

1 JAMES M. BURNHAM  
 Deputy Assistant Attorney General  
 2 JOHN R. GRIFFITHS  
 Director, Federal Programs Branch  
 3 ANTHONY J. COPPOLINO  
 Deputy Director, Federal Programs Branch  
 4 ANDREW I. WARDEN (IN #23840-49)  
 Senior Trial Counsel  
 5 KATHRYN C. DAVIS  
 6 MICHAEL J. GERARDI  
 7 LESLIE COOPER VIGEN  
 RACHAEL WESTMORELAND  
 8 Trial Attorneys  
 U.S. Department of Justice  
 9 Civil Division, Federal Programs Branch  
 1100 L Street, NW  
 10 Washington, D.C. 20530  
 11 Tel.: (202) 616-5084  
 12 Fax: (202) 616-8470

13 *Attorneys for Defendants*

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

17 STATE OF CALIFORNIA, *et al.*,  
 18 Plaintiffs,  
 19 v.  
 20 DONALD J. TRUMP, *et al.*,  
 21 Defendants.

No. 4:19-cv-00872-HSG

**STIPULATED REQUEST FOR  
 ORDER MODIFYING SUMMARY  
 JUDGMENT BRIEFING  
 SCHEDULE ON CLAIMS  
 RELATED TO 10 U.S.C.  
 § 2808 AND THE TREASURY  
 FORFEITURE FUND**

25 Pursuant to Local Rule 6-2 and 7-12, the Plaintiffs and Defendants in the above-  
 26 captioned case stipulate and agree as follows:

27 1. On June 7, 2019, the Court entered a scheduling order in the above-captioned  
 28 case establishing deadlines for the parties to brief cross-motions for summary judgment for the

1 two remaining sets of claims in the case: 10 U.S.C § 2808 (national emergency military  
2 construction) and 31 U.S.C. § 9705 (Treasury Forfeiture Fund). *See* ECF No. 174. The Acting  
3 Secretary of Defense has not yet decided to undertake or authorize any barrier construction  
4 projects under section 2808. Accordingly, the parties jointly request that the Court stay  
5 summary judgment briefing on the section 2808 claims until such time as the Acting Secretary  
6 makes a decision to authorize border barrier construction pursuant to that authority. The parties  
7 will submit a proposed briefing schedule for the section 2808 claims within 10 days of a  
8 decision by the Acting Secretary. Plaintiff States may need to move for a temporary restraining  
9 order or motion for preliminary injunction pending resolution of the motion for summary  
10 judgment, and expressly reserve their right to do so.

11 2. With respect to the Treasury Forfeiture Fund claims, the parties jointly request a  
12 one-week extension of the current briefing schedule to enable the parties to complete discovery  
13 related to these claims. The parties have been working diligently to complete discovery, but  
14 Defendants require several additional days to complete document production and Plaintiffs  
15 request sufficient time to incorporate that discovery into their summary judgment motion,  
16 which is currently due July 11. Accordingly, the parties jointly agree to extend the current  
17 briefing deadlines by an additional seven days as follows:

18

19 July 18	Plaintiffs' motion for summary judgment
20 August 1	Defendants' Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary 21 Judgment
22 August 15	Plaintiffs' Oppositions to Defendants' Cross-Motion for Summary Judgment and Reply in Support of Plaintiffs' 23 Motion for Summary Judgment
24 August 22	Defendants' Reply in Support of Cross-Motion for Summary Judgment

25

26 3. The parties agree that the motion hearing currently scheduled in this case for  
27 August 29, 2019 at 2:00 p.m. should remain in place to address the Treasury Forfeiture Fund  
28 claims. However, if the Court prefers holding a hearing a week later as a result of the change in

1 schedule, the parties are able to participate at a hearing on September 5, 2019 at 2:00 p.m.

2 4. Approving this stipulation would not impact any other deadlines in this case.

3 5. Pursuant to Local Rule 6-2(a), undersigned counsel for Defendants has submitted  
4 a declaration in support of this stipulation.

5 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the  
6 parties, subject to the Court's approval, that:

7 (1) Summary judgment briefing on the section 2808 claims is stayed;

8 (2) The parties will submit a proposed schedule for briefing the section 2808 claims  
9 within 10 days of a decision by the Acting Secretary of Defense;

10 (3) The current briefing deadlines for the Treasury Forfeiture Fund claims are extended  
11 by an additional seven days;

12 (4) The motion hearing set for August 29, 2019 at 2:00 p.m. remains as scheduled to  
13 address the Treasury Forfeiture Fund claims, unless the Court orders otherwise.

14  
15 A proposed order is attached.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 DATE: July 8, 2019

Respectfully submitted,

2 JAMES M. BURNHAM  
3 Deputy Assistant Attorney General

4 JOHN R. GRIFFITHS  
5 Director, Federal Programs Branch

6 ANTHONY J. COPPOLINO  
7 Deputy Director, Federal Programs Branch

8 /s/ Andrew I. Warden  
9 ANDREW I. WARDEN (IN #23840-49)  
10 Senior Trial Counsel  
11 U.S. Department of Justice  
12 Civil Division, Federal Programs Branch  
13 1100 L Street, NW  
14 Washington, D.C. 20530  
15 Tel.: (202) 616-5084  
16 Fax: (202) 616-8470  
17 *Attorneys for Defendants*

18 XAVIER BECERRA  
19 Attorney General of California  
20 ROBERT W. BYRNE  
21 SALLY MAGNANI  
22 MICHAEL L. NEWMAN  
23 Senior Assistant Attorneys General  
24 MICHAEL P. CAYABAN  
25 CHRISTINE CHUANG  
26 EDWARD H. OCHOA  
27 Supervising Deputy Attorneys General  
28 HEATHER C. LESLIE  
JANELLE M. SMITH  
JAMES F. ZAHRADKA II

/s/ Lee I. Sherman  
LEE I. SHERMAN  
Deputy Attorneys General  
300 S. Spring St., Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 269-6404  
Fax: (213) 897-7605  
E-mail: Lee.Sherman@doj.ca.gov  
*Attorneys for Plaintiff State of California  
and on Behalf of the Other Plaintiff States  
4:19-cv-872-HSG*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION**

I declare, under penalty of perjury, that the factual assertions contained in this stipulation are true and correct to the best of my knowledge.

/s/ Andrew I. Warden  
ANDREW I. WARDEN (IN Bar No. 23840-49)