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

4:19-cv-00872-HSG

**DECLARATION OF MICHAEL  
 CAYABAN IN SUPPORT OF PLAINTIFF  
 STATES OF CALIFORNIA AND NEW  
 MEXICO'S REPLY IN SUPPORT OF  
 MOTION FOR PARTIAL SUMMARY  
 JUDGMENT REGARDING SECTIONS  
 284, 8005, AND 9002, AND IN  
 OPPOSITION TO DEFENDANTS'  
 MOTION FOR PARTIAL SUMMARY  
 JUDGMENT**

1 I, Michael Cayaban, 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 as a Supervising Deputy Attorney General within the Office's Public  
6 Rights Division, Natural Resources Law Section. I am a licensed member of good standing with  
7 the California 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, I reviewed the declarations of Millard F. LeMaster filed in support of Defendants' motion  
10 for partial summary judgment in which Mr. LeMaster summarized drug seizure totals for several  
11 border patrol sectors during the current fiscal year. ECF No. 182, 182-8, 182-9. I also reviewed  
12 publicly available information concerning the United States Border Patrol's El Paso and El  
13 Centro Sectors and public statements by the United States Department of Homeland Security  
14 (DHS) concerning drug seizure events that have occurred within those two border patrol sectors,  
15 as described below.

16 4. The El Centro Sector is located within several counties of California, with Border  
17 Patrol Offices located in the cities of El Centro, Calexico and Indio, California. The El Centro  
18 Sector covers a 70-mile stretch of the international border and the El Centro's geographic area of  
19 responsibility encompasses more than 107,000 square miles. See, Exhibit 10 to Plaintiffs'  
20 Supplemental Request for Judicial Notice (Supp. RJN), Government Accountability Office  
21 Report 17-331, p. 49.

22 5. Mr. LeMaster declares that from the start of Fiscal Year 2019 to the present, there  
23 have been 107 events within El Centro Sector resulting in drug seizures by the Border Patrol.  
24 However, the declaration does not state where those seizures occurred within the El Centro  
25 Sector's area of responsibility. ECF No. 182-9, ¶ 8.

26 6. DHS, U.S. Customs and Border Protection publishes "media releases" on its  
27 website at <https://www.cbp.gov/newsroom/media-releases/all>. The website contains search  
28 features that allow members of the public to search for media releases by date, subject matter

1 and/or location.

2 7. On June 23, 2019, I utilized the search features available at this website to search  
3 for information concerning the drug seizures by the Border Patrol within the El Centro Sector  
4 during the period of October 1, 2018 through June 23, 2019. Using search query terms such as  
5 “drug,” “seize,” and “centro,” I found several media releases concerning drug events within the El  
6 Centro Sector during the relevant time-period. The majority of the drug events described in these  
7 media releases, however, pertained to drug seizures made by U.S. Customs and Border  
8 Protections officers at the official ports of entry, not seizures by Border Patrol agents in other  
9 areas within the El Centro Sector.

10 8. With respect to Border Patrol agent seizures, I found a total of 18 media releases  
11 published on the DHS website between October 1, 2018 and June 23, 2019, that described 21  
12 drug seizures by Border Patrol agents within El Centro Sector in areas other than the official ports  
13 of entry. These media releases are attached as Exhibits 11 through 28 to Plaintiffs’ Supp. RJN.

14 9. Excluding media releases that pertain to drug seizures by Customs Officers at the  
15 ports of entry (supra, ¶ 8), Supp. RJN Exhibits 11 through 28 were the only media releases  
16 available on DHS’s website that describe drug seizures that occurred within the above stated  
17 time-period within El Centro Sector.

18 10. Supp. RJN Exhibits 11 through 28 provide information concerning the types of  
19 drugs seized, the weight and approximate street value of the drugs seized, and the location of the  
20 event. In total, the events described Supp. RJN Exhibits 11 through 28 resulted in the seizure of  
21 approximately 829.6 pounds of methamphetamine, 18.33 pounds of fentanyl, 11.12 pounds of  
22 heroin, and 13.12 pounds of cocaine. These amounts account for approximately 69% of the  
23 methamphetamine, 61% of the fentanyl, 37% of the heroin, and 87% of the cocaine that,  
24 according to Mr. LeMaster’s declaration, ECF No. 182-9, ¶ 8, were seized by Border Patrol agents  
25 in the El Centro Sector so far this fiscal year.

26 11. Of the 21 drug events described in the press releases, only two describe events  
27 occurring near the international border. In one of the incidents, packages containing  
28 methamphetamine were thrown over the international border fence into the United States near the

1 port of entry in downtown Calexico. Supp. RJN Ex. 24. The other press release describes an  
2 incident in which Border Patrol agents observed a lightweight aircraft flying over the  
3 international border landing in an agriculture field. Supp. RJN Ex. 22. Both events resulted in  
4 drug seizures and the arrest of suspects that received the packages. *Id.*

5 12. In another incident described in a media release, Border Patrol agents seized a  
6 small amount of drugs during the execution of a warrant at a home in the City of El Centro, which  
7 is located several miles from the international border. Supp. RJN Ex. 26.

8 13. The remaining media releases describe 18 separate events in which the Border  
9 Patrol seized drugs at vehicle inspection checkpoints on Highways 86 and 111. Supp. RJN Ex.  
10 11-21, 23, 25, 27-28. The inspection checkpoints are permanent facilities located near the Salton  
11 Sea, approximately 30-40 miles north of the international border. Highways 86 and 111 provide  
12 the most direct routes of travel north from the Calexico port of entry to Riverside, San Bernardino  
13 and Los Angeles counties.

14 14. The site for El Centro Project 1 is the southwestern portion of the El Centro  
15 Sector, several miles west of the city of Calexico. DHS' media releases, which describe several  
16 drug events and seizures on highways that lead directly from the Calexico port of entry, do not  
17 describe any drug events or drug smuggling activities in the vicinity of El Centro Project 1.

18 15. Similarly, the declaration of Mr. LeMaster does not identify any drug events or  
19 seizures occurring in the southwestern portion of the El Centro Sector nor describe any drug  
20 smuggling activity in the vicinity of the project area.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is  
22 true and correct. Executed on June 24, 2019, at San Diego, California.

23  
24 /s/ Michael Cayaban  
MICHAEL CAYABAN

## 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 24, 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 REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002, AND OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT;**
- **PLAINTIFF STATES OF CALIFORNIA AND NEW MEXICO'S SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE RE: REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002, AND OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT; and**
- **DECLARATION OF MICHAEL CAYABAN IN SUPPORT OF PLAINTIFF STATES OF CALIFORNIA AND NEW MEXICO'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002, AND IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

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 24, 2019, at Sacramento, California.

\_\_\_\_\_  
L. Aguirre  
Declarant

\_\_\_\_\_  
  
Signature