

No. 20-138

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL., PETITIONERS

v.

SIERRA CLUB, ET AL.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: AUG. 7, 2020
CERTIORARI GRANTED: OCT. 19, 2020

TABLE OF CONTENTS

	Page
Court of appeals docket entries (19-16102)	1
Court of appeals docket entries (19-16299).....	19
Court of appeals docket entries (19-16300).....	33
Court of appeals docket entries (19-16336).....	37
District court docket entries (19-cv-872)	41
District court docket entries (19-cv-892)	53
Second declaration of Millard F. LeMaster.....	63
Excerpt of Kenneth P. Rapuano action memo to the Acting Secretary of Defense (May 6, 2019)	66
Declaration of Millard F. LeMaster	69
Excerpt of second declaration of Kenneth P. Rapuano	72
Memorandum from Patrick M. Shanahan to Acting Secretary of Homeland Security (May 9, 2019).....	74
Memorandum from Patrick M. Shanahan to Under Secretary of Defense (May 9, 2019)	76
Memorandum from Christina Bobb to Capt. Hallock N. Mohler, Jr. (Feb. 25, 2019)	80
Letter from Patrick M. Shanahan to Hon. Kirstjen Nielsen, Secretary of Homeland Security (Mar. 25, 2019).....	96
Memorandum from Patrick M. Shanahan to Under Secretary of Defense (Mar. 25, 2019).....	98
Memorandum from Christina Bobb to Capt. Hallock N. Mohler, Jr. (Mar. 29, 2019)	102
Memorandum from Patrick M. Shanahan to Acting Secretary of Homeland Security (Apr. 9, 2019)	105
Declaration of Ralph Hudson.....	108
Declaration of Bill Broyles.....	113
Declaration of Patricia Gerrodette	117
Declaration of Margaret Case	121

II

Table of Contents—Continued:	Page
Excerpt of “An American Budget, Budget of the U.S. Government” (FY 2019).....	127
Letter from Russell T. Vought to Hon. Richard Shelby, Chairman (Jan. 6, 2019).....	131
White House fact sheet, “President Donald J. Trump’s Border Security Victory” (Feb. 15, 2019)	136
Excerpt of “Remarks by President Trump on the National Security and Humanitarian Crisis on our Southern Border” (Feb. 15, 2019).....	142

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 19-16102

SIERRA CLUB, SOUTHERN BORDER COMMUNITIES
COALITION, PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES; MARK T. ESPER,
IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF
THE DEFENSE; CHAD F. WOLF, IN HIS OFFICIAL CAPAC-
ITY AS ACTING SECRETARY OF HOMELAND SECURITY;
STEVEN TERNER MNUCHIN, IN HIS OFFICIAL CAPACITY
AS SECRETARY OF THE DEPARTMENT OF THE TREAS-
URY, DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
5/29/19	<u>1</u>	DOCKETED CAUSE AND EN- TERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: To be set. Preliminary Injun- ction, C.R. 3-3. [11312098] (JBS) [Entered: 05/29/2019 01:33 PM]
		* * * * *
6/3/19	<u>7</u>	Filed (ECF) Appellants Kevin K. McAleenan, Steven Terner Mnuchin, Patrick Shanahan and Donald J. Trump EMERGENCY

DOCKET		
DATE	NUMBER	PROCEEDINGS
		Motion to stay lower court action. Date of service: 06/03/2019. [11318213] [19-16102] (Murphy, Anne) [Entered: 06/03/2019 10:03 PM]
		* * * * *
6/11/19	<u>37</u>	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by STATES OF CAL- IFORNIA, COLORADO, CON- NECTICUT, DELAWARE, HA- WAI, ILLINOIS, MAINE, MARYLAND, MASSACHU- SETTS, MICHIGAN, MINNE- SOTA, NEVADA, NEW JER- SEY, NEW MEXICO, NEW YORK, OREGON, RHODE IS- LAND, VERMONT, VIRGINIA, AND WISCONSIN. Date of service: 06/11/2019. [11327400] [19-16102]—[COURT UPDATE: Attached consolidated pdf. 06/11/2019 by LA] (Zahradka, James) [Entered: 06/11/2019 03:56 PM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
6/11/19	<u>39</u>	Filed (ECF) Appellees Sierra Club and Southern Border Communities Coalition response opposing motion ([7] Motion (ECF Filing), [7] Motion (ECF Filing)). Date of service: 06/11/2019. [11327474] [19-16102] (Ladin, Dror) [Entered: 06/11/2019 04:25 PM]
		* * * * *
6/14/19	<u>61</u>	Filed (ECF) Appellants Kevin K. McAleenan, Steven Terner Mnuchin, Patrick Shanahan and Donald J. Trump reply to response (). Date of service: 06/14/2019. [11331976] [19-16102] (Dixon, Courtney) [Entered: 06/14/2019 01:15 PM]
6/18/19	<u>62</u>	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND) At oral argument on Thursday, June 20, the parties shall be prepared to discuss whether, if the reprogramming of funds did not comport with section 8005, Plaintiffs' cause of action is properly understood as an equitable cause of action to enjoin a constitutional violation (e.g., a

DATE	DOCKET NUMBER	PROCEEDINGS
6/20/19	63	<p>violation of the Appropriations Clause of Article I or an executive action that exceeds powers granted in Article II), a statutory cause of action, or both. Additionally, the parties shall be prepared to discuss whether there is a zone of interests requirement for the proper cause or causes of action. Finally, the parties should be prepared to discuss whether this is a political question of a sort that is not justiciable. [11336378] (OC) [Entered: 06/18/2019 04:38 PM]</p> <p>ARGUED AND SUBMITTED TO RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND. [11339874] (SVG) [Entered: 06/20/2019 05:08 PM]</p>
6/24/19	<u>67</u>	<p>* * * * *</p> <p>Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND): Having heard argument on the Government's stay motion, the court is endeavoring to issue a decision before the July 4th holiday. Many issues arose at oral argument, however, that</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>were not briefed by the parties. It would assist the court to have briefing from the parties on: (1) whether Plaintiffs have an equitable or constitutional cause of action for violation of the Appropriations Clause, and how Dalton v. Specter, 511 U.S. 462 (1994), bears on this question; and (2) whether Plaintiffs' cause of action should be treated as an APA claim, and, if so, whether it succeeds. The parties should also address whether the answer to question 2 affects the answer to question 1. The Government's brief is due Thursday, June 27, 2019, at 9:00 am Pacific. The Plaintiffs' brief is due Friday, June 28, 2019, at 5:00 pm Pacific. The briefs shall not exceed 8000 words. [11342672] (AF) [Entered: 06/24/2019 03:32 PM]</p> <p>* * * * *</p>
6/27/19	<u>69</u>	<p>Submitted (ECF) Supplemental Brief for review. Submitted by Appellants Kevin K. McAleenan, Steven Turner Mnuchin, Patrick Shanahan and Donald J. Trump. Date of service: 06/27/2019.</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		[11346418]—[COURT ENTER ED FILING to replace incorrect entry [68].] (LA) [Entered: 06/27/2019 09:07 AM]
		* * * * *
6/28/19	<u>71</u>	Submitted (ECF) Supplemental Brief for review. Submitted by Appellees Sierra Club and South- ern Border Communities Coali- tion. Date of service: 06/28/ 2019. [11349270] [19-16102] (La din, Dror) [Entered: 06/28/ 2019 04:41 PM]
		* * * * *
6/29/19	<u>73</u>	Filed (ECF) Appellants Kevin K. McAleenan, Steven Turner Mnuchin, Patrick Shanahan and Donald J. Trump Correspondence: Informing the court that the district court entered a per- manent injunction and final judg- ment under Rule 54(b), which the government has appealed.. Date of service: 06/29/2019 [11349505] [19-16102] (Byron, H. Thomas) [Entered: 06/29/2019 10:07 AM]
		* * * * *
7/3/19	<u>75</u>	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH

DATE	DOCKET NUMBER	PROCEEDINGS
		and MICHELLE T. FRIEDLAND): The motion to consolidate appeal Nos. 19-16102 and 19-16300 is granted. We defer resolution of the request to consolidate appeal No. 19-16299, which will be addressed by separate order. Briefing is stayed in these appeals pending further order. [11353399] [19-16102, 19-16300, 19-16299] (AF) [Entered: 07/03/2019 10:20 AM]
7/3/19	<u>76</u>	Filed Order for PUBLICATION (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND) Order by Judges Clifton and Friedland Dissent by Judge N.R. Smith. [SEE ORDER FOR FULL TEXT] Motion for stay DENIED. [11354254] [19-16102, 19-16300]—[Edited: Updated docket text and attached corrected PDF of order (font correction). 07/03/2019 by SLM] (MM) [Entered: 07/03/2019 03:45 PM]
7/8/19	<u>77</u>	Filed (ECF) Appellants Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16300, 19-16102 Unopposed Motion to consolidate

DATE	DOCKET NUMBER	PROCEEDINGS
		cases 19-16102, 19-16300, 19-16299, 19-16336, Motion for miscellaneous relief [Establish briefing schedule]. Date of service: 07/08/2019. [11357245] [19-16300, 19-16102] (Byron, H. Thomas) [Entered: 07/08/2019 06:23 PM]
7/15/19	<u>78</u>	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND): We grant Defendants' Unopposed Motion to Consolidate Appeals and Establish Briefing Schedule. Appeal Nos. 19-16102, 19-16300, 19-16299, and 19-16336 are consolidated. In accordance with Defendants' proposed briefing schedule: Defendants' opening brief is due July 31, 2019. Sierra Club Case plaintiffs' response brief, and States Case plaintiffs' response brief and opening brief on cross-appeal, are due August 30, 2019. Defendants' reply brief and response brief to States Case plaintiffs' cross-appeal is due September 20, 2019. States Case plaintiffs' reply brief on cross-appeal is due October 11, 2019. We request that the parties promptly

DATE	DOCKET NUMBER	PROCEEDINGS
		inform this Court of any developments affecting this appeal. In particular, if there are developments that may moot any or all of the issues, this Court should be notified immediately. [11364018] [19-16102, 19-16299, 19-16336, 19-16300] (AF) [Entered: 07/15/2019 04:23 PM]
		* * * * *
7/26/19	<u>83</u>	Received copy of Supreme Court of the United States Opinion of Breyer, J. filed on 07/26/2019. (No. 19A60) [11378645] [19-16102, 19-16299, 19-16336, 19-16300] (RL) [Entered: 07/26/2019 04:41 PM]
		* * * * *
7/31/19	<u>85</u>	Submitted (ECF) First Brief on Cross-Appeal for review. Submitted by Appellants Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump,

DATE	DOCKET NUMBER	PROCEEDINGS
7/31/19	<u>86</u>	<p>United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300. Date of service: 07/31/2019. [11383517] [19-16102, 19-16299, 19-16300, 19-16336]—[COURT UPDATE: Attached corrected PDF of brief, updated docket text to reflect correct brief type. 08/01/2019 by LA] (Murphy, Anne) [Entered: 07/31/2019 08:09 PM]</p> <p>Submitted (ECF) excerpts of record. Submitted by Appellants Mark T. Esper, Kevin K. McAleenan, Steven Terner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300. Date of service: 07/31/2019. [11383519] [19-16102, 19-16299, 19-16300, 19-16336]—[COURT UPDATE: Attached corrected excerpts. 08/01/2019 by LA]</p>

DOCKET		
DATE	NUMBER	PROCEEDINGS
		(Murphy, Anne) [Entered: 07/31/2019 08:19 PM]
		* * * * *
8/15/19	<u>108</u>	Submitted (ECF) Answering Brief for review. Submitted by Appellees Sierra Club and Southern Border Communities Coalition in 19-16102, 19-16300. Date of service: 08/15/2019. [11399236] [19-16102, 19-16299, 19-16300, 19-16336] (Ladin, Dror) [Entered: 08/15/2019 07:08 PM]
8/15/19	<u>109</u>	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees Sierra Club and Southern Border Communities Coalition in 19-16102, 19-16300. Date of service: 08/15/2019. [11399237] [19-16102, 250 pg, 15.02 MB 19-16299, 19-16300, 19-16336] (Ladin, Dror) [Entered: 08/15/2019 07:11 PM]
8/15/19	<u>110</u>	Submitted (ECF) Second Brief on Cross-Appeal for review. Submitted by Appellees State of California and State of New Mexico in 19-16299, Appellants State of California and State of New Mexico in 19-16336. Date of service: 08/15/2019. [11399243]

DATE	DOCKET NUMBER	PROCEEDINGS
		[19-16299, 19-16102, 19-16300, 19-16336]—[COURT UPDATE: Updated docket text to reflect correct brief type and all party filers. 08/16/2019 by LA] (Zahradka, James) [Entered: 08/15/2019 08:48 PM]
8/15/19	<u>111</u>	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees State of California and State of New Mexico in 19-16299. Date of service: 08/15/2019. [11399244] [19-16299, 19-16102, 19-16300, 19-16336] (Zahradka, James) [Entered: 08/15/2019 08:51 PM]
		* * * * *
8/30/19	<u>145</u>	Submitted (ECF) Third Brief on Cross-Appeal for review. Submitted by Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16102, Appellants DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury,

DATE	DOCKET NUMBER	PROCEEDINGS
		USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300, Appellees DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16336. Date of service: 08/30/2019. [11417659] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [Entered: 08/30/2019 11:39 PM]
8/30/19	<u>146</u>	Submitted (ECF) further excerpts of record. Submitted by Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bernhardt, DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300, Appellees David Bern-

DATE	DOCKET NUMBER	PROCEEDINGS
		hardt, DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16336. Date of service: 08/30/2019. [11417660] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [Entered: 08/30/2019 11:43 PM]
		* * * * *
9/2/19	<u>148</u>	Filed (ECF) Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16102 Motion to file substitute or corrected brief. Date of service: 09/02/2019. [11417834] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [Entered: 09/02/2019 11:41 AM]
		* * * * *
9/13/19	<u>151</u>	Submitted (ECF) Cross-Appeal Reply Brief for review. Submitted by Appellees State of California and State of New Mexico in

DATE	DOCKET NUMBER	PROCEEDINGS
		19-16299, Appellants State of California and State of New Mexico in 19-16336. Date of service: 09/13/2019. [11431386] [19-16299, 19-16102, 19-16300, 19-16336]— [COURT UPDATE: Updated docket text to correctly reflect the type of brief. 09/13/2019 by SML] (Zahradka, James) [Entered: 09/13/2019 02:52 PM]
9/13/19	<u>152</u>	Submitted (ECF) further excerpts of record. Submitted by Appellees State of California and State of New Mexico in 19-16299, Appellants State of California and State of New Mexico in 19-16336. Date of service: 09/13/2019. [11431390] [19-16299, 19-16102, 19-16300, 19-16336]— [COURT UPDATE: Updated docket text to correctly reflect the type of excerpts. 09/13/2019 by SML] (Zahradka, James) [Entered: 09/13/2019 02:54 PM]
		* * * * *
9/17/19	<u>154</u>	Filed clerk order (Deputy Clerk: AF): Defendants-Appellants' Motion for leave to file a corrected Reply and Response Brief is GRANTED. [11434689]

DATE	DOCKET NUMBER	PROCEEDINGS
		[19-16102, 19-16299, 19-16336, 19-16300] (AF) [Entered: 09/17/2019 03:09 PM]
9/17/19	<u>155</u>	Submitted (ECF) Third Brief on Cross-Appeal for review. Submitted by Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Terner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bernhardt, DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300, Appellees David Bernhardt, DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16336. Date of service: 09/17/2019. [11434746] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [Entered: 09/17/2019

DATE	DOCKET NUMBER	PROCEEDINGS
		03:35 PM]
		* * * * *
11/12/19	177	ARGUED AND SUBMITTED TO SIDNEY R. THOMAS, KIM MCLANE WARDLAW and DANIEL PAUL COLLINS. [11496457] [19-16102, 19-16299, 19-16336, 19-16300] (BJK) [Entered: 11/12/2019 03:28 PM]
		* * * * *
6/26/20	<u>187</u>	FILED OPINION (SIDNEY R. THOMAS, KIM MCLANE WARDLAW and DANIEL PAUL COLLINS) AFFIRMED. Judge: SRT Authoring, Judge: DPC Dissenting. FILED AND ENTERED JUDGMENT. [11734529] [19-16102, 19-16300] (AKM) [Entered: 06/26/2020 08:52 AM]
		* * * * *
7/31/20	<u>190</u>	Received letter from the Supreme Court dated 07/31/2020: The motion to lift stay is denied. JUSTICE BREYER, with whom JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting from denial of motion to lift stay..

DATE	DOCKET NUMBER	PROCEEDINGS
		[11773507] [19-16102, 19-16300] (HH) [Entered: 07/31/2020 02:41 PM]
		* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 19-16299

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

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES OF AMERICA;
UNITED STATES OF AMERICA; UNITED STATES DEPART-
MENT 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; HEATHER WILSON, IN HER
OFFICIAL CAPACITY AS SECRETARY OF THE AIR FORCE;
UNITED STATES DEPARTMENT OF THE TREASURY;
STEVEN TERNER MNUCHIN, IN HIS OFFICIAL CAPACITY
AS SECRETARY OF THE DEPARTMENT OF THE TREAS-
URY; U.S. DEPARTMENT OF THE INTERIOR; DAVID
BERNHARDT, IN HIS OFFICIAL CAPACITY AS SECRETARY
OF THE INTERIOR; U.S. DEPARTMENT OF HOMELAND
SECURITY; CHAD F. WOLF, IN HIS OFFICIAL CAPACITY
AS ACTING SECRETARY OF HOMELAND SECURITY,
DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/1/19	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 07/08/2019. Transcript ordered by 07/29/2019. Transcript due 08/28/2019. Appellants David Bernhardt, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner 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 Department of Defense, United States of America and Heather Wilson opening brief due 10/07/2019. Appellees 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 Massachusetts, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico,

DATE	DOCKET NUMBER	PROCEEDINGS
		State of New York, State of Oregon, State of Rhode Island, State of Vermont and State of Wisconsin answering brief due 11/06/2019. Appellant's optional reply brief is due 21 days after service of the answering brief. [11349970] (JBS) [Entered: 07/01/2019 09:46 AM]
		* * * * *
7/2/19	<u>4</u>	Filed (ECF) Appellants David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson EMERGENCY Motion to stay lower court action, Motion to consolidate cases 19-16102, 19-16299, 19-16300. Date of service: 07/02/2019. [11351761] [19-16299] (Byron, H. Thomas) [Entered: 07/02/2019 09:52 AM]
7/3/19	<u>5</u>	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND): The motion to consolidate appeal Nos. 19-16102 and

DATE	DOCKET NUMBER	PROCEEDINGS
		19-16300 is granted. We defer resolution of the request to consolidate appeal No. 19-16299, which will be addressed by separate order. Briefing is stayed in these appeals pending further order. [11353399] [19-16102, 19-16300, 19-16299] (AF) [Entered: 07/03/2019 10:20 AM]
		* * * * *
7/8/19	<u>7</u>	Filed (ECF) Appellants David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, Appellees David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16336 Unopposed Motion to consolidate cases 19-16102, 19-16300, 19-16299,

DATE	DOCKET NUMBER	PROCEEDINGS
7/15/19	<u>8</u>	<p>19-16336, Motion for miscellaneous relief [Establish briefing schedule]. Date of service: 07/08/2019. [11357246] [19-16299, 19-16336] (Byron, H. Thomas) [Entered: 07/08/2019 06:25 PM]</p> <p>Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND): We grant Defendants' Unopposed Motion to Consolidate Appeals and Establish Briefing Schedule. Appeal Nos. 19-16102, 19-16300, 19-16299, and 19-16336 are consolidated. In accordance with Defendants' proposed briefing schedule: Defendants' opening brief is due July 31, 2019. Sierra Club Case plaintiffs' response brief, and States Case plaintiffs' response brief and opening brief on cross-appeal, are due August 30, 2019. Defendants' reply brief and response brief to States Case plaintiffs' cross-appeal is due September 20, 2019. States Case plaintiffs' reply brief on cross-appeal is due October 11, 2019. We request that the parties promptly</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		inform this Court of any developments affecting this appeal. In particular, if there are developments that may moot any or all of the issues, this Court should be notified immediately. [11364018] [19-16102, 19-16299, 19-16336, 19-16300] (AF) [Entered: 07/15/2019 04:23 PM]
		* * * * *
7/26/19	<u>13</u>	Received copy of Supreme Court of the United States Opinion of Breyer, J. filed on 07/26/2019. (No. 19A60) [11378645] [19-16102, 19-16299, 19-16336, 19-16300] (RL) [Entered: 07/26/2019 04:41 PM]
		* * * * *
7/31/19	<u>15</u>	Submitted (ECF) First Brief on Cross-Appeal for review. Submitted by Appellants Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States

DATE	DOCKET NUMBER	PROCEEDINGS
7/31/19	<u>16</u>	<p>Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300. Date of service: 07/31/2019. [11383517] [19-16102, 19-16299, 19-16300, 19-16336]—[COURT UPDATE: Attached corrected PDF of brief, updated docket text to reflect correct brief type. 08/01/2019 by LA] (Murphy, Anne) [Entered: 07/31/2019 08:09 PM]</p> <p>Submitted (ECF) excerpts of record. Submitted by Appellants Mark T. Esper, Kevin K. McAleenan, Steven Terner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300. Date of service: 07/31/2019. [11383519] [19-16102, 19-16299, 19-16300, 19-16336]—[COURT UPDATE: Attached corrected excerpts. 08/01/2019</p>

DOCKET		
DATE	NUMBER	PROCEEDINGS
		by LA] (Murphy, Anne) [Entered: 07/31/2019 08:19 PM]
		* * * * *
8/15/19	<u>38</u>	Submitted (ECF) Answering Brief for review. Submitted by Appellees Sierra Club and Southern Border Communities Coalition in 19-16102, 19-16300. Date of service: 08/15/2019. [11399236] [19-16102, 19-16299, 19-16300, 19-16336] (Ladin, Dror) [Entered: 08/15/2019 07:08 PM]
8/15/19	<u>39</u>	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees Sierra Club and Southern Border Communities Coalition in 19-16102, 19-16300. Date of service: 08/15/2019. [11399237] [19-16102, 19-16299, 19-16300, 19-16336] (Ladin, Dror) [Entered: 08/15/2019 07:11 PM]
8/15/19	<u>40</u>	Submitted (ECF) Second Brief on Cross-Appeal for review. Submitted by Appellees State of California and State of New Mexico in 19-16299, Appellants State of California and State of New Mexico in 19-16336. Date of service: 08/15/2019. [11399243] [19-16299, 19-16102, 19-16300,

DATE	DOCKET NUMBER	PROCEEDINGS
		19-16336]—[COURT UPDATE: Updated docket text to reflect correct brief type and all party fil- ers. 08/16/2019 by LA] (Zah- radka, James) [Entered: 08/15/2019 08:48 PM]
8/15/19	<u>41</u>	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees State of California and State of New Mexico in 19-16299. Date of service: 08/15/2019. [11399244] [19-16299, 19-16102, 19-16300, 19-16336] (Zahradka, James) [Entered: 08/15/2019 08:51 PM]
		* * * * *
8/30/19	<u>79</u>	Submitted (ECF) Third Brief on Cross-Appeal for review. Sub- mitted by Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Don- ald J. Trump in 19-16102, Appel- lants DOD, Doctor Mark T. Es- per, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather

DATE	DOCKET NUMBER	PROCEEDINGS
		Wilson in 19-16299, 19-16300, Appellees DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16336. Date of service: 08/30/2019. [11417659] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [Entered: 08/30/2019 11:39 PM]
8/30/19	<u>80</u>	Submitted (ECF) further excerpts of record. Submitted by Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bernhardt, DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300, Appellees David Bernhardt, DOD, Doctor Mark T. Esper, Kevin K. McAleenan, Ryan

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16336. Date of service: 08/30/2019. [11417660] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [Entered: 08/30/2019 11:43 PM]</p> <p>* * * * *</p>
9/2/19	<u>82</u>	<p>Filed (ECF) Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Terner Mnuchin and Donald J. Trump in 19-16102 Motion to file substitute or corrected brief. Date of service: 09/02/2019. [11417834] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [Entered: 09/02/2019 11:41 AM]</p> <p>* * * * *</p>
9/13/19	<u>85</u>	<p>Submitted (ECF) Cross-Appeal Reply Brief for review. Submitted by Appellees State of California and State of New Mexico in 19-16299, Appellants State of California and State of New Mexico</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		in 19-16336. Date of service: 09/13/2019. [11431386] [19-16299, 19-16102, 19-16300, 19-16336]— [COURT UPDATE: Updated docket text to correctly reflect the type of brief. 09/13/2019 by SML] (Zahradka, James) [Entered: 09/13/2019 02:52 PM]
9/13/19	<u>86</u>	Submitted (ECF) further excerpts of record. Submitted by Appellees State of California and State of New Mexico in 19-16299, Appellants State of California and State of New Mexico in 19-16336. Date of service: 09/13/2019. [11431390] [19-16299, 19-16102, 19-16300, 19-16336]— [COURT UPDATE: Updated docket text to correctly reflect the type of excerpts. 09/13/2019 by SML] (Zahradka, James) [Entered: 09/13/2019 02:54 PM]
		* * * * *
9/17/19	<u>88</u>	Filed clerk order (Deputy Clerk: AF): Defendants-Appellants' Motion for leave to file a corrected Reply and Response Brief is GRANTED. [11434689] [19-16102, 19-16299, 19-16336,

DATE	DOCKET NUMBER	PROCEEDINGS
		19-16300] (AF) [Entered: 09/17/2019 03:09 PM]
9/17/19	<u>89</u>	Submitted (ECF) Third Brief on Cross-Appeal for review. Sub- mitted by Appellants Doctor Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16102, Appellants David Bern- hardt, DOD, Doctor Mark T. Es- per, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, 19-16300, Appellees David Bern- hardt, DOD, Doctor Mark T. Es- per, Kevin K. McAleenan, Ryan D. McCarthy, Steven Turner Mnuchin, Richard V. Spencer, Donald J. Trump, United States Department of the Treasury, USA, USDHS, USDOJ and Hea- ther Wilson in 19-16336. Date of service: 09/17/2019. [11434746] [19-16102, 19-16299, 19-16300, 19-16336] (Murphy, Anne) [En- tered: 09/17/2019 03:35 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
11/12/19	110	<p style="text-align: center;">* * * * *</p> ARGUED AND SUBMITTED TO SIDNEY R. THOMAS, KIM MCLANE WARDLAW and DANIEL PAUL COLLINS. [11496457] [19-16102, 19-16299, 19-16336, 19-16300] (BJK) [Entered: 11/12/2019 03:28 PM]
6/26/20	<u>120</u>	<p style="text-align: center;">* * * * *</p> FILED OPINION (SIDNEY R. THOMAS, KIM MCLANE WARDLAW and DANIEL PAUL COLLINS) AFFIRMED. Judge: SRT Authoring, Judge: DPC Dissenting. FILED AND ENTERED JUDGMENT. [11734538] [19-16299, 19-16336] (AKM) [Entered: 06/26/2020 08:55 AM]
		<p style="text-align: center;">* * * * *</p>

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 19-16300

SIERRA CLUB; SOUTHERN BORDER COMMUNITIES
COALITION, PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES; MARK T. ESPER,
IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF
DEFENSE; CHAD F. WOLF, IN HIS OFFICIAL CAPACITY
AS ACTING SECRETARY OF HOMELAND SECURITY;
STEVEN TERNER MNUCHIN, IN HIS OFFICIAL CAPACITY
AS SECRETARY OF THE TREASURY,
DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/1/19	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 07/08/2019. Transcript ordered by 07/29/2019. Transcript due 08/28/2019. Appellants Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump opening brief due 10/07/2019. Appellees Sierra

DATE	DOCKET NUMBER	PROCEEDINGS
		Club and Southern Border Communities Coalition answering brief due 11/06/2019. Appellant's optional reply brief is due 21 days after service of the answering brief. [11349978] (JBS) [Entered: 07/01/2019 09:49 AM]
		* * * * *
7/2/19	<u>4</u>	Filed (ECF) Appellants Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump EMERGENCY Motion to stay lower court action, Motion to consolidate cases 19-16102, 19-16299, 19-16300. Date of service: 07/02/2019. [11351747] [19-16300] (Byron, H. Thomas) [Entered: 07/02/2019 09:49 AM]
7/3/19	<u>5</u>	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND): The motion to consolidate appeal Nos. 19-16102 and 19-16300 is granted. We defer resolution of the request to consolidate appeal No. 19-16299, which will be addressed by separate order. Briefing is stayed in these appeals pending further

DATE	DOCKET NUMBER	PROCEEDINGS
		order. [11353399] [19-16102, 19-16300, 19-16299] (AF) [Entered: 07/03/2019 10:20 AM]
		* * * * *
7/8/19	<u>7</u>	Filed (ECF) Appellants Mark T. Esper, Kevin K. McAleenan, Steven Turner Mnuchin and Donald J. Trump in 19-16300, 19-16102 Unopposed Motion to consolidate cases 19-16102, 19-16300, 19-16299, 19-16336, Motion for miscellaneous relief [Establish briefing schedule]. Date of service: 07/08/2019. [11357245] [19-16300, 19-16102] (Byron, H. Thomas) [Entered: 07/08/2019 06:23 PM]
7/15/19	<u>8</u>	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND): We grant Defendants' Unopposed Motion to Consolidate Appeals and Establish Briefing Schedule. Appeal Nos. 19-16102, 19-16300, 19-16299, and 19-16336 are consolidated. In accordance with Defendants' proposed briefing schedule: Defendants' opening brief is due July 31, 2019. Sierra Club Case plaintiffs' response brief, and

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>States Case plaintiffs' response brief and opening brief on cross-appeal, are due August 30, 2019. Defendants' reply brief and response brief to States Case plaintiffs' cross-appeal is due September 20, 2019. States Case plaintiffs' reply brief on cross-appeal is due October 11, 2019. We request that the parties promptly inform this Court of any developments affecting this appeal. In particular, if there are developments that may moot any or all of the issues, this Court should be notified immediately. [11364018] [19-16102, 19-16299, 19-16336, 19-16300] (AF) [Entered: 07/15/2019 04:23 PM]</p>

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 19-16336

STATE OF CALIFORNIA; STATE OF NEW MEXICO,
PLAINTIFFS-APPELLANTS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES OF AMERICA;
UNITED STATES OF AMERICA; UNITED STATES DEPART-
MENT OF DEFENSE; MARK T. ESPER, IN HIS OFFICIAL
CAPACITY AS ACTING SECRETARY OF DEFENSE; RYAN
D. MCCARTHY, SENIOR OFFICIAL PERFORMING THE DU-
TIES OF THE SECRETARY OF THE ARMY; RICHARD V.
SPENCER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF
THE NAVY; HEATHER WILSON, IN HER OFFICIAL CAPAC-
ITY AS SECRETARY OF THE AIR FORCE; UNITED STATES
DEPARTMENT OF THE TREASURY; STEVEN TERNER
MNUCHIN, IN HIS OFFICIAL CAPACITY AS SECRETARY
OF THE DEPARTMENT 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; CHAD F. WOLF, IN HIS OFFICIAL CAPACITY
AS ACTING SECRETARY OF HOMELAND SECURITY,
DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/8/19	<u>1</u>	DOCKETED CAUSE AND EN- TERED APPEARANCES OF COUNSEL. SEND MQ: Yes.

DATE	DOCKET NUMBER	PROCEEDINGS
		Setting cross-appeal briefing schedule as follows: Mediation Questionnaire due on 07/15/2019 for State of California and State of New Mexico. Briefing is stayed in these appeals pending further order. [11356849] [19-16336, 19-16299] (JBS) [Entered: 07/08/2019 03:01 PM] 07/08/2019
7/8/19	<u>2</u>	Filed (ECF) Appellants David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16299, Appellees David Bernhardt, DOD, Mark T. Esper, Kevin K. McAleenan, Ryan D. McCarthy, Steven Terner Mnuchin, Richard V. Spencer, Donald J. Trump, U.S. Department of the Treasury, USA, USDHS, USDOJ and Heather Wilson in 19-16336 Unopposed Motion to consolidate cases 19-16102, 19-16300, 19-16299, 19-16336, Motion for miscellaneous relief [Establish briefing schedule]. Date of service:

DATE	DOCKET NUMBER	PROCEEDINGS
7/15/19	<u>3</u>	<p>07/08/2019. [11357246] [19-16299, 19-16336] (Byron, H. Thomas) [Entered: 07/08/2019 06:25 PM]</p> <p>07/15/2019</p> <p>Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and MICHELLE T. FRIEDLAND): We grant Defendants' Unopposed Motion to Consolidate Appeals and Establish Briefing Schedule. Appeal Nos. 19-16102, 19-16300, 19-16299, and 19-16336 are consolidated. In accordance with Defendants' proposed briefing schedule: Defendants' opening brief is due July 31, 2019. Sierra Club Case plaintiffs' response brief, and States Case plaintiffs' response brief and opening brief on cross-appeal, are due August 30, 2019. Defendants' reply brief and response brief to States Case plaintiffs' cross-appeal is due September 20, 2019. States Case plaintiffs' reply brief on cross-appeal is due October 11, 2019. We request that the parties promptly inform this Court of any developments affecting this appeal. In</p>

DATE	DOCKET NUMBER	PROCEEDINGS
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particular, if there are developments that may moot any or all of the issues, this Court should be notified immediately. [11364018] [19-16102, 19-16299, 19-16336, 19-16300] (AF) [Entered: 07/15/2019 04:23 PM]

* * * * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND)

Docket No. 4:19-cv-00872-HSG
STATE OF CALIFORNIA, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/18/19	<u>1</u>	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; against All Defendants (Filing fee \$ 400, receipt number 0971-13100729.). Filed by State of New York, State of Minnesota, State of Colorado, State of California, Dana Nessel, State of Illinois, State of Maine, State of Maryland, State of Connecticut, State of New Mexico, State of Oregon, State of New Jersey, State of Delaware, State of Nevada, State of Hawaii, Commonwealth of Virginia. (Attachments: # <u>1</u> Civil Cover Sheet) (Sherman, Lee) (Filed on 2/18/2019) Modified on 2/19/2019 (aaaS, COURT

DATE	DOCKET NUMBER	PROCEEDINGS
		STAFF). Modified on 2/19/2019 (aaaS, COURT STAFF). (Entered: 02/18/2019)
		* * * * *
3/6/19	<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)
		* * * * *
3/13/19	<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)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Filed on 3/13/2019) (Entered: 03/13/2019)
		* * * * *
4/8/19	<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 Hayward 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)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Filed on 4/8/2019) (Entered: 04/08/2019)
		* * * * *
4/25/19	<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)
		* * * * *
5/2/19	<u>112</u>	REPLY (re <u>59</u> MOTION for Preliminary Injunction) filed by Commonwealth of Massachusetts, Commonwealth of Virginia, Dana

DATE	DOCKET NUMBER	PROCEEDINGS
		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)
		* * * * *
5/24/19	<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)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
5/29/19	<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)
		* * * * *
6/5/19	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

DATE	DOCKET NUMBER	PROCEEDINGS
6/7/19	<u>173</u>	<p>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. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ndrS, COURT STAFF) (Date Filed: 6/5/2019) (Entered: 06/10/2019)</p> <p>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</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		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)
		* * * * *
6/12/19	<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,

DATE	DOCKET NUMBER	PROCEEDINGS
		and 9002) (Sherman, Lee) (Filed on 6/12/2019) Modified on 6/13/2019 (cpS, COURT STAFF). (Entered: 06/12/2019)
		* * * * *
6/19/19	<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)

DATE	DOCKET NUMBER	PROCEEDINGS
6/24/19	<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)
		* * * * *
6/28/19	<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)
6/28/19	<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)
6/29/19	<u>187</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Department of Defense, David Bernhardt, Mark T. Esper, Ste-

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>ven 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)</p> <p>* * * * *</p>
7/1/19	<u>189</u>	<p>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)</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/8/19	<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)
		* * * * *
7/8/19	<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)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND)

Docket No. 4:19-cv-00892-HSG
SIERRA CLUB, ET AL, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/19/19	<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 by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet) (Wang, Cecillia) (Filed on 2/19/2019) (Entered: 02/19/2019)
		* * * * *
3/6/19	<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:

DATE	DOCKET NUMBER	PROCEEDINGS
03/06/2019)		
* * * * *		
3/18/19	<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)
* * * * *		
4/4/19	<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)
* * * * *		
4/25/19	<u>64</u>	OPPOSITION/RESPONSE (re

DATE	DOCKET NUMBER	PROCEEDINGS
		<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)
		* * * * *
5/2/19	<u>91</u>	REPLY (re <u>29</u> MOTION for Preliminary Injunction) filed by Sierra Club, Southern Border Communities Coalition. (Attachments: # <u>1</u> Supplemental Declaration of Christina Patino Houle, # <u>2</u> Supplemental Declaration of Kevin Bixby) (Ladin, Dror) (Filed on 5/2/2019) (Entered: 05/02/2019)
		* * * * *
5/24/19	<u>144</u>	ORDER by Hon. Haywood S. Gilliam, Jr., GRANTING IN PART and DENYING IN PART <u>29</u> Plaintiffs Motion for Preliminary In-

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>junction, 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)</p> <p>* * * * *</p>
5/29/145	<u>145</u>	<p>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)</p>
5/29/19	<u>146</u>	<p>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).</p>

DATE	DOCKET NUMBER	PROCEEDINGS
(Entered: 05/29/2019)		
* * * * *		
5/29/19	<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)
* * * * *		
5/29/19	<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,

DATE	DOCKET NUMBER	PROCEEDINGS
		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)
		* * * * *
5/30/19	<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)
		* * * * *
6/5/19	165	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

DATE	DOCKET NUMBER	PROCEEDINGS
6/7/19	<u>163</u>	<p>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. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ndrS, COURT STAFF) (Date Filed: 6/5/2019) (Entered: 06/10/2019)</p> <p>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)</p> <p>* * * * *</p>
6/12/19	<u>168</u>	<p>MOTION for Partial Summary Judgment filed by Sierra Club, Southern Border Communities Coalition. Responses due by</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		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)
		* * * * *
6/19/19	<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)
6/24/19	<u>182</u>	REPLY (re <u>168</u> MOTION for Partial Summary Judgment) filed by Sierra Club, Southern Border

DATE	DOCKET NUMBER	PROCEEDINGS
		Communities Coalition. (Attachments: # <u>1</u> Exhibit) (Zafar, Noor) (Filed on 6/24/2019) (Entered: 06/24/2019)
		* * * * *
6/28/19	<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)
6/28/19	<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)
6/29/19	<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.)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Warden, Andrew) (Filed on 6/29/ 2019) (Entered: 06/29/2019)
		* * * * *
7/1/19	<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) (En- tered: 07/01/2019)
		* * * * *

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

No. 4:19-cv-00872-HSG

STATE OF CALIFORNIA, ET AL. AND SIERRA CLUB,
ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

**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,

/s/ MILLARD F. LEMASTER
MILLARD F. LEMASTER

Deputy Chief

Strategic Planning and Analysis Directorate
United States Border Patrol

DRAFT // PRE-DECISIONAL // DELIBERATIVE

ACTION MEMO

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

[KR] [May 6, 2019]

FOR: ACTING SECRETARY OF DEFENSE

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 Sup-
port to the Department of Homeland Se-
curity

PURPOSE: To obtain your approval of a second tranche
of assistance to the Department of Home-
land Security (DHS) in blocking drug-
smuggling corridors along the southern
border: and for you to direct specific ac-
tions 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, 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

* * * * *

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

No. 4:19-cv-00892-HSG

SIERRA CLUB, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

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.

/s/ MILLARD F. LEMASTER
MILLARD F. LEMASTER

Deputy Chief
Strategic Planning and Analysis Directorate
United States Border Patrol

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 I, 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.

* * * * *



**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.

/s/ PATRICK M. SHANAHAN
PATRICK M. SHANAHAN
Acting



**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 Section 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 Section 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.

- 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.

/s/ PATRICK M. SHANAHAN
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

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



Feb. 25, 2019

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

FROM: Christina Bobb
/s/ CHRISTINA BOBB
Executive Secretary
Department of Homeland
Security (DHS)

SUBJECT: Request for Assistance Pursu-
ant 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 con-

struct 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.

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.

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

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:*
 - o 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.
 - o Start coordinate: 32.704197, -114.726013;
End coordinate: 32.642102, -114.764632)
- *Yuma Project 2:*
 - o 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.
 - o Start coordinate: 32.37755528, -114.4268201;
End coordinate: 32.3579244, -114.3623999;
 - o 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.

- o Start coordinate: 32.51419938, -114.8011175;
End coordinate: 32.49350559, -114.8116619
- *Yuma Project 3:*
 - o 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.
 - o 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 transshipment 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.

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:*
 - o 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.
 - o Start coordinate: 32.038278, -113.331716; End coordinate: 31.890032, -112.850162
 - o 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.
 - o Start coordinate: 31.8648, -112.76757; End coordinate: 31.823911, -112.634298
- *Tucson Project 2:*
 - o 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.
 - o Start coordinate: 31.8899921, -112.850162; End coordinate: 31.8648, -112.76757
- *Tucson Project 3:*
 - o 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.

- o Start coordinate: 31.333754, -110.253863;
End coordinate: 31.333767, -110.250286;
- o Start coordinate: 31.334154, -110.152548;
End coordinate: 31.334137, -110.147464;
- o Start coordinate: 31.333995, -109.453305;
End coordinate: 31.332759, -109.129344
- *Tucson Project 4:*
 - o 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.
 - o Start coordinate: 31.333578, -110.79579;
End coordinate: 31.333511, -110.775333;
 - o start coordinate: 31.33328, -110.70545;
End coordinate: 31.333602, -110.288665)
 - o 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:*
 - o 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.

- o Start Coordinate: 31.460175, -111.473171;
End Coordinate: 31.459673, -111.471584;
- o Start Coordinate: 31.453091, -111.450959;
End Coordinate: 31.449633, -111.440132;
- o Start Coordinate: 31.440683, -111.412054;
End Coordinate: 31.437351, -111.40168;
- o Start Coordinate: 31.423471, -111.358336;
End Coordinate: 31.422541, -111.355444;
- o Start Coordinate: 31.42221, -111.354379;
End Coordinate: 31.421321, -111.351608;
- 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.

The specific Project Areas are as follows:

- *El Paso Project 1:*
 - o 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.
 - o Start Coordinate: 31.7837, -107.923151;
End Coordinate: 31.783689, -107.679049;
 - o Start Coordinate: 31.783672, -107.573919;
End Coordinate: 31.783741, -107.038154
- *El Paso Project 2:*
 - o 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.
 - o Start Coordinate: 31.332323, -108.962631;
End Coordinate: 31.332292, -108.885946;
 - o 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.

- o Start Coordinate: 31.333368, -108.582412;
End Coordinate: 31.333407, -108.47926;
- o The third segment begins approximately 20 miles west of the Columbus Port of Entry extending west 12.84 miles.
- o 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.

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. Pending

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 Project 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.



**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 I 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.

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

/s/ PATRICK M. SHANAHAN
PATRICK M. SHANAHAN
Acting



**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 Pur-
suant 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 in-

stallation 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.

/s/ PATRICK M. SHANAHAN
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

Executive Secretary

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



**Homeland
Security**

Mar. 29, 2019

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

FROM: Christina Bobb
/s/ 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 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 anticlimb 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 anticlimb steel plate
- Sector El Paso Project 1: Requirement for 30 foot steel bollard fencing with 5 foot anticlimb 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 anticlimb 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 anticlimb 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.



**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 Corri-
dors**

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.

/s/ PATRICK M. SHANAHAN
PATRICK M. SHANAHAN
Acting

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO-OAKLAND DIVISION

No. 4:19-cv-00892-HSG

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

DECLARATION OF RALPH HUDSON

I, Ralph Hudson, declare as follows:

1. My name is Ralph Hudson. I am over 18 years old. The information in this declaration is based on my personal experience and my review of publicly available information. If called as a witness, I could and would testify competently to these facts. Any opinions contained in this declaration reflect my personal opinion and judgement.
2. My primary address is 427 Stone Road, Gilman-
ton Iron Works, New Hampshire 03837. However, I
have owned property in Ajo, Arizona for almost two
decades and I am a member of Sierra Club's Grand
Canyon Chapter in Southern Arizona.

3. I support the Sierra Club's mission and goals to encourage the public to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

4. I am a current member of Sierra Club and first joined in 2012.

5. I have been recreating in the wilderness areas along the U.S.-Mexico border in what U.S. Customs and Border Protection (CBP) refers to as the Tucson Sector for over 20 years. My love of this unique desert ecosystem led me to build my house in Ajo back in 2001. I use the lands close to the border in the Cabeza Prieta Wildlife Refuge and Organ Pipe Cactus National Monument to hike, take photos, and explore the natural history. I have been traveling to the areas in and around the proposed Tucson Projects 1 and 2 since 1997. I travel to these areas several times each year, sometimes for a week at a time.

6. Access to the Cabeza Prieta Wildlife Refuge, near the border, is along the El Camino del Diablo. Its proximity to the border makes hiking right to the current barrier possible. On foot you feel extremely connected with nature and I can hardly imagine the juxtaposition of this high border wall with the desert landscape. I have wonderful memories and photographs of the original border obelisks which served as the only demarcation of the border until about 10 years ago. It looks to me like little has changed

along the border in these wild places in terms of human traffic. Away from a few well known crossing spots it has remained the same. These wild places are empty of people despite recent rhetoric about waves of migrants crossing the border.

7. I love hiking, camping, and taking photos in this remote wilderness. I cannot fathom seeing an 18 to 30 foot barrier when I focus my camera on Kino peak or seeing a tall barrier strung out behind Monument Bluff just south of the El Camino on the Cabeza Prieta NWR. These are special places which fulfill the Wilderness Act's goal of being places "untouched by the hand of man."

8. Over the past few years, I have also enjoyed visiting Quitobaquito Springs. This UNESCO World Heritage Site is less than a half mile from the U.S.-Mexico Border. Because of its proximity to the border you can even see traffic along Mexico's Route 2. As a water source within this desert ecosystem, Quitobaquito Springs is extremely important to wildlife in the area. The replacement of penetrable vehicle barriers with pedestrian fencing will have a tremendous impact on the species that rely on this water source.

9. The current barrier is bad enough but, for the most part, it does allow desert animals to wander through this landscape as they always have. I am distressed that this may no longer happen and I fear that fragmenting their habitat may have unimaginable impacts. I have seen coyotes, javelina, bighorn sheep, pronghorn, and various reptiles in my Cabeza travels.

10. One of my favorite aspects of camping in these areas along the border is my ability to see the stars. There is very little light pollution in these areas, however, the proposed border construction will drastically change this reality. I have always been able to come out here and look up at the sky and see the Milky Way. If these projects move forward, the lighting will drastically impact my ability to stargaze in this beautiful border region.

11. I plan to continue returning to these unique landscapes along the border as long as I am able, but I am extremely concerned that Tucson Projects 1 and 2 will greatly detract from my ability to enjoy hiking, camping, and photographing these landscapes. The physical barrier alone is a blight on this landscape.

12. I am aware that President Trump declared a national emergency on February 15, 2019 in order to construct a wall along the U.S.-Mexico border. It is my understanding that the Secretary of Defense has recently authorized funding for Projects 1 and 2 in the Tucson Sector. I am concerned that the border wall and its construction will adversely impact the expansive area around and including Cabeza Prieta Wildlife Refuge and Organ Pipe Cactus National Monument, its ecosystems, and the many people like me who recreate in these places.

13. For all of these reasons, the proposed border wall in Tucson Sector Project 3 will injure me recreationally, aesthetically, and morally. An order halting the wall's construction would remedy those injuries.

I hereby declare under penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

Dated: May 26, 2019

/s/ RALPH HUDSON
RALPH HUDSON

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO-OAKLAND DIVISION

No. 4:19-cv-00892-HSG

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

DECLARATION OF BILL BROYLES

My name is Bill Broyles, and I declare:

1. I reside in Tucson, Arizona, north of the border between the United States and Mexico. I also own land near Ajo, Arizona, near the Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge.
2. I have been a member of the Sierra Club since 1989.
3. I regularly spend time in the vicinity of the proposed Tucson Section Projects 1 (extending northwest and southeast from Lukeville, Arizona) and 2 (extending through Lukeville), and intend to continue to do so in the future. Those portions of the border are flanked by large federal reserves that protect wildlife, habitat, and

which provide extraordinary opportunities for wilderness-based recreation. Those areas include Organ Pipe Cactus National Monument, the Cabeza Prieta National Wildlife Refuge, and the Goldwater Range. Similar reserves lie along the Mexican side of the border: El Pinacate and Gran Desierto Biosphere Reserve (recently designated a UNESCO World Heritage Site) and El Alto Golfo and Rio Colorado Delta Biosphere Reserve.

4. For the past 50 years, I have hiked, camped, vacationed, and traveled through the above-described areas, studying and observing the region's human- and natural history. I have traversed thousands of miles, and spent hundreds of days and nights, in these areas. I continue to visit these areas four to six times a year.

5. As a volunteer with the Cabeza Prieta National Wildlife Refuge, I have worked several thousand hours counting desert bighorn, surveying desert waterholes, measuring rainfall, and removing trash from the Refuge

6. I have written and edited books and articles on the area, including: *Organ Pipe Cactus National Monument*, *Our Sonoran Desert*, *Dry Borders*, *Sunshot*, *Last Water on the Devil's Highway*, *Desert Duty: On the Line with the U.S. Border Patrol*, *Cowboys and Cowgirls Around Ajo Arizona*, and *Field Man*.

7. My study and travels through these borderlands are critically enhanced by the presence of a wide array of species—some of which are endangered—within them. Some of those species, such as Sonoran Pronghorn and Desert Bighorn, use and require habitat that spans the border and have historically moved throughout northwestern Sonoran and southwestern Arizona. I understand that the construction of walls that such species

cannot cross harms such species, by inhibiting their access to parts of their habitat, and increasing human disturbances in the area.

8. My enjoyment of these areas will also be damaged by the incessant lighting associated with the wall and its construction, which, I understand, will disrupt night flights of migrating birds, and mar my and others' view of the night skies—a central attraction of Organ Pipe Cactus National Monument and other public lands in the area.

9. The widening of roads necessary to enable construction of these wall segments, along with the noise and dust associated with construction, will disturb that natural quiet of the area for many months, displacing wildlife from areas near the wall, exacerbating soil erosion, and substantially diminishing my and others' pleasure in experiencing the area.

10. At a more fundamental level, the proposed barrier construction will blight a landscape whose core attractions include unimpeded views across the border (of, for example, the volcanic cones and peaks of Mexico's Pinacate Biosphere Reserve), solitude and quiet, and the shared heritage, history, and culture of our two bordering nations. The wall diminishes each of those basic values, thereby irrevocably altering my and others' experience of the borderlands.

11. I am concerned by the absence of any environmental review of these projects. Such review, and an opportunity for public comment, would allow the community (including me) to better inform the agencies' decision, and, at a minimum, would permit the agencies to

identify less intrusive means of pursuing their goals, or of mitigating the impacts of their actions.

12. For all of these reasons, the proposed wall construction will injure me professionally, aesthetically, recreationally, and morally. An order halting the wall's construction would remedy those injuries.

I hereby declare under penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

Dated: May 23, 2019

/s/ BILL BROYLES
BILL BROYLES

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO-OAKLAND DIVISION

No. 4:19-cv-00892-HSG

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

DECLARATION OF PATRICIA GERRODETTE

My name is Patricia Gerrodette, and I declare:

1. I am over 18 years old. The information in this declaration is based on my personal experience and my review of publicly available information. If called as a witness, I could and would testify competently to these facts. Any opinions contained in this declaration reflect my personal opinion and judgment.
2. My primary residence is 3327 Eagle Ridge Drive, Sierra Vista AZ, 85650. I have lived in Sierra Vista since 1995.
3. I am an active member of the Sierra Club, Grand Canyon Chapter. I've been a member since 1984. I am currently a volunteer with the Sierra Club Grand Canyon Chapter's Water Sentinels Program,

a volunteer group that monitors the flow of Arizona's San Pedro River and tests its water quality, and have been a member of the program since it began in Arizona in 2010.

4. Throughout my time in Sierra Vista, I have become closely connected to the San Pedro River and the San Bernardino National Wildlife Refuge, both of which fall within Tucson Sector Project 3.
5. Within a few months of arriving in Sierra Vista, I started connecting with people in my community who, like me, value and appreciate the natural world. I quickly became educated about the San Pedro River and the surrounding watershed, and I started to explore and recreate along the river. As an activist on San Pedro River issues, I spend a lot of my free time working to protect the San Pedro River and the watershed that supports it, including the desert washes that originate in the Huachuca Mountains and the groundwater aquifer that keeps the San Pedro River flowing all year round. My efforts to protect the San Pedro River have included participation for the last 19 years in the Upper San Pedro Partnership, a collection of 21 federal and state agencies and some private entities working to ensure that the long-term water needs of the Sierra Vista Subwatershed are met.
6. I bought my current house three years after moving to Sierra Vista. My house is just a fifteen to twenty minute drive to the San Pedro River, which allows me to regularly travel to the river. I enjoy walking along its trails, identifying native plants, birdwatching, and observing wildlife. In my time along the river, I have seen many neotropical migrant birds,

which use the San Pedro River's riparian habitat as a migratory stop-over site, as well as Mexican specialty birds like Gray Hawks that come to the river to breed in the summertime. I have also seen the western Yellow-billed Cuckoo, which is a listed species under the Endangered Species Act. When friends come to town to visit, I often take them to the San Pedro River, because it is a jewel in our community. These days, I travel to the San Pedro River about once a month to visit, walk with friends, exercise, and observe the wildlife and vegetation that rely on the river.

7. The proposed border wall at the San Pedro River touches directly on the work that I've been doing for the past 24 years and is deeply upsetting to me. I am concerned about what the wall will do to the flow of the river. I don't see how this wall will be any different than walls that have failed along the border in the past. Experience with other sections of the border wall suggest that the wall will cause debris to accumulate in the river; in the worst case, it may cause the border wall to blow out as it did in Lukeville and Nogales. I also worry that the border wall and its construction will harm the plant and animal species living along and migrating through the San Pedro River ecosystem.
8. As I've mentioned, I regularly visit the San Pedro River. However, if construction moves forward, it will deter me from visiting as often as I once did. I will avoid the noise, dust, and unsightliness of a construction zone in a place I love so dearly for its natural beauty.

9. I am also deeply worried by the proposal along the San Bernardino National Wildlife Refuge. While construction itself is hugely disruptive, it is the proposed permanence of an impenetrable barrier that I find most distressing. The wall will prevent wildlife from crossing, thereby disrupting natural migration patterns. Such disregard for the needs of other life is very upsetting to me.
10. I am aware that President Trump declared a national emergency on February 15, 2019 in order to construct a wall along the U.S.-Mexico border. It is my understanding that the Secretary of Defense has recently authorized funding, and imminently plans to construct, Tucson Project 3. I am concerned that the border wall and its construction will destroy the natural beauty and ecosystems of the San Pedro River and the San Bernardino Wildlife Refuge as well as my ability to enjoy these places.
11. For all of these reasons, the proposed border wall in Tucson Sector Project 3 will injure me recreationally, aesthetically, spiritually, and morally. An order halting the wall's construction would remedy those injuries.

I hereby declare under penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

Dated: May 27, 2019

/s/ PATRICIA GERRODETTE
PATRICIA GERRODETTE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO-OAKLAND DIVISION

No. 4:19-cv-00892-HSG

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

DECLARATION OF MARGARET CASE

My name is Margaret F. Case. The information in this declaration is true and correct, based on my experience, and my review of publicly available information:

1. I am a member of the Sierra Club, and have been since 1990. My interest in the natural areas of south-east Arizona, and my concern for those areas, led me to join the Sierra Club's Borderlands Team.

2. I reside in the rural area know as Palominas, in southern Cochise County, Arizona. I have lived in the area for over 11 years. As the crow flies, my home is approximately four miles from the San Pedro River, and approximately 5 miles from a wall segment that runs along the United States-Mexico border. The border wall and the foliage corridor along the San Pedro River

are visible from my house's patios. The Coronado Memorial is a short drive from my home—approximately ten minutes. The San Bernardino Wildlife Refuge is also in our county, to the east of my house.

3. I understand that the Tucson Section Project 3 involves the construction and replacement of border wall sections that include the San Pedro River, the San Bernardino Wildlife Refuge, and areas south of the Coronado Memorial.

4. I use and enjoy the areas affected by the border wall—from my home, and on excursions with friends and visitors. Indeed, my husband and I spent our first Christmas Day in Arizona visiting the Slaughter Ranch and the San Bernardino National Wildlife Refuge. We are both birders; on that first trip, on a track running parallel to the Normandy-style 'vehicle barriers' currently along the border, we saw our first Black Phoebe.

5. The border areas and their natural beauty have been a central element of my life here since we moved to Arizona from Kentucky. Shortly after arriving, I went on an overnight Sierra Club outing along the border. My goal was to learn about the southeast borderlands area, which I intended to be my home for the rest of my life. That trip took us to the Buenos Aires National Wildlife Refuge, the San Pedro Riparian National Conservation Area, and to the Coronado National Memorial.

6. Since then, I have grown more familiar with the landscapes of southeast Arizona. I continue to regularly visit the San Pedro River. I saw my first Gray Hawk at the San Pedro Riparian National Conservation Area. My husband and I have an annual tradition of hiking at the San Pedro House (in that Conservation

Area) on Thanksgiving Day. When friends and family visit, we routinely take them to the Coronado National Memorial; we, along with them, are always dazzled by the sweeping vistas of the continuous landscape shared by the United States and Mexico.

7. My pleasure in living along the border is immensely enhanced by my knowledge that there are wolves, bears, ocelots, and even jaguars that inhabit those lands, prowling in secret and filling crucial, and unique, ecological niches. Just a few days ago, on a trip into nearby New Mexico, my husband and I spotted a wolf standing in the brush. I never thought I might see a wolf. Doing so was the thrill of a lifetime, and one that deepened my appreciation of the presence of such wildlife in my own backyard neighborhood, as well as my concern that border-wall construction will inhibit the mobility upon which those species depend.

8. The construction and expansion of the border wall, both as the construction proceeds and in the hard infrastructure that it will produce, will diminish the values that caused me to choose these borderlands as my home.

9. I understand that the proposed 'pedestrian' barriers will impose significant, often impassable, barriers to the wildlife that currently inhabit areas on both sides of the border. Near my home, wildlife such as deer and javelina have been photographed, in apparent consternation, unable to cross such barriers. I personally have heard the frustration of a neighbor—a long-time rancher—whose property is bounded by the border wall and road for many miles. His family has ranched that land for three generations. He describes a sharp drop in the deer population, as border barriers increase.

These and other similar stories suggest to me that the decrease in observable wildlife in my own property may be due to border enforcement activities; I find the notion of increasing the structures and human activities that interrupt the flows of wildlife, and water, painful, almost viscerally so.

10. I am also concerned that increased human activity along the border, and more substantial border walls and infrastructure, will affect the diverse bird life that provides one of the greatest pleasures of my current home. A higher, less permeable wall will impair the visibility that makes the border such an enticing bird-watching area. Many birds depend upon rabbits and other prey species that are likely to be disrupted by construction activities, and whose habitat will be fragmented by the wall; and their own nesting habitat, especially along the rivers, is likely to be adversely affected. Birds that frequent this area depend upon a delicately balanced habitat, which exists in only a few places around the world; disrupting the habitat of these birds disrupts and diminishes my own life.

11. I have read articles documenting the manner in which border-wall construction disrupts delicate ecosystems, adding sediment to rivers and streams, adding vehicular traffic and other human activity, contributing light pollution, and inhibiting wildlife corridors. And I have personally seen how the Department of Homeland Security's border walls, roads, and traffic have diminished the beauty and serenity of the border region where I live.

12. At night, from my house, I can watch the lights of Border Patrol vehicles on the roads that the agency has built in previously roadless areas. In our part of

the world, dark night skies are a pride and joy; law enforcement lighting, which I understand will be exacerbated by the proposed project, is an intrusive nuisance and decreases my enjoyment of the area. I am additionally worried about nocturnal animals, whose activities and habitat are disrupted by night-time lights and activity.

13. With each increase and escalation in enforcement along the border, my and other border residents' quality of life decreases. I once enjoyed taking visiting friends and family to the actual border; as access roads have been closed, such trips have become very difficult. Law enforcement activities which claim to limit north-bound human migration are in fact limiting my own freedom and mobility, and my ability to show visitors where I live, and what I enjoy. The proposed wall will, moreover, extend an already unwanted eyesore in the middle of a landscape whose beauty I treasure, irrevocably harming my enjoyment of that landscape.

14. I am greatly concerned about the federal agencies' refusal to comply with environmental statutes that Congress passed to protect natural and cultural resources. I chose to live the rest of my life in this area; when deciding to do so, I relied upon those legal protections to protect the lands around my home, never dreaming that they would be rendered impotent with the stroke of a pen.

15. For all of those reasons, the proposed Tucson border wall project will cause me and my family irreparable harm. An order preventing the wall's construction would remedy that harm.

I hereby declare under penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

Dated: May 24, 2019

/s/ MARGARET F. CASE
MARGARET CASE

EFFICIENT, EFFECTIVE, ACCOUNTABLE

**AN
AMERICAN
BUDGET**

BUDGET OF THE U.S. GOVERNMENT

OFFICE OF MANAGEMENT AND BUDGET | OMB.GOV

PROTECTING AMERICANS WHILE ENHANCING LEGAL IMMIGRATION

Since taking office, the President has made clear that he would restore order and integrity to the U.S. immigration system. There are three primary efforts underlying this goal: strengthening border security; ensuring enforcement of immigration laws; and reforming the legal immigration system, while recognizing that legal immigration is an important driver of a thriving economy. The Budget requests more than \$28.2 billion for the agencies that have primary responsibility for carrying out immigration programs at DHS and the Department of Justice (DOJ). This includes funding for U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services within DHS, and the Executive Office for Immigration Review (EOIR) within DOJ.

Within the Administration's proposal for \$18 billion to fund the border wall, the Budget invests \$1.6 billion to support CBP efforts to gain operational control of the Southwest border. Until the porous borders are closed to the criminals, terrorists, and gang members that exploit it, America remains at risk. Furthermore, since most of the illegal drugs that enter the United States come through the Southwest border, a border wall is critical to combating the scourge of drug addiction that leads to thousands of unnecessary deaths. The border wall would stop smugglers in their tracks and help make America safe.

The Budget also requests \$211 million for 750 additional Border Patrol agents in 2019, continuing the President's commitment to increase the ranks of the Border

Patrol by 5,000 new agents. Funding would be used to recruit, hire, and train new agents, and for staff to support the men and women on the front line of America's border defenses. These new personnel would supplement investments in the border wall by guarding the border and apprehending and swiftly removing illegal aliens at the border.

The Budget furthers investment in CBP technology and targeting systems such as the National Targeting Center (NTC) and the Biometric Entry-Exit System. The Budget requests a total of \$253 million for NTC, an increase of \$79 million, for its overall mission, including the background vetting of individuals seeking to enter the United States before they arrive. These programs would enable the Government to better identify terrorists and other criminals and prevent their entry into the United States. Completion of the long-required Biometric Entry-Exit System would increase law enforcement's ability to identify and remove those who overstay their visas. Future investments in enhanced vetting and targeting programs would further the Administration's goal of shifting such costs to visa and immigration applicants while continuing to facilitate legitimate travel to the United States.

The Budget makes major investments in immigration law enforcement in the interior of the Nation, focusing on efforts to identify, arrest, prosecute, and remove illegal aliens. Within ICE, the Budget proposes \$571 million to hire and support 2,000 new officers and agents, which directly supports the President's order for ICE to arrest all illegal aliens it encounters. Since the President's inauguration, ICE arrests have increased by 42 percent and the Agency has increased requests to local

law enforcement to transfer custody of illegal aliens to ICE by 81 percent during the same time period in the previous fiscal year.

As ICE increases its arrests and deportations of illegal aliens, it also requires additional detention and removal capacity. The Budget requests more than \$2.5 billion for these critical law enforcement functions, funding an average daily detention capacity of 47,000 illegal aliens in facilities across the United States. To ensure immigration cases are heard expeditiously, the Budget also requests an increase of \$40 million for 75 new immigration judge teams at EOIR and nearly \$40 million for 338 new prosecuting attorneys at ICE. These investments are critical to the prompt resolution of newly-brought immigration charges and to reduce the 650,000 backlog of cases currently pending in the immigration courts.

[SEAL OMITTED]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Jan. 6. 2019

The Honorable Richard Shelby
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The President continues to stress the need to pass legislation that will both reopen the Federal Government and address the security and humanitarian crisis at our Nation's Southwest border. The Administration has previously transmitted budget proposals that would support his ongoing commitment to dramatically reduce the entry of illegal immigrants, criminals, and drugs; keep out terrorists, public safety threats, and those otherwise inadmissible under U.S. law; and ensure that those who do enter without legal permission can be promptly and safely returned home.

Appropriations bills for fiscal year (FY) 2019 that have already been considered by the current and previous Congresses are inadequate to fully address these critical issues. Any agreement for the current year should satisfy the following priorities:

- *Border Wall, Customs and Border Protection (CBP)*: The President requests \$5.7 billion for

construction of a steel barrier for the Southwest border. Central to any strategy to achieve operational control along the southern border is physical infrastructure to provide requisite impedance and denial. In short, a physical barrier—wall—creates an enduring capability that helps field personnel stop, slow down and/or contain illegal entries. In concert with the U.S. Army Corps of Engineers, CBP has increased its capacity to execute these funds. The Administration’s full request 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. **This would require an increase of \$4.1 billion over the FY 2019 funding level in the Senate version of the bill.**

- *Immigration Judge Teams—Executive Office for Immigration Review (EOIR):* The President requests at least \$563 million for 75 additional Immigration Judges and support staff to reduce the backlog of pending immigration cases. The Administration appreciates that the Senate’s FY 2019 bill provides this level of funding, and looks forward to working with the Congress on further increases in this area to facilitate an expansion of in-country processing of asylum claims.
- *Law Enforcement Personnel, Border Patrol Agent Hiring, CBP:* The President requests \$211 million to hire 750 additional Border Patrol Agents in support of his promise to keep our borders safe and secure. While the Senate’s FY 2019 bill supports some Border Patrol Agent hiring, fulfilling this request **requires an increase of \$100 million**

over the FY 2019 funding level in the Senate version of the bill.

- *Law Enforcement Personnel, Immigration and Customs Enforcement (ICE)*: The President requests \$571 million for 2,000 additional law enforcement personnel, as well as support staff, who enforce our U.S. immigration laws and help address gang violence, smuggling and trafficking, and the spread of drugs in our communities. **This would require an increase of \$571 million over the FY 2019 funding level in the Senate version of the bill.**
- *Detention Beds, ICE*: The President requests \$4.2 billion to support 52,000 detention beds. Given that in recent months, the number of people attempting to cross the border illegally has risen to 2,000 per day, providing additional resources for detention and transportation is essential. **This would require an increase of \$798 million over the FY 2019 funding level in the Senate version of the bill.**
- *Humanitarian Needs*: **The President requests an additional \$800 million to address urgent humanitarian needs.** This includes additional funding for enhanced medical support, transportation, consumable supplies appropriate for the population, and additional temporary facilities for processing and short-term custody of this vulnerable population, which are necessary to ensure the well-being of those taken into custody.

- *Counter-narcotics/weapons Technology:* Beyond these specific budgetary requests, the Administration looks forward to working with Congress to provide resources in other areas to address the unprecedented challenges we face along the Southwest border. Specifically, \$675 million would provide Non-Intrusive Inspection (NII) technology at inbound lanes at U.S. Southwest Border Land Ports of Entry (LPOE) would allow CBP to deter and detect more contraband, including narcotics, weapons, and other materials that pose nuclear and radiological threats. **This would require an increase of \$631 million over the FY 2019 funding level in the Senate version of the bill.**

In addition, to address the humanitarian crisis of unaccompanied alien children (UACs), Democrats have proposed in-country asylum processing for Central American Minors. This would require a statutory change, along with reallocation of State Department funds to establish in-country processing capacities at Northern Triangle consulates and embassies. Furthermore, for the new procedure to achieve the desired humanitarian result, a further corresponding statutory change would be required to ensure that those who circumvent the process and come to the United States without authorization can be promptly returned home. Without the latter change, in-country processing will not reduce the unauthorized flow or successfully mitigate the humanitarian crisis.”

These upfront investments in physical barriers and technology, as well as legislation to close loopholes in our immigration system, will reduce illegal immigration, the flow of illicit drugs entering our country and reduce

the long term costs for border and immigration enforcement activities.

The Administration looks forward to advancing these critical priorities as part of legislation to reopen the Government.

Sincerely,

/s/ RUSSELL T. VOUGHT
RUSSELL T. VOUGHT
Acting Director



FACT SHEETS

President Donald J. Trump's Border Security Victory

— NATIONAL SECURITY & DEFENSE

Issued on: February 15, 2019



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I will never waver from my sacred duty to defend this Nation and its people. We will get the job done.

President Donald J. Trump

SECURING OUR BORDER: President Donald J. Trump is following through on his promise to secure the border with legislation and Executive action.

- President Trump was elected partly on his promise to secure the Southern Border with a barrier and, since his first day in office, he has been following through on that promise.
- As the President has said, sections of the border wall are already being built, and legislation and Executive actions are building on that progress.
- Executive action being taken by the President makes available additional funding to secure our border that is essential to our national security.

LEGISLATIVE WINS: President Trump secured a number of significant legislative victories in the Homeland Security appropriations bill that further his effort to secure the Southern Border and protect our country.

- The funding bill contains robust resources and additional provisions to secure the border and strengthen immigration enforcement.
- The bill provides \$1.375 billion for approximately 55 miles of border barrier in highly dangerous and drug smuggling areas in the Rio Grande Valley, where it is desperately needed.
 - More than 40 percent of all border apprehensions occurred in the Rio Grande Valley sector in fiscal year (FY) 2018.
 - The Rio Grande Valley was the border sector with the most known deaths of illegal border crossers in FY 2018.
- \$415 million will go toward addressing the humanitarian crisis at the border by providing medical care, transportation, processing centers, and consumables.
- President Trump successfully rejected efforts by some to undercut Immigration and Customs Enforcement's (ICE) ability to uphold our laws and detain illegal aliens, including criminals.
 - ICE funding supports nearly 5,000 additional beds to detain illegal aliens and keep criminals off our streets.
- Customs and Border Protection will receive funding for 600 additional officers.

- This bill will help keep deadly drugs out of our communities by increasing drug detection at ports of entry, including opioid detection staffing, labs, and equipment.

A PROMISE TO ACT: President Trump is taking Executive action to ensure we stop the national security and humanitarian crisis at our Southern Border.

- President Trump is using his legal authority to take Executive action to secure additional resources, just as he promised. In part, he is declaring a national emergency that makes available additional troops and funding for military construction.
- Including funding in Homeland Security appropriations, the Administration has so far identified up to \$8.1 billion that will be available to build the border wall once a national emergency is declared and additional funds have been reprogrammed, including:
 - About \$601 million from the Treasury Forfeiture Fund
 - Up to \$2.5 billion under the Department of Defense funds transferred for Support for Counterdrug Activities (Title 10 United States Code, section 284)
 - Up to \$3.6 billion reallocated from Department of Defense military construction projects under the President's declaration of a national emergency (Title 10 United States Code, section 2808)
- These funding sources will be used sequentially and as needed.

- The Department of Homeland Security, Department of Defense, and the Army Corps of Engineers are working to create a prioritized list of segments and a work plan for the remainder of FY 2019 and beyond.
 - New projects could include: new levee wall, new and replacement primary pedestrian barrier, new vehicle-to-pedestrian barrier, and new secondary barrier.

NATIONAL EMERGENCY ON OUR BORDER: The President is using his clear authority to declare a national emergency as allowed under the National Emergencies Act.

- Since 1976, presidents have declared nearly 60 national emergencies.
 - Most of the previously declared national emergencies have been continually renewed and are still in effect, after being continually renewed.
- Multiple Governors have declared states of emergency along the border in the past.
 - Former Arizona Governor Janet Napolitano, who became President Obama's DHS Secretary, declared a state of emergency along the border in 2005.
 - Former New Mexico Governor Bill Richardson also declared a state of emergency at the border in 2005.
- Former President George W. Bush and former President Obama both directed the use of the military to assist DHS in securing and managing the Southern Border.

- Former President Bush declared a national emergency in 2001, which invoked reprogramming authority granted by Title 10 United States Code, section 2808, and both he and former President Obama used that authority a total of 18 times to fund projects between 2001 and 2014.

ADDRESSING THE CRISIS AT HAND: President Trump is taking the necessary steps to address the crisis at our Southern Border and stop crime and drugs from flooding into our Nation.

- Cartels, traffickers, and gangs, like the vile MS-13 gang, have taken advantage of our weak borders for their own gain.
- Immigration officers have made 266,000 arrests of criminal aliens in the last two fiscal years.
 - This includes aliens charged or convicted of approximately 100,000 assaults, 30,000 sex crimes, and 4,000 killings.
- Tons of deadly drugs have flooded across the border and into our communities, taking countless American lives.
 - Methamphetamine, heroin, cocaine, and fentanyl all flow across our Southern Border and destroy our communities.
 - More than 70,000 Americans died of drug overdoses in 2017 alone.
- Human traffickers exploit our borders to traffic young girls and women into our country and sell them into prostitution and slavery.

- Massive caravans of migrants view our unsecure border as a way to gain illegal entry into our country and take advantage of our nonsensical immigration loopholes.



REMARKS

Remarks by President Trump on the National Security and Humanitarian Crisis on our Southern Border

IMMIGRATION

Issued on: February 15, 2019



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Q Thank you, Mr. President. I just want to say, in the past, when President Obama tried to use executive action as it related to immigration, you said, “The whole concept of executive order, it’s not the way the country is supposed to be run.” You said, “You’re supposed to go through Congress and make a deal.” Will you concede that you were unable to make the deal that you had promised in the past, and that the deal you’re ending up with now from Congress is less than what you could have had before a 35-day shutdown?

THE PRESIDENT: No. Look, I went through Congress. I made a deal. I got almost \$1.4 billion when I wasn’t supposed to get one dollar—not one dollar. “He’s not going to get one dollar.” Well, I got \$1.4 billion. But I’m not happy with it. I also got billions and billions of dollars for other things—port of entries, lots of different things. The purchase of drug equipment. More than we were even requesting.

In fact, the primary fight was on the wall. Everything else, we have so much, as I said, I don't know what to do with it we have so much money. But on the wall, they skimped.

So I did—I was successful, in that sense, but 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. And I don't have to do it for the election. I've already done a lot of wall, for the election—2020. And the only reason we're up here talking about this is because of the election, because they want to try and win an election, which it looks like they're not going to be able to do. And this is one of the ways they think they can possibly win, is by obstruction and a lot of other nonsense.

And I think that I just want to get it done faster, that's all.

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