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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
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13 **STATE OF CALIFORNIA et al.;**

14 Plaintiffs,

15 **v.**

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

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

**[PROPOSED] ORDER GRANTING
PLAINTIFF STATES OF CALIFORNIA
AND NEW MEXICO'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
REGARDING SECTIONS 284, 8005, AND
9002**

Judge: Honorable Haywood S. Gilliam,
Jr.

Trial Date: None Set

Action Filed: February 18, 2019

1 On June 12, 2019, Plaintiff States of California and New Mexico (Plaintiff States) filed a
2 Motion for Partial Summary Judgment (Motion) regarding Defendants' use of sections 8005 and
3 9002 of the Fiscal Year (FY) 2019 Department of Defense Appropriations Act (FY 2019 DOD
4 Appropriations Act), Pub. L. No. 115-245, 132 Stat. 2981, 2999, 3042 (2018) and 10 U.S.C.
5 section 284 for the construction of a barrier on the border between the United States and Mexico
6 in the El Centro Sector in California and the El Paso Sector in New Mexico. The Court has
7 considered the Motion and documents filed therewith, all of the papers on file in this action, and
8 hereby GRANTS Plaintiff States' Motion and enters judgment in their favor as to each of their
9 claims for relief on the grounds that the undisputed evidence shows that:

- 10 1. On March 25, 2019, Defendant Department of Defense (DOD) transferred \$1 billion
11 from DOD's Military and Personnel and Reserve account to the drug-interdiction
12 account through the Department's transfer authority in section 8005 of the FY 2019
13 DOD Appropriations Act (March 25 Reprogramming Action). DOD relies on its
14 authority under 10 U.S.C. section 284 and the funds that were transferred as part of
15 the March 25 Reprogramming Action for construction of a border barrier for El Paso
16 Sector Project 1 on the southern border of New Mexico.
- 17 2. On May 9, 2019, DOD transferred \$819.5 million to the drug-interdiction account
18 through the Department's transfer authority in section 8005 of the FY 2019 DOD
19 Appropriations Act, and \$681.5 million under its special Overseas Contingency
20 Operations transfer authority in section 9002 of the FY 2019 DOD Appropriations
21 Act (May 9 Reprogramming Action). DOD relies on its authority under 10 U.S.C.
22 section 284 and the funds that were transferred as part of the May 9 Reprogramming
23 Action for construction of a border barrier for El Centro Sector Project 1 on the
24 southern border of California.
- 25 3. The March 25 and May 9 Reprogramming Actions are ultra vires and violate the
26 Administrative Procedure Act because they exceed congressional authority.
- 27 4. The March 25 and May 9 Reprogramming Actions violate the Administrative
28 Procedure Act because they are arbitrary and capricious.

5. The March 25 and May 9 Reprogramming Actions violate the United States Constitution's separation of powers principles.

6. The March 25 and May 9 Reprogramming Actions violate the United States Constitution's Appropriations Clause.

7. The March 25 and May 9 Reprogramming Actions violate the United States Constitution's Presentment Clause.

Having entered judgment in favor of California and New Mexico and against Defendants on the above, the Court hereby ORDERS the following relief:

DECLARATION

The Court finds declaratory relief under 28 U.S.C. § 2201 is appropriate in this case. It is hereby DECLARED that the March 25 and May 9 Reprogramming Actions are unlawful and unconstitutional because they: (i) exceed the congressional authority conferred to the Executive Branch in violation of the Administrative Procedure Act and are ultra vires; (ii) violate the Administrative Procedure Act as arbitrary and capricious; (iii) violate the United States Constitution's separation of powers principles; (iv) violate the United States Constitution's Appropriations Clause; and (v) violate the United States Constitution's Presentment Clause.

PERMANENT INJUNCTION

The Court also finds that each of the necessary elements for issuing a permanent injunction are met. In particular, the Court finds that California and New Mexico have succeeded on the merits of their claims and that absent an injunction, California and New Mexico would suffer irreparable injury; the balance of equities favor California and New Mexico; and the requested relief is in the public interest. Pursuant to Federal Rule of Civil Procedure 65, it is now ORDERED that Defendants ARE HEREBY RESTRAINED AND ENJOINED from committing, performing, directly or indirectly, the following acts:

1. Diverting any funding or resources pursuant to sections 8005 and 9002 of the FY 2019 Department of Defense Appropriations Act or 10 U.S.C. section 284 toward the construction of any barrier or border-related infrastructure and/or project along the southern borders of California and New Mexico.

2. Obligating any funding, including but not limited to, the awarding of and/or entering into any contracts, toward the construction of any barrier or border-related infrastructure and/or project along the southern borders of California and New Mexico through the use of any funds diverted pursuant to sections 8005 and 9002 of the FY 2019 DOD Appropriations Act or 10 U.S.C. section 284.

IT IS SO ORDERED.

Dated: _____

The Honorable Haywood S. Gilliam, Jr.

CERTIFICATE OF SERVICE

Case Name: **California, et al. v Trump, et al.**
(Border Wall 2019)

No. **4:19-cv-00872**


I hereby certify that on June 12, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **PLAINTIFF STATES OF CALIFORNIA AND NEW MEXICO'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- **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**
- **APPENDIX OF DECLARATIONS RE: ENVIRONMENTAL HARMS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002**
- **[PROPOSED] ORDER GRANTING PLAINTIFF STATES OF CALIFORNIA AND NEW MEXICO'S MOTION PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 12, 2019, at San Diego, California.

V. Brizuela
Declarant


Signature