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12
 13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15 OAKLAND DIVISION
 16

17 **STATE OF CALIFORNIA; STATE OF**
 18 **COLORADO; STATE OF**
 19 **CONNECTICUT; STATE OF**
 20 **DELAWARE; STATE OF HAWAII;**
 21 **STATE OF ILLINOIS; STATE OF**
 22 **MAINE; STATE OF MARYLAND;**
 23 **COMMONWEALTH OF**
 24 **MASSACHUSETTS; ATTORNEY**
 25 **GENERAL DANA NESSEL ON BEHALF**
 26 **OF THE PEOPLE OF MICHIGAN;**
 27 **STATE OF MINNESOTA; STATE OF**
 28 **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.

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

**DECLARATION OF LEE I. SHERMAN
 IN SUPPORT OF PLAINTIFF STATES'
 MOTION TO SHORTEN TIME TO
 HEAR PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

1 **DONALD J. TRUMP**, in his official capacity
2 as President of the United States of America;
3 **UNITED STATES OF AMERICA; U.S.**
4 **DEPARTMENT OF DEFENSE; PATRICK**
5 **M. SHANAHAN**, in his official capacity as
6 Acting Secretary of Defense; **MARK T.**
7 **ESPER**, in his official capacity as Secretary of
8 the Army; **RICHARD V. SPENCER**, in his
9 official capacity as Secretary of the Navy;
10 **HEATHER WILSON**, in her official capacity
11 as Secretary of the Air Force; **U.S.**
12 **DEPARTMENT OF THE TREASURY;**
13 **STEVEN T. MNUCHIN**, in his official
14 capacity as Secretary of the Treasury; **U.S.**
15 **DEPARTMENT OF THE INTERIOR;**
16 **DAVID BERNHARDT**, in his official capacity
17 as Acting Secretary of the Interior; **U.S.**
18 **DEPARTMENT OF HOMELAND**
19 **SECURITY; KIRSTJEN M. NIELSEN**, in
20 her official capacity as Secretary of Homeland
21 Security;

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Defendants.

1 I, Lee I. Sherman, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below.

4 2. I am a Deputy Attorney General with the California Department of Justice, and am
5 counsel of record for Plaintiff the State of California in this matter.

6 3. On April 4, 2019, I filed an Administrative Motion to Exceed Applicable Page
7 Limits for Plaintiffs' Motion for Preliminary Injunction. Attached to that Administrative Motion
8 is a Motion for Preliminary Injunction (PI Motion) filed by Plaintiff States seeking to prevent
9 Defendants from diverting federal funds and resources toward the construction of a border wall
10 for the pendency of this litigation. Consistent with Local Rule 7-2, Plaintiff States noticed the PI
11 Motion for a hearing to be held on May 9, 2019, which is 35 days after April 4.

12 4. In the PI Motion, Plaintiff States assert a likelihood of success on numerous
13 statutory and constitutional claims to contest Defendants' unlawful redirection of funds and
14 resources appropriated for other purposes towards construction of a border wall. Plaintiff States
15 contend that Defendants have violated separation of powers principles, including those ingrained
16 in the Presentment and Appropriations Clauses, acted ultra vires and in excess of statutory
17 authority in violation of the Administrative Procedure Act (APA), and acted in an arbitrary and
18 capricious manner in further violation of the APA. Separately, Plaintiff States assert a likelihood
19 of success on their claim that Defendants' plan to proceed with border wall construction without
20 required environmental review violates the National Environmental Policy Act.

21 5. In their PI Motion, Plaintiff States also contend that they will experience
22 irreparable harm in the absence of preliminary relief by this Court for the pendency of this
23 litigation. Plaintiff States attach to their PI Motion two appendices compiling declarations
24 describing the harm that is caused by Defendants' actions. The first appendix, entitled Appendix
25 of Declarations re: TFF Harms in Support of Plaintiffs' Motion for Preliminary Injunction,
26 contains twenty-five declarations detailing the harm that would be caused to law enforcement
27 agencies in Plaintiff States if funds from the Treasury Forfeiture Fund (TFF) are diverted toward
28 construction of a border wall. The second appendix, entitled Appendix of Declarations re:

1 Environmental Harms in Support of Plaintiffs’ Motion for Preliminary Injunction, contains seven
2 declarations detailing the environmental harm that would be caused if Department of Defense
3 (DOD) funds are diverted toward construction of a border barrier on the border between New
4 Mexico and Mexico. On information and belief, including publicly available information that is
5 discussed in Plaintiff States’ PI Motion and accompanying Request for Judicial Notice,
6 Defendants are soon poised to begin obligating funds from TFF and DOD for border wall
7 construction, and proceeding with construction on the border between New Mexico and Mexico.

8 6. In their PI Motion, Plaintiff States assert that the balance of equities tip in their
9 favor and that an injunction is in the public interest.

10 7. Defendants have yet to appear in this case, and have yet to state their position on
11 the issues contained in Plaintiffs’ PI Motion.

12 8. On April 8, 2019, the Court granted Plaintiff States’ Administrative Motion to
13 Exceed Applicable Page Limits for Plaintiffs’ Motion for Preliminary Injunction, and ordered
14 Plaintiff States to “immediately” file their PI Motion. Accordingly, I caused Plaintiff States’ PI
15 Motion to be filed that same day.

16 9. On April 8, 2019, I reviewed Judge Gilliam’s calendar and the next available law
17 and motion date on the Court’s calendar is August 1, 2019. For the reasons discussed in this
18 declaration, in the Motion to Shorten Time, and the PI Motion and accompanying documents,
19 Plaintiff States will experience substantial harm and prejudice due to the imminent actions of
20 Defendants in diverting funds from the TFF and proceeding with construction in New Mexico.
21 Thus, due to the imminent harm Plaintiff States face as a result of Defendants’ actions, Plaintiff
22 States will be substantially prejudiced if a hearing is scheduled for later than May 9, 2019.
23 Plaintiff States have therefore noticed the PI Motion to be heard on May 9, 2019.

24 10. Defendants have not yet entered an appearance in this case. On April 8, 2019, I
25 contacted counsel who have appeared as counsel of record for Defendants in the *Alvarez, et al. v.*
26 *Trump, et al.*, No. 19-cv-404 (D.D.C.) and *Center for Biological Diversity et al. v. Trump et al.*,
27 No. 19-cv-408 (D.D.C.) matters, which address similar issues, to determine whether a stipulation
28 can be reached regarding a hearing date. I received a phone call from Andrew Warden, attorney

1 for the United States Department of Justice, who confirmed he will be one of the attorneys
2 representing Defendants in this matter. Mr. Warden told me that Defendants are formulating a
3 proposal for a hearing date and schedule, but was not able to provide that proposal in time for
4 Plaintiffs' filing of this motion to shorten time. Plaintiffs will continue to meet and confer with
5 Counsel for Defendants regarding a hearing date and briefing schedule with the aim of reaching a
6 stipulation without the Court's involvement.

7 11. There have been no time modifications in this case, and no schedule has been set
8 in this case.

9 I declare under penalty of perjury under the laws of the United States that the foregoing is
10 true and correct.

11 Executed on April 8, 2019, at Los Angeles, California.

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14 Lee I. Sherman
15 Deputy Attorney General
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