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13  
 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 **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  
**PLAINTIFF STATES OF CALIFORNIA  
 AND NEW MEXICO'S NOTICE OF  
 CONDITIONAL CROSS-APPEAL**  
 Judge: The Honorable Haywood S.  
 Gilliam, Jr.  
 Trial Date: None set  
 Action Filed: February 18, 2019

1 PLEASE TAKE NOTICE THAT Plaintiffs the State of California and the State of New  
2 Mexico (Plaintiff States) hereby cross-appeal to the United States Court of Appeals for the Ninth  
3 Circuit from this Court's Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial  
4 Summary Judgment, Denying Defendants' Motion for Partial Summary Judgment, and Certifying  
5 Judgment for Appeal (ECF No. 185) and the associated Judgment (ECF No. 186) insofar as this  
6 Court denied Plaintiff States' request for a permanent injunction.

7 This appeal is conditional. The permanent injunction in favor of the *Sierra Club* Plaintiffs  
8 in the related case *Sierra Club, et al. v. Trump, et al.*, No. 19-cv-892 (N.D. Cal. June 28, 2019),  
9 ECF No. 185, prevents the diversion of federal funds toward the construction of a barrier on the  
10 southern border of California and New Mexico, which would cause irreparable harm to Plaintiff  
11 States. So long as the injunction in that case remains in full effect, the Ninth Circuit need not  
12 reach the issues presented in this appeal.

13 Plaintiff States' Representation Statement, required by Federal Rule of Appellate  
14 Procedure, Rule 12(b), and Ninth Circuit Rule 3-2(b), is attached to this Notice of Appeal.

1 Dated: July 8, 2019

Respectfully submitted,

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*/s/ Lee I. Sherman*

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Civil Appellate Chief  
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MATTHEW L. GARCIA  
Governor's General Counsel  
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**ATTESTATION OF SIGNATURES**

I, Lee I. Sherman, hereby attest, pursuant to Local Civil Rule 5-1(i)(3) of the Northern District of California that concurrence in the filing of this document has been obtained from each signatory hereto.

*/s/ Lee I. Sherman*

LEE I. SHERMAN  
Deputy Attorney General  
*Attorney for Plaintiff*  
*State of California*

1 **REPRESENTATION STATEMENT**

2 Plaintiff States provide this Representation Statement as required by Federal Rule of  
3 Appellate Procedure, Rule 12(b), and Ninth Circuit Rule 3-2(b). The Office of the Attorney  
4 General, for the State of California, represents Plaintiff the State of California in this matter.

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12 The Office of the Attorney General, for the State of New Mexico, represents Plaintiff the  
13 State of New Mexico in this matter.

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20 The United States Department of Justice represents the Defendants in this matter, including:  
21 Donald J. Trump, in his official capacity as President of the United States of America; United  
22 States of America; U.S. Department of Defense; Mark T. Esper , in his official capacity as Acting  
23 Secretary of Defense; Ryan D. McCarthy, senior official performing the duties of the Secretary of  
24 the Army; Richard V. Spencer, in his official capacity as Secretary of the Navy; Matthew  
25 Donovan, in his official capacity as Acting Secretary of the Air Force; U.S. Department of the  
26 Treasury; Steven T. Mnuchin, in his official capacity as Secretary of the Treasury; U.S.  
27 Department of the Interior; David Bernhardt, in his official capacity as Secretary of the Interior;  
28 U.S. Department of Homeland Security; and Kevin K. McAleenan, in his official capacity as  
Acting Secretary of Homeland Security.<sup>1</sup>

25 <sup>1</sup> As required by Rule 25(d) of the Federal Rules of Civil Procedure and Rule 43 (c)(2) of  
26 the Federal Rules of Appellate Procedure, the list of Defendants has been updated to reflect that  
27 Mark T. Esper replaced Patrick M. Shanahan as the Acting Secretary of Defense, Ryan D.  
28 McCarthy is now the senior official performing the duties of the Secretary of the Army now that  
Mark T. Esper is the Acting Secretary of Defense, Matthew Donovan replaced Heather Wilson as  
the Acting Secretary of the Air Force, and Kevin K. McAleenan replaced Kirstjen M. Nielsen as  
the Acting Secretary of Homeland Security.

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