29/2019) (Entered: 05/29/2019)
05/29/2019	<u>148</u>	USCA Case Number 19-16102 Ninth Circuit Court of Appeals for <u>145</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (cjlS, COURT STAFF) (Filed on 5/29/2019) (Entered: 05/29/2019)
05/29/2019	<u>149</u>	MOTION to Appear by Telephone <i>at Case Management Conference</i> filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (Attachments: # <u>1</u> Proposed Order)(Westmoreland, Rachael) (Filed on 5/29/2019) (Entered: 05/29/2019)
05/29/2019	<u>150</u>	MOTION for Supplemental Preliminary Injunction filed by Sierra Club, Southern Border Communities Coalition. Responses due by 6/10/2019. Replies due by 6/13/2019. (Attachments: # <u>1</u> Declaration of Gayle G. Hartmann, # <u>2</u> Declaration of Ralph Hudson, # <u>3</u> Declaration of Kevin Arthur Dahl, # <u>4</u> Declaration of Bill Broyles, # <u>5</u> Declaration of Patricia Gerrodette, # <u>6</u> Declaration of Margaret Case, # <u>7</u> Declaration of Carmina Ramirez, # <u>8</u> Declaration of Cyndi C. Tuell, # <u>9</u> Declaration of Roy Armenta Sr., # <u>10</u> Proposed Order)(Ladin, Dror) (Filed on 5/29/2019) Modified on 5/30/2019 (cpS, COURT STAFF). Modified on 5/30/2019 (cpS, COURT STAFF). (Entered: 05/29/2019)
05/30/2019		***Hearing dates of 10/3/2019 Re Docket Nos. 167 in case no. 19-cv-00872-hsg and 146 and 150 in case no. 19-cv-00892-HSG are terminated because counsel set the date when filing the motions in ECF but failed to actual notice the motions for that date.*** (ndrS, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>151</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>149</u> Motion to Appear by Telephone at Case Management Conference. (ndrS, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>152</u>	ORDER by Judge Haywood S. Gilliam, Jr. DENYING <u>146</u> MOTION TO STAY PRELIMINARY INJUNCTION(<u>147</u> Motion to Shorten Time is terminated as moot). (ndrS, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/31/2019	<u>153</u>	TRANSCRIPT ORDER for proceedings held on 05/17/2019 before Judge Haywood S Gilliam, Jr for Court Reporter Pam Batalo. (oh, COURT STAFF) (Filed on 5/31/2019) (Entered: 05/31/2019)
05/31/2019	<u>154</u>	JOINT CASE MANAGEMENT STATEMENT filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, Sierra Club, Southern Border Communities Coalition. (Warden, Andrew) (Filed on 5/31/2019) Modified on 6/3/2019 (cpS, COURT STAFF). (Entered: 05/31/2019)
06/03/2019	<u>155</u>	ORDER of USCA as to <u>145</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (cpS, COURT STAFF) (Filed on

		6/3/2019) (Entered: 06/04/2019)
06/05/2019	<u>156</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13408180.) filed by Tohono O'odham Nation. (Attachments: # <u>1</u> Certificate of Good Standing)(Daughety, Samuel) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>157</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13408200.) filed by Tohono O'odham Nation. (Attachments: # <u>1</u> Certificate of Good Standing)(Schaeffer, Suzanne) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>158</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13408214.) filed by Tohono O'odham Nation. (Attachments: # <u>1</u> Certificate of Good Standing)(Rees, Joshua) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>159</u>	Consent MOTION to File Amicus Curiae Brief filed by Tohono O'odham Nation. Responses due by 6/19/2019. Replies due by 6/26/2019. (Attachments: # <u>1</u> Exhibit Amicus Brief, # <u>2</u> Proposed Order)(Adams, Matthew) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>160</u>	CERTIFICATE OF SERVICE by Tohono O'odham Nation re <u>159</u> Consent MOTION to File Amicus Curiae Brief (Adams, Matthew) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>161</u>	NOTICE of Appearance by Matthew Gordon Adams (Adams, Matthew) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>162</u>	ORDER of USCA: Oral argument on appellants' emergency motion for a stay pending appeal is set for Thursday 6/20/19 at a specific time to be set by further order as to <u>145</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (cpS, COURT STAFF) (Filed on 6/5/2019) (Entered: 06/06/2019)
06/05/2019	<u>165</u>	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Further Case Management Conference held on 6/5/2019. FTR Time: 2:01-2:27. Plaintiff Attorney: Dror Ladin, Lee Sherman, Gavion McCabe, Craig Newby and Justin Sullivan appearing via courtcall. Defendant Attorney: Andrew Warden appearing via courtcall. The Court orders the current preliminary injunction motion and briefing held in abeyance and orders that the motion for partial summary judgment briefing concerning Sections 284 and 8005 include issues raised in the pending preliminary injunction motion. The Court sets: June 12-filing deadline for motion for partial summary judgment and August 29, 2019 at 2:00 p.m.-hearing deadline for motion for summary judgment on remaining issues. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 6/5/2019) (Entered: 06/10/2019)
06/07/2019	<u>163</u>	NOTICE of Filing of Administrative Record For El Paso, Yuma, El Centro, and Tucson Border Barrier Projects by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Warden, Andrew) (Filed on 6/7/2019) Modified on 6/10/2019 (cpS, COURT STAFF). (Entered: 06/07/2019)
06/07/2019	<u>164</u>	SCHEDULING ORDER: Motions due by 6/12/2019; Responses due by 6/19/2019 and Replies due by 6/24/2019. Signed by Judge Haywood S. Gilliam, Jr. on 6/7/2019. (ndrS, COURT STAFF) (Filed on 6/7/2019) (Entered: 06/07/2019)
06/07/2019		Set Additional Deadlines/Hearing, See Docket No. 174 in case no. 19-cv-872-HSG and 164 in case no. 19-cv-892-HSG: Motions due by 7/11/2019; Responses due by 7/25/2019; Replies due by 8/8/2019 and Motion Hearing set for 8/29/2019 02:00 PM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S. Gilliam Jr. (ndrS, COURT STAFF) (Filed on 6/7/2019) Modified on 6/7/2019 (ndrS, COURT STAFF). (Entered: 06/07/2019)
06/11/2019	<u>166</u>	ORDER of USCA: Granting Motion for leave to file an amicus brief in support of appellants emergency stay motion as to <u>145</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (cpS, COURT STAFF) (Filed on 6/11/2019) (Entered: 06/12/2019)

06/12/2019	<u>167</u>	ORDER of USCA: Granting motions filed by the Former U.S. Government Officials and the U.S. House of Representatives for leave to file amicus briefs in opposition to appellants emergency stay motion as to <u>145</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (cpS, COURT STAFF) (Filed on 6/12/2019) (Entered: 06/12/2019)
06/12/2019	<u>168</u>	MOTION for Partial Summary Judgment filed by Sierra Club, Southern Border Communities Coalition. Responses due by 6/19/2019. Replies due by 6/24/2019. (Attachments: # <u>1</u> Appendix of Declarations, # <u>2</u> Request for Judicial Notice, # <u>3</u> Proposed Order)(Zafar, Noor) (Filed on 6/12/2019) (Entered: 06/12/2019)
06/13/2019	<u>169</u>	CLERK'S NOTICE. Notice is hereby given that counsel must notice not re-file the <u>168</u> motion for partial summary judgment. Counsel is directed to review the <u>164</u> scheduling order and the 165 minute order before noticing the motion. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ndrS, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/14/2019	<u>170</u>	Renotice motion hearing re <u>168</u> MOTION for Partial Summary Judgment filed by Sierra Club, Southern Border Communities Coalition. (Related document(s) <u>168</u>) (Zafar, Noor) (Filed on 6/14/2019) (Entered: 06/14/2019)
06/17/2019	<u>171</u>	Consent MOTION for Leave to File <i>Amicus Curiae Brief</i> filed by United States House of Representatives. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Proposed Order)(Letter, Douglas) (Filed on 6/17/2019) (Entered: 06/17/2019)
06/18/2019	<u>172</u>	Consent MOTION for Leave to File <i>Amicus Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by Tohono O'odham Nation. (Attachments: # <u>1</u> Exhibit Amicus Curiae Brief, # <u>2</u> Proposed Order)(Adams, Matthew) (Filed on 6/18/2019) (Entered: 06/18/2019)
06/18/2019	<u>173</u>	CERTIFICATE OF SERVICE by Tohono O'odham Nation re <u>172</u> Consent MOTION for Leave to File <i>Amicus Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment</i> (Adams, Matthew) (Filed on 6/18/2019) (Entered: 06/18/2019)
06/18/2019	<u>174</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>171</u> Motion for Leave to File amicus curiae brief. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 6/18/2019) (Entered: 06/18/2019)
06/18/2019	<u>175</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>172</u> Motion for Leave to File amicus curiae brief. Counsel is directed to file the amicus curiae brief on the docket. (ndrS, COURT STAFF) (Filed on 6/18/2019) (Entered: 06/18/2019)
06/19/2019	<u>176</u>	Brief of <i>Amicus Curiae in support of Motion for Partial Summary Judgment</i> filed by United States House of Representatives. (Letter, Douglas) (Filed on 6/19/2019) Modified on 6/20/2019 (cpS, COURT STAFF). (Entered: 06/19/2019)
06/19/2019	<u>177</u>	Brief of <i>Amicus Curiae in support of Motion for Supplemental Preliminary Injunction</i> filed by Tohono O'odham Nation. (Adams, Matthew) (Filed on 6/19/2019) Modified on 6/20/2019 (cpS, COURT STAFF). (Entered: 06/19/2019)
06/19/2019	<u>178</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>156</u> Motion for Pro Hac Vice as to Daughety, Samuel. (ndrS, COURT STAFF) (Filed on 6/19/2019) (Entered: 06/19/2019)
06/19/2019	<u>179</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>157</u> Motion for Pro Hac Vice as to Schaeffer, Suzanne. (ndrS, COURT STAFF) (Filed on 6/19/2019) (Entered: 06/19/2019)
06/19/2019	<u>180</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>158</u> Motion for Pro Hac Vice as to Rees, Joshua. (ndrS, COURT STAFF) (Filed on 6/19/2019) (Entered: 06/19/2019)
06/19/2019	<u>181</u>	MOTION for Partial Summary Judgment <i>and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i> filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. Responses due by 6/24/2019. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Proposed Order)(Warden, Andrew) (Filed on 6/19/2019) Modified on 6/20/2019 (cpS, COURT

		STAFF). (Entered: 06/19/2019)
06/24/2019	<u>182</u>	REPLY (re <u>168</u> MOTION for Partial Summary Judgment) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Exhibit)(Zafar, Noor) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/24/2019	<u>183</u>	ORDER of USCA: Brief is due 6/28/2019, and shall not exceed 8000 words as to <u>145</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (cpS, COURT STAFF) (Filed on 6/24/2019) Modified on 6/26/2019 (cpS, COURT STAFF). (Entered: 06/26/2019)
06/28/2019	<u>184</u>	JOINT STATUS REPORT <i>Regarding Defendants' Construction Plans</i> by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, Sierra Club, Southern Border Communities Coalition. (Warden, Andrew) (Filed on 6/28/2019) Modified on 6/30/2019 (cpS, COURT STAFF). (Entered: 06/28/2019)
06/28/2019	<u>185</u>	ORDER by Judge Haywood S. Gilliam, Jr., GRANTING IN PART and DENYING IN PART <u>168</u> Plaintiffs' Motion for Partial Summary Judgment; DENYING <u>181</u> Defendants' Motion for Partial Summary Judgment; CERTIFYING Judgment for Appeal; DENYING Request to Stay. (hs glc3S, COURT STAFF) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>186</u>	PARTIAL JUDGMENT. Signed by Judge Haywood S. Gilliam, Jr. on 6/28/2019.(hs glc3S, COURT STAFF) (Filed on 6/28/2019) Modified on 7/9/2019 (cpS, COURT STAFF). (Entered: 06/28/2019)
06/29/2019	<u>187</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. Appeal of Order on Motion for Partial Summary Judgment,, <u>185</u> , Judgment <u>186</u> (Appeal fee FEE WAIVED.) (Warden, Andrew) (Filed on 6/29/2019) (Entered: 06/29/2019)
07/01/2019	<u>188</u>	NOTICE of Filing of Administrative Record for the Treasury Forfeiture Fund by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump (Attachments: # <u>1</u> Exhibit Certification, # <u>2</u> Exhibit TFF Administrative Record)(Warden, Andrew) (Filed on 7/1/2019) Modified on 7/2/2019 (cpS, COURT STAFF). (Entered: 07/01/2019)
07/01/2019	<u>189</u>	USCA Case Number 19-16300 Ninth Circuit Court of Appeals for <u>187</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump. (cjlS, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/03/2019	<u>190</u>	ORDER of USCA GRANTING motion to consolidate appeal Nos. 19-16102 and 19-16300 as to <u>145</u> Notice of Appeal, <u>187</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (cpS, COURT STAFF) (Filed on 7/3/2019) (Entered: 07/05/2019)
07/03/2019	<u>192</u>	ORDER of USCA, Defendants' Motion for Stay is denied, as to <u>145</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, <u>187</u> Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (jjbS, COURT STAFF) (Filed on 7/3/2019) (Entered: 07/09/2019)
07/08/2019	<u>191</u>	STIPULATION WITH PROPOSED ORDER <i>Staying Summary Judgment Briefing Schedule on Claims Related to 10 U.S.C. § 2808 and the Treasury Forfeiture Fund</i> filed by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump, and Plaintiffs. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 7/8/2019) Modified on 7/9/2019 (jjbS, COURT STAFF). (Entered: 07/08/2019)
07/09/2019	<u>193</u>	ORDER by Hon. Haywood S. Gilliam, Jr., STAYING all outstanding summary judgment briefing deadlines and SETTING a telephone conference for July 17, 2019 at 3:00 p.m., to discuss a briefing schedule. Counsel shall contact CourtCall at (866) 582-6878 to make arrangements for the telephonic appearance. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hs glc3S, COURT STAFF) (Filed on 7/9/2019) (Entered: 07/09/2019)
07/09/2019		Set Hearing, See Docket Nos. 194 in case no. 19-cv-00872-HSG and 193 in case no. 19-cv-00892-HSG: Telephone Conference set for 7/17/2019 03:00 PM in Oakland, Chambers before Judge Haywood S. Gilliam Jr. (ndrS, COURT STAFF) (Filed on

		7/9/2019) (Entered: 07/10/2019)
07/11/2019	<u>194</u>	NOTICE of Change of Address by Kathleen R. Hartnett (Hartnett, Kathleen) (Filed on 7/11/2019) (Entered: 07/11/2019)
07/12/2019	<u>195</u>	SUPPLEMENTAL DECLARATION of Loren Flossman Addressing Treasury Forfeiture Fund by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump. (Attachments: # <u>1</u> Flossman Declaration (July 11, 2019))(Warden, Andrew) (Filed on 7/12/2019) Modified on 7/15/2019 (jjbS, COURT STAFF). (Entered: 07/12/2019)
07/15/2019		<u>Electronic filing error</u> . Incorrect event used. [err101]. Correct event is "Declaration." Event can be found under Civil Events > Motions and Related Filings > Motions-General > Declaration in Support/Opposition. Corrected by Clerk's Office. No further action is necessary. Re: <u>195</u> Notice (Other), filed by Steven Mnuchin, Mark T Esper, Kevin K. McAleenan, Donald J. Trump. (jjbS, COURT STAFF) (Filed on 7/15/2019) (Entered: 07/15/2019)
07/15/2019	<u>196</u>	ORDER of USCA, Defendants' Unopposed Motion to Consolidate Appeals is Granted, as to (145 in 4:19-cv-00892-HSG) Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, (187 in 4:19-cv-00892-HSG) Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, (187 in 4:19-cv-00872-HSG) Notice of Appeal,, filed by U.S. Department of Homeland Security, David Bernhardt, Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, Patrick M. Shanahan, U.S. Department of the Interior, Kirstjen M. Nielsen, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump, (191 in 4:19-cv-00872-HSG) Notice of Cross Appeal to the Ninth Circuit, filed by State of California, State of New Mexico (jjbS, COURT STAFF) (Filed on 7/15/2019) (Entered: 07/16/2019)
07/17/2019	<u>197</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>191</u> Stipulation Staying Summary Judgment Briefing Schedule on Claims Related to 10 U.S.C. § 2808 and the Treasury Forfeiture Fund. (ndrS, COURT STAFF) (Filed on 7/17/2019) (Entered: 07/17/2019)
07/17/2019	<u>198</u>	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Telephone Conference held on 7/17/2019. Total Time in Court: 10 Minutes. Not Reported. Plaintiff Attorney: Christine Chuang; Mollie Lee; Heather Leslie; Gavin McCabe; Craig Newby; Lee Sherman; Justin Sullivan; James Zahradka and Dror Ladin. Defendant Attorney: Andrew Warden. The Court advises the parties that it will grant the stipulation and proposed order in Sierra Club v. Trump, No. 4:19-cv-00892-HSG (docket no. 191). The parties in California v. Trump, No. 4:19-cv-00872-HSG are directed to meet and confer and e-file (1) a revised stipulation and proposed order regarding summary judgment briefing related to 10 U.S.C. § 2808, and (2) a stipulated dismissal without prejudice concerning claims related to the Treasury Forfeiture Fund. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 7/17/2019) (Entered: 07/18/2019)
07/26/2019	<u>199</u>	ORDER of United States Supreme Court. (jjbS, COURT STAFF) (Filed on 7/26/2019) (Entered: 07/29/2019)
08/27/2019	<u>200</u>	NOTICE Of Decision by the Department of Defense to Authorize Additional Border Barrier Projects Pursuant to 10 U.S.C. § 284 by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Warden, Andrew) (Filed on 8/27/2019) Modified on 8/28/2019 (jjbS, COURT STAFF). (Entered: 08/27/2019)
09/03/2019	<u>201</u>	NOTICE of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808 by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Warden, Andrew) (Filed on 9/3/2019) Modified on 9/4/2019 (jjbS, COURT STAFF). (Entered: 09/03/2019)
09/05/2019	<u>202</u>	Supplement to <u>201</u> Notice of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808 by Mark T Esper, Kevin K.

		McAleenan, Steven Mnuchin, Donald J. Trump (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 9/5/2019) Modified on 9/6/2019 (jjbS, COURT STAFF). (Entered: 09/05/2019)
09/13/2019	<u>203</u>	STATUS REPORT <i>Filed Jointly By Plaintiffs and Defendants Proposing Briefing Schedule For Summary Judgment Motions on Claims Related to 10 U.S.C. § 2808</i> by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump, Sierra Club, and Southern Border Communities Coalition. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 9/13/2019) Modified on 9/16/2019 (jjbS, COURT STAFF). (Entered: 09/13/2019)
09/13/2019	<u>204</u>	Supplemental NOTICE <i>Regarding Decision by the Department of Defense to Authorize Additional Border Barrier Projects Pursuant to 10 U.S.C. § 284</i> by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump re <u>200</u> Notice (Other). (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 9/13/2019) Modified on 9/16/2019 (jjbS, COURT STAFF). (Entered: 09/13/2019)
09/16/2019	<u>205</u>	SCHEDULING ORDER: Motions due by 10/11/2019; Cross Motions due by 10/25/2019; Responses due by 11/1/2019; Replies due by 11/8/2019 and Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S. Gilliam Jr. Signed by Judge Haywood S. Gilliam, Jr. on 9/16/2019. (ndrS, COURT STAFF) (Filed on 9/16/2019) Modified on 9/17/2019 to correct typo (time 10 not 2) (ndrS, COURT STAFF). (Entered: 09/16/2019)
09/16/2019	<u>206</u>	NOTICE by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump <i>of Filing of Administrative Record For Section 2808 Border Barrier Projects</i> (Attachments: # <u>1</u> Exhibit Certification, # <u>2</u> Exhibit 2808 Administrative Record – Part 1, # <u>3</u> Exhibit 2808 Administrative Record – Part 2, # <u>4</u> Exhibit 2808 Administrative Record – Part 3)(Warden, Andrew) (Filed on 9/16/2019) (Entered: 09/16/2019)
09/17/2019	<u>207</u>	NOTICE <i>of Withdrawal of Counsel Christine P. Sun</i> by Mollie M Lee (Lee, Mollie) (Filed on 9/17/2019) Modified on 9/18/2019 (jjbS, COURT STAFF). (Entered: 09/17/2019)
09/30/2019	<u>208</u>	NOTICE <i>Regarding Funding of Border Barrier Projects Pursuant to 10 U.S.C. § 284 in Fiscal Year 2020</i> by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump (Attachments: # <u>1</u> Declaration)(Warden, Andrew) (Filed on 9/30/2019) Modified on 10/1/2019 (jjbS, COURT STAFF). (Entered: 09/30/2019)
10/03/2019	<u>209</u>	NOTICE <i>Regarding Use Of The Treasury Forfeiture Fund</i> by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration)(Warden, Andrew) (Filed on 10/3/2019) Modified on 10/4/2019 (jjbS, COURT STAFF). (Entered: 10/03/2019)
10/11/2019	<u>210</u>	MOTION for Partial Summary Judgment filed by Sierra Club, Southern Border Communities Coalition. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 10/25/2019. Replies due by 11/1/2019. (Attachments: # <u>1</u> Appendix of Declarations, # <u>2</u> Request for Judicial Notice, # <u>3</u> Proposed Order)(Ladin, Dror) (Filed on 10/11/2019) (Entered: 10/11/2019)
10/17/2019	<u>211</u>	MOTION for Leave to File <i>Amicus Curiae Brief</i> filed by Brennan Center for Justice at NYU School of Law. (Attachments: # <u>1</u> Proposed Order Granting Motion for Leave to File Memorandum of Brennan Center for Justice and Cato Institute as Amici Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment, # <u>2</u> Exhibit Brief of the Brennan Center for Justice and the Cato Institute as Amici Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment)(Goitein, Elizabeth) (Filed on 10/17/2019) (Entered: 10/17/2019)
10/17/2019	<u>212</u>	NOTICE of Appearance by Jessica L. Duggan (Duggan, Jessica) (Filed on 10/17/2019) (Entered: 10/17/2019)
10/18/2019	<u>213</u>	Consent MOTION to File <i>Amicus Curiae Brief in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by Amici Curiae Former Members of Congress. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/1/2019. Replies due by

		11/8/2019. (Attachments: # <u>1</u> Exhibit Brief of Former Members of Congress as Amici Curiae in Support of Plaintiffs Motion for Partial Summary Judgment, # <u>2</u> Proposed Order Granting Consent Motion for Leave to File Brief of Former Members of Congress as Amici Curiae in Support of Plaintiffs Motion for Partial Summary Judgment)(Winthrop, Douglas) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/18/2019	<u>214</u>	Consent MOTION for Leave to File <i>Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by NAACP Legal Defense and Educational Fund, Inc.. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Proposed Order)(Turnage Young, Michael) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/18/2019	<u>215</u>	Consent MOTION for Leave to File <i>Brief as Amicus Curiae In Support of Plaintiffs Motion for Partial Summary Judgment</i> filed by Tohono O'odham Nation. (Attachments: # <u>1</u> Exhibit Amicus Curiae Brief of Tohono Oodham Nation In Support of Plaintiffs Motion for Partial Summary Judgment, # <u>2</u> Proposed Order Granting Motion of Tohono Oodham Nation for Leave to File Brief as Amicus Curiae)(Duggan, Jessica) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/18/2019	<u>216</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>211</u> Motion for Leave to File Amicus Curiae Brief. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/18/2019	<u>217</u>	Consent MOTION to File Amicus Curiae Brief <i>In Support of Plaintiffs Motion for Partial Summary Judgment</i> filed by United States House of Representatives. Motion Hearing set for 11/20/2019 10:00 AM before Judge Haywood S Gilliam Jr.. Responses due by 11/1/2019. Replies due by 11/8/2019. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(Letter, Douglas) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/18/2019	<u>218</u>	Consent MOTION to File Amicus Curiae Brief <i>in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by Former U.S. Government Officials. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/1/2019. Replies due by 11/8/2019. (Attachments: # <u>1</u> Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs Motion for Partial Summary Judgment, # <u>2</u> Proposed Order)(Hartnett, Kathleen) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/21/2019	<u>219</u>	BRIEF <i>as Amicus Curiae in Support of Motion for Partial Summary Judgment</i> by Brennan Center for Justice at NYU School of Law. (Goitein, Elizabeth) (Filed on 10/21/2019) Modified on 10/22/2019 (jjbS, COURT STAFF). (Entered: 10/21/2019)
10/21/2019	220	ORDER by Hon. Haywood S. Gilliam, Jr. SETTING November 4, 2019, as the deadline for any motion for leave to file an amicus brief related to the partial motions for summary judgment, set for hearing on November 20, 2019, at 10:00 a.m., see Dkt. No. 220 in Case No. 4:19-cv-00872, and Dkt. No. 210 in Case No. 4:19-cv-00892. Any motion received after November 4 will be denied as untimely. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsglc1S, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>221</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>213</u> Consent MOTION to File Amicus Curiae Brief in Support of Plaintiffs' Motion for Partial Summary Judgment. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>222</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>214</u> Consent MOTION for Leave to File Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. in Support of Plaintiffs' Motion for Partial Summary Judgment. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>223</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>215</u> Consent MOTION for Leave to File Brief as Amicus Curiae In Support of Plaintiffs Motion for Partial Summary Judgment. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 10/21/2019) Modified on 10/21/2019 to add language on the docket that appears on the written order.

		(ndrS, COURT STAFF). (Entered: 10/21/2019)
10/21/2019	<u>224</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>217</u> Consent MOTION to File Amicus Curiae Brief In Support of Plaintiffs Motion for Partial Summary Judgment. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>225</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>218</u> Consent MOTION to File Amicus Curiae Brief in Support of Plaintiffs' Motion for Partial Summary Judgment. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>226</u>	Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment filed by Former U.S. Government Officials. (Hartnett, Kathleen) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>227</u>	NOTICE of Appearance by Mark R. Conrad (Conrad, Mark) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>228</u>	Consent MOTION for Leave to File <i>Amicus Curiae Brief In Support of Plaintiffs Motion for Partial Summary Judgment</i> filed by Iraq and Afghanistan Veterans of America. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(Conrad, Mark) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>229</u>	Brief of <i>Amicus Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by NAACP Legal Defense and Educational Fund, Inc.. (Related document(s) <u>222</u>) (Turnage Young, Michael) (Filed on 10/21/2019) Modified on 10/22/2019 (jjbS, COURT STAFF). (Entered: 10/21/2019)
10/22/2019	<u>230</u>	Brief of <i>Amicus Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by United States House of Representatives. (Letter, Douglas) (Filed on 10/22/2019) Modified on 10/23/2019 (jjbS, COURT STAFF). (Entered: 10/22/2019)
10/22/2019	<u>231</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>228</u> Consent MOTION for Leave to File Amicus Curiae Brief In Support of Plaintiffs Motion for Partial Summary Judgment. Counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 10/22/2019) (Entered: 10/22/2019)
10/22/2019	<u>232</u>	Amicus Curiae Brief <i>In Support of Plaintiffs Motion for Partial Summary Judgment</i> re <u>231</u> Order on Motion for Leave to File, filed by Iraq and Afghanistan Veterans of America. (Related document(s) <u>231</u>) (Conrad, Mark) (Filed on 10/22/2019) Modified on 10/23/2019 (jjbS, COURT STAFF). (Entered: 10/22/2019)
10/22/2019	<u>233</u>	Amicus Curiae Brief <i>In Support of Plaintiffs Motion for Partial Summary Judgment</i> re <u>223</u> Order on Motion for Leave to File, filed by Tohono O'odham Nation. (Related document(s) <u>223</u>) (Duggan, Jessica) (Filed on 10/22/2019) Modified on 10/23/2019 (jjbS, COURT STAFF). (Entered: 10/22/2019)
10/25/2019	<u>234</u>	NOTICE of Appearance by Megan Barbero (Barbero, Megan) (Filed on 10/25/2019) (Entered: 10/25/2019)
10/25/2019	<u>235</u>	MOTION for Leave to Present Argument in the Summary Judgment Hearing filed by United States House of Representatives. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/8/2019. Replies due by 11/15/2019. (Attachments: # <u>1</u> Proposed Order)(Barbero, Megan) (Filed on 10/25/2019) (Entered: 10/25/2019)
10/25/2019	<u>236</u>	MOTION for Partial Summary Judgment <i>Regarding Border Barrier Projects Undertaken Pursuant to 10 U.S.C. § 2808 and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i> filed by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/1/2019. Replies due by 11/8/2019. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Proposed Order)(Warden, Andrew) (Filed on 10/25/2019) (Entered: 10/25/2019)

10/31/2019	<u>237</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13843625.) filed by Iraq and Afghanistan Veterans of America. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Rodman, Lindsay) (Filed on 10/31/2019) (Entered: 10/31/2019)
10/31/2019	<u>238</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>235</u> Motion for Leave to Present Argument in the Summary Judgment Hearing. (ndrS, COURT STAFF) (Filed on 10/31/2019) (Entered: 10/31/2019)
11/01/2019	<u>239</u>	REPLY (re <u>210</u> MOTION for Partial Summary Judgment , <u>236</u> MOTION for Partial Summary Judgment <i>Regarding Border Barrier Projects Undertaken Pursuant to 10 U.S.C. § 2808 and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i>) filed bySierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Supplemental Request for Judicial Notice, # <u>2</u> Second Appendix of Declarations)(Ladin, Dror) (Filed on 11/1/2019) (Entered: 11/01/2019)
11/04/2019	<u>240</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>237</u> Motion for Pro Hac Vice as to Rodman, Lindsay. (ndrS, COURT STAFF) (Filed on 11/4/2019) (Entered: 11/04/2019)
11/04/2019	<u>241</u>	Consent MOTION to File Amicus Curiae Brief filed by Federal Courts Scholars. Motion Hearing set for 11/20/2019 10:00 AM before Judge Haywood S Gilliam Jr.. Responses due by 11/18/2019. Replies due by 11/25/2019. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(Wydra, Elizabeth) (Filed on 11/4/2019) (Entered: 11/04/2019)
11/04/2019	<u>242</u>	Consent MOTION to File Amicus Curiae Brief <i>in Support of Motion for Summary Judgment</i> filed by Andy Barr. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/18/2019. Replies due by 11/25/2019. (Attachments: # <u>1</u> Exhibit Proposed Amicus Memo of Law, # <u>2</u> Proposed Order proposed order)(Joseph, Lawrence) (Filed on 11/4/2019) Modified on 11/5/2019 (jjbS, COURT STAFF). (Entered: 11/04/2019)
11/05/2019	<u>243</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 243 in case 4:19-cv-00872-HSG and 241 in case 4:19-cv-00892-HSG) Motion to File Amicus Curiae Brief. Counsel is directed to file federal courts scholars amici curiae brief on the docket in these matters. (ndrS, COURT STAFF) (Filed on 11/5/2019) (Entered: 11/05/2019)
11/05/2019	<u>244</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Consent <u>242</u> MOTION to File Amicus Curiae Brief in Support of Motion for Summary Judgment. Counsel is directed to file the brief on the docket. (ndrS, COURT STAFF) (Filed on 11/5/2019) Modified on 11/5/2019 (ndrS, COURT STAFF). (Entered: 11/05/2019)
11/05/2019	<u>245</u>	Brief of <i>Amici Curiae Federal Courts Scholars in Opposition to Defendants' Motion for Partial Summary Judgment</i> filed by Federal Courts Scholars. (Wydra, Elizabeth) (Filed on 11/5/2019) Modified on 11/6/2019 (jjbS, COURT STAFF). (Entered: 11/05/2019)
11/05/2019	<u>246</u>	Brief of U.S. Rep. Any Barr as Amicus Curiae in Support of Defendant's Motion for Partial Summary Judgment re <u>244</u> Order on Motion to File Amicus Curiae Brief, filed by Andy Barr. (Related document(s) <u>244</u>) (Joseph, Lawrence) (Filed on 11/5/2019) Modified on 11/6/2019 (jjbS, COURT STAFF). (Entered: 11/05/2019)
11/08/2019	<u>247</u>	REPLY (re <u>236</u> MOTION for Partial Summary Judgment <i>Regarding Border Barrier Projects Undertaken Pursuant to 10 U.S.C. § 2808 and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i>) filed byMark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Warden, Andrew) (Filed on 11/8/2019) (Entered: 11/08/2019)
11/20/2019	248	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Motion Hearing held on 11/20/2019. Total Time in Court: 2 Hours and 7 Minutes. Court Reporter: Pamela Batalo-Hebel. Plaintiff Attorney: Heather Leslie; Dror Ladin and Megan Barbero. Defendant Attorney: Eric Grant and James Burnham. Cross-motions for partial summary judgment (docket nos. 220 and 236 in case no. 19-cv-00872-HSG and 210 and 236 in case no. 19-cv-00892-HSG) are argued and submitted by the parties. Counsel for defendants are directed to advise the Court in a filing by noon Pacific Standard Time on November 25th

		(maximum of five pages), 1) whether there is underlying authority for the nearby limitation cited in the Section 2808 Administrative Record; and 2) how, and under whose authority, a military installation may be created. Counsel for plaintiffs responses are due by close of business (5 p.m.) on November 26th. The motions will be deemed submitted upon filing of plaintiffs responses. Written order to issue. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 11/20/2019) (Entered: 11/20/2019)
11/25/2019	<u>249</u>	RESPONSE To The Court's November 20, 2019 Order Requesting Additional Information About Military Installations by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump. (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 11/25/2019) (Entered: 11/25/2019)
11/25/2019	<u>250</u>	TRANSCRIPT ORDER for proceedings held on November 20, 2019 before Judge Haywood S Gilliam, Jr by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump, for Court Reporter Pam Batalo. (Warden, Andrew) (Filed on 11/25/2019) (Entered: 11/25/2019)
11/26/2019	<u>251</u>	Transcript of Proceedings held on 11/20/19, before Judge Gilliam. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamelabatalohebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (253 in 4:19-cv-00872-HSG) Transcript Order, (252 in 4:19-cv-00872-HSG) Transcript Order, (250 in 4:19-cv-00892-HSG) Transcript Order) Redaction Request due 12/17/2019. Redacted Transcript Deadline set for 12/27/2019. Release of Transcript Restriction set for 2/24/2020. (Batalo, Pam) (Filed on 11/26/2019) (Entered: 11/26/2019)
11/26/2019	<u>252</u>	RESPONSE re <u>249</u> Response, to the Court's November 20, 2019 Order Requesting Additional Information About Military Installations by Sierra Club, Southern Border Communities Coalition. (Ladin, Dror) (Filed on 11/26/2019) Modified on 11/27/2019 (jjbS, COURT STAFF). (Entered: 11/26/2019)
11/27/2019	<u>253</u>	TRANSCRIPT ORDER for proceedings held on 11/20/2019 before Judge Haywood S Gilliam, Jr for Court Reporter Pam Batalo. (oh, COURT STAFF) (Filed on 11/27/2019) (Entered: 11/27/2019)
11/27/2019	<u>254</u>	TRANSCRIPT ORDER for proceedings held on 11/20/2019 before Judge Haywood S Gilliam, Jr for Court Reporter Pam Batalo. (oh, COURT STAFF) (Filed on 11/27/2019) (Entered: 11/27/2019)
12/05/2019	<u>255</u>	TRANSCRIPT ORDER for proceedings held on 11/20/2019 before Judge Haywood S Gilliam, Jr by Sierra Club, for Court Reporter Pam Batalo. (Ladin, Dror) (Filed on 12/5/2019) (Entered: 12/05/2019)
12/05/2019	<u>256</u>	TRANSCRIPT ORDER for proceedings held on 11/20/2019 before Judge Haywood S Gilliam, Jr by Tohono O'odham Nation, for Court Reporter Pam Batalo. (Daughety, Samuel) (Filed on 12/5/2019) (Entered: 12/05/2019)
12/10/2019	<u>257</u>	NOTICE of Decision in <i>El Paso County v. Trump</i> (W.D. Tex.) by Mark T Esper, Kevin K. McAleenan, Steven Mnuchin, Donald J. Trump (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 12/10/2019) Modified on 12/10/2019 (jjbS, COURT STAFF). (Entered: 12/10/2019)
12/11/2019	<u>258</u>	ORDER by Judge Haywood S. Gilliam, Jr. GRANTING IN PART AND DENYING IN PART PLAINTIFFS (220 in case 4:19-cv-00872-HSG and 210 in case 4:19-cv-00892-HSG) MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANTS (236 in case 4:19-cv-00872-HSG and 236 in case 4:19-cv-00892-HSG) MOTIONS FOR PARTIAL SUMMARY JUDGMENT. (ndrS, COURT STAFF) (Filed on 12/11/2019) (Entered: 12/11/2019)

ADRMOPTERM,APPEAL,RELATE

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:19-cv-00872-HSG**

State of California et al v. Trump et al
Assigned to: Judge Haywood S Gilliam, Jr
Relate Case Case: 4:19-cv-00892-HSG

Case in other court: Ninth Circuit Court of Appeals, 19-16299
Ninth Circuit Court of Appeals, 19-16336
Ninth Circuit Court of Appeals, 19-17502
Ninth Circuit Court of Appeals, 20-15044

Cause: 42:4321 Review of Agency Action-Environment

Date Filed: 02/18/2019
Jury Demand: None
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government Defendant

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Date Filed	#	Docket Text
02/18/2019	<u>1</u>	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; against All Defendants (Filing fee \$ 400, receipt number 0971-13100729.). Filed by State of New York, State of Minnesota, State of Colorado, State of California, Dana Nessel, State of Illinois, State of Maine, State of Maryland, State of Connecticut, State of New Mexico, State of Oregon, State of New Jersey, State of Delaware, State of Nevada, State of Hawaii, Commonwealth of Virginia. (Attachments: # <u>1</u> Civil Cover Sheet)(Sherman, Lee) (Filed on 2/18/2019) Modified on 2/19/2019 (aaaS, COURT STAFF). Modified on 2/19/2019 (aaaS, COURT STAFF). (Entered: 02/18/2019)
02/18/2019	<u>2</u>	Proposed Summons. (Sherman, Lee) (Filed on 2/18/2019) (Entered: 02/18/2019)
02/18/2019		<u>Electronic filing error</u> . Corrected by Clerk's Office. No further action is necessary. Re: <u>1</u> Complaint, filed by State of Delaware, State of Maine, State of Hawaii, D ana Nessel, State of Minnesota, State of Nevada, State of California, State of New Jersey, State of Connecticut, State of Illinois, State of Oregon, State of Maryland, State of New Mexico, State of New York, State of Colorado Not a Civil Miscellaneous Case (aaaS, COURT STAFF) (Filed on 2/18/2019) (Entered: 02/19/2019)
02/18/2019		<u>Electronic filing error</u> . Corrected by Clerk's Office. No further action is necessary. Re: <u>1</u> Complaint, filed by State of Delaware, State of Maine, State of Hawaii, D ana Nessel, State of Minnesota, State of Nevada, State of California, State of New Jersey, State of Connecticut, State of Illinois, State of Oregon, State of Maryland, State of New Mexico, State of New York, State of Colorado Attorney Lee Isaac Sherman does not represent all plaintiffs just the State of California Only. (aaaS, COURT STAFF) (Filed on 2/18/2019) (Entered: 02/19/2019)
02/19/2019	3	Case assigned to Magistrate Judge Elizabeth D. Laporte.

		<p>Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening.</p> <p>Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 3/5/2019. (jmlS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)</p>
02/19/2019	<u>4</u>	MOTION & [PROPOSED] ORDER for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13101792.) filed by State of New Mexico. (Attachments: # <u>1</u> Certificate of Good Standing)(Maestas, Tania) (Filed on 2/19/2019) Modified on 2/20/2019 (aaaS, COURT STAFF). (Entered: 02/19/2019)
02/19/2019	<u>5</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 5/14/2019. Initial Case Management Conference set for 5/21/2019 10:00 AM. Signed by Magistrate Judge Elizabeth D. Laporte on 2/19/19. (aaaS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>6</u>	Summons Issued as to Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson, U.S. Department of Justice, Civil Process Clerk U.S. Attorney's Office. (aaaS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>7</u>	MOTION & [PROPOSED] ORDER for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13102243.) filed by State of Maine. (Herman, Susan) (Filed on 2/19/2019) Modified on 2/20/2019 (aaaS, COURT STAFF). (Entered: 02/19/2019)
02/19/2019	<u>8</u>	ORDER Granting Application for Admission of Attorney Pro Hac Vice signed by Magistrate Judge Elizabeth D. Laporte: granting <u>4</u> Application. (shyS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>9</u>	MOTION & [PROPOSED] ORDER for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13102823.) filed by State of Minnesota. (Campion, Jacob) (Filed on 2/19/2019) Modified on 2/20/2019 (aaaS, COURT STAFF). (Entered: 02/19/2019)
02/19/2019	<u>10</u>	NOTICE of Appearance by Gavin Geraghty McCabe (McCabe, Gavin) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>11</u>	Application for Refund, Receipt Number 26FGOHCE by Commonwealth of Virginia, Dana Nessel, State of California, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon. (Sherman, Lee) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>12</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13103252.) filed by State of Colorado. (Attachments: # <u>1</u> Certificate of Good Standing)(Olson, Eric) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>13</u>	NOTICE of Appearance by Michael Phillip Cayaban (Cayaban, Michael) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>14</u>	ORDER Granting Application for Admission of Attorney Pro Hac Vice signed by Magistrate Judge Elizabeth D. Laporte: granting <u>7</u> Application. (shyS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>15</u>	ORDER Granting Application for Admission of Attorney Pro Hac Vice signed by Magistrate Judge Elizabeth D. Laporte: granting <u>9</u> Application. (shyS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>16</u>	ORDER Granting Application for Admission of Attorney Pro Hac Vice signed by Magistrate Judge Elizabeth D. Laporte: granting <u>12</u> Application. (shyS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)

		STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/19/2019	<u>17</u>	NOTICE of Appearance by Caleb Andrew Rush (Rush, Caleb) (Filed on 2/19/2019) (Entered: 02/19/2019)
02/20/2019	<u>18</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by State of California.. (Sherman, Lee) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/20/2019	<u>19</u>	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now reassign this case to a District Judge because a party has not consented to the jurisdiction of a Magistrate Judge. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. <i>This is a text only docket entry; there is no document associated with this notice.</i> (shyS, COURT STAFF) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/20/2019	<u>20</u>	NOTICE of Appearance by Christine Chuang <i>on behalf of Plaintiff State of California</i> (Chuang, Christine) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/20/2019	<u>21</u>	ORDER, Case reassigned to Judge Haywood S Gilliam, Jr. Magistrate Judge Elizabeth D. Laporte no longer assigned to the case.. Signed by Executive Committee on 2/20/19. (haS, COURT STAFF) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/20/2019	<u>22</u>	NOTICE of Appearance by Edward Henry Ochoa <i>as Counsel for Plaintiff State of California</i> (Ochoa, Edward) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/20/2019	<u>23</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13107289.) filed by State of New York. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Colangelo, Matthew) (Filed on 2/20/2019) (Entered: 02/20/2019)
02/21/2019	<u>24</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13110536.) filed by State of New York. (Attachments: # <u>1</u> Certificate of Good Standing)(Meyer, Amanda) (Filed on 2/21/2019) (Entered: 02/21/2019)
02/21/2019	<u>25</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13110771.) filed by State of Delaware. (Attachments: # <u>1</u> Certificate/Proof of Service Certificate of Good Standing)(Lyons, David) (Filed on 2/21/2019) (Entered: 02/21/2019)
02/21/2019	<u>26</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13111002.) filed by State of Nevada. (Attachments: # <u>1</u> Certificate of Good Standing)(Stern, Heidi) (Filed on 2/21/2019) (Entered: 02/21/2019)
02/21/2019	<u>27</u>	Refund Status re <u>11</u> Application for Refund, APPROVED. (rghS, COURT STAFF) (Filed on 2/21/2019) (Entered: 02/21/2019)
02/21/2019	<u>28</u>	NOTICE of Appearance by James F. Zahradka, II <i>on behalf of Plaintiff State of California</i> (Zahradka, James) (Filed on 2/21/2019) (Entered: 02/21/2019)
02/22/2019	<u>29</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13113196.) filed by Commonwealth of Virginia. (Attachments: # <u>1</u> Good Standing Certificate)(Jones, Brittany) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019		Electronic filing error. REMINDER TO COUNSEL: In the future, please be sure that the case number is correctly reflected on your documents as 4:19-cv-00872-HSG . Re: <u>28</u> Notice of Appearance filed by State of California (jjbS, COURT STAFF) (Filed on 2/22/2019) Modified on 2/22/2019 (jjbS, COURT STAFF). (Entered: 02/22/2019)
02/22/2019	<u>30</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>23</u> Motion for Pro Hac Vice as to Colangelo, Matthew.(ndrS, COURT STAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)

02/22/2019	<u>31</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>24</u> Motion for Pro Hac Vice as to Meyer, Amanda. (ndrS, COURT STAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>32</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>25</u> Motion for Pro Hac Vice as to Lyons, David. (ndrS, COURT STAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>33</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>26</u> Motion for Pro Hac Vice as to Stern, Heidi. (ndrS, COURT STAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>34</u>	CLERK'S NOTICE SETTING CASE MANAGEMENT CONFERENCE FOR REASSIGNED CIVIL CASE. Notice is hereby given that a Case Management Conference has been set for May 21, 2019, before Judge Haywood S. Gilliam, Jr., at 2:00 p.m., in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA. Case Management Statement due by May 14, 2019. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. All future filings should reflect the case number as 4:19-cv-00872-HSG. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ndrS, COURT STAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>35</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>29</u> Motion for Pro Hac Vice as to Jones, Brittany.(ndrS, COURT STAFF) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/22/2019	<u>36</u>	NOTICE of Appearance by Janelle M. Smith <i>on behalf of Plaintiff State of California</i> (Smith, Janelle) (Filed on 2/22/2019) (Entered: 02/22/2019)
02/25/2019	<u>37</u>	RE-FILED AT DOCKET NO. <u>39</u> ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13120842.) filed by State of Oregon. (DeFever, Jeanne) (Filed on 2/25/2019) Modified on 2/27/2019 (jjbS, COURT STAFF). (Entered: 02/25/2019)
02/26/2019	<u>38</u>	MOTION to Relate Case <i>Pursuant to N.D. Cal. Civ. L.R. 3-12(b)</i> filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Declaration of Cecillia D. Wang, # <u>2</u> Exhibit A to Declaration of Cecillia D. Wang, # <u>3</u> Exhibit B to Declaration of Cecillia D. Wang, # <u>4</u> Proposed Order, # <u>5</u> Certificate/Proof of Service)(Wang, Cecillia) (Filed on 2/26/2019) (Entered: 02/26/2019)
02/26/2019	<u>39</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13120842.) Filing fee previously paid on 02/25/2019 filed by State of Oregon. (Attachments: # <u>1</u> Certificate of Good Standing)(Kantor, Henry) (Filed on 2/26/2019) (Entered: 02/26/2019)
03/01/2019	<u>40</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13134628.) filed by State of Maryland. (Attachments: # <u>1</u> Certificate of Good Standing)(Dunlap, Jeffrey) (Filed on 3/1/2019) (Entered: 03/01/2019)
03/01/2019	<u>41</u>	NOTICE of Appearance by Heather Colleen Leslie <i>as Counsel for Plaintiffs</i> (Leslie, Heather) (Filed on 3/1/2019) (Entered: 03/01/2019)
03/04/2019	<u>42</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>39</u> Motion for Pro Hac Vice as to Kantor, Henry. (ndrS, COURT STAFF) (Filed on 3/4/2019) (Entered: 03/04/2019)
03/04/2019	<u>43</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>40</u> Motion for Pro Hac Vice as to Jeffrey Paul Dunlap. (ndrS, COURT STAFF) (Filed on 3/4/2019) (Entered: 03/04/2019)
03/05/2019	<u>44</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13144599.) filed by Dana Nessel. (Attachments: # <u>1</u> Certificate/Proof of Service Certificate of Good Standing)(Restuccia, B. Eric) (Filed on 3/5/2019) (Entered: 03/05/2019)
03/06/2019	<u>45</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>38</u> Motion to Relate Case Pursuant to N.D. Cal. Civ. L.R. 3-12(b) Re Case No. 19-cv-0892-KAW. (ndrS, COURT STAFF) (Filed on 3/6/2019) (Entered: 03/06/2019)

03/06/2019	<u>46</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>44</u> Motion for Pro Hac Vice as to Restuccia, B. Eric. (ndrS, COURT STAFF) (Filed on 3/6/2019) (Entered: 03/06/2019)
03/13/2019	<u>47</u>	AMENDED COMPLAINT <i>FOR DECLARATORY AND INJUNCTIVE RELIEF</i> against All Defendants. Filed by State of Minnesota, State of Colorado, State of California, State of Illinois, State of Maryland, State of Nevada, State of New York, Commonwealth of Virginia, Dana Nessel, State of Maine, State of Connecticut, State of New Mexico, State of Oregon, State of New Jersey, State of Delaware, State of Hawaii, State of Wisconsin, Commonwealth of Massachusetts, State of Vermont, State of Rhode Island. (Zahradka, James) (Filed on 3/13/2019) (Entered: 03/13/2019)
03/13/2019	<u>48</u>	Proposed Summons. (Zahradka, James) (Filed on 3/13/2019) (Entered: 03/13/2019)
03/14/2019	<u>49</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13170489.) filed by State of Wisconsin. (Johnson-Karp, Gabe) (Filed on 3/14/2019) (Entered: 03/14/2019)
03/14/2019		<u>Electronic filing error.</u> The <u>48</u> Proposed Summons will not be issued as to the same Defendants listed on the summons issued at docket number <u>6</u> , unless those summons' are returned unexecuted . Also, the Clerk's Office will issue a maximum of 3 summons'. Either list all defendants on three summons' or list any additional defendants as an attachment to the proposed summons. (jjbS, COURT STAFF) (Filed on 3/14/2019) (Entered: 03/14/2019)
03/15/2019	<u>50</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13174333.) filed by State of Rhode Island. (Attachments: # <u>1</u> Exhibit Letters of Good Standing)(Sullivan, Justin) (Filed on 3/15/2019) (Entered: 03/15/2019)
03/18/2019	<u>51</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>49</u> Motion for Pro Hac Vice as to Johnson-Karp, Gabe. (ndrS, COURT STAFF) (Filed on 3/18/2019) (Entered: 03/18/2019)
03/18/2019	<u>52</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>50</u> Motion for Pro Hac Vice as to Sullivan, Justin. (ndrS, COURT STAFF) (Filed on 3/18/2019) (Entered: 03/18/2019)
03/19/2019	<u>53</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13182042.) filed by State of Vermont. (Attachments: # <u>1</u> Certificate of Good Standing)(Battles, Benjamin) (Filed on 3/19/2019) (Entered: 03/19/2019)
03/28/2019	<u>54</u>	AFFIDAVIT by State of California. (Zahradka, James) (Filed on 3/28/2019) (Entered: 03/28/2019)
04/02/2019	<u>55</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>53</u> Motion for Pro Hac Vice as to Battles, Benjamin. (ndrS, COURT STAFF) (Filed on 4/2/2019) (Entered: 04/02/2019)
04/04/2019	<u>56</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13233071.) filed by Commonwealth of Massachusetts. (Attachments: # <u>1</u> Certificate of Good Standing)(Taylor, Abigail) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/04/2019	<u>57</u>	ADMINISTRATIVE MOTION To enlarge page limits in support of motion for injunctive relief filed by State of California. Responses due by 4/18/2019. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Declaration of Lee Sherman, # <u>3</u> Notice of Motion & Motion for Preliminary Injunction, # <u>4</u> Proposed Order, # <u>5</u> Appendix of Declarations re: TFF, # <u>6</u> Appendix of Declarations re: Environmental, # <u>7</u> Request for Judicial Notice, # <u>8</u> Certificate/Proof of Service)(Sherman, Lee) (Filed on 4/4/2019) (Entered: 04/04/2019)
04/08/2019	<u>58</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>57</u> ADMINISTRATIVE MOTION To enlarge page limits in support of motion for injunctive relief. Plaintiff States shall immediately file a Motion for Preliminary Injunction up to 35 pages in length on the docket. (ndrS, COURT STAFF) (Filed on 4/8/2019) (Entered: 04/08/2019)

04/08/2019	<u>59</u>	MOTION for Preliminary Injunction filed by Commonwealth of Massachusetts, Commonwealth of Virginia, Dana Nessel, State of California, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon, State of Rhode Island, State of Vermont, State of Wisconsin. Motion Hearing set for 5/9/2019 02:00 PM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 4/18/2019. Replies due by 4/25/2019. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Appendix re Environmental Harms, # <u>3</u> Appendix re TFF Harms, # <u>4</u> Request for Judicial Notice and Exhibits 1–50, # <u>5</u> Certificate/Proof of Service)(Sherman, Lee) (Filed on 4/8/2019) (Entered: 04/08/2019)
04/08/2019	<u>60</u>	MOTION to Shorten Time to <i>Hear Plaintiff States' Motion for Preliminary Injunction</i> filed by State of California. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Declaration of Lee I. Sherman, # <u>3</u> Certificate/Proof of Service)(Sherman, Lee) (Filed on 4/8/2019) (Entered: 04/08/2019)
04/09/2019	61	CLERK'S NOTICE. Notice is hereby given that counsel must re–notice not re– file the <u>59</u> motion for preliminary injunction. Hearing date of May 9, 2019, is vacated. Response is due April 22nd and reply is due April 29th. Counsel is directed to check the Court's scheduling notes before re–noticing the motion for a new hearing date. May 9th was not the Court's next available hearing date when this motion was e–filed. If the motion to shorten time is granted, the Court will advance the briefing and/or the hearing date. <i>(This is a text–only entry generated by the court. There is no document associated with this entry.)</i> (ndrS, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/09/2019)
04/09/2019	<u>62</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>56</u> Motion for Pro Hac Vice as to Taylor, Abigail. (ndrS, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/09/2019)
04/09/2019	63	ORDER by Hon Haywood S. Gilliam, Jr. SETTING the following briefing and hearing schedule for Plaintiffs' <u>59</u> Motion for Preliminary Injunction: responses are due by April 25, 2019; replies are due by May 2, 2019; a hearing is scheduled for May 17, 2019 at 10:00 a.m. Plaintiffs' <u>60</u> Motion to Shorten Time is DENIED AS MOOT in light of this order. Plaintiffs' counsel is directed to serve Defendants with this order. <i>(This is a text–only entry generated by the court. There is no document associated with this entry.)</i> (hsglc3S, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/09/2019)
04/09/2019		Set Deadlines/Hearing as to <u>59</u> MOTION for Preliminary Injunction, See Docket No. 63 : Responses due by 4/25/2019; Replies due by 5/2/2019; and Motion Hearing set for 5/17/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S. Gilliam Jr. (ndrS, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/10/2019)
04/10/2019	<u>64</u>	CERTIFICATE OF SERVICE by State of California <i>re [ECF Doc. 63]</i> (Ochoa, Edward) (Filed on 4/10/2019) Modified on 4/11/2019 (jjbS, COURT STAFF). (Entered: 04/10/2019)
04/10/2019	<u>65</u>	CERTIFICATE OF SERVICE by State of California <i>re <u>47</u> Amended Complaint,,</i> (Zahradka, James) (Filed on 4/10/2019) (Entered: 04/10/2019)
04/10/2019	<u>66</u>	NOTICE of Appearance by Andrew Irwin Warden <i>on behalf of Defendants</i> (Warden, Andrew) (Filed on 4/10/2019) (Entered: 04/10/2019)
04/10/2019	<u>67</u>	STIPULATION WITH PROPOSED ORDER <i>For Order Extending Page Limits For Preliminary Injunction Briefs, Staying Defendants' Response to the Amended Complaints, and Staying Initial Case Management Activity</i> filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson, and all Plaintiffs. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 4/10/2019) Modified on 4/11/2019 (jjbS, COURT STAFF). (Entered: 04/10/2019)
04/11/2019	<u>68</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 67 in case 4:19–cv–00872–HSG and 42 in case 4:19–cv–00892–HSG) Stipulation For Order Extending Page Limits For Preliminary Injunction Briefs, Staying Defendants'

		Response to the Amended Complaints, and Staying Initial Case Management Activity. (ndrS, COURT STAFF) (Filed on 4/11/2019) (Entered: 04/11/2019)
04/11/2019	<u>69</u>	First MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13252197.) filed by State of New Jersey. (Attachments: # <u>1</u> Appendix Certificate of Good Standing)(Feigenbaum, Jeremy) (Filed on 4/11/2019) (Entered: 04/11/2019)
04/12/2019	<u>70</u>	NOTICE of Appearance by Douglas N. Letter (Letter, Douglas) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/12/2019	<u>71</u>	Consent MOTION to File Amicus Curiae Brief filed by United States House of Representatives. Responses due by 4/26/2019. Replies due by 5/3/2019. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Exhibit Amicus Brief)(Letter, Douglas) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/15/2019	<u>72</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>71</u> Consent Motion to File Amicus Curiae Brief. Houses counsel is directed to file the amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 4/15/2019) (Entered: 04/15/2019)
04/15/2019	<u>73</u>	Brief of <i>Amicus Curiae</i> filed by United States House of Representatives. (Letter, Douglas) (Filed on 4/15/2019) (Entered: 04/15/2019)
04/19/2019	<u>74</u>	Joint ADMINISTRATIVE MOTION for Relief from Automatic Referral to the ADR Multi-Option Program re <u>5</u> Initial Case Management Scheduling Order with ADR Deadlines, filed by State of California and all Defendants. Responses due by 4/23/2019. (Attachments: # <u>1</u> Proposed Order)(Sherman, Lee) (Filed on 4/19/2019) Modified on 4/22/2019 (jjbS, COURT STAFF). (Entered: 04/19/2019)
04/22/2019		<u>Electronic filing error. NOTICE TO COUNSEL:</u> Document also listed case number 4:19-cv-892-HSG. If it is intended to be applied to the other case number, please e-file in that case also. If the document is not applicable to that case, DO NOT include that case number on the document. [err102] Re: <u>74</u> Joint ADMINISTRATIVE MOTION RELIEF FROM AUTOMATIC REFERRAL TO THE ADR MULTI-OPTION PROGRAM re <u>5</u> Initial Case Management Scheduling Order with ADR Deadlines, filed by State of California (jjbS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)
04/22/2019	<u>75</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>69</u> Motion for Pro Hac Vice as to Feigenbaum, Jeremy. (ndrS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)
04/22/2019	<u>76</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. <u>74</u> in case 4:19-cv-00872-HSG and <u>48</u> in case 4:19-cv-00892-HSG) Joint Administrative Motion for Relief from Automatic Referral to the ADR Multi-Option Program. (ndrS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)
04/23/2019	<u>77</u>	NOTICE of Appearance by David W. Evans (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>78</u>	**RE-FILED AS DOCKET NO. <u>85</u> ** Amicus Curiae APPEARANCE entered by David W. Evans on behalf of John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/26/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>79</u>	**RE-FILED AS DOCKET NO. <u>86</u> ** Amicus Curiae APPEARANCE entered by David W. Evans on behalf of John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/26/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>80</u>	**RE-FILED AS DOCKET NO. <u>88</u> ** Amicus Curiae APPEARANCE entered by David W. Evans on behalf of John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/26/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)

04/23/2019	<u>81</u>	***DISREGARD, RE-FILED AS DOCKET NO. 84*** MOTION for Preliminary Injunction <i>Consent Motion For Leave</i> filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. Motion Hearing set for 5/17/2019 10:00 AM before Judge Haywood S Gilliam Jr.. Responses due by 5/7/2019. Replies due by 5/14/2019. (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>82</u>	***DISREGARD, RE-FILED AS DOCKET NO. 84*** EXHIBITS re <u>81</u> MOTION for Preliminary Injunction <i>Consent Motion For Leave Amicus Memorandum In Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Related document(s) <u>81</u>) (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/23/2019	<u>83</u>	***DISREGARD, RE-FILED AS DOCKET NO. 84*** Proposed Order re <u>81</u> MOTION for Preliminary Injunction <i>Consent Motion For Leave Proposed Order Granting Consent Motion for Leave to File Memorandum of Christopher Shays, et al.</i> by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Evans, David) (Filed on 4/23/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/23/2019)
04/24/2019		<u>Electronic filing error</u> . Incorrect event used. [err101]. Correct Event is "Motion for Leave to Appear Pro Hac Vice." Event can be found under Civil Events > Motions and Related Filings > Motions – General > Pro Hac Vice. The attorney requesting to appear pro hac vice must also file their own Motion using their own ECF login . Please re-file in its entirety. Re: <u>78</u> Amicus Curiae Appearance filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>80</u> Amicus Curiae Appearance filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>79</u> Amicus Curiae Appearance filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III. (jjbS, COURT STAFF) (Filed on 4/24/2019) (Entered: 04/24/2019)
04/24/2019		<u>Electronic filing error</u> . Incorrect event used. [err101]. Correct event is "Motion for Leave to File Document." Event can be found under Civil Events > Motions and Related Filings > Motions – General > Leave to File Document. ALSO , please attach all supporting documents and proposed orders to the Motion. Please re-file the motion using the correct event with all supporting documents as attachments in its entirety. Re: <u>81</u> MOTION for Preliminary Injunction <i>Consent Motion For Leave</i> filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>82</u> Exhibits, filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III, <u>83</u> Proposed Order, filed by Stanley Twardy, Carter Phillips, Peter Keisler, Christine Todd Whitman, Richard Bernstein, Christopher Shays, John Bellinger, III (jjbS, COURT STAFF) (Filed on 4/24/2019) (Entered: 04/24/2019)
04/24/2019	<u>84</u>	MOTION for Leave to File Memorandum in Support of <u>59</u> Motion for Preliminary Injunction <i>CORRECTION OF DOCKET # <u>81</u>, <u>82</u>, <u>83</u></i> filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Proposed Amicus Memorandum, # <u>2</u> Proposed Order Proposed Order)(Evans, David) (Filed on 4/24/2019) Modified on 4/24/2019 (jjbS, COURT STAFF). (Entered: 04/24/2019)
04/25/2019	<u>85</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13289928.) filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Mancino, Richard) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>86</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13290005.) filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Hussein, Shaimaa) (Filed on 4/25/2019) (Entered: 04/25/2019)

		4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>87</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 84 in case 4:19-cv-00872-HSG and 59 in case 4:19-cv-00892-HSG) MOTION for Leave to File Memorandum in Support of 59 Motion for Preliminary Injunction. Counsel is directed to file the amici curiae brief of Christopher Shays et al. on the docket in this matter. (ndrS, COURT STAFF) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>88</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13290110.) Filing fee previously paid on 4/25/19 filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Dollan, Matthew) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	<u>89</u>	OPPOSITION/RESPONSE (re <u>59</u> MOTION for Preliminary Injunction) filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit)(Warden, Andrew) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/29/2019	<u>90</u>	ORDER by Hon. Haywood S. Gilliam, Jr., DIRECTING defense counsel to submit two complete copies of exhibits to <u>89</u> opposition to Plaintiffs' motion for preliminary injunction by May 1, 2019. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsclc3S, COURT STAFF) (Filed on 4/29/2019) (Entered: 04/29/2019)
04/30/2019	<u>91</u>	Amicus Brief filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit 1 to Amicus Brief of Christopher Shays, Christine Todd Whitman, Peter Keisler, Carter Phillips, John Bellinger III, Stanley Twardy and Richard Bernstein as Amici Curiae)(Evans, David) (Filed on 4/30/2019) Modified on 5/1/2019 (jjbS, COURT STAFF). (Entered: 04/30/2019)
04/30/2019	<u>92</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>85</u> Motion for Pro Hac Vice as to Mancino, Richard. (ndrS, COURT STAFF) (Filed on 4/30/2019) (Entered: 04/30/2019)
04/30/2019	<u>93</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>86</u> Motion for Pro Hac Vice as to Hussein, Shaimaa. (ndrS, COURT STAFF) (Filed on 4/30/2019) (Entered: 04/30/2019)
04/30/2019	<u>94</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>88</u> Motion for Pro Hac Vice as to Dollan, Matthew. (ndrS, COURT STAFF) (Filed on 4/30/2019) (Entered: 04/30/2019)
05/01/2019	<u>95</u>	Consent MOTION for Leave to File <i>Brief of Former Members of Congress as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by Amici Curiae Former Members of Congress. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Amici Curiae Brief)(Winthrop, Douglas) (Filed on 5/1/2019) (Entered: 05/01/2019)
05/01/2019	<u>96</u>	**DISREGARD, RE-FILED AS DOCKET NO. <u>97</u> ** NOTICE of Appearance by Gary T. Lafayette [<i>Notice of Appearance of Counsel</i>] (Lafayette, Gary) (Filed on 5/1/2019) Modified on 5/2/2019 (jjbS, COURT STAFF). (Entered: 05/01/2019)
05/01/2019	<u>97</u>	NOTICE of Appearance by Gary T. Lafayette. (Lafayette, Gary) (Filed on 5/1/2019) Modified on 5/2/2019 (jjbS, COURT STAFF). (Entered: 05/01/2019)
05/01/2019	<u>98</u>	Consent MOTION for Leave to File <i>Memorandum of 58 Religious Organizations as Amici Curiae in Support of Plaintiffs' Motion for a Preliminary Injunction</i> filed by 58 Religious Organizations. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Proposed Order)(Lafayette, Gary) (Filed on 5/1/2019) Modified on 5/2/2019 (jjbS, COURT STAFF). (Entered: 05/01/2019)

05/01/2019	<u>99</u>	**RE-FILED AS DOCKET NO. 117 ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309746.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Mangi, Adeel) (Filed on 5/1/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/01/2019)
05/01/2019	<u>100</u>	**DISREGARD, RE-FILED AS DOCKET NO. 118 ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309762.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Zalesin, Steven) (Filed on 5/1/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/01/2019)
05/01/2019	<u>101</u>	**RE-FILED AS DOCKET NO. 120 ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309770.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Kolodin, Zachary) (Filed on 5/1/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/01/2019)
05/01/2019	<u>102</u>	**RE-FILED AT DOCKET NO. 121 ** MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309778.) filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Badat, Mohammed) (Filed on 5/1/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/01/2019)
05/01/2019	<u>103</u>	MOTION for Leave to File <i>Brief as Amici Curiae</i> filed by National Immigration Law Center, et al.. (Attachments: # <u>1</u> Proposed Amicus Brief, # <u>2</u> Proposed Order)(Espiritu, Nicholas) (Filed on 5/1/2019) (Entered: 05/01/2019)
05/01/2019	<u>104</u>	NOTICE of Appearance by Nicholas David Espiritu (Espiritu, Nicholas) (Filed on 5/1/2019) (Entered: 05/01/2019)
05/02/2019	<u>105</u>	Consent MOTION to File Amicus Curiae Brief filed by Erwin Chemerinsky, Michael C. Dorf, David A. Strauss, Stephen I. Vladeck. Responses due by 5/16/2019. Replies due by 5/23/2019. (Attachments: # <u>1</u> Exhibit Proposed Amici Curiae Brief, # <u>2</u> Proposed Order)(Wydra, Elizabeth) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019		<u>Electronic filing error. NOTICE TO COUNSEL:</u> Document also listed case number 4:19-cv-892-HSG. If it is intended to be applied to the other case number, please e-file in that case also. If the document is not applicable to that case, DO NOT include that case number on the document. [err102] Re: <u>103</u> MOTION for Leave to File <i>Brief as Amici Curiae</i> filed by National Immigration Law Center, et al. (jjbS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>106</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>95</u> Motion for Leave to File Brief of Former Members of Congress as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>107</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>98</u> Motion for Leave to File Motion for Leave to File Memorandum of 58 Religious Organizations as Amici Curiae in Support of Plaintiffs' Motion for a Preliminary Injunction. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>108</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Consent (Docket Nos. 105 in case 4:19-cv-00872-HSG; and 68 in case 4:19-cv-00892-HSG) MOTION to File Amicus Curiae Brief. (ndrS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019		<u>Electronic filing error. NOTICE TO COUNSEL:</u> Document also listed case number 4:19-cv-892-HSG. If it is intended to be applied to the other case number, please e-file in that case also. If the document is not applicable to that case, DO NOT include that case number on the document. Re: <u>104</u> Notice of Appearance filed by National Immigration Law Center, et al. (jjbS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>109</u>	Brief of 58 Religious Organizations as Amici Curiae in Support of Plaintiffs' <u>59</u> Motion for a Preliminary Injunction filed by 58 Religious Organizations. (Lafayette, Gary) (Filed on 5/2/2019) Modified on 5/2/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)

05/02/2019	<u>110</u>	MOTION for Leave to Present Argument in the Preliminary Injunction Hearing filed by United States House of Representatives. Responses due by 5/16/2019. Replies due by 5/23/2019. (Attachments: # <u>1</u> Proposed Order)(Letter, Douglas) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>111</u>	ORDER by Hon. Haywood S. Gilliam, Jr., GRANTING the <u>110</u> motion for leave to present argument, in light of the unique institutional interests articulated by <i>amicus curiae</i> United States House of Representatives. No party arguing at the hearing will be permitted to present PowerPoint or similar visual presentations. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsglc3S, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>112</u>	REPLY (re <u>59</u> MOTION for Preliminary Injunction) filed by Commonwealth of Massachusetts, Commonwealth of Virginia, Dana Nessel, State of California, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon, State of Rhode Island, State of Vermont, State of Wisconsin. (Attachments: # <u>1</u> Supplemental Request for Judicial Notice & Exhibits. 51-53)(Sherman, Lee) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>113</u>	MOTION for leave to appear in Pro Hac Vice <i>re: Harold Hongju Koh</i> (Filing fee \$ 310, receipt number 0971-13313954.) filed by Former U.S. Government Officials. (Attachments: # <u>1</u> Certificate of Good Standing)(Koh, Harold) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>114</u>	MOTION for leave to appear in Pro Hac Vice <i>re: Phillip M. Spector</i> (Filing fee \$ 310, receipt number 0971-13313986.) filed by Former U.S. Government Officials. (Attachments: # <u>1</u> Certificate of Good Standing)(Spector, Phillip) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/02/2019	<u>115</u>	Consent MOTION for Leave to File <i>Memorandum as Amici Curiae in Support of Plaintiffs Motion for a Preliminary Injunction</i> filed by Former U.S. Government Officials. (Attachments: # <u>1</u> Proposed Amicus Brief, # <u>2</u> Proposed Order)(Hartnett, Kathleen) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>116</u>	Consent MOTION to File Amicus Curiae Brief in Support of Defendants filed by American Center for Law and Justice. Responses due by 5/16/2019. Replies due by 5/23/2019. (Attachments: # <u>1</u> Proposed Amicus Curiae Brief, # <u>2</u> Proposed Order)(Sisney, Benjamin) (Filed on 5/2/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/02/2019)
05/03/2019	<u>117</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309746.) Filing fee previously paid on 05/01/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Mangi, Adeel) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>118</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309762.) Filing fee previously paid on 05/01/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Zalesin, Steven) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>119</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 103 in case 4:19-cv-00872-HSG; 79 in case 4:19-cv-00892-HSG) Motion for Leave to File as Amici Curiae. (ndrS, COURT STAFF) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>120</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309770.) Filing fee previously paid on 05/01/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Kolodin, Zachary) (Filed on 5/3/2019) (Entered: 05/03/2019)
05/03/2019	<u>121</u>	Amended MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13309778.) Filing fee previously paid on 05/01/2019 filed by 58 Religious Organizations. (Attachments: # <u>1</u> Certificate of Good Standing)(Badat, Mohammed) (Filed on 5/3/2019) (Entered: 05/03/2019)

05/03/2019	<u>122</u>	Amicus Brief filed by National Immigration Law Center, et al. (Espiritu, Nicholas) (Filed on 5/3/2019) Modified on 5/3/2019 (jjbS, COURT STAFF). (Entered: 05/03/2019)
05/06/2019	<u>123</u>	***RE-FILED, SEE DOCKET NO. <u>149</u> *** MOTION for leave to appear in Pro Hac Vice (<i>Margaret Q. Chapple</i>) (Filing fee \$ 310, receipt number 0971-13320417.) filed by State of Connecticut. (Chapple, Margaret) (Filed on 5/6/2019) Modified on 5/7/2019 (cpS, COURT STAFF). Modified on 5/21/2019 (ndrS, COURT STAFF). (Entered: 05/06/2019)
05/07/2019	<u>124</u>	Brief Amici Curiae in Support of Plaintiffs' Preliminary Injunction filed byNational Immigration Law Center, Asian Americans Advancing Justice-AAJC, Asian Americans Advancing Justice – Los Angeles, AALDEFF, Black Alliance For Just Immigration, LatinoJustice PRLDEF. (Espiritu, Nicholas) (Filed on 5/7/2019) Modified on 5/8/2019 (cpS, COURT STAFF). (Entered: 05/07/2019)
05/07/2019	<u>125</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13325691.) Filing fee paid on 5/7/19 filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Bernstein, Richard) (Filed on 5/7/2019) Modified on 5/8/2019 (cpS, COURT STAFF). (Entered: 05/07/2019)
05/08/2019	<u>126</u>	MOTION for leave to appear in Pro Hac Vice (<i>Benjamin P. Sisney</i>) (Filing fee \$ 310, receipt number 0971-13328079.) filed by American Center for Law and Justice. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Sisney, Benjamin) (Filed on 5/8/2019) Modified on 5/9/2019 (cpS, COURT STAFF). (Entered: 05/08/2019)
05/08/2019	<u>127</u>	MOTION to Withdraw as Attorney filed by John Bellinger, III, Richard Bernstein, Peter Keisler, Carter Phillips, Christopher Shays, Stanley Twardy, Christine Todd Whitman. Responses due by 5/22/2019. Replies due by 5/29/2019. (Attachments: # <u>1</u> Proposed Order)(Dollan, Matthew) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/08/2019	<u>128</u>	Brief of Former Members of Congress as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction filed byAmici Curiae Former Members of Congress. (Winthrop, Douglas) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/09/2019	<u>129</u>	Brief of Amici Curiae Federal Courts Scholars in Support of Plaintiffs' Motion for Preliminary Injunction filed byErwin Chemerinsky, Michael C. Dorf, David A. Strauss, Stephen I. Vladeck. (Wydra, Elizabeth) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/09/2019	<u>130</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>127</u> Motion to Withdraw as Attorney. (ndrS, COURT STAFF) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/09/2019	<u>131</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>117</u> Amended Motion for Pro Hac Vice as to Mangi, Adeel. (ndrS, COURT STAFF) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/09/2019	<u>132</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>118</u> Amended Motion for Pro Hac Vice as to Zalesin, Steven. (ndrS, COURT STAFF) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/09/2019	<u>133</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>120</u> Amended Motion for Pro Hac Vice as to Kolodin, Zachary. (ndrS, COURT STAFF) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/09/2019	<u>134</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>121</u> Amended Motion for Pro Hac Vice as to Badat, Mohammed. (ndrS, COURT STAFF) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/09/2019	<u>135</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>125</u> Motion for Pro Hac Vice as to Bernstein, Richard. (ndrS, COURT STAFF) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/10/2019	<u>136</u>	Second Supplemental Request for Judicial Notice re <u>59</u> MOTION for Preliminary Injunction filed byCommonwealth of Massachusetts, Commonwealth of Virginia, Dana Nessel, State of California, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of

		Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon, State of Rhode Island, State of Vermont, State of Wisconsin. (Attachments: # <u>1</u> Exhibit Exhibits 54 & 55)(Related document(s) <u>59</u>) (Zahradka, James) (Filed on 5/10/2019) Modified on 5/13/2019 (cpS, COURT STAFF). (Entered: 05/10/2019)
05/13/2019	<u>137</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>115</u> Consent MOTION for Leave to File Memorandum as Amici Curiae in Support of Plaintiffs Motion for a Preliminary Injunction. Counsel is directed to file the brief on the docket. (nrs, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>138</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>116</u> Consent MOTION to File Amicus Curiae Brief in Support of Defendants. Counsel is directed to file the brief on the docket. (nrs, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>139</u>	Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction filed by Former U.S. Government Officials. (Hartnett, Kathleen) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>140</u>	NOTICE of Appearance by Robert Henry Tyler (Tyler, Robert) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>141</u>	ORDER by Hon. Haywood S. Gilliam, Jr., DIRECTING DEFENDANTS TO SUBMIT STATEMENT. (hsglc3S, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>142</u>	ORDER by Hon. Haywood S. Gilliam, Jr., ADVISING Defendants that the Court's <u>141</u> requested statement should only include updated factual information, and should not include further legal argument. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsglc3S, COURT STAFF) (Filed on 5/13/2019) (Entered: 05/13/2019)
05/13/2019	<u>143</u>	SECOND DECLARATION of Kenneth Rapuano (May 13, 2019) filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. (Attachments: # <u>1</u> Exhibit Second Declaration of Kenneth Rapuano (dated May 13, 2019))(Warden, Andrew) (Filed on 5/13/2019) Modified on 5/14/2019 (cpS, COURT STAFF). (Entered: 05/13/2019)
05/14/2019	<u>144</u>	NOTICE of Appearance by Eric Grant <i>on behalf of Defendants</i> (Grant, Eric) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>145</u>	CLERK'S NOTICE. Notice is hereby given that any member of the press wishing to listen by telephone to the motions hearings scheduled for May 17th shall contact CourtCall at (866) 582-6878 to make arrangements to do so. No one is permitted to record the hearing. (This is a text-only entry generated by the court. There is no document associated with this entry.)(nrs, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>146</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>113</u> Motion for Pro Hac Vice re: Harold Hongju Koh.(nrs, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>147</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>114</u> Motion for Pro Hac Vice Re: Phillip M. Spector. (nrs, COURT STAFF) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/15/2019	<u>148</u>	MOTION to Withdraw as Attorney (<i>Zachary Kolodin</i>) filed by 58 Religious Organizations. Responses due by 5/29/2019. Replies due by 6/5/2019. (Attachments: # <u>1</u> Proposed Order)(Kolodin, Zachary) (Filed on 5/15/2019) Modified on 5/16/2019 (cpS, COURT STAFF). (Entered: 05/15/2019)
05/15/2019	<u>149</u>	MOTION for leave to appear in Pro Hac Vice (Margaret Q. Chapple) (Filing fee \$ 310, receipt number 0971-13320417.) Filing Fee Paid filed by State of Connecticut. (Chapple, Margaret) (Filed on 5/15/2019) Modified on 5/16/2019 (cpS, COURT STAFF). Modified on 5/16/2019 (cpS, COURT STAFF). (Entered: 05/15/2019)

05/15/2019	<u>150</u>	NOTICE of Appearance by James Mahoney Burnham (Burnham, James) (Filed on 5/15/2019) (Entered: 05/15/2019)
05/15/2019	<u>151</u>	Response to the Court's May 13, 2019 Order <u>141</u> by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Warden, Andrew) (Filed on 5/15/2019) Modified on 5/16/2019 (cpS, COURT STAFF). (Entered: 05/15/2019)
05/16/2019	<u>152</u>	NOTICE of Appearance by Howard Michael Garfield (Garfield, Howard) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	<u>153</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 148 in case 4:19-cv-00872-HSG and 129 in case 4:19-cv-00892-HSG) Motion to Withdraw as Attorney. (ndrS, COURT STAFF) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/17/2019	<u>154</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>126</u> Motion for Pro Hac Vice as to Benjamin P. Sisney.(ndrS, COURT STAFF) (Filed on 5/17/2019) (Entered: 05/17/2019)
05/17/2019	<u>155</u>	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Motion Hearing held on 5/17/2019. Total Time in Court: 2 hours and 40 minutes. Court Reporter: Pamela Batalo-Hebel. Plaintiff Attorney: Dror Ladin; Lee Sherman; Janelle Smith; Henry Kantor and Douglas Letter. Defendant Attorney: Andrew Warden; Eric Grant and James Burnham. Plaintiffs motions for preliminary injunction (docket nos. 59 in case no. 19-cv-872-HSG and 29 in case no. 19-cv-892-HSG) are argued and submitted by the parties and taken under submission by the Court. Parties are in agreement that the Court should rule on the motions for preliminary injunction without regard to the El Centro Sector and Tucson Sector Projects. Parties are directed to meet and confer and e-file a stipulation and proposed order setting briefing schedule regarding these projects. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 5/17/2019) (Entered: 05/17/2019)
05/17/2019	<u>156</u>	TRANSCRIPT ORDER for proceedings held on 5/17/2019 before Judge Haywood S Gilliam, Jr by State of California, for Court Reporter Pam Batalo. (Zahradka, James) (Filed on 5/17/2019) (Entered: 05/17/2019)
05/19/2019	<u>157</u>	TRANSCRIPT ORDER for proceedings held on May 17, 2019 before Judge Haywood S Gilliam, Jr by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson, for Court Reporter Pam Batalo. (Warden, Andrew) (Filed on 5/19/2019) (Entered: 05/19/2019)
05/20/2019	<u>158</u>	TRANSCRIPT ORDER for proceedings held on May 17, 2019 before Judge Haywood S Gilliam, Jr by United States House of Representatives, for Court Reporter Pam Batalo. (Letter, Douglas) (Filed on 5/20/2019) (Entered: 05/20/2019)
05/20/2019	<u>159</u>	Transcript of Proceedings held on 05/17/19, before Judge Gilliam. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamelabatalohebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (156 in 4:19-cv-00872-HSG) Transcript Order, (137 in 4:19-cv-00892-HSG) Transcript Order, (158 in 4:19-cv-00872-HSG) Transcript Order) Redaction Request due 6/10/2019. Redacted Transcript Deadline set for 6/20/2019. Release of Transcript Restriction set for 8/19/2019. (Batalo, Pam) (Filed on 5/20/2019) (Entered: 05/20/2019)
05/21/2019	<u>160</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>149</u> Motion for Pro Hac Vice as to Margaret Q. Chapple.(<u>123</u> Motion for Pro Hac Vice is terminated) (ndrS, COURT STAFF) (Filed on 5/21/2019) (Entered: 05/21/2019)

05/21/2019	<u>161</u>	Letter from Douglas N. Letter, General Counsel, U.S. House of Representatives . (Letter, Douglas) (Filed on 5/21/2019) (Entered: 05/21/2019)
05/22/2019	<u>162</u>	STIPULATION WITH PROPOSED ORDER <i>For Supplemental Briefing Schedule For El Centro and Tucson Border Barrier Projects</i> filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, State of California. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 5/22/2019) Modified on 5/23/2019 (cpS, COURT STAFF). (Entered: 05/22/2019)
05/23/2019	<u>163</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 162 in case 4:19-cv-00872-HSG and 140 in case 4:19-cv-00892-HSG) Stipulation For Supplemental Briefing Schedule For El Centro and Tucson Border Barrier Projects. (ndrS, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019		Set Deadlines/Hearing: Motions due by 5/29/2019; Responses due by 6/10/2019 and Replies due by 6/13/2019. (ndrS, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	<u>164</u>	***INCORRECT CASE NUMBER*** TRANSCRIPT ORDER for proceedings held on 05/17/2019 before Judge Haywood S Gilliam, Jr for Court Reporter Pam Batalo. (oh, COURT STAFF) (Filed on 5/23/2019) Modified on 5/24/2019 (cpS, COURT STAFF). (Entered: 05/23/2019)
05/24/2019	<u>165</u>	ORDER by Hon. Haywood S. Gilliam, Jr., DENYING <u>59</u> Plaintiffs Motion for Preliminary Injunction, and SETTING case management conference for June 5, 2019 at 2:00 p.m. Case management statement is due by May 31, 2019.(hsglc3S, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/24/2019)
05/24/2019		Set Deadline/Hearing: Case Management Statement due by 5/31/2019 and Further Case Management Conference set for 6/5/2019 02:00 PM in Oakland, Courtroom 2, 4th Floor. (ndrS, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/28/2019)
05/29/2019	<u>166</u>	Joint MOTION to Appear by Telephone <i>at Case Management Conference</i> filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Stephen I. Vladeck, Heather Wilson., State of California (Attachments: # <u>1</u> Proposed Order)(Westmoreland, Rachael) (Filed on 5/29/2019) Modified on 5/30/2019 (cpS, COURT STAFF). (Entered: 05/29/2019)
05/29/2019	<u>167</u>	MOTION for Preliminary Injunction filed by State of California. Responses due by 10/10/2019. Replies due by 10/15/2019. (Attachments: # <u>1</u> Supplement Request for Judicial Notice, # <u>2</u> Declaration of Kevin B. Clark, # <u>3</u> Declaration of Nagano, # <u>4</u> Declaration of Dunn, # <u>5</u> Declaration of Vanderplank, # <u>6</u> Proposed Order, # <u>7</u> Certificate/Proof of Service)(Cayaban, Michael) (Filed on 5/29/2019) Modified on 5/30/2019 (cpS, COURT STAFF). (Entered: 05/29/2019)
05/30/2019		Reset Deadlines as to <u>167</u> MOTION for Preliminary Injunction , See Docket No. <u>163</u> : Responses due by 6/10/2019 and Replies due by 6/13/2019. (ndrS, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019		***Hearing dates of 10/3/2019 Re Docket Nos. 167 in case no. 19-cv-00872-hsg and 146 and 150 in case no. 19-cv-00892-HSG are terminated because counsel set the date when filing the motions in ECF but failed to actual notice the motions for that date.*** (ndrS, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>168</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>166</u> Motion to Appear by Telephone at Case Management Conference.(ndrS, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/31/2019	<u>169</u>	JOINT CASE MANAGEMENT STATEMENT filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United

		States of America, Heather Wilson, State of Colorado, et al. (Warden, Andrew) (Filed on 5/31/2019) Modified on 6/3/2019 (cpS, COURT STAFF). (Entered: 05/31/2019)
06/04/2019	<u>170</u>	NOTICE of Appearance by Brian Jeffrey Bilford (Bilford, Brian) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/05/2019	<u>171</u>	NOTICE of Appearance by Noah Marc Golden-Krasner <i>for Plaintiff State of California</i> (Golden-Krasner, Noah) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>172</u>	NOTICE of Appearance by Sparsh S Khandeshi (Khandeshi, Sparsh) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	175	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Further Case Management Conference held on 6/5/2019. FTR Time: 2:01-2:27. Plaintiff Attorney: Dror Ladin, Lee Sherman, Gavion McCabe, Craig Newby and Justin Sullivan appearing via courtcall. Defendant Attorney: Andrew Warden appearing via courtcall. The Court orders the current preliminary injunction motion and briefing held in abeyance and orders that the motion for partial summary judgment briefing concerning Sections 284 and 8005 include issues raised in the pending preliminary injunction motion. The Court sets: June 12-filing deadline for motion for partial summary judgment and August 29, 2019 at 2:00 p.m.-hearing deadline for motion for summary judgment on remaining issues. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 6/5/2019) (Entered: 06/10/2019)
06/07/2019	<u>173</u>	NOTICE of Filing of Administrative Record For El Paso, Yuma, El Centro, and Tucson Border Barrier Projects by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Warden, Andrew) (Filed on 6/7/2019) Modified on 6/10/2019 (cpS, COURT STAFF). (Entered: 06/07/2019)
06/07/2019	<u>174</u>	SCHEDULING ORDER: Motions due by 6/12/2019; Responses due by 6/19/2019 and Replies due by 6/24/2019. Signed by Judge Haywood S. Gilliam, Jr. on 6/7/2019. (ndrS, COURT STAFF) (Filed on 6/7/2019) (Entered: 06/07/2019)
06/07/2019		Set Additional Deadlines/Hearing, See Docket No. 174 in case no. 19-cv-872-HSG and 164 in case no. 19-cv-892-HSG: Motions due by 7/11/2019; Responses due by 7/25/2019; Replies due by 8/8/2019 and Motion Hearing set for 8/29/2019 02:00 PM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S. Gilliam Jr. (ndrS, COURT STAFF) (Filed on 6/7/2019) Modified on 6/7/2019 (ndrS, COURT STAFF). (Entered: 06/07/2019)
06/12/2019	<u>176</u>	MOTION for Partial Summary Judgment filed by State of California, State of New Mexico. Responses due by 6/19/2019. Replies due by 6/24/2019. (Attachments: # <u>1</u> Proposed Order Proposed Order Granting Plaintiff States of California and New Mexico's Motion for Partial Summary Judgment Regarding Sections 284, 8005, and 9002, # <u>2</u> Appendix Appendix of Declarations re Enviromental Harms in Support of Motion for Partial Summary Judgment Regarding Sections 284, 8005, and 9002, # <u>3</u> Plaintiff States of California and New Mexico's Request for Judicial Notice in Support of Motion for Partial Summary Judgment Regarding Sections 284, 8005, and 9002)(Sherman, Lee) (Filed on 6/12/2019) Modified on 6/13/2019 (cpS, COURT STAFF). (Entered: 06/12/2019)
06/13/2019	177	CLERK'S NOTICE. Notice is hereby given that counsel must notice not re-file the <u>176</u> motion for partial summary judgment. Counsel is directed to review the <u>174</u> scheduling order and the 175 minute order before noticing the motion. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/14/2019	<u>178</u>	Renotice motion hearing re <u>176</u> MOTION for Partial Summary Judgment <i>Regarding Sections 284, 8005, and 9002</i> filed by State of California. (Related document(s) <u>176</u>) (Sherman, Lee) (Filed on 6/14/2019) (Entered: 06/14/2019)

06/17/2019	<u>179</u>	Consent MOTION for Leave to File <i>Amicus Curiae Brief</i> filed by United States House of Representatives. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Proposed Order)(Letter, Douglas) (Filed on 6/17/2019) (Entered: 06/17/2019)
06/18/2019	<u>180</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>179</u> Consent MOTION for Leave to File Amicus Curiae Brief. Counsel is directed to file the Houses amicus curiae brief on the docket in this matter. (ndrS, COURT STAFF) (Filed on 6/18/2019) (Entered: 06/18/2019)
06/19/2019	<u>181</u>	Brief of <i>Amicus Curiae</i> filed by United States House of Representatives. (Letter, Douglas) (Filed on 6/19/2019) (Entered: 06/19/2019)
06/19/2019	<u>182</u>	MOTION for Partial Summary Judgment <i>and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i> filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. Responses due by 6/24/2019. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Proposed Order)(Warden, Andrew) (Filed on 6/19/2019) Modified on 6/20/2019 (cpS, COURT STAFF). (Entered: 06/19/2019)
06/24/2019	<u>183</u>	REPLY (re <u>176</u> MOTION for Partial Summary Judgment) filed by State of California, State of New Mexico. (Attachments: # <u>1</u> Declaration, # <u>2</u> Request for Judicial Notice)(Sherman, Lee) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/28/2019	<u>184</u>	JOINT STATUS REPORT <i>Regarding Defendants' Construction Plans</i> by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson, State of California, et al. (Warden, Andrew) (Filed on 6/28/2019) Modified on 6/30/2019 (cpS, COURT STAFF). (Entered: 06/28/2019)
06/28/2019	<u>185</u>	ORDER by Judge Haywood S. Gilliam, Jr., GRANTING IN PART and DENYING IN PART <u>176</u> Plaintiffs' Motion for Partial Summary Judgment; DENYING <u>182</u> Defendants' Motion for Partial Summary Judgment; CERTIFYING Judgment for Appeal.(hsglc3S, COURT STAFF) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>186</u>	PARTIAL JUDGMENT. Signed by Judge Haywood S. Gilliam, Jr. on 6/28/2019.(hsglc3S, COURT STAFF) (Filed on 6/28/2019) Modified on 7/9/2019 (cpS, COURT STAFF). (Entered: 06/28/2019)
06/29/2019	<u>187</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Department of Defense, David Bernhardt, Mark T. Esper, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America. Appeal of Judgment <u>186</u> , Order on Motion for Partial Summary Judgment,, <u>185</u> (Appeal fee FEE WAIVED.) (Warden, Andrew) (Filed on 6/29/2019) (Entered: 06/29/2019)
07/01/2019	<u>188</u>	NOTICE of Filing of Administrative Record for the Treasury Forfeiture Fund by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit Certification, # <u>2</u> Exhibit TFF Administrative Record)(Warden, Andrew) (Filed on 7/1/2019) Modified on 7/2/2019 (cpS, COURT STAFF). (Entered: 07/01/2019)
07/01/2019	<u>189</u>	USCA Case Number 19-16299 Ninth Circuit Court of Appeals for <u>187</u> Notice of Appeal,, filed by U.S. Department of Homeland Security, David Bernhardt, Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, Patrick M. Shanahan, U.S. Department of the Interior, Kirstjen M. Nielsen, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump. (cjlS, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)

07/03/2019	<u>190</u>	ORDER of USCA: Defer resolution of the request to consolidate appeal No. 19-16299, which will be addressed by separate order as to <u>187</u> Notice of Appeal, filed by U.S. Department of Homeland Security, David Bernhardt, Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, Patrick M. Shanahan, U.S. Department of the Interior, Kirstjen M. Nielsen, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump (cpS, COURT STAFF) (Filed on 7/3/2019) (Entered: 07/05/2019)
07/08/2019	<u>191</u>	NOTICE OF CROSS APPEAL as to <u>186</u> Judgment, <u>185</u> Order on Motion for Partial Summary Judgment,, by State of California, State of New Mexico. (Appeal fee of \$505 receipt number 0971-13498158 paid.) Appeal Record due by 8/7/2019. (Sherman, Lee) (Filed on 7/8/2019) (Entered: 07/08/2019)
07/08/2019	<u>192</u>	**DISREGARD, RE-FILED AT DOCKET NO. 199** STIPULATION WITH PROPOSED ORDER <i>Modifying Summary Judgment Briefing Schedule on Claims Related to 10 U.S.C. § 2808 and the Treasury Forfeiture Fund</i> filed by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson, and Plaintiff States. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 7/8/2019) Modified on 7/9/2019 (jjbS, COURT STAFF). Modified on 7/19/2019 (jjbS, COURT STAFF). (Entered: 07/08/2019)
07/08/2019	<u>193</u>	USCA Case Number 19-16336 Ninth Circuit Court of Appeals for <u>191</u> Notice of Cross Appeal to the Ninth Circuit, filed by State of California, State of New Mexico. (cjlS, COURT STAFF) (Filed on 7/8/2019) (Entered: 07/09/2019)
07/09/2019	<u>194</u>	ORDER by Hon. Haywood S. Gilliam, Jr., STAYING all outstanding summary judgment briefing deadlines and SETTING a telephone conference for July 17, 2019 at 3:00 p.m., to discuss a briefing schedule. Counsel shall contact CourtCall at (866) 582-6878 to make arrangements for the telephonic appearance. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsglc3S, COURT STAFF) (Filed on 7/9/2019) (Entered: 07/09/2019)
07/09/2019		Set Hearing, See Docket Nos. 194 in case no. 19-cv-00872-HSG and 193 in case no. 19-cv-00892-HSG: Telephone Conference set for 7/17/2019 03:00 PM in Oakland, Chambers before Judge Haywood S. Gilliam Jr. (ndrS, COURT STAFF) (Filed on 7/9/2019) (Entered: 07/10/2019)
07/11/2019	<u>195</u>	NOTICE of Change of Address by Kathleen R. Hartnett (Hartnett, Kathleen) (Filed on 7/11/2019) (Entered: 07/11/2019)
07/12/2019	<u>196</u>	SUPPLEMENTAL DECLARATION of Loren Flossman Addressing Treasury Fofeiture Fund by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit Flossman Declaration (July 11, 2019))(Warden, Andrew) (Filed on 7/12/2019) Modified on 7/15/2019 (jjbS, COURT STAFF). (Entered: 07/12/2019)
07/15/2019		<u>Electronic filing error.</u> Incorrect event used. [err101]. Correct event is "Declaration." Event can be found under Civil Events > Motions and Related Filings > Moti ons-General > Declaration in Support/Opposition. Corrected by Clerk's Office. No further action is necessary. Re: <u>196</u> Notice (Other) filed by U.S. Department of Homeland Security, Ryan D. McCarthy, David Bernhardt, Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, U.S. Department of the Interior, Kevin K. McAleenan, Heather Wilson, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump. (jjbS, COURT STAFF) (Filed on 7/15/2019) (Entered: 07/15/2019)
07/15/2019	<u>197</u>	ORDER of USCA, Defendants' Unopposed Motion to Consolidate Appeals is Granted, as to (145 in 4:19-cv-00892-HSG) Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, (187 in 4:19-cv-00892-HSG) Notice of Appeal, filed by Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump, (187 in 4:19-cv-00872-HSG) Notice of Appeal,, filed by U.S. Department of Homeland Security, David Bernhardt,

		Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, Patrick M. Shanahan, U.S. Department of the Interior, Kirstjen M. Nielsen, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump, (191 in 4:19-cv-00872-HSG) Notice of Cross Appeal to the Ninth Circuit, filed by State of California, State of New Mexico (jjbS, COURT STAFF) (Filed on 7/15/2019) (Entered: 07/16/2019)
07/17/2019	<u>198</u>	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Telephone Conference held on 7/17/2019. Total Time in Court: 10 Minutes. Not Reported. Plaintiff Attorney: Christine Chuang; Mollie Lee; Heather Leslie; Gavin McCabe; Craig Newby; Lee Sherman; Justin Sullivan; James Zahradka and Dror Ladin. Defendant Attorney: Andrew Warden. The Court advises the parties that it will grant the stipulation and proposed order in Sierra Club v. Trump, No. 4:19-cv-00892-HSG (docket no. 191). The parties in California v. Trump, No. 4:19-cv-00872-HSG are directed to meet and confer and e-file (1) a revised stipulation and proposed order regarding summary judgment briefing related to 10 U.S.C. § 2808, and (2) a stipulated dismissal without prejudice concerning claims related to the Treasury Forfeiture Fund. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 7/17/2019) (Entered: 07/18/2019)
07/18/2019	<u>199</u>	STIPULATION WITH PROPOSED ORDER <i>Staying Summary Judgment Briefing Schedule on Claims Related to 10 U.S.C. § 2808</i> filed by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson, State of California and other Plaintiff States. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 7/18/2019) Modified on 7/19/2019 (jjbS, COURT STAFF). (Entered: 07/18/2019)
07/19/2019	<u>200</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>199</u> Stipulation Staying Summary Judgment Briefing Schedule on Claims Related to 10 U.S.C. § 2808. (ndrS, COURT STAFF) (Filed on 7/19/2019) (Entered: 07/19/2019)
07/26/2019	<u>201</u>	ORDER of United States Supreme Court. (jjbS, COURT STAFF) (Filed on 7/26/2019) (Entered: 07/29/2019)
08/02/2019	<u>202</u>	STIPULATION WITH PROPOSED ORDER <i>Dismissing without Prejudice TFF Claims</i> filed by Commonwealth of Massachusetts, Commonwealth of Virginia, Dana Nessel, State of California, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon, State of Rhode Island, State of Vermont, State of Wisconsin and Defendants. (Attachments: # <u>1</u> Proposed Order Dismissing Without Prejudice TFF Claims)(Sherman, Lee) (Filed on 8/2/2019) Modified on 8/5/2019 (jjbS, COURT STAFF). Modified on 8/5/2019 (jjbS, COURT STAFF). (Entered: 08/02/2019)
08/05/2019	<u>203</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>202</u> Stipulation Dismissing without Prejudice TFF Claims. (ndrS, COURT STAFF) (Filed on 8/5/2019) (Entered: 08/05/2019)
08/27/2019	<u>204</u>	NOTICE <i>Of Decision by the Department of Defense to Authorize Additional Border Barrier Projects Pursuant to 10 U.S.C. § 284</i> by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Warden, Andrew) (Filed on 8/27/2019) Modified on 8/28/2019 (jjbS, COURT STAFF). (Entered: 08/27/2019)
09/03/2019	<u>205</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13670617.) filed by State of Hawaii. (Nakatsuji, Robert) (Filed on 9/3/2019) (Entered: 09/03/2019)
09/03/2019	<u>206</u>	NOTICE <i>of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808</i> by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard

		V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Warden, Andrew) (Filed on 9/3/2019) Modified on 9/4/2019 (jjbS, COURT STAFF). (Entered: 09/03/2019)
09/05/2019	<u>207</u>	Supplement to <u>206</u> Notice of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808 by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 9/5/2019) Modified on 9/6/2019 (jjbS, COURT STAFF). (Entered: 09/05/2019)
09/05/2019	<u>208</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>205</u> Motion for Pro Hac Vice as to Nakatsuji, Robert. (ndrS, COURT STAFF) (Filed on 9/5/2019) (Entered: 09/05/2019)
09/13/2019	<u>209</u>	JOINT STATUS REPORT <i>Proposing Briefing Schedule For Summary Judgment Motions on Claims Related to 10 U.S.C. § 2808</i> by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. and all Plaintiffs. (Attachments: # <u>1</u> Proposed Order)(Warden, Andrew) (Filed on 9/13/2019) Modified on 9/16/2019 (jjbS, COURT STAFF). (Entered: 09/13/2019)
09/13/2019	<u>210</u>	Supplemental NOTICE Regarding Decision by the Department of Defense to Authorize Additional Border Barrier Projects Pursuant to 10 U.S.C. § 284 by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson re <u>204</u> Notice (Other) (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 9/13/2019) Modified on 9/16/2019 (jjbS, COURT STAFF). (Entered: 09/13/2019)
09/16/2019	<u>211</u>	SCHEDULING ORDER: Motions due by 10/11/2019; Cross Motions due by 10/25/2019; Responses due by 11/1/2019; Replies due by 11/8/2019 and Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S. Gilliam Jr. Signed by Judge Haywood S. Gilliam, Jr. on 9/16/2019. (ndrS, COURT STAFF) (Filed on 9/16/2019) Modified on 9/17/2019 to correct typo (time 10 not 2) (ndrS, COURT STAFF). (Entered: 09/16/2019)
09/16/2019	<u>212</u>	NOTICE of Filing of Administrative Record For Section 2808 Border Barrier Projects by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit Certification, # <u>2</u> Exhibit 2808 Administrative Record – Part 1, # <u>3</u> Exhibit 2808 Administrative Record – Part 2, # <u>4</u> Exhibit 2808 Administrative Record – Part 3)(Warden, Andrew) (Filed on 9/16/2019) Modified on 9/17/2019 (jjbS, COURT STAFF). (Entered: 09/16/2019)
09/20/2019	<u>213</u>	MOTION to Withdraw as Attorney <i>Brittany M. Jones</i> filed by Commonwealth of Virginia. Responses due by 10/4/2019. Replies due by 10/11/2019. (Attachments: # <u>1</u> Proposed Order)(Jones, Brittany) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/23/2019	<u>214</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>213</u> Motion to Withdraw Brittany M. Jones as Attorney. (ndrS, COURT STAFF) (Filed on 9/23/2019) (Entered: 09/23/2019)
09/30/2019	<u>215</u>	NOTICE Regarding Funding of Border Barrier Projects Pursuant to 10 U.S.C. § 284 in Fiscal Year 2020 by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson

		(Attachments: # <u>1</u> Declaration)(Warden, Andrew) (Filed on 9/30/2019) Modified on 10/1/2019 (jjbS, COURT STAFF). (Entered: 09/30/2019)
10/03/2019	<u>216</u>	NOTICE <i>Regarding Use Of The Treasury Forfeiture Fund</i> by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration)(Warden, Andrew) (Filed on 10/3/2019) Modified on 10/4/2019 (jjbS, COURT STAFF). (Entered: 10/03/2019)
10/10/2019	<u>217</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13781065.) filed by Commonwealth of Virginia. (Attachments: # <u>1</u> Good standing certificate issued by Supreme Court of Virginia dated Sept. 13, 2019)(Glubiak, Zachary) (Filed on 10/10/2019) (Entered: 10/10/2019)
10/10/2019	<u>218</u>	MOTION to Withdraw as Attorney filed by State of Hawaii. Responses due by 10/24/2019. Replies due by 10/31/2019. (Attachments: # <u>1</u> Proposed Order)(Wadsworth, Clyde) (Filed on 10/10/2019) (Entered: 10/10/2019)
10/11/2019	<u>219</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>218</u> Motion to Withdraw as Attorney as to Wadsworth, Clyde. (ndrS, COURT STAFF) (Filed on 10/11/2019) (Entered: 10/11/2019)
10/11/2019	<u>220</u>	MOTION for Partial Summary Judgment <i>Re Section 2808 and NEPA</i> filed by Commonwealth of Virginia, State of California, State of Colorado, State of Hawaii, State of Maryland, State of New Mexico, State of New York, State of Oregon, State of Wisconsin. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 10/25/2019. Replies due by 11/1/2019. (Attachments: # <u>1</u> Appendix of Declarations re: Environmental Harms, # <u>2</u> Declaration of Colonel William Green, # <u>3</u> Declaration of Alison Lynn Reaser, # <u>4</u> Declaration of Heather Leslie, # <u>5</u> Request for Judicial Notice ISO Mot for Partial Summary Judgment Re Section 2808 and NEPA, # <u>6</u> Proposed Order Granting Motion for Partial Summary Judgment, # <u>7</u> Certificate/Proof of Service)(Leslie, Heather) (Filed on 10/11/2019) (Entered: 10/11/2019)
10/18/2019	<u>221</u>	NOTICE of Filing Corrected Declaration of Alison Lynn Reaser by State of California. Amendment to <u>220</u> MOTION for Partial Summary Judgment <i>Re Section 2808 and NEPA</i> . (Attachments: # <u>1</u> Corrected Declaration of Alison Lynn Reaser)(Leslie, Heather) (Filed on 10/18/2019) Modified on 10/21/2019 (jjbS, COURT STAFF). (Entered: 10/18/2019)
10/18/2019	<u>222</u>	Consent MOTION for Leave to File <i>Brief as Amicus Curiae In Support of Plaintiffs Motion for Partial Summary Judgment</i> filed by United States House of Representatives. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(Letter, Douglas) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/18/2019	<u>223</u>	Consent MOTION to File Amicus Curiae Brief <i>in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by Former U.S. Government Officials. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/1/2019. Replies due by 11/8/2019. (Attachments: # <u>1</u> Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs Motion for Partial Summary Judgment, # <u>2</u> Proposed Order)(Hartnett, Kathleen) (Filed on 10/18/2019) (Entered: 10/18/2019)
10/21/2019	<u>224</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>222</u> Motion for Leave to File to File Brief as Amicus Curiae In Support of Plaintiffs Motion for Partial Summary Judgment. Counsel is directed to file the brief on the docket. (ndrS, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>225</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>223</u> Consent MOTION to File Amicus Curiae Brief in Support of Plaintiffs' Motion for Partial Summary Judgment. Counsel is directed to file the brief on the docket.(ndrS, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>226</u>	<i>Brief of Amicus Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment</i> filed by United States House of Representatives. (Letter, Douglas) (Filed on

		10/21/2019) Modified on 10/22/2019 (jjbS, COURT STAFF). (Entered: 10/21/2019)
10/21/2019	<u>227</u>	Brief <i>as Amici Curiae in Support of Plaintiffs Motion for Partial Summary Judgment</i> filed by Former U.S. Government Officials. (Hartnett, Kathleen) (Filed on 10/21/2019) Modified on 10/22/2019 (jjbS, COURT STAFF). (Entered: 10/21/2019)
10/21/2019	<u>228</u>	ORDER by Hon. Haywood S. Gilliam, Jr. SETTING November 4, 2019, as the deadline for any motion for leave to file an amicus brief related to the partial motions for summary judgment, set for hearing on November 20, 2019, at 10:00 a.m., see Dkt. No. 220 in Case No. 4:19-cv-00872, and Dkt. No. 210 in Case No. 4:19-cv-00892. Any motion received after November 4 will be denied as untimely. (This is a text-only entry generated by the court. There is no document associated with this entry.) (hsglc1S, COURT STAFF) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>229</u>	NOTICE of Appearance by Mark R. Conrad (Conrad, Mark) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/21/2019	<u>230</u>	Consent MOTION for Leave to File <i>Amicus Curiae Brief In Support of Plaintiffs Motion for Partial Summary Judgment</i> filed by Iraq and Afghanistan Veterans of America. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(Conrad, Mark) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/22/2019	<u>231</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>230</u> Consent MOTION for Leave to File Amicus Curiae Brief In Support of Plaintiffs Motion for Partial Summary Judgment. Counsel is directed to file the brief on the docket. (ndrS, COURT STAFF) (Filed on 10/22/2019) (Entered: 10/22/2019)
10/22/2019	<u>232</u>	<i>Amicus Curiae Brief In Support of Plaintiffs Motion for Partial Summary Judgment re <u>231</u> Order on Motion for Leave to File</i> , filed by Iraq and Afghanistan Veterans of America. (Related document(s) <u>231</u>) (Conrad, Mark) (Filed on 10/22/2019) Modified on 10/23/2019 (jjbS, COURT STAFF). (Entered: 10/22/2019)
10/22/2019	<u>233</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>217</u> Motion for Pro Hac Vice as to Glubiak, Zachary. (ndrS, COURT STAFF) (Filed on 10/22/2019) (Entered: 10/22/2019)
10/25/2019	<u>234</u>	NOTICE of Appearance by Megan Barbero (Barbero, Megan) (Filed on 10/25/2019) (Entered: 10/25/2019)
10/25/2019	<u>235</u>	MOTION for Leave to Present Argument in the Summary Judgment Hearing filed by United States House of Representatives. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/8/2019. Replies due by 11/15/2019. (Attachments: # <u>1</u> Proposed Order)(Barbero, Megan) (Filed on 10/25/2019) (Entered: 10/25/2019)
10/25/2019	<u>236</u>	MOTION for Partial Summary Judgment <i>Regarding Border Barrier Projects Undertaken Pursuant to 10 U.S.C. § 2808 and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i> filed by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 11/1/2019. Replies due by 11/8/2019. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Proposed Order)(Warden, Andrew) (Filed on 10/25/2019) (Entered: 10/25/2019)
10/29/2019	<u>237</u>	MOTION to Withdraw as Counsel <i>Henry Kantor</i> filed by State of Oregon. Responses due by 11/12/2019. Replies due by 11/19/2019. (Attachments: # <u>1</u> Proposed Order)(Kantor, Henry) (Filed on 10/29/2019) Modified on 10/30/2019 (jjbS, COURT STAFF). (Entered: 10/29/2019)
10/31/2019	<u>238</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13843757.) filed by Iraq and Afghanistan Veterans of America. (Attachments: # <u>1</u> Certificate of Good Standing)(Rodman, Lindsay) (Filed on 10/31/2019) (Entered: 10/31/2019)

10/31/2019	<u>239</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>235</u> Motion for Leave to Present Argument in the Summary Judgment Hearing. (ndrS, COURT STAFF) (Filed on 10/31/2019) (Entered: 10/31/2019)
10/31/2019	<u>240</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>237</u> Motion to Withdraw as Attorney Henry Kantor. (ndrS, COURT STAFF) (Filed on 10/31/2019) (Entered: 10/31/2019)
11/01/2019	<u>241</u>	REPLY (re <u>236</u> MOTION for Partial Summary Judgment <i>Regarding Border Barrier Projects Undertaken Pursuant to 10 U.S.C. § 2808 and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i> , <u>220</u> MOTION for Partial Summary Judgment <i>Re Section 2808 and NEPA</i>) filed by Commonwealth of Virginia, State of California, State of Colorado, State of Hawaii, State of Maryland, State of New Mexico, State of New York, State of Oregon, State of Wisconsin. (Leslie, Heather) (Filed on 11/1/2019) (Entered: 11/01/2019)
11/04/2019	<u>242</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting <u>238</u> Motion for Pro Hac Vice as to Rodman, Lindsay. (ndrS, COURT STAFF) (Filed on 11/4/2019) (Entered: 11/04/2019)
11/04/2019	<u>243</u>	Consent MOTION to File Amicus Curiae Brief filed by Federal Courts Scholars. Motion Hearing set for 11/20/2019 10:00 AM before Judge Haywood S Gilliam Jr.. Responses due by 11/18/2019. Replies due by 11/25/2019. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(Wydra, Elizabeth) (Filed on 11/4/2019) (Entered: 11/04/2019)
11/04/2019	<u>244</u>	Consent MOTION to File Amicus Curiae Brief <i>in Support of Defendants' Motion for Partial Summary Judgment</i> filed by Andy Barr. Motion Hearing set for 11/20/2019 10:00 AM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr. Responses due by 11/18/2019. Replies due by 11/25/2019. (Attachments: # <u>1</u> Exhibit Proposed Amicus Memo of Law, # <u>2</u> Proposed Order)(Joseph, Lawrence) (Filed on 11/4/2019) Modified on 11/5/2019 (jjbS, COURT STAFF). (Entered: 11/04/2019)
11/05/2019	<u>245</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting (Docket Nos. 243 in case 4:19-cv-00872-HSG and 241 in case 4:19-cv-00892-HSG) Motion to File Amicus Curiae Brief. Counsel is directed to file federal courts scholars amici curiae brief on the docket in these matters. (ndrS, COURT STAFF) (Filed on 11/5/2019) (Entered: 11/05/2019)
11/05/2019	<u>246</u>	ORDER by Judge Haywood S. Gilliam, Jr. Granting Consent <u>244</u> MOTION to File Amicus Curiae Brief in Support of Defendants' Motion for Partial Summary Judgment. Counsel is directed to e-file the brief on the docket. (ndrS, COURT STAFF) (Filed on 11/5/2019) (Entered: 11/05/2019)
11/05/2019	<u>247</u>	Brief of <i>Amici Curiae Federal Courts Scholars in Opposition to Defendants' Motion for Partial Summary Judgment</i> filed by Federal Courts Scholars. (Wydra, Elizabeth) (Filed on 11/5/2019) Modified on 11/6/2019 (jjbS, COURT STAFF). (Entered: 11/05/2019)
11/05/2019	<u>248</u>	Brief of U.S. Rep. Any Barr as Amicus Curiae in Support of Defendants Motion for Partial Summary Judgment re <u>246</u> Order on Motion to File Amicus Curiae Brief, filed by Andy Barr. (Related document(s) <u>246</u>) (Joseph, Lawrence) (Filed on 11/5/2019) Modified on 11/6/2019 (jjbS, COURT STAFF). (Entered: 11/05/2019)
11/08/2019	<u>249</u>	REPLY (re <u>236</u> MOTION for Partial Summary Judgment <i>Regarding Border Barrier Projects Undertaken Pursuant to 10 U.S.C. § 2808 and Opposition to Plaintiffs' Motion for Partial Summary Judgment</i>) filed by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Warden, Andrew) (Filed on 11/8/2019) (Entered: 11/08/2019)
11/20/2019	250	Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.: Motion Hearing held on 11/20/2019. Total Time in Court: 2 Hours and 7 Minutes. Court Reporter: Pamela Batalo-Hebel. Plaintiff Attorney: Heather Leslie; Dror Ladin and Megan Barbero. Defendant Attorney: Eric Grant and James Burnham. Cross-motions for partial summary judgment (docket nos. 220 and 236 in case

		no. 19-cv-00872-HSG and 210 and 236 in case no. 19-cv-00892-HSG) are argued and submitted by the parties. Counsel for defendants are directed to advise the Court in a filing by noon Pacific Standard Time on November 25th (maximum of five pages), 1) whether there is underlying authority for the nearby limitation cited in the Section 2808 Administrative Record; and 2) how, and under whose authority, a military installation may be created. Counsel for plaintiffs responses are due by close of business (5 p.m.) on November 26th. The motions will be deemed submitted upon filing of plaintiffs responses. Written order to issue. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ndrS, COURT STAFF) (Date Filed: 11/20/2019) (Entered: 11/20/2019)
11/25/2019	<u>251</u>	RESPONSE To The Court's November 20, 2019 Order Requesting Additional Information About Military Installations by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 11/25/2019) (Entered: 11/25/2019)
11/25/2019	<u>252</u>	TRANSCRIPT ORDER for proceedings held on November 20, 2019 before Judge Haywood S Gilliam, Jr by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson, for Court Reporter Pam Batalo. (Warden, Andrew) (Filed on 11/25/2019) (Entered: 11/25/2019)
11/25/2019	<u>253</u>	TRANSCRIPT ORDER for proceedings held on 11/25/2019 before Judge Haywood S Gilliam, Jr by State of California, for Court Reporter Pam Batalo. (Leslie, Heather) (Filed on 11/25/2019) (Entered: 11/25/2019)
11/26/2019	<u>254</u>	Transcript of Proceedings held on 11/20/19, before Judge Gilliam. Court Reporter Pamela Batalo Hebel, telephone number 626-688-7509; pamelabatalohebel@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (253 in 4:19-cv-00872-HSG) Transcript Order, (252 in 4:19-cv-00872-HSG) Transcript Order, (250 in 4:19-cv-00892-HSG) Transcript Order) Redaction Request due 12/17/2019. Redacted Transcript Deadline set for 12/27/2019. Release of Transcript Restriction set for 2/24/2020. (Batalo, Pam) (Filed on 11/26/2019) (Entered: 11/26/2019)
11/26/2019	<u>255</u>	RESPONSE to the Court's 11.20.19 Order Requesting Additional Information about Military Installations by Commonwealth of Virginia, State of California, State of Colorado, State of Hawaii, State of Maryland, State of New Mexico, State of New York, State of Oregon, State of Wisconsin. (Leslie, Heather) (Filed on 11/26/2019) Modified on 11/27/2019 (jjbS, COURT STAFF). (Entered: 11/26/2019)
12/10/2019	<u>256</u>	NOTICE of Decision in El Paso County v. Trump (W.D. Tex.) by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 12/10/2019) Modified on 12/10/2019 (jjbS, COURT STAFF). (Entered: 12/10/2019)
12/11/2019	<u>257</u>	ORDER by Judge Haywood S. Gilliam, Jr. GRANTING IN PART AND DENYING IN PART PLAINTIFFS (220 in case 4:19-cv-00872-HSG and 210 in case 4:19-cv-00892-HSG) MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANTS (236 in case 4:19-cv-00872-HSG and 236 in case 4:19-cv-00892-HSG) MOTIONS FOR PARTIAL SUMMARY JUDGMENT. (ndrS, COURT STAFF) (Filed on 12/11/2019) (Entered: 12/11/2019)

12/11/2019	<u>258</u>	CLERK'S JUDGMENT. (ndrS, COURT STAFF) (Filed on 12/11/2019) (Entered: 12/11/2019)
12/13/2019	<u>259</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson. Appeal of Order on Motion for Partial Summary Judgment,,,,,, <u>257</u> , Clerk's Judgment <u>258</u> (Appeal fee FEE WAIVED.) (Warden, Andrew) (Filed on 12/13/2019) (Entered: 12/13/2019)
12/16/2019	<u>260</u>	USCA Case Number 19-17502 Ninth Circuit Court of Appeals for <u>259</u> Notice of Appeal,, filed by U.S. Department of Homeland Security, Ryan D. McCarthy, David Bernhardt, Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, U.S. Department of the Interior, Kevin K. McAleenan, Heather Wilson, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump. (cjlS, COURT STAFF) (Filed on 12/16/2019) (Entered: 12/16/2019)
01/03/2020	<u>261</u>	ORDER of USCA as to <u>259</u> Notice of Appeal, filed by U.S. Department of Homeland Security, Ryan D. McCarthy, David Bernhardt, Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, U.S. Department of the Interior, Kevin K. McAleenan, Heather Wilson, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump (jjbS, COURT STAFF) (Filed on 1/3/2020) (Entered: 01/06/2020)
01/07/2020	<u>262</u>	NOTICE OF CROSS APPEAL as to <u>257</u> Order on Motion for Partial Summary Judgment, <u>258</u> Clerk's Judgment by Commonwealth of Virginia, State of California, State of Colorado, State of Hawaii, State of Maryland, State of New Mexico, State of New York, State of Oregon, State of Wisconsin. (Appeal fee of \$505 receipt number 0971-14046863 paid.) Appeal Record due by 1/21/2020. (Leslie, Heather) (Filed on 1/7/2020) Modified on 1/8/2020 (jjbS, COURT STAFF). (Entered: 01/07/2020)
01/08/2020	<u>263</u>	NOTICE <i>Regarding Use Of The Treasury Forfeiture Fund</i> by Department of Defense, David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven T. Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Richard V. Spencer, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of the Treasury, United States of America, Heather Wilson (Attachments: # <u>1</u> Exhibit)(Warden, Andrew) (Filed on 1/8/2020) Modified on 1/9/2020 (jjbS, COURT STAFF). (Entered: 01/08/2020)
01/10/2020	<u>264</u>	USCA Case Number 20-15044 Ninth Circuit Court of Appeals for <u>262</u> Notice of Cross Appeal to the Ninth Circuit, filed by State of Hawaii, State of Wisconsin, State of California, State of Maryland, State of New Mexico, State of Oregon, Commonwealth of Virginia, State of New York, State of Colorado. (cjlS, COURT STAFF) (Filed on 1/10/2020) (Entered: 01/10/2020)
01/10/2020	<u>265</u>	ORDER of USCA, the previously established briefing schedule is vacated, as to <u>259</u> Notice of Appeal, filed by U.S. Department of Homeland Security, Ryan D. McCarthy, David Bernhardt, Richard V. Spencer, Mark T. Esper, Department of Defense, United States of America, U.S. Department of the Interior, Kevin K. McAleenan, Heather Wilson, Steven T. Mnuchin, U.S. Department of the Treasury, Donald J. Trump (jjbS, COURT STAFF) (Filed on 1/10/2020) (Entered: 01/13/2020)