

No. 19-16102, -16300, -16299, -16336

**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

**EXCERPTS OF RECORD, VOLUME 2
ER117 – ER524**

JOSEPH H. HUNT
Assistant Attorney General
HASHIM M. MOOPAN
JAMES M. BURNHAM
Deputy Assistant Attorneys General
H. THOMAS BYRON III
ANNE MURPHY
COURTNEY L. DIXON
Attorneys, Appellate Staff
Civil Division, Room 7243
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 353-8189

**EXCERPTS OF RECORD
TABLE OF CONTENTS**

Page

VOLUME 1:

Sierra Club v. Trump, 4:19-cv-00892

Judgment, Dkt. No. 186 (June 28, 2019)	ER1
Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary Judgment, Denying Defendants' Motion for Partial Summary Judgment, Certifying Judgment for Appeal, and Denying Request to Stay, Dkt. No. 185 (June 28, 2019)	ER2
Order Denying Motion to Stay Preliminary Injunction, Dkt. No. 152 (May 30, 2019)	ER13
Order Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction, Dkt. No. 144 (May 24, 2019)	ER15

California et al. v. Trump, 4:19-cv-00872

Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary Judgment, Denying Defendants' Motion for Partial Summary Judgment, and Certifying Judgment for Appeal, Dkt. No. 185 (June 28, 2019)	ER71
Order Denying Plaintiffs' Motion for Preliminary Injunction, Dkt. No. 165 (May 24, 2019)	ER81

VOLUME 2:

Sierra Club v. Trump, 4:19-cv-00892

Defendants' Notice of Appeal, Dkt. No. 187 (June 29, 2019)	ER117
--	-------

Second Declaration of Eric McFadden, Dkt. No. 181-13 (June 19, 2019)	ER120
Second Declaration of Millard LeMaster, Dkt. No. 181-9 (June 19, 2019)	ER124
Declaration of Eric McFadden, Dkt. No. 181-12 (June 19, 2019)	ER129
Second Declaration of Paul Enriquez, Dkt. No. 181-7 (June 19, 2019)	ER134
Memorandum of May 8, 2019 to Acting Sec’y of Defense from Kenneth Rapuano, Ass’t Sec’y of Defense, with Tabs A-H, Dkt. No. 163-3 (June 7, 2019)	ER163
Tab A: Memorandum of May 9, 2019 approving additional support to DHS	ER 169
Tab B: Memorandum of May 9, 2019, from Secretary of Defense to Under Secretary of Defense, regarding additional funding	ER172
Tab C: Memorandum of May 9, 2019, advising Army and U.S. Corps of Engineers of support obligations	ER184
Tab D: DHS Request for Assistance of Feb 25, 2019	ER187
Tab E: Memorandum of March 21, 2019, from Assistant Secretary of Defense to Acting Secretary of Defense, regarding DHS request for additional support	ER198
Tab F: Memorandum of April 6, 2019, from Assistant Secretary of Defense to Acting Secretary of Defense regarding modification of request previously approved	ER204
Tab G: Memorandum of May 8, 2019, from Chairman of Joint Chiefs of Staff to Acting Secretary of Defense	ER208
Tab H: Policy Coordination Sheet	ER210
Declaration of Millard LeMaster, Dkt. No. 146-1 (May 29, 2019)	ER212
Notice of Appeal, Preliminary Injunction Appeal, Dkt. No. 145 (May 29, 2019)	ER214

Second Declaration of Kenneth Rapuano, Dkt. No. 118 (May 13, 2019) (counsel transmittal).....	ER216
Second Declaration of Kenneth Rapuano, with Exs. A-C, Dkt. No. 118-1 (May 13, 2019)	ER219
Ex. A: Memorandum of May 9, 2019 approving additional support to DHS.....	ER 222
Ex. B: Memorandum of May 9, 2019, from Secretary of Defense to Under Secretary of Defense, regarding additional funding.....	ER225
Ex. C: Reprogramming Action.....	ER228
Declaration of Paul Enriquez, with Exs. A and B, Dkt. No. 64-9 (Apr. 25, 2019).....	ER237
Ex. A: Map of Yuma project areas.....	ER263
Ex. B: Map of El Paso 1 Project Area.....	ER264
Declaration of Kenneth Rapuano, with Exs. A-H, Dkt. No. 64-8 (Apr. 25, 2019).....	ER267
Ex. A: Feb 25, 2019 DHS Request for Assistance	ER271
Ex. B: March 25, 2019 Letter from Acting Secretary of Defense to Secretary of Homeland Security approving Assistance to DHS.....	ER282
Ex. C: Memorandum of March 25, 2019 from Secretary of Defense to Under Secretary of Defense re funding.....	ER285
Ex. D: Reprogramming Action, March 25, 2019.....	ER288
Ex. E: DHS March 29, 2019 Modification Request.....	ER294
Ex. F: Memorandum of April 9, 2019, from Acting Secretary of Defense, approving modification	ER297
Ex. G: Department of Defense contract awards.....	ER300
Ex. H: Memorandum of April 18, 2019, from Assistant Secretary of Defense to DHS, re additional modification.....	ER308

Excerpt from Plaintiffs’ Motion for Preliminary Injunction;
 Memorandum of Points and Authorities, Dkt. No. 29
 (Apr. 4, 2019)ER309

First Amended Complaint, Dkt. No. 26 (Mar. 18, 2019)ER314

California et al. v. Trump, 4:19-cv-00872

Plaintiff States of California and New Mexico’s Notice of
 Conditional Cross-Appeal, Dkt. No. 191 ((July 8, 2019)ER354

Notice of Appeal, Dkt. No. 187 (June 29, 2019)ER360

Excerpt from Plaintiffs’ Motion for Partial Summary Judgment;
 Memorandum of Points and Authorities,
 Dkt. No. 176 (June 12, 2019)ER363

Excerpt from Plaintiffs’ Motion for Preliminary Injunction;
 Memorandum of Points and Authorities,
 Dkt. No. 57-3 (Apr. 4, 2019)ER370

First Amended Complaint, Dkt. No. 47 (Mar. 13, 2019)ER374

Civil Dockets:

Civil Docket, *Sierra Club v. Trump*, 4:19-cv-00892ER456

Civil Docket, *California et al. v. Trump*, 4:19-cv-00872ER486

JAMES M. BURNHAM
Deputy Assistant Attorney General
JOHN R. GRIFFITHS
Director, Federal Programs Branch
ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch
ANDREW I. WARDEN (IN #23840-49)
Senior Trial Counsel
KATHRYN C. DAVIS
MICHAEL J. GERARDI
LESLIE COOPER VIGEN
RACHAEL WESTMORELAND
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Tel.: (202) 616-5084
Fax: (202) 616-8470

Attorneys for Defendants

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

SIERRA CLUB, *et al.*,
Plaintiffs,
v.
DONALD J. TRUMP, *et al.*,
Defendants.

No. 4:19-cv-00892-HSG

NOTICE OF APPEAL

**PERMANENT INJUNCTION
APPEAL**

1 PLEASE TAKE NOTICE that Defendants Donald J. Trump, President of the United States,
2 Mark T. Esper, Acting Secretary of Defense, Kevin K. McAleenan, Acting Secretary of Homeland
3 Security, and Steven T. Mnuchin, Secretary of the Treasury, hereby appeal to the United States
4 Court of Appeals for the Ninth Circuit from the Court's Order Granting In Part and Denying In
5 Part Plaintiffs' Motion for Partial Summary Judgment, Denying Defendant's Motion For Partial
6 Summary Judgment, Certifying Judgment For Appeal and Directing Entry of Final Judgment
7 under Rule 54(b), and Denying Request to Stay (ECF No. 185), and the associated Judgment (ECF
8 No. 186).

9
10
11 DATE: June 29, 2019

Respectfully submitted,

12 JAMES M. BURNHAM
13 Deputy Assistant Attorney General

14 JOHN G. GRIFFITHS
15 Director, Federal Programs Branch

16 ANTHONY J. COPPOLINO
17 Deputy Director, Federal Programs Branch

18 /s/ Andrew I. Warden
ANDREW I. WARDEN
Senior Trial Counsel (IN Bar No. 23840-49)

19 RACHAEL L. WESTMORELAND
20 KATHRYN C. DAVIS
21 MICHAEL J. GERARDI
22 LESLIE COOPER VIGEN
23 Trial Attorneys
24 U.S. Department of Justice
25 Civil Division, Federal Programs Branch
26 1100 L Street, NW
27 Washington, D.C. 20530
28 Tel.: (202) 616-5084
Fax: (202) 616-8470

EXHIBIT 13

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

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00892-HSG

SECOND DECLARATION OF ERIC M. McFADDEN

I, Eric M. McFadden, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

2. I am a Colonel in the United States Army and am currently the Commanding Officer for Task Force Barrier ("Task Force") with the U.S. Army Corps of Engineers ("Corps"), South Pacific Division. I am stationed in Phoenix, Arizona.

3. The Task Force's primary mission is to coordinate the construction of approved border barrier projects on the southern border of the United States.

4. In my capacity as the Commanding Officer of the Task Force, I have overall responsibility for, and authority over, the Task Force and its operations, consistent with relevant policy, regulations, and laws. In this respect, my responsibilities include providing oversight, direction, and management of all systems and personnel, including contracting officers, involved in executing the Task Force's mission.

5. In the course of my duties, I oversaw the award of contracts for El Centro Project 1, which involves the replacement of 15.25 miles of vehicle fence in California ("El Centro 1"), and for Tucson Projects 1, 2 and 3, which involves the replacement of 63 miles of a mix of vehicle barrier and pedestrian fencing in the Tucson Sector ("Tucson 1, 2, 3"). I am currently overseeing the subsequent performance of work on these contracts. These awarded projects are collectively referred to as "Tranche 2."

6. Approximately \$752,750,000 remains unobligated on the Tranche 2 projects and is expected to be needed to complete those projects: \$646,000,000 unobligated for Tucson 1, 2, 3 and \$106,750,000 unobligated for El Centro 1.

7. Amounts made available to the Corps to construct the Tranche 2 projects are from the fiscal year 2019 Operation and Maintenance, Army, appropriation. As provided in Section 8003 of the Department of Defense Appropriations Act, 2019, any unobligated amounts in the Operation and Maintenance, Army, appropriation, including the unobligated amounts described in paragraph six above, will no longer remain available for obligation after the fiscal year ends on September 30, 2019.

8. The contracting process necessary to completely obligate the full value of the contracts awarded for Tucson 1, 2, 3 and El Centro 1 (Tranche 2) is complex. These contracts are "undefinitized" contract actions, which is a type of contract for which the contract terms, specifications, or price are not agreed upon before performance begins, but which does establish an overall ceiling price pending definitization. "Definitization" occurs when the parties determine or agree on the contract terms, specifications, and price. *See* Defense Federal Acquisition Supplement ("DFARS") SUBPART 217.74 –UNDEFINITIZED CONTRACT ACTIONS (JUN 2018). The definitization process includes extensive negotiation, audits of contractor accounting systems, and review of proposals by the Defense Contract Audit Agency ("DCAA"), as well as legal review, all prior to the contracting officer reaching a fair and reasonable pricing determination to finalize the contract pricing.

9. The Corps is subject to statutory restrictions on undefinitized contract actions. Title 10 U.S.C. § 2326 restricts the Corps from obligating more than 50 percent of the contract's ceiling price upon award. If the contractor submits a qualifying proposal that contains sufficient

information to enable the Corps to conduct a meaningful audit of the information contained in the proposal, the amount obligated may be increased to 75 percent of the negotiated overall ceiling price. Upon definitization, the Corps may obligate the remaining unobligated balance of the initial ceiling or such amounts as necessary to fully fund the contract's final negotiated price. If an agreement is not reached on contractual terms, specifications, and price within the time specified by the contract, the Corps may unilaterally definitize those terms.

10. The terms of the Tranche 2 contracts require definitization not later than 100 days from the date of contract award (the award dates are May 15 for both for Tucson 1, 2, 3 and May 15 for El Centro 1). If the Corps does not have sufficient time available prior to September 30, 2019, to definitize these contracts and thereby obligate the balance of the contract price, the remaining unobligated funds will become unavailable for obligation, as described in paragraph seven above. As a consequence, the Corps will be unable to complete the projects as planned, and the contracts will have to be significantly de-scoped or terminated.

11. Should the Court issue an injunction regarding construction of the Tranche 2 projects, I will immediately direct the Task Force to cease all actions involving construction of the border barrier in those areas. The contracting officer for the projects would then direct the respective contractors to suspend all work on those contracts, pursuant to Federal Acquisition Regulation ("FAR") Clause 52.242-14, SUSPENSION OF WORK (APR 1984).

12. As the Commander of the Task Force, I have been made aware by the contracting officer that suspending work on the above-named contracts in response to an injunction will cause significant immediate and irreparable harm to the government as described below.

13. Pursuant to FAR 52.242-14, the contractor is entitled to an adjustment for any increase in the cost of performance of the contract (excluding profit) necessarily caused by an unreasonable period of time during which the contract is suspended or delayed. The reasonableness of a suspension or delay is determined based upon the totality of the circumstances, including the duration of the delay. In this case, despite the suspension of work, the contractors will nevertheless continue to incur costs for every day that the contracts are suspended. The Corps estimates that these costs are likely to include significant costs for equipment the contractor must keep ready for use at multiple locations, costs for security to keep the equipment and materials from being stolen or vandalized, labor costs for the personnel managing the contract, labor costs for the personnel who have been trained and are dedicated to execute the tasks under the contract (workers whom the contractor would be reluctant to release due to the risk of not being able to rehire them), and potential costs associated with storing construction materials. Further, there will likely be increased market prices on labor, materials, equipment (*i.e.*, steel and concrete). The Corps will be obligated to reimburse these additional costs, which would not have been incurred but for the Court's injunction. Moreover, the Corps will be obligated to reimburse these additional costs from funds that would otherwise be spent on actual barrier construction.

14. For Tucson 1, 2, 3, the costs expected to be incurred while the contract is suspended are currently estimated to be approximately \$235,180 per day (approximately \$6,585,040 per month).

15. For El Centro 1, the costs expected to be incurred while the contract is suspended are currently estimated to be approximately \$47,000 per day (approximately \$1,316,000 per month).

16. Additionally, both contractors have already incurred significant costs for their work on these projects. These are costs to the contractor that the government owes, but will not be able to pay if an injunction is issued, and they will result in additional costs to the government. The prompt payment interest penalty is 3.625 percent per annum, if the Corps does not pay invoices within 30 days of certification and submission. *See* FAR 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JAN 2017) (citing to 5 C.F.R. Part 1315).

17. For Tucson 1, 2, 3, the contractor has already incurred approximately \$4,778,631 in material costs, \$1,033,321 in labor costs, \$740,036 in overhead, \$419,125 in travel, and \$2,584,000 for bonding. The total estimated incurred costs to date are \$9,555,113. The estimated total cost to the government for failure to timely pay any invoiced amounts for the above-related costs could reach approximately \$346,373 per year.

18. For El Centro 1, the contractor has already incurred approximately \$9,172,943 in material costs, \$113,826 in labor costs, \$717,832 for subcontractors, and \$945,435 for its general and administrative markup. The total estimated incurred costs to date are \$10,950,036. The estimated total cost to the government for failure to timely pay any invoiced amounts for the above-related costs could reach approximately \$396,939 per year.

19. Therefore, if these contracts are suspended, the government could incur estimated additional expenses of \$7,901,040 monthly, plus any interest. These costs will quickly become unsustainable for the government, and if the contracts are suspended for too long, the Corps will be forced to de-scope or terminate the contracts. Currently, the contracting officers estimate that, if the contracts are suspended for more than six months, the Corps will likely need to consider termination. The Corps estimates that the cost to terminate Tucson 1, 2, 3 could range between \$10,000,000 and \$100,000,000, and the cost to terminate El Centro 1 could range between \$11,000,000 and \$50,000,000.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 18th day of June, 2019.

MCFADDEN.ERIC. Digitally signed by
MICHAEL.1157309 MCFADDEN.ERIC.MICHAEL.115
842 7309842
Date: 2019.06.18 18:50:12 -07'00'

Eric M. McFadden
Colonel, United States Army

EXHIBIT 9

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

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00892-HSG

SECOND DECLARATION OF MILLARD F. LEMASTER

I, Millard F. LeMaster, declare as follows:

1. I am the Deputy Chief, United States Border Patrol Strategic Planning and Analysis Directorate (SPAD), U.S. Customs and Border Protection (CBP), an agency of the

Department of Homeland Security. I have held this position since February 2018. Over the course of my career I have served in multiple roles within the United States Border Patrol (USBP). I entered on duty with USBP in 2000. In that time I have served as a frontline Border Patrol Agent for five years, a Supervisory Border Patrol Agent for two different USBP Stations over the course of four years, and a second line supervisor in the field (Field Operations Supervisor, Watch Commander, and Deputy Patrol Agent In Charge) for two years until promotion to USBP Headquarters. Over the course of more than five years at the headquarters level I have served as an Assistant Chief, Associate Chief, and finally as the Deputy Chief for SPAD.

2. In my current position I am personally aware of the fiscal year 2018 drug apprehensions for the USBP, including drug seizures in the USBP's Tucson Sector (Tucson Sector). In addition, in my current position I am personally aware of the fiscal year 2019 year-to-date drug seizures for the USBP's Tucson and El Centro Sectors.
3. The statements in this declaration are based on my personal knowledge and information that I have received in my official capacity.
4. On February 25, 2019, the Department of Homeland Security (DHS) submitted a Request for Assistance (RFA) to the Department of Defense pursuant to 10 U.S.C. § 284.
5. As part of the RFA, DHS set forth drug seizure numbers for fiscal year 2018 for various Border Patrol Sectors, including the Tucson Sector.
6. The RFA understated the amount of marijuana, cocaine, and heroin seized in the Tucson Sector in fiscal year 2018. Specifically, the RFA stated that the Border Patrol seized over 1,600 pounds of marijuana in the Tucson Sector in fiscal year 2018, however, the actual amount is over 134,000 pounds of marijuana. With respect to cocaine, the RFA stated

that the Border Patrol seized over 52 pounds of cocaine in the Tucson Sector in fiscal year 2018, however, the actual amount is 62 pounds of cocaine. Finally, with respect to heroin, the RFA stated that the Border Patrol seized over 48 pounds of heroin, however, the actual amount is over 91 pounds of heroin.

7. Year-to-date in fiscal year 2019, there have been 944 drug events between border crossings in the Tucson Sector, through which USBP has seized over 44,000 pounds of marijuana, over 82 pounds of cocaine, over 800 ounces of heroin, over 2,300 pounds of methamphetamine, and over two pounds of fentanyl.
8. Year-to-date in fiscal year 2019, there have been 107 drug events between border crossings in the El Centro Sector, through which USBP has seized over 117 pounds of marijuana, over 15 pounds of cocaine, over 500 ounces of heroin, over 1,200 pounds of methamphetamine, and over 30 pounds of fentanyl.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 19th day of June, 2019.



Millard F. LeMaster
Deputy Chief
Strategic Planning and Analysis Directorate
United States Border Patrol

EXHIBIT 12

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

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

**DECLARATION OF ERIC M.
MCFADDEN**

I, Eric M. McFadden, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.
2. I am a Colonel in the United States Army and am currently the Commanding Officer for Task Force Barrier ("Task Force") with the U.S. Army Corps of Engineers ("Corps"), South Pacific Division. I am stationed in Phoenix, Arizona.
3. The Task Force's primary mission is to coordinate the construction of approved border barrier projects on the southern border of the United States.
4. In my capacity as the Commanding Officer of the Task Force, I have overall responsibility for, and authority over, the Task Force and its operations, consistent with relevant policy, regulations, and laws. In this respect, my responsibilities include providing oversight, direction, and management of all systems and personnel, including contracting officers, involved in executing the Task Force's mission.
5. In the course of my duties, I oversaw the award of contracts for El Paso Project 1, which involves the replacement of 46 miles of vehicle fence with pedestrian fencing in New Mexico ("El Paso 1"), and for Yuma Project 1, which involves the replacement of five miles of vehicle barrier fencing in the Yuma Sector ("Yuma 1"). I am currently overseeing the subsequent performance of work on these contracts. These awarded projects are collectively referred to as "Tranche 1."

6. Approximately \$423,999,999 remains unobligated on the Tranche 1 projects and is expected to be needed to complete those projects: \$388,999,999 unobligated for El Paso 1 and \$35,000,000 unobligated for Yuma 1.

7. Amounts made available to the Corps to construct the Tranche 1 projects are from the fiscal year 2019 Operation and Maintenance, Army, appropriation. As provided in Section 8003 of the Department of Defense Appropriations Act, 2019, any unobligated amounts in the Operation and Maintenance, Army, appropriation, including the unobligated amounts described in paragraph six above, will no longer remain available for obligation after the fiscal year ends on September 30, 2019.

8. The contracting process necessary to completely obligate the full value of the contracts awarded for El Paso 1 and Yuma 1 (Tranche 1) is complex. These contracts are “undefinitized” contract actions, which is a type of contract for which the contract terms, specifications, or price are not agreed upon before performance begins, but which does establish an overall ceiling price pending definitization. “Definitization” occurs when the parties determine or agree on the contract terms, specifications, and price. *See* Defense Federal Acquisition Supplement (“DFARS”) SUBPART 217.74 –UNDEFINITIZED CONTRACT ACTIONS (JUN 2018). The definitization process includes extensive negotiation, audits of contractor accounting systems, and review of proposals by the Defense Contract Audit Agency (“DCAA”), as well as legal review, all prior to the contracting officer reaching a fair and reasonable pricing determination to finalize the contract pricing.

9. The Corps is subject to statutory restrictions on undefinitized contract actions. Title 10 U.S.C. § 2326 restricts the Corps from obligating more than 50 percent of the contract’s ceiling price upon award. If the contractor submits a qualifying proposal that contains sufficient information to enable the Corps to conduct a meaningful audit of the information contained in the proposal, the amount obligated may be increased to 75 percent of the negotiated overall ceiling price. Upon definitization, the Corps may obligate the remaining unobligated balance of the initial ceiling or such amounts as necessary to fully fund the contract’s final negotiated price. If an agreement is not reached on contractual terms, specifications, and price within the time specified by the contract, the Corps may unilaterally definitize those terms.

10. The terms of the Tranche 1 contracts require definitization not later than 100 days from the date of contract award (the award dates are April 9 for El Paso 1 and May 15 for Yuma 1). If the Corps does not have sufficient time available prior to September 30, 2019, to definitize these contracts and thereby obligate the balance of the contract price, the remaining unobligated funds will become unavailable for obligation, as described in paragraph seven above. As a consequence, the Corps will be unable to complete the projects as planned, and the contracts will have to be significantly de-scoped or terminated.

11. On May 24, 2019, in compliance with the District Court’s preliminary injunction, I directed the Task Force to cease all actions involved in constructing border barriers in the areas identified as El Paso 1 and Yuma 1 (Tranche 1). Accordingly, the contracting officers for the El Paso 1 and Yuma 1 contracts directed the respective contractors to suspend all work on those contracts

in the identified sectors, pursuant to Federal Acquisition Regulation (“FAR”) Clause 52.242-14, SUSPENSION OF WORK (APR 1984).

12. As the Commander of the Task Force, I have been made aware by the contracting officers that suspending work on the above-named contracts in response to the preliminary injunction will cause significant immediate and irreparable harm to the government as described below.

13. Pursuant to FAR 52.242-14, the contractor is entitled to an adjustment for any increase in the cost of performance of the contract (excluding profit) necessarily caused by an unreasonable period of time during which the contract is suspended or delayed. The reasonableness of a suspension or delay is determined based upon the totality of the circumstances, including the duration of the delay. In this case, despite the suspension of work, the contractors will nevertheless continue to incur costs for every day that the contracts are suspended. The Corps estimates that these costs are likely to include significant costs for equipment the contractor must keep ready for use at multiple locations, costs for security to keep the equipment and materials from being stolen or vandalized, labor costs for the personnel managing the contract, labor costs for the personnel who have been trained and are dedicated to execute the tasks under the contract (workers whom the contractor would be reluctant to release due to the risk of not being able to rehire them), and potential costs associated with storing construction materials. Further, there will likely be increased market prices on labor, materials, and equipment (*i.e.*, steel and concrete). The Corps will be obligated to reimburse these additional costs, which would not have been incurred but for the Court’s injunction. Moreover, the Corps will be obligated to reimburse these additional costs from funds that would otherwise be spent on actual barrier construction.

14. For El Paso 1, the costs expected to be incurred while the contract is suspended are currently estimated to be approximately \$195,000 per day (approximately \$5,460,000 per month).

15. For Yuma 1, the costs expected to be incurred while the contract is suspended are currently estimated to be approximately \$20,000 per day (approximately \$560,000 per month).

16. Additionally, both contractors have already incurred significant costs for their work on these projects. These are costs to the contractor that the government owes, but cannot pay because of the injunction, and they will result in additional costs to the government. The prompt payment interest penalty is 3.625 percent per annum, if the Corps does not pay invoices within 30 days of certification and submission. *See* FAR 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JAN 2017) (citing to 5 C.F.R. Part 1315).

17. For El Paso 1, the contractor has already incurred approximately \$9,600,000 in material costs, \$785,000 in labor costs, \$250,000 in overhead, and \$150,000 in travel. The total estimated incurred costs to date are \$10,785,000. The estimated cost to the government for failure to timely pay any invoiced amounts for the above-related costs could reach approximately \$390,956 per year.

18. For Yuma 1, the contractor has already incurred approximately \$10,300,000 in material costs, \$200,000 in labor costs, \$50,000 in overhead, and \$15,000 in travel. The total estimated

incurred costs to date are \$10,565,000. The estimated cost to the government for failure to timely pay any invoiced amounts for the above-related costs could reach approximately \$382,981 per year.

19. Therefore, if these contracts remain suspended, the government could incur estimated additional expenses of \$6,020,000 monthly, plus any interest. These costs will quickly become unsustainable for the government, and if the contracts remain suspended for too long, the Corps will be forced to de-scope or terminate the contracts. Currently, the contracting officers estimate that if the contracts remain suspended for more than six months, the Corps will likely need to consider termination. The Corps estimates that the cost to terminate El Paso 1 will range between \$71,600,000 and \$101,600,000, and the cost to terminate Yuma 1 will range between \$8,600,000 and \$11,600,000.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 29th day of May, 2019.

MCFADDEN.ERIC.MI
CHAE1.1157309842

Digitally signed by
MCFADDEN.ERIC.MICHAEL.11573
09842
Date: 2019.05.29 05:58:38 -07'00'

Eric M. McFadden
Colonel, United States Army

EXHIBIT 7

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

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00892-HSG

SECOND DECLARATION OF PAUL ENRIQUEZ

I, Paul Enriquez, declare as follows:

1. I am the Acquisitions, Real Estate and Environmental Director for the Border Wall

Program Management Office ("Wall PMO"), U.S. Border Patrol Program Management

Office Directorate, U.S. Customs and Border Protection (“CBP”), an agency of the Department of Homeland Security (“DHS”). I have held this position since August 6, 2018. From 2013 to August 2018, I was the Real Estate and Environmental Branch Chief for the Border Patrol and Air and Marine Program Management Office (“BPAM”), Facilities Management and Engineering, Office of Facilities and Asset Management (“OFAM”). From 2011 to 2013, I was employed as an Environmental Protection Specialist in the BPAM office. In that role, I performed environmental analyses for various border infrastructure projects. From 2008 to 2011, I was a contractor assigned to the BPAM office and provided environmental support on various border infrastructure projects. Based upon my current and past job duties, I am familiar with past and planned border infrastructure projects that have been executed in support of border security.

2. In my position I am personally aware of the border barrier projects that have been identified as “El Centro Project 1” and “Tucson Projects 1, 2, and 3” (collectively the “El Centro and Tucson Projects”), which will be executed with the assistance of the Department of Defense (“DoD”). This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

BACKGROUND

3. The Secretary of DHS has determined that United States Border Patrol El Centro Sector (the “El Centro Sector”) and the United States Border Patrol Tucson Sector (the “Tucson Sector”) are areas of high illegal entry. Consequently, Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”), requires DHS to construct physical barriers and roads to deter and prevent illegal entry of people and drugs into the United States.

4. To support DHS's action under Section 102 of IIRIRA, the Secretary of DHS requested that the Secretary of Defense, pursuant to 10 U.S.C. § 284(b)(7), assist by constructing fences, roads, and lighting within the El Centro and Tucson Sectors. The Acting Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. § 284(b)(7) and that DoD will provide such support for the El Centro and Tucson Projects.
5. CBP is the DHS component with primary responsibility for border security. Therefore, CBP constructs, operates, and maintains border infrastructure necessary to deter and prevent illegal entry on the southern border.
6. Within CBP, the Wall PMO has expertise in managing and executing border infrastructure projects. The Wall PMO is directly tasked with managing the schedule, finances, real estate acquisition, environmental planning—including compliance with the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA")—and construction of the border infrastructure system along the U.S. border. Given its expertise in managing border infrastructure projects, the Wall PMO, on behalf of CBP, is working in close coordination with DoD on the El Centro and Tucson Projects.
7. For the El Centro and Tucson Projects, the Wall PMO, on behalf of CBP will, among other things, review and approve technical specifications, review and approve barrier alignments and locations, and provide feedback and input on other aspects of project planning and execution. In addition, the Wall PMO, on behalf of CBP, is responsible for all environmental planning, including stakeholder outreach and consultation, for the El Centro and Tucson Projects.

8. In my capacity as the Acquisitions, Real Estate and Environmental Director, I am responsible for overseeing all environmental planning and compliance activities as well as the real estate acquisition process for projects executed or overseen by the Border Wall PMO, including the El Centro and Tucson Projects.
9. DoD made contract awards for the El Centro and Tucson Projects on May 15, 2019. Environmental planning and consultation for the El Centro and Tucson Projects was initiated on May 6, 2019. The environmental planning and consultation that CBP has and will engage in for the El Centro and Tucson Projects are described in more detail in Paragraphs 19 through 31 below. Construction is scheduled to begin on the El Centro and Tucson Projects in early-July.
10. The El Centro and Tucson Projects will be executed on federally-owned land that is directly adjacent to the border. In general, the construction activity and project footprints will occur within a 60-foot strip of land that parallels the international border that is previously-disturbed, includes existing barriers and roads, and functions primarily as a law enforcement zone

A. El Centro Project 1

11. El Centro Project 1 will be carried out under a waiver issued by the Secretary of DHS pursuant to Section 102(c) of IIRIRA that was published in the Federal Register on May 15, 2019, 84 Fed. Reg. 21800 (May 15, 2019) (the “El Centro Waiver”).
12. The project area for El Centro Project 1 is a segment of the international border in Imperial County, California. It is generally located to the west of the Calexico West Port of Entry, and is described in the El Centro Waiver as starting at Border Monument 229 and extending east to approximately one and one-half (1.5) miles west of Border

Monument 223 (the “El Centro 1 Project Area”). Attached hereto as Exhibit A is a map depicting the El Centro 1 Project Area.

13. Within the El Centro 1 Project Area approximately 15 miles of existing vehicle barrier will be replaced with new bollard wall that includes a linear ground detection system. The existing vehicle barrier no longer meets the United States Border Patrol’s operational needs. The new bollard wall will be 30-feet tall. The bollards are steel-filled concrete that are approximately six inches in diameter and spaced approximately four inches apart. El Centro Project 1 will also include road improvement or construction and the installation of lighting that will be supported by grid power and may include imbedded cameras. All of the construction activity will occur on land that is owned and controlled by the United States.

B. Tucson Projects 1, 2, and 3

14. Tucson Projects 1, 2, and 3 (collectively the “Tucson Projects”) will be carried out under a waiver issued by the Secretary of DHS pursuant to Section 102(c) of IIRIRA that was published in the Federal Register on May 15, 2019, 84 Fed. Reg. 21798 (April 24, 2019) (the “Tucson Waiver”).
15. The project area for the Tucson Projects includes four segments of the international border in Pima County and Cochise County, Arizona. The project area for Tucson Projects 1 and 2 is in Pima County. The project area starts near the Cabeza Prieta National Wildlife Refuge (“CPNWR”) on the Pima and Yuma County line, extends to the eastern boundary of the Organ Pipe Cactus National Monument (“OPCNM”), and is described in the Tucson Waiver as starting approximately one-half (.5) mile west of Border Monument 178 and extending east to Border Monument 162 (the “Tucson 1 and 2

Project Area”). The project area for Tucson Project 3 includes three segments of the international border in Cochise County. The first segment is near the Coronado National Memorial and is described in the Tucson Waiver as starting at Border Monument 100 and extending east for approximately one (1) mile. The second is near the San Pedro Riparian National Conservation Area and is described in the Tucson Waiver as starting at Border Monument 98 and extending east to Border Monument 97. The third segment is situated west of the Douglas Port of Entry and is described in the Tucson Waiver as starting approximately one-half (.5) mile west of Border Monument 83 and extending east to Border Monument 74. The three segments in Cochise County described above are referred to herein as the “Tucson 3 Project Area.” The Tucson 1 and 2 Project Area and Tucson 3 Project Area are collectively referred to herein as the “Tucson Project Area.” Attached hereto as Exhibit B are maps depicting the Tucson Project Area.

16. Within the Tucson Project Area up to 63 miles of existing vehicle barrier and outmoded pedestrian barrier will be replaced with new bollard wall that includes a linear ground detection system. The existing barriers within the Tucson Project Area no longer meet Border Patrol’s operational needs. The new bollard wall will be 30-feet tall. The bollards are steel-filled concrete that are approximately six inches in diameter and spaced approximately four inches apart. The Tucson Projects will also include road improvement or construction and the installation of lighting that will be supported by grid power and may include imbedded cameras. All of the construction activity will occur on land that is owned and controlled by the United States.

**ENVIRONMENTAL PLANNING AND CONSULTATION FOR THE
ELCENTRO AND TUCSON PROJECTS**

17. CBP has long had a border security presence in the El Centro 1 Project Area and the Tucson Project Area (collectively, the “Project Areas”) and their surrounding areas. Through the planning and development of past projects and activities, CBP has developed a deep understanding and awareness of the natural, biological, historic, and cultural resources in the Projects Areas.
18. To cite just a few examples of CBP’s prior environmental analyses covering actions in and near the Project Areas, in 2008 CBP completed an Environmental Stewardship Plan (“ESP”) covering the construction of approximately 44 miles of border infrastructure within the El Centro 1 Project Area and its surrounding area. In 2014, CBP completed an Environmental Assessment (“EA”) concerning the improvement, construction, operation and maintenance of an all-weather road that is situated within El Centro 1 Project Area. In 2008 CBP completed an EA concerning the installation, operation, and maintenance of approximately five miles of pedestrian barrier near the Lukeville Port of Entry, which is situated within the Tucson 1 and 2 Project Area. In 2008, CBP also completed an ESP concerning the construction, operation, and maintenance of approximately six miles of pedestrian and vehicle barrier in the Tucson 3 Project Area and its surrounding area. In 2013, CBP completed an EA for the maintenance and repair of border infrastructure throughout the State of Arizona. The 2013 EA was the culmination of years of analysis and consultation with stakeholders concerning the potential environmental impacts from CBP’s repair and maintenance of existing and proposed border infrastructure in Arizona, including infrastructure in the Tucson Project Areas.

19. More recently, in 2018, CBP undertook a project to replace approximately two miles of existing pedestrian barrier with new bollard wall in a project area that is situated between the Calexico West Port of Entry and the El Centro 1 Project Area (the “Calexico Project”). As part of the Calexico Project, CBP prepared a Memo for the Record (“MFR”) that examined the potential impacts of the Calexico Project (the “Calexico MFR”). A copy of the Calexico MFR is attached hereto as Exhibit C.
20. CBP is drawing on its prior experience in the Project Areas as it assesses the potential environmental impacts for the El Centro and Tucson Projects.
21. In addition, CBP is presently engaged in new environmental planning and consultation that is specifically targeted to the El Centro and Tucson Projects. As a part of its environmental planning process, CBP conducts biological, cultural, and other natural resource surveys, coordinates with stakeholders, and uses that information to assess environmental impacts.
22. On May 6, 2019, before the El Centro and Tucson Waivers were issued, to better understand the potential impacts of the El Centro and Tucson Projects, CBP sent consultation letters to a number of stakeholders and potentially interested parties. The consultation letters include information about the El Centro and Tucson Projects and invite input from stakeholders regarding potential impacts. They also inform stakeholders that CBP would be accepting comments and input through June 6, 2019 regarding El Centro Project 1 and will be accepting comments and input through July 5, 2019 regarding the Tucson Projects.
23. For El Centro Project 1, CBP sent 161 separate consultation letters to a range of stakeholders and potentially interested parties, including, among others, the Department

of Interior (“DOI”), the United States Fish and Wildlife Service (“USFWS”), the Bureau of Land Management (“BLM”), the United States Environmental Protection Agency (“USEPA”), the California State Historic Preservation Officer, the California Department of Fish and Game, the California Environmental Protection Agency, State and local officials, Native American Tribes, and numerous non-governmental organizations.

24. For the Tucson Projects, CBP sent 100 separate consultation letters to a range of stakeholders and potentially interested parties, including, among others, USFWS, BLM, USEPA, the Arizona State Historic Preservation Officer, the Arizona Department of Environmental Quality, the Arizona Game and Fish Department, State and local officials, Native American Tribes, and numerous non-governmental organizations.
25. Also on May 6, 2019, CBP posted notices on its website, CBP.gov, notifying the public of the El Centro and Tucson Projects and soliciting the public’s input regarding potential impacts. The notices posted on CBP’s website can be found at <https://www.cbp.gov/document/environmental-assessments/imperial-county-border-infrastructure-project-may-2019> and <https://www.cbp.gov/document/environmental-assessments/pima-and-cochise-counties-border-infrastructure-projects-may-2019>. The notices included a link to the same consultation letters, which include information about the El Centro and Tucson Projects that were sent to every individual stakeholder or potentially interested party.
26. On May 14, 2019, May 15, 2019, and May 16, 2019, CBP conducted on-site meetings with representatives from DOI, USFWS, USEPA, BLM, the United States International Boundary and Water Commission, the United States Forest Service, and the Tohono

- O'odham Nation. At the on-site meetings, the parties toured the Project Areas and discussed the El Centro and Tucson Projects and their potential impacts.
27. On May 25, 2019, the Public Lands Liaison for the Tucson Sector met with members of certain non-government organizations, including the Sierra Club, the Center for Biological Diversity, the Nature Conservancy, and the Friends of the Sonoran Desert to discuss a number of topics related to the intersection of border security and conservation of lands on the southwest border. Among the topics discussed were the Tucson Projects.
28. On May 30, 2019, CBP participated in a regular meeting of the Border Management Task Force ("BMTF"). The BMTF meets every month to discuss issues related to border security and federal land management. Its members include federal land managers, CBP representatives, and Congressional staff. At the May 30th BMTF meeting, the attendees discussed the El Centro and Tucson Projects.
29. Consistent with its past practice for prior border infrastructure projects, CBP will survey the Project Areas for biological, historical, and cultural resources, and jurisdictional "Waters of the United States." CBP will use the data and information obtained through those surveys, along with data and information drawn from past environmental surveys and planning that CBP has done in the Project Areas, to prepare biological and cultural resources reports.
30. All of the information and input CBP obtains through stakeholder consultations, the biological and cultural resources reports, and prior environmental planning will inform the project planning and execution of the El Centro and Tucson Projects.¹

¹ As outlined in my declaration dated April 25, 2019 concerning the Yuma and El Paso Projects ("1st Enriquez Decl."), CBP is engaging in a similar consultation and environmental planning process for the Yuma and El Paso Projects. (1st Enriquez Decl. ¶¶ 19 -30.) CBP is assessing the comments it received from stakeholders concerning

31. Using the information it has compiled and feedback it has received, CBP will prepare an analysis of the potential environmental impacts of the El Centro and Tucson Projects. CBP will use that analysis to identify construction Best Management Practices (“BMPs”) or design modifications that can be presented to DoD for incorporation into project planning and execution in order to minimize or avoid potential impacts to the extent practicable.² In addition, input from stakeholders and CBP’s own analysis will be used to develop mitigation measures, which may be implemented after construction to offset or minimize unavoidable impacts. For example, for past border barrier projects, CBP has worked directly with DOI to implement mitigation measures such revegetation of project areas and the creation of new habitat for endangered fairy shrimp.

ALLEGED HARMS FROM THE EL CENTRO AND TUCSON PROJECTS

32. As detailed in the Paragraphs 19 through 31 CBP has not yet completed the environmental planning and consultation processes for the El Centro and Tucson Projects. Those processes are on-going. Nevertheless, based on these ongoing consultations, CBP’s prior experience in the Project Areas, meetings with various resource experts, and my understanding of the El Centro and Tucson Projects, I find many of plaintiffs’ claims concerning the alleged environmental harms that will result from the El Centro and Tucson Projects to be overstated or misplaced.

the Yuma and El Paso Projects and is currently preparing responses to comments, including the comments received from the New Mexico State Land Office.

² As outlined in my prior declaration, CBP is taking a similar approach for the Yuma and El Paso Projects. The information CBP compiles through consultation and its own data collection will be used to identify BMPs that could be implemented as a part of the Yuma and El Paso Projects. (*E.g.*, 1st Enriquez Decl. ¶ 33.) BMPs for past projects have included implementation of a Storm Water Pollution Prevention Plans, Construction Mitigation and Restoration Plans, Spill Prevention Control and Countermeasures Plans, Dust Control Plans, Fire Prevention and Suppression Plans, and Unanticipated Discovery Plans to protect natural and cultural resources. (1st Enriquez Decl. Ex. C. Santa Teresa ESP pg. ES-3.)

A. Alleged Procedural Injuries

33. Plaintiffs have put forth concerns about possible procedural injuries. For instance, plaintiffs allege that construction of the El Centro and Tucson Projects will occur without a review of impacts or opportunity for public comment. (Broyles Decl. ¶ 11.) Plaintiffs allege that there will be irreparable harm to endangered species without a NEPA review and ESA consultation. (Nagano Decl. ¶ 18.)
34. Plaintiffs' allegations that the El Centro and Tucson Projects will proceed without an environmental review or opportunity for public comment is not correct. As detailed above, CBP will perform an environmental review of the El Centro and Tucson Projects which will consider CBP's own data and information, new resource survey data, as well as the input provided by federal and state resource agencies. Also as detailed above, through its consultation letters and other outreach, CBP has specifically sought input from numerous parties, including USFWS, State and local officials, the Sierra Club, the Southwest Environmental Center, and the ACLU. Therefore, a wide range of stakeholders and interested parties, including plaintiffs, will have the opportunity to raise concerns and provide input about the potential environmental impacts of the El Centro and Tucson Projects. CBP will consider that input as it plans for implementation of the El Centro and Tucson Projects.
35. CBP has a proven track record of responding to concerns or input provided to CBP as a part of its consultation processes. For example, as part of its planning process for border barrier construction in the Rio Grande Valley, Texas ("RGV"), CBP conferred with USFWS. Among other things, USFWS provided CBP with data related to wildlife migration corridors. CBP used that information to modify barrier design and alignment

to minimize impacts to wildlife. For barrier construction in RGV, CBP is planning to include gates or gaps in the barrier in known migration corridors. CBP will also use a modified design for levee access ramps that will form a safe island for wildlife in the event of flooding.

36. To the extent that specific recommendations are made for barrier design, alignment modifications, or other measures that will minimize impacts to wildlife, wildlife migration, or other resources for the El Centro and Tucson Projects, CBP will similarly consider and, if feasible, recommend to DoD that those measures be incorporated into project planning and execution.
37. CBP has consistently implemented conservation measures and BMPs as part of the construction of border infrastructure in order minimize or avoid potential impacts. For example, for the recent Calexico Project in the El Centro Sector, the BMPs included, among other things: (a) providing an environmental briefing for all construction crew members; (b) having an environmental monitor present during project activities; (c) clearly demarcating the construction area perimeters to limit disturbance to the construction areas; (d) implementing construction speed limits; (e) implementing measures designed to limit the spread or establishment of non-native invasive plant species; (f) implementing measures designed to prevent entrapment of wildlife; and (g) development, implementation, monitoring of a storm water pollution prevention plan ("SWPPP"). (Calexico MFR at 10-15.) As noted in above, CBP will use all of the information that it compiles through consultation and its own data collection to identify BMPs that could be implemented as a part of the El Centro and Tucson Projects.

38. Plaintiffs also allege that they are harmed because, as a result of the El Centro Waiver, CBP will not have to apply for a National Pollutant Discharge Elimination System Construction General Permit, which would require preparation of a SWPPP that would be enforced by Colorado River Basin Water Board (“CRBWB”). (Dunn Decl. ¶ 19.)
39. Despite the El Centro Waiver, CBP expects that it will recommend to DoD that a SWPPP is prepared for both the El Centro and Tucson Projects.³ CBP welcomes input and consultation from the CRBWB regarding El Centro Project 1. That is precisely what occurred with the Calexico Project. Like El Centro Project 1, the Calexico Project was constructed pursuant to a waiver issued by the Secretary of Homeland Security. 82 Fed. Reg. 42829 (Sept. 12, 2017). Also like El Centro Project 1, despite the waiver, CBP sought input from affected stakeholders, including the CRBWB. In response to CBP’s outreach to stakeholders, CRBWB sent CBP a letter dated February 21, 2018, which is attached hereto as Exhibit D, that outlined CRBWB’s comments and concerns regarding the Calexico Project. In response to CRBWB’s February 21st letter, CBP held a teleconference with CRBWB on February 28, 2019 where CBP staff, the CRBWB Executive Director, and CRBWB counsel discussed, among other things, the SWPPP that had been developed for the Calexico Project and the BMPs CBP would be implementing that would address some of CRBWB’s concerns. The parties also discussed opportunities for future collaboration. The following day, on March 1, 2018, CBP sent CRBWB a copy of the SWPPP that had been developed for the Calexico Project and offered additional follow-up if CRBWB had more questions or concerns regarding the

³ The same is true regarding the Yuma and El Paso Projects.

SWPPP. A copy of CBP's March 1, 2018 correspondence is attached hereto as Exhibit E.

40. Notably, for both the Calexico Project and the West Desert All-Weather Road Project, which is cited in plaintiffs' declaration (e.g., Dunn Decl. ¶ 5), CBP concluded that there would be no significant impacts to water quality. Calexico MFR at 9; *U.S. Customs and Border Protection, Environmental Assessment for the Improvement, Construction, Operation, and Maintenance of a Proposed All-Weather Road in the El Centro Station Area of Responsibility, El Centro Sector* (February 2013) at 3-17 (attached hereto as Exhibit F). Given the nature of El Centro Project 1, it is likely that CBP will be able to reach a similar conclusion when it assesses its potential impacts.

41. Plaintiffs also allege that without a NEPA review of El Centro Project 1, 13 separate California Species of Special Concern that are allegedly found within the El Centro 1 Project Area and will be "harmed or killed" by "extensive trenching, construction of roads, and staging of materials necessary to construct" El Centro Project 1.⁴ (Clark Decl. ¶ 15.) Plaintiffs assert that the alleged harms to these California Species of Special Concern could be remedied had NEPA not been waived for El Centro Project 1 because "USFWS would consider and address potential impacts to these state listed species." (*Id.*)

42. But NEPA, even if it had not been waived, is a procedural statute that does not prohibit particular environmental harms. More importantly, as detailed above, CBP has engaged stakeholders and will assess the potential impacts of El Centro Project 1. To the extent

⁴ This statement is unsupported and appears to be unfounded. For example, plaintiffs do not explain how the seven bat species that are included in the list will be harmed or killed by trenching, road construction, or staging of materials.

that legitimate concerns are raised or revealed concerning impacts to the California Species of Special Concern cited in plaintiffs' declarations, CBP will have the opportunity to address those impacts through BMPs that are recommended to DoD or possible mitigation measures that are implemented during or after project execution.

B. Alleged Environmental Harms

43. In addition to alleged procedural injuries, plaintiffs make a number of allegations regarding purported environmental harms that they claim will result from the El Centro and Tucson Projects, including impacts to federally-listed species, wildlife, other natural resources, and plaintiffs' recreational or aesthetic interests. As detailed below, I find many of plaintiffs' claims to be overstated or misplaced.

1. Federally-Listed Species

44. Plaintiffs state that they are concerned that the Tucson Projects will harm the endangered Sonoran pronghorn. (Tuell Decl. ¶ 12.) Plaintiffs allege that the Tucson Projects will harm Sonoran pronghorn because this species relies on access to lands on both sides of the border to survive. (Hartmann Decl. ¶ 7; Broyles Decl. ¶ 7.)

45. Evidence does not support plaintiffs' suggestion that the Tucson Projects will threaten the survival of Sonoran pronghorn. According to the 2016 Recovery Plan for Sonoran pronghorn, recovery of the Sonoran pronghorn does not depend on natural cross-border migration of the species. Although the Recovery Plan considers the Sonoran pronghorn throughout its range, it specifically designates two conservation units containing two separate populations of the species: one in the United States and one in Mexico. *United States Fish and Wildlife Service, Recovery Plan for the Sonoran Pronghorn, Second Revision* (November 2016) at 91, available at

https://www.fws.gov/southwest/es/arizona/Documents/SpeciesDocs/SonoranPronghorn/FINAL_Sonoran_Pronghorn_Recovery%20Plan_2nd%20Revision_11-16-16.pdf.

USFWS has noted that the species would likely benefit from habitat connectivity between Sonoran pronghorn populations. *Id.* at 30. However, the Recovery Plan makes clear that recovery of Sonoran pronghorn does not depend on such natural cross-border migration, as Sonoran pronghorn in the United States are already “effectively geographically separated from Sonoran pronghorn populations in Mexico due to the physical barriers of Mexican Highway 2 and associated fencing.” *Id.* at 2. In addition, the Recovery Plan states that having viable populations in both the United States and Mexico serves the aims of “representation, redundancy, and resiliency across its range,” which decreases the changes that a “single stochastic event would cause the entire subspecies to go extinct.” *Id.* at 99.

46. Although the recovery of Sonoran pronghorn does not depend on natural cross-border migration of the species, the Recovery Plan states that within population habitat connectivity is critical to recovery. Importantly, then, the Tucson Projects will not affect vast areas of habitat that are currently available to the Sonoran pronghorn in Arizona. As noted above, in general the construction activity and project footprints of the Tucson Projects will be within a 60-foot strip of land that parallels the border. By contrast, the areas that surround the Tucson Project Areas include vast swaths of federally-protected lands, including the OPCNM and the CPNWR. The OPCNM is 330,689 square acres or 516 square miles. The CPNWR is 803,418 acres or over 1200 square miles. The majority of these areas and the habitat Sonoran pronghorn occupy or utilize therein will not be significantly impacted by the Tucson Projects.

47. In fact, since 2001, despite an increased presence of cross-border violators and the corresponding Border Patrol response (including the construction of border infrastructure), the population of endangered Sonoran pronghorn in Arizona has increased significantly, from approximately 21 in 2001 to over 200 by 2014. *Id.* 14. In my discussions with USFWS concerning the Tucson Projects, USFWS has informed me that the population continues to increase. According to USFWS, the 2018 estimate for endangered Sonoran pronghorn in Arizona rose to 215. In addition, USFWS has established and manages a non-essential experimental population of Sonoran pronghorn in Arizona pursuant to section 10j of ESA. USFWS has informed me that the 2018 population estimate for the non-essential experimental population of Sonoran pronghorn in Arizona is approximately 121.
48. Plaintiffs also allege that El Centro Project 1 will harm the endangered Peninsular bighorn sheep. (Nagano Decl. ¶ 13.) More specifically, plaintiffs allege that construction activities will “alter the normal behavior of peninsular big horn sheep” (Nagano Decl. ¶ 13), possibly causing pregnant ewes to abandon quality lamb rearing habitat (Clark Decl. ¶ 14), and that construction or maintenance vehicles may collide with peninsular bighorn sheep. Beyond construction impacts, plaintiffs allege that the improved border barrier will prevent movement of the species across the United States-Mexico border. (Clark Decl. ¶ 14; Nagano Decl. ¶ 13.)
49. As a part of CBP’s coordination with USFWS, I have been informed by USFWS that Peninsular bighorn sheep that would be found in or near the El Centro 1 Project Area are part of the Carrizo Canyon Recovery Region identified in the Recovery Plan and Critical Habitat Unit 3. *United States Fish and Wildlife Service, Recovery Plan for Bighorn*

Sheep in the Peninsular Ranges, California (October 2000), available at https://ecos.fws.gov/docs/recovery_plan/001025.pdf; *Final Rule, Designation of Critical Habitat for Peninsular Bighorn Sheep and Determination of a Distinct Population Segment of Desert Bighorn Sheep*, 74 Fed. Reg. 17288 (April 14, 2009), available at <https://www.govinfo.gov/content/pkg/FR-2009-04-14/pdf/E9-7767.pdf#page=2>.

Regarding the purported construction impacts cited by plaintiffs, as noted above CBP has BMPs that may be implemented, including construction speed limits, that will minimize the risk of vehicles colliding with Peninsular bighorn sheep. In addition, even if construction activities associated with El Centro Project 1 were to cause Peninsular bighorn sheep to alter their normal behavior patterns and abandon habitat in or near the El Centro 1 Project Area, such impacts would be temporary. Further, there is abundant available habitat in the areas that surround the El Centro 1 Project Area. There are, for example, approximately 11,000 acres of designated critical habitat for Peninsular bighorn sheep within the Jacumba Mountains, which abut the western terminus of the El Paso 1 Project Area. *Final Rule, Designation of Critical Habitat for Peninsular Bighorn Sheep and Determination of a Distinct Population Segment of Desert Bighorn Sheep*, 74 Fed. Reg. 17288, 17318. As to the alleged impacts regarding migration of Peninsular bighorn sheep into Mexico, because the western terminus of El Centro Project 1 ends at the base of the Jacumba Mountains, there will still be large areas to the west of the El Centro 1 Project Area where Peninsular bighorn sheep will continue to be able to cross into Mexico. Accordingly, in my coordination with USFWS, USFWS has informed me that it does not believe that El Centro Project 1 will result in population-level impacts to

Peninsular bighorn sheep within the Carrizo Canyon Recovery Region and Critical Habitat Unit 3.

2. Sensitive Wildlife Species

50. In addition to federally-listed species, plaintiffs allege harms to sensitive species such as the Flat-tailed horned lizard, which is not currently listed under ESA but is considered a California Species of Special Concern. (Clark Decl. ¶ 16.) Plaintiffs express concerns about construction impacts, claiming construction activities may result in death or injury to individual animals because they could “fall into trenches or holes” or be run over by vehicles.” (Nagano Decl. ¶ 23) Further, plaintiffs allege that the improved barrier will prevent Flat-tailed horned lizards from crossing the border, resulting in a “new genetic break in the species range.” (Clark Decl. ¶ 17.)
51. Plaintiffs have overstated the potential harms to Flat-tailed horned lizard. CBP has construction BMPs, which will be presented to DoD for consideration and incorporation into project execution, to address the alleged construction impacts cited by plaintiffs, including the presence of environmental monitors, construction speed limits, and measures designed to prevent the entrapment of wildlife. Further, because the bollard wall has four-inch gaps between the bollards, smaller species such as Flat-tailed horned lizard will continue to be able to migrate across the border into Mexico.
52. Plaintiffs also express concerns about potential impacts to burrowing owl, another California Species of Special Concern. (Nagano Decl. ¶ 19.) Plaintiffs allege that burrowing owls could be injured or harmed because they could be buried alive in their burrows by vehicular traffic associated with El Centro Project 1. (Nagano Decl. ¶ 25.)

53. Here again, plaintiffs overstate the potential harms. CBP's BMPs, which will be presented to DoD for consideration and incorporation into project execution, can address potential construction impacts to burrowing owl. For the Calexico Project, for example, CBP not only undertook burrowing owl surveys in advance of project execution, it implemented a BMP that was specifically designed to protect burrowing owls. (Calexico MFR at 12.) CBP required a 50-meter buffer around observed burrowing owl burrows. (*Id.*) Where the 50-meter buffer was not compatible with project needs, CBP required one-way exclusionary doors on burrowing owl burrows and that its contractors wait until the burrows were vacated before collapsing them to ensure there was no direct mortality to burrowing owls. (*Id.*)

3. Sensitive Plant Species

54. In addition to sensitive wildlife species, plaintiffs allege that El Centro Project 1 will harm sensitive plant species in and around the El Centro 1 Project Area. (*E.g.*, Evans Decl. ¶ 6.) Plaintiffs go so far to say that El Centro Project 1 will "undoubtedly have irreparable or irreversible impacts" on sensitive plants. (Vanderplank Decl. ¶ 25.) Plaintiffs' assertions are based in part on their having purportedly surveyed the "El Centro Project 1 project area twice in 2019," although plaintiffs provide no information as to how they actually defined the El Centro 1 project area. (Vanderplank Decl. ¶ 21.)

55. I believe plaintiffs' allegations concerning impacts to sensitive plant species are exaggerated. As discussed, in general the construction activities and project footprint for El Centro Project 1 will be within a strip of land along the international border that is already disturbed and functions and a law enforcement zone. Moreover, as plaintiffs rightly point out, in the areas that surround the El Centro 1 Project Area there is an

“absence of development, construction, and human impacts” (Vanderplank Decl. ¶ 21), meaning there is abundant habitat for such plant species in and around the El Centro 1 Project Area. For these reasons, I find plaintiffs’ assertion that there will “undoubtedly” be irreparable harms to sensitive plants to be overstated.

4. Other Wildlife

56. Plaintiffs put forth generalized fears that the El Centro and Tucson Projects will harm other wildlife. They claim, for example, that the El Centro and Tucson Project will fragment habitat of desert animals (Hudson Decl. ¶ 9; Evans Decl. ¶ 8) and stop the movement of both larger mammals and smaller species such as lizards, frogs, snakes, and some birds (Tuell Decl. ¶ 8). Plaintiffs also cite generalized fears that the Tucson Projects could impact “animal species living along and migrating through the San Pedro River ecosystem” (Gerrodette Decl. ¶ 9) or have lasting impacts on an ecosystem that is home to species such as javelina, deer, kangaroo rats, and coyotes. (Dahl Decl. ¶ 9; Hudson Decl. ¶ 9).
57. Plaintiffs do not provide much in the way of support for these generalized fears. In addition, these assertions are at odds with CBP’s prior analysis of similar projects. For example, as noted above, in 2013 CBP completed an EA concerning the construction of approximately 5 miles of pedestrian fencing in Lukeville, Arizona (the “Lukeville Project”), which is within the Tucson 1 and 2 Project Area adjacent to the OPCNM. Like the Tucson and El Centro Projects, the majority of the construction activities for the Lukeville Project were to occur in a 60-foot strip of federally-owned property immediately adjacent to the border that was already functioning as a law enforcement zone. The area was heavily disturbed and contained existing border infrastructure,

including permanent vehicle barriers that were constructed by the National Park Service in 2003. *U.S. Customs and Border Protection, Final Environmental Assessment for the Proposed Installation, Operation, and Maintenance of Primary Pedestrian Fence Near Lukeville, Arizona, U.S. Border Patrol, Tucson Sector* (February 2008) at 1-3, 2-1 – 2-2 (attached hereto as Exhibit G). In its analysis of potential impacts to wildlife, CBP concluded that, because the project area was already disturbed, the amount of land permanently impacted by the project would be negligible. *Id.* at 4-5. CBP also concluded that construction activities would only result in minor adverse impacts to species. *Id.* In reaching that conclusion, CBP noted that mobile animals would escape to other areas of similar habitat, and while slow or sedentary species could be injured or lost, this would not result in a substantial reduction on a regional scale due to the tens of thousands of acres of suitable, similar habitat adjacent to the project corridor. Finally, while CBP acknowledged that the pedestrian fence could affect transboundary migration patterns of animals, including larger animals, the impacts were considered minimal because habitat fragmentation typically affects species with small population size that are dependent on migration to obtain spatially or temporally limited resources. *Id.*

5. Other Resources or Alleged Harms

58. In addition to the allegations detailed above, plaintiffs have set forth a number of generalized “concerns” regarding a range of issues, including impacts from lighting, the spread of non-native plant species, and impacts to air quality and hydrology. The majority of these alleged harms are unsupported by specific allegations or supporting facts. Rather, plaintiffs merely cite generalized fears regarding the alleged environmental harms that may result from the El Centro and Tucson Projects. Plaintiffs’ generalized

fears concerning the potential impacts to the cited resources are exaggerated or unfounded.

59. For example, plaintiffs allege that pollution from construction activities, including vehicles, machinery, and desert dust storms, will “exacerbate” existing air pollution in and around the El Centro 1 Project Area. This allegation is unsupported by specific facts and at odds with CBP’s previous analysis of a similar project. As a part of Calexico MFR, CBP performed a detailed assessment of potential impacts to air quality from the Calexico Project, which like El Centro 1 Project, was located in Imperial County, California within the Imperial County Air Pollution Control District. After a detailed analysis, CBP concluded that the construction activities associated with the Calexico Project would not exceed Federal de minimis thresholds for air pollution emissions and, as such, a conformity determination would not have been required under the Clean Air Act. (MFR at 9-10.) Given my experience with the Calexico Project and other border infrastructure projects, I expect a similar determination concerning El Centro Project 1.
60. Plaintiffs claim that lighting from the El Centro and Tucson Projects will “drastically impact” or be detrimental to their ability to stargaze in the areas surrounding the Project Areas (Hudson Decl. ¶ 9; Evans Decl. ¶ 8) and degrade their camping experiences (Hudson Decl. ¶ 10). However, as a part of project design and execution of the El Centro and Tucson Projects, CBP will take steps, including the installation of light shields, to minimize or control any light spillage beyond the approximately 60-foot area along the border that contains the primary project footprint and currently functions as a law

enforcement zone. With such measures in place, the El Centro and Tucson Projects are unlikely to result in the “drastic impacts” claimed by plaintiffs.⁵

61. Plaintiffs also cite concerns as to how additional lighting from the El Centro Project and Tucson Projects may affect wildlife. (*E.g.*, Evans Decl. ¶ 8). Plaintiffs claim, for example, that lighting associated with El Centro Project 1 “can have a myriad negative effects on animals and plants” (Clark Decl. ¶ 19). However, as noted above, the 60-foot area along the border that contains the primary project footprints, where the lighting will be directed, is already heavily disturbed and is unlikely to provide quality habitat for animals and plants. Moreover, there is an abundance of available habitat for animal and plant species in the areas that surround the Project Areas. Therefore, it is not at all clear that the “myriad” of negative impacts claimed by plaintiffs will come to pass.⁶

62. Plaintiffs claim that the El Centro and Tucson Projects will lead to a loss of native vegetation and the spread of invasive, non-native species. (Dahl ¶ 9). For example, plaintiffs allege that disturbance from border wall construction will create habitat for exotic plants and weeds and that seeds from exotic weeds may be “transported by DHS and CBP cars, trucks, horse trailers, quads, and the hooves and fur of their patrol horses.” (Nagano Decl. 20.) These fears are exaggerated or misplaced.

63. The El Centro and Tucson Projects are construction projects. Thus, to the extent that plaintiffs’ are expressing concerns about potential impacts from normal patrol or law

⁵ Plaintiffs cite similar concerns regarding lighting associated with the El Paso Project. (Stewart Decl. ¶ 2, Ex. A, pg. 5.) As a part of El Paso Project 1, CBP will implement the same kinds of measures to control light spillage, thereby minimizing the impacts of lighting from the project, either as a part of project design or through potential BMPs.

⁶ Plaintiffs also express concerns as to how lighting from El Paso Project 1 may affect wildlife. (Stewart Decl. ¶ 2, Ex. A, pg. 5.) As stated in my prior declaration, the El Paso 1 Project Area is already heavily disturbed, largely devoid of vegetation, include existing barriers and roads, and functions primarily as a law enforcement zone. (1st Enriquez Decl. ¶¶ 50, 63.) Therefore, El Paso 1 Project area is also unlikely to contain quality habitat for wildlife.

enforcement activity within the Project Areas, i.e., the purported spread of invasive species via “CBP cars, trucks, horse trailers, quads, and the hooves and fur of their patrol horses,” such allegations are not germane to a discussion of potential impacts related to the El Centro and Tucson Projects. Regarding the actual construction activities related to the El Centro and Tucson Projects, very little new land will be disturbed by El Centro and Tucson Projects. As noted throughout, the El Centro and Tucson Projects will occur in areas that are already disturbed, already contain border infrastructure, i.e., existing barriers and roads, and already function primarily as a law enforcement zone. Further, for past projects CBP has implemented BMPs that are specifically designed to limit the loss of vegetation and the spread of invasive species. As a part the Calexico Project, for example, CBP implemented BMPs restricting vegetation removal to the smallest possible footprint and requiring the cleaning of equipment to limit the spread of non-native species. (MFR at 11.) CBP expects to recommend to DoD that these same BMPs are implemented as a part of the El Centro and Tucson Projects.

64. Plaintiffs have also expressed generalized, non-specific concerns regarding potential impacts on hydrology. Plaintiffs state that construction of the Tucson Projects 1 and 2 “could” impact the hydrology of Quitobaquito Springs. (Dahl Decl. ¶ 7) Similarly, plaintiffs state that they are “concerned” that Tucson Project 3 may affect the flow of the San Pedro River (Gerrodette Decl. ¶ 7).
65. In fact, Quitobaquito Springs is located north of the Tucson 1 and 2 Project Area, meaning it is outside the project footprint and will not be directly impacted by any construction activities. Therefore, I do not expect that Tucson Projects 1 and 2 will result in significant hydrological impacts to Quitobaquito Springs. For the portion of Tucson

Project 3 that is near the San Pedro River, initial designs indicate that a bridge will be constructed across the San Pedro River and the barrier will be constructed on top of the bridge. For the portion that spans the river under the bridge, gates will be installed that will stop illegal traffic but also allow for the continued flow of water through the San Pedro River.

6. Recreational and Aesthetic Injuries

66. Finally, plaintiffs put forth a number of claims concerning purported recreational or aesthetic injuries. Plaintiffs express concerns about the potential for “immense aesthetic impacts” (Evans Decl. ¶ 5), asserting for example, that the El Centro and Tucson Projects will detract from their ability to enjoy hiking, camping, and photography in the areas surrounding the Project Areas (Hudson Decl. ¶ 11), will destroy the beauty of the desert (Armenta Decl. ¶ 6), and harm wilderness character (Tuell Decl. ¶ 11).⁷
67. The evidence does not support plaintiffs’ suggestions or assertions the El Centro and Tucson Projects will significantly harm plaintiffs’ recreational activities or aesthetic interests. The El Centro and Tucson Projects will not effect any change to the existing land use within the Project Areas. These areas are already disturbed, include existing barriers and roads, and function primarily as a law enforcement zone.

⁷ Plaintiffs have made similar claims concerning aesthetic and recreational impacts related to the Yuma and El Paso Projects. Plaintiffs allege, for example, that they visit the Morelos Dam near the Yuma 1 Project Area or drive Highway 95, which is situated west of the Yuma 1 Project Area, and that Yuma Project 1 may “disrupt the desert views” or inhibit plaintiffs’ appreciation of the areas that surround the Yuma 1 Project Area. (Bevins Decl. ¶ 7.) Similarly, plaintiffs allege that CBP’s presence in the Yuma 1 Project Area diminishes the enjoyment of these areas due to fears of being questioned or detained. However, as discussed in my prior declaration, the evidence does not support Plaintiffs’ claims of significant harms to recreational or aesthetic interests. (1st Enriquez Decl. ¶¶ 63 – 64.) As I have previously noted, the Yuma 1 Project Area already functions primarily as a law enforcement zone (1st Enriquez Decl. ¶ 63); thus, CBP already has had and will continue to have a presence in the Yuma 1 Project Area. In addition, Yuma and El Paso Projects will not effect any change to existing land uses in the areas surrounding the Project Areas (1st Enriquez Decl. ¶ 64). To this end, Yuma Project 1 will not affected public access to the Morelos Dam.

68. Further, the El Centro and Tucson Projects will not effect any significant change to the existing land uses in the areas that surround the Project Areas, which include vast tracts of federally-protected lands. The Tucson 1 and 2 Project Area is surrounded by the OPCNM, which is 330,689 square acres or 516 square miles, and the CPNWR, which is 803,418 acres or over 1200 square miles. Areas that surround the Tucson 3 Project Area include the San Pedro Riparian National Conservation Area, which is 57,000 acres or 89 square miles, and the Coronado National Memorial, which is 4,750 acres or over seven square miles. Plaintiffs may continue to recreate in and enjoy these natural and undeveloped areas that surround the Project Areas. Given their size relative the small project footprint of the Tucson Projects, the evidence does not support plaintiffs' assertion that the Tucson Projects will irreparably harm plaintiffs' ability to hike, camp, and recreate in these areas, destroy beauty of the desert, or significantly harm or alter the wilderness characteristics of these areas.
69. Similarly, regarding El Centro Project 1, Plaintiffs will continue to be able to access, use, and enjoy the vast desert or mountains areas that surround the El Centro 1 Project Area, including the Jacumba Mountain Wilderness, which is 31,357 square acres or approximately 49 square miles of federally-protected wilderness.
70. In fact, enhanced border security may enhance plaintiffs' ability to recreate in and enjoy the areas surrounding the El Centro and Tucson Projects Areas. There are historical examples where CBP's construction of border barriers has resulted in increased public access and use in areas surrounding the border because barrier construction has reduced illegal traffic and, in turn, made such areas safer for access and use by the public.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 19 day of June, 2019.



Paul Enriquez
Acquisitions, Real Estate and Environmental Director
Border Wall Program Management Office
U.S. Border Patrol

~~DRAFT // PRE-DECISIONAL // DELIBERATIVE~~

ACTION MEMO

Prepared by: Tom LaCrosse, OASD(HD&GS)
Phone Number: (571) 256-8353

FOR: ACTING SECRETARY OF DEFENSE

KR

MAY 08 2019

FROM: Kenneth P. Rapuano, Assistant Secretary of Defense, Homeland Defense & Global Security

SUBJECT: Request for Assistance Pursuant to 10 U.S.C. § 284 – Approval of Additional Support to the Department of Homeland Security

PURPOSE: To obtain your approval of a second tranche of assistance to the Department of Homeland Security (DHS) in blocking drug-smuggling corridors along the southern border; and for you to direct specific actions by the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO), the Secretary of the Army, and the Commander, U.S. Army Corps of Engineers.

COORDINATION: This action was coordinated with SecArmy, USD(C)/CFO, OGC, and the Joint Staff.

BLUF: Approving this request will support DHS's efforts to secure the southern border by blocking drug-smuggling corridors. You have the authority under 10 U.S.C. § 284 to construct roads and fences, and to install lighting, to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotics activities of Federal law enforcement agencies.

DISCUSSION:

- 10 U.S.C. § 284 gives you the authority to construct roads and fences, and to install lighting, to block drug-smuggling corridors across international boundaries of the United States in support of counterdrug activities of Federal law enforcement agencies.
- Funding for assistance provided pursuant to 10 U.S.C. § 284 comes from the counter-narcotics support line in DoD's "Drug Interdiction and Counter-Drug Activities, Defense" appropriation.
- On February 25, 2019, DHS requested DoD assistance in blocking up to 11 specific drug-smuggling corridors on Federal land along the southern border of the United States. DHS requested that DoD provide this support in order of stated priority as DoD resources allow by (1) replacing existing vehicle barricades or dilapidated pedestrian barricades with construction of new pedestrian fences (i.e., fences that would block both vehicles and pedestrians), (2) constructing new and improving existing patrol roads, and (3) installing lighting (TAB D). This support to DHS is consistent with the President's direction in his April 4, 2018, memorandum, "Securing the Southern Border of the United States."
- On March 25, 2019, you approved a portion of the DHS request for assistance in blocking drug-smuggling corridors on the southern border pursuant to 10 U.S.C. § 284. Specifically,



* U S P 0 0 - 3 7 2 - 1 9 *

SD CA		DSD SA	
SD SMA		DSD SMA	024-519
SD MA		DSD MA	
CoS		DSD CA	
SD Action Grp			
ES		ESB Rvw	98159
ESR	RG 3/0	END	

ER163



OSD004791-19/CMD005890-19

you approved the construction of roads and fences and installation of lighting for 3 DHS priority projects totaling 57 miles of fencing across DHS's top three priority projects (Yuma Sector Project 1, Yuma Sector Project 2, and El Paso Sector Project 1). To fund this support, you directed the transfer of \$1B into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation (TAB E).

- On April 9, 2019, you approved a design modification to this support requested by DHS. Specifically, you approved construction of 30-foot steel bollard with anti-climb plate for Yuma Sector Project 1 and El Paso Sector Project 1 and 18-foot steel bollard with anti-climb plate for Yuma Sector Project 2 (TAB F).
- The U.S. Army Corps of Engineers (USACE) is prepared to proceed with the following DHS priority projects as undefinitized contractual actions, including initial project scoping and contracting, pursuant to 10 U.S.C. § 284.

DHS Priority	Project Name	Cost/Miles \$20.7 per mile 30-foot bollard
4	El Centro Sector Project 1	15.25 miles
5	Tucson Sector Project 1	38 miles
6	Tucson Sector Project 2	5 miles
7	Tucson Sector Project 3	20 miles
TOTAL		\$1.5B / 78.25 miles

- The requirements of Section 284 are met: DHS/Customs and Border Protection (CBP) is a Federal law enforcement agency; DHS has identified each project area as a drug-smuggling corridor; and the work requested by DHS falls within the scope of subsection 284(b)(7) in that it involves construction of fences (including linear ground detection systems), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).
- To provide this support under Section 284, additional funds must be transferred into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation using DoD's general transfer authority (GTA), which is provided in Section 8005 of the Department of Defense Appropriations Act, 2019, and Section 1001 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019, and DoD's special transfer authority (STA), which is provided in Section 9002 of the Department of Defense Appropriations Act, 2019, and Section 1512 of the John S. McCain NDAA for Fiscal Year 2019. This action will utilize \$700 million in funds designated for Overseas Contingency Operations (OCO) for a base budget requirement. Together, these GTA and STA provisions allow total transfers of up to \$6B. Congressional notification is required under both sections, but there is no statutory requirement to obtain prior congressional approval.
 - The Department may use GTA and STA only upon a determination by the Secretary of Defense that such action is necessary in the national interest, and the transfer may only be used to provide funding for higher-priority items, based on unforeseen military requirements, than those

items for which funds were originally appropriated, and in no case for an item for which funds or authorization have been denied by Congress.

- The USD(C)/CFO has identified \$1.5B in DoD funding that can be transferred into the Drug Interdiction and Counter-Drug Activities, Defense, account. The funds identified by the USD(C)/CFO are not currently needed for those purposes by DoD (Enclosure to Tab B) (i.e., DD 1415 and DD 1415-3).
- You may determine that:
 - o Use of GTA and STA is necessary in the national interest (see April 4 memo);
 - o Blocking drug-smuggling corridors is a higher-priority item than fully executing all available funding for items in the budget lines identified by the USD(C)/CFO in the Enclosure to TAB B;
 - o The requirement for this increased support to DHS is a military requirement unforeseen at the time of development of the fiscal year 2019 budget request; and
 - o Congress has not denied funding or authorization for support to DHS under Section 284(b)(7). Congress has not enacted legislation that denies funding for the item referenced in the transfer—namely counter-drug activities funding, including fence construction, under Section 284(b)(7).
- Any support provided under Section 284, including under subsection (b)(7), is subject to 10 U.S.C. § 276, which provides that support may not be provided if the provision of such support would adversely affect the military preparedness of the United States. By approving the above projects, you are determining that providing such support does not adversely affect the military preparedness of the United States.
- The military preparedness of the United States relates to the ability of DoD, at a strategic level, to defend the United States and to carry out the other major DoD missions. The term “adversely affect” is not any adverse effect, but any effect that would “seriously compromise” the nation’s military capability.¹

¹ See House Conference Report No. 100-989, Sept. 28, 1988, Accompanying P.L. 100-456, National Defense Authorization Act, Fiscal Year 1989.

~~PRE-DECISIONAL // DELIBERATIVE~~

- The sources of funds to be utilized to provide this support are documented in the Enclosure to Tab B.
- On May 8, 2019, the Chairman of the Joint Chiefs of Staff found that the proposed funding adjustments do not immediately impact the preparedness of the joint force and that some of the sources identified for reprogramming could be used to address currently unfunded DoD requirements (TAB G).
- It is reasonable, therefore, for you to find that utilizing these funds for support to DHS does not adversely affect the military preparedness of the United States because, after an assessment of the relevant accounts and based on the Chairman's advice, these funds are excess or early to need.

RECOMMENDATIONS:

1) Determine that providing the approved support, including the use of up to \$1.5B transferred from the funds identified in the Enclosure to Tab B, does not adversely affect the military preparedness of the United States because the funds are excess or early to need.

Approve: FWS 5/9/19 Disapprove: _____ Other: _____

2) Determine that transferring \$1.5B in funds for this support is in the national interest and that the other requirements of Sections 8005 and 9002 of the Department of Defense Appropriations Act, 2019, and Sections 1001 and 1512 of the John S. McCain NDAA for FY 2019 are met (i.e., that the item to be funded is higher priority than the items from which funds and authority are transferred, that the increase in Section 284(b)(7) support is based on unforeseen military requirements, and that the programmatic increase in Section 284(b)(7) support to DHS has not been denied by Congress).

Approve: FWS 5/9/19 Disapprove: _____ Other: _____

3) Approve immediate DoD support to DHS's Priority Projects 4, 5, 6, and 7 (78.25 miles of 30-foot bollard fence with an anti-climb feature), and sign the letter to the Acting Secretary of Homeland Security at Tab A. This supports the next four DHS priority projects.

Approve: FWS 5/9/19 Disapprove: _____ Other: _____



~~THE DOCUMENT IS UNCLASSIFIED~~

4) Sign the memorandum to USD(C)/CFO at TAB B – authorizing the transfer of \$1.5B from the accounts identified in the Enclosure to Tab B into the “Drug Interdiction and Counter-Drug Activities, Defense” appropriation, and direct the USD(C)/CFO, upon approval of the transfer by the Office of Management and Budget, to notify Congress promptly of the transfer.

Approve: PMS 5/9/19 Disapprove: _____ Other: _____

5) Sign the memorandum to the Secretary of the Army at TAB C, authorizing the Commander, U.S. Army Corps of Engineers, to undertake DHS priority projects 4, 5, 6, and 7.

Approve: PMS 5/9/19 Disapprove: _____ Other: _____

COORDINATION: TAB H

Attachments:

As stated



TAB

A



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

5/9/19

MEMORANDUM FOR ACTING SECRETARY OF HOMELAND SECURITY

SUBJECT: Additional Support to the Department of Homeland Security

The Department of Defense appreciates that the Department of Homeland Security (DHS) confronts a continuing and worsening crisis at the southern border. As I indicated in my March 25, 2019 letter, in which I approved the undertaking of three projects to support to your Department's effort to secure the southern border by blocking drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting, the Department of Defense has continued to assess the availability of resources and other factors in order to determine how additional similar support can be provided to DHS.

10 U.S.C. § 284(b)(7) gives the Department of Defense the authority to construct roads and fences and to install lighting to block drug-smuggling corridors across international boundaries of the United States in support of counterdrug activities of Federal law enforcement agencies. For the following reasons, I have concluded that the support requested on February 25, 2019 satisfies the statutory requirements:

- DHS/Customs and Border Protection (CBP) is a Federal law enforcement agency;
- DHS has identified each project area as a drug-smuggling corridor; and
- The work requested by DHS to block these identified drug-smuggling corridors involves construction of fences (including linear ground detection systems), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).

Accordingly, at this time I have decided to undertake 4 additional projects, namely El Centro Sector Project 1, Tucson Sector Project 1, Tucson Sector Project 2, and Tucson Sector Project 3, by constructing 78.25 miles of 30-foot pedestrian fencing, constructing and improving roads, and installing lighting as described in the February 25, 2019 request.

As the proponent of the requested action, CBP will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. I request that DHS place the highest priority on completing these actions for the projects identified above. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

The Commander, U.S. Army Corps of Engineers, is authorized to coordinate directly with DHS/CBP and immediately begin planning and executing up to \$1.5B in support to DHS/CBP by undertaking the projects identified above.

Patrick M. Shanahan
Acting

ER169

cc:

Secretary of the Army

Chairman of the Joint Chiefs of Staff

Under Secretary of Defense for Policy

Under Secretary of Defense (Comptroller)/Chief Financial Officer

General Counsel of the Department of Defense

Assistant Secretary of Defense for Legislative Affairs

Assistant Secretary of Defense for Homeland Defense and Global Security

Assistant to the Secretary of Defense for Public Affairs

Commander, U.S. Army Corps of Engineers

TAB

B



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

5/9/19

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF
FINANCIAL OFFICER

SUBJECT: Additional Funding Construction in Support of the Department of Homeland
Security Pursuant to 10 U.S.C. § 284

On February 25, 2019 the Secretary of Homeland Security requested that DoD provide support to the efforts of the Department of Homeland Security (DHS) to secure the southern border by blocking up to 11 drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting. I have determined that the requirements of title 10, U.S. Code, section 284, have been satisfied. Accordingly, I have approved DoD support for El Centro Sector Project 1, Tucson Sector Project 1, Tucson Sector Project 2, and Tucson Sector Project 3 (DHS Priority Projects 4, 5, 6, and 7) and have authorized up to \$1.5B in funding for the construction of 30-foot pedestrian fencing, the construction and improvement of roads, and the installation of lighting to block drug-smuggling corridors along the southern border.

I have also decided that the Department will transfer both base funds and funds designated for Overseas Contingency Operations to provide the support described above. This support will be funded through a transfer of \$1.5B from the accounts identified in the Enclosure into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation. I am advised that the amounts are excess or early to current programmatic needs. You should undertake a reprogramming action to effectuate such transfer, as authorized by law.

The reprogramming action that I am directing satisfies the statutory requirements. I have determined that a transfer of funds and authorization of appropriations for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is in the national interest. In an April 4, 2018 memorandum, "Securing the Southern Border of the United States," the President directed DoD to assist DHS in stopping the flow of illegal drugs into the United States. The reprogramming action is necessary to advance that goal. I have also determined that the other requirements of section 8005 and 9002 of the DoD Appropriations Act, 2019, and section 1001 and 1512 of the John S. McCain National Defense Authorization Act for FY 2019 are met as set forth below:

- The items to be funded (El Centro Sector Project 1, Tucson Sector Project 1, Tucson Sector Project 2, and Tucson Sector Project 3) are a higher priority than the items from which funds and authorizations are transferred because these projects are necessary in the national interest to prevent the flow of drugs into the United States, and the items from which funds and authorizations are transferred are excess or early to need.
- Support to law enforcement under section 284 for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is a military requirement assigned by statute. The need to provide support for the above projects was an unforeseen military requirement not known at the time of the FY 2019 budget request.



OSD004791-19/CMD005911-19

- Support under section 284 for construction of roads and fences and the installation of lighting, including for the projects listed above, has not been denied by Congress. Congress has not enacted legislation that denies funding for the item referenced in the transfer – namely counter-drug activities funding, including fence construction, under § 284(b)(7).

I have determined that providing the requested support for the projects listed above will not adversely affect the military preparedness of the United States. The sources of funds to be utilized to provide this support are identified in the Enclosure. Utilizing these funds for support to DHS does not affect the military preparedness of the United States because they are excess or early to current programmatic needs.

This \$1.5B in funds will be allocated to the Department of the Army with instructions to allocate it further to the U.S. Army Corps of Engineers to undertake fence and road construction and lighting installation, including initial project scoping and contracting, for the approved projects.

No funds may be transferred or re-programmed from the drug-demand-reduction program, the National Guard counter-drug program, or the National Guard counter-drug schools program in order to fund subsection 284(b)(7) support to DHS.

You will comply with all statutory requirements, but will do so without regard to comity-based policies that require prior approval from congressional committees.

My point of contact is Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security.



Patrick M. Shanahan
Acting

Enclosure:
As stated

cc:
Secretaries of the Military Departments
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Policy
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant Secretary of Defense for Homeland Defense and Global Security
Assistant to the Secretary of Defense for Public Affairs
Commander, U.S. Army Corps of Engineers

Unclassified REPROGRAMMING ACTION - INTERNAL REPROGRAMMING

Page 1 of 1

Subject: Drug Interdiction and Counter-Drug Activities, Defense						DoD Serial Number: FY 19-16 IR		
Appropriation Title: Various Appropriations						Includes Transfer? Yes		

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This reprogramming action transfers \$1,500,000 million from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation for drug interdiction and counter-drug activities consistent with the provisions in division A of Title VI of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019.

Realignment of funds between Drug Interdiction projects may be accomplished only with the concurrence of the Office of the Deputy Assistant Secretary of Defense, Counternarcotics and Global Threats. No funds made available in this reprogramming action may be obligated for projects pursuant to sections 321, 322, or 333 of Title 10, United States Code. This prohibition will be noted on all Funding Authorization Documents.

FY 2019 REPROGRAMMING INCREASE:**+1,500,000****Operation and Maintenance, Army, 19/19****+1,500,000****Budget Activity 01: Operating Forces**

Counter-Narcotics Support	-	1,216,874	+1,500,000	2,716,874
---------------------------	---	-----------	------------	-----------

FY 2019 REPROGRAMMING DECREASE:**-1,500,000****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****-1,500,000****Budget Activity 01: Counter-Narcotics Support**

	1,738,306	1,738,306	-1,500,000	238,306
--	-----------	-----------	------------	---------

Explanation: Transfers funds from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation to support the Department of Homeland Security (DHS) request for DoD to support drug interdiction and counter-drug activities through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States.

Approved (Signature and Date)

Unclassified

REPROGRAMMING ACTION

Page 1 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
Line Item								
a	b	c	d	e	f	g	h	i

This reprogramming action is submitted because these actions use general and special transfer authority. This reprogramming action provides funding in support of higher priority items, based on unforeseen military requirements, than those for which originally appropriated; and is determined to be necessary in the national interest. It meets all administrative and legal requirements, and none of the items has previously been denied by the Congress.

Part I of this reprogramming action transfers \$818.465 million between Fiscal Year (FY) 2019 Defense appropriations. This reprogramming action uses \$818.465 million of general transfer authority pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

Part II of this reprogramming action transfers \$681.535 million between FY 2019 Title IX, Overseas Contingency Operations (OCO) Defense appropriations. This reprogramming action uses \$681.535 million of special transfer authority pursuant to section 9002 of Title IX, OCO, of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019 and section 1512 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

PART I

FY 2019 REPROGRAMMING INCREASE: **+818,465**

Drug Interdiction and Counter-Drug Activities, Defense, 19/19 **+818,465**

Budget Activity 01: Counter-Narcotics Support

238,306	238,306	+818,465	1,056,771
---------	---------	----------	-----------

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S. Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

Approved (Signature and Date)

Unclassified

REPROGRAMMING ACTION

Page 2 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action							DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations							Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i
<u>FY 2019 REPROGRAMMING DECREASES:</u>						<u>-818,465</u>		
<u>ARMY DECREASES</u>						<u>-35,959</u>		
<u>Reserve Personnel, Army, 19/19</u>						<u>-10,599</u>		
<u>Budget Activity 01: Reserve Component Training and Support</u>								
		4,873,661		4,873,661		-10,599		4,863,062
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.018 million) and Continuation Pay (CP) (\$-5.581 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<u>National Guard Personnel, Army, 19/19</u>						<u>-25,360</u>		
<u>Budget Activity 01: Reserve Component Training and Support</u>								
		8,980,394		8,980,394		-25,360		8,955,034
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-14.503 million) and Continuation Pay (CP) (\$-10.857 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<u>NAVY DECREASES</u>						<u>-129,251</u>		
<u>Military Personnel, Navy, 19/19</u>						<u>-88,503</u>		
<u>Budget Activity 01: Pay and Allowances of Officers</u>								
		8,840,745		8,840,745		-33,002		8,407,743
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-25.496 million) and Continuation Pay (CP) (\$-7.506 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<u>Budget Activity 02: Pay and Allowances of Enlisted</u>								
		19,702,868		19,702,868		-55,501		19,647,367
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-37.733.million) and Continuation Pay (CP) (\$-17.768 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								

Unclassified

REPROGRAMMING ACTION

Page 3 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA			
Appropriation Title: Various Appropriations						Includes Transfer? Yes			
Component Serial Number:		(Amounts in Thousands of Dollars)							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i
Military Personnel, Marine Corps, 19/19						-36,653			
<u>Budget Activity 01: Pay and Allowances of Officers</u>									
		3,065,655		3,065,655		-12,030		3,053,625	
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-12.030 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.									
<u>Budget Activity 02: Pay and Allowances of Enlisted</u>									
		9,517,117		9,517,117		-24,623		9,492,494	
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-23.287 million) and Continuation Pay (CP) (\$-1.336 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.									
Reserve Personnel, Navy, 19/19						-4,095			
<u>Budget Activity 01: Reserve Component Training and Support</u>									
		2,064,037		2,064,037		-4,095		2,059,942	
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-2.923 million) and Continuation Pay (CP) (\$-1.172 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.									
AIR FORCE DECREASES						-402,255			
Military Personnel, Air Force, 19/19						-45,249			
<u>Budget Activity 01: Pay and Allowances of Officers</u>									
		9,773,411		9,771,327		-45,249		9,726,078	
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-30.785 million) and Continuation Pay (CP) (\$-14.464 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.									

Unclassified

REPROGRAMMING ACTION

Page 4 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA		
Appropriation Title: Various Appropriations						Includes Transfer? Yes		
Component Serial Number:		(Amounts in Thousands of Dollars)						
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a		b	c	d	e	f	g	h i
<u>Reserve Personnel, Air Force, 19/19</u>						<u>-4,835</u>		
Budget Activity 01: Reserve Component Training and Support								
			1,885,498		1,885,498		-4,835	1,880,663
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-4.274 million) and Continuation Pay (CP) (\$-0.561 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>								
<u>National Guard Personnel, Air Force, 19/19</u>						<u>-8,571</u>		
Budget Activity 01: Reserve Component Training and Support								
			3,761,744		3,761,744		-8,571	3,753,173
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.220 million) and Continuation Pay (CP) (\$-3.351 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>								
<u>Aircraft Procurement, Air Force 19/21</u>						<u>-57,000</u>		
Budget Activity 05: Modification of In-service Aircraft								
E-3			116,865		116,865		-57,000	59,865
<p><u>Explanation:</u> Funds are available due to schedule delays in the Diminishing Manufacturing Sources Replacement of Avionics for Global Operations and Navigation (DRAGON) integration. DRAGON integration is delayed for two primary reasons. First, aircraft have been available for Programmed Depot Maintenance (PDM) at a slower than planned rate. Second, block 40/45 upgrades, which are still ongoing, must be completed before DRAGON integration. Therefore, funds for DRAGON integration are early to need.</p>								
<u>Missile Procurement, Air Force 19/21</u>						<u>-76,900</u>		
Budget Activity 02: Other Missiles								
Predator Hellfire Missile	3,437	288,765		3,437	288,765	-	-23,000	3,437 265,765
<p><u>Explanation:</u> Funds are available due to contract savings from all variants that provide precision kill capabilities. Savings are attributed to negotiated lower unit costs per missile system.</p>								

Unclassified

REPROGRAMMING ACTION

Page 5 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA			
Appropriation Title: Various Appropriations						Includes Transfer? Yes			
Component Serial Number:		(Amounts in Thousands of Dollars)							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i
Budget Activity 03: Modification of In-service Missiles									
Minuteman III Modifications			124,592		124,592		-24,300		100,292
<u>Explanation:</u> Funds are available due to a slip in the production schedule to FY 2020 for the Launch Control Block Upgrade program due to late design changes to the Journal Memory Loader and Printer.									
Air Launch Cruise Missile (ALCM)			47,632		47,632		-29,600		18,032
<u>Explanation:</u> Funds are available due to contract savings from reduced guided missile flight controller modification requirements; and due to lack of executable requirements for Support Equipment and Low Cost Mods in FY 2019.									
Space Procurement, Air Force, 19/21							-209,700		
Budget Activity 01: Space Procurement, AF									
Evolved Expendable Launch Capability			659,981		659,981		-44,900		615,081
<u>Explanation:</u> Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) launch capability mission integration required to launch this mission for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.									
Evolved Expendable Launch Vehicle (Space)									
		5	954,555	5	954,555	-1	-164,800	4	789,755
<u>Explanation:</u> Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) service for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.									

Unclassified

REPROGRAMMING ACTION

Page 6 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number:	
Appropriation Title: Various Appropriations						FY 19-02 RA	
						Includes Transfer?	
						Yes	

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

DEFENSE-WIDE DECREASES**-251,000****Chemical Agent and Munitions Destruction, Defense, 19/20****-251,000****Budget Activity 02: Chem Agents -RDT&E**

886,728

886,728

-251,000

635,728

Explanation: Funds are available due to unexecuted prior year funding plus current year appropriation that was found to be more than sufficient to cover the program's funding needs in FY 2019. This is a fact-of-life asset in Chemical Materials Activity (CMA) and Assembled Chemical Weapons Alternatives (ACWA). Funds are available based on projected costs in FY 2019 (to include additional technologies at Blue Grass Chemical Agent-Destruction Pilot Plant (PCAPP) and at the Pueblo Chemical Agent-Destruction Pilot Plant (PCAPP). Due to cost avoidance that will be gained by shortening schedules at both sites, the program has an asset. This does not inhibit the ability to pursue efforts/technologies to accelerate the destruction of the remaining declared stockpile.

Unclassified

REPROGRAMMING ACTION

Page 7 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action							DoD Serial Number: FY 19-02 RA		
Appropriation Title: Various Appropriations							Includes Transfer? Yes		
Component Serial Number:		(Amounts in Thousands of Dollars)							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i

PART II**FY 2019 REPROGRAMMING INCREASE:** **+681,535****Drug Interdiction and Counter-Drug Activities, Defense, 19/19** **+681,535**Budget Activity 01: Counter-Narcotics Support238,306 1,056,771 **+681,535** 1,738,306

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S.Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

FY 2019 REPROGRAMMING DECREASES: **-681,535****Afghanistan Security Forces Fund, 19/20** **-604,000**Budget Activity 06: Afghan National Army1,639,993 1,639,993 **-279,000** 1,360,993Budget Activity 07: Afghan National Police726,264 726,264 **-117,200** 609,064Budget Activity 08: Afghan Air Force1,728,263 1,728,263 **-71,900** 1,656,363Budget Activity 09: Afghan Special Security Forces825,480 825,480 **-135,900** 689,580

Explanation: Funds are available from the Afghanistan Security Forces Fund (ASFF) due to forward funding of Afghan National Defense and Security Forces (ANDSF) requirements in the FY 2018/2019 ASFF appropriation and from cost savings identified during a comprehensive contract management review conducted by the Commander, Combined Security Transition Command – Afghanistan (CSTC-

Unclassified

REPROGRAMMING ACTION

Page 8 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action

DoD Serial Number:

FY 19-02 RA

Appropriation Title: Various Appropriations

Includes Transfer?

Yes

Component Serial Number:

(Amounts in Thousands of Dollars)

Line Item	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

A) from September 2018 through March 2019. The revised funding levels allow the CSTC-A to provide full support to the ANDSF sustainment, infrastructure, equipment, and training and operations requirements.

Operation and Maintenance, Defense-Wide, 19/20**-77,535**Defense Security Cooperation AgencyBudget Activity 04: Administration and Servicewide Activities

1,262,434

1,262,434

-77,535

1,184,899

Explanation: Funds are available from the Coalition Support Fund (CSF) due to no projected claims for reimbursements from key cooperating nations. The Department has preserved some CSF for projected Coalition Readiness Support Program requirements and Jordan border security reimbursements.

TAB

C



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

5/9/19

MEMORANDUM FOR SECRETARY OF THE ARMY
COMMANDER, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Construction of Roads and Fences along the U.S. Southern Border in Support of the Department of Homeland Security

On February 25, 2019 the Secretary of Homeland Security requested that DoD provide support to the efforts of the Department of Homeland Security (DHS) to secure the southern border by blocking up to 11 drug-smuggling corridors along the border through the construction of fences and roads and the installation of lighting.

On March 25, 2019 I determined that the requirements of title 10, U.S. Code, section 284, had been satisfied, and I approved support pursuant to title 10, U.S. Code, section 284(b)(7), and directed the transfer of \$1B into the Drug Interdiction and Counter-Drug Activities, Defense account.

Having determined again that the requirements of title 10, U.S. Code, section 284, have been satisfied, I have decided to provide up to \$1.5B of support for El Centro Sector Project 1, Tucson Sector Project 1, Tucson Sector Project 2, and Tucson Sector Project 3 specifically by constructing 78.25 miles of 30-foot pedestrian fencing, constructing and improving roads, and installing lighting.

I have directed the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO) to transfer \$1.5B from the accounts identified in the Enclosure to my memorandum to the USD(C)/CFO into the Drug Interdiction and Counter-Drug Activities, Defense account. That \$1.5B will be allocated to the Department of the Army with instructions to further allocate it to the U.S. Army Corps of Engineers to undertake the DHS priority projects identified below, including initial project scoping and contracting:

- El Centro Sector Project 1 - 15.25 miles
- Tucson Sector Project 1 - 38 miles
- Tucson Sector Project 2 - 5 miles
- Portions of Tucson Sector Project 3 - 20 miles

The U.S. Army Corps of Engineers will be the construction agent for this support and will take all necessary action to undertake construction this fiscal year. In light of the urgent and compelling nature of the crisis at the southern border, as described by the President, the Acting Secretary of Homeland Security, and other DHS officials, you should undertake construction as quickly as possible, consistent with applicable law.



OSD004791-19/CMD005912-19

As the proponent of the requested action, Customs and Border Protection will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

My point of contact is Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security.



Patrick M. Shanahan
Acting

cc:

Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Policy
Under Secretary of Defense (Comptroller)/Chief Financial Officer
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant Secretary of Defense for Homeland Defense and Global Security
Assistant to the Secretary of Defense for Public Affairs

TAB

D

Executive Secretary

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

February 25, 2019

MEMORANDUM FOR: CAPT Hallock N. Mohler Jr.
Executive Secretary
Department of Defense (DoD)

FROM: Christina Bobb
Executive Secretary
Department of Homeland Security (DHS)

SUBJECT: Request for Assistance Pursuant to 10 U.S.C. § 284

I. Overview

As the government department tasked with border security, the Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP), is requesting that the Department of Defense assist DHS in its efforts to secure the southern border. The Secretary has directed me to transmit this request for assistance to your attention. **This memorandum supersedes the February 22, 2019 version.**

In Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (IIRIRA), 8 U.S.C. § 1103 note, Congress has directed DHS to construct border infrastructure in areas of high illegal entry to deter illegal crossing of both drugs and people into the United States. Pursuant to Section 102, DHS has identified the areas set forth in Section II below as areas of high illegal entry where CBP must take action (the Project Areas).

Within the Project Areas, DHS is experiencing large numbers of individuals and narcotics being smuggled into the country illegally. The Project Areas are also used by individuals, groups, and transnational criminal organizations as drug smuggling corridors. Mexican Cartels continue to remain dominant in these areas, influencing and controlling narcotics and human smuggling operations, within their respective strongholds.

DHS must use its authority under Section 102 of IIRIRA to install additional physical barriers and roads in the vicinity of the United States border in order to deter and prevent illegal crossings within the Project Areas. The construction of border infrastructure within the Project Areas will support DHS's ability to impede and deny illegal entry and drug smuggling activities within the Project Areas.



OSD001680-19/CMD002193-19

ER187

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 2

The Project Areas identified are adjacent to some of the most densely populated metropolitan areas of Mexico and are also home to some of the strongest and most violent drug cartels in the world. Deterring and preventing illegal cross-border activity will help stem the flow of illegal narcotics and entries in these areas. Similarly, the improved ability to impede, deny, and be mobile within the Project Areas creates a safer operational environment for law enforcement.

To support DHS's action under Section 102 of IIRIRA, DHS is requesting that DoD, pursuant to its authority under 10 U.S.C. § 284(b)(7), assist with the construction of fences roads, and lighting within the Project Areas to block drug-smuggling corridors across the international boundary between the United States and Mexico.

II. Capabilities Requested

Within the Project Areas there is existing vehicle fence and dilapidated pedestrian fencing. Vehicle fencing is intended to stop vehicles from illegally entering the United States, but can be climbed over or under by individuals. Pedestrian fencing is intended to prevent and deter individuals and vehicles from illegally crossing into the United States.

DHS requests that DoD assist in the execution of projects, within the Project Areas set forth below, to: (1) replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing; (2) construct roads; and (3) install lighting.

The new pedestrian fencing includes a Linear Ground Detection System, which is intended to, among other functions, alert Border Patrol agents when individuals attempt to damage, destroy or otherwise harm the barrier. The road construction includes the construction of new roads and the improvement of existing roads. The lighting that is requested has an imbedded camera that works in conjunction with the pedestrian fence. The lighting must be supported by grid power.

The segments of fence within the Project Areas identified below are situated on federal property. DHS will be responsible for securing, to the extent required, any other real estate interest or instrument that is required for project execution. In the event a real estate interest or instrument that is needed for project execution cannot be obtained for a segment of fence within a Project Area in a time frame that is within the requirements of this request for assistance, the segment may be withdrawn from this request. In addition, DHS will be responsible for any applicable environmental planning and compliance to include stakeholder outreach and consultation associated with the projects.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 3

Project Areas:

II.A. El Centro Sector

Within the United States Border Patrol El Centro Sector (El Centro Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 15 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below.

The specific Project Area identified below is located in Imperial County, California and has been identified by the Office of National Drug Control Policy (ONDCP) as a High Intensity Drug Trafficking Area (HIDTA). Multiple local transnational criminal organizations known for smuggling drugs into Calexico from Mexico using a variety of tactics, techniques, procedures, and varying concealment methods operate in this area, including *Cartel De Jalisco Nueva Generacion* (CJNG) as well as remnants of the *Beltran Leyva* Organization and *La Familia Michoacana* organizations. CJNG, based in Jalisco, was previously a faction of the *Sinaloa* Cartel. CJNG broke away from the *Sinaloa* Cartel and has become an established Mexican Cartel. The Mexican government has declared CJNG as one of the most dangerous cartels in the country.

Due to the close proximity of urban areas on both sides of the border, the El Centro Sector suffers from some of the quickest vanishing times – that is, the time it takes to illegally cross into the United States and assimilate into local, legitimate traffic. These quick vanishing times enable the illegal activities of transnational criminal organizations, whether they are smuggling people or narcotics.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 29,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Centro Sector. Also in fiscal year 2018, Border Patrol had approximately 200 separate drug-related events between border crossings in the El Centro Sector, through which it seized over 620 pounds of marijuana, over 165 pounds of cocaine, over 56 pounds of heroin, and over 1,600 pounds of methamphetamine.

The specific Project Area is as follows:

- *El Centro Project 1:*
 - The project begins approximately 10 miles west of the Calexico Port of Entry continuing west 15.25 miles in Imperial County.
 - Start coordinate: 32.63273, -115.922787; End coordinate: 32.652563, -115.662399

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 4

II.B. Yuma Sector

Within the United States Border Patrol Yuma Sector (Yuma Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 36 miles of existing vehicle barrier and approximately 6 miles of dilapidated pedestrian fencing with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Yuma County, Arizona.

Yuma County has been identified by the ONDCP as a HIDTA. Of particular note is the operation of the *Sinaloa* Cartel in this area. The *Sinaloa* Cartel continues to be the most powerful cartel in the country and controls illicit networks and operations in the United States. Despite the arrest of Joaquin "El Chapo" Guzman-Loera, its narcotics business has continued uninterrupted. As a result, there have been no significant changes within the *Sinaloa* Cartel's hierarchy, or any changes in the illicit operations conducted by the *Sinaloa* Cartel.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 26,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the Yuma Sector. Also during fiscal year 2018, Border Patrol had over 1,400 separate drug-related events between border crossings in the Yuma Sector, through which it seized over 8,000 pounds of marijuana, over 78 pounds of cocaine, over 102 pounds of heroin, over 1,700 pounds of methamphetamine, and over 6 pounds of fentanyl.

The replacement of ineffective pedestrian fencing in this area is necessary because the older, wire mesh design is easily breached and has been damaged to the extent that it is ineffective. Additionally, this area is notorious for border violence and narcotics smuggling. Furthermore, while the deployment of vehicle barrier in the Yuma Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States. Thus, in order to respond to these changes in tactics, DHS now requires pedestrian fencing.

The specific Project Areas are as follows:

- *Yuma Project 1:*
 - The project begins approximately 1 mile southeast of the Andrade Port of Entry continuing along the Colorado River for approximately 5 miles in Yuma County.
 - Start coordinate: 32.704197, -114.726013; End coordinate: 32.642102, -114.764632)

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 5

- *Yuma Project 2:*
 - The project involves the replacement of two segments of primary pedestrian fencing in Yuma Sector for a total of approximately 6 miles. This includes approximately 2 miles of fencing along the Colorado River.
 - Start coordinate: 32.37755528, -114.4268201; End coordinate: 32.3579244, -114.3623999;
 - The project also includes replacement of primary pedestrian fencing approximately 17 miles east of the San Luis Port of Entry, on the Barry M Goldwater Range, continuing east for approximately 4 miles.
 - Start coordinate: 32.51419938, -114.8011175; End coordinate: 32.49350559, -114.8116619
- *Yuma Project 3:*
 - The project begins approximately 0.4 miles east of the Barry M. Goldwater Range continuing approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.
 - Start coordinate: 32.232935, -113.955211; End coordinate: 32.039033, -113.33411

III.C. Tucson Sector

Within the United States Border Patrol Tucson Sector (Tucson Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 86 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Pima, Cochise, and Santa Cruz Counties, Arizona.

Pima, Cochise and Santa Cruz Counties have been identified by the ONDCP as a HIDTA. The *Sinaloa* Cartel relies on their local associates to coordinate, direct, and support the smuggling of illegal drugs and aliens from Mexico to the United States. Since Arizona is contiguous with the U.S.-Mexico International Boundary, the Tucson and Phoenix metropolitan areas are major trans-shipment and distribution points for contraband smuggling. Plaza bosses operate as a *Sinaloa* Cartel leader within their specific area of operation along the Sonora-Arizona corridor of the U.S.-Mexico International Boundary.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 52,000 apprehensions of illegal entrants attempting enter the United States between the border crossings in the Tucson Sector. Also in fiscal year 2018 Border Patrol had over 1,900 separate drug-related events between border crossings in the Tucson Sector, through which it seized over 1,600 pounds of marijuana, over 52 pounds of cocaine, over 48 pounds of heroin, over 902 pounds of methamphetamine, and over 11 pounds of fentanyl.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 6

In addition, the absence of adequate pedestrian fencing, either due to the presence of vehicle barrier only or ineffective pedestrian designs, in the Tucson sector continues to be particularly problematic as it pertains to the trafficking of illegal narcotics. Rival transnational criminal organizations frequently employ "rip crews" who leverage the remote desert environment and lack of infrastructure to steal one another's illicit cargo resulting in increased border violence.

The terrain also provides high ground to scouts seeking to protect and warn smuggling loads being passed through the area. Transnational criminal organizations have successfully utilized this advantage in furtherance of their illicit activity and for this reason the area is in need of an improved capability to impede and deny illegal crossings or people and narcotics. In addition, the area hosts a number of tourist attractions that allow illegal activity to blend into legitimate activity; avoiding detection and evading interdiction.

The specific Project Areas are as follows:

- *Tucson Project 1:*
 - The project includes replacement of two segments of vehicle barriers. The first segment begins approximately 2 miles west of the Lukeville Port of Entry continuing west approximately 30 miles.
 - Start coordinate: 32.038278, -113.331716; End coordinate: 31.890032, -112.850162
 - The second segment project begins approximately 3 miles east of the Lukeville Port of Entry and continues east approximately 8 miles in Pima County, Arizona.
 - Start coordinate: 31.8648, -112.76757; End coordinate: 31.823911, -112.634298
- *Tucson Project 2:*
 - The project includes approximately 5 miles of primary pedestrian fence replacement around the Lukeville Port of Entry extending from approximately 2 miles west of the port to approximately 3 miles east of the port.
 - Start coordinate: 31.88999921, -112.850162; End coordinate: 31.8648, -112.76757

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 7

- *Tucson Project 3:*

- The project includes three segments of vehicle barrier replacement beginning approximately 18 miles west of the Naco Port of Entry and continuing to approximately 25 miles east of the Douglas Port of Entry (or approximately 5 miles west of the Arizona/New Mexico state line) for approximately 20 miles of non-contiguous vehicle barrier replacement in Cochise County, Arizona.
- Start coordinate: 31.333754, -110.253863; End coordinate: 31.333767, -110.250286;
- Start coordinate: 31.334154, -110.152548; End coordinate: 31.334137, -110.147464;
- Start coordinate: 31.333995, -109.453305; End coordinate: 31.332759, -109.129344

- *Tucson Project 4:*

- The project begins approximately 9 miles east of the Nogales Port of Entry and continues eastward for approximately 30 miles with approximately 26 miles of non-contiguous vehicle barrier replacement in Santa Cruz and Cochise Counties, Arizona.
- Start coordinate: 31.333578, -110.79579; End coordinate: 31.333511, -110.775333;
- start coordinate: 31.33328, -110.70545; End coordinate: 31.333602, -110.288665)
- Note: An additional approximately 0.3 miles of new pedestrian fence could be built between the existing segmented vehicle barrier locations to fill existing gaps if appropriate real estate interest can be verified

- *Tucson Project 5:*

- The project includes approximately 2 miles of vehicle barrier replacement beginning approximately 4.5 miles east of the Sasabe Port of Entry continuing east in six non-continuous segments for approximately 15 miles in Pima and Santa Cruz Counties, Arizona.
- Start Coordinate: 31.460175, -111.473171; End Coordinate: 31.459673, -111.471584;
- Start Coordinate: 31.453091, -111.450959; End Coordinate: 31.449633, -111.440132;
- Start Coordinate: 31.440683, -111.412054; End Coordinate: 31.437351, -111.40168;
- Start Coordinate: 31.423471, -111.358336; End Coordinate: 31.422541, -111.355444;
- Start Coordinate: 31.42221, -111.354379; End Coordinate: 31.421321, -111.351608;

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 8

- o Start Coordinate: 31.386813, -111.243966; End Coordinate: 31.385462, -111.239759)

II.D. El Paso Sector

Within the United States Border Patrol El Paso (El Paso Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 70 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Luna, Hidalgo and Doña Ana Counties, New Mexico. Luna, Hidalgo and Doña Ana Counties have been identified by the ONDCP as a HIDTA.

There are three specific transnational criminal organizations of interest operating in the El Paso Sector - the *Sinaloa* Cartel as well as remnants of the *Juarez* Cartel and the *Beltran Leyva* Organization. In the El Paso Sector the *Sinaloa* Cartel employs a variety of tactics, techniques and procedures depending upon the terrain and environment to move drugs across the border. While the *Sinaloa* Cartel has a strong presence and control of territories at the flanks of the Sector, it does not have full control of the territory throughout the El Paso Sector. The *Juarez* Cartel, traditionally a major trafficker of marijuana and cocaine, has become an active member in opium cultivation and heroin production.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 31,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Paso Sector. Also in fiscal year 2018, Border Patrol had over 700 separate drug-related events between border crossings in the El Paso Sector, through which it seized over 15,000 pounds of marijuana, over 342 pounds of cocaine, over 40 pounds of heroin, and over 200 pounds of methamphetamine.

Although the deployment of vehicle barrier in the El Paso Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States.

Thus, in order to respond to these changes in tactics, CBP now requires pedestrian fencing. Successfully impeding and denying illegal activities or transnational criminal organizations in this area is further complicated by the close proximity of New Mexico Highway 9 to the border. In some cases the highway is less than a half a mile, allowing illegal cross-border traffic to evade detection and apprehension and quickly vanish from the border area.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 9

The specific Project Areas are as follows:

- *El Paso Project 1:*
 - The project includes 46 miles of vehicle barrier replacement beginning approximately 17.5 miles west of the Columbus Port of Entry continuing east in non-contiguous segments to approximately 35 miles east of the Columbus Port of Entry within the Luna and Doña Ana Counties, New Mexico.
 - Start Coordinate: 31.7837, -107.923151; End Coordinate: 31.783689, -107.679049;
 - Start Coordinate: 31.783672, -107.573919; End Coordinate: 31.783741, -107.038154
- *El Paso Project 2:*
 - The project includes 23.51 miles of Vehicle Barrier replacement in non-contiguous segments within Hidalgo and Luna Counties, New Mexico. The first segment begin approximately 5.1 miles east of the New Mexico/Arizona Border continuing east 4.55 miles.
 - Start Coordinate: 31.332323, -108.962631; End Coordinate: 31.332292, -108.885946;
 - The second segment begins approximately 3 miles west of the Antelope Wells Port of Entry to 3 miles east of the port of entry for 6.12 miles of Vehicle Barrier replacement.
 - Start Coordinate: 31.333368, -108.582412; End Coordinate: 31.333407, -108.47926;
 - The third segment begins approximately 20 miles west of the Columbus Port of Entry extending west 12.84 miles.
 - Start Coordinate: 31.783722, -108.182442; End Coordinate: 31.783708, -107.963193;

III. Technical Specifications

As set forth above, DHS requires road construction, installation of lighting, and the replacement of existing vehicle barrier or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS will provide DoD with more precise technical specifications as contract and project planning moves forward.

Given DHS's experience and technical expertise, DHS plans to coordinate closely with DoD throughout project planning and execution, to include review and approval of design specifications, barrier alignment and location, and other aspects of project planning and execution.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284
Page 10

IV. Sequencing

The DHS request for assistance includes approximately 218 miles in which DHS requires road construction, the installation of lighting, and the replacement of existing vehicle fencing or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS requests that DoD's support under 10 U.S.C. § 284 address the requirements in order of priority as DoD resources allow. The DHS order of priority is as follows:

1. Yuma Sector Project 1
2. Yuma Sector Project 2
3. El Paso Sector Project 1
4. El Centro Sector Project 1
5. Tucson Sector Project 1
6. Tucson Sector Project 2
7. Tucson Sector Project 3
8. Tucson Sector Project 4
9. Yuma Sector Project 3
10. El Paso Sector Project 2
11. Tucson Sector Project 5

V. Funding

DHS requests that DoD provide the above-referenced border fences, roads, and lighting on a non-reimbursable basis as support to block drug smuggling corridors.

DHS will accept custody of the completed infrastructure and account for that infrastructure in its real property records.

DHS will operate and maintain the completed infrastructure.

VI. Conclusion

DHS requests DoD assistance under 10 U.S.C. § 284 to construct fences, roads, and to install lighting in order to block drug smuggling corridors in the Project Areas set forth above. The Projects Areas set forth above are also areas of high illegal entry under IIRIRA § 102(a), and the requested fences, roads, and lighting will assist in deterring illegal crossings in the Project Areas.

TAB

E

UNCLASSIFIED//~~FOUO~~

MAR 21, 2019

ACTION MEMO

Prepared by: James Ross, OASD(HD&GS)
Phone Number: (571) 256-8325

FOR: ACTING SECRETARY OF DEFENSE**FROM:** Kenneth P. Rapuano, Assistant Secretary of Defense, Homeland Defense & Global Security**SUBJECT:** Department of Homeland Security Request for Department of Defense Support to Block Drug-Smuggling Corridors

PURPOSE: To obtain your approval of a Department of Homeland Security (DHS) request for certain assistance in blocking drug-smuggling corridors along the southern border; and for you to direct specific actions by the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO) and the Secretary of the Army/Commander, U.S. Army Corps of Engineers.

COORDINATION: This action was coordinated with SecArmy, USD(C)/CFO, OGC, ASD(SO/LIC), and the Joint Staff.

BLUF: Approving this request will support DHS's efforts to secure the southern border by blocking drug-smuggling corridors. You have the authority under 10 U.S.C. § 284 to use certain DoD funds to construct roads and fences, and to install lighting, to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotics activities of Federal law enforcement agencies.

DISCUSSION:

- On February 25, 2019, the Secretary of Homeland Security requested DoD assistance in blocking up to 11 specific drug-smuggling corridors on Federal land along the southern border of the United States. DHS requested that DoD provide this support in order of stated priority as DoD resources allow by (1) replacing existing vehicle barricades or dilapidated pedestrian barricades with construction of new pedestrian fences (i.e., fences that would block both vehicles and pedestrians), (2) constructing new and improving existing patrol roads, and (3) installing lighting. (TAB D). This support to DHS is consistent with the President's direction in his April 4, 2018, memorandum, "Securing the Southern Border of the United States" (TAB E).
- 10 U.S.C. § 284(b)(7) gives you the authority, using funds from the counter-narcotics support line in DoD's "Drug Interdiction and Counter-Drug Activities, Defense" appropriation, to construct roads and fences, and to install lighting, to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotic activities of Federal law enforcement agencies.
 - The requirements of Section 284 are met: DHS/Customs and Border Protection (CBP) is a Federal law enforcement agency; DHS has identified each project area as a drug-smuggling corridor; and the work requested by DHS falls within the scope of subsection 284(b)(7) in that it

SD CA		DSI SA	
SD SMA		DSI SMA	
SD MA		DSI MA	
CoS		DSI CA	
SD Action Gp			
ES		ESB Rvw	
ESR	363/25	ESD	843-15

UNCLASSIFIED//~~FOUO~~

OSD001680-19/CMD003528-19

ER198

involves construction of fences (including a linear ground detection system), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).

- Any support provided under Section 284, including under subsection (b)(7), is subject to 10 U.S.C. § 276, which provides that support may not be provided if the provision of such support would adversely affect the military preparedness of the United States.
- On March 1, 2019, you directed an evaluation of the DHS request for assistance (TAB F).
 - The Secretary of the Army/Commander, U.S. Army Corps of Engineers (USACE) provided preliminary cost estimates for the 11 DHS-requested border fencing construction projects, totaling \$4.47B (based on construction of a 30-foot bollard fencing) and covering 217.8 miles. If the height of the bollard were changed to 18 feet, the estimated cost would be \$3.7B. (TAB G)
 - To meet any level of the support requested by DHS, additional funds must be transferred into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation using DoD's general transfer authority (GTA), which is provided in Section 8005 of the Department of Defense Appropriations Act, 2019, and Section 1001 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019. Together, these GTA provisions allow total transfers of up to \$4B. Congressional notification is required under both sections, but there is no statutory requirement to obtain prior congressional approval.
 - The Department may use GTA only upon a determination by the Secretary of Defense that such action is necessary in the national interest, and the transfer may only be used to provide funding for higher priority items, based on unforeseen military requirements, than those items for which funds were originally appropriated, and in no case for an item for which funds or authorization have been denied by Congress.
 - The USD(C)/CFO has identified \$1B of FY 2019 Army military personnel funds as excess to current military personnel requirements and available for transfer into the Drug Interdiction and Counter-Drug Activities, Defense, appropriation (TAB H).
 - You may determine that:
 - Use of GTA is necessary in the national interest (see April 4 memo);
 - Using funding to block drug smuggling corridors is a higher priority than the Army military personnel funds that have become excess to this fiscal year's Army military personnel programmatic requirement;
 - The military requirement for this increased support to DHS was unforeseen at the time of the budget request; and
 - Congress has not denied funding or authorization for support to DHS under Section 284(b)(7).
 - The CJCS indicates that reprogramming "of these funds into the Drug Interdiction and Counter-Drug Activities, Defense account will have no immediate negative impact on joint force readiness. However, if these funds were not reprogrammed they likely would be used to address currently unfunded DoD requirements" (TAB I). The Under Secretary of Defense for



Policy (USD(P)) concurs that there is no reduction in readiness. Because there is no adverse effect on readiness and the source funds are excess to need, providing the recommended support would not adversely affect the military preparedness of the United States.

- The Secretary of the Army requests that if the full \$1B is not used for support of DHS under Section 284, the remainder be returned to the Army for reprogramming and funding of unfunded Army requirements.
- During the USD(C)/CFO's mid-year review, additional funds may be identified that are excess to need or are lower-priority programmatic requirements that will not adversely affect military preparedness. The USD(C)/CFO and the USD(P) will coordinate with the CJCS and the heads of other appropriate DoD Components to provide a recommendation regarding construction of additional DHS-requested projects under Section 284.

OPTIONS:

- DHS's request for assistance includes approximately 218 miles of road construction, lighting installation, and fencing construction, set out as 11 distinct projects. DHS specifically requested "that DoD's support under 10 U.S.C. § 284 address the requirements in order of priority as DoD resources allow."
- All projects require that the Secretary of Homeland Security use her authority to waive such legal requirements (including environmental laws) as she determines are necessary to waive to ensure expeditious construction. Prior to executing such a waiver, the Secretary of Homeland Security must consult with relevant governmental officials, Indian tribes, and property owners to minimize effects on the environment, culture, commerce, and quality of life. The DHS request provides that DHS will be responsible for applicable environmental planning and compliance, including stakeholder outreach and consultation.
- CBP has indicated that the timeline to complete consultations and execute waivers will be longer if multiple projects are undertaken.
- We also considered USACE's ability to undertake projects using its multiple award task order contract (MATOC), which was developed as a contracting vehicle for border-fencing construction and has a limit of \$350M per individual task order. USACE could propose a task order in excess of \$350M under Federal Acquisition Regulation Part 16.5 procedures. Although a contractor would have to agree to a task order above \$350M, we believe that contractors will agree to larger task orders. Using the MATOC improves contract management and may reduce legal challenges to the projects since it was competitively bid.
- Although the MATOC is not currently available because it is under protest, USACE anticipates that the bid protest will be resolved in time to support DHS. If the protest is not resolved as quickly as anticipated, USACE can use a new sole-source contract, which has somewhat higher legal risk.



- With the constraint of \$1B in available resources, USACE would be able to construct approximately 57 miles of 18-foot or 46 miles of 30-foot bollard fencing. The CBP Commissioner confirmed that CBP still strongly prefers 30-foot bollard fencing.
- The DHS order of priority, mileage, and estimated cost for each project are as follows:

DHS Priority	Project Name	Cost / Miles (\$17M/mile) 18-foot bollard	Cost/Miles (\$20.5/ mile) 30-foot bollard
1	Yuma Sector Project 1	\$ 85M / 5 miles	\$103M / 5 miles
2	Yuma Sector Project 2	\$102M / 6 miles	\$123M / 6 miles
3	El Paso Sector Project 1, segment 1	\$255M / 15 miles	\$308M / 15 miles
	El Paso Sector Project 1, segment 2	\$527M / 31 miles	\$636M / 31 miles
4	El Centro Sector Project 1	\$259M / 15.25 miles	\$313M / 15.25 miles
5	Tucson Sector Project 1	\$646M / 38 miles	\$779M / 38 miles
6	Tucson Sector Project 2	\$ 85M / 5 miles	\$103M / 5 miles
7	Tucson Sector Project 3	\$340M / 20 miles	\$410M / 20 miles
8	Tucson Sector Project 4	\$442M / 26 miles	\$533M / 26 miles
9	Yuma Sector Project 3	\$527M / 31 miles	\$636M / 31 miles
10	El Paso Sector Project 2	\$400M / 23.51 miles	\$482M / 23.51 miles
11	Tucson Sector Project 5	\$ 34M / 2 miles	\$41M / 2 miles

- Addressing the DHS request in order of priority results in the following options:
 - **Option 1:** DHS “Top 3” Priorities: \$969M; 57 miles of 18-foot bollard fencing (\$17M/mile).
PRO: This course of action provides the most mileage for \$1B and meets DHS’s “Top 3” Border Fencing counter-drug priorities. By building to the 18-foot bollard standard, sufficient savings will be realized to complete all 3 projects for \$1B. El Paso Sector Project 1 would tie into existing fencing that is 18-feet high. All projects may be undertaken using the USACE MATOC, thereby limiting the number of contractors able to mount protests.
CON: Does not meet DHS’s desire for 30-foot bollard fencing. USACE would have to justify exceeding the MATOC’s normal \$350M ceiling and would have to obtain concurrence of the contractor awarded with a task order for Segment 2 of El Paso Sector Project 1. Additionally, there is a greater risk of being unable to execute the projects this fiscal year due to CBP capacity issues in completing multiple environmental consultations and waivers. Requires USACE to manage more projects.
 - **Option 2:** El Paso Sector Project 1: \$943M; 46 miles of 30-foot bollard fencing (\$20.5M/mile).
PRO: Highest-priority single project within available funding. Requires only one use of DHS’s waiver authority. Meets DHS’s desire for 30-foot bollard fencing.
CON: Does not account for DHS’s two highest priority projects. USACE may award both segments of this project using the MATOC, but Segment 2 (which is above the \$350M ceiling) requires contractor consent.
 - **Option 3:** DHS Priorities 1, 2, 3 (segment 1), 4, and 6: \$948M; 46.25 miles of 30-foot bollard fencing.



PRO: Fully funds the two highest and four of the top six DHS priority projects. Meets DHS's desire for 30-foot bollard fencing. All projects may be undertaken using the USACE MATOC, thereby limiting the number of contractors able to mount protests.

CON: Funds only one segment of DHS Priority 3. Fewer miles than Option 1. Additionally, there is a greater risk of being unable to execute projects this fiscal year due to CBP capacity issues in completing multiple environmental consultations and waivers. In particular, DHS Priority 6 includes an environmentally sensitive area, which could further extend the time required for consultations and delay issuance of a waiver for that specific project. Requires USACE to manage more projects.

RECOMMENDATIONS:

1) Determine, in light of the views of the CJCS and the USD(P), that providing up to \$1B in support does not adversely affect the military preparedness of the United States because there is no adverse effect on readiness and the source funds are excess to need.

Approve: HMS Disapprove: _____ Other: _____
MAR 25 2019

2) Approve Option 1 -- immediate DoD support to DHS's Priority Projects 1, 2, and 3 (57 miles of 18-foot bollard fence), and sign the letter to the Secretary of Homeland Security at TAB A. This option meets DHS's top 3 priority projects and provides the maximum mileage of 18-foot bollard fencing for \$1B.

Approve: HMS Disapprove: _____ Other: _____
MAR 25 2019

3) Determine that transferring \$1B in funds for this support is in the national interest and that the other requirements of Section 8005 of the Department of Defense Appropriations Act, 2019, and Section 1001 of the John S. McCain NDAA for FY 2019 are met (i.e., that the item to be funded is higher priority than the item for which funds and authority are transferred, that the increase in Section 284(b)(7) support is based on unforeseen military requirements, and that the programmatic increase in Section 284(b)(7) support to DHS has not been denied by Congress).

Approve: HMS Disapprove: _____ Other: _____
MAR 25 2019

4) Sign the memorandum to the USD(C)/CFO at TAB B -- authorizing the transfer of up to \$1B of FY 2019 Army military personnel funds into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation, and direct the USD(C)/CFO, upon approval of the transfer by the Office of Management and Budget, to notify Congress promptly of the transfer.

Approve: HMS Disapprove: _____ Other: _____
MAR 25 2019

5) Sign the memorandum to the Secretary of the Army at TAB C, authorizing the Commander, U.S. Army Corps of Engineers, to undertake DHS Priority Project 3.

Approve: HMS Disapprove: _____ Other: _____
MAR 25 2019

COORDINATION: TAB J

Attachments: As stated



TAB

F

UNCLASSIFIED

APR 06 2019

ACTION MEMO

DUSDP *[Signature]*Prepared by: James Ross, OASD(HD&GS)
Phone Number: (571) 256-8325

FOR: ACTING SECRETARY OF DEFENSE

FROM: Kenneth P. Rapuano, Assistant Secretary of Defense, Homeland Defense & Global Security *[Signature: Kenneth P. Rapuano]*

APR 05 2019

SUBJECT: Modification of DoD Support to Block Drug-Smuggling Corridors

PURPOSE: To obtain your approval of a Department of a Homeland Security (DHS) request to modify steel bollard fencing specifications for projects you previously approved under 10 U.S.C. § 284.

COORDINATION: This action was coordinated with SecArmy and OGC.

BLUF: Approving this request will meet DHS's preferred specifications for barrier construction, but may result in less miles of coverage (estimated decrease from 57 to 48) due to increased cost. Also, the final bullet on page two addresses the Secretary of Defense request for DHS documents regarding 10 U.S.C. § 284.

DISCUSSION:

- On March 25, 2019, you approved a DHS request for assistance in blocking drug-smuggling corridors on the southern border (TAB C). You have the authority under 10 U.S.C. § 284 to use certain DoD funds to construct roads and fences, and to install lighting, to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotics activities of Federal law enforcement agencies.
- Specifically, you approved construction of roads and 18-foot steel bollard fences and installation of lighting for 3 DHS priority projects totaling 57 miles of fencing at an estimated cost of \$969 million:
 - DHS Priority 1: Yuma Sector Project 1, 5 miles/18-foot fence/\$85 million
 - DHS Priority 2: Yuma Sector Project 2, 6 miles/18-foot fence/\$102 million
 - DHS Priority 3: El Paso Sector Project 1, 46 miles/18-foot fence/\$782 million
- On March 29, 2019, DHS requested that DoD modify the specifications for the projects that you approved on March 25, 2019. DHS now requests that all fencing installed by DoD include a 5-foot anti-climb steel plate. Additionally, DHS requests that DoD construct 30-foot steel bollard fencing for Yuma Sector Project 1 (DHS Priority 1) and El Paso Sector Project 1 (DHS Priority 3). The fence for DHS Priority 2, Yuma Sector Project 2, remains 18-foot steel bollard (TAB D).

SD CA		DSD SA	
SD SMA	<i>4/19</i>	DSD SMA	
SD MA		DSD MA	
CoS		DSD CA	
SD Action Grp			
ES	<i>4/18</i>	ESB Raw	<i>4/18</i>
ESR		ESD	

UNCLASSIFIED

ER204



OSD003269-19/CMD004376-19

UNCLASSIFIED

- DHS requests that DoD directly follow the prioritization provided in their February 25, 2019, request for assistance as closely as possible, even if this means completing a portion of the fencing on some projects.
- A comparison of the projects you approved on March 25, 2019, with the modification provided by DHS on March 29, 2019, is provided in the table below. Costs and mileage figures are estimates and may change depending on the actual cost of construction.

DHS Priority	Project Name	SecDef Approved March 25, 2019 (\$17M/mile) 18-foot bollard	DHS Modification March 29, 2019 Height Varies by Project Now includes anti-climb feature	
			18-foot \$17.4M/mile (Note 1)	30-foot \$20.9M/mile (Note 1)
1	Yuma Sector Project 1	\$85M / 5 miles		\$104.5M / 5 miles
2	Yuma Sector Project 2	\$102M / 6 miles	\$104.4M / 6 miles	
3	El Paso Sector Project 1, segment 1	\$255M / 15 miles		\$313.5M / 15 miles
	El Paso Sector Project 1, segment 2	\$527M / 31 miles		\$459.8M / 22 miles (Note 2)
Total Cost / Mileage		\$969M / 57 miles	\$982.2M / 48 miles	

Notes:

1. The U.S. Army Corps of Engineers (USACE) estimates the 5-foot anti-climb feature will add \$400K/mile to fence cost.
2. Undertaking construction in clearly defined segments, USACE should maximize the number of miles of approved barrier projects undertaken within the funds (\$1B) available.

- USACE should use the design-build construction contract methodology to maximize the number of miles of approved barrier projects undertaken within the funds (\$1B) available. As undefinitized contract actions are definitized, the work must be executed in clearly defined segments, and government commitments cannot exceed funds available. USACE estimates it should be able to provide at least 48 total miles of steel bollard fencing at a cost of \$982.2 million:
 - DHS Priority 1: Yuma Sector Project 1, 5 miles/30-foot fence/\$104.5 million
 - DHS Priority 2: Yuma Sector Project 2, 6 miles/18-foot fence/\$104.4 million
 - DHS Priority 3: El Paso Sector Project 1, 37 miles/30-foot fence/\$773.3 million
- The documents at TAB D and TAB E provide all the documentation provided by DHS for the use of 10 U.S.C. § 284 to construct fencing and roads, and to install lighting, to block

UNCLASSIFIED

ER205

UNCLASSIFIED

drug-smuggling corridors. These documents are submitted in response to your request to provide DHS Documentation (OSD003222-19) (TAB F).

RECOMMENDATIONS:

1) Approve DHS's modifications as stated in its March 29, 2019, request, 2) sign the letter to the Secretary of Homeland Security at TAB A, and 3) sign the letter at TAB B directing USACE to construct steel bollard fencing for DHS Priority Projects 1, 2, and 3 using the new specifications.

Approve:  Disapprove: _____ Other: _____
APR - 9 2019

COORDINATION: TAB G

Attachments:
As stated

TAB

G



CHAIRMAN OF THE JOINT CHIEFS OF STAFF

WASHINGTON, D.C. 20318-9999

CM-0117-19
8 May 2019

INFO MEMO

FOR: ACTING SECRETARY OF DEFENSE *MR*

DepSec Info *AM*

FROM: General Joseph F. Dunford Jr., CJCS *JFD*

SUBJECT: (U) Request for Assistance Pursuant to 10 U.S.C. 284 – Approval of Second Tranche

- (U) I have reviewed the list of proposed funding sources for the reprogramming of an additional \$1.5B into the Drug Interdiction and Counter-Drug Activities – Defense account to construct fences, roads, and lighting in support of the Department of Homeland Security's border security mission to block drug smuggling corridors.
- (U) The proposed program adjustments do not immediately impact the preparedness of the joint force. However, some of the sources identified for reprogramming could be used to address currently unfunded DoD requirements.
- (U) I will continue to evaluate and advise on potential impacts to force readiness and Combatant Command missions as future reprogramming decisions are made.

COORDINATION: NONE

Prepared by: Lieutenant General Andrew P. Poppas, USA; Director, J-3; 703-697-3702

TAB

H

Policy Coordination Sheet

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284 – Approval of Support to the Department of Homeland Security

Control Number: *USP001372-19*

<u>Title/Organization</u>	<u>Name</u>	<u>Coordination Requested</u>	<u>Coordination Received</u>
Army	Dr. Mark Esper	May 6, 2019	May 8, 2019
Joint Staff	GEN Joseph Dunford	May 6, 2019	May 8, 2019
USD(C)/CFO	Ms. Elaine McCusker	May 6, 2019	May 8, 2019
OGC	Mr. William Castle	May 6, 2019	May 8, 2019

EXHIBIT 1

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

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00892-HSG

DECLARATION OF MILLARD F. LEMASTER

I, Millard F. LeMaster, declare as follows:

1. I am the Deputy Chief, United States Border Patrol Strategic Planning and Analysis Directorate (SPAD), U.S. Customs and Border Protection (CBP), an agency of the Department of Homeland Security. I have held this position since February 2018. Over the course of my career I have served in multiple roles within the United States Border Patrol (USBP). I entered on duty with USBP in 2000. In that time I have served as a frontline Border Patrol Agent for five years, a Supervisory Border Patrol Agent for two different USBP Stations over the course of four years, and a second line supervisor in the field (Field Operations Supervisor, Watch Commander, and Deputy Patrol Agent In Charge) for two years until promotion to USBP Headquarters. Over the course of more

than five years at the headquarters level I have served as an Assistant Chief, Associate Chief, and finally as the Deputy Chief for SPAD.

2. In my current position I am personally aware of the fiscal year 2019 year-to-date drug apprehensions for the United States Border Patrol El Paso Sector (El Paso Sector) and the United States Border Patrol Yuma Sector (Yuma Sector).
3. The statements in this declaration are based on my personal knowledge and information that I have received in my official capacity.
4. Year-to-date in fiscal year 2019, there have been 314 drug events between border crossings in the El Paso Sector, through which USBP has seized over 9,500 pounds of marijuana, over 113 pounds of cocaine, over 139 ounces of heroin, over 228 pounds of methamphetamine, and over two pounds of fentanyl.
5. Year-to-date in fiscal year 2019, there have been 478 drug events between border crossings in the Yuma Sector, through which USBP has seized over 2,166 pounds of marijuana, .04 pounds of cocaine, over 160 ounces of heroin, over 664 pounds of methamphetamine, and over 36 pounds of fentanyl.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 28th day of May, 2019.



Millard F. LeMaster
Deputy Chief
Strategic Planning and Analysis Directorate
United States Border Patrol

JAMES M. BURNHAM
Deputy Assistant Attorney General
JOHN R. GRIFFITHS
Director, Federal Programs Branch
ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch
ANDREW I. WARDEN (IN #23840-49)
Senior Trial Counsel
KATHRYN C. DAVIS
MICHAEL J. GERARDI
LESLIE COOPER VIGEN
RACHAEL WESTMORELAND
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Tel.: (202) 616-5084
Fax: (202) 616-8470

Attorneys for Defendants

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

SIERRA CLUB, *et al.*,
Plaintiffs,
v.
DONALD J. TRUMP, *et al.*,
Defendants.

No. 4:19-cv-00892-HSG

NOTICE OF APPEAL

**PRELIMINARY INJUNCTION
APPEAL**

1 PLEASE TAKE NOTICE that Defendants Donald J. Trump, President of the United States,
2 Patrick M. Shanahan, Acting Secretary of Defense, Kevin K. McAleenan, Acting Secretary of
3 Homeland Security, and Steven T. Mnuchin, Secretary of the Treasury, hereby appeal to the United
4 States Court of Appeals for the Ninth Circuit from the Court's Order Granting In Part and Denying
5 In Part Plaintiffs' Motion for a Preliminary Injunction (ECF No. 144), which was issued on May
6 24, 2019.

7
8 DATE: May 29, 2019

Respectfully submitted,

9 JAMES M. BURNHAM
10 Deputy Assistant Attorney General

11 JOHN G. GRIFFITHS
12 Director, Federal Programs Branch

13 ANTHONY J. COPPOLINO
14 Deputy Director, Federal Programs Branch

15 /s/ Andrew I. Warden
16 ANDREW I. WARDEN
17 Senior Trial Counsel (IN Bar No. 23840-49)

18 RACHAEL L. WESTMORELAND
19 KATHRYN C. DAVIS
20 MICHAEL J. GERARDI
21 LESLIE COOPER VIGEN
22 Trial Attorneys
23 U.S. Department of Justice
24 Civil Division, Federal Programs Branch
25 1100 L Street, NW
26 Washington, D.C. 20530
27 Tel.: (202) 616-5084
28 Fax: (202) 616-8470

1 JAMES M. BURNHAM
Deputy Assistant Attorney General
2 JOHN R. GRIFFITHS
Director, Federal Programs Branch
3 ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch
4 ANDREW I. WARDEN (IN #23840-49)
Senior Trial Counsel
5 KATHRYN C. DAVIS
MICHAEL J. GERARDI
6 LESLIE COOPER VIGEN
7 RACHAEL WESTMORELAND
Trial Attorneys
8 U.S. Department of Justice
9 Civil Division, Federal Programs Branch
1100 L Street, NW
10 Washington, D.C. 20530
11 Tel.: (202) 616-5084
Fax: (202) 616-8470
12 *Attorneys for Defendants*

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 SIERRA CLUB, *et al.*,
17
18 Plaintiffs,
19
20 v.
21 DONALD J. TRUMP, *et al.*,
22 Defendants.
23
24
25
26
27
28

No. 4:19-cv-00892-HSG

**SECOND DECLARATION OF
KENNETH P. RAPUANO**

Hearing Date: May 17, 2019
Time: 10:00 a.m.
Place: Oakland Courthouse
Courtroom 2, 4th Floor

1 Defendants hereby submit the Second Declaration of Kenneth P. Rapuano, Assistant
2 Secretary of Defense for Homeland Defense and Global Security, dated May 13, 2019.

3 Mr. Rapuano previously submitted a declaration dated April 25, 2019 (ECF No. 64-8), that
4 explained the status of the Department of Defense's (DoD) support to the Department of
5 Homeland Security (DHS) pursuant to 10 U.S.C. § 284 in response to a February 25, 2019, request
6 from DHS for assistance in blocking up to 11 specific drug-smuggling corridors along certain
7 portions of the southern border of the United States. *See* First Rapuano Decl. ¶¶ 3-12. The
8 declaration explained that the Acting Secretary of Defense agreed to provide assistance to DHS to
9 construct fencing to block drug-smuggling corridors in three project areas along of the southern
10 border of the United States. *Id.* ¶ 4. The declaration stated that that the project identified as Yuma
11 Sector Project 2 would be constructed pursuant to 10 U.S.C. § 284 with money transferred pursuant
12 under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of
13 the John S. McCain National Defense Authorization Act for Fiscal Year. *Id.* ¶¶ 4-6, 9. Mr.
14 Rapuano's second declaration provides updated information about this project and states that the
15 U.S. Army Corps of Engineers has decided not to fund or construct Yuma Project 2 under these
16 authorities. *See* Second Rapuano Decl. ¶ 4.

17 Mr. Rapuano's first declaration also explained that DoD was in the process of conducting a
18 review of funding that might be available to support up to \$1.5 billion of additional § 284 projects
19 requested by DHS, and that decisions regarding future transfer of funds and approval of additional
20 DHS-requested projects under § 284 were expected in May 2019. *See* First Rapuano Decl. ¶ 11. Mr.
21 Rapuano's second declaration explains that, on May 9, 2019, the Acting Secretary of Defense
22 authorized the funding of four additional projects. *See* Second Rapuano Decl. ¶ 6. One project is
23 located in California (El Centro Project 1), and three projects are located in Arizona (Tucson Sector
24 Projects 1, 2, and 3). *Id.*; *see also* First Rapuano Decl., Ex. A (describing project locations). To fund
25 these four projects, the Acting Secretary of Defense decided to use DoD's general transfer authority
26 under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of
27 the John S. McCain National Defense Authorization Act for Fiscal Year 2019, as well as DoD's
28 special transfer authority under section 9002 of the Department of Defense Appropriations Act,

2019, and section 1512 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, to transfer \$1.5 billion between DoD appropriations. *See* Second Rapuano Decl. ¶ 7. On May 10, 2019, the funds were transferred to the U.S. Army Corps of Engineers. *Id.* ¶ 9. The U.S. Army Corps of Engineers expects to award contracts for the four projects by May 16, 2019, and construction will begin no earlier than 45 days after the award of the contracts. *Id.* ¶¶ 10-11.

DATE: May 13, 2019

Respectfully submitted,

JAMES M. BURNHAM
Deputy Assistant Attorney General

JOHN G. GRIFFITHS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Andrew I. Warden
ANDREW I. WARDEN
Senior Trial Counsel (IN Bar No. 23840-49)

RACHAEL L. WESTMORELAND
KATHRYN C. DAVIS
MICHAEL J. GERARDI
LESLIE COOPER VIGEN
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Tel.: (202) 616-5084
Fax: (202) 616-8470

SECOND DECLARATION OF KENNETH P. RAPUANO

I, KENNETH P. RAPUANO, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)). Among other duties, which are generally reflected in Department of Defense (DoD) Directive 5111.13, I am responsible for developing, coordinating, and overseeing implementation of DoD policy for plans and activities related to defense support of civil authorities. On April 5, 2018, the Secretary of Defense designated the ASD(HD&GS) to manage the then-newly established DoD Border Security Support Cell. The DoD Border Security Support Cell is the focal point and integrator for all requests for assistance, taskings, and information related to DoD support pursuant to the President's April 4, 2018, memo, "Securing the Southern Border of the United States."
2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.
3. I previously executed a declaration dated April 25, 2019, that explained the status of DoD's support to the Department of Homeland Security (DHS) pursuant to 10 U.S.C. § 284 in response to a February 25, 2019, request from DHS for assistance in blocking up to 11 specific drug-smuggling corridors along certain portions of the southern border of the United States. The declaration explained that, on March 25, 2019, the Acting Secretary of Defense agreed to provide assistance to DHS to construct fencing to block drug-smuggling corridors in three project areas along of the southern border of the United States. The project areas are identified and described in my declaration as Yuma Sector Project 1, Yuma Sector Project 2, and El Paso Sector Project 1. The declaration explained that the Acting Secretary of Defense decided to use DoD's general transfer authority under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to transfer \$1 billion between DoD appropriations to fund the approved projects.
4. My prior declaration also explained that the project identified as Yuma Sector Project 2 would be constructed pursuant to section 284 with money transferred pursuant under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of the John S. McCain National Defense Authorization Act for Fiscal Year. The U.S. Army Corps of Engineers has since decided not to fund or construct Yuma Project 2 under these authorities.
5. My prior declaration also explained that DoD was in the process of conducting a review of funding that might be available to support up to \$1.5 billion of additional section 284 projects requested by DHS. My declaration stated that decisions regarding future transfer of funds and approval of additional DHS-requested projects under section 284 were expected in May 2019.
6. On May 9, 2019, the Acting Secretary of Defense approved four additional section 284 projects to block drug-smuggling corridors based on DHS's February 25, 2019, request. *See*

Exhibit A. One project is located in California (El Centro Project 1), and three projects are located in Arizona (Tucson Sector Projects 1, 2, and 3).

7. Also on May 9, 2019, the Acting Secretary of Defense decided to use DoD's general transfer authority under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, as well as DoD's special transfer authority under section 9002 of the Department of Defense Appropriations Act, 2019, and section 1512 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, to transfer funds between DoD appropriations to fund the four newly approved projects. Specifically, he determined that the four projects will be funded through a transfer of \$1.5 billion to the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account. *See* Exhibit B. Source accounts and explanations as to why the funds were available are described in more detail in Exhibit C.

8. On May 10, 2019, the Under Secretary of Defense (Comptroller)/Chief Financial Officer initiated the reprogramming to transfer funds pursuant to the above authorities. Congress was promptly notified of this transfer on May 10, 2019. *See* Exhibit C.

9. On May 10, 2019, the designated \$1.5 billion was transferred from the Drug Interdiction and Counter-Drug Activities, Defense, account to the Operation and Maintenance, Army, account for use by the U.S. Army Corps of Engineers to undertake fence and road construction and lighting installation for the four projects approved on May 9, 2019.

10. The U.S. Army Corps of Engineers expects to award two contracts by May 16, 2019. One contract will be for Tucson Sector Projects 1, 2, and 3, approved on May 9, 2019. A second contract will be for El Centro Project 1 and Yuma Project 1, approved on May 9, 2019 and March 25, 2019, respectively.

11. The U.S. Army Corps of Engineers currently plans that construction of the four approved section 284 projects will begin no earlier than 45 days after the award of the contracts.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 13, 2019


KENNETH P. RAPUANO

EXHIBIT A



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

5/9/19

MEMORANDUM FOR ACTING SECRETARY OF HOMELAND SECURITY

SUBJECT: Additional Support to the Department of Homeland Security

The Department of Defense appreciates that the Department of Homeland Security (DHS) confronts a continuing and worsening crisis at the southern border. As I indicated in my March 25, 2019 letter, in which I approved the undertaking of three projects to support to your Department's effort to secure the southern border by blocking drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting, the Department of Defense has continued to assess the availability of resources and other factors in order to determine how additional similar support can be provided to DHS.

10 U.S.C. § 284(b)(7) gives the Department of Defense the authority to construct roads and fences and to install lighting to block drug-smuggling corridors across international boundaries of the United States in support of counterdrug activities of Federal law enforcement agencies. For the following reasons, I have concluded that the support requested on February 25, 2019 satisfies the statutory requirements:

- DHS/Customs and Border Protection (CBP) is a Federal law enforcement agency;
- DHS has identified each project area as a drug-smuggling corridor; and
- The work requested by DHS to block these identified drug-smuggling corridors involves construction of fences (including linear ground detection systems), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).

Accordingly, at this time I have decided to undertake 4 additional projects, namely El Centro Sector Project 1, Tucson Sector Project 1, Tucson Sector Project 2, and Tucson Sector Project 3, by constructing 78.25 miles of 30-foot pedestrian fencing, constructing and improving roads, and installing lighting as described in the February 25, 2019 request.

As the proponent of the requested action, CBP will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. I request that DHS place the highest priority on completing these actions for the projects identified above. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

The Commander, U.S. Army Corps of Engineers, is authorized to coordinate directly with DHS/CBP and immediately begin planning and executing up to \$1.5B in support to DHS/CBP by undertaking the projects identified above.

Patrick M. Shanahan
Acting

ER222

cc:

Secretary of the Army

Chairman of the Joint Chiefs of Staff

Under Secretary of Defense for Policy

Under Secretary of Defense (Comptroller)/Chief Financial Officer

General Counsel of the Department of Defense

Assistant Secretary of Defense for Legislative Affairs

Assistant Secretary of Defense for Homeland Defense and Global Security

Assistant to the Secretary of Defense for Public Affairs

Commander, U.S. Army Corps of Engineers

EXHIBIT B



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

5/9/19

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF
FINANCIAL OFFICER

SUBJECT: Additional Funding Construction in Support of the Department of Homeland
Security Pursuant to 10 U.S.C. § 284

On February 25, 2019 the Secretary of Homeland Security requested that DoD provide support to the efforts of the Department of Homeland Security (DHS) to secure the southern border by blocking up to 11 drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting. I have determined that the requirements of title 10, U.S. Code, section 284, have been satisfied. Accordingly, I have approved DoD support for El Centro Sector Project 1, Tucson Sector Project 1, Tucson Sector Project 2, and Tucson Sector Project 3 (DHS Priority Projects 4, 5, 6, and 7) and have authorized up to \$1.5B in funding for the construction of 30-foot pedestrian fencing, the construction and improvement of roads, and the installation of lighting to block drug-smuggling corridors along the southern border.

I have also decided that the Department will transfer both base funds and funds designated for Overseas Contingency Operations to provide the support described above. This support will be funded through a transfer of \$1.5B from the accounts identified in the Enclosure into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation. I am advised that the amounts are excess or early to current programmatic needs. You should undertake a reprogramming action to effectuate such transfer, as authorized by law.

The reprogramming action that I am directing satisfies the statutory requirements. I have determined that a transfer of funds and authorization of appropriations for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is in the national interest. In an April 4, 2018 memorandum, "Securing the Southern Border of the United States," the President directed DoD to assist DHS in stopping the flow of illegal drugs into the United States. The reprogramming action is necessary to advance that goal. I have also determined that the other requirements of section 8005 and 9002 of the DoD Appropriations Act, 2019, and section 1001 and 1512 of the John S. McCain National Defense Authorization Act for FY 2019 are met as set forth below:

- The items to be funded (El Centro Sector Project 1, Tucson Sector Project 1, Tucson Sector Project 2, and Tucson Sector Project 3) are a higher priority than the items from which funds and authorizations are transferred because these projects are necessary in the national interest to prevent the flow of drugs into the United States, and the items from which funds and authorizations are transferred are excess or early to need.
- Support to law enforcement under section 284 for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is a military requirement assigned by statute. The need to provide support for the above projects was an unforeseen military requirement not known at the time of the FY 2019 budget request.



ER225

- Support under section 284 for construction of roads and fences and the installation of lighting, including for the projects listed above, has not been denied by Congress. Congress has not enacted legislation that denies funding for the item referenced in the transfer – namely counter-drug activities funding, including fence construction, under § 284(b)(7).

I have determined that providing the requested support for the projects listed above will not adversely affect the military preparedness of the United States. The sources of funds to be utilized to provide this support are identified in the Enclosure. Utilizing these funds for support to DHS does not affect the military preparedness of the United States because they are excess or early to current programmatic needs.

This \$1.5B in funds will be allocated to the Department of the Army with instructions to allocate it further to the U.S. Army Corps of Engineers to undertake fence and road construction and lighting installation, including initial project scoping and contracting, for the approved projects.

No funds may be transferred or re-programmed from the drug-demand-reduction program, the National Guard counter-drug program, or the National Guard counter-drug schools program in order to fund subsection 284(b)(7) support to DHS.

You will comply with all statutory requirements, but will do so without regard to comity-based policies that require prior approval from congressional committees.

My point of contact is Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security.



Patrick M. Shanahan
Acting

Enclosure:
As stated

cc:
Secretaries of the Military Departments
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Policy
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant Secretary of Defense for Homeland Defense and Global Security
Assistant to the Secretary of Defense for Public Affairs
Commander, U.S. Army Corps of Engineers

EXHIBIT C

Unclassified

REPROGRAMMING ACTION - INTERNAL REPROGRAMMING

Page 1 of 1

Subject: Drug Interdiction and Counter-Drug Activities, Defense	DoD Serial Number: FY 19-16 IR
Appropriation Title: Various Appropriations	Includes Transfer? Yes

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This reprogramming action transfers \$1,500,000 million from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation for drug interdiction and counter-drug activities consistent with the provisions in division A of Title VI of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019.

Realignment of funds between Drug Interdiction projects may be accomplished only with the concurrence of the Office of the Deputy Assistant Secretary of Defense, Counternarcotics and Global Threats. No funds made available in this reprogramming action may be obligated for projects pursuant to sections 321, 322, or 333 of Title 10, United States Code. This prohibition will be noted on all Funding Authorization Documents.

FY 2019 REPROGRAMMING INCREASE:**+1,500,000****Operation and Maintenance, Army, 19/19****+1,500,000****Budget Activity 01: Operating Forces**

Counter-Narcotics Support	-	1,216,874	+1,500,000	2,716,874
---------------------------	---	-----------	------------	-----------

FY 2019 REPROGRAMMING DECREASE:**-1,500,000****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****-1,500,000****Budget Activity 01: Counter-Narcotics Support**

	1,738,306	1,738,306	-1,500,000	238,306
--	-----------	-----------	------------	---------

Explanation: Transfers funds from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation to support the Department of Homeland Security (DHS) request for DoD to support drug interdiction and counter-drug activities through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States.

Approved (Signature and Date)

Unclassified

REPROGRAMMING ACTION

Page 1 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action		DoD Serial Number: FY 19-02 RA
Appropriation Title: Various Appropriations		Includes Transfer? Yes

Component Serial Number: Line Item	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This reprogramming action is submitted because these actions use general and special transfer authority. This reprogramming action provides funding in support of higher priority items, based on unforeseen military requirements, than those for which originally appropriated; and is determined to be necessary in the national interest. It meets all administrative and legal requirements, and none of the items has previously been denied by the Congress.

Part I of this reprogramming action transfers \$818.465 million between Fiscal Year (FY) 2019 Defense appropriations. This reprogramming action uses \$818.465 million of general transfer authority pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

Part II of this reprogramming action transfers \$681.535 million between FY 2019 Title IX, Overseas Contingency Operations (OCO) Defense appropriations. This reprogramming action uses \$681.535 million of special transfer authority pursuant to section 9002 of Title IX, OCO, of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019 and section 1512 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

PART I**FY 2019 REPROGRAMMING INCREASE:****+818,465****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****+818,465****Budget Activity 01: Counter-Narcotics Support**

238,306

238,306

+818,465

1,056,771

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S. Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

Approved (Signature and Date)

Unclassified

REPROGRAMMING ACTION

Page 2 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA		
Appropriation Title: Various Appropriations						Includes Transfer? Yes		
Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i
<u>FY 2019 REPROGRAMMING DECREASES:</u>						<u>-818,465</u>		
<u>ARMY DECREASES</u>						<u>-35,959</u>		
<u>Reserve Personnel, Army, 19/19</u>						<u>-10,599</u>		
<u>Budget Activity 01: Reserve Component Training and Support</u>								
		4,873,661		4,873,661		-10,599		4,863,062
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.018 million) and Continuation Pay (CP) (\$-5.581 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<u>National Guard Personnel, Army, 19/19</u>						<u>-25,360</u>		
<u>Budget Activity 01: Reserve Component Training and Support</u>								
		8,980,394		8,980,394		-25,360		8,955,034
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-14.503 million) and Continuation Pay (CP) (\$-10.857 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<u>NAVY DECREASES</u>						<u>-129,251</u>		
<u>Military Personnel, Navy, 19/19</u>						<u>-88,503</u>		
<u>Budget Activity 01: Pay and Allowances of Officers</u>								
		8,840,745		8,840,745		-33,002		8,407,743
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-25.496 million) and Continuation Pay (CP) (\$-7.506 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<u>Budget Activity 02: Pay and Allowances of Enlisted</u>								
		19,702,868		19,702,868		-55,501		19,647,367
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-37.733.million) and Continuation Pay (CP) (\$-17.768 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								

Unclassified

REPROGRAMMING ACTION

Page 3 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
Line Item								
a	b	c	d	e	f	g	h	i

Military Personnel, Marine Corps, 19/19**-36,653****Budget Activity 01: Pay and Allowances of Officers**

3,065,655

3,065,655

-12,030

3,053,625

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-12.030 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

Budget Activity 02: Pay and Allowances of Enlisted

9,517,117

9,517,117

-24,623

9,492,494

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-23.287 million) and Continuation Pay (CP) (\$-1.336 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

Reserve Personnel, Navy, 19/19**-4,095****Budget Activity 01: Reserve Component Training and Support**

2,064,037

2,064,037

-4,095

2,059,942

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-2.923 million) and Continuation Pay (CP) (\$-1.172 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

AIR FORCE DECREASES**-402,255****Military Personnel, Air Force, 19/19****-45,249****Budget Activity 01: Pay and Allowances of Officers**

9,773,411

9,771,327

-45,249

9,726,078

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-30.785 million) and Continuation Pay (CP) (\$-14.464 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

Unclassified

REPROGRAMMING ACTION

Page 4 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA			
Appropriation Title: Various Appropriations						Includes Transfer? Yes			
Component Serial Number:		(Amounts in Thousands of Dollars)							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity		Amount		Quantity		Amount	
a		b		c		d		e	
		f		g		h		i	
<u>Reserve Personnel, Air Force, 19/19</u>						<u>-4,835</u>			
Budget Activity 01: Reserve Component Training and Support									
		1,885,498		1,885,498		-4,835		1,880,663	
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-4.274 million) and Continuation Pay (CP) (\$-0.561 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>									
<u>National Guard Personnel, Air Force, 19/19</u>						<u>-8,571</u>			
Budget Activity 01: Reserve Component Training and Support									
		3,761,744		3,761,744		-8,571		3,753,173	
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.220 million) and Continuation Pay (CP) (\$-3.351 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>									
<u>Aircraft Procurement, Air Force 19/21</u>						<u>-57,000</u>			
Budget Activity 05: Modification of In-service Aircraft									
E-3		116,865		116,865		-57,000		59,865	
<p><u>Explanation:</u> Funds are available due to schedule delays in the Diminishing Manufacturing Sources Replacement of Avionics for Global Operations and Navigation (DRAGON) integration. DRAGON integration is delayed for two primary reasons. First, aircraft have been available for Programmed Depot Maintenance (PDM) at a slower than planned rate. Second, block 40/45 upgrades, which are still ongoing, must be completed before DRAGON integration. Therefore, funds for DRAGON integration are early to need.</p>									
<u>Missile Procurement, Air Force 19/21</u>						<u>-76,900</u>			
Budget Activity 02: Other Missiles									
Predator Hellfire Missile		3,437		288,765		-23,000		3,437	
		265,765							
<p><u>Explanation:</u> Funds are available due to contract savings from all variants that provide precision kill capabilities. Savings are attributed to negotiated lower unit costs per missile system.</p>									

Unclassified

REPROGRAMMING ACTION

Page 5 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	

Component Serial Number: Line Item	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

Budget Activity 03: Modification of In-service Missiles

Minuteman III Modifications	124,592	124,592	-24,300	100,292
-----------------------------	---------	---------	---------	---------

Explanation: Funds are available due to a slip in the production schedule to FY 2020 for the Launch Control Block Upgrade program due to late design changes to the Journal Memory Loader and Printer.

Air Launch Cruise Missile (ALCM)	47,632	47,632	-29,600	18,032
----------------------------------	--------	--------	---------	--------

Explanation: Funds are available due to contract savings from reduced guided missile flight controller modification requirements; and due to lack of executable requirements for Support Equipment and Low Cost Mods in FY 2019.

Space Procurement, Air Force, 19/21-209,700Budget Activity 01: Space Procurement, AFEvolved Expendable Launch Capability

	659,981	659,981	-44,900	615,081
--	---------	---------	---------	---------

Explanation: Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) launch capability mission integration required to launch this mission for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.

Evolved Expendable Launch Vehicle (Space)

5	954,555	5	954,555	-1	-164,800	4	789,755
---	---------	---	---------	----	----------	---	---------

Explanation: Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) service for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.

Unclassified

REPROGRAMMING ACTION

Page 6 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number:	
Appropriation Title: Various Appropriations						FY 19-02 RA	
						Includes Transfer?	
						Yes	

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

DEFENSE-WIDE DECREASES**-251,000****Chemical Agent and Munitions Destruction, Defense, 19/20****-251,000****Budget Activity 02: Chem Agents -RDT&E**

886,728

886,728

-251,000

635,728

Explanation: Funds are available due to unexecuted prior year funding plus current year appropriation that was found to be more than sufficient to cover the program's funding needs in FY 2019. This is a fact-of-life asset in Chemical Materials Activity (CMA) and Assembled Chemical Weapons Alternatives (ACWA). Funds are available based on projected costs in FY 2019 (to include additional technologies at Blue Grass Chemical Agent-Destruction Pilot Plant (PCAPP) and at the Pueblo Chemical Agent-Destruction Pilot Plant (PCAPP). Due to cost avoidance that will be gained by shortening schedules at both sites, the program has an asset. This does not inhibit the ability to pursue efforts/technologies to accelerate the destruction of the remaining declared stockpile.

Unclassified

REPROGRAMMING ACTION

Page 7 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action

DoD Serial Number:

FY 19-02 RA

Appropriation Title: Various Appropriations

Includes Transfer?

Yes

Component Serial Number:

(Amounts in Thousands of Dollars)

Line Item	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

PART II**FY 2019 REPROGRAMMING INCREASE:****+681,535****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****+681,535****Budget Activity 01: Counter-Narcotics Support**

238,306

1,056,771

+681,535

1,738,306

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S.Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

FY 2019 REPROGRAMMING DECREASES:**-681,535****Afghanistan Security Forces Fund, 19/20****-604,000****Budget Activity 06: Afghan National Army**

1,639,993

1,639,993

-279,000

1,360,993

Budget Activity 07: Afghan National Police

726,264

726,264

-117,200

609,064

Budget Activity 08: Afghan Air Force

1,728,263

1,728,263

-71,900

1,656,363

Budget Activity 09: Afghan Special Security Forces

825,480

825,480

-135,900

689,580

Explanation: Funds are available from the Afghanistan Security Forces Fund (ASFF) due to forward funding of Afghan National Defense and Security Forces (ANDSF) requirements in the FY 2018/2019 ASFF appropriation and from cost savings identified during a comprehensive contract management review conducted by the Commander, Combined Security Transition Command – Afghanistan (CSTC-

Unclassified

REPROGRAMMING ACTION

Page 8 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action

DoD Serial Number:

FY 19-02 RA

Appropriation Title: Various Appropriations

Includes Transfer?

Yes

Component Serial Number:

(Amounts in Thousands of Dollars)

Line Item	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

A) from September 2018 through March 2019. The revised funding levels allow the CSTC-A to provide full support to the ANDSF sustainment, infrastructure, equipment, and training and operations requirements.

Operation and Maintenance, Defense-Wide, 19/20**-77,535**Defense Security Cooperation AgencyBudget Activity 04: Administration and Servicewide Activities

1,262,434

1,262,434

-77,535

1,184,899

Explanation: Funds are available from the Coalition Support Fund (CSF) due to no projected claims for reimbursements from key cooperating nations. The Department has preserved some CSF for projected Coalition Readiness Support Program requirements and Jordan border security reimbursements.

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

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00892-HSG

DECLARATION OF PAUL ENRIQUEZ

I, Paul Enriquez, declare as follows:

1. I am the Acquisitions, Real Estate and Environmental Director for the Border Wall

Program Management Office (“Wall PMO”), U.S. Border Patrol Program Management

Office Directorate, U.S. Customs and Border Protection (“CBP”), an agency of the Department of Homeland Security (“DHS”). I have held this position since August 6, 2018. From 2013 to August 2018, I was the Real Estate and Environmental Branch Chief for the Border Patrol and Air and Marine Program Management Office (“BPAM”), Facilities Management and Engineering, Office of Facilities and Asset Management (“OFAM”). From 2011 to 2013, I was employed as an Environmental Protection Specialist in the BPAM office. In that role, I performed environmental analyses for various border infrastructure projects. From 2008 to 2011, I was a contractor assigned to the BPAM office and provided environmental support on various border infrastructure projects. Based upon my current and past job duties, I am familiar with past and planned border infrastructure projects that have been executed in support of border security.

2. In my position I am personally aware of the border barrier projects that have been identified as “Yuma Projects 1 and 2 and El Paso Project 1,” (collectively the “Yuma and El Paso Projects”) which will be executed with the assistance of the Department of Defense (“DoD”). This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

BACKGROUND

3. The Secretary of DHS has determined that United States Border Patrol El Paso Sector (the “El Paso Sector”) and the United States Border Patrol Yuma Sector (the “Yuma Sector”) are areas of high illegal entry. Consequently Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”), requires DHS to construct physical barriers and roads to deter and prevent illegal entry of people and drugs into the United States.

4. To support DHS's action under Section 102 of IIRIRA, the Secretary of DHS requested that the Secretary of Defense, pursuant to 10 U.S.C. § 284(b)(7), assist by constructing fences, roads, and lighting within the El Paso and Yuma Sectors. The Acting Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. § 284(b)(7) and that DoD will provide such support for the Yuma and El Paso Projects.
5. CBP is the DHS component with primary responsibility for border security. Therefore, CBP constructs, operates, and maintains border infrastructure necessary to deter and prevent illegal entry on the southern border.
6. Within CBP, the Wall PMO has expertise in managing and executing border infrastructure projects. The Wall PMO is directly tasked with managing the schedule, finances, real estate acquisition, environmental planning—including compliance with the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA")—and construction of the border infrastructure system along the U.S. border. Given its expertise in managing border infrastructure projects, the Wall PMO, on behalf of CBP, is working in close coordination with DoD on the Yuma and El Paso Projects.
7. For the Yuma and El Paso Projects, the Wall PMO, on behalf of CBP will, among other things, review and approve technical specifications, review and approve barrier alignments and locations, and provide feedback and input on other aspects of project planning and execution. In addition, the Wall PMO, on behalf of CBP, is responsible for all environmental planning, including stakeholder outreach and consultation for the Yuma and El Paso Projects.

8. In my capacity as the Acquisitions, Real Estate and Environmental Director, I am responsible for overseeing all environmental planning and compliance activities as well as the real estate acquisition process for projects executed or overseen by the Border Wall PMO, including the Yuma and El Paso Projects.
9. DoD made contract awards for the Yuma and El Paso Projects on April 9, 2019. Environmental planning and consultation for the Yuma and El Paso Projects was initiated on April 8, 2019. The environmental planning and consultation that CBP has and will engage in for the Yuma and El Paso Projects are described in more detail in Paragraphs 19 through 33 below. On April 19, 2019, a protest was filed concerning the contracts for the Yuma and El Paso Projects. Construction on the Yuma and El Paso Projects was scheduled to begin in late-May; however, construction may be delayed due to the pending protests.

A. Yuma Project 1

10. Yuma Project 1 will be carried out under a waiver issued by the Secretary of DHS pursuant to Section 102(c) of IIRIRA that was published in the Federal Register on April 24, 2019, 84 Fed. Reg. 17187 (April 24, 2019) (the “Yuma Waiver”).
11. The project area for Yuma Project 1 is in Yuma County, Arizona and is situated southeast of the Andrade Port of Entry along the United States border with Mexico. The project area is described in the Yuma Waiver as starting at the Morelos Dam and extending south and generally following the Colorado River for approximately five and one-half (5.5) miles (the “Yuma 1 Project Area”). Attached hereto as Exhibit A is a map depicting the Yuma 1 Project Area.

12. Within the Yuma 1 Project Area approximately five (5) miles of existing vehicle barrier will be replaced with new bollard wall that includes a linear ground detection system. The existing vehicle barrier no longer meets the United States Border Patrol's operational needs. The new bollard wall will be 30-feet tall. The bollards are steel-filled concrete that are approximately six inches in diameter and spaced approximately four inches apart. Yuma Project 1 will also include road improvement or construction and the installation of lighting that will be supported by grid power and includes imbedded cameras. All of the construction activity will occur on land that is owned and controlled by the United States.

B. Yuma Project 2

13. Yuma Project 2 will also be carried out under the Yuma Waiver.
14. The project area for Yuma Project 2 is in Yuma County, Arizona and is situated on the Barry M. Goldwater Range ("BMGR") along the United States and Mexico border. The project area is described in the Yuma Waiver as starting two and one-half (2.5) miles east of Border Monument 198 and extending east to Border Monument 197 (the "Yuma 2 Project Area"). Attached hereto as Exhibit A is a map depicting the Yuma 2 Project Area.
15. Within the Yuma 2 Project Area approximately one and one-half (1.5) miles of existing pedestrian barrier will be replaced with new bollard wall that includes a linear ground detection system. The existing pedestrian barrier is a steel mesh design that no longer meets Border Patrol's operational needs. The new bollard wall will be 18-feet tall. The bollards are steel-filled concrete that are approximately six inches in diameter and spaced approximately four inches apart. Yuma Project 2 will also include road improvement or construction and the installation of lighting that will be supported by grid power and

includes imbedded cameras. All of the construction activity will occur on land that is owned and controlled by the United States.

C. El Paso Project 1

16. El Paso Project 1 will be carried out under a waiver issued by the Secretary of DHS pursuant to Section 102(c) of IIRIRA that was published in the Federal Register on April 24, 2019, 84 Fed. Reg. 17185 (April 24, 2019) (the “El Paso Waiver”).
17. The project area for El Paso Project 1 includes two segments along the United States border with Mexico in Luna County and Doña Ana County, New Mexico. The first segment is west of the Columbus Port of Entry and is described in the El Paso Waiver as starting at Border Monument 31 and extending east to Border Monument 23. The second segment is east of the Columbus Port of Entry and is described in the El Paso Waiver as starting approximately one (1) mile west of Border Monument 20 and extending east to Border Monument 9. Together these two segments represent the “El Paso 1 Project Area.” Attached hereto as Exhibit B are maps depicting the El Paso 1 Project Area.
18. Within the El Paso 1 Project Area up to 46 miles of existing vehicle barrier will be replaced with new bollard wall that includes a linear ground detection system. The existing vehicle barrier no longer meets Border Patrol’s operational needs. The new bollard wall will be 30-feet tall. The bollards are steel-filled concrete that are approximately six inches in diameter and spaced approximately four inches apart. El Paso Project 1 will also include road improvement or construction and the installation of lighting that will be supported by grid power and includes imbedded cameras. All of the construction activity will occur on land that is owned and controlled by the United States.

ENVIRONMENTAL PLANNING AND CONSULTATION FOR THE YUMA AND EL PASO PROJECTS

19. CBP has long had a border security presence in the Yuma 1 and 2 and El Paso 1 Project Areas (collectively, the “Project Areas”) and their surrounding areas. Through the planning and development of past projects and activities, CBP has developed a deep understanding and awareness of the natural, biological, historic, and cultural resources in the Projects Areas.
20. To cite just a few examples of CBP’s prior environmental analyses covering actions in and near the Project Areas, in 2008 CBP completed an Environmental Stewardship Plan (“ESP”) covering the construction of approximately eight miles of border infrastructure within the Yuma 1 Project Area and its surrounding area. In 2013, CBP completed an Environmental Assessment (“EA”) for the maintenance and repair of border infrastructure throughout the State of Arizona. The 2013 EA, the validity and sufficiency of which was never challenged in court, was the culmination of years of analysis and consultation with stakeholders concerning the potential environmental impacts from CBP’s repair and maintenance of existing and proposed border infrastructure in Arizona, including infrastructure in the Yuma 1 and Yuma 2 Project Areas.
21. Similarly, in 2006 CBP completed a Programmatic Environmental Assessment of the construction, operation, and maintenance of border infrastructure within the El Paso Sector along the entire United States border in New Mexico, including the El Paso 1 Project Area. In 2008, CBP completed two separate ESPs covering the construction, operation, and maintenance of border infrastructure within the El Paso 1 Project Area and its surrounding area. In 2015, CBP completed an EA regarding the maintenance and repair of border infrastructure throughout the State of New Mexico, including the El Paso

1 Project Area. Like the 2013 EA regarding the maintenance and repair of border infrastructure throughout Arizona, the 2015 EA, the validity and sufficiency of which was never challenged in court, was the culmination of years of analysis and consultation with stakeholders concerning the potential impacts of CBP's repair and maintenance of existing and proposed border infrastructure in New Mexico, including infrastructure in the El Paso 1 Project Area.

22. More recently, in 2018, CBP undertook a project to replace approximately 20 miles of existing vehicle barrier with new bollard wall in a project area that is west of the Santa Teresa Port of Entry in Doña Ana County, New Mexico (the "Santa Teresa Project"). The project area for Santa Teresa Project abuts the segment of the El Paso 1 Project Area that is east of the Columbus Port of Entry. As part of the Santa Teresa Project, CBP prepared an ESP that examined the potential impacts of the Santa Teresa Project (the "Santa Teresa ESP"). A copy of the Santa Teresa ESP is attached hereto as Exhibit C.
23. As a part of its environmental planning process, including environmental planning for projects and activities in the Yuma and El Paso Sectors, CBP conducts biological, cultural, and other natural resource surveys, coordinates with stakeholders, and uses that information to assess environmental impacts.
24. CBP is drawing on its prior experience in the Project Areas as it assesses the potential environmental impacts for the Yuma and El Paso Projects.
25. In addition, CBP is presently engaged in new environmental planning and consultation that is specifically targeted to the Yuma and El Paso Projects.
26. On April 8, 2019, before the Yuma and El Paso Waivers were issued, to better understand the potential impacts of the Yuma and El Paso Projects, CBP sent consultation letters to a

number of stakeholders and potentially interested parties. The consultation letters include information about the Yuma and El Paso Projects and invite input from stakeholders regarding potential impacts. They also inform stakeholders that CBP will be accepting comments and input through May 8, 2019.

27. For the Yuma 1 and 2 Projects, CBP sent 108 separate consultation letters to a range of stakeholders and potentially interested parties, including, among others, the Department of Interior (“DOI”), the United States Fish and Wildlife Service (“USFWS”), the Bureau of Land Management (“BLM”), the United States Environmental Protection Agency (“USEPA”), the United States Section of the International Boundary and Water Commission (“USIBWC”), the Arizona State Historic Preservation Officer (“AZSHPO”), the Arizona Game and Fish Department, the Arizona Department of Environmental Quality, State and local officials, Native American Tribes, and numerous non-governmental organizations.
28. For El Paso Project 1, CBP sent 130 separate consultation letters to a range of stakeholders and potentially interested parties, including, among others, DOI, USFWS, BLM, USEPA, the New Mexico Historic Preservation Officer (“NMSHPO”), the New Mexico Environment Department, New Mexico Department of Game and Fish (“NMDGF”), State and local officials, Native American Tribes, and numerous non-governmental organizations.
29. Also on April 8, 2019, CBP posted notices on its website, CBP.gov, notifying the public of the Yuma and El Paso Projects and soliciting the public’s input regarding potential impacts. The notices posted on CBP’s website can be found at <https://www.cbp.gov/document/environmental-assessments/yuma-county-border->

[infrastructure-projects-april-2019](#) and <https://www.cbp.gov/document/environmental-assessments/luna-and-do-ana-counties-border-infrastructure-projects-april>. The notices included a link to the same consultation letters, including information about the Yuma and El Paso Projects, that was sent to every individual stakeholder or potentially interested party.

30. On April 16, 2019, and April 17, 2019, CBP conducted on-site meetings with representatives from DOI, USFWS, USEPA, Bureau of Reclamation, the Cocopah Tribe, and BLM. At the on-site meetings, the parties toured the Project Areas and discussed the Yuma and El Paso Projects and their potential impacts.
31. Within the next 20 days CBP will survey the Project Areas for biological, historical, and cultural resources, and jurisdictional “Waters of the United States.” CBP will use the data and information obtained through those surveys, along with data and information drawn from past environmental surveys and planning that CBP has done in the Project Areas, to prepare biological and cultural resources reports.
32. All of the information and input CBP obtains through stakeholder consultations, the biological and cultural resources reports, and prior environmental planning will inform the project planning and execution of the Yuma and El Paso Projects.
33. Using the information it has compiled and feedback it has received, CBP will prepare an analysis of potential environmental impacts of the Yuma and El Paso Projects. CBP will use that analysis to identify construction Best Management Practices (“BMPs”) or design modifications that will be presented to DoD for incorporation into project planning and execution in order to minimize or avoid potential impacts to the extent practicable. In addition, input from stakeholders and CBP’s own analysis will be used to develop

mitigation measures, which may be implemented after construction to offset or minimize unavoidable impacts.

ALLEGED HARMS FROM THE YUMA AND EL PASO PROJECTS

34. As detailed in the Paragraphs 19 through 33, CBP has not yet completed the environmental planning and consultation process for the Yuma and El Paso Projects. Those processes are on-going. Nevertheless, based on these ongoing consultations, CBP's prior experience in the Project Areas, meetings with various resource experts, and my understanding of the Yuma and El Paso Projects, I find many of plaintiffs' claims concerning the alleged harms that will result from the Yuma and El Paso Projects to be overstated or misplaced.

A. Alleged Procedural Injuries

35. Plaintiffs have put forth concerns about possible procedural injuries, alleging that construction of the Yuma and El Paso Projects may occur without a review of impacts (Walsh Decl. ¶ 15) or that requiring a NEPA or ESA process for the Yuma and El Paso Projects will "surely redress" the alleged irreparable harms to federally-listed species and other resources that will purportedly result from the Yuma and El Paso Projects (Nagano Decl. ¶ 26).

36. As set forth above, however, CBP is engaging in environmental reviews of the Yuma and El Paso Projects that consider CBP's own data and information, new resource survey data, as well as the input provided by federal and state resource agencies, including USFWS, interest groups, and the public.

37. Through its consultation letters, CBP specifically sought input from numerous parties, including the Sierra Club, the Southern Border Communities Coalition, the Southwest

Environmental Center, and the ACLU. Therefore, a wide range of stakeholders or interested parties, including plaintiffs, will have the opportunity to raise concerns and provide input about the potential environmental impacts of the Yuma and El Paso Projects. CBP will consider that input as it plans for implementation of the Yuma and El Paso Projects.

38. In fact, CBP has a proven track record of responding to concerns or input provided to CBP as a part of its consultation processes. For example, in preparing the Santa Teresa ESP, CBP's Biological Resources Management Plan ("BRMP"), which informed the analysis in the Santa Teresa ESP, was revised to incorporate feedback CBP received from BLM, USFWS, and NMDGF, including incorporation of a discussion regarding proximity of the Santa Teresa project to a population of the Mexican wolf in the United States designated as a non-essential experimental population pursuant to Section 10(j) of ESA. CBP also held a teleconference with BLM to discuss the potential impacts of the Santa Teresa project on the cross-border migration of large mammals, and the BRMP was updated to reflect information received from BLM as a result of this discussion.
39. Similarly, as part of its planning process for border barrier construction in the Rio Grande Valley, Texas ("RGV"), CBP conferred with USFWS. Among other things, USFWS provided CBP with data related to wildlife migration corridors. CBP used that information to modify barrier design and alignment to minimize impacts to wildlife. For barrier construction in RGV, CBP is planning to include gates or gaps in the barrier in known migration corridors. CBP will also use a modified design for levee access ramps that will form a safe island for wildlife in the event of flooding.

40. To the extent that specific recommendations are made for barrier design, alignment modifications, or other measures that will minimize impacts to wildlife, wildlife migration, or other resources for the Yuma and El Paso Projects, CBP will similarly consider and, if feasible, recommend to DoD that those measures be incorporated into project planning and execution.

B. Alleged Environmental Harms

41. In addition to alleged procedural injuries, plaintiffs make a number of allegations regarding purported environmental harms that they assert will result from the Yuma and El Paso Projects, including impacts to federally-listed species, other wildlife, and plaintiffs' recreational or aesthetic interests. As detailed below, I find plaintiffs' claims to be exaggerated or misplaced.

1. Federally-Listed Species

42. Plaintiffs allege that the Yuma and El Paso Projects will have dire consequences for the endangered Northern jaguar. (Bixby Decl. ¶ 9.) For example, plaintiffs claim that a fixed border barrier has the potential to cause "irreparable harm for a jaguar isolated from a mate prior to insemination or a cub separated from its mother" (Hadley Decl. ¶ 13) and that construction of the Yuma and El Paso Projects "would stop jaguar movement through the region, potentially limiting recolonization" (Lasky Decl. ¶ 7).

43. USFWS defines critical habitat as those areas that contain the physical and biological features essential to the conservation of a species. 50 C.F.R. § 424.12(b). Critical habitat is generally limited to those areas that are either occupied by the species or those areas outside the geographic area occupied by the species that are essential to the conservation of the species. *Id.* The only designated critical habitat for jaguar within New Mexico is

found in Hidalgo County. *Final Rule, Designation of Critical Habitat for Jaguar*, 79 Fed. Reg. 12572 (March 5, 2014), available at

<https://www.federalregister.gov/documents/2014/03/05/2014-03485/endangered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-jaguar>. The El Paso 1

Project Area is well to the east of Hidalgo County in Luna and Doña Ana Counties.

According to USFWS’ critical habitat designation, there have only been seven individual jaguars detected in the United States since 1982, with all of them occurring in areas where critical habitat has been designated. *Id.* at 125851. Further, the most recent known breeding event in the United States, according to USFWS, was in 1910. *Id.* at 12586. Thus, plaintiffs’ assertion that the Yuma and El Paso Projects will cause “irreparable harm for a jaguar isolated from a mate prior to insemination or a cub separated from its mother” is exaggerated. Similarly, the only designated critical habitat for jaguar within Arizona is found in Cochise, Pima, and Santa Cruz Counties. *Id.* at 12572. The Yuma 1 and 2 Project Areas are in Yuma County, well to the west of any designated critical habitat for jaguar in Arizona. In light of the above, the evidence does not support plaintiffs’ suggestion or assertion that the Yuma and El Paso Projects will significantly harm the jaguar population or jaguar recovery in the United States.

44. Likewise, plaintiffs cite potential threats to the endangered Chiricahua leopard frog.

(Hadley Decl. ¶ 24.) However, there is no designated habitat for Chiricahua leopard frog in Luna County or Doña Ana County, New Mexico where El Paso Project 1 will occur.

Final Rule, Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog,

77 Fed. Reg. 16324 (March 20, 2012), available at

<https://www.govinfo.gov/content/pkg/FR-2012-03-20/pdf/2012-5953.pdf>. Nor is there

any critical habitat designated for Chiricahua leopard frog in Yuma County, Arizona where Yuma Projects 1 and 2 will occur. *Id.* Therefore, like their allegations concerning jaguar, plaintiffs’ alleged harms concerning this species are misplaced. The evidence does not support plaintiffs’ suggestion or assertion that the Yuma and El Paso Projects will significantly harm the Chiricahua leopard frog population or its recovery.

45. Plaintiffs express concern about the potential consequences for the white-sided jack rabbit. (Hadley Decl. ¶ 17.) Here again, however, this species only occurs in Hidalgo County, New Mexico. (Traphagen Decl. ¶ 26); *12-Month Finding on the Petition to List the White-Sided Jackrabbit as Threatened or Endangered*, 75 Fed. Reg. 53615, 53618 (September 1, 2010), available at <https://www.govinfo.gov/content/pkg/FR-2010-09-01/pdf/2010-21774.pdf#page=1>. As noted above, there will be no construction or other activities in Hidalgo County as a part of the Yuma and El Paso Projects. Therefore, the evidence does not support plaintiffs’ suggestion or assertion that the Yuma and El Paso Projects will significantly harm the white-sided jack rabbit population or its recovery.

46. Similarly, plaintiffs raises concerns about impacts to ocelot (Bixby ¶ 9; Munro ¶ 7; Vasquez ¶ 12) and pronghorn, (Hadley Decl. ¶ 15; Traphagen Decl. ¶¶ 28, 30-31; Munro Decl. ¶ 7.) Within the United States, ocelot are only known to occur in south Texas and eastern Arizona, areas that will be unaffected by the Yuma and El Paso Projects. *See United States Fish and Wildlife Service, Species Profile for Ocelot*, available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=A084>. As such, the evidence does not support plaintiffs’ suggestion or assertion that the Yuma and El Paso Projects will significantly harm ocelot, the ocelot population, or its recovery. In my discussions with USFWS, I inquired about impacts to pronghorn and USFWS did not express

significant concerns about pronghorn being impacted by the Yuma or El Paso Projects.

Thus, the Yuma and El Paso Projects will not significantly harm the pronghorn population or its recovery.

47. Plaintiffs further allege that El Paso Project 1 will adversely impact the endangered Mexican wolf and Aplomado falcon. (Nagano Decl. ¶ 12; Lasky Decl. ¶ 7.) USFWS has reintroduced both species in New Mexico as non-essential experimental populations pursuant to Section 10(j) of ESA, which means that USFWS has determined that the loss of these entire populations would not be “likely to appreciably reduce the likelihood of the survival of the species in the wild.” 50 C.F.R. § 17.80(b).
48. Plaintiffs assert that construction activities associated with El Paso Project 1 present dire risks to both species. (Nagano Decl. ¶ 13.) Plaintiffs allege that construction activities will result in “injury, death, harm, and harassment” to the Mexican wolf and Aplomado falcon. (Nagano Decl. ¶ 13.) Plaintiffs claim that these harms will result from “linear vegetation clearing; road construction; grading and construction of equipment storage and parking areas; off road movement of vehicle[s] and equipment involved in construction; and poisoning from chemical applications (herbicides and pesticides).” (*Id.*) Plaintiffs further allege that these two species may be forced to abandon the El Paso 1 Project Area for essential behaviors such as feeding, resting, and mating and that there could be detrimental impacts caused by exotic species introduced by construction, which will eliminate food sources and habitat for rodents and other mammals utilized by the two species. (*Id.*)
49. Plaintiffs’ claims regarding the potential impacts to the Mexican wolf and Aplomado falcon resulting from construction activities are overstated.

50. Plaintiffs' description of the actual construction activities is not accurate. The areas in and around the barrier footprint and construction staging areas are disturbed and largely devoid of vegetation. Therefore, there will be little to no vegetation clearing required for project execution. Further, there is already an existing border road that parallels the border within the El Paso 1 Project Area. Therefore, any new road construction or improvement will likely be within or adjacent to that existing road footprint. CBP also has construction BMPs, which it plans to present to DoD for consideration and incorporation into project execution, that are designed to address some of the very issues raised by plaintiffs. For example, as a part of the Santa Teresa Project, CBP implemented construction BMPs that included, among other things: (a) measures designed to prevent the entrapment of wildlife species; (b) anti-perch devices to discourage roosting by birds; (c) construction speed limits to minimize the risk of animal collisions; (d) backshields on lighting to minimize light pollution; (e) vehicle cleaning specifications to minimize the spread and establishment of invasive species; and (f) stringent requirements concerning the application of any herbicide or pesticide. Santa Teresa ESP at 4-5- 4-6. In addition, the Santa Teresa Project included species-specific BMPs. For example, to minimize impacts to Aplomado falcon, no construction was allowed to occur within two miles of active falcon nests, noise and light abatement measures were developed, and limits were placed on the removal of larger nests from other varieties of birds that could potentially be utilized by Aplomado falcon. *Id.* at 4-8.

51. USFWS has informed me that the potential impacts described by plaintiffs are unlikely to occur. USFWS informed me that the nearest known Aplomado falcon pair is located roughly seven miles from the El Paso 1 Project Area, in an area known as Simpson Draw

(the “Simpson Draw Pair”). After the Simpson Draw Pair, the nearest known pair are over 100 miles from the El Paso 1 Project Area. USFWS further stated that, while it would be possible for the Simpson Draw Pair to fly to the El Paso 1 Project Area, their risk of being killed, harmed, or harassed are at least as great on New Mexico Highway 9 and in the farm fields that are situated between Simpson Draw and the El Paso 1 Project Area. Relative to the El Paso 1 Project Area, New Mexico Highway 9 is closer to the area where the pair typically nest. Thus, USFWS stated, if the traffic and other activity from New Mexico Highway 9 has not caused the Simpson Draw Pair to abandon the site, it is unlikely that construction activities from El Paso Project 1 will. Further, USFWS has not expressed any concerns about potential construction impacts to Mexican wolf, and transient individual wolves are only rarely found in the El Paso Project Area.

52. This squares with CBP’s prior analysis of construction impacts. As a part of the Santa Teresa Project, CBP concluded that construction activities did not pose a significant risk to either Mexican wolf or Aplomado falcon. Santa Teresa ESP at 3-24-3-25. The analysis in the Santa Teresa ESP was informed by input it received from USFWS and other resource agencies.
53. Regarding Mexican wolf, CBP concluded that Mexican wolf would not be impacted by construction activities because it is a mobile species and would leave the area if disturbed by such activities. *Id.* As to Aplomado falcon, CBP concluded that any impacts to Aplomado falcon from construction activities would be temporary and minor. *Id.* Given the similarity of the two projects and the input CBP has received from USFWS, I would expect that CBP will be able to reach similar conclusions concerning El Paso Project 1.

54. In addition to potential construction impacts, plaintiffs allege that the improved barrier that will be constructed as a part of El Paso Project 1 will have dire consequences for recovery of these species. (Bixby Decl. ¶ 9.) Plaintiffs allege that the project will negatively impact the long-term recolonization or repopulation of the Mexican wolf (Lasky Decl. ¶ 7; Nagano Decl. ¶ 15) because it will prevent connection between wolves in the United States and Mexico (Traphaegen Decl. ¶ 18). Plaintiffs allege that the lack of connectivity will either harm Mexican wolf recovery (Traphagen Decl. ¶ 25) or could actually “eliminate the possibility of recovery” (Nagano Decl. ¶ 15).

55. Despite plaintiffs’ claims to the contrary, the evidence does not support plaintiffs’ suggestion or assertion that the Yuma and El Paso Projects will significantly harm the population or recovery of either species. Regarding Mexican wolf, plaintiffs have overstated the potential harms. The recovery criteria for Mexican wolf specifically contemplates “two demographically and environmentally independent populations,” one in the United States and one in Mexico, “such that negative events (e.g. diseases, severe weather, natural disasters) are unlikely to affect both populations simultaneously.”

United States Fish and Wildlife Service, Mexican Wolf Recovery Plan, First Revision (November 2017) at 24, available at

<https://www.fws.gov/southwest/es/mexicanwolf/pdf/2017MexicanWolfRecoveryPlanRevision1Final.pdf>.

According to USFWS, having two resilient populations provides for redundancy, which in turn provides security against extinction from catastrophic events that could impact a population. *Id.* Recovery criteria also call for achieving a specific genetic target to ensure genetic threats are adequately alleviated. *Id.* USFWS has recognized the benefits of connectivity (wolves naturally dispersing between populations)

to improve genetic diversity but has also stated, “[USFWS] do[es] not expect the level of dispersal predicted between any of the sites (particularly between the United States and northern Sierra Madre Occidental) to provide for adequate gene flow between populations to alleviate genetic threats or ensure *representation* of the captive population’s gene diversity in both populations.” *Id.* (emphasis in original). Therefore, USFWS crafted a recovery strategy for the Mexican wolf that relies on the initial release of wolves from captivity to the wild and the translocation of wolves between populations as a necessary form of management to alleviate genetic threats during the recovery process. *Id.* USFWS specifically stated that “connectivity or successful migrants are not required to achieve recovery” of the Mexican wolf. *Id.* at 15.

56. Similarly, regarding Aplomado Falcon, as noted above, USFWS has informed me that the nearest known Aplomado falcon pair is the Simpson Draw Pair, which is located roughly seven miles from the El Paso 1 Project Area. After the Simpson Draw Pair, the nearest known pair is over 100 miles from the El Paso 1 Project Area. USFWS has further informed me that, in the unlikely event that the Simpson Draw pair is killed or abandoned its nesting area due to El Paso Project 1, the impact to the subspecies survival and recovery would be negligible. According to USFWS, Aplomado falcon pairs likely number into the hundreds and are distributed among three populations and four countries. As such, the Simpson Draw pair likely account for less than 1% of Aplomado falcons. Therefore, even if the proposed construction resulted in the loss of one pair, it is not likely to significantly reduce the subspecies’ survival or recovery probabilities.
57. In addition, it is unlikely that construction activities from El Paso Project 1 will have an appreciable impact on the availability of habitat for either species. USFWS has not

designated any critical habitat for the Aplomado falcon because there is “ample suitable habitat” to support falcons in Arizona and New Mexico. *Final Rule, Establishment of Experimental Population of Northern Aplomado Falcons in New Mexico and Arizona*, 71 Fed. Reg. 42298, 42305 (July 26, 2006), available at <https://www.govinfo.gov/app/details/FR-2006-07-26/06-6486>. Similarly, USFWS has not designated any critical habitat for Mexican wolf. USFWS has stated that there is a “large expanse of contiguous high-quality habitat” in central Arizona into west central New Mexico, as well as other patches of high-and-low quality habitat. *Mexican Wolf Recovery Plan*, at 11. Given the large amount of habitat that is already available to these species and in light of the fact that the El Paso 1 Project Area is already heavily disturbed, it is unlikely that the project will have a significant impact on the available habitat for either species.

2. Other Wildlife Species

58. In addition to federally-listed species, plaintiffs allege harms to state-listed species such as the Gila monster. (Nagano Decl. ¶¶ 20-25.) While plaintiffs acknowledge “the low number of observations and records of Gila monster west of El Paso and Las Cruces” where the El Paso 1 Project Areas is situated (Nagano Decl. ¶ 23), plaintiffs assert that it is “highly likely that this animal inhabits the area where the border wall is proposed.” (Nagano Decl. ¶ 24.) Based on its purported presence in Luna and Doña Ana Counties, plaintiffs claim that the threats from the border barrier “come in the form of direct effects of wall construction such as their death and injury from construction operations, falling into trenches or other holes then dying of exposure or being buried alive; getting run over by vehicles associated with the project; collected by construction personnel; and indirect

effects in the form of the border wall blocking their movement patterns or reducing the size of an individual's home range and eliminating the available food or shelter resources.” (Nagano Decl. ¶ 25.)

59. Here again, plaintiffs appear to have overstated the potential harms. First, plaintiffs’ claim that Gila monsters are present within the El Paso 1 Project Area is highly speculative. The Recovery Plan for Gila monster states: “The Gila Monster reaches the eastern extent of its range in southwestern New Mexico, but the limits of its range are poorly understood. Its occurrence in Hidalgo and Grant Counties is well established, whereas origins of the small number of specimens and sight records from Luna and Doña Ana Counties have been questioned. The records from Kilborne Hole in Doña Ana County near Deming and Las Cruces are suspected to be released or escaped pets.” *New Mexico Game and Fish, Gila Monster Recovery Plan* (April 5, 2017) at 6, available at <http://www.wildlife.state.nm.us/download/conservation/species/amphibians-reptiles/Gila-Monster-Recovery-Plan.pdf>. Second, even if it is accepted that Gila monsters occupy the El Paso 1 Project Area, as detailed above, CBP has construction BMPs, which will be presented to DoD for consideration and incorporation into project execution, that will address some of the issues raised by plaintiffs. These include measures designed to prevent the entrapment of wildlife species and construction speed limits to minimize the risk of animal collisions. Plaintiffs’ assertion that the border barrier will block their movement patterns or reduce the size of an individual's home range and eliminating the available food or shelter resources is also speculative. The standard design of the planned bollard wall includes four-inch spacing between bollards thus allowing for the passage of Gila monsters through the barrier. In light of the above, the evidence does not

support plaintiffs' suggestion or assertion that the Yuma and El Paso Projects will significantly harm the viability of the Gila monster population.

60. Plaintiffs also overstate or exaggerate the risks to other wildlife species. For example, plaintiffs speculate that increased patrol activity will be detrimental to wildlife (Munro Decl. ¶ 9) or will present a specific risk of harm to species such as the Western Narrow-mounted toad (Traphagen Decl. ¶ 26). However, the Yuma and El Paso Projects are construction projects. Neither contemplates the hiring of additional Border Patrol agents and deploying those agents to patrol within the Project Areas.
61. Finally, plaintiffs put forth generalized fears that the Yuma and El Paso Projects will harm wildlife because they will bisect the habitat of larger species such as bobcats, mountain lions, mule deer, and badger (e.g., Munro Decl. ¶ 7; Bixby Decl. ¶ 8; Lasky Decl. ¶ 6) and smaller species such as lizards (Walsh Decl. ¶ 11), bats, birds, and snakes (Lasky Decl. ¶¶ 9-11). In at least one instance, plaintiffs go so far as to say that the Yuma and El Paso projects will result in "ecological devastation and likely regional extirpation of species." (Walsh Decl. ¶ 15.) Plaintiffs do not provide much in the way of support for these generalized fears. In addition, these assertions are directly at odds with CBP's prior analysis of similar projects, including the recent Santa Teresa Project. In the Santa Teresa ESP, which, as noted, examined the potential impacts of a project that is very similar to the Yuma and El Paso Projects, CBP concluded that the Santa Teresa Project would result only in minor adverse effects to wildlife. Santa Teresa ESP at 3-23. To this same end, in the Yuma 2 Project Area, the conversion from wire mesh fencing to bollard wall will have beneficial impacts for some smaller species, including the Flat-tailed horned lizard. For prior projects where CBP constructed mesh-style fencing, CBP

incorporated into the design small holes in the bottom of the fence that would allow for migration of smaller species such as Flat-tailed horned lizard. CBP incorporated these holes into the design upon the recommendation of USFWS and other resource agencies. The bollard wall will not require such holes because smaller species such as Flat-tailed horned lizard will be able to travel through the four-inch gaps between the bollards.

3. Recreational and Aesthetic Injuries

62. Plaintiffs also put forth a number of claims concerning purported recreational or aesthetic injuries. Plaintiffs allege that they enjoy recreational and aesthetic interests in the areas in and around the Project Areas. (*E.g.*, Bixby Decl. ¶ 6; Walsh Decl. ¶ 12.) These include hiking and camping in the desert scrubland and surrounding peaks or “sky islands” (Bixby Decl. ¶ 6), hunting and other hobbies (Trejo Decl. ¶¶ 6, 8; Vasquez Decl. ¶ 14), and fishing (Del Val Decl. ¶¶ 8-9). Plaintiffs assert not only that Yuma and El Paso Projects puts those interests at risk (Walsh Decl. ¶ 15) but that the consequences could be “devastating” (Bixby Decl. 12).
63. The evidence does not support plaintiffs’ suggestions or assertions the Yuma and El Paso Projects will have significantly harm plaintiffs’ recreational activities or aesthetic interests. The Yuma and El Paso Projects will not affect any change to the existing land use within the Project Areas. The Yuma and El Paso Projects will occur on federally-owned land that is directly adjacent to the border—the vast majority of the construction activity and the project footprints themselves will occur within a 60-foot strip of land that parallels the international border. These areas are heavily disturbed, include existing barriers and roads, and function primarily as a law enforcement zone. The Yuma 2

Project Area is on the BMGR, a military installation and active bombing range where unauthorized entry is prohibited. Given their current condition and use, I would be surprised to learn that any person has or would use the Project Areas for camping, hiking, hunting, or other recreational or aesthetic activities.

64. Further, the Yuma and El Paso Projects will not affect any change to the existing land uses in the areas that surround the Project Areas. Plaintiffs may continue to recreate in and enjoy the natural and undeveloped areas that surround the Project Areas. For example, because the barriers and roads that will be replaced or improved as a part of Yuma Project 1 are directly adjacent to the international border, plaintiffs will continue to be able to access and fish in the canals in and around Yuma, Arizona, including the West Main Canal. (Del Val Decl. ¶¶ 6-8.) Yuma Project 1 is located west of the canal and will not have any impact on the public's access to the canals. Similarly, El Paso Project 1 will not impact plaintiffs' ability to access, use, and enjoy the vast desert and mountains that surround the El Paso 1 Project Area. In fact, there are historical examples where CBP's construction of border barriers has resulted in increased public access and use in areas surrounding the border because barrier construction has reduced illegal traffic and, in turn, made such areas safer for access and use by the public.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 25 day of April, 2019.

A handwritten signature in blue ink, appearing to read "Paul Enriquez", with a stylized flourish at the end.

Paul Enriquez
Acquisitions, Real Estate and Environmental Director
Border Wall Program Management Office
U.S. Border Patrol



U.S. Customs and
Border Protection

Exhibit A

Yuma 1 and 2 Project Areas

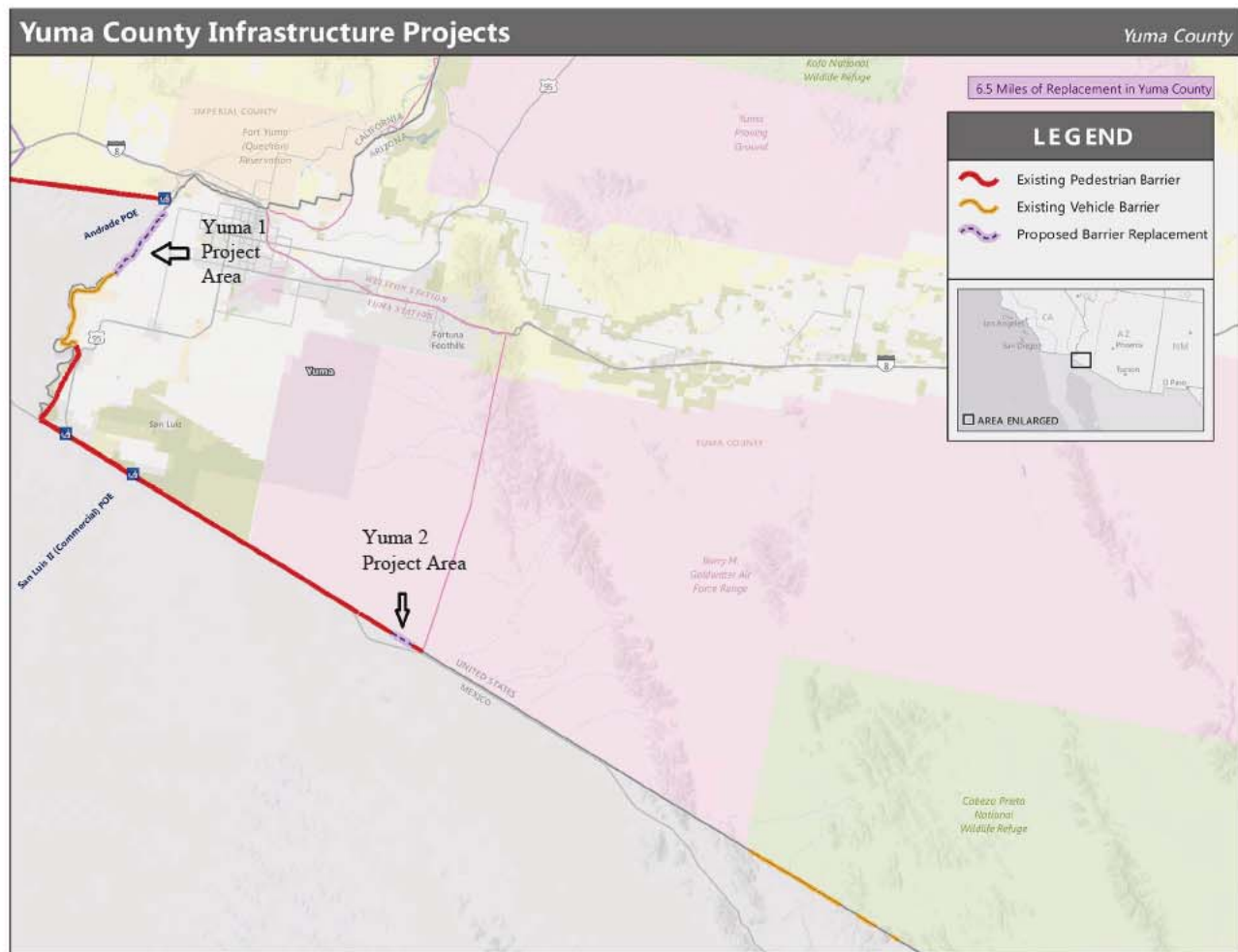
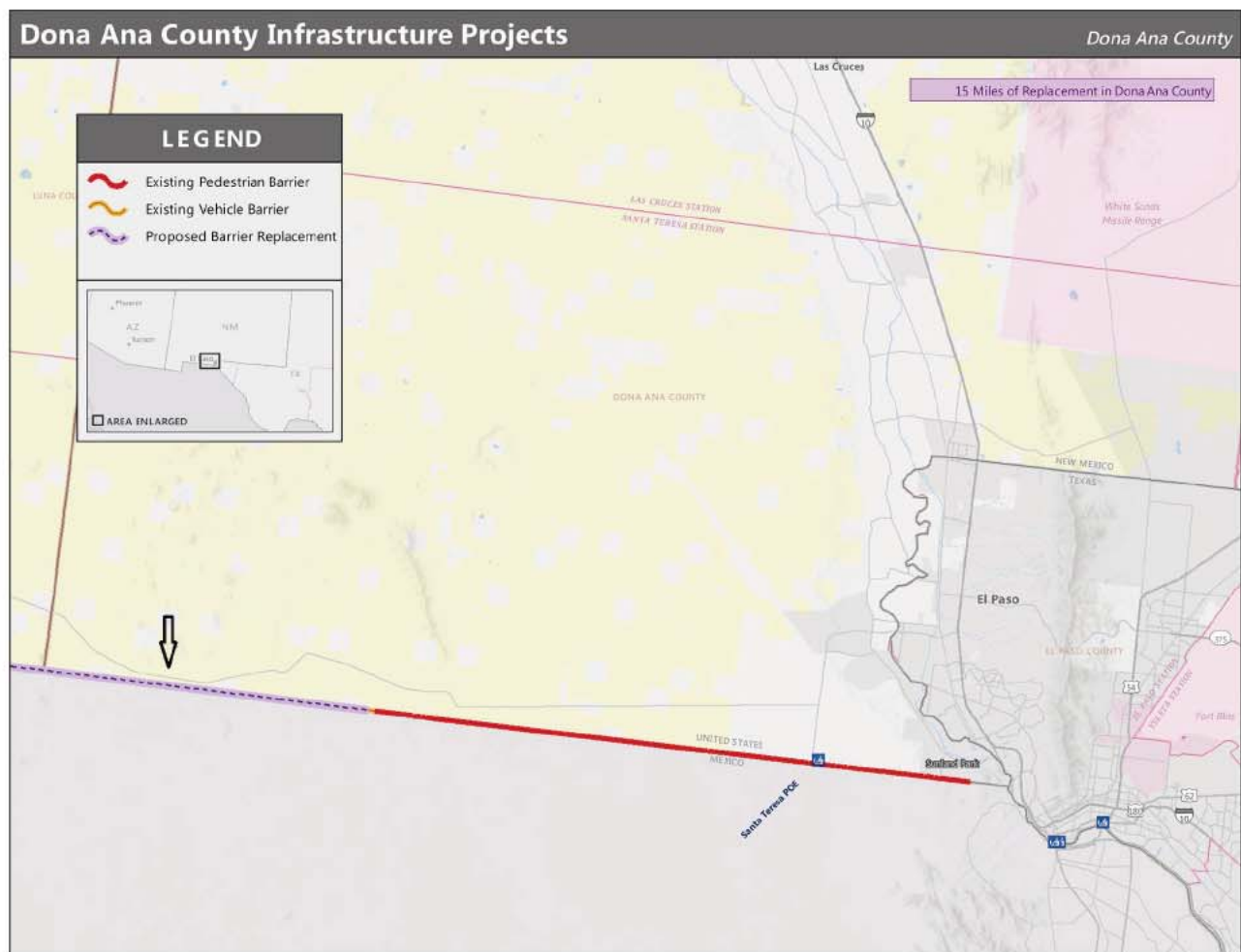


Exhibit B
El Paso 1 Project Area





U.S. Customs and Border Protection

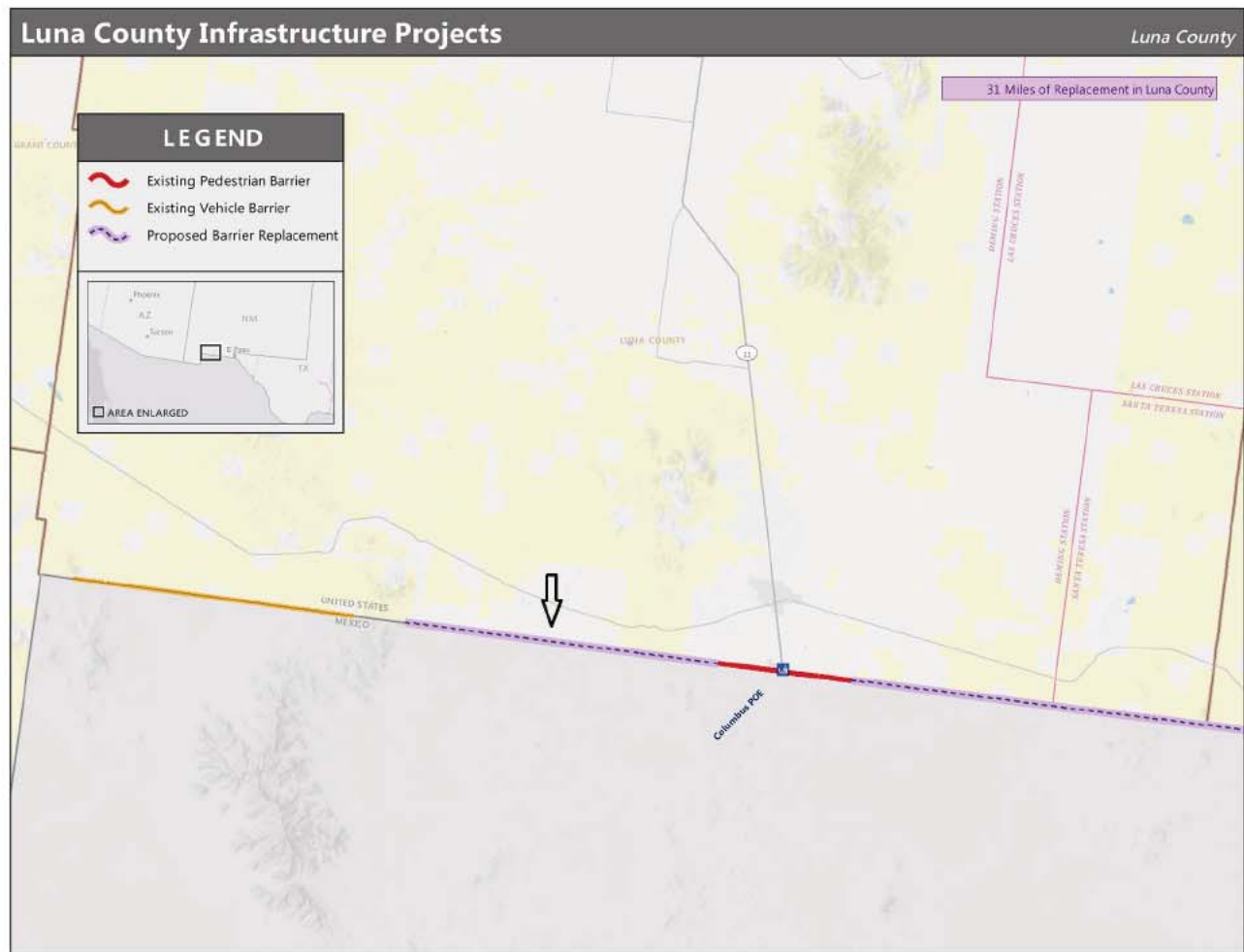


Exhibit 8

DECLARATION OF KENNETH P. RAPUANO

I, KENNETH P. RAPUANO, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)). Among other duties, which are generally reflected in Department of Defense (DoD) Directive 5111.13, I am responsible for developing, coordinating, and overseeing implementation of DoD policy for plans and activities related to defense support of civil authorities. On April 5, 2018, the Secretary of Defense designated the ASD(HD&GS) to manage the then-newly established DoD Border Security Support Cell. The DoD Border Security Support Cell is the focal point and integrator for all requests for assistance, taskings, and information related to DoD support pursuant to the President's April 4, 2018, memo, "Securing the Southern Border of the United States."

2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

10 U.S.C. § 284

3. On February 25, 2019, the Department of Homeland Security (DHS) submitted a request to DoD for assistance in blocking up to 11 specific drug-smuggling corridors along certain portions of the southern border of the United States, pursuant to 10 U.S.C. § 284. The request sought assistance through the replacement of existing vehicle barricades or dilapidated pedestrian fencing with new pedestrian fencing, the construction of new patrol roads and the improvement of existing patrol roads, and the installation of lighting on Federal land. *See* Exhibit A.

4. On March 25, 2019, the Acting Secretary of Defense approved three projects to block drug-smuggling corridors based on this February 25, 2019, DHS request. *See* Exhibit B. Two projects are located in Arizona, and one project is located in New Mexico. The approved projects were identified as: Yuma Sector Project 1 (maximum of 5 miles/18-foot fence); Yuma Sector Project 2 (maximum of 6 miles/18-foot fence); and El Paso Sector Project 1 (maximum of 46 miles/18-foot fence).

5. Also on March 25, 2019, the Acting Secretary of Defense decided to use DoD's general transfer authority under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to transfer funds between DoD appropriations to fund the approved projects. Specifically, he determined that the above projects he approved for DHS will be funded through a transfer of \$1 billion to the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account from fiscal year 2019 Army military personnel accounts that were excess to current military personnel requirements. *See* Exhibit C. Army personnel funds were available for transfer because expenditures for service member pay and compensation, retirement benefits, food, and moving expenses through the end of fiscal year 2019 will be lower than originally budgeted. Congress was notified of this transfer on March 25, 2019. *See* Exhibit D.

6. On March 26, 2019, the designated \$1 billion was transferred from the Drug Interdiction and Counter-Drug Activities, Defense, account to the Operation and Maintenance, Army, account for use by the U.S. Army Corps of Engineers to undertake fence and road construction and lighting installation for the approved projects. Of the \$1 billion, \$2.5 million is for U.S. Army Corps of Engineers planning and surveys of the areas where border barriers will be constructed under section 284.

7. On March 29, 2019, DHS requested that DoD modify certain technical specifications for the three projects approved on March 25, 2019. Specifically, DHS requested that all fencing constructed by DoD include a 5-foot anti-climb steel plate and that DoD construct 30-foot fencing for Yuma Sector Project 1 and El Paso Sector Project 1. The fence for Yuma Sector Project 2 will remain 18 feet. *See* Exhibit E. The Acting Secretary of Defense approved this modification on April 9, 2019. *See* Exhibit F.

8. On April 9, 2019, DoD announced that the U.S. Army Corps of Engineers had awarded contracts to SLSCO Ltd. of Galveston, Texas (\$789 million) to perform work in support of El Paso Sector Project 1, and to Barnard Construction Co. Inc. of Bozeman, Montana (\$187 million), to perform work to support the Yuma Sector projects.

9. On April 12, 2019, DHS determined that it has sufficient appropriated funding to address approximately four (4) of the six (6) miles identified for Yuma Project 2. Based on the availability of this appropriated funding, DHS modified its request by removing 4 miles from the Yuma Project 2 requirements for DoD. *See* Exhibit G. On April 18, 2019, I approved this modification, which permitted funding additional miles of 30-foot bollard fencing, roads, and lighting in the El Paso Sector 1 project. *See* Exhibit H.

10. The U.S. Army Corps of Engineers currently plans that construction of the approved section 284 projects will begin no earlier than May 25, 2019.

11. As part of the DoD Comptroller's review of available funding, additional funds may be identified that are excess to need or are otherwise appropriate to use for additional section 284 projects. In that case, DoD could approve the transfer of up to an additional \$1.5 billion to the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account. Decisions by the Acting Secretary of Defense regarding future transfer of funds and approval of additional DHS-requested projects under § 284 are expected in May 2019.

12. DoD will not use any DoD counter-narcotics funding for the drug-demand-reduction program, the National Guard counter-drug program, or the National Guard counter-drug schools program to provide support to DHS under 10 U.S.C. § 284(b)(7).

10 U.S.C. § 2808

13. On February 15, 2019, the President of the United States, in accordance with the National Emergencies Act, 50 U.S.C. §§ 1601-1651, declared that a national emergency exists at the southern border of the United States. In accordance with that declaration, the President invoked

10 U.S.C. § 12302 and made that statutory authority available, according to its terms, to the Secretaries of the military departments concerned, subject to the direction of the Secretary of Defense in the case of the Secretaries of the Army, Navy, and Air Force. To provide additional authority to DoD in support of the Federal Government's response to the national emergency at the southern border, the President also declared that this emergency requires use of the armed forces and, in accordance with section 301 of the National Emergencies Act (50 U.S.C. § 1631), that the construction authority provided in 10 U.S.C. § 2808 is made available, according to its terms, to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

14. Under section 2808, whenever the President declares a national emergency "that requires use of the armed forces," the Secretary of Defense may undertake or authorize military construction projects "not otherwise authorized by law that are necessary to support such use of the armed forces" 10 U.S.C. § 2808(a). The Acting Secretary of Defense has not yet decided to undertake or authorize any barrier construction projects under section 2808. To inform the Acting Secretary's decision, on March 20, 2019, the Secretary of Homeland Security provided a prioritized list of proposed border-barrier-construction projects that DHS assesses would improve the efficiency and effectiveness of the armed forces supporting DHS in securing the southern border. On April 11, 2019, as a follow-up to the Chairman's preliminary assessment of February 10, 2019, the Acting Secretary instructed the Chairman of the Joint Chiefs of Staff to provide, by May 10, 2019, a detailed assessment of whether and how specific military construction projects could support the use of the armed forces in addressing the national emergency at the southern border.

15. Also on April 11, 2019, the Acting Secretary instructed the DoD Comptroller, in consultation with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Policy, and the heads of any other relevant DoD components to identify, by May 10, 2019, existing military construction projects of sufficient value to provide up to \$3.6 billion of funding for his consideration. When evaluating the potential funding sources for potential section 2808 construction projects, the Comptroller was instructed not to consider family housing, barracks, or dormitory projects; projects that have already been awarded; or projects that have fiscal year 2019 award dates.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 25, 2019


KENNETH P. RAPUANO

EXHIBIT A

Executive Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

February 25, 2019

MEMORANDUM FOR: CAPT Hallock N. Mohler Jr.
Executive Secretary
Department of Defense (DoD)

FROM: Christina Bobb *Christina Bobb*
Executive Secretary
Department of Homeland Security (DHS)

SUBJECT: Request for Assistance Pursuant to 10 U.S.C. § 284

I. Overview

As the government department tasked with border security, the Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP), is requesting that the Department of Defense assist DHS in its efforts to secure the southern border. The Secretary has directed me to transmit this request for assistance to your attention. This memorandum supersedes the February 22, 2019 version.

In Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (IIRIRA), 8 U.S.C. § 1103 note, Congress has directed DHS to construct border infrastructure in areas of high illegal entry to deter illegal crossing of both drugs and people into the United States. Pursuant to Section 102, DHS has identified the areas set forth in Section II below as areas of high illegal entry where CBP must take action (the Project Areas).

Within the Project Areas, DHS is experiencing large numbers of individuals and narcotics being smuggled into the country illegally. The Project Areas are also used by individuals, groups, and transnational criminal organizations as drug smuggling corridors. Mexican Cartels continue to remain dominant in these areas, influencing and controlling narcotics and human smuggling operations, within their respective strongholds.

DHS must use its authority under Section 102 of IIRIRA to install additional physical barriers and roads in the vicinity of the United States border in order to deter and prevent illegal crossings within the Project Areas. The construction of border infrastructure within the Project Areas will support DHS's ability to impede and deny illegal entry and drug smuggling activities within the Project Areas.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 2

The Project Areas identified are adjacent to some of the most densely populated metropolitan areas of Mexico and are also home to some of the strongest and most violent drug cartels in the world. Deterring and preventing illegal cross-border activity will help stem the flow of illegal narcotics and entries in these areas. Similarly, the improved ability to impede, deny, and be mobile within the Project Areas creates a safer operational environment for law enforcement.

To support DHS's action under Section 102 of IIRIRA, DHS is requesting that DoD, pursuant to its authority under 10 U.S.C. § 284(b)(7), assist with the construction of fences roads, and lighting within the Project Areas to block drug-smuggling corridors across the international boundary between the United States and Mexico.

II. Capabilities Requested

Within the Project Areas there is existing vehicle fence and dilapidated pedestrian fencing. Vehicle fencing is intended to stop vehicles from illegally entering the United States, but can be climbed over or under by individuals. Pedestrian fencing is intended to prevent and deter individuals and vehicles from illegally crossing into the United States.

DHS requests that DoD assist in the execution of projects, within the Project Areas set forth below, to: (1) replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing; (2) construct roads; and (3) install lighting.

The new pedestrian fencing includes a Linear Ground Detection System, which is intended to, among other functions, alert Border Patrol agents when individuals attempt to damage, destroy or otherwise harm the barrier. The road construction includes the construction of new roads and the improvement of existing roads. The lighting that is requested has an imbedded camera that works in conjunction with the pedestrian fence. The lighting must be supported by grid power.

The segments of fence within the Project Areas identified below are situated on federal property. DHS will be responsible for securing, to the extent required, any other real estate interest or instrument that is required for project execution. In the event a real estate interest or instrument that is needed for project execution cannot be obtained for a segment of fence within a Project Area in a time frame that is within the requirements of this request for assistance, the segment may be withdrawn from this request. In addition, DHS will be responsible for any applicable environmental planning and compliance to include stakeholder outreach and consultation associated with the projects.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 3

Project Areas:

II.A. El Centro Sector

Within the United States Border Patrol El Centro Sector (El Centro Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 15 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below.

The specific Project Area identified below is located in Imperial County, California and has been identified by the Office of National Drug Control Policy (ONDCP) as a High Intensity Drug Trafficking Area (HIDTA). Multiple local transnational criminal organizations known for smuggling drugs into Calexico from Mexico using a variety of tactics, techniques, procedures, and varying concealment methods operate in this area, including *Cartel De Jalisco Nueva Generación* (CJNG) as well as remnants of the *Beltran Leyva* Organization and *La Familia Michoacana* organizations. CJNG, based in Jalisco, was previously a faction of the *Sinaloa* Cartel. CJNG broke away from the *Sinaloa* Cartel and has become an established Mexican Cartel. The Mexican government has declared CJNG as one of the most dangerous cartels in the country.

Due to the close proximity of urban areas on both sides of the border, the El Centro Sector suffers from some of the quickest vanishing times – that is, the time it takes to illegally cross into the United States and assimilate into local, legitimate traffic. These quick vanishing times enable the illegal activities of transnational criminal organizations, whether they are smuggling people or narcotics.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 29,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Centro Sector. Also in fiscal year 2018, Border Patrol had approximately 200 separate drug-related events between border crossings in the El Centro Sector, through which it seized over 620 pounds of marijuana, over 165 pounds of cocaine, over 56 pounds of heroin, and over 1,600 pounds of methamphetamine.

The specific Project Area is as follows:

- *El Centro Project 1:*
 - The project begins approximately 10 miles west of the Calexico Port of Entry continuing west 15.25 miles in Imperial County.
 - Start coordinate: 32.63273, -115.922787; End coordinate: 32.652563, -115.662399

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 4

II.B. Yuma Sector

Within the United States Border Patrol Yuma Sector (Yuma Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 36 miles of existing vehicle barrier and approximately 6 miles of dilapidated pedestrian fencing with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Yuma County, Arizona.

Yuma County has been identified by the ONDCP as a HIDTA. Of particular note is the operation of the *Sinaloa* Cartel in this area. The *Sinaloa* Cartel continues to be the most powerful cartel in the country and controls illicit networks and operations in the United States. Despite the arrest of Joaquin "El Chapo" Guzman-Loera, its narcotics business has continued uninterrupted. As a result, there have been no significant changes within the *Sinaloa* Cartel's hierarchy, or any changes in the illicit operations conducted by the *Sinaloa* Cartel.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 26,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the Yuma Sector. Also during fiscal year 2018, Border Patrol had over 1,400 separate drug-related events between border crossings in the Yuma Sector, through which it seized over 8,000 pounds of marijuana, over 78 pounds of cocaine, over 102 pounds of heroin, over 1,700 pounds of methamphetamine, and over 6 pounds of fentanyl.

The replacement of ineffective pedestrian fencing in this area is necessary because the older, wire mesh design is easily breached and has been damaged to the extent that it is ineffective. Additionally, this area is notorious for border violence and narcotics smuggling. Furthermore, while the deployment of vehicle barrier in the Yuma Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States. Thus, in order to respond to these changes in tactics, DHS now requires pedestrian fencing.

The specific Project Areas are as follows:

- *Yuma Project 1:*
 - The project begins approximately 1 mile southeast of the Andrade Port of Entry continuing along the Colorado River for approximately 5 miles in Yuma County.
 - Start coordinate: 32.704197, -114.726013; End coordinate: 32.642102, -114.764632)

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 5

- *Yuma Project 2:*
 - The project involves the replacement of two segments of primary pedestrian fencing in Yuma Sector for a total of approximately 6 miles. This includes approximately 2 miles of fencing along the Colorado River.
 - Start coordinate: 32.37755528, -114.4268201; End coordinate: 32.3579244, -114.3623999;
 - The project also includes replacement of primary pedestrian fencing approximately 17 miles east of the San Luis Port of Entry, on the Barry M Goldwater Range, continuing east for approximately 4 miles.
 - Start coordinate: 32.51419938, -114.8011175; End coordinate: 32.49350559, -114.8116619
- *Yuma Project 3:*
 - The project begins approximately 0.4 miles east of the Barry M. Goldwater Range continuing approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.
 - Start coordinate: 32.232935, -113.955211; End coordinate: 32.039033, -113.33411

III.C. Tucson Sector

Within the United States Border Patrol Tucson Sector (Tucson Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 86 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Pima, Cochise, and Santa Cruz Counties, Arizona.

Pima, Cochise and Santa Cruz Counties have been identified by the ONDCP as a HIDTA. The *Sinaloa* Cartel relies on their local associates to coordinate, direct, and support the smuggling of illegal drugs and aliens from Mexico to the United States. Since Arizona is contiguous with the U.S.-Mexico International Boundary, the Tucson and Phoenix metropolitan areas are major trans-shipment and distribution points for contraband smuggling. Plaza bosses operate as a *Sinaloa* Cartel leader within their specific area of operation along the Sonora-Arizona corridor of the U.S.-Mexico International Boundary.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 52,000 apprehensions of illegal entrants attempting enter the United States between the border crossings in the Tucson Sector. Also in fiscal year 2018 Border Patrol had over 1,900 separate drug-related events between border crossings in the Tucson Sector, through which it seized over 1,600 pounds of marijuana, over 52 pounds of cocaine, over 48 pounds of heroin, over 902 pounds of methamphetamine, and over 11 pounds of fentanyl.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 6

In addition, the absence of adequate pedestrian fencing, either due to the presence of vehicle barrier only or ineffective pedestrian designs, in the Tucson sector continues to be particularly problematic as it pertains to the trafficking of illegal narcotics. Rival transnational criminal organizations frequently employ “rip crews” who leverage the remote desert environment and lack of infrastructure to steal one another’s illicit cargo resulting in increased border violence.

The terrain also provides high ground to scouts seeking to protect and warn smuggling loads being passed through the area. Transnational criminal organizations have successfully utilized this advantage in furtherance of their illicit activity and for this reason the area is in need of an improved capability to impede and deny illegal crossings or people and narcotics. In addition, the area hosts a number of tourist attractions that allow illegal activity to blend into legitimate activity; avoiding detection and evading interdiction.

The specific Project Areas are as follows:

- *Tucson Project 1:*
 - The project includes replacement of two segments of vehicle barriers. The first segment begins approximately 2 miles west of the Lukeville Port of Entry continuing west approximately 30 miles.
 - Start coordinate: 32.038278, -113.331716; End coordinate: 31.890032, -112.850162
 - The second segment project begins approximately 3 miles east of the Lukeville Port of Entry and continues east approximately 8 miles in Pima County, Arizona.
 - Start coordinate: 31.8648, -112.76757; End coordinate: 31.823911, -112.634298
- *Tucson Project 2:*
 - The project includes approximately 5 miles of primary pedestrian fence replacement around the Lukeville Port of Entry extending from approximately 2 miles west of the port to approximately 3 miles east of the port.
 - Start coordinate: 31.88999921, -112.850162; End coordinate: 31.8648, -112.76757

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 7

- *Tucson Project 3:*
 - The project includes three segments of vehicle barrier replacement beginning approximately 18 miles west of the Naco Port of Entry and continuing to approximately 25 miles east of the Douglas Port of Entry (or approximately 5 miles west of the Arizona/New Mexico state line) for approximately 20 miles of non-contiguous vehicle barrier replacement in Cochise County, Arizona.
 - Start coordinate: 31.333754, -110.253863; End coordinate: 31.333767, -110.250286;
 - Start coordinate: 31.334154, -110.152548; End coordinate: 31.334137, -110.147464;
 - Start coordinate: 31.333995, -109.453305; End coordinate: 31.332759, -109.129344
- *Tucson Project 4:*
 - The project begins approximately 9 miles east of the Nogales Port of Entry and continues eastward for approximately 30 miles with approximately 26 miles of non-contiguous vehicle barrier replacement in Santa Cruz and Cochise Counties, Arizona.
 - Start coordinate: 31.333578, -110.79579; End coordinate: 31.333511, -110.775333;
 - start coordinate: 31.33328, -110.70545; End coordinate: 31.333602, -110.288665)
 - Note: An additional approximately 0.3 miles of new pedestrian fence could be built between the existing segmented vehicle barrier locations to fill existing gaps if appropriate real estate interest can be verified
- *Tucson Project 5:*
 - The project includes approximately 2 miles of vehicle barrier replacement beginning approximately 4.5 miles east of the Sasabe Port of Entry continuing east in six non-continuous segments for approximately 15 miles in Pima and Santa Cruz Counties, Arizona.
 - Start Coordinate: 31.460175, -111.473171; End Coordinate: 31.459673, -111.471584;
 - Start Coordinate: 31.453091, -111.450959; End Coordinate: 31.449633, -111.440132;
 - Start Coordinate: 31.440683, -111.412054; End Coordinate: 31.437351, -111.40168;
 - Start Coordinate: 31.423471, -111.358336; End Coordinate: 31.422541, -111.355444;
 - Start Coordinate: 31.42221, -111.354379; End Coordinate: 31.421321, -111.351608;

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 8

- Start Coordinate: 31.386813, -111.243966; End Coordinate: 31.385462, -111.239759)

II.D. El Paso Sector

Within the United States Border Patrol El Paso (El Paso Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 70 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Luna, Hidalgo and Doña Ana Counties, New Mexico. Luna, Hidalgo and Doña Ana Counties have been identified by the ONDCP as a HIDTA.

There are three specific transnational criminal organizations of interest operating in the El Paso Sector - the *Sinaloa* Cartel as well as remnants of the *Juarez* Cartel and the *Beltran Leyva* Organization. In the El Paso Sector the *Sinaloa* Cartel employs a variety of tactics, techniques and procedures depending upon the terrain and environment to move drugs across the border. While the *Sinaloa* Cartel has a strong presence and control of territories at the flanks of the Sector, it does not have full control of the territory throughout the El Paso Sector. The *Juarez* Cartel, traditionally a major trafficker of marijuana and cocaine, has become an active member in opium cultivation and heroin production.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 31,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Paso Sector. Also in fiscal year 2018, Border Patrol had over 700 separate drug-related events between border crossings in the El Paso Sector, through which it seized over 15,000 pounds of marijuana, over 342 pounds of cocaine, over 40 pounds of heroin, and over 200 pounds of methamphetamine.

Although the deployment of vehicle barrier in the El Paso Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States.

Thus, in order to respond to these changes in tactics, CBP now requires pedestrian fencing. Successfully impeding and denying illegal activities or transnational criminal organizations in this area is further complicated by the close proximity of New Mexico Highway 9 to the border. In some cases the highway is less than a half a mile, allowing illegal cross-border traffic to evade detection and apprehension and quickly vanish from the border area.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 9

The specific Project Areas are as follows:

- *El Paso Project 1:*
 - The project includes 46 miles of vehicle barrier replacement beginning approximately 17.5 miles west of the Columbus Port of Entry continuing east in non-contiguous segments to approximately 35 miles east of the Columbus Port of Entry within the Luna and Doña Ana Counties, New Mexico.
 - Start Coordinate: 31.7837, -107.923151; End Coordinate: 31.783689, -107.679049;
 - Start Coordinate: 31.783672, -107.573919; End Coordinate: 31.783741, -107.038154
- *El Paso Project 2:*
 - The project includes 23.51 miles of Vehicle Barrier replacement in non-contiguous segments within Hidalgo and Luna Counties, New Mexico. The first segment begin approximately 5.1 miles east of the New Mexico/Arizona Border continuing east 4.55 miles.
 - Start Coordinate: 31.332323, -108.962631; End Coordinate: 31.332292, -108.885946;
 - The second segment begins approximately 3 miles west of the Antelope Wells Port of Entry to 3 miles east of the port of entry for 6.12 miles of Vehicle Barrier replacement.
 - Start Coordinate: 31.333368, -108.582412; End Coordinate: 31.333407, -108.47926;
 - The third segment begins approximately 20 miles west of the Columbus Port of Entry extending west 12.84 miles.
 - Start Coordinate: 31.783722, -108.182442; End Coordinate: 31.783708, -107.963193;

III. Technical Specifications

As set forth above, DHS requires road construction, installation of lighting, and the replacement of existing vehicle barrier or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS will provide DoD with more precise technical specifications as contract and project planning moves forward.

Given DHS's experience and technical expertise, DHS plans to coordinate closely with DoD throughout project planning and execution, to include review and approval of design specifications, barrier alignment and location, and other aspects of project planning and execution.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 10

IV. Sequencing

The DHS request for assistance includes approximately 218 miles in which DHS requires road construction, the installation of lighting, and the replacement of existing vehicle fencing or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS requests that DoD's support under 10 U.S.C. § 284 address the requirements in order of priority as DoD resources allow. The DHS order of priority is as follows:

1. Yuma Sector Project 1
2. Yuma Sector Project 2
3. El Paso Sector Project 1
4. El Centro Sector Project 1
5. Tucson Sector Project 1
6. Tucson Sector Project 2
7. Tucson Sector Project 3
8. Tucson Sector Project 4
9. Yuma Sector Project 3
10. El Paso Sector Project 2
11. Tucson Sector Project 5

V. Funding

DHS requests that DoD provide the above-referenced border fences, roads, and lighting on a non-reimbursable basis as support to block drug smuggling corridors.

DHS will accept custody of the completed infrastructure and account for that infrastructure in its real property records.

DHS will operate and maintain the completed infrastructure.

VI. Conclusion

DHS requests DoD assistance under 10 U.S.C. § 284 to construct fences, roads, and to install lighting in order to block drug smuggling corridors in the Project Areas set forth above. The Projects Areas set forth above are also areas of high illegal entry under IIRIRA § 102(a), and the requested fences, roads, and lighting will assist in deterring illegal crossings in the Project Areas.

EXHIBIT B



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

MAR 25 2019

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
Washington, DC 20528

Dear Madam Secretary:

Thank you for your February 25, 2019 request that the Department of Defense provide support to your Department's effort to secure the southern border by blocking up to 11 drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting.

10 U.S.C. § 284(b)(7) gives the Department of Defense the authority to construct roads and fences and to install lighting to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotic activities of Federal law enforcement agencies. For the following reasons, I have concluded that the support you request satisfies the statutory requirements:

- The Department of Homeland Security (DHS)/Customs and Border Protection (CBP) is a Federal law enforcement agency;
- DHS has identified each project area as a drug-smuggling corridor; and
- The work requested by DHS to block these identified drug smuggling corridors involves construction of fences (including a linear ground detection system), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).

Accordingly, at this time, I have decided to undertake Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 by constructing 57 miles of 18-foot-high pedestrian fencing, constructing and improving roads, and installing lighting as described in your February 25, 2019 request.

As the proponent of the requested action, CBP will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. I request that DHS place the highest priority on completing these actions for the projects identified above. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

The Commander, U.S. Army Corps of Engineers, is authorized to coordinate directly with DHS/CBP and immediately begin planning and executing up to \$1B in support to DHS/CBP by undertaking the projects identified above.

ER282

Additional support may be available in the future, subject to the availability of funds and other factors.



Patrick M. Shanahan
Acting

EXHIBIT C



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

MAR 25 2019

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF
FINANCIAL OFFICER**

**SUBJECT: Funding Construction in Support of the Department of Homeland Security Pursuant
to 10 U.S.C. § 284**

On February 25, 2019 the Secretary of Homeland Security requested that the DoD provide support to the Department of Homeland Security's (DHS) effort to secure the southern border by blocking up to 11 drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting. I have determined that the requirements of title 10, U.S.C., section 284, have been satisfied. Accordingly, I have approved DoD support for Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 (DHS Priority Projects 1, 2, and 3) and have authorized up to \$1B in funding for the construction of 18-foot high pedestrian fencing, the construction and improvement of roads, and the installation of lighting to block drug-smuggling corridors along the southern border.

I have also decided that the Department will reprogram funds to provide the support described above. This support will be funded through a transfer of \$1B of FY 2019 Army military personnel appropriations into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation. I am advised that this amount is excess to the Army's current programmatic needs with respect to military personnel. You should undertake a reprogramming action to effectuate such transfer, as authorized by law.

The reprogramming action that I am directing satisfies the statutory requirements. I have determined that a transfer of funds and authorizations of appropriations for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is in the national interest. In an April 4, 2018 memorandum, "Securing the Southern Border of the United States," the President directed DoD to assist DHS in stopping the flow of illegal drugs into the United States. The reprogramming action is necessary to advance that goal. I have also determined that the other requirements of Section 8005 of the DoD Appropriations Act, 2019, and Section 1001 of the John S. McCain National Defense Authorization Act for FY 2019 are met as set forth below:

- The items to be funded (Yuma Sector Projects 1 and 2 and El Paso Sector Project 1) are a higher priority than the item for which funds and authority are transferred (excess Army military personnel funds) because Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 are necessary in the national interest to prevent the flow of drugs into the United States and the Army military personnel funds are excess to need due to under-execution and lower-than-expected end-strength.
- Support to law enforcement under Section 284 for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is a military requirement assigned by statute. The need to provide support for Yuma Sector Projects 1

and 2 and El Paso Sector Project 1 was an unforeseen military requirement not known at the time of the FY 2019 budget request.

- Support under Section 284 for construction of roads and fences and the installation of lighting, including for Yuma Sector Projects 1 and 2 and El Paso Sector Project 1, has not been denied by Congress.

The funds that will be used for this project are excess to the need for which they were appropriated, and therefore, the use of such funds will not have a negative impact on joint force readiness. As such, I have determined that providing the requested support for Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 will not adversely affect the military preparedness of the United States.

This \$1B in funds will be allocated to the Department of the Army with instructions to allocate it further to the U.S. Army Corps of Engineers to undertake fence and road construction and lighting installation for the approved project.

No funds may be transferred or re-programmed from the drug-demand-reduction program, the National Guard counter-drug program, or the National Guard counter-drug schools program in order to fund subsection 284(b)(7) support to DHS.

You will comply with all statutory requirements, but will do so without regard to comity-based DoD policies that prescribe prior approval from congressional committees.

My point of contact is Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security.


Patrick M. Shanahan
Acting

cc:
Secretary of the Army
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Policy
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant to the Secretary of Defense for Public Affairs
Commander, U.S. Army Corps of Engineers

EXHIBIT D



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER
(Program/Budget)

MAR 25 2019

Mr. Mark Sandy
Deputy Associate Director,
National Security Division
Office of Management and Budget
Washington, DC 20503

Dear Mr. Sandy:

Enclosed is a Reprogramming Action for the Department's Support for the Department of Homeland Security (DHS) Counter-Drug Activity.

Pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for Fiscal Year (FY) 2019; as delegated, the Deputy Under Secretary of Defense (Comptroller) has determined that it is in the national interest to effect a transfer of funds between appropriations of the Department of Defense, as depicted on the enclosed reprogramming action.

Upon your approval, the reprogramming action will be forwarded to the congressional committees.

Sincerely,

Anne J. McAndrew
DoD Deputy Comptroller (Program/Budget)

Enclosure:
As stated

Under the authority vested in the Office of Management and Budget by section 8005 of division A of Public Law 115-245, the DoD Appropriations Act, 2019, the transfers in the enclosed reprogramming action for Support for the DHS Counter-Drug Activity are approved and can be transmitted to the congressional committees.

OMB Approval: _____

Date: _____

3/25/2019



ER288

Unclassified

REPROGRAMMING ACTION

Page 1 of 3

Subject: Support for DHS Counter-Drug Activity Reprogramming Action		DoD Serial Number: FY 19-01 RA
Appropriation Title: Various Appropriations		
		Includes Transfer? Yes

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This reprogramming action is submitted because this action uses general transfer authority. This reprogramming action provides funding in support of higher priority items, based on unforeseen military requirements, than those for which originally appropriated; and is determined to be necessary in the national interest. It meets all administrative and legal requirements, and none of the items has previously been denied by the Congress.

This reprogramming action transfers \$1,000.000 million from the Military Personnel, Army, 19/19, and Reserve Personnel, Army, 19/19, appropriations to the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation. This reprogramming action uses \$1,000.000 million of general transfer authority pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for Fiscal Year (FY) 2019.

FY 2019 REPROGRAMMING INCREASE:**+1,000,000****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****+1,000,000****Budget Activity 01: Counter-Narcotics Support**

238,306

238,306

+1,000,000

1,238,306

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S. Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation. This is a base budget requirement.

Approved (Signature and Date)

Elaine McCusker

3/25/19

Unclassified

REPROGRAMMING ACTION

Page 2 of 3

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-01 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

FY 2019 REPROGRAMMING DECREASES:**-1,000,000****Military Personnel, Army, 19/19****-993,627****Budget Activity 01: Pay and Allowances of Officers**

14,000,263

14,000,263

-56,440

13,943,823

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-38.9 million) and Continuation Pay (CP) (\$-17.5 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system. This is base budget funding.

Budget Activity 02: Pay and Allowances of Enlisted

27,151,209

27,151,209

-754,212

26,396,997

Explanation: Funds are available due to a 9,500 Soldier reduction to Army's overall end strength target (478,000 vice 487,500) as Army refocuses on smart, modest annual growth without compromising quality in a highly challenging recruiting and retention market. Funds are available from the following programs stemming from strength reductions and rate-driven adjustments observed in execution to date. This is base budget funding.

- \$325.9 million in basic pay, primarily driven by the decrease in projected average strength
- \$135.1 million in retired pay accrual, primarily driven by the decrease in projected average strength
- \$15.9 million in clothing allowances, stemming from reduced requirements for non-accession related uniform purchases
- \$13.3 million in incentive pays and family separation allowances, reflecting current base budget execution trends showing a shift toward higher Overseas Contingency Operations execution
- \$141.3 million in separation payments, driven by nearly 10 thousand fewer projected separations than seen in fiscal year 2018, fewer Soldiers eligible for disability separation in the Integrated Disability Evaluation System, and fewer projected involuntary separations
- \$29.0 million in social security tax employer contributions, primarily driven by the decrease in projected average strength
- \$27.6 million in enlistment and reenlistment incentives, due to projections for fewer recruitment contracts with bonus options compared to prior year execution and a smaller than expected cohort eligible for reenlistment
- \$66.1 million due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-41.4 million) and Continuation Pay (CP) (\$-24.7 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system

Unclassified

REPROGRAMMING ACTION

Page 3 of 3

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-01 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)						
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i
<u>Budget Activity 04: Subsistence of Enlisted Personnel</u>							
		2,269,930		2,269,930		-57,420	2,212,510
<u>Explanation:</u> Funds are available due to a decrease in projected average enlisted strength, lower than budgeted rate increases (no inflation in 2019 vice 3.4% budgeted), and a slight increase in the amount of realized collections for members subsisting in Army dining facilities. This is base budget funding.							
<u>Budget Activity 05: Permanent Change of Station Travel</u>							
		1,785,401		1,785,401		-115,726	1,669,675
<u>Explanation:</u> Funds are available due to lower than budgeted rates of execution that have been realized in recent move expenditures. This is base budget funding. Specifically:							
<ul style="list-style-type: none"> • \$36.9 million is available in accession moves • \$26.1 million is available in rotational moves • \$52.7 million is available in separation moves 							
<u>Budget Activity 06: Other Military Personnel Costs</u>							
		317,883		317,883		-9,829	308,054
<u>Explanation:</u> Funds are available due to a lower-than-projected number of former soldiers receiving unemployment compensation payments. This is base budget funding.							
<u>Reserve Personnel, Army, 19/19</u>						<u>-6,373</u>	
<u>Budget Activity 01: Reserve Component Training and Support</u>							
		4,874,662		4,871,312		-6,373	4,864,939
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system. This is base budget funding.							

Unclassified REPROGRAMMING ACTION - INTERNAL REPROGRAMMING

Page 1 of 1

Subject: Drug Interdiction and Counter-Drug Activities, Defense**DoD Serial Number:****Appropriation Title:** Various Appropriations

FY 19-11 IR

Includes Transfer?

Yes

Component Serial Number:*(Amounts in Thousands of Dollars)*

Line Item	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This reprogramming action transfers \$1,000.000 million from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation for drug interdiction and counter-drug activities consistent with the provisions in division A of Title VI of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019.

Realignment of funds between Drug Interdiction projects may be accomplished only with the concurrence of the Office of the Deputy Assistant Secretary of Defense, Counternarcotics and Global Threats. No funds made available in this reprogramming action may be obligated for projects pursuant to sections 321, 322, or 333 of Title 10, United States Code. This prohibition will be noted on all Funding Authorization Documents.

FY 2019 REPROGRAMMING INCREASE:**+1,000,000****Operation and Maintenance, Army, 19/19****+1,000,000****Budget Activity 01: Operating Forces**

Counter-Narcotics Support	-	216,874	+1,000,000	1,216,874
---------------------------	---	---------	------------	-----------

FY 2019 REPROGRAMMING DECREASE:**-1,000,000****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****-1,000,000****Budget Activity 01: Counter-Narcotics Support**

	1,238,306	1,238,306	-1,000,000	238,306
--	-----------	-----------	------------	---------

Explanation: Transfers funds from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation to support the Department of Homeland Security (DHS) request for DoD to support drug interdiction and counter-drug activities through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. This is a base budget requirement.

Approved (Signature and Date)

Elaine McCook

3/25/19

EXHIBIT E

Executive Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

March 29, 2019

MEMORANDUM FOR: CAPT Hallock N. Mohler Jr.
Executive Secretary
Department of Defense

FROM: Christina Bobb *Christina Bobb*
Executive Secretary
Department of Homeland Security

SUBJECT: Modification Request: Section 284 funding for Border Barrier
Construction

REFERENCE: (a) February 25, 2019, DHS Request for Assistance Pursuant to 10
U.S.C. §284
(b) March 25, 2019, DoD Response to DHS Request for Assistance
Pursuant to 10 U.S.C. §284

Overview

The Department of Homeland Security (DHS) thanks the Department of Defense for both the response and approval of the use of Section 284 funding for the construction of border fencing and roads and the installation of lighting as characterized in the Request for Assistance. The completion of these projects will assist CBP significantly in controlling the flow of migrants in between the Ports of Entry (POE) on the Southwest Border.

Clarifications

Prior to construction for border barrier projects, Customs and Border Protection (CBP) conducts an Alternatives Analysis (AA), which compares operational data against the known and tested impedance value of barrier and other related design attributes. The analysis examines key operational data points, including but not limited to:

- Vanishing time
- Response time
- Current staffing
- Presence and effectiveness of existing technology and infrastructure
- Subject matter expertise of agents intimately familiar with operations in these areas

Such analyses have often demonstrated that higher barriers and/or barriers augmented with anticlimb features significantly increase the amount of time that migrants require to reach a

www.dhs.gov

vanishing point. A more robust barrier solution (i.e. 30 foot steel bollard vice 18 foot steel bollard and features), increases the vanishing time and provides USBP agents with a greater ability to with vice without antilimb interdict migrants.

CBP undertook AAs for the proposed Section 284-funded projects; two of these AAs have been completed, with the following conclusions:

- Sector Yuma Project 2: Requirement for 18 foot steel bollard fencing with 5 foot antilimb steel plate
- Sector El Paso Project 1: Requirement for 30 foot steel bollard fencing with 5 foot antilimb steel plate

The AA for Sector Yuma Project 1, USBP's highest priority project, is still underway, with results expected the week of April 1st. Preliminary indications from the analysis, however, indicate 30 foot bollard with antilimb features is the likely requirement. DHS will communicate to OSD the finalized requirements for Sector Yuma Project upon completion of the AA.

In light of the analyses summarized above, DHS requests that specifications for the Sector El Paso Project 1 be amended to 30ft bollard with antilimb features, and that DoD be prepared to likewise amend the specifications for Sector Yuma Project 1. DHS also requests DoD directly follow the prioritization set forth in Reference (a) as closely as possible even if that means completing partial projects.

Please direct any questions to Ntina K. Cooper, Deputy Executive Director, Strategic Planning & Analysis, USBP, CBP (202) 344-1417.

EXHIBIT F



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

APR - 9 2019

MEMORANDUM FOR ACTING SECRETARY OF HOMELAND SECURITY

SUBJECT: Modification of Department of Defense Support to Block Drug-Smuggling Corridors

Thank you for your April 5, 2019 request that the Department of Defense provide modified specifications on projects approved for construction under 10 U.S.C. § 284 in order to support more effectively the Department of Homeland Security's efforts to secure the southern border.

10 U.S.C. § 284(b)(7) authorizes the Department of Defense to construct roads and fences, and to install lighting, to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotic activities of Federal law enforcement agencies. For the following reasons, I have concluded that this modified request continues to satisfy the statutory requirements:

- The Department of Homeland Security (DHS)/Customs and Border Protection (CBP) is a Federal law enforcement agency;
- DHS has identified each project area as a drug-smuggling corridor; and
- The work requested by DHS to block these identified drug-smuggling corridors involves construction of fences (including a linear ground detection system), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).

Accordingly, I have approved construction of pedestrian fencing for Yuma Sector Projects 1 and El Paso Sector Project 1 with 30-foot steel bollard with anti-climb plate, and Yuma Sector Project 2, with 18-foot steel bollard with anti-climb plate, as requested in your April 5, 2019 request. Road construction and improvements, and lighting installation, will be included as described in your February 25, 2019 request.

As the proponent of the requested action, CBP will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. I request that DHS place the highest priority on completing these actions for the projects identified above. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

I have authorized the Commander, U.S. Army Corps of Engineers, to coordinate directly with DHS/CBP and immediately begin planning and executing support to DHS/CBP by

undertaking the projects identified above in clearly defined segments to maximize the number of miles of barrier projects within the available funds (up to \$1 billion).

Additional support may be provided in the future, subject to the availability of funds and other factors.



Patrick M. Shanahan
Acting

EXHIBIT G



DEPARTMENT OF DEFENSE



LEGACY HOMEPAGE > NEWS > CONTRACTS > CONTRACT VIEW

Contracts for April 9, 2019

April 9, 2019

Contracts

Release No: CR-066-19

ARMY

SLSCO Ltd., Galveston, Texas, was awarded a \$789,000,000 firm-fixed-price contract for border replacement wall construction. Nine bids were solicited with six bids received. Work will be performed in Santa Teresa, New Mexico, with an estimated completion date of Oct. 1, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$388,999,999 were obligated at the time of the award. U.S. Army Corps of Engineers Albuquerque, New Mexico, is the contracting activity (W912PP-19-C-0018).

Barnard Construction Co. Inc., Bozeman, Montana, was awarded an \$187,000,000 firm-fixed-price contract for design-bid-build construction project for primary pedestrian wall replacement. Four bids were solicited with three bids received. Work will be performed in Yuma, Arizona, with an estimated completion date of Sept. 30, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$93,499,999 were obligated at the time of the award. U.S. Army Corps of Engineers, Los Angeles, California, is the contracting activity (W912PL-19-C-0013).

The Dutra Group, San Rafael, California, was awarded a \$10,000,000 firm-fixed-price contract for rental of hopper dredge with attendant plant and operators for maintenance dredging in Alabama, Mississippi, and Florida. Bids were solicited via the internet with two received. Work locations and funding will be determined with each order, with an estimated completion date of June 9, 2020. U.S. Army Corps of Engineers, Mobile, Alabama, is the contracting activity (W91278-19-D-0019).

DEFENSE LOGISTICS AGENCY

Vital Images Inc., Minnetonka, Minnesota, has been awarded a maximum \$100,000,000 firm-fixed-price, indefinite-delivery/indefinite-quantity contract for radiology and imaging systems, maintenance and training services. This is a five-year base contract with one five-year option. This was a competitive acquisition with 27 responses received. Location of performance is Minnesota, with an April 8, 2024, performance completion date. Using customers are Army, Navy, Air Force, Marine Corps and federal civilian agencies. Type of appropriation is fiscal 2019 through 2020 defense working capital funds. The contracting activity is the Defense Logistics Agency Troop Support, Philadelphia, Pennsylvania (SPE2D1-19-D-0012).

AAR Aircraft Services, Oklahoma City, Oklahoma, has been awarded a minimum \$13,701,177 fixed-price with economic-price-adjustment contract for fuel. This was a competitive acquisition with 148 responses received. This is a 47-month base contract with a six-month option period. Location of performance is Oklahoma, with a March 31, 2023, performance completion date. Using customers are Army, Navy, Air Force, Marine Corps and federal civilian agencies. Type of appropriation is fiscal 2019 through fiscal 2023 defense working capital funds. The contracting activity is the Defense Logistics Agency Energy, Fort Belvoir, Virginia (SPE607-19-D-0061).

AIR FORCE

Pergravis LLC, Tampa, Florida, has been awarded an estimated \$73,220,000 firm-fixed-price contract for power converting and continuation interfacing equipment emergency maintenance/preventative maintenance. This contract provides for support of 700 uninterruptable power supply systems across every Air Force major command. Work will be performed in various locations in the U.S. and overseas, and is expected to be complete by April 13, 2024. This contract is the result of a competitive acquisition and three offers were received. Fiscal 2019 other station funds in the amount of \$137,440 are being obligated at

the time of award. Air Force Life Cycle Management Center, Hill Air Force Base, Utah, is the contracting activity (FA8217-19-D-0002).

Al Qabandi United Co. W.L.L., Kuwait City, Kuwait, is being awarded an estimated \$30,000,000 firm-fixed-price contract for vehicle lease services. This contract provides Ali Al Salem Air Base, Kuwait, and surrounding tenant units, with non-tactical vehicles for transportation purposes. Work will be performed at Ali Al Salem Air Base, Kuwait, and is expected to be complete by April 12, 2024. This award is the result of a competitive acquisition and 67 offers were received. Fiscal 2019 operations and maintenance funds in the amount of \$16,000 are being obligated on a task order at the time of award. The 386th Expeditionary Contracting Squadron, Ali Al Salem AB, Kuwait, is the contracting activity (FA5703-19-D-0001).

Textron Aviation Defense LLC, Wichita, Kansas, has been awarded a \$15,350,000 firm-fixed-price modification (P00007) to previously awarded contract FA8617-17-C-6225 for continued support for the completion of the reconstitution of 15 T-6A aircraft. This modification provides for a schedule extension to complete the reconstitution of 15 T-6A aircraft and procure cartridge actuated devices and propellant actuated devices. Work will be performed at Imam Ali Air Base, Iraq, and is expected to be complete by July 31, 2019. This modification involves 100 percent foreign military sales to Iraq, and brings the total cumulative face value of the contract to \$35,338,422. Foreign military sales funds in the full amount are being obligated at the time of award. Air Force Life Cycle Management Center, Training Aircraft Division, Wright-Patterson Air Force Base, Ohio, is the contracting activity.

2101 LLC, doing business as Intercontinental Truck Body, Anaconda, Montana, has been awarded a \$10,566,494 firm-fixed-price delivery order for tow tractors. This delivery order provides for the procurement of flight line tow tractors used to tow fighter aircraft, munition trailers and ground support equipment. Work will be performed in Anaconda, Montana, and is expected to be complete by Sept. 1, 2021. Fiscal 2018 and 2019 procurement funds in the full amount are being obligated at the time of award. Air Force Life Cycle Management Center, Robins Air Force Base, Georgia, is the contracting activity (FA8534-19-F-0017).

NAVY

Raytheon Intelligence, Information and Services, Indianapolis, Indiana, is awarded a \$47,378,485 firm-fixed-price contract to procure 99 LAU-115 and 100 LAU-116 guided missile launchers for the Navy as well as 62 LAU-115 and 68 LAU-116 guided missile launchers for the government of Kuwait to enable F/A-18 aircraft to carry and launch AIM-120 and AIM-9X missiles. Work will be performed in Indianapolis, Indiana, and is expected to be completed in July 2022. Fiscal 2017 and 2018 aircraft procurement (Navy); and foreign military sales funds in the amount of \$47,378,485 will be obligated at time of award, \$17,285,182 of which will expire at the end of the current fiscal year. This contract was not competitively procured pursuant to Federal Acquisition Regulation 6.302-1. The Naval Air Systems Command, Patuxent River, Maryland, is the contracting activity (N00019-19-C-0056).

Raytheon Co., Portsmouth, Rhode Island, is awarded a \$33,347,011 firm-fixed-priced, indefinite-delivery/indefinite supply quantity contract, for up to 28 electronic throttle control units and auxiliary components to support Naval Surface Warfare Center Philadelphia Division. This contract is for the purpose of supporting the Virginia class submarine program. The proposed contract is for procurement of replacement electronic throttle control unit (ETCU) hardware which is currently obsolete and can no longer be efficiently supported. The proposed contract includes the hardware fabrication for new construction platforms and all back-fit systems to mitigate parts obsolescence, update/maintain the ETCU technical data package, and design verification testing on limited production units for quality assurance. Work will be performed in Portsmouth, Rhode Island, and is expected to be completed by April 2024. Fiscal 2018 shipbuilding and conversion (Navy) funding in the amount of \$9,165,306 will be obligated at time of award and will not expire at the end of the current fiscal year. This contract was solicited competitively via the Federal Business Opportunities website, with one offer received. The Naval Surface Warfare Center, Philadelphia Division, Philadelphia, Pennsylvania, is the contracting activity (N64498-19-D-4016).

Marshall Communications Corp.,* Ashburn, Virginia, is awarded \$9,805,873 for firm-fixed-price delivery order N0042119F0555 against a previously issued NASA Solutions for Enterprise-wide procurements contract (NNG15SD82B). This order provides for information technology supplies and services in support of the Teamcenter Product Lifecycle Management configuration for the Commander, Fleet Readiness Centers business process, enabling digital data updates, sharing and visibility across all levels of aviation maintenance. Work will be performed at the Naval Air Station, Patuxent River, Maryland (70 percent); and the Fleet Readiness Center East, Cherry Point, North Carolina (30 percent), and is expected to be completed in April 2020. Fiscal 2019 research, development, test and evaluation (Navy); and Section 852 funds in the amount of \$9,805,873 will be obligated at time of award, none of which will expire at the end of the current fiscal year. The Naval Air Warfare Center Aircraft Division, Patuxent River, Maryland, is the contracting activity.

Barnhart-Reese Construction, Inc.,* San Diego, California, is awarded \$8,137,970 for firm-fixed-price task order N6247319F4452 under a previously awarded multiple award construction contract (N62473-17-D-4635) for construction of a full motion trainer facility at Marine Corps Base, Camp Pendleton. This project will construct a new 10,828 SF facility to centralize infrastructures, to consolidate all aspects of training in one physical location, to provide operational support for home ported detachments, virtual and hands-on maintenance training, operator training, and to support contingencies in accordance with combatant and commander tasking. The task order also contains two planned modifications, which if exercised would increase cumulative task order value to \$8,171,720. Work will be performed in Oceanside, California, and is expected to be completed by October 2020. Fiscal 2019 military construction (Navy) contract funds in the amount of \$8,137,970 are obligated on this award and will not expire at the end of the current fiscal year. Four proposals were received for this task order. Naval Facilities Engineering Command Southwest, San Diego, California, is the contracting activity.

BAE Systems Jacksonville Ship Repair, Jacksonville, Florida, is awarded an \$8,123,072 cost-plus-award-fee modification to previously awarded contract N00024-16-C-2302 to exercise options for the USS Wichita (LCS 13) post-

shakedown availability (PSA). A PSA is accomplished within a period of approximately 10-16 weeks between the time of ship custody transfer to the Navy and the shipbuilding and conversion, Navy obligation work limiting date. The PSA encompasses all of the manpower, support services, material, non-standard equipment and associated technical data and documentation required to prepare for and accomplish the PSA. The work to be performed will include correction of government-responsible trial card deficiencies, new work identified between custody transfer and the time of PSA and incorporation of approved engineering changes that were not incorporated during the construction period which are not otherwise the building yard's responsibility under the ship construction contract. Work will be performed in Jacksonville, Florida, and is expected to be complete by March 2020. Fiscal 2019 shipbuilding and conversion (Navy) funding in the amount of \$5,896,048; fiscal 2013 shipbuilding and conversion (Navy) funding in the amount of \$1,482,102; and fiscal 2018 other procurement (Navy) funding in the amount of \$293,384 will be obligated at time of award and will not expire at the end of the current fiscal year. The Naval Sea Systems Command, Washington, District of Columbia, is the contracting activity.

Huntington-Ingalls Industries - Ingalls Shipbuilding, Pascagoula, Mississippi, is awarded a \$7,889,490 cost-plus-fixed-fee modification to previously awarded contract N00024-17-C-2473 to exercise an option for the accomplishment of emergent work as required, including management and labor efforts for the post-delivery planning yard services in support of the LHA-7 amphibious assault ship. Work will be performed in Pascagoula, Mississippi, and is expected to be completed December 2019. Fiscal 2019 shipbuilding and conversion (Navy) funding in the amount of \$7,889,490 will be obligated at time of award and will not expire at the end of the current fiscal year. The Naval Sea Systems Command, Washington, District of Columbia, is the contracting activity.

MISSILE DEFENSE AGENCY

Lockheed Martin Rotary and Mission Systems, Moorestown, New Jersey, is awarded a \$7,438,922 cost-plus-incentive-fee modification (P00322) to previously awarded contract HQ0276-10-C-0001. Under this modification, the contractor

will provide software maintenance support, identify, analyze, correct, test, and merge/rebase of the Common Source Library infrastructure and software discrepancies originating from heritage Aegis Ballistic Missile Defense Computer Programs. This modification increases the total cumulative face value of the contract from \$2,973,087,008 to \$2,980,525,930. Work will be performed in Moorestown, New Jersey, with an expected completion date of Oct. 31, 2019. Fiscal 2019 operations and maintenance funds in the amount of \$1,045,902 will be obligated at the time of award. The Missile Defense Agency, Dahlgren, Virginia, is the contracting activity.

*Small business

SHARE CONTRACTS

EXHIBIT H



HOMELAND DEFENSE &
GLOBAL SECURITY

ASSISTANT SECRETARY OF DEFENSE
2600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2600

APR 18 2019

MEMORANDUM FOR MILITARY ADVISOR, DEPARTMENT OF HOMELAND
SECURITY

SUBJECT: Modification of DHS Request for Assistance Pursuant to 10 U.S.C. § 284

Thank you for your April 12, 2019, memorandum requesting that DoD de-scope approximately four (4) of the six (6) miles for Yuma Sector Project 2.

I have reviewed and approved your request, and will instruct the U.S. Army Corps of Engineers to take the necessary contracting action in response to your request. DoD will use those funds previously approved by the Acting Secretary of Defense that are no longer required for Yuma Sector Project 2 to fund additional miles of 30-foot bollard fencing, roads, and lighting in the El Paso Sector 1 project. As previously agreed, DHS retains the responsibility to address environmental compliance for all construction undertaken pursuant to 10 U.S.C. § 284 and to provide the necessary access to land (i.e., real estate rights).

I appreciate the opportunity to support the Department of Homeland Security's mission of securing and managing our Nation's southern border.

A handwritten signature in black ink, reading "Kenneth P. Rapuano", is positioned above the typed name.

Kenneth P. Rapuano
Assistant Secretary of Defense
Homeland Defense & Global Security

DROR LADIN*
NOOR ZAFAR*
JONATHAN HAFETZ**
HINA SHAMSI*
OMAR C. JADWAT*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2660
dladin@aclu.org
nzafar@aclu.org
jhafetz@aclu.org
hshamsi@aclu.org
ojadwat@aclu.org
*Admitted pro hac vice
** Pro hac vice application pending

CECILLIA D. WANG (SBN 187782)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 343-0770
cwang@aclu.org

Attorneys for Plaintiffs (Additional counsel listed on following page)

**UNITED STATES DISTRICT COURT
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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: May 9, 2019

Time: 2:00 PM

Judge: Honorable Haywood S. Gilliam

Dept: Oakland

Date Filed: April 4, 2019

Trial Date: Not set

1 Arizona and New Mexico next month, despite advancing their specific construction plans. DOD and
2 DHS have issued notices stating exactly where border infrastructure will be built, and DOD has
3 transferred money to fund it. *See* RJN ¶ 15, 21 Exs. O, U. Teams of experts and engineers are
4 surveying sites. *Id.* ¶ 16, Ex. P. Yet, DOD and DHS have not engaged in interagency consultations,
5 invited public comment, prepared an EIS or an EA, or issued a finding of no significant impact.
6 Their failure to do so violates NEPA. *Cf. In re Border Infrastructure Envtl. Litig.*, 915 F.3d 1213,
7 1219, 1225–26 (9th Cir. 2019) (not reaching NEPA challenge to border wall construction because
8 project was “still in the preliminary planning stage” and no final agency action had been taken).

9 **II. Plaintiffs are suffering irreparable harm and will suffer further harm in the absence
10 of a preliminary injunction.**

11 Plaintiffs have suffered and will suffer irreparable harm if a border wall is constructed
12 pursuant to the President’s emergency declaration. As a result of the declaration, Sierra Club and
13 SBCC have been forced to continuously divert resources and efforts away from other core
14 organizational priorities. In addition, Plaintiffs’ members who live, work, or recreate in the specified
15 Yuma and El Paso sectors will suffer irreparable harm to their interests as a result of Defendants’
16 construction of 18-foot-high barriers across the land they treasure. Finally, the emergency
17 declaration causes constitutional injury to Plaintiffs by usurping Congress’s appropriations authority
18 and violating the Constitution’s separation of powers.

19 **A. Sierra Club and SBCC members face irreparable harm if construction proceeds
20 in Yuma Sector Projects 1 and 2 and El Paso Sector Project 1.**

21 Construction of a border wall in Yuma Sector Projects 1 and 2 and El Paso Sector Project 1
22 will have devastating effects on the environment and cause irreparable harm to Plaintiffs’ members
23 who reside or recreate in these areas. *See All. for the Wild Rockies*, 632 F.3d at 1135
24 (“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is
25 often permanent or at least of long duration, *i.e.*, irreparable.”) (quotation marks and citation
26 omitted). A plaintiffs who can establish that a project will “harm [their] members’ ability to ‘view,
27 experience, and utilize’ . . . areas in their undisturbed state” has demonstrated a likelihood of
28 irreparable harm. *Id. See also Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803,
822 (9th Cir. 2018) (finding irreparable harm to plaintiffs’ aesthetic and recreational pursuits
stemming from irreparable harm to endangered species). A plaintiff can also establish irreparable

1 harm if construction proceeds prior to NEPA compliance. *See High Sierra Hikers Ass’n v.*
2 *Blackwell*, 390 F.3d 630, 642 (9th Cir. 2004) (“In the NEPA context, irreparable injury flows from
3 the failure to evaluate the environmental impact of a major federal action.” (citation omitted)).
4 Plaintiffs Sierra Club and SBCC face irreparable harm for these reasons.

5 Wall construction will diminish Plaintiffs’ members’ recreational, aesthetic, and professional
6 interests in the wilderness areas along the U.S.–Mexico border. For example, Albert Del Val has
7 been fishing striped bass in the canals along the border in Yuma, Arizona for more than fifty years.
8 *See Del Val Decl.* ¶¶ 6. He fears that installation of an 18-foot-high border wall in this area will cut
9 off his access to the canals and detract from the natural environment that he has cherished since he
10 was a young boy. *Id.* ¶¶ 6, 7, 9-10. Sierra Club member Elizabeth Walsh routinely visits the El Paso
11 Sector 1 area for hiking and birdwatching. *See Walsh Decl.* ¶ 8. As part of her professional and
12 academic work, Dr. Walsh supervises several ongoing and long-term biology studies in the area with
13 graduate students. *Id.* ¶ 7. Construction of a border wall will not only impede her aesthetic
14 enjoyment of the borderlands, but will also negatively impact her ability to continue the scientific
15 studies she has been conducting for years. *Id.* ¶¶ 10-11, 15. *See also Munro Decl.* ¶ 7–9.

16 The agencies’ failure to comply with NEPA also increases the risk of irreparable harm. A
17 preliminary injunction is appropriate where a Plaintiff can show that irreparable harm is likely to
18 flow from a procedural violation of an environmental statute. *See W. Watersheds Project v.*
19 *Kraayenbrink*, 632 F.3d 472, 492–93 (9th Cir. 2011) (finding irreparable harm for procedural
20 violation of NEPA); *see also Cottonwood Env’tl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1091
21 (9th Cir. 2015) (procedural violation supports injunctive relief). By neglecting to even consider the
22 environmental harms of construction, as they are required to under NEPA, Defendants threaten
23 irreparable harm to Plaintiffs. *See, e.g., Bixby Decl.* ¶¶ 6–7, 9; *Walsh Decl.* ¶ 15; *Del Val Decl.* ¶¶
24 8–10. For SBCC community members who live along the border, Defendants’ failure to adhere to
25 NEPA is especially harmful because a wall and its underground foundation can increase lands’
26 susceptibility to flooding and cause the displacement of entire communities. *See Houle Decl.* ¶¶ 4, 6.

27 **B. Plaintiffs face irreparable harm from frustration of their missions.**

28 Plaintiffs will suffer irreparable harm unless the President’s plan to use military funds under

1 10 U.S.C. sections 2808 and 284 is enjoined, because they are forced to continue to divert
2 organizational resources to address the detrimental impact of a border wall. Such injuries are
3 sufficient to demonstrate a likelihood of irreparable harm and justify preliminary injunctive relief.
4 *See, e.g., Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (plaintiffs who have
5 shown “ongoing harms to their organizational missions . . . have established a likelihood of
6 irreparable harm”); *E. Bay Sanctuary Covenant v. Trump*, 354 F. Supp. 3d 1094, 1116 (N.D. Cal.
7 2018); *League of Women Voters v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (obstacles that “make it
8 more difficult for [organizations] to accomplish their primary mission” impose “irreparable harm”).

9 Plaintiff SBCC has expended significant staff time and resources to monitor and respond to
10 the diversion of funds and threatened construction caused by the emergency declaration. Since the
11 President declared a national emergency, several senior SBCC staff have devoted a “majority” of
12 their time to analyzing and responding to it. *See* Gaubeca Decl. ¶ 7 (emphasis in original). They have
13 fielded inquiries from members, journalists, and elected officials; created new educational materials,
14 media toolkits, and multimedia content; and hosted trainings for staff and partners, all in order to
15 respond to the national emergency declaration. *Id.* ¶¶ 8-9. Prioritizing these activities has taken time
16 away from and frustrated SBCC’s core organizational mission of advocating for Border Patrol
17 accountability and immigration reform, through activities such as policy initiatives that increase law-
18 enforcement accountability. *Id.* ¶ 10. SBCC member organizations Southwest Environmental Center
19 (SEC) and Equal Voice Network (EVN) have similarly diverted scarce organizational resources to
20 address the emergency declaration. *See* Houle Decl. ¶¶ 8-10 (organizing site-specific protests,
21 educating community members, providing group tours to border areas affected by “emergency,”
22 mapping out anticipated construction areas, creating new media campaign); Bixby Decl. ¶¶ 10-11
23 (identifying timing and location of construction, responding to stakeholder concerns, designing
24 media kits about impact of construction). Responding to the emergency declaration has frustrated the
25 core missions of both organizations, causing them irreparable harm. *See* Houle Decl. ¶¶ 4-5
26 (organization developed “additional arm” to deal with emergency, detracting from core
27 organizational priorities such as “Jobs and Economic Security,” “Education,” “Housing,” and
28 “Healthcare”); Bixby Decl. ¶¶ 3, 10-11 (core mission of “protection and restoration of native

wildlife and their habitats in the southwest” is frustrated). Plaintiffs are suffering present, ongoing, and concrete harms and will continue to do so absent judicial intervention.

C. Defendants’ constitutional violations impose irreparable harm.

“[T]he deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted). This principle applies even where the government’s constitutional violation is structural, rather than a deprivation of individual constitutional rights. *See Am. Trucking Assn.’s. v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009) (finding with respect to Supremacy Clause that “constitutional violation alone, coupled with the damages incurred, can suffice to show irreparable harm”); *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 538 (N.D. Cal. 2017) (rejecting distinction between violations of structural and personal constitutional rights, and finding irreparable harm arising from Separation of Powers and Spending Clause violations). Plaintiffs are experiencing and will continue to experience irreparable harm stemming from the President’s usurpation of Congressional authority. Defendants efforts to construct a border wall at a speed and manner not authorized by Congress through the unlawful diversion of military funds to construct walls in Arizona and New Mexico directly impairs Sierra Club members’ and SBCC members’ ability to enjoy protected parks and wildlife areas. This harm is irreparable.

III. The Balance of Equities and Public Interest Favor a Preliminary Injunction.

The balance of the equities and public interest support issuance of injunctive relief. In cases against the government, the government’s interest and public interest factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the public “has an interest in ensuring that ‘statutes enacted by [their] representatives’ are not imperiled by executive fiat. *E. Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1255 (9th Cir. 2018) (quoting *Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers)). In addition, there is a “well-established public interest in preserving nature and avoiding irreparable environmental injury.” *All. for the Wild Rockies*, 632 F.3d at 1138 (citation omitted); *see also Sierra Club v. Bosworth*, 510 F.3d 1016, 1033 (9th Cir. 2007).

CONCLUSION

For the reasons stated above, the Court should grant Plaintiffs a Preliminary Injunction.

DROR LADIN*
NOOR ZAFAR*
HINA SHAMSI*
OMAR C. JADWAT*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2660
Fax: (212) 549-2564
dladin@aclu.org
nzafar@aclu.org
hshamsi@aclu.org
ojadwat@aclu.org
*Admitted pro hac vice

CECILLIA D. WANG (SBN 187782)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 343-0770
Fax: (415) 395-0950
cwang@aclu.org

SANJAY NARAYAN (SBN 183227)**
GLORIA D. SMITH (SBN 200824)**
SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
2101 Webster Street, Suite 1300
Oakland, CA 94612
Tel.: (415) 977-5772
sanjay.narayan@sierraclub.org
gloria.smith@sierraclub.org
**Counsel for Plaintiff SIERRA CLUB

Attorneys for Plaintiffs (Additional counsel listed on following page)

**UNITED STATES DISTRICT COURT
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**

Additional counsel for Plaintiffs:

MOLLIE M. LEE (SBN 251404)
CHRISTINE P. SUN (SBN 218701)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 621-2493
Fax: (415) 255-8437
mlee@aclunc.org
csun@aclunc.org

DAVID DONATTI*
ANDRE I. SEGURA (SBN 247681)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF TEXAS
P.O. Box 8306
Houston, TX 77288
Tel.: (713) 325-7011
Fax: (713) 942-8966
ddonatti@aclutx.org
asegura@aclutx.org
*Admitted pro hac vice

INTRODUCTION

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

construction of the border wall and otherwise implementing President Trump's declaration of national emergency.

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61. The Proclamation directs the Secretary of Defense, pursuant to 10 U.S.C. § 2808, to order members of the Ready Reserve to “assist and support the activities of the Secretary of 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82. According to the Department of Homeland Security, in 2019 it will commence construction of 215 new miles of border wall. This construction will occur in ecologically sensitive habitats and other border lands known for their outstanding hiking, wildlife viewing, photography, and wilderness values. For example, the Department of Homeland Security has notified the public it intends to commence wall construction in California’s San Diego and El Centro Sectors; Arizona’s 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

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

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

LEGAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

143. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

156. Defendants are acting ultra vires in using funds to construct the border wall beyond 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

187. 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. Section 8005 of the 2019 Department of Defense Appropriations Act, Pub. Law No. 115-245, prohibits the transfer of Department of Defense funds “where the item for which funds are requested has been denied by the Congress,” and 10 U.S.C § 2214(b) similarly bars transfers in support of any “item for which Congress has denied funds.” Congress has denied funding for Defendants’ planned wall construction, thus barring the Department of Defense from using transfers to fund it.

188. In addition, 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) 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

Mollie M. Lee (SBN 251404)
Christine P. Sun (SBN 218701)
American Civil Liberties Union Foundation
of Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 621-2493
Fax: (415) 255-8437
mlee@aclunc.org
csun@aclunc.org

David Donatti*
Andre I. Segura (SBN 247681)
American Civil Liberties Union Foundation
of Texas
P.O. Box 8306
Houston, TX 77288
Tel.: (713) 325-7011
Fax: (713) 942-8966
ddonatti@aclutx.org
asegura@aclutx.org

Dror Ladin*
Noor Zafar*
Hina Shamsi*
Omar C. Jadwat*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2660
Fax: (212) 549-2564
dladin@aclu.org
nzafar@aclu.org
hshamsi@aclu.org
ojadwat@aclu.org

Cecillia D. Wang (SBN 187782)
American Civil Liberties Union Foundation
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 343-0770
Fax: (415) 395-0950
cwang@aclu.org

Sanjay Narayan (SBN 183227)**
Gloria D. Smith (SBN 200824)**
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
Tel.: (415) 977-5772
sanjay.narayan@sierraclub.org
gloria.smith@sierraclub.org

Counsel for Plaintiffs

*Admitted pro hac vice

**Counsel for Plaintiff Sierra Club

XAVIER BECERRA
Attorney General of California
ROBERT W. BYRNE
SALLY MAGNANI
MICHAEL L. NEWMAN
Senior Assistant Attorneys General
MICHAEL P. CAYABAN
CHRISTINE CHUANG
EDWARD H. OCHOA
Supervising Deputy Attorneys General
BRIAN J. BILFORD
NOAH M. GOLDEN-KRASNER
SPARSH S. KHANDESHI
HEATHER C. LESLIE
JANELLE M. SMITH
JAMES F. ZAHRADKA II
LEE I. SHERMAN (SBN 272271)
Deputy Attorneys General
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6404
Fax: (213) 897-7605
E-mail: Lee.Sherman@doj.ca.gov
Attorneys for Plaintiff State of California

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

STATE OF CALIFORNIA et al.;

Plaintiffs,

v.

**DONALD J. TRUMP, in his official
capacity as President of the United States of
America et al.;**

Defendants.

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

**PLAINTIFF STATES OF CALIFORNIA
AND NEW MEXICO'S NOTICE OF
CONDITIONAL CROSS-APPEAL**

Judge: The Honorable Haywood S.
Gilliam, Jr.

Trial Date: None set

Action Filed: February 18, 2019

1 PLEASE TAKE NOTICE THAT Plaintiffs the State of California and the State of New
2 Mexico (Plaintiff States) hereby cross-appeal to the United States Court of Appeals for the Ninth
3 Circuit from this Court's Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial
4 Summary Judgment, Denying Defendants' Motion for Partial Summary Judgment, and Certifying
5 Judgment for Appeal (ECF No. 185) and the associated Judgment (ECF No. 186) insofar as this
6 Court denied Plaintiff States' request for a permanent injunction.

7 This appeal is conditional. The permanent injunction in favor of the *Sierra Club* Plaintiffs
8 in the related case *Sierra Club, et al. v. Trump, et al.*, No. 19-cv-892 (N.D. Cal. June 28, 2019),
9 ECF No. 185, prevents the diversion of federal funds toward the construction of a barrier on the
10 southern border of California and New Mexico, which would cause irreparable harm to Plaintiff
11 States. So long as the injunction in that case remains in full effect, the Ninth Circuit need not
12 reach the issues presented in this appeal.

13 Plaintiff States' Representation Statement, required by Federal Rule of Appellate
14 Procedure, Rule 12(b), and Ninth Circuit Rule 3-2(b), is attached to this Notice of Appeal.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: July 8, 2019

Respectfully submitted,

2 XAVIER BECERRA
Attorney General of California
3 ROBERT W. BYRNE
SALLY MAGNANI
4 MICHAEL L. NEWMAN
Senior Assistant Attorneys General
5 MICHAEL P. CAYABAN
CHRISTINE CHUANG
6 EDWARD H. OCHOA
Supervising Deputy Attorneys General
7 BRIAN J. BILFORD
NOAH M. GOLDEN-KRASNER
8 SPARSH S. KHANDESHI
HEATHER C. LESLIE
9 JANELLE M. SMITH
JAMES F. ZAHRADKA II

/s/ Lee I. Sherman

11 LEE I. SHERMAN
12 Deputy Attorneys General
Attorneys for Plaintiff State of California

13 HECTOR BALDERAS
14 Attorney General of New Mexico
TANIA MAESTAS (*appearance pro hac vice*)
15 Chief Deputy Attorney General
NICHOLAS M. SYDOW
16 Civil Appellate Chief
JENNIE LUSK
17 Assistant Attorney General, Civil Rights Bureau Chief
MATTHEW L. GARCIA
18 Governor's General Counsel
Attorneys for Plaintiff State of New Mexico
19

ATTESTATION OF SIGNATURES

I, Lee I. Sherman, hereby attest, pursuant to Local Civil Rule 5-1(i)(3) of the Northern District of California that concurrence in the filing of this document has been obtained from each signatory hereto.

/s/ Lee I. Sherman

LEE I. SHERMAN
Deputy Attorney General
Attorney for Plaintiff
State of California

REPRESENTATION STATEMENT

Plaintiff States provide this Representation Statement as required by Federal Rule of Appellate Procedure, Rule 12(b), and Ninth Circuit Rule 3-2(b). The Office of the Attorney General, for the State of California, represents Plaintiff the State of California in this matter.

Lee Sherman
Deputy Attorney General
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6404
Fax: (213) 897-7605
E-mail: Lee.Sherman@doj.ca.gov

The Office of the Attorney General, for the State of New Mexico, represents Plaintiff the State of New Mexico in this matter.

Tania Maestas
Chief Deputy Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
Telephone: (505) 490-4048
E-mail: tmaestas@nmag.gov

The United States Department of Justice represents the Defendants in this matter, including: Donald J. Trump, in his official capacity as President of the United States of America; United States of America; U.S. Department of Defense; Mark T. Esper, in his official capacity as Acting Secretary of Defense; Ryan D. McCarthy, senior official performing the duties of the Secretary of the Army; Richard V. Spencer, in his official capacity as Secretary of the Navy; Matthew Donovan, in his official capacity as Acting 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 Secretary of the Interior; U.S. Department of Homeland Security; and Kevin K. McAleenan, in his official capacity as Acting Secretary of Homeland Security.¹

¹ As required by Rule 25(d) of the Federal Rules of Civil Procedure and Rule 43 (c)(2) of the Federal Rules of Appellate Procedure, the list of Defendants has been updated to reflect that Mark T. Esper replaced Patrick M. Shanahan as the Acting Secretary of Defense, Ryan D. McCarthy is now the senior official performing the duties of the Secretary of the Army now that Mark T. Esper is the Acting Secretary of Defense, Matthew Donovan replaced Heather Wilson as the Acting Secretary of the Air Force, and Kevin K. McAleenan replaced Kirstjen M. Nielsen as the Acting Secretary of Homeland Security.

1 H. Thomas Byron III
2 Assistant Director
3 Civil Division, Appellate Staff
4 U.S. Department of Justice
5 Main (RFK) Room 7529
6 950 Pennsylvania Avenue, N.W.
7 Washington, DC 20530
8 Telephone: (202) 616-5367
9 Facsimile: (202) 307-2551
10 Email: H.Thomas.Byron@usdoj.gov
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JAMES M. BURNHAM
Deputy Assistant Attorney General
JOHN R. GRIFFITHS
Director, Federal Programs Branch
ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch
ANDREW I. WARDEN (IN #23840-49)
Senior Trial Counsel
KATHRYN C. DAVIS
MICHAEL J. GERARDI
LESLIE COOPER VIGEN
RACHAEL WESTMORELAND
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Tel.: (202) 616-5084
Fax: (202) 616-8470

Attorneys for Defendants

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

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants Donald J. Trump, President of the United States; Mark T. Esper, Acting Secretary of Defense; Kevin K. McAleenan, Acting Secretary of Homeland Security; David Bernhardt, Acting Secretary of the Interior; Steven T. Mnuchin, Secretary of the Treasury; Heather A. Wilson, Secretary of the Air Force; Richard V. Spencer, Secretary of the Air Force; David Bernhardt, Secretary of the Interior; Ryan D. McCarthy, Senior Official Performing the Duties of the Secretary of the Army; the Department of Defense; the Department of Homeland Security; the Department of the Treasury; the Department of the Interior; and the United States of America hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Court's Order granting In Part and Denying In Part Plaintiffs' Motion for Partial Summary Judgment, Denying Defendant's Motion For Partial Summary Judgment, and Certifying Judgment For Appeal and Directing Entry of Final Judgment under Rule 54(b) (ECF No. 185), and the associated Judgment (ECF No. 186).

DATE: June 29, 2019

Respectfully submitted,

JAMES M. BURNHAM
Deputy Assistant Attorney General

JOHN G. GRIFFITHS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Andrew I. Warden
ANDREW I. WARDEN
Senior Trial Counsel (IN Bar No. 23840-49)

RACHAEL L. WESTMORELAND
KATHRYN C. DAVIS
MICHAEL J. GERARDI
LESLIE COOPER VIGEN
Trial Attorneys

U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Tel.: (202) 616-5084
Fax: (202) 616-8470

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XAVIER BECERRA
Attorney General of California
ROBERT W. BYRNE
SALLY MAGNANI
MICHAEL L. NEWMAN
Senior Assistant Attorneys General
MICHAEL P. CAYABAN
CHRISTINE CHUANG
EDWARD H. OCHOA
Supervising Deputy Attorneys General
BRIAN J. BILFORD
NOAH M. GOLDEN-KRASNER
SPARSH S. KHANDESHI
HEATHER C. LESLIE
JANELLE M. SMITH
JAMES F. ZAHRADKA II
LEE I. SHERMAN (SBN 272271)
Deputy Attorneys General
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6404
Fax: (213) 897-7605
E-mail: Lee.Sherman@doj.ca.gov
Attorneys for Plaintiff State of California

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

STATE OF CALIFORNIA et al.;

Plaintiffs,

v.

**DONALD J. TRUMP, in his official capacity
as President of the United States of America
et al.;**

Defendants.

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

**PLAINTIFF STATES OF CALIFORNIA
AND NEW MEXICO'S NOTICE OF
MOTION AND MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING
SECTIONS 284, 8005, AND 9002;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Judge: Honorable Haywood S. Gilliam,
Jr.
Trial Date: None Set
Action Filed: February 18, 2019

1 Separately and independently, DOD's deviation from its binding rules regarding
 2 reprogramming of funds under §§ 8005 and 9002 without Congress's consent, PI RJN Exs. 37-
 3 38, without "acknowledg[ing] and provid[ing] an adequate explanation" for that departure is
 4 arbitrary and capricious. *Jicarilla Apache Nation v. U.S. Dep't of the Interior*, 613 F.3d 1112,
 5 1119 (D.C. Cir. 2010) (internal citation omitted).⁶

6 **V. CALIFORNIA AND NEW MEXICO WOULD SUFFER IRREPARABLE HARM FROM THE**
 7 **DIVERSIONS OF FUNDS**

8 **A. The Diversions of Funds Harm California's and New Mexico's Sovereign**
 9 **Interests in the Enforcement of Their State Laws**

10 It is well-established that whenever a state is prevented "from effectuating statutes enacted
 11 by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. of*
 12 *California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *see*
 13 *also Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers) (state's inability to
 14 "employ a duly enacted statute . . . constitutes irreparable harm"). States have an undeniable
 15 sovereign interest not only in their "power to create and enforce a legal code," *Alfred L. Snapp &*
 16 *Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982), but also in protecting their
 17 natural resources and wildlife within their borders, an interest that is effectuated through a
 18 number of state environmental protection laws and regulations. *See Maine v. Taylor*, 477 U.S.
 19 131, 151 (1986) (state has "broad regulatory authority to protect the . . . integrity of its natural
 20 resources"); *Pac. Nw. Venison Producers v. Smitch*, 20 F.3d 1008, 1013 (9th Cir. 1994) ("Clearly,
 21 the protection of wildlife is one of the state's most important interests.").

22 But for the illegal diversions of DOD funds and resources, Defendants would not have
 23 available the funding and resources to initiate the planned construction of a barrier on California's
 24 and New Mexico's southern borders, and thereby undermine the purposes of the states'
 25 environmental laws. Unless Defendants are enjoined from illegally transferred DOD funds to
 26 DHS to construct a border barrier, Defendants will act on the IIRIRA waiver⁷ and infringe on

27 ⁶ California and New Mexico recognize that this Court rejected this argument, *States* PI Order 12
 28 n.8, but raise it here to preserve it for appellate purposes.

⁷ While the States believe that DOD should not have been able to exercise a waiver here, this
 Court has preliminarily ruled otherwise. *States* PI Order 28-29.

1 California's and New Mexico's sovereign interests in enforcing their environmental protection
2 laws.

3 For example, California would be prevented from enforcing its laws protecting water
4 quality, Cal. Water Code §§ 13050, 13220-13228.15, 13240, 13376; Cal. Code Regs. tit. 23, §§
5 3960-3969.4; MSJ Env. App'x Ex. 2 (Dunn Decl. ¶¶ 4-6, 20), its laws protecting residents from
6 the dust and fine particulate matter (PM 10) generated by construction projects, *see supra* 7; *see*
7 *also* 42 U.S.C. § 7506(c)(1); 40 C.F.R. § 52.220(c)(345)(i)(E)(2); 75 Fed. Reg. 39,366; Partial
8 MSJ RJN Ex. 4 (Rule 801), and its laws protecting rare and endangered wildlife species, *see* MSJ
9 Env. App'x Ex. 1 (Clark Decl. ¶¶ 14-18), Ex. 4 (Nagano Decl. ¶¶ 13-23). Similarly, New Mexico
10 would be prevented from enforcing its laws protecting air quality in Dona Ana and Luna
11 Counties, *see supra* 8-9; N.M. Admin. Code §§ 20.2.23.109-112; Partial MSJ RJN Ex. 7, as well
12 as its laws protecting endangered species and wildlife corridors, including on New Mexico State
13 Trust Lands that border the El Paso Project 1 site, *see* 2019 N.M. Laws Ch. 97; N.M. Stat. Ann. §
14 17-2-41; MSJ Env. App'x Ex. 5 (Nestlerode Decl. ¶ 4, Ex. A), Ex. 6 (Traphagen Decl. ¶¶ 18, 27).

15 These harms to the States' "sovereign interests and public policies," which cannot be
16 remedied by monetary damages, constitute an irreparable harm that justify the imposition of
17 injunctive relief. *Kansas v. United States*, 249 F.3d 1213, 1227 (10th Cir. 2001); *see also Rent-A-*
18 *Center, Inc. v. Canyon Television & Appliance Rental Inc.*, 944 F.2d 597, 603 (9th Cir. 1991)
19 ("intangible injuries" that cannot be remedied by monetary damages "qualify as irreparable
20 harm"). These injuries are distinct from that of private party litigants, as the harm to the States'
21 sovereign interests in preserving and enforcing their own laws cannot be adequately asserted by
22 other parties. *See California v. United States*, 180 F.2d 596, 599 (9th Cir. 1950) (California had a
23 right to intervene in action between the United States and a non-public entity where the non-
24 public entity "can only assert in court the rights of its shareholders and cannot adequately protect
25 the State's interest in its public welfare"). Consequently, regardless of any other relief ordered for
26 private litigants, California and New Mexico are entitled to injunctive relief to ensure that the
27 States can vindicate their own sovereign interests in their environment and natural resources as
28 this case proceeds on appeal. *See Day v. Apoliona*, 505 F.3d 963, 965 (9th Cir. 2007) (granting

1 intervention as of right to Hawaii because the action involved the state's "protectable interest in
2 the lands" of the state and "[t]he disposition of [the] action may impede the [s]tate's ability to
3 protect this interest").

4 **B. The Diversions of Funds Cause Harm to California's and New Mexico's**
5 **Environment, Wildlife, and Natural Resources**

6 Unless enjoined, the diversions of funds for border barrier construction will cause
7 irreparable injury to wildlife and plant species protected under federal, California, and New
8 Mexico law. "[E]nvironmental injury, by its nature, can seldom be adequately remedied by
9 monetary damages and is often permanent or at least of long duration, i.e., irreparable." *Idaho*
10 *Sporting Cong. Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (citations omitted).
11 California and New Mexico have demonstrated that, in the absence of injunctive relief, they will
12 suffer irreparable environmental injury. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,
13 22 (2008); *see also States PI Order 31* (holding that population-level harm is not required to
14 demonstrate irreparable injury to wildlife and plant species).

15 **California Harms Due to El Centro Project 1**

16 The planned construction in the El Centro Sector constitutes a "definitive threat" to
17 protected "species" such as Peninsular Bighorn Sheep, flat-tailed horned lizards, and burrowing
18 owls, and would harm multiple other species of lizards, birds and mammals such as mountain
19 lions and bobcats. MSJ Env. App'x Ex. 1 (Clark Decl. ¶¶ 12-19), Ex. 4 (Nagano Decl. ¶¶ 12-27);
20 *cf. Nat'l Wildlife Fed'n v. Burlington N.R.R.*, 23 F.3d 1508, 1513 (9th Cir. 1994) (citing *Fund for*
21 *Animals, Inc. v. Turner*, No. 91-2201(MB), 1991 WL 206232 (D.D.C. Sept. 27, 1991))
22 (injunction warranted by the potential killing of three to nine grizzly bears); *see also States PI*
23 *Order 31*.

24 The Peninsular Bighorn Sheep is listed as endangered under both federal and California
25 law. MSJ Env. App'x Ex. 1 (Clark Decl. ¶ 14), Ex. 4 (Nagano Decl. ¶ 27). The sheep have been
26 recorded moving back and forth across the border immediately west of the project area,
27 movement that allows for genetic interchange between populations based in the United States and
28 Mexico. *Id.* Ex. 1 (Clark Decl. ¶ 14), Ex. 4 (Nagano Decl. ¶ 13). Without that genetic exchange,

1 inbreeding can cause physical abnormalities, behavioral problems, and reduced reproductive
2 capability. *Id.* Ex. 4 (Nagano Decl. ¶ 17). The sheep are currently able to move through the
3 existing vehicle fencing to access habitat on both sides of the border, but would not be able to do
4 so if the bollard barrier planned for El Centro Project 1 is constructed. *Id.* ¶¶ 13, 15.

5 In addition, over 11,000 acres in the Jacumba Mountains, immediately north of the
6 international border and adjacent to the El Centro Project 1 site, are undisputedly designated
7 critical habitat for the sheep because “the Jacumba Mountains represent the only area of habitat
8 connecting the DPS [Distinct Population Segment] listed in the United States with other bighorn
9 sheep populations that occupy the Peninsular Ranges in Mexico.” *Id.* Ex. 1 (Clark Decl. ¶ 14).
10 “The California Department of Fish and Wildlife has tracked collared sheep in this area for many
11 years, and documented intensive use of the slopes immediately above and to the west of the
12 western terminus of the project area.” *Id.* These slopes are lamb-rearing habitat, and pregnant
13 ewes would be adversely affected by construction activities at the El Centro Project 1 site and the
14 vehicle traffic and lighting associated with border infrastructure immediately below these slopes,
15 particularly because the ewe group depends on resources in both the United States and Mexico.”
16 *Id.* Ex. 1 (Clark Decl. ¶ 14), Ex. 4 (Nagano Decl. ¶¶ 13-18). According to the California
17 Department of Fish and Wildlife, “[a] fence along the US-Mexico border would prohibit
18 movement to, and use of, prelambling and lamb-rearing habitat and summer water sources.” *Id.*
19 Ex. 1 (Clark Decl. ¶ 14).

20 Other protected wildlife species that would be harmed by El Centro Project 1 include the
21 flat-tailed horned lizard and the burrowing owl, which are both species of concern under
22 California state law. MSJ Env. App’x Ex. 1 (Clark Decl. ¶¶ 15-18), Ex. 4 (Nagano Decl. ¶¶ 21-
23 26). The flat-tailed horned lizard occurs within the project footprint and surrounding area. *Id.* Ex.
24 1 (Clark Decl. ¶ 18). The extensive trenching, construction of roads, and staging of materials
25 would harm or kill lizards that are either active or in underground burrows within the project
26 footprint. *Id.*, Ex. 4 (Nagano Decl. ¶¶ 19-20, 23). Additionally, the principal predators of these
27 lizards include small birds of prey that use perches to hunt. *Id.* Ex. 1 (Clark Decl. ¶ 18). By
28 constructing a continuous 18-30 feet high fence, and numerous light poles, over the lizards’

1 habitat range, this project would greatly increase the predation rate of lizards adjacent to the
2 barrier. *Id.* And the permanent roads and infrastructure removing suitable habitat, would
3 effectively sever the linkage that currently exists between populations on both sides of the border.
4 *Id.* Ex. 4 (Nagano Decl. ¶¶ 19, 23). Thus, it is precisely the type of the project that the U.S. Fish
5 and Wildlife Service and BLM's rangewide management strategy prohibits. Partial MSJ RJN Ex.
6 6. Burrowing owls, which live in underground burrows, also face death or injury from project
7 construction, including being buried alive in their burrows. *Id.* Ex. 4 (Nagano Decl. ¶¶ 24-25).
8 And El Centro Project 1 would inflict irreparable and irreversible impacts to at least 23 plants of
9 conservation concern, 13 of which are considered rare, threatened, or endangered in California
10 and are eligible for state listing, including the flat-seeded spurge and Haydon's Lotus. *Id.* Ex. 7
11 (Vanderplank Decl. ¶¶ 6, 24).

12 **New Mexico Harms Due to El Paso Project 1**

13 The construction planned in New Mexico would similarly cause irreparable harm to the
14 endangered Mexican wolf, block wildlife corridors for other large mammals, and harm protected
15 plant species. MSJ Env. App'x Ex. 3 (Lasky ¶ 11), Ex. 6 (Traphagen Decl. ¶¶ 17-31). In New
16 Mexico, Defendants' plan for 30-foot tall barriers extending up to 37 miles, AR 56, would
17 undeniably permanently impede wildlife connectivity. *See* MSJ Env. App'x Ex. 3 (Lasky Decl. ¶
18 8), Ex. 4 (Nagano Decl. ¶ 31), Ex. 6 (Traphagen Decl. ¶¶ 17-25, 27, 31). Defendants contend that
19 New Mexico has "overstated" its harms, but do not dispute that the bollard barrier planned for El
20 Paso Project 1 would block wildlife corridors for the Mexican wolf, a rare, endangered subspecies
21 of the gray wolf that suffers from a lack of genetic diversity. Enriquez Decl. ¶ 55; Mexican Wolf
22 Recovery Plan (Wolf Plan) (ECF No. 89-13) 5, 13-14; MSJ Env. App'x Ex. 6 (Traphagen Decl.
23 ¶¶ 18-25). The U.S. Fish and Wildlife Service confirms that having the two wild wolf populations
24 (one based in Mexico and the other based in New Mexico and Arizona) interbreed would benefit
25 the species. Wolf Plan 5, 13-14. Defendants also acknowledge that two wolves have crossed from
26 Mexico into the United States, including one wolf that returned to Mexico, *id.* 8; that wolf crossed
27 through the El Paso Project 1 site. MSJ Env. App'x Ex. 6 (Traphagen Decl. ¶¶ 23-24) & Ex. A.
28 And Defendants recognize that if the proposed bollard barrier is constructed, Mexican wolves

1 would no longer be able to cross the border and access habitat on both sides of the border,
2 meaning there would be zero chance of the two wild-wolf populations interbreeding and
3 improving the wolf's genetic diversity. *See* Enriquez Decl. ¶¶ 18, 55; MSJ Env. App'x Ex. 6
4 (Traphagen Decl. ¶¶ 18-25). Other species that would suffer from a lack of wildlife connectivity
5 and be irreparably harmed include the mountain lion, bobcat, mule deer, javelina, and at least 53
6 other land-based mammals, 38 reptiles, and 10 amphibian species. *Id.* Ex. 3 (Lasky Decl. ¶ 6, 11),
7 Ex. 6 (Traphagen Decl. ¶ 28).

8 Beyond harms due to a loss of wildlife connectivity, there would be additional impacts to
9 wildlife species from noise, deep holes for fence posts, vehicle traffic, lighting, and other
10 disturbances associated with border barrier construction. These construction activities would kill,
11 injure, or alter the behavior of many vital species such as the endangered Aplomado falcon, the
12 iconic Gila monster, which is listed as endangered by the State of New Mexico, and many birds
13 and bats. MSJ Env. App'x Ex. 3 (Lasky Decl. ¶ 9), Ex. 4 (Nagano Decl. ¶¶ 29, 32, 36, 41); Ex. 6
14 (Traphagen Decl. ¶ 26). Endangered plant species would also be harmed due to construction of El
15 Paso Project 1. *Id.* Ex. 3 (Lasky Decl. ¶ 14).

16 VI. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST FAVOR GRANTING A 17 PERMANENT INJUNCTION

18 Here, the balance of the equities and public interest weigh decidedly in favor of granting the
19 requested relief. As this Court has recognized, the public "has an interest in ensuring that statutes
20 enacted by their representatives are not imperiled by executive fiat." *Sierra Club* PI Order 54
21 (quoting *E. Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1255 (9th Cir. 2018)); *see also*
22 *Population Inst. v. McPherson*, 797 F.2d 1062, 1082 (D.C. Cir. 1986) ("The public has an interest
23 in assuring that public funds are appropriated and distributed pursuant to Congressional
24 directives."). The public interest is also served by enforcing California's and New Mexico's
25 environmental protection laws, which as discussed *supra*, would be undermined by the
26 construction facilitated by Defendants' illegal and unconstitutional diversions. *See New Motor*
27 *Vehicle Bd.*, 434 U.S. at 1351 (the "[public] interest is infringed by the very fact that the State is
28 prevented from engaging in investigation and examination" pursuant to its own duly enacted state

XAVIER BECERRA
Attorney General of California
ROBERT W. BYRNE
SALLY MAGNANI
MICHAEL L. NEWMAN
Senior Assistant Attorneys General
MICHAEL P. CAYABAN
CHRISTINE CHUANG
EDWARD H. OCHOA
Supervising Deputy Attorneys General
HEATHER C. LESLIE
JANELLE M. SMITH
JAMES F. ZAHRADKA II
LEE I. SHERMAN (SBN 272271)
Deputy Attorneys General
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6404
Fax: (213) 897-7605
E-mail: Lee.Sherman@doj.ca.gov
Attorneys for Plaintiff State of California

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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: May 9, 2019
Time: 2:00 pm
Dept: 2
Judge: Honorable Haywood S. Gilliam,
Jr.
Trial Date: None Set
Action Filed: February 18, 2019

construction in the El Paso and Yuma Sectors in New Mexico and Arizona, respectively. RJN Exs. 34-35. Now, not only has DHS made a decision that required environmental review, it has secured funding, unlawfully, to effectuate that decision. NEPA thus required environmental review months ago. “NEPA’s object is to minimize . . . the risk of uninformed choice, a risk that arises in part from the practical fact that bureaucratic decisionmakers (when the law permits) are less likely to tear down a nearly completed project than a barely started project.” *Sierra Club v. Marsh*, 872 F.2d 497, 500–01 (1st Cir. 1989); *see also* 40 C.F.R. § 1502.5 (“The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made.”). DHS made an “uninformed choice” and violated NEPA by failing to conduct any environmental review before the December 12, 2018 decision regarding the location of the barriers or the March 25, 2019 funding decision.

III. PLAINTIFF STATES ARE LIKELY TO SUFFER IRREPARABLE HARM FROM THE FUNDING DIVERSIONS

A. New Mexico is Likely to Suffer Irreparable Harm from the Environmental Impacts Caused by the Diversion of Funding and Resources and Construction of Border Wall Without Proper Environmental Review

As the Ninth Circuit has observed, “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.” *Idaho Sporting Cong. Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (citations omitted). Further, “[i]n the NEPA context, irreparable injury flows from the failure to evaluate the environmental impact of a major federal action.” *California ex rel. Lockyer v. U.S. Dept. of Agric.*, 459 F. Supp. 2d 874, 913 (N.D. Cal. 2006), *opinion clarified* sub nom. *People of State of California ex rel. Lockyer v. U.S. Dept. of Agric.*, C05-03508 EDL, 2006 WL 2827903 (N.D. Cal. Oct. 3, 2006), *aff’d*, 575 F.3d 999 (9th Cir. 2009). Thus, irreparable injury exists when the agency fails to consider the environmental concerns raised by NEPA such that “governmental decisionmakers make up their minds without having before them an analysis (with prior public comment) of the likely effects of their decision upon the environment.” *Id.* at 913.

Irrespective of the procedural injury caused by the violation of NEPA, construction of a

border wall in New Mexico will cause irreparable injury to wildlife in the area and New Mexico as a whole. This harm is caused not just by Defendants' violation of NEPA. This irreparable injury would not occur but for Defendants' unlawful and unconstitutional diversion of DOD funds toward construction of a border wall on New Mexico's southern border.

The proposed pedestrian fencing will permanently impede wildlife connectivity that is essential to the survival of many species such as the Mexican wolf. The Mexican wolf is a rare, endangered subspecies of the gray wolf. Env. App'x Ex. 5 (Traphagen Decl. ¶¶ 18-22). After being nearly killed off in the 1970s, recovery efforts for this important species are still ongoing. *Id.* The Mexican wolf is known to travel hundreds of miles and cross the United States-Mexico border in the El Paso Project 1 area. *Id.* ¶¶ 23-25. This movement is essential for the genetic diversity of this species. *Id.* Ex. 2 (Lasky Decl. ¶ 8); Ex. 3 (Nagano Decl. ¶ 17); Ex. 5 (Traphagen Decl. ¶ 20). The El Paso Project 1 border wall likely irreparably eliminates the possibility of the recovery of the endangered Mexican wolf and precludes its delisting under the Endangered Species Act. *Id.* Ex. 3 (Nagano Decl. ¶ 15). Other species that will suffer from a lack of wildlife connectivity and be irreparably harmed by the El Paso Project 1 border wall include the mountain lion, bobcat, mule deer, javelina, and at least 53 other non-volant mammal, 38 reptile, and 10 amphibian species. *Id.* Ex. 2 (Lasky Decl. ¶ 6, 11); Ex. 5 (Traphagen Decl. ¶ 28).

In addition to wildlife connectivity issues, noise, deep holes for fence posts, vehicle traffic, lighting, and other disturbances associated with border wall construction will kill, injure, or alter the behavior of many vital species such as the endangered Aplomado falcon, the iconic Gila monster which is listed as endangered by the State of New Mexico, and many birds and bats. Env. App'x Ex. 2 (Lasky Decl. ¶ 9); Ex. 3 (Nagano Decl. ¶¶ 16, 20, 25); Ex. 5 (Traphagen Decl. ¶ 26). Harms to other wildlife will also have significant impacts on New Mexico residents, limiting recreational opportunities and eliminating sources of income for local communities. *Id.* Ex. 1 (Hadley Decl. ¶ 25); Ex. 5 (Traphagen Decl. ¶¶ 29-30); Ex. 6 (Trejo Decl. ¶¶ 8-10, 13, 17-18); Ex. 7 (Vasquez Decl. ¶¶ 8, 14). For example, a border wall would block the flight path of low-flying quail, making it more vulnerable to natural predators and thus impairing residents' ability to hunt the quail. *Id.* Ex. 6 (Trejo Decl. ¶¶ 10, 13).

Finally, the irreparable damage to species and to wildlife corridors, including on State Trust Lands, constitutes irreparable harm to the State of New Mexico. Under the New Mexico Constitution, “protection of the state’s beautiful and healthful environment is . . . of fundamental importance to the public interest, health, and safety and the general welfare.” N.M. Const. art. XX, § 21. This provision “recognizes that a public trust duty exists for the protection of New Mexico’s natural resources . . . for the benefit of the people of this state.” *Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 350 P.3d 1221, 1225 (N.M. Ct. App. 2015). New Mexico is now committed to preserving wildlife corridors for large mammals and species of concern such as the Mexican gray wolf. Env. App’x Ex. 5 (Traphagen Decl. ¶ 27). Additionally, El Paso Project 1 abuts and includes New Mexico State Trust Lands and borders the Organ Mountains-Desert Peaks National Monument and other wilderness areas, which together constitute a critical wildlife corridor that the Project will disrupt. *Id.* Ex. 4 (Nestlerode Decl. Ex. A); Ex. 5 (Traphagen Decl. ¶¶ 27-31, Exs. A and B).

B. Diversion from TFF is Likely to Irreparably Harm the Plaintiff States

Plaintiff States will suffer irreparable harm from the permanent diversion of funds from TFF because this is an unconstitutional action that deprives Plaintiff States of the same opportunity to receive TFF funds that they have enjoyed for years. “[C]onstitutional violation[s] alone, coupled with the damages incurred, can suffice to show irreparable harm.” *Am. Trucking Ass’n, v. Los Angeles*, 559 F.3d 1046, 1058-59 (9th Cir. 2009) (relying on *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992)). The harms that this diversion causes to Plaintiff States’ public policy and sovereign interests in preserving public safety constitutes irreparable harm. *See Kansas v. United States*, 249 F.3d 1213, 1227-28 (10th Cir. 2001).

Defendants have used unconstitutional means to direct \$601 million from TFF toward a new competing priority to which forfeitures may be devoted—*i.e.*, a border wall that Congress has refused to fund with additional appropriations. This \$601 million in Strategic Support funding for one fiscal year is greater than the amount of Strategic Support funding that has been drawn from TFF for the *past nine years combined*. Cayaban Decl. ¶ 11. This diversion, which is taking place against the backdrop of “severe negative impacts” to the TFF caused by Congressional

XAVIER BECERRA
Attorney General of California
ROBERT W. BYRNE
SALLY MAGNANI
MICHAEL L. NEWMAN
Senior Assistant Attorneys General
MICHAEL P. CAYABAN
CHRISTINE CHUANG
EDWARD H. OCHOA
Supervising Deputy Attorneys General
HEATHER C. LESLIE
LEE I. SHERMAN
JANELLE M. SMITH
JAMES F. ZAHRADKA II (SBN 196822)
Deputy Attorneys General
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550
Telephone: (510) 879-1247
E-mail: James.Zahradka@doj.ca.gov
Attorneys for Plaintiff State of California

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.").

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

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

18. California 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 and resources.

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

20. California 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 Defendants' reduction of federal defense spending in California due to diversion of funding to the border wall.

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

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

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

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

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

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

PLAINTIFF STATE OF DELAWARE

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

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

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

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

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

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

47. Delaware 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, Delaware received more than \$1.3 million in equitable sharing from the Treasury Forfeiture Fund; in 2017, Delaware received \$349,045; in 2016, Delaware received more than \$1.2 million; in 2015, Delaware received \$331,134; and in 2014, Delaware received more than \$2.5 million. These resources are used to supplement and enhance law enforcement agencies' state-appropriated funding.

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

49. Defendants' unlawful and unconstitutional diversion of funds away from projects authorized and appropriated for disbursement and use within the State of Delaware will cause it 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

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

65. 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 State caused by Defendants' diversion of funding. The loss of funding to conduct drug interdiction and counter-narcotics activity threatens the public safety of all Illinois residents.

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

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

PLAINTIFF STATE OF MAINE

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

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

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

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

71. Maine 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.

72. Maine 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 Defendants' reduction of federal defense spending in Maine due to diversion of funding to the border wall.

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

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

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

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

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

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

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

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

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

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

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

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

PLAINTIFF STATE OF MARYLAND

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

85. Maryland is aggrieved by the actions of Defendants and has standing to bring this action 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 threaten the public safety of all Marylanders.

86. Maryland is also aggrieved by the actions of Defendants and has standing to bring this action because of the injury due to the diversion of funding for military construction projects. On information and belief, Maryland stands to lose up to \$513 million in military construction 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.

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

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

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

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

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

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

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

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

Forfeiture Fund's equitable sharing program.

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

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

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

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

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

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

**PLAINTIFF ATTORNEY GENERAL DANA NESSEL ON BEHALF
OF THE PEOPLE OF MICHIGAN**

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

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

quasi-sovereign, and proprietary interests.

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

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

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

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

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

³ See Off. of Inspector Gen., Dep't of the Treasury, *Audit of the Department of the 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

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

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

PLAINTIFF COMMONWEALTH OF VIRGINIA

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

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

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

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

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

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

PLAINTIFF STATE OF WISCONSIN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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>.

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

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

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

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

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

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

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

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

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

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/yycew5dk>.

³² See, e.g., Alex Nowrateh, *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/y4vmtezxb>.

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>.

emergency.”⁵¹

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

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

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

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

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

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

III. PRESIDENT TRUMP’S EXECUTIVE ACTION AND EMERGENCY DECLARATION

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

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

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

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

⁵³ *Id.*

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

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

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

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

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

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

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* § 1.

⁵⁸ *Id.*

⁵⁹ *Id.* § 2.

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

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

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

IV. LEGAL BACKGROUND

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

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

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>.

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

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>.

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

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

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

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

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

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

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

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

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>.

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

266. Section 8005’s transfer authority is subject to several conditions, including “prompt” notification to Congress. In addition, the Section 8005 transfer authority “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 Congress.”

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

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

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

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

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

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

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

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

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

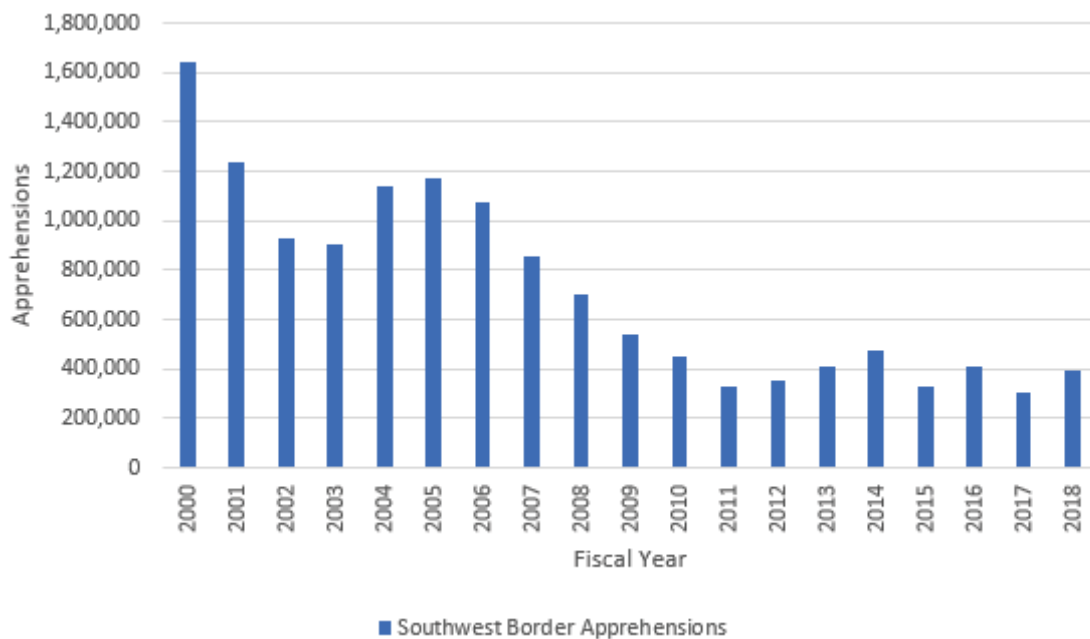
277. In FY2017, CBP made the fewest apprehensions since FY2000, and the number of apprehensions in FY2018 was the fifth lowest since FY2000.⁷⁵

⁷² See 165 Cong. Rec. S1412 (daily ed. Feb. 25, 2019) (joint declaration of 58 former United States senior government national security, defense, and diplomatic officials, including 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”).

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

⁷⁴ CBP, *Nationwide Illegal Alien Apprehensions Fiscal Years 1925-2017*, <https://tinyurl.com/y2kysbr8> (last visited Feb. 17, 2019) (also showing over 1 million 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).

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).

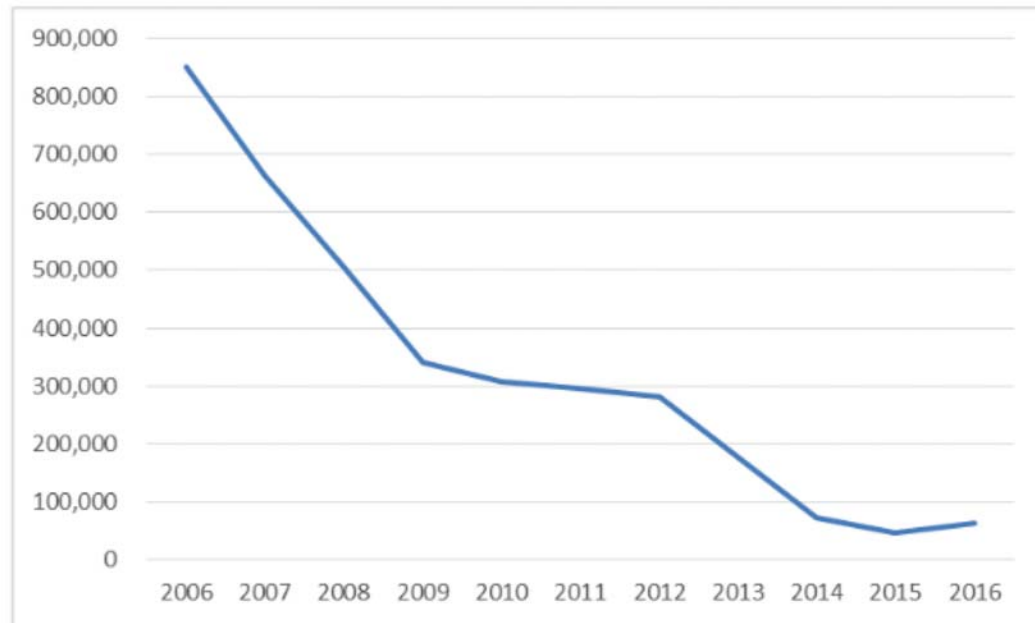
⁷⁷ *Id.*; CBP, *Total Illegal Alien Apprehensions by Fiscal Year*, <https://tinyurl.com/y73mzshs> (last visited Feb. 17, 2019).

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.*

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

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

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

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

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

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*, Ctr. for Migration Studies (Jan. 16, 2019), <https://tinyurl.com/y7wa849r>; see also Former Gov't 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").

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

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

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

⁸⁶ *Id.* at 41.

⁸⁷ *Id.* at 19.

⁸⁸ Max Ehrenfreund, *The Huge Immigration Problem That Donald Trump's Wall Won't Solve*, Wash. Post (Dec. 18, 2015), <https://tinyurl.com/yxgw1x2q> (citing research by Federal 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/y9zgmv7p>.

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>.

military installations outside the United States.¹³¹

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

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

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

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

1. Harm caused by diversion of funding and other resources

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

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

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

¹³¹ *Id.*

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.

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

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

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

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

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

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

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

¹⁴⁴ *Id.*

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

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/y3zamyvsh> (last visited Feb. 17, 2019); Wilderness Connect, *Otay Mountain Wilderness*, <https://tinyurl.com/y3ymkazzn> (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, spikedace, 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>.

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

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

DECLARATORY/INJUNCTIVE RELIEF

362. Plaintiff States will suffer irreparable injury if Defendants take action to build the border wall by diverting funds and resources in contravention of the United States Constitution and several federal statutes, and Plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF

VIOLATION OF CONSTITUTIONAL SEPARATION OF POWERS

363. Plaintiff States incorporate the allegations of the preceding paragraphs by reference.

364. Article I, Section 1 of the United States Constitution enumerates that "[a]ll legislative Powers herein granted shall be vested in [the] Congress." Article I, Section 8 of the

¹⁶⁰ Lauren Villagran, *Land That Time Forgot*, Albuquerque J. (Apr. 30, 2017), <https://tinyurl.com/mxqht6r>.

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).

United States Constitution vests exclusively in Congress the spending power to “provide for the . . . General Welfare of the United States.”

365. Article I, Section 7, Clause 2 of the United States Constitution, known as the Presentment Clause, requires that all bills passed by the House of Representatives and the Senate be presented to the President for signature. The President then has the choice to sign or veto the bill. Article II, Section 3 of the United States Constitution requires that the President “shall take Care that the Laws be faithfully executed.”

366. The President acts at the lowest ebb of his power if he acts contrary to the expressed or implied will of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). Moreover, there is no provision in the United States Constitution that authorizes the President to enact, amend, or repeal statutes, including appropriations already approved by Congress and signed into law by the President. *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).

367. Defendants have violated the United States Constitution’s separation of powers doctrine by taking executive action to fund a border wall for which Congress has refused to appropriate funding. The 2019 Appropriations Act is an explicit denial of the President’s requested funding for a border wall. Defendants have further violated the separation of powers doctrine—specifically the Presentment Clause—by unilaterally diverting funding that Congress already appropriated for other purposes to fund a border wall for which Congress has provided no appropriations.

368. 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.

SECOND CLAIM FOR RELIEF

VIOLATION OF APPROPRIATIONS CLAUSE

369. Plaintiff States incorporate the allegations of the preceding paragraphs by 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.

Dated: March 13, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT W. BYRNE
SALLY MAGNANI
MICHAEL L. NEWMAN
Senior Assistant Attorneys General
MICHAEL P. CAYABAN
CHRISTINE CHUANG
EDWARD H. OCHOA
Supervising Deputy Attorneys General

/s/ James F. Zahradka II
JAMES F. ZAHRADKA II (SBN 196822)
HEATHER C. LESLIE
LEE I. SHERMAN
JANELLE M. SMITH
Deputy Attorneys General
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550
Telephone: (510) 879-1247
E-mail: James.Zahradka@doj.ca.gov
Attorneys for Plaintiff State of California

Philip J. Weiser
Attorney General of Colorado

WILLIAM TONG
Attorney General of Connecticut

/s/ Eric R. Olson
Eric R. Olson (*pro hac vice pending*)
Solicitor General
Attorneys for Plaintiff the State of Colorado

/s/ Margaret Q. Chapple
MARGARET Q. CHAPPLE (*pro hac vice
forthcoming*)
Deputy Attorney General
55 Elm Street
Hartford, CT 06106
Telephone: (860) 808-5316
Margaret.chapple@ct.gov
Attorneys for Plaintiff State of Connecticut

KATHLEEN JENNINGS
Attorney General of Delaware
AARON R. GOLDSTEIN
Chief Deputy Attorney General
ILONA KIRSHON
Deputy State Solicitor

/s/ David J. Lyons
DAVID J. LYONS
Deputy Attorney General
Attorneys for Plaintiff State of Delaware

CLARE E. CONNORS
Attorney General of Hawaii

/s/ Clyde J. Wadsworth
CLYDE J. WADSWORTH
Solicitor General
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 586-1360
E-mail: Clyde.J.Wadsworth@hawaii.gov
Attorneys for Plaintiff State of Hawaii

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Caleb Rush
Caleb Rush
Assistant Attorney General
David L. Franklin, Solicitor General
100 West Randolph Street, 12th Floor
Chicago IL 60601
(312) 814-5376
crush@atg.state.il.us
Attorneys for Plaintiff State of Illinois

BRIAN E. FROSH
Attorney General of Maryland

/s/ Jeffrey P. Dunlap
Jeffrey P. Dunlap (*pro hac vice forthcoming*)
Assistant Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
(410) 576-6300
jdunlap@oag.state.md.us
Attorneys for Plaintiff State of Maryland

AARON M. FREY
ATTORNEY GENERAL OF MAINE
SUSAN P. HERMAN (*pro hac vice pending*)
Deputy Attorney General
6 State House Station
Augusta, Maine 04333-0006
Telephone: (207) 626-8814
Email: susan.herman@maine.gov
Attorneys for Plaintiff State of Maine

MAURA HEALEY
Attorney General for Massachusetts
/s/ Abigail B. Taylor
ABIGAIL B. TAYLOR (*pro hac vice forthcoming*)
Director, Child & Youth Protection Unit
DAVID C. KRAVITZ
Assistant State Solicitor
TARA D. DUNN
Assistant Attorney General, Civil Rights Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel: (617) 727-2200
Abigail.Taylor@mass.gov
David.Kravitz@mass.gov
Tara.Dunn@mass.gov
Attorneys for Plaintiff Commonwealth of Massachusetts

Dana Nessel
Michigan Attorney General
P.O. Box 30212
Lansing, Michigan 48909

/s/ B. Eric Restuccia
Assistant Attorney General B. Eric Restuccia
(P49550) (*pro hac vice pending*)
Solicitor General Fadwa A. Hammoud
Attorneys for Plaintiff State of Michigan

KEITH ELLISON
Attorney General of Minnesota
JOHN KELLER
Chief Deputy Attorney General
JAMES W. CANADAY
Deputy Attorney General

/s/ Jacob Campion
JACOB CAMPION (*pro hac vice forthcoming*)
Assistant Attorney General
445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
Telephone: (651) 757-1459
Email: jacob.campion@ag.state.mn.us
Attorneys for Plaintiff State of Minnesota

AARON D. FORD
Attorney General of Nevada

/s/ Heidi Parry Stern
HEIDI PARRY STERN
Solicitor General
Office of the Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
775-684-1100
775-684-1108 Fax
Attorneys for Plaintiff State of Nevada

GURBIR S. GREWAL
Attorney General of New Jersey

/s/ Jeremy Feigenbaum
JEREMY FEIGENBAUM (*pro hac vice forthcoming*)
Assistant Attorney General
New Jersey Attorney General's Office
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625
(609) 376-3235
Jeremy.Feigenbaum@njoag.gov
Attorneys for Plaintiff State of New Jersey

HECTOR BALDERAS
Attorney General of New Mexico

/s/ Tania Maestas
TANIA MAESTAS (*pro hac vice*
forthcoming)
Chief Deputy Attorney General
NICHOLAS M. SYDOW
Civil Appellate Chief
JENNIE LUSK
Assistant Attorney General, Director
MATTHEW L. GARCIA
Governor's General Counsel
PO Drawer 1508
Santa Fe, New Mexico 87504-1508
E-mail: tmaestas@nmag.gov
Attorneys for Plaintiff State of New Mexico,
by and through Attorney General Hector
Balderas

ELLEN ROSENBLUM
Attorney General of Oregon
Henry Kantor (*pro hac vice pending*)
Special Counsel to Attorney General

/s/ J. Nicole Defever
J. NICOLE DEFEVER SBN #191525
Senior Assistant Attorney General
Attorney for the State of Oregon

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Matthew Colangelo
Matthew Colangelo
Chief Counsel for Federal Initiatives
Steven C. Wu, *Deputy Solicitor General*
Eric R. Haren, *Special Counsel*
Gavin McCabe, *Special Assistant Attorney General*
Amanda Meyer, *Assistant Attorney General*
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057
matthew.colangelo@ag.ny.gov
Attorneys for the State of New York

PETER F. NERONHA
Attorney General of Rhode Island

/s/ Justin Sullivan
JUSTIN J. SULLIVAN (*pro hac vice forthcoming*)
Special Assistant Attorney General
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903
Tel: (401) 274-4400 | Fax: (401) 453-0410
ajsullivan@riag.ri.gov
Attorneys for Plaintiff State of Rhode Island

THOMAS J. DONOVAN
Attorney General of Vermont
/s/ Benjamin D. Battles
BENJAMIN D. BATTLES (*pro hac vice*
forthcoming)
Solicitor General
109 State Street
Montpelier, VT 05609
(802) 828-5500
benjamin.battles@vermont.gov
Attorneys for the State of Vermont

MARK R. HERRING
Attorney General
TOBY J. HEYTENS
Solicitor General
Counsel of Record
MATTHEW R. MCGUIRE
Principal Deputy
Solicitor General

/s/ Michelle S. Kallen
MICHELLE S. KALLEN
Deputy Solicitor General
BRITTANY M. JONES (*pro hac vice forthcoming*)
Attorney
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7240 – Telephone
(804) 371-0200 – Facsimile
SolicitorGeneral@oag.state.va.us
Attorney for Plaintiff Commonwealth of Virginia

JOSHUA L. KAUL
Wisconsin Attorney General

/s/ Gabe Johnson-Karp
GABE JOHNSON-KARP (*pro hac vice*
forthcoming)
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707
P: (608) 267-8904
F: (608) 267-2223
johnsonkarp@doj.state.wi.us
Attorney for State of Wisconsin

ADRMOPTERM,APPEAL,RELATE

**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
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

Plaintiff

Sierra Club

represented by **Dror Ladin**
American Civil Liberties Union
Foundation
125 Broad Street
18th Floor
New York, NY 10004
212-549-2500
Email: dladin@aclu.org
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Andre Ivan Segura
ACLU Foundation of Northern California,
Inc.
PO Box 8306
Houston, TX 77288
713-325-7011
Fax: 713-942-8966
Email: asegura@aclutx.org
ATTORNEY TO BE NOTICED

Christine Patricia Sun
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493
Fax: (415) 255-8437
Email: csun@aclunc.org
ATTORNEY TO BE NOTICED

David A Donatti
ACLU of Texas
P.O. Box 8306
Houston, TX 77288
713-325-7011
Email: ddonatti@aclutx.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Gloria Diantha Smith
Sierra Club
2101 Webster Street
Suite 1300
Oakland, CA 94612
415-977-5772
Email: gloria.smith@sierraclub.org
ATTORNEY TO BE NOTICED

Hina Shamsi

American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10019
212-549-2500
Email: hshamsi@aclu.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jonathan L. Hafetz

American Civil Liberties Union
Foundation
125 Broad Street
18th Floor
New York, NY 10004
212-284-7319
Email: jhafetz@aclu.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Mollie M Lee

American Civil Liberties Union of
Northern California
39 Drumm Street
San Francisco, CA 94111
4156212493
Email: mlee@aclunc.org
ATTORNEY TO BE NOTICED

Noor Zafar

American Civil Liberties Union
Foundation
125 Broad Street
18th Floor
New York, NY 10004
212-549-2500
Email: nzafar@aclu.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Omar C. Jadwat

ACLU Foundation Immigrants' Rights
Project
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2620
Fax: (212) 549-2654
Email: ojadwat@aclu.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sanjay Narayan

Sierra Club
2101 Webster St
Suite 1300
Oakland, CA 94612
415-977-5769
Email: sanjay.narayan@sierraclub.org
ATTORNEY TO BE NOTICED

Cecillia Derphine Wang

American Civil Liberties Union
Foundation
Immigrants Rights Project

39 Drumm Street
San Francisco, CA 94111
415-343-0775
Fax: 415-395-0950
Email: cwang@aclu.org
ATTORNEY TO BE NOTICED

Plaintiff

**Southern Border Communities
Coalition**

represented by **Dror Ladin**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Andre Ivan Segura
(See above for address)
ATTORNEY TO BE NOTICED

Christine Patricia Sun
(See above for address)
ATTORNEY TO BE NOTICED

David A Donatti
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Hina Shamsi
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jonathan L. Hafetz
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Mollie M Lee
(See above for address)
ATTORNEY TO BE NOTICED

Noor Zafar
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Omar C. Jadwat
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Cecillia Derphine Wang
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Donald J. Trump
in his official capacity

represented by **Andrew Irwin Warden**
U.S. Department of Justice, Civil Division
20 Massachusetts Ave., NW
Room 6120
Washington, DC 20530

202-616-5084
Fax: 202-616-8460
Email: andrew.warden@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rachael Westmoreland
U.S. Department of Justice
Civil Division
P.O. Box 883
Washington, DC 20044
(202) 514-1280
Email: rachael.westmoreland@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
U.S. Department of Justice
Environment and Natural Resources
Division
950 Pennsylvania Avenue, N.W., Room
2611
Washington, DC 20530
(202) 514-0943
Email: eric.grant@usdoj.gov
ATTORNEY TO BE NOTICED

James Mahoney Burnham
United States Department of Justice
950 Pennsylvania Ave, NW
Room 3131
Washington, DC 20530
202-353-5049
Email: james.m.burnham@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

Patrick M. Shanahan
in his official capacity
TERMINATED: 06/28/2019

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Kirstjen M. Nielsen
in her official capacity
TERMINATED: 06/28/2019

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Steven Mnuchin
in his official capacity

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Federal Courts Scholars

represented by **Elizabeth B. Wydra**
Constitutional Accountability Center
1200 18th Street, NW
Suite 501
Washington, DC 20036
202 296 6889
Fax: 202 296 6895
Email: elizabeth@theusconstitution.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Mark T Esper
*in his official capacity as Acting
Secretary of Defense*

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

represented by

ER460

Kevin K. McAleenan
*in his official capacity as Acting
Secretary of Homeland Security*

Andrew Irwin Warden
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

United States House of Representatives

represented by **Douglas N. Letter**
U.S. House of Representatives
Office of General Counsel
219 Cannon House Office Building
Washington, DC 20515
202-225-9700
Email: douglas.letter@mail.house.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

United States House of Representatives

represented by **Douglas N. Letter**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Brennan Center for Justice
TERMINATED: 05/07/2019

represented by **Elizabeth Goitein**
Brennan Center for Justice
1140 Connecticut Ave. NW
Ste. 1150
Washington, DC 20036
(202) 249-7192
Email: goiteine@brennan.law.nyu.edu
PRO HAC VICE
ATTORNEY TO BE NOTICED

Joseph Andrew Boyle
Brennan Center for Justice
1140 Connecticut Avenue NW
Suite 1150
Washington, DC 20036
202-753-5909
Email: boylea@brennan.law.nyu.edu
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Christopher Shays

represented by **David W. Evans**
Haight Brown & Bonesteel LLP
Three Embarcadero Center
Suite 200
San Francisco, CA 94111-4005

415-546-7500
Fax: (415) 546-7505
Email: devans@hbblaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
Willkie Farr and Gallagher LLP
787 Seventh Avenue
New York, NY 10019
212-278-8000
Email: rmancino@willkie.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
Haight, Brown, & Bonesteel
Three Embarcadero Center, Suite 200
San Francisco, CA 94111
(415) 546-7500
Fax: (415) 546-7505
Email: hgarfield@hbblaw.com
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
Willkie Farr Gallagher LLP
787 7th Avenue
New York, NY 10019
(212)728-8583
Email: mdollan@willkie.com
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
Willkie Farr and Gallagher LLP
1875 K Street
Washington, DC 20006
202-303-1000
Email: rbernstein@willkie.com
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
Willkie Farr Gallagher LLP
787 7th Avenue
New York, NY 10019
(212)728-8638
Email: shussein@willkie.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Christine Todd Whitman

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield

(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Peter Keisler

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Carter Phillips

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan

(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

John Bellinger, III

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Stanley Twardy

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Richard Bernstein

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Amici Curiae Former Members of Congress

represented by **Douglas Andrew Winthrop**
Arnold & Porter LLP
Three Embarcadero Center 10th Floor
San Francisco, CA 94111-4024
415-471-3100
Fax: 415-471-3400
Email: douglas.winthrop@aporter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Erwin Chemerinsky

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Michael C. Dorf

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

David A. Strauss

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Stephen I. Vladeck

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

58 Religious Organizations

represented by **Gary T. Lafayette**
Lafayette & Kumagai LLP
1300 Clay Street, Suite 810
Oakland, CA 94612
(415) 357-4600
Fax: (415) 357-4605
Email: glafayette@lkclaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adeel A. Mangi
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
212-336-2000
Email: aamangi@pbwt.com
ATTORNEY TO BE NOTICED

Brian H. Chun
Lafayette & Kumagai LLP
1300 Clay Street, Suite 810
Oakland, CA 94612
(415) 357-4600
Fax: (415) 357-4605
Email: bchun@lkclaw.com
ATTORNEY TO BE NOTICED

Mohammed Amir Badat
Patterson Belknap Webb and Tyler LLP
1133 Sixth Ave.
Floor 24
New York, NY 10036
212-336-2527
Email: abadat@pbwt.com
ATTORNEY TO BE NOTICED

Steven A. Zalesin
Patterson Belknap Webb and Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710
212-336-2000
Email: sazalesin@pbwt.com
ATTORNEY TO BE NOTICED

Zachary Kolodin
Patterson Belknap Webb Tyler LLP
1133 Avenue of the Americas
NEW YORK, NY 10036-6710
United Sta
212-336-2642

Email: zkolodin@pbwt.com
TERMINATED: 05/16/2019

Amicus

**Brennan Center for Justice at NYU
School of Law**

represented by **Elizabeth Goitein**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Ramraj Singh
Weil, Gotshal and Manges LLP
201 Redwood Shores Parkway
5th Floor
Redwood Shores, CA 94065
650-802-3000
Fax: 650-802-3100
Email: david.singh@weil.com
ATTORNEY TO BE NOTICED

Joseph Andrew Boyle
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

CATO Institute

represented by **Elizabeth Goitein**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Ramraj Singh
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

National Immigration Law Center

represented by **Nicholas David Espiritu**
National Immigration Law Center
3450 Wilshire Blvd #108-62
LOS ANGELES, CA 90010
213-639-3900
Fax: 213-639-3911
Email: espiritu@nilc.org
ATTORNEY TO BE NOTICED

Amicus

**NAACP Legal Defense and
Educational Fund, Inc.**

represented by **Michaele Nicole Turnage Young**
NAACP Legal Defense and Educational
Fund, Inc.
700 14th St. NW
Suite 600
Washington, DC 20005
202-682-1300
Email: mturnageyoung@naacpldf.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Former U.S. Government Officials

represented by **Kathleen R. Hartnett**
Boies Schiller Flexner LLP
44 Montgomery Street
41st Floor
San Francisco, CA 94104

(415) 293-6800
Email: khartnett@bsflp.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Harold Hongju Koh
Yale Law School Rule of Law Clinic
127 Wall Street
New Haven, CT 06520-8215
203-432-4932
Email: harold.koh@ylsclinics.org
ATTORNEY TO BE NOTICED

Phillip Michael Spector
Messing and Spector LLP
1200 STEUART ST
UNIT 2112
Baltimore, MD 21230
202-277-8173
Email: ps@messingspector.com
ATTORNEY TO BE NOTICED

Amicus

**Asian Americans Advancing Justice—
AAJC**

represented by **Nicholas David Espiritu**
National Immigration Law Center
National Immigration Law Center
3450 Wilshire Blvd #108-62
LOS ANGELES, CA 90010
United Sta
213-639-3900
Fax: 213-639-3911
Email: espiritu@nilc.org
ATTORNEY TO BE NOTICED

Amicus

**Asian Americans Advancing Justice —
Los Angeles**

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

AALDEF

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

Black Alliance for Just Immigration

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

LatinoJustice PRLDEF

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

Tohono O'odham Nation

represented by **Joshua Owen Rees**
Tohono O'odham Nation
PO Box 830
Sells, AZ 85634
520-383-3410
Email: joshua.rees@tonation-nsn.gov

*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Matthew Gordon Adams
Dentons US LLP
One Market Plaza
Spear Tower, 24th Floor
San Francisco, CA 94105
(415) 267-4000
Fax: (415) 267-4198
Email: matthew.adams@dentons.com
ATTORNEY TO BE NOTICED

Samuel Franklin Daughety
1900 K St NW
Washington, DC 20006-1110
202-408-6427
Email: samuel.daughety@dentons.com
*PRO HAC VICE
ATTORNEY TO BE NOTICED*

Suzanne Rebecca Schaeffer
Dentons US LLP
1900 K Street NW
Washington, DC 20006
202-408-7097
Email: suzanne.schaeffer@dentons.com
*PRO HAC VICE
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
02/19/2019	<u>1</u>	COMPLAINT <i>FOR DECLARATORY AND INJUNCTIVE RELIEF</i> against Steven Mnuchin, Kirstjen M. Nielsen, Patrick M. Shanahan, Donald J. Trump (Filing fee \$ 400, receipt number 0971-13103766.). Filed bySierra 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. (ndrS, 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> (ndrS, 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. <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)(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 by Sierra 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 by Sierra 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 by Sierra 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. REMINDER TO COUNSEL:</u> 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	<u>37</u>	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	<u>39</u>	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. <u>61</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>54</u>	**RE-FILED AT DOCKET NO. <u>62</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>55</u>	**RE-FILED AT DOCKET NO. <u>63</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>56</u>	**DISREGARD, RE-FILED AS DOCKET NO. <u>59</u> ** 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>	**DISREGARD, 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		<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>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		<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>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 CORRECTION OF DOCKET # <u>56</u> , <u>57</u> , <u>58</u> 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. 98 ** 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. 99 ** 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. 90 ** 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	<u>89</u>	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 CORRECTION OF DOCKET # 87</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, Michaele) (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 bySierra 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 byNational 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 byNational 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 byAmici 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 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>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 by58 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 byNAACP 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 <i>the 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 byBrennan 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. (This is a text-only entry generated by the court. There is no document associated with this entry.) (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; 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>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 bySierra 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. (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 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.) (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>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	198	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)

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

Cause: 42:4321 Review of Agency Action-Environment

Plaintiff

State of California

represented by **Christine Chuang**
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, CA 94612-1499
510-879-0094
Email: christine.chuang@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
California Department of Justice
300 S. Spring Street
Suite 1702
Los Angeles, CA 90013
(213) 269-6404
Fax: 213 897-7605
Email: lee.sherman@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian Jeffrey Bilford
California Attorney General's Office
Civil Rights Enforcement Section
300 S. Spring St.
Los Angeles, CA 90013
213-269-6341
Email: brian.bilford@doj.ca.gov
ATTORNEY TO BE NOTICED

Edward Henry Ochoa
Ofc Attorney General
600 W. Broadway Ste. 1800
San Diego, CA 92101
619-738-9323
Fax: 619-645-2271
Email: Ed.Ochoa@doj.ca.gov
ATTORNEY TO BE NOTICED

Heather Colleen Leslie
Attorney General's Office
Dept. of Justice
1300 I Street
Sacramento, CA 95814
(916) 445-3302
Fax: (916) 327-2319
Email: heather.leslie@doj.ca.gov
ATTORNEY TO BE NOTICED

James F. Zahradka , II

California Department of Justice
Bureau of Children's Justice
1515 Clay Street, Suite 2000
Oakland, CA 94612
(510) 622-2239
Fax: (510) 622-2121
Email: james.zahradka@doj.ca.gov
ATTORNEY TO BE NOTICED

Janelle M. Smith
California State Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
415-703-5521
Fax: 415-703-5843
Email: Janelle.Smith@doj.ca.gov
ATTORNEY TO BE NOTICED

Michael Phillip Cayaban
Ofc Attorney General
600 West Broadway
Suite 1800
San Diego, CA 92101
(619)738-9313
Fax: 619-645-2271
Email: mike.cayaban@doj.ca.gov
ATTORNEY TO BE NOTICED

Noah Marc Golden-Krasner
California Department of Justice
300 South Spring Street
Los Angeles, CA 90013
213-269-6343
Email: noah.goldenkrasner@doj.ca.gov
ATTORNEY TO BE NOTICED

Sparsh S Khandeshi
California Department of Justice
Public Rights Division
600 W. Broadway
Suite 1800
San Diego, CA 92101
619-738-9061
Fax: 619-645-2012
Email: sparsh.khandeshi@doj.ca.gov
ATTORNEY TO BE NOTICED

Plaintiff

State of Colorado

represented by **Lee Isaac Sherman**
California Department of Justice
300 S. Spring Street
Los Angeles, CA 90013
(213) 269-6404
Email: lee.sherman@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Reuel Olson
Office of the Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203
7205086548
Email: eric.olson@coag.gov
PRO HAC VICE

ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Connecticut

represented by **Lee Isaac Sherman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Margaret Chapple
Connecticut Attorney General's Office
Administration
55 Elm Street
Hartford, CT 06106
860-808-5045
Email: margaret.chapple@ct.gov
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Delaware

represented by **David Jay Lyons**
Delaware Department of Justice
820 N. French St.
Wilmington, De 19801
United Sta
(302)577-8413
Fax: (302)577-6630
Email: david.lyons@state.de.us
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Hawaii

represented by **Clyde James Wadsworth**
Dept. of the Attorney General
425 Queen Street
Honolulu, HI 96813
808-586-1360
Fax: 808-586-8116
Email: Clyde.J.Wadsworth@hawaii.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Maine

represented by **Lee Isaac Sherman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Susan P. Herman
Office of the Attorney General
Litigation Division
6 State House Station
Augusta, ME 04333-0006
207-626-8814
Fax: 207-287-3145
Email: susan.herman@maine.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Minnesota

represented by **Lee Isaac Sherman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jacob Daniel Campion
Office of Minnesota Attorney General
445 Minnesota Street
Suite 1100
Saint Paul, MN 55101
651-757-1459
Email: jacob.campion@ag.state.mn.us
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of New Jersey

represented by **Jeremy Feigenbaum**
Assistant Attorney General
New Jersey Attorney Generals Office
25 Market Street
Trenton, NJ 08625
609-376-3235
Email: Jeremy.Feigenbaum@njoag.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II

(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of New Mexico

represented by **Lee Isaac Sherman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew L. Garcia
Governor's General Counsel
P.O. Drawer 1508
Santa Fe, NM 87504-1508
505-842-9960
Fax: 505-842-0761
Email: tmaestas@nmag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tania Maestas
NM Office of the Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
505-490-4048
Fax: 505-490-4883
Email: tmaestas@nmag.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Nevada

represented by **Heidi Parry Stern**
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave.
Suite 3900
Las Vegas, NV 89101
702-486-3594
Fax: 702-486-3773
Email: hstern@ag.nv.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of New York

represented by **Lee Isaac Sherman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew Colangelo

Chief Counsel for Federal Initiatives
Office of the New York State Attorney
General
28 Liberty Street
New York, NY 10005
212-416-6057
Email: matthew.colangelo@ag.ny.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amanda Meyer
New York Office of the Attorney General
28 Liberty Street
New York, NY 10005
212-416-6225
Email: Amanda.Meyer@ag.ny.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED

Gavin Geraghty McCabe
New York State Office of Attorney
General
28 Liberty Street
19th Floor
New York, NY 10005
212-416-8469
Fax: 212-416-6007
Email: gavin.mccabe@ag.ny.gov
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Oregon

represented by **Jeanne Nicole DeFever**
Oregon Dept of Justice
Trial Division
100 SW Market Street
Portland, OR 97201
971-673-1880
Fax: 971-673-5000
Email: nicole.defever@doj.state.or.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Henry Kantor
Oregon Department of Justice
100 SW Market St
Portland, OR 97201
971-673-3805
Email: henry.kantor@doj.state.or.us
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Commonwealth of Virginia

represented by **Brittany Marie Jones**
Office of the Attorney General
Solicitor General Division
202 North Ninth Street
Richmond, VA 23219
804-371-0667
Fax: 804-371-0200
Email: BJones2@oag.state.va.us
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michelle S. Kallen
Office of the Attorney General
202 North Ninth Street
Richmond, VA 23219
804 786-7240
Fax: 804 371-0200
Email: SolicitorGeneral@oag.state.va.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Illinois

represented by **Caleb Andrew Rush**
Office of the Attorney General
100 W Randolph St
12th Floor
Chicago, IL 60601
(312) 814-2274
Email: caleb.rush.law@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Maryland

represented by **Jeffrey Paul Dunlap**
Maryland Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202
410-576-7906
Email: jdunlap@oag.state.md.us
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Attorney General Dana Nessel
on behalf of the People of Michigan

represented by **B. Eric Restuccia**
Michigan Department of Attorney General
Solicitor General Division
P.O. Box 30212
525 West Ottawa Street
Lansing, mi 48909
517-335-7628
Email: restucciae@michigan.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lee Isaac Sherman
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Wisconsin

represented by **Gabe Johnson-Karp**
17 West Main Street
Madison, WI 53703
608-267-8904
Email: johnsonkarp@doj.state.wi.us
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Commonwealth of Massachusetts

represented by **Abigail Taylor**
Massachusetts Office of the Attorney
General
1 Ashburton Place, 20th Floor
Boston, MA 02108
United Sta
(617) 963-2232
Email: abigail.taylor@mass.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Vermont

represented by **Benjamin Daniel Battles**
Office of the Attorney General
109 State Street
Montpelier, VT 05609
802-828-5944
Fax: 802-828-3187
Email: benjamin.battles@vermont.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

State of Rhode Island

represented by **Justin James Sullivan**
Rhode Island Office of the Attorney
General
Civil Division, Government Litigation Unit
150 South Main St.
Providence, RI 02903
United Sta
401-274-4400
Fax: 401-222-2995
Email: jsullivan@riag.ri.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

James F. Zahradka , II
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Donald J. Trump
*in his official capacity as President of the
United States of America*

represented by **Andrew Irwin Warden**
U.S. Department of Justice, Civil Division
20 Massachusetts Ave., NW
Room 6120
Washington, DC 20530
202-616-5084
Fax: 202-616-8460
Email: andrew.warden@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
U.S. Department of Justice
Environment and Natural Resources
Division
950 Pennsylvania Avenue, N.W., Room
2611
Washington, DC 20530
(202) 514-0943
Email: eric.grant@usdoj.gov
ATTORNEY TO BE NOTICED

James Mahoney Burnham
United States Department of Justice
950 Pennsylvania Ave, NW
Room 3131
Washington, DC 20530

202-353-5049
Email: james.m.burnham@usdoj.gov
ATTORNEY TO BE NOTICED

Rachael Westmoreland
U.S. Department of Justice
Civil Division
P.O. Box 883
Washington, DC 20044
(202) 514-1280
Email: rachael.westmoreland@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

United States of America

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Department of Defense

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Patrick M. Shanahan
in his official capacity as Acting
Secretary of Defense
TERMINATED: 06/28/2019

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Mark T. Esper
*in his official capacity as Acting
Secretary of Defense*

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Richard V. Spencer
*in his official capacity as Secretary of the
Navy*

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Heather Wilson
*in her official capacity as Secretary of the
Air Force*

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

U.S. Department of the Treasury

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Eric Grant

(See above for address)

ATTORNEY TO BE NOTICED

James Mahoney Burnham

(See above for address)

ATTORNEY TO BE NOTICED

Rachael Westmoreland

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

Steven T. Mnuchin

*in his official capacity as Secretary of the
Department of the Treasury*

represented by **Andrew Irwin Warden**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Eric Grant

(See above for address)

ATTORNEY TO BE NOTICED

James Mahoney Burnham

(See above for address)

ATTORNEY TO BE NOTICED

Rachael Westmoreland

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

U.S. Department of the Interior

represented by **Andrew Irwin Warden**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Eric Grant

(See above for address)

ATTORNEY TO BE NOTICED

James Mahoney Burnham

(See above for address)

ATTORNEY TO BE NOTICED

Rachael Westmoreland

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

David Bernhardt

*in his official capacity as Acting
Secretary of the Interior*

represented by **Andrew Irwin Warden**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Eric Grant

(See above for address)

ATTORNEY TO BE NOTICED

James Mahoney Burnham

(See above for address)

ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

U.S. Department of Homeland Security

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Kirstjen M. Nielsen
in her official capacity as Secretary of
Homeland Security
TERMINATED: 06/28/2019

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Stephen I. Vladeck

represented by **Elizabeth B. Wydra**
Constitutional Accountability Center
1200 18th Street, NW
Suite 501
Washington, DC 20036
202 296 6889
Fax: 202 296 6895
Email: elizabeth@theusconstitution.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Federal Courts Scholars

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Ryan D. McCarthy
*in his official capacity as Acting
Secretary of the Army*

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Kevin K. McAleenan
*in his official capacity as Acting
Secretary of Homeland Security*

represented by **Andrew Irwin Warden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Eric Grant
(See above for address)
ATTORNEY TO BE NOTICED

James Mahoney Burnham
(See above for address)
ATTORNEY TO BE NOTICED

Rachael Westmoreland
(See above for address)
ATTORNEY TO BE NOTICED

V.

Movant

Sierra Club

represented by **Cecillia Derphine Wang**
American Civil Liberties Union
Foundation
Immigrants Rights Project
39 Drumm Street
San Francisco, CA 94111
415-343-0775
Fax: 415-395-0950
Email: cwang@aclu.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant

**Southern Border Communities
Coalition**

represented by **Cecillia Derphine Wang**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

United States House of Representatives

represented by **Douglas N. Letter**
U.S. House of Representatives
Office of General Counsel

219 Cannon House Office Building
Washington, DC 20515
202-225-9700
Email: douglas.letter@mail.house.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Christopher Shays

represented by **David W. Evans**
Haight Brown & Bonesteel LLP
Three Embarcadero Center
Suite 200
San Francisco, CA 94111-4005
415-546-7500
Fax: (415) 546-7505
Email: devans@hbblaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
Willkie Farr and Gallagher LLP
787 Seventh Avenue
New York, NY 10019
212-278-8000
Email: rmancino@willkie.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
Haight, Brown, & Bonesteel
Three Embarcadero Center, Suite 200
San Francisco, CA 94111
(415) 546-7500
Fax: (415) 546-7505
Email: hgarfield@hbblaw.com
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
Willkie Farr Gallagher LLP
787 7th Avenue
New York, NY 10019
(212)728-8583
Email: mdollan@willkie.com
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
Willkie Farr and Gallagher LLP
1875 K Street, N.W.
Washington, DC 20006
202-303-1000
Email: rbernstein@willkie.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
Willkie Farr Gallagher LLP
787 7th Avenue
New York, NY 10019
(212)728-8638
Email: shussein@willkie.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Christine Todd Whitman

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Peter Keisler

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Carter Phillips

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

John Bellinger, III

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Stanley Twardy

represented by **David W. Evans**
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Richard Bernstein

represented by **David W. Evans**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard Mancino
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Howard Michael Garfield
(See above for address)
ATTORNEY TO BE NOTICED

Matthew Richard Dollan
(See above for address)
TERMINATED: 05/09/2019
PRO HAC VICE

Richard D. Bernstein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shaimaa M Hussein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

**Amici Curiae Former Members of
Congress**

represented by **Douglas Andrew Winthrop**
Arnold & Porter LLP
Three Embarcadero Center 10th Floor
San Francisco, CA 94111-4024

415-471-3100
Fax: 415-471-3400
Email: douglas.winthrop@aporter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gary T. Lafayette
Lafayette & Kumagai LLP
1300 Clay Street, Suite 810
Oakland, CA 94612
(415) 357-4600
Fax: (415) 357-4605
Email: glafayette@lkclaw.com
ATTORNEY TO BE NOTICED

Amicus

58 Religious Organizations

represented by **Brian H. Chun**
Lafayette & Kumagai LLP
1300 Clay Street, Suite 810
Oakland, CA 94612
(415) 357-4600
Fax: (415) 357-4605
Email: bchun@lkclaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gary T. Lafayette
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adeel A. Mangi
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
212-336-2000
Email: aamangi@pbwt.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Mohammed Amir Badat
Patterson Belknap Webb and Tyler LLP
1133 Sixth Ave.
Floor 24
New York, NY 10036
212-336-2527
Email: abadat@pbwt.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Steven A. Zalesin
Patterson Belknap Webb and Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710
212-336-2000
Email: sazalesin@pbwt.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Zachary Kolodin
Patterson Belknap Webb Tyler LLP
1133 Avenue of the Americas
NEW YORK, NY 10036-6710
212-336-2642

Email: zkolodin@pbwt.com

TERMINATED: 05/16/2019

PRO HAC VICE

Amicus

National Immigration Law Center

represented by **Nicholas David Espiritu**
National Immigration Law Center
National Immigration Law Center
3450 Wilshire Blvd #108-62
LOS ANGELES, CA 90010
United Sta
213-639-3900
Fax: 213-639-3911
Email: espiritu@nilc.org
ATTORNEY TO BE NOTICED

Amicus

Erwin Chemerinsky

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Michael C. Dorf

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

David A. Strauss

represented by **Elizabeth B. Wydra**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Former U.S. Government Officials

represented by **Kathleen R. Hartnett**
Boies Schiller Flexner LLP
44 Montgomery Street
41st Floor
San Francisco, CA 94104
(415) 293-6800
Email: khartnett@bsflp.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Harold Hongju Koh

Yale Law School Rule of Law Clinic
127 Wall Street
New Haven, CT 06520-8215
203-432-4932
Email: harold.koh@ylsclinics.org
ATTORNEY TO BE NOTICED

Phillip Michael Spector

Messing and Spector LLP
1200 STEUART ST
UNIT 2112
Baltimore, MD 21230
202-277-8173
Email: ps@messingspector.com
ATTORNEY TO BE NOTICED

Amicus

American Center for Law and Justice

represented by **Benjamin Paul Sisney**
American Center for Law and Justice
201 Maryland Ave., NE
Washington, DC 20002
(202) 384-0259
Email: bsisney@aclj.org
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Robert Henry Tyler
Tyler & Bursch, LLP
25026 Las Brisas Road
Murrieta, CA 92562
(951) 600-2733
Fax: 951-600-4996
Email: rt Tyler@tylerbursch.com
ATTORNEY TO BE NOTICED

Amicus

**Asian Americans Advancing
Justice-AAJC**

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

**Asian Americans Advancing Justice –
Los Angeles**

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

AALDEFF

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

Black Alliance For Just Immigration

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

LatinoJustice PRLDEF

represented by **Nicholas David Espiritu**
(See above for address)
ATTORNEY TO BE NOTICED

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 byState 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	<u>3</u>	Case assigned to Magistrate Judge Elizabeth D. Laporte. 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 3/5/2019. (jmlS, COURT STAFF) (Filed on 2/19/2019) (Entered: 02/19/2019)
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>2</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)
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		<u>Electronic filing error. REMINDER TO COUNSEL:</u> 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 Hear Plaintiff States' Motion for Preliminary Injunction 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 re [ECF Doc. 63] (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 re <u>47</u> Amended Complaint,, (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. 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>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. 85** 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. 86** 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. 88** 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 # 81 , 82 , 83</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)
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.) (hsglc3S, 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. 97** 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 tha t 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, SEEE 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 <i>Former Members of Congress as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction</i> 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 <i>Amici Curiae Federal Courts Scholars in Support of Plaintiffs' Motion for Preliminary Injunction</i> 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 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> 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. (ndrS, 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. (ndrS, 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

		<i>document associated with this entry.</i>)(ndrS, 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. (ndrS, 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. (ndrS, 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; pamela_batalo-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>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	<u>177</u>	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. (<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>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. <u>199</u> ** 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	194	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 > Motions-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)