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FEDERAL
Trial
Court

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

17 **STATE OF CALIFORNIA; STATE OF**
COLORADO; STATE OF
18 **CONNECTICUT; STATE OF**
19 **DELAWARE; STATE OF HAWAII;**
STATE OF ILLINOIS; STATE OF
20 **MAINE; STATE OF MARYLAND;**
ATTORNEY GENERAL DANA NESSEL
ON BEHALF OF THE PEOPLE OF
21 **MICHIGAN; STATE OF MINNESOTA;**
STATE OF NEVADA; STATE OF NEW
22 **JERSEY; STATE OF NEW MEXICO;**
STATE OF NEW YORK; STATE OF
23 **OREGON; and COMMONWEALTH OF**
24 **VIRGINIA;**

25 Plaintiffs,

26 v.

27 **DONALD J. TRUMP** in his official capacity
as President of the United States of America;
28 **UNITED STATES OF AMERICA; U.S.**

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

These are
EXCERPTS
from

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

Defendants.

INTRODUCTION

1. The States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, the Commonwealth of Virginia, and Attorney General Dana Nessel on behalf of the People of Michigan (collectively, "Plaintiff States"), bring this action to protect their residents, natural resources, and economic interests from President Donald J. Trump's flagrant disregard of fundamental separation of powers principles engrained in the United States Constitution. Contrary to the will of Congress, the President has used the pretext of a manufactured "crisis" of unlawful immigration to declare a national emergency and redirect federal dollars appropriated for drug interdiction, military construction, and law enforcement initiatives toward building a wall on the United States-Mexico border. This includes the diversion of funding that each of the Plaintiff States receive. Defendants must be enjoined from carrying out President Trump's unconstitutional and unlawful scheme.

2. President Trump has veered the country toward a constitutional crisis of his own making. For years, President Trump has repeatedly stated his intention to build a wall across the United States-Mexico border. Congress has repeatedly rebuffed the President's insistence to fund a border wall, recently resulting in a record 35-day partial government shutdown over the border wall dispute.¹ After the government reopened, Congress approved, and the President signed into law, a \$1.375 billion appropriation for fencing along the southern border, but Congress made clear that funding could not be used to build President Trump's proposed border wall.

3. After an agreement was reached on the spending bill to prevent another government shutdown, on February 15, 2019, President Trump declared an intention to redirect federal funds toward the construction of a border wall. On the same day, the Administration announced an executive action ("Executive Action,") to make up to \$6.7 billion in additional funding available for construction of the border wall, including through the declaration of a

¹ References to "border wall" in this Complaint refer to any barrier or border-related infrastructure and/or project relating to the construction of a barrier or border-related infrastructure along the southern border that President Trump has called for and has not been approved by Congress.

1 national emergency under the National Emergencies Act (“Emergency Declaration,” combined
2 with the “Executive Action,” the “Executive Actions”).

3 4. Use of those additional federal funds for the construction of a border wall is
4 contrary to Congress’s intent in violation of the U.S. Constitution, including the Presentment
5 Clause and Appropriations Clause. Such use would divert counter-drug programming funds
6 directed to the states, and military construction funds to be spent in the states, for the non-
7 appropriated purpose of constructing a border wall. Even if the Administration could
8 constitutionally redirect funds toward the construction of the border wall, the Administration does
9 not satisfy the criteria in the statutes that it invokes to enable it to do so.

10 5. If the Administration were to use the funding sources identified in the Executive
11 Actions, Plaintiff States collectively stand to lose millions in federal funding that their national
12 guard units receive for domestic drug interdiction and counter-drug activities, and millions of
13 dollars received on an annual basis for law enforcement programs from the Treasury Forfeiture
14 Fund, harming the public safety of Plaintiff States. The redirection of funding from authorized
15 military construction projects located in Plaintiff States will cause damage to their economies.
16 Plaintiff States will face harm to their proprietary interests by the diversion of funding from
17 military construction projects for the States’ national guard units. And the construction of a wall
18 along California’s and New Mexico’s southern borders will cause irreparable environmental
19 damage to those States’ natural resources.

20 6. There is also no objective basis for President Trump’s Emergency Declaration. By
21 the President’s own admission, an emergency declaration is not necessary. The federal
22 government’s own data prove there is no national emergency at the southern border that warrants
23 construction of a wall. Customs and Border Protection (“CBP”) data show that unlawful entries
24 are near 45-year lows. The State Department recognizes there is a lack of credible evidence that
25 terrorists are using the southern border to enter the United States. Federal data confirm that
26 immigrants are less likely to commit crimes than are native-born Americans. CBP data
27 demonstrate that dangerous drugs are much more likely to be smuggled through, not between,
28

1 official ports of entry—rendering a border wall ineffectual at preventing their entry into this
2 country.

3 7. Notwithstanding the illegality of and wholesale lack of necessity for the
4 Emergency Declaration, the Trump Administration has expressed its intent to move quickly with
5 the construction of the border wall. A senior advisor to the White House reportedly said the
6 Administration will proceed with construction at a speed that will “shock” people. The thwarting
7 of congressional intent to fund a vanity project that not only will fail to safeguard national
8 security, but is positioned to cause significant harm to the public safety, public fisc, environment,
9 and well-being of Plaintiff States’ residents, cries out for judicial intervention.

10 8. For these reasons, and those discussed below, the Court should declare that the
11 Executive Actions directing the diversion of federal funds and other resources for border wall
12 construction are unlawful and unconstitutional, and enjoin Defendants from taking any action in
13 furtherance of President Trump’s Executive Actions.

14 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

15 9. This Court has jurisdiction because this action arises under the United States
16 Constitution and the laws of the United States. This Court also has jurisdiction under 28 U.S.C.
17 sections 1331 and 2201.

18 10. An actual, present, and justiciable controversy exists between the parties within the
19 meaning of 28 U.S.C. section 2201(a), and this Court has authority to grant declaratory and
20 injunctive relief under 28 U.S.C. sections 2201 and 2202.

21 11. Venue is proper in this judicial district under 28 U.S.C. section 1391(e) because
22 the California Attorney General and the State of California have offices at 455 Golden Gate
23 Avenue, San Francisco, California and at 1515 Clay Street, Oakland, California, and therefore
24 reside in this district, and no real property is involved in this action. This is a civil action in
25 which Defendants are agencies of the United States or officers of such an agency.

26 12. Assignment to the San Francisco Division of this District is proper pursuant to
27 Civil Local Rule 3-2(c)-(d) and 3-5(b) because Plaintiff State of California and Defendant United
28 States both maintain offices in the District in San Francisco.

* FEDERAL
QUESTIONS
JURISDICTION!!
(j)

Now
skipping
to the end...

1 C.F.R. § 1502.23.

2 280. Defendant DHS is in violation of NEPA and the APA because it failed to prepare
3 an EIS concerning border wall development projects that will have adverse effects on the
4 environment, including but not limited to direct, indirect and cumulative impacts on plant and
5 animal species that are listed as endangered or threatened under the Endangered Species Act
6 and/or California Endangered Species Act.

7 281. The imminency of this action is shown by the Trump Administration's expression
8 of its intent to move quickly with the construction of the border wall, with a senior advisor to the
9 White House reportedly saying that the Administration will proceed with construction at a speed
10 that will "shock" people.¹³⁷ In addition, during his speech announcing the Emergency
11 Declaration, President Trump spoke of his desire to build the wall "much faster" that he could
12 otherwise.¹³⁸

13 282. The States of California and New Mexico have concrete and particularized
14 interests in the protection of their own proprietary interests near the border as well as the
15 protection of natural, historical, cultural, economic, and recreational resources within their
16 jurisdictional boundaries. Defendants' failure to comply with NEPA and the APA injures and
17 denies California's and New Mexico's procedural rights necessary to protect these interests.

18 **PRAYER FOR RELIEF**

This explains what the plaintiffs want.

19 WHEREFORE, Plaintiff States respectfully request that this Court enter judgment in their
20 favor, and grant the following relief:

21 1. Issue a judicial declaration that the Executive Actions' diversion of federal funds
22 toward construction of a border wall is unconstitutional and/or unlawful because it: (a) violates
23 the separation of powers doctrine; (b) violates the Appropriations Clause; and (c) exceeds
24 congressional authority conferred to the Executive Branch and is ultra vires;

25 2. The States of California and New Mexico seek a judicial declaration that
26 Defendants violated NEPA and the APA and further seek an order enjoining DHS, requiring it to

27 ¹³⁷ Rachael Bade et al., 'A Recipe for Disaster'? Trump's Border Emergency Drags the
28 GOP into a Risky Fight Ahead of 2020, Wash. Post (Feb. 15, 2019), <https://tinyurl.com/y413lu99>.

¹³⁸ White House, President Trump's Feb. 15, 2019, Remarks, *supra* note 50.

1 comply with NEPA and the APA—including preparing an EIS—before taking any further action
2 pursuant to the Executive Actions;

3 3. Permanently enjoin Defendants from constructing a border wall without an
4 appropriation by Congress for that purpose;

5 4. Permanently enjoin Defendants from diverting federal funding toward construction
6 of a border wall; and

7 5. Grant such other relief as the Court may deem just and proper.
8

9 Dated: February 18, 2019

Respectfully submitted,

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