

# **EXHIBIT 8**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALABAMA & GOVERNOR  
ROBERT J. BENTLEY,

Defendants.

Civil Action No.

**DECLARATION OF DAVID V. AGUILAR**

Pursuant to 28 U.S.C. § 1746, I, David V. Aguilar, declare and state as follows:

1. I am employed by U.S. Customs and Border Protection (CBP), within the U.S. Department of Homeland Security, in the position of Deputy Commissioner. I have held this position since April 11, 2010. Prior to holding the position of Deputy Commissioner, I served as Acting Deputy Commissioner beginning on January 2, 2010, and previously as the Chief of the Border Patrol for six years and, prior to that, as the Chief Patrol Agent of the Tucson Sector. I began my service with the U.S. Border patrol in 1978. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. I am aware that the State of Alabama has enacted new immigration legislation, known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, or H.B. 56.

2. In deploying resources, CBP seeks to incorporate the appropriate mix of personnel, infrastructure, and technology that will allow us to best advance our objectives: specifically, preventing the commission of crimes, apprehending those who have endangered or will endanger public safety, and securing the U.S. border. As explained below, our assets at and between the ports

of entry in Alabama are deployed in a manner that supports CBP's strategy for control of our nation's borders.

3. CBP currently maintains 3 air ports of entry within the State of Alabama, found in the following locations: Birmingham, Huntsville, and Mobile. These ports of entry accommodate private and commercial aircraft, including individuals seeking entry or admission into the United States. CBP currently maintains one sea port of entry within the State of Alabama, found in Mobile. CBP's Office of Field Operations (OFO) currently has 38 CBP Officers stationed in Alabama, both at these ports of entry and in the Alabama operational offices, as well as 13 agriculture specialists and 7 import specialists.

4. As of June 30, 2011, CBP has processed 8,767 commercial vessel passengers and crew, 199,744 private vessel passengers and crew, 1,671 private aircraft passengers and crew, and 2,233 commercial aircraft passengers and crew in Alabama this fiscal year.<sup>1</sup> The volume for fiscal year 2011 is in keeping with the volume that CBP has consistently processed in Alabama since fiscal year 2006:

- a. In fiscal year 2010, CBP processed 509 commercial vessels, 830 private vessels, 13,370 commercial vessel passengers and crew, 244,666 private vessel passengers and crew, 2,236 private aircraft passengers and crew, and 2,156 commercial aircraft passengers and crew.
- b. In fiscal year 2009, CBP processed 418 commercial vessels, 968 private vessels, 16,616 commercial vessel passengers and crew, 190,149 private vessel passengers and crew, 2,471 private aircraft passengers and crew, and 1,803 commercial aircraft passengers and crew.

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<sup>1</sup> These numbers and those in the subsequent bullets represent the number of entries or admissions and may not be unique persons, vessels or vehicles, as individuals, vessels or vehicles may make repeated entries or admissions.

- c. In fiscal year 2008, CBP processed 409 commercial vessels, 1,104 private vessels, 8,890 commercial vessel passengers and crew, 238,235 private vessel passengers and crew, 2,419 private aircraft passengers and crew, and 1,878 commercial aircraft passengers and crew.
- d. In fiscal year 2007, CBP processed 430 commercial vessels, 893 private vessels, 14,155 commercial vessel passengers and crew, 198,084 private vessel passengers and crew, 2,522 private aircraft passengers and crew, and 2,031 commercial aircraft passengers and crew.
- e. In fiscal year 2006, CBP processed 432 commercial vessels, 921 private vessels, 11,597 commercial vessel passengers and crew, 114,208 private vessel passengers and crew, 2,668 private aircraft passengers and crew, and 2,014 commercial aircraft passengers and crew.

5. As of June 30, 2011, during CBP's processing of individuals at the ports of entry in Alabama, 2,118 were determined to be inadmissible into the United States under the Immigration and Nationality Act (INA) during fiscal year 2011, with another 4 withdrawing their applications for admission. Since the beginning of fiscal year 2006, 10,059 individuals have been found inadmissible at the Alabama Ports of Entry, including the 4 withdrawing their applications for admission in FY 2011. In addition, since the beginning of fiscal year 2006 through June 30, 2011, OFO has arrested 229 individuals at the ports of entry in Alabama and referred them for criminal prosecution for a variety of criminal violations.

6. CBP's U.S. Border Patrol (Border Patrol) maintains a presence between the ports of entry in the region, including Alabama. For operational purposes, the Border Patrol divides the United States into geographical areas known as "sectors." The sector which covers the State

of Alabama is the New Orleans sector, which includes Alabama, Arkansas, Kentucky, Louisiana, Mississippi and Tennessee.

7. Nationwide, the Border Patrol is better staffed today than at any time in its eighty-seven year history, having nearly doubled the number of agents from approximately 10,000 in 2004 to more than 20,700 as of June 18, 2011. As of July 18, 2011, there are 11 agents stationed in Alabama. This is an increase from the 7 agents stationed during fiscal year 2007 in Alabama.

8. At times, certain state and local law enforcement entities may contact CBP, either through OFO or Border Patrol, to verify or ascertain the citizenship or immigration status of an individual within the jurisdiction of that agency. Responding to these inquiries takes the time of officers and agents at our ports of entry, offices and stations.

9. CBP has seen the overall apprehensions nationwide of illegal aliens by Border Patrol decrease from our highest point of over one million apprehensions in FY 2000. These numbers demonstrate the effectiveness of our layered approach to security, comprised of a balance of tactical infrastructure, technology, and personnel at our borders. Specifically, in the New Orleans sector the Border Patrol, operating at strategic points within the sector, apprehended 512 individuals in fiscal year 2006. In fiscal year 2010, Border Patrol apprehended 439 individuals, down 14 percent from 2006.

10. As part of CBP's processing of individuals for admissibility, it administers the inspection and admission process for aliens seeking admission to the United States under the Visa Waiver Program (VWP). The VWP enables eligible citizens from thirty-six (36) designated countries to travel to the United States temporarily for business or pleasure for up to ninety (90) days without obtaining a visa. In fiscal year 2010, more than 16,562,352 million aliens were admitted to the United States under the VWP. Historically, upon arrival in the United States and

during the inspection and admission process, VWP travelers signed and submitted Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Form) in paper, which was stamped by CBP Officers to reflect the date of admission and authorized period of stay as a nonimmigrant visitor (as described in 8 U.S.C. § 1101(a)(15)(B)). The lower portion of the Form I-94W was retained by the alien.

11. As of January 12, 2009, travelers intending to seek admission under the VWP must complete an Electronic System for Travel Authorization (ESTA) application prior to initiating travel by air or sea carrier to the United States. The ESTA application contains the questions that appeared on the paper Form I-94W. Approval of the ESTA application represents a determination by CBP that an alien may travel (absent a subsequent revocation by CBP) to the United States under the VWP for the duration of the validity of the authorization, which generally is two years. CBP, however, retains authority to make the determination as to the alien's admissibility upon the alien's arrival and inspection at a U.S. port of entry, as well as the period of each VWP admission, not to exceed 90 days.

12. On May 25, 2010, the Secretary of Homeland Security began the process of eliminating the paper Form I-94W requirement for VWP travelers whose ESTA applications are approved prior to boarding a carrier to travel by air or sea to the United States. The transition to paperless processing of ESTA-compliant travelers was completed on June 29, 2010.

13. Upon arrival at a port of entry in the United States, ESTA-compliant travelers are inspected for an admission determination. As part of that process the traveler submits biometrics through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program. The only proof of admission issued to most VWP travelers is the entry stamp on his or her passport reflecting the date of admission and the authorized period of admission.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed the 29th day of July, 2011 in Washington, D.C.

  
David V. Aguilar 7/29/11