

1 JAMES M. BURNHAM
Deputy Assistant Attorney General
2 ALEXANDER K. HAAS
Director, Federal Programs Branch
3 ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch
4 ANDREW I. WARDEN (IN #23840-49)
5 Senior Trial Counsel
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
Attorneys for Defendants

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

16 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, *et al.*,

20 Defendants.

No. 4:19-cv-00872-HSG

No. 4:19-cv-00892-HSG

21 **NOTICE REGARDING USE OF**
22 **THE TREASURY FORFEITURE**
23 **FUND**

24 SIERRA CLUB, *et al.*,

25 Plaintiffs,

26 v.

27 DONALD J. TRUMP, *et al.*,

28 Defendants.

1 Defendants hereby update the Court and parties in the above-captioned cases about the
2 use of the Treasury Forfeiture Fund (TFF) to support the U.S. Customs and Border Protection’s
3 (CBP) border security law enforcement mission.

4 As explained in Defendants’ prior submissions, on February 15, 2019, the U.S.
5 Department of the Treasury determined that the TFF could allocate up to \$601 million to CBP
6 for its border security law enforcement mission. *See* First Declaration of John M. Farley ¶ 24
7 (April 12, 2019). This sum of money was separated into two tranches. *Id.* ¶ 25. The first
8 tranche of \$242 million was made available to CBP for obligation on March 14, 2019 through an
9 interagency agreement. *See* Second Declaration of John M. Farley ¶ 4 (October 2, 2019)
10 (attached as Exhibit 1). The second tranche of \$359 million was made available to CBP for
11 obligation on July 16, 2019 through a modification to the interagency agreement. *Id.*

12 Defendants’ prior submissions also explained that, in practice, once the statutory
13 requirements are met and Congressional notifications are made, Treasury and the agencies enter
14 into interagency agreements, after which the agencies receiving TFF funds may begin incurring
15 expenses and submitting invoices to the TFF for reimbursement, which the TFF would then
16 reimburse. *See* First Farley Decl. ¶¶ 14, 25; Second Farley Decl. ¶ 5. As relevant here, CBP has
17 submitted one claim to TFF for reimbursement of border security expenses. *See* Declaration of
18 Ruynard Singleton ¶ 4 (Oct. 4, 2019) (attached as Exhibit 2). On September 4, 2019, CBP
19 submitted a request for reimbursement of \$6631.74 for CBP program management and support
20 costs associated with planning potential TFF funded projects. *Id.*; *see also* Third Declaration of
21 Loren Flossman ¶ 4 (July 11, 2019) (ECF No. 196 in 19-cv-872; ECF No. 195 in 19-cv-892)
22 (stating CBP intended to use some TFF money for program support). CBP received
23 reimbursement for these funds on September 12, 2019. *Id.*

24 Recently, the manner in which TFF strategic support funds are made available to CBP for
25 its border security expenses has changed. *See* Second Farley Decl. ¶ 5. Instead of having CBP
26 submit invoices to Treasury for reimbursement of its expenditures, a financial transfer of
27 approximately \$601 million was made directly to CBP. *Id.* Specifically, on September 27, 2019,
28 pursuant to a financial transfer, a CBP account received from the Department of the Treasury

1 \$600,993,368.26 to support CBP's law enforcement border security mission. *See* Singleton
2 Decl. ¶ 4. This money now resides in a CBP account rather than a Treasury account, thereby
3 allowing CBP to spend funds directly without submitting reimbursement requests to Treasury.
4 *See* Second Farley Decl. ¶ 5.

5 CBP plans to utilize TFF money for planning and construction exclusively within Texas,
6 in the Rio Grande Valley and/or Laredo Sectors. *See* Singleton Decl. ¶ 5. At this time no final
7 decisions have been made as to the final barrier location for any project potentially funded by the
8 TFF in the Rio Grande Valley and/or Laredo Sectors, and no TFF funds have been obligated to
9 specific border barrier projects in these Sectors. *Id.*

10
11
12
13 DATE: October 3, 2019

Respectfully submitted,

14 JAMES M. BURNHAM
15 Deputy Assistant Attorney General

16 ALEXANDER K. HAAS
17 Director, Federal Programs Branch

18 ANTHONY J. COPPOLINO
19 Deputy Director, Federal Programs Branch

20 */s/ Andrew I. Warden*

ANDREW I. WARDEN (IN #23840-49)

Senior Trial Counsel

U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, NW

Washington, D.C. 20530

Tel.: (202) 616-5084

Fax: (202) 616-8470

Attorneys for Defendants