

1 JAMES M. BURNHAM
 Deputy Assistant Attorney General
 2 ALEXANDER K. HAAS
 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
 RACHAEL WESTMORELAND
 7 Trial Attorneys
 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 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, *et al.*,

20 Defendants.

No. 4:19-cv-00872-HSG

No. 4:19-cv-00892-HSG

21 **NOTICE REGARDING USE OF**
 22 **THE TREASURY FORFEITURE**
 23 **FUND**

23 SIERRA CLUB, *et al.*,

24 Plaintiffs,

25 v.

26 DONALD J. TRUMP, *et al.*,

27 Defendants.

1 Defendants hereby update the Court and parties in the above-captioned cases about the
2 use of the Treasury Forfeiture Fund (TFF) to support the U.S. Customs and Border Protection's
3 (CBP) border security law enforcement mission.

4 As explained in Defendants' prior submissions, on February 15, 2019, the U.S.
5 Department of the Treasury determined that the TFF could allocate up to \$601 million to CBP
6 for its border security law enforcement mission. *See* First Declaration of John M. Farley ¶ 24
7 (April 12, 2019). This sum of money was separated into two tranches. *Id.* ¶ 25. The first
8 tranche of \$242 million was made available to CBP for obligation on March 14, 2019 through an
9 interagency agreement. *See* Second Declaration of John M. Farley ¶ 4 (October 2, 2019). The
10 second tranche of \$359 million was made available to CBP for obligation on July 16, 2019
11 through a modification to the interagency agreement. *Id.* In September 2019, a CBP account
12 received from the Department of the Treasury \$600,993,368.26. *See* Declaration of Ruynard
13 Singleton ¶ 4 (Oct. 4, 2019); Second Farley Decl. ¶ 5.

14 CBP recently made decisions as to how it will allocate the approximately \$601 million of
15 TFF funds to support CBP's border security law enforcement mission. *See* Declaration of Loren
16 Flossman ¶ 6 (Jan. 8, 2020) (attached as Exhibit 1). CBP will use \$340 million for border barrier
17 projects in the Rio Grande Valley Sector in Texas. *Id.* ¶ 7. \$124 million of the \$340 million will
18 be used to construct border barriers. *Id.* ¶ 7.a. On December 27, 2019, CBP, through the United
19 States Army Corps of Engineers, exercised contract options for the barrier projects known as
20 RGV 09 and RGV 10. *Id.* The RGV 09 and RGV 10 projects had previously been funded
21 exclusively with funds appropriated in the Fiscal Year 2019 CBP appropriation (Public Law No.
22 116-6, Div. A, § 230). *Id.* CBP used approximately \$11 million in TFF funds to fund a contract
23 option for the RGV 09 project that will increase the height of a planned segment of barrier in
24 Starr County, Texas, from 18 feet to 30 feet. *Id.* For the RGV 10 project, CBP used
25 approximately \$113 million in TFF funds to fund a contract option that will add approximately
26 10 miles of barrier to the RGV 10 project. *Id.* These additional miles are located in Hidalgo
27 County and Cameron County, Texas. *Id.* The locations of the RGV 09 and RGV 10 projects,
28 including the specific barrier segments funded by the TFF, are depicted in the maps attached as

1 Exhibit A to the Flossman declaration. Construction on the RGV 09 and RGV 10 projects,
2 including the portions of those projects funded with TFF funds, will begin once CBP has
3 acquired sufficient real estate. *Id.* CBP does not anticipate that it will have sufficient real estate
4 prior to July 2020. *Id.*

5 \$216 million of the \$340 million in TFF funds that will be used in the Rio Grande Valley
6 Sector will be used for program and project activities such as construction management, change
7 management (*i.e.*, covering increased project costs due to unforeseen site conditions and other
8 contingencies), and real estate planning and acquisition for planned or on-going border barrier
9 projects in the Rio Grande Valley Sector that are funded by one of three sources: CBP's Fiscal
10 Year 2018 appropriation (Public Law No. 115-141, Div. F, § 230), CBP's Fiscal Year 2019
11 appropriation (Public Law No. 116-6, Div. A, § 230), and TFF funds. *Id.* ¶ 7.b.

12 CBP intends to use the remaining balance of approximately \$261 million in TFF funds
13 for real estate planning activities for future year barrier construction in the United States Border
14 Patrol's priority locations along the southwest border. *Id.* ¶ 9. Real estate planning activities
15 involve, among other things, planning for future barrier alignments, title research, surveys, and
16 appraisals. *Id.*¹ CBP's prior declarations stated that CBP planned to utilize TFF funds for
17 planning and construction exclusively within Texas, in the Rio Grande Valley and/or Laredo
18 Sectors. *Id.* ¶ 8; *see* Declaration of Loren Flossman ¶ 5 (July 11, 2019); Singleton Decl. ¶ 5
19 (Oct. 3, 2019). CBP has now decided to expand the use of TFF funds for planning beyond the
20 Rio Grande Valley and Laredo Sectors. Flossman Decl. ¶ 8 (Jan. 8, 2020). The decision to
21 expand the use of the TFF funds for planning beyond the Rio Grande Valley and Laredo Sectors
22 was the result of CBP having recently received funding in its Fiscal Year 2020 appropriation
23 (Public Law No. 116-93, Div. D, § 209) that will fund its highest priority locations in the Laredo
24 Sector. *Id.* ¶ 10. Because CBP has now received funding for its highest priority locations in the
25 Laredo Sector, \$340 million in TFF funds may be used for priority projects in the Rio Grande

26
27 ¹ If there is surplus funding that is not needed for real estate planning activities, CBP
28 would allocate any remaining TFF funds to other activities in support of CBP's law enforcement
border security mission. Flossman Decl. ¶ 9 (Jan. 8, 2020)

1 Valley Sector, and the remaining balance of the TFF funds may be used to plan for future year
2 barrier requirements. *Id.* Future year planning will allow CBP to streamline the execution of
3 such projects and more quickly deliver the capabilities required for the United States Border
4 Patrol to deter and prevent illegal entry on the southwest border. *Id.*

5
6
7
8 DATE: January 8, 2020

Respectfully submitted,

9 JAMES M. BURNHAM
10 Deputy Assistant Attorney General

11 ALEXANDER K. HAAS
12 Director, Federal Programs Branch

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

15 /s/ Andrew I. Warden
16 ANDREW I. WARDEN (IN #23840-49)
17 Senior Trial Counsel
18 U.S. Department of Justice
19 Civil Division, Federal Programs Branch
20 1100 L Street, NW
21 Washington, D.C. 20530
22 Tel.: (202) 616-5084
23 Fax: (202) 616-8470

24 *Attorneys for Defendants*
25
26
27
28