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

STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; ATTORNEY GENERAL DANA NESSEL ON BEHALF OF THE PEOPLE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; COMMONWEALTH OF VIRGINIA; and STATE OF WISCONSIN;

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States of America;
UNITED STATES OF AMERICA; U.S. DEPARTMENT OF DEFENSE; PATRICK M. SHANAHAN, in his official capacity as Acting Secretary of Defense; **MARK T. ESPER**, in his official capacity as Secretary of

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

[PROPOSED] ORDER GRANTING PLAINTIFF STATES' MOTION FOR PRELIMINARY INJUNCTION

Date: May 9, 2019
Time: 2:00 pm
Dept: 2
Judge: Honorable Haywood S. Gilliam, Jr.
Trial Date: None Set
Action Filed: February 18, 2019

1 the Army; **RICHARD V. SPENCER**, in his
2 official capacity as Secretary of the Navy;
3 **HEATHER WILSON**, in her official capacity
4 as Secretary of the Air Force; **U.S.**
5 **DEPARTMENT OF THE TREASURY;**
6 **STEVEN T. MNUCHIN**, in his official
7 capacity as Secretary of the Treasury; **U.S.**
8 **DEPARTMENT OF THE INTERIOR;**
9 **DAVID BERNHARDT**, in his official capacity
10 as Acting Secretary of the Interior; **U.S.**
11 **DEPARTMENT OF HOMELAND**
12 **SECURITY; KIRSTJEN M. NIELSEN**, in
13 her official capacity as Secretary of Homeland
14 Security;

Defendants.

1 On April 4, 2019, Plaintiffs States of California, Colorado, Connecticut, Delaware, Hawaii,
2 Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon,
3 Rhode Island, Vermont, Wisconsin, the Commonwealths of Massachusetts and Virginia, and
4 Attorney General Dana Nessel on behalf of the People of Michigan (collectively, Plaintiff States)
5 filed a Motion for Preliminary Injunction (Motion) and a hearing on the Motion was held on
6 Thursday, May 9, 2019 at 2:00 p.m.

7 The Court has considered the Motion and documents filed therewith, all of the papers on
8 file in this action, and the evidence and arguments presented at the hearing, and hereby GRANTS
9 Plaintiff States' Motion. The Court finds that each of the necessary elements for issuing a
10 preliminary injunction are met. In particular, the Court finds that Plaintiff States are likely to
11 prevail on the merits of their claims; absent a preliminary injunction, Plaintiff States would be
12 likely to suffer irreparable injuries; the balance of the equities favor Plaintiff States; and the
13 requested relief is in the public interest.

14 **PRELIMINARY INJUNCTION**

15 Now, therefore, it is hereby ORDERED that:

16 Defendants Patrick M. Shanahan, in his official capacity as Acting Secretary of Defense,
17 Mark T. Esper, in his official capacity as Secretary of the Army, Richard V. Spencer, in his
18 official capacity as Secretary of the Navy, Heather Wilson, in her official capacity as Secretary of
19 the Air Force, and the United States of America and the Department of Defense, and their
20 officers, agents, servants, employees, and attorneys, and any other persons who are in active
21 concert or participation with them, ARE HEREBY RESTRAINED AND ENJOINED from
22 committing, or performing directly and indirectly, any and all of the following acts during the
23 pendency of this action: Diverting any funding or resources pursuant to section 8005 of the Fiscal
24 Year 2019 Department of Defense Appropriations Act, P.L. No. 115-245 or 10 U.S.C. section
25 284 toward the construction of any barrier or border-related infrastructure and/or project along the
26 southern border of New Mexico. Further, these Defendants and Defendants Kirstjen M. Nielsen,
27 in her official capacity as Secretary of Homeland Security, and the Department of Homeland
28 Security, and their officers, agents, servants, employees, and attorneys, and any other persons

1 who are in active concert or participation with them, ARE HEREBY RESTRAINED AND
2 ENJOINED during the pendency of this action from obligating any funding, including but not
3 limited to, the awarding of and/or entering into any contracts, toward the construction of any
4 barrier or border-related infrastructure and/or project along the southern border of New Mexico
5 through the use of any funds diverted pursuant to section 8005 of the Fiscal Year 2019
6 Department of Defense Appropriations Act, P.L. No. 115-245 or 10 U.S.C. section 284.

7 Defendants Steven T. Mnuchin, in his official capacity as Secretary of the Treasury, and the
8 United States of America and the Department of the Treasury, and their officers, agents, servants,
9 employees, and attorneys, and any other persons who are in active concert or participation with
10 them, ARE HEREBY RESTRAINED AND ENJOINED from committing, or performing directly
11 and indirectly, any and all of the following acts during the pendency of this action: Diverting any
12 funding pursuant to 31 U.S.C. section 9705 toward the construction of any barrier or border-
13 related infrastructure and/or project along the southern border of the United States of America.
14 Further, these Defendants and Defendants Kirstjen M. Nielsen, in her official capacity as
15 Secretary of Homeland Security, and the Department of Homeland Security, and their officers,
16 agents, servants, employees, and attorneys, and any other persons who are in active concert or
17 participation with them, ARE HEREBY RESTRAINED AND ENJOINED during the pendency
18 of this action from obligating any funding, including but not limited to, the awarding of and/or
19 entering into any contracts, toward the construction of any barrier or border-related infrastructure
20 and/or project along the southern border of the United States of America through the use of any
21 funds diverted pursuant to 31 U.S.C. section 9705.

22 Defendants Kirstjen M. Nielsen, in her official capacity as Secretary of Homeland Security,
23 Patrick M. Shanahan, in his official capacity as Acting Secretary of Defense, Mark T. Esper, in
24 his official capacity as Secretary of the Army, Richard V. Spencer, in his official capacity as
25 Secretary of the Navy, Heather Wilson, in her official capacity as Secretary of the Air Force, and
26 the United States of America, the Department of Homeland Security, and the Department of the
27 Defense, and their officers, agents, servants, employees, and attorneys, and any other persons who
28 are in active concert or participation with them, ARE HEREBY RESTRAINED AND

1 ENJOINED from committing, or performing directly and indirectly, any and all of the following
2 acts during the pendency of this action: Taking any further action related to the construction of
3 any barrier or border-related infrastructure and/or project along the southern border of New
4 Mexico unless and until Defendants comply with the National Environmental Policy Act, 42
5 U.S.C. sections 4321-4370m-12.

6 **IT IS SO ORDERED.**

7 Dated: _____

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10 The Honorable Haywood S. Gilliam, Jr.
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