

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

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STATES OF CALIFORNIA, ET AL.,
Plaintiffs-Appellees-Cross-Appellants,

v.

DONALD J. TRUMP, ET AL.,
Defendants-Appellants-Cross-Appellees;

SIERRA CLUB, ET AL.,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court for the Northern
District of California, Nos. 4:19-cv-872 and 4:19-cv-892
Hon. Haywood S. Gilliam, Jr., Judge

**SUPPLEMENTAL EXCERPTS OF RECORD, VOLUME 1 OF 2
SER1000-1267**

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Supplemental Excerpts of Record

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Docket No.¹	Date Filed	Document	Page
221-1	10/18/19	Corrected Declaration of Alison Lynn Reaser in Support of Plaintiffs' Motion for Partial Summary Judgment Regarding Section 2808 and NEPA	SER1000
220	10/11/19	Plaintiff States of California, Colorado, Hawaii, Maryland, New Mexico, New York, Oregon, Virginia, and Wisconsin's Notice of Motion and Motion for Partial Summary Judgment Regarding Section 2808 and NEPA; Memorandum of Points and Authorities in Support Thereof	SER1019
220-1	10/11/19	Appendix of Declarations regarding Environmental Harms in Support of Plaintiffs' Motion for Partial Summary Judgment Regarding Section 2808 and NEPA	SER1021
220-2	10/11/19	Declaration of Colonel William Green in Support of Plaintiffs' Motion for Partial Summary Judgment Regarding Section 2808 and NEPA	SER1127
220-4	10/11/19	Declaration of Heather Leslie in Support of Motion for Partial Summary Judgement Regarding Section 2808 and NEPA	SER1134
220-5	10/11/19	Plaintiffs' Request for Judicial Notice in Support of Plaintiffs' Motion for Partial Summary Judgment Regarding Section 2808 and NEPA	SER1138
207	2/5/19	Supplement to Notice of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808	SER1254

¹ All docket references are to case number N.D. Cal. 19-cv-00872-HSG unless otherwise noted.

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207-1	9/5/19	Exhibit 1 to Supplement to Notice of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808	SER1256
206	9/3/19	Notice of Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10 U.S.C. § 2808	SER1259
185	6/28/19	Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary Judgment Denying Defendants' Motion for Partial Summary Judgment, and Certifying Judgment for Appeal	SER1265

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Docket No.²	Date Filed	Document	Page
176-3	6/12/19	Plaintiff States of California and New Mexico's Request for Judicial Notice in Support of Motion for Partial Summary Judgment Regarding Sections 284, 8005, and 9002	SER1268
165	5/24/19	Order Denying Plaintiffs' Motion for Preliminary Injunction	SER1357
144 ³	5/24/19	Order Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction	SER1360
59-4	4/8/19	Request for Judicial Notice in Support of Plaintiffs' Motion for Preliminary Injunction	SER1364

² All docket references are to case number N.D. Cal. 19-cv-00872-HSG unless otherwise noted.

³ From *Sierra Club, et al. v. Trump, et al.*, N.D. Cal. 19-cv-00872-HSG.

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

18 **STATE OF CALIFORNIA et al.;**
 19
 20 Plaintiffs,
 21
 22 **v.**
 23
 24 **DONALD J. TRUMP, in his official**
capacity as President of the United States of
America et al.;
 25
 26
 27
 28 Defendants.

Case No. 4:19-cv-00872-HSG
DECLARATION OF ALISON LYNN REASER IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTION 2808 AND NEPA
 Judge: Honorable Haywood S. Gilliam, Jr.
 Trial Date: None Set
 Action Filed: February 18, 2019

1 I, ALISON LYNN REASER, declare as follows:

2 1. I have personal knowledge of all the facts stated herein. This declaration is based
3 on my personal knowledge, my review of publicly-available documents, and the knowledge and
4 expertise I have acquired in the course of over 40 years as a trained business and academic
5 economist, including analysis of the economic impacts of defense expenditures and military
6 construction. If called and sworn as a witness, I could and would testify competently to the
7 matters set forth herein.

8 **Qualifications and Background**

9 2. I have a B.A., M.A., and Ph.D. in Economics, all awarded by the University of
10 California Los Angeles. Since 2009, I have been the Chief Economist for the Fermanian Business
11 and Economic Institute (FBEI), a strategic unit of the Fermanian School of Business at Point
12 Loma Nazarene University (PLNU), and have taught as an Adjunct Professor of Economics in the
13 MBA program at PLNU. Attached hereto as Exhibit A is a true and correct copy of my
14 curriculum vitae.

15 3. Previously, from 1996 through 2009, I served as Chief Economist for Barnett
16 Banks, Inc. (acquired by Bank of America) and Bank of America's Investment Strategies Group.
17 Prior to that, from 1992 through 1996, I served as the Chief Economist for First Interstate Bank
18 (acquired by Wells Fargo Corporation), where I served in various other economic and managerial
19 roles beginning in 1974.

20 4. I currently serve as a member of the California Chamber of Commerce Economic
21 Advisory Council. I have recently served (through the end of 2018) as the Chair of the California
22 State Treasurer's Council of Economic Advisors, as well as the National Association for Business
23 Economics Foundation. I previously served as Chair of the California State Controller's Council
24 of Economic Advisors and as the President of the National Association for Business Economics.

25 5. In my current role at PLNU, I serve as the director and principal economist for the
26 FBEI. The Institute does consulting for companies, non-profit organizations, and government
27 entities. Its purpose is to provide objective and actionable economic analysis, forecasts, and
28 recommendations to entities that may not have a full staff of in-house economists. We study

1 issues such as the impact of the military on the region, water, homelessness, utilities, land use,
2 housing policy, tourism, and transportation. I give frequent presentations on the economic
3 outlook, covering the global, U.S., financial markets, and regional economies.

4 6. From July 1, 2018 to June 30, 2019, I was interviewed 185 times by 27 sources
5 (newspapers, TV, radio/podcasts, and internet) regarding my work. Some of these interviews
6 were disseminated across multiple platforms, resulting in nearly 300 total media reports. I am a
7 member of the CNBC Federal Reserve Forecasting Panel, comprised of Wall Street analysts, the
8 Wall Street Journal Panel of Economic Forecasters, and the Economic Outlook Forecast Panel for
9 the National Association for Business Economics.

10 7. Beginning in 2012 and annually each year since, I have authored an Economic
11 Impact Study calculating the economic impacts of all the spending from the Department of
12 Defense that flows into San Diego. This comes in various channels, including payrolls of U.S.
13 Navy and Marine Corps personnel, defense contracts, grants, and retirement benefits. During the
14 past two years, I have also included spending linked to the Department of Veterans Affairs and
15 the U.S. Coast Guard. This study includes a full analysis of the multiplier or ripple effects as
16 defense dollars spread through supply chains of defense contractors and others who support
17 various programs and military activities, as well as the effects on consumer spending. I have
18 mapped the effects into the total impact on gross regional product (GRP), personal income, and
19 jobs for the entire San Diego region (San Diego County). The study is sponsored by the non-
20 profit San Diego Military Advisory Council (SDMAC), which is funded by various companies
21 and other organizations. The study is widely respected as the authoritative document on the
22 impact of military spending in the region and is regarded as a model of how such studies should
23 be done. U.S. Navy and Marine Corps leadership in San Diego, Department of Defense officials
24 in Washington, and political leaders in Congress and in California view the document as highly
25 credible and valuable.

26 8. The annual economic impact of military spending discussed above in Paragraph 7
27 includes the effects of military construction as a vital element. I have also authored a separate
28

1 study focusing exclusively on military construction spending, along with another report which
2 analyzed a major development project tied to a new military facility.

3 **Methodology**

4 9. Before drafting this declaration, I reviewed the list of military construction
5 projects announced by the Department of Defense from which funding is being diverted under 10
6 U.S.C. § 2808 towards construction of border barriers along the southern border of the United
7 States. I identified a total of nineteen projects that are within the jurisdictions of the plaintiff
8 states in the above-captioned matter. Nine of these twenty plaintiff states have projects targeted
9 for funds diversion: California, Colorado, Hawaii, Maryland, New Mexico, New York, Oregon,
10 Virginia, and Wisconsin (the States). Information provided by counsel for the State of Virginia
11 indicated that the Pentagon Metro Entrance Facility project in Virginia was unlikely to be
12 constructed as intended before defendants' diversion of funds. The counsel for the State of
13 Oregon also indicated that the project to replace the fuel facilities at Klamath Falls Airport was
14 unlikely to go forward. These two projects were therefore excluded from my analysis. Seventeen
15 projects in the States were therefore analyzed, which represented a total value of defunded
16 projects equal to \$493 million. For each of those projects, I reviewed the Department of Defense
17 form 1391 (1391 form), which contains basic information regarding each project.

18 10. I also reviewed the list prepared by the Department of Defense of proposed barrier
19 borders to be constructed with the funds diverted under 10 U.S.C. § 2808. Offsetting positive
20 impacts on the States from border barrier building were based on information from this report.

21 11. All of the estimated costs for each project as identified in the 1391 forms were
22 carefully analyzed. The timing of fund expenditure was based on the timeframes identified for
23 construction in each 1391 form. Construction expenditures were allocated to the appropriate
24 industry or type of firm except in cases where it appeared likely that some items would have to be
25 sourced primarily out of state. In addition to the expenditure amounts included in the construction
26 dollar totals, two other types of effects were included. First, expenditures on equipment, furniture,
27 or other items that are contingent on the project's completion were included in the analysis since
28 these spending benefits would also be lost. These amounts were identified in the 1391 forms and

1 cited as being appropriated under separate bills. Second, where operations were scheduled or
2 targeted to be expanded following the construction project's completion, the annual impact on
3 direct military payrolls in terms of lost jobs and incomes was modeled.

4 12. The economic benefits of spending from construction of the proposed border
5 barriers was based on the gross contract totals supplied by the Department of Defense noted in
6 Paragraph 10 above. This affected two of the nine States analyzed: California and New Mexico.
7 All construction was assumed to take place in 2020. The amounts of construction materials
8 sourced within each state was estimated. Labor costs were based on their typical share of contract
9 totals in similar projects.

10 13. The IMPLAN® model was used to analyze the total economic impact of military
11 expenditure changes. This is a model widely used by economists to evaluate the various ripple or
12 multiplier effects of an increase in spending on a region's sales, output, income, employment, and
13 local tax revenues. These ripple effects encompass two stages: supply chain and consumer effects.
14 The supply chain effects reflect the impact on other businesses when a local firm has to purchase
15 additional goods or services to support its own increase in sales or activity. The consumer effects
16 refer to the increase in household outlays due to the gain in jobs and income created by the direct
17 impact of the increase in spending as well as the effects along the supply chain. I have used this
18 model frequently in studies of various issues involving regional economies and have utilized it in
19 all of the reports I have prepared on the impact of defense spending.

20 14. For this analysis, I built models to analyze the effects of proposed changes in
21 spending for each of the nine states paired with each of the other eight states. For each state,
22 models were built for each year between 2020 and 2022 where spending would be impacted. A
23 total of 171 models were built. This process allowed me to assess not only the direct effects of
24 changes in a given state, but also the feedback effect of other states as their spending was
25 impacted.

26 15. The diversion of funds from military construction projects located outside of the
27 plaintiff states would also have economic ripple effects on the plaintiff states. However, my
28 analysis conservatively included only projects within the plaintiff states' boundaries because the

1 diversion of those projects would have primary effects on the plaintiff states. Because the
2 secondary effects of defendants' diversion of military construction projects located in other states
3 and countries were not considered in my analysis, the actual economic harm resulting from all of
4 defendants' diversion of military construction projects would be greater than represented in this
5 declaration. Those secondary effects, as well as the secondary effects of the projects considered in
6 this analysis, would be felt in all of the plaintiff states as well as the states not involved in this
7 action.

8 16. The use of the IMPLAN® involves five primary steps. First, spending for a project
9 is allocated over time. For example, in the case of the Space Control Facility in Colorado
10 proposed for defunding, the utilities and basic infrastructure would be installed before the
11 building of the facility would begin. Second, the geographic direction of project dollars is
12 determined. For example, in the case of the C-130J Flight Simulator Facility at the Channel
13 Islands Air National Guard Station in California, the flight simulator would be built out of state.
14 In contrast, construction dollars on various projects, such as for the Cyber Operations Facility in
15 Hampton, Virginia, would typically be directed to firms within the state. Third, the spending on
16 various projects is divided across different industries, such as construction firms, suppliers of
17 electronics equipment, or providers of communications systems. Fourth, the impact of these
18 dollars across the economy is modeled based on the historical relationships tracked by the U.S.
19 Bureau of Economic Analysis and included in the IMPLAN® Model. For example, in a given
20 state, a certain fraction of construction dollars is typically subcontracted out to other firms while
21 other parts are spent on different types of building materials. The IMPLAN® Model also includes
22 the historical data on the number of workers and wages used in the various industries that might
23 be affected in supply chains and is used to estimate the impact on consumer spending for various
24 goods and services that would typically occur in a given state. Fifth, the total effects of changes in
25 the initial contract dollars, changes across various supply chains, and effects on consumer
26 spending are summed to determine the total effects on jobs, income, GRP, and state and local
27 taxes.

28

1 number of jobs. The loss of employment for all nine States in 2021 would reach nearly 1,600
2 jobs.

3 20. The tax revenues for state and local governments, through taxes on personal
4 income, retail sales, corporate profits, and other sources, for the States of Colorado, Hawaii,
5 Maryland, New Mexico, New York, Oregon, Virginia, and Wisconsin would be reduced by over
6 \$36 million as a result of defendants' diversions from the military construction projects.

7 21. Among all the States, California is the only state that would see net benefits to its
8 economy and tax revenues as a result of the diversions over the 2020-2022 period. This is because
9 only one project in California, the construction of a C-130J Flight Simulator Facility at the
10 Channel Islands Air National Guard Station, would be defunded at a total cost of \$8.0 million.
11 That loss is outweighed by the economic benefits resulting from the proposed border barrier
12 construction in the state. However, the net benefits from the border barrier building would only
13 occur in 2020, with economic losses following in 2021 and 2022.

14 22. Colorado faces the defunding of one project, a Space Control Facility at the
15 Peterson Air Force Base, at a cost of \$8.0 million. This would lead to a net loss of \$37 million in
16 business sales over the 2020-22 period, while its GRP would lose over \$25 million. Personal
17 income would be reduced by \$18 million and employment would be reduced by 82 jobs in 2020,
18 growing to an impact of 129 jobs in 2022. The state would receive over \$1.0 million less in state
19 and local tax revenues.

20 23. Hawaii faces the defunding of two projects: a consolidated training facility at the
21 Joint Base Pearl Harbor-Hickam and security improvements at the Mokapu Gate at the Marine
22 Corps base at Kaneohe Bay, at a total cost of \$32 million. As a result, Hawaii would see a net loss
23 of \$48 million in business sales over the 2020-22 period, while its GRP would lose \$27 million.
24 Personal income would be reduced by \$17 million and employment in 2020 would be adversely
25 affected with 163 fewer jobs. The state would receive \$2.5 million less in state and local tax
26 revenues.

27 24. Maryland faces the defunding of three projects: an expansion of cantonment area
28 roads at Fort Meade, construction of a hazardous cargo loading and unloading pad and explosive

1 ordinance disposal training range at Joint Base Andrews, and construction of a child development
2 center at Joint Base Andrews, at a total cost of \$66.5 million. Maryland would see a net loss of
3 \$123 million in business sales over the 2020-22 period, while its GRP would lose \$63 million.
4 Personal income would be reduced by \$42 million and employment in 2020 would be adversely
5 affected with 319 fewer jobs, while employment would be reduced by 326 jobs in 2021. The state
6 would receive over \$5.0 million less in state and local tax revenues.

7 25. New Mexico faces the defunding of two projects: the construction of an air combat
8 training facility for unmanned vehicles at Holloman Air Force Base and an Information Systems
9 Facility at White Sands Missile Range, at a total cost of \$125 million. Even with the economic
10 boost from construction of the proposed border barriers the state would receive, New Mexico
11 would see a net loss of nearly \$165 million in business sales over the 2020-22 period, while its
12 GRP would lose \$70 million. Personal income would be reduced by \$39 million and employment
13 in 2020 would be adversely affected by close to 450 fewer jobs, while employment would be
14 reduced by over 300 jobs in 2021. The state would receive nearly \$9 million less in state and local
15 tax revenues.

16 26. New York faces the defunding of two projects: an Engineering Center and Parking
17 Structure, both at the U.S. Military Academy at West Point, at a total cost of \$160 million. New
18 York would see a net loss of \$260 million in business sales over the 2020-22 period, while its
19 GRP would lose close to \$150 million. Personal income would be reduced by more than \$100
20 million and employment in 2020 would be adversely affected with over 1,000 fewer jobs, while
21 employment would be reduced by about 400 jobs in 2021. The state would receive \$13 million
22 less in state and local tax revenues.

23 27. Excluding the project to replace the fuel facilities at Klamath Falls Airport, Oregon
24 faces the defunding of the construction of an indoor small arms training range at the Klamath
25 Falls International Airport, at a total cost of \$8 million. This would result in a net loss of \$13
26 million in total business sales in the 2020-22 period and \$7 million in GRP. The state's personal
27 income would be down by \$5 million, while the state would also see the loss of about 70 jobs in
28 2020. The state would receive about \$0.6 million less in state and local tax revenues.

EXHIBIT A

Curriculum Vitae
Alison Lynn Reaser, Ph.D.
Chief Economist, Fermanian Institute of Business and Economics,
Point Loma Nazarene University (2010-Present)

Education

B.A. Economics, University of California Los Angeles, Los Angeles, Ca.,
May 1969. Cum Laude.

M.A. Economics, University of California Los Angeles, Los Angeles, Ca.,
May 1972.

Ph.D. Economics, University of California Los Angeles, Los Angeles, Ca.,
May 1974.

Doctoral dissertation: Relationship between Advertising, Profitability, and Competition.

Doctoral fields: Micro and Macroeconomics; Finance; Industrial Organization; and Econometrics.

Teaching Experience – Graduate

Fermanian School of Business, Point Loma Nazarene University, San Diego, Ca.

Managerial Economics (Bus. 6030); MBA Program, Fall 2010-Present.

MBA Thesis Advisor; Fall 2011-Spring 2012 (multiple projects)

Teaching Experience – Undergraduate

University of California Los Angeles, Los Angeles, Ca.

Teaching Assistant

Professional Experience

Chief Economist and Professor of Managerial Economics, Fermanian Business & Economic Institute, Point Loma Nazarene University 2009-Present. Leads Institute's economic studies and initiatives, providing research, analysis, modeling, and forecasting for firms, non-profit institutions, government organizations, and other entities. Engages in contract research covering a wide range of issues, writes various reports and papers, and makes presentations at various speaking engagements throughout the country and abroad.

Chief Economist and Managing Director, Investment Strategies Group, Bank of America 1998-2009. Responsible for analyzing and forecasting the macroeconomic U.S. and global environments as a basis for portfolio design and strategy. Adviser on asset allocation, fixed-income markets, and equity strategies. Consultant for other parts of the bank, including real estate, commercial banking, and consumer finance.

Chief Economist for Barnett Banks (Bank of America) 1996-1998. Responsible for economic assumptions used in asset and liability management and other Treasury functions. Helped design deposit and other product pricing strategies. Developed market potential models for commercial and consumer banking divisions.

Economist Analyst; Senior Vice President and Chief Economist for First Interstate Bank (Wells Fargo) 1974-1996. Provided key advice for senior management and the Asset and Liability Committee. Responsible for industry and country risk assessments and models. Conducted regional economic studies and forecasts. Developed assumptions for budget forecasting and strategic planning.

Special Awards

"NABE Outlook Award", 2012

"San Diego Top 50 Influentials" by San Diego Daily Transcript, 2011.

"Fellow", by National Association for Business Economics, 2010.

"Spirit Medallion" by Bank of America, 2007.

"Outstanding Partnership Award" by Barnett Banks, 1997.

Plaque of Appreciation, by the City of Los Angeles, 1996.

Selected Publications

San Diego Military Economic Impact Study, 2019

Naval Information Warfare Systems Command (NAVWAR): Economic Impact on the San Diego Region, 2019.

The San Diego Metropolitan Transit System: A Study of its Economic Impact, 2019.

An Economic Impacts Cost and Benefit Analysis: Coronado's Ownership of State Routes (SR) 75 and 282, 2019.

Understanding the Homelessness Journey: Insights from Individuals Living in Shelters or on the Streets, 2019.

Revising San Diego's Inclusionary Housing Policies: Costs vs. Benefits, 2019.

The Big Bay Boom Economic Analysis, 2018.

San Diego Military Economic Impact Study, 2018.

California State Job Tracker, published monthly 2015-present.

The Impact of the Proposed Soar Initiative on the City of Oceanside, 2018.

Ending the Taxation of Military Pay in California: An Analysis of the Costs and Benefits, 2018.

The Interaction between State Economic Policy and Manufacturing Competitiveness, 2017.

78 & Jefferson Medical Office Economic and Community Benefit Report , 2017.

Analytical Review of the Feasibility Study for a Community Choice Aggregation Program in the City of San Diego, 2017.

San Diego Military Economic Impact Study, 2017.

Changes, Challenges, and Choices, 2017.

SDHC's Growing Economic and Community Impact on San Diego, 2016.

Economic Outlook Forum: Harmony or Discord?, 2016.

Housing San Diego's Homeless at Greatest Risk: A Cost Benefit Analysis, 2016.

San Diego Military Economic Impact Study, 2016.

Economic Outlook Forum: Looking Back with Nostalgia or Celebrating an Innovative Future?, 2015.

Project 25: Housing the Most Frequent Users of Public Services Among the Homeless, 2015.

SDHC: Its Housing Footprint, Community Role, and Economic Impact on San Diego, 2015.

San Diego Military Economic Impact Study, 2015.

San Diego's Shipbuilding & Repair Ecosystem: Its Regional Economic Impact and Role in the Nation's Defense, 2015

Opening San Diego's Door to Lower Housing Costs, 2015.

Can 3D Printing Unlock Bioinspiration's Full Potential?, 2014.

San Diego Military Economic Impact Study, 2014.

SPAWAR Economic Impact Study, 2014.

2014 Economic Outlook, Time to Take Off the Training Wheels?, December 2013.

Bioinspiration: An Economic Progress Report, November 2013.

San Diego's Food Bank Population: Profile, Analysis, and Solutions, 2013

Meeting Water Quality Standards for San Diego Recreational Waters: A Cost Benefit Analysis, 2013

Military Economic Impact Study, San Diego Region 2013, September 2013

San Diego's Talent Pipeline: An Analysis of Supply, Demand, and Gaps in Eight Key Occupations, June 2013.

Economic Outlook 2013: Will the Fiscal Fog Lift?, November 2012.

San Diego Military Economic Impact Study, June 2012.

2012 Economic Outlook, Rebalance or Restart?, February 2012.

A Review and Critique of "Should Green Jobs Be Outsourced?" by Peter Philips, Ph.D., January 2012.

The Sempra Baja Wind Project Energia Sierra Juarez: An Economic and Comprehensive Analysis for the Cali-Baja Mega Region, for Sempra Generation, January 2012.

Navy Broadway Complex Redevelopment Project The Economic Impact: 2012-2025, The San Diego Military Advisory Council, October 2011

Manufacturing—At Home in California?, State Controller's Summary Analysis, June 2011

Meeting Water Quality Standards for San Diego's Recreational Waters: A Cost Benefit Analysis, Commissioned by the City of San Diego Transportation and Storm Water Department, April 2011

2011 Economic Outlook. Sustaining the Expansion, March 2011

The New Economic Reality: How New and How Real?, Business Economics, January 2011

Biomimicry—A New Economic Driver for California, State Controller's Summary Analysis, December 2010

China's Role in the New Economic Reality, Chinese Academy of Social Sciences Forum, Macroeconomy and Price Reform, December 2010

San Diego's Water Sources: Assessing the Options, The Equinox Center, July 2010

Military Construction Spending in San Diego The Economic Impact 2007-2011, The San Diego Military Advisory Council, May 2010

2010 Economic Outlook The New Economic Reality, FBEI, March 2010

Weekly Economic Blogs, fbei.wordpress.com

Economic Projections, published weekly, 1997-2009, including
"U.S. Mints Drastically Fewer Jobs," February 9, 2009
"Little Break in the Weather," February 16, 2009

"Future Remains Bleak—Either in Analog or Digital," February 23, 2009

Investment Perspective, published monthly, 1999-2009, including
"More Dark Numbers," February 2009

Economic Update, published periodically following major economic or market
events, such as policy announcements by the Federal Reserve, 2004-2009

Economic Outlook, (chart form) published monthly, 2004-2009

Analyst Survey, published monthly, 2004-2009

Strategic Outlook, published quarterly, 1998-2004

"Retirement Planning: Facing the Challenges," published 2008

"Am I Saving Enough?" published 2008

Forecast, published annually, 1974-1995

Forecast Update, published quarterly, 1992-1998

The Armchair Economist, published monthly, 1994-1998

Member of the Editorial Advisory Board, *Contemporary Policy Issues* (now
Contemporary Economic Policy), published by the WEAI, 1988-91

Selected Conferences

International Society of Bionic Engineering, China, 2019

NABE Annual Meetings, various locations, 1980-2019

NABE Policy Conferences, Washington, D.C., 2000-2018

NABE international Symposium, Bank of Italy, 2017

PLNU MBA Europe trip, including meetings with senior economists,
policy officials, and business leaders, November 2011

Member of NABE Economists delegation to Brazil, including meetings with
leaders from government, academia, research institutes, and companies,
August 2011

Leader of NABE Economists delegation to China, including meetings with leaders from government, academia, research institutes, and companies, June 2010

American Economic Association, various locations, 1995-2011

Association for University and Business Economic Research, various locations, 1990-2010

Western Economic Association International, various locations, 1990-2000

Public Policy and Professional Affiliations

Chair, California Treasurer's Council of Economic Advisors., 2014-2018

Member, California Chamber of Commerce Economic Advisory Council, 2016-Present

Chair, National Association of Business Economics Foundation, 2011-2018

Member, Chair, California Controller's Council of Economic Advisors., 2011-2013

President, National Association of Business Economics, 2009-2010

Chairman of American Bankers' Association's Economic Advisory Council for two terms

Member, Boston Economics Club.

Member, National Association of Business Economics; St. Louis Chapter.

Member, Leadership Florida.

President of Economic Roundtable of Jacksonville

Member, California Governor's Council of Economic Advisors and State's Economic Strategy Panel

Fiscal advisor to cities of San Francisco and Los Angeles

Chairman of Board of Economic Advisors for Los Angeles Area Chamber of Commerce

Media Interviews

In the year, July 1, 2018 to June 30, 2019, interviewed 185 times by 27 sources (newspapers, TV, radio/podcasts, and internet). Some of these were disseminated across multiply platforms, resulting in nearly 300 total media reports)

Member of CNBC Fed Forecasting Panel, comprised of Wall Street analysts and economists

Member of Wall Street Journal Panel of Economic Forecasters

Member of National Association for Business Economics (NABE) Economic Outlook Forecast Panel

Public Policy and Professional Affiliations

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

18 **STATE OF CALIFORNIA et al.;**

19 Plaintiffs,

20 v.

22 **DONALD J. TRUMP, in his official capacity**
as President of the United States of America
 23 **et al.;**

24 Defendants.

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

**PLAINTIFF STATES OF CALIFORNIA,
 COLORADO, HAWAII, MARYLAND,
 NEW MEXICO, NEW YORK, OREGON,
 VIRGINIA, AND WISCONSIN'S
 NOTICE OF MOTION AND MOTION
 FOR PARTIAL SUMMARY JUDGMENT
 REGARDING SECTION 2808 AND
 NEPA; MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT
 THEREOF**

Date: November 20, 2019
 Time: 10:00 am
 Judge: Honorable Haywood S. Gilliam,
 Jr.
 Trial Date: None Set
 Action Filed: February 18, 2019

1 The stretches of the U.S.-Mexico border where Defendants will build their border barrier
2 projects contain no military base, camp, post, station, yard, or center. To the contrary, much of the
3 land where the intended construction will take place was not even originally under the jurisdiction
4 of a military department. Sept. 3 Notice 2-4. In fact, none of the seven planned border barrier
5 projects in California and New Mexico were entirely within federal land under the administrative
6 jurisdiction of DoD when announced. *Id.*, Ex. 3 at 2-3. El Centro Project 5 will be built on a
7 combination of “Federal non-public domain land and non-Federal land.” *Id.* at 3. The other six
8 projects will be built, “at least in part, on Federal public domain land currently under the
9 administrative jurisdiction of the Department of the Interior” (DOI). *Id.* DOI subsequently
10 transferred the federal lands under its jurisdiction into the Army’s jurisdiction for three years to
11 effectuate this construction. Req. for Judicial Notice in Supp. of Mot. for Partial Summ. J. re: §
12 2808 (2808 RJN), Ex. 1.

13 In response to the Sierra Club’s preliminary injunction motion regarding § 2808, as this
14 Court noted, Defendants did not attempt to characterize the U.S. Mexico border or a border
15 barrier as a “base, camp, post, station, yard [or] center;” in any event, this Court correctly held
16 they could not do so. *Sierra Club* PI Order 43-44. Instead, Defendants argued that their plan to
17 build border barriers fell within the statutory term “or other activity.” *Id.* This Court properly
18 rejected that argument, *id.* at 44-46, and it has no more validity now than it did then.

19 The plain language of a statute controls where “the statutory language [is] unambiguous.”
20 *Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1151 (9th Cir 2019). “When deciding
21 whether the language is plain, courts must read the words in their context and with a view to their
22 place in the overall statutory scheme.” *Id.* (internal citation and quotation marks omitted). As this
23 Court already stated, classifying the southern border or border barriers as an “other activity,”
24 “fail[s] to appreciate that the words immediately preceding ‘or other activity’ in Section
25 2801(c)(4)—‘a base, camp, post, station, yard, [and] center’—provide contextual limits on the
26 catch-all term.” *Sierra Club* PI Order 44 (alteration in original).

27 This conclusion is supported by traditional tools of statutory interpretation. This Court
28 properly applied the statutory interpretation principles of *noscitur a sociis* and *eiusdem generis* to

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18 **STATE OF CALIFORNIA et al.;**

19 Plaintiffs,

20 v.

21 **DONALD J. TRUMP, in his official**
 22 **capacity as President of the United States of**
 23 **America et al.;**

24 Defendants.

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

**APPENDIX OF DECLARATIONS
 REGARDING ENVIRONMENTAL
 HARMS IN SUPPORT OF PLAINTIFFS’
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT REGARDING SECTION
 2808 AND NEPA**

Date: November 20, 2019
 Time: 10:00 am
 Judge: Honorable Haywood S. Gilliam,
 Jr.
 Trial Date: None Set
 Action Filed: February 18, 2019

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DECLARATIONS CONCERNING ENVIRONMENTAL HARMS

Exhibit Number	Declarant
1	Kevin B. Clark (San Diego Natural History Museum)
2	Dr. Kai Dunn (California Regional Water Quality Control Board, Colorado River Basin Region)
3	David Gibson (California Regional Water Quality Control Board, San Diego Region)
4	Christopher D. Nagano (Center for Biological Diversity)
5	Myles B. Traphagen (Wildlands Network)
6	Sula Elizabeth Vanderplank (San Diego Zoo Global)

EXHIBIT 1

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

18 **STATE OF CALIFORNIA; STATE OF**
 19 **COLORADO; STATE OF**
 20 **CONNECTICUT; STATE OF**
 21 **DELAWARE; STATE OF HAWAII;**
 22 **STATE OF ILLINOIS; STATE OF**
 23 **MAINE; STATE OF MARYLAND;**
 24 **COMMONWEALTH OF**
 25 **MASSACHUSETTS; ATTORNEY**
 26 **GENERAL DANA NESSEL ON BEHALF**
 27 **OF THE PEOPLE OF MICHIGAN;**
 28 **STATE OF MINNESOTA; STATE OF**
NEVADA; STATE OF NEW JERSEY;
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF OREGON;
STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN;

Plaintiffs,

4:19-cv-00872-HSG

**DECLARATION OF KEVIN B. CLARK
 IN SUPPORT OF PARTIAL MOTION
 FOR SUMMARY JUDGMENT
 REGARDING SECTION 2808
 PROJECTS AND NEPA**

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v.

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

Defendants.

1 I, Kevin B. Clark, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below.

4 2. I am the Director of BioServices for the San Diego Natural History Museum, a
5 position I have held since 2014.

6 3. I have over twenty-five years of biological experience, including conducting surveys
7 for a wide range of endangered species. I hold permits with the state and federal governments to
8 nest search, monitor, and band rare and endangered passerines, shorebirds, and seabirds. I hold
9 federal and state permits to survey and nest monitor endangered species such as the Southwestern
10 Willow Flycatcher, Least Bell's Vireo, Western Yellow-billed Cuckoo, and California
11 Gnatcatcher. I am also permitted to mist-net, handle, and band migratory birds.

12 4. I have conducted biological surveys throughout the U.S., Mexico, and Costa Rica,
13 from bird banding in bottomland hardwood forests of Louisiana to mammal, bird, and reptile
14 studies in the Sierra Nevada of California. I co-authored a book on the extinction of the Imperial
15 Woodpecker that took me throughout tropical and montane habitats of northwestern Mexico. I
16 have a Bachelor of Science degree from the University of California, Berkeley, and a Master of
17 Science Degree in Ecology from Arizona State University. My thesis research involved the
18 effects of habitat fragmentation on birds, mammals, and reptiles. My research analyzed
19 landscape influences on biological communities and trophic level relationships of extirpated and
20 persisting species. This research found that smaller habitat fragments supported fewer species of
21 animals, and even common species in pre-fragmented landscapes could be extirpated once
22 fragmentation occurred. In 2011, this research was published in the Journal of the Arizona-
23 Nevada Academy of Sciences.

24 5. From 2000-2006, I was a Fish and Wildlife Biologist with the U.S. Fish and
25 Wildlife Service (USFWS), based in Carlsbad, California. In this capacity, I worked on the
26 recovery of endangered species, including the California Gnatcatcher and California Least Tern,
27 and was the regional recovery coordinator for the threatened Western Snowy Plover. I was the
28 primary author of the 2003 designation of critical habitat for the California Gnatcatcher, which

1 included a proposed rulemaking reclassifying the species as a Distinct Population Segment under
2 the Endangered Species Act (68 Fed. Reg. 20228). As part of this analysis, I thoroughly
3 reviewed all the pertinent literature and survey information for the species, conducted field
4 surveys for the bird and its habitat requirements, and analyzed and finalized maps describing the
5 range of the species and its essential habitat locations. In my capacity as a Fish and Wildlife
6 Biologist I also participated in consultations required under Section 7 of the Endangered Species
7 Act, which are required whenever a federal project may impact threatened or endangered species.

8 6. Subsequent to my employment at the U.S. FWS, I founded my own company,
9 Clark Biological Services, to conduct focused surveys and conservation-based research on
10 endangered species in Southern California. I possess authorized take permits from both federal
11 and state wildlife agencies to conduct surveys and monitoring of the California Gnatcatcher. I
12 authored numerous reports on the results of California Gnatcatcher surveys and monitoring,
13 generally for large landowners in southern California such as the Department of Defense. After I
14 founded my own conservation firm, I joined the San Diego Natural History Museum as the
15 Director of BioServices, and in this capacity I coordinate the contracting within the science
16 departments with various clients requiring applied ecological research, typically for large
17 agencies and institutions. I also currently serve on the recovery teams of the endangered Masked
18 Bobwhite Quail (*Colinus virginianus ridgwayi*) and the Sonoran pronghorn (*Antilocapra*
19 *americana sonoriensis*), both convened by the U.S. FWS.

20 7. I have analyzed the proposed border-infrastructure projects including San Diego
21 Project 4, Yuma Project 6, and San Diego Project 11, as outlined in the table attached as Exhibit 1
22 to the Declaration of Heather Leslie (“2808 Project Table”), and as described in the “List of
23 Military Construction Projects” that Defendants filed in this matter on September 3, 2019, [ECF
24 Doc. No. 206-2] (“2808 Project List”). These projects involve the construction of primary and
25 secondary pedestrian fencing that will be 18 to 30 feet tall, based on the bollard-style pedestrian
26 fencing used for other recent border-barrier projects that Defendants have undertaken. San Diego
27 Project 4, Yuma Project 6, and San Diego Project 11 would also include the construction of roads
28 and installation of lighting.

1 8. The Department of Homeland Security (“DHS”) has not provided detailed
2 information regarding these projects. It is presumed that the projects will be similar to recently
3 completed border wall projects in other portions of the California border, and will include a new
4 bollard wall from 18 to 30 feet high, construction of a 20-foot wide all-weather road, and assorted
5 temporary roads for access to the work sites. As with any construction project of this scale, it is
6 assumed that extensive areas for equipment staging and materials storage will also be required in
7 the vicinity of the project area at the border.

8 9. I have considerable experience in evaluating the impacts caused by similar border
9 infrastructure projects. From 2011-2012, my company was hired to perform biological
10 monitoring of the construction along the primary and secondary border fences from Bunker Hill
11 (about a mile east of the Pacific Ocean) to the coast. My observations of the amount of area
12 needed for staging equipment and materials, constructing roads for access to construction areas,
13 and cut and fill activities during construction are directly relevant to the current proposal.

14 10. In this declaration, I provide several examples specific to the San Diego 4, San
15 Diego 11, and Yuma project sites, and to the border region more generally, to illustrate how these
16 projects will cause irreparable harm to wildlife.

17 11. Multiple peer-reviewed scientific studies have found that a variety of wildlife,
18 ranging from mountain lions (*Puma concolor*) to bighorn sheep (*Ovis canadensis*) as well as
19 ground dwelling non-migratory birds, are negatively affected by border fences disrupting their
20 movement patterns. In disrupting movement, these barriers can reduce or restrict events such as
21 juvenile and adult dispersal, as well as genetic interchange between populations.

22 12. The American Society of Mammalogists, a professional, scientific, and
23 educational society consisting of nearly 3,000 members, passed a resolution in June 2017
24 opposing the construction of border infrastructure due to its well-documented negative effects on
25 a variety of mammal species, many of them declining or endangered. The resolution calls upon
26 the Federal Government to ensure that all boundary infrastructure, both existing and proposed,
27 include features and modifications to maintain landscape permeability for mammalian
28 populations to permit demographic and genetic exchange necessary for well-distributed, viable

1 populations and the long-term persistence of species and mammalian community structure.
2 According to the resolution, the actions of DHS on the US-Mexico border must receive regular
3 environmental review to identify, monitor, and mitigate significant threats to the persistence of
4 mammalian populations under the National Environmental Policy Act (“NEPA”) and the U.S.
5 Endangered Species Act. In addition, the Southwestern Association of Naturalists (“SWAN”)
6 passed a similar resolution in July 2017 opposing the construction of a border wall. SWAN is an
7 international association of scientists, educators, and students founded in 1953 to promote the
8 field study of plants and animals in the southwestern United States, Mexico, and Central America.
9 Their resolution states, “. . . wall construction will irreparably harm many species and some of the
10 Southwest’s most significant lands . . . THEREFORE BE IT RESOLVED that the Southwestern
11 Association of Naturalists (SWAN) calls upon the Governors of all the border states (those of the
12 U.S. and of Mexico), the U.S. Secretary of the Interior, the Secretaria de Medio Ambiente y
13 Recursos Naturales (SEMARNAT) of Mexico, the Director of the U.S. Fish and Wildlife Service,
14 and the Secretary for Homeland Security to immediately stop all plans for construction of the
15 proposed border wall based on the potential negative impacts of the wall to native plants and
16 wildlife and to mitigate the current negative impacts of the existing fence.”

17 *Effects of the Proposed San Diego Project 4*

18 13. San Diego Project 4 proposes the construction of 1.5 miles of new primary
19 pedestrian fencing and 2 miles of new secondary fencing starting 3.6 miles east of the Otay Mesa
20 Port of Entry and extending to the east. Extensive trenching, construction of roads, and staging of
21 materials would also presumably be necessary to construct the proposed border fence in this
22 location. The proposed construction area would cut through designated critical habitat for the
23 endangered Quino Checkerspot Butterfly, as well as the federally designated Otay Mountain
24 Wilderness Area.

25 14. I conducted a site visit to the proposed construction area on October 2, 2019.
26 During this visit I evaluated the habitat conditions of the work area, and observed access roads
27 and staging areas.

28 15. The endangered Quino Checkerspot Butterfly (*Euphydryas editha quino*) has been

1 documented to occur within the project area. This butterfly is restricted to a few locations in
2 Riverside and San Diego Counties and is found in open scrub and grassland areas that support its
3 primary host plant, dwarf plantain (*Plantago erecta*). Dwarf plantain is a small annual herb found
4 in open patches of bare ground. Adult Quino Checkerspot Butterflies seek out patches of dwarf
5 plantain to lay their eggs, as the caterpillars are restricted to feeding on this host plant. After
6 hatching, the caterpillars grow rapidly while feeding in patches of plantain, but if dry conditions
7 occur, these caterpillars have the ability to “diapause” or enter biological stasis, where they bury
8 themselves in the leaf litter, sometimes for years, until suitable conditions arrive again. The
9 Quino Checkerspot Butterfly uses this strategy to persist in habitats that are prone to extended
10 droughts. Quino can therefore persist in some areas where it has not been seen in years, but when
11 suitable rains arrive and the dwarf plantain is in abundance, caterpillars in large numbers can
12 emerge in short periods of time to take advantage of the conditions, resulting in brief population
13 spikes. This is important because a lack of sightings in any given year does not necessarily mean
14 that the species is not present.

15 16. According to the California Natural Diversity Database, Quino Checkerspot
16 Butterflies have been documented immediately adjacent to the border fence and on the
17 surrounding slopes to the north, well within the proposed project area.

18 17. The western third of the project area cuts through Quino Checkerspot Butterfly
19 designated critical habitat. The presence of critical habitat and past occurrences of the species in
20 the area indicates that the species is present, and the proposed work, including resurfacing of the
21 roadways where the butterfly and its host plant have been found, will crush and bury diapausing
22 larvae and host plant seed bank in the area. These activities will cause irreparable harm to the
23 Quino Checkerspot Butterfly population and its critical habitat on Otay Mesa.

24 18. The Coastal California Gnatcatcher (*Polioptila californica californica*; California
25 Gnatcatcher) is a federally threatened species restricted to coastal southern California in areas of
26 open coastal sage scrub vegetation. California gnatcatchers are obligate insectivores (meaning
27 that they can only eat insects) that forage by “foliage gleaning”, a method of visually finding
28 insects while actively searching through vegetation. These birds utilize shrub species found

1 within coastal sage scrub vegetation for foraging. One prominent species utilized by the
2 California gnatcatcher for foraging is coastal sagebrush (*Artemisia californica*) which commonly
3 occurs in coastal sage scrub adjacent to the proposed border wall. This shrub is considered a
4 primary constituent element within California gnatcatcher critical habitat. California Gnatcatcher
5 territories average approximately 9 acres, and expand in the winter to take in a larger foraging
6 area, often by as much as 80%.

7 19. The California Natural Diversity Database documents California Gnatcatchers as
8 occurring within the project area. During a site visit October 2, 2019, I detected a California
9 Gnatcatcher approximately two miles northwest of the project, but numerous pairs have been
10 detected much closer. Habitat on the slopes adjacent to the proposed work and staging areas is
11 suitable for this species, consisting of coastal sage scrub dominated by shrubs such as California
12 sagebrush, and it is expected that this species is currently found in the work area.

13 20. The construction of a border wall fence and related road network will destroy
14 essential habitat for numerous gnatcatcher pairs due to vegetation clearance activities that will be
15 required to construct both the primary and secondary fences. Additionally, the steep topography
16 of this area will require new road networks for access to the work areas, and significant cut and
17 fill operations will be undertaken, as was needed in previous border fence construction projects in
18 and around Otay Mountain. These destructive construction activities will result in significant
19 displacement of California gnatcatchers into already diminished and limited habitat areas. As
20 these habitats are already occupied by adjacent pairs, the affected gnatcatchers will either be
21 required to move or challenge adjacent pairs for their occupied territories. The result will be a
22 substantial reduction of the population in the area, and irreparable harm to the species and its
23 habitat.

24 21. The Western Burrowing Owl (*Athene cunicularia hypugaea*, Burrowing Owl) is a
25 burrow-inhabiting small owl restricted to the western U.S. and northern Mexico, where it occurs
26 in declining numbers in open grasslands and agricultural areas. Diurnal (daytime) activities of
27 owls are often restricted to within 250 meters of the nest burrow. However, nocturnal foraging
28 activities extend out much farther and average home range sizes are determined by the extent and

1 quality of foraging habitat. A study in San Diego County found that burrowing owl home ranges
2 averaged 20 acres. A study of two urban sites in northern California determined that home ranges
3 averaged 22 acres.

4 22. The Burrowing Owl is considered a Bird of Conservation Concern by the U.S.
5 Fish and Wildlife Service, as well as a Species of Special Concern by the California Department
6 of Fish and Wildlife. The 1988 amendment to the Fish and Wildlife Conservation Act mandates
7 the USFWS to “identify species, subspecies, and populations of all migratory nongame birds that,
8 without additional conservation actions, are likely to become candidates for listing under the
9 Endangered Species Act (ESA) of 1973.” Birds identified as such are deemed priorities for
10 conservation actions, and the lists are consulted for actions taken on Federal lands in accordance
11 with Executive Order 13186, “Responsibilities of Federal agencies to protect migratory birds”.
12 BCC species also receive priority attention in the USFWS when allocating research, monitoring,
13 and management funding. California Species of Special Concern are defined as species or
14 subspecies that are experiencing population declines or range retractions that, if continued, could
15 qualify them for state threatened or endangered status. According to a California Department of
16 Fish and Wildlife Report, in California, threat factors affecting Burrowing Owl populations
17 include “habitat loss, degradation and modification, and eradication of ground squirrels resulting
18 in a loss of suitable burrows required by burrowing owls for nesting, protection from predators,
19 and shelter.”

20 23. As stated in the draft Burrowing Owl Conservation and Management Plan for San
21 Diego County:

22
23 In southern California, the western burrowing owl . . . has experienced declining
24 populations for decades. This species was once widespread and abundant in San Diego
25 County during the breeding season. The San Diego Bird Atlas provides a detailed account
26 of declines in the County population since the 1920s, when the owl was common along an
27 elevational gradient extending from coast to foothills. The number of occupied sites had
28 declined by the 1970s, although breeding owls could still be found in coastal locations . . .
as well as several inland sites that are no longer occupied by BUOW [Burrowing Owls].
Nearly all coastal populations were extirpated [meaning a local population extinction] by
1997 due to intensive urban development and habitat fragmentation. Extensive field
surveys conducted in the years 1997-2002 for the San Diego Bird Atlas documented five
locations of breeding pairs. In the 15 years since those surveys, the number of breeding
pairs has dropped to the point that breeding pairs are now only detected in scattered sites

1 on Otay Mesa.

2 24. A Memorandum dated September 25, 2017, that I have reviewed and was written
3 by U.S. Customs and Border Protection staff, states that during a one-day survey in August 2017,
4 immediately west of the proposed construction area, contract biologists found 37 active
5 Burrowing Owl burrows and 19 individual owls. *See* Memorandum by Border Patrol staff, dated
6 Sept. 25, 2017, and attached as Exhibit A to this declaration. On another property further to the
7 west of this project, also along the border fence, nine Burrowing Owl pairs utilizing 165 acres of
8 habitat were found. This area of eastern Otay Mesa is the last stronghold for the species in the
9 County, and further loss of both occupied burrows and foraging habitat will only hasten its
10 decline.

11 25. The proposed construction activities, while still undefined and poorly documented,
12 include disturbance to foraging habitat and occupied burrows through the extensive road work,
13 and vegetation clearing and trenching along the primary and secondary border fences. Burrowing
14 Owls are especially sensitive to construction disturbance due to their unique behavior. During
15 daylight hours, they stand guard over their burrow, which may include eggs and young, and are
16 easily flushed by adjacent human disturbance or activities. Repeated flushing during periods of
17 incubation or while feeding chicks has extremely negative effects, including cooling of eggs,
18 reduced feeding of chicks, or increased exposure to predators, reducing the percentage of chicks
19 surviving to adulthood.

20 26. Besides direct flushing, the extensive clearing of vegetation, as would be necessary
21 for the construction of staging areas for materials and road access to the site, would remove
22 foraging habitat from this owl population. Due to the high density of owls in such a relatively
23 restricted area, with nineteen individual owls observed during a one-day survey, loss of foraging
24 habitat would necessarily cause additional competition for resources among the owls, leading to
25 the displacement of some younger or less aggressive birds. Displaced birds are subject to
26 increased mortality rates as they search the area for suitable unoccupied habitat. These activities
27 would therefore hasten the decline of this last breeding population in coastal southern California.
28

1 27. In southern California, vernal pools are shallow depressions overlying
2 impermeable substrates, typically clay hardpans, which fill with winter rainfall and retain ponded
3 water through the spring. These unique seasonal wetlands are too short-lived to harbor fish, and
4 therefore support specialized species that cannot survive fish predation, but can reproduce quickly
5 in the rapidly drying pools. Species such as fairy shrimp, spadefoot toads, and specialized plants
6 with both aquatic and terrestrial components of their life cycle can only be found in vernal pools.
7 In Southern California, due to the massive destruction of vernal pools on flat coastal mesas
8 (upwards of 90% have been destroyed), several of these species have now been protected as
9 Endangered Species under the Federal Endangered Species Act.

10 28. Fairy shrimp reproduce by means of hardened “cysts”, analogous to hard-shelled
11 plant seeds, which are released by the female after mating. These cysts remain in the soil for
12 extended periods, potentially years, until the right combination of soil moisture and temperature
13 returns to stimulate hatching. Only a percentage of cysts hatch during any particular period with
14 suitable conditions, therefore, “cyst banks” analogous to seed banks, develop in the soil
15 consisting of viable but unhatched cysts from numerous previous generations in a state of
16 diapause, or biological stasis, awaiting future suitable hatching conditions.

17 29. Two federally endangered species of fairy shrimp inhabit the border zone in Otay
18 Mesa. The San Diego Fairy Shrimp (*Branchinecta sandiegonensis*) is restricted to vernal pools
19 and other temporary aquatic environments in San Diego, Orange, and Riverside Counties. It can
20 survive in shallow, short-lived pools that fill for only a few weeks. Its short life cycle allows it to
21 persist in pools that have been damaged or disturbed, and in some cases it can survive in pools on,
22 or adjacent to, dirt roads bisecting vernal pool landscapes. Despite this tolerance for some
23 disturbance, the majority of vernal pools in southern California that would have supported this
24 species have now been irreparably lost, and it only survives in scattered parks and preserves that
25 are managed for vernal pool species.

26 30. The second endangered fairy shrimp inhabiting the border zone in Otay Mesa is
27 the Riverside Fairy Shrimp (*Streptocephalus woottoni*). In contrast to the wider variety and
28 distribution of pools inhabited by the San Diego Fairy Shrimp, the Riverside Fairy Shrimp can

1 only occur in deeper pools holding water for extended periods of time. Upon listing as an
2 endangered species in 1993, Riverside fairy shrimp were known to inhabit 9 vernal pool
3 complexes within Riverside, Orange, and San Diego counties, and Baja California, Mexico.
4 Extensive survey work since its listing as an Endangered Species have now documented 45
5 known occupied vernal pool complexes, but it is still restricted to the same geographic
6 distribution in southern California.

7 31. Past border-barrier construction activities to the west of where San Diego Project 4
8 is being constructed included improvements to access roads to facilitate project construction. For
9 example, in order to construct the wall prototypes access roads were repaired and improved to
10 support the movement of heavy trucks and equipment to the prototype construction area from the
11 nearest paved roads to the west. That road work consisted of clearing vegetation, filling potholes,
12 leveling and grading, and stabilizing the road with aggregate or other stabilized road surface
13 course. *See* Memorandum by Border Patrol staff, dated Sept. 25, 2017, and attached as Exhibit A
14 to this declaration. It is clear from the site visit conducted on October 2, 2019, as well as analysis
15 of aerial imagery, that the only feasible access to the western portion of the San Diego Project 4
16 construction area is on unimproved dirt roads that lead from the prototype area to the west. It is
17 expected that the current proposal for San Diego Project 4 would conduct similar road grading
18 activities through this area as it is the primary means of accessing the construction zone. The
19 landscape in the immediate vicinity of the prototype area and along the dirt roads to the east and
20 north, leading to San Diego 4, supports numerous vernal pools. Several of these pools occur
21 within and adjacent to dirt roads that will be utilized by heavy equipment, and where additional
22 grading, vegetation clearing and filling may occur. This roadwork would damage vernal pools
23 and cause irreparable harm to the fairy shrimp and other vernal pool species.

24 32. Adjacent to the border wall zone on Otay Mesa, several recent biological surveys
25 on private properties have found that the entire road network within, and adjacent to, the work
26 area contains vernal pools and numerous rare and endangered species associated with them. For
27 example, the access roads to the west of the project area, which are the main conduits for the
28 heavy equipment and materials being brought onto the site, support rare and endangered species

1 such as Riverside Fairy Shrimp, San Diego fairy Shrimp, Quino Checkerspot Butterfly, Western
2 Spadefoot Toad, and San Diego Button Celery. Surveys on private parcels to the immediate north
3 and west of the construction area depict numerous vernal pools occupied by both fairy shrimp
4 species. Surveys for the Otay Business Park development, immediately north of the border fence,
5 found San Diego Fairy Shrimp at ten sites, including nine pools along the road network
6 immediately north of the secondary fence, to the west of the construction area. This area is also
7 designated as critical habitat for the species. Riverside Fairy shrimp were also found in three
8 pools, all of which occur along the main east-west dirt road that would be used for access to the
9 construction area. Also found within these same pools are other federally endangered species,
10 such as San Diego Button Celery (*Eryngium aristulatum* var. *parishii*) and Spreading Navarretia
11 (*Navarretia fossalis*).

12 33. These species are persisting in and adjacent to the disturbed dirt roadways due to
13 their brief reproduction period when the pools are full, and when vehicles avoid these pools in
14 order to avoid getting stuck in the deep-clay mud. However, once road modifications of grading,
15 “pothole filling”, and repaving with aggregate occur, these pools will cease to refill with water,
16 and the cysts and seeds embedded in the soil will be crushed and buried, preventing their hatching
17 in future rain events. These actions will cause irreparable harm to these vernal pool species, and
18 reduce the potential for recovery of the species, as mandated under the Federal Endangered
19 Species Act.

20 *Effects of the Proposed San Diego Project 11*

21 34. San Diego Project 11 proposes the construction of three miles of new secondary
22 pedestrian fencing starting two miles west of the Tecate Port Of Entry and extending 1.5 miles
23 east of the port. The project footprint here is characterized by natural habitats with minimal
24 disturbance, and the proposed fencing here will harm multiple species of lizards, birds and
25 mammals. The Quino Checkerspot Butterfly, discussed above, has been reported from this area.
26 In addition to the to the butterfly, numerous rare species occur in the project area and would be
27 harmed or killed by the extensive trenching, construction of roads, and staging of materials
28 necessary to construct the proposed border fence. These include:

- 1 Baja California coachwhip (CA State Species of Special Concern)
- 2 Coast patch-nosed snake (CA State Species of Special Concern)
- 3 Red-diamond rattlesnake (CA State Species of Special Concern)
- 4 Cope’s leopard lizard (CA State Species of Special Concern)
- 5 Coast horned lizard (CA State Species of Special Concern)
- 6 San Diego banded gecko (CA State Species of Special Concern)
- 7 Coastal whiptail (CA State Species of Special Concern)
- 8 Gray Vireo (CA State Species of Special Concern)
- 9 Townsend’s big-eared bat (CA State Species of Special Concern)
- 10 Pallid bat (CA State Species of Special Concern)
- 11 California Leaf-nosed bat (CA State Species of Special Concern)
- 12 Western Yellow bat (CA State Species of Special Concern)
- 13 Western mastiff bat (CA State Species of Special Concern)
- 14 Pocketed free-tailed bat (CA State Species of Special Concern)
- 15 Big free-tailed bat (CA State Species of Special Concern)
- 16 San Diego black-tailed jackrabbit (CA State Species of Special Concern)
- 17 Dulzura pocket mouse (CA State Species of Special Concern)
- 18 Northwestern San Diego pocket mouse (CA State Species of Special Concern)
- 19 Jacumba pocket mouse (CA State Species of Special Concern)
- 20 San Diego desert woodrat (CA State Species of Special Concern)
- 21 Southern grasshopper mouse (CA State Species of Special Concern)
- 22 American badger (CA State Species of Special Concern)

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26 In my experience, if Defendants had conducted environmental review under NEPA for San
27 Diego Project 11, the USFWS would have considered and addressed potential impacts to these
28 listed species as part of its review of the project during the NEPA process.

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Effects of proposed Yuma Project 6

35. Yuma Project 6 proposes the construction of approximately 1.5 miles of a new primary and secondary pedestrian fence system starting at Andrade Port Of Entry and extending to the west into the Algodones sand dunes. Additional proposed fencing would also occur east of the Colorado River and continue south for approximately one mile.

36. The proposed primary and secondary fence in the Yuma area would affect numerous rare and endangered species along the Colorado River and adjacent desert uplands that would be harmed or killed by the extensive trenching, construction of roads, and staging of materials necessary to construct the proposed border fence. These include:

- Flat-tailed Horned Lizard (CA State Species of Special Concern)
- Colorado Desert Fringe-toed Lizard (CA State Species of Special Concern)
- Sonoran mud turtle (CA State Species of Special Concern)
- Loggerhead shrike (CA State Species of Special Concern)
- LeConte’s Thrasher (CA State Species of Special Concern)
- Yuma Ridgway’s Rail (Federally endangered)
- Arizona Bell’s Vireo (CA State Species of Special Concern)
- Gila Woodpecker (CA State Species of Special Concern)
- Southwestern Willow Flycatcher (Federally endangered)
- Western Yellow-billed Cuckoo (Federally endangered)
- Townsend’s big-eared bat (CA State Species of Special Concern)
- Pallid bat (CA State Species of Special Concern)
- California Leaf-nosed bat (CA State Species of Special Concern)
- Western Yellow bat (CA State Species of Special Concern)
- Western mastiff bat (CA State Species of Special Concern)
- Pocketed free-tailed bat (CA State Species of Special Concern)
- Big free-tailed bat (CA State Species of Special Concern)

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In my experience, if Defendants had conducted environmental review under NEPA for Yuma Project 6, the USFWS would have considered and addressed potential impacts to these listed species as part of its review of the project during the NEPA process.

37. The flat-tailed horned lizard (*Phrynosoma mcallii*) is found in a restricted area of low desert habitat in southeastern California, southwestern Arizona, and adjacent Mexico. This lizard was proposed by the U.S. Fish and Wildlife Service for listing as a threatened species under the Endangered Species Act. On March 15, 2011, this proposal was withdrawn by the Service, which determined that the species did not need the protection of the Act, in part due to ongoing conservation efforts such as the establishment of a Rangewide Management Strategy, an excerpt of which is attached as Exhibit 6 to Plaintiffs’ Request for Judicial Notice, that was filed on June 12, 2019 [ECF Doc. No. 176-3]. The lizard is currently considered a California Species of Special Concern. It is typically found in sandy flats and dunes that often support sparse desert vegetation. Though this species is typically found in areas of fine windblown sand, it occasionally is found in badlands, saltbush flats, and gravelly soils. This lizard is a specialized predator of ants, and has declined throughout its range due to habitat fragmentation and degradation from agricultural development, urbanization, and off-road vehicle use. For much of the year it stays concealed in underground burrows, emerging during warmer months to forage for prey.

38. The flat-tailed horned lizard is currently known to occur along the border zone within the proposed construction area. The extensive trenching, construction of roads, and staging of materials proposed in this area would harm or kill lizards that were either active or in underground burrows in the area.

39. The Yuma Ridgway’s Rail (*Rallus obsoletus yumanensis*) is a federally endangered bird restricted to marsh and riparian habitats within the watershed of the lower Colorado River and adjacent desert marshes. This secretive species stays well hidden in dense vegetation located in shallow water. The Yuma Ridgway’s Rail is known to occur along the Colorado River in the vicinity of the border. As this rail is secretive and easily disturbed by human activities, the proposed one mile of construction activity immediately in and adjacent to

1 the river will destroy nesting habitat and disturb nesting rails along a significant stretch of the
2 river.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct.

5 Executed on October 8, 2019, at San Diego, California.

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Kevin B. Clark

EXHIBIT A

Construction of SDC Border Wall Prototype

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to the protection of valuable natural and cultural resources through responsible environmental stewardship.

Project Description:

CBP will construct and evaluate border wall prototypes in an approximately 120' by 1,000' corridor on the U.S./Mexico border in the alignment of the secondary border fence between the Otay Mesa Land Port of Entry (LPOE) and the western base of Otay Mountain in San Diego County, California (the Construction Corridor). The Construction Corridor is situated within an area that currently serves as a border enforcement zone with primary and secondary border fences, border roads, border lighting, and surveillance technology. CBP will build eight different border wall prototypes side by side in the Construction Corridor. The construction design, materials, methods, and equipment will vary by prototype. In general, construction activities will consist of excavating for the prototype foundations, forming concrete, and assembling and installing the 30' by 30' prototypes. A mockup of each prototype will be further evaluated at the USBP SDC Support Facility on Pogo Row.

Access to the prototype construction area will be along the secondary border road from the west and via two north-south roads near the LPOE; these access roads will be repaired or improved to support the movement of heavy trucks and equipment to the prototype construction area. Access road repair and improvement will consist of clearing vegetation, filling potholes, leveling and grading, and stabilizing the road with aggregate or other stabilized road surface course. A gate will be installed on the existing secondary fence to allow the movement of construction traffic from the entrance road through the fence and onto the border road. Construction laydown and staging will be done immediately south of the prototype construction area. The laydown and staging area will include concrete washout stations, sanitary stations, and equipment refueling stations. A remote video surveillance system (RVSS) will also be installed in the laydown and staging area.

The Construction Corridor, access roads, laydown and staging areas and RVSS placement area is referred to collectively as the Project Area. The total Project Area is estimated at approximately 52 acres, of which approximately 8 acres will be temporary disturbance and approximately 2 acres will be new permanent disturbance.

Existing Environment:

The Project Area is located in San Diego County, California. It is situated along the U.S./Mexico border between the western base of Otay Mountain and the Otay Mesa Land Port of Entry (LPOE) within Section 36 of Township 18 South, Range 1 West, and Sections 31 and 32, Township 18 South, Range 1 East (map reference: Otay Mesa, California, USGS 7.5' topographic quadrangles). Additional evaluation of prototype mockups will occur at the USBP SDC Support Facility on Pogo Row. See Figure 1 for a Project location map.

The Project Area, including the Construction Corridor, is located on Federal government property. The Construction Corridor, laydown and staging areas, and RVSS placement area are managed by CBP for purposes of border security. The access road to be used as an entrance to the Construction Corridor is a two track road located on Federal government property managed

Construction of SDC Border Wall Prototype

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by the General Services Administration (GSA). The access road to be used as an exit from the prototype construction area is a graded dirt road located on an easement held by CBP. The laydown, staging, and RVSS placement area is heavily disturbed and currently serves as a border enforcement zone with primary and secondary border fences, all-weather road, and border lighting and surveillance technology. The USBP SDC Support Facility is a fully developed facility located on Federal government property managed by CBP.

Field surveys for natural and cultural resources were conducted on August 23, 2017 by Gulf South Research Corporation (GSRC) on behalf of CBP. The surveys covered the entire Project Area but not the mockup evaluation location, which is completely paved and devoid of vegetation. The survey area included the prototype construction area, all potential access roads, and the laydown, staging, and RVSS placement area. See Figure 2 for a Project Area overview map.

The Construction Corridor is heavily disturbed and bound by disturbed nonnative grassland to the north and the U.S./Mexico Border to the south. A majority of this portion of the Project Area is devoid of vegetation. A small strip of heavily disturbed and frequently mowed non-native forb grassland runs along the southern edge of the Project Area adjacent to the border. The entrance road is bound by industrial buildings to the north and east, and by heavy-truck transport infrastructure to the west and south. This area shows evidence of heavy prior disturbances in the form of grading and frequent mowing. The vegetation community is non-native grassland with mixed forbs dominated by brome grass (*Bromus* spp.), Russian thistle (*Salsola* sp.), prickly lettuce (*Lactuca serriola*), and Australian saltbush (*Atriplex semibaccata*). The exit road is an unpaved heavily disturbed area running south of Via de La Amistad to the secondary border fence. This area is bound by industrial buildings to the west, disturbed non-native grassland to the east, and the border enforcement zone to the south. The vegetation community in the immediate vicinity can best be described as non-native grassland with mixed forbs and shrubs. This portion of the Project Area is completely disturbed and is nearly devoid of vegetation. The laydown, staging, and RVSS placement area is heavily disturbed from frequent mowing of vegetation and vehicular traffic. The vegetation community in the immediate vicinity can best be described as non-native grassland with mixed non-native forbs dominated by brome grass, Russian thistle, prickly lettuce, and Australian saltbush.

The burrowing owl (*Athene cunicularia*; [BUOW]) is a small owl distributed throughout western North America that has been designated as a Species of Special Concern in the State of California and is protected under the Migratory Bird Treaty Act. Common habitat includes open areas containing mammal burrows within sparsely vegetated arid and semi-arid environments. BUOWs require small mammal burrows for rearing and fledging young and for refuge. BUOWs generally stay close to their burrows during the day and forage further from the nest or refuge burrow between dusk and dawn. The current breeding range of BUOW includes much of the state of California, including most of San Diego County along the border with Mexico.

During the survey, multiple BUOWs and 37 active BUOW burrows were observed in the laydown, staging, and RVSS placement area. GSRC biologists reported 19 BUOWs, 12 of which were observed at burrow sites. Additionally, several small mammal burrows were observed within the entrance road portion of the Project Area, primarily along the western edge of the GSA managed property. However, there was no evidence of occupation or use of these

Construction of SDC Border Wall Prototype

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burrows by BUOW and no BUOWs were observed in this portion of the survey area. There was no evidence of any active bird breeding or nesting behaviors observed in the Construction Corridor or the exit road portions of the Project Area.

The Project Area is located within one mile of designated Critical Habitat for the coastal California gnatcatcher (*Polioptila californica*; [CAGN]). The CAGN is Federally listed as threatened. The CAGN is the northernmost species of California gnatcatcher. It is a small, non-migratory songbird occurring along the Pacific coasts of southern California and northern Baja California, Mexico. The CAGN is associated with coastal scrub plant communities, including coastal sage scrub and coastal succulent scrub. There was no evidence of suitable habitat or occupation of the Project Area by CAGN.

The eastern portion of the Project Area extends into designated Critical Habitat for the Quino checkerspot butterfly (*Euphydryas editha quino*; [QCB]). The QCB is Federally listed as endangered. The QCB is found in several plant communities, from scrub on coastal bluffs, coastal sage, chaparral, and oak woodlands to desert pinyon-juniper woodlands. However, it is only found in openings within these plant communities having a sufficient cover of larval food plants and annual forbs that provide nectar for adults. There was no evidence of suitable habitat or occupation of the Project Area by QCB.

The Project Area extends into designated Critical Habitat for San Diego Fairy Shrimp (*Branchinecta sandiegonensis*; [SDFS]). The SDFS is a small aquatic crustacean that is generally restricted to vernal pools in southern California and northwestern Baja California. The SDFS is Federally listed as endangered. There was no evidence of suitable habitat or occupation of the Project Area by SDFS.

Critical habitat for Riverside Fairy Shrimp (*Streptocephalus woottoni*; [RSFS]) occurs within 1.0 mile of the Project Area. The RSFS is a small aquatic crustacean that is generally restricted to vernal pools greater than 12 inches in depth in Riverside, Orange, and San Diego Counties in California. The RSFS is Federally listed as endangered. There was no evidence of suitable habitat or occupation of the Project Area by RSFS.

Vernal pools are a type of temporary wetland that consist of depressions in areas where a hard underground layer prevents rainwater from draining downward into the subsoils. Rainwater typically fills the pools in winter and spring and gradually evaporates from late spring to summer. Vernal pools are some of the most ecologically important and distinct habitats in California, supporting a diversity of flora and fauna, including species found only in these habitats such as SDFS and RFS. As wetlands, vernal pools are protected by state and Federal laws. Vernal pools are known to occur north of the Project Area. However, no vernal pools, wetlands, or other surface waters were observed within the Project Area. A shallow ditch within the border enforcement zone to the east of the entrance road and outside of the Project Area was observed to display vegetation and hydrology consistent with wetlands and is a potential wetland habitat.

No other rare, threatened, or endangered species were observed within the survey area and other than the BUOWs, no other nesting or breeding bird behavior was observed.

Construction of SDC Border Wall Prototype

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No archaeological sites or historic properties were identified during the pedestrian archaeological survey. Several manmade features were observed within the Project Area, such as a drainage channel and storm drain. The drainage channel is believed to be modern in nature and origin (i.e., within the last 10 to 20 years). A fragment of a ceramic roof tile was also noted within the GSA-managed property near the entrance road, but appears to be displaced, along with refuse, and is likely modern. In addition, two possible pieces of lithic debitage were also noted within the laydown, staging, and RVSS placement area. However, both items are located between the primary fence and the all-weather road to the north, and within an area that has been subject to significant earth-moving activities (e.g., blading, grading, leveling). It is likely that the items were created through pressure of heavy equipment (e.g., bulldozer or grader) traveling over the ground surface.

The Project Area is located within San Diego County, California within the San Diego Air Pollution Control District. San Diego County is a Federal and State nonattainment area for 8-hour ozone and a State nonattainment area for 1-hour ozone and particulate matter (PM10 and PM2.5). San Diego County is in attainment or unclassified status for all other criteria air pollutants.

Environmental Analysis:

Based on the results of the field surveys and knowledge of the Project Area, CBP identified sensitive species, surface water, cultural and historical resources, and air quality as the environmental resource categories with the greatest potential to be impacted by the Project. A review was conducted to ensure that the impacts from the Project will not adversely affect these resources. Other environmental impacts are not expected to result from the Project.

(a) Sensitive Species

In August 2017, biologists conducted a pedestrian survey of the Project Area to identify sensitive species, candidate species, and/or critical habitat present; consider project revisions to avoid or minimize effects; and provide options for reasonable mitigation of unavoidable effects.

During the survey, multiple BUOWs and 37 active BUOW burrows were observed in the laydown, staging, and RVSS placement area. GSRC biologists reported 19 BUOWs, 12 of which were observed at burrow sites. The California Department of Fish and Wildlife recommends a 50-meter buffer around active BUOW burrows during the non-breeding season (September 1 through January 31). A 50-meter buffer around all but the two easternmost observed burrows will be enforced by CBP for Project activities. The two easternmost observed burrows will be directly affected by site grading and are within 50 meters of the area to be affected by the RVSS placement. CBP will install one-way exclusionary doors on these two easternmost BUOW burrows to be affected as the result of RVSS placement and wait until the burrows are vacated before collapsing them to ensure no direct mortality to BUOW individuals occurs. Because BUOW burrows and suitable habitat are relatively common throughout San Diego County along the border with Mexico, overall impacts to BUOW from a loss of two burrows are considered minor.

Construction of SDC Border Wall Prototype

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The Project Area is located within designated Critical Habitat for QCB and SDFS and in the vicinity of designated Critical Habitat for CAGN and RSFS. However, no evidence of suitable habitat or occupation of the Project Area was observed. Due to the absence of suitable habitat for these species within the Project Area, the Project will have no impact on CAGN, QCB, SDFS, or RSFS or their designated Critical Habitat. Furthermore, the Project will have no impact on any other state or Federal sensitive or protected species.

(b) Cultural and Historical Resources

In August 2017, an archaeologist conducted a pedestrian survey of the Project Area to identify cultural and historical resources; consider project revisions to avoid or minimize effects; and provide options for reasonable mitigation of unavoidable effects. No archaeological sites or historic properties were identified during the pedestrian archaeological survey. Due to the absence of cultural resources sites in the Project Area, the Project is not likely to have any impact on cultural and historical resources.

(c) Air Quality

San Diego County is within a Federal and State nonattainment area for 8-hour ozone and a State nonattainment area for 1-hour ozone, PM10, and PM2.5. A conformity determination would be required for each pollutant where the total of direct and indirect emissions in a non-attainment or maintenance area caused by the Federal action will equal or exceed specified emissions rates.

Temporary and minor increases in air pollution will occur from the use of construction equipment (combustion emissions) and the disturbance of soils (fugitive dust) during construction. Several sources of air pollutants will contribute to the overall air impacts of the Project, including: combustion engines of construction equipment; construction workers commuting to and from work; supply trucks delivering materials to the construction site; and fugitive dust from job-site ground disturbances. Fugitive dust emissions for the Project were calculated based on assumptions about equipment to be used, size of the Project Area, and construction duration. The total air quality emissions from the construction activities were estimated and compared to the de minimis thresholds of the General Conformity Rule.

Total Air Emissions (tons/year) from the Project versus the de minimis Threshold Levels for San Diego County

<i>Pollutant</i>	<i>Total (tons/year)</i>	<i>de minimis Thresholds (tons/year)</i>
CO	<3	100
Volatile Organic Compounds (VOC)	<1	50
Nitrous Oxides (NOx)	<2	100
PM-10	<2	100
PM-2.5	<2	100
SO2	<1	100
CO2 and CO2 equivalents	<1,200	27,557

The construction and evaluation activities associated with the Project do not exceed Federal de minimis thresholds for air pollution emissions. As there are no violations of air quality standards

Construction of SDC Border Wall Prototype

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and no conflicts with the state implementation plans, the Project will not have a major impact on air quality.

(d) Surface Water

The Project will not result in impacts on any vernal pools, wetlands, or other surface waters, as no vernal pools, wetlands, or other surface waters are located within the Project Area. A shallow ditch within the border enforcement zone to the east of the entrance road and outside of the Project Area displayed vegetation and hydrology consistent with wetlands and is a potential wetland. However, all impacts from the Project will be contained within the Project Area through the implementation of a Storm Water Pollution Prevention Plan (SWPPP), and no impacts to the potential wetland will occur. The SWPPP measures will be monitored during construction. The Project will not have a major impact on surface water quality.

Best Management Practices:

GENERAL

CBP will clearly demarcate project construction area perimeters. No disturbance outside that perimeter will be authorized without prior coordination and approval.

Within the designated disturbance area, CBP will minimize the area to be disturbed by limiting deliveries of materials and equipment to only those needed for effective project implementation.

CBP will provide an environmental briefing to all construction crew members working on the Project, informing them of sensitive resources present within the Project Area and BMPs to be implemented.

VEGETATION

CBP will minimize habitat disturbance by restricting vegetation removal to the smallest possible project footprint. Native seeds or plants, which are compatible with the enhancement of habitat for sensitive species, will be used to the greatest extent practicable, to rehabilitate staging areas and other temporarily disturbed areas.

Construction equipment will be cleaned at temporary staging areas, in accordance with BMPs, prior to entering and departing the Project Area to minimize the spread and establishment of non-native invasive plant species.

WILDLIFE RESOURCES

If construction activities are scheduled during nesting season (February 15 through September 1), monitors will perform surveys in advance of construction activity to identify active nests. If the monitor observes a nest with eggs or chicks, he will work with the construction crew to do one of the following: 1) avoid the nest, so long as it does not impact the scope of work for road improvement activities; 2) if appropriate, take it to a rehabilitation center; or 3) if neither 1 nor 2 is practicable, document the loss and include that information in the monitoring report.

Construction of SDC Border Wall Prototype

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CBP will not, for any length of time, permit any pets inside the Project Area or adjacent native habitats. This BMP does not pertain to law enforcement animals.

PROTECTED SPECIES

A 50-meter buffer around observed BUOW burrows will be enforced by CBP for Project activities. Where observing a 50-meter buffer is not compatible with Project needs, CBP will install one-way exclusionary doors on BUOW burrows and wait until the burrows are vacated before collapsing them to ensure no direct mortality to BUOW individuals occurs.

WATER RESOURCES

Standard construction procedures will be implemented to minimize the potential for erosion and sedimentation during construction. All work will cease during heavy rains and will not resume until conditions are suitable for the movement of equipment and material. No refueling or storage will take place within 100 feet of drainages. CBP will avoid contaminating natural aquatic systems with runoff by limiting all equipment maintenance, staging, laydown, and dispensing of fuel, oil, etc., to designated upland areas.

CBP will avoid contamination of ground and surface waters by storing any water that has been contaminated with construction materials, oils, equipment residue, etc., in closed containers on site until removed for disposal. Storage tanks must have proper air space (to avoid rainfall-induced overtopping), be on-ground containers, and be located in upland areas instead of washes.

In the event that CBP contaminates soil or water resources as a result of the Project, the contaminated soil or water will be remediated.

A SWPPP will be prepared, implemented, and monitored.

CULTURAL RESOURCES

If any archaeological artifacts are found during Project activities, all project activity in the immediate area will immediately cease until an evaluation of the discovery is made to determine appropriate actions to prevent the loss of significant cultural or scientific value.

In the event that human remains or indications that human remains may be present, such as headstones, are observed or encountered, all project activity in the immediate area will immediately cease and the site will be secured. Securing the site requires that the discovery not be disturbed and that others are prevented from disturbing it. The CBP project manager will be immediately notified of the observations or discoveries. A map showing the location will be provided if possible. No photographs of human remains will be taken.

AIR QUALITY

In order to minimize the amount of project-related dust emissions, construction crews will implement the following practices: minimizing land disturbance; ensuring saturation of exposed

Construction of SDC Border Wall Prototype

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areas; and controlling fugitive dust caused by hauling activities and vehicular travel on unpaved road surfaces.

All construction equipment shall be maintained and operated in a manner that produces the least amount of emissions. All construction equipment and vehicles must be maintained in good operating condition, free from leaks.

NOISE

All applicable Occupational Safety and Health Administration regulations and requirements will be followed.

On-site activities will be restricted to daylight hours, to the greatest extent practicable.

All equipment will possess properly working mufflers and will be kept properly tuned to reduce backfires.

HAZARDOUS MATERIALS

To minimize potential impacts from hazardous and regulated materials, all fuels, waste oils, and solvents will be collected and stored in tanks or drums within a secondary containment system that consists of an impervious floor and bermed sidewalls capable of containing the volume of the largest container stored therein. The refueling of machinery will be completed in accordance with accepted industry and regulatory guidelines, and all vehicles will have drip pans during storage to contain minor spills and drips. Although it is unlikely that a major spill will occur, any spill of reportable quantities will be contained immediately within an earthen dike, and the application of an absorbent (e.g., granular, pillow, sock) will be used to absorb and contain the spill.

CBP will contain non-hazardous waste materials and other discarded materials, such as construction waste, until removed from the construction and maintenance sites. This will assist in keeping the Project Area and surroundings free of litter and reduce the amount of disturbed area needed for waste storage.

CBP will minimize site disturbance and avoid attracting predators by promptly removing waste materials, wrappers, and debris from the site. Any waste that must remain more than 12 hours should be properly stored until disposal.

All waste oil and solvents will be recycled. All non-recyclable hazardous and regulated wastes will be collected, characterized, labeled, stored, transported, and disposed of in accordance with all applicable Federal, state, and local regulations, including proper waste manifesting procedures.

Solid waste receptacles will be maintained at the construction staging area. Non-hazardous solid waste (trash and waste construction materials) will be collected and deposited in on-site receptacles. Solid waste will be collected and disposed of by a local waste disposal contractor.


Construction of SDC Border Wall Prototype

10

Conclusion:

Based on a review of the information provided for the Project, the results of natural and cultural resources surveys, and an analysis of potential effects from the Project, no major impacts to the environment are likely to result from the Project. Therefore, no further environmental investigation or analysis, such as preparing an Environmental Stewardship Plan, is required.

Date: 25 Sep 17

Approve: 

Disapprove: _____

Modify: _____

Needs More Discussion: _____

EXHIBIT 2

1 XAVIER BECERRA
 Attorney General of California
 2 ROBERT W. BYRNE
 SALLY MAGNANI
 3 MICHAEL L. NEWMAN
 Senior Assistant Attorneys General
 4 MICHAEL P. CAYABAN
 CHRISTINE CHUANG
 5 EDWARD H. OCHOA
 Supervising Deputy Attorneys General
 6 BRIAN J. BILFORD
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 7 LEE I. SHERMAN
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 8 JAMES F. ZAHRADKA II
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 13 *Attorneys for Plaintiff State of California*

14
 15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 17 OAKLAND DIVISION

18
 19 **STATE OF CALIFORNIA; STATE OF**
 20 **COLORADO; STATE OF**
 21 **CONNECTICUT; STATE OF**
 22 **DELAWARE; STATE OF HAWAII;**
 23 **STATE OF ILLINOIS; STATE OF**
 24 **MAINE; STATE OF MARYLAND;**
 25 **COMMONWEALTH OF**
 26 **MASSACHUSETTS; ATTORNEY**
 27 **GENERAL DANA NESSEL ON BEHALF**
 28 **OF THE PEOPLE OF MICHIGAN;**
STATE OF MINNESOTA; STATE OF
NEVADA; STATE OF NEW JERSEY;
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF OREGON;
STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN;

4:19-cv-00872-HSG

DECLARATION OF DR. KAI DUNN IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTION 2808 PROJECTS AND NEPA

Plaintiffs,

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v.

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

Defendants.

1 I, Dr. Kai Dunn, declare as follows:

2 1. I have personal knowledge of each fact stated in this declaration, and if called as
3 witness could competently testify thereto.

4 2. I am a Senior Water Resources Control Engineer and Chief of the “NPDES /
5 Stormwater / 401 Water Quality Certification Unit” for the California Regional Water Quality
6 Control Board, Colorado River Basin Region (Colorado River Basin Water Board). I have served
7 as the Chief of this unit since 2014 and been employed by the Colorado River Basin Water Board
8 as a senior engineer since 2007.

9 3. As the Chief of the NPDES / Stormwater / 401 Water Quality Certification Unit, I am
10 responsible for drafting National Pollutant Discharge Elimination System (NPDES) permits for
11 wastewater and storm water discharges to surface waters within the Colorado River Basin Region
12 that are issued by the Colorado River Basin Water Board, as well as water quality certifications
13 under Section 401 of the Clean Water Act. I am a California registered civil engineer and hold a
14 doctorate degree in environmental engineering from the University of Southern California.

15 4. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (commonly
16 referred to as the “Clean Water Act”) and the California Porter-Cologne Water Quality Control
17 Act (Cal. Wat. Code § 13000 et seq.) authorize the California State Water Resources Control
18 Board (State Water Board) and the nine California Regional Water Quality Control Boards
19 (Regional Water Boards) (collectively, Water Boards) to regulate and protect water quality in
20 California. The Water Boards’ mission is to preserve, enhance, and restore the quality of
21 California’s water resources and drinking water for the protection of the environment, public
22 health, and all beneficial uses for the benefit of present and future generations.

23 5. Each Regional Water Board—including the Colorado River Basin Water Board—is
24 required to prepare a water quality control plan (also referred to as a “basin plan”) setting forth
25 the water quality standards for all surface waters and groundwaters within the region, as well as
26 programs of implementation. *See* Cal. Water Code §§ 13050(j), 13240-13248. Water quality
27 standards consist of the beneficial uses of a water body and the water quality objectives (or
28 “criteria” under Clean Water Act terminology) designated to protect those beneficial uses. 40

1 C.F.R. §§ 131.2, 131.10-131.15; Cal. Wat. Code §§ 13050(f), (h), 13241. “Beneficial uses” of
2 water refers to the resources, services, and qualities they support or could support, e.g., drinking,
3 recreation, critical habitat, etc. Cal. Wat. Code § 13050(f); 40 C.F.R. § 131.10. “Water quality
4 objectives” are limits on levels of pollutants in a water body designed to ensure that the water
5 quality is adequate to support the designated beneficial uses for that water body. Cal. Wat. Code
6 §§ 13050(h), 13241; 40 C.F.R. § 131.11.

7 6. The Water Quality Control Plan for the Colorado River Basin Region (Basin Plan),
8 adopted by the Colorado River Basin Water Board, contains water quality standards and
9 programs of implementation and serves as the legal, technical, and programmatic basis of water
10 quality regulation in the Board’s region. Cal. Wat. Code § 13240; 33 U.S.C. § 1313; 40 C.F.R. §
11 131.4. The Basin Plan is designed to preserve and enhance water quality in the region and to
12 protect the beneficial uses of all regional waters. A copy of the current Basin Plan is available on
13 the Colorado River Basin Water Board’s website at
14 https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/basin_planning/. The
15 Basin Plan has been approved by the State Water Board and has the full force and effect of
16 regulation. Cal. Code Regs., tit. 23, § 3960 et seq; Cal. Gov Code § 11353.

17 7. The Colorado River Basin Water Board protects the water quality of water bodies
18 within the Colorado River Basin Region, including the Salton Sea, Colorado River, New River,
19 Alamo River, All-American Canal, Alamo Canal, Imperial Valley agricultural drains, and washes
20 and ephemeral streams that drain into and serve as to tributaries to these water bodies, all of
21 which are located near California’s border with Mexico. These surface waters generally
22 constitute jurisdictional waters of the United States under the Clean Water Act and are also waters
23 of the state under the California Porter-Cologne Water Quality Control Act. 33 U.S.C. § 1362;
24 Cal. Wat. Code § 13050(e).

25 8. The Colorado River Basin Water Board implements the water quality objectives
26 contained in the Basin Plan through the issuance of several different types of permits and other
27 orders and certifications to protect water quality. *See, e.g.*, Cal. Wat. Code § 13263 (waste
28 discharge requirements “shall implement any relevant water quality control plans that have been

1 adopted, shall take into consideration the beneficial uses to be protected, the water quality
2 objectives reasonably required for that purpose...”; 33 U.S.C. § 1342 (federal Clean Water Act
3 permits must conform to state water quality standards). In addition to the traditional NPDES
4 permits for domestic, municipal, and industrial wastewater discharges to surface waters (under
5 Clean Water Act Section 402), the Water Boards issue NPDES permits to address storm water
6 runoff from construction activities that may result in discharges into the jurisdictional waters of
7 the United States. Pursuant to section 313 of the Clean Water Act (33 U.S.C. § 1323), federal
8 agencies and departments are required to comply with the requirements of California’s NPDES
9 permitting program.

10 9. The Colorado River Basin Water Board also issues water quality certifications under
11 Section 401 of the Clean Water Act for projects that involve the discharge of dredged or fill
12 material into waters of the United States, including rivers and streams and wetlands. Under
13 Section 401, every applicant for a federal permit or license for any activity that may result in a
14 discharge to jurisdictional waters must obtain a water quality certification from the appropriate
15 Water Board demonstrating that the proposed activity will comply with state water quality
16 standards and with any other appropriate requirements of state law. The federal permit, such as a
17 permit issued by the United States Army Corps of Engineers under Clean Water Act Section 404,
18 allowing a party to dredge and fill within or near a water body, cannot be issued unless the state
19 grants or waives certification. 33 U.S.C. §§ 1341, 1344; Cal. Wat. Code §§ 13260, 13376.

20 10. A Section 401 water quality certification ensures that the project complies with water
21 quality objectives for waters impacted by the project, and that the project will not harm or impair
22 the waters’ beneficial uses designated in the Colorado River Basin Water Board’s Basin Plan.
23 Water quality certifications typically include requirements for implementing best management
24 practices (BMPs) that the project proponent must follow in order to minimize the project’s
25 impacts on water quality. BMPs are scheduling of activities, prohibitions of practices,
26 maintenance procedures, and other management practices to prevent or reduce the discharge of
27 pollutants to waters of the United States. BMPs also include treatment requirements, operating
28 procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or

1 drainage from raw material storage. Water quality certifications can also require compensatory
2 mitigation to offset loss of aquatic resource functions from unavoidable project impacts to waters
3 of the United States. *See* Cal. Wat. Code § 13263; 40 C.F.R. § 230.93.

4 11. The Colorado River Basin Water Board’s NPDES / Stormwater / Section 401 Water
5 Quality Certification Unit has reviewed and processed several applications for Section 401 water
6 quality certifications submitted to the Board by federal agencies for projects within the Colorado
7 River Basin Region. These have included applications submitted by the United States Bureau of
8 Reclamation, the United States Army Corps of Engineers, and United States Customs and Border
9 Protection.

10 12. Exhibit 3 to Plaintiffs’ Request for Judicial Notice, filed on June 12, 2019, [ECF Doc
11 No. 176-3], is a Water Quality Certification Order issued in response to United States Customs
12 and Border Protection’s (CBP) 2013 application for a Section 401 water quality certification. I
13 have reviewed the Water Quality Certification Order and CBP’s application for certification.
14 CBP sought to construct a 1.6 mile road, known as the West Desert All-Weather Road project,
15 along the United States-Mexico border in an area west of the Calexico Port of Entry. The order
16 reflects that CBP needed a Section 401 water quality certification and federal permits from the
17 Army Corps of Engineers because the project would involve dredge and fill activities within or
18 next to the Pinto Wash, an ephemeral stream that drains into the New River. (RJN Ex. 3, p. 7.)

19 13. The Colorado River Basin Water Board’s Section 401 Water Quality Certification
20 Order, which granted CBP certification subject to specified conditions, also noted that the West
21 Desert All-Weather Road project would traverse six ephemeral washes that are waters of the
22 United States through use of concrete low-water crossings, reinforce concrete pipes, or box
23 culverts. (*See* RJN Ex. 3, page 7.) In documents attached to CBP’s application for certification,
24 CBP acknowledged that the six unnamed ephemeral washes constitute waters of the United
25 States. The order also specified the exact location of the West Desert All-Weather Road project
26 using GPS coordinates. (*See* RJN Ex. 3, page 7.)

27 14. I have reviewed a list of additional border-barrier projects that the federal
28 government plans to construct in Imperial County, California, as outlined in the table attached as

1 Exhibit 1 to the Declaration of Heather Leslie. (2808 Project Table). I received the 2808 Project
2 Table from counsel of record for the State of California. I also reviewed the projects described in
3 the “List of Military Construction Projects” that Defendants filed in this matter on September 3,
4 2019, [ECF Doc. No. 206-2] (2808 Project List). The 2808 Project Table and 2808 Project List
5 include three border-barrier projects to be constructed, at least in part, in areas under the
6 jurisdiction of the Colorado River Basin Water Board. The three projects include El Centro
7 Projects 5 and 9, and Yuma Project 6.

8 15. The 2808 Project List states that El Centro Project 5 includes one mile of new
9 secondary pedestrian fencing near the Calexico Point of Entry, and that El Centro Project 9
10 involves construction of approximately twelve miles of a new secondary fence system, starting
11 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming one
12 mile east of the Calexico West Port of Entry and extending east for three miles. The California
13 portion of Yuma Project 6 includes construction of approximately one mile of new primary
14 pedestrian fencing starting at the Andrade Port of Entry and going east towards the Colorado
15 River, and also construction of around 1.6 miles of new secondary pedestrian fencing in
16 California, starting a half mile east of monument marker 208 and extending east towards the
17 Colorado River. (ECF Doc. No. 206-2). I also used Google Earth to plot the coordinates provided
18 for the projects in the 2808 Project Table to confirm the locations of El Centro Projects 5 and 9,
19 and Yuma Project 6.

20 16. I am generally familiar with the steel bollard style fencing that has been constructed
21 by CBP over the past year near the Calexico Port of Entry and understand that the construction of
22 similar fencing is proposed for El Centro Projects 5 and 9 and Yuma 6. The construction of these
23 types of barriers necessarily involves the use of heavy equipment, excavation and digging.
24 Similarly, the construction of roadways near the border barriers necessarily require grading and
25 significant soil disturbances.

26 17. El Centro Project 5 is being constructed near the New River, which CBP has
27 previously recognized is a jurisdictional water of the United States under the Clean Water Act.
28 (RJN Ex. 3, p. 7). Possible impacts to the New River from this project include sediment being

1 discharged into the River, and also potential harm to riparian areas including a 14-foot-wide
2 riparian zone on the west bank of the New River, and a 9-foot riparian zone on its east bank.
3 Riparian areas act as a buffer to protect and enhance aquatic resource functions from adjacent
4 land uses. Compensatory mitigation could be required for loss of riparian areas due to El Centro
5 5, in order to sustain aquatic resource functions within the watershed. The protection and
6 maintenance of terrestrial resources, such as riparian areas and uplands, is required when they
7 contribute to or improve the overall ecological functioning of aquatic resources in the watershed.
8 El Centro Project 5 could normally not proceed without a Section 404 dredge and fill permit
9 issued by the United States Army Corps of Engineers, which would in turn compel a Section 401
10 water quality certification for the project by the unit that I manage.

11 18. The same is true for El Centro Project 9. That project will also impact jurisdictional
12 waters including the All-American Canal by discharging sediment, which is a physical pollutant
13 that increases turbidity, and also further impairs water quality by transporting other pollutants
14 such as nutrients, metals, pesticides, and oils and grease into the water body. El Centro Project 9
15 could normally not proceed without a Section 404 dredge and fill permit issued by the United
16 States Army Corps of Engineers, which would in turn compel a Section 401 water quality
17 certification by the unit that I manage.

18 19. Yuma Project 6 will also likely result in water-quality impacts to jurisdictional waters
19 including the All-American Canal, the Alamo Canal and the Colorado River. This project will
20 result in sediment impacts to these waters, and also potentially harm a 30-foot-wide riparian zone
21 on the west bank of the Alamo Canal. Compensatory mitigation might be required depending on
22 the extent of impacts to the riparian area. This project also could normally not proceed without a
23 Section 404 dredge and fill permit issued by the United States Army Corps of Engineers, which
24 would in turn compel a Section 401 water quality certification by the unit that I manage.

25 20. Due to their nature and location of construction, El Centro Projects 5 and 9, and Yuma
26 Project 6 normally would also require enrollment in the State Water Board's statewide NPDES
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1 Construction General Permit,¹ which is enforced by the Colorado River Basin Water Board in the
2 region. The proposed construction for all three projects poses a high risk for storm water run-off
3 impacting water quality during the construction phase and post-construction maintenance. The
4 Construction General Permit requires the preparation and implementation of a Storm Water
5 Pollution Prevention Plan (SWPPP) to ensure construction and post-construction activities do not
6 adversely impact water quality. The permit requires a risk assessment of pollutants being
7 discharged to surface waters, and that the SWPPP include a description of: (a) the specific project
8 activities that threaten water quality (i.e., characterization of potential sources of storm water
9 pollution and their pollutants); and (b) specific best management practices and other measures
10 that will be implemented by the project proponent for project-specific activities during
11 construction to prevent and minimize adverse water quality impacts.

12 21. The authority of the State and Regional Water Boards under the NPDES permitting
13 program and the Section 401 water quality certification program are necessary to ensure that
14 projects within the Colorado River Basin Region are constructed in a way that is consistent with
15 the state's water quality objectives and in a way that protects the beneficial uses for affected
16 water bodies. Without such permitting authority, the Colorado River Basin Water Board and
17 other Water Boards lose critical tools for implementing applicable water quality objectives and
18 enforcing California water quality laws.

19 I declare under penalty of perjury that the foregoing is true and correct and that this
20 declaration was executed on October 4, 2019, in Palm Desert, California.

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27 ¹ *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm*
28 *Water Discharges Associated with Construction and Land Disturbance Activities*, State Water
Board Order No. 2009-0009-DWQ, NPDES No. CAS000002 (as amended).

EXHIBIT 3

1 XAVIER BECERRA
 Attorney General of California
 2 ROBERT W. BYRNE
 SALLY MAGNANI
 3 MICHAEL L. NEWMAN
 Senior Assistant Attorneys General
 4 MICHAEL P. CAYABAN
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 13 *Attorneys for Plaintiff State of California*

14
 15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 17 OAKLAND DIVISION

18
 19 **STATE OF CALIFORNIA; STATE OF**
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 21 **CONNECTICUT; STATE OF**
 22 **DELAWARE; STATE OF HAWAII;**
 23 **STATE OF ILLINOIS; STATE OF**
 24 **MAINE; STATE OF MARYLAND;**
 25 **COMMONWEALTH OF**
 26 **MASSACHUSETTS; ATTORNEY**
 27 **GENERAL DANA NESSEL ON BEHALF**
 28 **OF THE PEOPLE OF MICHIGAN;**
STATE OF MINNESOTA; STATE OF
NEVADA; STATE OF NEW JERSEY;
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF OREGON;
STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN;

4:19-cv-00872-HSG

**DECLARATION OF DAVID GIBSON IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING
SECTION 2808 PROJECTS AND NEPA**

Plaintiffs,

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v.

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

Defendants.

1 I, David Gibson, declare as follows:

2 1. Except as to statements made on information and belief, I have personal knowledge
3 of each fact stated in this declaration, and if called as witness, I would and could testify
4 competently to those facts. As relevant to statements made on information and belief, I am
5 informed and believe that those statements are true.

6 2. I am employed by the California Regional Water Quality Control Board, San Diego
7 Region (San Diego Water Board) as its Executive Officer and have served in that capacity since
8 November 18, 2009. Before that, I was an environmental scientist in the Watershed Protection,
9 Storm Water, Clean Water Act section 401 Water Quality Certifications, Grants and Loans, and
10 Total Maximum Daily Loads programs. Prior to my employment with the San Diego Water
11 Board, I was employed by the City of San Diego Water Department where I worked on vector
12 control, watershed, and reservoir monitoring programs. I hold a Bachelor of Science Degree in
13 Biology from San Diego State University (1989).

14 3. I have been trained in wetlands delineation and have worked extensively preparing
15 proposals for dredging and fill activities in wetlands and preparing Federal Clean Water Act
16 (CWA) section 401 Water Quality Certifications (401 Certifications). In my staff work at the
17 City of San Diego and the San Diego Water Board, I have acquired extensive knowledge of the
18 Tijuana River Watershed and its several transboundary drainages. As Executive Officer, I have
19 led the Tijuana River Valley Recovery Team and worked with over 30 agencies and organizations
20 on projects related to the transboundary flows of wastes, and on the impacts of those flows on
21 receiving waters, habitats, and communities in the lower Tijuana River Valley. Those efforts
22 have included extensive engagement with agents, staff, and contractors of the Department of
23 Homeland Security and U.S. Customs and Border Protection (CBP). I am also familiar with
24 CBP's efforts to develop or expand border fence and ancillary infrastructure in the San Diego
25 Region.

26 4. As Executive Officer, I am responsible for reviewing staff work on National Pollutant
27 Discharge Elimination System (NPDES) permits for wastewater and storm water discharges to
28 surface waters within the San Diego Region that are issued by the San Diego Water Board, as

1 well as water quality certifications under Section 401 of the Clean Water Act. I have reviewed
2 and acted upon staff recommendations to approve or deny 401 Water Quality Certifications for
3 projects in the Tijuana River and Otay River watersheds.

4 5. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (commonly
5 referred to as the “Clean Water Act”) and the California Porter-Cologne Water Quality Control
6 Act (Cal. Wat. Code § 13000 et seq.) authorize the California State Water Resources Control
7 Board (State Water Board) and the nine California Regional Water Quality Control Boards
8 (Regional Water Boards) (collectively, Water Boards) to regulate and protect water quality in
9 California. The Water Boards’ mission is to preserve, enhance, and restore the quality of
10 California’s water resources and drinking water for the protection of the environment, public
11 health, and all beneficial uses for the benefit of present and future generations.

12 6. Each Regional Water Board—including the San Diego Water Board—is required to
13 prepare a water quality control plan (also referred to as a “basin plan”) setting forth the water
14 quality standards for all surface waters and groundwaters within the region, as well as programs
15 of implementation. *See* Cal. Water Code §§ 13050(j), 13240-13248. Water quality standards
16 consist of the beneficial uses of a water body and the water quality objectives (or “criteria” under
17 Clean Water Act terminology) designated to protect those beneficial uses. 40 C.F.R. §§ 131.2,
18 131.10-131.15; Cal. Wat. Code §§ 13050(f), (h), 13241. “Beneficial uses” of water refers to the
19 resources, services, and qualities they support or could support, e.g., drinking, recreation, critical
20 habitat, etc. Cal. Wat. Code § 13050(f); 40 C.F.R. § 131.10. “Water quality objectives” are
21 limits on levels of pollutants in a water body designed to ensure that the water quality is adequate
22 to support the designated beneficial uses for that water body. Cal. Wat. Code §§ 13050(h),
23 13241; 40 C.F.R. § 131.11.

24 7. The Water Quality Control Plan for the San Diego Region (Basin Plan), adopted by
25 the San Diego Water Board, contains water quality standards and programs of implementation
26 and serves as the legal, technical, and programmatic basis of water quality regulation in the
27 Board’s region. Cal. Wat. Code § 13240; 33 U.S.C. § 1313; 40 C.F.R. § 131.4. The Basin Plan
28 is designed to preserve and enhance water quality in the region and to protect the beneficial uses

1 of all regional waters. A copy of the current Basin Plan is available on the San Diego Water
2 Board’s website at https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/

3 The Basin Plan has been approved by the State Water Board and has the full force and
4 effect of regulation. Cal. Code Regs., tit. 23, § 3960 et seq; Cal. Gov Code § 11353.

5 8. The San Diego Water Board protects the water quality of water bodies within the San
6 Diego Region, including Tijuana River and Otay River, and washes and ephemeral streams that
7 drain into and serve as to tributaries to these water bodies, all of which are located near
8 California’s border with Mexico. These surface waters generally constitute jurisdictional waters
9 of the United States under the Clean Water Act and are also waters of the state under the
10 California Porter-Cologne Water Quality Control Act. 33 U.S.C. § 1362; Cal. Wat. Code §
11 13050(e).

12 9. The San Diego Water Board implements the water quality objectives contained in the
13 Basin Plan through the issuance of several different types of permits and other orders and
14 certifications to protect water quality. *See, e.g.*, Cal. Wat. Code § 13263 (waste discharge
15 requirements “shall implement any relevant water quality control plans that have been adopted,
16 shall take into consideration the beneficial uses to be protected, the water quality objectives
17 reasonably required for that purpose...”); 33 U.S.C. § 1342 (federal Clean Water Act permits
18 must conform to state water quality standards). In addition to the traditional NPDES permits for
19 domestic, municipal, and industrial wastewater discharges to surface waters (under Clean Water
20 Act Section 402), the Water Boards issue NPDES permits to address storm water runoff from
21 construction activities that may result in discharges into the jurisdictional waters of the United
22 States. Pursuant to section 313 of the Clean Water Act (33 U.S.C. § 1323), federal agencies and
23 departments are required to comply with the requirements of California’s NPDES permitting
24 program.

25 10. The San Diego Water Board also issues water quality certifications under Section 401
26 of the Clean Water Act for projects that involve the discharge of dredged or fill material into
27 waters of the United States, including rivers and streams and wetlands. Under Section 401, every
28 applicant for a federal permit or license for any activity that may result in a discharge to

1 jurisdictional waters must obtain a water quality certification from the appropriate Water Board
2 demonstrating that the proposed activity will comply with state water quality standards and with
3 any other appropriate requirements of state law. The federal permit, such as a permit issued by
4 the United States Army Corps of Engineers under Clean Water Act Section 404, allowing a party
5 to dredge and fill within or near a water body, cannot be issued unless the state grants or waives
6 certification. 33 U.S.C. §§ 1341, 1344; Cal. Wat. Code §§ 13260, 13376.

7 11. A Section 401 water quality certification ensures that the project complies with water
8 quality objectives for waters impacted by the project, and that the project will not harm or impair
9 the waters' beneficial uses designated in the San Diego Water Board's Basin Plan. Water quality
10 certifications typically include requirements for implementing best management practices (BMPs)
11 that the project proponent must follow in order to minimize the project's impacts on water
12 quality. BMPs are scheduling of activities, prohibitions of practices, maintenance procedures,
13 and other management practices to prevent or reduce the discharge of pollutants to waters of the
14 United States. BMPs also include treatment requirements, operating procedures, and practices to
15 control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material
16 storage. Water quality certifications can also require compensatory mitigation to offset loss of
17 aquatic resource functions from unavoidable project impacts to waters of the United States. *See*
18 Cal. Wat. Code § 13263; 40 C.F.R. § 230.93.

19 12. The San Diego Water Board has reviewed and processed several applications for
20 Section 401 water quality certifications submitted to the Board by federal agencies for projects
21 within the San Diego Region. These have included applications submitted by the United States
22 Army Corps of Engineers, and I am aware of a pending application by CBP.

23 13. I have reviewed a list of additional border-barrier projects that the federal
24 government plans to construct in San Diego County, California, as outlined in the table attached
25 as Exhibit 1 to the Declaration of Heather Leslie. (2808 Project Table). I received the 2808
26 Project Table from counsel of record for the State of California. I also reviewed the projects
27 described in the "List of Military Construction Projects" that Defendants filed on September 3,
28 2019, [ECF Doc. No. 206-2] (2808 Project List). The 2808 Project Table and 2808 Project List

1 include two border-barrier projects, San Diego 4 and San Diego 11, that will be constructed in
2 areas under the jurisdiction of the San Diego Water Board.

3 14. The 2808 Project List states that San Diego 4 includes construction of 1.5 miles of
4 new primary pedestrian fencing starting 3.6 miles east of the Otay Mesa Port of Entry and
5 extending east, and also construction of 2 miles of new secondary pedestrian fencing for this
6 same stretch of the border. San Diego 11 involves construction of approximately 3 miles of new
7 secondary pedestrian fencing starting 2 miles west of the Tecate Port of Entry and extending to
8 1.5 miles east of the Tecate Port of Entry. I also reviewed the coordinates in the 2808 Project
9 Table to confirm the locations of San Diego Project 4 and San Diego Project 11.

10 15. I am generally familiar with the steel bollard style pedestrian fencing that has been
11 constructed by CBP over the past year in California, and understand that the construction of
12 similar fencing is proposed for San Diego Projects 4 and 11. The construction of these types of
13 barriers necessarily involves the use of heavy equipment, excavation and digging. Similarly, the
14 construction of roadways near the border barriers necessarily requires grading and significant soil
15 disturbances.

16 16. San Diego Project 4 is being constructed near the Tijuana River, and within and near
17 washes and ephemeral streams that drain into the Tijuana River. Possible impacts to the Tijuana
18 River from this project include sediment being discharged into the River, along with other
19 pollutants like metals and pesticides that are contained in the sediment. Vernal pools near the
20 project site may also be impacted during project construction, as the roads providing site access
21 go through vernal pool areas. Transporting heavy construction equipment on these roads, and any
22 road improvements needed for project construction, could damage vernal pools. In Southern
23 California, vernal pools are shallow depressions overlying impermeable substrates, typically clay
24 hardpans, which fill with winter rainfall and retain ponded water through the spring. These
25 seasonal wetlands are habitat for numerous protected species such as the San Diego Fairy Shrimp
26 and the Riverside Fairy Shrimp, both of which are endangered under the federal Endangered
27 Species Act. Because much of the vernal pool habitat in Southern California has been destroyed,
28 preserving the remaining vernal pool habitat is critical for these species' recovery. San Diego

1 Project 4 could normally not proceed without a Section 404 dredge and fill permit issued by the
2 United States Army Corps of Engineers, which would in turn compel a Section 401 water quality
3 certification for the project issued by the San Diego Water Board.

4 17. The same is true for San Diego Project 11. That project will also impact
5 jurisdictional waters including the Tijuana River, and washes and ephemeral streams that drain
6 into the Tijuana River, by discharging sediment which is a physical pollutant that increases
7 turbidity, and also further impairs water quality by transporting other pollutants such as nutrients,
8 metals, pesticides, and oils and grease into the water body. San Diego Project 11 could normally
9 not proceed without a Section 404 dredge and fill permit issued by the United States Army Corps
10 of Engineers, which would in turn compel a Section 401 water quality certification issued by the
11 San Diego Water Board.

12 18. Due to their nature and location of construction, San Diego Projects 4 and 11 normally
13 would also require enrollment in the State Water Board's statewide NPDES Construction General
14 Permit,¹ which is enforced by the San Diego Water Board in the region. The proposed
15 construction for these two projects poses a high risk for storm water run-off impacting water
16 quality during the construction phase and post-construction maintenance. The Construction
17 General Permit requires the preparation and implementation of a Storm Water Pollution
18 Prevention Plan (SWPPP) to ensure construction and post-construction activities do not adversely
19 impact water quality. The permit requires a risk assessment of pollutants being discharged to
20 surface waters, and that the SWPPP include a description of: (a) the specific project activities that
21 threaten water quality (i.e., characterization of potential sources of storm water pollution and their
22 pollutants); and (b) specific best management practices and other measures that will be
23 implemented by the project proponent for project-specific activities during construction to
24 prevent and minimize adverse water quality impacts.

25 19. The authority of the State and Regional Water Boards under the NPDES permitting
26 program and the Section 401 water quality certification program are necessary to ensure that

27 ¹ *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm*
28 *Water Discharges Associated with Construction and Land Disturbance Activities*, State Water
Board Order No. 2009-0009-DWQ, NPDES No. CAS000002 (as amended).

1 projects within the San Diego Region are constructed in a way that is consistent with the state's
2 water quality objectives and in a way that protects the beneficial uses for affected water bodies.
3 Without such permitting authority, the San Diego Water Board and other Water Boards lose
4 critical tools for implementing applicable water quality objectives and enforcing California water
5 quality laws.

6 I declare under penalty of perjury that the foregoing is true and correct and that this
7 declaration was executed on October 9 2019, in San Diego, California.

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EXHIBIT 4

1 XAVIER BECERRA
 Attorney General of California
 2 ROBERT W. BYRNE
 SALLY MAGNANI
 3 MICHAEL L. NEWMAN
 Senior Assistant Attorneys General
 4 MICHAEL P. CAYABAN
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14
 15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 17 OAKLAND DIVISION
 18

19
 20 **STATE OF CALIFORNIA; STATE OF**
COLORADO; STATE OF
 21 **CONNECTICUT; STATE OF**
DELAWARE; STATE OF HAWAII;
 22 **STATE OF ILLINOIS; STATE OF**
MAINE; STATE OF MARYLAND;
 23 **COMMONWEALTH OF**
MASSACHUSETTS; ATTORNEY
 24 **GENERAL DANA NESSEL ON BEHALF**
OF THE PEOPLE OF MICHIGAN;
 25 **STATE OF MINNESOTA; STATE OF**
NEVADA; STATE OF NEW JERSEY;
 26 **STATE OF NEW MEXICO; STATE OF**
NEW YORK; STATE OF OREGON;
 27 **STATE OF RHODE ISLAND; STATE OF**
VERMONT; COMMONWEALTH OF
 28 **VIRGINIA; and STATE OF WISCONSIN;**

4:19-cv-00872-HSG

**DECLARATION OF CHRISTOPHER D.
 NAGANO IN SUPPORT OF MOTION
 FOR PARTIAL SUMMARY JUDGMENT
 REGARDING SECTION 2808
 PROJECTS AND NEPA**

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Plaintiffs,

v.

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

Defendants.

1 I, Christopher D. Nagano, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below. As to those matters
4 which reflect an opinion, they reflect my personal opinion and judgment on the matter.

5 2. I reside in Washougal, Washington.

6 3. I am a staff member of the Center for Biological Diversity, where I have served as
7 a senior scientist in the Center's Endangered Species Program since 2017. At the Center, I work
8 to protect imperiled species, particularly reptiles and invertebrates such as butterflies, lady
9 beetles, and tiger beetles. I work in conjunction with campaigners, lawyers, policy experts and
10 other scientists to achieve this goal.

11 4. Prior to coming to the Center, I worked for 27 years, from 1989 to 2016, as an
12 endangered species entomologist/ecologist, endangered species biologist, Endangered Species
13 Division Chief, and Deputy Assistant Field Supervisor with the U.S. Fish and Wildlife Service
14 ("FWS" or "Service") based in Carlsbad and Sacramento, California, and Albuquerque, New
15 Mexico. At the FWS, I worked on nearly all aspects of the Endangered Species Act, including
16 section 7, habitat conservation plans, listing, recovery, and law enforcement.

17 5. I was the Chief of the Endangered Species Division at the New Mexico Ecological
18 Services Office for 1 ½ years. I was responsible for the protection, conservation, and recovery of
19 listed species throughout the Land of Enchantment, including at the US/Mexico border area. I
20 also completed endangered species-related details in five other states.

21 6. Prior to going to the Service, I worked for several years in the mid-late 1980s as a
22 research associate in the Entomology Section at the Natural History Museum of Los Angeles
23 County. While at the Natural History Museum, I worked on "soft money" funded projects
24 investigating the western migration of the Monarch butterfly, and comprehensive surveys of the
25 terrestrial invertebrate fauna of two coastal southern California wetlands.

26 7. I have a Master of Environmental Studies degree from the Yale School of Forestry
27 and Environmental Studies; for my graduate work I investigated the international trade in
28 butterflies. During this period, I was an intern working on endangered species issues at the

1 Environmental Defense Fund in Washington, D.C. for Michael J. Bean, now retired Deputy
2 Assistant Secretary for Fish, Wildlife and Parks at the Department of Interior. In sum, I have
3 dedicated my career to the scientific research and protection of endangered and threatened
4 species.

5 8. As a scientist at the Center focused on the conservation and eventual recovery of
6 imperiled animals, especially reptiles and invertebrates, I have a profound professional interest in
7 researching and finding whether certain animal species warrant new or continued federal
8 protection under the Endangered Species Act (“ESA” or “Act”) and ensuring that the Act’s
9 procedural and substantive protections are enforced. As a veteran of the FWS, I understand the
10 critical role that non-governmental organizations, like the Center, play in ensuring that these
11 procedural and substantive protections are adhered to and carried out, particularly the requirement
12 for interagency consultation pursuant to section 7 of the ESA. I am committed to playing this
13 outside monitoring role to ensure that the government is carrying out its statutory duties toward a
14 listed species’ continued survival and ultimate recovery in the wild.

15 9. I have an extensive working knowledge of section 7 of the ESA. During my 27-
16 year career with the FWS, I conducted literally hundreds of informal consultations and many
17 dozens of formal consultations with many Federal agencies ranging from the Bureau of
18 Reclamation to the National Park Service. This involved providing guidance to Federal agencies
19 in the process of complying with the section 7 process, including instruction and assistance in
20 making their effects determinations as to whether their projects were “no effect,” “may affect, not
21 likely to adversely affect,” or “may affect, likely to adversely affect” listed species and critical
22 habitat. I also reviewed their projects to ascertain if their project description was accurate, and
23 whether the FWS concurred with their effects determination; and if the action was likely to
24 adversely affect the survival and recovery in the wild of listed species, as well as whether the
25 action was likely to adversely modify or destroy designated critical habitat. If the project was not
26 likely to jeopardize a listed species and/or adversely modify or destroy critical habitat, I made the
27 recommendation for or authorized the anticipated amount of incidental take, and the appropriate
28 reasonable and prudent measures for the project. I am familiar with the new regulations for

1 section 7 of the ESA that were issued by the Trump Administration on August 27, 2019 (Federal
2 Register 84(166): 44976-45018) and the changes from the previous section 7 regulations.

3 10. During my career with the FWS, I routinely reviewed projects proposed by
4 federal, state and local agencies, and non-governmental parties for their potential effects on non-
5 listed wildlife, plants, and their habitats pursuant to the National Environmental Policy Act
6 (“NEPA”). I also reviewed projects to ensure compliance with the Fish and Wildlife
7 Coordination Act, Migratory Bird Treaty Act, and the FWS Mitigation Policy of 1956. My
8 efforts involved assessments of project impacts on non-listed wildlife and plants, and their
9 habitats, as well as review of the proposed mitigations and development of additional measures, if
10 appropriate.

11 11. While at the U.S. Fish and Wildlife Service, one of the issues that I focused on,
12 analyzed, and encouraged other agencies and non-governmental parties to first avoid, and if not
13 possible, to mitigate, was the effect of barriers, such as highways and roadways, on the long-term
14 movement of listed animals and wildlife. The ability of many animals to move to new areas or
15 between portions of their home range is critical for ensuring they do not become extinct or
16 extirpated.

17 12. Another issue that I focused on at the FWS was the indirect adverse effects of a
18 project, or as they are now called in the new section 7 regulations, consequences, on listed
19 animals and wildlife. 50 CFR § 402.02 defines “effects of the action” as “... all consequences to
20 listed species or critical habitat that are caused by the proposed action, including the
21 consequences of other actions that are caused by the proposed action. A consequence is caused
22 by the proposed action if it would not occur but for the proposed action and it is reasonably
23 certain to occur. Effects of the action may occur later in time and may include consequences
24 occurring outside the immediate area involved in the action.” Some consequences, formerly
25 known more accurately as indirect effects, can have adverse impacts on listed species that are
26 greater and much longer lasting than the direct effects (also now considered to be consequences)
27 of a project. An example of such a consequence (indirect effect) is silt from the construction of a
28

1 road washing into a pond inhabited by the tadpoles of a listed frog after project construction has
2 been completed, and results in the animals dying because their gills become coated with dirt.

3 13. I am gravely concerned by the failure of the Department of Defense (“DOD”),
4 Department of Homeland Security (“DHS”) and Customs Border Patrol (“CBP”) to comply with
5 the ESA for segments El Paso 2 and El Paso 8 of their proposed border wall in New Mexico. As
6 they are required, these agencies failed to consult with FWS on the effects of the proposed border
7 wall on the endangered jaguar (*Panthera onca*) and its designated critical habitat, threatened
8 Chiricahua leopard frog (*Rana chiricahuensis*), and endangered and Experimental Nonessential
9 Populations of the Mexican wolf (*Canis lupus baileyi*) and the Aplomado falcon (*Falco femoralis*
10 *septentrionalis*).

11 14. Based on my background in the ecology and biology of the jaguar and its critical
12 habitat, and the Chiricahua leopard frog, Mexican wolf, and Aplomado falcon, and my experience
13 with them while I was stationed at the FWS New Mexico Ecological Services Office, as well as
14 my professional experience and knowledge dealing with the effects (=consequences) of human
15 and natural effects on threatened and endangered plants and animals, I recognize and understand
16 the credible threat that the border wall construction poses to these four listed animals and critical
17 habitat for the jaguar.

18 15. El Paso 2 and El Paso 8 are located in the “Bootheel” of New Mexico, a region of
19 the United States and northern Mexico where six distinct biological provinces overlap with a
20 concomitant extremely high diversity of plant and animal species (World Wildlife Fund and Sky
21 Island Alliance.2003. Natural heritage of the Peloncillo Mountain region. Tucson, Arizona).
22 Much of the Bootheel is uninhabited by humans, and still has extensive amounts of natural
23 habitats. These factors make the area among the most diverse biological regions in North
24 America. There are at least 879 species of plants, 89 species of reptiles and amphibians (72% of
25 the 123 species recorded in New Mexico), 91 mammal species (more than all of the mammal
26 species in the entire State of Pennsylvania), and 318 species of birds including 23 species listed as
27 threatened or endangered by the State of New Mexico.
28

1 16. In May 2019, I visited the Animas Valley of the “bootheel” region of Hidalgo
2 County, New Mexico, to specifically observe the habitats of the jaguar and its critical habitat, the
3 Chiricahua leopard frog, Mexican wolf, Gila monster and other wildlife, and current land uses in
4 the area.

5 17. The endangered jaguar was historically found throughout the southwestern United
6 States with occurrences recorded from Arizona, New Mexico, California, Texas, and perhaps
7 Oklahoma and Colorado (M.J. Robinson *et al.* undated. Suitable habitat for jaguars in New
8 Mexico. Center for Biological Diversity, Tucson, Arizona). Today, only a few individuals
9 remain in the United States as a result of hunting, trapping, poisoning, and habitat loss. El Paso 2
10 is located within 50 miles of recently documented jaguar occurrences, and the project areas for
11 both El Paso 2 and El Paso 8 contain suitable habitat that is essential for the recovery for this
12 endangered animal (*ibid*). There are many springs, seeps, stock tanks, and seasonal and
13 permanent springs in this area that provide sources of drinking water for the big cats; and there is
14 an abundance of Coues deer, javelina, rodents, skunks, jackrabbits, and other prey species. Based
15 on the project coordinates that Defendants have provided, El Paso 8 is located adjacent to this
16 designated critical habitat for the jaguar.

17 18. Only very minimal information has been made available by DOD, DHS, and CBP
18 on El Paso 2 and El Paso 8 –construction methods and equipment, timing of construction, number
19 of construction personnel, night lighting, operation and maintenance, and other basic information
20 which federal agencies routinely supply, even for projects of an emergency nature have
21 apparently not been publically disclosed. The DOD has provided the approximate geographical
22 coordinates (=latitude and longitude) of El Paseo 2 and El Paso 8, but based on my 27 years
23 reviewing projects for their effects on federally listed species, this information is not sufficient for
24 allowing a full assessment of the projects’ impacts on wildlife. However, even with the lack of
25 any specificity or meaningful information, it is clear the proposed project will result in harm and
26 harassment to the jaguar. The big cat will avoid using or abandon the area while construction is
27 underway, and when finished, the border wall will result in the significant reduction in its ability
28 to move between the United States and Mexico.

1
2 19. Even if El Paso 2 and El Paso 8 are not located within jaguar critical habitat, the
3 area in the Bootheel where these two Border Wall segments are proposed contains one or more
4 habitat components which would be considered primary constituent elements essential to the
5 conservation of the jaguar if they were located within designated critical habitat for this
6 endangered cat. These primary constituent elements include: (a) expansive open spaces in the
7 southwestern United States which are at least 32 to 38.6² miles in size; (b) provide connectivity to
8 Mexico; (c) contain adequate levels of native prey species including deer and javelina, as well as
9 medium-sized prey such as coatis, skunks, raccoons, or jackrabbits; (d) include surface water
10 sources within 12.4 miles of each other; (e) contain greater than 1 to 50 percent canopy cover
11 within Madrean evergreen woodland, generally recognized by a mixture oaks, juniper, and pine
12 trees on the landscape, or semidesert grassland vegetation communities usually characterized by
13 tobosa grass or black gamma grass along with other grass species; (f) are characterized by
14 intermediately, moderately, or highly rugged terrain; (g) are below 6,562 feet in elevation; and (h)
15 are characterized by minimal to no human population density, no major roads, and no stable
16 nighttime lighting over any 0.4 mile² area.

17 20. Based on my 27 years administering the Endangered Species Act, including the
18 review and oversight of hundreds of section 7 consultations for federal projects, and my
19 knowledge of the jaguar and other listed species which are highly imperiled, it is my professional
20 opinion that segments El Paso 2 and El Paso 8 along with their associated consequences
21 (=adverse effects) in what is the most important area for this large cat to cross between the United
22 States and Mexico, almost certainly will significantly contribute to the elimination of this
23 imperiled animal in the United States. If the pedestrian wall can keep humans out, it will keep
24 jaguars out. Fewer jaguars entering the United States will result a smaller resident population and
25 fewer individuals available to mate with each other causing a decline and eventual loss of this
26 legendary large cat in this Country.

27 21. The threatened Chiricahua leopard frog inhabits cienegas, livestock tanks, ponds,
28 reservoirs, streams and rivers in northern Sonora, Chihuahua, and Durango in Mexico, central and

1 southeastern Arizona, and west central and southwestern New Mexico. Its range includes the
2 area where El Paso 2 and El Paso 8 are proposed in the Bootheel. According to the FWS, the
3 animal has continued to decline in New Mexico since it was listed in 2002 (FWS. 2011.
4 Chiricahua leopard frog (*Lithobates [=Rana] chiricahuaensis*) 5-year review: summary and
5 evaluation. Arizona Field Office, Phoenix, Arizona). The threats to the Chiricahua leopard frog
6 in this area of range include predation by non-native fishes, disease (chrtidomycosis fungus),
7 wildfire, drought, and habitat destruction. El Paso 2 and El Paso 8 will act cumulatively with
8 these factors to reduce the chances of its recovery, including by damaging or destroying the frog's
9 habitat and its ability for foraging, resting, breeding, and movement.

10 22. Based on my 27 years administering the Endangered Species Act, including the
11 review and oversight of hundreds of section 7 consultations for federal projects including many
12 dozens of informal and formal consultations for the threatened California red-legged frog (*Rana*
13 *draytonii*), a listed amphibian species with a similar ecology and biology to the Chiricahua
14 leopard frog, it is my professional opinion the construction and operation of El Paso 2 and El
15 Paso 8 will have consequences (=adverse effects) on the threatened *Rana chiricahuaensis*.
16 Construction may result in animals being injured, killed, or harassed by equipment, workers, and
17 vehicles, falling into trenches or pits and dying from exposure or suffocating after being covered
18 with dirt and other debris, poisoned by oil, fuel leaks and other chemical contaminants from
19 vehicles and mechanical equipment, eaten by coatis and other omnivorous animals attracted to the
20 work sites by discarded human food and trash; and once the pedestrian wall is in place, loss of the
21 ability to move between breeding ponds and upland areas, loss of aestivation and wintering sites,
22 and being run over by CBP vehicles.

23 23. The Center for Biological Diversity is aware of reports from reliable observers
24 who have seen Mexican wolves in the Bootheel region of New Mexico in recent times. The
25 entire region currently contains suitable habitat for this animal to move through the area and find
26 food and shelter, and also includes other biological and physical features that are essential for the
27 Wolf's successful survival.
28

1 24. The unimpeded movement of Mexican wolves between the United States and
2 Mexico is critical for increasing and maintaining their genetic diversity in both countries, and
3 especially to ensure their survival and recovery in Mexico.

4 25. The pedestrian wall will adversely affect, and likely restrict or eliminate the ability
5 of Mexican wolves to move on their own volition between Mexico and the United States. Since
6 the pedestrian walls will be effective in prohibiting the entry of humans, they also will restrict or
7 prevent the movement of Mexican wolves between the two nations, including animals from the
8 United States into Mexico. The Mexican wolves inhabiting Mexico could also be harassed by
9 construction of the border wall. These impacts—particularly the restrictions on the wolf’s
10 movement—undermine the wolf’s ability in both the United States and Mexico to survive and
11 recover.

12 26. The FWS has designated the Mexican wolf on the northern side of the
13 U.S./Mexico border as an Experimental Nonessential Population under section 10(j) of the ESA.
14 It is unclear if the authorized take of the Mexican wolf described in the final rule for the
15 Experimental Nonessential Population was intended to include massive habitat destroying,
16 movement blocking projects, such as the proposed border wall. The Experimental Nonessential
17 Population designation did not include endangered Mexican wolves that inhabit the Republic of
18 Mexico. Therefore, the section 9 prohibitions of the ESA against harm of a listed animal apply to
19 the endangered Mexican wolves in Mexico who could be harmed through the El Paso 2 and El
20 Paso 8 by eliminating the ability of individuals from the US dispersing into Mexico, where they
21 will prevent genetic problems such as inbreeding by providing much needed genetic diversity. In
22 turn, wolves from Mexico will be prevented from entering the US and providing genetic diversity
23 in to the experimental non-essential population. Therefore, any Mexican wolf residing in Mexico
24 is currently listed as endangered under the ESA, and is not part of the Experimental Nonessential
25 Population designated for this species, and the effects of the proposed border wall on them must
26 be analyzed by DOD, DHS and CBP pursuant to section 7 of the ESA. Failure to consult by
27 DOD, DHS and CBP not only could violate section 7(a)(2) of the ESA, but the border wall could
28 eliminate the possibility of the survival and recovery of the endangered Mexican wolf in the

1 Republic of Mexico, and thus all of these federal agencies, as well as the FWS by remaining
2 silent, would violate section 7(a)(1) of the ESA.

3 27. The construction of El Paso 2 and El Paso 8 will likely also harm the federally –
4 protected Aplomado falcon. This raptor is present in the bootheel of New Mexico and habitat
5 exists in the project area and adjacent areas in Mexico (R.A. Meyer and S.O. Williams. 2005.
6 Recent nesting and current status of Aplomado falcon (*Falco femoralis*) in New Mexico. North
7 American Birds 59(2): 352-356; FWS. 2014. Northern Aplomado falcon (*Falco femoralis*
8 *septentrionalis*). 5-year review summary and evaluation. New Mexico Field Office,
9 Albuquerque, New Mexico). The dispersal of falcons from the US into the Republic of Mexico
10 may be preventing long-term problems such as the inbreeding of closely related individuals by
11 providing genetic diversity. Again, the FWS has designated this imperiled raptor on the northern
12 side of the U.S./Mexico border as an Experimental Nonessential Population pursuant to section
13 10(j) of the ESA. Again, the Experimental Nonessential Population designation does not include
14 the endangered Aplomado falcons on the Mexican side of the U.S./Mexico border. Therefore, the
15 section 9 prohibitions of the ESA protecting listed animals apply to the birds from Mexico which
16 could be harmed or harassed by construction activities of the proposed border wall for El Paso 2
17 and El Paso 8. In 2005, agricultural development resulted in the extensive conversion of portions
18 of occupied habitat in the State of Chihuahua, Mexico. The Sonoran Joint Venture, a partnership
19 of organizations and individuals in the southwestern United States and northwestern Mexico,
20 including the FWS, expressed concern that the extirpation of the Aplomado falcon in Chihuahua
21 in the coming decades is imminent (<https://sonoranjv.org/aplomado-falcons-chihuahua>. Accessed
22 on September 18, 2019). And just as in the case of the Mexican wolf, any individual of the
23 Aplomado falcon found within Mexico is not part of the Experimental Nonessential Population,
24 so the effects of the proposed border wall to the population in Mexico must be analyzed by DOD,
25 DHS and CBP. Failure to consult by DOD, DHS and CBP, and the continued silence of the
26 FWS, would violate the requirements of section 7(a)(2) of the ESA.

27 28. It is critical that DOD, DHS and CBP comply with section 7(a)(2) of the ESA
28 because it mandates that federal agencies must ensure they do not jeopardize listed species or

1 adversely modify or destroy designated critical habitat. Neither DOD, CBP nor DHS have
2 completed, let alone initiated the section 7 process for the jaguar and its critical habitat, the
3 Chiricahua leopard frog, the endangered and Experimental Nonessential Populations of the
4 Mexican wolf and the Aplomado falcon, nor on members of the wolf and falcon which are listed
5 as endangered species. It is the section 7 process which should reveal effects to these four
6 animals, including whether the proposed action will jeopardize them, whether the proposed action
7 will result in adverse modification or destruction of critical habitat, and the appropriate
8 conservation measures for the project. Without this fundamental adherence to the law, DOD,
9 CBP and DHS will not be fulfilling their statutory responsibilities under section 7(a)(2) of the
10 ESA for the endangered jaguar and its designated critical habitat, threatened Chiricahua leopard
11 frog, endangered Mexican wolf and endangered Aplomado falcon. In addition, these three
12 federal agencies and the silent FWS apparently will not be carrying out any recovery actions
13 pursuant to section 7(a)(1) of the ESA, thereby exacerbating the negative effects of the border
14 wall. There will be irreparable harm to these four listed species and critical habitat without the
15 completion of section 7 consultation by these three federal agencies, and the currently silent
16 FWS.

17 29. In addition to the ESA, I am very disturbed by DOD, DHS and CBP's failure to
18 comply with NEPA. Given the lack of an adequate assessment of the project on the environment,
19 the potential effects of the proposed project on sensitive habitats, as well as non-listed, but
20 imperiled species, remains unknown. The border wall construction and associated activities
21 including vehicle traffic, road building, horseback and quad patrols, night lighting, and other
22 associated human and law enforcement activities could permanently alter the geography, impact
23 native vegetation and plant communities, especially by improving habitat conditions for invasive
24 weeds, and adversely impact the existing natural ecosystems.

25 30. The earth moving and associated disturbance caused by border wall construction
26 will create habitat for invasive exotic plants and weeds which outcompete and replace native
27 plants. These exotic species initiate a downward spiral of increasingly destructive effects to
28 native plants, and native animals that are dependent on the native vegetation for food, as well as

1 the predators that feed on them. The seeds of exotic weeds from other areas are easily transported
2 within dried mud or dirt on construction equipment, or unintentionally by CBP cars, trucks, horse
3 trailers, quads, and the hooves and fur of their patrol horses. Listed species, wildlife, and plants
4 across the surface of the Earth are imperiled by invasive exotic plants. In the 1990s, then
5 Secretary of Interior Bruce Babbitt warned that invasive species are one of the biggest threats to
6 listed species.

7 31. The Gila monster (*Heloderma suspectum*), is an iconic large orange and black
8 colored venomous lizard that inhabits both sides of the international border from west of El Paso,
9 Texas into Arizona. This legendary reptile is listed as endangered by the State of New Mexico.
10 Its 2017 recovery plan issued by the New Mexico Department of Game and Fish (Gila Monster
11 (*Heloderma suspectum*) Recovery Plan by John Bulger dated April 5, 2017) and other
12 publications (W.G. Degenhardt *et al.* 1996. Amphibians and reptiles of New Mexico. University
13 of New Mexico Press, Albuquerque, New Mexico; C.H. and E.M. Ernest. 2011. Venomous
14 reptiles of the United States, Canada, and northern Mexico Volume I *Heloderma, Micruroides,*
15 *Micurus, Pelamis, Agkistrodon, Sistrurus.* John Hopkins University Press, Baltimore, Maryland;
16 D.D. Beck. 2005. Biology of Gila monsters and beaded lizards. University of California Press,
17 Berkeley, California), document the animal has been collected or observed in at least one location
18 in the bootheel of New Mexico, and is found throughout this region of the State.

19 32. Gila monsters in New Mexico are typically found in Chihuahuan desert scrub, and
20 grassland habitat most commonly associated with rocky areas of mountain foothills and canyons.
21 Dominant vegetation in occupied and suitable sites includes creosote bush, catclaw, snakeweed,
22 ocotillo, mesquite, juniper, cacti, sotol, and numerous grasses. Small trees, shrubs, and
23 herbaceous vegetation provide important cover and food for the Gila monster's prey. The
24 recovery plan and the other publications reported that Gila monsters in New Mexico prefer
25 relatively coarse gravelly conglomerate soils and areas of loam and sand. Of paramount
26 importance is availability of suitable refuge shelters, which occur in rock cavities and crevices,
27 pack rat mounds, and burrows created by other reptiles or mammals.

28

1 33. The recovery plan noted Gila monster home range sizes are highly variable,
2 ranging from <2.5 acres to 259 acres. Typically, Gila monsters center their activities and home
3 ranges on their refuge shelters. Individuals have tremendous fidelity to their home ranges, e.g.
4 they stay within their “home” area, according to one herpetologist (D.D. Beck, 2005. Biology of
5 Gila monsters and beaded lizards. University of California Press, Berkeley, California).

6 34. The threats from the proposed border wall to the Gila monster come in the form of
7 direct effects of wall construction such as their death or injury from construction operations,
8 falling into trenches or other holes and then dying of exposure or being buried alive; getting run
9 over by vehicles associated with the project; collected by construction personnel; and indirect
10 effects in the form of the border wall blocking their movement patterns or reducing the size of
11 individual animal’s home ranges and eliminating the available food or shelter resources.

12 35. The border wall will prevent a number of native wildlife species from moving in
13 this region of Mexico and the United States, resulting in their inability to successfully find food,
14 water, mates, and shelter. These animals include Gould’s wild turkey, mountain lions, javelinas,
15 badgers, gray foxes, and Coues deer.

16 36. Currently, we are seeing a dramatic global collapse of species that were
17 widespread and once common or even abundant. A recent scientific paper documented the loss
18 of 3 billion native birds in North America since 1970 or 29% of the abundance over the last 48
19 years, and the scientists who conducted the study expressed concern about avifaunal collapse with
20 concomitant loss of ecosystem integrity, function, and service. (K.V. Rosenberg *et al.* 2019.
21 Decline of the North American avifauna. *Science* 365(6459): 1228-1229)). The very real
22 possibility exists that another familiar and once abundant inhabitant of much of North America,
23 the monarch butterfly, will disappear from throughout large regions of the continent within the
24 span of a few decades, if not sooner. The failure by DOD, DHS and CBP to adequately analyze
25 the effects of the construction and operation on wildlife, let alone acknowledge the need to assess
26 the impacts on the environment, will result in the unnecessary loss of native plants and animals,
27 the blocking of key movement corridors for listed animals and wildlife across the US/Mexico
28

1 border, and “nickle and dime” even some common and abundant species to the point where they
2 will become imperiled and require the protection of the ESA to prevent their extinction.

3 37. These injuries to listed species, wildlife, and the environment would be redressed
4 if DOD, DHS and CBP immediately and without delay complete consultation pursuant to section
5 7 of the ESA with the FWS, and complete the environmental review process as required under
6 NEPA. The Bootheel contains one of the most biologically diverse and ecologically important
7 areas in the United States and northern Mexico, and El Paso 2 and El Paso 8 almost certainly will
8 spell doom or extreme danger to many of the plants and animals who call this region home.
9 Unfortunately, the DOD, DHS and CBP, with the apparent acquiescence of the FWS, continue to
10 maintain the shroud of darkness over the border wall which they brazenly and shamelessly
11 dropped over the project at its initiation which conceals the deleterious effects of their plan on
12 listed species, and wildlife. I am hopeful that NEPA and ESA analyses, if done properly and in
13 good faith by DOD, DHS and CBP, will ensure the survival and recovery in the wild of the
14 endangered jaguar, threatened Chiricahua leopard frog, endangered Mexican wolf and
15 endangered Aplomado falcon, and the New Mexico State-listed Gila monster, and avoid adverse
16 modification or destruction of the jaguar’s critical habitat, in addition to maintaining the health of
17 the greater ecosystem in the New Mexico borderlands region. Requiring DOD, DHS and CBP to
18 complete the NEPA process and ESA consultation will surely redress the irreparable harms to
19 listed species, wildlife, and the environment.

20
21 I declare under penalty of perjury under the laws of the United States that the foregoing is true
22 and correct.

23
24 Executed on October 8, 2019, at Portland, Oregon.

25
26
27 
28 CHRISTOPHER D. NAGANO

EXHIBIT 5

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

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

4:19-cv-00872-HSG

DECLARATION OF MYLES
TRAPHAGEN IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING SECTION
2808 PROJECTS AND NEPA

28 Plaintiffs,

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v.

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

Defendants.

1 I, Myles Traphagen, declare as follows:

2 1. I have personal knowledge of each fact stated in this declaration, and if called as
3 witness could competently testify thereto.

4 2. I am providing this declaration in response to the 10 U.S.C. section 2808 transfer of
5 Department of Defense funds to build primary and secondary steel bollard fencing in Hidalgo
6 County, in southwestern New Mexico, an area referred to commonly as the “Bootheel.” This
7 declaration specifically pertains to El Paso Project 2 and El Paso Project 8. I have worked on
8 both sides of the United States-Mexico border in this region for 22 years as a biologist.

9 **Background and Qualifications**

10 3. I hold a Master of Science Degree in Geography from the University of Arizona, and
11 a Bachelor of Arts Degree from the University of California Santa Cruz in Environmental
12 Studies. I conducted research in the Bootheel for my Master’s Degree resulting in my thesis,
13 “Habitat connectivity for the white-sided jackrabbit (*Lepus callotis*) between the United States
14 and Mexico: The border divides a species.” The white-sided jackrabbit is a New Mexico state-
15 listed threatened species, and its only population occurs exclusively in the same valleys where El
16 Paso Project 2 and El Paso Project 8 are being constructed.

17 4. Since 1996 I have conducted field surveys, inventories and research along the US and
18 Mexico border region and in Mexico. From 1996 to 1998, I worked for the US Fish and Wildlife
19 Service at San Bernardino National Wildlife Refuge in southeast Arizona conducting bird
20 surveys, native fish surveys and recovery of Rio Yaqui fishes.

21 5. From 1998 to 2008, I conducted research as a consultant for the US Forest Service
22 Rocky Mountain Research Station and Malpai Borderlands Group on the effects of fire, grazing
23 and climate in the borderlands of southwest New Mexico and southeast Arizona. During this time
24 period I also began researching the white-sided jackrabbit.

25 6. From 2000 to 2008, I worked for both Turner Enterprises and the Turner Endangered
26 Species Fund in New Mexico inventorying vegetation, monitoring bison and prairie dog
27 reintroduction, and rewilding the Bolson tortoise from Durango, Mexico. I have held permits
28 from the New Mexico Department of Game and Fish to survey wildlife in the state.

1 7. From 2007 to 2014, I was a Bureau of Land Management Authorized Biologist and
2 worked as a consultant on numerous renewable energy projects in California and Nevada,
3 surveying and translocating desert tortoise and inventorying rare plants and wildlife.

4 8. In 2010 and 2011, I conducted research for the New Mexico Department of Game
5 and Fish to assess the population status of the white-sided jackrabbit in New Mexico, specifically
6 in the El Paso Project 2 and 8 project areas. The results of this survey suggested that roadkill by
7 the U.S. Border Patrol was a significant factor leading to a threefold population decline in less
8 than decade.

9 9. My current employment as Borderlands Program Coordinator with Wildlands
10 Network involves researching and advocating for wildlife corridors and connectivity. This entails
11 a significant amount of work in Mexico on projects such as trail camera trapping, mapping, and
12 designing projects for mitigating road and highway impacts and enhancing habitat connectivity.

13 10. I am also the Science Coordinator the Malpai Borderlands Group. In that role I
14 implement research and monitoring projects such as wildlife, vegetation, climate and weather
15 monitoring, fire and grazing research and review, and coordinate a large array of projects that
16 relate directly to conservation projects in the borderlands of Arizona and New Mexico. This work
17 occurs in the El Paso Projects 2 and 8 project areas in New Mexico, and the Tucson Project 5 area
18 in Arizona.

19 11. In this declaration, I provide several examples specific to the El Paso 2 and El Paso 8
20 project sites, and to the border region more generally, to illustrate how these projects will cause
21 irreparable harm to wildlife.

22 **The Floral and Faunal Diversity of the El Paso 2 and 8 Project Areas: What's at Risk**

23 12. I have analyzed the proposed border-infrastructure projects including El Paso Projects
24 2 and 8, as outlined in the table attached as Exhibit 1 to the Declaration of Heather Leslie ("2808
25 Project Table"), and as described in the "List of Military Construction Projects" that Defendants
26 filed in this matter on September 3, 2019, [ECF Doc. No. 206-2] ("2808 Project List"). These
27 projects involve the construction of primary and secondary pedestrian fencing that will be 18 to
28 30 feet tall, based on the bollard-style pedestrian fencing used for other recent border-barrier

1 projects that Defendants have undertaken. El Paso 2 and 8 also include the construction of roads
2 and installation of lighting.

3 13. The Bootheel region, where El Paso Projects 2 and 8 are being constructed, is
4 extremely high in both plant and wildlife diversity and is the pinch point for ecological diversity
5 and species migration and dispersal in the western North American continent. The Bootheel
6 includes the Peloncillo and Sierra San Luis Mountains where 879 plant species are known to
7 occur. 25 percent of all the plant species in New Mexico occur in this region, which occupies only
8 about 2 percent of the state's area. The area harbors numerous biotic communities which include
9 riparian corridors, Chihuahuan desert scrub, desert grassland, oak woodland, pine-oak forest and
10 spruce-fir at higher elevations. The Peloncillo Mountains are the only mountain range that
11 directly connects the Sierra Madre of Mexico to the Rocky Mountains in the United States. The
12 exchange of plant and animal diversity between the northern and southern parts of the North
13 America Continent reaches its apex here.

14 14. The great diversity of plants and habitat in the Peloncillo region supports an equally
15 rich fauna where many species of invertebrates, reptiles, birds, and mammals flourish, including
16 an impressive number of endemic species. For example, 89 species of reptiles and amphibians
17 live in the Peloncillo Mountains, more than any other mountain range in New Mexico. Just one
18 small area of two square miles, Antelope Pass, harbors the highest lizard diversity of any
19 comparably sized area in the United States, and there are 14 native amphibian species despite the
20 xeric nature of the area. Mammal diversity is equally high as Hidalgo County has 91 recorded
21 species, and 75 mammal species have been recorded in the El Paso 2 and 8 project areas, a higher
22 number than Yellowstone National Park. Many birds are resident year-round, while others find
23 the region suitable habitat for summer nesting or wintering.

24 15. One crucial ecological feature of Greater Peloncillo Ecosystem is the number of intact
25 native plant and animal species existing with little competition from exotic, introduced or
26 invasive species. The building of border walls will bring a high likelihood of introducing exotic,
27 non-native plant species that could drastically alter the ecological integrity and balance of the
28 system. Following the construction of the vehicle border barrier in 2008 in the Animas Valley in

1 the same location that is now the proposed El Paso 2 Project (5.1 miles east of the Arizona/New
2 Mexico state line), non-native South African lovegrasses were introduced. The entire 60-foot
3 wide Roosevelt Easement was bulldozed to bare earth, and then heavy equipment ran across the
4 site for 6 months. The Animas Valley had been free of these exotic grasses, and the only vector
5 for spreading these seeds would have been the tires of the heavy equipment and vehicles that had
6 access to gates that are normally locked to outside traffic (Animas Foundation vegetation
7 monitoring data 2008 to 2018). Lehman lovegrass (*Eragrostis lehmanniana*) is the chief culprit.
8 During the 2010 surveys for the white-sided jackrabbit (*Lepus callotis*), no hares were observed
9 in the grasslands where the exotic Lehman lovegrass had taken over the previous two years.

10 **The White-Sided Jackrabbit- El Paso 2 and 8 Jeopardize the Continued Existence of this**
11 **New Mexico Threatened Species:**

12 16. Currently, the only area that the white-sided jackrabbit (*Lepus callotis gaillardi*)
13 inhabits in the United States is in the Animas and Playas Valleys, where the proposed El Paso 2
14 and 8 Projects are being constructed. This New-Mexico threatened species is already in distress
15 and its numbers are falling due to habitat loss and roadkill incidents from U.S. Border Patrol
16 vehicles which increased dramatically after Customs and Border Protection completed road
17 improvements in 2008. The current jackrabbit population is estimated to be 61 hares (Range
18 between 18 and 103 (CI= 42, SD .326)). This represents a 65% reduction in the population since
19 the last reliable estimates were made in 1977 and 2004.

20 17. The jackrabbit's habitat extends from the Animas and Playas Valleys into Mexico, as
21 shown on the maps attached as Exhibits A and B to this declaration. I created these maps using
22 data that I obtained when I researched the white-sided jackrabbit and its habitat and distribution
23 for my Master's thesis, and also when I worked for the New Mexico Department of Game and
24 Fish to assess the hares' population status in New Mexico.

25 18. On the U.S. side the hares chiefly live in the Animas Valley, as shown in detail on the
26 map attached as Exhibit B. These jackrabbits access their habitat in Mexico by going east and
27 crossing through a gap in the San Luis Mountains into the Playas Valley, and then into Mexico.
28 Hares in Mexico cross into the U.S. using this same route. The hares cross back and forth to avoid

1 predators, and to access food, water and mates. This habitat corridor (shown in blue on the maps
2 and labeled “Best Fit Corridor”) is the sole route the hares can utilize to access habitat on both
3 sides of the border because they cannot navigate the mountainous terrain that surrounds the
4 Animas and Playas Valleys. El Paso Project 8 completely blocks this habitat corridor, and the
5 primary and secondary pedestrian fence constructed there *would cut off the last remaining*
6 *population of the white-sided jackrabbit in the United States.* The eastern portion of El Paso 2
7 also blocks a habitat corridor for the hare. The outlook for the jackrabbit’s survival in New
8 Mexico and the United States is dismal if El Paso 2 and 8 are built due to a variety of factors that
9 include drought, climate change and a major increase in fire frequency since 1987. Non-native
10 plant invasion caused by construction of the 2008 vehicle barrier has also contributed to fuel
11 loading that has increased fire frequency, as noted in Exhibit C, a map I created that depicts fires
12 that occurred in the El Paso 2 and El Paso 8 project areas. The 2002-03 drought was considered
13 the worst drought in recorded history due to higher temperatures and lower humidity than past
14 droughts, such as the drought of the 1950’s. From 2000 to 2010 the mean number of white-sided
15 jackrabbits per survey (one of the standard measures used for line-distance sampling) had
16 declined by 55%. *See* Exhibit D attached to this declaration, which is a chart I prepared
17 illustrating this decline. From 1976 to 2010, suitable white-sided jackrabbit habitat was reduced
18 from 11,993 hectares to 5,838 hectares, representing a 51.3% loss of habitat in a 33-year period.
19 In a time of changing climates that are favoring hotter, drier conditions, arid lands mammals, like
20 the white-sided jackrabbit, need more options--not fewer--to ensure their survival. At the current
21 population level of 61 estimated individuals, genetic inbreeding is likely to be an issue. The
22 importance of genetic introgression from alternate populations is paramount. The US population
23 of *L. callotis* is already inherently isolated by virtue of complex geography. The introduction of a
24 double-barrier steel bollard pedestrian fencing would be the most significant event to alter the
25 evolutionary history of the white-sided jackrabbit since the close of the Ice-Age 10,800 years ago.

26 19. Based on the pedestrian fencing in other border-barrier projects that Defendants have
27 recently constructed, my understanding is that for El Paso 2 and 8 the fencing will be 18 to 30
28 feet high, and include steel concrete-filled bollards spaced four inches apart. The jackrabbits

1 cannot fit through the 4-inch gaps in this bollard-style pedestrian fencing because they are too big
2 and have a body width that exceeds 4 inches. Therefore, El Paso 2 and 8 will completely block a
3 critical habitat corridor for this already imperiled species and make its survival in the U.S.
4 unlikely.

5 **Border Wall Construction Will Negatively Impact Jaguar Recovery**

6 20. Construction of El Paso 2 and 8 will also harm the federally endangered jaguar
7 (*Panthera onca*), as both projects are immediately adjacent to the jaguar's critical habitat which
8 was designated by the US Fish and Wildlife Service. *See* Exhs. A, B and E to this declaration.
9 Unit 5 of the jaguar's critical habitat abuts the western portion of El Paso Project 2, and Unit 6 is
10 adjacent to El Paso Project 8, as shown in the map I created that is attached to this declaration as
11 Exhibit E. Though jaguars are elusive and are not radio-collared (making it difficult to definitely
12 confirm the number of jaguars present in the Bootheel), jaguars have been documented in this
13 region, including on conservation lands that directly adjoin the location of El Paso 2 Project in the
14 Animas Valley.

15 21. Habitat connectivity is critical to the jaguar's survival, and was a key factor in
16 designating its critical habitat as mandated by the U.S. Endangered Species Act. Wildlife
17 corridors (which facilitate habitat connectivity) are not just arbitrarily drawn on maps to illustrate
18 one's perceived impression of wildlife movement patterns. Rather, when identifying and
19 predicting wildlife corridors and connectivity, complex sets of covariates (factors) are
20 incorporated into quantitative models to determine which corridors the species in question
21 actually utilizes. Common covariates include: slope, ruggedness, vegetation, prey and predator
22 presence, proximity to water, roads, human settlements, and other significant factors that may
23 affect wildlife movement. Two published models using two different methods, Circuitscape,
24 which is based upon the principles behind electrical current flow and resistance, and Least Cost
25 Distance modeling, have arrived at similar spatial models regarding jaguar corridors and optimal
26 habitat. They show that El Paso 2 and 8 will impact the eastern-most corridor of the critical
27 habitat because they will bisect the intracontinental jaguar corridor by creating an impermeable
28 barrier. In corridor modeling, most variables that are incorporated, such as ruggedness and

1 vegetation, are malleable, and therefore are simply impedances and obstacles to wildlife. But a
2 steel border wall with the gaps of only 4 inches between the bollards will amount to an
3 impenetrable barrier that has never been seen in the entire evolutionary history of jaguar (and all
4 wildlife) of North America in this region.

5 22. The jaguar's survival depends on it being able to access habitat on both sides of the
6 U.S.-Mexican border to access prey, mate and suitable habitat. The El Paso Projects impede the
7 jaguar's recovery by blocking a key wildlife corridor.

8 **Harms to Other Wildlife Species**

9 23. El Paso Projects 2 and 8 will also block habitat corridors, in both Hidalgo and Luna
10 Counties, for many other wildlife species that currently cross back and forth over the border to
11 access habitat, vegetation, water and other resources. Common species in the project areas
12 include mule deer, bighorn sheep, pronghorn antelope, mountain lions and black bears, all of
13 which are covered by New Mexico's Wildlife Corridors Act which recognizes the need to create
14 and preserve habitat corridors for these and other species. Javelina and other more common
15 species also utilize habitat in the U.S. and Mexico. The El Paso 2 and 8 projects, particularly
16 when viewed cumulatively with other recent border-barrier projects such as El Paso Project 1, are
17 blocking wildlife corridors for these species and impeding their access to resources necessary for
18 their survival.

19 24. These border-barrier projects also negatively impact wildlife corridors for the
20 Mexican wolf which is endangered under both the New Mexico and U.S. endangered species acts.

21 I declare under penalty of perjury that the foregoing is true and correct and that this
22 declaration was executed on October 9, 2019 in Tucson, Arizona.

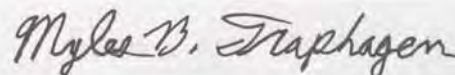
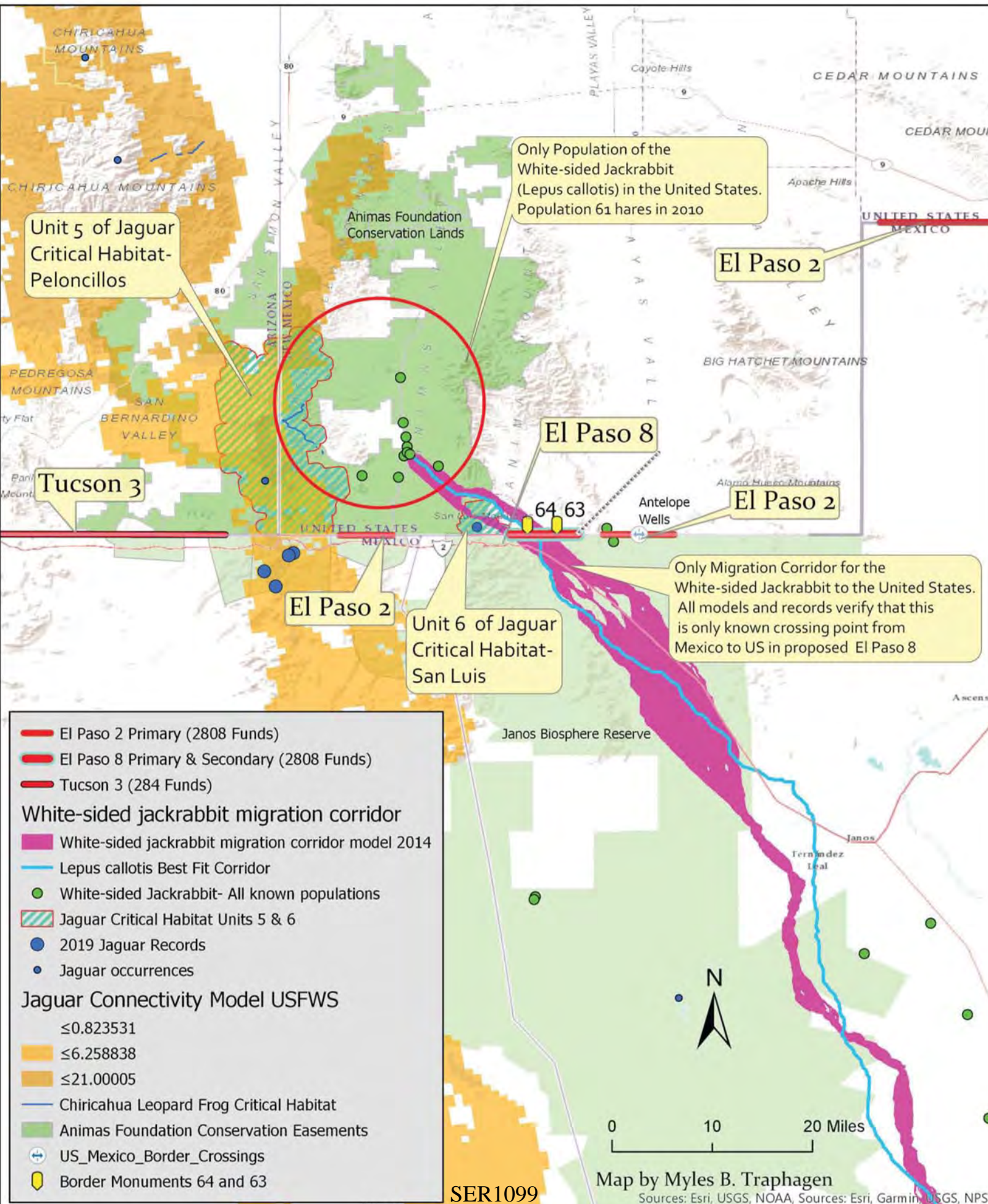
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EXHIBIT A

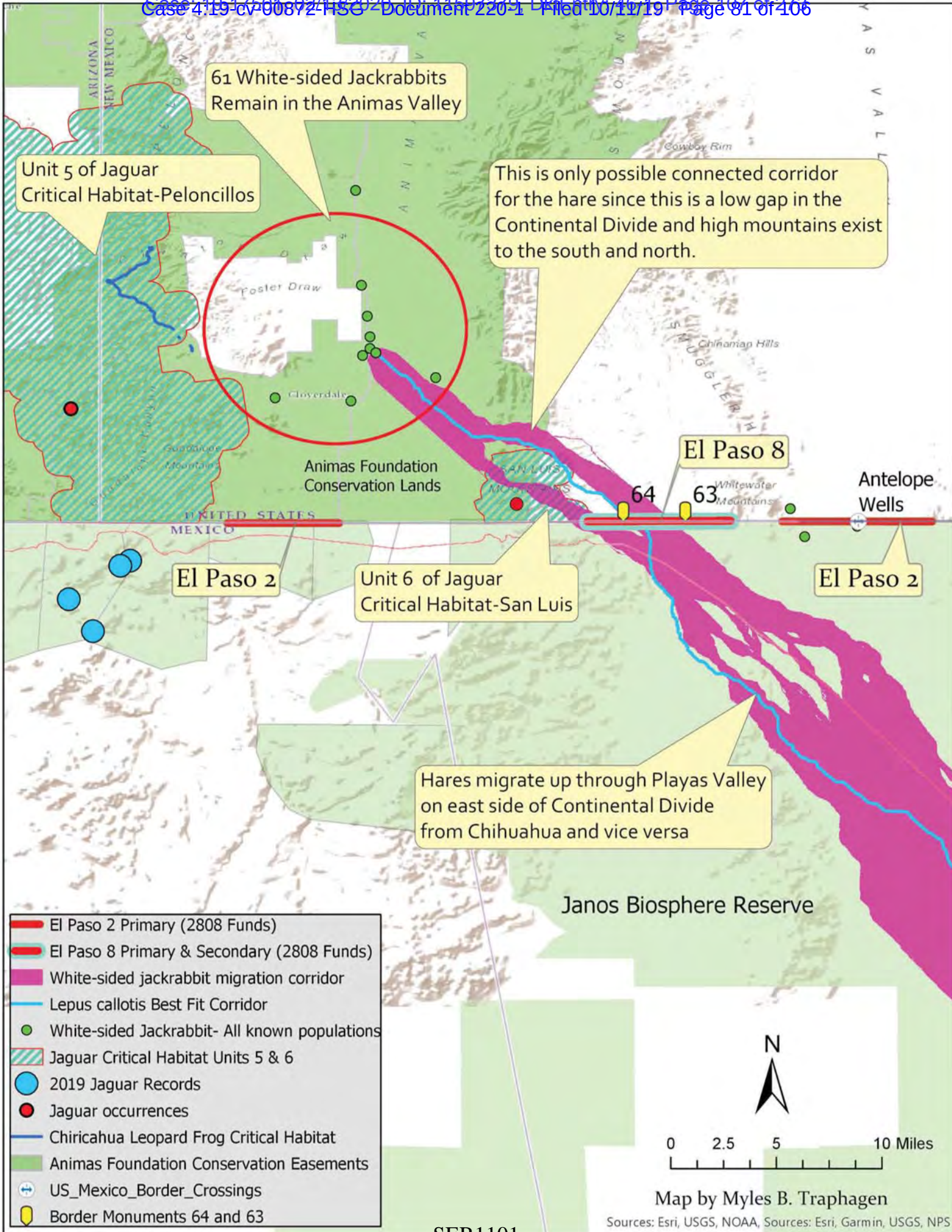
Overview Map of Proposed El Paso 2 and 8 (1 & 2) Project Areas



SER1099

Map by Myles B. Traphagen
Sources: Esri, USGS, NOAA, Sources: Esri, Garmin, USGS, NPS

EXHIBIT B



61 White-sided Jackrabbits Remain in the Animas Valley

Unit 5 of Jaguar Critical Habitat-Peloncillos

This is only possible connected corridor for the hare since this is a low gap in the Continental Divide and high mountains exist to the south and north.



Animas Foundation Conservation Lands

El Paso 8

64

63

Antelope Wells

El Paso 2

Unit 6 of Jaguar Critical Habitat-San Luis

El Paso 2

Hares migrate up through Playas Valley on east side of Continental Divide from Chihuahua and vice versa

Janos Biosphere Reserve

- El Paso 2 Primary (2808 Funds)
- El Paso 8 Primary & Secondary (2808 Funds)
- White-sided jackrabbit migration corridor
- Lepus callotis Best Fit Corridor
- White-sided Jackrabbit- All known populations
- Jaguar Critical Habitat Units 5 & 6
- 2019 Jaguar Records
- Jaguar occurrences
- Chiricahua Leopard Frog Critical Habitat
- Animas Foundation Conservation Easements
- US_Mexico_Border_Crossings
- Border Monuments 64 and 63



0 2.5 5 10 Miles

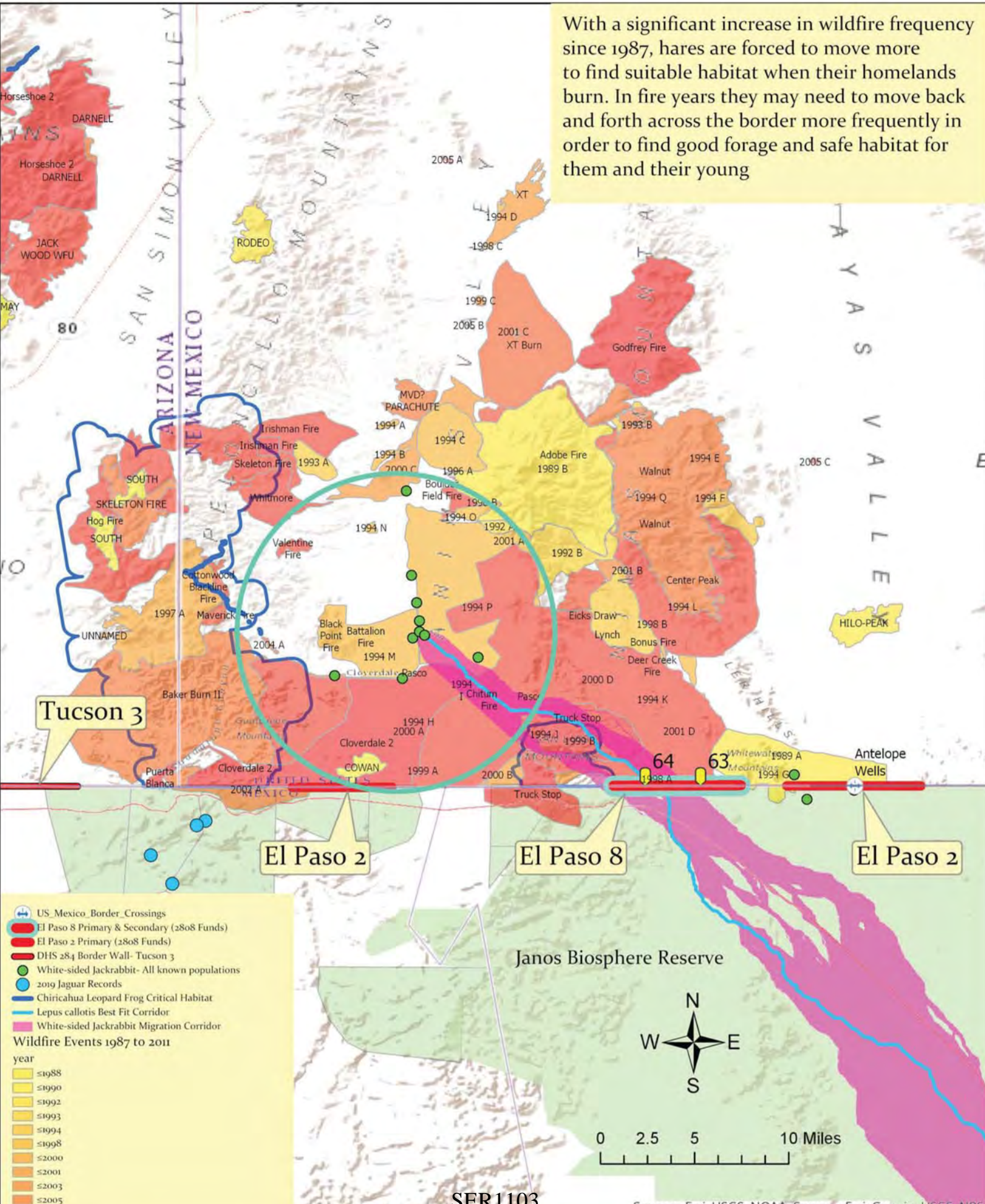
Map by Myles B. Traphagen

Sources: Esri, USGS, NOAA, Sources: Esri, Garmin, USGS, NPS

EXHIBIT C

Wildfire and Drought Effects on White-Sided Jackrabbit Movements and Migration

With a significant increase in wildfire frequency since 1987, hares are forced to move more to find suitable habitat when their homelands burn. In fire years they may need to move back and forth across the border more frequently in order to find good forage and safe habitat for them and their young



Legend

- US_Mexico_Border_Crossings
- El Paso 8 Primary & Secondary (2808 Funds)
- El Paso 2 Primary (2808 Funds)
- DHS 284 Border Wall- Tucson 3
- White-sided Jackrabbit- All known populations
- 2019 Jaguar Records
- Chiricahua Leopard Frog Critical Habitat
- Lepus callotis* Best Fit Corridor
- White-sided Jackrabbit Migration Corridor

Wildfire Events 1987 to 2011

Year	Color
≤1988	Lightest Yellow
≤1990	Light Yellow
≤1992	Yellow
≤1993	Light Orange
≤1994	Orange
≤1998	Dark Orange
≤2000	Red-Orange
≤2001	Red
≤2003	Dark Red
≤2005	Dark Red



EXHIBIT D

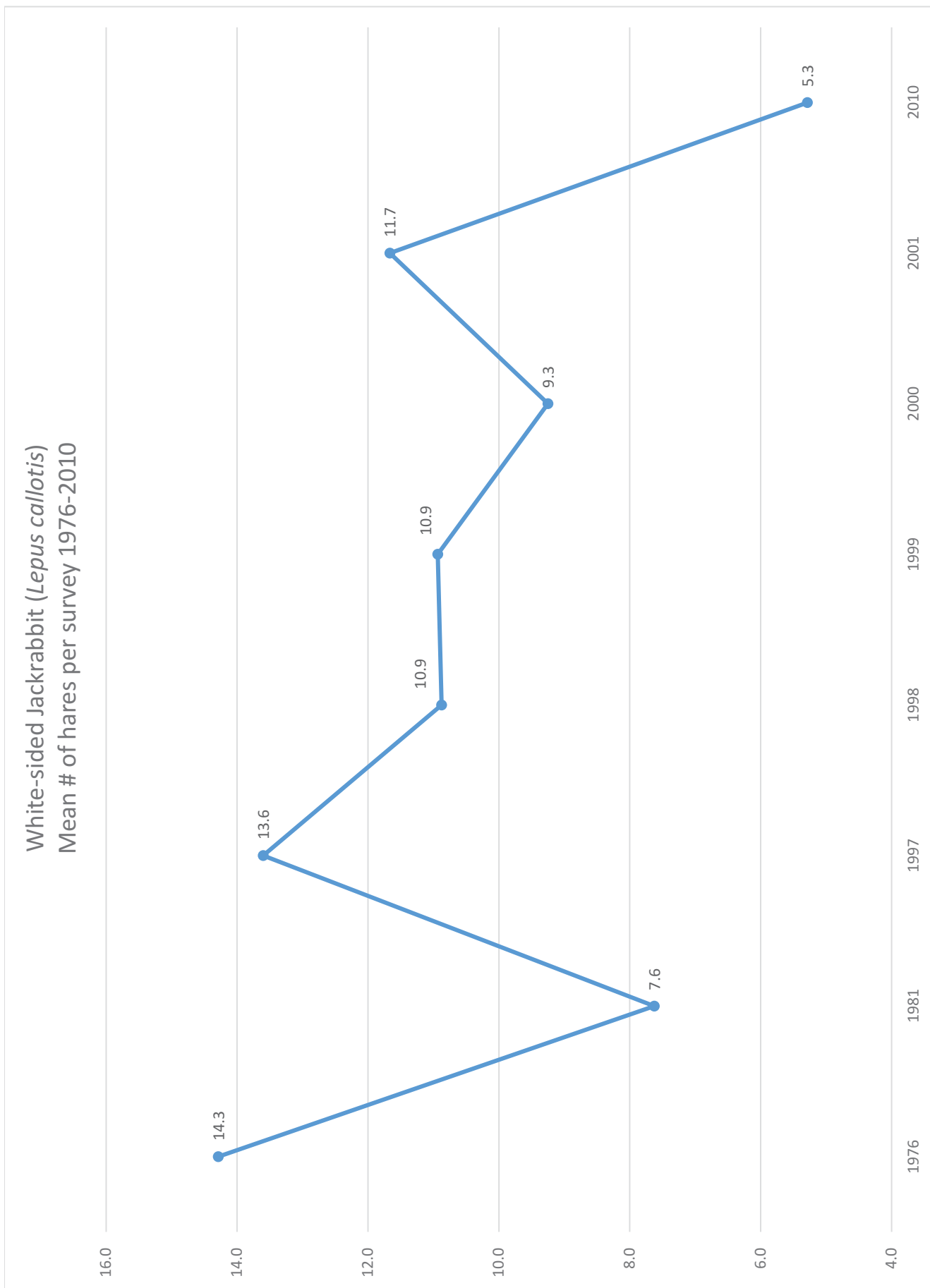


EXHIBIT E

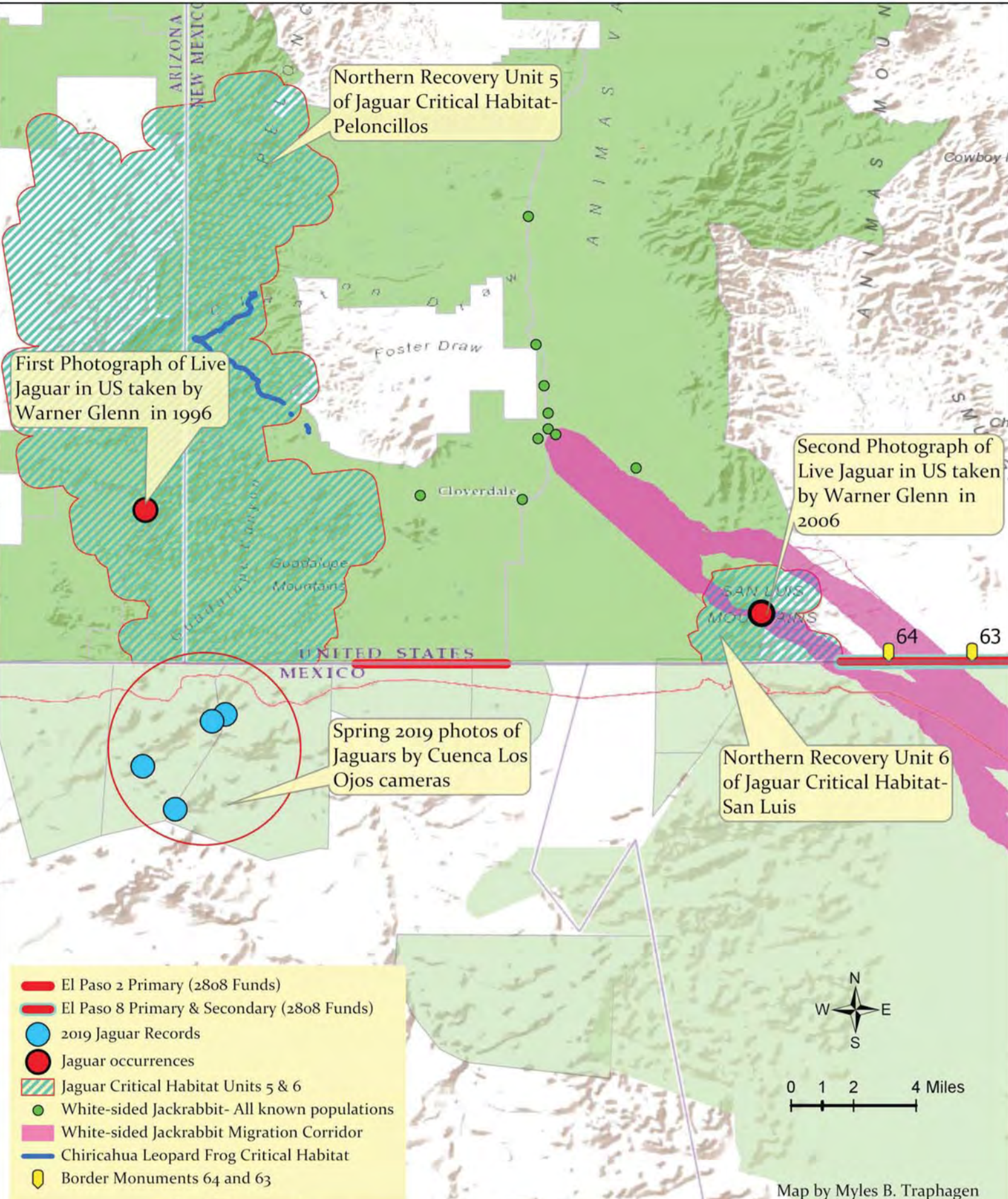


EXHIBIT 6

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

18 **STATE OF CALIFORNIA; STATE OF**
 19 **COLORADO; STATE OF**
 20 **CONNECTICUT; STATE OF**
 21 **DELAWARE; STATE OF HAWAII;**
 22 **STATE OF ILLINOIS; STATE OF**
 23 **MAINE; STATE OF MARYLAND;**
 24 **COMMONWEALTH OF**
 25 **MASSACHUSETTS; ATTORNEY**
 26 **GENERAL DANA NESSEL ON BEHALF**
 27 **OF THE PEOPLE OF MICHIGAN;**
 28 **STATE OF MINNESOTA; STATE OF**
NEVADA; STATE OF NEW JERSEY;
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF OREGON;
STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN;

4:19-cv-00872-HSG

**DECLARATION OF SULA
 VANDERPLANK IN SUPPORT OF
 PARTIAL MOTION FOR SUMMARY
 JUDGMENT REGARDING SECTION
 2808 PROJECTS AND NEPA**

Plaintiffs,

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v.

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

Defendants.

1 I, Sula Elizabeth Vanderplank, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below.

4 **Professional Background**

5 2. I am a postdoctoral fellow at the San Diego Zoo Global (SDZG) Institute for
6 Conservation Research, and a freelance conservation scientist (Director of SUVA Research). San
7 Diego Zoo Global has a focus on ending extinction worldwide. My postdoctoral position focuses
8 on conservation of cross-border rare plants. I serve as adjunct faculty in the Biology Department
9 of San Diego State University (SDSU) and at the Centro de Investigación Científica y Educación
10 Superior de Ensenada (CICESE), a graduate school in Baja California, Mexico. I specialize in
11 botany and conservation biology for the Southern California and Baja California regions,
12 including the area along California’s border with Mexico, and I have published many articles on
13 the subject. The matters set forth in this declaration are based upon my personal knowledge, as
14 well as my expertise in the California-border region.

15 3. In addition to my work with SDZG and CICESE, I hold research associate positions
16 at prominent regional research centers including: San Diego Natural History Museum (SDNHM)
17 since 2012; Rancho Santa Ana Botanic Garden (RSABG) since 2011; and Cabrillo Marine
18 Aquarium (CMA) since 2015.

19 4. I am also the scientific advisor to a non-profit organization in northwest Baja
20 California called Terra Peninsular AC, and I serve on the board of the following non-profit
21 organizations: California Botanical Society, Southern California Botanists, Conservación de
22 Fauna del Noroeste AC (FAUNO), and for the research network “Next Generation of Sonoran
23 Desert Researchers.” I am also a rare plant botanist for the California Native Plant Society
24 (CNPS), Baja California Chapter.

25 5. I have a Ph.D. in Plant Ecology, with minors in Conservation Biology and
26 Biogeography from the University of California, Riverside (2013), where my dissertation focused
27 on correlates of plant diversity in northwestern Baja California. My current research projects as
28 part of my postdoctoral fellowship at the SDZG focus on evaluating the conservation status of

1 rare plants in Baja California, Mexico, and in particular, on plant species that are rare on both
2 sides of the U.S./Mexico border. Specifically, we are developing conservation seed banks for
3 these plants, as well as taking samples for genetic research, and recording population data and
4 threats for each plant occurrence.

5 6. In this declaration, I provide my professional opinions regarding the biological
6 impacts of the federal government’s border wall projects being constructed in California, with a
7 focus on the proposed construction near San Diego at Otay Mountain (San Diego Project 4), and
8 at the Tecate Port of Entry (San Diego Project 11) (collectively, “Projects” or “San Diego Border
9 Wall Projects”). The Project areas include near-pristine habitat that will be irreparably harmed by
10 the Projects’ construction. These two Projects alone, despite including just 6.5 miles of fencing (3
11 miles for San Diego Project 11 and 3.5 miles for San Diego Project 4), will most likely cause
12 irreparable and irreversible impacts to at least 40 Plants of Conservation Concern, including 24
13 that are rare, threatened, or endangered in California (and eligible for listing). Three of the plants
14 are listed as rare, threatened or endangered at the state and federal levels. The Project areas also
15 include multiple fragile and sensitive habitats that will be irreparably harmed by the Projects’
16 construction.

17 **Assumptions on Project Activities and Expected Impacts**

18 7. In developing my opinion about the biological impacts from the San Diego Border
19 Wall Projects, I have relied on the “List of Military Construction Projects” that Defendants filed
20 in this matter on September 3, 2019 [ECF Doc. No. 206-2] (“2808 Project List”). I also reviewed
21 the table containing the 2808 Project Coordinates that is attached as Exhibit 1 to the Declaration
22 of Heather Leslie. The construction and installation of border fencing as part of these Projects
23 will cause significant environmental impacts.

24 8. At the time of writing (Oct 2019), the information available on the potential impacts
25 from the San Diego Border Wall Projects was extremely limited. No environmental impact
26 statement was prepared, and as a result there is minimal data available on anticipated impacts.
27 Exhaustive surveys have not been carried out inside the Projects’ footprints and data on the
28 species that will be impacted is sparse. But previous border-barrier construction projects in

1 California provide some guidance on likely construction activities and impacts that will result
2 from San Diego Projects 4 and 11. Past projects have necessitated new access roads, extensive
3 vegetation clearing, grading and soil compaction, as well as significant landscape alteration (e.g.,
4 the past border-barrier construction in Smuggler’s Gulch). Installation of San Diego Projects 4
5 and 11 will require similar clearance of vegetation, grading, and creation of roads, and will result
6 in environmental impacts including soil compaction and erosion, and significant disturbance to
7 surrounding ecosystems including by facilitating the spread of invasive species (exotic plants and
8 seeds being transported to the Project sites by construction equipment, for example).

9 **Environmental Context**

10 9. San Diego Projects 4 and 11 are entirely within the California Floristic Province, one
11 of the world’s Biodiversity Hotspots (an area with a high number of restricted species and
12 significant impacts to 80% of habitat). These hotspots are defined by extreme levels of species
13 endemism and high levels of human impact and landscape alteration. The Project areas are no
14 exception; they have very high levels of local endemism and have been heavily impacted.

15 10. The U.S./Mexico border is not a natural border, yet interestingly, it is close to a
16 natural shift in the local plant communities in San Diego County. Our borderlands are often the
17 northernmost outposts for many plants that are otherwise restricted to the CFP region of Baja
18 California. These California occurrences often constitute some of the very rarest plants in the
19 United States, occurring nowhere else in our nation. San Diego County is perhaps the most bio-
20 diverse county in the U.S. (no other county is known to have greater plant diversity). In 2014, San
21 Diego County had 2,672 plants documented from within its boundaries.

22 11. San Diego County is also home to 266 rare plants that are included in the California
23 Native Plant Society (CNPS) Rare Plant Rankings. This program develops current and accurate
24 information on the distribution and conservation status of California’s rare and endangered plants,
25 and since 1968 has been the standard for information on the rarity and endangerment of the
26 State’s flora. The program operates under a Memorandum of Understanding (MOU) with
27 the California Department of Fish and Wildlife (CDFW) and facilitates broad cooperation in rare
28 plant assessment and protection. The CNPS Rare Plant Botanist is housed at the Sacramento

1 office of the CDFW’s Biogeographic Data Branch, and shares all data with the [California Natural](#)
2 [Diversity Data Base](#) (CNDDDB). See: <http://www.cnps.org/cnps/rareplants/ranking.php>.

3 12. Notably, San Diego Project 4 includes part of the Otay Mountain Federal Wilderness
4 Area. (See Exhibit A to this declaration, which is a true and correct copy of a map of the Otay
5 Wilderness Area from the U.S. Dept of the Interior, Bureau of Land Management). Wilderness
6 Areas “are final holdout refuges for a long list of rare, threatened, and endangered species, forced
7 to the edges by modern development.” They are “places where law mandates above all else
8 that *wildness* be retained for our current generation, and those who will follow.” See the US
9 Forest Service website for Managing the Land at [https://www.fs.fed.us/managing-](https://www.fs.fed.us/managing-land/wilderness)
10 [land/wilderness](https://www.fs.fed.us/managing-land/wilderness). Federal Wilderness Areas have been protected under federal law since the
11 Wilderness Act of 1964 was enacted “[i]n order to assure that an increasing population,
12 accompanied by expanding settlement and growing mechanization, does not occupy and modify
13 all areas within the United States and its possessions, leaving no lands designated for
14 preservation and protection in their natural condition.” In enacting the Wilderness Act, Congress
15 declared its policy was “to secure for the American people of present and future generations the
16 benefits of **an enduring resource of wilderness.**”

17 13. The Otay Mountain Wilderness Area, near San Diego, California, was created by
18 Congress in 1999 and encompasses some 18,500 acres. It reaches elevations of 3,500 feet, and is
19 home to rugged mountains with gradients exceeding 40%. The 2006 Secure Fence Act stated, “If
20 the topography of a specific area has an elevation grade that exceeds 10 percent, the Secretary
21 may use other means to secure such area, including the use of surveillance and barrier
22 tools.” Otay Mountain “represents a unique ecosystem, home to twenty sensitive plant and
23 animal species, including the endangered quino checkerspot butterfly, the only known stand of
24 Tecate cypress, as well as the only known population of the Mexican flannel bush”
25 (<https://www.blm.gov/visit/otay-mountain-wilderness>). Notably, the part of the Otay Mountain
26 Wilderness where San Diego Project 4 is being constructed is particularly steep and rugged, as
27 shown in a photograph I took which shows the existing fencing heading toward the steep
28

1 unfenced area that is the project-footprint for San Diego 4. This photograph is attached as Exhibit
2 B to this declaration.

3 **Site-Specific Plant Diversity**

4 14. The San Diego Project 4 and 11 sites include extensive native-plant habitat. A
5 checklist of plants previously collected in the San Diego Project 11 area was generated using data
6 from the San Diego County Plant Atlas and includes 211 different plant species. The same query
7 for San Diego Project 4 yields 251 plant species. There are a total of 372 unique plant taxa
8 expected to be impacted if San Diego Projects 4 and 11 are constructed.

9 15. This is certainly a VERY limited dataset, far from the true total because a thorough
10 plant inventory has never been conducted in this region. These lists also do not include
11 observations or records from the California Natural Diversity Database (maintained by the
12 California Department of Fish and Wildlife). Sadly, I was not able to conduct a thorough
13 inventory due to the lack of site access, and a multi-season inventory would be necessary to
14 adequately assess diversity; a single site visit could never capture the diversity of the Project
15 areas.

16 16. During a single weekend in March 2019, citizen scientists documented 1,073 distinct
17 plant and animal taxa along the California/Mexico borderlands during the Border Bioblitz, 805 of
18 which were plants. These are certainly VERY restricted datasets, which include far less than the
19 true plant diversity of the border region, since a plant inventory has never been conducted in the
20 remote regions of the border where fencing is proposed. However, these numbers give some
21 indication of the immense biodiversity of the immediate border region. The California Natural
22 Diversity Database clearly shows the proximity of many rare plants and animals to San Diego
23 Project (*See* Exhibit B, a true and original copy of the Bureau of Land Management's Otay
24 Mountain Wilderness Boundary).

25 **Methods Used for this Assessment**

26 17. To assess the Plants of Conservation Concern that will be potentially and directly
27 impacted by San Diego Projects 4 and 11, I visited both project sites (notably access to the San
28 Diego 4 Project site was challenging, and main access roads were closed to the public). To

1 compile these data, I have also searched CNDDDB records from the CDFW. Exhibit C to this
2 Declaration is a true and correct copy of a screenshot from the CNDDDB BIOS viewer, that I
3 accessed on September 30, 2019, which shows the number of rare species records for the Project
4 sites. I also searched records in the San Diego County Plant Atlas (sdplantatlas.org), and
5 reviewed museum specimen collection data (herbarium specimens) – recent and historical as
6 appropriate - including data from the Consortium of California Herbaria
7 (<http://ucjeps.berkeley.edu/consortium/>). I have also referenced expert verified observations from
8 iNaturalist, used a wealth of scientific literature, and sought expert knowledge, including
9 consultation with Dr. Jon Rebman, a foremost expert in the region and author of the Checklist of
10 the Vascular Plants of San Diego County 5th Edition (Rebman & Simpson 2014, 156pp), and the
11 Annotated Checklist of the Vascular Plants of Baja California (Rebman, Gibson & Rich 2016,
12 352 p).

13 18. In the absence of an exhaustive survey of the Project areas, the rare and endangered
14 plants found within the impact zone at the border have been distinguished as follows:

- 15
16 • **California Rare Plant Rank 1B: Plants Rare, Threatened, or Endangered in**
17 **California and Elsewhere:** Plants with a California Rare Plant Rank of 1B are rare
18 throughout their range with the majority of them endemic to California. Most of the
19 plants that are ranked 1B have declined significantly over the last century.
- 20
21 • **California Rare Plant Rank 2B: Plants Rare, Threatened, or Endangered in**
22 **California, But More Common Elsewhere:** Except for being common beyond the
23 boundaries of California, plants with a California Rare Plant Rank of 2B would have
24 been ranked 1B. From the federal perspective, plants common in other states or
25 countries are not eligible for consideration under the Federal Endangered Species
26 Act.

- 1 • California Rare Plant Rank 3: Plants Where More Information is Needed: Plants with
2 a California Rare Plant Rank of 3 are united by one common theme - we lack the
3 necessary information to assign them to one of the other ranks or to reject them.
4 Nearly all of the plants constituting California Rare Plant Rank 3 are taxonomically
5 problematic.

6 All of the plants constituting California Rare Plant Rank 1A, 1B, 2A, 2B, and 3 are eligible
7 for listing under the California Endangered Species Act (CESA). Impacts to these species or their
8 habitat must be analyzed during preparation of environmental documents under the California
9 Environmental Quality Act (CEQA), as they meet the definition of Rare or Endangered under
10 CEQA Guidelines §15125 (c) and/or §15380.

- 11 • California Rare Plant Rank 4: Plants of Limited Distribution - A Watch List: Plants
12 with a California Rare Plant Rank of 4 are of limited distribution or infrequent
13 throughout a broader area in California, and their status should be monitored
14 regularly.

15 Few of the plants constituting California Rare Plant Rank 4 are eligible for state listing.
16 Nevertheless, many of them are significant locally, and it is strongly recommended that California
17 Rare Plant Rank 4 plants be evaluated for impact significance during preparation of
18 environmental documents relating to CEQA, based on CEQA Guidelines §15125 (c) and/or
19 §15380. This is particularly significant for populations at the periphery of a species' range, and
20 areas where the taxon has sustained heavy losses, which are often applicable in the U.S./Mexico
21 border region.

22 19. Each rare plant also receives a threat rank, follow its listing designation:

- 23 • 0.1-Seriously threatened in California (over 80% of occurrences threatened / high
24 degree and immediacy of threat)
25 • 0.2-Moderately threatened in California (20-80% occurrences threatened / moderate
26 degree and immediacy of threat)
27 • 0.3-Not very threatened in California (less than 20% of occurrences threatened / low
28 degree and immediacy of threat or no current threats known)

1 20. I also evaluated the types of impacts that are likely to result from the Projects’
2 construction:

- 3 • **Direct impacts** are listed for those plants which have been documented within 100
4 meters of the fenceline and will be directly impacted during the proposed
5 construction. (Direct Impacts under the National Environmental Policy Act
6 (NEPA).)
- 7 • **Expected impacts** are those where plants have been documented within 500 meters
8 of the impact zone and are expected within the Project footprint, although
9 conclusive data are not currently available. (Direct Impacts under NEPA.)
- 10 • **Indirect impacts** are listed for sensitive plants that live adjacent to the impact area, in
11 fragile habitats that have a high likelihood to suffer from dust, soil erosion,
12 particulate deposition, and/or landscape hydraulic alterations which may result from
13 the installations. They are all likely to suffer edge effects from the disturbance and
14 an increase in invasive species competing for resources. (Indirect Impacts under
15 NEPA.)

16 **The Projects Will Cause Irreparable Harm to Rare and Endangered Plants**

17 21. The Table below outlines the sensitive plants along the Projects’ footprints and
18 highlights the rare and endangered plants found within each one, including their CNPS rankings
19 (lists and threat ranks as detailed above), and federal and state listed status (CE = California
20 Endangered, FT = Federally Threatened and CR = California Rare). The Table also details the
21 impacts the sensitive habitats will suffer from the San Diego 4 and 11 Projects, following the
22 criteria listed above. All plants listed are also subject to cumulative impacts (as per NEPA) as a
23 result of the repeat disturbances to this region. Notably, the Table includes a species new to
24 science that is not yet formerly named (pers. comm. Dr. Jon Rebman, Curator of Botany, San
25 Diego Natural History Museum, and Dr. Michael Simpson, Professor Emeritus, San Diego State
26 University, September 2019) in the genus *Eriodictyon*, as well as charismatic rare plants like the
27 Tecate Cypress.
28

22. Of the 40 plants in the table, all are considered Species of Conservation Concern in California. One is federally-listed, two are state-listed, and 24 are considered rare, threatened or endangered in California. In total 33 Plants of Conservation Concern are expected to suffer direct impacts under NEPA, and 7 are expected to suffer indirect impacts.

Status	Family	Genus	Species	Infra Name	Common Name	State/Federal	CNPS
Expected	Asteraceae	<i>Baccharis</i>	<i>vanessae</i>		Encinitas Baccharis	CE, FT	1B.1
Direct	Asteraceae	<i>Bahiopsis</i>	<i>laciniata</i>		San Diego Sunflower	None	4.2
Direct	Asteraceae	<i>Deinandra</i>	<i>floribunda</i>		Tecate tarplant	None	1B.2
Direct	Asteraceae	<i>Isocoma</i>	<i>menziesii</i>	<i>decumbens</i>	Decumbent Goldenbush	None	1B.2
Direct	Asteraceae	<i>Iva</i>	<i>hayesiana</i>		San Diego Marsh-Elder	None	2B.2
Indirect	Asteraceae	<i>Packera</i>	<i>ganderi</i>		San Diego Butterweed	CR	1B.2
Direct	Asteraceae	<i>Xanthisma</i>	<i>junceum</i>		Rush Chaparral-Star	None	4.3
Direct	Boraginaceae	<i>Harpagonella</i>	<i>palmeri</i>		Palmer's Grappling-Hook	None	4.2
Direct	Brassicaceae	<i>Lepidium</i>	<i>virginicum</i>	<i>robinsonii</i>	Robinson's Peppergrass	None	4.3
Indirect	Brassicaceae	<i>Streptanthus</i>	<i>bernardinus</i>		Southern Jewelflower	None	1B.3
Expected	Cactaceae	<i>Ferocactus</i>	<i>viridescens</i>	<i>viridescens</i>	Coast Barrel Cactus	None	2B.1
Direct	Convolvulaceae	<i>Convolvulus</i>	<i>simulans</i>		Small-flowered Morning-glory	None	4.2
Direct	Convolvulaceae	<i>Dichondra</i>	<i>occidentalis</i>		Western Dichondra	None	4.2
Expected	Crassulaceae	<i>Dudleya</i>	<i>variegata</i>		Variiegated Dudleya	None	1B.2
Direct	Cupressaceae	<i>Hesperocyparis</i>	<i>forbesii</i>		Tecate Cypress	None	1B.1
Direct	Ericaceae	<i>Arctostaphylos</i>	<i>otayensis</i>		Otay Manzanita	None	1B.2
Direct	Ericaceae	<i>Comarostaphylis</i>	<i>diversifolia</i>	<i>diversifolia</i>	Summer-Holly	None	1B.2
Direct	Fabaceae	<i>Hosackia</i>	<i>crassifolia</i>	<i>otayensis</i>	Otay Mountain Lotus	None	1B.1
Expected	Fabaceae	<i>Lathyrus</i>	<i>splendens</i>		Campo Pea	None	4.3
Direct	Fabaceae	<i>Pickeringia</i>	<i>montana</i>	<i>tomentosa</i>	Hairy Chaparral-Pea	None	4.3
Direct	Fagaceae	<i>Quercus</i>	<i>cedrosensis</i>		Cedros Island oak	None	2B.2
Indirect	Lamiaceae	<i>Lepechinia</i>	<i>ganderi</i>		Gander's pitcher sage	None	1B.3
Expected	Lamiaceae	<i>Monardella</i>	<i>hypoleuca</i>	<i>lanata</i>	Felt-Leaf Monardella	None	1B.2
Direct	Lamiaceae	<i>Monardella</i>	<i>stoneana</i>		Jennifer's monardella	None	1B.2
Direct	Lamiaceae	<i>Salvia</i>	<i>munzii</i>		Munz's Sage	None	2B.2
Direct	Liliaceae	<i>Calochortus</i>	<i>dunnii</i>		Dunn's Mariposa Lily	CR	1B.1
Expected	Namaceae	<i>Eriodictyon</i>	<i>sp. nov.</i>			None	pending
Expected	Onagraceae	<i>Clarkia</i>	<i>delicata</i>		Delicate/Campo Clarkia	None	1B.2
Indirect	Orchidaceae	<i>Piperia</i>	<i>cooperi</i>		Cooper's Rein Orchid	None	4.2
Indirect	Picrodendraceae	<i>Tetracoccus</i>	<i>dioicus</i>		Parry's Tetracoccus	None	1B.2
Direct	Poaceae	<i>Stipa</i>	<i>diegoensis</i>		San Diego Needlegrass	None	4.2
Direct	Polygonaceae	<i>Chorizanthe</i>	<i>leptotheca</i>		Ramona Spineflower	None	4.2
Direct	Pteridaceae	<i>Pentagramma</i>	<i>glanduloviscida</i>			None	Pending
Direct	Pteridaceae	<i>Pentagramma</i>	<i>rebmanii</i>		Rebman's Silverback Fern	None	Pending
Indirect	Rhamnaceae	<i>Adolphia</i>	<i>californica</i>		Spineshrub	None	2B.1
Direct	Rhamnaceae	<i>Ceanothus</i>	<i>otayensis</i>		Otay-Lilac	None	1B.2
Direct	Rosaceae	<i>Chamaebatia</i>	<i>australis</i>		Southern Mountain Misery	None	4.2

1	Direct	Selaginellaceae	<i>Selaginella</i>	<i>cinerascens</i>	Mesa Spike-Moss	None	4.1
2	Expected	Themidaceae	<i>Bloomeria</i>	<i>clevelandii</i>	San Diego Goldenstar	None	1B.1
3	Indirect	Themidaceae	<i>Brodiaea</i>	<i>orcuttii</i>	Orcutt's Brodiaea	None	1B.1

23. During a site visit I conducted on October 2, 2019, the following plants from the Table were seen to be abundant in the direct footprint for San Diego Project 4: Tecate Cypress, Otay Lilac, Otay Manzanita, Southern Mountain Misery, Summer Holly, Cedros Island Oak and the Mesa Spike-Moss.

Conclusion

24. In conclusion, the Projects’ footprints include at least 40 Plants of Conservation Concern in the state of California, including at least three plants that are listed at the federal and state levels. Within these 40 Plants of Conservation Concern, there are at least 19 plants on list 1B (plants that are globally rare, threatened or endangered), and 5 plants on list 2B (plants that are rare, threatened or endangered in California), for a total of 24 plants that are eligible to be listed as rare, threatened, or endangered at the state and federal levels. In total, 33 Plants of Conservation Concern are expected to suffer direct impacts under NEPA, and 7 are expected to suffer indirect impacts under NEPA. San Diego Projects 4 and 11 will have irreparable and irreversible impacts to numerous rare plants and fragile habitats in this extremely diverse area.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on October 10, 2019, at San Diego, California.



Sula Vanderplank

EXHIBIT A

Export Observator

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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Q

Otay Mountain Wilderness

BLM Recreation Web Map

SanGIS, Bureau of Land Management, Esri, HERE, Garmin, USGS, NGA, EPA, USDA...

True and original copy of the extent of the BLM Otay Mountain Wilderness area.

EXHIBIT B



EXHIBIT C

1 XAVIER BECERRA
 Attorney General of California
 2 ROBERT W. BYRNE
 SALLY MAGNANI
 3 MICHAEL L. NEWMAN
 Senior Assistant Attorneys General
 4 MICHAEL P. CAYABAN
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13
 14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION
 17

18
 19 **STATE OF CALIFORNIA, et al.;**
 20 Plaintiffs,
 21 v.
 22 **DONALD J. TRUMP, in his official capacity**
 23 **as President of the United States of America;**
 24 **et al.;**
 25 Defendants.

Case No. 4:19-cv-00872-HSG
**DECLARATION OF COLONEL
 WILLIAM GREEN IN SUPPORT OF
 PLAINTIFFS’ MOTION FOR
 SUMMARY JUDGMENT re: SECTION
 2808 AND NEPA**
 Date: November 20, 2019
 Time: 10:00 am
 Judge: Honorable Haywood S. Gilliam,
 Jr.
 Trial Date: None Set
 Action Filed: February 18, 2019

1 I, Col. William Green, declare as follows:

2 1. I have personal knowledge of each fact stated in this declaration, and if called as a
3 witness could competently testify thereto.

4 2. I am a Colonel with the California Air National Guard (ANG) and currently serve as
5 the California ANG's Director of Operations. In this capacity, I advise the Adjutant General and
6 other California Military Department senior leaders on federal issues affecting the State of
7 California. Additionally, I advise the Commander of the California ANG on the readiness of over
8 4800 military and civilian personnel across five wings and ensure that they are postured and
9 prepared to support national defense requirements and emergency response, relief and recovery
10 operations throughout the State of California. I am also a command pilot with more than 6000
11 military and civilian flying hours in the C-130J, WC130J, EC-130J, B-787, S80, B727, T-38, T-
12 37 and T-41 aircraft. I have accrued over 400 combat hours in the tactical environment in support
13 of multiple deployments. I have served as a C-130J Instructor Pilot and a C-130J Command
14 Evaluator Pilot. I am also an instructor and designated Subject Matter Expert with respect to the
15 Modular Aerial Fire Fighting System (MAFFS).

16 3. The California ANG is a component of the California National Guard, a federally
17 funded California military force that is part of the National Guard of the United States. The
18 California National Guard is the second largest National Guard force in the United States with a
19 total authorized strength of over 23,000 soldiers and airmen. The Constitution of the United
20 States charges the National Guard with dual federal and state missions.

21 4. The California ANG is comprised of citizen airmen that fill the ranks of five air
22 wings strategically positioned across California to support the state and nation in times of need.
23 The California ANG's highly specialized servicemen and women leverage a variety of aviation
24 platforms and combat tested expertise to perform a full spectrum of missions. Their missions
25 include providing homeland air defense for all of the Western United States and providing direct
26 support to combatant commanders overseas, as well as assisting in search and rescue missions
27 along the Pacific Coast and combatting wildfires throughout the state of California and throughout
28 the United States.

1 5. The California ANG’s 146th Airlift Wing is part of the reserve component of the
2 United States Air Force supporting Air Mobility Command and is headquartered at the Channel
3 Islands Air National Guard Base (ANGB) in Port Hueneme, California. The 146th Airlift Wing is
4 a combat ready organization prepared to support the U.S. and allied forces, as well as provide
5 disaster response, humanitarian relief, and large scale aerial firefighting capabilities to the state of
6 California and the nation.

7 6. The 146th Airlift Wing employs the Lockheed C-130J “Super Hercules” aircraft. The
8 146th Airlift Wing’s tactical airlift mission is one of the most training-intensive in the Mobility
9 Air Forces.

10 7. In addition to standard military flight training, the 146th Airlift Wing is responsible to
11 train to its demanding aerial firefighting mission. The 146th Airlift Wing is one of only four units
12 in the country equipped with MAFFS, an integrated airborne delivery system for battling large
13 fires. The MAFFS modules, which are loaded into the cargo bays of the C-130J aircraft, are
14 capable of discharging 3,000 gallons of water or fire retardant in less than five seconds, covering
15 an area a quarter mile long by 100 feet, specializing in large fire containment operations.

16 8. As part of the California ANG’s function in responding to state emergencies, the 146th
17 Airlift Wing is frequently called-up to combat wildfires in California and the western United
18 States. Over the past six years, they have been activated 11 times, performing over 775 fire drops
19 supporting efforts to combat 45 different wildfires. These have included large and increasingly
20 common destructive incidents in California, such as the Rim, Thomas, Mendocino Complex, Carr
21 and recent Woolsey fires. The 2018 fire season was the largest and most destructive in California
22 history.

23 9. With the exception of flights within combat zones where anti-aircraft defenses are
24 present, the firefighting mission presents the greatest risk to the 146th Airlift Wing C-130J
25 aircrew. This is because the firefighting mission requires the C-130J pilots to fly aircraft at lower
26 than standard altitudes, slow air speeds and nonstandard configurations in order to deliver
27 retardant in the prescribed manner. Additionally, these flights often take place in mountainous
28

1 terrain with reduced visibility and rapidly changing weather conditions. The mission also requires
2 California C-130J flight crews to train and operate with civil agency partners that fly dissimilar
3 aircraft, such as the United States Forest Service (USFS) and the California Department of
4 Forestry and Fire Protection (CalFire).

5 10. I am familiar with the training requirements for airmen piloting the C-130J aircraft.
6 In addition to monthly ground and in-flight training, C-130J aircrew are required to participate in
7 at least one week of refresher simulator training emphasizing complex emergency procedures,
8 challenging and unusual aircraft maneuvers and crew coordination at a certified C-130J flight
9 simulator on annual basis. Aircrew from the 146th Airlift Wing currently travel to Keesler Air
10 Force Base in Biloxi, Mississippi, at an approximate cost of \$360,000 annually, to accomplish
11 this simulator training.

12 11. C-130J flight crews also participate in an annual, one-week training course relating to
13 firefighting missions. This one-week training course, which includes flight training and water
14 drops, is coordinated with the USFS. Similar to actual firefighting missions, the training often
15 takes place over mountainous terrain, at lower-than-normal altitudes and at slow air speeds.

16 12. Rising aircraft sustainment costs, extensive flight training requirements and limited
17 military budgets inspired military acquisition of the C-130J flight simulators, which are designed
18 to provide realistic training at a fraction of the cost of actual aircraft flight operations.

19 13. Flight simulators have been installed or programmed for installation at all C-130J
20 mobility air bases to meet current and future training demands. Based on currently scheduled
21 installation dates, in 2022, Channel Islands ANGB will be the only remaining C-130J base in the
22 Mobility Air Forces without a flight simulator.

23 14. The C-130J flight simulator is designed to provide the majority of all initial, mission,
24 continuation and upgrade C-130J training. Command training managers estimate that on site
25 simulators account for approximately 40% of all training requirements previously conducted in
26 the aircraft alone. This reduced training demand on the aircraft has resulted in increased
27 availability for required maintenance and operational missions.
28

1 15. During the FY2019 budgeting cycle, after undergoing the lengthy process to evaluate
2 and prioritize proposed military construction projects, Congress appropriated \$8,000,000 for the
3 purpose of constructing a facility at the Channel Islands ANGB to house a C-130J flight
4 simulator, which was secured by the U.S. Air Force’s Air Mobility Command at a cost of
5 \$29,000,000. Initial efforts by California ANG to secure the simulator began over ten years ago.

6 16. The California ANG anticipates delivery of the C-130J flight simulator at the
7 Channel Islands ANGB in March 2022. However, the Channel Islands ANGB cannot receive a
8 fully functional simulator unless and until the simulator facility is constructed.

9 17. Access to the flight simulator at the Channel Islands ANGB is essential because it
10 would provide the 146th Airlift Wing’s flight crews with realistic flight training opportunities
11 without the expense or risks associated with flight training in the aircraft. In fact, the simulator
12 was specifically designed to provide the most realistic training simulation of all critical mission
13 sets for two California C-130J units. It is fully reconfigurable to support both the tactical airlift
14 mission of the 146th Airlift Wing at Channel Islands Air National Guard Station, as well as the
15 aerial refueling mission of the 129th Rescue Wing at Moffett Field in Sunnyvale, California. It is
16 also scheduled to be modified in 2024, to network with other flight simulators around the world
17 allowing aircrew at Channel Islands ANGB to participate in large, complex integrated training
18 scenarios and exercises without ever leaving home station. It can also be used to train aircrew
19 whenever new software modifications are employed on the aircraft.

20 18. Finally, the flight simulator at the Channel Islands ANGB would include an enhanced
21 software suite that simulates aerial firefighting, one of California’s most critical domestic threats.
22 This training capability is significant because, as noted, the firefighting mission is extremely
23 challenging and the threat of large wild fires remains high. The flight simulator would enable the
24 California ANG to provide its C-130J flight crews with firefighting-specific training in
25 circumstances that simulate these dangerous conditions. Importantly, the California ANG would
26 be able to augment its annual week-long aerial firefighting training program, greatly enhancing
27 mission proficiency and thereby improving the California ANG’s ability to safely and effectively
28 respond to wildfire threats.

1 19. With the availability of higher-paying commercial aviation jobs, it is becoming
2 increasingly difficult for the California ANG to retain aircrew with the requisite experience
3 necessary to participate safely in its firefighting mission. The availability of enhanced aerial
4 firefighting training in a flight simulator is particularly important to the California ANG because
5 it would allow the 146th Airlift Wing to introduce aerial firefighting training to all of its air crews,
6 regardless of experience, in a safe, efficient and effective manner. With additional training
7 opportunities made possible through the use of a flight simulator, it would also accelerate the
8 development of crews with less firefighting experience, which helps offset the loss of experienced
9 aerial firefighters leaving the organization for careers with commercial airlines.

10 20. Recently, the California Military Department was advised that \$8,000,000 in funds to
11 construct a C-130J Simulator Facility at the Channel Islands ANGB were being diverted to other
12 executive branch projects.

13 21. Over the past several years, large, rapidly-moving wildfires have become increasingly
14 common in California. Aircraft equipped with firefighting systems, such as the C-130J equipped
15 with the MAFFS, have proven to be essential tools in protecting Californians and their
16 communities by slowing the spread of these massive wildfires. Use of aerial firefighting tools aid
17 firefighters on the ground attempting to contain these fires and often give citizens needed time to
18 escape dangerous areas. Aerial firefighting has saved lives and property.

19 22. The additional simulator training was intended to ensure mission preparedness and
20 minimize the costs and risks associated with the robust flight training requirements associated
21 with the tactical combat airlift mission. The availability of a C-130J flight simulator at the
22 Channel Islands ANGB would have permitted the California ANG to provide its aircrews with
23 more combat mission training and more training specific to firefighting missions throughout the
24 year.

25 23. As a consequence of the decision to defund the project to construct the facility that is
26 needed to house the C-130J flight simulator, the California ANG's C-130J flight crews will not
27 receive the intended benefits of the additional simulator training throughout the year and the 146th
28

1 Airlift Wing’s flight crews will receive less training in aerial firefighting than they would have
2 following receipt of the simulator.

3 24. Also, because the availability of flight simulator training would have offset the loss
4 of experienced aerial firefighters to the commercial airlines, the defunding of the flight simulator
5 facility would also make it more difficult for the 146th Airlift Wing to maintain its current level
6 of aerial firefighting experience potentially impacting its ability to meet increasing mission
7 demands.

8 25. Accordingly, the defunding of this project will have significant negative impacts on
9 the Channel Island ANGB’s operations, placing at risk the California ANG’s ability to maintain
10 its current level of effectiveness in responding to the growing threat of California wildfires and
11 causing a potential increased risk to public health and safety of Californians and their
12 communities.

13 I declare under penalty of perjury that the foregoing is true and correct and that this
14 declaration was executed on October 10, 2019, in Port Hueneme, California.

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17 WILLIAM C. GREEN, Jr., Colonel CA ANG
18 Director of Operations
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14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16
 17

18	STATE OF CALIFORNIA et al.;	
19		Plaintiffs,
20	v.	
21		
22	DONALD J. TRUMP, in his official	
23	capacity as President of the United States of	
24	America et al.;	Defendants.
25		

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

**DECLARATION OF HEATHER LESLIE
 IN SUPPORT OF MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 REGARDING SECTION 2808 AND
 NEPA**

Date: November 20, 2019
 Time: 10:00 am
 Judge: Honorable Haywood S. Gilliam,
 Jr.
 Trial Date: None Set
 Action Filed: February 18, 2019

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1 I, Heather Leslie, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below.

4 2. I am employed by the California Department of Justice, Office of the Attorney
5 General, and currently serve a Deputy Attorney General within the Office's Public Rights
6 Division, Environment Section. I am a licensed member of good standing with the California
7 State Bar and represent the State of California in the above-captioned matter.

8 3. In my role as one of the attorneys representing the State of California in this
9 matter, on September 10, 2019, I e-mailed Andrew Warden, an attorney with the United States
10 Department of Justice and counsel for the Defendants, requesting the latitude and longitude
11 coordinates for the border barrier projects identified on page 4 of Exhibit 1 of the Notice of
12 Decision by the Department of Defense to Authorize Border Barrier Projects Pursuant to 10
13 U.S.C. § 2808, ECF No. 206-1.

14 4. On September 23, 2019, I received an e-mail from Andrew Warden, counsel for
15 Defendants, stating "Attached is a chart listing the coordinates for the 2808 projects." Attached to
16 that e-mail was the list of coordinates I have attached hereto as Exhibit 1. I shared this list of
17 coordinates with other attorneys representing the State of California in this matter and we
18 provided this list of coordinates with our declarants for their use in determining the proposed
19 location of the border barrier projects that Defendants seek to construct under 10 U.S.C. § 2808.
20 This list of coordinates is the only information I received from the Defendants in response to my
21 September 10, 2019 e-mail.

22 I declare under penalty of perjury under the laws of the United States that the foregoing is
23 true and correct. Executed on October 11, 2019, at Sacramento, California.

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/s/ Heather Leslie
HEATHER LESLIE

EXHIBIT 1

Project	Lat Start	Long Start	Lat End	Long End	Fence Program	Fund Type
El Centro 5	32.66609683	-115.4825268	32.66639969	-115.4783807	Secondary	2808
El Centro 5	32.66441744	-115.50539	32.66502661	-115.5003213	Secondary	2808
El Centro 9	32.65298241	-115.6621623	32.65674745	-115.6119704	Secondary	2808
El Centro 9	32.65674745	-115.6119704	32.65997305	-115.5685476	Secondary	2808
El Centro 9	32.65997305	-115.5685476	32.66268114	-115.5317336	Secondary	2808
El Centro 9	32.66268114	-115.5317336	32.66400527	-115.5107808	Secondary	2808
El Centro 9	32.66672509	-115.4740716	32.67008528	-115.4310461	Secondary	2808
El Centro 9	32.66400527	-115.5107808	32.66441744	-115.50539	Secondary	2808
El Centro 9	32.66639969	-115.4783807	32.66672509	-115.4740716	Secondary	2808
El Centro 9	32.67008528	-115.4310461	32.67065177	-115.4231003	Secondary	2808
San Diego 4 (1&2)	32.55576079	-116.877791	32.55675216	-116.866256	Secondary	2808
San Diego 4 (1&2)	32.55675216	-116.866256	32.56012814	-116.8414011	Secondary	2808
Yuma 6 (1&2)	32.71603068	-114.7605058	32.71764807	-114.7365576	Primary Pedestrian Replacemen	2808
Yuma 6 (1&2)	32.71905241	-114.7191752	32.70406484	-114.7257261	Secondary	2808
Yuma 6 (1&2)	32.71643589	-114.7606214	32.7167382	-114.7560448	Secondary	2808
Yuma 6 (1&2)	32.7167382	-114.7560448	32.71825951	-114.7284394	Secondary	2808
San Diego 4 (1&2)	32.55637513	-116.8658211	32.55768939	-116.8531846	Primary Pedestrian	2808
San Diego 4 (1&2)	32.55535062	-116.8777419	32.55637513	-116.8658211	Primary Pedestrian	2808
Yuma 6 (1&2)	32.71869511	-114.719492	32.70419718	-114.726013	Primary Pedestrian	2808
Yuma 6 (1&2)	32.71815515	-114.7282353	32.71824028	-114.7269522	Primary Pedestrian	2808
El Paso 8 (1&2)	31.33337004	-108.6176304	31.33337005	-108.6175192	Vehicle to Pedestrian	2808
El Paso 8 (1&2)	31.33291655	-108.7158582	31.33337004	-108.6176304	Vehicle to Pedestrian	2808
El Paso 8 (1&2)	31.33333552	-108.7158147	31.33375248	-108.6176157	Secondary	2808
San Diego 11	32.57427251	-116.6581131	32.57670274	-116.6282079	Secondary	2808
San Diego 11	32.57687801	-116.6260834	32.57866339	-116.6045492	Secondary	2808
El Paso 2	31.33336836	-108.5824119	31.33340657	-108.4792601	Vehicle to Pedestrian	2808
El Paso 2	31.78372235	-108.1824416	31.78371909	-108.1582742	Vehicle to Pedestrian	2808
El Paso 2	31.33231251	-108.9321214	31.33229403	-108.8986798	Vehicle to Pedestrian	2808
El Paso 2	31.332323	-108.962631	31.33231251	-108.9321208	Vehicle to Pedestrian	2808
El Paso 2	31.78371916	-108.1566405	31.78370825	-107.9631931	Vehicle to Pedestrian	2808
El Paso 2	31.33229403	-108.8986798	31.33229168	-108.8859448	Vehicle to Pedestrian	2808
Yuma 2	32.36531415	-114.3866211	32.3579244	-114.3623999	Primary Pedestrian Replacemen	2808
Yuma 3	32.23292391	-113.955219	32.19928542	-113.8465093	Vehicle to Pedestrian	2808
Yuma 3	32.1935563	-113.8280496	32.18621857	-113.8044093	Vehicle to Pedestrian	2808
Yuma 3	32.18075874	-113.7868986	32.17759305	-113.776713	Vehicle to Pedestrian	2808
Yuma 3	32.15087662	-113.6908774	32.05685869	-113.3906895	Vehicle to Pedestrian	2808
Yuma 3	32.05345764	-113.3798902	32.0390333	-113.3341097	Vehicle to Pedestrian	2808
Yuma 3	32.05685869	-113.3906895	32.05381251	-113.3810172	Vehicle to Pedestrian	2808
Yuma 10/27	32.41373234	-114.5445796	32.35831411	-114.3621746	Secondary	2808
Yuma 10/27	32.35454649	-114.3498202	32.26078649	-114.0440488	Secondary	2808
Yuma 10/27	32.41831713	-114.5597239	32.41373234	-114.5445796	Secondary	2808
Laredo 7	28.19685431	-100.2088407	28.12144242	-100.0703333	Primary Pedestrian	2808
Laredo 7	28.12144242	-100.0703333	28.02047236	-100.0053196	Primary Pedestrian	2808
Laredo 7	28.02047236	-100.0053196	27.86156482	-99.89227461	Primary Pedestrian	2808
Laredo 7	27.86155738	-99.89226627	27.74799699	-99.8004009	Primary Pedestrian	2808
Laredo 7	27.74799699	-99.8004009	27.73322231	-99.77084466	Primary Pedestrian	2808
Laredo 7	27.73322231	-99.77084466	27.70087	-99.74378	Primary Pedestrian	2808

The coordinates are not survey accurate and are subject to change

California v. Trump, 19-CV-872 (N.D. Cal.)
 Sierra Club v. Trump, 19-CV-892 (N.D. Cal.)
 Produced by Defendants on Sept. 23, 2019

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 16 OAKLAND DIVISION

18 **STATE OF CALIFORNIA et al.;**

19 Plaintiffs,

20 v.

24 **DONALD J. TRUMP, in his official capacity**
 25 **as President of the United States of America**
 26 **et al.;**

27 Defendants.

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

**PLAINTIFFS' REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT OF
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT REGARDING SECTION
 2808 AND NEPA**

Date: November 20, 2019
 Time: 10:00 am
 Judge: Honorable Haywood S. Gilliam,
 Jr.
 Trial Date: None Set
 Action Filed: February 18, 2019

1 Plaintiffs hereby respectfully request, pursuant to Federal Rule of Evidence 201, that this
2 Court take judicial notice of the following documents.

- 3 1. Attached hereto as **Exhibit 1** is a true and correct copy of a press release from the
4 United States Department of the Interior, Bureau of Land Management regarding the
5 Secretary of the Interior's transfer of the jurisdiction of land to the Department of the
6 Army. As of October 7, 2019, this press release is posted on the Bureau of Land
7 Management's website, at [https://www.blm.gov/press-release/interior-secretary-](https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army)
8 [transfers-five-parcels-land-department-army](https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army).
- 9 2. Attached hereto as **Exhibit 2** is a true and correct copy of the Department of Defense
10 (DoD) form 1391 for construction of the C-130J Flight Simulator Facility at the
11 Channel Islands Air National Guard Station in California. The Department of Defense
12 submitted this form to Congress in support of DoD's request for funding for this
13 project.
- 14 3. Attached hereto as **Exhibit 3** is a true and correct copy of the DoD form 1391 for
15 construction of the Space Control Facility at the Peterson Air Force Base in Colorado.
16 The Department of Defense submitted this form to Congress in support of DoD's
17 request for funding for this project.
- 18 4. Attached hereto as **Exhibit 4** is a true and correct copy of the DoD form 1391 for
19 construction of the Consolidated Training Facility at the Joint Base Pearl Harbor-
20 Hickam in Hawaii. The Department of Defense submitted this form to Congress in
21 support of DoD's request for funding for this project.
- 22 5. Attached hereto as **Exhibit 5** is a true and correct copy of the DoD form 1391 for
23 construction of security improvements at Mokapu Gate at Kaneohe Bay in Hawaii. The
24 Department of Defense submitted this form to Congress in support of DoD's request for
25 funding for this project.
- 26 6. Attached hereto as **Exhibit 6** is a true and correct copy of the DoD form 1391 for
27 construction of the Cantonment Area roads at Fort Meade in Maryland. The Department
28

- 1 of Defense submitted this form to Congress in support of DoD's request for funding for
2 this project.
- 3 7. Attached hereto as **Exhibit 7** is a true and correct copy of the DoD form 1391 for
4 construction of the PAR Relocate Haz Cargo Pad and EOD Range at Joint Base
5 Andrews in Maryland. The Department of Defense submitted this form to Congress in
6 support of DoD's request for funding for this project.
- 7 8. Attached hereto as **Exhibit 8** is a true and correct copy of the DoD form 1391 for
8 construction of a child development center at Joint Base Andrews in Maryland. The
9 Department of Defense submitted this form to Congress in support of DoD's request for
10 funding for this project.
- 11 9. Attached hereto as **Exhibit 9** is a true and correct copy of the DoD form 1391 for
12 construction of the MQ-9 FTU Ops Facility at Holloman Air Force Base in New
13 Mexico. The Department of Defense submitted this form to Congress in support of
14 DoD's request for funding for this project.
- 15 10. Attached hereto as **Exhibit 10** is a true and correct copy of the DoD form 1391 for
16 construction of the Information Systems Facility at White Sands in New Mexico. The
17 Department of Defense submitted this form to Congress in support of DoD's request for
18 funding for this project.
- 19 11. Attached hereto as **Exhibit 11** is a true and correct copy of the DoD form 1391 for
20 construction of the Engineering Center and Parking Structure at the U.S. Military
21 Academy in New York. The Department of Defense submitted this form to Congress in
22 support of DoD's request for funding for this project.
- 23 12. Attached hereto as **Exhibit 12** is a true and correct copy of the DoD form 1391 for
24 construction of an indoor range at Klamath Falls International Airport. The Department
25 of Defense submitted this form to Congress in support of DoD's request for funding for
26 this project.
- 27 13. Attached hereto as **Exhibit 13** is a true and correct copy of the DoD form 1391 for
28 construction of replacement fuel facilities at the Klamath Falls International Airport.

1 The Department of Defense submitted this form to Congress in support of DoD's
2 request for funding for this project.

3 14. Attached hereto as **Exhibit 14** is a true and correct copy of the DoD form 1391 for
4 construction of a cyber ops facility at Joint Base Langley-Eustis in Virginia. The
5 Department of Defense submitted this form to Congress in support of DoD's request for
6 funding for this project.

7 15. Attached hereto as **Exhibit 15** is a true and correct copy of the DoD form 1391 for
8 construction to replace a hazardous materials warehouse in Norfolk, Virginia. The
9 Department of Defense submitted this form to Congress in support of DoD's request for
10 funding for this project.

11 16. Attached hereto as **Exhibit 16** is a true and correct copy of the DoD form 1391 for
12 construction at the Pentagon Metro Entrance Facility at the Pentagon in Virginia. The
13 Department of Defense submitted this form to Congress in support of DoD's request for
14 funding for this project.

15 17. Attached hereto as **Exhibit 17** is a true and correct copy of the DoD form 1391 for
16 construction to replace a hazardous materials warehouse in Portsmouth, Virginia. The
17 Department of Defense submitted this form to Congress in support of DoD's request for
18 funding for this project.

19 18. Attached hereto as **Exhibit 18** is a true and correct copy of the DoD form 1391 for
20 construction of a ships maintenance facility in Portsmouth, Virginia. The Department of
21 Defense submitted this form to Congress in support of DoD's request for funding for
22 this project.

23 19. Attached hereto as **Exhibit 19** is a true and correct copy of the DoD form 1391 for
24 construction of a small arms range at Truax Field in Wisconsin. The Department of
25 Defense submitted this form to Congress in support of DoD's request for funding for
26 this project.

27 20. Attached hereto as **Exhibit 20** is a true and correct copy of the San Diego Air Pollution
28 Control District's Fugitive Dust Control Rule. As of October 8, 2019, this document is

1 posted on the San Diego Air Pollution Control District's website at:

2 [https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Rules and Regulations/Prohibition](https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Rules_and_Regulations/Prohibition)
3 [s/APCD_R55.pdf](https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Rules_and_Regulations/Prohibition).

4 21. Attached hereto as **Exhibit 21** is a true and correct copy of the Congressional Research
5 Service's Report entitled "The Trump Administration's 'Zero Tolerance' Immigration
6 Enforcement Policy" dated July 20, 2018.

7 Each of these exhibits is a matter of public record and is therefore subject to judicial notice.
8 Fed. R. Evid. 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may
9 judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

10 **Exhibits 1-21** are judicially noticeable because government memoranda, bulletins, letters,
11 statements and opinions are matters of public record appropriate for judicial notice. *See Brown v.*
12 *Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative bulletin);
13 *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (court may take judicial
14 notice of records and reports of state administrative bodies), *overruled on other grounds by*
15 *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991); *Interstate Nat. Gas. Co. v.*
16 *S. Cal. Gas. Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (judicially noticing government agency
17 records and reports); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 520 nn.5, 8, 11 (N.D.
18 Cal. 2017) (taking judicial notice of government memoranda and letters).

19 **Exhibits 1 and 20** are judicially noticeable because they are posted on official government
20 websites. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (judicially
21 noticing information contained on a government website); *Paralyzed Veterans of America v.*
22 *McPherson*, No. C 06-4670 SBA, 2008 WL 4183981, at *5 (N.D. Cal. Sept. 9, 2008) (finding
23 that courts commonly take judicial notice of information and documents on government websites,
24 citing cases from various jurisdictions). Thus, the statements of government departments and
25 agencies contained within these exhibits are not subject to reasonable dispute, as the statements
26 "can be accurately and readily determined from sources whose accuracy cannot reasonably be
27 questioned." Fed. R. Evid. § 201(b)(2).

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Dated: October 11, 2019

Respectfully submitted,

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 13 Attorneys for Plaintiff State of California

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

18 **STATE OF CALIFORNIA et al.;**
 19 Plaintiffs,
 20 v.
 21
 22
 23
 24 **DONALD J. TRUMP, in his official capacity**
as President of the United States of America
 25 **et al.;**
 26 Defendants.

Case No. 4:19-cv-00872-HSG
**PLAINTIFFS' REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT OF
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT REGARDING SECTION
 2808 AND NEPA**
 Date: November 20, 2019
 Time: 10:00 am
 Judge: Honorable Haywood S. Gilliam,
 Jr.
 Trial Date: None Set
 Action Filed: February 18, 2019

1 Plaintiffs hereby respectfully request, pursuant to Federal Rule of Evidence 201, that this
2 Court take judicial notice of the following documents.

- 3 1. Attached hereto as **Exhibit 1** is a true and correct copy of a press release from the
4 United States Department of the Interior, Bureau of Land Management regarding the
5 Secretary of the Interior's transfer of the jurisdiction of land to the Department of the
6 Army. As of October 7, 2019, this press release is posted on the Bureau of Land
7 Management's website, at [https://www.blm.gov/press-release/interior-secretary-](https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army)
8 [transfers-five-parcels-land-department-army](https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army).
- 9 2. Attached hereto as **Exhibit 2** is a true and correct copy of the Department of Defense
10 (DoD) form 1391 for construction of the C-130J Flight Simulator Facility at the
11 Channel Islands Air National Guard Station in California. The Department of Defense
12 submitted this form to Congress in support of DoD's request for funding for this
13 project.
- 14 3. Attached hereto as **Exhibit 3** is a true and correct copy of the DoD form 1391 for
15 construction of the Space Control Facility at the Peterson Air Force Base in Colorado.
16 The Department of Defense submitted this form to Congress in support of DoD's
17 request for funding for this project.
- 18 4. Attached hereto as **Exhibit 4** is a true and correct copy of the DoD form 1391 for
19 construction of the Consolidated Training Facility at the Joint Base Pearl Harbor-
20 Hickman in Hawaii. The Department of Defense submitted this form to Congress in
21 support of DoD's request for funding for this project.
- 22 5. Attached hereto as **Exhibit 5** is a true and correct copy of the DoD form 1391 for
23 construction of security improvements at Mokapu Gate at Kaneohe Bay in Hawaii. The
24 Department of Defense submitted this form to Congress in support of DoD's request for
25 funding for this project.
- 26 6. Attached hereto as **Exhibit 6** is a true and correct copy of the DoD form 1391 for
27 construction of the Cantonment Area roads at Fort Meade in Maryland. The Department
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- 1 of Defense submitted this form to Congress in support of DoD's request for funding for
2 this project.
- 3 7. Attached hereto as **Exhibit 7** is a true and correct copy of the DoD form 1391 for
4 construction of the PAR Relocate Haz Cargo Pad and EOD Range at Joint Base
5 Andrews in Maryland. The Department of Defense submitted this form to Congress in
6 support of DoD's request for funding for this project.
- 7 8. Attached hereto as **Exhibit 8** is a true and correct copy of the DoD form 1391 for
8 construction of a child development center at Joint Base Andrews in Maryland. The
9 Department of Defense submitted this form to Congress in support of DoD's request for
10 funding for this project.
- 11 9. Attached hereto as **Exhibit 9** is a true and correct copy of the DoD form 1391 for
12 construction of the MQ-9 FTU Ops Facility at Holloman Air Force Base in New
13 Mexico. The Department of Defense submitted this form to Congress in support of
14 DoD's request for funding for this project.
- 15 10. Attached hereto as **Exhibit 10** is a true and correct copy of the DoD form 1391 for
16 construction of the Information Systems Facility at White Sands in New Mexico. The
17 Department of Defense submitted this form to Congress in support of DoD's request for
18 funding for this project.
- 19 11. Attached hereto as **Exhibit 11** is a true and correct copy of the DoD form 1391 for
20 construction of the Engineering Center and Parking Structure at the U.S. Military
21 Academy in New York. The Department of Defense submitted this form to Congress in
22 support of DoD's request for funding for this project.
- 23 12. Attached hereto as **Exhibit 12** is a true and correct copy of the DoD form 1391 for
24 construction of an indoor range at Klamath Falls International Airport. The Department
25 of Defense submitted this form to Congress in support of DoD's request for funding for
26 this project.
- 27 13. Attached hereto as **Exhibit 13** is a true and correct copy of the DoD form 1391 for
28 construction of replacement fuel facilities at the Klamath Falls International Airport.

- 1 The Department of Defense submitted this form to Congress in support of DoD's
2 request for funding for this project.
- 3 14. Attached hereto as **Exhibit 14** is a true and correct copy of the DoD form 1391 for
4 construction of a cyber ops facility at Joint Base Langley-Eustis in Virginia. The
5 Department of Defense submitted this form to Congress in support of DoD's request for
6 funding for this project.
- 7 15. Attached hereto as **Exhibit 15** is a true and correct copy of the DoD form 1391 for
8 construction to replace a hazardous materials warehouse in Norfolk, Virginia. The
9 Department of Defense submitted this form to Congress in support of DoD's request for
10 funding for this project.
- 11 16. Attached hereto as **Exhibit 16** is a true and correct copy of the DoD form 1391 for
12 construction at the Pentagon Metro Entrance Facility at the Pentagon in Virginia. The
13 Department of Defense submitted this form to Congress in support of DoD's request for
14 funding for this project.
- 15 17. Attached hereto as **Exhibit 17** is a true and correct copy of the DoD form 1391 for
16 construction to replace a hazardous materials warehouse in Portsmouth, Virginia. The
17 Department of Defense submitted this form to Congress in support of DoD's request for
18 funding for this project.
- 19 18. Attached hereto as **Exhibit 18** is a true and correct copy of the DoD form 1391 for
20 construction of a ships maintenance facility in Portsmouth, Virginia. The Department of
21 Defense submitted this form to Congress in support of DoD's request for funding for
22 this project.
- 23 19. Attached hereto as **Exhibit 19** is a true and correct copy of the DoD form 1391 for
24 construction of a small arms range at Truax Field in Wisconsin. The Department of
25 Defense submitted this form to Congress in support of DoD's request for funding for
26 this project.
- 27 20. Attached hereto as **Exhibit 20** is a true and correct copy of the San Diego Air Pollution
28 Control District's Fugitive Dust Control Rule. As of October 8, 2019, this document is

1 posted on the San Diego Air Pollution Control District’s website at:
2 https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Rules_and_Regulations/Prohibition
3 [s/APCD_R55.pdf](https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Rules_and_Regulations/Prohibition).

4 21. Attached hereto as **Exhibit 21** is a true and correct copy of the Congressional Research
5 Service’s Report entitled “The Trump Administration’s ‘Zero Tolerance’ Immigration
6 Enforcement Policy” dated July 20, 2018.

7 Each of these exhibits is a matter of public record and is therefore subject to judicial notice.
8 Fed. R. Evid. 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may
9 judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

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12 *Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative bulletin);
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23 that courts commonly take judicial notice of information and documents on government websites,
24 citing cases from various jurisdictions). Thus, the statements of government departments and
25 agencies contained within these exhibits are not subject to reasonable dispute, as the statements
26 “can be accurately and readily determined from sources whose accuracy cannot reasonably be
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Dated: October 11, 2019

Respectfully submitted,

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Attorneys for Plaintiff State of California

EXHIBIT 1

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U.S. DEPARTMENT OF THE INTERIOR
**BUREAU OF LAND
MANAGEMENT (/)**

(/)

SECRETARY OF THE INTERIOR TRANSFERS JURISDICTION OF FIVE PARCELS OF LAND TO THE DEPARTMENT OF THE ARMY TO SECURE THE SOUTHWEST BORDER

Transferred acreage will facilitate construction of border barriers



WASHINGTON – Secretary of the Interior David Bernhardt announced today the transfer of administrative jurisdiction of approximately 560 acres of Federal lands to the U.S. Department of the Army (Army) to build roughly 70 miles of border barriers. This action comes in response to a series of applications for Emergency Withdrawal as submitted by the Army for construction or augmentation of barriers along the southern border. No national parks nor segments from Indian country are included in the land transfer.

The Army submitted its requests following **Presidential Proclamation 9844** (<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-emergency-concerning-southern-border-united-states/>), issued by President Trump on February 15, 2019, declaring a national emergency regarding the border security and humanitarian crisis at our southern border. The requests follow the Defense Department **announcement** (<https://www.defense.gov/explore/story/Article/1952013/dod-to-divert-36-billion-to-fund-11-barrier-projects-at-southern-border/>) on September 4, 2019 to defer \$3.6 billion to fund 11 barrier projects at our southern border. In accordance with this proclamation, and as requested by the Army, the land will be transferred to the Army for military construction projects under 10 U.S.C. 2808.

“I’ve personally visited the sites that we are transferring to the Army, and there is no question that we have a crisis at our southern border. Absent this action, national security and natural resource values will be lost. The impacts of this crisis are vast and must be aggressively addressed with extraordinary measures,” said **Secretary of the Interior David Bernhardt**. “The damages to natural resource values are a byproduct of the serious national security, drug enforcement, and other immigration challenges facing our dedicated staff along the border. Construction of border barriers will help us maintain the character of the lands and resources under our care and fulfill our mission to protect them.”

“We made it a priority to work closely with the Departments of Homeland Security and Defense, to protect the wildlife, natural, and cultural resources that occur on these federal lands along the border. This work will provide the necessary tools to enhance the safety of those that live, work and recreate in this region,” said **Casey Hammond, Acting Assistant Secretary for Land and Minerals Management**. “Through this collaboration we will maximize safety and stewardship, benefitting all Americans in response to this crisis.”



The lands requested for these projects include:

- El Paso 2 (170 acres in Luna and Hidalgo counties, NM): Replacement of existing vehicle barrier with pedestrian barrier.
- El Paso 8 (43 acres in Hidalgo County, NM): Construction of new primary and secondary pedestrian barriers.
- San Diego 4 (43.77 acres in San Diego County, CA): Construction of new primary bollard fence and secondary pedestrian barrier.
- Yuma 3 (228 acres in Yuma County, AZ): Replacement of the existing vehicle barrier adjacent to the Cabeza Prieta National Wildlife Refuge (CPNWR) with pedestrian barrier.
- Yuma 6 (73.3 acres in Yuma County, AZ): Construction of both new primary and secondary pedestrian barriers.

The Public Land Orders temporarily transferring jurisdiction of the land to the Army will be for a period of three years for border security purposes.

In addition to national security concerns, this act also responds to environmental issues caused by unlawful border crossings. Wilderness areas, wildlife refuges, as well as species and vegetation are adversely impacted by land degradation and destruction caused by the creation of trails, the deposition of trash, and unlawful fires, among other things. Construction of border barriers will reduce or eliminate these impacts and preserve values that will otherwise be lost.

The BLM manages more than 245 million acres of public land located primarily in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. Diverse activities authorized on these lands generated \$96 billion in sales of goods and services throughout the American economy in fiscal year 2017. These activities supported more than 468,000 jobs.

MORE PRESS RELEASES

RELEASE DATE

Wednesday, September 18, 2019

ORGANIZATION

Bureau of Land Management

CONTACTS

Email:

interior_press@ios.doi.gov (mailto:interior_press@ios.doi.gov)

RELATED CONTENT

Maps

[PLO_APPLICATION FOR WITHDRAWAL EL PASO 2 MAP.PDF](#) »

[PLO_APPLICATION FOR WITHDRAWAL EL PASO PROJECT PRIORITY 8 MAP.PDF](#) »

[PLO_APPLICATION FOR WITHDRAWAL SAN DIEGO 4 MAP.PDF](#) »

[PLO_APPLICATION FOR WITHDRAWAL YUMA 3 MAP.PDF](#) »

PLO_APPLICATION FOR WITHDRAWAL YUMA PROJECT PRIORITY6.PDF »

Public Land Orders

PLO_EL PASO PROJECT 2.PDF »

PLO EL PASO PROJECT 8.PDF »

PLO SAN DIEGO PROJECT 4.PDF »

PLO YUMA PROJECT 3.PDF »

PLO YUMA PROJECT 6.PDF »

EXHIBIT 2

①

1. COMPONENT ANG		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE Feb 2018	
3. INSTALLATION AND LOCATION CHANNEL ISLANDS ANG STATION, CALIFORNIA			4. PROJECT TITLE CONSTRUCT C-130J FLIGHT SIMULATOR FACILITY		
5. PROGRAM ELEMENT 54332F	6. CATEGORY CODE 171-212	7. PROJECT NUMBER DJCF149001	8. PROJECT COST(\$000) \$8,000		
9. COST ESTIMATES					
ITEM		U/M	QUANTITY	UNIT COST	COST (\$000)
C-130J FLIGHT SIMULATOR TRAINING FACILITY		SM	985		4,082
CONSTRUCT FLIGHT SIMULATOR (171212)		SM	985	4,144	(4,082)
SUPPORTING FACILITIES					3,122
UTILITIES		LS			(494)
PAVEMENTS		LS			(336)
SITE IMPROVEMENTS		LS			(346)
COMMUNICATIONS SUPPORT		LS			(99)
FIRE PROTECTION SUPPORT		LS			(1,481)
SEISMIC CONDITIONS		LS			(247)
SUSTAINABILITY AND ENERGY MEASURES		LS			(119)
SUBTOTAL					7,204
CONTINGENCY (5%)					360
TOTAL CONTRACT COST					7,564
SUPERVISION, INSPECTION AND OVERHEAD (6%)					453
TOTAL REQUEST					8,017
TOTAL REQUEST (ROUNDED)					8,000
10. Description of Proposed Construction: Construct a C-130-J Simulator Facility utilizing conventional design and construction methods to accommodate the mission of the facility. Facility shall be designed as permanent construction in accordance with the DoD Unified Facilities Criteria. The facility should be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special construction requirements: Simulator will require high bay construction with specialized flooring. To the greatest extent possible interior spaces shall be open office configuration with demountable partitions and systems furniture/prewired workstations. Exterior work includes: all necessary exterior utilities, sidewalks, paved areas, fire protection, site work, communications support and parking area. Air Conditioning: 350 KW.					
11. REQUIREMENT: 985 SM ADEQUATE: 0 SM SUBSTANDARD: 0 SM PROJECT: C-130J Flight Simulator Training Facility (New Mission) REQUIREMENT: The installation requires a properly sited, adequately sized and appropriately configured flight simulator facility house a six-axis flight simulator to train aircrews to fly the 8 PAA C-130J aircraft assigned to the 146th Airlift Wing. Functional areas include a two-story high bay in which to house flight simulator, briefing rooms, administrative areas for training and support staff, equipment and maintenance rooms, storage spaces, communications room supporting simulator operations, mechanical and electrical utility rooms and latrine facilities. CURRENT SITUATION: Air Mobility Command is establishing C-130J Aircraft Flight Simulator Training Program and selected Channel Islands Air National Guard Station to receive the equipment for this function. The installation does not have a facility that can be modified to accommodate a flight simulator. Crews currently perform training and meet qualification requirements by either flying existing based aircraft or performing temporary duty at an installation that has an appropriate simulator device.					

1. COMPONENT ANG	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE Feb 2018	
3. INSTALLATION AND LOCATION CHANNEL ISLANDS ANG STATION, CALIFORNIA			
5. PROJECT TITLE CONSTRUCT C-130J FLIGHT SIMULATOR FACILITY		7. PROJECT NUMBER DJCF149001	
12. SUPPLEMENTAL DATA:			
a. Estimated Design Data:			
(1) Status:			
(a) Date Design Started		DEC 2017	
(b) Parametric Cost Estimates used to develop costs		NO	
(c) Percent Complete as of Jan 2018		6%	
* (d) Date 35% Designed		MAR 2018	
(e) Date Design Complete		JUL 2018	
(f) Type of Design Contract		IDIQ	
(g) Energy Study/Life-Cycle analysis was/will be performed		YES	
(2) Basis:			
(a) Standard or Definitive Design -		NO	
(b) Where Design Was Most Recently Used -		N/A	
(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)			
(a) Production of Plans and Specifications		370	
(b) All Other Design Costs		180	
(c) Total		550	
(d) Contract		550	
(e) In-House			
(4) Contract Award (Month/Year)		DEC 2018	
(5) Construction Start		FEB 2019	
(6) Construction Completion		JAN 2020	
* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability.			
b. Equipment associated with this project will be provided from other appropriations: YES			
EQUIPMENT NOMENCLATURE C-130J Flight Simulator	PROCURING APPROPRIATION 3010	FY APPROPRIATED OR REQUESTED 2018	COST (\$000) 30,000
POINT OF CONTACT: NGB / A4AD (240) 612-8070			

EXHIBIT 3

2

1. COMPONENT ANG		FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE May 2017	
3. INSTALLATION AND LOCATION PETERSON AFB, COLORADO				4. PROJECT TITLE SPACE CONTROL FACILITY		
5. PROGRAM ELEMENT C5116F		6. CATEGORY CODE 141-454	7. PROJECT NUMBER TDKA169004		8. PROJECT COST(\$000) \$8,000	
9. COST ESTIMATES						
ITEM		U/M	QUANTITY	UNIT COST	COST (\$000)	
SPACE CONTROL FACILITY		SM	1,124		5,354	
OPERATIONAL AREA (141454)		SM	1,096	4,822	(5,285)	
HAZARDOUS STORAGE (442257)		SM	28	2,465	(69)	
SUPPORTING FACILITIES		LS			1,672	
UTILITIES		LS			(394)	
EQUIPMENT PAD		SM	2,090	172	(359)	
PAVEMENTS		SM	2,090	110	(230)	
SITE IMPROVEMENTS		LS			(525)	
COMM SUPPORT		LS			(164)	
SUSTAINABILITY AND ENERGY MEASURES		LS			196	
SUBTOTAL					7,222	
CONTINGENCY (5%)					361	
TOTAL CONTRACT COST					7,583	
SUPERVISION, INSPECTION AND OVERHEAD (6%)					454	
TOTAL REQUEST					8,037	
TOTAL REQUEST (ROUNDED)					8,000	
<p>10. Description of Proposed Construction: Construct a Space Control Facility utilizing conventional design and construction methods. Facilities will be designed as permanent construction in accordance with the DoD Unified Facilities Criteria (UFC) 1-200-01, General Building Requirements and UFC 1-200-02, High Performance and Sustainable Building Requirements. This facility will be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special Construction Requirements: Provide for open floor plan with Secure Compartmentalized Information Facility (SCIF) space capable of accommodating 88 personnel. Exterior site improvements, equipment pad, utility services, roadways, sidewalks, parking lots, access pavements, drainage, fencing, and gates. HAZMAT Storage to include space for fuel storage, used oil depositary and flammable storage locker. Facility and equipment require Protection Level 3. Air Conditioning: 175 KW.</p>						
<p>11. REQUIREMENT: 1,124 SM ADEQUATE: 0 SM SUBSTANDARD: 0 SM <u>PROJECT:</u> Space Control Facility (New Mission) <u>REQUIREMENT:</u> The Colorado Air National Guard requires adequately sized and properly configured space to support a Space Control Squadron functions in accordance with force structure changes identified by the FY18 Program Action Memorandum. The facility must provide adequate space to support the squadron's operations, maintenance, security, command and administration, and storage areas. Facility must have an unobstructed view of the southern horizon. <u>CURRENT SITUATION:</u> A new Space Control Squadron will be created in Colorado, most likely at Peterson AFB. The squadron does not currently existing and there are no adequate facilities located at either Peterson or Buckley AFBs for this space control squadron. The only solution that meets all mission requirements is to construct a new facility on Peterson AFB. <u>IMPACT IF NOT PROVIDED:</u> Unable to beddown the space control mission and equipment, with operational and strategic mission impacts due to inadequate facilities.</p>						

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE May 2017																							
3. INSTALLATION AND LOCATION PETERSON AFB, COLORADO																									
5. PROJECT TITLE SPACE CONTROL FACILITY	7. PROJECT NUMBER TDKA169004																								
<p><u>ADDITIONAL:</u> Sustainable principles, to include Life Cycle cost effective practices, will be integrated into the design, development, and construction of the project in accordance with Executive Order 13423, 10 USC 2802 (c) and other applicable laws and Executive Orders. An economic analysis is being prepared comparing the alternatives of new construction, and status quo operation. Based on the net present values and benefits of the respective alternatives, new construction will be the most cost efficient alternative over the life of the project.</p>																									
<table border="0"> <tr> <td>CatCode</td> <td>Requirement</td> <td>Adequate</td> <td>Substandard</td> </tr> <tr> <td>141-454 SPECIAL OPERATIONS</td> <td>1,096 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>132-133 EQUIPMENT PAD</td> <td>6,271 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>852-262 NON-ORGANIZATIONAL VEHICLE PKN</td> <td>1,923 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>852-261 OPERATIONAL VEHICLE PARKING</td> <td>167 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>442-257 BASE HAZARDOUS STORAGE</td> <td>28 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> </table>	CatCode	Requirement	Adequate	Substandard	141-454 SPECIAL OPERATIONS	1,096 SM	0 SM	0 SM	132-133 EQUIPMENT PAD	6,271 SM	0 SM	0 SM	852-262 NON-ORGANIZATIONAL VEHICLE PKN	1,923 SM	0 SM	0 SM	852-261 OPERATIONAL VEHICLE PARKING	167 SM	0 SM	0 SM	442-257 BASE HAZARDOUS STORAGE	28 SM	0 SM	0 SM	
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<p>OPERATIONAL AREA (141454) HAZARDOUS STORAGE (442257) EQUIPMENT PAD PAVEMENTS</p>	<p>1,096 SM = 11,800 SF 28 SM = 300 SF 2,090 SM = 2,500 SY 2,090 SM = 2,500 SY</p>																								

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE May 2017																												
3. INSTALLATION AND LOCATION PETERSON AFB, COLORADO																														
5. PROJECT TITLE SPACE CONTROL FACILITY		7. PROJECT NUMBER TDKA169004																												
<p>12. SUPPLEMENTAL DATA:</p> <p>a. Estimated Design Data:</p> <p>(1) Status:</p> <table border="0"> <tr> <td>(a) Date Design Started</td> <td>NOV 2016</td> </tr> <tr> <td>(b) Parametric Cost Estimates used to develop costs</td> <td>No</td> </tr> <tr> <td>(c) Percent Complete as of Jan 2017</td> <td>10%</td> </tr> <tr> <td>* (d) Date 35% Designed</td> <td>APR 2017</td> </tr> <tr> <td>(e) Date Design Complete</td> <td>NOV 2017</td> </tr> <tr> <td>(f) Type of Design Contract</td> <td>IDIQ</td> </tr> <tr> <td>(g) Energy Study/Life-Cycle analysis was/will be performed</td> <td>No</td> </tr> </table> <p>(2) Basis:</p> <table border="0"> <tr> <td>(a) Standard or Definitive Design -</td> <td>No</td> </tr> <tr> <td>(b) Where Design Was Most Recently Used -</td> <td></td> </tr> </table> <p>(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)</p> <table border="0"> <tr> <td>(a) Production of Plans and Specifications</td> <td>240</td> </tr> <tr> <td>(b) All Other Design Costs</td> <td>480</td> </tr> <tr> <td>(c) Total</td> <td>720</td> </tr> <tr> <td>(d) Contract</td> <td>720</td> </tr> <tr> <td>(e) In-House</td> <td></td> </tr> </table> <p>(4) Contract Award (Month/Year) MAR 2018</p> <p>(5) Construction Start JUN 2018</p> <p>(6) Construction Completion AUG 2019</p> <p>* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability.</p> <p>b. Equipment associated with this project will be provided from other appropriations: N/A</p> <p>POINT OF CONTACT: NGB/A4AD (240) 612-8083</p>			(a) Date Design Started	NOV 2016	(b) Parametric Cost Estimates used to develop costs	No	(c) Percent Complete as of Jan 2017	10%	* (d) Date 35% Designed	APR 2017	(e) Date Design Complete	NOV 2017	(f) Type of Design Contract	IDIQ	(g) Energy Study/Life-Cycle analysis was/will be performed	No	(a) Standard or Definitive Design -	No	(b) Where Design Was Most Recently Used -		(a) Production of Plans and Specifications	240	(b) All Other Design Costs	480	(c) Total	720	(d) Contract	720	(e) In-House	
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EXHIBIT 4

1. COMPONENT AIR FORCE RESERVE	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. DATE MAY 2017	
3. INSTALLATION AND LOCATION JOINT BASE PEARL HARBOR-HICKAM, HI			
4. PROJECT TITLE CONSOLIDATED TRAINING FACILITY		5. PROJECT NUMBER KNMD624007	
12. SUPPLEMENTAL DATA:			
A. DESIGN DATA (Estimated)			
1. STATUS			
a. Date Design Started:		Sep 2017	
b. Parametric estimates have been used to develop project cost.			
c. Percentage Complete as of January 1, 2016		35%	
d. Date Design 35% Complete		Dec 2017	
e. Date Design Complete - (If design-build, construction complete)		Sep 2019	
2. BASIS			
a. Standard or Definitive Design - Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> .			
b. Where Design Was Most Recently Used <u> N/A </u> .			
3. COST (Total) = c = a + b or d + e		(\$495)	
a. Production of Plans and Specifications (35% design)		(294)	
b. All Other Design Costs (Design-build)		(201)	
c. Total		(495)	
d. Contract (A-E)		()	
e. In-house (management)		()	
4. CONSTRUCTION AWARD /START / COMPLETION		Aug 2018 / Sep 2018 / Sep 2019	
B. EQUIPMENT ASSOCIATED WITH THIS PROJECT WHICH WILL BE PROVIDED FROM OTHER APPROPRIATIONS:			
<u>Equipment</u>	<u>Procuring</u>	<u>Fiscal Year</u>	<u>Cost</u>
<u>Nomenclature</u>	<u>Appropriation</u>	<u>Appropriated</u>	<u>(\$000)</u>
<u>Or Requested</u>			
Furniture / Storage Equipment	3740	FY 2018	350
Interior Design Services	3740	FY 2018	200
Communications Equipment	3740	FY 2018	65

1. COMPONENT AIR FORCE RESERVE	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. DATE MAY 2017
3. INSTALLATION AND LOCATION JOINT BASE PEARL HARBOR-HICKAM, HI		
11. PERSONNEL STRENGTH AS OF JAN 2017		
	PERMANENT (ARTs, AGRs, Non-ART Civilians)	GUARD/RESERVE
	<u>TOTA</u> <u>OFFICER</u> <u>ENLISTED</u> <u>CIVILIAN</u>	<u>TOTAL</u> <u>OFFICER</u> <u>ENLISTED</u>
AUTHORIZE D	<u>L</u> 44 5 32 7	393 62 331
ACTUAL	38 9 27 2	490 89 401
12. RESERVE UNIT DATA		
<u>UNIT DESIGNATION</u>	<u>STRENGTH</u>	
	<u>AUTHORIZED</u>	<u>ACTUAL</u>
624 Aeromed STG Squadron	81	97
624 Civil Engineer Squadron	139	129
647 Security Forces Squadron	0	6
624 Regional Support Group	43	51
647 Force Support Squadron	0	4
701 Combat Operations Squadron	20	15
713 Combat Operations Squadron	21	19
15 Wing WG	0	27
AFR West Recruit Squadron	3	3
HQ AF Reserve / PACAF	1	53
IR Read and Integ Organization	4	4
48 Aerial Port Squadron	125	120
Total	442	528
13. MAJOR EQUIPMENT AND AIRCRAFT		
<u>TYPE</u>	<u>AUTHORIZED</u>	<u>ASSIGNED</u>
Non -Flying Unit -Civil Engineering, Aerial Port, and Medical Support Unit		

1. COMPONENT AIR FORCE RESERVE	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. DATE MAY 2017
3. INSTALLATION AND LOCATION: JOINT BASE PEARL HARBOR-HICKAM, HI		
4. PROJECT TITLE: CONSOLIDATED TRAINING FACILITY	5. PROJECT NUMBER KNMD624007	
<p><u>JOINT USE CERTIFICATION:</u> This facility can be used by other components on an "as available" basis; however, the scope of the project is based on Air Force Reserve requirements.</p>		

EXHIBIT 5

4

1. Component NAVY		FY 2018 MILITARY CONSTRUCTION PROGRAM			2. Date 23 MAR 2018	
3. Installation(SA) & Location/UIC: M00318 MARINE CORPS BASE HAWAII KANEHOE BAY, HAWAII				4. Project Title Mokapu Gate Entry Control AT/FP Compliance		
5. Program Element 0216496M		6. Category Code 87210	7. Project Number P877	8. Project Cost (\$000) 26,492		
9. COST ESTIMATES						
Item		UM	Quantity	Unit Cost	Cost (\$000)	
MOKAPU GATE ENTRY CONTROL AT/FP COMPLIANCE		LS			9,560	
ECP OVER WATCH TOWER CC73025		EA	1	1,353,295.69	(1,350)	
ECP GENERATOR/TOILET/COMM BUILDING CC73025 (431SF)		m2	40	30,846.43	(1,230)	
PERIMETER GATE GENERATOR/TOILET/COMM BLDG (430SF) CC73025 (431SF)		m2	40	28,529.6	(1,140)	
ECP GATE HOUSE & GUARD BOOTH CANOPY CC73025		EA	1	971,860.08	(970)	
ECP GATE/CONTROLS HOUSE CC73025 (118SF)		m2	11	58,406.09	(640)	
PERIMETER GATE/CONTROLS HOUSE CC73025 (118SF)		m2	11	58,406.09	(640)	
ECP POV SEARCH CANOPY CC73025		EA	1	625,411.07	(630)	
ECP OVER WATCH STATION CC73025		EA	1	410,277.41	(410)	
ECP GUARD BOOTH CC73025		EA	1	83,808.87	(80)	
BUILT-IN EQUIPMENT		LS			(700)	
SPECIAL COSTS		LS			(1,660)	
OPERATION & MAINTENANCE SUPP INFO (OMSI)		LS			(110)	
SUPPORTING FACILITIES					14,190	
SITE PREPARATIONS		LS			(1,860)	
PAVING AND SITE IMPROVEMENTS		LS			(3,190)	
ANTI-TERRORISM/FORCE PROTECTION		LS			(1,840)	
ELECTRICAL UTILITIES		LS			(6,860)	
MECHANICAL UTILITIES		LS			(430)	
DEMOLITION		LS			(10)	
SUBTOTAL					23,750	
CONTINGENCY (5%)					1,190	
TOTAL CONTRACT COST					24,940	
SIOH (6.2%)					1,550	
SUBTOTAL					26,490	
TOTAL REQUEST ROUNDED					26,490	

1. Component NAVY		FY 2018 MILITARY CONSTRUCTION PROGRAM		2. Date 23 MAR 2018																
3. Installation(SA) & Location/UIC: M00318 MARINE CORPS BASE HAWAII KANEHOE BAY, HAWAII			4. Project Title Mokapu Gate Entry Control AT/FP Compliance																	
5. Program Element 0216496M	6. Category Code 87210	7. Project Number P877	8. Project Cost (\$000) 26,492																	
<p>Site preparation includes site clearing and grubbing work and earthwork for the project.</p> <p>Paving and site improvements include asphalt-concrete roadways and parking area (approximately 15 stalls), concrete roadway crossing, concrete sidewalks and ramps, landscaping, chain-link fence and gates, and site demolition.</p> <p>Anti-Terrorism/Force Protection (Outside) improvements include mechanical vehicle barriers, a POV search pad, earth berms at the POV search area, vehicle barrier curbs, bollards, and movable barriers for the center separation wall.</p> <p>Electrical utilities include primary electrical distribution, secondary electrical distribution, transformer, area lighting, and exterior telecommunications infrastructure.</p> <p>Mechanical utilities include potable water and fire protection water distribution systems, gravity sanitary sewer systems, and a sanitary sewer pump station and force main.</p> <p>Demolition includes restroom/equipment room Building #1188 (10.87 M2) and gate control Building #886 (5.02 M2) to be demolished after the new gate/controls house at the perimeter gate is completed.</p> <p>Facilities will be designed to meet or exceed the useful service life specified in DoD Unified Facility Criteria. Facilities will incorporate features that provide the lowest practical life cycle cost solutions satisfying the facility requirements with the goal of maximizing energy efficiency.</p>																				
<table border="0"> <tr> <td>11. Requirement:</td> <td>Adequate:</td> <td>Substandard:</td> </tr> <tr> <td colspan="3">PROJECT:</td> </tr> <tr> <td colspan="3">Construct entry control point, perimeter gate improvements, and supporting facilities to comply with current AT/FP standards.</td> </tr> <tr> <td colspan="3">The entry control point facilities will include a new gate/control house with canopy, over watch tower, generator/toilet/communications building, privately-owned-vehicle (POV) inspection area with canopy, and over watch station.</td> </tr> <tr> <td colspan="3">(Current Mission)</td> </tr> </table>						11. Requirement:	Adequate:	Substandard:	PROJECT:			Construct entry control point, perimeter gate improvements, and supporting facilities to comply with current AT/FP standards.			The entry control point facilities will include a new gate/control house with canopy, over watch tower, generator/toilet/communications building, privately-owned-vehicle (POV) inspection area with canopy, and over watch station.			(Current Mission)		
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1. Component NAVY		FY 2018 MILITARY CONSTRUCTION PROGRAM		2. Date 23 MAR 2018																					
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(B) Date 35% Design or Parametric Cost Estimate complete 03/2017 (C) Date design completed 09/2017 (D) Percent completed as of September 2016 15% (E) Percent completed as of January 2017 15% (F) Type of design contract Design Bid Build (G) Parametric Estimate used to develop cost Yes (H) Energy Study/Life Cycle Analysis performed Yes 2. Basis: (A) Standard or Definitive Design No (B) Where design was previously used No 3. Total Cost (C) = (A) + (B) = (D) + (E): (A) Production of plans and specifications \$1,320 (B) All other design costs \$944 (C) Total \$2,264 (D) Contract \$1,848 (E) In-house \$416 4. Contract award: 08/2018 5. Construction start: 09/2018 6. Construction complete: 03/2020 B. Equipment associated with this project which will be provided from other appropriations: <table border="1"> <thead> <tr> <th><u>Equipment</u></th> <th><u>Procuring</u></th> <th><u>FY Approp</u></th> <th></th> </tr> <tr> <th><u>Nomenclature</u></th> <th><u>Approp</u></th> <th><u>or Requested</u></th> <th><u>Cost (\$000)</u></th> </tr> </thead> <tbody> <tr> <td>C4I, IT</td> <td>O&MMC</td> <td>2020</td> <td>172</td> </tr> <tr> <td>PSE</td> <td>O&MMC</td> <td>2020</td> <td>212</td> </tr> <tr> <td>Smart Grid Equipment</td> <td>PMC</td> <td>2020</td> <td>30</td> </tr> </tbody> </table>						<u>Equipment</u>	<u>Procuring</u>	<u>FY Approp</u>		<u>Nomenclature</u>	<u>Approp</u>	<u>or Requested</u>	<u>Cost (\$000)</u>	C4I, IT	O&MMC	2020	172	PSE	O&MMC	2020	212	Smart Grid Equipment	PMC	2020	30
<u>Equipment</u>	<u>Procuring</u>	<u>FY Approp</u>																							
<u>Nomenclature</u>	<u>Approp</u>	<u>or Requested</u>	<u>Cost (\$000)</u>																						
C4I, IT	O&MMC	2020	172																						
PSE	O&MMC	2020	212																						
Smart Grid Equipment	PMC	2020	30																						
JOINT USE CERTIFICATION: The Director Land Use and Military Construction Branch, Installations and Logistics Department, Headquarters Marine Corps certifies that this project has been considered for joint use potential. Unilateral Construction is recommended. This is an installation utility/infrastructure project and does not qualify for joint use at this location, however, all tenants on this installation will benefit from this project.																									
Activity POC: Project Development Lead Phone No: (808) 257-3687																									

EXHIBIT 6

5

1. COMPONENT Army		FY 2021 MILITARY CONSTRUCTION PROJECT DATA			2. DATE 13 APR 2018 02 SEP 2014			
3. INSTALLATION AND LOCATION Fort George G Meade Maryland				4. PROJECT TITLE Cantonment Area Roads				
5. PROGRAM ELEMENT		6. CATEGORY CODE 851 10	7. PROJECT NUMBER 86767		8. PROJECT COST (\$000) 16,500			
9. COST ESTIMATES								
ITEM					UM	QUANTITY	UNIT COST	COST(\$000)
PRIMARY FACILITY								9,994
Roads, Surfaced					SY	80,643	118.28	(9,539)
Sustainability/Energy Measures					LS	--	--	(260)
Antiterrorism Measures					LS	--	--	(195)
SUPPORTING FACILITIES								4,986
Electric Service					LS	--	--	(680)
Paving, Walks, Curbs And Gutters					LS	--	--	(974)
Storm Drainage					LS	--	--	(2,226)
Site Imp(816) Demo(290)					LS	--	--	(1,106)
ESTIMATED CONTRACT COST								14,980
CONTINGENCY (5.00%)								749
SUBTOTAL								15,729
SUPERVISION, INSPECTION & OVERHEAD (5.70%)								897
TOTAL REQUEST								16,626
TOTAL REQUEST (ROUNDED)								16,500
INSTALLED EQT-OTHER APPROPRIATIONS								(0)
10. Description of Proposed Construction Construct additional road surface by widening the travel lanes of Cooper Avenue from Rockenbach Road to Mapes Road. Increase transit lanes from two to four lanes. Similarly widen Reece Road from Cooper Avenue to the point east of Rose Street to adjoin the new four lane road from the Access Control Point at the Reece gate. Increase the travel lanes of Rose Street from two to four lanes. Facilities will be designed to a minimum life of 40 years in accordance with DoD's Unified Facilities Criteria (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance.								
11. REQ: 1,504,240 SY ADQT: 827,410 SY SUBSTD: 551,608 SY								
PROJECT: Widen existing two lane roadways to four lanes and modify existing intersections to establish continuity of travel.								
REQUIREMENT: Improve the timely, efficient and safe transit within the cantonment area. Connect the three primary east-west roads on the installation with a primary route, of similar capacity, to maintain traffic flow.								
CURRENT SITUATION: Daily traffic counts measured at the ACPs can exceed 53,000 vehicles. Traffic								

EXHIBIT 7

6

1. COMPONENT AIR FORCE		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE			
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND				4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE				
5. PROGRAM ELEMENT 41319		6. CATEGORY CODE 112-211	7. RPSUID/PROJECT NUMBER 1377/AJXF163002		8. PROJECT COST (\$000) 37,000			
9. COST ESTIMATES								
ITEM					U/M	QUANTITY	UNIT	COST (\$000)
PRIMARY FACILITIES								12,704
ACCESS TAXIWAY (112-211)					SM	28,533	232	(6,620)
HAZARDOUS CARGO PAD (116-662)					SM	7,791	232	(1,808)
HCP/TAXIWAY PAVED SHOULDERS (116-642)					SM	24,682	156	(3,850)
EOD PROFICIENCY RANGE (831-173)					SM	37	5,310	(196)
SUSTAINABILITY/ENERGY MEASURES					LS			(230)
SUPPORTING FACILITIES								20,476
ACTIVE/PASSIVE BARRIERS					EA	2	90,630	(181)
PERIMETER FENCING					LS			(759)
LIGHTING					LS			(1,314)
ACCESS ROAD					LS			(766)
UTILITIES					LS			(2,117)
SITE PREPARATION					LS			(15,339)
SUBTOTAL								33,180
CONTINGENCY (5.0%)								1,659
TOTAL CONTRACT COST								34,839
SUPERVISION, INSPECTION AND OVERHEAD (5.7%)								1,986
TOTAL REQUEST								36,825
TOTAL REQUEST (ROUNDED)								37,000
10. Description of Proposed Construction: Construct a Hazardous Cargo Pad (HCP) and Access Taxiway that complies with Airfield and Explosive Safety criteria. Construct Explosive Ordnance Disposal (EOD) proficiency range and supporting infrastructure in compliance with AF standards for safe training of EOD technicians and maintaining EOD qualifications. Add to and alter base perimeter fencing and install security/traffic control barriers. HCP consists of a concrete aircraft parking apron, asphalt shoulders, aircraft grounding system, and aircraft tie down points. HCP also requires a concrete access taxiway with asphalt shoulders. Project also includes site preparation, airfield taxiway and HCP lighting and markings, HCP and EOD range access roads, site improvements, necessary utilities rerouting and installation, airfield storm drainage features, required demolition, and all other necessary work. All work will utilize economical design and construction methods to accommodate the mission of the facilities and will be compatible with applicable DoD, Air Force, and base design standards. Facilities will be designed as permanent construction in accordance with DoD Unified Facilities Criteria (UFC) 1-200-01, General Building Requirements and UFC 1-200-02, High Performance and Sustainable Building Requirements. This project will comply with DoD antiterrorism/force protection requirements per UFC 4-010-01.								

DD FORM 1391, DEC 99

Previous editions are obsolete.

1. COMPONENT AIR FORCE		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE	
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE		
5. PROGRAM ELEMENT 41319	6. CATEGORY CODE 112-211	7. RPSUID/PROJECT NUMBER 1377/AJXF163002	8. PROJECT COST (\$000) 37,000		
<p>11. Requirement: 7791 SM Adequate: 0 SM Substandard: 0 SM</p> <p>PROJECT: Relocate Hazardous Cargo Pad and Explosive Ordnance Disposal Proficiency Range</p> <p>REQUIREMENT A hazardous cargo pad is required to load/unload explosives or other dangerous materials on cargo aircraft. This mission requires a location that meets both Airfield and Explosive Safety requirements. The pad will be sited to accommodate 30,000 pounds of net explosive weight (NEW). The taxiway provides aircraft access to the cargo pad. Pavement will be medium load with tie down anchors and grounding points. Maintaining qualified EOD technicians necessitates construction of an appropriately sited proficiency range.</p> <p>CURRENT SITUATION: The Secretary of the Air Force approved basing the PAR program at Joint Base Andrews (JBA), MD pending National Environmental Policy Act analysis. As a direct result of this bed down, the existing HCP and JADOC Satellite sites at JBA were displaced to allow construction of the new PAR Complex. The JADOC Satellite site construction caused relocation of the EOD Proficiency Range site. Siting the EOD range next to the HCP and the new Munitions Storage Area (MSA) makes the most functional sense as it allows for overlap of the explosive quantity-distance arcs associated with those facilities.</p> <p>IMPACT IF NOT PROVIDED: A temporary HCP will provided on taxiway Charlie for use during the construction of the new HCP (limited to 450 pound NEW, far below the required 30,000 pound NEW). Failing to replace the HCP will cause JBA to have enduring systemic weaknesses in its ability to support required military activities. Lack of an EOD proficiency range will adversely impact EOD training and force training to be accomplished at an off-base location at an increased cost.</p> <p>ADDITIONAL: This project meets the criteria/scope specified in Air Force Handbook 32-1084, Facility Requirements, UFC 3-260-01, Airfield and Heliport Planning and Design. An analysis of reasonable options for accomplishing this project indicates construction of the HCP on the selected southeast corner of the airfield will economically meet mission needs. The economic analysis of reasonable options for this project (status quo, and various new construction options) indicated new construction is required to meet mission needs. The analysis concluded that construction on the south east side of the airfield provided the greatest cost benefit without adversely impacting airfield safety. This option requires land acquisition and restrictive easements included in an FY18 MILCON, AJXF163002A - PAR Land Acquisition/Easement. Significant supporting facility costs are associated with development of off base land.</p> <p>Base Civil Engineer (11 CES/CC): 301-981-7281.</p> <p>Access Taxiway 28,533 SM equals 307,015 SF Pa ed Shoulders 24,682 SM equals 265,578 SF EOD Range 37 SM equals 398 SF</p>					

1. COMPONENT AIR FORCE		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE	
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE		
5. PROGRAM ELEMENT 41319	6. CATEGORY CODE 112-211	7. RPSUID/PROJECT NUMBER 1377/AJXF163002	8. PROJECT COST (\$000) 37,000		
<p>This design shall conform to criteria established in the Air Force Corporate Facilities Standards (AFCFS), the Installation Facilities Standards (IFS) [if available], but will not employ a standard facility design because there is no applicable standard facility design for this project and there is no applicable standard design from AFCEC.</p> <p>Sustainable principles, to include Life Cycle cost-effective practices, will be integrated into the design, development, and construction of the project and will follow the guidance detailed in the AF Sustainable Design and Development Implementing Guidance Memorandum (dated June 2, 2011) in accordance with applicable laws and Executive Orders. 11th Wing Base Civil Engineer: Comm: 301-981-7281.</p> <p>JOINT USE CERTIFICATION: This facility can be used by other components on an as available basis; however, the scope of the project is based on Air Force requirements.</p>					

DD FORM 1391, DEC 99

Previous editions are obsolete.

1. COMPONENT AIR FORCE	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE																										
3. INSTALLATION AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE																											
5. PROGRAM ELEMENT 41319	6. CATEGORY CODE 112-211	7. PROJECT NUMBER 1377/AJXF163002	8. PROJECT COST (\$000) 37,000																											
<p>12. SUPPLEMENTAL DATA: This design shall conform to criteria established in the Air Force Corporate Facilities Standards (AFCFS), the Installation Facilities Standards (IFS) [if available], but will not employ a standard facility design because there is no AF standard facility design for this project and there is no applicable standard design from AFCEC.</p> <p>a. Estimated Design Data:</p> <p>(1) Status:</p> <table> <tr> <td>(a) Date Design Started</td> <td>01-NOV-17</td> </tr> <tr> <td>(b) Parametric Cost Estimates used to develop costs</td> <td>YES</td> </tr> <tr> <td>* (c) Percent Complete as of 01 JAN 2018</td> <td>15%</td> </tr> <tr> <td>* (d) Date 35% Designed</td> <td>30-MAR-18</td> </tr> <tr> <td>(e) Date Design Complete</td> <td>03-SEP-18</td> </tr> <tr> <td>(f) Energy Study/Life-Cycle analysis was/will be performed</td> <td>NO</td> </tr> </table> <p>(2) Basis:</p> <table> <tr> <td>(a) Standard or Definitive Design -</td> <td>NO</td> </tr> <tr> <td>(b) Where Design Was Most Recently Used -</td> <td></td> </tr> </table> <p>(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)</p> <table> <tr> <td>(a) Production of Plans and Specifications</td> <td>2,220</td> </tr> <tr> <td>(b) All Other Design Costs</td> <td>1,110</td> </tr> <tr> <td>(c) Total</td> <td>3,330</td> </tr> <tr> <td>(d) Contract</td> <td>2,775</td> </tr> <tr> <td>(e) In-house</td> <td>555</td> </tr> </table> <p>(4) Construction Contract Award 19 SEP</p> <p>(5) Construction Start 19 OCT</p> <p>(6) Construction Completion 21 OCT</p> <p>* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope, cost and executability.</p> <p>b. Equipment associated with this project provided from other appropriations: N/A</p>					(a) Date Design Started	01-NOV-17	(b) Parametric Cost Estimates used to develop costs	YES	* (c) Percent Complete as of 01 JAN 2018	15%	* (d) Date 35% Designed	30-MAR-18	(e) Date Design Complete	03-SEP-18	(f) Energy Study/Life-Cycle analysis was/will be performed	NO	(a) Standard or Definitive Design -	NO	(b) Where Design Was Most Recently Used -		(a) Production of Plans and Specifications	2,220	(b) All Other Design Costs	1,110	(c) Total	3,330	(d) Contract	2,775	(e) In-house	555
(a) Date Design Started	01-NOV-17																													
(b) Parametric Cost Estimates used to develop costs	YES																													
* (c) Percent Complete as of 01 JAN 2018	15%																													
* (d) Date 35% Designed	30-MAR-18																													
(e) Date Design Complete	03-SEP-18																													
(f) Energy Study/Life-Cycle analysis was/will be performed	NO																													
(a) Standard or Definitive Design -	NO																													
(b) Where Design Was Most Recently Used -																														
(a) Production of Plans and Specifications	2,220																													
(b) All Other Design Costs	1,110																													
(c) Total	3,330																													
(d) Contract	2,775																													
(e) In-house	555																													

EXHIBIT 8

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1. COMPONENT AIR FORCE		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE CHILD DEVELOPMENT CENTER		
5. PROGRAM ELEMENT 41976	6. CATEGORY CODE 740-884	7. RPSUID/PROJECT NUMBER 1377/AJXF093005	8. PROJECT COST (\$000) 13,000		
9. COST ESTIMATES					
ITEM		U/M	QUANTITY	UNIT	COST (\$000)
PRIMARY FACILITIES					7,466
CHILD DEVELOPMENT CENTER		SM	2,711	2,700	(7,320)
SUSTAINABILITY AND ENERGY MEASURES		LS			(146)
SUPPORTING FACILITIES					4,328
UTILITIES		LS			(500)
PAVEMENTS		LS			(700)
SITE IMPROVEMENTS		LS			(800)
COMMUNICATION SUPPORT		LS			(275)
PLAYGROUND AREA		LS			(650)
DEMOLITION		SM	2,065	350	(723)
STORM WATER MANAGEMENT		LS			(230)
UTILITIES CONNECTION FEE		LS			(250)
CAMERA/SECURITY SYSTEM		LS			(200)
SUBTOTAL					11,794
CONTINGENCY (5.0%)					590
TOTAL CONTRACT COST					12,384
SUPERVISION, INSPECTION AND OVERHEAD (5.7%)					706
TOTAL REQUEST					13,089
TOTAL REQUEST (ROUNDED)					13,000
EQUIPMENT FROM OTHER APPROPRIATIONS (NON-ADD)					(1,550.0)
<p>10. Description of Proposed Construction: Construct a Child Development Center (CDC) utilizing economical design and construction methods in accordance with Joint Base Andrews' (JBA) Architectural Compatibility Plan to accommodate the mission of the facility. The facility should be compatible with applicable DoD, Air Force, and base design standards to include UFC 4-740-14, Design: Child Development Centers and Section 01 10 10, Design Requirements For A Child Development Center. In addition, local materials and construction techniques shall be used where cost effective. Includes pick-up/drop-off area, reception area, lobby area, multi-purpose rooms, administrative space, access road, parking, outdoor fenced playground areas, restrooms, storage rooms, kitchen and equipment, space for walk-in freezer and refrigeration units, camera/security system, utility spaces, utilities, site preparation, landscaping, storm water management, electrical, communications, gas, water and sewer utilities and connection fees, fire detection & suppression systems and all other associated support necessary to provide a complete and useful facility. Integrates facility space to accommodate the Family Childcare Center. Demolishes existing CDC facility (building 4575) totaling 2065 SM. Facilities will be designed as permanent construction in accordance with the DoD Unified Facilities Criteria (UFC) 1-200-01, General Building Requirements and UFC 1-200-02, High Performance and Sustainable Building Requirements. This project</p>					

1. COMPONENT AIR FORCE		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE	
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE CHILD DEVELOPMENT CENTER		
5. PROGRAM ELEMENT 41976	6. CATEGORY CODE 740-884	7. RPSUID/PROJECT NUMBER 1377/AJXF093005	8. PROJECT COST (\$000) 13,000		

Base Civil Engineer: Comm 301- 981-7281.
 Child Development Center: 2,711 SM = 29,181 SF
 Demo 2,065 SM Child Development Center = 22,227 SF
 JOINT USE CERTIFICATION: This facility can be used for other components on an "as available" basis; however, the scope of the project is based on Air Force requirements.

EXHIBIT 9

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1. COMPONENT AIR FORCE			FY 2019 MILITARY CONSTRUCTION PROGRAM				2. DATE (YYYYMMDD) 20171219					
3. INSTALLATION AND LOCATION HOLLOMAN AIR FORCE BASE NEW MEXICO					4. COMMAND AIR COMBAT COMMAND			5. AREA CONSTRUCTION COST INDEX 0.99				
6. PERSONNEL		(1) PERMANENT			(2) STUDENTS			(3) SUPPORTED			TOTAL	
		OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN		
a. AS OF	30-Sep-17	333	2741	522	0	60	0	96	359	226	4,337	
b. END FY	2020	322	2495	464	0	60	0	96	359	226	4,022	
7. INVENTORY DATA (\$000)												
a. TOTAL ACREAGE		58,723										
b. INVENTORY TOTAL AS OF		30-Sep-17										
										4,001,838		
c. AUTHORIZATION NOT YET IN INVENTORY										45,050		
d. AUTHORIZATION REQUESTED IN THIS PROGRAM (FY 2017)										85,000		
e. PLANNED IN NEXT FOUR PROGRAM YEARS (FY 2018-2021)										0		
f. REMAINING DEFICIENCY										213,250		
g. GRAND TOTAL										4,345,138		
8. PROJECTS REQUESTED IN THIS PROGRAM (FY 2017)												
a. CATEGORY												
(1) CODE	(2) PROJECT TITLE				(3) SCOPE			b. COST (\$000)		c. DESIGN STATUS		
										(1) START	(2) COMPLETE	
149511	MQ-9 FTU OPS FACILITY				19,702 SM			85,000		01/19	03/21	
								TOTAL		85,000		
9. FUTURE PROJECTS IN NEXT FOUR PROGRAM YEARS												
										FUTURE PROJECTS TOTAL		0
R&M UNFUNDED REQUIREMENT (\$M)												
										TOTAL		29.4
10. MISSION OR MAJOR FUNCTIONS												
AIR COMBAT COMMAND INSTALLATION SUPPORTING T-38 TALON DEPOT MAINTENANCE; MQ-1 PREDATOR AND MQ-9 REAPER FORMAL TRAINING UNITS; F-16 FORMAL TRAINING UNIT; GERMAN AIR FORCE TORNADO FIGHTER SQUADRON; QF-4/QF-16 FULL SCALE AERIAL TARGETS MISSION; 10-MILE TEST TRACK (AFMC), ARMY AIR AND THE WAR RESERVE MATERIAL (WRM) BARE BASE SUPPORT GROUP.												
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES (FY 2017-2021)												
a. Air Pollution												
b. Water Pollution												
c. Occupational Safety and Health												
d. Other Environmental												
										OUTSTANDING DEFICIENCIES TOTAL		0

DD Form 1390, JUL 1999

PREVIOUS EDITION IS OBSOLETE.

FEBRUARY 2018

1. COMPONENT AIR FORCE	FY 2019 MILITARY CONSTRUCTION PROJECT DATA	2. DATE
3. INSTALLATION AND LOCATION HOLLOMAN AIR FORCE BASE, HOLLOMAN SITE #1 NEW MEXICO		
4. PROJECT TITLE MQ-9 FTU OPS FACILITY	5. PROJECT NUMBER 2352/KWRD163000	
<p>Squadrons (6th, 9th and 29th) to each have five FGCS, six simulators, four classified training classrooms, twenty classified brief/debrief rooms, a secure server room, classified student study/mission planning rooms and adequate space for squadron administrative functions for 120 personnel and 32 contractors. Additionally, 16th Training Squadron, 429th Air Combat Training Squadron and support contractors must be collocated with the Attack Squadrons to maximize efficiencies throughout the full duration of the syllabus.</p> <p>CURRENT SITUATION: The 2008 RPA beddown hinged on use of vacant facilities at the time in order meet CSAF-directed aircrew production. B302, a 1943-vintage Sqd Ops, was used to house the MQ-1 Predator FTU (6 RS) with only minor modifications. The 6th ATKS is now transitioning to the MQ-9 without facility modifications. B302 is in a severe state of disrepair, including bat infestation, sink holes and is only partially covered by functional fire alarms. The 50-person ACMU currently operates out of B303 (2,727 sf) maintaining all mobile (current) and fixed (future) GCS equipment. The space in B318 renovated during the beddown to house the 9th and 29th Attack Squadrons, while in good physical condition, has become extremely limited in mission capability by the stand-up of an informal "International Schoolhouse", focused on training aircrews from partner nations, such as: Italy, UK and France. Expansion capability adjacent to B318 is not possible in the near future due to environmental contamination present on the site. MQ-9 formal training sorties are currently flown from Mobile Ground Control Stations (MGCS) located within a fenced compound, but will transition to FGCS equipment in 2020/2021. This conversion will free up the existing MGCS equipment to be transferred to forward locations as the equipment was designed to operate. The Block 50 FGCS is 30% larger than previous versions, rendering the space renovated during initial beddown to house the 9th/29th ATKS useless. Additionally, the MQ-9 FTU is the only combat airframe FTU operating 100% in an Unclassified environment, while the airframe's mission is conducted nearly exclusively in a Top Secret environment. Not only does this fact limit the ability to train aircrews to realistically train for their future mission, it also prevents the MQ-9 FTU from participating in electronically-linked training scenarios with other airframes/resources from other training units around the globe (via Distributed Mission Operations). Most importantly, a classified environment enables the use of Link-16 and Blue Force Tracker to provide significantly enhanced safety in the airspace and on the ranges. Link-16 allows aircraft to see each other even with radar outages – enhancing flight safety by providing adequate de-confliction. Blue Force Tracker allows MQ-9 aircrew to see JTAC position on the ground – enhancing life-safety by verifying JTAC position prior to employing live/inert weapons. Academic portions of the formal training syllabus are routinely held in a relocatable trailer. The trailer was originally purchased to provide swing space during the execution of initial beddown renovations in B318, but recurring explosive growth and the lack of fixed space alternatives has driven the continued use of the trailer with no end to the requirement in sight. Additionally, there are insufficient classrooms to execute the syllabus optimally. Likewise, the FTU squadrons currently operate in a severe shortage of brief/debrief spaces dispersed throughout the existing facilities. While this shortfall could be addressed through scheduling in a traditional FTU, the MQ-9 training flow requires students to rotate through "sorties" flying an aircraft already airborne during and after their mission. While one aircrew is flying the aircraft for a training sortie, the last aircrew to fly the aircraft is debriefing their mission and the next aircrew is briefing for their mission to follow. This cyclical flow requires reliable availability of brief/debrief rooms to enable smooth transition between flights. Lastly, students currently have no access to classified mission planning/study space. This limits their ability to focus on the classified aspects of the training requirements of the syllabus. These critical facility condition, capacity and classification shortfalls severely limit the overall effectiveness and efficiency of the FTU in performing its core task of generating properly trained aircrews to feed CAF demands.</p> <p>IMPACT IF NOT PROVIDED: If properly configured MQ-9 FTU facilities are not provided, the quantity and/or timeliness of aircrew produced will be less than HHQ expects while artificially increasing PERSTEMPO to make up for lack of appropriate equipment and facilities. Low quantity and late graduations negatively impact US power projection for multiple CCDRs. Additionally, due to the lack of secure operational spaces, the newly trained aircrews will continue to be thrust into Top Secret environments with little to no experience operating in these types of situations. Additionally, failure to enable use of Link-16 and BFT will inhibit improvements to safety margins in airspace and ranges.</p> <p>ADDITIONAL: This project meets the criteria/scope in Air Force Manual 32-1084, Facility Requirements. A preliminary analysis of alternatives indicates that constructing a new facility to house MQ-9 FTU Operations is the only feasible option. This is a new mission beddown (MQ-9) specific to the mission and no other suitable facilities exist on Holloman AFB. A certification of exception is being prepared. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development, and construction of the project. Base Civil Engineer: Comm. (575) 572-3071; (MQ-9 Ops Facility: 19702 SM = 212,000 SF)</p> <p>JOINT USE CERTIFICATION: This facility can be used by other components on an "as available" basis; however, the scope of this project is based on Air Force requirements.</p>		

DD Form 1391, DEC 99 (E-Form)

PREVIOUS EDITIONS MAY BE USED INTERNALLY

FEBRUARY 2018

SER1183

EXHIBIT 10

9

1. COMPONENT ARMY		FY 2019 MILITARY CONSTRUCTION PROGRAM								2. DATE 01 FEB 2018	
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico				4. COMMAND US Army Installation Management Command				5. AREA CONSTRUCTION COST INDEX 0.95			
6. PERSONNEL STRENGTH:		(1) PERMANENT			(2) STUDENTS			(3) SUPPORTED			(4) TOTAL
		OFFICER	ENLIST	CIVIL	OFFICER	ENLIST	CIVIL	OFFICER	ENLIST	CIVIL	
A. AS OF 31 OCT 2017		64	61	1830	0	0	0	466	1178	3668	7,267
B. END FY 2023		73	155	1695	0	0	0	466	1178	3326	6,893
7. INVENTORY DATA (\$000)											
A. TOTAL AREA.....		936,364 ha		(2,313,797 AC)							
B. INVENTORY TOTAL AS OF 05 JUL 2017.....							4,354,107				
C. AUTHORIZATION NOT YET IN INVENTORY.....							221,182				
D. AUTHORIZATION REQUESTED IN THE FY 2019 PROGRAM.....							40,000				
E. AUTHORIZATION INCLUDED IN THE FY 2020 PROGRAM.....							0				
F. PLANNED IN NEXT THREE YEARS (NEW MISSION ONLY).....							0				
G. REMAINING DEFICIENCY.....							75,730				
H. GRAND TOTAL.....							4,691,019				
8. PROJECT APPROPRIATIONS REQUESTED IN THE FY 2019 PROGRAM:											
CAT						COST		DESIGN STATUS			
CODE	PROJECT TITLE			SCOPE/UM		(\$000)	START	COMPLETE			
13115	Information Systems Facility			56,268.00/SF (5227.47/m2)		40,000	06/2017	10/2018			
						TOTAL	40,000				
9. FUTURE PROJECT APPROPRIATIONS:											
CATEGORY						COST					
CODE	PROJECT TITLE					(\$000)					
A. INCLUDED IN THE FY 2020 PROGRAM: NONE											
B. PLANNED NEXT THREE PROGRAM YEARS (NEW MISSION ONLY): NONE											
C. DEFERRED SUSTAINMENT, RESTORATION, AND MODERNIZATION (SRM):		N/A									
10. MISSION OR MAJOR FUNCTIONS:											
White Sands Missile Range (WSMR), birthplace of America's missile and space activity, provides Army, Navy, Air Force, Department of Defense (DoD), and other organizations with high quality services for experimentation, test, research, assessment, development, and training in support of the Nation. WSMR always provides the best value; focusing on affordability and stewardship of resources, providing results that consistently exceed expectations while providing a high quality of life for our service members, civilians, and families.											
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES:											
						(\$000)					
A. AIR POLLUTION						0					
B. WATER POLLUTION						0					
C. OCCUPATIONAL SAFETY AND HEALTH						0					

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1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA			2. DATE 01 FEB 2018	
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico				4. PROJECT TITLE Information Systems Facility		
5. PROGRAM ELEMENT 72896A		6. CATEGORY CODE 13115	7. PROJECT NUMBER 33584		8. PROJECT COST (\$000) Approp 40,000	
9. COST ESTIMATES						
ITEM		UM (M/E)	QUANTITY		UNIT COST	COST(\$000)
<u>PRIMARY FACILITY</u>						30,124
13115 Information Systems Facility		m2 (SF)	5,227 (56,268)		3,707	(19,376)
81160 Redundant Power		LS	--		--	(1,598)
13120 Communications Center		m2 (SF)	185.81 (2,000)		5,294	(984)
88020 IDS Installation		LS	--		--	(104)
89220 EMCS Connection		LS	--		--	(52)
Total from Continuation page(s)						(8,010)
<u>SUPPORTING FACILITIES</u>						6,141
Electric Service		LS	--		--	(522)
Water, Sewer, Gas		LS	--		--	(77)
Paving, Walks, Curbs And Gutters		LS	--		--	(161)
Storm Drainage		LS	--		--	(240)
Site Imp(3,658) Demo(462)		LS	--		--	(4,120)
Information Systems		LS	--		--	(1,021)
ESTIMATED CONTRACT COST						36,265
CONTINGENCY (5.00%)						1,813
SUBTOTAL						38,078
SUPV, INSP & OVERHEAD (5.70%)						2,170
TOTAL REQUEST						40,248
TOTAL REQUEST (ROUNDED)						40,000
INSTALLED EQT-OTHER APPROP						(13,360)
10. Description of Proposed Construction Construct an Information Systems Facility (ISF) and a Communications Center with redundant power, an Intrusion Detection System (IDS) and connection to the Energy Monitoring and Control System (EMCS). The facilities will have state of the art network systems, telephonic, voice, and enterprise storage equipment to support installation wide communication network services. The project includes administrative offices, laboratory space, a server farm area, enterprise storage systems, telephone switch room, information assurance secure operations center, customer support branch, data center Non-classified Internet Protocol Router (NIPR) Network space, Network Operations Center (NOC), secure room with vault for Outside Plant (OSP), Red NOC, Communications Security (COMSEC), Technical Support Network(TSN) data center, computer help desk, Secure Video Teleconferencing Center (VTC), telecommunications center, building information systems, Secret Internet Protocol Router (SIPR) Network data center, reception area, conference room, battery storage area, break room and, rest rooms. Heating and air conditioning will be provided by self-contained system. Measures in accordance with the Department of Defense (DoD) Minimum Antiterrorism for Buildings standards will be provided. Comprehensive building and furnishings related interior design services are required. Access for individuals with disabilities will be provided. Cyber Security Measures will be incorporated into this project. Sustainability/Energy measures will be provided. Facilities will be designed to a minimum life of 40 years in accordance with DoD's Unified Facilities Criteria (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance. Demolish 2						

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 01 FEB 2018	
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico			4. PROJECT TITLE Information Systems Facility		
5. PROGRAM ELEMENT 72896A	6. CATEGORY CODE 13115	7. PROJECT NUMBER 33584	8. PROJECT COST (\$000) Approp 40,000		
9. COST ESTIMATES (CONTINUED)					
ITEM		UM (M/E)	QUANTITY	UNIT COST	COST (\$000)
PRIMARY FACILITY (CONTINUED)					
00000 Cybersecurity Measures		LS	--	--	(750)
Sustainability/Energy Measures		LS	--	--	(416)
Antiterrorism Measures		LS	--	--	(416)
Building Information Systems		LS	--	--	(6,428)
				Total	8,010
DESCRIPTION OF PROPOSED CONSTRUCTION: (CONTINUED)					
buildings at White Sands Missile Range, NM (Total 2,061 m2/22,180 SF). Air Conditioning (Estimated 2,198 kW/625 Tons).					
11. REQ:	5,312 m2	ADQT:	85 m2	SUBSTD:	NONE
PROJECT: Construct an Information Systems Facility at White Sands Missile Range (WSMR), New Mexico. (Current Mission)					
REQUIREMENT: This project is required to provide WSMR with an adequate ISF necessary to provide a mission essential operational interaction affecting a 24-hour Information Technology and Information Management (IT/IM) between Command, tenants, and Other Government Agency (OGA) partners. The facility includes space for a command center for operations support, system and network administrators, operations floor, technical laboratory, Multi-service Technical Control Facility (MTCF), Defense Switched Network (DSN), operations center, administrative offices, customer service center, technical assistance for IT and land mobile radios. The facility also serves the Installation as a Docking Station (IAADS) in its baseline services. The ISF will contain a Network Operations Center (NOC), technical laboratory, Video Teleconferencing (VTC), classroom(s), training room(s), conference room(s) and offices.					
CURRENT SITUATION: Currently the ISF occupies both limited and fragmented space in ten separate buildings located at WSMR. Each assigned building has undergone varying levels of retrofit to accommodate the current ISF mission. None of which have been successful for long-term planning. The cooling systems are highly inefficient and inadequate, partly due to the necessary alterations of past floor plans to accommodate equipment expansions throughout the years. The heating system is limited in that the temperature control in the personnel areas cannot be maintained at comfortable limits without overheating equipment areas. Hazardous materials like asbestos and lead are dealt with on a case-by-case basis. Existing building design lacks appropriate workstation space and circulation, is encumbered with safety concerns including poor air quality and limited reliable electrical redundancy, no grounding/bonding/shielding, and noncompliance with the Americans with Disabilities Act (ADA). Assigned geographically separated space cannot provide the operational synergy required for 24-hour information management and the necessary workforce fusion required for network defense.					
IMPACT IF NOT PROVIDED: If this project is not provided, the WSMR ISF operations, situational awareness, and security of information and information systems may be compromised due to the inability to provide complete and continuous surveillance and response measures. The inability to expand and support existing and future network systems will negatively effect DoD efforts relating to IT/IM and information security. As					

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA			2. DATE 01 FEB 2018
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico			4. PROJECT TITLE Information Systems Facility		
5. PROGRAM ELEMENT 72896A	6. CATEGORY CODE 13115	7. PROJECT NUMBER 33584	8. PROJECT COST (\$000) Approp 40,000		
IMPACT IF NOT PROVIDED: (CONTINUED)					
<p>new military technologies and operational concepts grow and mature WSMR will need to position itself to process and transport vast amounts of electronic test data more reliably, efficiently, faster, and securely. The risk to the segment of the Global Information Grid (GIG) will affect the integrity and reliability of the global networks, adversely affecting field commanders' capability to reach-back which is a vital mission requirement for the warfighter. Secure and reliable information may not be readily available to installation and field commanders and will compromise the integrity and confidentiality of information systems available to the warfighter.</p> <p><u>ADDITIONAL:</u> Required assessments have been made for supporting facilities and the project is not in a 100-year floodplain in accordance with Executive Order 11988. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. The Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships) certifies that this project has been considered for joint use potential. The facility will be available for use by other components. A parametric cost estimate based upon project engineering design was used to develop this budget estimate. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development and construction of the project and will follow the guidance detailed in the Army Sustainable Design and Development Policy - complying with applicable laws and executive orders.</p>					
12. SUPPLEMENTAL DATA:					
A. Estimated Design Data:					
(1) Status:					
(a) Date Design Started.....					JUN 2017
(b) Percent Complete as of January 2018.....					35.00
(c) Date 35% Designed.....					JAN 2018
(d) Date Design Complete.....					OCT 2018
(e) Parametric Cost Estimating Used to Develop Costs..					YES
(f) Type of Design Contract: Design-bid-build					
(g) An energy study and life cycle cost analysis will be documented during the final design.					
(2) Basis:					
(a) Standard or Definitive Design: YES					
(b) Where Design Was Most Recently Used:					
(c) Percentage of Design utilizing Standard Design ...					50
(3) Total Design Cost (c) = (a)+(b) OR (d)+(e): (\$000)					
(a) Production of Plans and Specifications.....					2,160
(b) All Other Design Costs.....					1,440

1. COMPONENT Army	FY 2019 MILITARY CONSTRUCTION PROJECT DATA	2. DATE 01 FEB 2018	
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico		4. PROJECT TITLE Information Systems Facility	
5. PROGRAM ELEMENT 72896A	6. CATEGORY CODE 13115	7. PROJECT NUMBER 33584	
		8. PROJECT COST (\$000) Approp 40,000	
12. SUPPLEMENTAL DATA (CONTINUED..)			
A. Estimated Design Data: (CONTINUED..)			
(c) Total Design Cost.....		3,600	
(d) Contract.....		2,880	
(e) In-house.....		720	
(4) Construction Contract Award.....		APR 2019	
(5) Construction Start.....		JUN 2019	
(6) Construction Completion.....		JUN 2021	
B. Equipment associated with this project which will be provided from other appropriations:			
<u>Equipment Nomenclature</u>	<u>Procuring Appropriation</u>	<u>Fiscal Year Appropriated Or Requested</u>	<u>Cost (\$000)</u>
Equipment	OPA	2020	130
IDS Equipment	OPA	2020	100
Electronic Access Control	OPA	2020	100
Clean Agent Supp System w/ VES	OPA	2020	100
UPS Equipment	OPA	2020	40
Info Sys - ISC	OPA	2020	2,532
Info Sys - PROP	RDT&E	2020	10,358
		Total	13,360
Installation Engineer: Phone Number: 575-678-2252			

EXHIBIT 11

10

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA			2. DATE 11 APR 2019 29 AUG 2017			
3. INSTALLATION AND LOCATION West Point Military Reservation New York				4. PROJECT TITLE Engineering Center and Parking Structure				
5. PROGRAM ELEMENT		6. CATEGORY CODE 171 38	7. PROJECT NUMBER 78804		8. PROJECT COST (\$000) 197,000			
9. COST ESTIMATES								
ITEM					UM	QUANTITY	UNIT COST	COST(\$000)
PRIMARY FACILITY								161,225
Instructional Building					SF	136,000	667.63	(90,797)
Parking Structure					EA	450	43,736	(19,681)
Rock Removal					LS	--	--	(45,221)
Guard Booth					SF	100	2,770	(277)
Cyber Security					LS	--	--	(1,065)
Total from Continuation page								(4,184)
SUPPORTING FACILITIES								16,616
Electric Service					LS	--	--	(2,680)
Water, Sewer, Gas					LS	--	--	(744)
Steam And/Or Chilled Water Distribution					LS	--	--	(1,939)
Paving, Walks, Curbs And Gutters					LS	--	--	(1,771)
Storm Drainage					LS	--	--	(1,548)
Site Imp(7,333) Demo(369)					LS	--	--	(7,702)
Information Systems					LS	--	--	(232)
ESTIMATED CONTRACT COST								177,841
CONTINGENCY (5.00%)								8,892
SUBTOTAL								186,733
SUPERVISION, INSPECTION & OVERHEAD (5.70%)								10,644
TOTAL REQUEST								197,377
TOTAL REQUEST (ROUNDED)								197,000
INSTALLED EQT-OTHER APPROPRIATIONS								(53,214)
10. Description of Proposed Construction This is an incrementally funded project. Congress initially authorized the project in FY2019 as two separate projects, PN 78804, Engineering Center (authorized at \$95M) and PN 78805, Parking Structure (authorized at \$65M). A second funding increment of \$37M will be requested in FY2022. Construct an Engineering Center to provide a state-of-the-art collaborative educational space in support of multi-disciplinary project based engineering education for science, technology, engineering and mathematics (STEM). Construct a Parking Structure for faculty and staff to support the academic program within the central Cadet Zone. Primary facility includes an instructional building with space for mission-critical laboratories and laboratory support; project fabrication areas; and space for project display, collaborative effort, and capstone work. The instructional building will also contain conference rooms, spray booths, double height space (high bay) with overhead lift capability, and a loading dock. A guard booth supports the building and multi-story parking structure equipped with electronic security system. Significant rock removal is required. Project includes cyber security measures, a mass notification system, information systems, fire detection system (smoke detection) and sprinklers, building information systems, intrusion detection system (IDS) installation, and energy monitoring control systems (EMCS) connection to the installation central system. Sustainability/energy measures will be provided. Measures in accordance with the Department of Defense (DoD) Minimum								

DD FORM 1391, JUL 1999

PREVIOUS EDITION IS OBSOLETE

PAGE NO.

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 11 APR 2019 29 AUG 2017																																
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<p>Antiterrorism for Buildings standards to include a fence will be provided. Supporting facilities include utilities (electric, water, sewer, gas); paving, parking, walks, curbs and gutters; storm drainage; vehicular drives; site improvements to include extension of existing historic pedestrian walk and stone retaining walls; relocation of existing passive and active barriers; landscaping; signage; and information systems. Heating and air conditioning will be provided by self-contained systems. The project will include a solar array on the roof, electric service, outdoor security lighting, electric car charging stations, Common Access Card (CAC) readers enabled control access gates, fire protection (to include additional fire hydrants), an elevator and stairs. Access for individuals with disabilities will be provided. Comprehensive building and furnishings related interior design services are required. Facility shall be constructed to standards for historically significant facilities. Operations and maintenance manuals will be provided. Facilities will be designed to a minimum life of 40 years in accordance with DoD's Unified Facilities Criteria (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance. Demolish 5 buildings at West Point Military Reservation, NY (14,700 Total SF). Air Conditioning (Estimated 600 Tons).</p>																																				
11. REQ: 136,000 SF		ADQT: NONE	SUBSTD: 33,201 SF																																	
<p>PROJECT: Construct an Engineering Center and multi-level parking structure at West Point Military Reservation, New York. (Current Mission)</p> <p>REQUIREMENT: This project is required to provide flexible multi-disciplinary project based educational space for science, engineering, technology and mathematics (STEM) that achieves compliance with academic standards. The facility is required to compete with peer institutions for recruitment of STEM students and, in particular, highly recruited minority candidates. This project will provide open, unstructured project areas, high-bay space, collaborative workspaces and laboratories essential for project-based learning. By bringing the engineering and cyber programs from several different academic buildings into one, cross-disciplinary collaboration and project-based education will be brought up to 21st Century practices. High-bay space and overhead lift capability will allow Cadets to work on projects exceeding 8ft and to work thru the winter months. Open and unstructured project areas will</p>																																				

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 11 APR 2019 29 AUG 2017	
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5. PROGRAM ELEMENT	6. CATEGORY CODE 171 38	7. PROJECT NUMBER 78804	8. PROJECT COST (\$000) 197,000		

REQUIREMENT: (CONTINUED)

allow proper materials handling capabilities. A proper loading dock, adjacencies for rapid fabrication, and visibility into fabrication and project spaces will cut down life, health, safety challenges. This project will provide air handling and fume ventilation for application of coatings, glues, paints and chemical treatments. There are no alternate permanent facilities, either adequate or available, which could be used to support this mission. Parking and circulation studies conducted by the Garrison indicate the need to eliminate existing parking due to antiterrorism force protection violations; the need to restrict vehicle access within the academic campus for safety and security purposes; and the need to provide additional parking for staff and faculty. The location along Thayer Road will support the parking demands of faculty and staff, and accommodate displaced parking to be removed in accordance with minimum antiterrorism force protection standards.

CURRENT SITUATION:

Currently, neither adequate existing permanent facilities nor buildings of opportunity are available at West Point to support compliance with engineering academic standards and the requirements to turn out high caliber, Army ready Soldiers. As functions and requirements have changed, existing facilities have become inadequate for the success of the program mission. Functions are scattered throughout the buildings, so preferred adjacencies, utilities, climate control, ceiling height and material handling capacity are not available. Adequate facilities for the support of project-based learning and Cyber Security Studies do not exist, and there are on-going issues with water infiltration, insufficient provision of air and circulation, inflexibility of layout spaces, and difficulty in providing new utilities. Existing laboratories have insufficient headroom and separation of functions, and classrooms need additional audio visual infrastructure and blackboard/chalkboard surfaces. Parking within the academic campus area is critically short, and does not meet the requirement of numerous faculty and staff that work within this area. Additionally, much of the parking is in violation of Antiterrorism force protection standards, and needs to be relocated. The structure will enable the required 450 parking spaces to fit within the dense urban campus, minimize the amount of land needed, and account for the steep slopes. The steep terrain and rock conditions will require extensive rock blasting and removal/disposal.

IMPACT IF NOT PROVIDED:

If this project is not provided, West Point's engineering education facilities will fail to meet the standards set by peer Universities (Mission failure), Cadet injury, potential loss of Engineering Accreditation (Mission failure), and loss of prime Collegiate recruits (Mission failure). The quality of the engineering education at West Point would be deteriorated, particularly as compared to peer and near-peer institutions. The nationally-ranked engineering programs absolutely require this modernization to maintain the edge, and a failure to act will have a significant negative impact on the accession of trained engineers and cyber-security personnel into the Army as cadets and potential Cadets choose other academic majors and other universities. Further, recruiting of new cadets,

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 11 APR 2019 29 AUG 2017	
3. INSTALLATION AND LOCATION West Point Military Reservation New York			4. PROJECT TITLE Engineering Center and Parking Structure		
5. PROGRAM ELEMENT	6. CATEGORY CODE 171 38	7. PROJECT NUMBER 78804	8. PROJECT COST (\$000) 197,000		
<p>IMPACT IF NOT PROVIDED: (CONTINUED)</p> <p>particularly those not familiar with West Point, such as under-represented groups, would be negatively impacted as the deteriorated existing facility looks progressively less competitive with peer institutions. If the project does not include parking, a gross deficit in parking throughout the academic campus will continue to be a critical issue at the installation. The need for faculty and staff parking within the campus will necessitate the continued use of parking on and adjacent to Thayer and Mahan Halls. This will prolong violations of minimum antiterrorism force protection standards. Distant parking lots are beyond the acceptable distance to principal buildings per international building codes.</p> <p>ADDITIONAL:</p> <p>Required assessments have been made for supporting facilities and the project is not in a 100-year floodplain in-accordance-with Executive Order 11988. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. A parametric cost estimate based upon project engineering design was used to develop this budget estimate. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development and construction of the project and will follow the guidance detailed in the Army Sustainable Design and Development Policy - complying with applicable laws and executive orders.</p>					
Installation Engineer: Mr. Matthew Talaber Phone Number: 845-938-3415					

EXHIBIT 12

12

1. COMPONENT ANG		FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE May 2017	
3. INSTALLATION AND LOCATION KLAMATH FALLS INTERNATIONAL AIRPORT, OREGON				4. PROJECT TITLE CONSTRUCT INDOOR RANGE		
5. PROGRAM ELEMENT 52276F		6. CATEGORY CODE 179-475	7. PROJECT NUMBER KJAQ159096		8. PROJECT COST(\$000) \$8,000	
9. COST ESTIMATES						
ITEM		U/M	QUANTITY	UNIT COST	COST (\$000)	
CONSTRUCT INDOOR RANGE		SM	1,142		6,018	
SMALL ARMS RANGE (179-475)		SM	975	5,490	(5,353)	
COMBAT ARMS TRNG & MAINT (171-476)		SM	167	3,983	(665)	
SUPPORTING FACILITIES					1,000	
UTILITIES AND COMMUNICATIONS SUPPORT		LS			(500)	
SITE IMPROVEMENTS		LS			(250)	
PAVEMENTS		LS			(250)	
SUSTAINABILITY AND ENERGY MEASURES		LS			150	
SUBTOTAL					7,168	
CONTINGENCY (5%)					358	
TOTAL CONTRACT COST					7,526	
SUPERVISION, INSPECTION AND OVERHEAD (6%)					451	
TOTAL REQUEST					7,977	
TOTAL REQUEST (ROUNDED)					8,000	
10. Description of Proposed Construction: Construct a small arms indoor range and CATM training & maintenance facility utilizing conventional design and construction methods to accommodate the mission of the facility. Facility shall be designed as permanent construction in accordance with the DOD Unified Facilities Criteria. The facility should be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special construction requirements: Use modular small arms range construction to the maximum extent possible. all necessary exterior utilities, access pavements, fire protection, site work, and support. Provide utility connections for modular small arms range equipment components. Provide doors to ensure ease of access to modular small arms range equipment to facilitate maintenance. Air Conditioning: 105 KW.						
11. REQUIREMENT: 1,143 SM ADEQUATE: 0 SM SUBSTANDARD: 0 SM PROJECT: Small Arms Range/CATM Training (Current Mission) REQUIREMENT: The installation requires an adequately sized, properly configured, and correctly sited small arms range to train and certify security forces, battlefield airmen, and mobility personnel in accordance with AFI 36-2226. The facility will house a MCSATS (Modular Containerized Small Arms Training Set) for a total of 12 to 14 firing lanes. A combat arms training and maintenance (CATM) facility, to provide classroom training space, administrative space, and arms cleaning and inspection areas for members using the small arms range. The ANG has both members that are required to perform armed duties in-garrison and others only in contingency operations on both pistol and rifle in accordance with AFI 36-2226, Table 2-1. CURRENT SITUATION: The installation does not have an organic small arms range capability. Drill status members cannot be qualified on base during their 2-days-per-month drill attendance. Work-arounds include traveling off-site at considerable expense per qualification. Given the new course of fire includes a full 8-hour firing day, plus pre-firing classroom familiarization training, combat arms training can occupy the majority of a drill weekend, leaving no time for other functional or ancillary training. On base training is considered the preferred course of action because it minimizes impacts to						

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE May 2017																												
3. INSTALLATION AND LOCATION KLAMATH FALLS INTERNATIONAL AIRPORT, OREGON																														
5. PROJECT TITLE CONSTRUCT INDOOR RANGE		7. PROJECT NUMBER KJAQ159096																												
<p>12. SUPPLEMENTAL DATA:</p> <p>a. Estimated Design Data:</p> <p>(1) Status:</p> <table border="0"> <tr> <td>(a) Date Design Started</td> <td>JAN 2017</td> </tr> <tr> <td>(b) Parametric Cost Estimates used to develop costs</td> <td>No</td> </tr> <tr> <td>(c) Percent Complete as of Jan 17</td> <td>6%</td> </tr> <tr> <td>* (d) Date 35% Designed</td> <td>SEP 2017</td> </tr> <tr> <td>(e) Date Design Complete</td> <td>DEC 2017</td> </tr> <tr> <td>(f) Type of Design Contract</td> <td>IDIQ</td> </tr> <tr> <td>(g) Energy Study/Life-Cycle analysis was/will be performed</td> <td>No</td> </tr> </table> <p>(2) Basis:</p> <table border="0"> <tr> <td>(a) Standard or Definitive Design -</td> <td>No</td> </tr> <tr> <td>(b) Where Design Was Most Recently Used -</td> <td></td> </tr> </table> <p>(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)</p> <table border="0"> <tr> <td>(a) Production of Plans and Specifications</td> <td>400</td> </tr> <tr> <td>(b) All Other Design Costs</td> <td>300</td> </tr> <tr> <td>(c) Total</td> <td>700</td> </tr> <tr> <td>(d) Contract</td> <td>700</td> </tr> <tr> <td>(e) In-House</td> <td></td> </tr> </table> <p>(4) Contract Award (Month/Year) APR 2018</p> <p>(5) Construction Start MAY 2018</p> <p>(6) Construction Completion JUL 2019</p> <p>* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability.</p> <p>b. Equipment associated with this project will be provided from other appropriations: N/A</p> <p>POINT OF CONTACT: NGB/A4AD (240) 612-4498</p>			(a) Date Design Started	JAN 2017	(b) Parametric Cost Estimates used to develop costs	No	(c) Percent Complete as of Jan 17	6%	* (d) Date 35% Designed	SEP 2017	(e) Date Design Complete	DEC 2017	(f) Type of Design Contract	IDIQ	(g) Energy Study/Life-Cycle analysis was/will be performed	No	(a) Standard or Definitive Design -	No	(b) Where Design Was Most Recently Used -		(a) Production of Plans and Specifications	400	(b) All Other Design Costs	300	(c) Total	700	(d) Contract	700	(e) In-House	
(a) Date Design Started	JAN 2017																													
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(g) Energy Study/Life-Cycle analysis was/will be performed	No																													
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(b) Where Design Was Most Recently Used -																														
(a) Production of Plans and Specifications	400																													
(b) All Other Design Costs	300																													
(c) Total	700																													
(d) Contract	700																													
(e) In-House																														

EXHIBIT 13

1. Component DEFENSE (DLA)		FY 2016 MILITARY CONSTRUCTION PROGRAM						2. Date FEBRUARY 2015		
3. Installation And Location AIR NATIONAL GUARD KLAMATH FALLS INTERNATIONAL AIR PORT, OREGON				4. Command DEFENSE LOGISTICS AGENCY			5. Area Construction Cost Index 1.11			
6. PERSONNEL ANG FACILITY		(1) PERMANENT		(2) STUDENTS		(3) GUARD/RESERVE			(4) TOTAL	
		OFF	ENL	CIV	OFF	ENL	CIV	OFF		ENL
a. ACTUAL AS OF										
b. AUTHORIZED										
7. INVENTORY DATA (\$000)										
A. TOTAL ACREAGE										
B. INVENTORY TOTAL AS OF										
C. AUTHORIZED NOT YET IN INVENTORY										
D. AUTHORIZATION REQUESTED IN THIS PROGRAM										
E. AUTHORIZATION INCLUDED IN FOLLOWING PROGRAM										
F. PLANNED IN NEXT THREE YEARS										
G. REMAINING DEFICIENCY										
H. GRAND TOTAL										
8. PROJECTS REQUESTED IN THIS PROGRAM:										
a. CATEGORY				b. COST		c. DESIGN STATUS				
(1) CODE	(2) PROJECT TITLE			(3) SCOPE	(\$000)	(1) START mm/yy	(2) COMPLETE mm/yy			
126	Replace Fuel Facilities			2 OL	2,500	10/10	12/14			
9. FUTURE PROJECTS										
a. INCLUDED IN FOLLOWING PROGRAM										
CATEGORY CODE	PROJECT NUMBER	PROJECT TITLE				COST (\$000)				
		None								
b. PLANNED IN NEXT FOUR YEARS										
CATEGORY CODE	PROJECT NUMBER	PROJECT TITLE				COST (\$000)				
		None								
10. MISSION OR MAJOR FUNCTION										
<p>These fuel facilities provide essential storage and distribution systems to support the mission of assigned Air National Guard units and transient aircraft at Klamath Falls International Airport (IAP), Oregon.</p> <p>Deferred sustainment, restoration, and modernization for fuel facilities at this location is \$0.4 million.</p>										
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES:										
A. AIR POLLUTION										
B. WATER POLLUTION										
C. OCCUPATIONAL SAFETY AND HEALTH										
(\$000)										
0										
0										
0										

1. Component DEFENSE (DLA)	FY 2016 MILITARY CONSTRUCTION PROJECT DATA	2. Date FEBRUARY 2015
3. Installation and Location AIR NATIONAL GUARD KLAMATH FALLS, KINGSLEY FIELD, OREGON	4. Project Title REPLACE FUEL FACILITIES	
5. Program Element 0702976S	6. Category Code 126	7. Project Number DESC14U2
8. Project Cost (\$000) 2,500		
<p>IMPACT IF NOT PROVIDED: Loading and unloading of refueler tank trucks will continue to be a lengthy, inefficient operation. The environment and operators will be at risk due to lack of adequate containment surfaces and operating from a facility that does not have all the current DoD safety features.</p> <p>ADDITIONAL: This project meets all applicable DoD criteria. The Defense Logistics Agency certifies that this facility has been considered for joint use, as applicable, by other components. Mission requirements, operational considerations, and location are incompatible with use by the other components.</p>		
12. Supplemental Data:		
A. Estimated Design Data:		
1. Status		
(a) Date Design Started:		10/10
(b) Parametric Cost Estimate Used to Develop Costs (Yes/No):		No
(c) Percent Complete as of February 2015:		95
(d) Date 35 Percent Complete:		03/11
(e) Date Design Complete:		12/14
(f) Type of Design Contract:		D/B/B
2. Basis		
(a) Standard or Definitive Design:		No
(b) Date Design was Most Recently Used:		N/A
3. Total Cost (c) = (a) + (b) or (d) + (e) (\$000)		
(a) Production of Plans and Specifications:		100
(b) All Other Design Costs:		100
(c) Total:		200
(d) Contract:		150
(e) In-House:		50
4. Contract Award:		03/16
5. Construction Start:		04/16
6. Construction Complete:		06/17
B. Equipment associated with this project that will be provided from other appropriations:		
<u>PURPOSE</u>	<u>APPROPRIATION</u>	<u>FISCAL YEAR REQUIRED</u>
Environmental Remediation	DWCF	2016
		<u>AMOUNT (\$000)</u> 50
Point of Contact is DLA Civil Engineer at 703-767-2326		

EXHIBIT 14

14

1. COMPONENT ANG	FY 2019 GUARD AND RESERVE MILITARY CONSTRUCTION			2. DATE Feb 2018	
3. INSTALLATION AND LOCATION JOINT BASE LANGLEY-EUSTIS, HAMPTON			4. AREA CONSTR COST INDEX .91		
5. FREQUENCY AND TYPE OF UTILIZATION 192nd Fighter Wing					
6. OTHER ACTIVE/GUARD/RESERVE INSTALLATIONS WITHIN 15 MILES RADIUS					
7. PROJECTS REQUESTED IN THIS PROGRAM					
CATEGORY CODE	PROJECT TITLE	SCOPE	COST \$(000)	DESIGN STATUS START COMPLETE	
171-447	Construct Cyber Ops Facility	966 SM (10,400 SF)	10,000	Sep 17	Oct 18
8. STATE RESERVE FORCES FACILITIES BOARD RECOMMENDATION The Board recommendations are:					
				04 Feb 16 (Date)	
9. LAND ACQUISITION REQUIRED					
				None (Number of Acres)	
10. PROJECTS PLANNED IN NEXT FOUR YEARS					
CATEGORY CODE	PROJECT TITLE	SCOPE	COST \$(000)		
R&M Unfunded Requirement: \$0					

1. COMPONENT ANG	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE Feb 2018															
3. INSTALLATION AND LOCATION JOINT BASE LANGLEY-EUSTIS, VIRGINIA																	
5. PROJECT TITLE CONSTRUCT CYBER OPS FACILITY	7. PROJECT NUMBER MUHJ179000																
<p>As a tenant unit on an Active Duty base with a TFI agreement, the 192d FW does not have the ability to allocate buildings on Joint Base Langley-Eustis. The host 633d ABW does not currently have the availability in any building that would meet the COS mission requirements. In order for the unit to attain operating capability, temporary leased space has been obtained off base. Continued use of that space is costly, and it involves an increased security risk, which is not appropriate to continue.</p> <p><u>IMPACT IF NOT PROVIDED:</u> The 185th COS will be unable to reach Full Operating Capability (FOC) without a facility that includes the required SCIF space from which to operate. Having the required SCIF space is necessary for the team to receive the intel and perform the training required to perform in the cyber mission space. The squadron is required for the ANG to meet their USCC mobilization requirements. Not having a facility that enables the unit to reach FOC risks the ANG being unable to fulfill their obligation to USCC. Continued use of leased space is costly and represents an enhanced security risk.</p> <p><u>ADDITIONAL:</u> Sustainable principles, to include Life Cycle cost effective practices, will be integrated into the design, development and construction of the project in accordance with Executive Order 13423, 10 USC 2802(c) and other applicable laws and Executive Orders. An economic analysis is being prepared comparing the alternatives of new construction, revitalization, leasing and status quo operation. This project is considered capitalization based on the following rule from ANGETL 17-06: New Construction.</p>																	
<table border="0"> <tr> <td>CatCode</td> <td></td> <td>Requirement</td> <td>Adequate</td> <td>Substandard</td> </tr> <tr> <td>171-447</td> <td>RES FORCES COMM/ELECTRONIC TRN</td> <td>455 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>171-447</td> <td>RES FORCES COMM/ELECTRONIC TRN</td> <td>511 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> </table>	CatCode		Requirement	Adequate	Substandard	171-447	RES FORCES COMM/ELECTRONIC TRN	455 SM	0 SM	0 SM	171-447	RES FORCES COMM/ELECTRONIC TRN	511 SM	0 SM	0 SM		
CatCode		Requirement	Adequate	Substandard													
171-447	RES FORCES COMM/ELECTRONIC TRN	455 SM	0 SM	0 SM													
171-447	RES FORCES COMM/ELECTRONIC TRN	511 SM	0 SM	0 SM													
<p>CONSTRUCT CYBER ADMINISTRATION (171447) CONSTRUCT CYBER SCIF (171447)</p>	<p>455 SM = 4,900 SF 511 SM = 5,500 SF</p>																

1. COMPONENT ANG	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE Feb 2018																												
3. INSTALLATION AND LOCATION JOINT BASE LANGLEY-EUSTIS, VIRGINIA																														
5. PROJECT TITLE CONSTRUCT CYBER OPS FACILITY		7. PROJECT NUMBER MUHJ179000																												
<p>12. SUPPLEMENTAL DATA:</p> <p>a. Estimated Design Data:</p> <p>(1) Status:</p> <table border="0"> <tr> <td>(a) Date Design Started</td> <td>SEP 2017</td> </tr> <tr> <td>(b) Parametric Cost Estimates used to develop costs</td> <td>No</td> </tr> <tr> <td>(c) Percent Complete as of Jan 2018</td> <td>6%</td> </tr> <tr> <td>* (d) Date 35% Designed</td> <td>APR 2018</td> </tr> <tr> <td>(e) Date Design Complete</td> <td>OCT 2018</td> </tr> <tr> <td>(f) Type of Design Contract</td> <td>Standard</td> </tr> <tr> <td>(g) Energy Study/Life-Cycle analysis was/will be performed</td> <td>YES</td> </tr> </table> <p>(2) Basis:</p> <table border="0"> <tr> <td>(a) Standard or Definitive Design -</td> <td>No</td> </tr> <tr> <td>(b) Where Design Was Most Recently Used -</td> <td></td> </tr> </table> <p>(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)</p> <table border="0"> <tr> <td>(a) Production of Plans and Specifications</td> <td>\$470</td> </tr> <tr> <td>(b) All Other Design Costs</td> <td>\$270</td> </tr> <tr> <td>(c) Total</td> <td>\$740</td> </tr> <tr> <td>(d) Contract</td> <td>\$740</td> </tr> <tr> <td>(e) In-House</td> <td></td> </tr> </table> <p>(4) Contract Award (Month/Year) FEB 2019</p> <p>(5) Construction Start APR 2019</p> <p>(6) Construction Completion JAN 2020</p> <p>* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability.</p> <p>b. Equipment associated with this project will be provided from other appropriations: N/A</p> <p>POINT OF CONTACT: NGB / A4AD (240) 612-8070</p>			(a) Date Design Started	SEP 2017	(b) Parametric Cost Estimates used to develop costs	No	(c) Percent Complete as of Jan 2018	6%	* (d) Date 35% Designed	APR 2018	(e) Date Design Complete	OCT 2018	(f) Type of Design Contract	Standard	(g) Energy Study/Life-Cycle analysis was/will be performed	YES	(a) Standard or Definitive Design -	No	(b) Where Design Was Most Recently Used -		(a) Production of Plans and Specifications	\$470	(b) All Other Design Costs	\$270	(c) Total	\$740	(d) Contract	\$740	(e) In-House	
(a) Date Design Started	SEP 2017																													
(b) Parametric Cost Estimates used to develop costs	No																													
(c) Percent Complete as of Jan 2018	6%																													
* (d) Date 35% Designed	APR 2018																													
(e) Date Design Complete	OCT 2018																													
(f) Type of Design Contract	Standard																													
(g) Energy Study/Life-Cycle analysis was/will be performed	YES																													
(a) Standard or Definitive Design -	No																													
(b) Where Design Was Most Recently Used -																														
(a) Production of Plans and Specifications	\$470																													
(b) All Other Design Costs	\$270																													
(c) Total	\$740																													
(d) Contract	\$740																													
(e) In-House																														

EXHIBIT 15

15

1. Component DEFENSE (DLA)	FY 2018 MILITARY CONSTRUCTION PROJECT DATA			2. Date May 2017
3. Installation and Location NORFOLK NAVAL STATION, NORFOLK, VA		4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE		
5. Program Element 0702976S	6. Category Code 44130	7. Project Number DDNV1801	8. Project Cost (\$000) 18,500	
9. COST ESTIMATES				
Item	U/M	Quantity	Unit Cost	Cost (\$000)
PRIMARY FACILITIES.....	-	-	-	8,894
HAZMAT WAREHOUSE & ADMIN NAVSTA (CC 44130).....	SF	35,904	207	(7,432)
GAS CYLINDER STORAGE SHED NAVSTA (CC 44135).....	SF	13,000	95	(1,235)
FORKLIFT STORAGE SHED (CC 44135).....	SF	682	268	(183)
GATE HOUSE NAVSTA (CC 73025).....	SF	100	440	(44)
SUPPORTING FACILITIES.....	-	-	-	7,774
SITE PREP, PAVING & IMPROVEMENTS.....	LS	-	-	(2,797)
SPECIAL FOUNDATIONS.....	LS	-	-	(2,038)
SITE UTILITIES.....	LS	-	-	(1,891)
DEMOLITION.....	LS	-	-	(1,048)
SUBTOTAL.....	-	-	-	16,668
CONTINGENCY (5%)	-	-	-	<u>833</u>
ESTIMATED CONTRACT COST	-	-	-	17,501
SUPERVISION, INSPECTION & OVERHEAD (SIOH) (5.7%)..	-	-	-	<u>998</u>
TOTAL.....	-	-	-	18,499
TOTAL (ROUNDED)	-	-	-	18,500
EQUIPMENT FROM OTHER APPROPRIATIONS	-	-	-	(1,670)
10. Description of Proposed Construction:				
<p>Construct a non-combustible Hazardous Materials (HAZMAT) Warehouse. It will include sufficient clear stacking height storage, concrete floors at dock height, weather-sealed truck doors, loading docks with dock levelers, shipping and receiving areas, admin office space, restrooms with lockers, employee lunch/break/training room, and utility spaces. The project will also include a gas cylinder storage shed with forklift storage and charging capability. Supporting facilities include site improvements, dumpster enclosures, utilities, fire protection, storm drainage, site information systems, site lighting, paving (access roadways, hardstand aprons, parking), fencing, walks, landscaping, and related improvements. Provide aboveground fire protection water storage tank(s) and associated fire pumps, piping, etc. Site work includes improvements to parking areas to replace displaced parking.</p> <p>Demolition at NAVSTA Norfolk includes a portion of existing warehouse CEP-156 (approx. 110,668 SF, FCI=67), the adjacent gatehouse CEP-180 (approx. 108 SF, FCI=76) and the existing gas cylinder storage shed (Shed X380, approx. 67,300 SF, FCI=64). The existing warehouse will return to the host installation for reuse.</p>				
11. REQUIREMENT: 105,600 Square Feet (SF) ADEQUATE: 0 SF SUBSTANDARD: 201,792 SF				
PROJECT: Construct modern hazmat warehouse with appropriate administrative areas, gas cylinder storage and forklift storage and charging facilities. (C)				

1. Component DEFENSE (DLA)	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. Date May 2017	
3. Installation and Location NORFOLK NAVAL STATION, NORFOLK, VA		4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE	
5. Program Element 0702976S	6. Category Code 44130	7. Project Number DDNV1801	8. Project Cost (\$000) 18,500
2. Basis (a) Standard or Definitive Design: (b) Date Design was Most Recently Used:			No N/A
3. Total Cost (c) = (a)+(b) or (d)+(e) (\$000) (a) Production of Plans and Specifications (b) All Other Design Costs (c) Total (d) Contract (e) In-House			1,150 650 1,755 1,432 323
4. Contract Award			06/18
5. Construction Start			07/18
6. Construction Complete			05/20
B. Equipment associated with this project that will be provided from other appropriations:			
<u>PURPOSE</u>	<u>APPROPRIATION</u>	<u>FISCAL YEAR REQUIRED</u>	<u>AMOUNT (\$000)</u>
Furniture	DWCF	2018	65
Security/Access Control System	DWCF	2018	100
Rack System & MHE	DWCF	2018	1,500
Info Sys	DWCF	2018	5
Point of Contact is DLA Civil Engineer at 703-767-2326			

EXHIBIT 16

1. COMPONENT WHS		FY 2017 MILITARY CONSTRUCTION PROJECT DATA		2. DATE Feb 2016
3. INSTALLATION AND LOCATION Pentagon Reservation			4. PROJECT TITLE Pentagon Metro Entrance Facility	
5. PROGRAM ELEMENT	6. CATEGORY CODE 144 13	7. PROJECT NUMBER 80916	8. PROJECT COST (\$000) 12,111	

9. COST ESTIMATES				
ITEM	UM	QUANTITY	UNIT COST	COST(\$000)
PRIMARY FACILITY				9,358
Entrance Screening Facility	SF	10,400	431.9	(4,493)
Existing Canopy Removal/Modifications	SF	9,125	155	(1,414)
Fixed Equipment	LS	--	--	(538)
Security Equipment Infrastructure	LS	--	--	(1,584)
Intrusion Detection Infrastructure	LS	--	--	(28)
Total from Continuation page(s)				(1,301)
SUPPORTING FACILITIES				679
Electric Service	LS	--	--	(74)
Steam And/Or Chilled Water Distribution	LS	--	--	(271)
Paving, Walks, Curbs And Gutters	LS	--	--	(39)
Site Imp(244) Demo()	LS	--	--	(244)
Antiterrorism Measures	LS	--	--	(32)
Info Systems	LS	--	--	(19)
ESTIMATED CONTRACT COST				10,037
CONTINGENCY (10.00%)				<u>1,004</u>
SUBTOTAL				<u>11,041</u>
SUPERVISION, INSPECTION & OVERHEAD (5.70%)				629
DESIGN/BUILD - DESIGN COST (4.0000%)				<u>442</u>
TOTAL REQUEST				12,111
TOTAL REQUEST (ROUNDED)				12,200
INSTALLED EQT - OTHER APPROPRIATIONS				2,324

10. Description of Proposed Construction
 Construct a new Pedestrian Access Control Point (PACP) for employee screening at the Pentagon Metro Entrance. This addition to the existing building will include all required security equipment and systems; anti-terrorism/force protection (AT/FP); intrusion detection system, information system (IT/communications); safety and surveillance measures; screening and unauthorized personnel and hazardous materials detection capabilities; systems commissioning; utility services; lighting, heating, ventilation and air conditioning; interior renovations; demolition; and site work for conformance with Homeland Security Presidential Directive (HSPD) -12, Pentagon Integrated Security Master Plan (ISMP), Pentagon Exterior Standards, Architectural Barriers Act (ABA), Historical Preservation, Green Build/Leadership in Energy and Environmental Design (LEED) Silver, Sustainability and Energy Policy Act features, Unified Facilities Criteria (UFC) and all applicable Federal, State and local codes and requirements. The new employee screening facility will provide increased throughput capacity to safely and efficiently handle the large daily volume of Pentagon employees and badged personnel traffic using the Pentagon Metro Entrance and to decrease threats and risks to the attending police officers.

Interior renovations to the existing Metro Entrance screening area will be required for integration and efficient functioning of the new employee screening

1. COMPONENT WHS		FY 2017 MILITARY CONSTRUCTION PROJECT DATA		2. DATE Feb 2016	
3. INSTALLATION AND LOCATION Pentagon Reservation			4. PROJECT TITLE Pentagon Metro Entrance Facility		
5. PROGRAM ELEMENT		6. CATEGORY CODE 144 13	7. PROJECT NUMBER 80916		8. PROJECT COST (\$000) 12,111

IMPACT IF NOT PROVIDED: (CONTINUED)

Pentagon access control points. This project is also needed to complete integration with the new Metro Entrance Visitor Screening Facility for maximum operational efficiency.

ADDITIONAL:

All applicable Federal, State, local codes, regulations and criteria will be integrated into this project including all applicable Pentagon standards. The Director WHS certifies that this project has been considered for joint use potential. The facility will be available for use by other components.

1. COMPONENT Washington Headquarters Services		FY 2017 MILITARY CONSTRUCTION PROGRAM					2. DATE Feb 2016				
3. INSTALLATION AND LOCATION Pentagon Reservation (Raven Rock Mountain Complex)				4. COMMAND OSD/DAM			5. AREA CONSTRUCTION COST INDEX 1.14				
6. PERSONNEL		(1) PERMANENT			(2) STUDENTS			(3) SUPPORTED			(4) TOTAL
		OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN	
a. AS OF 30 Sep 2015											23,000
b. END FY 2020											23,000
7. INVENTORY DATA (\$000)											
a. TOTAL ACREAGE											
b. INVENTORY TOTAL AS OF 30 Sep 2014											
c. AUTHORIZATION NOT YET IN INVENTORY											
d. AUTHORIZATION REQUESTED IN THIS PROGRAM)											
e. AUTHORIZATION INCLUDED IN FOLLOWING PROGRAM											
f. PLANNED IN NEXT THREE PROGRAM YEARS											
g. REMAINING DEFICIENCY											
h. GRAND TOTAL											
8. PROJECTS REQUESTED IN THIS PROGRAM											
a. CATEGORY											
(1) CODE	(2) PROJECT TITLE			(3) SCOPE			b. COST (\$000)	DESIGN START	STATUS COMPLETE		
13290	Upgrade IT Facilities Infrastructure			4,000 SF			8,105	03/2015	04/2019		
9. FUTURE PROJECTS											
N/A											
10. MISSION OR MAJOR FUNCTIONS											
Raven Rock Mountain Complex provides an enduring platform from where DOD can execute its mission essential functions in support of continuity of operations.											
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES											
A. Air Pollution (\$000) 0											
B. Water Pollution (\$000) 0											
C. Occupational Safety and Health (\$000) 0											

1. COMPONENT WHS		FY 2017 MILITARY CONSTRUCTION PROJECT DATA			2. DATE Feb 2016
3. INSTALLATION AND LOCATION Pentagon Reservation (Raven Rock Mountain Complex			4. PROJECT TITLE Upgrade IT Facilities Infrastructure-RRMC		
5. PROGRAM ELEMENT	6. CATEGORY CODE 132 90	7. PROJECT NUMBER 87744	8. PROJECT COST (\$000) 8,105		

PROJECT: (CONTINUED)

REQUIREMENT:
Provide adequate information systems infrastructure both classified and unclassified and to meet the site's mission. Centrally located Telecommunication Rooms paired with upgraded cabling plant will require less maintenance, provide more accessibility to IT personnel, and provide for additional information throughput to serve a greater user population with increasing bandwidth needs.

CURRENT SITUATION:
The facility currently has an IT infrastructure with inadequate capacity to serve current data needs and a layout that is inefficient and requires multiple hops which causes signal degradation and slow network speed. Additionally the lack of dedicated IT rooms on each floor of the main facility causes maintenance personnel to take an average of eight (8) hours per service ticket to track down and resolve problems with cabling not being properly routed, and equipment spread throughout the facility often in tenant spaces that should be centrally located for ease of access. The unnecessary complexity and inadequate capacity of the current infrastructure and equipment access constraints require work-arounds and delay both the information systems operators and end users. This could be eliminated by a more modern, higher capacity, information systems infrastructure.

IMPACT IF NOT PROVIDED:
If this project is not constructed site information systems users will not have the bandwidth available to efficiently perform their missions nor will information systems personnel have the ability to effectively upgrade proponent sponsored equipment as data needs continue to increase to meet user needs. Trouble-shooting delays will continue to result from the unnecessary complexity of the existing system.

ADDITIONAL:
All applicable codes will be integrated into this project. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. The Director WHS certifies that this project has been considered for joint use potential. Mission requirements, operational considerations, and location are incompatible with user by other components. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development and construction of the project.

EXHIBIT 17

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1. Component DEFENSE (DLA)	FY 2018 MILITARY CONSTRUCTION PROJECT DATA			2. Date May 2017
3. Installation and Location NORFOLK NAVAL SHIPYARD, PORTSMOUTH, VA		4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE		
5. Program Element 0702976S	6. Category Code 44130	7. Project Number DDNV1802	8. Project Cost (\$000) 22,500	
9. COST ESTIMATES				
Item	U/M	Quantity	Unit Cost	Cost (\$000)
PRIMARY FACILITIES	-	-	-	11,916
HAZMAT WAREHOUSE & ADMIN NNSY (CC 44130)	SF	52,500	207	(10,878)
GAS CYLINDER STORAGE SHED NNSY (CC 44135).....	SF	9,000	95	(855)
FORKLIFT STORAGE SHED (CC 44135).....	SF	682	268	(183)
SUPPORTING FACILITIES	-	-	-	8,287
SITE PREP, PAVING & IMPROVEMENTS	LS	-	-	(2,797)
SPECIAL FOUNDATIONS.....	LS	-	-	(2,551)
SITE UTILITIES	LS	-	-	(1,891)
DEMOLITION	LS	-	-	(1,048)
SUBTOTAL	-	-	-	20,203
CONTINGENCY (5%)	-	-	-	<u>1,010</u>
ESTIMATED CONTRACT COST	-	-	-	21,213
SUPERVISION, INSPECTION & OVERHEAD (SIOH) (5.7%)..	-	-	-	<u>1,209</u>
TOTAL	-	-	-	22,422
TOTAL (ROUNDED)	-	-	-	22,500
EQUIPMENT FROM OTHER APPROPRIATIONS	-	-	-	(1,670)
10. Description of Proposed Construction:				
<p>Construct a non-combustible Hazardous Materials (HAZMAT) Warehouse. It will include sufficient clear stacking height storage, concrete floors at dock height, weather-sealed truck doors, loading docks with dock levelers, shipping and receiving areas, admin office space, restrooms with lockers, employee lunch/break/training room, and utility spaces. The project will also include a gas cylinder storage shed with forklift storage and charging capability. Supporting facilities include site improvements, dumpster enclosures, utilities, fire protection, storm drainage, site information systems, site lighting, paving (access roadways, hardstand aprons, parking), fencing, walks, landscaping, and related improvements. Provide aboveground fire protection water storage tank(s) and associated fire pumps, piping, etc. Site work includes improvements to parking areas to replace displaced parking.</p> <p>Relocate ready service lockers (RSL's) and demolish gas cylinder storage shed (Shed 1567, approx. 15,400 SF, FCI=76) and a shed area office (approx. 96 SF).</p>				
11. REQUIREMENT: 105,600 Square Feet (SF) ADEQUATE: 0 SF SUBSTANDARD: 201,792 SF				
PROJECT: Construct a modern hazmat warehouse with appropriate administration areas, gas cylinder storage and forklift storage & charging facilities. (C)				

1. Component DEFENSE (DLA)	FY 2018 MILITARY CONSTRUCTION PROJECT DATA		2. Date May 2017
3. Installation and Location NORFOLK NAVAL SHIPYARD, PORTSMOUTH, VA		4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE	
5. Program Element 0702976S	6. Category Code 44130	7. Project Number DDNV1802	8. Project Cost (\$000) 22,500
2. Basis (a) Standard or Definitive Design: (b) Date Design was Most Recently Used:			No N/A
3. Total Cost (c) = (a)+(b) or (d)+(e) (\$000) (a) Production of Plans and Specifications (b) All Other Design Costs (c) Total (d) Contract (e) In-House			1,391 735 2,126 1,803 323
4. Contract Award			06/18
5. Construction Start			07/18
6. Construction Complete			05/20
B. Equipment associated with this project that will be provided from other appropriations:			
<u>PURPOSE</u>	<u>APPROPRIATION</u>	<u>FISCAL YEAR REQUIRED</u>	<u>AMOUNT (\$000)</u>
Furniture	DWCF	2018	65
Security/Access Control System	DWCF	2018	100
Rack System & MHE	DWCF	2018	1,500
Info Sys	DWCF	2018	5
Point of Contact is DLA Civil Engineer at 703-767-2326			

EXHIBIT 18

1. Component NAVY		FY 2019 MILITARY CONSTRUCTION PROGRAM		2. Date 05 FEB 2018	
3. Installation (SA) & Location/UIC: N32443 NAVAL SUPPORT STATION NREK NSY PORTSMOUTH, VIRGINIA			4. Project Title Ships Maintenance Facility		
5. Program Element 0703676N	6. Category Code 21357	7. Project Number P256	8. Project Cost (\$000) 26,120		
9. COST ESTIMATES					
Item		UM	Quantity	Unit Cost	Cost (\$000)
SHIPS MAINTENANCE FACILITY (370,989SF)		m2	34,466		23,080
ELECTRIC/ELECTRONICS SHOP CC21357 (370,989SF) (RENOVATE)		m2	34,466	543.52	(18,730)
ANTI-TERRORISM/FORCE PROTECTION		LS			(3,020)
BUILT-IN EQUIPMENT		LS			(150)
SPECIAL COSTS		LS			(950)
OPERATION & MAINTENANCE SUPP INFO (OMSI)		LS			(230)
SUPPORTING FACILITIES					450
PAVING AND SITE IMPROVEMENTS		LS			(30)
ELECTRICAL UTILITIES		LS			(220)
MECHANICAL UTILITIES		LS			(40)
ENVIRONMENTAL MITIGATION		LS			(160)
SUBTOTAL					23,530
CONTINGENCY (5%)					1,180
TOTAL CONTRACT COST					24,710
SIOH (5.7%)					1,410
SUBTOTAL					26,120
TOTAL REQUEST ROUNDED					26,120
TOTAL REQUEST					26,120
EQUIPMENT FROM OTHER APPROPRIATIONS (NON ADD)					(1,384)
10. Description of Proposed Construction:					
<p>Converts the fifth and sixth floor in Building #510 to accommodate the relocation of the nuclear containment and life raft shops. The altered floor plan will include shop equipment areas, maintenance space, pallet racks, fire rated walls around storage areas, administrative office, break room, personnel support areas, bathrooms, and a conference room. Existing stairwells, from ground floor to sixth floor will be repaired to meet code requirements. All non-code compliant combustible construction throughout the building will be removed and the egress deficiency on the third floor will be corrected. Code compliant fire alarm/mass notification, standpipe and sprinkler systems will be installed throughout the facility. Progressive collapse retrofits are included.</p>					

1. Component NAVY		FY 2019 MILITARY CONSTRUCTION PROGRAM		2. Date 05 FEB 2018							
3. Installation (SA) & Location/UIC: N32443 NAVAL SUPPORT STATION NRFK NSY PORTSMOUTH, VIRGINIA			4. Project Title Ships Maintenance Facility								
5. Program Element 0703676N		6. Category Code 21357	7. Project Number P256	8. Project Cost (\$000) 26,120							
<p>CURRENT SITUATION:</p> <p>Building #510 was constructed in 1957. The building has been cited for a number of life safety violations. These violations include having no sprinkler protection, inadequate fire alarm placement, lack of a mass notification system and inadequate egress. Most of the occupants on fifth and sixth floors have been relocated into trailers. Current mitigation includes roving fire watches on each floor, 24 hours per day, seven days a week, by existing shop personnel, thus reducing available manpower for ship maintenance and repair activities.</p> <p>The most efficient use of the vacant space in building #510 would be the relocation of the nuclear containment and life raft shops from an existing facility. This existing facility has severe life safety and environmental concerns that would require significantly more funding to repair than Building #510.</p> <p>The shipyard has the only life raft inspection, repairs and certification facility for the east coast, servicing life rafts from Navy and Coast Guard ships. This represents an annual work load of 750 raft inspections, repairs and certifications per year, with 50-100 rafts in active maintenance at any time.</p> <p>IMPACT IF NOT PROVIDED:</p> <p>The nuclear containment and life raft shops will stay in their existing facility, resulting in increased risk to critical ship maintenance activities. Approximately 330 personnel, working more than 256,000 man-hours annually, will remain in a high risk environment, with continuing significant rework, higher stress, and additional operating costs due to inadequate working environment. Shop operations will continue to require the rental of a portable sixty ton HVAC system to provide the minimum required climate control for the shops required to operate under specified temperature and/or humidity levels. Even with the temporary climate control, this facility still routinely operates at high summertime temperatures and/or high humidity. The result is negative impacts on availability schedules due to rework, and time delays caused by equipment overheating and failed seams on the contaminated materials containment bags and enclosures.</p>											
<p>12. Supplemental Data:</p> <p>A. Estimated Design Data:</p> <p>1. Status:</p> <table border="0"> <tr> <td>(A) Date design or Parametric Cost Estimate started</td> <td>09/2016</td> </tr> <tr> <td>(B) Date 35% Design or Parametric Cost Estimate complete</td> <td>02/2017</td> </tr> <tr> <td>(C) Date design completed</td> <td>11/2018</td> </tr> </table>						(A) Date design or Parametric Cost Estimate started	09/2016	(B) Date 35% Design or Parametric Cost Estimate complete	02/2017	(C) Date design completed	11/2018
(A) Date design or Parametric Cost Estimate started	09/2016										
(B) Date 35% Design or Parametric Cost Estimate complete	02/2017										
(C) Date design completed	11/2018										

EXHIBIT 19

19

1. COMPONENT ANG		FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE AUG 14, 2018	
3. INSTALLATION AND LOCATION DANE COUNTY REGIONAL-TRUAX FIELD, WISCONSIN			4. PROJECT TITLE CONSTRUCT SMALL ARMS RANGE		
5. PROGRAM ELEMENT 52276F	6. CATEGORY CODE 179-475	7. PROJECT NUMBER XGFG179036	8. PROJECT COST(\$000) \$8,000		

9. COST ESTIMATES				
ITEM	U/M	QUANTITY	UNIT COST	COST (\$000)
CONSTRUCT SMALL ARMS RANGE	SF	12,300		6,021
SMALL ARMS RANGE (179475)	SF	10,500	510	(5,355)
COMBAT ARMS TRNG & MAINT (171476)	SF	1,800	370	(666)
SUPPORTING FACILITIES				1,000
UTILITIES AND COMMUNICATIONS SUPPORT	LS			(500)
SITE IMPROVEMENTS	LS			(250)
PAVEMENTS	LS			(250)
SUSTAINABILITY AND ENERGY MEASURES	LS			150
SUBTOTAL				7,171
CONTINGENCY (5%)				359
TOTAL CONTRACT COST				7,530
SUPERVISION, INSPECTION AND OVERHEAD (6%)				451
TOTAL REQUEST				7,981
TOTAL REQUEST (ROUNDED)				8,000

10. Description of Proposed Construction: Construct a small arms range and CATM training & maintenance facility utilizing conventional design and construction methods to accommodate the mission of the facility. Facility shall be designed as permanent construction in accordance with the DOD Unified Facilities Criteria. The facility should be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special construction requirements: all necessary exterior utilities, access pavements, fire protection, site work, and support. Provide utility connections for modular small arms range equipment components.
Air Conditioning: 30 Tons.

11. REQUIREMENT: 12,300 SF ADEQUATE: 0 SF SUBSTANDARD: 0 SF
PROJECT: Small Arms Range/CATM Training (Current Mission)
REQUIREMENT: The installation requires an adequately sized, properly configured, and correctly sited small arms range to train and certify security forces, battlefield airmen, and mobility personnel in accordance with AFI 36-2226. The facility will house a MCSATS (Modular Containerized Small Arms Training Set) for a total of 12 to 14 firing lanes. A combat arms training and maintenance (CATM) facility, to provide classroom training space, administrative space, and arms cleaning and inspection areas for members using the small arms range. The ANG has both members that are required to perform armed duties in-garrison and others only in contingency operations on both pistol and rifle in accordance with AFI 36-2226, Table 2-1.
CURRENT SITUATION: The installation does not have an organic small arms range capability. Drill status members cannot be qualified on base during their 2-days-per-month drill attendance. Work-arounds include traveling off-site at considerable expense per qualification. Given the new course of fire includes a full 8-hour firing day, plus pre-firing classroom familiarization training, combat arms training can occupy the majority of a drill weekend, leaving no time for other functional or ancillary training. On base training is considered the preferred course of action because it minimizes impacts to drill time. The ANG's 89 wings each have Airmen who need to qualify on rifle or pistol. However, most ANG bases have too little real estate to support enclosed outdoor firing ranges due to the sizable

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE AUG 14, 2018
3. INSTALLATION AND LOCATION DANE COUNTY REGIONAL-TRUAX FIELD, WISCONSIN		
5. PROJECT TITLE CONSTRUCT SMALL ARMS RANGE		7. PROJECT NUMBER XGFG179036

surface danger zone behind the target line; units seek indoor ranges to minimize the range footprint, maximize training efficiency for drill status Airmen and CATM instructors, and allow required Security Forces "night" firing by using low light levels inside the indoor range. In an NGB/A4S study which considered the cost of travel and lost time, this site had the third highest cost-per-qualification in the ANG, at more than \$1,116 per student qualified.

IMPACT IF NOT PROVIDED: Installation personnel will continue to travel considerable distances to qualify on weapons, negatively affecting all wing readiness and severely degrading their wartime mission. The installation will have to continue to travel over 5 hours round trip, plus 4 hours of training forces the unit to stay over night near the range, costing \$15K annually. Safety, security, and physical protection of Wing personnel is hampered, endangering both life and property. Additionally, installation security forces will not have adequate training and qualifications which reduces overall base security and also endangers both life and property. Accept risk to the deployment mission and the protection of valuable mobility aircraft on site due to inadequate training.

ADDITIONAL: The ANG currently has 28 installations with a small-arms range. An additional 24 ANG installations are units hosted on an installation with an operational small arms range, leaving 46 installations which lack organic range capability. This project will construct a facility to provide a modular small arms range plus provide classroom and weapons maintenance/administrative space. This project is considered capitalization based on the following rule from ANGETL 17-06: New Construction.

CatCode	Requirement	Adequate	Substandard
179-475 SMALL ARMS RANGE SYSTEM	10,500 SF	0 SF	0 SF
171-476 COMBAT ARMS TRNG & MAINT	1,800 SF	0 SF	0 SF
SMALL ARMS RANGE (179475)	10,500 SF = 975 SM		
COMBAT ARMS TRNG & MAINT (171476)	1,800 SF = 167 SM		

EXHIBIT 20

RULE 55 FUGITIVE DUST CONTROL

(Adopted June 24, 2009; Effective December 24, 2009)

(a) **APPLICABILITY**

Except as provided in Section (b), the provisions of this rule shall apply to any commercial construction or demolition activity capable of generating fugitive dust emissions, including active operations, open storage piles, and inactive disturbed areas. Activities subject to this regulation are also subject to the applicable requirements of Rule 50 (Visible Emissions) and Rule 51 (Nuisance).

(b) **EXEMPTIONS**

The provisions of this rule shall not apply to the following:

(1) Noncommercial construction or demolition activities in support of any structure designed for and used exclusively as a dwelling for not more than four families;

(2) Emergency operations conducted during and in response to life-threatening situations, or in conjunction with any officially declared disaster or state of emergency;

(3) Active operations conducted by essential service utilities to provide electricity, natural gas, telephone, water and/or sewer during periods of unplanned service outages and emergency disruptions;

(4) Any active operation, open storage pile, or inactive disturbed area for which the owner/operator can demonstrate that necessary fugitive dust preventive or mitigating actions are in conflict with the California or federal Endangered Species Acts, or a local, state, or federal water quality requirement;

(5) Explosive blasting operations. However, any other activities capable of generating fugitive dust emissions and performed in conjunction with explosive blasting, such as vehicle transport of materials produced by blasting operations, are not exempt from complying with the provisions of this rule or other applicable rules;

(6) Abrasive blasting operations regulated by Rule 71 (Abrasive Blasting);

(7) Activities subject to an Air Pollution Control District permit to operate;

(8) Permanent unpaved roads.

(c) **DEFINITIONS**

For the purpose of this rule, the following definitions shall apply:

(1) **“Active Operation”** means any construction or demolition activity capable of generating fugitive dust. This includes but is not limited to, earth-moving activities, and heavy- and light-duty vehicular movement on disturbed surface areas or on unpaved roads.

(2) **“Bulk Materials”** means any material which can emit fugitive dust when stored, disturbed, or handled, and is un-packaged. Bulk material includes, but is not limited to, sand, gravel, soil, aggregate material, and other organic or inorganic particulate matter.

(3) **“Commercial”** means work conducted for financial compensation by other than a tenant or property owner.

(4) **“Construction or Demolition Activity”** means any on-site activity preparatory to or for the purpose of building, altering, rehabilitating, raising, tearing down, breaking into pieces, or improving property, including, but not limited to, the following activities: grading, excavation, loading, transporting, crushing, cutting, planing, shaping or ground breaking.

(5) **“Dust”** means minute solid particles released into the air by natural forces or by mechanical processes including, but not limited to: crushing, grinding, milling, drilling, demolishing, shoveling, conveying, covering, bagging, and sweeping.

(6) **“Earth-moving Activities”** means activities that include, but are not limited to, grading, earth cutting and filling operations, loading or unloading of dirt or bulk materials, adding to or removing bulk materials from open storage piles, or soil mulching.

(7) **“Emergency”** means an immediate threat to human health or property.

(8) **“Erosion”** means the movement and deposition of land surface materials by water or wind primarily as a result of human activities.

(9) **“Inactive Disturbed Area”** means a portion of the earth's surface that has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural soil condition, thereby increasing the potential for emissions of fugitive dust. This definition excludes those areas that have:

(i) Been restored to a natural state, such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby natural conditions;

(ii) Been paved or otherwise covered by a permanent structure; or

(iii) Established a vegetative ground cover equivalent to at least 70% percent of the background coverage for nearby undisturbed areas.

(10) **“Open Storage Pile”** means any accumulation of bulk material with five percent or greater silt content which is not fully enclosed, covered or chemically stabilized, and which attains a height of three feet or more and a total surface area of 150 or more

square feet. Silt content level is assumed to be five percent or greater unless a person can show, by sampling and analysis in accordance with ASTM Method C-136 or other equivalent method approved in writing by the California Air Resources Board, that the silt content is less than five percent.

(11) “**Owner/operator**” means any person who owns, leases, operates, controls, or supervises any activity subject to this rule or any person who owns, leases, operates, controls, or supervises the site at which any activity subject to this rule occurs, or both.

(12) “**Particulate Matter**” means any finely divided material which exists as a solid or liquid at standard conditions, excluding uncombined water.

(13) “**Paved Road**” means an improved street, highway, alley, public way, or easement that is covered by concrete, asphaltic concrete, fresh or recycled asphalt, or rubberized asphalt, excluding access roadways that connect a facility with a public paved roadway and are not open to through traffic.

(14) “**Permanent Unpaved Road**” means any unsealed or dirt roadway that is not covered by concrete, asphaltic concrete, fresh or recycled asphalt, or rubberized asphalt, and which is designed and intended to remain unsealed and uncovered indefinitely. This definition excludes public or private roads undergoing construction or resurfacing.

(15) “**Person**” means any individual, firm, association, organization, partnership, business trust, corporation, company, contractor, supplier, installer, user or owner, or any state or local government agency or public district and any officer or employee thereof, or the federal government and any officers or employees thereof to the extent authorized by federal law, or any other entity whatsoever which is recognized by law as the subject of rights and duties.

(16) “**Property Line**” means the boundaries of an area in which either a person causing the fugitive dust emissions or a person allowing such emissions has the legal control or possession. This may include all or portions of a legal parcel or parcels as defined by the San Diego County Assessor.

(17) “**Track-Out/Carry-Out**” means any bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles and/or equipment (including tires), or are inadvertently carried out, and that fall onto a paved road, creating visible roadway dust.

(18) “**Visible Dust Emissions**” means any solid particulate matter that is visually detectable in the air without the aid of instruments other than corrective lenses.

(19) “**Visible Roadway Dust**” means any sand, soil, dirt, or other solid particulate matter which is visible upon paved public road surfaces and which can be removed by a vacuum sweeper, or a wet sweeper under normal operating conditions.

(d) **STANDARDS**

(1) **Airborne Dust Beyond the Property Line:** No person shall engage in construction or demolition activity subject to this rule in a manner that discharges visible dust emissions into the atmosphere beyond the property line for a period or periods aggregating more than 3 minutes in any 60 minute period.

(2) **Track-Out/Carry-Out:** Visible roadway dust as a result of active operations, spillage from transport trucks, erosion, or track-out/carry-out shall:

(i) be minimized by the use of any of the following or equally effective track-out/carry-out and erosion control measures that apply to the project or operation: track-out grates or gravel beds at each egress point, wheel-washing at each egress during muddy conditions, soil binders, chemical soil stabilizers, geotextiles, mulching, or seeding; and for outbound transport trucks: using secured tarps or cargo covering, watering, or treating of transported material; and

(ii) be removed at the conclusion of each work day when active operations cease, or every 24 hours for continuous operations. If a street sweeper is used to remove any track-out/carry-out, only PM10-efficient street sweepers certified to meet the most current South Coast Air Quality Management District Rule 1186 requirements shall be used. The use of blowers for removal of track-out/carry-out is prohibited under any circumstances.

EXHIBIT 21



The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy

name redacted

Analyst in Immigration Policy

July 20, 2018

Congressional Research Service

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www.crs.gov

R45266

Summary

For the last several years, Central American migrant families have arrived at the U.S.-Mexico border in relatively large numbers, many seeking asylum. While some request asylum at U.S. ports of entry, others do so after entering the United States “without inspection” (i.e., illegally) between U.S. ports of entry. On May 7, 2018, the Department of Justice (DOJ) implemented a zero tolerance policy toward illegal border crossing both to discourage illegal migration into the United States and to reduce the burden of processing asylum claims that Administration officials contend are often fraudulent.

Under the zero tolerance policy, DOJ prosecutes all adult aliens apprehended crossing the border illegally, with no exception for asylum seekers or those with minor children. DOJ’s policy represents a change in the level of enforcement for an existing statute rather than a change in statute or regulation. Prior Administrations prosecuted illegal border crossings relatively infrequently.

Criminally prosecuting adults for illegal border crossing requires detaining them in federal criminal facilities where children are not permitted. While DOJ and the Department of Homeland Security (DHS) have broad statutory authority to detain adult aliens, children must be detained according to guidelines established in the Flores Settlement Agreement (FSA), the Homeland Security Act of 2002, and the Trafficking Victims Protection Reauthorization Act of 2008. A 2015 judicial ruling held that children remain in family immigration detention for no more than 20 days. If parents cannot be released with them, children are treated as unaccompanied alien children and transferred to the Department of Health and Human Services’ (HHS’s) Office of Refugee Resettlement (ORR) for care and custody.

The widely publicized family separations are a consequence of the Trump Administration’s 100% prosecution policy, not the result of any family separation policy. Since that policy was implemented, up to 3,000 children may have been separated from their parents.

Following mostly critical public reaction, President Trump ordered DHS to maintain custody of alien families during the pendency of any criminal trial or immigration proceedings. DHS Customs and Border Protection (CBP) subsequently stopped referring most illegal border crossers to DOJ for criminal prosecution. A federal judge then mandated that all separated children be promptly reunited with their families. Another rejected DOJ’s request to modify the FSA to extend the 20-day child detention guideline. DHS has since reverted to some prior immigration enforcement policies.

Family unit apprehensions, which increased from just over 11,000 in FY2012 to 68,560 in the first nine months of FY2018, are occurring within relatively low historical levels of total alien apprehensions. The national origin of recently apprehended aliens and families has shifted from mostly Mexican to mostly Central American.

Administration officials and immigration enforcement advocates argue that measures like the zero tolerance policy are necessary to discourage migrants from coming to the United States and submitting fraudulent asylum requests. They maintain that alien family separation resulting from the prosecution of illegal border crossers mirrors that occurring under the U.S. criminal justice system policy where adults with custody of minor children are charged with a crime and held in jail, effectively separating them from their children.

Immigrant advocates contend that migrant families are fleeing legitimate threats from countries with exceptionally high rates of gang violence, and that family separations resulting from the zero tolerance policy are cruel and violate fundamental human rights—such as the ability to request

asylum. They maintain that the zero tolerance policy was hastily implemented and lacked planning for family reunification following criminal prosecutions. Some observers question the Trump Administration's capacity to marshal sufficient resources to prosecute all illegal border crossers without additional resources. Others criticize the family separation policy in light of less expensive alternatives to detention.

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Introduction

In recent years, Central American migrant families have been arriving at the U.S.-Mexico border in relatively large numbers, many seeking asylum.¹ While some request asylum at U.S. ports of entry, others do so after attempting to enter the United States illegally between U.S. ports of entry.² On May 7, 2018, Attorney General Jeff Sessions announced that the Department of Justice (DOJ) implemented a “zero tolerance” policy toward illegal border crossing, both to discourage illegal migration into the United States and to reduce the burden of processing asylum claims that Administration officials contend are often fraudulent.³

Under the zero tolerance policy, DOJ is prosecuting 100% of adult aliens⁴ apprehended crossing the border illegally, making no exceptions for whether they are asylum seekers or accompanied by minor children.⁵ Illegal border crossing is a *misdemeanor*⁶ for a first time offender and a *felony*⁷ for anyone who has previously been “denied admission, excluded, deported, or removed, or has departed the United States while an order of exclusion, deportation or removal is outstanding and thereafter enters, attempts to enter or is found in the U.S.”⁸ Both such criminal offenses can be prosecuted by DOJ in federal criminal courts.

DOJ’s “100% prosecution” policy represents a change in the level of enforcement of an existing statute rather than a change in statute or regulation.⁹ The recent Bush and Obama Administrations prosecuted illegal border crossings relatively infrequently, in part to avoid having DOJ resources committed to prosecuting sizeable numbers of misdemeanors. At different times during those

¹ Asylum is a protection granted to a foreign national physically present within the United States or at the U.S. border who meets the definition of a refugee. A refugee is a person who is outside his or her home country (a second country that is not the United States) and is unable or unwilling to return because of persecution, or a well-founded fear of persecution, on account of five possible criteria: (1) race, (2) religion, (3) nationality, (4) membership in a particular social group, or (5) political opinion; INA 1101(a)(42)(A). In recent years, particularly following the surge of unaccompanied children at the southwest border in 2014, courts have grappled with whether the statutory definition of asylum can encompass threats like gang violence. In some cases, asylum has been granted on such grounds.

² A port of entry is a harbor, border town, or airport through which people and goods may enter a country. The United States currently has 328 ports of entry. For background information related to ports of entry and border security, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*; and CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

³ U.S. Department of Justice, Office of Public Affairs, “Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration,” May 7, 2018.

⁴ *Alien* refers to anyone who is not a citizen or a national of the United States; INA §101(a)(3), 8 U.S.C. §1101(a)(3). In this report, alien is synonymous with *foreign national*. *Unauthorized alien* refers to a foreign national who is unlawfully present in the United States and who either entered the United States illegally (“without inspection”) or entered lawfully and temporarily (“with inspection”) but subsequently violated the terms of his/her admission, typically by “overstaying” a visa duration.

⁵ DHS’s Immigration and Customs Enforcement (ICE) refers to the “zero tolerance” policy as the “100% prosecution” policy. CRS consultation with ICE Legislative Affairs, June 8, 2018.

⁶ A misdemeanor, under federal law, is a criminal offense that is generally regarded as less serious than a felony and punishable by a fine and/or imprisonment for a period of one year or less. See 18 U.S.C. § 3559; see also Black’s Law Dictionary, 10th ed., 2014.

⁷ A felony is a criminal offense punishable by a term of imprisonment for more than one year or by death. See 18 U.S.C. § 3559; see also Black’s Law Dictionary, 10th ed., 2014.

⁸ 8 U.S.C. §1326

⁹ See Tim O’Shea, Theresa Cardinal Brown, “Why Are families Being Separated at the Border? An Explainer,” Bipartisan Policy Center, June 13, 2018; and Weekend Edition Saturday, “Jeh Johnson On Immigration And Trump,” *National Public Radio*, June 9, 2018.

Administrations, illegal entrants would be criminally prosecuted in an attempt to reduce illegal migration, but exceptions were generally made for families and asylum seekers.

Illegal border crossers who are prosecuted by DOJ are detained in federal criminal facilities. Because children are not permitted in criminal detention facilities with adults, detaining adults who crossed illegally requires that any minor children under age 18 accompanying them be treated as unaccompanied alien children (UAC)¹⁰ and transferred to the care and custody of the Department of Health and Human Services' (HHS's) Office of Refugee Resettlement (ORR).

The widely publicized family separations are therefore a *consequence* of the Administration's new policy of 100% prosecution of illegal border crossing, and not the result of a direct policy or law mandating family separation. Since the policy was implemented, "under 3,000" children may have been separated from their parents, including at least 100 under age 5.¹¹

The family separations have garnered extensive public attention. The Trump Administration and immigration enforcement advocates maintain that the zero tolerance policy is necessary to disincentivize migrants from coming to the United States and clogging immigration courts with fraudulent requests for asylum.¹² Immigrant advocates contend that migrant families are fleeing legitimate threats of violence and that family separations resulting from the zero tolerance policy are cruel and violate fundamental human rights.¹³

This report briefly reviews the statutory authority for prosecuting persons who enter the United States illegally between U.S. ports of entry, and the policies and procedures for processing apprehended illegal border entrants and any accompanying children. It explains enforcement policies under past Administrations and then discusses the Trump Administration's zero tolerance policy on illegal border crossers and the attendant family separations. The report concludes by presenting varied policy perspectives on the zero tolerance policy and briefly reviews recent related congressional activity. An appendix examines recent trends in the apprehension of family units at the U.S. southern border.

This report describes policies and circumstances that are changing rapidly. Information presented in it is current as of the publication date but may become outdated quickly.

¹⁰ Unaccompanied alien children (UAC) are defined in statute as children who lack lawful immigration status in the United States, who are under the age of 18, and who either are without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody; 6 U.S.C. §279(g)(2). In this report, children refers to minors under age 18 unless otherwise indicated. For more information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

¹¹ U.S. Department of Health and Human Services, "HHS Issues Statement on Ms. L, et al., Status Report Regarding Plan for Compliance for Remaining Class Members," press release, July 13, 2018. This figure was also reported in several news reports, including Dan Diamond, "HHS says hundreds more migrant kids may have been separated than earlier count," *Politico*, July 5, 2018; and Caitlin Dickerson, "Trump Administration in Chaotic Scramble to Reunify Migrant Families," *New York Times*, July 5, 2018.

¹² U.S. Department of Justice, Office of Public Affairs, "Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration," May 7, 2018.

¹³ See, for example, American Immigration Council, "Asylum in the United States, Fact Sheet," May 14, 2018; and International Justice Resource Center, *Asylum and the Rights of Refugees*, accessed by CRS on July 12, 2018, at <https://ijrcenter.org/refugee-law/>.

Enforcement and Asylum Policy for Illegal Border Crossers

Aliens who wish to enter the United States may request admission legally¹⁴ at a U.S. port of entry or may attempt to enter illegally by crossing the border surreptitiously between U.S. ports of entry. Aliens who wish to request asylum may do so at a U.S. port of entry before an officer with the Department of Homeland Security (DHS) Customs and Border Protection (CBP) Office of Field Operations or upon apprehension between U.S. ports of entry before an agent with CBP's U.S. Border Patrol. DHS has broad statutory authority both to detain aliens not legally admitted, including asylum seekers, and to remove aliens who are found to be either inadmissible at ports of entry or removable once in the United States. Aliens requesting asylum at the border are entitled to an interview assessing the credibility of their asylum claims.¹⁵

Illegal U.S. Entry

Aliens who enter the United States illegally between ports of entry face two types of penalties. They face civil penalties for illegal presence in the United States, and they face criminal penalties for having entered the country illegally. Both types of penalties are explained below.

The Immigration and Nationality Act (INA) establishes *civil* penalties for persons who are in the United States unlawfully (i.e., without legal status). These penalties apply to foreign nationals who entered the United States illegally as well as those who entered legally but subsequently violated the terms of their admission, typically by "overstaying" their visa duration. Foreign nationals who are apprehended for such civil immigration violations are generally subject to removal (deportation) and are placed in formal or streamlined removal proceedings (described below in "Removal").

The INA also establishes *criminal* penalties for (1) persons who enter or attempt to enter the United States illegally between ports of entry, (2) persons who elude examination or inspection by immigration officers, or (3) persons who attempt to enter or obtain entry to the United States through fraud or willful misrepresentation.¹⁶ In addition, the INA provides criminal penalties for persons who unlawfully reenter the United States after they were previously removed from the country.¹⁷ Foreign nationals apprehended for criminal immigration violations are subject to prosecution by DOJ in federal criminal courts. This report only addresses criminal penalties for illegal entry and reentry between ports of entry.

Foreign nationals who attempt to enter the United States without authorization often do so between U.S. ports of entry on the U.S. border. If apprehended, they are processed by CBP. They are typically housed briefly in CBP detention facilities before being transferred to the custody of another federal agency or returned to their home country through streamlined removal procedures (discussed below). All apprehended aliens, including children, are placed into removal proceedings that occur procedurally after any criminal prosecution for illegal entry. Removal

¹⁴ For more information on legal admissions, see CRS Legal Sidebar LSB10150, *An Overview of U.S. Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*; and CRS Report R45020, *A Primer on U.S. Immigration Policy*.

¹⁵ INA §235(b)(1), 8 U.S.C. §1225(b)(1).

¹⁶ INA §275, 8 U.S.C. §1325 treats "improper" entry by aliens (first-time illegal entry) as a federal misdemeanor, punishable by fines and/or up to six months in prison.

¹⁷ INA §276, 8 U.S.C. §1326 treats illegal reentry as a felony, punishable by fines and/or up to two years in prison. Higher penalties apply for migrants with criminal records.

proceedings generally involve formal hearings in an immigration court before an immigration judge, or expedited removal without such hearings (see "Removal" below).

In general, CBP refers apprehended aliens for criminal prosecution if they meet criminal enforcement priorities (e.g., child trafficking, prior felony convictions, multiple illegal entries). Such individuals are placed in the custody of the U.S. Marshals Service (DOJ's enforcement arm) and transported to DOJ criminal detention facilities for pretrial detention. After individuals have been tried—and if convicted, have served any applicable criminal sentence—they are transferred to DHS Immigration and Customs Enforcement (ICE) custody and placed in immigration detention.¹⁸ ICE, which represents the government in removal hearings, commences removal proceedings.

If CBP does not refer apprehended aliens to DOJ for criminal prosecution, CBP may either return them to their home countries using streamlined removal processes or transfer them to ICE custody for immigration detention while they are in formal removal proceedings.¹⁹

Asylum

Many aliens at the U.S.-Mexico border seek asylum in the United States. Asylum is not numerically limited and is granted on a case-by-case basis. Asylum can be requested by foreign nationals who have already entered the United States and are not in removal proceedings ("affirmative" asylum) or those who are in removal proceedings and claim asylum as a defense to being removed ("defensive" asylum). The process in each case is different.²⁰

Arriving aliens who are inadmissible, either because they lack proper entry documents or because they attempt U.S. entry through misrepresentation or false claims to U.S. citizenship, are put into a streamlined removal process known as expedited removal (described below in "Removal").²¹ Aliens in expedited removal who express a fear of persecution are detained by ICE and given a "credible fear" interview with an asylum officer from DHS's U.S. Citizenship and Immigration Services (USCIS).²² The purpose of the interview is to determine if the asylum claim has sufficient validity to merit an asylum hearing before an immigration judge. Those who receive a favorable credible fear determination are taken out of expedited removal, placed into formal removal proceedings, and given a hearing before an immigration judge, thereby placing the

¹⁸ Sentences for first-time illegal entry under INA §275 are typically a matter of days or weeks, with pretrial detention usually counted as part of the sentence; Tim O'Shea, Theresa Cardinal Brown, "Why Are families Being Separated at the Border? An Explainer," Bipartisan Policy Center, June 13, 2018.

¹⁹ For more information on formal and streamlined removal processes, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

²⁰ For more information on the two ways of obtaining asylum, see U.S. Citizenship and Immigration Services, "Obtaining Asylum in the United States," updated October 19, 2015, accessed by CRS on July 15, 2018 at <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>.

²¹ INA §212(a)(7) and §212(a)(6)(C) are inadmissibility sections that apply to expedited removal. Expedited removal was introduced as part of the Illegal Immigration and Immigrant Responsibility Act of 1996. According to the statute (INA §235(b)(1)(A)(iii)), expedited removal can be applied to an alien who meets the expedited removal inadmissibility criteria described above, has not been admitted or paroled, and cannot affirmatively show continuous physical presence for the prior two years. As a matter of policy, however, expedited removal to date has been limited to persons apprehended within 100 miles of the U.S. border and who have been present in the United States for less than 14 days. Executive Order 13767 issued on January 25, 2017, instructs the DHS Secretary to implement the expansion of expedited removal to the full extent of the statute. That implementation has not yet occurred.

²² Credible fear means that there is "a significant possibility," taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum; INA §235(b)(1)(B)(v); 8 U.S.C. §1225(b)(1)(B)(v).

asylum seeker on the defensive path to asylum. Those who receive an unfavorable determination may request that an immigration judge review the case. Aliens in expedited removal who cannot demonstrate a credible fear are promptly deported.

Detention

The INA provides DHS with broad authority to detain adult aliens who are in removal proceedings.²³ However, child detention operates under different policies than that of adults. All children are detained according to broad guidelines established through a court settlement agreement (applicable to all alien children) and two statutes (applicable only to unaccompanied alien children).

The 1997 Flores Settlement Agreement (FSA) established a nationwide policy for the detention, treatment, and release of all alien children, both accompanied and unaccompanied. The Homeland Security Act of 2002 charged ORR with providing temporary care and ensuring custodial placement of UAC with suitable and vetted sponsors.²⁴ Finally, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) directed DHS to ensure that all UAC be screened by DHS for possible human trafficking.²⁵ The TVPRA mandated that UAC from countries other than Mexico or Canada—along with all UAC apprehended in the U.S. interior—be transferred to the care and custody of ORR, and then be “promptly placed in the least restrictive setting that is in the best interest of the child.”²⁶ In the course of being referred to ORR, UAC are also put into formal removal proceedings, ensuring they can request asylum or other types of immigration relief before an immigration judge.

As a result of a 2015 judicial interpretation of the Flores Settlement Agreement, children accompanying apprehended adults cannot be held in family immigration detention with their parents for more than 20 days, on average. If the parents cannot be released with them, such children are typically treated as UAC and referred to ORR.

Removal

Under the formal removal process, an immigration judge from DOJ’s Executive Office for Immigration Review (EOIR) determines whether an alien is removable. The immigration judge may grant certain forms of relief (e.g., asylum, cancellation of removal), and removal decisions are subject to administrative and judicial review.

Under streamlined removal procedures, which include *expedited removal* and *reinstatement of removal* (i.e., when DHS reinstates a removal order for a previously removed alien), opportunities for relief and review are generally limited. Under expedited removal (INA §235(b)), an alien who lacks proper documentation or has committed fraud or willful misrepresentation to gain

²³ For background information, see archived CRS Report RL32369, *Immigration-Related Detention*.

²⁴ P.L. 107-296, §462, codified, as amended, at 6 U.S.C. §279(g)(2).

²⁵ P.L. 110-457, §235.

²⁶ For unaccompanied alien children from Mexico or Canada, CBP personnel must screen each child within 48 hours of apprehension to determine if he or she (1) is at risk of becoming a trafficking victim, (2) has a possible asylum claim, and (3) is unable to make an independent decision to voluntarily return to his/her country of nationality or last habitual residence. If any response is affirmative, CBP must refer the child to ORR within 72 hours of this determination. If CBP personnel determine the minor to be inadmissible under the INA (i.e., if responses are not affirmative), they can permit the minor to voluntarily return to his/her country of nationality or last habitual residence. For more information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

admission into the United States may be removed without any further hearings or review, unless he or she indicates a fear of persecution in their home country or an intention to apply for asylum.²⁷

If apprehended foreign nationals are found to be removable, ICE and CBP share the responsibility for repatriating them.²⁸ CBP handles removals at the border for unauthorized aliens from the contiguous countries of Mexico and Canada, and ICE handles all removals from the U.S. interior and removals for all unauthorized aliens from noncontiguous countries.²⁹

Prosecution of Aliens Charged with Illegal Border Crossing in Prior Administrations

Prior to the Trump Administration, aliens apprehended between ports of entry who were not considered enforcement priorities (e.g., a public safety threat, repeat illegal border crosser, convicted felon, suspected child trafficker) were typically not criminally prosecuted for illegal entry but would be placed directly into civil removal proceedings for unauthorized U.S. presence.³⁰

In addition, aliens apprehended at and between ports of entry who sought asylum and were found to have credible fear generally were not held in immigration detention if DHS did not assess them as public safety risks. Rather, they were administratively placed into removal proceedings, instructed by DHS to appear at their immigration hearings, and then released into the U.S. interior. This policy became more prevalent after 2015 when a federal judge ruled that children could not be kept in immigration detention for more than 20 days.³¹

DHS officials justified the “catch and release” approach in the past because of the lack of detention bed space and the considerable cost of detaining large numbers of unauthorized aliens and family units for the lengthy periods, often stretching to years, between apprehension by CBP and removal hearings before an EOIR judge.³² Immigration enforcement advocates criticized the catch and release policy because of the failure of many apprehended individuals to appear subsequently for their immigration hearings.³³

²⁷ Two other removal options, often referred to as “returns”—*voluntary departure* and *withdrawal of petition for admission*—require aliens to leave the United States promptly but exempt them from certain penalties associated with other types of removal. For background information, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

²⁸ *Ibid.*

²⁹ For more detail on laws governing border enforcement, see CRS Legal Sidebar LSB10150, *An Overview of U.S. Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*.

³⁰ CRS consultation with ICE Legislative Affairs, June 8, 2018.

³¹ The federal judge ruled that under the Flores Settlement Agreement, minors detained as part of a family unit cannot be detained in unlicensed facilities for longer than “a presumptively reasonable period of 20 days,” at which point, such minors must be released or transferred to a licensed facility. Since most jurisdictions do not offer licensure for family residential centers, and because none of ICE’s family detention centers is licensed, DHS rarely detains families for more than 20 days. See *Flores v. Lynch*, 212 F. Supp. 3d 907 (C.D. Cal. 2015).

³² Lori Robertson, “Did the Obama Administration Separate Families,” *FactCheck.org*, June 20, 2018.

³³ For more information, see Mark Metcalf, “Absent attendance and absent enforcement in America’s immigration courts,” Center for Immigration Studies, March 19, 2017.

According to some observers, prior Administrations made more use of alternatives to detention that permitted DHS to monitor families who were released into the U.S. interior.³⁴ Such practices are needed to monitor the roughly 2 million aliens in removal proceedings given that ICE's current budget funds less than 50,000 beds, which are prioritized for aliens who pose public safety or absconder risks.³⁵

Data are not available on the rate and/or absolute number of family separations resulting from illegal border crossing prosecutions under prior Administrations, limiting the degree to which comparisons can be made with the Trump Administration's zero tolerance policy.³⁶

DHS states that the agency referred an average of 21% of all illegal border crossing "amenable adults" for prosecution from FY2010 through FY2016.³⁷ DHS maintains that it has an established policy of separating children from adults when it

- cannot determine the family relationship or otherwise verify identity,
- determines that the child is being smuggled or trafficked or is otherwise at risk with the parent or legal guardian, or
- determines that the parent or legal guardian may have engaged in criminal conduct and refers them for criminal prosecution.³⁸

Prosecution of Aliens Charged with Illegal Border Crossing in the Trump Administration

On April 6, 2018, Attorney General Jeff Sessions announced a "zero tolerance" policy under which *all* illegal border crossers apprehended *between U.S. ports of entry* would be criminally prosecuted for illegal entry or illegal reentry.³⁹ This "100% prosecution" policy makes no

³⁴ See, for example, Ana Campoy, "The \$36-a-day alternative to jailing immigrant families favored by Obama," Quartz, June 23, 2018; Alex Nowrasteh, "Alternatives to Detention Are Cheaper than Universal Detention," Cato Institute, June 20, 2018; and Alexia Fernández Campbell, "Trump doesn't need to put families in detention centers to enforce his immigration policy. There are better options," Vox, June 22, 2018. For more information on alternatives to detention, see United Nations High Commission for Refugees, "Guiding Questions for the assessment of Alternatives to Detention," *UNHCR Beyond Detention Toolkit*, May 2018; and American Immigration Lawyers Association, "The Real Alternatives to Detention," Document 17071103, July 11, 2017. For a critical perspective on alternatives to detention, see Dan Cadman, "Are 'Alternative to Detention' Programs the Answer to Family Detention?," Center for Immigration Studies, June 28, 2018.

³⁵ U.S. Department of Homeland Security, Office of the Inspector General, "U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised)," OIG-15-22, February 4, 2015. For FY2019, ICE is requesting funding for 47,000 detention beds (44,500 for adults, 2,500 for families); see U.S. Immigration and Customs Enforcement, FY2109 Congressional Budget Justification, Operations and Support, pp. 13-14.

³⁶ As of this writing, CRS has open requests with DHS for data on family separations under the Obama Administration. Other observers have similar pending requests. See, for example, Lori Robertson, "Did the Obama Administration Separate Families," *FactCheck.org*, June 20, 2018.

³⁷ U.S. Department of Homeland Security, "Myth vs. Fact: DHS Zero-Tolerance Policy," press release, June 18, 2018. However, as some observers note, this percentage does not reveal how many children were separated from the adults who were referred for prosecution. See Lori Robertson, "Did the Obama Administration Separate Families?," *FactCheck.org*, June 20, 2018.

³⁸ *Ibid.*

³⁹ Office of the Attorney General, *Memorandum for Federal Prosecutors Along the Southwest Border*, "Zero-Tolerance for Offenses Under 8 U.S.C. §1325(a)," April 6, 2018. The policy was implemented on May 7, 2018; U.S. Department of Justice, Office of Public Affairs, "Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration," May 7, 2018.

exceptions for asylum seekers and/or family units.⁴⁰ To facilitate this policy, the Attorney General announced that he would send 35 additional prosecutors to U.S. Attorney's Offices along the southwest border and 18 additional immigration judges to adjudicate cases in immigration courts near the southwest border.⁴¹

Consequently, if a family unit is apprehended crossing illegally between ports of entry, the zero tolerance policy mandates that CBP refer all illegal adult entrants to DOJ for criminal prosecution. Accompanying children, who are not permitted to be housed in adult criminal detention settings with their parents, are to be processed as unaccompanied alien children in accordance with the TVPRA. They are transferred to the custody of ORR, which houses them in agency-supervised, state-licensed shelters. If feasible given the circumstances, ORR attempts to place them with relatives or legal guardian sponsors or place them in temporary foster care.⁴²

ORR has over 100 shelters in 17 states,⁴³ and they are reportedly at close to full capacity.⁴⁴ Consequently, the agency is currently evaluating options for housing children on Department of Defense (DOD) installations to handle the surge of separated children resulting from increased prosecution of parents crossing between ports of entry.⁴⁵

As noted earlier, after adults have been tried in federal courts for illegal entry—and if convicted, have served their criminal sentences—they are transferred to ICE custody and placed in immigration detention. It is expected that parents can then be reunited in ICE family detention facilities with their children who have either remained in ORR custody or have been placed with a sponsor. Requests for asylum can also be pursued at this point.

Statistics on Family Separation

In FY2017, CBP apprehended 75,622 alien family units and separated 1,065 (1.4%) of them. Of those separations, 46 were due to fraud and 1,019 were due to medical and/or security concerns. In the first five months of FY2018, prior to enactment of the zero tolerance policy, CBP

⁴⁰ Immigration and human rights advocates caution that prosecuting persons who cross into the United States in order to present themselves before a CBP officer and request asylum raises concerns about whether the United States is abiding by a number of human rights and refugee-related international protocols. See, for example, Jonathan Blitzer, "The Trump Administration Is Completely Unravelling the U.S. Asylum System," *The New Yorker*, June 11, 2018.

⁴¹ U.S. Department of Justice, Office of Public Affairs, "Justice Department Announces Additional Prosecutors and Immigration Judges For Southwest Border Crisis," May 2, 2018.

⁴² Most unaccompanied alien children who arrive at the southwest border alone are placed with sponsors or in ORR-arranged foster care; for more information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*. It is not clear whether such placements are as likely for UAC who arrive with parents. During the peak of the UAC apprehension surge in 2014, UAC spent an average of 35 days in ORR shelters. Most recently, ORR reported that the average length of stay in its shelters was 57 days. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, *Fact Sheet*, "Unaccompanied Alien Children Program," June 15, 2018.

⁴³ U.S. Department of Health and Human Services, Office of Refugee Resettlement, "Unaccompanied Alien Children Frequently Asked Questions," website, July 9, 2018, accessed by CRS on July 11, 2018.

⁴⁴ One article at the end of May 2018 reported ORR shelter capacity at 95%; see Nick Miroff, "Trump's 'zero tolerance' at the border is causing child shelters to fill up fast," *Washington Post*, May 29, 2018. CRS was unable to obtain a figure for current ORR shelter capacity as of this writing.

⁴⁵ Letter from Alex M. Azar II, Secretary, U.S. Department of Health and Human Services, to The Honorable Jim Mattis, Secretary of Defense, March 8, 2018. Similar arrangements were made in June 2014, when apprehensions of UAC reached an all-time high. ORR coordinated with DOD to temporarily allow UAC to be housed at Lackland Air Force Base in San Antonio, TX, and at Naval Base Ventura County in Oxnard, CA. Arrangements at both sites ended August 2014.

apprehended 31,102 alien family units and separated 703 (2.2%), of which 191 resulted from fraud and 512 from medical and/or security concerns.⁴⁶

Under the Administration's zero tolerance policy, 658 children were separated from 638 adults who were referred for prosecution between May 7 and May 21, 2018, according to CBP testimony.⁴⁷ DHS subsequently reported that 1,995 children had been separated from their parents between April 19 and May 31.⁴⁸ DHS updated these figures in June 2018, reporting that 2,342 children were separated from their parents between May 5 and June 9.⁴⁹ DHS subsequently reported that CBP had since reunited with their parents 538 children who were never sent to ORR shelters.⁵⁰ HHS Secretary Alex Azar then reported that "under 3,000" minor children (under age 18) had been separated from their families in total, including roughly 100 under age 5.⁵¹ As of July 13, 2018, HHS reported that 2,551 children ages 5 to 17 remained separated (see "Recent Developments" below).⁵²

Recent Developments

On June 20, 2018, following considerable and largely negative public attention to family separations stemming from the zero tolerance policy, President Trump issued an executive order (EO) mandating that DHS maintain custody of alien families "during the pendency of any criminal improper entry or immigration proceedings involving their member," to the extent permitted by law and appropriations.⁵³ The EO instructs DOD to provide and/or construct additional shelter facilities, upon request by ORR, and it instructs other executive branch agencies to assist with housing as appropriate to implement the EO.⁵⁴ The EO mandates that the Attorney General prioritize the adjudication of detained family cases, and it requires the Attorney General to ask the U.S. District Court for the Central District of California, which oversees the Flores Settlement Agreement, to modify the agreement to permit detained families to remain together.

On June 25, 2018, CBP announced that, because of ICE's lack of family detention bed space, it had temporarily halted the policy of referring adults who cross the border illegally with children

⁴⁶ Email correspondence from CBP Legislative Affairs to CRS, June 8, 2018. Figures represent separated family units, not the number of separated children; the latter is likely higher given that some family units consist of more than one child.

⁴⁷ Testimony of Richard Hudson, Deputy Chief of the Operations Program, Law Enforcement Operations Directorate, U.S. Customs and Border Protection, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration, *TVRA and Exploited Loopholes Affecting Unaccompanied Alien Children*, 115th Cong., 2nd sess., May 23, 2018.

⁴⁸ These figures were obtained from DHS by the Associated Press on June 15, 2018. See Colleen Long, "DHS reports about 2,000 minors separated from families," Associated Press, June 16, 2018.

⁴⁹ On June 18, Senator Dianne Feinstein reportedly released DHS statistics showing that 2,342 children were separated from their parents between May 5 and June 9. See Arit John and Jennifer Epstein, "All About the U.S. Separating Families at Its Border," Bloomberg, June 18, 2018.

⁵⁰ U.S. Department of Homeland Security, "Fact Sheet: Zero-Tolerance Prosecution and Family Reunification," June 23, 2018.

⁵¹ Dan Diamond, "HHS says hundreds more migrant kids may have been separated than earlier count," *Politico*, July 5, 2018; and Caitlin Dickerson, "Trump Administration in Chaotic Scramble to Reunify Migrant Families," *New York Times*, July 5, 2018.

⁵² Dan Diamond, "Trump administration expedites reunifications for 2551 migrant children," *Politico*, July 13, 2018.

⁵³ The White House, *Affording Congress an Opportunity to Address Family Separation*, Executive Order, June 20, 2018.

⁵⁴ Thus far, only DOD has made arrangements with ORR to provide housing for alien families and children.

to DOJ for criminal prosecution.⁵⁵ According to a White House announcement, the zero tolerance policy is expected to be reinstated once additional family detention bed space becomes available.⁵⁶ Also on June 25, 2018, DOD announced plans to permit four of its military bases to be used by other federal agencies to shelter up to 20,000 UAC and family units.⁵⁷ DOD subsequently announced that 12,000 persons would be housed on its facilities,⁵⁸ before another report appeared suggesting the number was 32,000 UAC and family units.⁵⁹

In addition to leasing facilities to DHS or HHS when those agencies' detention or shelter facilities are insufficient to meet surges of border crossers,⁶⁰ DOD is deploying National Guard personnel under "Operation Guardian Support."⁶¹ DOD reportedly is also sending active duty military officers to serve as Special Assistant U.S. Attorneys (also known as judge advocate generals or JAGs) to assist in U.S. Attorney offices along the border for six-month tours of duty.⁶²

On June 26, 2018, as the result of a class action lawsuit filed by the American Civil Liberties Union,⁶³ Judge Dana Sabraw of the U.S. District Court for the Southern District of California issued an injunction against the Administration's practice of separating families and ordered that all separated families be reunited within 30 days.⁶⁴ The judge ruled that children under age 5 must be reunited with their parents within 14 days, all children must have phone contact with their parents within 10 days, children could be separated at the border only if accompanying adults presented an immediate danger to them, and parents were not to be removed unless they had been reunited with their separated children.⁶⁵

In response, the Trump Administration has reportedly instructed DHS to provide all parents who have final orders of removal and whose children have been separated from them with two options.⁶⁶ The first is to return to their countries of origin with their children. This option fulfills

⁵⁵ Ron Nixon, Erica L. Green and Michael D. Shear, "Border Officials Suspend Handing Over Migrant Families to Prosecutors," *New York Times*, June 25, 2018.

⁵⁶ *Ibid.*

⁵⁷ Michael D. Shear, Helene Cooper and Katie Benner, "U.S. Prepares to House Up to 20,000 Migrants on Military Bases," *New York Times*, June 21, 2018. It remains unclear what proportion of the DOD facilities will be used for UAC shelters versus immigration detention for families.

⁵⁸ U.S. Department of Defense, "DHS Requests DoD House Up to 12,000 Migrants," *Defense.gov*, June 28, 2018.

⁵⁹ Lara Seligman, "Pentagon Says It Won't Pay for Housing of Immigrants," *Foreign Policy*, July 9, 2018.

⁶⁰ Secretary of Health and Human Services, letter to the Honorable Jim Mattis, Secretary of Defense, March 8, 2018.

⁶¹ For more information, see U.S. Customs and Border Protection, "Operation Guardian Support Begins for Del Rio Border Patrol Sector," press release, April 13, 2018. According to CBP, support includes "logistical and administrative support, aerial support, surveillance efforts, border-related intelligence analysis efforts, and mechanical support."

⁶² Alex Johnson and Courtney Kube, "Pentagon sending military lawyers to border to help prosecute immigration cases," *nbcnews.com*, June 20, 2018.

⁶³ The ACLU case was filed on behalf of two families separated at the southwest border: a woman from the Democratic Republic of the Congo who, at a port of entry, was separated from her 6-year-old daughter for five months; and a woman from Brazil who, crossing into the United States illegally between ports of entry, was separated from her 14-year-old son for eight months.

⁶⁴ *Ms. L. v. U.S. Immigration and Customs Enforcement*, ___ F. Supp. 3d ___, 2018 WL 3129486 (S.D. Cal. 2018).

⁶⁵ Michael D. Shear, Julie Hirschfeld Davis, Thomas Kaplan, and Robert Pear, "Federal Judge in California Halts Splitting of Migrant Families at Border," *New York Times*, June 26, 2018.

⁶⁶ Immigration advocates contend that the new form being used misleads parents who have outstanding asylum claims into thinking that they must leave the United States without their children, despite the fact that the forms indicate that they apply only to parents with final orders of removal. DHS responds that "it is 'long-standing policy' to offer parents facing deportation the option of leaving their [children] behind, noting it is 'not uncommon' for parents to elect to do so, historically. Any child who remains in the United States in the custody of the government or with a family member is allowed to pursue their own right to stay, and ICE 'does not interfere' in that decision." Nick Valencia and Tal

the mandate from the June 26 court order to reunite families but also forces parents and children to abandon any claims for asylum. The second option is for parents to return alone to their country of origin. This option would leave the children in the United States to apply for asylum on their own. Parental decisions are to be recorded on a new ICE form.⁶⁷

On July 9, 2018, Judge Dolly Gee of the U.S. District Court for the Central District of California, which oversees the Flores Settlement Agreement, ruled against DOJ's request to modify the agreement. Judge Gee held that no basis existed for amending the court's original decision requiring the federal government to release alien minors in immigration detention after 20 days, regardless of any unlawful entry prosecution of the parents.⁶⁸

On July 10, ICE officials reportedly indicated that parents reunited with their children would be enrolled in an alternative detention program, such as the use of ankle bracelets that permit electronic monitoring, and then released into the U.S. interior, essentially reverting to the prior policy that has been labeled by some as "catch and release." DOJ maintains that its zero tolerance policy remains in effect.⁶⁹

DHS and HHS have publicized their efforts to reunify families.⁷⁰ News reports indicate that Judge Sabraw's June 26 order mandating the reunion of all children under age 5 with their parents within two weeks will not be met.⁷¹ On July 12, 2018, the Trump Administration reported that 57 of 103 children under the age of 5 who had been separated from their parents had been reunited, while the other 46 had been deemed ineligible for reunification for reasons including parental deportation and criminal histories of some of the adults.⁷²

On July 16, 2018, in response to concerns expressed by the American Civil Liberties Union about potential abrupt deportations following family reunification, Judge Sabraw stated that he will temporarily halt deportations, for one week, of parents who have been reunited with their children.⁷³ The judge issued the stay of deportations to provide parents slated for removal with a week's time to better understand their legal rights regarding asylum or other forms of immigration relief for themselves and their children.

On July 16, 2018, Jonathan White, Deputy Director for Children's Programs at the Office of Refugee Resettlement, testified before Judge Sabraw that ORR had identified 2,551 separated

Kopan, "The options parents facing deportation have after they've been separated from their kids," *CNN*, July 3, 2018; and Julia Ainsley and Jacob Soboroff, "New Trump admin order for separated parents: Leave U.S. with kids or without them," *nbcnews.com*, July 3, 2018; and Jeremy Raff, "ICE Is Pressuring Separated Parents to Choose Deportation," *The Atlantic*, July 6, 2018.

⁶⁷ U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Separated Parent's Removal Form, July 2018. CRS could not locate the form or accompanying instructions on the ICE or DHS websites.

⁶⁸ Miriam Jordan and Manny Fernandez, "Federal Judge Rules that Trump Administration Cannot Hold Migrant Families in Long-Term Detention," *New York Times*, July 9, 2018.

⁶⁹ Miriam Jordan, Katie Benner, Ron Nixon, and Caitlin Dickerson, "As Migrant Families Are Reunited, Some Children Don't Recognize Their Mothers," *New York Times*, July 10, 2018.

⁷⁰ U.S. Department of Homeland Security, "Fact Sheet: Zero-Tolerance Prosecution and Family Reunification," press release, June 23, 2018; U.S. Department of Health and Human Services, "HHS Is Executing On Its Mission With Care And Compassion," press release, July 6, 2018; and U.S. Department of Health and Human Services, "Unaccompanied Alien Children Frequently Asked Questions," website, July 9, 2018, accessed by CRS on July 12, 2018.

⁷¹ Tal Kopan, "Trump administration falls short on first family reunification deadline," *CNN*, July 10, 2018.

⁷² Brittny Mejia, "Trump administration reunites just over half of migrant children under 5 with parents, says others are 'ineligible'," *Los Angeles Times*, July 12, 2018.

⁷³ Caitlin Dickerson, "Court Orders Temporary Halt to Migrant Family Deportations," *New York Times*, July 16, 2018; and Ted Hesson, "Judge will temporarily halt deportations of reunited families," *Politico*, July 16, 2018.

children in its custody ages 5 to 17 and had matched 2,480 to their parents, while 71 children's parents remain unidentified.⁷⁴ ORR is undertaking intensive background checks to ensure that separated children are reunited with their actual parents and do not face personal security risks such as child abuse.⁷⁵ According to White, 1,609 parents of separated children remain in ICE custody. White noted that ICE is also conducting its own security checks and thus far had cleared 918 parents, failed 51 parents, and had 348 parents with pending clearances. As of July 16, 2018, ICE had approved about 300 children for release to be reunited with their parents.⁷⁶

As of July 19, 2018, the Administration had reportedly reunified 364 of the 2,551 children ages 5 to 17. Apart from the parents of those children, 1,607 parents were eligible to be reunited with their children, 719 of whom have final orders of deportation. Another 908 parents are reportedly not expected to be eligible for reunification because they possessed criminal backgrounds or required "further evaluation."⁷⁷

Policy Perspectives

Perspectives on the zero tolerance policy generally divide into two groups. Those who support greater immigration enforcement point to recent surges in family unit migration and a substantial backlog of asylum cases that are straining DHS and DOJ resources, potentially compromising the agencies' abilities to meet their outlined missions. Those who advocate on behalf of immigrants decry the Administration's treatment of migrants as unnecessarily harsh and counterproductive.

Enforcement Perspectives

DHS and DOJ contend that the policy enforces existing law and is needed to reduce illegal immigration.⁷⁸ DHS notes that foreign nationals attempting to enter the United States between ports of entry or "without inspection" are committing a crime punishable under the INA as a misdemeanor on the first occasion and a felony for every attempt thereafter.

DHS maintains that it has a long-standing policy of separating children from adults when children are at risk because of threats from human trafficking or because the familial relationship is suspect. DHS also maintains that it does not have a formal policy of separating parents from children for deterrence purposes, and it follows a standard policy of keeping families together "as long as operationally possible."⁷⁹ According to DHS, the agency has "a legal obligation to protect

⁷⁴ Ibid.

⁷⁵ Nick Miroff, Maria Sacchetti and Amy Goldstein, "In D.C. command center, officials work to reunite migrant children by court deadline," *Washington Post*, July 19, 2018.

⁷⁶ Ibid.

⁷⁷ Julia Ainsley and Jacob Soboroff, "Facing deadline, government reunified 364 of 2,500-plus migrant children," *nbcnews.com*, July 19, 2018.

⁷⁸ Sari Horwitz and Maria Sacchetti, "Sessions vows to prosecute all illegal border crossers and separate children from their parents," *Washington Post*, May 7, 2018. Senior immigration and border officials had reportedly issued a confidential memo to DHS Secretary Nielsen supporting the policy as the "most effective" way to reduce illegal entry.

⁷⁹ Testimony of the Honorable Kirstjen Nielsen, Secretary of Homeland Security, in U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *FY 2019 Budget Hearing - Department of Homeland Security*, 115th Cong., 2nd sess., April 11, 2018 (hereinafter, "Nielsen testimony, April 11, 2018"). Other observers contend that Attorney General Sessions explicitly justified the zero tolerance policy on the basis of deterring migrants from coming to the United States. See, for example, Christopher Ingraham, "Sessions says family separation is 'necessary' to keep the country from being 'overwhelmed.' Federal immigration data says otherwise," *Washington Post*, June 18, 2017; and U.S. Department of Justice, Office of Public Affairs, "Attorney General Sessions Delivers

the best interests of the child whether that is from human smugglings, drug traffickers, or nefarious actors who knowingly break [U.S.] immigration laws and put minor children at risk.”⁸⁰ Accordingly, DHS considers it appropriate to treat children of apprehended parents as UAC.⁸¹

DHS posits that while family separation is an unfortunate outcome of stricter enforcement of immigration laws and criminal prosecution of illegal entry and reentry, it is no different than the family separation that occurs in the U.S. criminal justice system when parents of minor children commit a crime and are taken into criminal custody.⁸² Attorney General Sessions has stated that parents who do not want to be separated from their children should simply not attempt to cross the U.S. border illegally.⁸³

DHS Secretary Nielsen justified the zero tolerance policy with statistics showing a 223% increase in illegal border crossings and inadmissible cases along the southwest border between April 2017 and April 2018.⁸⁴ Similar increases in monthly apprehensions between years were cited for family units and unaccompanied alien children. Secretary Nielsen also stated that while the apprehension figures “are at times higher or lower than in years past, it makes little difference,” characterizing them as unacceptable either way.⁸⁵ DHS officials cite results of policies imposed at the Border Patrol’s El Paso sector (covering West Texas and New Mexico) for part of 2017, where a similar family separation policy reduced the number of illegal family border crossings by 64%.⁸⁶

DHS notes that its policy reflects President Trump’s January 2017 Executive Order 13767⁸⁷ on border security directing executive branch departments and agencies to “deploy all lawful means to secure the Nation’s Southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely.”⁸⁸ DHS further contends that parents who attempt to cross illegally into the United States with their children not only put their children at grave risk but also enrich transnational criminal organizations to whom they pay smuggling fees. DHS argues that some parents, aware of the limited amount of family

Remarks Discussing the Immigration Enforcement Actions of the Trump Administration,” May 7, 2018.

⁸⁰ Maria Sacchetti, “Top Homeland Security officials urge criminal prosecution of parents crossing border with children,” *Washington Post*, April 26, 2018.

⁸¹ For more information on ORR processing of UAC, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

⁸² Nielsen testimony, April 11, 2018.

⁸³ U.S. Department of Justice, Office of Public Affairs, “Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration,” May 7, 2018.

⁸⁴ Nielsen testimony, April 11, 2018. CBP apprehended 15,766 unauthorized migrants at the Southern border in April 2017 and 50,923 in April 2018. See U.S. Customs and Border Protection, “Southwest Border Migration FY2018,” website, updated July 5, 2018.

⁸⁵ Because monthly apprehensions can fluctuate substantially between years, average monthly apprehensions may provide a more accurate measure of illegal border crossing activity. Average monthly apprehensions of all border crossers in FY2016, FY2017, and the first eight months of FY2018 were 46,934, 34,599, and 42,503, respectively. See U.S. Customs and Border Protection, “Southwest Border Migration FY2018,” website updated July 5, 2018.

⁸⁶ Maria Sacchetti, “Top Homeland Security officials urge criminal prosecution of parents crossing border with children,” *Washington Post*, April 26, 2018. That statistic has been criticized as inaccurate and misleading by at least one news report; see Dara Lind, “Trump’s DHS is using an extremely dubious statistic to justify splitting up families at the border,” *Vox*, May 8, 2018. In addition, other reports suggest that family separation was occurring because of increased prosecution of illegal border crossing since the summer of 2017; see Jonathan Blitzer, “How the Trump Administration Got Comfortable Separating Immigrant Kids from Their Parents,” *The New Yorker*, May 30, 2018.

⁸⁷ Executive Order 13767, “Border Security and Immigration Enforcement Improvements,” 82 *Federal Register* 8793-8797, January 25, 2017.

⁸⁸ Email communication to CRS from CBP Legislative Affairs, June 4, 2018.

detention space, intentionally use their children as shields from detention and anticipate that they will be viewed, as they had been in prior years, as low security risks.⁸⁹ DHS points to unpublished intelligence reports describing cases where unrelated adults have used or trafficked children in order to avoid immigration detention.⁹⁰ DHS and other observers also note that asylum requests have increased considerably, a trend that raises concerns about possible fraudulent asylum claims and the misuse of asylum claims to enter and remain in the United States.⁹¹

DHS notes that ICE and ORR both play a role in family reunification and characterizes the process as “well-coordinated.”⁹² DHS maintains that it has procedures in place to connect separated family members and ensure that parents know the location of minors and can regularly communicate with them. Mechanisms to facilitate such communication include posted information notices in ICE detention facilities, an HHS Adult Hotline and email inquiry address, and an ICE call center and email inquiry address.⁹³ DHS and ORR are using DNA testing to confirm familial ties between parents and children.⁹⁴

Immigrant Advocacy Perspectives

Immigrant advocacy organizations argue that migrant families are fleeing a well-documented epidemic of gang violence from the Northern Triangle countries of El Salvador, Guatemala, and Honduras.⁹⁵ They have criticized the practice of family separation because it seemingly punishes people for fleeing dangerous circumstances and seeking asylum in the United States. They posit that requesting asylum is not an illegal act,⁹⁶ Congress created laws that require DHS to process and evaluate claims for humanitarian protection, DHS must honor congressional intent by humanely processing and evaluating such claims, and many who request asylum have valid claims and compelling circumstances that merit consideration.⁹⁷

⁸⁹ Ibid.

⁹⁰ Ariane de Vogue and Tal Kopa, “ACLU class action lawsuit seeks to block immigrant family separations,” *CNN*, March 9, 2018.

⁹¹ See, for example, U.S. Citizenship and Immigration Services, “USCIS to Take Action to Address Asylum Backlog,” press release, January 31, 2018.

⁹² U.S. Department of Homeland Security, “Fact Sheet: Zero-Tolerance Prosecution and Family Reunification,” press release, June 23, 2018. In some cases, expedited DOJ hearings resulted in family reunification occurring in CBP holding facilities because children had not yet been transported to ORR custody. In such cases, family reunification occurs in CBP custody before the family unit is transported to an ICE immigration detention facility for family units.

⁹³ U.S. Department of Homeland Security, “Myth vs. Fact: DHS Zero-Tolerance Policy,” press release, June 18, 2018.

⁹⁴ Email correspondence from ORR Legislative Affairs, July 11, 2018; and U.S. Department of Health and Human Services, “Unaccompanied Alien Children Frequently Asked Questions,” website, July 9, 2018, accessed by CRS on July 12, 2018.

⁹⁵ See CRS Report RL34112, *Gangs in Central America*.

⁹⁶ See, for example, American Immigration Council, “Asylum in the United States, Fact Sheet,” May 14, 2018; and International Justice Resource Center, *Asylum and the Rights of Refugees*, accessed by CRS on July 12, 2018, at <https://ijrcenter.org/refugee-law/>.

⁹⁷ According to the 1951 Convention on the Status of Refugees, countries should not punish asylum-seekers who violate immigration laws if they present themselves to authorities. Although not a party to this convention, the United States is a party to a 1967 Protocol to the Convention, provisions of which are found in the 1980 Refugee Act. Under current U.S. policy, most aliens arriving in the United States without proper documentation who claim asylum are held until their “credible fear” hearing, but some asylum seekers are held until their asylum claims have been adjudicated. For background information, see archived CRS Report RL32369, *Immigration-Related Detention*.

Immigrant advocates have also criticized the Administration for creating what they consider to be a debacle of its own making, characterized by frequently changing policies and justifications,⁹⁸ what some describe as an uncoordinated implementation process, and the absence of an effective plan to reunify separated families.⁹⁹ In some cases, records linking parents to children reportedly may have disappeared or been destroyed, hampering efforts to establish relationships between family members.¹⁰⁰ Media reports have described obstacles to reuniting families after separation, including a lack of communication between federal agencies, the absence of information about accompanying children collected by CBP at the time of apprehension, the inability of ICE detainees to receive phone calls without special arrangements, and a cumbersome vetting process to ensure children's safe placement with parents.¹⁰¹ In addition, while DOJ typically detains and prosecutes parents for illegal entry at federal detention centers and courthouses near the U.S.-Mexico border, ORR houses their children at shelters geographically dispersed in 17 states, in some cases thousands of miles away from the parents.

Child welfare professionals assert that family separation has the potential to cause lasting psychological harm for adults¹⁰² and especially for children.¹⁰³ Some point to the findings of a DHS advisory panel as well as those of other organizations that discourage family detention as neither appropriate nor necessary for families and as not being in children's best interests.¹⁰⁴

Some immigration observers question the Administration's ability to marshal resources required to prosecute all illegal border crossers given that Congress has not appropriated additional funding to support the zero tolerance policy. One news report, for example, noted that 3,769 foreign nationals were convicted of illegal entry in criminal courts during March 2018, a month in

⁹⁸ Maria Sacchetti, "DHS proposal would change rules for minors in immigration detention," *Washington Post*, May 9, 2018. This proposal was first publicly suggested by then DHS Secretary John Kelly in March, 2017. See Daniella Diaz, "Kelly: DHS is considering separating undocumented children from their parents at the border," *CNN*, March 7, 2017. Following the ensuing controversy over his interview, he subsequently stated that DHS would not implement such policies. See Tal Kopan, "Kelly says DHS won't separate families at the border," *CNN*, March 29, 2017.

⁹⁹ See, for example, Kevin Sieff, "The chaotic effort to reunite immigrant parents with their separated kids," *Washington Post*, June 21, 2018; Erik Hanshaw, "Families will no longer be separated at the border. But where are my clients' kids?," *Washington Post*, June 20, 2018; and Jonathan Blitzer, "The Government has no plan for reuniting the immigrant families it is tearing apart," *The New Yorker*, June 18, 2018.

¹⁰⁰ Caitlin Dickerson, "Trump Administration in Chaotic Scramble to Reunify Migrant Families," *New York Times*, July 5, 2018.

¹⁰¹ See, for example, Ian Lovett and Louise Radnofsky, "Amid Chaos at Border, Some Immigrant Families Reunite," *Wall Street Journal*, June 24, 2018; Jonathan Blitzer, "The Government has no plan for reuniting the immigrant families it is tearing apart," *The New Yorker*, June 18, 2018; Ted Hesson and Dan Diamond, "As deadline looms, Trump officials struggle to reunite migrant families," *Politico*, July 2, 2018; Ritu Prasad, "Undocumented migrant families embark on chaotic reunion process," *BBC*, June 25, 2018; and Caitlin Dickerson, "Trump Administration in Chaotic Scramble to Reunify Migrant Families," *New York Times*, July 5, 2018.

¹⁰² See, for example, DHS Advisory Committee on Family Residential Centers, "Report of the DHS Advisory Committee on Family Residential Centers," September 30, 2016; and Alexander Miller, Julia Meredith Hess, Deborah Bybee, and Jessica R. Goodkind, "Understanding the mental health consequences of family separation for refugees: Implications for policy and practice," *American Journal of Orthopsychiatry*, vol. 88 (2018), pp. 26-37.

¹⁰³ See, for example, American Academy of Pediatrics, Letter from Colleen A. Kraft, President, to The Honorable Kirstjen M. Nielsen, U.S. Secretary of Homeland Security, March 1, 2018; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, and Council on Community Pediatrics, "Detention of Immigrant Children," *Pediatrics*, vol. 139 (April 2017), pp. 1-13; and Kimberly Howard, Anne Martin, Lisa J. Berlin, and Jean Brooks-Gunn, "Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families," *Attachment & Human Development*, vol. 13 (2011), pp. 5-26.

¹⁰⁴ DHS Advisory Committee on Family Residential Centers, "Report of the DHS Advisory Committee on Family Residential Centers," September 30, 2016. This report cites similar findings by Government Accountability Office, the United Nations High Commissioner for Refugees, and the American Bar Association, among others.

which 37,383 foreign nationals were apprehended for illegal entry.¹⁰⁵ Given the relative size of the task they face, observers question how DOJ and DHS can channel fiscal resources to meet this objective without compromising their other missions. They contend that the policy is counterproductive because it prevents CBP from using risk-based strategies to pursue the most egregious crimes, thereby making the southern border region less safe and more prone to criminal activity.¹⁰⁶ Some have suggested that the zero tolerance policy is diverting resources from, and thereby hindering, other DHS operations.¹⁰⁷

Some in Congress have criticized the family separation policy because of its cost in light of alternative options, such as community-based detention programs. They cite, for example, the Family Case Management Program (FCMP), which monitored families seeking asylum and demonstrated a reportedly high compliance rate with immigration requirements such as court hearings and immigration appointments.¹⁰⁸ The FCMP, which began in January 2016,¹⁰⁹ was terminated by the Trump Administration in April 2017.¹¹⁰ According to DHS, the FCMP average daily cost of \$36 reportedly exceeded that of "intensive supervision" programs (\$5-\$7 daily),¹¹¹ although both programs are considerably lower than the average daily cost of family detention (\$319).¹¹²

More broadly, immigration advocates contend that the Administration is engaged in a concerted effort to restrict access to asylum and reduce the number of asylum claims.¹¹³ They caution that prosecuting persons who cross into the United States in order to present themselves before a CBP officer and request asylum raises concerns about whether the United States is abiding by human rights- and refugee-related international protocols.¹¹⁴ They note a considerable current backlog of pending defensive asylum cases, which numbered almost 325,000 (45%) of the roughly 720,000 total pending immigration cases in EOIR's docket as of June 11, 2018.¹¹⁵ They also cite Attorney General Sessions's recent decision to substantially limit the extent to which immigration judges can consider gang or domestic violence as sufficient grounds for asylum.¹¹⁶ Such efforts could

¹⁰⁵ Alan Bersin, Nate Bruggeman and Ben Rohrbaugh, "Trump's 'zero tolerance' bluff on the border will hurt security, not help," *Washington Post*, May 31, 2018.

¹⁰⁶ *Ibid.*

¹⁰⁷ Nick Mirnoff, "Seeking a split from ICE, some agents say Trump's immigration crackdown hurts investigations and morale," *Washington Post*, June 28, 2018.

¹⁰⁸ DHS Office of Inspector General, "U.S. Immigration and Customs Enforcement's Award of the Family Case Management Program Contract (Redacted)," OIG-18-22, November 30, 2017.

¹⁰⁹ U.S. Immigration and Customs Enforcement, "Fact Sheet, Stakeholder Referrals to the ICE/ERO Family Case Management Program," January 6, 2016.

¹¹⁰ Frank Bajak, "ICE Shuttles Detention Alternative for Asylum-Seekers," *U.S. News and World Report*, June 9, 2017.

¹¹¹ *Ibid.* Intensive supervision programs monitor aliens in deportation proceedings who have been released from detention. They often involve electronic monitoring devices such as GPS ankle bracelets or voice recognition software for telephone-based reporting, and intensive case management.

¹¹² DHS currently oversees three family detention facilities. Berks Family Residential Center in Berks County, PA; Karnes Residential Center in Karnes City, TX; and South Texas Family Residential Center in Dilley, TX.

¹¹³ Simon Romero and Miriam Jordan, "On the Border, a Discouraging New Message for Asylum Seekers: Wait," *New York Times*, June 12, 2018; and Jonathan Blitzer, "The Trump Administration Is Completely Unravelling the U.S. Asylum System," *The New Yorker*, June 11, 2018. For a contrary view on the weakening of the asylum system, see Dan Cadman, "Asylum in the United States," Center for Immigration Studies, March 26, 2014.

¹¹⁴ Jonathan Blitzer, "The Trump Administration Is Completely Unravelling the U.S. Asylum System," *The New Yorker*, June 11, 2018.

¹¹⁵ Email correspondence to CRS from DOJ Legislative Affairs, June 28, 2018.

¹¹⁶ *Matter of A-B-*, Respondent, 27 I&N Dec. 316 (A.G. 2018), Interim Decisions #3929. The ruling vacated a 2016 decision by DOJ's Board of Immigration Appeals, the immigration appeals court for EOIR, granting asylum to a

have the unintended effect of sustaining illegal immigration flows of desperate foreign nationals fleeing violent circumstances, particularly from Northern Triangle countries.

Congressional Activity

A number of bills have been introduced in the 115th Congress in response to family separation resulting from the Administration's zero tolerance policy regarding the prosecution of illegal border crossing. With the exception of H.R. 6136, which failed to pass in the House by a vote of 121-301, none of the bills introduced have seen congressional action as of this writing.

Given that this topic is developing rapidly, bills discussed below do not reflect all legislation or amendments introduced to date, or more recent developments. Instead, the bills presented here are intended to illustrate the range of legislative proposals to address family separation in the current context.

Bills that emphasize immigration enforcement include H.R. 6182, the Codifying President Trump's Affording Congress an Opportunity to Address Family Separation Executive Order Act, which provides statutory authority for President Trump's executive order within the INA; H.R. 6173;¹¹⁷ and Section 3102 of H.R. 6136, the Border Security and Immigration Reform Act of 2018, which would permit children accompanied by parents to remain in DHS custody during the pendency of a parent's criminal prosecution, rather than being referred to ORR and treated as UAC. On July 11, 2018, similar amendment language was included in an appropriations bill to fund the Departments of Labor, Health and Human Services, and Education, that was approved by the House Appropriations Committee.¹¹⁸ H.R. 6204, the Families First Act of 2018, includes similar provisions and would also implement asylum reforms and provide increased funding for family unit facilities, personnel, and judges, among other provisions.

Bills that intend to prevent or limit family separation include H.R. 6135/S. 3036, the Keep Families Together Act, and H.R. 6236, the Family Unity Rights and Protection Act, both of which contain provisions to keep families together during all stages of processing following apprehension at a U.S. border; H.R. 6232, the Preventing Family Separation for Immigrants with Disabilities Act, which would prohibit family separation for individuals with developmental disabilities; and H.R. 6172, the Reunite Children with Their Parents Act, which would require DHS and DOJ to reunite minor children already separated from their parents.

Other bills, such as H.R. 6181/H.R. 6190 /S. 3093, the Keep Families Together and Enforce the Law Act, would maintain family unity by making the Flores Settlement Agreement and related laws and regulations inapplicable to children who are accompanied by adults when they are apprehended at a U.S. border. H.R. 6195/S. 3091, the Protect Kids and Parents Act, would limit the separation of families seeking asylum by mandating that they be housed together, and facilitate asylum processing (e.g., by adding additional immigration judges and DHS personnel and establishing asylum processing deadlines), among other provisions.

woman who experienced sexual, emotional, and physical abuse. See Ted Hesson and Josh Gerstein, "Sessions moves to block asylum for most victims of domestic, gang violence," *Politico*, June 11, 2018; and Katie Benner and Caitlin Dickerson, "Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum," *New York Times*, June 11, 2018.

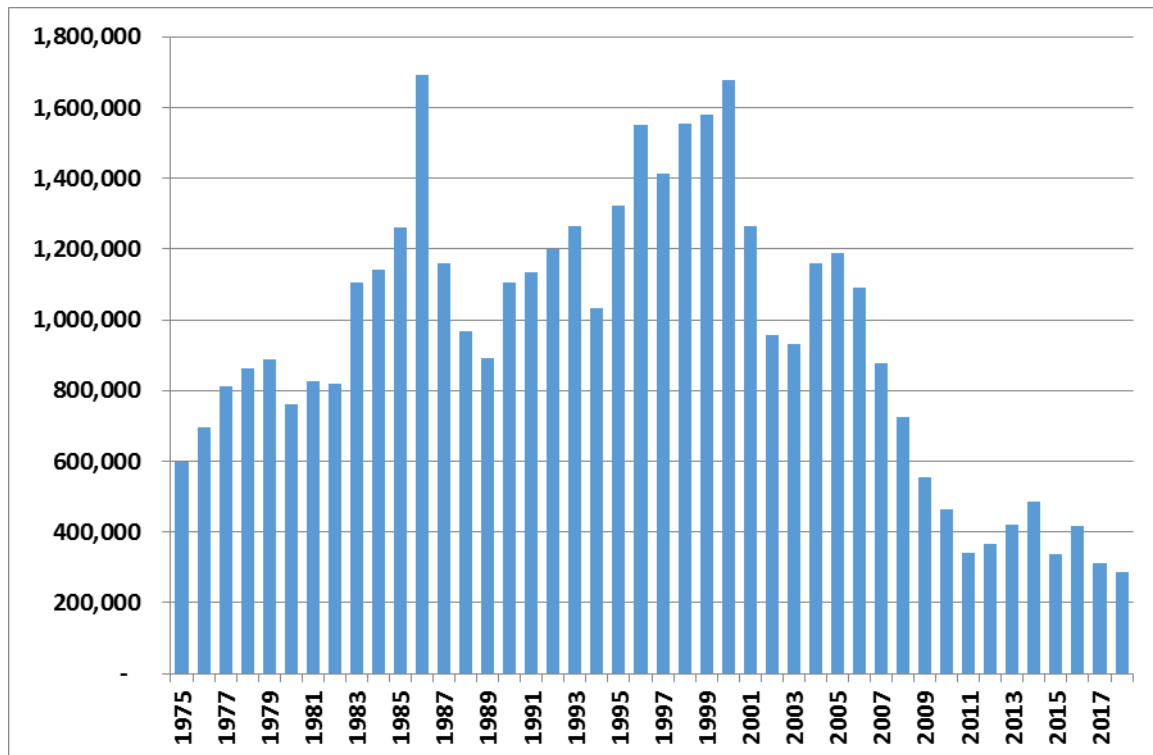
¹¹⁷ The title of H.R. 6173 is "To amend section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to clarify the standards for family detention, and for other purposes."

¹¹⁸ A number has not yet been assigned to this bill. See Andrew Siddons and Kellie Mejdritch, "Labor-HHS-Education Bill OK'd; Family Separation Changes Added," *CQ News*, July 11, 2018.

Appendix. Trends in Alien Apprehensions

Increasing numbers of apprehensions of Central American family units are occurring within the context of relatively low historical levels of total alien apprehensions (**Figure A-1**).

Figure A-1. Total CBP Alien Apprehensions at the Southwest Border, FY1975-FY2018*



Source: U.S. Department of Homeland Security, United States Border Patrol, "Stats and Summaries," <https://www.cbp.gov/newsroom/media-resources/stats>.

Notes: *FY2018 includes October 2017 through June 2018, or three-fourths of the fiscal year.

Apprehensions had peaked at 1.7 million in 1986, the year Congress enacted the Immigration Reform and Control Act (IRCA), which gave legal status to roughly 2.7 million unauthorized aliens residing in the United States.¹¹⁹ After dropping for multiple years, apprehensions increased again, climbing from 1.13 million in FY1991 to 1.68 million in FY2000. Apprehensions generally fell after that (with the exception of FY2004-FY2005), reaching a 40-year low of 327,577 in FY2011. They have fluctuated since that point. For the first nine months of FY2018, apprehensions reached 286,290.¹²⁰

The national origins of apprehended aliens have shifted considerably during the past two decades (**Figure A-2**). In FY2000, for example, almost all aliens apprehended at the southwest border (98%) were Mexican nationals. As recently as FY2011, Mexican nationals made up 84% of all apprehensions. However, beginning in FY2012 foreign nationals from countries other than Mexico began to comprise a growing percentage of total apprehensions, even as total

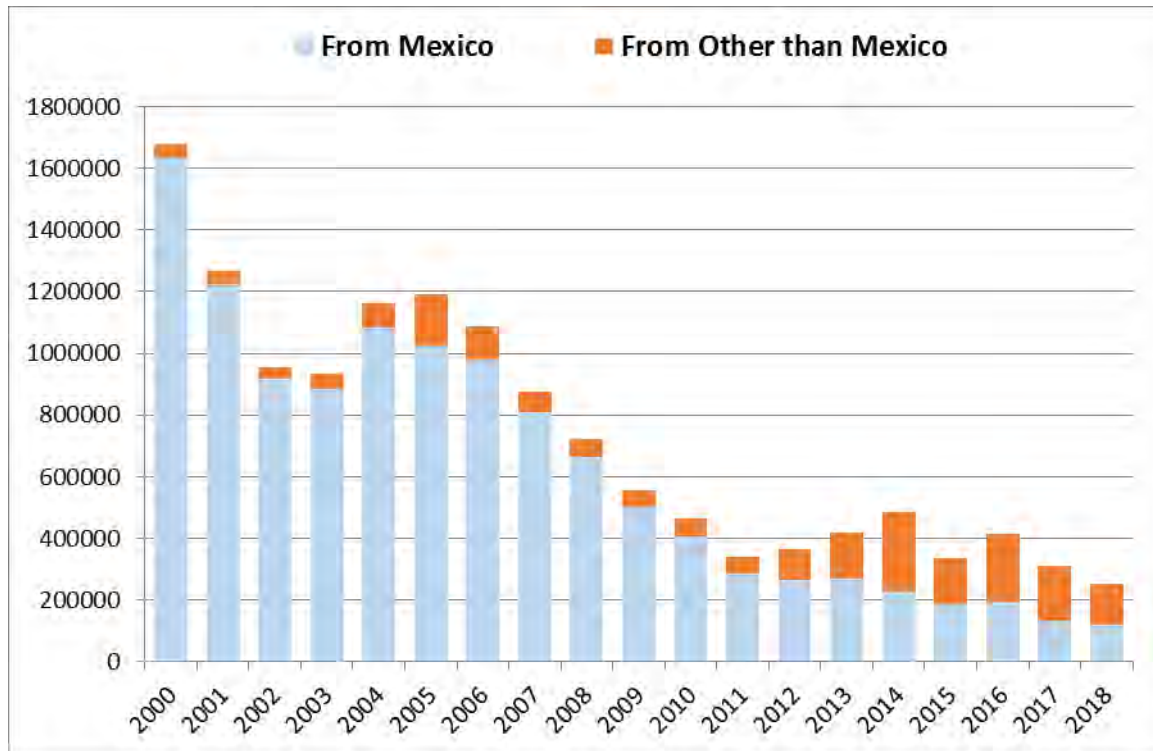
¹¹⁹ For more information, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

¹²⁰ Border patrol apprehensions data count events rather than people. Thus, an unauthorized alien who is caught trying to enter the country three times in one year counts as three apprehensions.

apprehensions declined since FY2005.¹²¹ Most recently, in the first eight months of FY2018, "other-than-Mexicans" comprised the majority (52%) of total alien apprehensions on the southwest border.

Figure A-2. Total CBP Alien Apprehensions at the Southwest Border by Country of Origin, FY2000-FY2018*

(Country of origin is either Mexico or other-than-Mexico)



Source: U.S. Department of Homeland Security, United States Border Patrol, "Stats and Summaries," <https://www.cbp.gov/newsroom/media-resources/stats>.

Notes: *FY2018 includes October 2017 through May 2018, or two-thirds of the fiscal year. CRS was unable to locate these data through June 2018, in contrast with data presented in **Figure A-1** and **Figure A-3**.

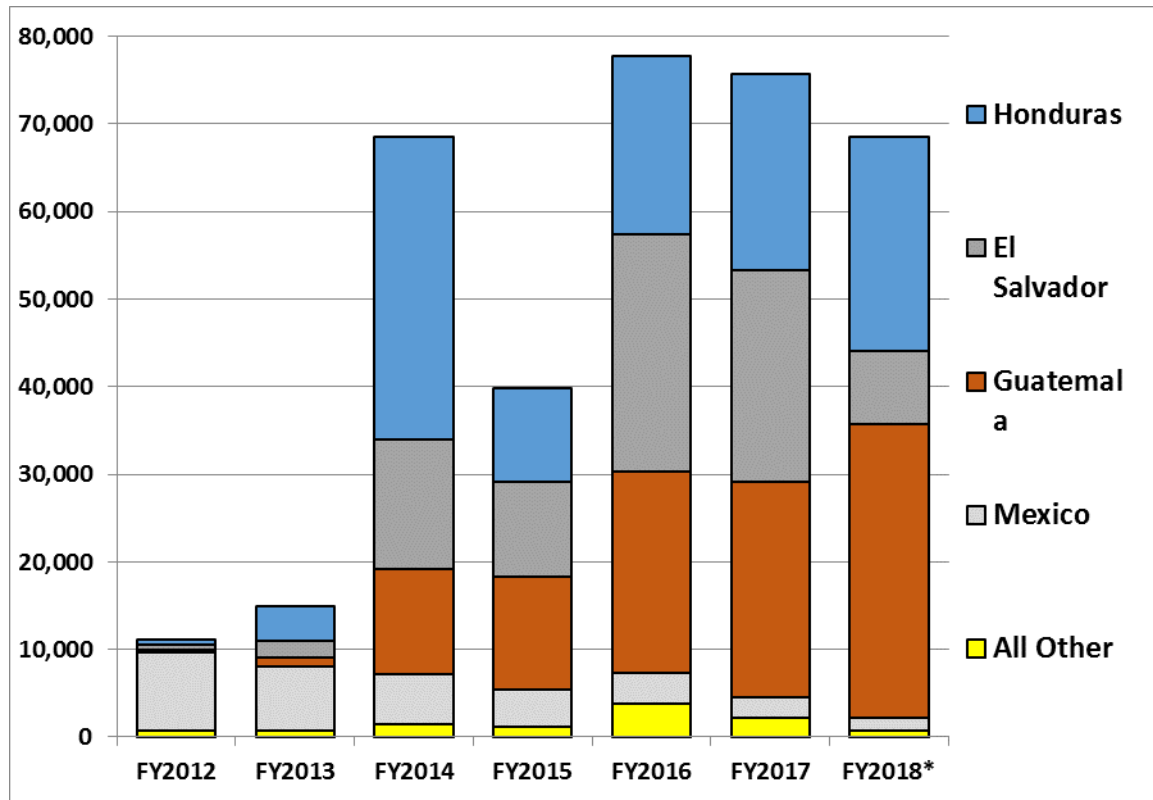
Family units are making up a growing share of total alien apprehensions at the southern border. According to CBP Commissioner Kevin McAleenan, single adult males made up over 90% of arriving aliens in the past; however, families and children make up roughly 40% of all arriving aliens currently.¹²² CBP data on family unit apprehensions at the southern border are publicly available starting in FY2012, when they numbered just over 11,000 (**Figure A-3**). Since then, family unit apprehensions have increased considerably, reaching a peak of 77,674 in FY2016. In the first nine months of FY2018, CBP apprehended 68,560 family units, which, if the monthly average is extrapolated to the remainder of FY2018, would yield a total (91,400) exceeding those of all prior fiscal years.

¹²¹ The rise in both total apprehensions and family unit apprehensions of other-than Mexicans mirrors that of unaccompanied alien children over this recent period. See CRS Report R43599, *Unaccompanied Alien Children: An Overview*, Figure 1.

¹²² Testimony of Kevin McAleenan, Commissioner, U.S. Customs and Border Patrol, in U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Border Security, Commerce and Travel: Commissioner McAleenan's Vision for the Future of CBP*, 115th Cong., 2nd sess., April 25, 2016.

Since FY2012, the composition of family unit apprehensions by origin country has shifted from mostly Mexican (80%) to mostly El Salvadoran, Guatemalan, and Honduran (97%). Among these Northern Triangle countries, the proportion of apprehensions from El Salvador has recently declined, from 35% of all family unit apprehensions in FY2016 to 12% in FY2018.

Figure A-3. Total CBP Alien Family Unit Apprehensions at the Southwest Border, FY2012-FY2018*



Source: For FY2008-FY2013: U.S. Department of Homeland Security, United States Border Patrol, "Juvenile and Adult Apprehensions—Fiscal Year 2013." For FY2014-FY2016, "Customs and Border Protection, Southwest Border Unaccompanied Alien Children." For FY2017-FY2018, "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2018," <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions>.

Notes: *FY2018 includes October 2017 through June 2018, or three-fourths of the fiscal year.

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

16 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

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

20 Defendants.

21 SIERRA CLUB, *et al.*,

22 Plaintiffs,

23 v.

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

25 Defendants.

No. 4:19-cv-00872-HSG
 No. 4:19-cv-00892-HSG

26 **SUPPLEMENT TO NOTICE OF**
 27 **DECISION BY THE**
 28 **DEPARTMENT OF DEFENSE TO**
AUTHORIZE BORDER BARRIER
PROJECTS PURSUANT TO 10
U.S.C. § 2808

1 On September 3, 2019, Defendants notified the Court and parties that the Secretary of
2 Defense had authorized eleven border barrier projects in California, Arizona, New Mexico, and
3 Texas pursuant to 10 U.S.C. § 2808. *See* ECF No. 206 in 4:19-CV-00872; ECF No. 201 in 4:19-
4 CV-00892. To fund the projects, the Secretary of Defense authorized the Department of the
5 Army to expend up to \$3.6 billion in unobligated military construction funds. *See id.* The
6 Secretary of Defense directed that, initially, only funds associated with deferred military
7 construction projects located outside of the United States will be provided to the Department of
8 the Army. *See id.* Deferred military construction projects outside of the United States account
9 for \$1.8 billion of the required funds. *See id.* The remaining \$1.8 billion associated with
10 deferred military construction projects located in the United States (including U.S. territories)
11 will be made available to the Secretary of the Army when it is needed for obligation. *See id.* As
12 a supplement to Defendants’ notice, the list of unobligated military construction projects
13 currently identified for deferral is attached as Exhibit 1.

14
15 DATE: September 5, 2019

Respectfully submitted,

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EXHIBIT 1

2808 Deferrals in United States Territories (\$ in thousands)

State Country Title	Location Title	Award Date	Line Item Title	Fiscal Year Enactment	Amount
GUAM	Joint Region Marianas	December 2020	Earth Covered Magazines	2019	52,270
		September 2020	PRTC Roads	2016	2,500
		July 2020	Water Well Field	2018	56,088
		June 2020	Navy-Commercial Tie-In Hardening	2018	37,180
		March 2020	Machine Gun Range	2019	50,000
		February 2020	APR - Munitions Storage Igloos, Ph 2	2017	35,300
		February 2020	Hayman Munitions Storage Igloos MSA 2	2019	9,800
		January 2020	APR - SATCOM C4I Facility	2017	14,200
PUERTO RICO	Arroyo	January 2021	Readiness Center	2018	30,000
		March 2021	Company Headquarters Bldg -Transient Training	2018	47,000
	Camp Santiago	March 2021	Dining Facility, Transient Training	2018	13,000
		September 2020	Engineering/Housing Maintenance Shops (DPW)	2018	11,000
		September 2020	Maneuver Area Training Equipment Site	2018	80,000
		September 2020	National Guard Readiness Center	2018	50,000
	Gurabo	September 2020	Power Substation/Switching Station Building	2018	18,500
		January 2021	Vehicle Maintenance Shop	2018	28,000
Punta Borinquen	December 2019	Ramey Unit School Replacement	2018	61,071	
San Juan	January 2021	Aircraft Maintenance Hangar (AASF)	2018	64,000	
VIRGIN ISLANDS	St. Croix	January 2021	Vehicle Maintenance Shop	2018	20,000
		September 2020	Power Substation/Switching Station Building	2018	3,500
	St. Thomas	September 2020	National Guard Vehicle Maintenance Shop Add/A	2018	3,875
Grand Total					687,284

2808 Deferrals in the 50 United States (\$ in thousands)

State Country Title	Location Title	Award Date	Line Item Title	Fiscal Year Enactment	Amount
ALABAMA	Anniston Army Depot	March 2020	Weapon Maintenance Shop	2019	5,200
ALASKA	Eielson AFB	February 2021	Repair Central Heat/Power Plant Boiler PH 4	2018	41,000
		January 2020	Repair Central Heat & Power Plant Boiler Ph3	2016	34,400
	January 2020	Eielson AFB Improved CATM Range	2019	19,000	
	January 2021	Missile Field #1 Expansion	2019	8,000	
ARIZONA	Fort Huachuca	May 2020	Ground Transport Equipment Building	2018	30,000
CALIFORNIA	Channel Islands ANGS	July 2020	Construct C-130J Flight Simulator Facility	2019	8,000
COLORADO	Peterson AFB	September 2020	Space Control Facility	2018	8,000
FLORIDA	Tyndall AFB	January 2020	Fire/Crash Rescue Station	2018	17,000
HAWAII	Joint Base Pearl Harbor-Hickam	September 2020	Consolidated Training Facility	2018	5,500
		May 2020	Security Improvements Mokapu Gate	2018	26,492
INDIANA	Crane Army Ammunition Plant	March 2020	Railcar Holding Area	2019	16,000
		February 2020	Construct Small Arms Range	2018	8,000
KENTUCKY	Fort Campbell, Kentucky	February 2020	Ft Campbell Middle School	2019	62,634
LOUISIANA	Joint Reserve Base New Orleans	January 2020	NORTHCOM - Construct Alert Apron	2019	15,000
		January 2020	NORTHCOM - Construct Alert Facilities	2019	24,000
MARYLAND	Fort Meade	June 2020	Cantonment Area Roads	2019	16,500
		January 2020	Child Development Center	2019	13,000
	Joint Base Andrews	June 2020	PAR Relocate Haz Cargo Pad and EOD Range	2019	37,000
MISSISSIPPI	Jackson IAP	August 2020	Construct Small Arms Range	2018	8,000
NEW MEXICO	Holloman AFB	March 2020	MQ-9 FTU Ops Facility	2019	85,000
		February 2020	Information Systems Facility	2019	40,000
NEW YORK	U.S. Military Academy	June 2020	Engineering Center	2019	95,000
		June 2020	Parking Structure	2019	65,000
NORTH CAROLINA	Camp Lejeune, North Carolina	April 2020	2nd Radio BN Complex, Phase 2	2019	25,650
		January 2020	Ambulatory Care Center Addition/Alteration	2018	15,300
	Fort Bragg	Previously cancelled	Butner Elementary School Replacement	2016	32,944
OKLAHOMA	Seymour Johnson AFB	April 2020	KC-46A ADAL for Alt Mission Storage	2018	6,400
OREGON	Tulsa Iap	May 2020	Construct Small Arms Range	2018	8,000
SOUTH CAROLINA	Klamath Falls IAP	February 2020	Construct Indoor Range	2018	8,000
		January 2020	Replace Fuel Facilities	2016	2,500
SOUTH CAROLINA	Beaufort	April 2020	Laurel Bay Fire Station Replacement	2019	10,750
TEXAS	Fort Bliss	January 2020	Defense Access Roads	2018	20,000
		February 2020	Camp Bullis Dining Facility	2018	18,500
UTAH	Hill AFB	August 2020	Composite Aircraft Antenna Calibration Fac	2019	26,000
		January 2020	UTTR Consolidated Mission Control Center	2018	28,000
VIRGINIA	Joint Base Langley-Eustis	January 2020	Construct Cyber Ops Facility	2019	10,000
		January 2020	Replace Hazardous Materials Warehouse	2018	18,500
	Pentagon	Previously cancelled	Pentagon Metro Entrance Facility	2017	12,111
	Portsmouth	January 2020	Replace Hazardous Materials Warehouse	2018	22,500
WASHINGTON	Bangor	January 2020	Ships Maintenance Facility	2019	26,120
WISCONSIN	Truax Field	February 2021	Pier and Maintenance Facility	2019	88,960
		March 2020	Construct Small Arms Range	2018	8,000
Grand Total					1,075,961

2808 Deferrals Outside of the United States (\$ in thousands)

State Country Title	Location Title	Award Date	Line Item Title	Fiscal Year Enactment	Amount
BAHRAIN ISLAND	SW Asia	February 2020	Fleet Maintenance Facility & TOC	2019	26,340
BELGIUM	Chievres AB	September 2020	Europe West District Superintendent's Office	2019	14,305
BULGARIA	Nevo Selo Fos	October 2020	EDI: Ammunition Holding Area	2019	5,200
CUBA	Guantanamo Bay	February 2020	Working Dog Treatment Facility Replacement	2019	9,080
ESTONIA	Unspecified Estonia	December 2020	EDI: SOF Operations Facility	2019	6,100
		December 2020	EDI: SOF Training Facility	2019	9,600
GERMANY	Baumholder	April 2021	SOF Joint Parachute Rigging Facility	2019	11,504
	East Camp Grafenwoehr	January 2020	Mission Training Complex	2019	31,000
	Panzer Kaserne	June 2021	MARFOREUR HQ Modernization and Expansion	2019	43,950
	Ramstein AB	September 2020	37 AS Squadron Operations/AMU	2017	13,437
		September 2020	EDI - KMC DABS-FEV/RH Storage Warehouses	2019	119,000
	Spangdahlem AB	July 2020	F/A-22 Low Observable/Composite Repair Fac	2017	18,000
		August 2021	EIC - Site Development and Infrastructure	2017	43,465
		March 2020	Spangdahlem Elementary School Replacement	2018	79,141
		March 2020	Upgrade Hardened Aircraft Shelters for F/A-22	2017	2,700
	Stuttgart	June 2022	Robinson Barracks Elem. School Replacement	2018	46,609
	Weisbaden	December 2022	Clay Kaserne Elementary School	2019	56,048
	Wiesbaden Army Airfield	November 2019	Hazardous Material Storage Building	2017	2,700
GREECE	Souda Bay	November 2019	EDI: Marathi Logistics Support Center	2019	6,200
		October 2019	EDI: Joint Mobility Processing Center	2019	41,650
HUNGARY	Kecskemet AB	October 2020	ERI: Airfield Upgrades	2018	12,900
		October 2020	ERI: Construct Parallel Taxiway	2018	30,000
		April 2020	ERI: Increase POL Storage Capacity	2018	12,500
ITALY	Sigonella	August 2020	EDI: P-8A Taxiway and Apron Upgrades	2019	66,050
JAPAN	Camp Mctureous	April 2020	Bechtel Elementary School	2019	94,851
	Iwakuni	March 2020	Fuel Pier	2019	33,200
		January 2020	Construct Bulk Storage Tanks PH 1	2018	30,800
	Kadena AB	June 2020	Truck Unload Facilities	2019	21,400
		May 2020	SOF Maintenance Hangar	2018	3,972
		May 2020	SOF Maintenance Hangar	2017	42,823
		January 2020	APR - Replace Munitions Structures	2017	19,815
	Yokota AB	February 2020	C-130J Corrosion Control Hangar	2017	23,777
		January 2020	Construct CATM Facility	2017	8,243
		December 2019	Hangar/Aircraft Maintenance Unit	2018	12,034
		December 2019	Hangar/AMU	2017	39,466
		December 2019	Operations and Warehouse Facilities	2018	8,590
		December 2019	Operations and Warehouse Facilities	2017	26,710
	Yokosuka	March 2020	Kinnick High School Inc 1	2019	40,000
KOREA	Camp Tango	December 2020	Command and Control Facility	2019	17,500
	Kunsan AB	December 2019	Unmanned Aerial Vehicle Hangar	2018	53,000
LUXEMBOURG	Sanem	April 2021	ERI: ECAOS Deployable Airbase System Storage	2018	67,400
NORWAY	Rygge	November 2020	ERI: Replace/Expand Quick Reaction Alert Pad	2018	10,300
POLAND	Poland	September 2020	EDI: Staging Areas	2019	34,000
		September 2020	EDI: Staging Areas	2019	17,000
		June 2020	EDI: Ammunition Storage Facility	2019	52,000
		April 2020	EDI: Rail Extension and Railhead	2019	6,400
	Powidz Air Base	November 2020	EDI: Bulk Fuel Storage	2019	21,000
ROMANIA	Mihail Kogalniceanu	November 2019	EDI: Explosives & Ammo Load/Unload Apron	2019	21,651
SLOVAKIA	Malacky	December 2020	EDI - Regional Munitions Storage Area	2019	59,000
		February 2020	ERI: Increase POL Storage Capacity	2018	20,000
		November 2019	ERI: Airfield Upgrades	2018	4,000
	Sliac Airport	November 2019	ERI: Airfield Upgrades	2018	22,000
SPAIN	Rota	January 2020	EDI: Port Operations Facilities	2019	21,590
TURKEY	Incirlik AB	August 2020	OCO: Relocate Base Main Access Control Point	2018	14,600
UNITED KINGDOM	Croughton RAF	January 2020	Croughton Elem/Middle/High School Replacement	2017	71,424
		October 2019	Main Gate Complex	2017	16,500
	Menwith Hill Station	February 2020	RAFMH Main Gate Rehabilitation	2018	11,000
	Royal Air Force Fairford	November 2019	EIC RC-135 Infrastructure	2018	2,150
		November 2019	EIC RC-135 Intel and Squad Ops Facility	2018	38,000
		November 2019	EIC RC-135 Runway Overrun Reconfiguration	2018	5,500
	Raf Fairford	September 2020	EDI - Munitions Holding Area	2019	19,000
		September 2020	EDI - Construct DABS-FEV Storage	2019	87,000
WORLDWIDE CLASSIFIED	Classified Location	January 2020	TACMOR - Utilities and Infrastructure Support	2019	18,000
WW unspecified	WW unspecified	February 2021	Planning and Design	2018	13,580
Grand Total					1,836,755

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

16 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

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

20 Defendants.

No. 4:19-cv-00872-HSG

No. 4:19-cv-00892-HSG

**NOTICE OF DECISION BY THE
DEPARTMENT OF DEFENSE TO
AUTHORIZE BORDER BARRIER
PROJECTS PURSUANT TO 10
U.S.C. § 2808**

21 SIERRA CLUB, *et al.*,

22 Plaintiffs,

23 v.

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

25 Defendants.

1 Defendants hereby notify the Court and parties in the above-captioned cases that, on
2 September 3, 2019, the Secretary of Defense authorized eleven border barrier projects in
3 California, Arizona, New Mexico, and Texas pursuant to 10 U.S.C. § 2808. A description of the
4 project locations and estimated cost of each project is attached as Exhibit 1. *See* Memorandum
5 from the Secretary of Defense re: Guidance for Undertaking Military Construction Projects
6 Pursuant to Section 2808 of Title 10, U.S. Code (Sept. 3, 2019). In accordance with 10 U.S.C.
7 § 2808(b), the Secretary of Defense has notified Congress of his decision to undertake military
8 construction projects authorized by Section 2808. *See, e.g.*, Letter from Secretary of Defense
9 Mark Esper to Sen. James Inhofe (Sept. 3, 2019) (attached as Exhibit 2).

10 To fund these projects, the Secretary of Defense has authorized the Department of the
11 Army to expend up to \$3.6 billion in unobligated military construction funds. *See id.* The
12 Secretary of Defense has further directed that, initially, only funds associated with deferred
13 military construction projects located outside of the United States will be provided to the
14 Department of the Army. *See id.* Deferred military construction projects outside of the United
15 States account for \$1.8 billion of the required funds. *See id.* The remaining \$1.8 billion
16 associated with deferred military construction projects located in the United States (including
17 U.S. territories) will be made available to the Secretary of the Army when it is needed for
18 obligation. *See id.* Defendants will provide the Court and parties with the list of unobligated
19 military construction projects currently identified for deferral as soon as congressional
20 notifications are complete but no later than Friday, September 6, 2019.

21 The timeline for obligating funds and beginning construction of the Section 2808 projects
22 depends on type of expenditure and the project's location. *See* Declaration of Brigadier General
23 Glenn Goddard ¶¶ 7–12 (attached as Exhibit 3). The U.S. Army Corps of Engineers (USACE)
24 has identified four types of expenditures associated with the projects. *See id.* ¶¶ 7–10. First,
25 USACE expects to begin incurring project-related administrative costs as soon as funds are made
26 available. *See id.* ¶ 7. These costs include labor costs for USACE employees, travel costs, and
27 other overhead costs related to the approved projects. *Id.* Because it has not yet identified the
28 number of personnel or the amount of their time needed to manage these projects, USACE is

1 unable to provide a precise estimate of the amount of money it would need for these
2 administrative costs. *Id.* USACE is developing a staffing plan and a precise budget for its
3 administrative costs, but based on experience from other border barrier projects, once fully
4 staffed, USACE estimates the likely administrative costs will be approximately \$1 million per
5 week. *Id.*

6 Second, USACE estimates it will spend approximately \$500,000 on costs associated with
7 initial real estate activities necessary to acquire or obtain administrative jurisdiction of land not
8 currently under the jurisdiction of the Department of Defense (DoD). *See id.* ¶ 8. Some of the
9 project areas are on land not currently under the control of DoD, thus DoD must acquire
10 administrative jurisdiction over the land and add it to the Department of the Army's real property
11 inventory, either as a new military installation or as part of an existing military installation. *See*
12 Exhibit 1. As part of that process, USACE must acquire, among other things, preliminary title
13 evidence on all lands necessary for the projects. *See* Goddard Decl. ¶ 7. USACE expects to
14 begin obligating and expending funds for this category of expenses starting on September 23 and
15 continuing over the course of the next several months. *See id.*

16 Third, USACE will use funds made available for the approved Section 2808 projects to
17 provide just compensation to landowners for land acquired through negotiated purchases or
18 condemnation, for payments of relocation assistance benefits, and for the provision of substitute
19 facilities, where appropriate. *See id.* ¶ 9. USACE does not expect to expend any funds for these
20 purposes before April 2020. *Id.*

21 Fourth, USACE will use Section 2808 funds for barrier construction contracts. *See id.*
22 ¶ 10. The timeline for obligating funds for construction contracts and beginning construction
23 depends on the location of each project. *Id.* The project locations generally fall into three
24 categories, as explained below.

25 **A. Projects on the Barry M. Goldwater Range**

26 Two border barrier projects (Yuma 2 and Yuma 10/27) are located on the Barry M.
27 Goldwater Range, an existing military installation in Arizona that is under the administrative
28 jurisdiction of the Department of the Navy. *See id.* ¶ 10.a. USACE will not award a contract

1 (thereby obligating funds for all contract costs) for border barrier construction on the Goldwater
2 Range earlier than October 3, 2019. *Id.* The contract for these two barrier-construction projects
3 is estimated to cost \$567 million. *Id.* No ground-disturbing activities, including geotechnical
4 borings and clearing and grubbing, will occur before 20 days after the date of contract award. *Id.*
5 The earliest date on which substantial construction could occur for these projects is 40 days after
6 contract award. *Id.*

7 **B. Projects on Federal Public Domain Land**

8 There are seven projects located, at least in part, on Federal public domain land currently
9 under the administrative jurisdiction of the Department of the Interior. *See id.* ¶ 10.b. The
10 projects and estimated costs are: Yuma 3 (\$630 million); Yuma 6 (\$65 million); San Diego 4
11 (\$67 million); San Diego 11 (\$57 million); El Paso 2 (\$476 million); El Paso 8 (\$164 million);
12 and El Centro 9 (\$286 million). *Id.* Yuma 3 and San Diego 4 are exclusively on Federal public
13 land. *Id.* The remaining five projects involve various combination of Federal public domain
14 land; Federal non-public domain land that can be transferred between Federal agencies under the
15 Federal Property and Administrative Services Act of 1949, as amended (the Property Act); and
16 non-Federal land.¹ The Department of the Army anticipates obtaining administrative jurisdiction
17 over the portions of these seven projects that are on Federal public domain land no earlier than
18 30 days after the Secretary's decision. *Id.* The processes required for USACE to obtain
19 jurisdiction over Federal non-public domain land and non-Federal land will require additional
20 time and are not expected to conclude before April 2020. *Id.* The earliest date on which USACE
21 could award a construction contract and obligate funds for any of these projects is 30 days after
22 the Department of the Army has accepted administrative jurisdiction and recorded the property
23 in its records as a military installation. *Id.* USACE would not need to acquire all of the land in a
24 project area before awarding a contract and may proceed with contract award for a project once
25 some portion of the land is under the administrative jurisdiction of the Department of the Army.

26
27
28 ¹ USACE's understanding of the current land status of the seven project areas is based on
the best information available at this time. *See* Goddard Decl. ¶ 10.b.

1 *Id.* USACE anticipates that the construction contracts for Yuma 3 and San Diego 4 will be the
2 first of these seven projects ready for award and obligation. *Id.* The earliest date on which any
3 ground-disturbing activities could occur for these projects is 20 days after contract award. *Id.*
4 The earliest date on which substantial construction could occur for these projects is 40 days after
5 contract award. *Id.*

6 **C. Projects Exclusively on Non-Public Land**

7 The remaining two projects (El Centro 5 and Laredo 7) are located entirely on Federal
8 non-public domain land and non-Federal land. *See id.* ¶ 10.c. To obtain administrative
9 jurisdiction over non-Federal land will require either purchase or condemnation. *Id.* As
10 explained above, USACE does not expect to expend funds for either purchase or condemnation
11 before April 2020. *Id.* Similarly, USACE does not expect to obtain jurisdiction of Federal non-
12 public domain land before April 2020. *Id.* The earliest date on which the Task Force could
13 award a construction contract for these projects is 30 days after the Department of the Army has
14 recorded the property in its records as a military installation. *Id.* The earliest date on which any
15 ground-disturbing activities could occur for these projects is 20 days after contract award. *Id.*
16 The earliest date on which substantial construction could occur for these projects is 40 days after
17 contract award. *Id.* The estimated costs for construction of these projects is \$20 million for El
18 Centro 5 and \$1.268 billion for Laredo 7. *Id.*

19 ***

20 In sum, the soonest any ground disturbing activity will begin for any of the Section 2808
21 projects is October 23, 2019 for the two projects on BMGR (Yuma 2 and Yuma 10/27). *Id.* ¶ 11.
22 The Corps anticipates that ground disturbing activities for the Yuma 3 and San Diego 4 projects
23 would begin next, approximately 30 days later. *Id.* The timetable for ground disturbing
24 activities on the remaining projects is uncertain, but will not occur earlier than as indicated for
25 Yuma 2, Yuma 10/27, Yuma 3, and San Diego 4. *Id.*

26 With respect to the obligation of funds, money for the projects will be drawn initially
27 only from funds associated with deferred military construction projects located outside of the
28 United States. *See* Exhibit 2. The Corps will begin immediately incurring project-related

1 administrative costs that are expected to be no more than \$1 million per week. *See* Goddard
2 Decl. ¶ 12. Beginning no sooner than September 23, 2019, the Corps will start expending
3 additional funds, not expected to exceed \$500,000, on initial real estate activities necessary to
4 acquire or obtain administrative jurisdiction of non-DoD land. *Id.* The earliest contract award
5 and obligation of funds for construction will occur no sooner than October 3, 2019, for the two
6 projects on BMGR (Yuma 2 and Yuma 10/27), which are estimated to cost \$567 million. *Id.* It
7 is expected that the next construction contracts to be awarded and obligated will be Yuma 3
8 (\$630 million) and San Diego 4 (\$67 million), approximately 30 day later. *Id.* The timetable for
9 award and obligation of the remaining contracts is uncertain, but will not occur earlier than as
10 indicated for Yuma 2, Yuma 10/27, Yuma 3, and San Diego 4. *Id.*

11
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13
14 DATE: September 3, 2019

Respectfully submitted,

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,
Plaintiffs,
v.
DONALD J. TRUMP, et al.,
Defendants.

Case No. [19-cv-00872-HSG](#)

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT, DENYING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT, AND CERTIFYING JUDGMENT FOR APPEAL

Re: Dkt. Nos. 176, 182

Pending before the Court are cross-motions for partial summary judgment filed by Plaintiff States California and New Mexico, and Defendants Donald J. Trump, in his official capacity as President of the United States; the U.S. Department of Defense (“DoD”); Mark T. Esper, in his official capacity as Acting Secretary of Defense¹; Ryan D. McCarthy, in his official capacity as Acting Secretary of the Army²; Richard V. Spencer, in his official capacity as Secretary of the Navy; Heather Wilson, in her official capacity as Secretary of the Air Force; the U.S. Department of the Treasury; Steven T. Mnuchin, in his official capacity as Secretary of the Department of the Treasury; the U.S. Department of the Interior; David Bernhardt, in his official capacity as Secretary of the Interior³; the U.S. Department of Homeland Security (“DHS”); and Kevin K. McAleenan, in his official capacity as Acting Secretary of Homeland Security,⁴ briefing for which

¹ Acting Secretary Esper is automatically substituted for former Acting Secretary Patrick M. Shanahan. *See* Fed. R. Civ. P. 25(d).
² Acting Secretary McCarthy is automatically substituted for former Secretary Esper. *See* Fed. R. Civ. P. 25(d).
³ Secretary Bernhardt was named in his then-capacity as Acting Secretary, but was subsequently confirmed as Secretary by the U.S. Senate on April 11, 2019.
⁴ Acting Secretary McAleenan is automatically substituted for former Secretary Kirstjen M. Nielsen. *See* Fed. R. Civ. P. 25(d).

United States District Court
Northern District of California

1 Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant
2 Responsibility Act of 1996, as Amended, 84 Fed. Reg. 21,800 (May 15, 2019) (waiving state laws
3 related to the El Centro Sector Project); REAL ID Act of 2005, Pub. L. No. 109-13, § 102, 119
4 Stat. 231, 306 (May 11, 2005) (amending Section 102(c) to reflect that the Secretary “ha[s] the
5 authority to waive all legal requirements” that, in the “Secretary’s sole discretion,” are “necessary
6 to ensure expeditious construction” of barriers and roads). Plaintiffs counter that the waivers’
7 effectiveness depends on Defendants first having authority to use funds in a certain manner. *See*
8 *Pls.’ Reply* at 12–13. As Plaintiffs put it, “without the funds to proceed with construction, [an]
9 IIRIRA waiver is meaningless.” *Id.* at 12.

10 Whether the relevant waivers deprive states of their sovereign interests in enforcing state
11 laws for purposes of an irreparable injury analysis, or merely deprive states of their ability to bring
12 suit to vindicate those interests, is unclear as a legal matter. The Court need not resolve this issue,
13 however, because whether or not the border barrier construction at issue in this order could harm
14 California and New Mexico’s sovereign interests, the contested use of funds for such construction
15 will not occur in the absence of injunctive relief. This is because the Court has permanently
16 enjoined the relevant Defendants in the related action from proceeding with such construction.
17 *See Order* at 10, *Sierra Club v. Trump*, No. 4:19-cv-00892-HSG (N.D. Cal. June 28, 2019), ECF
18 No. 185 (permanently enjoining the use of reprogrammed funds for border barrier construction for
19 El Paso Sector Project 1 and the El Centro Sector Project). Accordingly, no irreparable harm to
20 California and New Mexico will result from the denial (without prejudice) of their duplicative
21 requested injunction.

22 **C. Certification for Appeal**

23 Finally, Defendants request that the Court certify this judgment for appeal under Rule
24 54(b). Appellate courts generally only have jurisdiction to hear appeals from final orders. *See* 28
25 U.S.C. § 1291. Rule 54(b) allows for a narrow exception to this final judgment rule, permitting
26 courts to “direct entry of a final judgment as to one or more, but fewer than all, claims or parties
27 only if the court expressly determines that there is no just reason for delay.” Entry of judgment
28 under Rule 54(b) thus requires: (1) a final judgment; and (2) a determination that there is no just

United States District Court
Northern District of California

1 requirements related to outstanding claims are distinct inquiries, largely based on distinct law.
2 The Court also recognizes that Defendants’ appeal of the Court’s preliminary injunction order in
3 the related case, *Sierra Club v. Trump*, is currently pending before the Court of Appeals, which
4 recently issued an order holding the briefing on that appeal in abeyance pending partial summary
5 judgment orders. *See Sierra Club v. Trump*, No. 19-16102 (9th Cir. 2019), ECF Nos. 65–66. This
6 suggests to the Court that the Court of Appeals agrees that “sound judicial administration” is best
7 served by the Court certifying this judgment for appeal, in light of the undisputedly significant
8 interests at stake in this case. *See Wood*, 422 F.3d at 879.


9 **III. CONCLUSION**

10 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
11 Plaintiffs’ motion for partial summary judgment and **DENIES** Defendants’ motion for partial
12 summary judgment. Specifically, the Court **GRANTS** Plaintiffs’ request for declaratory judgment
13 that Defendants’ intended use of funds reprogrammed under Sections 8005 and 9002 of the
14 Department of Defense Appropriations Act, 2019, for border barrier construction in El Paso Sector
15 1 and El Centro Sector is unlawful. The Court **DENIES** Plaintiffs’ requests for (1) any broader
16 declaratory judgment, and (2) a permanent injunction.

17 The Clerk is directed to enter final judgment in favor of Plaintiffs and against Defendants
18 with respect to Defendants’ purported reliance on Sections 8005, 9002, and 284 to fund border
19 barrier construction. This judgment will be certified for immediate appeal pursuant to Rule 54(b)
20 of the Federal Rules of Civil Procedure.

21 **IT IS SO ORDERED.**

22 Dated: 6/28/2019

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24 
25 HAYWOOD S. GILLIAM, JR.
26 United States District Judge
27
28