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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STATE OF CALIFORNIA et al.;

Plaintiffs,

v.

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

Defendants.

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

**[PROPOSED] ORDER GRANTING
PLAINTIFF STATES OF CALIFORNIA,
COLORADO, HAWAII, MARYLAND,
NEW MEXICO, NEW YORK, OREGON,
VIRGINIA, AND WISCONSIN'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING SECTION
2808 AND NEPA**

Date: November 20, 2019
Time: 10:00 am
Judge: Honorable Haywood S. Gilliam,
Jr.
Trial Date: None Set
Action Filed: February 18, 2019

1 On October 11, 2019, Plaintiff States of California, Colorado, Hawaii, Maryland, New
 2 Mexico, New York, Oregon, Virginia, and Wisconsin (the States) filed a Motion for Partial
 3 Summary Judgment (Motion) regarding Defendants' use of 10 U.S.C. § 2808 for the construction
 4 of barrier projects on the border between the United States and Mexico and Defendants' violation
 5 of the National Environmental Policy Act with respect to barrier projects funded under 10 U.S.C.
 6 § 2808 and 10 U.S.C. § 284. On October 25, 2019, the Defendants filed a cross-motion for
 7 summary judgment (Defendants' Cross-Motion). The Court has considered the States' Motion
 8 and documents filed therewith, Defendants' Cross-Motion and documents filed therewith, and all
 9 of the papers on file in this action, and hereby GRANTS the States' Motion, DENIES
 10 Defendants' Cross-Motion, and enters judgment in the States' favor as to each of their claims for
 11 relief on the grounds that the undisputed evidence shows that:

- 12 1. On September 3, 2019, the Secretary of Defense authorized the Department of the
 13 Army to spend \$3.6 billion originally intended for military construction projects on 11
 14 border barrier projects under 10 U.S.C. § 2808. The States' Motion addresses 17
 15 defunded projects within the States as listed below:

16 State	Location Title	Line Item Title	Amount
17 California	Channel Islands ANGS	Construct C-130J Flight Simulator Facility	\$8,000,000
18 Colorado	Peterson AFB	Space Control Facility	\$8,000,000
19 Hawaii	Joint Base Pearl Harbor-Hickam	Consolidated Training Facility	\$5,500,000
	Kaneohe Bay	Security Improvements Mokapu Gate	\$26,492,000
20 Maryland	Fort Meade	Cantonment Area Roads	\$16,500,000
	Joint Base Andrews	PAR Relocate Haz Cargo Pad and EOD Range	\$37,000,000
		Child Development Center	\$13,000,000
22 New Mexico	Holloman AFB	MQ-9 FTU Ops Facility	\$85,000,000
	White Sands	Information Systems Facility	\$40,000,000
23 New York	U.S. Military Academy	Engineering Center	\$95,000,000
		Parking Structure	\$65,000,000
24 Oregon	Klamath Falls IAP	Construct Indoor Range	\$8,000,000
25 Virginia	Joint Base Langley- Eustis	Construct Cyber Ops Facility	\$10,000,000
	Norfolk	Replace Hazardous Materials Warehouse	\$18,500,000
	Portsmouth	Replace Hazardous Materials Warehouse	\$22,500,000
		Ships Maintenance Facility	\$26,120,000
27 Wisconsin	Truax Field	Construct Small Arms Range	\$8,000,000

1 The States' motion also concerns the construction of seven border barrier projects in
2 California and New Mexico. These include: San Diego Project 4, San Diego Project 11,
3 El Centro Project 5, El Centro Project 9, Yuma Project 6, El Paso Project 2, and El Paso
4 Project 8. Defendants' actions with respect to these 17 defunded projects and 7 border
5 barrier projects are referred to herein as "Defendants' 2808 Actions."

6 2. On March 25 and May 9, 2019, citing 10 U.S.C. section 284, DOD committed to the
7 construction of several border barrier projects, including El Paso Project 1 in New
8 Mexico and El Centro Project 1 in California. These border barrier projects are referred
9 to herein as "Defendants' 284 Actions."

10 3. Defendants' 2808 Actions are ultra vires and violate the Administrative Procedure Act
11 because they exceed congressional authority.

12 4. Defendants' 2808 Actions violate the Administrative Procedure Act because they are
13 arbitrary and capricious.

14 5. Defendants' 2808 Actions violate the United States Constitution's separation of powers
15 principles.

16 6. Defendants' 2808 Actions violate the United States Constitution's Appropriations
17 Clause.

18 7. Defendants' 2808 Actions violate the United States Constitution's Presentment Clause.

19 8. Defendants' 2808 Actions and Defendants 284 Actions violate the National
20 Environmental Policy Act.

21 Having entered judgment in favor of the States and against Defendants on the above, the
22 Court hereby ORDERS the following relief:

23 **DECLARATION**

24 The Court finds declaratory relief under 28 U.S.C. § 2201 appropriate in this case. It is
25 hereby DECLARED that Defendants' 2808 Actions are unlawful and unconstitutional because
26 they: (i) exceed the congressional authority conferred to the Executive Branch in violation of the
27 Administrative Procedure Act and are ultra vires; (ii) violate the Administrative Procedure Act
28 because they are arbitrary and capricious; (iii) violate the United States Constitution's separation

1 of powers principles; (iv) violate the United States Constitution's Appropriations Clause; and (v)
2 violate the United States Constitution's Presentment Clause. The Court further declares that
3 Defendants' 2808 and 284 Actions violate the National Environmental Policy Act.

4 **PERMANENT INJUNCTION**

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

- 11 1. Diverting any funding or resources from the 17 military construction projects in the
12 States identified in the chart above under 10 U.S.C. § 2808 toward the construction of
13 any barrier or border-related infrastructure and/or project along the United States-
14 Mexico border.
- 15 2. Obligating any funding, including but not limited to, the awarding of and/or entering
16 into any contracts, toward the construction of any border barrier or border-related
17 infrastructure and/or project along in California or New Mexico through the use of any
18 funds diverted under 10 U.S.C. § 2808.
- 19 3. Taking any further action related to the construction of any barrier along the United
20 States-Mexico border in California or New Mexico under 10 U.S.C. § 2808 and 10
21 U.S.C. § 284 unless and until Defendants comply with the National Environmental
22 Policy Act, 42 U.S.C. sections 4321-4370m-12.

23
24 **IT IS SO ORDERED.**

25 Dated: _____

26 _____
27 THE HONORABLE HAYWOOD S. GILLIAM, JR.
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