

From: Clark, Charity <Charity.Clark@vermont.gov>
Sent: Friday, July 19, 2019 4:05 PM
To: Meyn, Colin <cmeyn@vtdigger.org>
Cc: Galloway, Anne <agalloway@vtdigger.org>
Subject: Re: Public Records Act request 4/17/19 - cost estimate

Hi, Colin,

The responsive documents from the Civil Rights Unit were compiled in one PDF. I have attached the PDF. It's somewhat large, so let me know if you have any trouble opening it. There is no charge for this.

One down, two to go!

Charity

From: Clark, Charity <Charity.Clark@vermont.gov>
Sent: Friday, July 19, 2019 3:25:36 PM
To: Meyn, Colin <cmeyn@vtdigger.org>
Cc: Galloway, Anne <agalloway@vtdigger.org>
Subject: Re: Public Records Act request 4/17/19 - cost estimate

Hi, Colin,

Unfortunately, the Environmental Division already copied nearly all of the responsive documents a week or two ago. Since the cost has already been incurred, we can't go back now. We can, however, put these on a thumb drive for you in addition to the paper copies, if that appeals.

The Consumer Unit will put these on a thumb drive for you. The cost of the thumb drive is no more than \$10. Getting the documents saved to the thumb drive would likely be within 30 minutes, but no more than an hour.

As to Civil Rights, I will check with them as to whether a thumb drive is possible.

Charity

From: Colin Meyn <cmeyn@vtdigger.org>
Sent: Thursday, July 18, 2019 1:33:13 PM
To: Clark, Charity <Charity.Clark@vermont.gov>
Cc: Galloway, Anne <agalloway@vtdigger.org>
Subject: Re: Public Records Act request 4/17/19 - cost estimate

Hi Charity,

Thanks as always for your help on this. Because we were talking about pre-existing binders at the beginning of this conversation, it did not occur to me that you would have comprehensive digital files of these records.

-C

On Thu, Jul 18, 2019 at 1:03 PM Clark, Charity <Charity.Clark@vermont.gov> wrote:
I believe we can do this for all three! My understanding was that you wanted these in hard copy format. Let me look into the cost of putting these on a thumb drive instead and get back to you.

Charity

Sent from my iPhone

On Jul 18, 2019, at 12:41 PM, Colin Meyn <cmeyn@vtdigger.org> wrote:

Hi Charity,

I would happily take all of these docs (consumer, civil rights, environment) on a thumb drive to reduce the cost. Sounds like it would also save time for folks over there. Is that possible -- or is this offer only for consumer?

-C

STATE OF VERMONT
WASHINGTON COUNTY, SS.

IN THE MATTER OF:)
)
State of Vermont) FEPA File No. CW11-10010
) EEOC File No.: 16K-2011-00012C
)
v.)
)
Bromley Mountain Ski Resort, Inc.)

ASSURANCE OF DISCONTINUANCE

WHEREAS, Bromley Mountain Ski Resort, Inc. ("BMSR") engaged in business and employs more than one person within the State of Vermont; and

WHEREAS, Lisa Stickney filed a Charge of Employment Discrimination (Charge) based on disability against BMSR; and

WHEREAS, William H. Sorrell, Attorney General of the State of Vermont, found reasonable grounds to believe that BMSR violated Vermont's Fair Employment Practices Act (21 V.S.A. § 495 et seq.) by discriminating against an employee on the basis of disability; and

WHEREAS BMSR has not admitted any violation of Vermont's Fair Employment Practices Act (21 V.S.A. § 495 et seq.); and

WHEREAS, the Attorney General is willing to accept an Assurance of Discontinuance in lieu of proceeding under 21 V.S.A. §495 and 9 V.S.A. §2453;

WHEREFORE, the Attorney General of the State of Vermont, and BMSR enter into this Assurance of Discontinuance pursuant to 21 V.S.A. § 495b and 9 V.S.A. § 2459, and agree as follows:

Section I. General Provisions

1. BMSR agrees that it shall conduct all matters concerning employment in a manner that does not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or disability, in violation of Vermont's Fair Employment Practices Act.

2. BMSR agrees that there shall be no discrimination or retaliation of any kind against any person because of the filing of this allegation, giving of testimony or assistance, or participation in any manner in any investigation or proceeding with the Attorney General's Civil Rights Unit.

3. This Assurance of Discontinuance does not constitute an admission by BMSR of any violation of the Vermont Fair Employment Practices, as amended.

4. Nothing in this Assurance of Discontinuance shall be construed to limit Respondent's ability or right to assert any legal, factual, or equitable defenses in any pending or future proceeding of any kind, except with respect to enforcement of this agreement by the Attorney General.

5. This Assurance of Discontinuance shall become effective upon signing by all parties and shall be binding upon BMSR, its successors and assigns, and upon its employees and those individuals in active concert or participation with it. The Civil Rights Unit shall determine whether BMSR has complied with the terms of Section II set forth below.

Section II. Party Relief

6. BMSR agrees to pay to the State of Vermont, Office of Attorney General, Civil Rights Unit, investigative and administrative costs of \$ 700.00. This sum shall be paid no later than 14 days after the date of execution of this agreement.

7. BMSR agrees to provide comprehensive training to all its supervisory staff pertaining to its responsibilities toward employees with disabilities. The training shall be conducted by a trainer whose qualifications, syllabus, and course materials have been approved no less than 30 days in advance by the Director of the Civil Rights Uni. The training shall be completed within ninety (90) days of the signing of this agreement

Dated at Montpelier, Vermont, this 5th day of Sept 2012.

STATE OF VERMONT

William H. Sorrell
Attorney General

By: Julio Thompson
Julio Thompson
Assistant Attorney General
for Civil Rights

Dated at Peru, Vermont, this 24th day of Aug., 2012.

Bromley Mountain Ski Resort, Inc.

By: DW CARRNS

Its: GENERAL MANAGER

disability, and found reasonable grounds to conclude Three White Birches Development Corporation failed to reasonably accommodate him, specifically, by not adding a light to the host stand and a typed and large print reservation sheet to accommodate Mr. Smith's sight impairment.

4. Three White Birches Development Corporation admits that it failed to reasonably accommodate Michael Dean Smith by not adding a light to the host stand and a typed and large print reservation sheet to accommodate Mr. Smith's sight impairment..

5. The Attorney General alleges that the above conduct violated the Vermont Fair Employment Practices Act, 21 V.S.A. §§ 495 et seq.

6. The Attorney General is willing to accept an Assurance of Discontinuance in lieu of proceeding under 21 V.S.A. § 495 and 9 V.S.A. § 2453;

7. William H. Sorrell, Attorney General of the State of Vermont, and Three White Birches Development Corporation enter into this Assurance of Discontinuance pursuant to 21 V.S.A. § 495b and 9 V.S.A. § 2459, and agree as follows:

AGREEMENT

8. Three White Birches Development Corporation agrees to conduct all matters concerning employment in a manner that does not discriminate on the basis of disability in violation of Vermont's Fair Employment Practices Act, as amended.

9. Three White Birches Development Corporation agrees that there shall be no discrimination or retaliation of any kind against any person because of the filing of this or any other discrimination complaint, giving of testimony or assistance, or participation in any manner in any investigation or proceeding with the Public Protection Division.

Restitution

10. Upon execution of the Confidential General Release by Michael Dean Smith and pursuant to the timing for payment set forth in that Release, Three White Birches Development Corporation shall make payment to Michael Dean Smith in the amount of \$5,000.00 (five thousand dollars), for damages and emotional distress related to his employment with Three White Birches Development Corporation.

11. Within 10 days of payment to Michael Dean Smith, as set forth above in Paragraph 10, , Three White Birches Development Corporation shall make payment to The State of Vermont in the amount of \$1,125.00 (one thousand, one hundred, twenty-five dollars) for the costs of the Public Protection Division's investigation.

Legal Compliance Program

12. All officers and managers of Three White Birches Development Corporation shall be provided with a copy of this Assurance of Discontinuance and be required to read the AOD as part of the Legal Compliance Program.

OTHER TERMS

13. Three White Birches Development Corporation agrees that this Assurance of Discontinuance shall be binding on Three White Birches Development Corporation, and its successors and assigns.

14. The Attorney General hereby releases and discharges any and all claims arising under the Vermont Fair Employment Practices Act, 21 V.S.A. §§ 495, et seq., that it may have against Three White Birches Development Corporation for all conduct alleged by or that could have been alleged by Michael Dean Smith in the charges he filed with the

Attorney General's Office and Equal Employment Opportunity Commission, and particularly, that described in the Background section Paragraph 3 above.

15. The Attorney General agrees that, as set forth in the separate Confidential General Release signed by Michael Dean Smith, Michael Dean Smith generally releases and covenants not to sue Three White Birches Development Corporation and all of its related entities with respect to any and all matters which were alleged or could in any way have formed the basis for any allegations of discrimination filed with the Public Protection Division and the Equal Employment Opportunity Commission, subject to performance by Three White Birches Development Corporation promises and representations contained in the Restitution section.

16. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this Assurance of Discontinuance.

17. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Three White Birches Development Corporation not required by this AOD, and Three White Birches Development Corporation shall make no representation to the contrary.

STIPULATED PENALTIES

NOTICE


18. Three White Birches Development Corporation may be located at 18 Main Street in Stowe, Vermont.

19. Three White Birches Development shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against Three White Birches Development Corporation, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Three White Birches Development Corporation voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Burlington VT, this 21st day of JANUARY, 2016.



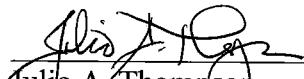
ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 27 day of January, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



Julio A. Thompson
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
MASSACHUSETTS,
WASHINGTON, CONNECTICUT,
DELAWARE, DISTRICT OF
COLUMBIA, HAWAII, ILLINOIS,
IOWA, NEW MEXICO, NORTH
CAROLINA, OREGON,
PENNSYLVANIA, RHODE ISLAND,
VERMONT, and VIRGINIA,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY; ELAINE
C. DUKE, in her official capacity; U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT;
and the UNITED STATES OF
AMERICA,

Defendants.

CIVIL ACTION NO. 17-cv-5228

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. The States of New York, Massachusetts, Washington, Connecticut, Delaware, District Of Columbia, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia (the “States”) bring this action to protect the States—including their residents, employers, regulatory systems, and educational institutions—against the illegal actions of the President and the federal government. On September 5, 2017, the U.S. Department of Homeland Security (“DHS”) issued a Memorandum (the “DHS Memorandum”) ending Deferred Action for Childhood Arrivals (“DACA”), a program that has protected from deportation approximately 800,000 young people who grew up in this country, most of whom have

known no home other than the United States. Pursuant to the DHS Memorandum, the federal government will only issue renewals for grantees whose terms expire before March 5, 2018, provided they apply for renewal by October 5, 2018. DHS will immediately cease accepting new applications under DACA.

2. Since 2012, DACA has allowed hundreds of thousands of young people to live, study, and work in the United States, and to become stable and even more productive members of their communities, without fear that they could be arrested and placed in deportation proceedings at any moment. Throughout the country, DACA grantees are employed by various companies and State and municipal agencies, which benefit from their skills and productivity. DACA grantees also contribute significantly to State and local revenues and tax bases. DACA recipients will also lose their eligibility for public and employer-based health insurance programs that reduce the States' health expenditures and promote public health. They also will lose their right to enroll in higher education institutions with in-state admissions preferences and tuition; thus, public universities will be deprived of a means by which they enrich the experience of all students and faculty through diversity and new perspectives.

3. More than 78 percent of DACA grantees are of Mexican origin, *See* Ex. 1 (USCIS, Consideration of Deferred Action for Childhood Arrivals Fiscal Years 2012-2017, June 8, 2017), which is more than double the percentage of people of Mexican origin that comprise of the overall foreign-born population (29 percent) of the United States. *See* Ex. 2 (U.S. Census Bureau, The Foreign-Born Population in the United States).

4. Ending DACA, whose participants are mostly of Mexican origin, is a culmination of President's Trump's oft-stated commitments—whether personally held, stated to appease some portion of his constituency, or some combination thereof—to punish and disparage people with

Mexican roots. The consequence of the President's animus-driven decision is that approximately 800,000 persons who have availed themselves of the program will ultimately lose its protections, and will be exposed to removal when their authorizations expire and they cannot seek renewal. The individuals who have relied on DACA are now more vulnerable to removal than before the program was initiated, as they turned over sensitive information to the federal government in their applications. Despite the federal government's repeated promises that it would not use such information to conduct enforcement measures, the DHS Memorandum does not explain how the government will keep that information secure, nor does it provide any assurances that immigration enforcement agents will not use such information to find and remove those who applied for DACA.

5. Rescinding DACA will cause harm to hundreds of thousands of the States' residents, injure State-run colleges and universities, upset the States' workplaces, damage the States' economies, hurt State-based companies, and disrupt the States' statutory and regulatory interests. The States respectfully request that this Court invalidate the portions of the DHS Memorandum challenged here. Further, the States ask that the Court enjoin the federal government from using data gathered for the DACA program in immigration enforcement.

JURISDICTION AND VENUE

6. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a).

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1). Defendants are United States agencies or officers sued in their official capacities. The State of New York is a resident of this judicial district, and a substantial part of the events or omissions giving rise to this Complaint occurred within the Eastern District of New York.

8. The States bring this action to redress harms to their proprietary interests and their interests as *parens patriae*.

PARTIES

PLAINTIFF STATE OF NEW YORK

9. The State of New York, represented by and through its Attorney General, Eric T. Schneiderman, is a sovereign state of the United States of America.

10. The Governor is the chief executive officer of the State of New York. The Governor is responsible for overseeing the operations of the State of New York and ensuring that its laws are faithfully executed.

11. New York is aggrieved by Defendants' actions and has standing to bring this action because of the injuries caused by Defendants' rescission of DACA, including irreparable injuries to its proprietary, sovereign, and quasi-sovereign interests.

12. The Attorney General is empowered to advance New York's strong and important public policy against unlawful discrimination. New York's Constitution guarantees all persons the right to equal treatment under the law and forbids discrimination based on race, color, creed or religion. N.Y. Const. art. I, § 11. And New York's statutes reiterate the State's strong interest in combatting discrimination and prejudice. N.Y. Exec. Law § 290.

13. According to the latest American Community Survey, New York is home to more than 4.4 million foreign-born residents, including an estimated 76,000 or more DACA-eligible residents. *See* Ex. 3 ¶ 7(c) (Decl. Essig, Wiehe and Hill). According to the United States Citizen and Immigration Services ("USCIS"), 41,970 initial DACA applications and 53,693 renewal applications from New York have been approved through the first quarter of 2017. New York was the third largest source of DACA applications and approvals in the United States.

14. New York State has an interest in protecting the economic health and welfare of its residents. More than 91% of DACA grantees are employed. *See* Ex. 5 ¶ 11 (Decl. Wong). They work for some of the largest companies in New York and for small and family-owned business that have a significant impact on local economies in New York. Ex. 5 ¶¶ 21, 36(b) (Decl. Wong). And they provide vital services to New Yorkers in important fields such as healthcare, education, law, and social services. *See* Ex. 6 ¶ 13 (Decl. C.A.); Ex. 11 ¶ 8 (Decl. TFA); Ex 52 MOIA ¶ 8 (Decl. MOIA).

15. Rescinding DACA will result in disruptions in each of these fields, as companies and non-profits will be forced to terminate qualified and trained employees who have lost employment authorization. One expert estimates that rescinding the DACA program will cost New York State \$38.6 billion dollars over the next ten years. *See* Ex. 4, Table 1 (Decl. Brannon).

16. New York State also has a proprietary interest in maintaining a qualified workforce. Both New York State and municipalities across New York have hired DACA grantees to work in government agencies and institutions because of their specialized skills and qualifications. *See* Ex. 52 ¶ 8 (Decl. MOIA); Ex. 11 ¶ 8 (Decl. TFA). These agencies and institutions have invested significant amounts of time and money to hire and train these DACA grantees. Accordingly, the agencies and institutions will be adversely affected by DACA's termination as they will lose the value of their investments as well as the services of qualified and trained employees. *See* Ex. 52 ¶ 8 (Decl. MOIA); Ex. 11 ¶ 8 (Decl. TFA).

17. Rescinding the DACA program will decrease New York State's tax revenues. Through work authorization, DACA grantees more effectively avoid underemployment than their undocumented peers and are able obtain higher wages. *See* Ex. 3 ¶ 4(b) (Decl. Essig, Wiehe and Hill). Higher incomes result in higher tax revenues in New York State. In addition, DACA grantees have increased purchasing power, and report buying cars and homes at significant rates. *See* Ex. 5 ¶ 16 (Decl. Wong). These types of expensive purchases contribute to New York State's tax revenues in the form of sales and property taxes. According to the Institute on Taxation and Economic Policy ("ITEP"), DACA-eligible individuals in New York currently contribute \$140 million annually in state and local taxes. However, the loss in employment that would result from rescinding DACA would decrease contributions from this population by between \$55 million and \$84 million annually. *See* Ex. 3 ¶ 7(c) (Decl. Essig, Wiehe and Hill).

18. The DACA program has encouraged thousands of grantees to pursue higher education they would not otherwise have sought. *See* Ex. 5 ¶¶ 18-21 (Decl. Wong). Rescinding DACA will adversely impact current DACA grantees enrolled in colleges and universities who will be unable to plan for the future, apply for and obtain internships, study abroad, simultaneously

work to pay costs and fees, and obtain certain financial aid and scholarships. *See* Ex. 12 ¶¶ 7-8 (Decl. Milliken). Students subject to these conditions may choose to withdraw from their college or university.

19. New York State's public colleges and universities also will be harmed if DACA is rescinded. Both the State University of New York ("SUNY") and the City University of New York ("CUNY") have encouraged DACA grantees to apply as part of their strong commitment to diversity, equity, and inclusion. *See* Ex. 12 ¶ 10 (Decl. Milliken, CUNY Chancellor), and Ex. 99 (Decl. Johnson, SUNY Chancellor). At CUNY, hundreds of DACA grantees have enrolled in the university, many with the benefit of full scholarships.

20. Rescinding DACA will cause many high-achieving students to drop out. As a result, New York's public universities will lose the diversity and enrichment this population brings to the school community. Moreover, the public universities will lose the resources they have spent on educating students who ultimately do not graduate. *See* Ex. 12 ¶ 8 (Decl. Milliken).

21. New York State has an interest in protecting the health of its residents. Rescinding DACA will harm that interest by increasing the number of uninsured adults in New York and forcing many to avoid medical care unless and until an emergency arises. With the benefit of work authorization, more than 50% of DACA grantees obtain employer-provided health insurance. *See* Ex. 5 ¶ 12 (Decl. Wong). Without DACA, these individuals will be unable to obtain health insurance from employers.

22. In addition, rescinding DACA may prevent access to Medicaid for current DACA grantees. New York State currently funds Medicaid coverage for low-income undocumented immigrants who have received deferred action, including DACA-eligible immigrants. *See* Ex. 77 (Office of Health Insurance Program, *Children's Health Insurance Program Reauthorization Act (CHIPRA); Expanded Coverage for Certain Qualified and PRUCOL Aliens*, May 7, 2013). In contrast, undocumented immigrants without deferred action in New York only have access to limited emergency Medicaid funds. Rescinding DACA will require New York to either alter its

regulatory scheme to fund Medicaid for formerly DACA-eligible immigrants or allow this population to go uninsured and rely on state healthcare funding only in the event of emergencies.

23. New York State's quasi-sovereign interest in protecting the welfare of its residents includes its interest in protecting family rights. Most DACA grantees live in households with American citizen family members. One expert survey estimates that 73% of DACA grantees live with a citizen sibling, spouse or child. *See* Ex. 5 ¶ 23 (Decl. Wong).

24. Rescinding deferred action will lead to increased uncertainty in these mixed-status families, and it will increase the likelihood of splitting DACA grantees from their citizen family members. Moreover, rescission of work authorization of DACA grantees will threaten the financial and housing security of some of these families, especially where the DACA grantee provides financial help to his or her family. *See* Ex. 5 ¶ 16 (Decl. Wong). New York's interest in protecting the rights of families would clearly be harmed by any decision to rescind deferred action or employment authorization for DACA grantees in New York, thereby subjecting their families to potential separation, financial instability, and housing insecurity.

25. Many DACA grantees also have families overseas, including parents and siblings. DACA permitted grantees to visit family members for the first time in years, through advance parole.

26. Rescinding DACA would prevent current grantees in New York from visiting their families abroad.

PLAINTIFF COMMONWEALTH OF MASSACHUSETTS

27. The Commonwealth of Massachusetts, represented by and through its Attorney General, is a sovereign state of the United States of America. Massachusetts is aggrieved and has standing to bring this action because of the injuries to the state caused by Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

28. Massachusetts is home to more than one million immigrants, including an estimated 19,000 or more DACA-eligible residents.^[1] *See* Ex. 3 ¶ 7 (Decl. Essig, Wiehe and Hill).

29. Massachusetts also is home to many of the world's leading universities and businesses. These institutions rely heavily on immigrants, who bring tremendous talent, knowledge, and expertise to academic communities and to the labor force. Many of these immigrants are DACA grantees.

30. As of March 31, 2017, USCIS had approved 7,934 initial DACA applications and 10,854 renewals for residents of Massachusetts. *See* Ex. 1 (USCIS Data); Ex. 5 ¶ 31 (Decl. Wong). The DACA program has allowed these individuals, many of whom are long-term residents of Massachusetts, to work legally, acquire driver's licenses, open bank accounts, access lines of credit, purchase homes and cars, receive in-state tuition at public universities, and obtain employer-based health insurance, among other benefits.

31. An estimated 7,252 Massachusetts DACA grantees are employed. *See* Ex. 5 ¶ 32 (Decl. Wong). An estimated 428 are business owners. *Id.* An estimated 3,562 are in school, and 2,547 are currently pursuing a bachelor's degree or higher. *Id.*, ¶ 33.

32. Rescinding DACA will harm the ability of Massachusetts colleges and universities, including public universities, to satisfy their educational missions and prepare Massachusetts residents for the workforce. *See* Ex. 61 ¶¶ 5-7 (Decl. UMass).

33. The nation's leading private universities—many of which are located in Massachusetts will suffer similar harms if DACA is rescinded. Harvard University, for example, has more than 50 DACA students currently enrolled. *See* Ex. 96 ¶ 6 (Decl. Masden, Harvard University). Tufts University has more than 25 DACA students. *See* Ex. 97 ¶ 8 (Decl. Jeka, Tufts University.) These students often have had to overcome significant challenges in order to gain acceptance and bring critical perspectives, insights, and experiences to their universities. *See* Ex.

^[1] *See* Migration Policy Institute, *Deferred Action for Childhood Arrivals (DACA) Data Tools*, available at <http://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles#overlay-context=events>.

97 ¶ 5 (Tufts Decl.); Ex. 96 ¶ 5 (Harvard Decl.). They make important and lasting contributions, including through their classroom participation, their extracurricular engagements, and their commitment to independent study and research. *See* Ex. 97 (Tufts Decl.), ¶ 5; Ex. 96 ¶¶ 7, 12 (Harvard Decl.). Employment authorization gives these students and their universities an assurance that they may put their talents to use in the United States job market after graduation—something that benefits Massachusetts and the nation as a whole. *See* Ex. 96 (Harvard Decl.), ¶ 12. DACA has allowed these students to step outside the shadow of their immigration status and to participate fully as members of academic and campus communities in ways that likely would not be possible otherwise. *See* Ex. 97 (Tufts Decl.), ¶ 7; Ex. 96 (Harvard Decl.), ¶ 12. Rescinding DACA will take important opportunities away from DACA students and reintroduce fear and uncertainty into their lives, with significant adverse effects on these students, their universities, and the broader community. *See* Ex. 97 (Tufts Decl.); Ex. 96 ¶ 13 (Harvard Decl.).

34. DACA grantees who are Massachusetts residents receive in-state tuition at public universities in the Commonwealth, and are eligible for a variety of scholarships. *See* Ex. 7 (Mass. Dept. of Higher Education Memorandum, *Residency Status for Tuition Classification Purposes – Deferred Action for Childhood Arrivals*, Nov. 21, 2012); Ex. 61 ¶ 5 (Decl. UMass). Without the DACA program, talented young immigrants will be less likely to apply to and attend state schools because they will not be able to afford tuition given the lack of available financial assistance and the likelihood that they will not be able to work legally upon graduation. Those who already are attending state schools may be forced to drop out. *See, e.g.*, ¶ 5 Ex. 61 (University of Massachusetts Decl.); Ex. 72 ¶ 5 (Decl. Teodoro); Ex. 69 ¶¶ 8, 10 (Decl. Mendes); Ex. 60 ¶¶ 6, 9 (Decl. Guevara Decl.).

35. DACA students in graduate programs at public universities in the Commonwealth, in particular, will be significantly affected because the loss of employment authorization needed for graduate assistantship (research or teaching) will likely mean the loss of tuition waivers and other benefits such as subsidized health, dental, and vision insurance for the students and their families. Ex. 61 ¶ 5 (UMass Decl.).

36. In addition, DACA students in both undergraduate or graduate programs, including research and teaching programs, that require students to have employment authorization to complete elements of the program—such as paid internships, residency training, and graduate assistantships—will be severely impacted if DACA is rescinded. Ex. 61 ¶ 6 (UMass Decl.).

37. Losing these talented young immigrants will deprive Massachusetts state schools of the special contributions and perspectives they bring to campus communities, both as students and alumni. Ex. 61 ¶ 7 (UMass Decl.). If current DACA students are forced to drop out, the University of Massachusetts also will lose the value of the financial assistance it has granted to and the other resources it has spent educating students who ultimately do not graduate. *Id.* Rescinding DACA also will impose additional tangible costs on our state schools, which already have begun to experience disruption as a result of uncertainty over the future of the program and are preparing for the likelihood of increased institutional funds needed to help DACA students meet the loss of employment. Ex. 61 ¶¶ 8-9 (UMass Decl.).

38. Rescinding DACA will further deprive Massachusetts of the earning potential of graduates from public universities who are most likely to stay here and join the state's workforce. Nine out of ten Massachusetts public higher education graduates remain in the state, working or pursuing further education. *See* Ex. 93 (Mass. Dept. of Higher Education, *Time to Lead, The Need for Excellence in Public Higher Education*, Sept. 2012).

39. Rescinding DACA will cause Massachusetts to lose qualified state employees. A number of DACA grantees work in government or at state-run institutions. *See, e.g.*, Ex. 70 ¶ 6 (Decl. I.V.); Ex. 61 ¶ 10 (University of Massachusetts Decl.). Massachusetts has expended time and resources to hire, train, and manage DACA grantees. If these individuals become ineligible to work, Massachusetts will lose the value of its investment and the services of employees who perform important functions for the state.

40. Rescinding DACA will jeopardize the state's licensing scheme for drivers. Under DACA, thousands of young Massachusetts residents are able to receive social security cards and thereby have access to driver's licenses, which they depend on to attend health care appointments,

to commute to work and school, and to attend to other necessities for themselves and their family members. Ex. 9 (Mass. Registry of Motor Vehicles, *Social Security Number (SSN) Requirements*); *See, e.g.*, Ex. 71 ¶¶ 5-7, 9 (Decl. I.T.); Ex. 69 ¶¶ 7-8 (Decl. Mendes); Ex. 70 ¶¶ 5, 8 (Decl. I.V.). Rescinding DACA will make it impossible for these individuals to apply for new licenses or renew the licenses they have, leading to a number of potential outcomes, including a decrease in productivity of these residents and an increase in unlicensed drivers on the road.

41. Rescinding DACA will harm public health and impose additional health care costs on the state. Work authorization allows DACA recipients to access employer-sponsored health benefits. *See, e.g.*, Ex. 72 ¶ 4 (Decl. Teodoro); Ex. 69 ¶¶ 6, 10 (Mendes Decl.). Without these benefits, more Massachusetts residents are likely to forgo needed health care, including preventive care, which will create more costly health problems in the long run. It also will cause more people to rely on state-funded and/or state-administered public health care and other benefits, and thus impose additional costs on the state. Through its MassHealth Limited and Children's Medical Security Plan programs, Massachusetts offers health care benefits to residents whose immigration status otherwise keeps them from accessing health care benefits and services. In addition, Massachusetts' state-administered Health Safety Net program reimburses hospitals for emergency and urgent services provided to uninsured patients and pays community health centers for certain preventive services, all irrespective of immigration status.

42. Rescinding DACA will harm the general welfare of Massachusetts DACA grantees and their families. Most DACA grantees live in households with family members who are American citizens. One expert survey estimates that 73% of DACA grantees in Massachusetts live with a citizen sibling, spouse, or child. *See* Ex. 5 (Wong Decl.), ¶ 34. Many of these families rely on the income of DACA grantees. *See, e.g.*, Ex. 69 ¶¶ 6, 10 (Decl. Mendes); Ex. 60 ¶ 5 (Decl. Guevara). Many DACA grantees also have families overseas, including parents and siblings. DACA had made it possible for these grantees to visit family members, often for the first time in years. *See, e.g.*, Ex. 72 ¶ 7 (Decl. Teodoro); Ex. 70 ¶ 5 (Decl. I.V.). Rescinding DACA will harm all of these families in profound ways.

43. Rescinding DACA also will hurt the Massachusetts economy. Stripping DACA grantees of the ability to work legally will cause many to lose their jobs, resulting, among other things, in less tax revenue for the state. According to one estimate, DACA-eligible residents contribute approximately \$24 million annually in state and local taxes in Massachusetts—a contribution that may drop by \$9 million without DACA. *See* Ex. 3 ¶ 7 (Decl. Essig, Wiehe and Hill). Another estimate suggests that ending DACA would, over a ten-year period, cost the Massachusetts economy \$258 million in lost tax revenue and \$924.5 million overall. Brannon Decl., Table 1.

PLAINTIFF STATE OF WASHINGTON

44. Washington is aggrieved by Defendants' actions and has standing to bring this action because of the injury to its sovereignty as a state caused by Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

45. The Governor is the chief executive officer of the State of Washington. The Governor is responsible for overseeing the operations of the State of Washington and ensuring that its laws are faithfully executed.

46. The Attorney General is the chief legal adviser to the State of Washington. The Attorney General's powers and duties include acting in federal court on matters of public concern.

47. Washington has declared that practices that discriminate against any of its inhabitants because of race, color, or national origin are matters of public concern that threaten the rights and proper privileges of the State and harm the public welfare, health, and peace of the people. *See* Wash. Rev. Code 49.60.010.

48. Washington's interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health, is a quasi-sovereign interest.

49. Washington also has an interest in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges provided by the U.S. Constitution and federal law.

50. Washington's interest in preventing and remedying injuries to the public's health, safety, and well-being extends to all of Washington's residents, including individuals who suffer indirect injuries and members of the general public.

51. As of March 2017, Washington is home to more than 17,800 DACA recipients. *See* Ex. 1 (USCIS Data). Participating in the DACA program has allowed these individuals, many of whom are long-term residents of Washington, to work legally, acquire driver's licenses, open bank accounts, access lines of credit, purchase homes and cars, receive in-state tuition at public universities, and obtain employer-based health insurance, among other benefits.

52. Immigration is an important economic driver in Washington. Many Washington workers are immigrants, and many of those immigrant workers are DACA recipients. *See* Ex. 5 ¶¶ 12, 13 (Decl. Wong) Many companies in Washington are dependent on DACA grantees to operate and grow their businesses. DACA recipients work for our State's largest companies as software engineers, finance professionals, and retail and sales associates, including for Amazon, Microsoft and Starbucks Ex. 63 ¶¶ 4-5 (Decl. Blackwell-Hawkins, Amazon); Ex. 90 ¶¶ 7-12, 14 (Decl. Shively, Microsoft); Ex. 8 ¶¶ 7-8 (Decl. Mutty, Starbucks).

53. The market for highly skilled workers and employees is extremely competitive. *Id.* Rescinding the work authorization of DACA recipients will inhibit Washington companies' ability to adequately staff their organizations, develop their workforces, and recruit talent. If recruiting efforts are less successful, these companies' abilities to develop and deliver successful products and services may be adversely affected. *Id.*

54. Rescinding DACA will likewise cause Washington to lose qualified state employees. *See e.g.*, Ex. 56 ¶¶ 2-4 (Decl. Quinonez). Many DACA recipients work in government or at state-run institutions. *See* Ex. 62 ¶ 3 (Decl. Monroe, Dept. of Ecology); Ex. 65 ¶ 3 (Decl. Kaplan, Dept. of Social and Health Svcs.); Ex. 92 ¶ 3 (Decl. Jones, Treasury); Ex. 91 ¶ 3 (Decl.

Garza, Big Bend Community College); Ex. 64 ¶ 3 (Decl. Glatt, Columbia Basin College); Ex. 58 ¶ 4 (Decl. Loera, Washington State University). These employees were hired because of their specialized skills and qualifications.

55. Washington expended time and funds to hire, train, and manage DACA recipients. If these individuals become ineligible to work, Washington will lose the value of its investment and the services of employees who perform important functions for the state.

56. Rescinding DACA will harm the ability of Washington universities, including public universities, to satisfy their educational missions and prepare Washington residents for the workforce. According to the Washington Student Achievement Council, the state agency that advances educational opportunities in the state, there are more than 1,400 DACA students in Washington attending institutions of higher education. *See* Ex. 59 ¶ 9 (Decl. Thompson, WSAC).

57. The University of Washington and Washington State University are the two largest public universities in the State. More than one hundred DACA grantees attend the University of Washington, based in Seattle. *See* Ex. 57 ¶ 4 (Decl. Ballinger, University of Washington). More than 150 DACA grantees attend Washington State University, based in Pullman. *See* Ex. 58 ¶ 4 (Decl. Loera, Washington State University).

58. The DHS Memorandum will likely cause some DACA recipients to leave Washington colleges and universities. The cost of a college education may make little sense for students unable to work following graduation. *See*, Ex. 56 ¶ 7 (Decl. Quinonez). Future DACA students may be prevented from enrolling. These harms damage the educational mission of Washington's institutions of higher education and affect their tuition revenues. *See* Ex. 57 ¶¶ 4-6 (Decl. Ballinger, University of Washington); Ex. 58 ¶¶ 4-8 (Decl. Loera, Washington State University).

59. Rescinding DACA also will hurt the Washington economy. Stripping DACA recipients of the ability to work legally will cause many to lose their jobs, resulting, among other things, in less tax revenue for the state. According to one estimate, DACA-eligible residents contribute approximately \$51 million annually in state and local taxes in Washington. *See* Ex. 3 ¶

7(d) (Decl. Essig, Wiehe and Hill); Ex. 55 ¶¶ 5-7 (Decl. Perez). Another estimate suggests that ending DACA would, over a ten-year period, cost the Washington economy \$258 million in lost tax revenue and \$6.4 billion in GDP growth. See Ex. 4, Table 1 (Decl. Brannon). DACA recipients average higher earning capacities than their undocumented peers and are able to better participate in our economy, for example by purchasing homes and cars that are taxed by our state and local authorities. See Ex. 5 ¶¶ 10-13 (Decl. Wong).

60. In sum, the DHS Memorandum's rescission of DACA affects Washington's economy, residents, families, educational institutions, state agencies, and businesses.

PLAINTIFF STATE OF CONNECTICUT

61. Connecticut is aggrieved by Defendants' actions and has standing to bring this action because of the injury to its sovereignty as a state caused by Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests. Attorney General George Jepsen brings this action on behalf of Connecticut at the request of Governor Dannel P. Malloy to protect the interests of Connecticut and its residents.

62. Connecticut has an interest, as evidenced by its Constitution and state law, in prohibiting discrimination on the basis of race, color, or national origin. See Conn. Const. art. First, § 20; Conn. Gen. Stat. § 46a-58.

63. Connecticut's interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health, is a quasi-sovereign interest.

64. Connecticut also has an interest in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges provided by the U.S. Constitution and federal law.

65. Connecticut's interest in preventing and remedying injuries to the public's health, safety, and well-being extends to all of Connecticut's residents, including individuals who suffer indirect injuries and members of the general public.

66. As of March 31, 2017, USCIS had approved 4,929 initial DACA applications and 5,882 renewals for residents of Connecticut, for a total of 10,811. *See Ex. 1 (USCIS Data)*. The DACA program has allowed these individuals, many of whom are long-term residents of Connecticut, to work legally, acquire driver's licenses, open bank accounts, access lines of credit, purchase homes and cars, receive in-state tuition at public universities, and obtain employer-based health insurance, among other benefits.

67. Connecticut provides in-state tuition to DACA recipients at its public universities and colleges. Conn. Gen. Stat. § 10a-29. The Defendants' actions will likely cause some DACA recipients to leave Connecticut colleges and universities. These harms damage the educational mission of Connecticut's institutions of higher education and affect their tuition revenues.

68. Rescinding DACA also will hurt the Connecticut economy. Stripping DACA recipients of the ability to work legally will cause many to lose their jobs, resulting, among other things, in less tax revenue for the state.

69. In sum, Defendants' actions affect Connecticut's economy, residents, families, educational institutions, state agencies, and businesses.

PLAINTIFF STATE OF DELAWARE

70. The State of Delaware has a strong interest in retaining the DACA program. USCIS has approved approximately 1,450 initial applications from DACA grantees since 2012. *See Ex. 1 (USCIS Data)*. One expert estimates that of that total, at least 1,256 DACA grantees currently work in Delaware's economy. *See Ex. 53 (Nicole Prchal Svajlenka, A New Threat to DACA Could Cost States Billions of Dollars, Center for American Progress, July 21, 2017)*

71. Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests. If DACA is terminated, these grantees will lose their work authorization. The resulting loss in employment will cause significant losses

in tax revenue and Gross Domestic Product (“GDP”). Over ten years, Delaware can expect to lose \$258 million in tax revenues, and \$924.5 million in GDP with the loss of DACA. *See* Ex. 4 Table 1 (Brannon Decl.).

72. Moreover, rescinding DACA would adversely impact Delaware’s public universities. Currently, about 75 DACA grantees attend Delaware State University (“DSU”). *See* Ex. 81 (Scott Gross, *DSU immigrant students fear Trump’s DACA decision*, Delawareonline, Sept. 2 2017). These high achieving students contribute to the university’s mission to advance diversity and inclusion. These students would be less likely to continue pursuing their education at DSU if there is no viable employment option available to them upon graduation.

PLAINTIFF COMMONWEALTH OF DISTRICT OF COLUMBIA

73. The District of Columbia is a municipal corporation empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. DC Code § 1-301.81(a)(1).

74. The District has declared its intent to end discrimination based on race, color, religion, or national origin. DC Code § 2-1401.01.

75. The District’s interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health, is a quasi-sovereign interest.

76. The District also has an interest in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges provided by the U.S. Constitution and federal law.

77. The District has a compelling interest in that the Constitution and federal law of the U.S. are enforced and protect their residents as designed. In addition, the District has an interest in protecting its economy and residents.

78. Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

79. The District's interest in preventing and remedying injuries to the public's health, safety, and well-being extends to all of the District's residents, including individuals who suffer indirect injuries and members of the general public.

80. The District has an interest in protecting its residents' family rights. Most DACA recipients live in households with American citizen family members.

81. The rescission of DACA will lead to increased uncertainty in these families, and will increase the likelihood of splitting DACA recipients from their citizen family members. Moreover, the rescission of DACA will make employment of DACA recipients more difficult and will threaten the financial and housing security of some of these families, especially where the DACA recipient is head of household. The District's interest in protecting the rights of families is clearly harmed by the rescission of DACA, and subjects DACA families to potential separation, financial instability, and housing insecurity.

82. Many DACA recipients also have families overseas, including parents and siblings. DACA permitted these recipients to visit these family members through advance parole. The rescission of DACA will prevent recipients from taking the risk of visiting their families abroad.

83. Immigrants are an important part of the District's economy. Many of the District's workers and students are immigrants and many of those immigrants are DACA recipients.

84. Many DACA recipients attend the colleges and universities in the District as post-secondary and graduate students. The rescission of DACA will have an adverse effect on both the students and the colleges and universities. The rescission of DACA will likely cause some DACA recipients to leave District colleges and universities. Future DACA students will likely be prevented from enrolling. These harms damage the educational mission of the District's institutions of higher education and affect their revenues.

85. DACA recipients also work for the District government and District businesses. The District government and businesses have expended time and funds to hire, train, and manage DACA grantees, and will lose the value of that investment—and in the employees’ ongoing labor—if employees are not able to continue to work and travel due to DACA’s rescission.

86. DACA recipients contribute to the District’s tax base by, for example, purchasing homes and cars that are taxed by the District. The District will lose tax revenue as a result of the rescission of DACA.

87. The rescission of DACA affects District residents, families and businesses, as well as harms the District’s proprietary interests.

PLAINTIFF STATE OF HAWAII

88. The State of Hawaii represented by and through its Attorney General, is a sovereign state of the United States of America. Hawaii is aggrieved and has standing to bring this action because of the injury to its sovereignty as a state caused by Defendants’ rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

89. Hawaii is a state of 1.4 million residents, almost 18% of whom are foreign born. *See Ex. 2.*

90. Almost 600 young people in Hawaii have passed background checks and live and work legally in Hawaii as a direct result of DACA. *See Ex. 1 (USCIS Data).*

91. Hawaii is home to many places of higher education and businesses, which rely heavily on immigrants, who bring tremendous talent, knowledge, and expertise to academic communities and to the labor force. Many of these immigrants are DACA grantees.

92. By the latest available numbers, USCIS had approved 558 initial DACA applications and 1,740 renewals for residents of Hawaii. Obtaining DACA status has allowed these individuals, many of whom are long-term residents of Hawaii, to work legally, acquire driver’s licenses, open bank accounts, access lines of credit, purchase homes and cars, receive in-state tuition at public universities, and obtain employer-based health insurance, among other benefits.

93. Rescinding DACA will harm the ability of Hawaii colleges and universities, including public universities, to satisfy their educational missions and prepare Hawaii residents for the workforce. There are currently 13 DACA students enrolled for classes in fall 2017 at the University of Hawaii's ten campuses. *See Ex. 73 (University of Hawai'i, UH and State Leaders Respond to DACA Program Termination, Sept. 5, 2017).*

94. DACA grantees who are Hawaii residents are eligible for certain benefits at the University of Hawaii. According to David Lassner, President of the University of Hawaii, "[o]ver four years ago the University of Hawaii Board of Regents adopted a policy to extend eligibility for resident tuition rates to undocumented students, including but not limited to those who have filed for DACA." *See Ex. 73 (University of Hawai'i, UH and State Leaders Respond to DACA Program Termination, Sept. 5, 2017).*

95. Losing these talented young immigrants will deprive Hawaii state schools of the special contributions and perspectives they bring to campus communities, both as students and alumni. If current DACA students are forced to drop out, the University of Hawaii also will lose the value of the financial assistance it has granted to, and the other resources it has spent, educating students who ultimately do not graduate.

96. Rescinding DACA will further deprive Hawaii of the earning potential of graduates from public universities who are likely to stay here and join the state's workforce. Ending DACA would cost Hawaii more than \$28.8 million in annual GDP losses. *See Ex. 53 (Center for American Progress, A New Threat to DACA Could Cost States Billions of Dollars, Jul. 21, 2017).*

97. Over the next ten years Hawaii also stands to lose \$126 million in tax revenues and \$451.5 million in further GDP losses if DACA is rescinded.

PLAINTIFF STATE OF ILLINOIS

98. The State of Illinois, by and through its Attorney General, Lisa Madigan, is a sovereign state of the United States of America. Illinois is aggrieved by Defendants' actions and has standing to bring this action because of harm to Illinois' state institutions and economy, including immediate and irreparable injuries to its sovereign and proprietary interests.

99. Between FY 2012 and FY 2017, 42,376 individuals residing in Illinois have been approved for the DACA program, and 37,039 individuals have renewed a DACA application. Ex. 1.

100. Approximately 36,867 DACA recipients work in the state of Illinois and contribute to the Illinois economy. Should those workers be removed from Illinois, the state economy would suffer approximately \$2.3 billion in annual GDP loss. Ex. 53.

101. ITEP estimates that Illinois would lose approximately \$54.7 million in local and state tax revenue if DACA protections are eliminated. Ex. 54 (Misha E. Hill and Meg Wiehe, *State & Local Tax Contributions of Young Undocumented Immigrants*, Institute on Taxation and Economic Policy, April 25, 2017).

102. Illinois also has enacted laws to enable DACA grantees to participate in the economy professionally. These include providing that no person in Illinois shall be prohibited from receiving a law license solely because he or she is not a citizen and explicitly allowing DACA recipients to apply for a license to practice law within the state of Illinois. 705 Ill. Comp. Stat. 205/2.

103. Furthermore, Illinois has enacted laws and implemented government programs to support DACA participants. Elimination of DACA would harm these programs.

104. For example, Illinois law has been amended to facilitate and encourage the attendance of DACA grantees at public universities in Illinois. DACA participants may obtain in-state tuition to attend Illinois's public universities. 110 Ill. Comp. Stat. 305/7e-5. Illinois's public universities also accept and provide resources for DACA recipients. *See* Ex. 66 (University of Illinois at Chicago, *Resources for Undocumented Students*); Ex. 67 (Illinois State University, *Admissions and Financial Aid for Undocumented Student Admissions*); Ex. 68 (University of Illinois, *Undocumented Applicants, Illinois Admissions*).

105. Furthermore, through the Illinois Dream Act, Public Law No. 97-0233, Illinois law permits anyone with a valid social security number or taxpayer number, including DACA recipients, to participate in state-run college financing programs, such as the State Treasurer's

College Savings Pool, 15 Ill. Comp. Stat. 505/16.5, and the Illinois Prepaid Tuition Plan, 110 Ill. Comp. Stat. 979/45.

106. Illinois has an interest in ensuring that the investments made in the education of DACA grantees attending Illinois's public universities through scholarships and financial aid are not diminished by a disruption in the DACA program.

107. A rescission of the DACA program also would disrupt Illinois employers who employ DACA grantees, resulting in economic loss to the state of Illinois and Illinois employers. Furthermore, Illinois would be harmed by the loss of local and state tax revenue due to the removal of DACA program protections for Illinois workers. One expert estimates that rescinding the DACA program will cost Illinois \$6.9 billion over the next ten years. Ex. 3 Table 1 (Decl. Bannon).

PLAINTIFF STATE OF IOWA

108. The State of Iowa, represented by and through its Attorney General, Tom Miller, is a sovereign state of the United States of America. Iowa is aggrieved by Defendants' action and has standing to bring this action because of harm to Iowa's state institutions and economy, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

109. The State of Iowa has a strong interest in retaining the DACA program. As of March 31, 2017, USCIS had approved approximately 2,798 initial DACA applications and 2,780 renewals for residents of Iowa, for a total of 5,578. Ex. 1 (USCIS Data). One expert estimates that of that total, at least 2,434 DACA grantees currently work in Iowa's economy. Ex. 53 (Nicole Prchal Svajlenka, *A New Threat to DACA Could Cost States Billions of Dollars*, Center for American Progress, July 21, 2017).

110. If DACA is terminated, these grantees will lose their work authorization. The resulting loss in employment will cause significant losses in tax revenue and Gross Domestic Product ("GDP"). Over ten years, Iowa can expect to lose \$258 million in tax revenues, and \$924.5 million in GDP with the loss of DACA. Ex. 4 Table 1 (Brannon Decl.).

111. Iowa has an interest, as evidenced by its Constitution and state law, in prohibiting discrimination on the basis of race, color, or national origin. *See* Iowa Const. art. I, Iowa Code Chapter 216.

112. Iowa's interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health, is a quasi-sovereign interest.

113. Iowa also has an interest in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges provided by the U.S. Constitution and federal law.

114. Iowa's interest in preventing and remedying injuries to the public's health, safety, and well-being extends to all of Iowa's residents, including individuals who suffer indirect injuries and members of the general public.

115. In sum, Defendants' actions affect Iowa's economy, residents, families, educational institutions, state agencies, and businesses.

PLAINTIFF STATE OF NEW MEXICO

116. The State of New Mexico, represented by and through its Attorney General, is a sovereign state of the United States of America. New Mexico is aggrieved by Defendants' actions and has standing to bring this action because of the injury to its sovereignty as a state caused by Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

117. According to the latest American Community Survey, New Mexico is home to more than 211,249 foreign-born residents, of whom approximately 7,000 are DACA-eligible residents.

118. Foreign-born residents of New Mexico constitute more than 10% of the State's population. Some 34.4% of the foreign-born New Mexicans—72,652 persons—are naturalized

citizens eligible to vote in New Mexico. In 2010, 8.4% of all business owners in New Mexico were foreign-born, according to the Fiscal Policy Institute.

119. Immigrants comprised 12.6% of the state's workforce in 2013 (or 122,131 workers), according to the U.S. Census Bureau.

120. Of the 876,000 recipients of deferred action nationwide, 7,300 live in New Mexico, according to the latest figures provided by the USCIS.

121. ITEP estimates that New Mexico could lose up to \$7.5 million in state and local taxes if DACA were eliminated.

122. An estimated 5.9% (or 57,438) of registered voters in New Mexico were "New Americans"—naturalized citizens or the U.S.-born children of immigrants who were raised during the current era of immigration from Latin America and Asia which began in 1965—according to an analysis of 2012 Census Bureau data by American Immigration Council.

123. DACA-eligible residents are estimated to contribute more than \$19 million in New Mexico's state and local taxes, a figure of particular importance in a state often ranked as among the poorest in the country. DACA-eligible residents are part of the State's near-majority Latino population, which wields some \$24.9 billion in consumer purchasing power, and are also part of the increasing numbers of Asian families in the State.

124. The 2014 purchasing power of Latinos in New Mexico totaled \$23.4 billion—an increase of 374% since 1990. Asian buying power totaled \$1.5 billion—an increase of 724% since 1990, according to the Selig Center for Economic Growth at the University of Georgia.

125. Immigration boosts housing values in communities, and increases in housing values adds to the health of New Mexico's economy. From 2000 to 2010, according to the Americas Society/Council of the Americas, the value added by immigration to the price of the average home was \$2,654 in Bernalillo, the State's most populous county.

126. New Mexico's 37,195 Latino-owned businesses had sales and receipts of \$6.5 billion and employed 50,021 people in 2007, the last year for which data is available. The state's

3,321 Asian-owned businesses had sales and receipts of \$1.1 billion and employed 10,739 people in 2007, according to the U.S. Census Bureau's Survey of Business Owners.

127. From 2006 to 2010, there were 11,440 new immigrant business owners in New Mexico, and they had total net business income of \$389 million, which makes up 8.9% of all net business income in the state, according to Robert Fairlie of the University of California, Santa Cruz.

128. New Mexico's 3,711 foreign students contributed \$85.1 million to the state's economy in tuition, fees, and living expenses for the 2013-2014 academic year, according to NAFSA: Association of International Educators.

129. Foreign students contribute to New Mexico's metropolitan areas. From 2008 to 2012, according to the Brookings Institution, 1,848 foreign students paid \$17.8 million in tuition and \$11.3 million in living costs in the Las Cruces metropolitan area.

130. Foreign students also contribute to innovation in New Mexico. In 2009, "non-resident aliens" comprised 42.1% of master's degrees and 42.9% of doctorate degrees in science, technology, engineering, and mathematics (STEM) fields, according to the Partnership for a New American Economy.

131. Latinos in New Mexico paid \$2.7 billion in federal taxes and \$1.3 billion in state/local taxes in 2013, according to the Partnership for a New American Economy. In particular, foreign-born Latinos paid \$463 million in federal taxes and \$252 million in state/local taxes.

132. The federal tax contribution of New Mexico's Latino population included \$1.9 billion to Social Security and \$441 million to Medicare in 2013. Foreign-born Latinos contributed \$356 million to Social Security and \$83 million to Medicare that year.

133. Unauthorized immigrants comprised roughly 4.7% of the state's workforce (or 45,000 workers) in 2012, according to a report by the Pew Hispanic Center. If all unauthorized immigrants were removed from New Mexico, the state would lose \$1.8 billion in economic activity, \$809.1 million in gross state product, and approximately 12,239 jobs, even accounting for adequate market adjustment time, according to a report by the Perryman Group.

134. Rescinding DACA in New Mexico will adversely impact current DACA grantees enrolled in New Mexico's colleges and universities. Without DACA's employment authorization, these students will be unable to plan for the future, apply for and obtain internships, study abroad,

simultaneously work to pay costs and fees, or obtain certain financial aid and scholarships. Without these students, New Mexico's institutions of higher education will suffer loss of enrollment, a reduction in diversity and negative financial consequences.

135. Significantly, it is common for New Mexico's families to include both U.S.-born and foreign born members. Rescinding DACA will jeopardize the health, security and stability of New Mexico families by forcing separation and alienation.

136. New Mexico has a continuing interest in protecting and securing the safety and stability of its families, and that interest mandates the State's involvement in this litigation.

PLAINTIFF STATE OF NORTH CAROLINA

137. The State of North Carolina, represented by Attorney General Josh Stein, is a sovereign state of the United States of America. North Carolina has standing to bring this action because it has suffered and will continue to suffer injuries to its sovereignty as a state caused by Defendants' rescission of DACA. These harms include injuries to North Carolina's state institutions and economy, including to its sovereign and proprietary interests.

138. North Carolina has an interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health.

139. According to USCIS, 27,385 initial DACA applications and 22,327 renewal applications from North Carolina have been approved through the second quarter of 2017. *See Ex. 1.*

140. Immigration is a vital catalyst to North Carolina's economy. According to a study conducted by the Latino Migration Project at the University of North Carolina at Chapel Hill, in 1990, only 1.7% of the State's population was foreign-born. By 2014, that proportion had increased to 7.6%. This demographic change is due, in large part, to industries' recruitment of foreign-born individuals, primarily of Latin American origin to fill available jobs that have been created as a result of the expansion of North Carolina's economy. *See Ex. 87 (Latino Migration Project, DACA Program in North Carolina, Perspectives from Immigrants and Community-Based Organizations, Jan. 2017).*

141. By 2012, as estimated 350,000 people (44% of the state's immigrant population) did not have legal immigration status. *See* Ex. 81 (Pew Research Center, *U.S. Unauthorized Immigration Population Estimates*, Mar. 2015).

142. After the institution of the DACA program in 2012, North Carolina had one of the highest application rates to DACA in the nation. Out of an estimated 26,000 eligible people, 75% had applied to the DACA program. By June 2014, USCIS had approved almost 21,000 applications. *See* Ex. 1 .

143. North Carolina has one of the largest undocumented high school populations in the country, with close to 31,000 undocumented students enrolled as of 2015. *See* Ex. 82 (Technician, *Immigrants Still Face Obstacles To Go To College Despite DACA*, Mar. 2015) . There are a total of 16 public universities in North Carolina, enrolling nearly 225,000 students. *See* Ex. 83 (University of North Carolina, *Our 17 campuses*). Affected students attend these universities, as well as North Carolina's community and technical colleges. Rescinding DACA permits will cause students currently enrolled to leave North Carolina community and technical colleges and universities. In addition, future DACA students may be prevented from finishing their high school education or from enrolling in North Carolina's colleges and universities. These harms damage the educational mission of North Carolina's institutions of higher learning and affect their tuition revenues.

144. According to the 2010 census, North Carolina is the ninth wealthiest state in terms of gross domestic product. *See* Ex. 85(Greyhill Advisors, *GDP By State*). Charlotte, North Carolina's largest city is the second largest banking center in the United States. *See* Ex. 84 (North Carolina History Project, *Charlotte Soars To Become The Nation's Second Largest Financial Center*). The Research Triangle Park, home to more than 170 companies and federal agencies, is the largest and oldest continuously operating research and science park in the United States. *See* Ex. 86 (Research Triangle Park). The market to employ skilled workers to fuel these expanding economies is highly competitive. Rescinding work authorization for DACA recipients will cripple the ability for North Carolina's companies to attract and maintain a robust workforce, adversely

affecting the companies' ability to develop and deliver products and services. In addition, the inability to maintain a workforce may induce companies to relocate out of North Carolina.

145. DACA recipients make significant contributions to North Carolina's tax base. The DACA program has encouraged tens of thousands of individuals to secure driver's licenses, continue their education, obtain employment, secure better employment or benefits, and integrate themselves into the fabric of North Carolina society.

146. The rescission of DACA creates upheaval in the operation of state-run programs, including programs relating to public benefits and scholarships, as well as in the operation of North Carolina's private economy. One expert estimates that rescinding the DACA program will cost North Carolina 7.8 billion dollars over the next ten years. *See* Ex. 4 (Decl. Brannon, Table 1).

147. As a result of the DHS Memorandum, North Carolina's residents, families, and businesses will suffer physical and economic harms. In addition, DHS Memorandum also harms North Carolina's proprietary interests.

PLAINTIFF STATE OF OREGON

148. Oregon is aggrieved by Defendants' actions and has standing to bring this action because of its injuries caused by Defendants' rescission of DACA, including immediate, long-term, and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

149. The Governor is the chief executive officer of the State of Oregon. The Governor is responsible for overseeing the operations of the State of Oregon and ensuring that its laws are faithfully executed.

150. The Attorney General is the chief legal officer of the State of Oregon. The Attorney General's powers and duties include acting in federal court on matters of public concern and at the request of state agencies and officials.

151. Oregon has codified its state policy that practices of unlawful discrimination against any of its inhabitants because of religion or national origin are "a matter of state concern," and that such discrimination "menaces the institutions and foundation of a free democratic state." Or. Rev. Stat. § 659A.006.

152. Oregon's interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health, is a quasi-sovereign interest.

153. Oregon also has an interest in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges provided by the U.S. Constitution and federal law.

154. Oregon's interest in preventing and remedying injuries to the public's health, safety, and well-being extends to all of Oregon's residents, including individuals who suffer indirect injuries and members of the general public.

155. Oregon has a strong interest in promoting employment and business creation and in the tax revenues that result.

156. Oregon is home to more than 11,000 DACA recipients, many of whom are long-term residents of Oregon. *See* Ex. 1. The DACA program has allowed these individuals to work legally, acquire driver's licenses, open bank accounts, access lines of credit, purchase homes and cars, obtain employer-based health insurance, among other benefits. Oregon also has many individuals who would have become eligible for DACA in the coming months or years if Defendants had not acted to end the program.

157. Immigration is an important economic driver in Oregon. Many Oregon workers are immigrants, and many of those immigrant workers are DACA recipients.

158. Rescinding DACA will harm the ability of Oregon colleges and universities, including public universities, to satisfy their educational missions and prepare Oregon residents for the workforce. Oregon's colleges and universities also prepare students to be the next generation of political, civic, and private and public sector leaders.

159. Oregon invests in its educational mission by also investing in its DACA recipient students. It does this by, among other things, offering free comprehensive K-12 education to undocumented students, and, upon graduation from an Oregon high school or GED program,

offering tuition equity (in-state tuition benefits) and access to state financial aid to Oregon residents who are undocumented, including DACA recipients.

160. Portland State University, based in Portland, Oregon, is a public university that enrolls and in some cases employs DACA recipients. Losing the ability to employ these DACA recipients means the university loses economic and training investments. The potential loss of those enrolled means a loss of graduates and future alumni who would invest their time and talents in the university and community. Other Oregon colleges and universities, including community colleges, also enroll and in some cases employ DACA recipients.

161. Eastern Oregon University, based in La Grande, Oregon, and Western Oregon University, based in Monmouth, Oregon, are public universities that enroll DACA recipients, and are partner universities with USDream project, which provides scholarships to DACA students from non-tuition equity states to come to Oregon partner universities to study.

162. The rescission of DACA will likely cause some DACA recipients to leave Oregon colleges and universities, or take longer to complete their course of study because they can no longer work to support their educational expenses that are not covered by financial aid. The cost of a college education may make little sense for students unable to work following graduation, which may discourage students from enrolling or continuing with their course of study. In one study, more than 90% of the respondent DACA grantees who were in school agreed that because of DACA, they pursued educational opportunities that they previously could not. *See Ex. 22 (Center for American Progress, New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes, Oct. 18, 2016)*. These harms damage the educational mission of Oregon's institutions of higher education and affect their tuition revenues. It also undermines Oregon's investment in and efforts to develop a well-educated workforce that can contribute to the State's economy and competitiveness. The harm is for years to come, not just the short-term.

163. Rescinding DACA also will hurt the Oregon economy. Stripping DACA recipients of the ability to work legally will cause many to lose their jobs, resulting, among other things, in less tax revenue for the state. According to one estimate, DACA-eligible residents contribute

approximately \$20 million in state and local taxes in Oregon, and the State would lose approximately \$11 million in state and local tax revenue if the DACA program were rescinded. *See Ex. 54* (Institute on Taxation and Economic Policy, *State and Local Contributions of Young Undocumented Immigrants*, Apr. 2017). It also has been estimated that removing DACA workers would cost Oregon more than \$600 million in GDP. *See Ex. 53* (Center for American Progress, *A New Threat to DACA Could Cost State Billions of Dollars*, Jul. 21, 2017). Research shows that DACA recipients average higher earning capacities than their undocumented peers and are able to better participate in our economy, for example by purchasing homes and starting businesses that are taxed by our state and local authorities. *See Ex. 22*.

164. In sum, Defendants' actions in rescinding DACA adversely and significantly affects Oregon's economy, residents, families, educational institutions, state agencies, and businesses.

PLAINTIFF STATE OF PENNSYLVANIA

165. The Commonwealth of Pennsylvania, represented by and through its Attorney General, "the chief law officer of the Commonwealth," is a sovereign state of the United States of America. PA Const., Art. IV, § 4.1.

166. Pennsylvania was founded by William Penn, an early Quaker and advocate of democracy, immigration and religious freedom and places great value on tolerance, diversity, multiculturalism and an openness to others of different races, religions and nationalities.

167. The Attorney General of Pennsylvania files this action because Defendants' rescission of DACA, has caused injuries to its sovereign, quasi-sovereign, and proprietary interests. The Attorney General of the Commonwealth of Pennsylvania also has standing under the *parens patriae* doctrine to protect the people, schools, institutions and economy of Pennsylvania including quasi-sovereign interests such as the general health, comfort and welfare of the citizens of Pennsylvania. In filing this action, the Attorney General seeks to redress the

injuries to the interests described herein, which are separate from the narrow interests of particular individuals.

168. Pennsylvania's laws reflect its commitment to its values of diversity, multiculturalism and openness to others of different races and nationalities. For example, Pennsylvania's Human Relations Act recognizes that an individual's opportunity to obtain employment, public accommodation, housing accommodation and commercial property without discrimination on the basis of "race, color, familial status, ... ancestry [and] national origin" is a "civil right" that is "enforceable" under Pennsylvania law. 43 P.S. § 953 ("The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any public accommodation and of any housing accommodation and commercial property without discrimination because of race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act."). See also 43 P.S. § 955.

169. Pennsylvania is home to approximately 15,000 DACA-eligible immigrants. *See Ex. 54.*

170. As of March 31, 2017, initial DACA applications had been accepted for 5,889 young immigrants living in Pennsylvania. *See Ex. 1.*

171. Of those Pennsylvania DACA recipients, it is estimated that 5,123 are working in Pennsylvania where they generate approximately \$357,080,795 of economic activity annually. *See Ex. 53.*

172. In connection with this significant Pennsylvania economic activity, workers enrolled in DACA generate an estimated \$20.7 million in state and local taxes in Pennsylvania each year. *See Ex. 54.*

173. Among other items set forth herein, Pennsylvania is particularly concerned that, based on the DHS' Memorandum rescinding DACA, immigrants who shared their sensitive,

personal information with the federal government in reliance on DACA's promise that their information would not be used against them in immigration enforcement proceedings will now face exactly that – a federal government that lured these young people to share their personal information and will now break its promise and use that information to deport them. The DHS Memorandum, notably, fails to honor the federal government's promise to these important economic contributors to Pennsylvania. And Defendants' actions will cause Pennsylvania to lose hundreds of millions of dollars in economic activity – and tens of millions of state and local tax dollars – annually.

PLAINTIFF STATE OF RHODE ISLAND

174. The State of Rhode Island, represented by and through its Attorney General, is a sovereign state of the United States of America. Rhode Island is aggrieved by Defendants' actions and has standing to bring this action because of the injury to its sovereignty as a state caused by Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

175. The State of Rhode Island has prohibited practices that discriminate against any of its inhabitants because of race, color, or national origin. R.I. Gen. Laws § 42-112-1.

176. Rhode Island's interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health, is a quasi-sovereign interest.

177. Rhode Island also has an interest in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges provided by the U.S. Constitution and federal law.

178. Rhode Island's interest in preventing and remedying injuries to the public's health, safety, and well-being extends to all of Rhode Island's residents, including individuals who suffer indirect injuries and members of the general public.

179. According to the latest American Community Survey, Rhode Island is home to more than 140,000 foreign-born residents. *See Ex. 79* (Rhode Island State Center, Census Data Bulletin, March 2014).

180. The Migration Policy Institute estimates that there are 5,000 DACA-eligible residents in Rhode Island. *See Ex. 80* (Migration Policy Institute, State/County DACA Estimates).

181. According to USCIS, 1,229 initial DACA applications and 1,733 renewal applications from Rhode Island have been approved through the second quarter of 2017. *See Ex. 1*.

182. The market for highly skilled workers and employees is extremely competitive. Rescinding the work authorization of DACA grantees will inhibit Rhode Island companies' ability to adequately staff their organizations, develop their workforces, and recruit talent. If recruiting efforts are less successful, these companies' abilities to develop and deliver successful products and services may be adversely affected.

183. Rhode Island expended time and funds to hire, train, and manage DACA recipients. Rhode Island wastes that time and money, and loses the value of employee labor, if employees are not able to continue to work due to DACA's rescission.

184. DACA recipients make significant contributions to state and local taxes. DACA recipients average higher earning capacities than their undocumented peers and are able to better participate in our economy, for example by purchasing homes and cars that are taxed by our state and local authorities. According to ITEP, the State of Rhode Island alone will lose \$2.6 million in state and local taxes if DACA protections are lost. *See Ex. 54*.

185. According to the Center for American Progress, Rhode Island will lose more than \$61 million in annual GDP as a result of losing DACA workers. *See Ex. 53*.

186. In sum, the DHS Memorandum's rescission of DACA affects Rhode Island residents, families, and businesses, as well as harms Rhode Island's proprietary interests.

PLAINTIFF STATE OF VERMONT

187. The State of Vermont, represented by and through its Attorney General, is a sovereign state of the United States of America. Vermont is aggrieved by Defendants' actions and has standing to bring this action because of the injury to its sovereignty as a state caused by Defendants' rescission of DACA, including immediate and irreparable injuries to its sovereign, quasi-sovereign, and proprietary interests.

188. The Attorney General is empowered to advance Vermont's strong and important public policy against unlawful discrimination. The Common Benefits Clause of Vermont's Constitution provides that government "is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community," not for the "advantage of any single person, family, or set of persons, who are a part only of that community." Vt. Const., ch. I, art 7.

189. The State of Vermont has prohibited practices that discriminate against any of its inhabitants because of race, color, national origin, ancestry, and place of birth. 9 V.S.A. § 4502; 21 V.S.A. § 495.

190. Vermont's interest in protecting the health, safety, and well-being of its residents, including protecting its residents from harms to their physical or economic health, is a quasi-sovereign interest.

191. Vermont also has an interest in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges provided by the U.S. Constitution and federal law.

192. Vermont's interest in preventing and remedying injuries to the public's health, safety, and well-being extends to all of Vermont's residents, including individuals who suffer indirect injuries and members of the general public.

193. According to the latest American Community Survey, Vermont is home to over 26,000 foreign-born residents.¹

194. According to United States Citizen and Immigration Services (“USCIS”), 42 initial DACA applications and 162 renewal applications from Vermont have been approved through the second quarter of 2017. Ex. 1 (USCIS Data).

195. One expert estimates that of that total, at least 37 DACA grantees currently work in Vermont’s economy. Ex. 53 (Nicole Prchal Svajlenka, *A New Threat to DACA Could Cost States Billions of Dollars*, Center for American Progress, July 21, 2017). If DACA is terminated, these grantees will lose their work authorization. The resulting loss in employment will cause significant losses in tax revenue and Gross Domestic Product (“GDP”). Over ten years, Vermont can expect to \$2,429,910 in GDP with the loss of DACA. *Id.*

196. The market for highly skilled workers and employees is extremely competitive. Rescinding the work authorization of DACA recipients will inhibit Vermont companies’ ability to adequately staff their organizations, develop their workforces, and recruit talent. If recruiting efforts are less successful, these companies’ abilities to develop and deliver successful products and services may be adversely affected.

197. DACA recipients make significant contributions to state and local taxes. DACA recipients average higher earning capacities than their undocumented peers and are able to better participate in our economy, for example by purchasing homes and cars that are taxed by our state and local authorities. According to the Institute on Taxation and Economic Policy (“ITEP”), the State of Vermont alone will lose \$48,000 in state and local taxes if DACA protections are lost. *See* Ex. 54 (2017 DACA Tax).

198. In sum, President Trump’s Executive Order rescinding DACA affects Vermont residents, families, and businesses, as well as harms Vermont’s proprietary interests.

¹ U.S. Census Bureau, Place of birth for the foreign-born population in the United States: Vermont, 2011-2015 American Community Survey 5-Year Estimates; American Immigration Council, Fact Sheet: New Americans in Vermont (Jan. 1, 2015), *available at* <https://www.americanimmigrationcouncil.org/research/new-americans-vermont>.

PLAINTIFF COMMONWEALTH OF VIRGINIA

199. The Commonwealth of Virginia has a strong interest in retaining the DACA program. USCIS has approved over 12,000 initial applications from DACA grantees since 2012. *See Ex. 1.*

200. If DACA is terminated, these grantees will lose their work authorization. The resulting loss in employment will cause significant losses in tax revenue and Gross Domestic Product (“GDP”). Over ten years, Virginia can expect to lose \$1.03 billion in tax revenues, and \$3.68 billion in GDP with the loss of DACA. *See Ex. 4, Table 1 (Brannon Decl.).*

201. Moreover, rescinding DACA would adversely impact Virginia’s public colleges and universities. According to the State Council of Higher Education for Virginia, over a thousand DACA grantees attend Virginia’s two-year and four-year public institutions of higher learning. These students would be less likely to continue pursuing their education at those institutions if there is no viable employment option available to them upon graduation.

DEFENDANTS

202. Defendant Donald Trump is the President of the United States, and authorized the issuance of the DHS Memorandum that purports to rescind DACA. He is sued in his official capacity.

203. Defendant DHS is a federal cabinet agency responsible for implementing the DACA program. DHS is a Department of the Executive Branch of the U.S. Government, and is an agency within the meaning of 5 U.S.C. § 552(f).

204. Defendant USCIS is an Operational and Support Component agency within DHS. USCIS is the sub-agency responsible for administering the DACA program.

205. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is an Operational and Support Component agency within DHS. ICE is responsible for enforcing federal immigration law, including identifying, apprehending, detaining, and removing non-citizens.

206. Defendant Elaine C. Duke is the Acting Secretary of the Department of Homeland Security. She is responsible for implementing and enforcing the Immigration and Nationality Act, and oversees USCIS and ICE. She is sued in her official capacity.

207. Defendant the United States of America includes all government agencies and departments responsible for the implementation and rescission of the DACA program.

ALLEGATIONS

Establishment of the DACA Program.

208. On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a memorandum establishing the DACA program (the “2012 DACA Memorandum”). *See* Ex. 34 (2012 DACA Memorandum). Under DACA, individuals who were brought to the United States as children and meet specific criteria may request deferred action for a period of two years, subject to renewal.

209. Deferred action is a well-established form of prosecutorial discretion under which the government forbears from taking removal action against an individual for a designated period. The 2012 DACA Memorandum explained that DACA covers “certain young people who were brought to this country as children and know only this country as home” and that the immigration laws are not “designed to remove productive young people to countries where they may not have lived or even speak the language.” *Id.* at 1-2.

210. The 2012 DACA Memorandum established that an applicant would be considered for an exercise of prosecutorial discretion only by satisfying each of the following criteria:

- a. came to the United States under the age of sixteen;
- b. had continuously resided in the United States for at least five years preceding the date of the memorandum and is present in the United States on the date of the memorandum;
- c. was currently in school, had graduated from high school, had obtained a general education development certificate, or was an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;

- d. had not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- e. was not above the age of thirty.

Id. at 1.

211. USCIS described DACA as follows: “Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based upon unlawful presence, an individual whose case has been deferred is not considered to be unlawfully present during the period in which deferred action is in effect. An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer lawful status upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.” *See* Ex. 14, Question 1 (USCIS Help Center, DACA FAQs).

212. As the government has recognized, our nation “continue[s] to benefit . . . from the contributions of those young people who have come forward and want nothing more than to contribute to our country and our shared future.” *See* Ex. 15 (Letter from Secretary Jeh Charles Johnson to Rep. Judy Chu, Dec. 30, 2016).

The DACA Application Process

213. USCIS affirmatively represented to DACA applicants that “[a]ll individuals who believe they meet the guidelines . . . may affirmatively request consideration of DACA from USCIS through this process,” and after USCIS receives the applicant’s forms, evidence, supporting documents and application fee, “USCIS will review them for completeness.” USCIS further affirmatively represented to DACA applicants that if it determines that the request is complete, USCIS will send the applicant notices of receipt and for needed appointments, and then review the

applications “on an individual, case-by-case basis” and notify applicants of its determination in writing. *See* Ex. 16 (USCIS Help Center, How do I request consideration of DACA?).

214. In order to apply for the DACA program, applicants had to submit extensive documentation establishing that they meet the eligibility criteria. Applicants had to submit a Form I-765 Application for Employment Authorization, and pay a \$495 fee. *See* Ex. 14 at Questions 28-41; *see also* Ex. 17 (USCIS, I-821D, Consideration of Deferred Action for Childhood Arrivals) (explaining that the filing fee for a DACA application cannot be waived).

215. DACA applicants had to undergo biometric and biographic background checks. When conducting these checks, DHS reviewed the applicant’s biometric and biographic information “against a variety of databases maintained by DHS and other federal government agencies.” *See* Ex. 14 at Questions 23. If any information “indicates that [the applicant’s] presence in the United States threatens public safety or national security,” the applicant will be ineligible for DACA absent “exceptional circumstances.” *Id.* at Question 65.

216. Once individuals were admitted into the DACA program, internal USCIS “Standard Operating Procedures” dictate that, absent an “Egregious Public Safety” issue, DACA grantees should not be terminated from the program until the government has provided a “Notice of Intent to Terminate” which “thoroughly explain[s]” the grounds for the termination.” *See* Ex. 18 at 132, Appendix I (DHS, National Standard Operating Procedures (SOP): Deferred Action for Childhood Arrivals, Apr. 4, 2013). DHS policy further provided that the grantees of such notice should be afforded 33 days to “file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate” prior to termination of participation in the DACA program. *Id.*

217. At the expiration of their two-year DACA term, grantees could seek renewal. As USCIS has represented, DACA applicants “may be considered for renewal of DACA” if they meet

the guidelines for consideration and meet other criteria which “must be met for consideration of DACA renewal.” *See* Ex. 19 (USCIS Help Center, How will USCIS evaluate my request for renewal of DACA?).

Benefits Provided Under the DACA Program

218. DACA confers numerous benefits on DACA grantees. Notably, DACA grantees are granted the right not to be arrested or detained based solely on their immigration status during the time period their deferred action is in effect. *See* Ex. 14, Question 9.

219. DACA grantees also are granted eligibility for work authorization. As USCIS has explained, “an individual whose case has been deferred is eligible to receive employment authorization for the period of deferred action” *Id.*, Question 1.

220. DACA grantees are eligible to receive certain public benefits. These include Social Security, retirement, and disability benefits, and, in certain states, benefits such as driver’s licenses or unemployment insurance. *See* 8 U.S.C. §§ 1611(b)(2)-(3), 1621(d). In the State of Washington, DACA holders also are eligible for certain state financial aid programs and state-funded food assistance. *See* Wash. Rev. Code § 28B.92.010; Wash. Admin. Code §§ 388-400-0050, 388-424-0001, 388-424-0030. In the State of New York, DACA holders are eligible for teaching and nursing licenses. *See* Comm. of Educ. Regs. §§ 59.4; 80-1.3; Ex. 78 (NYS Board of Regents Press Release, Feb. 24, 2016).

221. DACA enables grantees to secure equal access to numerous other benefits and opportunities on which Americans depend, enabling grantees to open bank accounts, obtain credit cards, start businesses, purchase homes and cars, and conduct other aspects of daily life that are otherwise often unavailable for undocumented immigrants. *See* Ex. 5 (Wong Decl.).

222. DACA has enabled hundreds of thousands of young people “to enroll in colleges and universities, complete their education, start businesses that help improve our economy, and

give back to our communities as teachers, medical professionals, engineers, and entrepreneurs—all on the books.” *See* Ex. 15 (Letter from Sec’y Johnson).

223. These positive effects have rippled throughout the States’ economies. Rescinding DACA would not only rip away the life-changing benefits to individual DACA grantees, but would also reverse the benefits to the community at large, including innumerable small businesses, non-profits, and governments.²

The Government’s Assurances That the Information Provided by DACA Applicants Would be Kept Confidential and Not Used for Enforcement

224. When the DACA program was first implemented, many eligible young people were reluctant to voluntarily disclose information that could help facilitate their removal from the United States. To encourage applications, DHS repeatedly promised applicants that information they provided as part of the DACA application process would “not later be used for immigration enforcement purposes.” Ex. 15 (Letter from Sec’y Johnson).

225. Moreover, the approval notice granting deferred action under DACA lists only “fraud or misrepresentation” in the application process or “[s]ubsequent criminal activity” as grounds for revoking DACA. Ex. 24 (USCIS, DACA Approval Notice).

226. The government’s commitment to the DACA program was further communicated to young people through its publication entitled “National Standard Operating Procedures (SOP): Deferred Action for Childhood Arrivals (DACA)” (the “DACA SOP”). Ex. 18. This document sets forth the standards agency applies concerning DACA applications with nearly 150 pages of specific instructions for granting or denying deferred action.

² *See e.g.*, Ex. 20 (Ike Brannon, *The Economic and Fiscal Impact of Repealing DACA*, the Cato Institute, Jan. 18, 2017) (“The deportation of DACA participants would cost the American economy billions of dollars, as well as billions of tax dollars foregone, while doing little to address the true concerns that Americans may have about unauthorized immigrants”); Ex. 21 (Tom Wong, et al., *DACA Grantees’ Economic and Educational Gains Continue to Grow*, Center for American Progress, Aug. 28, 2017) (quoting multiple DACA grantees whose small businesses will suffer or even close if DACA is rescinded); Ex. 22 (Tom Wong et al., *New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes*, Center for American Progress, Oct. 18, 2016) (study showing that 9 percent of DACA grantees work at non-profits, a significant percentage work in education, and 6 percent started their own business, including one owner who employs nine people and hopes to continue to grow and “hire even more people from the community” [internal brackets and quotation marks omitted]).

227. USCIS affirmatively represented to DACA applicants that, except in limited circumstances, “[i]nformation provided in [a DACA request] is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings.” Ex. 25 (USCIS Help Center, Will the information I share in my request for DACA be used for immigration enforcement purposes?).

228. USCIS affirmatively represented to DACA applicants that, except in limited circumstances, “[i]f you have submitted request for consideration of DACA and USCIS decides not to defer your case . . . your case will not be referred to ICE for purposes of removal proceedings.” Ex. 26 (USCIS Help Center, If USCIS does not exercise deferred action in my case, will I be placed in removal proceedings?).

229. In the exceptional circumstances when USCIS refers a DACA applicant to ICE, USCIS affirmatively represented to DACA applicants that “information related to your family members or guardians that is contained in your request will not be referred to ICE for purposes of immigration enforcement against family members or guardians.” Ex. 27 (USCIS Help Center, If my DACA case is referred to ICE for immigration enforcement purposes or if I receive an NTA, will information related to my family members and guardians also be referred to ICE for immigration enforcement purposes?).

230. USCIS affirmatively represented to employers of DACA applicants that, except in limited circumstances, if they provide their employees “with information regarding his or her employment to support a request for consideration of DACA This information will not be shared with ICE for civil immigration enforcement purposes.” Ex. 28 (USCIS Help Center, If I provide my employee with information regarding his or her employment to support a request for consideration of DACA, will that information be used for immigration enforcement purposes against me and/or my company?).

231. The government’s representations that information provided by a DACA recipient would not be used against him or her for later immigration enforcement proceedings were unequivocal and atypical. For example, the federal government does not make the same

representations for participants in other similar programs, such as Temporary Protected Status. These assurances were key to the success of the DACA initiative. By making repeated, unique, and strong representations, the federal government induced persons to rely on those representations and apply to become DACA grantees despite the potential risks.

The Government's Statements Regarding Continuity and Fair Treatment for DACA Grantees

232. Numerous public officials from both political parties have reinforced the federal government's promise to provide continuity and fair treatment to DACA grantees, and have recognized that DACA grantees have relied on the government's representations in applying for DACA. For example, in December 2016, then-Secretary of Homeland Security Jeh Charles Johnson acknowledged that there are 750,000 DACA grantees who have "relied on the U.S. government's representations" about DACA, and asserted that "representations made by the U.S. government, upon which DACA applicants most assuredly relied, must continue to be honored." Ex. 15.

233. On December 8, 2016, then-President-elect Trump stated in an interview with TIME magazine that he would find an accommodation for DACA grantees, stating, "We're going to work something out that's going to make people happy and proud." He further recognized, "[DACA grantees] got brought here at a very young age, they've worked here, they've gone to school here. Some were good students. Some have wonderful jobs. And they're in never-never land because they don't know what's going to happen." Ex. 29 (Michael Scherer, *Person of the Year 2016*, TIME Magazine, Dec. 2016).

234. Again, on January 18, 2017, then President-elect Trump promised in an interview with Fox & Friends that he was working on a plan to make DACA grantees "very happy." He further stated, "We're working on a plan right now. And that plan, over the next two to three months, is going to come out. And it's a plan that's going to be very firm, but it's going to have a lot of heart." Ex. 30 (Francesca Chambers, *Trump signals he's softening on immigration as he says he's 'working on a plan' that will make DREAMers 'very happy,'* Daily Mail, Jan. 18, 2017).

235. In January 2017, Speaker of the House Paul Ryan stated that the government must ensure that “the rug doesn’t get pulled out from under” DACA grantees, who have “organize[d] [their] li[ves] around” the DACA program. Ex. 31 (CNN, *Transcript of CNN Town Hall with Speaker Paul Ryan*, Jan. 12, 2017).

236. On January 25, 2017, President Trump again stated in an interview with David Muir that “[DACA grantees] shouldn’t be very worried. I do have a big heart.” Ex. 32 (ABC News, *Transcript of ABC News anchor David Muir interview with Donald Trump*, Jan. 25, 2017).

237. On March 29, 2017, Secretary Kelly reaffirmed that “DACA status” is a “commitment . . . by the government towards the DACA person, or the so-called Dreamer.” Ex. 33 (Ted Hesson & Seung Min Kim, *Wary Democrats Look to Kelly for Answers on Immigration*, Politico, Mar. 29, 2017).

238. On April 21, 2017, President Trump confirmed that his Administration’s policy is not to deport DACA grantees, and suggested that they “should rest easy.” Ex. 34 (The Associated Press, *Transcript of interview with Trump*, Apr. 21, 2017).

President Trump’s Statements about Mexicans

239. Despite these various and repeated promises to DACA grantees made by the federal government and by President Trump, including a recognition of DACA’s value and successes, President Trump has a long history of disparaging Mexicans, who comprise the vast majority of DACA grantees.

240. In announcing his presidential campaign, then-candidate Trump compared Mexican immigrants to rapists, stating: “When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.” Ex. 35 (Washington Post, *Transcript of Donald Trump’s Presidential Bid Announcement*, June 16, 2015).

241. During the first Republican presidential debate, then-candidate Trump again restated his distaste for immigrants from Mexico: “The Mexican government is much smarter, much sharper, much more cunning. And they send the bad ones over because they don’t want to pay for them. They don’t want to take care of them.” Ex. 36 (Andrew O’Reilly, *At GOP debate, Trump says ‘stupid’ U.S. leaders are being duped by Mexico*, Fox News, Aug. 6, 2015).

242. Soon after, on August 25, 2015, then-candidate Trump refused to answer questions about immigration from Jorge Ramos, a Mexican-American and the top news anchor at Univision, a Spanish-language news channels. After sending his bodyguard to physically remove Mr. Ramos, then-candidate Trump derisively told Mr. Ramos to “Go back to Univision.” Ex. 37 (Phillip Rucker, *First, Trump booted Univision anchor Jorge Ramos out of his news conference. Then things got interesting*, The Washington Post, Aug. 25, 2015).

243. In May 2016, then-candidate Trump referred to anti-Trump protestors who carried the Mexican flag on Twitter as “criminals” and “thugs.” Ex. 38 (Donald Trump, *The protestors in New Mexico were thugs who were flying the Mexican Flag*, Twitter, May 25, 2016), and Ex. 39 (Donald Trump, *Many of the thugs that attacked peaceful Trump supporters in San Jose were illegals*, Twitter, June 4, 2016).

244. In June 2016, then-candidate Trump impugned the integrity of a federal judge presiding over a lawsuit against one of his businesses because the judge is Hispanic. Suggesting his own opinions are anti-Hispanic, then-candidate Trump commented that Judge Gonzalo Curiel’s unfavorable rulings “[H]as to do with perhaps that I’m very, very strong on the border. . . Now, he is Hispanic, I believe. He is a very hostile judge to me.” Ex. 40 (Jose A. DelReal and Katie Zezima, *Trump’s personal, racially tinged attacks on federal judge alarm legal experts*, The Washington Post, June 1, 2016).

245. In an interview with CBS News on June 5, 2016, then-candidate Trump again reiterated his anti-Mexican views, noting that “[Judge Curiel]’s a member of a club or society very strongly, pro-Mexican, which is all fine. But I say he’s got bias.” Ex. 41 (Transcript of Face the Nation, CBS News, June 5, 2016). Judge Curiel is a member of is the San Diego Chapter of the

La Raza Lawyers Association. *See* Ex. 42 (Michelle Ye Hee Lee, *Trump supporters' false claim that Trump U judge is a member of a pro-immigrant group*, The Washington Post, June 7, 2016).

246. On August 21, 2015, two men urinated on a sleeping Latino man and then beat him with a metal pole. At the police station, they stated “Donald Trump was right; all these illegals need to be deported.” When asked about the incident, then-candidate Trump failed to condemn the men, instead stating that they were “passionate.” Specifically, Trump stated, “[i]t would be a shame . . . I will say that people who are following me are very passionate. They love this country and they want this country to be great again. They are passionate.” Ex. 43 (Adrian Walker, *‘Passionate’ Trump fans behind homeless man’s beating?*, The Boston Globe, Aug. 21, 2015).

247. In October 2016, during a presidential debate, then-candidate Trump responded to a question about immigration by stating: “We have some bad hombres here and we’re going to get them out.” Ex. 44 (Katie Zezima, *Trump on immigration: There are ‘bad hombres’ in the United States*, The Washington Post, Aug. 30, 2017).

248. On January 27, 2017, newly-inaugurated President Trump and Mexico’s President Peña Nieto discussed President Trump’s proposal for a border wall over the phone. During that transcribed conversation, President Trump again referred to “hombres” stating: “You have some pretty tough hombres in Mexico that you may need help with, and we are willing to help you with that big-league. But they have to be knocked out and you have not done a good job of knocking them out.” Ex. 45 (Greg Miller *et. al.*, *Full Transcripts of Trump’s Calls with Mexico and Australia*, The Washington Post, Aug. 3, 2017).

249. On August 25, 2017, President Trump pardoned former Maricopa County Sheriff Joe Arpaio, who was to be sentenced for criminal contempt for failing to comply with a federal judge’s order to stop racially profiling Latinos. *See* Ex. 46 (Julie Hirschfield Davis and Maggie Haberman, *Trump Pardons Joe Arpaio, Who Became Face of Crackdown on Illegal Immigration*, The N.Y. Times, Aug. 25, 2017).

250. Arpaio had been detaining people ostensibly because they had violated the law. But in practice, his office detained huge numbers of individuals solely because they looked Latino,

without any reasonable suspicion of illegal conduct. *See generally Melendres v. Arpaio*, Findings of Fact & Conclusions of Law, 2:07-cv-02513-GMS, ECF Doc. No.579 (D. Az. May 24, 2013). After a federal court enjoined that practice in 2011, Arpaio continued his unlawful and discriminatory practices unabated, “announc[ing] to the world and to his subordinates that he was going to continue business as usual no matter who said otherwise.” *United States v. Arpaio*, Findings of Fact & Conclusions of Law, 2:16-cr-01012-SRB, ECF Doc. No. 210 at 13 (D. Az. July 31, 2017). On July 31, 2017, a federal court held Arpaio in criminal contempt, holding that he had willfully acted in “flagrant disregard” of the injunction. *Id.*

251. Before issuing the pardon, President Trump asked, “Was Sheriff Joe convicted for doing his job?” Ex. 46. After issuing the pardon, President Trump sent a tweet calling Mr. Arpaio “an American patriot.” *Id.*

252. As President Trump’s statements about Mexico and those with Mexican roots show, the President has demonstrated a willingness to disparage Mexicans in a misguided attempt to secure support from his constituency, even when such impulses are impermissible motives for directing governmental policy.

Trump Administration’s Threatening Statements about Deporting Immigrants

253. On June 13, 2017, Acting ICE Director Thomas Homan testified in front of the House Appropriations Committee’s Subcommittee on Homeland Security, stating as to “every immigrant in the country without papers,” that they “should be uncomfortable. You should look over your shoulder. And you need to be worried.” *Hearing on the ICE and CBP F.Y. 2018 Budget Before the Subcomm. on Homeland Security of the H. Comm. on Appropriations*, 115th Cong. (2017) 2017 WLNR 18737622. CNN reported that Homan “doubled down” on these statements in an interview later that week, stating that “Trump and his administration have made clear that any undocumented immigrant could be arrested and face deportation proceedings at any time, unless they have current and valid protection under DACA.” Ex. 48 (Tal Kopan, ICE Director: Undocumented immigrants ‘should be afraid,’ CNN, June 6, 2017).

254. On April 19, 2017, United States Attorney General Jefferson B. Sessions stated in an interview on Fox News' "Happening Now," program—in response to a question regarding the deportation of a DACA recipient—that “[e]verybody in the country illegally is subject to being deported, so people come here and they stay here a few years and somehow they think they are not subject to being deported -- well, they are. . . . we can't promise people who are here unlawfully that they aren't going to be deported.” Ex. 49 (Adam Shaw, *Sessions defends immigration policies after reported 'DREAMer' deportation*, Fox News, Apr. 19, 2017).

President Trump Rescinds DACA in Response to the Litigation Threats of a State Found To Have Discriminated Against Latinos/Hispanics Nine Times Since 2012

255. On June 29, 2017, the Attorneys General of ten states, led by the State of Texas, sent U.S. Attorney General Sessions a letter threatening to add claims to litigation currently pending in the Southern District of Texas “to challenge both the DACA program and the remaining expanded DACA permits,” if the Executive Branch did not agree to end the DACA program by September 5, 2017.

256. The demand that President Trump eliminate DACA is part of a history of intentional discrimination against Latinos/Hispanics by the State of Texas.

257. Over the preceding decade, federal courts have repeatedly found the State of Texas liable for engaging in unlawful discrimination based on race and/or national origin.

258. For example, in *Texas v. United States*, 887 F. Supp. 2d 133, 161 (D.D.C. 2012), three federal judges blocked a Congressional and State House redistricting plan after finding that it “was enacted with discriminatory purpose.”

259. The litigation eventually culminated in a ruling by a three-judge panel on August 15, 2017 finding, again, that the 2010 congressional districts had been created with “racially discriminatory intent” against Latinos and African American voters. *Perez v. Abbott*, SA-11-CV-360, 2017 U.S. Dist. LEXIS 129982, at *55 (W.D. Tex. Aug. 15, 2017).

260. On October 9, 2014, in separate litigation challenging a state voter photo identification (“ID”) law, a Texas federal district court judge found that the provision had been “imposed with an unconstitutional discriminatory purpose” and “constitute[d] an unconstitutional poll tax.” *Veasey v. Perry*, 71 F. Supp. 3d 627, 633 (S.D. Tex. 2014).

261. On remand from the Fifth Circuit, a federal district court concluded that the 2011 Legislature intentionally discriminated against minority voters by requiring presentation of a photo ID when casting their ballots. *Veasey v. Abbott*, 2017 U.S. Dist. LEXIS 54253, at *14-18 (S.D. Tex. Apr. 10, 2017).

262. DHS issued the DHS Memorandum rescinding DACA on September 5, 2017, in direct response to the threats of the State of Texas and the other ten states, fulfilling the demand of a State marked with a history of racial discrimination.

President Trump Backtracks on His Promise and Rescinds DACA

263. Despite its repeated assurances, the federal government announced that the DACA program will be rescinded and that the government will immediately cease accepting applications under DACA. The federal government will process pending applications on a case-by-case basis. *See Ex. 74* (DHS, Memorandum Rescinding DACA, September 5, 2017). The federal government will only issue renewals for recipients whose permits expire before March 5, 2018, provided they apply for renewal by October 5, 2018. *Id.* The DHS Memorandum further specifies that the government will not approve any new or pending applications for advanced parole. *Id.*

264. In issuing the DHS Memorandum rescinding DACA, the federal government misleadingly claimed that DACA was unconstitutional, despite no court making that determination. *See Ex. 75* (DOJ, Attorney General Sessions Remarks on DACA, September 5, 2017).

265. As a result of the DHS Memorandum, after the expiration of DACA grantees’ terms, the grantees will immediately face the risk of losing their employment, as well as vital benefits, such as social security cards, driver licenses, financial aid, disability and health benefits, among others. They also may lose their homes and communities if the program is allowed to

expire: an internal White House memo reported on by CNN stated that DHS now is urging DACA recipients “to prepare for and arrange their departure from the United States” when their DACA terms end. Ex. 88 (Tal Kopan & Jim Acosta, *Admin Memo: DACA recipients should prepare for departure from the United States*, CNN, Sept. 5, 2017).

266. President Trump also has taken affirmative steps to reduce the privacy protections applicable to DACA data. In January 2017, President Trump issued an Executive Order directing all agencies, including DHS, to “ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.” Ex. 76 (Executive Order 13768, “Enhancing Public Safety in the Interior of the United States,” Jan. 25, 2017). DHS has confirmed that its new privacy policy, adopted in response to the Executive Order, “permits the sharing of information about immigrants and non-immigrants with federal, state, and local law enforcement.” Ex. 51 (DHS, *Privacy Policy 2017-01 Questions & Answers*, Apr. 27, 2017).

267. The DHS Memorandum provides no assurance to DACA grantees, or direction to USCIS and ICE, that information contained in DACA applications or renewal requests cannot be used for the purpose of future immigration enforcement proceedings.

268. To the contrary, DHS posted public guidance about the impact of the rescission on the same day that the DHS Memorandum was issued, expressly declining to give concrete assurances about how it would use the information provided by DACA applicants. DHS states that although it generally will not “proactively” use information obtained through DACA for enforcement, it reserves the right to change that policy “at any time without notice” and that the policy “may not be relied upon” by any party. Ex. 89 (DHS, *Frequently Asked Questions: Rescission of Deferred Action for Childhood Arrivals*, Sept. 5, 2017). DACA grantees thus immediately face the risk that information they provided to the federal government could be used against them at any time, without notice, for purposes of immigration enforcement, including detention or deportation.

FIRST CAUSE OF ACTION
(Fifth Amendment – Equal Protection)

269. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

270. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying equal protection of the laws.

271. The DHS Memorandum—together with the President’s numerous statements about his intentions towards Mexicans, who comprise the largest population of DACA grantees—target individuals for discriminatory treatment based on their national origin, without lawful justification.

272. The DHS Memorandum was motivated, at least in part, by a discriminatory motive and/or a desire to harm a particular group.

273. The discriminatory terms and application of the DHS Memorandum cannot be sufficiently justified by federal interests.

274. Through their actions above, Defendants have violated the equal protection guarantee of the Fifth Amendment.

275. Defendants’ violation causes ongoing harm to the States and their residents.

SECOND CAUSE OF ACTION
(Fifth Amendment – Due Process – Information Use)

276. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

277. The Due Process Clause of the Fifth Amendment requires that immigration enforcement actions taken by the federal government be fundamentally fair.

278. Given the federal government’s representations about the allowable uses of information provided by DACA applicants, a refusal to prohibit the use of information contained in DACA applications and renewal requests for purposes of immigration enforcement, including identifying, apprehending, detaining, or deporting non-citizens, is fundamentally unfair.

279. Through their actions above, Defendants have violated the due process guarantee of the Fifth Amendment.

280. Defendants' violation causes ongoing harm to the States and their residents.

THIRD CAUSE OF ACTION
(Administrative Procedure Act – Substantively Arbitrary and Capricious,
Abuse of Discretion, Contrary to Constitution or Statute)

281. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

282. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), prohibits federal agency action that is arbitrary, unconstitutional, and contrary to statute. In implementing the DHS Memorandum and rescinding DACA with minimal formal guidance, federal agencies have taken unconstitutional and unlawful action, as alleged herein, in violation of the Administrative Procedure Act.

283. In implementing the DHS Memorandum, federal agencies have acted arbitrarily and capriciously, and otherwise not in accordance with law, and have abused their discretion, in violation of the APA.

284. Defendants' violation causes ongoing harm to the States' residents.

FOURTH CAUSE OF ACTION
(Administrative Procedure Act – Procedurally Arbitrary and Capricious,
Notice and Comment)

285. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

286. The APA, 5 U.S.C. §§ 553 and 706(2)(D), requires that federal agencies conduct formal rule making before engaging in action that impacts substantive rights.

287. DHS is an “agency” under the APA. 5 U.S.C. § 551(1).

288. The actions that DHS has taken to implement the DHS Memorandum are “rules” under the APA. 5 U.S.C. § 551(4).

289. In implementing the DHS Memorandum, federal agencies have changed the substantive criteria by which individuals DACA grantees work, live, attend school, obtain credit, and travel in the United States. Federal agencies did not follow the procedures required by the APA before taking action impacting these substantive rights.

290. With exceptions that are not applicable here, agency rules must go through notice-and-comment rulemaking. 5 U.S.C. § 553.

291. The Defendants promulgated and relied upon these rules without authority and without notice-and-comment rulemaking in violation of the APA.

292. The States will be impacted because they have not had the opportunity to comment on the rescission of DACA.

293. Defendants' violation causes ongoing harm to the States and their residents.

**FIFTH CAUSE OF ACTION
(Regulatory Flexibility Act – Failure to Issue Regulatory Flexibility Analyses)**

294. The States reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

295. The Regulatory Flexibility Act, 5 U.S.C. §§ 601-612 (“RFA”), requires federal agencies to analyze the impact of rules they promulgate on small entities and publish initial and final versions of those analyses for public comment. 5 U.S.C. §§ 603-604.

296. “Small entities” for purposes of the RFA includes small businesses, small nonprofits, and small governmental jurisdictions. 5 U.S.C. § 601(6).

297. The actions that DHS has taken to implement the DHS Memorandum are “rules” under the RFA. 5 U.S.C. § 601(2).

298. The actions that DHS has taken to implement the DHS Memorandum are likely to have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 602(a)(1).

299. Defendants have not issued the required analyses of DHS’s new rules.

300. Defendants' failure to issue the initial and final Regulatory Flexibility Analyses violates the RFA and is unlawful.

301. Defendants' violation causes ongoing harm to the States and their residents.

PRAYER FOR RELIEF

302. Wherefore, the States pray that the Court:

- a. Declare that the DHS Memorandum rescinding the DACA program is unauthorized by and contrary to the Constitution and laws of the United States;
- b. Declare that the actions that DHS has taken to implement the DHS Memorandum rescinding the DACA program are procedurally unlawful under the APA;
- c. Declare that the actions that DHS has taken to implement the DHS Memorandum rescinding the DACA program are substantively unlawful under the APA;
- d. Declare that the actions that DHS has taken to implement the DHS Memorandum rescinding the DACA program are unlawful under the RFA;
- e. Enjoin Defendants from rescinding the DACA program, pending further orders from this Court;
- f. Enjoin Defendants from using information obtained in any DACA application or renewal request to identify, apprehend, detain, or deport any DACA applicant or member of any DACA applicant's family, or take any action against a DACA applicant's current or former employer; and
- g. Award such additional relief as the interests of justice may require.

DATED: September 6, 2017

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**Pro hac vice* motions will be forthcoming.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
CONNECTICUT, DELAWARE,
ILLINOIS, IOWA, MARYLAND,
MINNESOTA, NEW JERSEY, NEW
MEXICO, NORTH CAROLINA,
OREGON, RHODE ISLAND,
VERMONT, and WASHINGTON;
COMMONWEALTHS OF
MASSACHUSETTS,
PENNSYLVANIA, and VIRGINIA;
DISTRICT OF COLUMBIA; CITIES
OF CHICAGO, NEW YORK,
PHILADELPHIA, PROVIDENCE,
and SEATTLE; CITY and COUNTY
of SAN FRANCISCO; and the
UNITED STATES CONFERENCE
OF MAYORS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE; and WILBUR L.
ROSS, JR., in his official capacity as
Secretary of Commerce,

and

BUREAU OF THE CENSUS, an
agency within the United States
Department of Commerce; and RON S.
JARMIN, in his capacity as performing
the non-exclusive functions and duties
of the Director of the U.S. Census
Bureau,

Defendants.

CIVIL ACTION NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case is brought to enforce the federal government’s constitutional obligation to conduct an “actual Enumeration” of the national population every ten years, by determining the “whole number of persons” in the United States. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2. Plaintiffs challenge Defendants’ unconstitutional and arbitrary decision to add a citizenship demand to the 2020 Census questionnaire, which will fatally undermine the accuracy of the population count and cause tremendous harms to Plaintiffs and their residents.

2. The “decennial enumeration of the population is one of the most critical constitutional functions our federal government performs.”¹ The decennial census directly determines the apportionment of Representatives to Congress among the states, the allocation of electors to the Electoral College, and the distribution of hundreds of billions of dollars in federal funds to states, local governments, and other grantees.

3. On March 26, 2018, Defendants announced their decision to use the 2020 Census to demand information on the citizenship status of every resident in the country, despite acknowledging that “[t]he Department of Commerce is not able to determine definitively how inclusion of a citizenship question on the decennial census will impact responsiveness.”² As required by the Census Act, on March 29, 2018, Defendants transmitted the Secretary of Commerce’s final determination of the “questions that will be asked on the 2020 Census” to Congress.³

¹ Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-119, § 209(a)(5), 111 Stat. 2440, 2481 (1997).

² Memorandum from Sec’y of Commerce Wilbur Ross to Under Sec’y of Commerce for Econ. Affairs Karen Dunn Kelley, *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire* 7 (Mar. 26, 2018), https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf (hereafter “Ross Memo”).

³ U.S. Census Bureau, *Questions Planned for the 2020 Census and American Community Survey* 1 (Mar. 2018); *see also* 13 U.S.C. § 141(f)(2) (hereafter “Final Questions Report”).

4. The U.S. Bureau of the Census (“Census Bureau”) has not sought citizenship information on the decennial census form that goes to every household in the country since 1950. In departing from nearly seven decades of settled practice, Defendants also departed from their long-standing and well-established processes for revising the decennial census questionnaire. Decisions to change questions on the decennial census typically take several years to test, evaluate, and implement; but Defendants’ decision here was compressed into a hasty and unprecedented period of less than four months.

5. As Defendants’ own research shows, this decision will “inevitably jeopardize the overall accuracy of the population count” by significantly deterring participation in immigrant communities, because of concerns about how the federal government will use citizenship information. *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980) (three-judge court). These concerns have been amplified by the anti-immigrant policies, actions, and rhetoric targeting immigrant communities from President Trump and this Administration.

6. The resulting undercount will not only fatally undermine the accuracy of the 2020 Census, but will jeopardize critical federal funding needed by states and localities to provide services and support for millions of residents. Further, it will deprive historically marginalized immigrant communities of critical public and private resources over the next ten years. Defendants’ decision is inconsistent with their constitutional and statutory obligations; is unsupported by the stated justification; departs from decades of settled practice without reasoned explanation; and fails to consider the availability of alternative data that effectively serve the federal government’s needs.

7. Plaintiffs the States of New York, Connecticut, Delaware, Illinois, Iowa, Maryland, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, and Washington; the Commonwealths of Massachusetts, Pennsylvania, and Virginia; the District of Columbia; the Cities of Chicago, New York, Philadelphia, Providence, and Seattle; the City and County of San Francisco; and the United States Conference of Mayors (“USCM”), therefore bring this action to enjoin Defendants’ decision because it violates the constitutional mandate to conduct an “actual Enumeration,” U.S. Const. art. I, § 2, cl. 3; exceeds and is contrary to Defendants’ statutory jurisdiction, authority, and limitations in violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(C); and is arbitrary, capricious, and an abuse of discretion under the APA, 5 U.S.C. § 706(2)(A).

JURISDICTION AND VENUE

8. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a). Jurisdiction is also proper under the judicial review provisions of the APA, 5 U.S.C. § 702.

9. Declaratory and injunctive relief is sought as authorized in 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiffs State of New York and City of New York are residents of this judicial district, and the other Plaintiffs consent to adjudication of these issues in this district.

11. Plaintiffs bring this action to redress harms to their proprietary and sovereign interests and Plaintiff States and the District of Columbia as to their interests as *parens patriae*.

PARTIES

12. Plaintiff the State of New York, represented by and through its Attorney General, Eric T. Schneiderman, is a sovereign state in the United States of America. The Attorney General is New York State's chief law enforcement officer, and is authorized to pursue this action pursuant to N.Y. Executive Law § 63.

13. Plaintiff the State of Connecticut, represented by and through its Attorney General, is a sovereign state in the United States of America.

14. Plaintiff the State of Delaware, represented by and through its Attorney General, is a sovereign state in the United States of America.

15. Plaintiff the State of Illinois, represented by and through its Attorney General, is a sovereign state in the United States of America.

16. Plaintiff the State of Iowa, represented by and through its Attorney General, is a sovereign state in the United States of America.

17. Plaintiff the State of Maryland, represented by and through its Attorney General, is a sovereign state in the United States of America.

18. Plaintiff the State Minnesota, represented by and through its Attorney General, is a sovereign state in the United States of America.

19. Plaintiff the State New Jersey, represented by and through its Attorney General, is a sovereign state in the United States of America.

20. Plaintiff the State of New Mexico, represented by and through its Attorney General, is a sovereign state in the United States of America.

21. Plaintiff the State of North Carolina, represented by and through its Attorney General, is a sovereign state in the United States of America.

22. Plaintiff the State of Oregon, represented by and through its Attorney General, is a sovereign state in the United States of America.

23. Plaintiff the State of Rhode Island, represented by and through its Attorney General, is a sovereign state in the United States of America.

24. Plaintiff the State of Vermont, represented by and through its Attorney General, is a sovereign state in the United States of America.

25. Plaintiff the State of Washington, represented by and through its Attorney General, Robert W. Ferguson, is a sovereign state in the United States of America. The Washington State Attorney General is the chief legal advisor to the State. The Attorney General's powers and duties include acting in federal court on matters of public concern.

26. Plaintiff the Commonwealth of Massachusetts, represented by and through its Attorney General, is a sovereign state in the United States of America.

27. Plaintiff the Commonwealth of Pennsylvania, represented by and through its Attorney General, is a sovereign state in the United States of America.

28. Plaintiff the Commonwealth of Virginia, represented by and through its Attorney General, is a sovereign state in the United States of America.

29. Plaintiff the District of Columbia is a municipal corporation organized under the Constitution of the United States. It is empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia.

30. Plaintiff City of Chicago is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Illinois. Chicago is the third largest city in the United States by population.

31. Plaintiff New York City is a municipal corporation organized pursuant to the laws of the State of New York. The City is a political subdivision of the State and derives its powers through the State Constitution, State laws, and the New York City Charter. New York City is the largest city in the United States by population.

32. Plaintiff City of Philadelphia is a municipal corporation organized pursuant to the laws of the Commonwealth of Pennsylvania. The City is a political subdivision of the Commonwealth with powers derived from the Pennsylvania Constitution, Commonwealth law, and the City's Home Rule Charter. Philadelphia is the fifth largest city in the United States by population.

33. Plaintiff City of Providence is a municipal corporation organized pursuant to the laws of the State of Rhode Island.

34. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county.

35. Plaintiff the City of Seattle is a first-class charter city, incorporated under the laws of the State of Washington, empowered to sue and be sued, and represented by and through its elected City Attorney, Peter S. Holmes. Seattle is the largest city in the State of Washington by population.

36. Plaintiff United States Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are nearly 1,400 such cities in

the country today, and each member city is represented in the Conference by its chief elected official, the mayor.

37. Plaintiffs are aggrieved by Defendants' actions and have standing to bring this action because the decision to add a person-by-person demand for citizenship information to the 2020 Census has already damaged Plaintiffs' sovereign, quasi-sovereign, and proprietary interests and will continue to cause injury unless and until the decision is enjoined.

38. Defendant United States Department of Commerce is a cabinet agency within the executive branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f). The Commerce Department is responsible for planning, designing, and implementing the 2020 Census. 13 U.S.C. § 4.

39. Defendant Wilbur L. Ross, Jr. is the Secretary of Commerce. He is responsible for conducting decennial censuses of the population, and oversees the Bureau of the Census ("Census Bureau"). He is sued in his official capacity.

40. Defendant Census Bureau is an agency within, and under the jurisdiction of, the Department of Commerce. 13 U.S.C. § 2. The Census Bureau is the agency responsible for planning and administering the decennial census.

41. Defendant Ron S. Jarmin is currently performing the non-exclusive functions and duties of the Director of the Census Bureau. He is sued in his official capacity.

ALLEGATIONS

I. Defendants have a constitutional obligation to conduct an accurate enumeration of the population.

42. The Constitution provides that Representatives "shall be apportioned among the several States . . . according to their respective Numbers," U.S. Const. art. I, cl. 2, § 3; which requires "counting the whole number of persons in each State," *id.* amend. XIV, § 2. To ensure

fair representation among the states, the Constitution requires that this count be an “actual Enumeration” conducted every ten years.

43. Congress has assigned the responsibility of making this enumeration to the Secretary of Commerce, and the Secretary may delegate authority for establishing procedures to conduct the census to the Census Bureau. 13 U.S.C. §§ 2, 4, 141. The central constitutional purpose of the Census Bureau in taking the decennial census is to conduct an accurate enumeration of the population.

44. In addition, the population data tabulated as a result of the census are used for other governmental purposes, including to permit compliance with the Fourteenth Amendment’s one-person one-vote requirement when drawing district lines for state and local government elected bodies; and to allocate federal funds authorized by hundreds of critical Congressional programs.

45. To enable a person-by-person count, the Census Bureau sends a questionnaire to every household in the United States. The questionnaires are directed to every resident in the United States and, under 13 U.S.C. § 221, residents are legally required to respond. The Census Bureau then counts responses from every household to determine the population count in the various states.

46. Some demographic groups have proven more difficult to count than others. Minority and immigrant populations have historically been some of the hardest groups to count accurately in the decennial census, due to issues such as language barriers and distrust of government. For example, the 2010 Census failed to count more than 1.5 million minorities.

Indeed, Census Bureau analyses show the fast-growing Hispanic population was undercounted by 1.54% in 2010, by 0.71% in 2000, and by 4.99% in 1990.⁴

47. Recognizing that these barriers undermine its constitutional mandate to pursue an accurate enumeration of the population, the Census Bureau has previously taken affirmative steps to reach these hard-to-count populations. One such measure includes hiring census workers to serve as “enumerators,” to conduct in-person follow-up with any person who fails to respond.⁵ In addition, during the 2000 and 2010 censuses, the Census Bureau designed and implemented a public advertising campaign to reach hard-to-count immigrant communities. The Census Bureau used paid media in over a dozen different languages to improve responsiveness in immigrant communities. For the 2010 Census, the Census Bureau adopted a plan to partner with local businesses, faith-based groups, community organizations, elected officials, and ethnic organizations to reach these communities and improve the accuracy of the count.

48. The Census Bureau’s constitutional obligation to pursue an accurate enumeration requires that the Census Bureau avoid unnecessarily deterring participation in the decennial census. U.S. Const. art. 1, § 2, cl. 3. To that end, the Census Bureau must minimize the burden questions may place on respondents. According to the Census Bureau’s own standards, it must also test its survey questions to ensure that they do not increase non-responsiveness by touching on sensitivities or anxieties respondents have about privacy and governmental overreach.

⁴ See Memorandum from Patrick J. Cantwell to David C. Whitford, *2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States 2* (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

⁵ U.S. Census Bureau, *2010 Census Non-Response Followup Enumerator Manual 1–6* (2009), <https://www.census.gov/history/pdf/2010nrfu.pdf>; U.S. Census Bureau, *Non-Response Followup Enumerator Manual 1–2* (1999), <https://www.census.gov/history/pdf/2000nrfu.pdf>; U.S. Census Bureau, *Census Instructions-History*, https://www.census.gov/history/www/through_the_decades/census_instructions/.

II. Defendants' decision to include a citizenship demand on the 2020 Census will deter participation.

49. Federal law requires the Secretary of Commerce to advise Congress by no later than March 31, 2018, of the Secretary's determination of the questions to be included on the 2020 Census. 13 U.S.C. § 141(f)(2). Consistent with this obligation, the Defendants transmitted a report to Congress on March 29, 2018, advising Congress of the questions to be included on the 2020 Census. This report included the Secretary's determination that the decennial census will include, for the first time since 1950, a demand for information regarding the citizenship status of every person in the country.

50. In the March 26, 2018, memo announcing the Defendants' decision to demand citizenship status for every resident in the country, Secretary Ross stated that "the Department [of Commerce]'s review found that limited empirical evidence exists about whether adding a citizenship question would decrease response rates materially."⁶ However, almost forty years of Census Bureau statements and data reflect the opposite to be true.

A. Defendants have acknowledged for decades that a citizenship demand would deter census participation and undermine the decennial population count.

51. Since at least 1980, the Census Bureau has expressed the public position that inquiries regarding citizenship are particularly sensitive in immigrant communities, and that demanding citizenship or immigration status on the decennial census would drive down response rates and seriously impair the accuracy of the decennial population count.

52. In 1980, in response to a lawsuit seeking to compel the Census Bureau to demand all Americans disclose their immigration status, the Bureau argued in litigation that "any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count."

⁶ Ross Memo at 5.

Fed'n for Am. Immigration Reform, 486 F. Supp. at 568. The Bureau explained that “[o]btaining the cooperation of a suspicious and fearful population would be impossible if the group being counted perceived any possibility of the information being used against them. Questions as to citizenship are particularly sensitive in minority communities and would inevitably trigger hostility, resentment and refusal to cooperate.” *Id.*

53. The Census Bureau repeated these concerns in 1988 and 1989, in congressional testimony opposing proposed legislation that would have directed the Census Bureau to exclude from its count any immigrant who was not a lawful permanent resident.

54. The Bureau testified that inquiring into immigration status “could seriously jeopardize the accuracy of the census,” because “[p]eople who are undocumented immigrants may either avoid the census altogether or deliberately misreport themselves as legal residents,” and legal residents “may misunderstand or mistrust the census and fail or refuse to respond.”⁷ The Bureau concluded that a citizenship demand would suffer from “the same problems.”⁸

55. The Census Bureau also declined to include a person-by-person demand regarding citizenship status on the 2000 Census. The former Director of the Census Bureau who oversaw the 2000 Census later testified that a citizenship demand “will lead to a less complete and less accurate census,” explaining that the “question will be treated with suspicion” and “[a] significant number of noncitizens will not respond,” because “it is foolish to expect that census-

⁷ See *Census Equity Act: Hearings Before the Subcomm. on Census & Population of the H. Comm. on Post Office & Civ. Serv.*, 101st Cong. 43–45 (1989) (statement of C. Louis Kincannon, Deputy Director, Census Bureau); *Exclude Undocumented Residents from Census Counts Used for Apportionment: Hearing Before the Subcomm. on Census & Population of the H. Comm. on Post Office & Civil Serv.*, 100th Cong. 50–51 (1988) (testimony of John Keane, Director, Census Bureau).

⁸ *Id.*

taking is immune from anxieties that surround such issues as undocumented aliens, immigration enforcement, and so forth.”⁹

56. In 2009, all eight former Census Bureau directors dating back to 1979, and appointed by presidents of both political parties, objected to an ultimately failed congressional proposal to add demands for information regarding citizenship and immigration status to the 2010 Census. They argued that the Census Bureau would not have enough time to determine “[t]he effect on data quality” and “the consequences for participation among all immigrants, regardless of their legal status,” including the concern that enumerators might encounter “problems during door-to-door visits to unresponsive households, when a legalized ‘head of household’ would avoid enumerators because one or more other household members are present unlawfully.”¹⁰

57. In 2010, the Census Bureau again declined to include a person-by-person citizenship demand on the census questionnaire. Then-Director of the Census Bureau, Robert Groves, explained that “we don’t ask citizenship or documentation status, all of the things that may make people uncomfortable are gone from [the census] form.”¹¹

58. Subsequently, in 2016, four former Directors of the Census Bureau, also appointed by presidents of both political parties, argued in a brief filed with the U.S. Supreme Court that “a [person-by-person] citizenship inquiry would invariably lead to a lower response

⁹ *Counting the Vote: Should Only U.S. Citizens Be Included in Apportioning Our Elected Representatives?: Hearing Before the Subcomm. on Federalism & the Census of the H. Comm. on Gov’t Reform*, 109th Cong. 73 (2005) (statement of Kenneth Prewitt).

¹⁰ *Statement of Former Census Directors on Adding a New Question to the 2010 Census* (Oct. 16, 2009), http://reformimmigrationforamerica.org/wp-content/uploads/2009/10/thecensusproject.org_letters_cp-formerdirs-16oct2009.pdf.

¹¹ *Video of Robert Groves*, C-SPAN (Mar. 26, 2010), <https://www.c-span.org/video/?292743-6/2010-us-census&start=1902>.

rate to the Census in general,” and would “seriously frustrate the Census Bureau’s ability to conduct the only count the Constitution expressly requires: determining the whole number of persons in each state in order to apportion House seats among the states.” Brief of Former Directors of the U.S. Census Bureau as Amici Curiae Supporting Appellees at 25, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940).

59. The former Directors also noted that “[r]ecent experience demonstrates lowered participation in the Census and increased suspicion of government collection of information in general,” and that “[p]articular anxiety exists among non-citizens.” *Id.* at 5. In this context, the former Directors concluded, “[t]here would be little incentive for non-citizens to offer to the government their actual status,” and the “result would be a reduced rate of response overall and an increase in inaccurate responses.” *Id.*

B. The Trump Administration’s anti-immigrant policies, actions, and rhetoric will amplify the negative impacts on census participation rates of Defendants’ demand for citizenship status.

60. These well-documented risks of adding a person-by-person citizenship demand to the decennial census are heightened in the current political climate because of President Trump’s anti-immigrant rhetoric and this Administration’s pattern of policies and actions that target immigrant communities. These actions and policies include the rescission of the Deferred Action for Childhood Arrivals program; the ban on travel from several majority-Muslim countries; the suspension on refugee admissions to the United States; the termination of special protections from removal for migrants from nations experiencing war and natural disasters; increased roundups of undocumented migrants; efforts to suspend or terminate federal funding to localities that elect to limit their participation in federal immigration enforcement efforts; and efforts to build a physical wall along the Mexico-U.S. border, among other actions.

61. The Trump Administration has also made a number of threatening statements about deporting undocumented immigrants. On June 13, 2017, the Acting Director of U.S. Immigration and Customs Enforcement, Thomas Homan, testified before Congress that “every immigrant in the country without papers . . . should be uncomfortable. You should look over your shoulder. And you need to be worried.”¹²

62. This anti-immigrant climate has led to significant public distrust and fear of providing information to the federal government. During recent pretests in preparation for the 2020 Census, Census Bureau researchers found that immigrant respondents are already increasingly concerned about confidentiality and data sharing in light of the current anti-immigrant rhetoric.

63. Census Bureau officials have noted that in routine pretests conducted from February 2017 to September 2017, “fears, particularly among immigrant respondents, have increased markedly this year.”¹³ The Census Bureau’s researchers recounted repeated instances of respondents spontaneously raising concerns about data confidentiality and the government’s negative attitudes toward immigrants. The researchers also noted that some respondents, acting on these same concerns, intentionally provided incomplete or inaccurate information, or sought to break off interviews.

64. The Census Bureau has recognized that these anxieties are already likely to present a barrier to participation in the 2020 Census, and that “[t]hese findings are particularly

¹² *Immigration and Customs Enforcement and Customs and Border Patrol Fiscal Year 2018 Budget Request: Hearing Before the Subcomm. on Homeland Sec. of the H. Comm. on Appropriations*, 115th Cong. (2017) (statement of Thomas D. Homan, Acting Director, Immigration and Customs Enforcement).

¹³ Memorandum from the U.S. Census Bureau, Ctr. for Survey Measurement to Assoc. Directorate for Research and Methodology, *Respondent Confidentiality Concerns 1* (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

troubling given that they impact hard-to-count populations disproportionately, and have implications for data quality and nonresponse.”¹⁴

65. The Defendants’ decision to add a citizenship demand to the 2020 Census questionnaire will add to this unprecedented level of anxiety in immigrant communities. It will lead to nonresponse and lower participation by many immigrants who are citizens and legal residents and live in mixed immigration status households, as well as by undocumented immigrants, all of whom may seek to protect their own privacy or the privacy of their household. This exacerbated deterrent effect began on March 26, 2018, when immigrant communities learned that Secretary Ross directed the Census Bureau to add a citizenship demand to the 2020 Census.

66. Further, the Census Bureau will have to expend significant additional resources due to the lowered participation of immigrant communities, including hiring more census enumerators for in-person follow-up. However, enumerators are unlikely to succeed in meaningfully addressing nonresponses to the census where individuals decline to participate due to fear or mistrust of the federal government.

67. While Defendants recognize the detrimental impact that the addition of a citizenship demand will cause to the accuracy of the 2020 Census, they nevertheless decided to demand citizenship status from every individual resident in the country through the 2020 Census questionnaire.

¹⁴ *Id.* at 7.

C. Defendants ignored their own standards for ensuring the accuracy of the decennial census.

68. In adding a citizenship demand to the 2020 Census, Defendants departed from statistical standards that promote the accuracy of information collected and disseminated by the Defendants.

69. For each decennial census, the Census Bureau meticulously develops and tests the content, specific language, order, and layout of the questionnaire to improve the accuracy of the enumeration. In addition to fulfilling the Census Bureau's constitutional duty, this development process involves multiple steps that ensure the accuracy, reliability, and objectivity of the final data, as consistent with prior Census Bureau practice and as required by the Information Quality Act ("IQA"). Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763 (Dec. 21, 2000).

70. Government-wide statistical standards adopted under the IQA require the Commerce Department and the Census Bureau to carefully design the census questionnaire to "minimize respondent burden while maximizing data quality" and to "achieve the highest rates of response."¹⁵ The standards also require testing each component of the questionnaire to ensure that it operates as intended.

71. The questionnaire development process and the evaluation of changes to individual inquiries take several years to complete.

72. Indeed, the Census Bureau has spent almost ten years developing and testing the content, specific language, and layout of just one proposed change to the question regarding race and ethnicity on the 2020 questionnaire. From 2008 through 2012, the Census Bureau conducted

¹⁵ Office of Mgmt. & Budget, *Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys* Sections 1.3, 1.4, 2.3.1 (2006).

comprehensive research into the possibility of combining race and ethnicity into one question on the 2020 Census. The research focused on whether this proposed change would improve respondent understanding of the question, and improve the accuracy of race and ethnicity data collected.

73. The Census Bureau then spent several years designing and conducting tests on the proposed change to explore different alternatives for the language, layout, and instructions regarding a revised question. The testing was designed to assess the accuracy and reliability of alternative forms of asking the proposed question. In 2016, the Census Bureau conducted outreach to federal agencies and to the public to obtain feedback on the proposed change.

74. The Bureau concluded its process at the end of 2017, after nine years of evaluation and testing, because it “needed to make a decision on the design of the race and ethnicity questions by December 31, 2017 in order to prepare for the 2020 Census systems, and deliver the final 2020 Census question wording to Congress by March 31, 2018.”¹⁶

75. In contrast, Defendants added a demand for citizenship information to the 2020 questionnaire after less than four months of consideration, conducted almost entirely after the Bureau’s internal deadline of December 31, 2017, for adding questions to the 2020 Census. Defendants did not conduct any research into the potential performance of the citizenship demand, and did not test the impact of adding a citizenship demand on data accuracy. Nevertheless, Secretary Ross directed the Census Bureau to add a citizenship demand to the 2020 Census questionnaire, overruling Census Bureau officials and the Bureau’s own expert advisory committee.

¹⁶ Memorandum, U.S. Census Bureau, *2020 Census Program Memorandum Series: 2018.02, Using Two Separate Questions for Race and Ethnicity in 2018 End-to-End Census Test and 2020 Census* (Jan. 26, 2018), https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_02.pdf.

(1) The Defendants failed to adequately test the inclusion of a citizenship demand on the 2020 Census.

76. The Defendants added a citizenship demand to the 2020 Census without following required standards for testing the content, specific language, and layout of new inquiries. Specifically, Defendants ignored IQA standards that require testing of each inquiry to “ensure that all components of a survey function as intended,” and require incorporation of testing results into the final design of the questionnaire.¹⁷ These testing standards promote the accuracy of the decennial census, which is the Defendants’ primary constitutional obligation.

77. Major testing of proposed changes to the 2020 Census questionnaire began with the 2014 Census Test. At that time, the Census Bureau assessed wording changes to the race and Hispanic origin question, as well as new potential response categories for married and unmarried relationships. The 2014 test did not assess the content, wording, or layout of a demand for citizenship information.

78. For the 2020 Census, the 2015 National Content Test was the opportunity for the U.S. Census Bureau to “compare different versions of questions prior to making final decisions.”¹⁸

79. The Census Bureau designed and conducted the National Content Test in 2015. While the Census Bureau tested the changes to questions related to race and ethnicity, the Bureau did not design tests of language, layout, or instructions for a potential citizenship demand. The Census Bureau announced the results of this test in early March 2017, none of which related to citizenship.

¹⁷ Office of Mgmt. & Budget, *Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys* Section 1.4 (2006).

¹⁸ U.S. Census Bureau, *Information Collection Request: 2015 National Content Test*, 80 Fed. Reg. 29,609, 29,610 (May 22, 2015).

80. The Census Bureau had other opportunities during the major tests in 2016 and April 2017 to test its questionnaire for the 2020 Census. However, the questionnaires assessed in these tests did not include a question regarding citizenship. In fact, the Census Bureau did not begin considering whether to add a demand for citizenship information to the 2020 Census until approximately eight months after it began conducting major testing in 2017.

81. The last major test before the 2020 Census, the 2018 end-to-end test, began on April 1, 2018. The end-to-end test is a dress rehearsal for the upcoming census, in which the Bureau tests and validates all major components, including operations, procedures, systems, and infrastructure. The 2018 end-to-end test does not include any request for citizenship information on the questionnaire sent to households. As a result, none of the major tests for the 2020 Census will have assessed the content, language, layout, or order of the citizenship demand on the questionnaire, or the impact that the demand for person-by-person citizenship status would have on response rates and accuracy.

82. Defendants acknowledge that they are unable “to determine definitively how inclusion of a citizenship question on the decennial census will impact responsiveness,”¹⁹ but they added a citizenship question without conducting the necessary testing to determine the impact of this decision on the 2020 Census.

83. To date, the Census Bureau has not tested the language or layout of the newly added demand for person-by-person citizenship information. Indeed, the purpose of testing is to promote accuracy by ensuring that the components of the census function as intended. Yet, the Bureau has failed to conduct any testing to assess the accuracy and reliability of “different ways

¹⁹ Ross Memo at 7.

to ask the question” before adding it to the questionnaire.²⁰ The Census Bureau also failed to test the content and order of the citizenship demand on the proposed census questionnaire with actual respondents as required by its own standards. Such testing could have allowed the Bureau to identify potential problems, including adverse impact of the citizenship demand on response rates and accuracy.

84. The Census Bureau’s failure to test its demand for citizenship information before deciding to include it on the 2020 Census questionnaire is unprecedented in the modern administration of the decennial census. For each decennial census since 1970, “the Census Bureau has conducted content tests to research and improve the design and function of different questions.”²¹ The Census Bureau spent three to four years thoroughly testing proposed changes to topics and question wording “to ensure census questionnaires are easily understood and reflect the population accurately.”²² This thorough vetting process included testing of the language of specific questions in decennial National Content Tests in 1976, 1986, 1996, 2005, and 2015, as well as testing the performance of proposed topics and specific questions in the field with actual respondents.

85. In sharp contrast to these extensive testing practices, the Bureau failed to conduct any tests to determine the performance of its new demand for citizenship status on the 2020 questionnaire. Instead the Census Bureau simply transferred the citizenship demand from the existing American Community Survey (“ACS”) to the 2020 Census questionnaire.

²⁰ U.S. Census Bureau, *How a Question Becomes a Part of the American Communities Survey* (2017) <https://www.census.gov/content/dam/Census/library/visualizations/2017/comm/acs-questions.pdf>.

²¹ U.S. Census Bureau, *Content Research* (Jan. 11, 2017), <https://www.census.gov/programs-surveys/decennial-census/2020-census/research-testing/content-research.html>.

²² *Id.*

86. While the Census Bureau currently inquires into citizenship status on the annual ACS, it cannot simply transfer the demand from the ACS to the decennial census without testing. The ACS is a sample survey sent to 3.5 million households annually, rather than a complete enumeration of every household in the United States.

87. Moreover, the testing the Census Bureau has conducted on the citizenship demand occurred to refine the question in the context of the ACS questionnaire. The citizenship demand's specific language, layout, order, and instructions remain untested in the context of the decennial census questionnaire.

88. For instance, the Census Bureau developed the language of the citizenship demand on the ACS to fulfill various purposes, including the "evaluation of immigration policies."²³ As a result, the citizenship demand on the ACS requires citizens to disclose whether they were born in "United States territories," whether they were born "abroad" to U.S. parents, or if and when they were "naturalized."²⁴ This information is entirely irrelevant to the sole stated purpose for adding the citizenship demand to the 2020 Census questionnaire: to provide the Department of Justice with data it claims to need to enforce Section 2 of the Voting Rights Act.²⁵ The Census Bureau has not tested how these components of the citizenship demand will perform on a person-by-person questionnaire, and whether the language can be refined to minimize respondent burden.

89. Finally, the demand for information regarding the citizenship status of every individual in the United States has not been tested in the contemporary environment of high immigrant anxiety and concerns over privacy. Secretary Ross ignored these requirements when

²³ Final Questions Report at 59.

²⁴ *Id.* at 7.

²⁵ Ross Memo at 1, 8.

he asserted that the demand for citizenship status had been adequately tested by virtue of its inclusion on the so-called “long-form census” that was sent to a random sample of households from 1960 to 2000, and on the ACS since 2005. As the Census Bureau’s Scientific Advisory Committee publicly asserted on March 30, 2018, Secretary Ross’s reliance on these prior surveys is based on “data collected in a different data collection context, in a different political climate, before anti-immigrant attitudes were as salient and consequential” as they are at present.²⁶

90. Indeed, during general testing from February through September 2017, the Census Bureau found that unprecedented anxiety in immigrant communities – even without the inclusion of a demand for citizenship status – could increase non-response rates and adversely affect data quality for the 2020 Census. Defendants did not incorporate these findings into the final design of the 2020 Census questionnaire. Instead, Defendants incorporated a demand for citizenship status that will exacerbate anxiety in immigrant communities and further diminish the accuracy of the 2020 Census.

(2) The Defendants have not considered respondent burden or potential response rates.

91. The IQA standards require Defendants to design questionnaires “in a manner that achieves the best balance between maximizing data quality . . . while minimizing respondent burden and cost,” and “achieves the highest practical rates of response.”²⁷ Further, under agency-specific IQA standards adopted by the Census Bureau, the Bureau committed to verify that questions are not “unduly sensitive” and “do not cause undue burden.”²⁸

²⁶ Michael Wines, *Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question* (Mar. 30, 2018).

²⁷ Office of Mgmt. & Budget, *Statistical Policy Directive No. 2*, § 2.3 at 11.

²⁸ U.S. Census Bureau, *Statistical Quality Standards* ii, 7–8 reqs. A2-3 & A2-3.3 (Jul. 2013).

92. The Defendants failed to follow these directives. To the contrary, despite accumulating significant evidence showing that inquiries into citizenship are especially burdensome for immigrant populations, and that a demand for citizenship status would lead to higher rates of non-response, Defendants nonetheless decided to include such a demand on the 2020 Census questionnaire that will be sent to every household.

(3) The Defendants failed to respond to stakeholder concerns.

93. A number of affected stakeholders have expressed concern to the Defendants regarding the inclusion of a demand for citizenship status on the 2020 Census.

94. On January 8, 2018, the American Statistical Association (“ASA”) urged the Census Bureau not to collect citizenship information because of the “very strong potential the quality of the census will be undermined.”²⁹ In addition, the ASA raised concerns that the addition of a citizenship demand this late in the preparation process “would likely increase distrust or suspicion of the government among immigrants, many of whom are already anxious about government inquiries and activities.”³⁰ Moreover, the timing of the Census Bureau’s consideration “[did] not allow time for adequate testing to incorporate new questions, particularly if the testing reveals substantial problems.”³¹

95. The National League of Cities also flagged concerns that the addition of a citizenship demand at such a late stage in the census planning process was “reckless and disruptive,” and would “spike fears about data confidentiality.”³²

²⁹ Letter from Lisa LaVange to Sec’y of Commerce Wilbur Ross (Jan. 8, 2018), <http://www.amstat.org/asa/files/pdfs/POL-CitizenshipQuestion.pdf>.

³⁰ *Id.*

³¹ *Id.*

³² Letter from Clarence Anthony to Sec’y of Commerce Wilbur Ross (Feb. 8, 2018), <http://www.nlc.org/sites/default/files/users/user125/Ross%20Letter%20on%20Citizenship%20Question.pdf>.

96. Plaintiff USCM also sent Secretary Ross a letter signed by 161 Republican and Democratic mayors, expressing concerns about the addition of a citizenship demand to the 2020 Census questionnaire. The USCM noted that adding a demand for citizenship status late in the 2020 Census development process would nullify years of careful planning by the Census Bureau, and would require staffing beyond currently planned levels to address higher rates of non-response in light of the anticipated chilling effect.

97. On February 12, 2018, nineteen state Attorneys General and the Governor of Colorado urged Secretary Ross not to collect citizenship information on the 2020 Census. In addition to the issues highlighted above, the states explained in detail that the collection of citizenship data is “unnecessary to enforce the vote-dilution prohibition in Section 2 of the Voting Rights Act,” and that “[c]ollecting citizenship data would undermine the goal of fair and effective representation for all communities, which the Voting Rights Act was enacted to protect.”³³

98. Several former directors of the Census Bureau voiced similar concerns after Defendants began considering this change. The Census Bureau Director from 2013 to 2017 explained, “[t]here are great risks that including that question, particularly in the atmosphere that we’re in today, will result in an undercount, not just of non-citizen populations but other populations that are concerned with what could happen to them.”³⁴ While Secretary Ross acknowledged receipt of some of these letters in his March 26, 2018, memorandum, he

³³ Letter from Eric Schneiderman *et al.* to Sec’y of Commerce Wilbur Ross (Feb. 12, 2018), https://ag.ny.gov/sites/default/files/multi-state_letter_2020_census.pdf.

³⁴ Kriston Capps, *Ex-Census Director: Citizenship Question is ‘a Tremendous Risk’*, CityLab (Feb. 27, 2018), <https://www.citylab.com/equity/2018/02/former-census-director-citizenship-question-is-a-tremendous-risk/554372/>.

disregarded the serious concerns raised in these letters and directed the Census Bureau to demand the citizenship status of all respondents to the 2020 Census.

(4) The Defendants failed to justify their changes to the subjects to be included on the 2020 Census.

99. Finally, the Defendants failed to comply with their statutory obligations to advise Congress of the subjects to be included on the decennial census, and of any changes to those subjects. The Census Act required the Commerce Secretary, not later than three years before the decennial census date (that is, before April 1, 2017), to transmit to Congress “a report containing the Secretary’s determination of the subjects proposed to be included” in the census. 13 U.S.C. § 141(f)(1). The report of subjects that Defendants submitted in March 2017 included the same subjects as the 2010 Census, and did not indicate any change to include citizenship information.

100. In reversing course just a year later, Defendants failed to identify and explain any “new circumstances” that “necessitated” this modification to the subjects it submitted in 2017, as required by statute. 13 U.S.C. § 141(f)(3).

III. Defendants’ decision to include a citizenship demand on the 2020 Census is not supported by the stated justification.

101. Defendants assert that they included a citizenship demand on the 2020 Census in response to a request from the United States Department of Justice (“DOJ”) dated December 12, 2017 (the “DOJ Letter”).

102. The DOJ Letter asserted that person-by-person information on the citizenship status of every individual in the country was necessary to enforce Section 2 of the Voting Rights Act. Specifically, DOJ claimed that it needs a “reliable calculation of citizen voting-age

population” in order to determine whether a minority group can constitute a majority in a single-member district, the first element in a vote dilution case.³⁵

103. Collecting citizenship information from every person in the United States is not necessary to achieve the goal of effective Section 2 enforcement. The Supreme Court has never held that citizen voting-age population (“CVAP”) is the proper measure for examining whether a minority group can constitute a majority in a single-member district.

104. Congress could not have intended for effective Section 2 enforcement to depend on the availability of person-by-person citizenship data, because such data has never been available at any point since Section 2 was enacted in 1965. Data collected through the decennial census would not provide a “reliable calculation” of CVAP in any event, because citizenship information collected decennially will quickly become outdated and less reliable over the course of the subsequent decade.

105. Further, the American Community Survey already provides a reliable calculation of annually updated citizenship information that is collected through less invasive methods. In fact, DOJ and voting rights advocates have long used data from the ACS or a functionally equivalent survey to effectively enforce the law, and have never relied on the decennial census for this purpose.³⁶

106. Even if demanding citizenship status from every person residing in the United States were necessary to enforce Section 2 of the Voting Rights Act – which it is not –

³⁵ Letter from Arthur E. Gary, General Counsel, Justice Management Division, U.S. Dep’t of Justice, to Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Bureau of the Census, U.S. Dep’t of Commerce (Dec. 12, 2017).

³⁶ Section 2 of the VRA was enacted in 1965, and no citizenship question has been included on the decennial census since 1950. From 1970 to 2000, a citizenship question was included only on the “long form” questionnaire, which was distributed to a sample of about one in six households in lieu of the decennial census questionnaire. Following the 2000 Census, the Census Bureau discontinued the “long form” questionnaire and replaced it with the American Community Survey, which is now sent to about one in every 38 households each year.

Defendants' decision would impermissibly sacrifice the accuracy of the constitutionally-mandated census for non-constitutional purposes.

107. Demanding citizenship status on the 2020 Census will undermine, not advance, the goals of the Voting Right Act. A person-by-person citizenship demand that leads to a systematic undercount of minority populations across the United States will impair fair representation of those groups and the states in which they live.

108. It is clear that DOJ's stated rationale for demanding information on the citizenship status of every resident in the country is contrary to the evidence, and was not, in fact, the true reason DOJ sought this change in practice from the Census Bureau. A March 29, 2018, fundraising email from President Trump's reelection campaign indicates that the President "officially mandated" that a citizenship demand be included on the 2020 Census,³⁷ with no assertion that the President sought this information to strengthen enforcement of the Voting Rights Act.³⁸ Further, the assertion that President Trump compelled the addition of a demand for citizenship information undermines Secretary Ross's claims that Defendants made an informed decision to add this question based on a comprehensive review process. Therefore, Defendants' unfounded and conflicting rationales indicate that the stated reason for demanding citizenship information is pretext.

IV. Plaintiffs are harmed by Defendants' actions.

109. Defendants' decision to add a demand for person-by-person citizenship information to the 2020 Census will lead to significant undercount of Plaintiffs' citizen and

³⁷ Tal Kopan, *Trump Campaign Rallies Supporters on Census Citizenship Question*, CNN (Mar. 28, 2018), <https://www.cnn.com/2018/03/28/politics/trump-census-citizenship/index.html>.

³⁸ Ross Memo at 1, 8.

noncitizen residents. Indeed, Plaintiffs are home to some of the hardest-to-count communities in the nation, including significant authorized and undocumented immigrants.

110. For instance, in New York State, 24.2% of households did not mail back their 2010 Census questionnaire, which required the Census Bureau to conduct in-person follow-up. Approximately 36% of New York State's population lives in hard-to-count neighborhoods. Among those hard-to-count communities is New York State's large population of immigrants. One in five residents of New York State is foreign-born, the second highest proportion of foreign-born residents in the United States. In addition, in 2014, New York State had the fourth largest population of undocumented residents in the nation.

111. In Massachusetts, 21.1% of households did not mail back their 2010 Census questionnaire, which required the Census Bureau to conduct in-person follow-up. Approximately 23% of the population currently lives in hard-to-count neighborhoods. Immigrants account for 16.5% of Massachusetts's total population, and, in 2014, nearly one in five immigrants in Massachusetts was undocumented.

112. In Connecticut, 20.9% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 22% of the population currently lives in hard-to-count neighborhoods. Immigrants account for 14.4% of Connecticut's population, and in 2014, nearly one in every four immigrants in Connecticut was undocumented.

113. In Delaware, 20% of households did not mail back their 2010 census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 9.4% of Delaware's population, and in 2014, approximately 31% of Delaware's immigrant population was undocumented.

114. In the District of Columbia, 21.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.3% of D.C.'s population, and in 2014, over one in four immigrants in D.C. was undocumented.

115. In Illinois, 19.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.9% of Illinois's population, and in 2014, nearly one in four immigrants in Illinois was undocumented.

116. In Iowa, 16.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 5.1% of Iowa's population, and in 2014, over one in four immigrants in Iowa was undocumented.

117. In Maryland, 19.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 15.3% of Maryland's population, and in 2014, over one in four immigrants in Maryland was undocumented.

118. In Minnesota, 14.4% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 8.2% of Minnesota's population, and in 2014, nearly one in four immigrants in Minnesota was undocumented.

119. In New Jersey, 21.9% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 22% of the population currently lives in hard-to-count neighborhoods.

Immigrants account for 22.5% of New Jersey's population, and in 2014, nearly one in four immigrants in New Jersey was undocumented.

120. In New Mexico, 26.2% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 43% of the population currently lives in hard-to-count neighborhoods. During the 2000 Census, New Mexico had the fourth highest undercount of any state. Immigrants account for 9.5% of New Mexico's population, and in 2014, approximately 37% of immigrants in New Mexico were undocumented.

121. In North Carolina, 19.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. North Carolina is home to one of the fastest growing immigrant communities in the nation, increasing by over 83% between 2000 and 2016. Immigrants account for 7.8% of North Carolina's population, and in 2014, approximately 43% of immigrants in North Carolina were undocumented.

122. In Oregon, 20.2% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 9.6% of Oregon's population, and in 2014, approximately 32% of immigrants in Oregon were undocumented.

123. In Pennsylvania, 17.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 6.8% of Pennsylvania's population, and in 2014, over one in five immigrants in Pennsylvania was undocumented.

124. In Rhode Island, 22.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.5% of Rhode Island's population, and in 2014, nearly one in five immigrants in Rhode Island was undocumented.

125. In Vermont, 20.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 4.5% of Vermont's population, and in 2014, approximately 8% of Vermont's immigrant population was undocumented.

126. In Virginia, 19.2% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 12.3% of Virginia's population, and in 2014, approximately 28% of Virginia's immigrant population was undocumented.

127. In Washington, more than 20% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Roughly one in seven Washington residents is an immigrant, and one in eight native-born U.S. citizens lives with at least one immigrant parent. In 2014, over one in four immigrants in Washington was undocumented, and over 170,000 U.S. citizens lived with an undocumented family member.

128. In Chicago, 34% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 48% of Chicago's population lives in hard-to-count neighborhoods. Immigrants account for 20.8% of Chicago's population, and in 2014, an estimated 425,000 undocumented immigrants lived in the Chicago metro area.

129. In New York City, 29% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. New York City is home to 3.4 million foreign-born residents, and approximately 46% of foreign-born residents are non-citizens. Immigrants and the children of immigrants account for 60% of New York City's population. The New York metropolitan area is also home to an estimated 1.15 million undocumented immigrants.

130. In Philadelphia, 26.9% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.1% of Philadelphia's population, and in 2014, an estimated 50,000 undocumented immigrants lived in the City of Philadelphia.

131. In Providence County, Rhode Island, where Providence is located, 24.8% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for nearly 30% of Providence's population.

132. In the City and County of San Francisco, 22.3% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 35% of San Francisco's population, and the San Francisco metro area is home to an estimated 240,000 undocumented immigrants.

133. In King County, Washington, where Seattle is located, 20.7% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 18% of Seattle's population, and the immigrant population in Seattle grew by 20% from 2000 through 2014. Over one in five

residents in Seattle speak a language other than English at home. In 2014, approximately 150,000 undocumented immigrants lived in the Seattle metro area.

134. The members of the USCM are home to the majority of immigrants in the United States. In 2014, 104 metro areas, including many USCM members, accounted for over 86% of the immigrant population of the United States. Moreover, 61% of the nation's undocumented population live in the 20 largest metro areas in the United States, all of which contain cities that are USCM members.

135. Given the prevalence of Plaintiffs' hard-to-count populations, Plaintiffs are particularly susceptible to an undercount. The Defendants' decision to add a person-by-person citizenship demand to the 2020 Census questionnaire will disproportionately impact Plaintiffs' hard-to-count immigrant populations. The resulting undercounts in these communities will harm Plaintiffs' interests in full federal funding, accurate redistricting, and fair representation.

A. Defendants' conduct harms Plaintiffs' funding interests.

136. Many federal programs rely on the population figures collected in the decennial census to allocate federal funds among states and local governments. A total of approximately \$700 billion is distributed annually to nearly 300 different census-guided federal grant and funding programs. Inaccurate population counts as a result of Defendants' decision to add a citizenship demand to the 2020 Census will harm Plaintiffs by depriving them of their statutory fair share of federal funding.

137. For instance, the Highway Trust Fund provides grants to states and municipalities for road construction and other surface transportation programs, which are allocated on the basis of local population estimates collected through the decennial census. 23 U.S.C. § 104(d)(3). In fiscal year 2015:

- a. New York received \$1.66 billion in Highway Trust Fund grants.

- b. Massachusetts received nearly \$614 million in Highway Trust Fund grants.
- c. Connecticut received over \$470 million in Highway Trust Fund grants.
- d. Delaware received nearly \$182 million in Highway Trust Fund grants.
- e. The District of Columbia received over \$185 million in Highway Trust Fund grants.
- f. Illinois received over \$1.44 billion in Highway Trust Fund grants.
- g. Iowa received over \$506 million in Highway Trust Fund grants.
- h. Maryland received about \$597 million in Highway Trust Fund grants.
- i. Minnesota received over \$673 million in Highway Trust Fund grants.
- j. New Jersey received over \$839 million in Highway Trust Fund grants.
- k. New Mexico received nearly \$361 million in Highway Trust Fund grants.
- l. North Carolina received over \$237 million in Highway Trust Fund grants.
- m. Oregon received nearly \$431 million in Highway Trust Fund grants.
- n. Pennsylvania received over \$1.67 billion in Highway Trust Fund grants.
- o. Rhode Island received nearly \$217 million in Highway Trust Fund grants.
- p. Vermont received over \$206 million in Highway Trust Fund grants.
- q. Virginia received over \$953 million in Highway Trust Fund grants.
- r. Washington received over \$663 million in Highway Trust Fund grants.

138. Under the Urbanized Area Formula Funding program, the Department of Transportation utilizes population figures from the most recent decennial census to calculate the federal resources allocated to cities and states for planning, operating, and improving transportation. 49 U.S.C. §§ 5307, 5340. In fiscal year 2017:

- a. New York received nearly \$657 million in Urbanized Area Formula grants.

- b. Massachusetts received over \$205 million in Urbanized Area Formula grants.
 - c. Connecticut received nearly \$98 million in Urbanized Area Formula grants.
 - d. Delaware received over \$20 million in Urbanized Area Formula grants.
 - e. The District of Columbia received over \$22 million in Urbanized Area Formula grants.
 - f. Illinois received over \$273 million in Urbanized Area Formula grants.
 - g. Iowa received over \$21 million in Urbanized Area Formula grants.
 - h. Maryland received over \$165 million in Urbanized Area Formula grants.
 - i. Minnesota received over \$63 million in Urbanized Area Formula grants.
 - j. New Jersey received over \$401 million in Urbanized Area Formula grants.
 - k. New Mexico received over \$24 million in Urbanized Area Formula grants.
 - l. North Carolina received nearly \$71 million in Urbanized Area Formula grants.
 - m. Oregon received nearly \$57 million in Urbanized Area Formula grants.
 - n. Pennsylvania received nearly \$183 million in Urbanized Area Formula grants.
 - o. Rhode Island received over \$28 million in Urbanized Area Formula grants.
 - p. Vermont received nearly 2.5 million in Urbanized Area Formula grants.
 - q. Virginia received over 131 million in Urbanized Area Formula grants.
 - r. Washington received over \$145 million in Urbanized Area Formula grants.
139. The Child Care and Development Fund allocates funding based on census information of the number of children below the age of thirteen. 45 C.F.R. § 98.63. In Fiscal Year 2015:
- a. New York received over \$198 million in Child Care Development grants.
 - b. Massachusetts received over \$76 million in Child Care Development grants.

- c. Connecticut received over \$36 million in Child Care Development grants.
- d. Delaware received nearly \$9.9 million in Child Care Development grants.
- e. The District of Columbia received over \$7.2 million in Child Care Development grants.
- f. Illinois received over \$126 million in Child Care Development grants.
- g. Iowa received over \$25 million in Child Care Development grants.
- h. Maryland received nearly \$54 million in Child Care Development grants.
- i. Minnesota received over \$52 million in Child Care Development grants.
- j. New Jersey received nearly \$72 million in Child Care Development grants.
- k. New Mexico received over \$20 million in Child Care Development grants.
- l. North Carolina received over \$122 million in Child Care Development grants.
- m. Oregon received nearly \$39 million in Child Care Development grants.
- n. Pennsylvania received over \$116 million in Child Care Development grants.
- o. Rhode Island received over \$11 million in Child Care Development grants.
- p. Vermont received nearly \$6.7 million in Child Care Development grants.
- q. Virginia received nearly \$64 million in Child Care Development grants.
- r. Washington received nearly \$78 million in Child Care Development grants.

140. The Medicaid Program relies on “per-capita income” information calculated with decennial census data to determine the amount to reimburse each state for medical assistance payments on behalf of low-income individuals. 42 U.S.C. §§ 1301, 1396d. Several Plaintiff States will lose millions of dollars in reimbursement as a result of even a 1% undercount. In fiscal year 2015:

- a. Delaware received \$771 million under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$14 million in federal funding.
- b. Illinois received \$7.19 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$122 million in federal funding.
- c. Iowa received \$2.14 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$38 million in federal funding.
- d. New Mexico received \$2.49 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$23 million in federal funding.
- e. North Carolina received \$8.43 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$94 million in federal funding.
- f. Oregon received \$3.64 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$44 million in federal funding.
- g. Pennsylvania received \$11.2 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of nearly \$222 million in federal funding.

- h. Vermont received \$774 million under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$14 million in federal funding.
- i. Washington received 3.92 billion under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$2 million in federal funding.

141. In addition, Plaintiff Cities of Chicago, New York, Philadelphia, Providence, and Seattle, the City and County of San Francisco, and the members of the USCM also receive funding through these and other programs that determine allocations on the basis of population data collected during the decennial census.

142. An undercount of Plaintiffs' populations as a result of the demand for person-by-person citizenship status of every resident in the country will lead to losses of funding for Plaintiffs in each of these programs, as well as losses in other federally-funded programs that tie allocations to data collected during the decennial census. Losses of funding for these programs will significantly harm Plaintiffs, who will either need to procure additional resources to meet these shortfalls in funding, or their resource needs will be unmet.

B. Defendants' conduct harms Plaintiffs' interests in accurate redistricting and compliance with the Constitution's one-person, one-vote mandate.

143. Defendants' decision to demand person-by-person citizenship information on the 2020 Census questionnaire also harms Plaintiffs' interests in obtaining accurate population figures for redistricting purposes.

144. Each Plaintiff State relies on tabulations of the population produced by the Census Bureau from the decennial census to draw statewide redistricting plans for their Congressional and state legislative districts. When drawing these districts, Plaintiff States must adhere to the

U.S. Constitution's one-person, one-vote requirement, which requires that legislative districts must be "as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 559, 577 (1964); see *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983). Moreover, at least for congressional districts, the Constitution requires apportionment "based on total population," not citizen voting age population. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1128-29 (2015).

145. Plaintiff the District of Columbia relies on tabulations of the population produced by the Census Bureau to redistrict for local elections within the District, setting boundaries for wards that elect members to the local legislative body, the Council of the District of Columbia, as well as boundaries for Advisory Neighborhood Commissions, Single Member Districts, and voting precincts. Similarly, Plaintiff Cities, including the Cities of Chicago, New York, and San Francisco, also rely on population tabulations produced by the Census Bureau in order to reapportion their legislative districts. 65 ILCS 20/21-36; N.Y.C. Charter § 51; S.F. Charter art. XIII, § 13.110(d). Like all U.S. States, the District of Columbia, and the Cities of Chicago, New York, Philadelphia, Providence, and Seattle, the City and County of San Francisco, and the members of the USCM are also bound by the U.S. Constitution's one-person, one-vote requirement.

146. By causing disproportionate undercounts of citizens and noncitizens in communities with immigrant populations, the addition of a citizenship demand to the 2020 Census will jeopardize the ability of Plaintiffs to comply with the one-person, one-vote requirement. Undercounts of citizens and noncitizens in these communities will create distributional inaccuracies in the data Plaintiffs rely on to draw district lines. Districts drawn on the basis of inaccurate data may systemically dilute the voting power of persons living in communities with immigrant populations.

147. As a result, Defendants' decision will harm Plaintiffs' interest in complying with the constitutional equal population principle in redistricting.

C. Defendants' conduct harms Plaintiffs' representational interests.

148. Defendants' decision to demand person-by-person citizenship information on the 2020 Census questionnaire will harm Plaintiffs' interest in fair representation in Congress by depressing participation in the decennial census within Plaintiffs' diverse immigrant and undocumented populations, leading to inaccurate responses and a significant undercount of Plaintiffs' residents.

149. For instance, an undercount resulting from Defendants' decision to add a citizenship demand will lead to loss of representation in Rhode Island. As a result of the 2010 Census, Rhode Island was allocated two seats to the United States House of Representatives in accordance with U.S. Const. art. I, § 2. Rhode Island has maintained two seats to the United States House of Representatives for over 200 years. According to the Census Bureau estimates for 2017, the population of Rhode Island is 1,059,639. Based on these 2017 estimates of its population, if 157 persons that reside in Rhode Island are not counted in the 2020 Census, Rhode Island will lose one of its two seats in the United States House of Representatives.

150. In addition, the undercount resulting from Defendants' decision will threaten additional Plaintiffs with losses in representation.

151. For example, New York is projected to lose one representative as a result of the 2020 Census, and is on the cusp of losing a second. Illinois also risks losing additional representation in Congress. An undercount of immigrant communities in these states will result in losses of these seats, and harm these states' interest in fair representation in Congress, and in the Electoral College.

152. Moreover, Defendants' decision will also harm the interest of Plaintiff Cities and the members of Plaintiff USCM in fair electoral representation within their states. Plaintiff Cities and the members of Plaintiff USCM are home to larger immigrant populations than other jurisdictions within their states. For instance, the foreign-born population of Chicago is approximately 20.8% of the total population, compared to 13.9% for the State of Illinois. Similarly, approximately 34.9% of San Francisco's population is foreign-born, while only 27% of the State of California's population is foreign-born, and approximately 13.1% of Philadelphia's population is foreign-born, while 6.5% of Pennsylvania's population is foreign-born.

153. Defendants' decision to include a citizenship demand on the 2020 Census questionnaire will lead to undercounts in immigrant communities, and, as a result, will disproportionately affect jurisdictions within states with larger immigrant communities. Redistricting on the basis of these inaccurate numbers will harm Plaintiff Cities and the members of Plaintiff USCM, including Chicago and San Francisco, vis-a-vis other jurisdictions within their states with smaller immigrant communities.

D. Plaintiffs will expend significant resources to mitigate the harm from Defendants' decision.

154. Plaintiffs already devote considerable resources every ten years to ensuring that they receive an accurate count of their populations on the census. Plaintiffs will have to expend additional funding to combat the undercount that the addition of a citizenship demand will cause, such as expending resources on greater public outreach to encourage residents, particularly in immigrant communities, to respond to the 2020 Census. For example, New York City implemented an early outreach initiative, which consists of deploying employees to canvass in

hard-to-count neighborhoods and identifying potentially problematic blocks, among other measures, to ensure these residents are counted.

E. Defendants' conduct harms the health of Plaintiffs' residents.

155. Many federal health agencies and public health organizations rely on the decennial census for accurate demographic statistics of the population of the United States.

156. These statistics help healthcare providers and policymakers contain and prevent the spread of disease by efficiently allocating funding and limited resources for targeted interventions. For example, census statistics help reduce the incidence of asthma and other preventative diseases by using demographic data to model neighborhoods before initiating preventative programs.

157. An inaccurate census would not just result in worse health outcomes for undercounted communities, but for the nation as a whole. An undercount in the 2020 Census would undermine efforts to prevent disease and cost millions of dollars in long-term treatment.

F. Defendants' conduct harms Plaintiffs' economies and residents who are beneficiaries of private funding.

158. An accurate census is essential for both public and private actors to identify and help meet community and business needs.

159. The Department of Commerce estimates that census data guide trillions of dollars in private sector investment and create \$221 billion in private sector revenue.

160. Non-profit organizations use census data to decide where to provide critical aid such as health care and natural disaster relief and where to conduct fundraising and advocacy drives.

161. Academics and researchers from Plaintiffs' universities rely on census data to conduct research on a wide variety of issues relating to race and ethnicity, population mobility, and other areas.

162. An undercount on the 2020 Census, caused by Defendants' demand for citizenship information from every respondent, will ultimately deprive historically marginalized communities of vital private resources over the next decade.

163. Plaintiffs will need to expend additional funds to compensate for the loss of vital aid from private actors to their residents.

FIRST CLAIM FOR RELIEF
(U.S. Constitution article I, section 2, clause 3;
U.S. Constitution amend. XIV, sec. 2)

164. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

165. The Constitution requires that Defendants conduct an "actual Enumeration" of the "whole number of persons" in the United States, so that Members of the U.S. House of Representatives may be "apportioned among the several States . . . according to their respective Numbers." U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2; *see* 13 U.S.C. §§ 4, 141.

166. Defendants' decision to add a citizenship demand to the 2020 Census questionnaire will deter participation in the decennial census and cause an undercount that impedes the "actual Enumeration" required by the Constitution.

167. Defendants' conduct poses a significant risk that Plaintiffs' number of U.S. Representatives and representation in the Electoral College will not reflect their actual population.

168. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

SECOND CLAIM FOR RELIEF
**(Administrative Procedure Act – not in accordance with law,
contrary to constitutional right, and beyond statutory authority)**

169. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

170. Under the Administrative Procedure Act, courts must “hold unlawful and set aside” agency action that is “not in accordance with law,” “contrary to constitutional right,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2).

171. Defendants’ decision to add a citizenship demand to the 2020 Census questionnaire is inconsistent with and contrary to the constitutional mandate to conduct an “actual Enumeration” of “the whole number of persons” in the United States. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2.

172. Defendants’ decision is also inconsistent with the data quality requirements of the Information Quality Act and the guidelines implementing the IQA adopted by the Census Bureau. Pub. L. No. 106-554, § 515. The data quality requirements and testing standards developed pursuant to law and practice are designed to ensure accuracy, reliability, and objectivity in the final data, to minimize respondent burden and maximize data quality, and to achieve the highest rates of response. Defendants have failed to act in a manner consistent with these requirements and standards by failing to adequately test the citizenship demand, minimize the burden that that demand imposes on respondents, maximize data quality, or ensure the highest rates of response.

173. Defendants’ decision to add a citizenship demand to the 2020 Census is therefore not in accordance with law and beyond statutory authority, in violation of the APA. 5 U.S.C. § 706(2).

174. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

THIRD CLAIM FOR RELIEF
(Administrative Procedure Act – arbitrary and capricious)

175. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

176. The Administrative Procedure Act provides that courts must “hold unlawful and set aside” agency action that is “arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C. § 706(2)(A).

177. Defendants' decision to add a citizenship demand to the 2020 Census is arbitrary and capricious and an abuse of discretion for multiple reasons. First, there is no support for the Department of Justice's claim that effective enforcement of Section 2 of the Voting Rights Act requires person-by-person citizenship data; to the contrary, requesting citizenship data would undermine the purposes of the Voting Rights Act and weaken voting rights enforcement; and sufficient data for Voting Rights Act purposes is already available to the Department of Justice.

178. Second, Defendants' decision to add a citizenship demand is arbitrary and capricious because it reverses nearly seven decades of settled and well-considered practice without reasoned explanation, in contradiction to factual findings that underlay the Census Bureau's previous practice.

179. Third, Defendants' decision is arbitrary and capricious because Defendants entirely failed to consider important aspects of the problem, including the risk of inaccurate results and the availability of alternative data that serves the federal government's needs no less well.

180. Fourth, Defendants' decision is arbitrary and capricious because it was reached without complying with Defendants' own data quality requirements and testing standards.

181. Fifth, Defendants' unfounded and conflicting rationales indicate that the stated reason for adding the question is pretext. Defendants' decision to add a citizenship demand to the 2020 Census is therefore "arbitrary, capricious, [or] an abuse of discretion" in violation of the APA. 5 U.S.C. § 706(2)(A).

182. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

1. Declare that the Defendants' decision to add a citizenship demand to the questionnaire for the 2020 Census is unauthorized by and contrary to the Constitution and laws of the United States;

2. Declare that the Defendants' decision to add a citizenship demand to the 2020 Census is not in accordance with law, is beyond statutory authority, and is arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. § 706;

3. Enjoin Defendants and all those acting on their behalf from adding a citizenship demand to the 2020 Census;

4. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and

5. Award such additional relief as the interests of justice may require.

DATED: April 3, 2018

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**Pro hac vice* motions will be forthcoming.

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

11 STATE OF WASHINGTON;
12 COMMONWEALTH OF
13 MASSACHUSETTS; STATE OF
14 CALIFORNIA; STATE OF MARYLAND;
15 STATE OF OREGON; STATE OF NEW
16 MEXICO; COMMONWEALTH OF
17 PENNSYLVANIA; STATE OF NEW
18 JERSEY; STATE OF IOWA; STATE OF
19 ILLINOIS; STATE OF MINNESOTA;
20 STATE OF RHODE ISLAND;
21 COMMONWEALTH OF VIRGINIA;
22 STATE OF NEW YORK; STATE OF
23 VERMONT; STATE OF NORTH
24 CAROLINA; STATE OF DELAWARE;
25 and THE DISTRICT OF COLUMBIA,

26 Plaintiffs,

v.

THE UNITED STATES OF AMERICA;
DONALD TRUMP, in his official capacity
as President of the United States of America;
U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; U.S.
CUSTOMS AND BORDER
PROTECTION; U.S. CITIZENSHIP AND
IMMIGRATION SERVICES; U.S.
DEPARTMENT OF HEALTH AND

NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 HUMAN SERVICES; OFFICE OF
2 REFUGEE RESETTLEMENT; KIRSTJEN
3 NIELSEN, in her official capacity as
4 Secretary of the U.S. Department of
5 Homeland Security; THOMAS HOMAN, in
6 his official capacity as Acting Director of
7 U.S. Immigration and Customs
8 Enforcement; KEVIN K. MCALEENAN, in
9 his official capacity as Commissioner of
10 U.S. Customs and Border Protection; ALEX
11 AZAR, in his official capacity as Secretary
12 of U.S. Department of Health and Human
13 Services; SCOTT LLOYD, in his official
14 capacity as Director of Office of Refugee
15 Resettlement; and JEFFERSON
16 BEAUREGARD SESSIONS III, in his
17 official capacity as the Attorney General of
18 the United States,

19 Defendants.

20 I. INTRODUCTION

21 1. The States of Washington, California, Maryland, Oregon, New Mexico, New
22 Jersey, Iowa, Illinois, Minnesota, Rhode Island, New York, Vermont, North Carolina, and
23 Delaware; the Commonwealths of Massachusetts, Pennsylvania, and Virginia; and the District
24 of Columbia (collectively, the States) bring this action to protect the States and their residents
25 against the Trump Administration's practice of refusing entry to asylum applicants who present
26 at Southwestern border ports of entry and its cruel and unlawful policy of forcibly separating
families who enter the country along our Southwestern border.

21 2. Widespread news reports, as well as interviews of detainees in Seattle and
22 elsewhere, confirm that families fleeing violence and persecution in their home countries who
23 try to present themselves at Southwestern ports of entry to seek asylum are being refused entry
24 into the United States. Border officials are unlawfully turning away these families on the pretext
25 that the United States is "full" or no longer accepting asylum seekers. This unlawful practice
26

1 exacerbates the trauma already suffered by refugee families while simultaneously artificially
2 increasing illegal entry violations.

3 3. For those families that do enter the United States along the Southwestern border,
4 immigration officials have implemented the Trump Administration’s policy of forcibly
5 separating parents from their children – regardless of the family’s circumstances or the needs of
6 the children. As of June 20, 2018, the new policy had already resulted in the separation of over
7 two thousand children from their parents at the Southwestern border, most recently at a rate of
8 50-70 families separated *every day*. Defendants have taken children as young as infants from
9 their parents, often with no warning or opportunity to say goodbye, and providing no information
10 about where the children are being taken or when they will next see each other. The States’
11 interviews of detainees in their respective jurisdictions confirm the gratuitous harm that this
12 policy inflicts on parents and children and the immediate and deleterious impact it has on
13 families and communities.
14

15
16 4. As of June 25, 2018, emerging reports suggest that immigration officials are now
17 using the children taken from their parents as leverage to coerce parents to withdraw their asylum
18 claims.

19 5. Defendants have repeatedly and publicly admitted that a policy of intentionally
20 separating immigrant children from their parents would be “cruel, “horrible,” and “antithetical
21 to child welfare.” But they have alternately claimed that they have no such policy, or that it is
22 somehow mandated by federal law or prior court decisions.
23

24 6. In truth, however, Defendants have embraced a policy of separating parents from
25 their children for the express purpose of deterring immigration along the Southwestern border
26

1 (the “Policy”). No law or court decision requires such separation. Rather, Defendants have
2 chosen to adopt the Policy as part of their “zero tolerance” or “100 percent prosecution” approach
3 to individuals who enter the country unlawfully, irrespective of circumstances, and to then use
4 such misdemeanor criminal charges to detain parents indefinitely in federal facilities that cannot
5 accommodate families.
6

7 7. Hundreds of children are left to languish in makeshift detention facilities – where
8 staff are sometimes told not to comfort them – until a placement is found for the child.
9 Defendants have moved the children and parents to different locations all over the country. While
10 the parents are held in federal facilities to await further immigration proceedings, their children
11 are sent elsewhere to group shelters or family placements.
12

13 8. Defendants have made clear that the purpose of separating families is not to
14 protect children, but rather to create a public spectacle designed to deter potential immigrants
15 from coming to the United States. As Counselor to the President Kellyanne Conway said
16 recently: “Nobody likes seeing babies ripped from their mothers’ arms . . . but we have to make
17 sure that DHS’ laws are understood through the soundbite culture that we live in.” *KellyAnne*
18 *Conway: ‘Nobody likes’ Policy Separating Migrant Kids at the Border* (June 17, 2018) available
19 at [https://www.nbcnews.com/politics/first-read/conway-nobody-likes-policy-separating-](https://www.nbcnews.com/politics/first-read/conway-nobody-likes-policy-separating-migrant-kids-border-n884016)
20 [migrant-kids-border-n884016](https://www.nbcnews.com/politics/first-read/conway-nobody-likes-policy-separating-migrant-kids-border-n884016), attached hereto as Ex. 1. Defendants’ Policy is causing severe,
21 intentional, and permanent trauma to the children and parents who are separated in furtherance
22 of an illegitimate deterrence objective.
23

24 9. On June 20, 2018, President Trump signed an Executive Order purporting to
25 suspend the Policy, but any relief offered by the Order is illusory. The Order says nothing about
26

1 reuniting the families already ripped apart by the federal government, and Trump Administration
2 officials have made clear the Order will have no impact on the thousands of families who have
3 already been traumatized.

4
5 10. Moreover, based on its text and contemporaneous statements by Administration
6 officials, it is clear the Order does not require the end of family separation. In fact, the
7 Administration currently lacks both the capacity and the legal authority to detain families
8 together for indefinite periods of time, which is what the Order contemplates as the alternative
9 to separating families.

10 11. On June 21, 2018, as required by the Order, Attorney General Sessions filed an
11 *Ex Parte* Application for relief from the *Flores* Settlement (a 1997 agreement which sets national
12 standards regarding the detention, release, and treatment of all children in DHS custody). That
13 request seeks rescission of *Flores*' protections so that families may be detained indefinitely
14 during the pendency of any immigration proceedings involving their members, a plan that raises
15 the specter of internment camps.

16
17 12. Moreover, the *Flores* application seeks a "determin[ation] that the Agreement's
18 state licensure requirement does not apply to ICE family residential facilities." The government's
19 attempt to modify the *Flores* settlement terms by removing States' licensing authority and
20 jurisdiction over such facilities is a direct attack on the States' sovereign powers.

21
22 13. Neither the Order nor the Administration's *Flores* application offer any assurance
23 that the Administration will not return to a family separation policy when its efforts to intern
24 families together fail. In response to the public outcry against family separation, in recent days
25 President Trump has proposed that Homeland Security simply deport immigrants without
26

1 hearing or legal process instead of, or perhaps in addition to, interning thousands of families in
2 military facilities.

3 14. The Policy, and the Trump Administration's subsequent attempt to shield their
4 facilities from state licensing standards, is an affront to States' sovereign interests in enforcing
5 their laws governing minimum standards of care for children, declaring the family unit to be a
6 fundamental resource of American life that should be nurtured, and requiring the preservation of
7 the parent-child relationship unless the child's right to basic nurture, health, or safety is
8 jeopardized. The Policy also adversely affects the States' proprietary interests, forcing States to
9 expend resources to remediate the harms inflicted by the Policy, some of which are likely to be
10 permanent. State programs, including child welfare services, social and health services, courts,
11 and public schools are all experiencing fiscal impacts due to family separation that will only
12 increase. The Policy, and the Administration's related conduct, has caused severe and immediate
13 harm to the States and their residents, including parents who are detained, released, or otherwise
14 reside in the States after being forcibly separated from their children; children who are placed in
15 facilities, shelters, sponsor homes, foster care, or who otherwise reside in the States after being
16 separated from their parents; extended families and sponsors in the States; and the States'
17 immigrant communities.

18 15. The Court should declare the practice of refusing to accept asylum seekers who
19 present at Southwestern points of entry and the related Policy of family separation illegal and
20 order Defendants to stop implementing them immediately. The Court should order Defendants
21 to reunite every family separated by these unlawful acts immediately, and to take such other
22 actions as are warranted by the time of hearing. Defendants' conduct has caused real harms to
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1 the States and our residents, harms that will only increase unless Defendants are enjoined from
2 continuing.

3 II. JURISDICTION AND VENUE

4 16. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a). The United
5 States' sovereign immunity is waived by 5 U.S.C. § 702.

6 17. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and
7 1391(e)(1). Defendants are the United States of America and United States agencies or officers
8 sued in their official capacities. The State of Washington is a resident of this judicial district, and
9 a substantial part of the events or omissions giving rise to this Complaint occurred within the
10 Western District of Washington. For example, as of June 18, 2018, parents who were recently
11 refused entry and then victimized by the Policy were being detained at the Federal Detention
12 Center – SeaTac, which is located in King County. At that time, a number of children who were
13 separated from their parents pursuant to the Policy also were being detained in Seattle and other
14 nearby locations.

15 18. The States bring this action to redress harms to their sovereign, proprietary, and
16 *parens patriae* interests.

17 III. PARTIES

18 A. Plaintiffs

19 19. The Plaintiff States of Washington, California, Maryland, Oregon, New Mexico,
20 New Jersey, Iowa, Illinois, Minnesota, Rhode Island, New York, Vermont, North Carolina,
21 Delaware, and the Commonwealths of Massachusetts, Pennsylvania, and Virginia, represented
22 by and through their Attorneys General, are sovereign states of the United States of America.
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1 The District of Columbia, represented by and through its Attorney General, is a municipal
2 corporation organized under the Constitution of the United States and the local government for
3 the territory constituting the permanent seat of the federal government.

4 20. The States are aggrieved and have standing to bring this action because of the
5 injuries to the States caused by the Policy, including immediate and irreparable injuries to their
6 sovereign, proprietary, and quasi-sovereign interests.

7 21. Nothing in the June 20 Executive Order remedies these harms, and the June 21
8 application to modify *Flores* is a direct attack on the sovereign powers of the States.

9
10 **B. Defendant Federal Agencies and Officers**

11 22. Defendant the United States of America includes government agencies and
12 departments responsible for the implementation of the Immigration and Nationality Act (INA)
13 and the admission, detention, and removal of non-citizens who are traveling or returning to the
14 United States via air, land, and sea ports across the United States.

15 23. Defendant Donald Trump is the President of the United States, and he is sued in
16 his official capacity.

17 24. Defendant Department of Homeland Security (DHS) is a federal cabinet agency
18 responsible for implementing and enforcing the INA. DHS is a Department of the Executive
19 Branch of the U.S. Government, and is an agency within the meaning of 5 U.S.C. § 552(f).

20 25. Defendant Immigration and Customs Enforcement (ICE) is the component
21 agency of DHS that is responsible for carrying out removal orders; operating adult immigration
22 detention facilities; and contracting for the detention of immigrants in removal proceedings,
23 including with public and private operators of detention centers, jails, and prisons.
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1 26. The U.S. Customs and Border Protection (CBP) is an Operational and Support
2 Component agency within DHS. CBP is responsible for detaining and/or removing non-citizens
3 arriving at air, land, and sea ports across the United States.

4 27. Defendant U.S. Citizenship and Immigration Services (USCIS) is a component
5 agency of DHS that, through its Asylum Officers, conducts interviews of certain individuals
6 apprehended at the border to determine whether they have a credible fear of persecution and
7 should be permitted to apply for asylum.

8 28. Defendant U.S. Department of Health and Human Services (HHS) is a
9 department of the executive branch of the U.S. government.

10 29. Defendant Office of Refugee Resettlement (ORR) is a component of HHS which
11 provides care for and placement for unaccompanied noncitizen children.

12 30. Defendant Kirstjen Nielsen is the Secretary of DHS. She is sued in her official
13 capacity.

14 31. Defendant Thomas Homan is the acting Director of ICE and is sued in his official
15 capacity.

16 32. Defendant Kevin K. McAleenan is the Commissioner of CBP and is sued in his
17 official capacity.

18 33. Defendant Alex Azar is the Secretary of HHS and is sued in his official capacity.

19 34. Defendant Scott Lloyd is Director of ORR and is sued in his official capacity.

20 35. Defendant Jefferson Beauregard Sessions III is sued in his official capacity as the
21 Attorney General of the United States. In this capacity, he has responsibility for the
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1 administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive
2 Office of Immigration Review.

3 IV. ALLEGATIONS

4 A. Federal Immigration Policy Has Traditionally Emphasized Family Reunification, 5 Recognizing that Children Belong with their Families

6 36. When DHS, typically through ICE or CBP, detains an undocumented child who
7 is traveling alone, *i.e.*, unaccompanied by a parent, the relevant federal agencies follow an
8 established process. Specifically, ICE or CBP may detain an unaccompanied alien child (UAC)
9 for up to 72 hours, as other federal agencies locate an appropriate shelter facility for that child.
10 8 U.S.C. § 1232(b)(3). ICE or CBP then must turn the child over to the ORR for shelter
11 placement. *Id.*

13 37. Once in ORR custody, children are placed in ORR-funded and supervised
14 shelters, where staff must attempt to locate a parent and determine if family reunification is
15 possible. If ORR is unable to find a parent, ORR staff will try to locate another family member,
16 relative, family friend, or caretaker in the United States to serve as a sponsor who can care for
17 the child during the pendency of any subsequent immigration proceeding.

18 38. Unaccompanied children in ORR custody for whom no sponsor placement can
19 be made are moved to secondary ORR-contracted and state-licensed group care facilities, which
20 can be anywhere in the country. In such cases, if ORR assesses that the child has a pathway to
21 legal immigration status, ORR will place the child in an ORR-contracted and state-licensed long
22 term foster care program while the immigration process continues. If ORR determines that a
23 pathway does not exist, the child may remain in a shelter or ORR-contracted and state-licensed
24 group care during removal proceedings.
25
26

1 39. Thus, unaccompanied children typically arrive in the individual states in three
2 ways: they may be placed initially in a state-licensed shelter located in the state while ORR
3 determines if a family member can be found in the country; they may arrive when ORR releases
4 them to the care of an in-state sponsor while their immigration proceeding goes forward; or they
5 can be moved into a placement in an ORR-contracted and state-licensed long term foster care
6 program as they await their immigration proceeding.

7
8 40. While ORR's initial shelter care placement and long term foster care programs
9 are largely federally funded, an unaccompanied child's in-state placements impose burdens on
10 the receiving state, discussed below.

11
12 **B. After Almost a Year of Threats, Defendants Adopted an Official Policy of**
13 **Separating Families Who Cross the Southwestern Border, Creating a New Class of**
14 **“Unaccompanied” Children**

15 41. For over a year, the Trump Administration has made clear in numerous public
16 statements that it was considering an official Policy to separate families at the Southwestern
17 border in an effort to deter immigrants from Latin America from coming to the United States.

18 42. As early as March 2017, a senior DHS official stated that Defendants were
19 considering a proposal to separate children from their parents at the Southwestern border. *See*
20 *Mary Kay Mallonee, DHS Considering Proposal to Separate Children From Adults at Border*
21 *(March 4, 2017) available at [https://www.cnn.com/2017/03/03/politics/dhs-children-adults-](https://www.cnn.com/2017/03/03/politics/dhs-children-adults-border/)*
22 *[border/](https://www.cnn.com/2017/03/03/politics/dhs-children-adults-border/)*, attached hereto as Ex. 2.

23 43. On March 7, 2017, John Kelly, the then-Secretary of DHS, confirmed that DHS
24 was considering a policy of separating children from their parents: “I am considering that. They
25 will be well cared for as we deal with their parents.” *See Daniella Diaz, Kelly: DHS Considering*
26

1 *Separating Undocumented Children From Their Parents at the Border* (March 7, 2017)
2 available at [https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-](https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html)
3 [parents-immigration-border/index.html](https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html), attached hereto as Ex. 3.

4
5 44. Then-Secretary Kelly publicly backed away from those statements after harsh
6 criticism from the press, human-rights advocates, and members of Congress. See Tal Kopan,
7 *Kelly Says DHS Won't Separate Families at the Border* (March 29, 2017) available at
8 <https://www.cnn.com/2017/03/29/politics/border-families-separation-kelly/index.html> and
9 attached hereto as Ex. 4. An inside source, however, reported that the family separation proposal
10 was still on the table for discussion at DHS as of August 2017. See Jonathan Blitzer, *How the*
11 *Trump Administration Got Comfortable Separating Immigrant Kids From Their Parents*, *The*
12 *New Yorker* (May 30, 2018) available at [https://www.newyorker.com/news/news-desk/how-](https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents)
13 [the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents,](https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents)
14 attached hereto as Ex. 5.

15
16 45. In fact, DHS secretly piloted the Policy in the El Paso sector of the border in
17 western Texas from July to November 2017. See Dara Lind, *Trump's DHS is Using an*
18 *Extremely Dubious Statistic to Justify Splitting up Families at the Border*, *Vox* (May 8, 2018)
19 available at [https://www.vox.com/policy-and-politics/2018/5/8/17327512/sessions-illegal-](https://www.vox.com/policy-and-politics/2018/5/8/17327512/sessions-illegal-immigration-border-asylum-families)
20 [immigration-border-asylum-families](https://www.vox.com/policy-and-politics/2018/5/8/17327512/sessions-illegal-immigration-border-asylum-families), attached hereto as Ex. 6.

21
22 46. It was later reported that between October 2017 and April 2018, 700 families
23 were separated at the Southwestern border, including at least 100 children under the age of four.
24 See Ex. 3.

1 47. On February 12, 2018, 33 U.S. Senators also a letter to DHS Secretary Nielsen,
2 concerned that DHS was carrying out “a systematic and blanket policy to separate a child from
3 a parent” upon arrival to the United States—a policy the Senators condemned as “cruel” and
4 “grotesquely inhumane.” The letter is attached hereto as Ex. 7. The letter notes that Secretary
5 Nielsen “failed to repudiate” such a policy during a recent Senate Judiciary Committee hearing,
6 and points to “numerous [documented] cases in which parents have been separated from their
7 children.” *Id.*

9 48. In the spring of 2018, an influx of families seeking to enter the United States may
10 have catalyzed the Administration to finally embrace the Policy. In March and April of 2018,
11 the number of families from Latin America apprehended at the Southwestern border increased
12 dramatically, going from 5,475 in February to 8,873 in March (a 62% increase) and 9,653 in
13 April (a 76% increase from February). *See* Southwest Border Migration FY2018, U.S. Dept. of
14 Homeland Security *available at* <https://www.cbp.gov/newsroom/stats/sw-border-migration>,
15 attached hereto as Ex. 8 *and* Southwest Border Migration FY2017, U.S. Dept. of Homeland
16 Security *available at* <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017#>,
17 attached hereto as Ex. 9¹.

22 ¹ CBP tracks “apprehensions” and “inadmissibles” separately and adds these together to count
23 “total enforcement actions.” *See* CBP Enforcement Statistics FY2018, U.S. Customs and Border
24 Protection *available at* <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>, attached hereto
25 as Ex. 10. “Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful
26 admission into the United States but are determined to be inadmissible, individuals presenting themselves
to seek humanitarian protection under our laws, and individuals who withdraw an application for
admission and return to their countries of origin within a short timeframe.” *Id.* “Apprehensions refers to
the physical control or temporary detainment of a person who is not lawfully in the U.S. which may or
may not result in an arrest.” *Id.*

1 49. The number of family units deemed to be inadmissible went from 3,941 in
2 February to 5,162 in March (a 31% increase) and 5,445 in April (a 38% increase from February).
3 *See* Ex. 8. These numbers include all persons who enter at ports of entry but are deemed to be
4 inadmissible; asylum seekers; and individuals who apply for admission but subsequently return
5 to their countries of origin within a short time frame. *See* Ex. 9. The numbers reflected an
6 increase of 672% in March 2018 in comparison to March 2017, and 697% in April 2018 in
7 comparison to April 2017. *Compare* Exs. 8 and 9.

9 50. According to at least one source, the President’s frustration with the rising
10 numbers of Latino immigrants at the Southwestern border in March and April of 2018 was the
11 impetus for publicly adopting the Policy. *See* Ex. 5. When asked what had changed since the
12 prior year – when the Administration backed away from adopting such a policy – the person
13 pointed to the President: “What you’re seeing now is a President’s frustration with the fact that
14 the numbers are back up.” *Id.*

16 51. In early April 2018, President Trump reportedly expressed frustration with DHS
17 Secretary Nielsen for failing to stop or decrease immigration at the Southwestern border. Several
18 officials stated that one persistent issue was President Trump’s belief that Secretary Nielsen and
19 DHS were resisting his direction that parents be separated from their children when crossing
20 unlawfully at the US-Mexico border. *See* Shear and Pearlroth, *Kirstjen Nielsen, Chief of*
21 *Homeland Security, Almost Resigned After Trump Tirade* (May 10, 2018) available at
22 [https://www.nytimes.com/2018/05/10/us/politics/trump-homeland-security-secretary-](https://www.nytimes.com/2018/05/10/us/politics/trump-homeland-security-secretary-resign.html)
23 [resign.html](https://www.nytimes.com/2018/05/10/us/politics/trump-homeland-security-secretary-resign.html), attached hereto as Ex. 11. The President and his aides had been pushing a family
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25
26

1 separation policy for weeks as a way to deter families from crossing the Southwestern border
2 illegally. *Id.*

3 52. On April 6, 2018, President Trump issued a memorandum directing Attorney
4 General Sessions and DHS Secretary Nielsen to detail all measures and identify any resources
5 or steps “needed to expeditiously end ‘catch and release’ practices” that allow undocumented
6 immigrants to be released into the community pending resolution of their immigration cases.
7

8 53. That same day, Attorney General Sessions formally announced a
9 “zero-tolerance” policy “for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted
10 illegal entry and illegal entry into the United States by an alien.” *See* Attorney General
11 Announces Zero-Tolerance Policy for Criminal Illegal Entry, U.S. Department of Justice (April
12 6, 2018) available at [https://www.justice.gov/opa/pr/attorney-general-announces-zero-
13 tolerance-policy-criminal-illegal-entry](https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry), attached hereto as Ex. 12.
14

15 54. In a memorandum also issued April 6, Attorney General Sessions “direct[ed] each
16 United States Attorney’s Office along the Southwest Border . . . to adopt immediately a
17 zero-tolerance policy for all offenses referred for prosecution under section 1325(a)” and made
18 clear that this directive “superseded any existing policy.” *See* Memorandum for Federal
19 Prosecutors Along the Southwest Border (April 6, 2018), attached hereto as Ex. 13.
20

21 55. On May 7, 2018, DHS adopted an official Policy of “referring 100 percent of
22 illegal Southwest Border crossings to the Department of Justice for prosecution,” and Attorney
23 General Sessions publicized that children would be automatically separated from parents or other
24 adults with whom they were traveling. *See Attorney General Sessions Delivers Remarks
25 Discussing the Immigration Enforcement Actions of the Trump Administration*, Justice News
26

1 (May 7, 2018) available at [https://www.justice.gov/opa/speech/attorney-general-sessions-](https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions)
2 [delivers-remarks-discussing-immigration-enforcement-actions](https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions), attached hereto as Ex. 14.

3 56. With that, Attorney General Sessions and Secretary Nielsen carried out President
4 Trump's directive: Under the new federal law enforcement priority, all undocumented adults
5 crossing the U.S.-Mexico border at unauthorized locations would be referred by DHS to the
6 Department of Justice. DOJ would then charge each adult with misdemeanor illegal entry or
7 reentry. Everyone so referred would be prosecuted and detained regardless of familial
8 circumstances or asylum claims, and children would be automatically separated from their
9 parents and transferred to the custody of ORR for placement elsewhere.

10
11 57. Accordingly, Defendants have thus created a new category of "unaccompanied"
12 children – those who came into the country with a parent but were, pursuant to the Policy,
13 forcibly separated by ICE or CBP immediately thereafter.

14
15 58. Perhaps emboldened by the directive, DHS officers at ports of entry along the
16 Southwestern border have been refusing to let immigrants present themselves and request
17 asylum, turning people away because the United States is "full." *See* Alfredo Corchado, *Asylum*
18 *Seekers Reportedly Denied Entry at Border as Trump Tightens 'Zero Tolerance' Immigration*
19 *Policies* (June 6, 2018) available at
20 [https://www.dallasnews.com/news/immigration/2018/06/06/reports-turning-back-asylum-](https://www.dallasnews.com/news/immigration/2018/06/06/reports-turning-back-asylum-seekers-border-crossings-trump-tightens-grip-zero-tolerance-immigration-policies)
21 [seekers-border-crossings-trump-tightens-grip-zero-tolerance-immigration-policies](https://www.dallasnews.com/news/immigration/2018/06/06/reports-turning-back-asylum-seekers-border-crossings-trump-tightens-grip-zero-tolerance-immigration-policies), attached
22 hereto as Ex. 15.

23
24 59. One report describes immigrants who were turned away on the bridge in El Paso
25 by CBP officers before they reached the border checkpoint, so they were unable to make their
26

1 asylum request at the port of entry. *Id.* Ruben Garcia, founder of a nonprofit that assists
2 immigrants in El Paso explains: “If you look indigenous and you look Central American, they
3 will stop you . . . They never ask why they are coming. They just say we can’t receive you.”
4 *Id.* When asked why they are refusing to allow immigrants to reach checkpoints to request
5 asylum, CBP officials state that centers are “full.” *Id.*

6
7 60. Recent interviews with detained parents held in federal facilities in Seattle
8 confirm these reports. For example, one mother presented herself and her 15-year old son at the
9 Laredo, Texas port of entry and requested asylum for herself and safe passage for her American-
10 citizen son. Officials at the port of entry detained her, separated her from her son, and told her
11 that the United States “will not give [her] asylum” and that she “w[ould] not see [her] son again
12 until he turns 18” because he would be taken to a shelter or given to an American family for
13 adoption. Another mother claiming asylum was told, in front of her 14-year-old daughter, that
14 she would be “punished with jail time” for having come to the United States.
15

16 61. The effect of this conduct is an increasing influx of entrants at locations other
17 than ports of entry, which Defendants construe as violations of 8 U.S.C. § 1325 and its
18 implementing regulations. The adults are then routed into the criminal system while the children
19 are turned over to ORR for placement – thereby separating the family and implementing the
20 Policy.
21

22 62. Since announcing the Policy, Defendants have repeatedly acknowledged its
23 existence and cruelty. For example, President Trump, tweeting on May 26, 2018, referred to the
24 Policy as a “horrible law.” The May 26, 2018 tweet is attached hereto as Ex. 16.
25
26

1 63. On May 29, 2018, Devin O’Malley, a Justice Department spokesman, recapped
2 the Policy, telling reporters that suspected crossers “will not be given a free pass,” and will face
3 criminal prosecution and federal detention “irrespective of whether or not they have brought a
4 child with them.” See Ted Hesson, *White House’s Miller blames Democrats for border crisis*,
5 Politico (May 29, 2018) available at [https://www.politico.com/story/2018/05/29/stephen-miller-](https://www.politico.com/story/2018/05/29/stephen-miller-democrats-border-574537)
6 [democrats-border-574537](https://www.politico.com/story/2018/05/29/stephen-miller-democrats-border-574537), attached hereto as Ex. 17.

8 64. On June 16, 2018, it was reported that Senior Advisor to the President Stephen
9 Miller was a driving force in adoption and implementation of the Policy. See Chas Danner,
10 *Separating Families at the Border Was Always Part of the Plan* (June 17, 2018) available at
11 [http://nymag.com/daily/intelligencer/2018/06/separating-families-at-border-was-always-part-](http://nymag.com/daily/intelligencer/2018/06/separating-families-at-border-was-always-part-of-the-plan.html)
12 [of-the-plan.html](http://nymag.com/daily/intelligencer/2018/06/separating-families-at-border-was-always-part-of-the-plan.html), attached hereto as Ex. 18. While others acknowledge the controversial nature
13 of the Policy, Mr. Miller unapologetically embraced it, calling it “a simple decision by the
14 administration The message is that no one is exempt from immigration law.” *Id.*

16 65. On June 17, 2018, Counselor to the President Kellyanne Conway acknowledged
17 the existence of the Policy in an interview with NBC’s “Meet the Press,” stating, “As a mother,
18 as a Catholic, as somebody who has a conscience . . . I will tell you that nobody likes this policy.”
19 See Ex. 1. She continued, “Nobody likes seeing babies ripped from their mothers’ arms, from
20 their mothers’ wombs, frankly, but we have to make sure that DHS’ laws are understood through
21 the soundbite culture that we live in.” *Id.*

23 66. On June 18, 2018, President Trump characterized the Policy as one of the United
24 States’ “horrible and tough” immigration laws. See Hains, Tim, *President Trump: “The United*
25 *States Will Not be a Migrant Camp”, “Not On My Watch”* (June 18, 2018) available at
26

1 <https://www.realclearpolitics.com/video/2018/06/18/president-trump-the-united-states-will-not-be-a-migrant-camp.html>, attached hereto as Ex. 19.

3 67. Also on June 18, 2018, in remarks before the National Sheriffs' Association
4 (NSA), Attorney General Sessions promoted the deterrent effect of family separation: "We
5 cannot and will not encourage people to bring their children or other children to the country
6 unlawfully by giving them immunity in the process." See Luis Sanchez, *Sessions on separating
7 families: If we build a wall and pass legislation, we won't have these 'terrible choices'*, The Hill
8 (June 18, 2018) available at [http://thehill.com/homenews/administration/392785-sessions-on-
9 separating-families-if-we-build-a-wall-and-pass](http://thehill.com/homenews/administration/392785-sessions-on-separating-families-if-we-build-a-wall-and-pass), attached hereto as Ex. 20.

11 68. And in her remarks to the NSA, DHS Secretary Nielsen also confirmed the
12 existence of the Policy, stating: "Illegal actions have and must have consequences. No more
13 free passes, no more get out of jail free cards." See Tal Kopan, *'We will not apologize': Trump
14 DHS chief defends immigration policy* (June 18, 2018) available at
15 <https://www.cnn.com/2018/06/18/politics/kirstjen-nielsen-immigration-policy/index.html>,
16 attached hereto as Ex. 21.

18 69. The Policy has resulted in thousands of brutal familial separations.

19 70. For example, during a briefing call on June 15, 2018, DHS officials admitted that
20 1,995 children were separated from 1,940 adults at the U.S.-Mexico border from April 19
21 through May 31, 2018. The adults were all referred for prosecution. See *How Trump Family
22 Separation Policy Became What it is Today* (June 14, 2018) available at
23 [https://www.pbs.org/newshour/nation/how-trumps-family-separation-policy-has-become-what-
24 it-is-today](https://www.pbs.org/newshour/nation/how-trumps-family-separation-policy-has-become-what-it-is-today), attached hereto as Ex. 22.

1 71. According to DHS data released on June 18, 2018 by Senator Dianne Feinstein,
2 federal immigration officials separated 2,342 children from adults at the border between May 5
3 and June 9, 2018. *See* Louis Nelson, *Defiant Trump refuses to back off migrant family*
4 *separations*, Politico (June 18, 2018) *available at*
5 <https://www.politico.com/story/2018/06/18/trump-immigration-child-separations-650875>,
6
7 attached hereto as Ex. 23.

8 **C. The President’s Executive Order Does Not End Family Separation**

9 72. On June 20, 2018, President Trump issued an Executive Order entitled,
10 “Affording Congress an Opportunity to Address Family Separation” (the Order). The Order is
11 attached hereto as Ex. 24. While purporting to suspend the practice of separating families, the
12 Order offers illusory relief. Indeed, the language of the Order itself does not actually require an
13 end to family separation, and in fact, it implicitly recognizes that the Policy will continue.

14 73. By its own terms, the Order states that it does not confer any enforceable right or
15 benefit on any person.

16 74. The Order appears to direct the Secretary of Homeland Security to detain families
17 together “during the pendency of any criminal proceedings for improper entry or immigration
18 proceedings involving their members,” while continuing the practice of prosecuting and
19 detaining all unauthorized border crossers.

20 75. At the same time, the Order acknowledges that Defendants do not have the
21 resources or facilities necessary to effectuate its terms. Indeed, every provision of the Order is
22 to be carried out only “where appropriate and consistent with law and available resources.”
23 These terms are undefined, leaving familial detention largely discretionary. Likewise, the Order
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25
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1 repeatedly affirms that family unity is “subject to the availability of appropriations,” but provides
2 no parameters on when appropriations will be sought or even how much funding is needed.

3 76. Similarly, the Order directs the Secretary of Defense to provide existing available
4 facilities to house immigrant families, or to construct them, but again there is no indication that
5 appropriate federal facilities exist and are available, or that construction of new family
6 internment facilities is feasible.

7
8 77. The Order also acknowledges that Defendants cannot lawfully carry out its terms
9 until they receive a court order “that would permit” the family detention scheme contemplated.
10 Because almost every provision in the Order is subject to the availability of non-existent
11 resources and legal authority for indefinite detention that is contrary to settled law, it fails to
12 provide any actual relief.

13
14 78. The Order also is silent as to the thousands of families already separated by the
15 Policy. It does nothing to require their reunification or redress the harms inflicted on those
16 families. As a spokesperson for HHS’ Administration for Children and Families explained,
17 “There will not be a grandfathering of existing cases ... I can tell you definitively that is going
18 to be policy.” See Michael D. Shear, Abby Goodnough and Maggie Haberman, *Trump Retreats*
19 *on Separating Families, but Thousands May Remain Apart*, (June 20, 2018) available at
20 [https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-](https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region®ion=top-news&WT.nav=top-news)
21 [order.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-](https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region®ion=top-news&WT.nav=top-news)
22 [lede-package-region®ion=top-news&WT.nav=top-news](https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region®ion=top-news&WT.nav=top-news), attached as Ex. 25.

23
24 79. Defendants have confirmed that the Order will not end family separation,
25 ostensibly because only Congress can reverse the Policy. Notably, the Order poses a striking
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1 contrast with the Administration’s previous statements that Congressional legislation is the sole
2 means of ending family separation, including President Trump’s explicit statement that “You
3 can’t do it through executive order.” See “*Trump said only legislation could stop family*
4 *separation. He just issued an executive order,*” the Washington Post (June 20, 2018) clip
5 available at [https://www.washingtonpost.com/video/politics/trump-said-only-legislation-could-](https://www.washingtonpost.com/video/politics/trump-said-only-legislation-could-stop-family-separation-hes-about-to-issue-an-executive-order/2018/06/20/c4f93aea-74a9-11e8-bda1-18e53a448a14_video.html?utm_term=.d6843e5acc54)
6 [stop-family-separation-hes-about-to-issue-an-executive-order/2018/06/20/c4f93aea-74a9-11e8-](https://www.washingtonpost.com/video/politics/trump-said-only-legislation-could-stop-family-separation-hes-about-to-issue-an-executive-order/2018/06/20/c4f93aea-74a9-11e8-bda1-18e53a448a14_video.html?utm_term=.d6843e5acc54)
7 [bda1-18e53a448a14_video.html?utm_term=.d6843e5acc54](https://www.washingtonpost.com/video/politics/trump-said-only-legislation-could-stop-family-separation-hes-about-to-issue-an-executive-order/2018/06/20/c4f93aea-74a9-11e8-bda1-18e53a448a14_video.html?utm_term=.d6843e5acc54), and Adam Edelman, *Trump signs*
8 *order stopping his policy of separating families at border* (June 20, 2018) available at
9 [https://www.nbcnews.com/politics/immigration/trump-says-he-ll-sign-order-stopping-](https://www.nbcnews.com/politics/immigration/trump-says-he-ll-sign-order-stopping-separation-families-border-n885061)
10 [separation-families-border-n885061](https://www.nbcnews.com/politics/immigration/trump-says-he-ll-sign-order-stopping-separation-families-border-n885061), attached hereto as Ex. 26.

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12
13 80. Likewise, just days prior to issuance of the Order, Defendants stated numerous
14 times their position that only Congress could end a policy of separating families. For example,
15 on June 18, 2018, Secretary Nielsen announced: “Until these loopholes are closed by Congress,
16 it is not possible, as a matter of law, to detain and remove whole family units who arrive illegally
17 in the United States. Congress and the courts created this problem, and Congress alone can fix
18 it. Until then, we will enforce every law we have on the books to defend the sovereignty and
19 security of the United States.” See Matthew Nussbaum, *Trump falsely claimed for days that he*
20 *couldn’t end family separations* (June 20, 2018) available at
21 <https://www.politico.com/story/2018/06/20/trump-false-claims-family-separations-656011>,
22 attached hereto as Ex. 27.

23
24 81. Also on June 18, 2018, White House Press Secretary Sarah Huckabee Sanders
25 stated: “There’s only one body here that gets to create legislation and it’s Congress. Our job is
26

1 to enforce it, and we would like to see Congress fix it. That’s why the President has repeatedly
2 called on them to work with him to do just that.” *Id.*

3 82. And on June 20, 2018, contemporaneous with announcing the Order, Vice
4 President Pence claimed that changing the law was the only way to end family separation: “I
5 think the American people want the Democrats to stop the obstruction, to stop standing in the
6 way of the kind of reforms at our border that will end the crisis of illegal immigration. We can
7 solve this issue of separation.” *See Vice President Mike Pence: Democrats Can Fix Family*
8 *Separation at Border* (June 20, 2018) available at [https://kdkradio.radio.com/articles/vice-](https://kdkradio.radio.com/articles/vice-president-mike-pence-democrats-can-fix-family-separation-border)
9 [president-mike-pence-democrats-can-fix-family-separation-border](https://kdkradio.radio.com/articles/vice-president-mike-pence-democrats-can-fix-family-separation-border), attached hereto as Ex. 28.
10

11 83. When President Trump signed the Order, Vice President Pence and Secretary
12 Nielsen again called on Congress to end separating families at the border; Vice President Pence
13 suggested that the Order is only applicable “in the immediate days forward” and “call[ed] on
14 Congress to change the laws” for a more permanent fix. *See* clip at [https://www.c-](https://www.c-span.org/video/?447373-1/president-trump-signs-executive-order-halting-family-separation-policy)
15 [span.org/video/?447373-1/president-trump-signs-executive-order-halting-family-separation-](https://www.c-span.org/video/?447373-1/president-trump-signs-executive-order-halting-family-separation-policy)
16 [policy](https://www.c-span.org/video/?447373-1/president-trump-signs-executive-order-halting-family-separation-policy).
17

18 84. Later that day, at a briefing organized by the White House, Gene Hamilton, a
19 counselor to Attorney General Sessions, sidestepped a question about whether a family that
20 crosses the border now would be separated, stating that an “implementation phase” would occur,
21 but that he was not sure precisely what DHS or HHS would do in the immediate future. Mr.
22 Hamilton echoed President Trump’s, Nielsen’s, and Sessions’ statements that “Congress needs
23 to provide a permanent fix for this situation.” Mr. Hamilton stated that if Congress does not act,
24 it would be up to the *Flores* judge to decide whether the Administration could keep families
25
26

1 together. See Charlie Savage, *Explaining Trump’s Executive Order on Family Separation*, (June
2 20, 2018) available at [https://www.nytimes.com/2018/06/20/us/politics/family-separation-
3 executive-order.html](https://www.nytimes.com/2018/06/20/us/politics/family-separation-executive-order.html), attached hereto as Ex. 29.

4
5 **D. Pursuant to the Order, the Attorney General Has Launched an Attack on State
6 Sovereignty**

7 85. The Order directs the Attorney General to “promptly file a request with the U.S.
8 District Court for the Central District of California to modify the Settlement Agreement in *Flores*
9 *v. Sessions*,” making rescission of *Flores*’ protections a predicate to the maintenance of family
10 unity.

11 86. The *Flores* Agreement, which has been in place since 1997, “sets out nationwide
12 policy for the detention, release, and treatment of minors in the custody of the INS,” including
13 both accompanied and unaccompanied minors. Stipulated Settlement Agreement, ¶ 9, attached
14 hereto as Ex. 30. Among other things, *Flores* prevents the DHS from detaining children in
15 restricted facilities for long periods and it requires federal detention centers to meet state
16 licensing requirements for childcare facilities.

17 87. As Vice President Pence previously conceded, the *Flores* agreement provides
18 only two options for the long term placement of families—(1) parental detention and family
19 separation, or (2) keeping families together, by releasing them into the community. See clip
20 available at <https://www.c-span.org/video/?c4736625/pence-options-law>.

21 88. On June 21, 2018, Attorney General Sessions filed an *ex parte* application
22 seeking relief from the *Flores* Settlement Agreement to allow the federal government to detain
23 families indefinitely at non-licensed facilities. *Flores, et al. v. Sessions, et al.*, Case No. CV 85-
24 4544-DMG (C.D. Cal.), Dkt. 435-1 at 1, 13, attached hereto as Ex. 31.
25
26

1 89. In his application, Attorney General Sessions admits that mass internment of
2 families by the federal government is currently illegal: “this Court’s construction of the Flores
3 Settlement Agreement eliminates the practical availability of family detention across the nation
4 . . .” Ex. 31 at 2. “Under current law and legal rulings, including this Court’s, it is not possible
5 for the U.S. government to detain families together during the pendency of their immigration
6 proceedings. It cannot be done.” *Id.* at 3.

8 90. Nevertheless, Attorney General Sessions argues that indefinitely detaining
9 families is necessary for deterrence. Specifically, he asserts that, without family detention, there
10 is “a powerful incentive for aliens to enter this country with children.” *Id.* at 1. Attorney General
11 Session claims that, “[u]ndeniably the limitation on the option of detaining families together and
12 marked increase of families illegally crossing the border are linked.” *Id.* at 2. “[D]etaining
13 these individuals dispels such expectations, and deters others from unlawfully coming to the
14 United States.” *Id.* at 13 (internal citations omitted).

16 91. Attorney General Sessions also requests an exemption from state licensing
17 requirements, “because of ongoing and unresolved disputes over the ability of States to license
18 these types of facilities.” Ex. 31 at 17-18.

19 92. The district court and the Ninth Circuit in *Flores* rejected almost identical
20 arguments advanced by the federal government in 2015. *See Flores v. Lynch*, 212 F. Supp. 3d
21 907, 913 (C.D. Cal. 2015), *aff’d in part, rev’d in part and remanded*, 828 F.3d 898 (9th Cir.
22 2016); *Flores v. Lynch*, 828 F.3d 898, 910 (9th Cir. 2016). At that time, the government
23 requested that the trial court modify the *Flores* agreement to allow DHS to hold female-headed
24 families with their children indefinitely in family detention centers in Texas and New Mexico.
25
26

1 Rather than grant that request, the district court confirmed that *Flores* requires that “Defendants
2 must house children who are not released in a non-secure facility that is licensed by an
3 appropriate state agency to care for dependent children.” Case No. CV 85-4544-DMG (C.D.
4 Cal.), Dkt. 177 at 12. The court stated: “The fact that the [Texas and New Mexico] family
5 residential centers cannot be licensed by an appropriate state agency simply means that, under
6 the Agreement, [children] ... cannot be housed in these facilities except as permitted by the
7 Agreement.” *Id.* at 12-13.

9 93. The district court also found that the alleged “influx” of immigrants crossing the
10 U.S.-Mexico border did not constitute changed circumstances warranting the requested
11 modification and rejected the government’s stated rationale that the “family detention policy
12 [would] deter[] others who would have come.” Case No. CV 85-4544-DMG (C.D. Cal.), Dkt.
13 177 at 23. The Ninth Circuit affirmed, stating: “The Settlement expressly anticipated an influx
14 . . . and, even if the parties did not anticipate an influx of this size, we cannot fathom how a
15 ‘suitably tailored’ response to the change in circumstances would be to exempt an entire category
16 of migrants from the Settlement, as opposed to, say, relaxing certain requirements applicable to
17 all migrants.” *Flores v. Lynch*, 828 F.3d 898, 910 (9th Cir. 2016).

18
19
20 **E. Defendants’ Recent Statements Call Into Question the Administration’s
Commitment to the Rule of Law**

21 94. Neither the Order nor the *Flores* application offer any assurance that the
22 Administration will not once again return to a family separation policy when its efforts to inter
23 families together fail.

24
25 95. To the contrary, on June 25, 2018, Attorney General Sessions told an audience in
26 Reno, NV that DOJ would continue carrying out President Trump’s “zero-tolerance” directive

1 because to do otherwise “would encourage more adults to bring more children illegally on a
2 dangerous journey.” The same day, CBP Commissioner Kevin McAleenan stated that his
3 agency would stop referring parents with children for prosecution but that this is a “temporary”
4 halt. See Shannon Pettypiece and Toluse Olorunnipa, *Border Patrol Halts Prosecution of*
5 *Families Crossing Illegally* (June 25, 2018) available at
6 [https://www.bloomberg.com/news/articles/2018-06-25/border-patrol-halts-prosecution-of-](https://www.bloomberg.com/news/articles/2018-06-25/border-patrol-halts-prosecution-of-families-crossing-illegally)
7 [families-crossing-illegally](https://www.bloomberg.com/news/articles/2018-06-25/border-patrol-halts-prosecution-of-families-crossing-illegally).

9 96. Further, the Trump Administration’s statements from June 20, 2018-June 26,
10 2018 raise the specter of further unconstitutional and unlawful acts.

11 97. For example, in response to the public outcry against family separation, the
12 Administration appears to be preparing to intern thousands of families in military facilities. As
13 Commissioner McAleenan explained, he is unable to refer parents for prosecution without
14 separating them from their children due to lack of resources, but that he and his agency are
15 working on a plan to resume criminal referrals. See Shannon Pettypiece and Toluse Olorunnipa,
16 *Border Patrol Halts Prosecution of Families Crossing Illegally* (June 25, 2018) available at
17 [https://www.bloomberg.com/news/articles/2018-06-25/border-patrol-halts-prosecution-of-](https://www.bloomberg.com/news/articles/2018-06-25/border-patrol-halts-prosecution-of-families-crossing-illegally)
18 [families-crossing-illegally](https://www.bloomberg.com/news/articles/2018-06-25/border-patrol-halts-prosecution-of-families-crossing-illegally).

19 98. On June 21, 2018, at DHS’s request, the Pentagon agreed to host up to 20,000
20 unaccompanied migrant children on military bases. See Dan Lamothe, Seung Min Kim and Nick
21 Miroff, *Pentagon will make room for up to 20,000 migrant children on military bases*, the
22 *Washington Post* (June 21, 2018) available at
23 <https://www.washingtonpost.com/news/checkpoint/wp/2018/06/21/pentagon-asked-to-make->
24 [Washington Post](https://www.washingtonpost.com/news/checkpoint/wp/2018/06/21/pentagon-asked-to-make-) (June 21, 2018) available at
25 <https://www.washingtonpost.com/news/checkpoint/wp/2018/06/21/pentagon-asked-to-make->
26

1 [room-for-20000-migrant-children-on-military-bases/?utm_term=.decab089f684](https://www.reuters.com/article/us-usa-immigration-military/pentagon-eyes-temporary-camps-for-immigrants-at-two-bases-idUSKBN1JL015), attached
2 hereto as Ex. 32.

3 99. Defense Secretary Jim Mattis confirmed on June 24, 2018, that the military is
4 preparing to construct camps for migrants on at least two military bases. See Phil Stewart,
5 *Pentagon eyes temporary camps for immigrants at two bases*, Reuters (June 24, 2018) available
6 at [https://www.reuters.com/article/us-usa-immigration-military/pentagon-eyes-temporary-](https://www.reuters.com/article/us-usa-immigration-military/pentagon-eyes-temporary-camps-for-immigrants-at-two-bases-idUSKBN1JL015)
7 [camps-for-immigrants-at-two-bases-idUSKBN1JL015](https://www.reuters.com/article/us-usa-immigration-military/pentagon-eyes-temporary-camps-for-immigrants-at-two-bases-idUSKBN1JL015), attached hereto as Ex. 33. Moreover, a
8 planning document from the United States Navy details “temporary and austere” tent cities that
9 would be able to house 25,000 migrants on abandoned airfields. See Philip Elliott, *Exclusive:*
10 *Navy Document Shows Plan to Erect ‘Austere’ Detention Camps*, *Time* (June 22, 2018)
11 [http://time.com/5319334/navy-detainment-centers-zero-tolerance-immigration-family-](http://time.com/5319334/navy-detainment-centers-zero-tolerance-immigration-family-separation-policy/)
12 [separation-policy/](http://time.com/5319334/navy-detainment-centers-zero-tolerance-immigration-family-separation-policy/), attached hereto as Ex. 34.

13
14
15 100. Emerging reports as of June 25, 2018, suggest that immigration officials are using
16 the children taken from their parents as leverage to coerce parents to withdraw their asylum
17 claims. The family reunification Fact Sheet released by the Department of Homeland Security
18 on June 23, 2018, provides for family reunification only for adults “who are subject to removal”
19 so that they may be “reunited with their children for the purposes of removal.” See Fact Sheet:
20 Zero Tolerance Prosecution and Family Reunification (June 23, 2018) available at
21 <https://content.govdelivery.com/accounts/USDHS/bulletins/1f98ad8>, attached hereto as Ex. 35.
22 In other words, parents who hope to be quickly reunited with their children must abandon their
23 own asylum claims and agree to withdraw their children’s claims to remain in the United States.
24 See Dara Lind, *Trump will reunite separated families – but only if they agree to deportation*,

1 Vox (June 25, 2018) available at <https://www.vox.com/2018/6/25/17484042/children-parents->
2 [separate-reunite-plan-trump](https://www.vox.com/2018/6/25/17484042/children-parents-separate-reunite-plan-trump), attached hereto as Ex. 36.

3 101. Parents have felt compelled to act accordingly. On June 24, 2018, a DHS official
4 stated that parents separated from their children “were quickly given the option to sign
5 paperwork leading to their deportation. Many chose to do so.” The June 24, 2018 tweet is
6 available at <https://twitter.com/jacobsoboroff/status/1010862394103328771>, and attached
7 hereto as Ex. 37. This is consistent with other accounts of parents signing voluntary deportation
8 paperwork out of “desperation” because officials had suggested that it would lead to faster
9 reunification with their children. *See, e.g.,* Jay Root and Shannon Najmabadi, *Kids in exchange*
10 *for deportation: Detained migrants say they were told they could get kids back on way out of*
11 *U.S.*, Texas Tribune (June 24, 2018) available at <https://www.texastribune.org/2018/06/24/kids->
12 [exchange-deportation-migrants-claim-they-were-promised-they-could/?utm_campaign=trib-](https://www.texastribune.org/2018/06/24/kids-exchange-deportation-migrants-claim-they-were-promised-they-could/?utm_campaign=trib-)
13 [social-buttons&utm_source=twitter&utm_medium=social](https://www.texastribune.org/2018/06/24/kids-exchange-deportation-migrants-claim-they-were-promised-they-could/?utm_campaign=trib-social-buttons&utm_source=twitter&utm_medium=social), attached hereto as Ex. 38.

14 102. Likewise, on June 24, 2018, a senior administrative official speaking on the
15 condition of anonymity confirmed that defendants do not plan to reunite families until after a
16 parent has lost his or her deportation case, effectively punishing parents who may otherwise
17 pursue an asylum claim or other relief request and creating tremendous pressure to abandon such
18 claims so that parents may be reunited with kids. *See* Maria Saccherri, Michael Miller and
19 Robert Moore, *Sen. Warren visits detention center, says no children being returned to parents*
20 *there*, The Washington Post (June 24, 2018) available at
21 <https://www.washingtonpost.com/local/immigration/desperate-to-get-children-back-migrants->
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1 [are-willing-to-give-up-asylum-claims-lawyers-say/2018/06/24/c7fab87c-77e2-11e8-80be-](https://www.washingtonpost.com/news/immigration/wp/2018/06/24/are-willing-to-give-up-asylum-claims-lawyers-say/2018/06/24/c7fab87c-77e2-11e8-80be-6d32e182a3bc_story.html)
2 [6d32e182a3bc_story.html](https://www.washingtonpost.com/news/immigration/wp/2018/06/24/are-willing-to-give-up-asylum-claims-lawyers-say/2018/06/24/c7fab87c-77e2-11e8-80be-6d32e182a3bc_story.html), attached hereto as Ex. 39.

3 103. In recent days, President Trump has proposed deporting immigrants without
4 hearing or legal process as his favored alternative. On June 21, 2018 President Trump stated:
5 “We shouldn’t be hiring judges by the thousands, as our ridiculous immigration laws demand,
6 we should be changing our laws, building the Wall, hire Border Agents and Ice and not let people
7 come into our country based on the legal phrase they are told to say as their password.” See
8 <https://mobile.twitter.com/realDonaldTrump/status/1009770941604298753>.

9
10 104. On June 24, 2018, President Trump again proposed that immigrants who cross
11 into the United States should be sent back immediately without due process or an appearance
12 before a judge: “We cannot allow all of these people to invade our Country. When somebody
13 comes in, we must immediately, with no Judges or Court Cases, bring them back from where
14 they came. Our system is a mockery to good immigration policy and Law and Order. Most
15 children come without parents...” See Katie Rogers and Sheryl Gay Stolberg, *Trump Calls for*
16 *Depriving Immigrants Who Illegally Cross Border of Due Process Rights*, The New York Times
17 (June 24, 2018) available at [https://www.nytimes.com/2018/06/24/us/politics/trump-](https://www.nytimes.com/2018/06/24/us/politics/trump-immigration-judges-due-process.html)
18 [immigration-judges-due-process.html](https://www.nytimes.com/2018/06/24/us/politics/trump-immigration-judges-due-process.html), attached hereto as Ex. 40.

19
20
21 105. On June 25, 2018, President Trump continued: “Hiring manythousands [sic] of
22 judges, and going through a long and complicated legal process, is not the way to go – will
23 always be dysfunctional [sic]. People must simply be stopped at the Border and told they cannot
24 come into the U.S. illegally. Children brought back to their country.....” The June 25, 2018
25
26

1 tweet is available at <https://twitter.com/realDonaldTrump/status/1011228265003077632>, and
2 attached hereto as Ex. 41.

3 106. On June 25, 2018, White House press secretary Sarah Huckabee Sanders
4 confirmed that CPB's halt of prosecution referrals "is a temporary solution. This isn't going to
5 last. . . This will only last a short amount of time, because we're going to run out of space, we're
6 going to run out of resources to keep people together." Secretary Sanders reiterated: "We're
7 not changing the policy . . . We're simply out of resources. And at some point, Congress has to
8 do what they were elected to do, and that is secure our border, that is stop the crime coming into
9 our country." Secretary Sanders dodged questions regarding President Trump's recent
10 suggestion that immigrants be afforded no due hearing or due process prior to deportation. *See*
11 *Press Briefing by Press Secretary Sarah Sanders (June 25, 2018), available at*
12 [https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-](https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-062518/)
13 [062518/](https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-062518/).

14
15
16 **F. Defendants' Policy Causes Devastating Harm To Children and Parents**

17 107. Separating families when a child's safety is not at risk causes immediate, acute
18 trauma as well as foreseeable long term damage and harm to both the parents and the children.
19 The negative effects and consequences of the Policy are likely to be long-lasting and in some
20 cases debilitating.

21
22 108. Unless required to protect a child's safety, forced separation from their parents is
23 likely to cause immediate and extreme psychological harm to young children, and the resulting
24 cognitive and emotional damage can be permanent. Parental separation is a traumatic loss for
25 the child; as a result they are likely to experience post-traumatic symptoms such as nightmares,
26

1 and other manifestations of anxiety and depression, all of which are likely to increase in severity
2 the longer the separation lasts and lead to the potential development of problematic coping
3 strategies in both the near and long term. This trauma may be exacerbated for children who are
4 fleeing persecution or violence in their home countries.

5
6 109. Observations by those who have seen children recently separated pursuant to
7 Defendants' Policy suggest that conditions created by Defendants will further exacerbate the
8 separation trauma. By way of example, after touring a shelter along the Texas border to Mexico,
9 Dr. Colleen Kraft, President of the American Academy of Pediatrics, described a "screaming"
10 girl, "no older than 2" who could not be comforted because shelter workers had been told they
11 are not allowed to touch the children, not even to hold a crying child and convey some semblance
12 of compassion. *See Immigrant children: What a doctor saw in a Texas shelter*, The Washington
13 Post (June 17, 2018) available at [https://www.washingtonpost.com/news/post-](https://www.washingtonpost.com/news/post-nation/wp/2018/06/16/america-is-better-than-this-what-a-doctor-saw-in-a-texas-shelter-for-migrant-children/?utm_term=.e1e5566675e9)
14 [nation/wp/2018/06/16/america-is-better-than-this-what-a-doctor-saw-in-a-texas-shelter-for-](https://www.washingtonpost.com/news/post-nation/wp/2018/06/16/america-is-better-than-this-what-a-doctor-saw-in-a-texas-shelter-for-migrant-children/?utm_term=.e1e5566675e9)
15 [migrant-children/?utm_term=.e1e5566675e9](https://www.washingtonpost.com/news/post-nation/wp/2018/06/16/america-is-better-than-this-what-a-doctor-saw-in-a-texas-shelter-for-migrant-children/?utm_term=.e1e5566675e9), attached hereto as Ex. 42.

16
17 110. These reports are also consistent with the observations of State employees who
18 recently interviewed separated children living in Seattle. Every child displayed significant
19 distress when relaying their experience and broke down when describing their separation. Some
20 reported ongoing nightmares, others were so traumatized they could not continue the brief
21 interviews.
22

23 111. Similarly, parents who arrive together with their children at the U.S. border and
24 then are separated from their children by the U.S. government are likely to experience immediate
25 and acute psychological injury as a result. Under the Policy, many parents are being separated
26

1 from their children suddenly without the chance to prepare the child or even say goodbye,
2 without knowing where they or their children will be taken, without any guarantee of
3 reunification, and often without contact with their children or with long gaps in that contact.
4 When parents and children are allowed to speak, it is only briefly – ten minutes or so – by
5 telephone.
6

7 112. These otherwise fit parents are likely to experience deterioration of their mental
8 and physical health in the aftermath of the forcible separation from their children with symptoms
9 including anxiety, depression, PTSD, and other trauma-related disorders. In some cases, parental
10 trauma from separation from their children will become unbearable because their available
11 coping mechanisms may be overwhelmed by the sudden loss of the important role of parent and
12 protector of the child. Indeed, at least one parent, distraught after officials pried his 3-year-old
13 son from his arms, is reported to have committed suicide following the separation. *See* Nick
14 Miroff, *A family separated at the border, and this distraught father took his own life*, (June 9,
15 2018) available at https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?utm_term=.96a4606e47c7, attached hereto as Ex.
16
17
18
19 43.

20
21 113. These general observations were confirmed by interviewers who recently spoke
22 with mothers detained in a federal facility in King County, Washington. The mothers were
23 visibly upset, with some expressing panic and desperation, because they lacked information
24 about their children's safety and did not know whether or when they would see their children
25 again.
26

1 **G. The Policy Is Expressly Intended to Use Traumatized Children and Families to**
2 **Deter Migration of Latina/o Immigrants and for Political Leverage**

3 114. Defendants have changed public positions on the Policy numerous times over the
4 last few weeks, but what has remained consistent throughout is Defendants' unambiguous
5 adoption of a policy at the Southwestern border that uses trauma as deterrence, and their
6 insistence that Congress overhaul immigration laws to codify President Trump's immigration
7 agenda, including building a wall at the U.S.-Mexico border. *See* JM Rieger, *The Trump*
8 *Administration Changed its Story on Family Separation no Fewer than 14 Times Before Ending*
9 *the Policy* (June 20, 2018) available at [https://www.washingtonpost.com/news/the-](https://www.washingtonpost.com/news/the-fix/wp/2018/06/20/the-trump-administration-changed-its-story-on-family-separation-no-fewer-than-14-times-before-ending-the-policy/?utm_term=.6719a188344f)
10 [fix/wp/2018/06/20/the-trump-administration-changed-its-story-on-family-separation-no-fewer-](https://www.washingtonpost.com/news/the-fix/wp/2018/06/20/the-trump-administration-changed-its-story-on-family-separation-no-fewer-than-14-times-before-ending-the-policy/?utm_term=.6719a188344f)
11 [than-14-times-before-ending-the-policy/?utm_term=.6719a188344f](https://www.washingtonpost.com/news/the-fix/wp/2018/06/20/the-trump-administration-changed-its-story-on-family-separation-no-fewer-than-14-times-before-ending-the-policy/?utm_term=.6719a188344f), Ex. 44 (collecting
12 contradictory statements). Confirmation of these two goals is reflected in statements from a year
13 ago and continued even after issuance of the Executive Order.

14
15 115. As early as March 7, 2017, then-Secretary of DHS John Kelly confirmed that the
16 Policy was intended to “to deter movement” along the Southwestern border. *See* Ex. 3. Later
17 that year, a source who attended a DHS meeting to discuss ways to “deter immigrants from
18 coming to the U.S. illegally” reported that the Policy was still being considered, but kept getting
19 “bogged down” because of how “difficult and controversial it was.” *See* Ex. 4.

20
21 116. On December 5, 2017, Kirstjen Nielsen replaced John Kelly as DHS Secretary.

22 117. On February 8, 2018, 75 members of Congress wrote a letter to DHS Secretary
23 Nielsen expressing “deep[] concern that the Department of Homeland Security (DHS) is
24 separating families, including parents and their minor children . . . along the U.S.-Mexico
25 border.” DHS’ “reported justification of this practice as a deterrent to family migration suggests
26

1 a lack of understanding about the violence many families are fleeing in their home countries”
2 and “[m]ore pointedly, the pretext of deterrence is not a legally sufficient basis for separating
3 families.” The letter is attached hereto as Ex. 45.

4
5 118. The letter details two complaints filed in December 2017 that confirmed DHS
6 was “intentionally separating families for purposes of deterrence and punishment.” In particular,
7 the second complaint documented “instances of infants and toddlers as young as one and two
8 years old separated from their parents and rendered ‘unaccompanied’”—among these was “a
9 father separated from his one-year-old son, Mateo, despite presenting appropriate documents to
10 establish their relationship.” *Id.*

11
12 119. Attorney General Sessions has confirmed that the Policy is intended to deter other
13 families from entering the United States. For example, on April 6, 2018, he issued a warning to
14 immigrants crossing the Southwestern border that “illegally entering this country will not be
15 rewarded, but instead will be met with the full prosecutorial powers of the Department of Justice”
16 and children “will be separated from [their parents].” *See* Ex. 12.

17
18 120. In May 2018, DHS announced the results of its pilot at the El Paso border sector
19 from July to November 2017. Its report—later found to be inaccurate—further confirms that
20 deterrence is the primary purpose of the Policy. When asked about the Policy, DHS reported that
21 “[t]he number of illegal crossings between ports of entry of family units dropped by 64 percent.
22 This decrease was attributed to the prosecution of adults amenable to prosecution for illegal entry
23 while risking the lives of their children. Of note, the numbers began rising again after the
24 initiative was paused.” *See* Ex. 6. Notably, public reporting suggests that, based on DHS’ own
25 statistics, these numbers are wrong and that there was, in fact, a 64% *increase* in apprehensions.
26

1 *Id.*; *see also* US Border Patrol Southwest Border Apprehensions by Section FY2017, U.S.
2 Customs and Border Protection *available at* [https://www.cbp.gov/newsroom/stats/usbp-sw-](https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017#field-content-tab-group-tab-9)
3 [border-apprehensions-fy2017#field-content-tab-group-tab-9](https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017#field-content-tab-group-tab-9), attached hereto as Ex. 46 and US
4 Border Patrol Southwest Border Apprehensions by Section FY2018, U.S. Customs and Border
5 Protection *available at* [https://www.cbp.gov/newsroom/stats/usbp-sw-border-](https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions#field-content-tab-group-tab-1)
6 [apprehensions#field-content-tab-group-tab-1](https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions#field-content-tab-group-tab-1), attached hereto as Ex. 47.
7

8 121. On May 11, 2018, White House Chief of Staff John Kelly was interviewed by
9 National Public Radio. When asked whether he was in favor of the Policy, he acknowledged that
10 “the vast majority of the people that move illegally into United States are not bad people.
11 They’re not criminals. They’re not MS-13. . . . They’re not bad people. They’re coming here
12 for a reason. And I sympathize with the reason. . . . But a big name of the game is deterrence.”
13 *See* White House Chief of Staff John Kelly’s Interview with NPR (May 11, 2018) *available at*
14 [https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-](https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr)
15 [interview-with-npr](https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr), transcript attached hereto as Ex. 48. He noted that the Policy “would be a
16 tough deterrent” but that “this is a technique that no one hopes will be used extensively or for
17 very long.” *Id.*
18

19 122. On June 5, 2018, Attorney General Sessions was asked whether it was “absolutely
20 necessary” to “separate parents from children when they are detained or apprehended at the
21 border.” He responded, “yes” and “[i]f people don’t want to be separated from their children,
22 they should not bring them with them. We’ve got to get this message out.” *See* Hugh Hewitt,
23 US Attorney General Jeff Sessions on Children Separated From Parents at Border, F-1 Visas For
24 PRC Students, and Masterpiece Cakeshop Decision (June 5, 2018) *available at*
25
26

1 <http://www.hughewitt.com/attorney-general-jeff-sessions-on-the-immigration-policies->
2 [concerning-children-apprehended-at-he-border-and-f-1-visas/](http://www.hughewitt.com/attorney-general-jeff-sessions-on-the-immigration-policies-), transcript attached hereto as Ex.
3 49.

4
5 123. On June 14, 2018, Attorney General Sessions quoted a Bible verse ostensibly to
6 justify the Policy to leaders of the faith community and added: “Having children does not give
7 you immunity from arrest and prosecution.” See Adam Edelman, *Sessions Cites Bible in Defense*
8 *of Breaking up Families, Blames Migrant Parents* (June 14, 2018) available at
9 <https://www.nbcnews.com/politics/immigration/sessions-cites-bible-defense-breaking->
10 [families-blames-migrant-parents-n883296](https://www.nbcnews.com/politics/immigration/sessions-cites-bible-defense-breaking-), attached hereto as Ex. 50.

11
12 124. Public statements suggest that the Trump Administration intends to use the
13 Policy as a negotiating tool to force congressional acquiescence to its proposed immigration
14 legislation. For example, President Trump tweeted on May 26, 2018 that Democrats should “end
15 the horrible law that separates children from there [sic] parents once they cross the Border.” The
16 May 26, 2018 tweet is available at
17 <https://twitter.com/realDonaldTrump/status/1000375761604370434>, and attached hereto as Ex.
18 51.

19
20 125. On May 29, 2018 Senior Advisor to the President Stephen Miller confirmed that
21 families are intentionally being traumatized for political gain: “If we were to have those
22 [Republican sponsored] fixes in federal law, the migrant crisis emanating from Central America
23 would largely be solved in a very short period of time,” and “[f]amilies would then therefore be
24 able to be kept together and could be sent home expeditiously and safely.” See Ted Hesson,
25 *White House’s Miller Blames Democrats for border crisis*, Politico (May 29, 2018) available at
26

1 <https://www.politico.com/story/2018/05/29/stephen-miller-democrats-border-574537>, attached
2 hereto as Ex. 52.

3 126. On June 16, 2018, President Trump confirmed that he is using the Policy to push
4 lawmakers to enact immigration legislation more in line with his own agenda: “Democrats can
5 fix their forced family breakup at the Border by working with Republicans on new legislation.”
6 *See* Kate Sullivan, *Trump suggests separation of families at border is a negotiating tool* (June
7 16, 2018) available at [https://www.cnn.com/2018/06/16/politics/trump-separation-families-](https://www.cnn.com/2018/06/16/politics/trump-separation-families-negotiating-tool/index.html)
8 [negotiating-tool/index.html](https://www.cnn.com/2018/06/16/politics/trump-separation-families-negotiating-tool/index.html), attached hereto as Ex. 53.

9
10 127. On June 18, 2018, President Trump complained that “[w]e have the worst
11 immigration laws in the entire world. Nobody has such sad, such bad and actually, in many
12 cases, such horrible and tough – you see about child separation, you see what’s going on there.”
13 *See* Ex. 19. He suggested, “[i]f the Democrats would sit down, instead of obstructing, we could
14 have something done very quickly, good for the children, good for the country, good for the
15 world. It could take place quickly.” *Id.* But in the meantime, he stated, “The United States
16 will not be a migrant camp and it will not be a refugee holding facility, it won’t be.” *Id.*

17
18 128. On June 18, 2018, in remarks before the National Sheriffs’ Association, Attorney
19 General Sessions also suggested that if lawmakers would simply acquiesce to President Trump’s
20 demands to fund a wall on the Southwestern border, Defendants would stop separating families:
21 “We do not want to separate parents from their children,” “[i]f we build the wall, if we pass
22 legislation to end the lawlessness, we won’t face these terrible choices.” *See* Ex. 20.

23
24 129. DHS Secretary Nielsen also linked the Policy with demands the Administration
25 has made on Congress: “We are enforcing the laws passed by Congress, and we are doing all
26

1 that we can in the executive branch to protect our communities. It is now time that Congress act
2 to fix our broken immigration system.” *See* Ex. 21.

3 **H. Defendants’ Family Separation Policy Targets Immigrant Families Based on Their**
4 **National Origin**

5 130. Defendants’ Policy is directed only at “Southwest Border crossings” (*see* Ex. 13),
6 the majority of which consist of immigrants from Latin America. Indeed, in its reports on recent
7 “Southwest Border Apprehensions,” CBP only tracks family unit apprehensions for immigrants
8 from El Salvador, Guatemala, Honduras, and Mexico. *See* U.S. Border Patrol Southwest Border
9 Apprehensions by Sector FY2018, *available at* [https://www.cbp.gov/newsroom/stats/usbp-sw-](https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions)
10 [border-apprehensions](https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions), attached hereto as Ex. 54. Defendants do not track whether the Policy is
11 impacting family unit migration from any other countries.
12

13 131. Defendants’ stated rationale for adopting the Policy—*i.e.*, to deter migration—is
14 ineffective and not a legitimate law enforcement tactic. Rather than deter migration, the number
15 of families and unaccompanied children apprehended has steadily increased since Defendants
16 have implemented the Policy. According to Defendants’ own statistics, in March 2018, the
17 number of families apprehended at the Southwestern border was 37,385; in April 2018, 38,278;
18 and in May 2018, 40,344. *See* Ex. 8. The number of family units arriving at ports of entry
19 determined to be inadmissible also stayed relatively stable; in March 2018, the number was
20 5,162, in April, 5,445, and in May 4,718. *Id.*
21

22 132. Defendants also report that U.S. border agents made more than 50,000 arrests in
23 each of the months of March, April and May 2018—“an indication that escalating enforcement
24 tactics by the Trump Administration—including separating immigrant parents from their
25 children—has not had an immediate deterrent effect.” *See* Nick Miroff, *Border arrests exceed*
26

1 50,000 for third month in a row (June 6, 2018), available at
2 [https://www.washingtonpost.com/world/national-security/border-arrests-exceed-50000-for-](https://www.washingtonpost.com/world/national-security/border-arrests-exceed-50000-for-third-month-in-a-row/2018/06/06/db6f15a6-680b-11e8-bea7-c8eb28bc52b1_story.html?utm_term=.72b8f43a7470)
3 [third-month-in-a-row/2018/06/06/db6f15a6-680b-11e8-bea7-](https://www.washingtonpost.com/world/national-security/border-arrests-exceed-50000-for-third-month-in-a-row/2018/06/06/db6f15a6-680b-11e8-bea7-c8eb28bc52b1_story.html?utm_term=.72b8f43a7470)
4 [c8eb28bc52b1_story.html?utm_term=.72b8f43a7470](https://www.washingtonpost.com/world/national-security/border-arrests-exceed-50000-for-third-month-in-a-row/2018/06/06/db6f15a6-680b-11e8-bea7-c8eb28bc52b1_story.html?utm_term=.72b8f43a7470), attached hereto as Ex. 55.

5
6 133. On May 23, 2018, Steven Wagner, Acting Secretary of the Administration for
7 Children and Families testified before a Senate committee, stating: “In FY 2017, 84 percent of
8 [unaccompanied alien minors] referred to ORR came from Honduras, Guatemala, and
9 El Salvador. To date in FY 2018, 93 percent of referred children come from those countries.” A
10 copy of the Wagner Statement is attached as Ex. 56.

11
12 134. On April 6, 2018, President Trump signed a memorandum ordering agencies to
13 “expeditiously end” the practice of “catch and release,” a pejorative phrase that refers to the
14 practice of allowing immigrants to be released into the community pending resolution of their
15 immigration cases. *See* Jesse Byrnes, *Trump signs memo ordering end to ‘catch and release’*
16 *practices*, The Hill, available at [http://thehill.com/homenews/administration/382054-trump-](http://thehill.com/homenews/administration/382054-trump-signs-memo-ordering-end-to-catch-and-release-practices)
17 [signs-memo-ordering-end-to-catch-and-release-practices](http://thehill.com/homenews/administration/382054-trump-signs-memo-ordering-end-to-catch-and-release-practices), attached hereto as Ex. 57. For
18 example, the memo orders DHS to submit a report within 45 days “detailing all measures that
19 their respective departments have pursued or are pursuing to expeditiously end ‘catch and
20 release’ practices.” *Id.* It also requests “a detailed list of all existing facilities, including military
21 facilities, that could be used, modified, or repurposed to detain aliens for violations of
22 immigration law” and specifically directs Attorney General Sessions and DHS Secretary
23 Nielsen to identify any resources “that may be needed to expeditiously end ‘catch and release’
24 practices.” *Id.*
25
26

1 135. The Policy—announced shortly thereafter—targets only the immigrants at the
2 Southwestern border, the vast majority of whom are from Latin American countries. *See* Ex. 12.

3 136. In stark contrast to Defendants’ Southwestern border actions, DHS’ updated
4 Northern Border Strategy, announced on June 12, 2018, aims “to facilitate the flow of lawful
5 cross-border trade and travel, and strengthen cross-border community resilience.” Although the
6 Northern Border Strategy is intended, in part, to “safeguard our northern border against terrorist
7 and criminal threats,” the strategy does not demand prosecution and family separation for all
8 unauthorized entrants at the northern border of the United States. *See* Department of Homeland
9 Security Northern Border Strategy *available at*
10 [https://www.dhs.gov/sites/default/files/publications/18_0612_PLCY_DHS-Northern-Border-](https://www.dhs.gov/sites/default/files/publications/18_0612_PLCY_DHS-Northern-Border-Strategy.pdf)
11 [Strategy.pdf](https://www.dhs.gov/sites/default/files/publications/18_0612_PLCY_DHS-Northern-Border-Strategy.pdf), attached hereto as Ex. 58.

12
13
14 137. The Policy is intended to target immigrants by their country of origin and is
15 consistent with the demonstrated anti-Latina/o bias repeatedly shown by President Trump.

16 138. Members of the Trump Administration repeatedly disparaged Latin American
17 countries during the presidential campaign and during the Trump presidency. When Mr. Trump
18 announced his campaign at Trump Tower in June 2015, he announced: “When Mexico sends its
19 people, they’re not sending their best. . . . They’re bringing drugs. They’re bringing crime.
20 They’re rapists.” *See* Z. Byron Wolf, *Trump basically called Mexicans rapists again*, available
21 at <https://www.cnn.com/2018/04/06/politics/trump-mexico-rapists/index.html>, attached hereto
22 as Ex. 59. In that same speech, he first proposed the idea of building a wall along the
23 Southwestern border and “mak[ing] Mexico pay for that wall.”
24
25
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1 139. During the first Republican presidential debate, then-candidate Trump again
2 stated his distaste for immigrants from Mexico: “The Mexican government is much smarter,
3 much sharper, much more cunning. And they send the bad ones over because they don’t want
4 to pay for them. They don’t want to take care of them.” See Andrew O’Reilly, *At GOP debate,*
5 *Trump says ‘stupid’ U.S. leaders are being duped by Mexico*, Fox News (Aug. 6, 2015) available
6 at [http://www.foxnews.com/politics/2015/08/06/at-republican-debate-trump-says-mexico-is-](http://www.foxnews.com/politics/2015/08/06/at-republican-debate-trump-says-mexico-is-sending-criminals-because-us.html)
7 [sending-criminals-because-us.html](http://www.foxnews.com/politics/2015/08/06/at-republican-debate-trump-says-mexico-is-sending-criminals-because-us.html), attached hereto as Ex. 60.

9 140. Soon after, on August 25, 2015, then-candidate Trump refused to answer questions
10 about immigration posed by Jorge Ramos, a Mexican-American and the top news anchor at
11 Univision, a Spanish-language news network. After sending his bodyguard to physically remove
12 Mr. Ramos, then-candidate Trump derisively told Mr. Ramos to “Go back to Univision.” See Phillip
13 Rucker, *First, Trump booted Univision anchor Jorge Ramos out of his news conference. Then things*
14 *got interesting*, The Washington Post, (Aug. 25, 2015) available at
15 [https://www.washingtonpost.com/news/post-politics/wp/2015/08/25/first-trump-booted-](https://www.washingtonpost.com/news/post-politics/wp/2015/08/25/first-trump-booted-univision-anchor-jorge-ramos-out-of-his-news-conference-then-things-got-interesting/?utm_term=.33965c195aca)
16 [univision-anchor-jorge-ramos-out-of-his-news-conference-then-things-got-](https://www.washingtonpost.com/news/post-politics/wp/2015/08/25/first-trump-booted-univision-anchor-jorge-ramos-out-of-his-news-conference-then-things-got-interesting/?utm_term=.33965c195aca)
17 [interesting/?utm_term=.33965c195aca](https://www.washingtonpost.com/news/post-politics/wp/2015/08/25/first-trump-booted-univision-anchor-jorge-ramos-out-of-his-news-conference-then-things-got-interesting/?utm_term=.33965c195aca), attached hereto as Ex. 61.

19 141. In May 2016, then-candidate Trump referred to anti-Trump protestors who
20 carried the Mexican flag as “criminals” and “thugs.” Donald Trump, “The protestors in New
21 Mexico were thugs who were flying the Mexican Flag.” The May 25, 2016 tweet is attached
22 hereto as Ex. 62. Donald Trump, “Many of the thugs that attacked peaceful Trump supporters
23 in San Jose were illegals.” The June 4, 2016 tweet is attached hereto as Ex. 63.
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1 142. In June 2016, then-candidate Trump impugned the integrity of a federal judge
2 presiding over a lawsuit against one of his businesses. Trump commented that Judge Gonzalo
3 Curiel's rulings against him "[H]as to do with perhaps that I'm very, very strong on the border.
4 . . . Now, he is Hispanic, I believe. He is a very hostile judge to me." See Jose A. DelReal and
5 Katie Zezima, *Trump's personal, racially tinged attacks on federal judge alarm legal experts*,
6 The Washington Post (June 1, 2016) available at
7 [https://www.washingtonpost.com/politics/2016/06/01/437ccae6-280b-11e6-a3c4-
8 0724e8e24f3f_story.html?utm_term=.c82ec7177a13](https://www.washingtonpost.com/politics/2016/06/01/437ccae6-280b-11e6-a3c4-0724e8e24f3f_story.html?utm_term=.c82ec7177a13), attached hereto as Ex. 64.

10 143. U.S. House Speaker Paul Ryan publicly rebuked his own party's presumptive
11 presidential nominee, stating: "Claiming a person can't do the job because of their race is sort
12 of like the textbook definition of a racist comment. I think that should be absolutely disavowed.
13 It's absolutely unacceptable." See Tom Kertscher, *Donald Trump's racial comments about
14 Hispanic judge in Trump University case*, Politifact (June 8, 2016) available at
15 [http://www.politifact.com/wisconsin/article/2016/jun/08/donald-trumps-racial-comments-
16 about-judge-trump-un/](http://www.politifact.com/wisconsin/article/2016/jun/08/donald-trumps-racial-comments-about-judge-trump-un/), attached hereto as Ex. 65.

18 144. In an interview with CBS News on June 5, 2016, then-candidate Trump reiterated
19 his views, noting that "[Judge Curiel]'s a member of a club or society very strongly, pro-Mexican,
20 which is all fine. But I say he's got bias." See CBS News, *Transcript of Face the Nation* (June
21 5, 2016) available at [https://www.cbsnews.com/news/face-the-nation-transcripts-june-5-2016-
22 trump/](https://www.cbsnews.com/news/face-the-nation-transcripts-june-5-2016-trump/), attached hereto as Ex. 66. Judge Curiel is a member of the San Diego Chapter of the La
23 Raza Lawyers Association. See Michelle Ye Hee Lee, *Trump Supporters' False Claim That
24 Trump U Judge Is a Member of a Pro-immigrant Group*, The Washington Post (June 7, 2016)
25
26

1 available at [https://www.washingtonpost.com/news/fact-checker/wp/2016/06/07/trump-
4 supporters-false-claim-that-trump-u-judge-is-a-member-of-a-pro-immigrant-
5 group/?utm_term=.07b5b0148791](https://www.washingtonpost.com/news/fact-checker/wp/2016/06/07/trump-
2 supporters-false-claim-that-trump-u-judge-is-a-member-of-a-pro-immigrant-
3 group/?utm_term=.07b5b0148791), attached hereto as Ex. 67.

6 145. On August 21, 2015, two men urinated on a sleeping Latino man and then beat him
7 with a metal pole. They later told police that “Donald Trump was right; all these illegals need to
8 be deported.” When asked about the incident, then-candidate Trump failed to condemn the men,
9 instead describing them as “passionate.” See Adrian Walker, *‘Passionate’ Trump fans behind
10 homeless man’s beating?* (Aug. 21, 2015) available at
11 [https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedly-beat-homeless-
14 man-one-them-admiringly-quote-donald-trump-deporting-
15 illegals/I4NXR3Dr7litLi2NB4f9TN/story.html](https://www.bostonglobe.com/metro/2015/08/20/after-two-brothers-allegedly-beat-homeless-
12 man-one-them-admiringly-quote-donald-trump-deporting-
13 illegals/I4NXR3Dr7litLi2NB4f9TN/story.html), attached hereto as Ex. 68. Specifically, Trump
16 stated, “[i]t would be a shame . . . I will say that people who are following me are very passionate.
17 They love this country and they want this country to be great again. They are passionate.” *Id.*

18 146. In October 2016, during a presidential debate, then-candidate Trump responded
19 to a question about immigration by stating: “We have some bad hombres here and we’re going
20 to get them out.” See Katie Zezima, *Trump on immigration: There are ‘bad hombres’ in the
21 United States*, The Washington Post (Aug. 30, 2017) available at
22 [https://www.washingtonpost.com/news/post-politics/wp/2016/10/19/trump-on-immigration-
24 there-are-bad-hombres-in-the-united-states/?utm_term=.e24f12fed08a](https://www.washingtonpost.com/news/post-politics/wp/2016/10/19/trump-on-immigration-
23 there-are-bad-hombres-in-the-united-states/?utm_term=.e24f12fed08a), attached hereto as Ex.
25 69.

26 147. On January 27, 2017, newly-inaugurated President Trump and Mexico’s
President Peña Nieto discussed President Trump’s proposal for a border wall over the phone.

1 During that transcribed conversation, President Trump again referred to “hombres” stating:
2 “You have some pretty tough hombres in Mexico that you may need help with, and we are
3 willing to help you with that big-league. But they have to be knocked out and you have not done
4 a good job of knocking them out.” See Greg Miller *et. al.*, *Full Transcripts of Trump’s Calls*
5 *with Mexico and Australia*, The Washington Post (Aug. 3, 2017) available at
6 [https://www.washingtonpost.com/world/national-security/you-cannot-say-that-to-the-president-](https://www.washingtonpost.com/world/national-security/you-cannot-say-that-to-the-president-trump-urged-mexican-president-to-end-his-public-defiance-on-border-wall-transcript-reveals/2017/08/03/0c2c0a4e-7610-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.85f36aa7a876)
7 [trump-urged-mexican-president-to-end-his-public-defiance-on-border-wall-transcript-](https://www.washingtonpost.com/world/national-security/you-cannot-say-that-to-the-president-trump-urged-mexican-president-to-end-his-public-defiance-on-border-wall-transcript-reveals/2017/08/03/0c2c0a4e-7610-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.85f36aa7a876)
8 [reveals/2017/08/03/0c2c0a4e-7610-11e7-8f39-](https://www.washingtonpost.com/world/national-security/you-cannot-say-that-to-the-president-trump-urged-mexican-president-to-end-his-public-defiance-on-border-wall-transcript-reveals/2017/08/03/0c2c0a4e-7610-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.85f36aa7a876)
9 [eeb7d3a2d304_story.html?utm_term=.85f36aa7a876](https://www.washingtonpost.com/world/national-security/you-cannot-say-that-to-the-president-trump-urged-mexican-president-to-end-his-public-defiance-on-border-wall-transcript-reveals/2017/08/03/0c2c0a4e-7610-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.85f36aa7a876), attached hereto as Ex. 70.

10
11 148. In August 2017, President Trump pardoned Joe Arpaio, the former Arizona
12 sheriff who oversaw operations that consistently targeted and harassed Latino residents in
13 Maricopa County. After a thorough investigation, the U.S. Department of Justice issued a report
14 in 2011 finding that Mr. Arpaio’s office had committed numerous civil rights violations by, *inter*
15 *alia*, conducting immigration sweeps that routinely violated the Fourth Amendment; detaining
16 Latino residents based on fabricated charges; placing Spanish-speaking inmates in solitary
17 confinement as punishment for not speaking English; refusing to accept requests for basic
18 services written in Spanish; pressuring Latino inmates to sign deportation forms; and referring
19 to Latino inmates as “wetback,” “Mexican bitches,” and “stupid Mexicans.” See Letter/Report,
20 attached hereto as Ex. 71. The report found that Mr. Arpaio’s own actions “promoted a culture
21 of bias in his organization and clearly communicated to his officers that biased policing would
22 not only be tolerated, but encouraged.” *Id.*

1 149. A federal judge ruled twice that Mr. Arpaio’s deputies unlawfully deprived
2 detainees of food and medical care, and tortured inmates by locking them in unbearably hot
3 solitary confinement cells in violation of the Eighth Amendment. See Mark Joseph Stern, *White*
4 *Nationalist Rule is Already Here* (Aug. 15, 2017), available at [http://www.slate.com/news-and-](http://www.slate.com/news-and-politics/2018/06/district-court-judge-rules-that-trump-administration-child-separations-would-be-unconstitutional.html)
5 [politics/2018/06/district-court-judge-rules-that-trump-administration-child-separations-would-](http://www.slate.com/news-and-politics/2018/06/district-court-judge-rules-that-trump-administration-child-separations-would-be-unconstitutional.html)
6 [be-unconstitutional.html](http://www.slate.com/news-and-politics/2018/06/district-court-judge-rules-that-trump-administration-child-separations-would-be-unconstitutional.html), attached hereto as Ex. 72. The vast majority of individuals jailed by
7 Mr. Arpaio’s office were Latinos detained on suspicion of being undocumented. *Id.* In issuing
8 the pardon, President Trump stated that Mr. Arpaio “has done a lot in the fight against illegal
9 immigration. He’s a great American patriot and I hate to see what has happened to him.” *Id.*
10

11 150. In February 2018, President Trump referred to nations such as El Salvador as
12 “shithole countries” in a meeting with lawmakers, and suggested that the U.S. preferred to
13 receive immigrants from countries like Norway. See David Boddiger, *Trump falsely links*
14 *Central American Immigrants to Drug Trafficking, Again* (Feb. 3, 2018) available at
15 [https://splinternews.com/trump-falsely-links-central-american-immigrants-to-drug-](https://splinternews.com/trump-falsely-links-central-american-immigrants-to-drug-1822692216)
16 [1822692216](https://splinternews.com/trump-falsely-links-central-american-immigrants-to-drug-1822692216), attached hereto as Ex. 73.
17

18 151. That same month, President Trump said of undocumented immigrants from
19 Mexico and Central America, “You know they’re bad. They’re pouring in from El Salvador,
20 Honduras, Mexico, all over.” See Ex. 73. He added, “These countries are not our friends.” *Id.*
21

22 152. In April 2018, President Trump expressed repeated frustration with immigration
23 numbers at the Southwestern border, and made a number of racially charged comments around
24 the time he issued the memorandum directing DHS Secretary Nielsen and Attorney General
25
26

1 Sessions to end catch-and-release practices. For example, President Trump again insinuated that
2 Mexican immigrants are rapists. *See* Ex. 59.

3 153. President Trump also commented multiple times about a “caravan” of Central
4 American immigrants aiming to reach the Southwestern border, many of whom planned on
5 seeking asylum. He stated that “Mexico has the absolute power to not let these large ‘Caravans’
6 of people enter our country.” *See* Edgard Garrido, *Migrant ‘caravan’ that angers Trump nears*
7 *U.S.-Mexico border*, Reuters (April 23, 2018), available at [https://www.reuters.com/article/us-](https://www.reuters.com/article/us-usa-immigration-caravan/migrant-caravan-that-angers-trump-nears-u-s-mexico-border-idUSKBN1HU2ZB)
8 [usa-immigration-caravan/migrant-caravan-that-angers-trump-nears-u-s-mexico-border-](https://www.reuters.com/article/us-usa-immigration-caravan/migrant-caravan-that-angers-trump-nears-u-s-mexico-border-idUSKBN1HU2ZB)
9 [idUSKBN1HU2ZB](https://www.reuters.com/article/us-usa-immigration-caravan/migrant-caravan-that-angers-trump-nears-u-s-mexico-border-idUSKBN1HU2ZB), attached hereto as Ex. 74. The “caravans” are an apparent reference to a
10 contingent of Latin American immigrants traveling through Mexico. *Id.* President Trump stated:
11 “If it reaches our border, our laws are so weak and so pathetic . . . it’s like we have no border.”
12 *See* Klein, Starr, Shoichet, *Trump: ‘We’re going to be guarding our border with the military’*
13 *until wall complete* (April 3, 2018) available at
14 <https://www.cnn.com/2018/04/03/politics/trump-border-wall-military/index.html>, attached
15 hereto as Ex. 75. He added, “[t]he caravan makes me very sad that this could happen to the
16 United States.” *Id.*

17 154. After expressing frustration regarding the “caravan,” President Trump announced
18 that he planned to dispatch U.S. troops to guard the U.S.-Mexico border because “we have very
19 bad laws for our border” so “we’re going to do some things militarily, until we can have a wall
20 and proper security—we’re going to be guarding our border with the military.” *See* Ex. 75.
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1 155. On June 19, 2018, President Trump tweeted that without strong border policies
2 “illegal immigrants” would “pour into and infest our Country.” See
3 <https://twitter.com/realDonaldTrump/status/1009071403918864385>.

4 156. On June 20, 2018, shortly after signing the Executive Order, at a rally in Duluth,
5 Minnesota amid chants of “Build the Wall,” President Trump repeated: “They’re not sending
6 their finest. We’re sending them the hell back. That’s what we’re doing.” See Katie Rogers and
7 Jonathan Martin, *‘We’re Sending them the Hell Back,’ Trump Says of Securing the County’s*
8 *Borders*, The New York Times (June 20, 2018) available at
9 <https://www.nytimes.com/2018/06/20/us/politics/trump-minnesota-rally.html>, attached hereto
10 as Ex. 76.

11
12 **I. The Policy Has Been Widely Denounced by the United Nations, Professional**
13 **Organizations, Public Figures, and Religious Leaders**

14 157. The United Nations High Commissioner for Human Rights has called for an end
15 to the Policy, saying, “The thought that any state would seek to deter parents by inflicting such
16 abuse on children is unconscionable. I call on the United States to immediately end the practice
17 of forcible separation of these children.” See Stephanie Nebehay, *U.N. rights boss calls for an*
18 *end to Trump’s policy of family separation*, (June 18, 2018) available at
19 [https://www.reuters.com/article/us-un-rights/un-rights-boss-calls-for-end-to-trumps-policy-of-](https://www.reuters.com/article/us-un-rights/un-rights-boss-calls-for-end-to-trumps-policy-of-family-separation-idUSKBN1JE0NA)
20 [family-separation-idUSKBN1JE0NA](https://www.reuters.com/article/us-un-rights/un-rights-boss-calls-for-end-to-trumps-policy-of-family-separation-idUSKBN1JE0NA), attached hereto as Ex. 77. A spokesperson for the U.N.
21 also said that the Policy “amounts to arbitrary and unlawful interference in family life, and is a
22 serious violation of the rights of the child.” See Nick Cumming-Bruce, *Taking Migrant Children*
23 *From Parents Is Illegal, U.N. Tells U.S.*, available at
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1 <https://www.nytimes.com/2018/06/05/world/americas/us-un-migrant-children-families.html>,
2 attached hereto as Ex. 78.

3 158. Numerous professional and religious organizations have also denounced the
4 Policy. On June 12, 2018, the American Bar Association (ABA) expressed “strong opposition”
5 to Defendants’ “separation of children from their parents when arriving at the southern border,”
6 calling the practice “unfair, inhumane, and, in the end, ineffective.” *See* ABA letter attached
7 hereto as Ex. 79 (noting “that the primary purpose of the ‘zero tolerance’ Policy is to serve as a
8 deterrent for migrant parents” at the Southwestern border, and “that family separation is not a
9 collateral consequence of regular law enforcement” but “an explicitly intentional goal.”).

10
11 159. The Policy has also been widely condemned by the medical community. For
12 example, the American Association of Pediatrics (AAP) recently denounced Defendants’ Policy,
13 writing: “Separating children from their parents contradicts everything we stand for as
14 pediatricians – protecting and promoting children’s health. In fact, highly stressful experiences,
15 like family separation, can cause irreparable harm, disrupting a child’s brain architecture and
16 affecting his or her health. This type of prolonged exposure to serious stress - known as toxic
17 stress - can carry lifelong consequences for children.” *See* AAP Statement Opposing Separation
18 of Mothers and Children at the Border (March 4, 2017), *available at* [https://www.aap.org/en-](https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx)
19 [us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx](https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx), attached
20 hereto as Ex. 80; *See also* AAP Statement Opposing Separation of Children and Parents at the
21 Border (May 8, 2018), *available at* [https://www.aap.org/en-us/about-the-aap/aap-press-](https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx)
22 [room/Pages/StatementOpposingSeparationofChildrenandParents.aspx](https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx), attached hereto as Ex.
23 81; The American Academy of Family Physicians also released a statement in opposition, urging
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1 the federal government to “withdraw its policy” and “instead, give priority to supporting families
2 and protecting the health and well-being of the children within those families.” *See* American
3 Academy of Family Physicians Statement Regarding the United States Department of Homeland
4 Security’s Policy to Separate Children from Adult Caregivers available at
5 [https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/equality/ST-](https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/equality/ST-DHSPolicyChild-AdultSeparation-061618.pdf)
6 [DHSPolicyChild-AdultSeparation-061618.pdf](https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/equality/ST-DHSPolicyChild-AdultSeparation-061618.pdf), attached hereto as Ex. 82. Further, the American
7 Medical Association “strongly urge[d]” the Defendants to withdraw the Policy, writing, “It is
8 well known that childhood trauma and adverse childhood experiences created by inhumane
9 treatment often create negative health impacts that can last an individual’s entire lifespan.” *See*
10 *AMA Urges Administration to Withdraw “Zero Tolerance” Policy (June 20, 2018) available at*
11 <https://www.ama-assn.org/ama-urges-administration-withdraw-zero-tolerance-policy>, attached
12 hereto as Ex. 83.

13
14
15 160. On June 13, 2018, Daniel Cardinal DiNardo of the United States Conference of
16 Catholic Bishops (USCCB) “join[ed] Bishop Joe Vásquez, Chairman of USCCB’s Committee
17 on Migration, in condemning the continued use of family separation at the U.S./Mexico border:
18 “Families are the foundational element of our society” and separating parent from child “is not
19 the answer” to “protecting our borders.” *See A Statement from Daniel Cardinal DiNardo, United*
20 *States Conference of Catholic Bishops, (June 13, 2018) available at*
21 <http://www.usccb.org/news/2018/18-098.cfm>, attached hereto as Ex. 84.

22
23 161. Likewise, the Southern Baptist Convention recently passed a resolution affirming
24 that immigrants be treated “with the same respect and dignity as those native born,” and
25 emphasizing “maintaining the priority of family unity.” *See* Sasha Ingber, *Faith Leaders Oppose*
26

1 *Trump's Immigration Policy of Separating Children From Parents*, available at
2 [https://www.npr.org/2018/06/16/620651574/faith-leaders-oppose-trumps-immigration-policy-](https://www.npr.org/2018/06/16/620651574/faith-leaders-oppose-trumps-immigration-policy-of-separating-children-from-paren)
3 [of-separating-children-from-paren](https://www.npr.org/2018/06/16/620651574/faith-leaders-oppose-trumps-immigration-policy-of-separating-children-from-paren), attached hereto as Ex. 85.

4
5 162. Prominent figures from both political parties have denounced the Policy. For
6 example, on June 17, 2018, former First Lady Laura Bush wrote: “Our government should not
7 be in the business of warehousing children in converted box stores or making plans to place them
8 in tent cities in the desert outside of El Paso. These images are eerily reminiscent of the Japanese
9 American internment camps of World War II, now considered to have been one of the most
10 shameful episodes in U.S. history.” See Laura Bush: *Separating Children from Their Parents at*
11 *the Border Breaks my Heart*, The Washington Post, available at
12 [https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-](https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?utm_term=.84b533c697a8)
13 [at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-](https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?utm_term=.84b533c697a8)
14 [b1dd6a09b549_story.html?utm_term=.84b533c697a8](https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?utm_term=.84b533c697a8), attached hereto as Ex. 86. Likewise, Jeb
15 Bush, former Florida Governor, recently stated: “Children shouldn’t be used as a negotiating
16 tool.” The June 18, 2018 tweet is attached hereto as Ex. 87.

17
18 163. At least one federal court has found that Defendants’ practice of separating
19 immigrant families “arbitrarily tears at the sacred bond between parent and child” and “is brutal,
20 offensive, and fails to comport with traditional notions of fair play and decency.” *Ms. L. v. U.S*
21 *Immigration & Customs Enf’t*, No. 18-cv-0428 DMS, 2018 WL 2725736, at *12 (S.D. Cal.
22 June 6, 2018).

1 **J. Defendants' Policy Harms the States' Sovereign Interests**

2 164. Defendants' Policy and subsequent actions harm the States' sovereign interests
3 by interfering with their licensing authority and rendering the States unable to honor their own
4 policies favoring family unity.

5
6 165. Even for residential facilities that are federally funded, States have sovereign
7 responsibility for the licensing, inspection, and monitoring of out-of-home care providers (i.e.,
8 providers who care for children away from their parents). The States conduct periodic licensing
9 monitoring visits to these facilities, meeting with the staff and children in their care, to ensure
10 that these facilities meet minimum safety standards, including background check approvals,
11 facility safety standards, and ensuring the facilities provide necessary and appropriate care to the
12 children.

13
14 166. For example, in Washington State, any agency that cares for children on a 24-hour
15 basis away from their parents must be licensed. *See, e.g.* RCW 74.15.020, 74.15.090. Under
16 RCW 74.15.030(7) and .080, the state's department of social and health services has the
17 authority and duty to access and inspect the facility's records for the purpose of determining
18 whether or not there is compliance with state licensing requirements. *See also* ch. 388-145 WAC
19 (the licensing requirements for group homes and youth shelters). These licensing requirements
20 apply to all private facilities, even those operated by a private agency contracting with the federal
21 government.
22

23 167. In the Commonwealth of Massachusetts, no "agency or institution of the federal
24 government" may operate a "[foster care] placement agency, group care facility, or temporary
25 shelter facility" for children unless licensed by the Department of Early Education and Care
26

1 (EEC). Mass. Gen. Laws Ch. 15D, § 1A, 6. EEC “may, at any reasonable time, visit and inspect
2 any facility” subject to such licensure. *Id.*, § 9.

3 168. Likewise, New York State has licensing and oversight responsibilities over the
4 facilities where immigrant children who are separated from their parents are placed. Specifically,
5 the Bureau of Child Welfare and Community Services (“CWCS”) of the New York State Office
6 of Children and Family Services (“OCFS”) has regulatory, licensing, inspection and supervisory
7 authority over residential programs that care for foster children. N.Y. Soc. Serv. Law §§ 460-b,
8 460-c, 462-a. OCFS issues operating certificates to non-profit agencies in New York State that
9 provide residential care in a congregate setting to UACs, including the children who have been
10 separated from their parents at the border. OCFS, as the licensing state agency of child residential
11 programs in New York, retains the authority to conduct building, equipment, fire and safety
12 inspections of these facilities. Also, OCFS has the statutory authority to establish regulatory
13 standards for the certification or approval of foster homes, and the authority of an agency to
14 certify or approve foster homes. N.Y. Soc. Serv. Law §§ 378, 460-a, N.Y. Not-for-Profit Corp.
15 Law § 404(b). Provider agencies in New York that contract with ORR place UACs in foster
16 homes that the agency has approved or certified pursuant to this authority from the state.
17

18 169. In the State of North Carolina, “[n]o person shall operate, establish or provide
19 foster care for children or receive and place children in residential care facilities, family foster
20 homes, or adoptive homes without first applying for a licensure to the Department” of Health
21 and Human Services]. N.C. Gen. Stat. § 131D-10.3. In addition to other powers and duties, the
22 North Carolina Department of Health and Human Services also has the authority to “[i]nspect
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1 facilities and obtain records, documents, and other information necessary to determine
2 compliance with” North Carolina law and regulations. *Id.* § 131D-10.6(6).

3 170. Likewise, Delaware licenses, registers, and monitors all residential and
4 nonresidential childcare facilities including . . . child placement and adoption agencies . . .”
5 29 *Del. C.* § 9003 (7). Delaware’s monitoring scheme includes the right of entrance, inspection,
6 and access to the papers of childcare facilities operating within Delaware and entities that operate
7 within Delaware and place children in other states. 31 *Del. C.* §§ 343, 344. In certain
8 circumstances, a violation of Delaware’s childcare licensing requirements may constitute a
9 criminal act. 31 *Del. C.* § 345.

10
11 171. Other States have similar licensing authority and statutory regimes. These
12 provisions are intended to protect children from substandard housing and care, and are essential
13 to the wellbeing of minors placed in facilities located in the States.

14
15 172. The United States’ *Ex Parte* Application for relief from the *Flores* Settlement is
16 a frontal attack on that sovereign interest. That request seeks rescission of *Flores*’s protections
17 and a “determin[ation] that the Agreement’s state licensure requirement does not apply to ICE
18 family residential facilities.” The United States has thus sought to extinguish state licensing
19 powers over federally contracted out-of-home care providers, leaving those facilities wholly
20 unregulated at the local level. The government’s attempt to modify the *Flores* settlement terms
21 by removing States’ licensing authority and jurisdiction interferes with the States’ sovereign
22 powers.

23
24 173. Moreover, each of the States is required to respect family integrity absent a
25 finding that a parent is unfit or unavailable to care for a child. Here, the federal government has
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1 intentionally separated parents from children and is leaving it to the States' court systems to
2 establish alternative guardianships for them, or relying on state-licensed foster care facilities to
3 care for the children, rendering the States unable to enforce the legal mandates and public
4 policies that require keeping families together unless the best interests of the child dictate
5 otherwise.
6

7 174. For example, the **State of Washington** has a longstanding public policy affirming
8 the importance of family integrity and the primacy of the parent-child relationship. Wash. Rev.
9 Code § 13.34.020 “declares that the family unit is a fundamental resource of American life which
10 should be nurtured” and mandates “that the family unit should remain intact unless a child’s right
11 to conditions of basic nurture, health, or safety is jeopardized.” Wash. Rev. Code § 26.09.002
12 likewise “recognizes the fundamental importance of the parent-child relationship to the welfare
13 of the child” and requires “that the relationship between the child and each parent [] be fostered
14 unless inconsistent with the child’s best interests.” Similarly, Washington’s child abuse and
15 neglect law, contained in chapter 26.44 RCW, enshrines the state’s policy that “[t]he bond
16 between a child and his or her parent . . . is of paramount importance[.]” RCW 26.44.010. Under
17 Washington law, the state is justified to intervene in that relationship only when a child is
18 deprived of the right to conditions of minimal nurture, health, and safety.
19

20
21 175. Washington also has recognized that children in government custody have
22 substantive due process rights under the U.S. Constitution. *See Braam v State of Washington*,
23 150 Wn.2d 689, 81 P.3d 851 (2003) (foster children possess substantive due process rights).
24 While these rights are not coextensive with parental rights in every context, Washington
25 recognizes a child’s constitutional rights “to be free from unreasonable risk of harm, including a
26

1 risk flowing from the lack of basic services, and a right to reasonable safety.” *Id.* The intentional
2 exposure of a child to an unreasonable risk of harm, including physical or mental injury, violates
3 these rights.

4
5 176. Washington has also declared that practices that discriminate against any of its
6 inhabitants because of race, creed, color, or national origin are matters of public concern that
7 threaten the rights and proper privileges of the State and harm the public welfare, health, and
8 peace of the people. *See* Wash. Rev. Code § 49.60.010.

9
10 177. **The Commonwealth of Massachusetts** has long committed itself to the
11 promotion and safeguarding of the family unit. Massachusetts law, for example, notes that “the
12 family is the best source of child rearing,” 110 C.M.R. 1.02, and holds that “the policy of this
13 commonwealth [is] to direct its efforts, first, to the strengthening and encouragement of family
14 life for the care and protection of children.” Mass. Gen. Laws c. 119, § 1. Normally, therefore,
15 “the interest of the child is best served by a stable, continuous environment with his or her own
16 family.” *Adoption of Frederick*, 405 Mass. 1, 4 (1989). As a result, the Commonwealth allows
17 “state intervention into a family unit [to] be used only when it is clearly needed to protect a
18 child.” 110 C.M.R. 1.02.

19
20 178. The Commonwealth of Massachusetts has also long protected the civil rights and
21 liberties of its residents, outlawing practices that harm or discriminate individuals based on race,
22 color, religious creed, or national origin. *See, e.g.*, Mass. Gen. Laws c. 151B, § 4; c. 151C, § 2;
23 c. 76, § 5; and c. 272, § 98.

24
25 179. **The State of Oregon** has statutorily codified a number of deeply-rooted public
26 concerns that are grossly undermined by defendants’ unlawful actions, thus harming Oregon’s

1 sovereign interests. Oregon recognizes the intrinsic value of family relationships and prioritizes
2 protecting them. For example, Or. Rev. Stat. § 419B.007 states the policy of Oregon is to
3 “preserve family life” by “stabilizing the family.” In addition, Oregon has declared there is a
4 “strong preference” that children live “with their own families.” Or. Rev. Stat. § 419B.090(5).
5 Similarly, custody determinations are based on the best interest of the child, including “[t]he
6 emotional ties between the child and other family members” as well as “[t]he desirability of
7 continuing an existing relationship.” *Id.* Oregon thus places great value on the parent-child
8 relationship, on “interaction, companionship, interplay and mutuality, that fulfilled the child’s
9 psychological needs for a parent” in addition to a child’s physical needs. Or. Rev. Stat. § 109.119
10 (10)(a).
11

12 180. Oregon further recognizes that children are individuals who have legal rights.
13 Among those rights are “freedom from...emotional abuse or exploitation.” Or. Rev. Stat. §
14 419B.090(1). To that end, Oregon has enacted laws and policies to protect children’s rights. For
15 example, “[i]t is the policy of the State of Oregon to safeguard and promote each child’s right to
16 safety, stability and well-being and to safeguard and promote each child’s relationships with
17 parents, siblings, grandparents, other relatives and adults with whom a child develops healthy
18 emotional attachments.” Or. Rev. Stat. § 419B.090(3).
19

20 181. Moreover, Oregon acknowledges the importance of due process rights afforded
21 to parents facing “interference” with their right to “direct the upbringing of their children”
22 because the policy of Oregon is to “guard the liberty interest of parents protected by the
23 Fourteenth Amendment to the United States Constitution and to protect the rights and interests
24 of children.” Or. Rev. Stat. § 419B.090(4). Oregon requires appointment of legal counsel for
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1 parents whenever due process so requires, and courts must consider “[t]he duration of and degree
2 of invasiveness of the interference with the parent-child relationship” that could result from legal
3 proceedings as well as the “effects” the proceedings may have on later proceedings or events
4 that may interfere with the parent-child relationship. Or. Rev. Stat. § 419B.205(1). Pursuant to
5 Or. Rev. Stat. § 419B.165, a child taken into custody must be released to a parent unless a court
6 order prevents it or there is probable cause to believe the child may be endangered by immediate
7 release.
8

9 182. When parents and children are separated, Oregon prioritizes a child’s existing
10 relationships in considering placement alternatives. For example, “there shall be a preference
11 given to placement of the child or ward with relatives and persons who have a caregiver
12 relationship with the child.” Or. Rev. Stat. § 419B.192(1). Oregon law also recognizes the value
13 of sibling relationships and requires state social agencies to make “diligent efforts” to keep
14 siblings together when they have been separated from their parents. Or. Rev. Stat. §
15 419B.192(2).
16

17 183. Children separated from families in Oregon are entitled to participate in age and
18 developmentally appropriate activities. Specifically, this includes activities that are reflective
19 of and promote “development of cognitive, emotional, physical and behavioral capacities that
20 are typical for an age or age group.” Or. Rev. Stat. § 419B.194(a)(A). Moreover, Oregon
21 requires appropriate activities for a specific child separated from family “based on the
22 developmental stages attained by the child.” Or. Rev. Stat. § 419B.194(a)(B). In making these
23 determinations, the “reasonable and prudent parent standard” applies. Or. Rev. Stat. §
24 419B.194(b). The standard is characterized by “careful and sensible parental decisions that
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1 maintain the health, safety and best interests of a child or ward while encouraging the emotional
2 and developmental growth of the child or ward...” *Id.*

3 184. Oregon has also codified anti-discrimination policies that protect all Oregon
4 residents from disparate treatment based on race, color, religion, sex, sexual orientation, national
5 origin, marital status or age. Or. Rev. Stat. § 659A.403(1). Further, it is unlawful for any person
6 to deny another full and equal accommodations, advantages, facilities, and privileges of any
7 place of public accommodation. Or. Rev. Stat. § 659A.403(3).

9 185. The **State of California** similarly has a long history of preserving the integrity of
10 the family unit and the parent-child relationship. For example, California Welfare and
11 Institutions Code section 11205 declares “the family unit is of fundamental importance to society
12 in nurturing its members,” and states “[e]ach family has the right and responsibility to provide
13 sufficient support and protection of its children.” California’s policy to “preserve and strengthen
14 a child’s family ties whenever possible” and to remove a child from the custody of his or her
15 parents “only when necessary for his or her welfare or for the safety and protection of the public”
16 is delineated in California Welfare and Institution Code section 201, subdivision (a), and section
17 16000, subdivision (a).

19 186. California’s interests in protecting the physical, emotional and psychological
20 health of minors and in preserving and fostering the parent-child relationship “are extremely
21 important interests that rise to the level of ‘compelling interests’ for purposes of constitutional
22 analysis.” *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 348 (1997).

1 187. It is California policy that social services programs must prevent or reduce
2 inappropriate institutional care by providing community-based care, home-based care, or other
3 forms of less intensive care. Cal. Welf. & Inst. Code § 13003(4).

4 188. In California, per statute, any out-of-home placement of children must be in the
5 “least restrictive family setting,” and should promote “normal childhood experiences that [are]
6 suited to meet the child's or youth's individual needs.” Cal. Welf. & Inst. Code § 16000(a).

7 189. California also has robust constitutional and statutory protections against
8 discrimination. For example, the California Constitution protects against discrimination on the
9 basis of race, creed, color or national or ethnic origin. Cal. Const. art. I, § 8. California law also
10 protects against discrimination on the basis of ancestry, citizenship, primary language, and
11 immigration status. Cal. Civ. Code § 51. California is also committed to developing strategic
12 polices and plans regarding health issues affecting immigrants and refugees. Cal. Health & Saf.
13 Code § 131019.5.

14 190. **The State of New Mexico’s** laws embody a public policy dedicated to the
15 preservation of the family unit. NMSA 1978, Sec. 32A-1-3 (2009). To “the maximum extent
16 possible, children in New Mexico shall be reared as members of a family unit.” *Id.* See also
17 NMSA 1978, Section 40-15-3 (2005) (“It is the policy of the state that its laws and programs
18 shall: support intact, functional families and promote each family's ability and responsibility to
19 raise its children; strengthen families in crisis and at risk of losing their children, so that children
20 can remain safely in their own homes when their homes are safe environments and in their
21 communities...help halt the breakup of the nuclear family[.]”). Further, New Mexico’s Family
22 Preservation Act clearly indicates the purpose of the Act is to “confirm the state’s policy of
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1 support for the family” as a “institution” and that the Act is “intended to serve as a benchmark
2 against which other legislation may be measured to assess whether it furthers the goals of
3 preserving and enhancing families in New Mexico.” NMSA 1978, Section 40-15-2 (2005). New
4 Mexico case law affirms there is a clearly established right to familial integrity embodied in the
5 Fourteenth Amendment. *Oldfield v. Benavidez*, 1994-NMSC-006, ¶ 14, 116 N.M. 785.

6
7 191. The New Mexico Children’s Code also ensures that New Mexican parents have
8 substantial due process protections prior to losing the right to care of and custody of their own
9 children. *See* NMSA 1978, Section 32A-4-28. The sole fact that a parent is incarcerated is not
10 a basis for terminating parental rights. *Id.* A parent's fundamental liberty interest in the care,
11 custody, and management of their children is well established. *See State ex rel. Children, Youth*
12 *& Families Dep't v. Mafin M.*, 2003–NMSC–015, ¶ 18, 133 N.M. 827, 70 P.3d 1266; *State ex*
13 *rel. Children, Youth & Families Dep't v. Joe R.*, 1997–NMSC–038, ¶ 29, 123 N.M. 711, 945
14 P.2d 76. “[T]he parent-child relationship is one of basic importance in our society ... sheltered
15 by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or
16 disrespect.” *State ex rel. Children, Youth & Families Dep't v. Anne McD.*, 2000–NMCA–020, ¶
17 22, 128 N.M. 618, 995 P.2d 1060 (alteration in original) (internal quotation marks and citation
18 omitted). Thus, we have recognized that process is due when a proceeding affects or interferes
19 with the parent-child relationship. *State ex rel. Children, Youth & Families Dep't v. Stella P.*,
20 1999–NMCA–100, ¶ 14, 127 N.M. 699, 986 P.2d 495; *State ex rel. Children, Youth & Families*
21 *Dep't v. Rosa R.*, 1999–NMCA–141, ¶ 13, 128 N.M. 304, 992 P.2d 317 (recognizing that
22 constitutionally adequate procedures must be in place before the State can investigate or
23 terminate the parent-child relationship).
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1 192. New Mexico custody determinations are also driven by the best interests of the
2 child. *See Schuermann v. Schuermann*, 1980-NMSC-027, ¶ 6, 94 N.M. 81 (“In any proceeding
3 involving custody, the courts' primary concern and consideration must be for the child's best
4 interests.”) (citing NMSA 1978, Section 40-4-9(A) (1977)). “In any case in which a judgment
5 or decree will be entered awarding the custody of a minor, the district court shall, if the minor is
6 under the age of fourteen, determine custody in accordance with the best interests of the child.”
7
8 *Id.*

9 193. The laws of the State of New Mexico dictate that the best interests of a child, if
10 not properly within the custody of their parents, then lies in the custody of other family members.
11 This policy is not only rooted in the best interests of children generally, but is designed to protect
12 both family unity as well as unique cultural heritage. Under the State’s Kinship Guardianship
13 Act, family members have a protected interest in raising a child when neither parent is available.
14 NMSA 1978, Section 40-10B-2 (2001). Where the United States’ policy of family separation
15 does not provide a meaningful opportunity for children who are separated from their parents to
16 unite with other members of their family, it is direct contravention of the laws of this state and
17 the policy principles that underlying those laws. Further, because “a kinship guardian possesses
18 the same legal rights and responsibilities of a biological parent,” members of separated children’s
19 families should be afforded the opportunity to seek custody of their relatives. *State ex rel.*
20 *Children, Youth & Families Dep’t v. Djamila B.*, 2015-NMSC-003. To reiterate, any policy or
21 practice of the federal government that would serve to deny or otherwise disrupt any family
22 member’s ability to take custody of their child relative is an affront to the laws of a sovereign
23 state and the views of the people therein.
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1 194. New Mexico’s Children’s Code is structured to promote child safety, recognize
2 cultural diversity, and to ensure that civil and criminal justice systems are coordinated. NMSA
3 1978, Section 32A-1-3 (2009). All children are to be provided services sensitive to their cultural
4 needs. *Id.*; *see also* NMSA 1978, Section 32A-18-1 (2009) (requiring cross-cultural training
5 for all caregivers and service-providers under the children’s code). Families seeking asylum do
6 not face allegations of abuse, neglect, or a crime that allows children to be removed from the
7 custody of their parents under New Mexico law. In New Mexico, the mental and physical
8 wellbeing of children is paramount. NMSA 1978, Section 32A-1-3(A)(2009). Children removed
9 from the home in New Mexico because of a parent’s criminal behavior are afforded due process
10 and representation of counsel in every proceeding other than probation. *State v. Doe*, 1977-
11 NMCA-234, 91 N.M. 232, 572 P.2d 960, cert. denied 91 N.M. 249, 572 P.2d 1257 (1978). *See*
12 *also* NMSA 1978, § 32A-1-7. *State ex rel. Children, Youth & Families Dept. v. Lilli L.*, 1996-
13 NMCA-014, ¶ 14, 121 N.M. 376. “[F]ailure to appoint either counsel or a guardian ad litem to
14 protect the interests of a minor may constitute a denial of due process, thereby invalidating such
15 proceedings.”
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18 195. The **State of New Jersey** has a longstanding public policy confirming the
19 importance of family integrity and the primacy of the parent-child relationship. New Jersey law
20 declares that “the preservation and strengthening of family life is a matter of public concern as
21 being in the interest of the general welfare.” N.J. Stat. Ann. § 30:4C-1(a). It also includes a
22 mandate “to make reasonable efforts ... to preserve the family in order to prevent the need for
23 removing the child” from his or her parents, and to return the child safely to his or her parents if
24 possible. N.J. Stat. Ann. § 30:4C-11.1. In determining whether removal of a child is required,
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1 “the health and safety of the child shall be of paramount concern to the court.” N.J. Stat. Ann.
2 § 30:4C-11.2. Moreover, any proceeding which may result in even a temporary loss of custody
3 of a child implicates a parent’s state constitutional right to appointed counsel. *In re*
4 *Guardianship of Dotson*, 72 N.J. 112, 123 (1976).

5
6 196. New Jersey has also long protected the civil rights and civil liberties of its
7 residents, including by prohibiting discrimination on the basis of race, creed, color, or national
8 origin. *See, e.g.*, N.J. Stat. Ann. § 10:5-12.

9 197. The **State of Rhode Island** has a longstanding public policy affirming the
10 importance of family integrity and the primacy of the parent-child relationship. For example,
11 R.I. Gen. Law § 42-72-2 (1979) declares that “the state has a basic obligation to promote,
12 safeguard and protect the social well-being and development of the children of the state through
13 a comprehensive program providing for” such items as “the strengthening of the family unit”
14 and “making the home safe for children by enhancing the parental capacity for good child care
15 and services to children and their families to prevent the unnecessary removal of children from
16 their homes”. *See* R.I. Gen. Laws § 42-72-2 (1979).

17
18 198. Rhode Island has declared that practices that discriminate against any of its
19 persons within the state on the basis of race, color, religion, sex, disability, age, or country of
20 ancestral origin are matters of public concern that threaten the rights and proper privileges of the
21 State and harm the public welfare, health, and peace of the people. *See*. R.I. Gen. Laws § 42-
22 112-1 (1990).

23
24 199. The **State of Vermont** has a fundamental, sovereign interest in the welfare of
25 children and families. Vermont has the authority and obligation to intervene where children are
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1 “without proper parental care or subsistence, education, medical, or other care necessary for
2 [their] well-being.” 33 V.S.A. § 5102(3)(B). That duty includes bearing “such expenses for the
3 proper care, maintenance, and education of a child, including the expenses of medical, surgical,
4 or psychiatric examination or treatment” as deemed necessary in connection with juvenile care
5 proceedings. 33 V.S.A. § 5116(a). Vermont authorities owe a corollary duty “to preserve the
6 family and to separate a child from his or her parents only when necessary to protect the child
7 from serious harm or in the interests of public safety.” 33 V.S.A. § 5101(a)(3).

9 200. Where children require foster care, Vermont strives to ensure their placement in
10 a healthy, loving environment through strict licensing requirements. *See* 33 V.S.A. § 4905; Vt.
11 Admin. Code § 12-3-501. The Vermont Department of Children and Families closely regulates
12 not only the child’s physical environment but also the individuals who may be entrusted to care
13 for the child. *See* Vt. Admin. Code §§ 12-3-501:20; 12-3-501:40.

15 201. Vermont has long protected its residents from discrimination on the basis of race,
16 color, and national origin — irrespective of their citizenship status. *See, e.g.*, 9 V.S.A. §§ 4502-
17 4503 (public accommodations and housing); 21 V.S.A. § 495 (employment); and 13 V.S.A. §
18 1455 (bias-motivated crimes). Vermont continues to reaffirm this commitment through
19 legislation. *See, e.g.*, Vermont Act. 5 (S. 79) (March 28, 2017) (“In Vermont, we celebrate the
20 rich cultural heritage and diversity of our residents. . . . All Vermont residents should be free
21 from discrimination on the basis of their sex, sexual orientation, gender identity, marital status,
22 race, color, religion, national origin, immigration status, age, or disability.”).

24 202. The **State of Minnesota**’s public policy also affirms the importance of family
25 integrity. For example, Minnesota Statutes section 252.32 declares that it is the State’s policy
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1 “that all children are entitled to live in families that offer safe, nurturing, permanent relationships,
2 and that public services be directed toward preventing the unnecessary separation of children
3 from their families.” Minn. Stat. § 252.32, subd. 1. In addition, Minnesota Statutes section
4 260C.001 recognizes the importance of “preserv[ing] and strengthen[ing] the child’s family ties
5 whenever possible and in the child’s best interests” Minn. Stat. § 260C.001, subd. 1(b)(3).
6

7 203. Minnesota has also declared that the State’s public policy is that persons be free
8 from discrimination in employment, housing and real property, public accommodations, public
9 services, and education on the basis of, among other things, race, color, creed, or national origin.
10 Minn. Stat. § 363A.02, subd. 1(a). “Such discrimination threatens the rights and privileges of
11 the inhabitants of this state and menaces the institutions and foundations of democracy.” *Id.*
12 subd. 1(b).
13

14 204. The **State of Iowa** has a longstanding policy that favors the protection of the
15 family unit. The State of Iowa only separates parents and children in the most exceptional of
16 circumstances because when we do so we “inflict[] a unique deprivation of a constitutionally
17 protected liberty interest[.]” *In re M.S.*, 889 N.W.2d 675, 677-78 (Iowa Ct. App. 2016). “An
18 innocent man can be set free. The landowner can be justly compensated. The childless parent
19 has no recourse.” *Id.* To that end, Iowa’s child welfare system strives to ensure that every child
20 receives the care, guidance, and control she needs in her own home, with her own parents,
21 whenever possible. Iowa Code § 232.1. “[T]he custody, care, and nurture of the child reside
22 first in the parents” and it is presumed to be in a child’s best interest to remain in parental custody.
23 *In re M.S.*, 889 N.W.2d 675, 677-78 (Iowa Ct. App. 2016); *In re N.M.*, 528 N.W.2d 94, 96 (Iowa
24 1995). Under Iowa law, a family cannot be broken up simply upon proof that a parent has
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1 “engaged in immoral or illegal conduct[.]” *In re M.S.*, 889 N.W.2d 675, 677-78 (Iowa Ct. App.
2 2016). “Indeed, due process would be violated if the State ‘attempt[ed] to force the breakup of
3 a natural family, over the objections of the parents and their children, without some showing of
4 unfitness’” as a parent. *Id.*

5
6 205. The State of Iowa prohibits discrimination based on race, creed, color, national
7 origin, or religion. *See* Iowa Code chapter 216.

8 206. The **State of Illinois** has a longstanding policy recognizing the importance of
9 maintaining the family relationship.

10 207. The Illinois Juvenile Court Act of 1987, for example, declares that the State
11 should “secure for each minor subject hereto such care and guidance, preferably in his or her
12 own home, as will serve the safety and moral, emotional, mental, and physical welfare of the
13 minor and the best interests of the community; [and] preserve and strengthen the minor’s family
14 ties whenever possible, removing him or her from the custody of his or her parents only when
15 his or her safety or welfare or the protection of the public cannot be adequately safeguarded
16 without removal.” 705 ILCS 405/1-2.

17
18 208. The Illinois Abused and Neglected Child Reporting Act likewise instructs the
19 Department of Children and Family Services to “protect the health, safety, and best interests of
20 the child in all situations in which the child is vulnerable to child abuse or neglect, offer
21 protective services in order to prevent any further harm to the child and to other children in the
22 same environment or family, stabilize the home environment, and preserve family life whenever
23 possible.” 325 ILCS 5/2(a).
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1 209. In addition, the State of Illinois has a longstanding policy affirming the
2 importance of assisting the state's immigrant population.

3 210. The Illinois Attorney General Act declares that "[i]t is imperative that State
4 government is aware of the needs of the State's immigrant community and sensitive to the
5 barriers that may prevent them from seeking and obtaining services." 15 ILCS 205/6.6(a). The
6 Act further directs the Office of the Illinois Attorney General to "assist immigrants by increasing
7 accessibility to the Office and providing outreach services to the community, which will serve
8 to educate immigrants as to their rights and responsibilities as residents of the State." *Id.*

9 211. **New York State** has a strong interest in family unity. It is the long-established
10 policy and practice of the State to prioritize keeping a child with his or her parent or parents.
11 OCFS operates under the principal that families staying together is the most desired outcome for
12 children. Children are some of the most vulnerable residents in New York State and they best
13 develop their unique potential in a caring and healthy family environment with their birth parents
14 or other relatives. The State's first obligation is to help the family with services to prevent its
15 break-up, or to quickly reunite the family if the child has already been separated from his parents.
16 That is because the child's need for a normal family life will usually best be met with his or her
17 birth parent, and parents are entitled to bring up their own children unless the best interests of
18 the child would thereby be endangered. N.Y. Soc. Serv. Law § 384-b(1); N.Y. Exec. Law § 990.

19 212. New York State has a strong interest in promulgating and operating under non-
20 discriminatory policies. In fact, the legislature has declared that non-discrimination is a guiding
21 principal of policy in New York State. New York's legislature has found that "the state has the
22 responsibility to act to assure that every individual within this state is afforded an equal
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1 opportunity to enjoy a full and productive life and that the failure to provide such equal
2 opportunity, whether because of discrimination, prejudice, intolerance or inadequate education,
3 training, housing or health care not only threatens the rights and proper privileges of its
4 inhabitants but menaces the institutions and foundation of a free democratic state and threatens
5 the peace, order, health, safety and general welfare of the state and its inhabitants.” N.Y. Exec.
6 Law § 290. Thus, it is unlawful to discriminate against any person in New York State on the
7 basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability,
8 predisposing genetic characteristics, familial status, marital status, domestic violence victim
9 status, gender identity, transgender status, and gender dysphoria. N.Y. Exec. Law § 296; 9 N.Y.
10 Comp. Codes R. & Regs. Tit. 9 § 466.13(c)(2)-(3).
11

12
13 213. This principal of non-discrimination is also applied at the agency level. For
14 example, OCFS promulgates regulatory standards that expressly prohibit discrimination or
15 harassment of adults or children involved in child welfare programs and services based on race,
16 creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression,
17 marital status or disability. N.Y. Comp. Codes R. & Regs. Tit. 10 §§ 421.6, 423.4, 441.24
18

19 214. The **State of Maryland** has longstanding policies affirming the importance of
20 family integrity and of protecting the wellbeing of children to the greatest extent
21 possible. Maryland’s Legislature has declared that “it is the policy of this State to promote
22 family stability, [and] to preserve family unity[.]” Md. Code Ann., Fam. Law § 4-
23 401(1). Maryland’s statute governing custody proceedings for children in need of assistance is
24 intended to “conserve and strengthen the child’s family ties and to separate a child from the
25 child’s parents only when necessary for the child’s welfare,” and to “provide for the care,
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1 protection, safety, and mental and physical development of” children. Md. Code Ann., Cts. &
2 Jud. Proc. § 3-802(a)(3), (1). And under state law, various social programs must be administered
3 to “preserve family unity” or “preserv[e] family integrity.” Md. Code Ann., Health-Gen. § 7-
4 702(b); Code of Md. Regs. 07.02.01.01; Code of Md. Regs. 11.02.13.01.

5
6 215. Maryland also has a public policy prohibiting discrimination against any of its
7 inhabitants because of their race, age, color, creed, or national origin, and has enacted anti-
8 discrimination laws in a wide array of contexts, ranging from public accommodations, *see* Md.
9 Code Ann., State Gov’t §§ 20-304, to employment, *id.* § 20-602, to residential housing, *id.* § 20-
10 702. Maryland law also prohibits any person from retaliating against any person because he or
11 she has exercised or enjoyed the rights granted or protected by Maryland’s anti-discrimination
12 laws, *id.* § 20-708(2).

13
14 216. It is the policy of the State of Maryland, “in the exercise of its police power for
15 the protection of the public safety, public health, and general welfare, for the maintenance of
16 business and good government, and for the promotion of the State’s trade, commerce, and
17 manufacturers,” to “assure all people equal opportunity in receiving employment” regardless of
18 race, color, religion, age, ancestry, or national origin. Md. Code Ann., State Gov’t § 20-602.

19
20 217. The **Commonwealth of Pennsylvania** has a longstanding public policy
21 recognizing the significance of family integrity and the parent-child relationship. For example,
22 Pennsylvania law declares that “[t]he family is the basic institution in society in which our
23 children’s sense of self-esteem and positive self-image are developed and nurtured” and that
24 “[t]hese feelings and values are essential to a healthy, productive and independent life during
25 adulthood.” 62 P.S. § 2172(a)(1). Similarly, Pennsylvania’s Domestic Relations Act states that
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1 “[t]he family is the basic unit in society and the protection and preservation of the family is of
2 paramount public concern.” 23 Pa.C.S. § 3102(a).

3 218. Pennsylvania law further recognizes that children who are separated from their
4 parents are deprived “of the unique bond which exists in the parent-child relationship, leaving
5 emotional scars on such children which may never fully heal” because “children are better off
6 emotionally when their needs can be met by their biological parents.” 62 P.S. § 2172(a). This
7 reality is recognized throughout Pennsylvania law. For instance, the Commonwealth’s Juvenile
8 Act seeks to “preserve the unity of the family whenever possible” and to separate “the child
9 from parents only when necessary for his welfare, safety or health or in the interests of public
10 safety.” 42 Pa.C.S. § 6301(b).

11 219. To separate a child from her family is among the most intrusive acts that the
12 government can initiate. North Carolina has long committed itself to separating families only as
13 a last resort, and only after exhausting other options, and taking all appropriate measures to
14 ensure the safety of children. In North Carolina, protection of the family unit is guaranteed not
15 only by the U.S. Constitution but also by North Carolina law. *Adams v. Tessner*, 354 N.C. 57,
16 60 (N.C. 2001). As a result, taking a child away from its parent requires “a showing that the
17 parent is unfit to have custody.” *Id.* at 62.

18 220. Parents of children in North Carolina have due process rights that require
19 “reasonable efforts [to be] made to prevent or eliminate the need for removal of the child” from
20 her parents, but only to allow removal when “necessary to protect the safety and health of the
21 child.” *In re Dula*, 143 N.C. App. 16, 17 (N.C. Ct. App. 2001). A parent’s “right to retain
22 custody of their child and to determine the care and supervision suitable for their child is a
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1 fundamental liberty interest which warrants due process protection.” *In re Montgomery*, 311
2 N.C. 101, 106 (N.C. 1984).

3 221. The people of North Carolina, in their Declaration of Rights, have stated that
4 “[n]o person . . . shall be subjected to discrimination by the State because of race, color, religion,
5 or national origin.” N.C. Const. Art. I, § 19. The State of North Carolina reiterates this
6 commitment in numerous statutes that make it unlawful to discriminate on the basis of, *inter*
7 *alia*, race, color, religion, or national origin. *See, e.g.*, N.C. Gen. Stat. §§ 75B-2, 41A-4, 95-151,
8 126-16, 143-422.2.

9
10 222. In the **State of Delaware**, “parents have the primary responsibility for meeting
11 the needs of their children and the State has an obligation to help them discharge this
12 responsibility . . .” 29 *Del. C.* § 9001. Delaware law explicitly declares that “the State has a
13 basic obligation to promote family stability and preserve the family as a unit. . . .” *Id.* Delaware
14 law also recognizes that preservation of the family as a unit is “fundamental to the maintenance
15 of a stable, democratic society.” 10 *Del. C.* § 902(a). To that end, the state has directed its
16 courts, when possible consistent with the safety of family members, to ensure that homes
17 “remain unbroken.” *Id.* The express statutory child welfare policy of the State is to “serve to
18 advance the interests and secure the safety of the child, while preserving the family unit
19 whenever the safety of the child is not jeopardized.” 16 *Del. C.* § 901.

20
21 223. The State of Delaware has comprehensively prohibited discrimination based on
22 race and national origin in its laws, including the areas of public accommodations (6 *Del. C.* §
23 4501, housing (6 *Del. C.* § 4601), and employment (19 *Del. C.* § 711). While children forcibly
24 separated from their parents pursuant to the Trump Administration’s policy are not presently
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1 located within any facility within the State of Delaware, a business entity that has facilitated such
2 placements has a business location within the State of Delaware. Upon information and belief,
3 this entity has assisted in placing children forcibly separated from their parents in other co-
4 plaintiff States. Should separated children ultimately be placed within Delaware, its education
5 and child welfare systems may be saddled with unanticipated fiscal and operational burdens due
6 to the need to provide care for children who have been psychologically traumatized by
7 involuntary separation from their parents. In order to ensure a complete injunction, to eliminate
8 the chilling effect on the exercise of the fundamental rights of documented and undocumented
9 immigrants presently residing in the State of Delaware, to protect the sovereignty of the State of
10 Delaware by protecting its obligation to assist parents in meeting the needs of children, and to
11 maintain the appropriate licensure and supervision of childcare facilities within the State,
12 Delaware joins this action.

15 224. The **District of Columbia** is uniquely situated among the Plaintiff States, as it
16 has no sovereign interest to claim as against the Federal Government. *See* Const. art. I, § 8, cl.
17 17; *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 76 (1982); *District of*
18 *Columbia ex rel. Am. Combustion, Inc. v. Transamerica Ins. Co.*, 797 F.2d 1041, 1046 (D.C.
19 Cir. 1986) (Congress acts “as sovereign of the District of Columbia”). Rather, the District asserts
20 its quasi-sovereign interests and its authority to enforce its laws and uphold the public interest
21 under its Attorney General Act, which was intended to incorporate the common law authority of
22 states’ attorneys general. D.C. Code. § 1-301.81. *See also Alfred L. Snapp & Son, Inc. v. Puerto*
23 *Rico ex rel. Barez*, 458 U.S. 592, 608 n.15 (1982) (recognizing that Puerto Rico “has a claim to
24 represent its quasi-sovereign interests in federal court at least as strong as that of any State”).
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1 **K. Defendants' Policy Harms the States' Proprietary Interests**

2 225. The Policy also harms the States' proprietary interests. ORR places thousands of
3 unaccompanied minors with sponsors (adults who can care for the child during the pendency of
4 immigration proceedings) in the States every year. In FY 2016, ORR placed 52,147 individual
5 children in such placements nationwide. In FY 2017, there were 42,497 placements, and so far
6 there have been almost 20,000 in FY 2018 (October-April). *See* Unaccompanied Alien Children
7 Released to Sponsors by State (June 30, 2017) *available at*
8 [https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state)
9 [state](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state), attached hereto as Ex 88. These ORR data are inclusive of children who were separated
10 as a result of the Policy.
11

12 226. The States are receiving and will continue to receive an increasing number of
13 separated immigrant parents and children if Defendants are allowed to continue implementing
14 their Policy. The federal government's separation of these families and transfer of separated
15 persons into the States places increased burdens on state resources, particularly because of the
16 acute trauma that children and parents have experienced due to Defendants' unlawful policy.
17 Children who have been separated from their parents and are awaiting immigration proceedings
18 (for example the adjudication of an asylum application or adjustment of status) are entitled to
19 access a variety of state-funded programs. Providing the necessary services to address the legal,
20 educational, physical, and psychological needs of parents and children who have been separated
21 will burden the state systems. The following are non-exclusive examples of state systems that
22 are impacted.
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1 227. **Courts.** Many of the sponsors of these children will need to obtain guardianship
2 through the States’ juvenile and family courts. This is not discretionary: ORR’s agreement with
3 sponsors requires “best efforts” to establish such guardianships, and sponsors in many states
4 would be unable to access medical and educational records and make important decisions for the
5 children in their care without such court-ordered guardianships. *See* Sponsor Care Agreement
6 *available* *at*
7 https://www.acf.hhs.gov/sites/default/files/orr/frp_4_sponsor_care_agreement_05_14_18.pdf,
8 and attached hereto as Ex. 89.
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10 228. Children who have been separated from their parents will also access the State
11 courts to obtain orders necessary for their immigration proceedings. For example, some such
12 children are eligible for Special Immigrant Juvenile Status (SIJS), pursuant to federal law. *See*
13 Immigration and Nationality Act (INA) §203(b)(4); INA §101(a)(27)(j); Trafficking Victims
14 Protection Reauthorization Act of 2008 (TVPRA), P.L. 110-457 §235. In these proceedings, the
15 federal immigration system relies on the expertise of state courts in making determinations
16 regarding a child’s welfare, requiring SIJS-eligible children to seek SIJS predicate findings from
17 a state’s juvenile court.
18

19 229. **Education.** Public elementary and secondary schools have a constitutional
20 obligation to educate students irrespective of immigration status. *See Plyler v. Doe*, 457 U.S.
21 202 (1982), and various statutory obligations to provide particularized services to high needs
22 students, such as through the Individuals with Disabilities Education Act (IDEA). Children
23 separated from their parents and placed with sponsors will attend the States’ public schools and
24 receive a variety of educational services, including special education, ESL programs, mental
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1 health services, and other programs delivered within the school district. Such programs are
2 funded in large part through local levy funds and state dollars. Indeed, state funding for general
3 education delivered in public schools is calculated in part on a per-student basis.

4
5 230. The trauma of forcible separation from a parent renders public schooling more
6 difficult and expensive for the States to provide. Research shows that the experience of trauma
7 may severely undercut a child's ability to learn and function in the classroom. *See* Helping
8 Traumatized Children Learn, available at [https://traumasensitiveschools.org/wp-](https://traumasensitiveschools.org/wp-content/uploads/2013/06/Helping-Traumatized-Children-Learn.pdf)
9 [content/uploads/2013/06/Helping-Traumatized-Children-Learn.pdf](https://traumasensitiveschools.org/wp-content/uploads/2013/06/Helping-Traumatized-Children-Learn.pdf), attached hereto as Ex. 90.

10 Children may require additional mental health services through school guidance counselors and
11 social workers; they may have behavioral problems and trauma-related learning disabilities that
12 would need to be addressed; and they lack the critically important educational advocacy and
13 partnership that parents can provide. Students without parents to care for them are also more
14 likely to arrive at school with housing and food insecurity and require additional attention and
15 resources to address hunger, exhaustion, and increased levels of stress and anxiety.

16
17 231. **Healthcare.** Such children are also often eligible for State-funded healthcare
18 programs, including mental health care treatment. Health care costs will be exacerbated for the
19 states because of the Policy, as children who suffer prolonged and unexpected separation from
20 their parents experience particular health effects, including higher levels of anxiety, more
21 susceptibility to physical and emotional illness, and decreased capacity to manage their
22 emotions. These health effects may result in higher levels of care and increase costs to the state.
23 *See* Burke and Mendoza, *At Least 3 tender age shelters set up for child migrants*, the AP (June
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1 20, 2018) *available at* <https://apnews.com/dc0c9a5134d14862ba7c7ad9a811160e>, attached
2 hereto as Ex. 91.

3 232. **Other programs.** Many States also have programs that provide services
4 specifically directed at helping immigrants and refugees, as well as programs designed to address
5 the consequences of trauma. Some have limited available group care facilities that they stand to
6 lose to ORR placements because of the increase in separated families.

8 233. The plaintiff States are already experiencing some of these proprietary harms.

9 234. **Washington.** For example, ORR places hundreds of unaccompanied minors with
10 sponsors in the state of Washington every year. For FY 2017, the last year for which complete
11 data are available, ORR placed almost 500 children with Washington resident sponsors. As of
12 April 30, 2018, ORR's available data show that Washington has already received 278
13 unaccompanied children during this fiscal year. *See*
14 [https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state)
15 [state](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state). *See* Ex. 88.

17 235. Washington has almost 300 public school districts and serves well over a million
18 children. Per pupil expenditures for 2016-17, for example, were more than \$11,800 per
19 child. Of this total, slightly more than 90% of school funding came from state and local
20 resources. *See* Statewide Average Financial Tables and Charts *available at*
21 <http://k12.wa.us/safs/PUB/FIN/1617/1617Section1Full.pdf>, attached hereto as Ex. 92. For the
22 2017-19 biennium, state spending for basic education will total over \$22 billion, with over \$16
23 billion allocated to basic general education services.
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1 236. Washington State children residing in households with an income less than 312
2 percent of the federal poverty level are eligible for the Apple Health program, regardless of
3 citizenship and/or documented status. Qualifying children receive access to the full scope of
4 health care coverage including medical, dental, behavioral health, vision, hearing and
5 pharmaceutical benefits. Of the \$7.3 billion that Washington state spent in state fiscal year 2017
6 to support the entire Apple Health program, the cost to cover minor children was \$1.6 billion. In
7 state fiscal year 2017, the cost to cover undocumented immigrant children was \$31 million. The
8 average cost per undocumented child in state fiscal year 2017 was \$1,552 per year.

9
10 237. Washington's Office of Refugee and Immigrant Assistance (ORIA) is part of the
11 State of Washington, Department of Social and Health Services (DSHS). ORIA coordinates and
12 facilitates the provision of services for people who are refugees and immigrants to enable them to
13 achieve economic stability and integrate into Washington communities. To do this, ORIA braids
14 federal funding from the ORR with other federal and state dollars, for a total annual budget of
15 \$27,925,874. This funding provides services to more than 10,000 refugees and immigrants each
16 year through contracts with more than 60 different organizations across the state to offer 11 distinct
17 programs and services. National immigration policies affect the state's access to federal funding.
18 For example, around August of 2014, the nation experienced an influx of unaccompanied
19 immigrant children being apprehended by immigration officials, and ORR reduced
20 Washington's federal funding to provide refugee social services to cover an increase in costs at
21 the national level.

22
23
24 238. **Massachusetts.** Since 2014, ORR has placed 3,803 unaccompanied children
25 with sponsors in Massachusetts. *See* Ex. 88. These numbers are particularly high in part because
26

1 of Massachusetts' large population of residents from which UACs most often come (Honduras,
2 Guatemala, and El Salvador, in particular). *See* Office of Refugee Resettlement Facts & Data,
3 available at <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>, attached hereto as Ex. 93. For
4 example, Massachusetts has the eighth largest Salvadoran population in the country. *See* Profiles
5 of Boston's Latinos available at [http://www.bostonplans.org/getattachment/e0019487-138b-
6 4c73-8fe5-fbbd849a7fba](http://www.bostonplans.org/getattachment/e0019487-138b-4c73-8fe5-fbbd849a7fba), attached hereto as Ex. 94. These residents are more likely than the
7 general population to become sponsors of UACs because sponsors are often family members.
8

9 239. A non-profit foster care agency in Massachusetts, which is licensed by the
10 Massachusetts Department of Early Education and Care, also provides long term foster care
11 services to UACs in Massachusetts foster homes. *See* Office of Refugee Resettlement Division
12 of Children Services Legal Resource Guide – Legal Service Provider List for UAC in ORR Case,
13 available at [https://www.acf.hhs.gov/sites/default/files/orr/legal_service_provider_list_for_uac_in_orr_care
14 english_092016.pdf](https://www.acf.hhs.gov/sites/default/files/orr/legal_service_provider_list_for_uac_in_orr_care_english_092016.pdf), attached hereto as Ex. 95.

17 240. In Massachusetts, all children regardless of immigration status are entitled to a
18 free public education. On average, per pupil expenditures amount to more than \$16,000. *See*
19 Massachusetts Department of Elementary and Secondary Education School Finance Statistical
20 Comparisons FY13-FY17 Per Pupil Expenditures All Funds, available at
21 <http://www.doe.mass.edu/finance/statistics/ppx13-17.html>, attached hereto as Ex. 96. Of this
22 total, over 95 percent comes from state and local funding resources, with 39 percent from the
23 state alone. *See* [https://www.census.gov/data/tables/2016/econ/school-finances/secondary-
24 education-finance.html](https://www.census.gov/data/tables/2016/econ/school-finances/secondary-education-finance.html). In Massachusetts' Gateway Cities, where a higher population of
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1 immigrants live, state funding amounts to an even higher percent of total per pupil spending.
2 See <http://www.doe.mass.edu/finance/chapter70/chapter-17.html>. For Fiscal Year 2017, state
3 spending on education programs totaled more than \$7 billion. See
4 <http://massbudget.org/browser/index.php>.

5
6 241. All undocumented children in Massachusetts are eligible for state-funded health
7 insurance through the Children’s Medical Security Plan, MassHealth Limited, or the Health
8 Safety Net. Immigrant children with SIJS and other statuses may be eligible for more robust
9 state-funded health insurance. See *Understanding the Affordable Care Act: Non-Citizens’*
10 *Eligibility for Mass Health & Other Subsidized Health Benefits (March 2018) available at*
11 [https://www.masslegalservices.org/system/files/library/Understanding%20eligibility%20of%20](https://www.masslegalservices.org/system/files/library/Understanding%20eligibility%20of%20non-citizens_0.pdf)
12 [non-citizens_0.pdf](https://www.masslegalservices.org/system/files/library/Understanding%20eligibility%20of%20non-citizens_0.pdf), attached hereto as Ex. 97.

13
14 242. Children separated from their parents pursuant to the Policy will require
15 determinations from the Massachusetts Probate and Family Court or Juvenile Court for purposes
16 of SIJS, see *Recinos v. Escobar*, 473 Mass. 734 (2016), and determinations about guardianship
17 in the best interests of children. Mass. Gen. Laws c. 190B, § 5-206.

18
19 243. Undocumented children and other immigrant children who are not eligible for
20 mental health services through state-funded health insurance programs may qualify for mental
21 health services through the state’s Department of Mental Health (“DMH”). Under its statutory
22 mandate, DMH provides or arranges for the provision of services to residents who meet certain
23 clinical criteria. Mass. Gen. Laws c. 19 § 1. For Massachusetts youth to meet DMH’s clinical
24 criteria, they must have a “serious emotional disturbance...that has lasted or is expected to last
25 at least one year [and] has resulted in functional impairment that substantially interferes with or
26

1 limits the child's [or] adolescent's role or functioning in family, school or community
2 activities....". 104 CMR 20.04(2)(b). Many if not all children separated from their parents under
3 the Policy may suffer from such disturbances.

4
5 244. **Oregon.** Defendants' Policy also harms Oregon's proprietary interests, because
6 it forces Oregon to expend resources and incur costs that would otherwise not be required. For
7 example, unaccompanied minors detained in Oregon have often suffered severe trauma in their
8 home countries. Children separated from their parents under this Policy have suffered additional
9 trauma from Defendants' actions. Counsel for these minors can and do file petitions with the
10 juvenile court departments of the Oregon Circuit Courts on their behalf to obtain Special
11 Immigrant Juvenile status. This allows the court to transfer custody to the Oregon Department
12 of Human Services, where they can be placed in foster care and receive other necessary services,
13 such as healthcare, education, and other support. This process employs the financial and other
14 resources of the state of Oregon.

15
16 245. Children in Oregon, including those separated from parents, are entitled to a
17 public education. The cost of that education as of 2016-17 was \$11,715 per student, with 92%
18 from state and local resources.

19
20 246. Children in Oregon, including those separated from parents, may be eligible for
21 health care funded in part by the state of Oregon. Children separated from parents who may
22 become wards of the state due to forced separation would become eligible for state-funded
23 healthcare at a cost of approximately \$664 per-member per-month. Federal reimbursement is
24 not available for healthcare recipients in this population due to their immigration status. Some
25 children may not become wards of the state and would not have access to any state-funded
26

1 healthcare. The average cost of hospitalization for a child in Oregon is \$9,370. Oregon bears
2 the entire cost of providing healthcare and/or emergency-related care to children separated from
3 their families.

4 247. **California.** ORR places more unaccompanied minors with resident sponsors in
5 California than any other State in the country. For FY 2017, ORR placed 6,268 children with
6 California resident sponsors. As of April 30, 2018, California has already received 2,807
7 unaccompanied children during this fiscal year. *See* Ex. 88.

8 248. In California, any child, including children who have been separated from their
9 parents, is entitled to a free public education. Per pupil expenditures in 2017-18 exceeded
10 \$14,000 per child from all fund sources. Of this total, over 91% came from state and local
11 resources. California has also dedicated educational funds to meeting the needs of
12 unaccompanied immigrant children.

13 249. In California, undocumented children receive healthcare coverage paid for
14 entirely by the State. *See* Cal. Welf. & Inst. Code § 14007.8. These children are also eligible
15 for and benefit from other state funded public health programs.

16 250. Children separated from their parents because of the Policy may require
17 determinations by California courts in order to obtain a guardianship or a predicate order
18 enabling the child to apply for Special Immigrant Juvenile Status. *See* Cal. Prob. Code § 1514;
19 Cal. Civ. Proc. Code § 155.

20 251. The federal government has already placed a number of children separated from
21 their parents pursuant to the Policy at nonprofit facilities in California, including facilities that
22 also serve children in the State child welfare system. In California, both state and county
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1 personnel license and approve homes and facilities for the placement of vulnerable children.
2 Community Care Licensing (CCL) is the division within the California Department of Social
3 Services that has regulatory oversight of the residential facilities for children in California, and
4 is responsible for the health, safety, and welfare of children in out-of-home care facilities,
5 including those facilities who have contacts with ORR to house unaccompanied immigrant
6 children in California. In its role, CCL has three main functions: prevention, compliance, and
7 enforcement.
8

9 252. California's Refugee Programs Bureau is part of the Immigration and Refugee
10 Programs Branch of the California Department of Social Services (CDSS). This Bureau
11 provides assistance to newly arrived refugees to support long term social and economic
12 integration. In FY 2017, at least 12,058 refugees arrived in the state of California, and received
13 assistance from the State in the form of nutrition aid, cash assistance, employment services,
14 immigration legal services, medical services, and educational support. The Bureau administers
15 the Unaccompanied Refugee Minors (URM) Program, the Refugee School Impact Grant (RSIG),
16 and the California Newcomer Education and Well-Being (CalNEW), three programs exclusively
17 for minors. The URM provides foster care, case management, mental health, and medical
18 services to certain unaccompanied minors. Through RSIG and CalNEW, the RPB funds
19 programs in schools to provide supplementary educational and social adjustment support
20 services including academic, English-language acquisition, and mental and well-being supports.
21 The CalNEW is funded exclusively by the State. Combined, these programs help ensure that
22 immigrants coming to California are prepared to be full participants in California society and
23 culture, and that they are able to thrive in their new surroundings.
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1 253. California’s Immigration Services Unit is also a part of the Immigration and
2 Refugee Programs Branch of the CDSS. The California Legislature has authorized this program
3 to provide assistance to “persons residing in, or formerly residing in, California,” including
4 “[s]ervices to obtain . . . immigration remedies.” Cal. Welf. & Inst. Code § 13303(b)(1)(B). The
5 program awards funding to California-based legal services organizations to assist in the
6 representation of undocumented immigrants in their immigration proceedings, including
7 targeted funding for unaccompanied undocumented minors present in California after release
8 from the care and custody of ORR pursuant to Cal. Welf. & Inst. Code § 13300. The State has
9 invested \$12,000,000 in services for unaccompanied minors since State FY 2014-2015. Legal
10 services providers have provided representation to 2,147 minors.
11

12 254. **New Jersey.** ORR released a total of 2,268 Unaccompanied Children (UAC) to
13 sponsors in New Jersey in FY 2017 (October 2016 – September 2017), and an additional 1,053
14 between October 2017 and April 2018. *See*
15 [https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state)
16 [state.](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state) This is more than any other state except Virginia, Texas, New York, Maryland, Florida
17 and California.
18

19 255. **Rhode Island.** In Rhode Island, all children regardless of immigration status are
20 entitled to free public education. Rhode Island has over 300 public schools that serve over
21 142,000 children. Per-pupil expenditures for 2013-14 were more than \$15,000 per child. The
22 majority of these funds come from state and local funding resources. As forcible separation from
23 a parent renders public schooling more difficult and expensive for Rhode Island, Rhode Island
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1 will experience harm. *See* InfoWorks! Rhode Island Education Data Reporting, Rhode Island
2 Public Schools, available at <http://infoworks.ride.ri.gov/state/ri>.

3 256. **Vermont.** In Vermont, all children, regardless of immigration status, are entitled
4 to a free public education. On average, Vermont spends over \$18,000 per pupil each year. *See*
5 Vermont Agency of Education, *Per Pupil Spending: FY 2017 Report* (2018), available at
6 <http://education.vermont.gov/documents/data-per-pupil-spending-fy2017>, attached hereto as
7 Ex. 98.

8
9 257. Many immigrant children are also eligible to receive free or low-cost health care
10 through Vermont's children's health insurance program, known as Dr. Dynasaur. *See generally*
11 Vt. Health Benefits Eligibility and Enrollment Rules §§ 2.03(b), 7.02(b), 7.03(a)(3), 17.02,
12 17.03, available at [http://humanservices.vermont.gov/on-line-rules/hbee/hbee-all-parts-1-8-](http://humanservices.vermont.gov/on-line-rules/hbee/hbee-all-parts-1-8-adopted-with-toc.pdf)
13 [adopted-with-toc.pdf](http://humanservices.vermont.gov/on-line-rules/hbee/hbee-all-parts-1-8-adopted-with-toc.pdf). The program includes mental health services, which may face increased
14 demand in cases of family separation.

15
16 258. Since 2014, ORR has placed four unaccompanied minors in Vermont. *See* Ex.
17 88. However, the Policy has seen increasingly large numbers of children scattered across the
18 nation, often in conditions of secrecy. *See* Exs. 23 & 25.

19 259. Vermont's responsibility to protect the welfare of all children living in the State
20 includes those children who are separated from their parents and moved to Vermont pursuant to
21 the Policy. That responsibility includes, when appropriate, commencing juvenile judicial
22 proceedings and incurring significant costs to ensure that children are receiving safe and
23 adequate care. *See generally* 33 V.S.A. §§ 5102, 5103, and 5116.
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1 260. The Policy's negative impact upon immigrants also threatens Vermont's
2 economic interests. For example, in 2014, immigrant households paid \$57.9 million in state and
3 local taxes. Of that amount, undocumented immigrants paid an estimated \$2.9 million in state
4 and local taxes that year. Immigrants also greatly contributed to the economy with over \$462.5
5 million in spending power. *See The Contributions of New Americans in Vermont*, New
6 American Economy (2016), available at [https://research.newamericaneconomy.org/report/the-](https://research.newamericaneconomy.org/report/the-contributions-of-new-americans-in-vermont/)
7 [contributions-of-new-americans-in-vermont/](https://research.newamericaneconomy.org/report/the-contributions-of-new-americans-in-vermont/), attached hereto as Ex. 99. *Undocumented*
8 *Immigrants' State & Local Tax Contributions*, Institute of Tax and Public Policy (2017),
9 available at <https://itep.org/undocumented-immigrants-state-local-tax-contributions-2/>, attached
10 hereto as Ex. 100.

11
12 261. **Minnesota.** For FY 2017, the last year for which complete data are available,
13 ORR placed over 300 children with Minnesota resident sponsors. As of April 30, 2018, ORR's
14 available data show that Minnesota has already received 164 unaccompanied children during
15 this fiscal year. *See* Ex. 88.

16
17 262. In Minnesota, any child, including children who have been separated from their
18 parents, is eligible to a free public education. On average, per pupil expenditures for the current
19 fiscal year is \$12,251 per child. Of this total, approximately 96% comes from state and local
20 resources. If, as may be expected, an immigrant child requires services through the English
21 Learners program, the state funds an additional \$700 or \$950 per child. Children in Minnesota
22 may also require special education, mental health services, and other programs delivered within
23 the school district. Unaccompanied children, including those who are separated from their
24 parents, may also receive child care assistance in certain settings.
25
26

1 263. In addition, unaccompanied children residing in Minnesota, including those who
2 are separated from their parents, are also eligible to receive health care through Minnesota's
3 Emergency Medical Assistance program and support through the Women, Infants, and Children
4 program. They may also receive services through the state's child protection system.

5
6 264. Unaccompanied children in Minnesota, including those who are separated from
7 their parents, may also be involved in state court proceedings related to the unaccompanied
8 child's immigration status or the child's sponsor's legal authority.

9 265. **Iowa.** Likewise, since 2014, ORR has placed 980 unaccompanied children with
10 sponsors in Iowa. *See* Ex. 93.

11 266. In Iowa, all children regardless of immigration status are entitled to a free public
12 education. On average, per pupil expenditures amounted to nearly \$13,000 in federal FY2015.
13 *See* Revenues and Expenditures for Public Elementary and Secondary Education: School Year
14 2014-15 (Fiscal Year 2015) available at <https://nces.ed.gov/pubs2018/2018301.pdf>, attached
15 hereto as Ex. 101. Of this total, 93% came from state and local funding sources, with 53%
16 coming from the state alone. *Id.*

17
18 267. **Illinois.** Illinois's commitment to supporting its immigrant communities is also
19 evidenced by certain state expenditures.

20
21 268. In FY 2018, for example, the Illinois Department of Human Services (DHS) was
22 appropriated approximately \$13,779,400 for various refugee and immigration services. These
23 funds came from General Revenue Funds and other state funds. *See* Pub. Act 100-21, at 15, 450
24 (2017), available at <http://ilga.gov/legislation/publicacts/100/PDF/100-0021.pdf>, attached
25 hereto as Ex. 102. In FY 2019, DHS, the Illinois Office of the Secretary of State, and the Illinois
26

1 Department of Public Health were appropriated approximately \$37,477,900 for various refugee
2 and immigration services. *See* Pub. Act 100-586, at 335, 343–44, 402–03, 433 (2018), *available*
3 *at* <http://ilga.gov/legislation/publicacts/100/PDF/100-0586.pdf>, attached hereto as Ex. 103.

4
5 269. Services provided by DHS through the Bureau of Refugee and Immigrant
6 Services include helping newly arrived refugees achieve self-sufficiency in the United States
7 and providing outreach and interpretation services to low-income and limited English-proficient
8 individuals requiring supportive services.” *See Refugee & Immigrant Services*, ILL. DEP’T OF
9 HUMAN SERVS., *available at* <http://www.dhs.state.il.us/page.aspx?item=30363> (last visited June
10 22, 2018), and attached hereto as Ex. 104.

11
12 270. Similarly, within the Illinois Department of Children and Family Services
13 (DCFS) exists the Office of the DCFS Guardian. This Guardian serves as the legal parent of
14 every child in the custody of DCFS, “monitor[ing] and mak[ing] critical decisions based on the
15 child’s best interests regarding major medical treatment, ... and all other decisions requiring
16 parental consent.” *See* ILL. DEP’T OF CHILDREN & FAMILY SERVS., BUDGET BRIEFING FY 2019,
17 at 34 (2018), [https://www2.illinois.gov/dcfs/aboutus/newsandreports/Documents/FY19_Budget](https://www2.illinois.gov/dcfs/aboutus/newsandreports/Documents/FY19_Budget_Briefing.pdf)
18 [Briefing.pdf](https://www2.illinois.gov/dcfs/aboutus/newsandreports/Documents/FY19_Budget_Briefing.pdf), attached hereto as Ex. 105. To that end, the DCFS Guardian, with assistance from
19 the DCFS Special Counsel and the Immigration Services Unit, acquires adjustment of legal
20 status for foreign-born youth who are under its guardianship. *Id.*

21
22 271. Children reunited with a family member residing in Illinois will likely be entitled
23 to access certain state-funded programs. This is also true for children currently sheltered outside
24 of Illinois who are later reunited with a family member residing in Illinois.

1 272. For example, every child residing in Illinois, including children who have been
2 separated from their parents, is entitled to a free public education. In school year 2015–16,
3 Illinois per-pupil expenditures exceed \$12,900 per child. Of this total, over 92% comes from
4 state and local resources. *See* ILL. STATE BD. OF EDUC., ILLINOIS STATE REPORT CARD 3 (2017),
5 [http://webprod.isbe.net/ereportcard/publicsite/getReport.aspx?year=2017&code=2017StateRep
6 ort E.pdf](http://webprod.isbe.net/ereportcard/publicsite/getReport.aspx?year=2017&code=2017StateReport E.pdf), attached hereto as Ex. 106.

8 273. Moreover, separated children enrolled in Illinois schools may receive bilingual
9 support services through Transitional Bilingual Education (TBE) Programs and/or Transitional
10 Programs of Instruction (TPI). These programs help English Learners achieve academically,
11 and provide classroom and other forms of support. In FY 2018 and FY 2019, Illinois
12 appropriated approximately \$65,540,700 and \$48,600,000, respectively to support bilingual
13 education programs in Illinois school districts. *See* Pub. Act 100-21, at 636–37 (Ex. 102); Pub.
14 Act 100-586, at 491 (Ex. 104). Currently, Illinois school districts receive funding on a per-pupil
15 allocation by level of service ranging from \$304–758 per pupil. *See* ILL. STATE BD. OF EDUC.,
16 FISCAL YEAR 2018 PROPOSED BUDGET 14, 58 (2017), *available at*
17 <https://www.isbe.net/Documents/fy2018-budget-book.pdf>, attached hereto as Ex. 107. Children
18 who are reunited with family members located in Illinois who attend Illinois schools are likely
19 to receive such services as English Learners.

22 274. As well, each child who qualifies is entitled to receive free breakfast and lunch
23 pursuant to the Illinois Free Lunch and Breakfast Program, 105 ILCS 125/1. Through this
24 program, the Illinois State Board of Education reimburses all public schools, nonprofit private
25 schools, and residential child care institutions that provided breakfast and lunch to children who
26

1 meet the income-level guidelines. In FY 2018 and FY 2019, the Board of Education received
2 \$9,000,000 in state funding to provide reimbursements. *See* Pub. Act 100-21, at 435, 634–35
3 (Ex. 102); *See* Pub. Act. 100-587, at 39, 450 (2018), *available at*
4 <http://ilga.gov/legislation/publicacts/100/PDF/100-0587.pdf>, attached hereto as Ex. 108.
5
6 Heartland Alliance is a participant in the Free Lunch and Breakfast Program and receives
7 reimbursement from the State of Illinois for breakfasts and lunches provided to unaccompanied
8 children in Illinois.

9 275. Separated children may also be eligible for healthcare programs that are partially
10 or fully funded by the State of Illinois, including Medicaid. In FY 2014, for example, Illinois
11 spent an average of approximately \$2,108 per Medicaid-eligible child. *See* Medicaid Spending
12 Per Enrollee (Full or Partial Benefit), KAISER FAMILY FOUND.,
13 <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/> (last visited June
14 22, 2018).
15

16 276. In addition, children who have been separated from their parents may access state
17 courts in Illinois in order to obtain Special Immigrant Juvenile Status (SIJS). In order to petition
18 the U.S. Customs and Immigration Services for a SIJS, a child must first obtain an order from a
19 state court finding that it is not in the child’s best interests to return to her home country or to
20 the country she last lived in, and that the child cannot be reunited with a parent because of abuse,
21 abandonment, or neglect. As additional children are brought to Illinois as a result of Defendants’
22 child separation policy, Illinois courts will see an increase in the number of orders being sought.
23

24 277. **New York.** In FY 2017, ORR placed 3,938 children with New York resident
25 sponsors. ORR placed another 1,577 UACs with New York resident sponsors from October 2017
26

1 through April 30, 2018. *See* Unaccompanied Alien Children Released to Sponsors by State,
2 available at Ex. 88.

3 278. Once a UAC is placed with a sponsor who resides in New York State, the child
4 is entitled to a variety of services funded by the state, including educational services, early
5 intervention services, and access to healthcare, among others. New York State makes these
6 services available to such children in support of the State's interest in ensuring the health, safety,
7 and well-being of all residents.

9 279. New York State will incur expenses to educate UACs placed within the state
10 because under state law, children ages six through sixteen who reside in New York must attend
11 school and are entitled to attend school up until age twenty-one. Moreover, the IDEA requires
12 the state to provide special education services to students with learning or emotional disabilities.
13 Under this federal law, children aged three to twenty-one are entitled to special education
14 services when clinically warranted. 20 U.S.C. § 1411. New York State law also entitles
15 qualified students to English Language Learner (ELL) services. N.Y. Comp. Codes R. & Regs.
16 Tit. 8, § 154. There are 692 public school districts in New York that serve approximately 2.6
17 million students. While costs will vary depending on the school district's location and the child's
18 needs, the statewide average to educate a student in New York is approximately \$22,000 per
19 year.
20

21
22 280. New York State also provides a robust early intervention program which UACs
23 utilize when placed in New York State communities. The Part C Early Intervention Program
24 (EIP) was created by Congress in 1986 as part of the IDEA. The IDEA authorizes the
25 discretionary EIP for infants and toddlers with disabilities and requires states to provide a free
26

1 appropriate education for all students with disabilities, ages three to twenty-one. 20 U.S.C. §§
2 1411, 1419. Each year, New York's EIP serves over 60,000 children ages zero to three who have
3 moderate to severe developmental delays. The EIP includes 1,279 providers that contract with
4 New York State to bill for EI services. Total annual expenditures for New York's EIP total more
5 than \$644 million across all payers—45% is covered by Medicaid, 2% by commercial insurance,
6 26% by state funds, and 27% by county funds. While EIP costs and services vary based on the
7 child's needs and the intensity of services offered, for the 2017 program year the average cost of
8 services delivered ranged from \$5,820 to \$22,000 per child.
9

10 281. New York State also incurs significant medical expenses for each UAC placed in
11 state. UACs who are placed with sponsors in the community are eligible to enroll in the
12 Children's Health Insurance Program (CHIP) operated by New York's Office of Health
13 Insurance Programs. The yearly cost of CHIP per child is \$2,607.36 and is financed exclusively
14 by New York State.
15

16 282. An influx of UACs also carries with it increased costs for the New York State
17 child welfare system. After a UAC is placed with a sponsor in the community, that placement
18 may be disrupted for a number of reasons. If the child becomes at risk of entering foster care—
19 for example, because of allegations of abuse or neglect by the person now legally responsible
20 for the child—the child welfare system will provide preventive services to attempt to keep the
21 child safely in the new home; such services are funded, in part, by New York State. If those
22 services are unsuccessful and the child must be removed from the new home, New York State
23 will also partly fund the child's placement and needed services while in the foster system.
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1 283. **Maryland.** For FY 2017, the last year for which complete data are available,
2 ORR placed almost 3,000 children with Maryland resident sponsors—the fifth most of any state.
3 As of April 30, 2018, ORR’s available data show that Maryland has already received 901
4 unaccompanied children during this fiscal year. *See* Ex. 88. Maryland is one of the states that is
5 receiving children separated from their parents under the Trump Administration’s “zero
6 tolerance” policy. *See* Theresa Vargas, “*I will kiss their boo-boos*” *Foster Families provide*
7 *small comforts* (June 22, 2018), attached hereto as Ex. 109; *I really miss my mom: What becomes*
8 *of a 5-year-old in Maryland and the other separated children now?*, The Washington Post (June
9 21, 2018) available at [https://www.washingtonpost.com/local/i-really-miss-my-mom-what-](https://www.washingtonpost.com/local/i-really-miss-my-mom-what-becomes-of-a-5-year-old-in-maryland-and-other-the-separated-children-now/2018/06/21/28afbd54-759d-11e8-9780-b1dd6a09b549_story.html?utm_term=.383bb9cc8a01)
10 [becomes-of-a-5-year-old-in-maryland-and-other-the-separated-children-](https://www.washingtonpost.com/local/i-really-miss-my-mom-what-becomes-of-a-5-year-old-in-maryland-and-other-the-separated-children-now/2018/06/21/28afbd54-759d-11e8-9780-b1dd6a09b549_story.html?utm_term=.383bb9cc8a01)
11 [now/2018/06/21/28afbd54-759d-11e8-9780-](https://www.washingtonpost.com/local/i-really-miss-my-mom-what-becomes-of-a-5-year-old-in-maryland-and-other-the-separated-children-now/2018/06/21/28afbd54-759d-11e8-9780-b1dd6a09b549_story.html?utm_term=.383bb9cc8a01)
12 [b1dd6a09b549_story.html?utm_term=.383bb9cc8a01](https://www.washingtonpost.com/local/i-really-miss-my-mom-what-becomes-of-a-5-year-old-in-maryland-and-other-the-separated-children-now/2018/06/21/28afbd54-759d-11e8-9780-b1dd6a09b549_story.html?utm_term=.383bb9cc8a01), attached hereto as Ex. 110; “Bethany
13 Continues to Work to Reunify Families Separated at the Border,” *available at*
14 <https://www.bethany.org/campaigns/refugee>, attached hereto as Ex. 111.

17 284. The Office of Licensing and Monitoring within Maryland’s Department of
18 Human Services licenses several organizations that operate shelters at which unaccompanied
19 children—including children separated from their parents under the federal government’s
20 policy—are being placed. At least one such organization receiving children in Maryland is under
21 contract with ORR to provide services for unaccompanied immigrant minors, including children
22 separated from their parents under the policy.

24 285. As the separated children are placed in foster homes, many will enter the
25 Maryland’s public school system. Maryland’s 24 public school districts served nearly 900,000
26

1 students during the 2016-17 school year. Per pupil expenditures for 2016-17 were over \$13,000
2 per child. Of this total, approximately 95% of school funding came from state and local
3 resources. For the 2016-17 school year, state and local spending for basic education totaled over
4 \$12 billion, with nearly \$5 billion allocated to general instructional expenditures. *See* Selected
5 Financial Data Maryland Public Schools 2016-2017 available at
6 [http://marylandpublicschools.org/about/Documents/DBS/SFD/2016-](http://marylandpublicschools.org/about/Documents/DBS/SFD/2016-2017/SFD20162017Part3.pdf)
7 [2017/SFD20162017Part3.pdf](http://marylandpublicschools.org/about/Documents/DBS/SFD/2016-2017/SFD20162017Part3.pdf), attached hereto as Ex. 112.

9 286. **Virginia.** More than one hundred traumatized, unaccompanied alien children
10 have been transported and are being housed at federal detention centers in Virginia. More than
11 a dozen of those children were separated from their parents at the southern border. *See* Nick
12 Anderson and Marissa J. Lang, *Sen. Tim Kaine tours Virginia shelter housing about 15 separated*
13 *migrant children*, the Washington Post (June 22, 2018) available at
14 [https://www.washingtonpost.com/local/immigration/sen-tim-kaine-tours-virginia-shelter-](https://www.washingtonpost.com/local/immigration/sen-tim-kaine-tours-virginia-shelter-housing-about-15-separated-migrant-children/2018/06/22/7bc1e8f2-763b-11e8-b4b7-308400242c2e_story.html?utm_term=.5be4b43f307c)
15 [housing-about-15-separated-migrant-children/2018/06/22/7bc1e8f2-763b-11e8-b4b7-](https://www.washingtonpost.com/local/immigration/sen-tim-kaine-tours-virginia-shelter-housing-about-15-separated-migrant-children/2018/06/22/7bc1e8f2-763b-11e8-b4b7-308400242c2e_story.html?utm_term=.5be4b43f307c)
16 [308400242c2e_story.html?utm_term=.5be4b43f307c](https://www.washingtonpost.com/local/immigration/sen-tim-kaine-tours-virginia-shelter-housing-about-15-separated-migrant-children/2018/06/22/7bc1e8f2-763b-11e8-b4b7-308400242c2e_story.html?utm_term=.5be4b43f307c), attached hereto as Ex. 113.

18 287. ORR reports that they have placed hundreds of unaccompanied alien children
19 with sponsors in the Commonwealth of Virginia every year. For FY 2017, the last year for which
20 complete data are available, ORR placed 2,888 children with Virginia resident sponsors. As of
21 April 30, 2018, ORR's available data show that Virginia has already received 931
22 unaccompanied alien children during this fiscal year. *See* Ex. 88.

24 288. Under federal law, states and local educational agencies are obligated to provide
25 all children – regardless of immigration status – with equal access to public education at the
26

1 elementary and secondary level. This includes unaccompanied alien children who may be
2 involved in immigration proceedings. Once these children are released to a sponsor, they have
3 a right to enroll in Virginia schools regardless of their immigration status. In Virginia, some of
4 these unaccompanied alien children under 18 will be classified as homeless under applicable
5 state and federal law. See Va. Code Ann. § 22.1-3. Virginia school divisions are required to
6 immediately enroll homeless students. The Virginia Department of Education provides the state
7 share, and the enrolling local school division is responsible for paying the local share of the cost
8 for educating students enrolled in public schools at a total per pupil statewide average
9 expenditure in excess of \$10,000.
10

11 289. Unaccompanied alien children may seek a variety of health services in Virginia.
12 For example, they need childhood immunizations and may seek testing and treatment when they
13 present with symptoms of a communicable disease. In Virginia, school divisions are required to
14 help any child classified as homeless obtain necessary physical examinations and
15 immunizations. Va. Code § 22.1-271.2. Moreover, if an unaccompanied alien child needed to be
16 hospitalized for emergency care, including psychiatric care, then Virginia would provide and
17 bear the cost of that care in part by absorption of costs by state-owned hospitals.
18

19 290. ORR places hundreds of unaccompanied minors with sponsors in the State of
20 North Carolina every year. For FY 2017, ORR placed approximately 1,290 children with North
21 Carolina-resident sponsors. As of April 30, 2018, ORR's available data show that North
22 Carolina has already received 565 unaccompanied children during this fiscal year. *See Ex. 88.*
23

24 291. **North Carolina.** The State of North Carolina has 11 State Refugee and Health
25 Coordinators that are coordinated and organized through the State's Department of Health and
26

1 Human Services Refugee Services program. North Carolina's Refugee Services program
2 integrates federal funding from ORR with other federal and state funding. The program services
3 thousands of refugees across the State of North Carolina.

4
5 292. **District of Columbia.** ORR places hundreds of unaccompanied minors with
6 sponsors in the District of Columbia every year. For FY 2017, the last year for which complete
7 data are available, ORR placed almost 300 children with District of Columbia resident sponsors.
8 As of April 30, 2018, ORR's available data show that the District of Columbia has already
9 received more than 80 unaccompanied children during this fiscal year. *See* Ex. 88.

10
11 293. In the District of Columbia, any child, including children who have been
12 separated from their parents, is entitled to a free public education. The District spends almost
13 \$10,000 per child in D.C Public Schools. The overwhelming share of the money spent on public
14 education in the District comes from local taxes, fees, and resources. *See, e.g.,*
15 [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_FY17_Bu](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_FY17_Budget_vol_3.pdf)
16 [dget_vol_3.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_FY17_Budget_vol_3.pdf).

17
18 294. The District of Columbia offers comprehensive health insurance coverage to
19 eligible children who have been separated from their parents through the Immigrant Children's
20 Program, which provides coverage equal to that offered by Medicaid, including: doctor visits,
21 immunizations, mental health services, dental, vision, and prescription drugs. *See* Department of
22 Health Care Finance – DHCF Immigrant Children's Program *available at*
23 <https://dhcf.dc.gov/service/immigrant-childrens-program>, attached hereto as Ex. 114.

1 **L. Defendants' Policy Harms the States' Quasi-Sovereign Interests**

2 295. States have a quasi-sovereign interest in protecting the health, safety, and well-
3 being of their residents, including protecting their residents from harms to their physical,
4 psychological, emotional, or economic health. The States' interests in preventing and remedying
5 injuries to the public's health, safety, and well-being extends to all of their residents who will be
6 harmed by the Policy. The Policy has caused and will continue to cause severe and immediate
7 harm to the States' residents, including parents who are detained, released, or otherwise reside
8 in the States after being forcibly separated from their children; children who are placed in
9 facilities, shelters, homes or otherwise reside in the States after being separated from their
10 parents; extended families and sponsors in the States; and the States' immigrant communities.

11
12 296. The States also have an interest in ensuring that their residents are not excluded
13 from the rights and privileges provided by the U.S. Constitution, international laws, federal laws,
14 and state laws. These rights include due process and equal protection rights afforded to alien
15 parents and their minor children, and rights and protections under federal asylum and refugee
16 laws, international human rights laws, and state laws.

17
18 297. The Policy causes measurable harm to existing immigrant communities in the
19 States. A 2018 study published in the *Journal of Adolescent Health* finds that recent changes in
20 U.S. immigration policy that appear to target Latino immigrants have triggered serious
21 psychological distress for many resident Latino parents, including those living in the United
22 States legally. A substantial proportion of U.S. Latino parents reported adverse emotional and
23 behavioral consequences from recent immigration actions and news. For example, 66% said that
24 they very often or always worry about family members getting separated. Nearly 40% of parents
25
26

1 said they frequently avoided getting medical care, help from police, or support from social
2 service agencies because of reports about immigration actions. Parents who frequently
3 experienced worries or changes in behavior due to immigration news and policies had at least a
4 250% increase in the odds of experiencing high psychological distress, including clinical anxiety
5 and depression. The association between U.S. immigration actions and psychological distress in
6 this study held true after controlling for education, residency status, gender and other factors.
7

8 298. Many of the States have resident Latino and Hispanic populations that are
9 affected by the Policy and attendant distress. For example, as of 2010, 10.2 percent of the total
10 population of Washington State was of Hispanic origin, with some counties over 45%. Indeed,
11 roughly one in seven Washington residents is an immigrant, while one in eight residents is a
12 native-born U.S. citizen with at least one immigrant parent. The other States also have resident
13 Latino and Hispanic communities who are impacted by the Policy, as well.
14

15 299. Indeed, the States are already acting to try to protect the health, safety, and well-
16 being of persons separated and harmed by the Policy. As a result of the Policy, thousands of
17 immigrant parents and children are being separated and moved to a range of facilities or homes
18 in the States or being released to live in the States. Transfer of these separated immigrant parents
19 and children into the States will continue into the future as long as Defendants' Policy remains
20 in place. *See* Exs. 55, 8, 21. In May 2018 alone, DHS took nearly 51,912 immigrants into
21 custody, nearly three times the number detained in May 2017. Ex. 55. The number of families
22 apprehended at the Southwestern border increased by 435% in May 2018 in comparison to May
23 2017. Ex. 8. The States have an interest in protecting those immigrants who are resident, or will
24 soon settle, in their jurisdictions.
25
26

1 300. Traumatized immigrant parents and children are already present in the States’
2 shelters and in federal detention centers in the States. On June 7, 2018, ICE spokeswoman
3 Danielle Bennett confirmed that because of “implementation of the U.S. Department of Justice’s
4 zero-tolerance Policy . . . ICE has entered into inter-agency agreements with [the Bureau of
5 Prisons (BOP)] to acquire access to more than 1,600 additional beds at [five] BOP facilities.”
6 These include 220 beds at the Federal Detention Center SeaTac in Seattle, Washington; 130 beds
7 in Sheridan, Oregon; and 1,000 beds at the Federal Correctional Institution Victorville Medium
8 Security Prison in Victorville, California. *See* Robert Moore, Immigration Officials Taking Over
9 1,600 Beds in Federal Prison System, Texas Monthly (June 8, 2018) available at
10 [https://www.texasmonthly.com/news/immigration-officials-taking-1600-beds-federal-prison-](https://www.texasmonthly.com/news/immigration-officials-taking-1600-beds-federal-prison-system/)
11 [system/](https://www.texasmonthly.com/news/immigration-officials-taking-1600-beds-federal-prison-system/), attached hereto as Ex. 115.
12

13
14 301. Defendants’ Policy causes severe and lasting psychological and emotional harm
15 to immigrant parents in Washington who have been separated from their children. For example,
16 of the approximately 200 immigrants detained in Seattle as of June 19, 2018, 174 were women,
17 and dozens of those women were mothers who had been forcibly separated from their children,
18 whose ages range from one-year-old to teenagers. *See* Jayapal Goes Inside Federal Detention
19 Center to Meet with Asylum Seeking Women: “the mothers could not stop crying” (June 9,
20 2018), *available at* [https://jayapal.house.gov/media/press-releases/jayapal-goes-inside-federal-](https://jayapal.house.gov/media/press-releases/jayapal-goes-inside-federal-detention-center-meet-asylum-seeking-women-0)
21 [detention-center-meet-asylum-seeking-women-0](https://jayapal.house.gov/media/press-releases/jayapal-goes-inside-federal-detention-center-meet-asylum-seeking-women-0), attached hereto as Ex. 116. Many were
22 asylum seekers from Latin American countries. *Id.* Most had been in detention for more than
23 two weeks and many for over a month. *Id.* A majority of the mothers have not spoken with their
24
25
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1 children in weeks, and Defendants had not provided the mothers with any information regarding
2 the whereabouts or well-being of their children. *Id.*

3 302. These women described the horrific and inhumane conditions at the Border Patrol
4 facilities where they were previously detained, including fenced cages; lack of blankets and mats
5 notwithstanding frigid temperatures; and lack of access to food and water. *Id.* Some suffered
6 verbal abuse from border agents who called them “filthy” and “stinky.” *Id.* And they endured
7 further intentionally inflicted trauma when agents told them their “families would not exist
8 anymore” and that they would “never see their children again.” *Id.*

9
10 303. The specific stories of two immigrant mothers who are being detained in Seattle
11 confirm this horrifying experience. These two mothers crossed the border in Texas, immediately
12 turned themselves in, and were taken to a holding facility. The mothers were each separated
13 from their daughters upon arrival and held in a facility they describe as similar to a dog kennel.
14 The following week, the mothers appeared in federal court, were charged with illegal entry,
15 found guilty, and served time in Texas. After approximately three weeks, the mothers were
16 flown to SeaTac, where they remain in prison without their daughters.

17
18 304. A growing number of children separated from their parents pursuant to
19 Defendants’ Policy have been placed in facilities in Washington. These children have suffered
20 severe psychological and emotional trauma.

21
22 305. Similarly, a Brazilian woman who recently arrived in Massachusetts presented
23 herself for asylum at the U.S.-Mexico border and was detained and then separated from her 8-
24 year-old son. Immigration authorities determined that she has a credible fear of persecution if
25 she is returned to Brazil, so she has since been released pending adjudication of her asylum
26

1 claim. As of June 22, 2018, she had not, however, been reunited with her son, who remains in
2 a facility in Chicago, where he hasn't been able to see his mother for almost a month. *See* Akilah
3 Johnson, *A Brazilian Mother Seeking Asylum Was Freed from Detention. Her son was not.* The
4 Boston Globe (June 22, 2018) available at
5 [https://www.bostonglobe.com/news/nation/2018/06/22/brazilian-mother-seeking-asylum-was-](https://www.bostonglobe.com/news/nation/2018/06/22/brazilian-mother-seeking-asylum-was-freed-from-detention-her-son-was-not/kIYT1F4fHTsHxdkfmHh73I/story.html)
6 [freed-from-detention-her-son-was-not/kIYT1F4fHTsHxdkfmHh73I/story.html](https://www.bostonglobe.com/news/nation/2018/06/22/brazilian-mother-seeking-asylum-was-freed-from-detention-her-son-was-not/kIYT1F4fHTsHxdkfmHh73I/story.html), attached hereto
7 as Ex. 117.
8

9 306. In Massachusetts, two Guatemalan children were recently released to their father,
10 a Massachusetts resident, after being separated from their mother, with whom they crossed the
11 border to seek asylum. She is still in detention in Texas. The children were held in facilities in
12 Texas and then Michigan for five weeks until they were released to their father. The young girl,
13 who is 9 years old, has been particularly affected by the experience and still cries for her mother.
14 *See* Mark Sullivan, *Guatemalan in Westboro Sees the Effects of Separation Policy Firsthand,*
15 *The Worcester Telegram & Gazette* (June 20, 2018) available at
16 [http://www.telegram.com/news/20180620/guatemalan-in-westboro-sees-effects-of-separation-](http://www.telegram.com/news/20180620/guatemalan-in-westboro-sees-effects-of-separation-policy-firsthand)
17 [policy-firsthand](http://www.telegram.com/news/20180620/guatemalan-in-westboro-sees-effects-of-separation-policy-firsthand), attached hereto as Ex. 118.
18

19 307. Defendants' abhorrent and indefensible family-separation Policy has already had
20 an impact on Oregon in a variety of ways, and will continue to do so. There are at least 123
21 immigrant men detained at the federal prison in Sheridan, Oregon. At least six of these are
22 fathers, from Mexico, Guatemala and Honduras, who have been separated from their children
23 pursuant to the Policy. Oregon's federal lawmakers have been able to visit these detainees, and
24 report that they have been denied access to lawyers and health care and are confined to cells for
25
26

1 up to 22 hours a day. Oregon immigration lawyers also report that they have been repeatedly
2 denied access to detainees. The Mexican Consulate reports that one of the detained men had his
3 newborn infant, only 15 days old, taken from him. Another detainee was separated from his 18-
4 month-old toddler. Another reports his wife is detained in San Antonio, Texas, and he does not
5 know the whereabouts of their 4-year-old child.
6

7 308. There are a number of children in Oregon who have been separated from their
8 parents by the defendants' implementation of its Policy, including two children who saw their
9 mother being taken away in chains. At least three others have been separated from their parents
10 at the border pursuant to the Policy.
11

12 309. Defendants' unlawful Policy also cruelly affects the wellbeing of Oregon
13 residents, including its immigrant and Hispanic and Latinx populations. For example, a
14 substantial number of Oregon residents are survivors of the Japanese-American internment
15 camps of World War II, or family members of such survivors. Many of those survivors and/or
16 family members have experienced significant emotional and psychological distress as a result of
17 the government's family-separation Policy.
18

19 310. Similarly, some Oregonians are survivors of Nazi concentration camps. Many of
20 those survivors are also experiencing profound psychological and emotional distress as a result
21 of the federal government's family-separation Policy. For all these Oregon survivors and their
22 families, the Policy echoes the ethnic-based targeting that they experienced in the twentieth
23 century, and causes them to relive the trauma of one of the darkest times in history. Many
24 survivors are also profoundly afraid for the safety of minority communities targeted by the
25 current Administration.
26

1 311. Defendants' Policy similarly harms immigrant parents and children in California
2 who have been separated by federal immigration officials. For example, at least 50-60 children
3 are being served in group homes and family homes approved by foster family agencies in
4 California as a result of Defendants' Policy.
5

6 312. Additionally, parents, including asylum-seekers, who have been separated from
7 their children are being housed at facilities throughout Southern California. There is a
8 particularly large number of immigration detainees being held at the Victorville facility, but
9 unlike the SeaTac facility, attorneys have been denied access to determine how many of those
10 individuals are parents.
11

12 313. Several asylum-seeker parents who arrived at a port of entry with a migrant
13 caravan in April 2018 were separated from their children. While their children have been placed
14 by ORR in facilities across the nation, the parents are being detained in other immigration
15 detention facilities in California. Parents are not provided with information about their
16 children's whereabouts or how to locate them. As a result, parents have been unable to locate
17 or communicate with their children, are not receiving regular in-person visitation or phone
18 contact with their children, and have not been told if or when their families will be reunified.
19

20 314. Likewise, New Mexico has a right to ensure that no one within its border is
21 excluded from the rights and privileges provided by the U.S. Constitution, international, federal
22 or state law. State resources are used without statutory authority if used in furtherance of
23 unconstitutional federal policies contravening the purposes of New Mexico's constitution and
24 laws. There is well documented evidence to suggest that these interests are currently being
25 infringed upon with the boundaries of the State of New Mexico.
26

1 315. The federal Office of Refugee Resettlement reported that 15 Unaccompanied
2 Children (UAC) taken into custody in New Mexico were released to U.S. sponsors between
3 October 2017 and April 2018, but those children were not released to caregivers licensed by the
4 State of New Mexico. One Brazilian grandmother held at the Santa Teresa border crossing in
5 New Mexico was separated from her 16-year-old ward almost a year ago. The child, who has
6 severe epilepsy, neurological problems and is autistic, was placed in Connecticut. *See* Angela
7 Kocherga, *Zero-tolerance policy impacts New Mexico*, Albuquerque Journal June 20, 2018, page
8 4 (citing Maria Vandelize de Pastos' attorney Eduardo Beckett), *available at*
9 <https://www.abqjournal.com/1186875/zerotolerance-policy-impacts-new-mexico.html>,
10
11 attached hereto as Ex. 119.

12 316. Approximately fifty mothers, some with valid claims for asylum have had their
13 children separated from them at border crossings and are being held in a private jail in Otero
14 County, New Mexico. One of the Mothers details health issues her child faces and that she is
15 completely unaware of where he is or whether his health needs are being addressed. *See* Jonathan
16 Blitzer, "Mothers in a New Mexico Prison Do Not Know How to Find Their Children," New
17 Yorker Magazine (June 21, 2018) *available at*
18 [https://www.newyorker.com/news/dispatch/mothers-in-a-new-mexico-prison-do-not-know-](https://www.newyorker.com/news/dispatch/mothers-in-a-new-mexico-prison-do-not-know-how-to-find-their-children)
19 [how-to-find-their-children](https://www.newyorker.com/news/dispatch/mothers-in-a-new-mexico-prison-do-not-know-how-to-find-their-children), attached hereto as Ex. 120.
20
21

22 317. New Mexico also has an interest in ensuring that New Mexico citizens continue
23 to be afforded their rights to cross the U.S.-Mexico border unmolested. Because many New
24 Mexico families visit their relatives in Mexico and because these families traditionally visit with
25
26

1 their own children in tow, such New Mexico citizens face the potential of separation in
2 derogation of their rights to travel and to maintain their familial ties.

3 318. Because there is direct evidence of harm to these families, occurring within the
4 borders of New Mexico, the state has a distinct interest in ensuring that no violations of law
5 occur. This notion is grounded in general principles of federalism, and are distinctly the
6 obligations of the state in ensuring that its constitution and laws are upheld. This interstitial
7 framework is well grounded in law and is the underpinning of our system of government.

9 319. Fathers who were forcibly separated from their children at the border are
10 currently being detained at the Elizabeth Detention Center in Elizabeth, New Jersey. *See* Brenda
11 Flanagan, *At Detention Center Rally, Family Reunification Left in Question*, NJTV News June
12 22, 2018, clip available at [https://www.njtvonline.org/news/video/at-detention-center-rally-](https://www.njtvonline.org/news/video/at-detention-center-rally-family-reunification-left-in-question/)
13 [family-reunification-left-in-question/](https://www.njtvonline.org/news/video/at-detention-center-rally-family-reunification-left-in-question/).

15 320. In addition, children who were forcibly separated from their parents at the border
16 have been placed at the Center for Family Services in Camden, New Jersey, which contracts
17 with ORR to provide shelter to children who crossed the border. *See* Kelly Heyboer and Erin
18 Banco, *20 Immigrant Children Have Arrived in N.J. in the Last 30 Days. Here's What We Know*,
19 NJ Advance Media for NJ.com, Updated June 22, 2018 at 12:24PM,
20 https://www.nj.com/news/index.ssf/2018/06/are_immigrant_kids_being_held_in_nj_heres_ho
21 [w_trum.html](https://www.nj.com/news/index.ssf/2018/06/are_immigrant_kids_being_held_in_nj_heres_how_trum.html), attached hereto as Ex. 121.

23 321. Defendants' Policy causes severe and potentially permanent emotional and
24 psychological trauma to children in Rhode Island who have been separated from their parents
25 pursuant to Defendants' Policy. Unaccompanied Alien Children are released to sponsors in
26

1 Rhode Island by the Office of Refugee Resettlement of the United States Department of Health
2 and Human Services each year. For example in FY 2017, 234 total Unaccompanied Minor Child
3 were released in Rhode Island and thus far in FY 2018 that total already stands at 129. These
4 children have suffered severe psychological and emotional trauma. *See*. Unaccompanied Alien
5 Children Released to Sponsors by State (June 30, 2017) Ex. 88.
6

7 322. In Vermont, reports are emerging that federal authorities' animus toward Latino
8 migrants is taking a psychological and medical toll on migrant workers essential to Vermont's
9 dairy industry and economy. *See* J. Dillon, *For Undocumented Workers On Vermont Farms,*
10 *2017 Was A Year Filled With Anxiety*, Vermont Public Radio (January 5, 2018), (public health
11 screening of migrant workers found 80% exhibiting elevated levels of stress), available at
12 [http://digital.vpr.net/post/undocumented-workers-vermont-farms-2017-was-year-filled-](http://digital.vpr.net/post/undocumented-workers-vermont-farms-2017-was-year-filled-anxiety#stream/0)
13 [anxiety#stream/0](http://digital.vpr.net/post/undocumented-workers-vermont-farms-2017-was-year-filled-anxiety#stream/0), attached hereto as Ex. 122. The Policy will likely increase the strain on an
14 already vulnerable population.
15

16 323. Children who have been forcibly separated from their parents at the border have
17 already arrived in Minnesota and other children who have been separated from their parents are
18 likely to come to Minnesota in the future.

19 324. For example, an 8 year-old girl experienced the most "traumatic moment of her
20 life" when she was forcibly separated from her father at the U.S.-Mexico border. *See* Chris
21 Serres and Mary Lynn Smith, the Star Tribune (June 23, 2018) *available at*
22 [http://www.startribune.com/migrant-children-separated-from-parents-start-to-arrive-in-](http://www.startribune.com/migrant-children-separated-from-parents-start-to-arrive-in-minnesota/486365431/)
23 [minnesota/486365431/](http://www.startribune.com/migrant-children-separated-from-parents-start-to-arrive-in-minnesota/486365431/), attached hereto as Ex. 123. The father "begged the officer to be able to
24 stay with his child. He was crying. She was crying." *Id.* After they were separated, her father
25
26

1 was deported to Guatemala. The girl remains in Minnesota, but wants to be reunited with her
2 family.

3 325. As one lawyer who represents unaccompanied minors in Minnesota explained,
4 “[s]o many of these children, they just want their parents. They really, really, really want to be
5 reunited with their families.” *Id.*

6
7 326. Illinois has also received children affected by the Policy. As of June 22, 2018,
8 approximately 66 minor children, who have been separated from their parents or guardians and
9 are awaiting immigration proceedings, are currently under the care of Heartland Alliance.
10 Currently, Heartland is housing these separated children in the cities of Chicago and Des Plaines.

11 327. Heartland is endeavoring to reunite the 66 separated children with family
12 members in the United States. Certain of these children will likely remain in Illinois, given the
13 fact that 1,568 unaccompanied minors were released to sponsors located in Illinois between
14 October 2014 and April 2018. *See* Ex. 88.

15
16 328. New York State relies on the same agencies that the federal ORR relies on for
17 provision of foster care services. ORR currently contracts with eleven provider agencies in New
18 York State to care for UACs, including those children whom Defendants have separated from
19 their parents: Abbott House; Catholic Family Center; Catholic Guardian Services; Cayuga Home
20 for Children; Children’s Home of Kingston; Children’s Village; Jewish Child Care Association
21 of New York; Rising Ground (formerly Leake and Watts Services); Lincoln Hall; Lutheran
22 Social Services of New York; and MercyFirst. These agencies either run residential congregate
23 care programs that house the children or place the children with family or sponsors in the
24 community, or do both. These agencies also provide residential care and placement services for
25
26

1 children who enter New York's child welfare system because they are abandoned, abused,
2 neglected, delinquent or dependent children. OCFS has confirmed that at least 321 children who
3 have been separated from their parents at the Southwestern border are currently in the care of
4 one of these eleven agencies and thus residing in New York State. Since the State was unable to
5 obtain this information from HHS or ORR, OCFS undertook efforts to create a census of
6 separated children in New York State. Specifically, OCFS's Acting Commissioner issued a
7 directive to the agencies to confirm the total number of UACs in their care. Upon receipt of that
8 information, OCFS staff verbally verified with each voluntary agency how many of those
9 children were in fact separated from their families at the border. To accomplish this, OCFS staff
10 took a hiatus from their regular duties and, in a single day, physically went to each of the 11
11 agencies to review records and interview children in order to obtain a current head count. ORR
12 has still not confirmed this number or shared data regarding how many children have already
13 come through these voluntary agencies, or how many it plans to send to these voluntary agencies
14 in the future.

17 329. Staff at one voluntary agency have informed local government officials that the
18 ages of most children newly placed at their agency, many of whom were separated from family
19 at the border, are between four and twelve. The youngest child so far was a nine-month-old
20 baby, in addition to multiple not-yet-verbal toddlers.

22 330. The children whom Defendants have separated from their parents and sent to New
23 York are suffering extreme trauma. For example, a South American boy who was separated from
24 his father at the Mexican border was rushed to the hospital because he was about to jump out of
25 the second-story window of the group home where he was sent in early June after being forcibly
26

1 separated from his family. The distraught child verbalized that he wanted to jump because he
2 missed his parents. Twelve other young immigrant children who were separated from their
3 parents at the border have been treated for physical and mental illnesses at New York City
4 hospitals. One child was suicidal and others were treated for depression and anxiety. *See* Jillian
5 Jorgensen, *City hospitals have treated 12 immigrant children who were taken from parents,*
6 *including a suicidal child*, N.Y. Daily News (June 21, 2018) available at
7 <http://www.nydailynews.com/news/politics/ny-pol-immigrant-children-treated-20180621->
8 [story.html](http://www.nydailynews.com/news/politics/ny-pol-immigrant-children-treated-20180621-), attached hereto as Ex. 124.

10 331. New York State has a quasi-sovereign interest in the health, safety and well-being
11 of all children within its borders, and Defendant's separation policy directly undermines that
12 interest by causing severe trauma to these children. New York State goes to great lengths to
13 provide significant due process protections for both parents and children when families are
14 separated as a result of government action. When a child is placed in foster care in New York,
15 state statutes and regulations afford both the parent and the child a range of rights, including the
16 right of visitation. Indeed, the child's *family* service plan must include a plan for regular
17 visitation between the parents and child. N.Y. Soc. Serv. Law § 409-e; N.Y. Comp. Codes R. &
18 Regs. Tit. 18 § 428.3. *See also* N.Y. Fam. Ct. Act § 1030(a) (providing that a parent has a right
19 of regular and reasonable visitation with a child in foster care unless otherwise prohibited by
20 court order). This right of regular visitation is afforded even when one or both parents is
21 incarcerated in a prison or jail. In that situation, the child welfare agency must make suitable
22 arrangements with the correctional facility for a parent to visit with the child, unless the visiting
23 would be harmful to the child. 11 OCFS ADM 07. Moreover, parents who are incarcerated are
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1 entitled to participate in the planning for their child in foster care by participating in family court
2 proceedings and periodic family service plan reviews. *See* N.Y. Comp. Codes R. & Regs. Tit.
3 18 § 428.9. To protect these vital rights, state law provides that the parent of a child in foster
4 care has a right to assigned counsel by the court where such parent is financially unable to obtain
5 one. N.Y. Family Court Act § 26. Such rules are premised on the importance of the parent-child
6 bond, and the parent’s critical, indispensable role in assuring that the needs of his or her child
7 are met. Here, by contrast, the parents and children whom Defendants have separated at the
8 border are afforded no visitation procedure and have no process to recognize or protect their
9 rights. Due to Defendant’s illegal policy, the separated children who are currently residing in
10 New York are being treated differently than other children in foster care in the State, to their
11 great detriment and in direct contravention of the state’s interest in ensuring the health, safety,
12 and well-being of all its residents.

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15 332. Upon information and belief, family members of separated children currently
16 reside in New York State. An HHS spokesman stated that “[t]here’s an effort to place [children
17 who were separated at the border] as closely as possible to where they’re going to be eventually
18 reunified with a sponsor or a family member” and that if a child was placed in New York it
19 usually means that there is a family member residing in the state who is a possible placement
20 option for the child. *See* Tal Kopan, *Why some children have been sent to states far away from*
21 *the US border*, CNN (June 22, 2018) available at [https://www.cnn.com/politics/live-](https://www.cnn.com/politics/live-news/immigration-border-children-separation/h.714fd2e091af7813fb8df5fc587c7b8b)
22 [news/immigration-border-children-separation/h.714fd2e091af7813fb8df5fc587c7b8b](https://www.cnn.com/politics/live-news/immigration-border-children-separation/h.714fd2e091af7813fb8df5fc587c7b8b),
23
24 attached hereto as Ex. 125. New York has a quasi-sovereign interest in ensuring that children
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1 residing in New York State, who have been separated from their parents, are placed with family
2 members also residing in the State if the children cannot be quickly reunified with their parents.

3 333. **Maryland** has an interest in the health, safety, and wellbeing of all its residents,
4 including any parents or children being placed in Maryland under the Policy. Immigration agents
5 are reported to have sent dozens of children to Maryland during the implementation of the Trump
6 Administration's family separation policy. The children often have no family connection to the
7 state; they are sent here because the system has capacity. Some of the children have been placed
8 with foster families coordinated by care organizations, while others are placed in residential
9 group child care.
10

11 334. Immigration officials are sending separated children to Maryland without the
12 most basic information about the children or their parents, or how to connect them with one
13 another. And many of the children have come with little or no information and are too young—
14 as young as 18 months—to communicate with caregivers or social workers trying to track down
15 relatives who could take them in. Thus, the sheltering organizations that are housing the children
16 do not know how to identify, let alone locate, the children's parents, who risk deportation before
17 they can find or be reunited with their children.
18

19 335. Care organizations report that children who have been separated from their
20 parents suffer greater trauma than other unaccompanied minors whom the organizations care for.
21 For some of these children, their suffering is immediately apparent, as has been shown in
22 publicly available videos and other recordings. For others, their suffering emerges over time, as
23 they become more comfortable with the staff of the care organizations. And when those
24 organizations can track down a parent and arrange for a call with his or her child, the children
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1 are reportedly so upset afterwards that they need counseling. *See* Andrea K. McDaniels, *Border*
2 *separations could have traumatic impact on children, doctors say*, The Balt. Sun (June 22, 2018) at
3 A9, available at [http://www.baltimoresun.com/health/bs-hs-border-separation-trauma-20180621-](http://www.baltimoresun.com/health/bs-hs-border-separation-trauma-20180621-story.html)
4 [story.html](http://www.baltimoresun.com/health/bs-hs-border-separation-trauma-20180621-story.html), attached hereto as Ex. 126; Ian Duncan, “”, The Balt. Sun, June 21, 2018, at A1,
5 available at [http://www.baltimoresun.com/news/maryland/bs-md-border-separations-20180620-](http://www.baltimoresun.com/news/maryland/bs-md-border-separations-20180620-story.html)
6 [story.html](http://www.baltimoresun.com/news/maryland/bs-md-border-separations-20180620-story.html), attached hereto as Ex. 127.

8 336. Parents who have been separated from their children are also being sent to
9 Maryland and detained in local facilities that contract with ICE to hold detainees, mostly pending
10 criminal process. Anne Arundel, Frederick, Howard, and Worcester counties have all agreed to
11 hold immigration detainees, and the Anne Arundel Detention Center is reportedly holding at
12 least two parents who have been separated from their children under the Trump Administration’s
13 policy. *See* Ex. 127. In addition, Maryland is the location of a Federal Correctional Institution
14 and the Chesapeake Detention Facility where, by contract, the federal government houses federal
15 pre-trial detainees, which might be affected by ICE’s policy of housing separated parents in
16 federal detention facilities. Parents held in Maryland have little contact with their children and
17 no information about where they are being held. One was reportedly separated from his five-
18 year-old daughter by force and has not had any contact with, or information about, her in the two
19 months since. *See* Patricia Sullivan, *Md., Va. congressmen hear stories of family separation*, the
20 Washington Post (June 21, 2018) at B4, available at
21 [https://www.washingtonpost.com/local/immigration/md-va-congressmen-hear-stories-of-family-](https://www.washingtonpost.com/local/immigration/md-va-congressmen-hear-stories-of-family-separation/2018/06/20/af3fe0ae-74aa-11e8-b4b7-308400242c2e_story.html?noredirect=on&utm_term=.fa6d5bb19919)
22 [separation/2018/06/20/af3fe0ae-74aa-11e8-b4b7-](https://www.washingtonpost.com/local/immigration/md-va-congressmen-hear-stories-of-family-separation/2018/06/20/af3fe0ae-74aa-11e8-b4b7-308400242c2e_story.html?noredirect=on&utm_term=.fa6d5bb19919)
23 [308400242c2e_story.html?noredirect=on&utm_term=.fa6d5bb19919](https://www.washingtonpost.com/local/immigration/md-va-congressmen-hear-stories-of-family-separation/2018/06/20/af3fe0ae-74aa-11e8-b4b7-308400242c2e_story.html?noredirect=on&utm_term=.fa6d5bb19919), attached hereto as Ex. 128.
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1 337. In other respects, as well, ORR is using facilities in Maryland to facilitate the
2 Administration's family separation policy without providing the transparency that would allow
3 Maryland to ensure the safety and security of its residents, including the parents and children
4 who have been separated from one another under the policy. ORR has provided no information
5 about the care and circumstances of immigrant children detained within Maryland's borders—
6 where they are being held; what condition they are in; where their parents are; whether they have
7 adequate food, clothing and shelter; whether they have access to medical care and legal
8 representation; or when and how they will be reunited with their families.
9

10 338. Children separated from their families as a result of Defendants' actions have
11 been sent to organizations in **Pennsylvania**. For instance, 50 child immigrants separated from
12 their families are being housed at the Holy Family Institute in Emsworth, Pennsylvania, a
13 Catholic social services organization that is under contract with Defendant ORR. *See* Paula
14 Reed Ward and Ashley Murray, *Child migrants separated from families housed at Holy Family*
15 *Institute in Emsworth*, *Pittsburg Post-Gazette* (June 17, 2018) available at [http://www.post-](http://www.post-gazette.com/news/faith-religion/2018/06/17/Child-migrants-separated-from-families-being-housed-at-Holy-Family-Institute/stories/201806160074)
16 [gazette.com/news/faith-religion/2018/06/17/Child-migrants-separated-from-families-being-](http://www.post-gazette.com/news/faith-religion/2018/06/17/Child-migrants-separated-from-families-being-housed-at-Holy-Family-Institute/stories/201806160074)
17 [housed-at-Holy-Family-Institute/stories/201806160074](http://www.post-gazette.com/news/faith-religion/2018/06/17/Child-migrants-separated-from-families-being-housed-at-Holy-Family-Institute/stories/201806160074), attached hereto as Ex. 129. The
18 children, who range in age from 4 to 17, are from Honduras, Guatemala, El Salvador, and other
19 countries. Other child immigrants separated from their parents as a result of Defendants' actions
20 have been placed with a shelter in Pennsylvania's Lehigh Valley. *See* Laura Benshoff, *As Trump*
21 *ends family separation policy, children removed from their parents are already in Pa.*, (June 21,
22 2018), available at [https://whyy.org/segments/as-trump-ends-family-separation-policy-](https://whyy.org/segments/as-trump-ends-family-separation-policy-children-removed-from-their-parents-are-already-in-pa/)
23 [children-removed-from-their-parents-are-already-in-pa/](https://whyy.org/segments/as-trump-ends-family-separation-policy-children-removed-from-their-parents-are-already-in-pa/), attached hereto as Ex. 130.
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1 339. The **District of Columbia** places an emphasis on preserving families and
2 reunifying families even when children become involved with the state due to child abuse or
3 neglect. *See* D.C. Code § 4-1303.03(a)(11) and (a)(13). The District of Columbia follows the
4 United States Supreme Court’s holdings that there is “a presumption that fit parents act in the
5 best interests of their children,” *Troxel v. Granville*, 530 U.S. 57, 68, (2000), and recognition
6 that the state may not “inject itself into the private realm of the family” absent a finding of
7 unfitness. *Id.* at 68–69. The Court has frequently emphasized the importance of the family, and
8 has held that individuals have a fundamental right to parent their own children. *Stanley v. Illinois*,
9 405 U.S. 645, 651 (1972). This important relationship may not be terminated without a predicate
10 determination, by clear and convincing evidence that the individual is unfit to parent. *Santosky*
11 *v. Kramer*, 455 U.S. 745 760, 768–71 (1982).

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14 340. The District of Columbia also prohibits discrimination based upon the race, color,
15 religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender
16 identity or expression, familial status, family responsibilities, genetic information, disability,
17 matriculation, or political affiliation, source of income, status as a victim of an intrafamily
18 offense, and place of residence or business of any individual. D.C. Code § 2-1401.01.

19
20 341. Defendants’ Policy causes severe and potentially permanent emotional and
21 psychological trauma to children who have been separated from their parents, some of whom
22 are placed with sponsors in the District of Columbia. The number of children placed with
23 sponsors in the District will increase as the sponsors are identified and vetted, and approved to
24 receive these children.
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V. CAUSES OF ACTION

Count I: Violation of Fifth Amendment – Substantive Due Process

342. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

343. State residents who are parents have a fundamental liberty interest in the care, custody, and control of their children. This includes current state residents and those who may arrive in the States following separation pursuant to Defendants’ Policy.

344. State residents who are minors have a reciprocal liberty interest in their parents’ care. This includes current state residents and those who may arrive in the States following separation pursuant to Defendants’ Policy.

345. State residents who are minors have a right to be free of unreasonable risk of harm, including trauma from separation and detention, as well as the risk of harm from housing them in unlicensed facilities.

346. Defendants’ Policy offends the Due Process Clause by separating parents from their children without any showing that the parent is unfit or is otherwise endangering the child.

347. Defendants’ violation causes ongoing harm to the States and their residents.

Count II: Violation of Fifth Amendment – Procedural Due Process

348. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

349. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving individuals of their liberty interests without due process of law.

1 350. Defendants' Policy deprives the States' residents of a fundamental liberty interest
2 with no hearing whatsoever. This includes current state residents and those who will arrive in
3 the States following separation pursuant to Defendants' Policy.

4 351. Defendants have violated the procedural due process guarantees of the Fifth
5 Amendment.

6 352. Defendants' violation causes ongoing harm to the States and their residents.

7
8 **Count III: Violation of Fifth Amendment – Equal Protection**

9 353. All of the foregoing allegations are repeated and realleged as though fully set
10 forth herein.

11 354. The Due Process Clause of the Fifth Amendment prohibits the federal
12 government from denying equal protection of the laws.

13 355. The Policy burdens a fundamental right and targets individuals for discriminatory
14 treatment based on their nationality or ethnicity, without lawful justification, and is therefore not
15 narrowly tailored to achieve a compelling governmental interest. The Policy is also
16 unconstitutional because it disparately impacts immigrants from Latin America arriving at the
17 Southwestern border and is motivated by animus and a desire to harm this particular group.
18

19 356. Alternatively, the discriminatory terms and application of the Policy are arbitrary
20 and do not bear a rational relationship to a legitimate federal interest.

21 357. Through their actions above, Defendants have violated the equal protection
22 guarantee of the Fifth Amendment.

23 358. Defendants' violation causes ongoing harm to the States and their residents.
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1 **Count IV: Violation of the Administrative Procedure Act**

2 359. All of the foregoing allegations are repeated and realleged as though fully set
3 forth herein.

4 360. The Administrative Procedure Act, 5 U.S.C. § 706(2), prohibits federal agency
5 action that is arbitrary, unconstitutional, and contrary to statute.
6

7 361. Defendants' Policy constitutes final agency action for purposes of the
8 Administrative Procedure Act.

9 362. Defendants have offered no legitimate basis for their Policy.

10 363. Defendants' Policy is arbitrary and capricious because it conflicts with various
11 laws requiring Defendants and the States to consider the best interests and well-being of children
12 arriving to the United States.

13 364. The Policy is not authorized or required by the TVPRA, which only applies to
14 unaccompanied minors. The minors subject to Defendants' Policy are not "unaccompanied," as
15 they are accompanied by a parent or guardian. Indeed, in a White House Press Release, dated
16 October 8, 2017, Defendants released a "detailed outline of President Trump's immigration
17 principles and policies" which states Defendants' agreement that "alien minors [] are not UACs
18 [if they are] accompanied by a parent or legal guardian." *See* Immigration Principles & Policies,
19 available at <http://www.aila.org/infonet/wh-immigration-principles-and-policies>,
20 attached
21 hereto as Ex. 131.
22

23 365. Further, as alleged herein, the separation Policy contravenes the spirit and
24 purpose of the TVPRA, which seeks to protect children. In general, the TVPRA requires,
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1 whenever possible, family reunification or other appropriate placement for unaccompanied alien
2 children. *See* 8 U.S.C. § 1232(c)(2)(A).

3 366. In implementing the Policy, federal agencies have taken or will take
4 unconstitutional and unlawful action, as alleged herein, in violation of the Administrative
5 Procedure Act.

6 367. In implementing the Policy, federal agencies have applied or will apply
7 provisions arbitrarily, in violation of the Administrative Procedure Act.

8 368. Defendants' violation causes ongoing harm to the State and its residents.

9
10 **Count V: Violation of Asylum Laws**

11 369. Under United States law, noncitizens with a well-founded fear of persecution
12 shall have the opportunity to obtain asylum in the United States. 8 U.S.C. § 1158 (“[a]ny alien
13 who is physically present in the United States or who arrives in the United States . . . irrespective
14 of such alien’s status, may apply for asylum in accordance with this section.”). Federal law also
15 prohibits the return of a noncitizen to a country where he may face torture or persecution. *See* 8
16 U.S.C. § 1231(b); United Nations Convention Against Torture (CAT), implemented in the
17 Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, Title XXII,
18 § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

19 370. In enacting these statutes, Congress created a right to petition our government for
20 asylum that at the very least requires that asylum seekers be able to present themselves at ports
21 of entry to request asylum. Defendants are preventing asylum-seekers from presenting
22 themselves at ports of entry that are allegedly “full,” thus preventing asylum claims from being
23 heard, in violation of 8 U.S.C. § 1158.
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1 e. Enjoin Defendants from conditioning family reunification on an
2 agreement not to petition for asylum or other relief available under the INA, or on an
3 agreement to withdraw a petition or other request for that relief;

4 f. Enjoin Defendants from removing separated parents from the United
5 States without their children, unless the parent affirmatively, knowingly, and voluntarily
6 waives the right to reunification before removal after consultation with an attorney;

7 g. Enjoin Defendants from placing children in unlicensed facilities;

8 h. Order Defendants to provide specific information to parents who are
9 lawfully separated from their children about the nature and purpose of the separation, the
10 process by which they can be reunified, and the whereabouts of their children at all times,
11 absent a finding by a court of competent jurisdiction that such information would be
12 dangerous to a child's welfare;

13 i. Award such additional relief as the interests of justice may require.
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1 Respectfully submitted this 26th day of June, 2018.

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

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

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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.

INTRODUCTION

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

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

23 3. After an agreement was reached on the spending bill to prevent another
24 government shutdown, on February 15, 2019, President Trump declared an intention to redirect
25 federal funds toward the construction of a border wall. On the same day, the Administration

26 _____
27 ¹ References to “border wall” in this First Amended Complaint (“Complaint”) refer to any
28 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 announced an executive action (“Executive Action”) to make up to \$6.7 billion in additional
2 funding available for construction of the border wall, including through the declaration of a
3 national emergency under the National Emergencies Act (“Emergency Declaration,” combined
4 with the “Executive Action,” the “Executive Actions”).

5 4. Use of those additional federal funds for the construction of a border wall is
6 contrary to Congress’s intent in violation of the U.S. Constitution, including the Presentment
7 Clause and Appropriations Clause. This use would divert funding that has been appropriated to
8 support Plaintiff States’ law enforcement and counter-drug programming efforts, as well as
9 military construction and other Department of Defense projects in Plaintiff States, for the non-
10 appropriated purpose of constructing a border wall. Even if the Administration could
11 constitutionally redirect funds toward the construction of the border wall, the Administration does
12 not satisfy the criteria in the statutes that it invokes to enable it to do so. In addition, Defendants’
13 actions to divert funding from state and local law enforcement, military construction, and other
14 appropriated Department of Defense projects toward a border wall for which funding has not
15 been appropriated by Congress is arbitrary and capricious and exceeds Defendants’ authority in
16 violation of the Administrative Procedure Act (“APA”).

17 5. If the Administration were to use the funding sources identified in the Executive
18 Actions for the purpose of building a border wall, Plaintiff States collectively stand to lose
19 millions of dollars in federal funding that their national guard units receive for domestic drug
20 interdiction and counter-drug activities, and millions of dollars received on an annual basis for
21 law enforcement programs from the Treasury Forfeiture Fund, harming the public safety of
22 Plaintiff States. The redirection of funding from authorized military construction and other
23 Department of Defense projects located in Plaintiff States will cause damage to their economies.
24 Plaintiff States will face harm to their proprietary interests by the diversion of funding from
25 military construction projects or military pay for the States’ national guard units. And the
26 diversion of any funding toward construction of a wall along California’s and New Mexico’s
27 southern borders will cause irreparable environmental damage to those States’ natural resources.
28

1 provisions of the APA, 5 U.S.C. sections 701-06. This Court also has jurisdiction under 28
2 U.S.C. sections 1331 and 2201.

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

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

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

14 **PARTIES**

15 **PLAINTIFF STATE OF CALIFORNIA**

16 13. The State of California, represented by and through its Attorney General, is a
17 sovereign state of the United States of America.

18 14. Attorney General Xavier Becerra is the chief law officer of the State of California
19 and has the authority to file civil actions to protect California's rights and interests, the
20 environment, and the natural resources of this State. Cal. Const., art. V, § 13; Cal. Gov't Code
21 §§ 12511, 12600-12. This challenge is brought pursuant to the Attorney General's independent
22 constitutional, common law, and statutory authority.

23 15. As head of the California Department of Justice, Cal. Gov't Code section 12510,
24 Attorney General Becerra also has standing to bring this action because funding for law
25 enforcement throughout the State is at stake. *See Pierce v. Sup. Ct.*, 1 Cal. 2d 759, 761-62 (1934)
26 (Attorney General "has the power to file any civil action or proceeding directly involving the
27 rights and interests of the state . . . and the protection of public rights and interest.").

28

1 16. Governor Gavin Newsom is the chief executive officer of the State. The Governor
2 is responsible for overseeing the operations of the State and ensuring that its laws are faithfully
3 executed. As the leader of the executive branch, the Governor is the chief of California’s
4 executive branch agencies, including those whose injuries are discussed in this Complaint. Cal.
5 Const., art. V, § 1. Governor Newsom is the Commander-in-Chief of the California National
6 Guard. Cal. Const., art. V, § 7; Cal. Mil. & Vet. Code § 550 et seq.

7 17. California, as one of several affected states located within President Trump’s
8 declared “national emergency” southern border area, has an interest in ensuring public safety
9 within its borders and protecting its economic interests and the rights of its residents. California
10 shares over 140 miles of its southern border with Mexico.² The orderly flow of goods and people
11 across the border is a critical element in California’s success as the fifth-largest economy in the
12 world.

13 18. California is aggrieved by the actions of Defendants and has standing to bring this
14 action because of the injury due to the loss of federal drug interdiction, counter-narcotic, and law-
15 enforcement funding to the State caused by Defendants’ diversion of funding and resources.

16 19. The threat of losing funding to conduct drug interdiction and counter-narcotic
17 activity prevents California from moving forward with critical criminal narcotics programs and
18 threatens the public safety of all Californians. The diversion of funding from the Treasury
19 Forfeiture Fund will harm public safety by impacting critically necessary funding for law
20 enforcement officers and their agencies.

21 20. California is aggrieved by the actions of Defendants and has standing to bring this
22 action because of the injury to the State and its residents caused by Defendants’ reduction of
23 federal defense spending in California due to diversion of funding to the border wall.

24 21. California has an interest in protecting the economic health and well-being of its
25 residents. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982).

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27
28 ² Janice Cheryl Beaver, *U.S. International Borders: Brief Facts*, Cong. Res. Serv. (Nov. 9,
2006), <https://tinyurl.com/y49jq9vv>.

1 the Attorney General's authority and responsibility to protect Connecticut's sovereign, quasi-
2 sovereign, and proprietary interests.

3 39. Governor Ned Lamont is the chief executive officer of the State. The Governor is
4 responsible for overseeing the operations of the State and ensuring that its laws are faithfully
5 executed. As the leader of the executive branch, the Governor is the chief of Connecticut's
6 executive branch agencies, including those whose injuries are discussed in this Complaint. Conn.
7 Const. art IV, § 5.

8 40. On information and belief, Connecticut is aggrieved by the actions of Defendants
9 and has standing to bring this action because of the injury caused by Defendants' unlawful and
10 unconstitutional diversion of funding from military construction projects in Connecticut to
11 construction of a border wall in Texas, Arizona, New Mexico, and California. Defendants'
12 actions will hurt Connecticut's economy and, by damaging the State's critical security
13 infrastructure, threaten the safety of Connecticut's National Guard and of all Connecticut
14 residents.

15 41. Further, on information and belief, Defendants' diversion of funding aimed at drug
16 interdiction and counter-narcotic activity threatens to hurt the State's law enforcement agencies
17 and compromise the public safety of all Connecticut residents. Connecticut has received and—
18 absent the unlawful and unconstitutional actions of Defendants—intends to continue to receive
19 equitable sharing funding through the Treasury Forfeiture Fund. Defendants' diversion of that
20 funding threatens the budgets of Connecticut law enforcement agencies and the public safety of
21 all Connecticut residents.

22 **PLAINTIFF STATE OF DELAWARE**

23 42. The State of Delaware, represented by and through its Attorney General, is a
24 sovereign state of the United States of America.

25 43. Attorney General Kathleen Jennings is the chief legal officer of the State of
26 Delaware and has the authority to file civil actions to protect Delaware's rights and the rights of
27 Delaware citizens. 29 Del. C. § 2504. The Attorney General's powers and duties include
28 litigating matters in our nation's federal courts on matters of public interest. The Attorney

1 General has the authority to file suit to challenge action by the federal government that threatens
2 the public interest and welfare of Delaware residents as a matter of constitutional, statutory, and
3 common law authority.

4 44. Governor John Carney is the chief executive officer of the State of Delaware. The
5 Governor is responsible for overseeing the operations of the State of Delaware and is required to
6 take care that Delaware's laws be faithfully executed. Del. Const., Art. III, §§ 1, 8.

7 45. Delaware is aggrieved by the actions of Defendants and has standing to bring this
8 action because of the injury due to loss of federal funding to the State caused by Defendants'
9 unconstitutional and unlawful diversion of funding discussed herein.

10 46. Defendants have and intend to continue to misappropriate equitable sharing funds
11 gained through forfeiture of assets in the context of Delaware's enforcement of state and federal
12 law. As such, Delaware will be deprived of such funds that are owed to it to carry on law
13 enforcement activities.

14 47. Delaware has received money from the Treasury Forfeiture Fund in the past, and
15 expects to receive comparable monies in the future absent diversion to fund the construction of a
16 wall. According to audits of the Treasury Forfeiture Fund, in 2018, Delaware received more than
17 \$1.3 million in equitable sharing from the Treasury Forfeiture Fund; in 2017, Delaware received
18 \$349,045; in 2016, Delaware received more than \$1.2 million; in 2015, Delaware received
19 \$331,134; and in 2014, Delaware received more than \$2.5 million. These resources are used to
20 supplement and enhance law enforcement agencies' state-appropriated funding.

21 48. With a federally funded budget of over \$1 million, any diversion of annual federal
22 funding intended for the Delaware National Guard's drug interdiction programs will harm
23 Delaware given the success of such programs resulting in the annual confiscation of illegal drugs
24 and by and through the support it provides to state and local law enforcement agencies for this
25 purpose.

26 49. Defendants' unlawful and unconstitutional diversion of funds away from projects
27 authorized and appropriated for disbursement and use within the State of Delaware will cause it
28 injury in fact, which is traceable to Defendants' conduct as set forth herein.

1 **PLAINTIFF STATE OF HAWAII**

2 50. The State of Hawaii, represented by and through its Attorney General, is a
3 sovereign state of the United States of America.

4 51. Attorney General Clare E. Connors is the chief legal officer of the State of Hawaii
5 and has authority to appear, personally or by deputy, for the State of Hawaii in all courts, criminal
6 or civil, in which the State may be a party or be interested. Haw. Rev. Stat. § 28-1. The
7 Department of the Attorney General has the authority to represent the State in all civil actions in
8 which the State is a party. *Id.* § 26-7. This challenge is brought pursuant to the Attorney
9 General’s constitutional, statutory, and common law authority. *See* Haw. Const. art. V, § 6; Haw.
10 Rev. Stat. Chapter 28; Haw. Rev. Stat. § 26-7.

11 52. As the chief law enforcement officer of the State of Hawaii, the Attorney General
12 has ultimate responsibility for enforcing the penal laws of the State, and thus has a strong interest
13 in protecting public safety. Haw. Rev. Stat. §§ 28-2 & 28-2.5; *Amemiya v. Sapienza*, 629 P.2d
14 1126, 1129 (Haw. 1981).

15 53. Hawaii has an interest in its exercise of sovereign power over individuals and
16 entities within the State, including the enforcement of its legal code.

17 54. Hawaii is aggrieved by the actions of Defendants and has standing to bring this
18 action because of the injury due to the loss of federal drug interdiction, counter-narcotic, and law
19 enforcement funding to the State caused by Defendants’ diversion of funds.

20 55. Hawaii participates in federally-funded drug interdiction and counter-narcotic
21 programs, such as the National Guard Counterdrug Program. Diversion of this funding will
22 reduce the funds available to Hawaii for accomplishing critical drug interdiction and counter-
23 narcotic efforts, and will therefore threaten public safety in Hawaii.

24 56. State and local law enforcement agencies in Hawaii have received funds from the
25 Treasury Forfeiture Fund in the past and anticipate doing so again in the future. Unless diverted,
26 these funds would be available to Hawaii’s state and local law enforcement agencies. Diversion
27 of funding therefore will harm public safety by reducing the availability of critical funds for state
28 and local law enforcement officers and their agencies.

1 State from the Treasury Forfeiture Fund. The loss of funding for state and local law enforcement
2 operational needs threatens the public safety of all Illinois residents.

3 65. On information and belief, Illinois is aggrieved by the actions of Defendants and
4 has standing to bring this action because of the injury due to the loss of federal funding to the
5 State caused by Defendants' diversion of funding. The loss of funding to conduct drug
6 interdiction and counter-narcotics activity threatens the public safety of all Illinois residents.

7 66. On information and belief, Illinois is also aggrieved by the actions of Defendants
8 and has standing to bring this action because of the injury due to the loss of federal funding
9 resulting from the diversion of military construction projects from Illinois to the construction of a
10 border wall on the nation's southern border.

11 67. In filing this action, the Attorney General seeks to protect the residents and
12 agencies of Illinois from harm caused by Defendants' illegal conduct, prevent further harm, and
13 seek redress for the injuries caused to Illinois by Defendants' actions. Those injuries include
14 harm to Illinois's sovereign, quasi-sovereign, and proprietary interests.

15 **PLAINTIFF STATE OF MAINE**

16 68. The State of Maine, represented by and through its Attorney General, is a
17 sovereign state of United States of America.

18 69. The Attorney General of Maine, Aaron M. Frey, is a constitutional officer with the
19 authority to represent the State of Maine in all matters, and serves as its chief legal officer with
20 general charge, supervision, and direction of the State's legal business. Me. Const. art. IX, Sec.
21 11; 5 M.R.S., §§ 191 et seq. The Attorney General's powers and duties include acting on behalf
22 of the State and the people of Maine in the federal courts on matters of public interest. The
23 Attorney General has the authority to file suit to challenge action by the federal government that
24 threatens the public interest and welfare of Maine residents as a matter of constitutional, statutory,
25 and common law authority.

26 70. The Governor of Maine, Janet T. Mills, is the chief executive officer of the State.
27 The Governor is responsible for overseeing the operations of the State and ensuring that its laws
28 are faithfully executed. As the leader of the executive branch, the Governor is the chief of

1 Maine's executive branch agencies, including those whose injuries are discussed in this
2 Complaint. Me. Const. art V, § 1. Governor Mills is the Commander-in-Chief of the Maine
3 National Guard. 37-B M.R.S. §§ 103 et seq.

4 71. Maine is aggrieved by the actions of Defendants and has standing to bring this
5 action because of the injury due to the loss of federal funding to the State caused by Defendants'
6 diversion of funding.

7 72. Maine is aggrieved by the actions of Defendants and has standing to bring this
8 action because of the injury to the State and its residents caused by Defendants' reduction of
9 federal defense spending in Maine due to diversion of funding to the border wall.

10 73. Maine has an interest in protecting the health, safety, and well-being of its
11 residents, including protecting its residents from harms to their economic health.

12 74. Maine has an interest in the State's economic vitality and workforce.

13 75. Maine has an interest in preventing diminution of its tax revenues.

14 76. The diversion of military construction funding from authorized projects in Maine
15 will harm Maine's economy.

16 77. The State would suffer economic harm from diversion of funding from authorized
17 military construction projects in Maine.

18 78. Maine participates in the equitable sharing program, pursuant to which eligible
19 Maine law enforcement agencies are entitled to reimbursement from the Treasury Forfeiture Fund
20 for law enforcement agency expenditures associated with seizures and forfeitures, 31 U.S.C.
21 section 9705(a)(1)(B)(iii).

22 79. During the federal fiscal years 2009 through 2018, eligible law enforcement
23 agencies within the State of Maine were entitled to receive or received approximately \$4.9
24 million dollars in equitable sharing funds from the Treasury Forfeiture Fund account, or an
25 average of approximately \$490,000 annually.

26 80. In addition to the state-wide impact that loss of Treasury Forfeiture Funds would
27 have on all law enforcement agencies within Maine, the State of Maine, Department of Inland
28

1 Fisheries & Wildlife, Maine Warden Service (“Maine Warden Service”) will be impacted by the
2 non-payment of an approved pending claim for Treasury Forfeiture Fund equitable sharing.

3 81. By letter dated September 7, 2018, the Maine Warden Service was notified by the
4 Department of Treasury, Internal Revenue Service that the Maine Warden Service was entitled to
5 equitable sharing at the rate of 3 percent of \$238,956.42 (or \$7,168), the net amount available for
6 equitable sharing related to the liquidation of two parcels of land seized during a joint law
7 enforcement operation conducted in 2014.

8 82. To date, the Maine Warden Service has not received payment of its equitable
9 share.

10 83. The diversion of Treasury Forfeiture Funds will harm Maine by depriving Maine
11 of the proceeds of equitable sharing to which it is entitled and by impacting public safety
12 generally by reducing critically necessary funding for law enforcement officers and their agencies
13 within Maine.

14 **PLAINTIFF STATE OF MARYLAND**

15 84. The State of Maryland is a sovereign state of the United States of America.
16 Maryland is represented by and through its chief legal officer, Attorney General Brian E. Frosh.
17 Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the
18 Attorney General has the authority to file suit to challenge action by the federal government that
19 threatens the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); 2017
20 Md. Laws, J. Res. 1.

21 85. Maryland is aggrieved by the actions of Defendants and has standing to bring this
22 action due to the loss of federal funding to the State caused by Defendants’ diversion of federal
23 funds. The loss of funding to conduct drug interdiction and counter-narcotic activity would
24 threaten the public safety of all Marylanders.

25 86. Maryland is also aggrieved by the actions of Defendants and has standing to bring
26 this action because of the injury due to the diversion of funding for military construction projects.
27 On information and belief, Maryland stands to lose up to \$513 million in military construction
28 funding for currently planned projects at Fort Meade and Joint Base Andrews.

1 87. Additionally, Maryland has received money from the Treasury Forfeiture Fund in
2 the past, and expects to receive comparable monies in the future absent diversion to fund the
3 construction of a border wall. During the fiscal year that ended September 30, 2018, Maryland
4 state and local law enforcement agencies received \$1.79 million in equitable sharing payments
5 from the Treasury Forfeiture Fund for their participation in successful seizure and forfeiture
6 activities; the previous year, that amount was \$1.32 million. The Maryland State Police has
7 regularly received equitable sharing payments from the Treasury Forfeiture Fund for its
8 contributions to operations that led to forfeitures. In 2018, the Maryland State Police received
9 over \$429,000 in equitable sharing payments from the Treasury Forfeiture Fund. The Maryland
10 State Police currently has over 50 requests pending with the Treasury Forfeiture Fund for
11 equitable shares relating to forfeited assets worth over \$8.3 million. The diversion of funds from
12 the Treasury Forfeiture Fund could deprive the Maryland State Police of its fair share of the
13 forfeited assets, impacting its budget and hindering law enforcement activities, negatively
14 affecting the public safety and welfare of Maryland citizens.

15 **PLAINTIFF COMMONWEALTH OF MASSACHUSETTS**

16 88. The Commonwealth of Massachusetts, represented by and through its Attorney
17 General, is a sovereign state of the United States of America.

18 89. Attorney General Maura Healey is the chief law enforcement officer in
19 Massachusetts and has both statutory and common-law authority to bring lawsuits to protect the
20 interests of the Commonwealth of Massachusetts and the public interest of the people. *Feeney v.*
21 *Commonwealth*, 366 N.E.2d 1262, 1265-66 (Mass. 1977); Mass. Gen. Laws Ch. 12, § 3, 10.

22 90. Massachusetts is aggrieved by the actions of Defendants and has standing to bring
23 this action because of injury due to the probable loss of federal drug interdiction and counter-
24 narcotic funding, asset forfeiture funds, and military construction funds to and in Massachusetts,
25 caused by Defendants' unlawful diversion of funding to pay for border wall construction.

26 91. Losing drug interdiction and counterdrug activities funding would hamper
27 Massachusetts' efforts to combat the opioid crisis, which continues to cause grave harm to
28 Massachusetts residents and the public health.

1 92. The Department of Defense allocated \$2.3 million to Massachusetts for drug
2 interdiction and counterdrug activities in fiscal year (or “FY”) 2019. Of that allocation,
3 Massachusetts has not yet received more than \$965,000.

4 93. The Massachusetts National Guard uses these funds to combat drug trafficking
5 organizations operating in our communities, and to support federal, state, and local law
6 enforcement agencies in their efforts to decrease illicit drug supply and demand while reducing
7 opioid overdose deaths.

8 94. Specifically, the Massachusetts National Guard uses Department of Defense drug
9 interdiction and counter-narcotic funds to provide investigative case analysis support, linguist
10 services, transportation support, inter-agency training, and reconnaissance.

11 95. These funds are particularly important in Massachusetts, where the number of fatal
12 opioid-related overdoses has increased by over 420 percent from 2000 to 2018. Heroin and
13 fentanyl trafficking and consumption remain a major threat, due to widespread availability, high
14 demand, low costs, and high incidence of addiction. Local agencies often have neither the
15 resources nor the expertise to properly conduct extensive drug investigations, and illegal narcotics
16 are rarely manufactured, distributed and consumed all within the same municipality. The
17 Massachusetts National Guard drug interdiction and counter-narcotic programs provide critically
18 important support for these agencies in pursuing inter-agency and inter-jurisdictional work.

19 96. Massachusetts will also be harmed due to the loss of federal asset forfeiture funds
20 to state and local law enforcement agencies in Massachusetts.

21 97. Massachusetts receives Treasury Forfeiture Funds through equitable sharing when
22 participating in asset forfeiture activities with certain federal law enforcement agencies.

23 98. In fiscal year 2018, state and local law enforcement agencies in Massachusetts
24 received approximately \$307,000 in currency and \$34,000 in property through the Treasury
25 Forfeiture Fund’s equitable sharing program. These resources are used to supplement and
26 enhance law enforcement agencies’ state appropriated funding.

27 99. The Massachusetts State Police and Massachusetts Port Authority received a
28 combined \$481,822 in fiscal year 2017 and \$35,286 in fiscal year 2018 from the Treasury

1 Forfeiture Fund's equitable sharing program.

2 100. In fiscal year 2019, the Massachusetts State Police has already received \$13,980
3 through the Treasury Forfeiture Fund's equitable sharing program, and the Massachusetts Office
4 of the Attorney General has received \$17,313.

5 101. On information and belief, Massachusetts law enforcement agencies have
6 submitted requests for equitable sharing funds that remain pending with the Treasury Department.

7 102. Massachusetts will be additionally harmed due to the loss of funding for military
8 construction projects in Massachusetts.

9 103. Funds that could be diverted include, but may not be limited to, \$90 million
10 appropriated by Congress for a new compound semiconductor facility and microelectronics
11 integration facility at Hanscom Air Force Base's Lincoln Laboratory, which is affiliated with the
12 Massachusetts Institute of Technology, and \$42.6 million appropriated by Congress for
13 construction of a new hangar at Westover Air Force Base.

14 104. In addition, the Massachusetts National Guard has been allocated \$9.7 million in
15 funding for a multi-purpose machine gun range for fiscal year 2020. \$8.9 million of these funds
16 have not yet been obligated.

17 105. Not only are these military construction projects important to national security,
18 military readiness, and well-being of our service members, they are important generators of
19 economic activity for Massachusetts.

20 **PLAINTIFF ATTORNEY GENERAL DANA NESSEL ON BEHALF**

21 **OF THE PEOPLE OF MICHIGAN**

22 106. The People of Michigan are the sovereign of one of the states of the United States
23 and are represented by and through the Michigan Attorney General Dana Nessel.

24 107. Attorney General Dana Nessel is the chief legal officer of the State of Michigan
25 and her powers and duties include acting in federal court in matters of concern to the People of
26 Michigan, to protect Michigan residents. *Fieger v. Cox*, 734 N.W.2d 602, 604 (Mich. Ct. App.
27 2007); Mich. Comp. Laws §§ 14.28, 14.101. This action is brought to protect the interests of the
28 People of Michigan.

1 quasi-sovereign, and proprietary interests.

2 115. Governor Tim Walz is the chief executive officer of the State of Minnesota,
3 custodian of state property and federal funds made available to the State, and the Commander-in-
4 Chief of the state military. Minn. Const., art. V, § 3; Minn. Stat. §§ 4.01 & .07. As the chief
5 executive officer and Commander-in-Chief of the State of Minnesota, Governor Walz leads
6 executive branch agencies injured by the actions described in this Complaint.

7 116. The Minnesota National Guard has over 13,000 soldiers and airmen, employs
8 more than 2,000 people on a full-time basis, and operates over 60 facilities in the state. The
9 Minnesota National Guard receives more than 96 percent of its funding from the federal
10 government. It performs missions training and prepares citizen soldiers and airmen to respond to,
11 among other things, the Governor of Minnesota for state emergency response, military support,
12 and protection of local communities. Loss of funding negatively impacts this vital service for the
13 State of Minnesota.

14 117. For example, diverting federal funding for the Minnesota National Guard's
15 counterdrug programs and domestic drug interdiction activities to construct a wall along the
16 United States-Mexico border would harm Minnesota's law enforcement agencies and
17 compromise the health and safety of Minnesota residents.

18 118. In addition, diverting federal funding from necessary military construction projects
19 in Minnesota, including National Guard projects, to construct a wall along the United States-
20 Mexico border would also harm Minnesota, its economy, and its residents.

21 119. Law enforcement agencies in Minnesota, and the Minnesotans they protect and
22 serve, are also harmed by the diversion of funding from the Treasury Forfeiture Fund to construct
23 a wall along the United States-Mexico border. Law enforcement agencies in Minnesota
24 participate in the Treasury Forfeiture Fund's strategic mission "to use high-impact asset forfeiture
25 in investigative cases to disrupt and dismantle criminal enterprises."³ For example, in Fiscal Year

26 _____
27 ³ See Off. of Inspector Gen., Dep't of the Treasury, *Audit of the Department of the*
28 *Treasury Forfeiture Fund's Financial Statements for Fiscal Years 2018 and 2017* at 2 (Dec. 13,
2018), <https://tinyurl.com/y6ovg5s3>.

1 2018, a Minnesota-based investigation and prosecution of a nationwide wire fraud scheme
2 primarily targeting elderly Hmong people resulted in the forfeiture of \$1,612,451.84.⁴

3 120. Law enforcement agencies in Minnesota have pending requests for money from
4 the Treasury Forfeiture Fund and will likely have additional requests in the future. The delay,
5 reduction, or denial of payment resulting from the diversion of funding from the Treasury
6 Forfeiture Fund to construct a wall along the United States-Mexico border harms these law
7 enforcement agencies and compromises the health and safety of Minnesota residents.

8 **PLAINTIFF STATE OF NEVADA**

9 121. The State of Nevada, represented by and through its Attorney General, is a
10 sovereign state of the United States of America.

11 122. Attorney General Aaron D. Ford is the chief legal officer of the State of Nevada
12 and has the authority to commence actions in federal court to protect the interests of the State.
13 Nev. Rev. Stat. 228.170.

14 123. Governor Stephen F. Sisolak is the chief executive officer of the State of Nevada.
15 The Governor is responsible for overseeing the operations of the State and ensuring that its laws
16 are faithfully executed. Nev. Const., art. 5, § 1. Governor Sisolak is the Commander-in-Chief of
17 the Nevada state military forces. Nev. Const., art. 5, § 5.

18 124. On information and belief, Nevada is aggrieved by the actions of Defendants and
19 has standing to bring this action because of the injury to the State and its residents caused by the
20 reduction of federal funding to the State due to Defendants' diversion of funding to a southern
21 border wall.

22 125. Any diversion of military construction funding from Nevada will harm the State's
23 economy. Nevada is home to several military bases, including Nellis Air Force Base, Creech Air
24 Force Base, Hawthorne Army Depot Base, and Naval Air Station Fallon. These military bases
25 play a critical role in our nation's defense and to the State's economy. The use of funding for a
26 southern border wall rather than for necessary expenses at these military bases harms Nevada and
27 its economy.

28

⁴ *Id.* at 5.

1 consequences of cross-border activity. Attorney General Balderas has worked with law
2 enforcement counterparts in Mexico to facilitate international extraditions, implement
3 technologies to combat human trafficking, and train prosecutors.⁶ Trade across New Mexico's
4 southern border is a crucial component of the State's economy, with Mexico its largest export
5 partner.⁷

6 139. New Mexico is aggrieved by Defendants' actions and has standing to bring this
7 lawsuit. Defendants' diversion of federal funding to conduct drug-interdiction and counter-
8 narcotics efforts threatens the safety and health of all New Mexicans.

9 140. New Mexico will also be harmed by Defendants' diversion of military
10 construction funding. Some \$85 million of this funding currently is allocated to construct a MQ-
11 9 Formal Training Unit at Holloman Air Force Base in Otero County, New Mexico.⁸ Another
12 \$40 million is allocated to White Sands Missile Range in New Mexico to build an information
13 systems facility.⁹ The loss of these projects would harm New Mexico's economy, particularly in
14 the communities surrounding these military installations.

15 141. If Defendants use the diverted funding to construct any of their border wall in New
16 Mexico, it will also impose environmental harm to the State. The environmental damage caused
17 by a border wall in New Mexico would include the blocking of wildlife migration, flooding, and
18 habitat loss.¹⁰ Further, this border wall would be constructed on state land, taking the State's

19 _____
20 ⁶ Ryan Boetel, *Attorney General Announces Pilot Project for Mexico Extraditions*,
21 Albuquerque J. (July 25, 2018), <https://tinyurl.com/y2zdbc8h>; PR Newswire, *TrustStamp and the*
22 *Conference of Western Attorneys General Alliance Partnership Introduce Technology to Ease*
23 *Data Sharing Among Law Enforcement* (Aug. 30, 2018), <https://tinyurl.com/y2seu64t>; Carol
24 Clark, *AG Balderas Trains Mexican Prosecutors, Forensic Scientists, Investigators in Effort to*
25 *Stop Crime From Crossing Border*, Los Alamos Daily Post (Nov. 3, 2017),
26 <https://tinyurl.com/y3mcvrms>.

27 ⁷ Int'l Trade Admin., *New Mexico Exports, Jobs, & Foreign Investment* (Feb. 2018),
28 <https://tinyurl.com/y25tsost>.

⁸ Alamogordo Daily News, *Holloman Getting \$85M for Construction Project* (Feb. 3,
2018), <https://tinyurl.com/y5u7vx4k>.

⁹ Miriam U. Rodriguez, *WSMR to Build State of the Art Information Systems Facility*,
U.S. Army (Jan. 10, 2018), <https://tinyurl.com/y3yr24yr>.

¹⁰ See Robert Peters et al., *Nature Divided, Scientists United: US-Mexico Border Wall*
27 *Threatens Biodiversity and Binational Conservation*, 68 *BioScience* 740, 743 (Oct. 2018),
28 <https://tinyurl.com/y3t4ymfn>.

1 sovereign property.¹¹

2 **PLAINTIFF STATE OF NEW YORK**

3 142. The State of New York, represented by and through its Attorney General, is a
4 sovereign state of the United States of America. The Attorney General is New York State's chief
5 law enforcement officer and is authorized to pursue this action pursuant to N.Y. Executive Law
6 section 63.

7 143. Upon information and belief, New York is aggrieved by the actions of Defendants
8 and has standing to bring this action because of the injury due to the loss of federal funding to the
9 State caused by Defendants' diversion of federal funds. The loss of funding to conduct drug
10 interdiction and counter-narcotic activity would injure the State's law enforcement agencies and
11 threaten the public safety of all New Yorkers.

12 144. New York participates in the Treasury Forfeiture Fund through state law
13 enforcement agencies, state prosecutorial agencies, and joint federal-state task forces, and
14 regularly receives equitable sharing payments to state agencies from forfeitures generated by joint
15 law enforcement operations with federal law enforcement. Defendants' unlawful diversion of
16 funding from the Treasury Forfeiture Fund will harm the public safety of New York's residents
17 by impacting critically necessary funding for law enforcement officers and their agencies.

18 145. Upon information and belief, Defendants' unlawful diversion of funding from
19 military construction projects in New York to construction of a border wall will injure New
20 York's economy and, by damaging the State's critical security infrastructure, threaten the safety
21 of New York's National Guard and of all New York residents.

22 **PLAINTIFF STATE OF OREGON**

23 146. Plaintiff State of Oregon, acting through its Attorney General, Ellen Rosenblum, is
24 a sovereign state in the United States of America.

25 147. Attorney General Rosenblum is the chief law officer of Oregon and is empowered
26 to bring this action on behalf of the State of Oregon and the affected state agencies under ORS

27 _____
28 ¹¹ See Deming Headlight, *N.M. Land Commish Aubrey Dunn Rejects Settlement Offer from CBP* (Aug. 17, 2018), <https://tinyurl.com/y557wpcb>.

1 160.060, ORS 180.210, and ORS 180.220.

2 148. On information and belief, Oregon is aggrieved by the actions of Defendants and
3 has standing to bring this action because of the injury due to the loss of federal funding to the
4 State caused by Defendants' diversion of federal funds. The loss of funding to conduct drug
5 interdiction and counter-narcotic activity, including funding that supports Oregon's work in this
6 area with other States, would threaten the public safety of all Oregonians.

7 149. On information and belief, the diversion of military construction funds will harm
8 Oregon. Defendants' diversion of funding from military construction projects in Oregon to
9 construction of a border wall in Texas, New Mexico, Arizona, and California would impact
10 Oregon's economy. In particular and without limitation, any diversion of funds from U.S. Army
11 Corps of Engineers projects in Oregon would harm Oregon's environment and could cause
12 flooding and other dangers to the health and safety of Oregonians.

13 150. Oregon has received money from the Treasury Forfeiture Fund in the past and
14 expects to receive comparable monies in the future absent diversion to fund the construction of a
15 wall. According to federal audits of the Treasury Forfeiture Fund in 2018, Oregon received more
16 than \$9 million in equitable sharing from the Treasury Forfeiture Fund over the years 2008-2017.
17 These resources are used to supplement and enhance law enforcement agencies' state-
18 appropriated funding.

19 **PLAINTIFF STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

20 151. The State of Rhode Island, represented by and through its Attorney General, is a
21 sovereign state of the United States of America.

22 152. Attorney General Peter F. Neronha is the chief law officer of the State of Rhode
23 Island and has the authority to file civil actions to protect Rhode Island's rights and the rights of
24 Rhode Island citizens. The Attorney General has the authority to file suit to take legal action
25 against the federal government for the protection of the public interest and welfare of Rhode
26 Island citizens as a matter of constitutional, statutory, and common law authority. R.I. Const. art.
27 IX, sec. 12; R.I. Gen. Laws §§ 42-9-1, et seq.; *see also State v. Lead Industries Ass'n*, 951 A.2d
28 428 (R.I. 2008).

1 153. The Governor of Rhode Island, Gina M. Raimondo, is the chief executive officer
2 of the State of Rhode Island. The Governor oversees the operations of the State and is in charge
3 of the State military, the Rhode Island National Guard, which is comprised of the Rhode Island
4 Army National Guard, Rhode Island Air National Guard, and the Historic Rhode Island Militia.

5 154. The Rhode Island National Guard is the oldest military branch in the United States
6 and consists of over 3,300 members (2,178 in the Army National Guard, 1,136 in the Air National
7 Guard) and operates 14 armories, three air bases, two training sites, 10 support buildings, four
8 organization maintenance facilities, and one combined support maintenance facility and is
9 responsible for responding to statewide civil emergencies declared by the Governor, as well as
10 supporting the defense of the nation and national security interests, including actively
11 participating in counterdrug efforts.

12 155. The Rhode Island National Guard is financed with approximately 74 percent
13 federal funds and federal equipment housed and secured at these facilities and is valued in excess
14 of \$500 million. The estimated annual impact on the State attributed to National Guard programs
15 exceeds \$238 million.¹²

16 156. The Rhode Island National Guard, Counterdrug Support program (“RING-CD”),
17 coordinates and provides unique military skills and resources to support state and federal law
18 enforcement and community-based organizations in their efforts to disrupt and dismantle various
19 aspects of the illicit markets supporting the drug and narcotic trade.

20 157. RING-CD provides support to state and federal law enforcement agencies with
21 embedded criminal intelligence analysts, the local offices of the U.S. Drug Enforcement
22 Administration (“DEA”), the U.S. Postal Inspector Service (“USP”), the Food and Drug
23 Administration Office of Criminal Investigations (“FDA”), the U.S. Internal Revenue Service
24 (“IRS”), the U.S. Marshall Service, the Rhode Island State Police Narcotics, High Intensity Drug
25 Trafficking Area (“HIDTA”), and Financial Crimes Units, and the Providence Police
26 Department.¹³

27 ¹² State of Rhode Island and Providence Plantations, *Fiscal Year 2019 Budget*, Vol. IV,
28 103-111 (Jan. 2018), <http://tinyurl.com/y3nucc5s>.

¹³ R.I. Nat’l Guard, *Joint Units*, <https://ri.ng.mil/Joint-Units/>.

1 158. RING-CD provides support to Rhode Island State Police and local law
2 enforcement that is essential to combat illicit drug markets in Rhode Island, as well as ensuring
3 the health and safety of officers, investigators, and other law enforcement personnel from the
4 evolving dangers that the drug trade poses.¹⁴

5 159. For Fiscal Year 2018, the Rhode Island National Guard received approximately
6 \$852,000 in connection with the U.S. Department of Defense National Guard Counterdrug
7 program for state drug interdiction and counterdrug activities.

8 160. For Fiscal Year 2019, the U.S. Department of Defense allocated approximately
9 \$900,000 to be paid in monthly installments to the Rhode Island National Guard in connection
10 with the U.S. Department of Defense National Guard Counterdrug program for state drug
11 interdiction and counterdrug activities.

12 161. For Fiscal Year 2019, the Rhode Island National Guard has received
13 approximately \$450,000 under the National Guard Counterdrug program and approximately
14 \$450,000 remains outstanding.

15 162. The Rhode Island State Police is a full-service, statewide law enforcement agency
16 whose mission is to fulfill the law enforcement needs of the people with the highest degree of
17 fairness, professionalism, and integrity, and protect the inherent rights of the people of Rhode
18 Island to live in freedom and safety.

19 163. The Rhode Island State Police receives funds from the Treasury Forfeiture Fund in
20 connection with law enforcement activities jointly performed by and between the Rhode
21 Island State Police and federal law enforcement agencies.

22 164. In 2018, the Rhode Island State Police received approximately \$26,960.10 from
23 the Treasury Forfeiture Fund in connection with joint law enforcement actions.

24 _____
25 ¹⁴ For example, in 2018 RING-CD procured a Liquid Chromatography Mass
26 Spectrometer. This device supports Rhode Island's efforts to combat the dramatic effects of
27 opioid abuse. The Rhode Island Department of Health Forensic Toxicology Laboratory
28 previously identified a significant lag in in confirming the presence of illicit trace evidence to the
Law Enforcement Community. This device, and RING memorandum of agreement with the
Department of Health, targets that capability gap. This system began supporting casework in
Rhode Island during the last fiscal year. R.I. Nat'l Guard, *Annual Report 2018*,
<http://tinyurl.com/y2qagky6>.

1 165. So far, in 2019, the Rhode Island State Police has received approximately
2 \$19,305.77 from the Treasury Forfeiture Fund in connection with joint law enforcement actions.

3 166. At present, the Rhode Island State Police has 59 forfeiture requests pending for
4 U.S. currency and property seized during investigations between the Rhode Island State Police
5 and federal law enforcement agencies. The forfeitures seized in connection with these pending
6 applications is estimated to be valued at approximately \$4,285,721.81 of which Rhode Island is
7 entitled to a *pro rata* share.

8 167. Upon information and belief, the Executive Actions seek to divert some or all
9 funds referenced in the prior paragraph from the Treasury Forfeiture Fund. These funds have
10 been shared or distributed to Rhode Island in the past and Rhode Island presently has applications
11 pending for equitable sharing relating to the Treasury Forfeiture Fund.

12 168. Rhode Island is aggrieved by the actions of Defendants and has standing to bring
13 this action because of the loss of federal funding from the Treasury Forfeiture Fund.

14 169. Diversion of funds from the Treasury Forfeiture Fund will deprive Rhode Island of
15 access to funds that would otherwise be available for law enforcement purposes, negatively
16 impacting the public safety and welfare of Rhode Island citizens.

17 **PLAINTIFF STATE OF VERMONT**

18 170. The State of Vermont, represented by and through its Attorney General, is a
19 sovereign state of the United States of America.

20 171. Attorney General Thomas J. Donovan is the chief legal officer of the State of
21 Vermont and has the authority to file civil actions to protect Vermont's rights and interests. Vt.
22 Stat. Ann. tit. 3, §§ 152, 157.

23 172. Vermont is aggrieved by the actions of Defendants and has standing to bring this
24 action because of the injury due to the loss of federal drug interdiction, counter-narcotic, and law
25 enforcement funding to the State caused by Defendants' diversion of funding. The threat of losing
26 funding to conduct drug interdiction and counter-narcotic activity threatens the public safety of all
27 Vermonters.

28 173. Vermont participates in the Treasury Forfeiture Fund through state and local law

1 enforcement agencies. These Vermont law enforcement agencies regularly receive equitable
2 sharing payments from the Treasury Forfeiture Fund and expect to receive comparable payments
3 in the future absent diversion to fund the construction of a wall.

4 174. The diversion of funding from the Treasury Forfeiture Fund will harm public
5 safety by impacting critical funding for these law enforcement agencies and their officers.

6 **PLAINTIFF COMMONWEALTH OF VIRGINIA**

7 175. The Commonwealth of Virginia is a sovereign state of the United States of
8 America.

9 176. The Commonwealth of Virginia brings this action by and through its Attorney
10 General, Mark R. Herring. The Attorney General has authority to represent the Commonwealth,
11 its departments, and its agencies in “all civil litigation in which any of them are interested.” Va.
12 Code Ann. § 2.2-507(A).

13 177. On information and belief, the Commonwealth of Virginia will be injured by the
14 diversion of funding from the Treasury Forfeiture Fund. The Commonwealth participates as an
15 equitable sharing partner in the Fund and, from 2013 to 2017, received over \$122 million in
16 distributions to state and local law enforcement. On information and belief, the announced
17 diversion of forfeiture funding will diminish the future funding available for the
18 Commonwealth’s participating law enforcement agencies, thereby decreasing the resources
19 available for future investigations to the detriment of the safety and welfare of Virginia’s citizens
20 and law enforcement officers.

21 178. On information and belief, the Commonwealth of Virginia will be injured by the
22 diversion of funding from the Treasury Forfeiture Fund. The Commonwealth participates as an
23 equitable sharing partner in the Fund and, in the past five years, has received over \$79 million in
24 distributions to state and local law enforcement. On information and belief, the announced
25 diversion of forfeiture funding will diminish the funding available for the Commonwealth’s
26 participating law enforcement agencies.

27 179. On information and belief, the Commonwealth of Virginia would likewise be
28 aggrieved if Defendants divert federal funding under the National Guard Drug Interdiction and

1 Prevention Program for use on a southern border wall. This loss of funding—to the tune of
2 approximately \$3 million for Virginia—to implement counter-narcotics and drug interdiction
3 measures would threaten the public safety of all Virginians.

4 **PLAINTIFF STATE OF WISCONSIN**

5 180. The State of Wisconsin is a sovereign state of the United States of America.

6 181. Governor Tony Evers is the chief executive officer of the State of Wisconsin and
7 has the duty to “take care that the laws be faithfully executed.” Wis. Const. art. V, §§ 1, 4. The
8 Governor is the commander-in-chief of the military and naval forces of the State, including the
9 Wisconsin National Guard. Wis. Const. art. V, § 1.

10 182. Attorney General Joshua L. Kaul is the chief legal officer of the State of
11 Wisconsin and has the authority to file civil actions to protect Wisconsin’s rights and interests.
12 *See Wis. Stat. § 165.25(1m)*. The Attorney General’s powers and duties include appearing for
13 and representing the State, on the governor’s request, “in any court or before any officer, any
14 cause or matter, civil or criminal, in which the state or the people of this state may be interested.”
15 Wis. Stat. § 165.25(1m).

16 183. The State of Wisconsin brings this action by and through its Attorney General,
17 Joshua L. Kaul.

18 184. In filing this action, the Attorney General seeks to redress and prevent injuries to
19 the State and its residents caused by Defendants’ illegal diversion of federal funds to build the
20 border wall. These injuries include harms to Wisconsin’s sovereign, quasi-sovereign, and
21 proprietary interests.

22 185. Wisconsin has an interest in protecting the State’s economy and security, as well
23 as the health, safety, and welfare of its residents.

24 186. Wisconsin has an interest in protecting its tax revenues, including those resulting
25 from economic activity in communities near military bases in Wisconsin.

26 187. On information and belief, Defendants’ diversion of funds for the border wall
27 includes over \$29 million in military construction funding for projects currently planned in
28 Wisconsin.

1 196. Defendant Department of Defense (“DOD”) is the federal agency to which
2 Congress has appropriated the military construction and drug interdiction funding implicated by
3 the President’s Executive Actions. Defendant DOD is an executive department of the United
4 States of America pursuant to 5 U.S.C. section 101, and a federal agency within the meaning of
5 28 U.S.C. section 2671. As such, it engages in agency action within the meaning of 5 U.S.C.
6 section 702, and is named as a defendant in this action pursuant to 5 U.S.C. section 702.

7 197. Defendant Patrick M. Shanahan, acting Secretary of Defense, oversees the DOD
8 and is responsible for the actions and decisions that are being challenged by Plaintiffs in this
9 action. Defendant Shanahan is sued in his official capacity pursuant to 5 U.S.C. section 702.

10 198. Defendant Mark T. Esper, Secretary of the Army, oversees the United States Army
11 within DOD, and is responsible for the actions and decisions that are being challenged by
12 Plaintiffs in this action. Defendant Esper is sued in his official capacity pursuant to 5 U.S.C.
13 section 702.

14 199. Defendant Richard V. Spencer, Secretary of the Navy, oversees the United States
15 Navy within DOD, and is responsible for the actions and decisions that are being challenged by
16 Plaintiffs in this action. Defendant Spencer is sued in his official capacity pursuant to 5 U.S.C.
17 section 702.

18 200. Defendant Heather A. Wilson, Secretary of the Air Force, oversees the United
19 States Air Force within DOD, and is responsible for the actions and decisions that are being
20 challenged by Plaintiffs in this action. Defendant Wilson is sued in her official capacity pursuant
21 to 5 U.S.C. section 702.

22 201. Defendant Department of the Treasury (the “Treasury”) is the federal agency
23 responsible for the Treasury Forfeiture Fund that is implicated by the President’s Executive
24 Actions. Defendant the Treasury is an executive department of the United States of America
25 pursuant to 5 U.S.C. section 101, and a federal agency within the meaning of 28 U.S.C. section
26 2671. As such, it engages in agency action within the meaning of 5 U.S.C. section 702, and is
27 named as a defendant in this action pursuant to 5 U.S.C. section 702.

28 202. Defendant Steven T. Mnuchin, Secretary of the Treasury, oversees the Treasury

1 and is responsible for the actions and decisions that are being challenged by Plaintiffs in this
2 action. Defendant Mnuchin is sued in his official capacity pursuant to 5 U.S.C. section 702.

3 203. Defendant Department of Homeland Security (“DHS”) is the federal agency
4 responsible for providing border security along the United States-Mexico border in a manner that
5 is consistent with the laws and Constitution of the United States. Defendant DHS is an executive
6 department of the United States of America pursuant to 5 U.S.C. section 101, and a federal
7 agency within the meaning of 28 U.S.C. section 2671. As such, it engages in agency action
8 within the meaning of 5 U.S.C. section 702, and is named as a defendant in this action pursuant to
9 5 U.S.C. section 702.

10 204. Defendant Kirstjen M. Nielsen, Secretary of DHS, oversees DHS and is
11 responsible for the actions and decisions that are being challenged by Plaintiffs in this action.
12 Defendant Nielsen is sued in her official capacity pursuant to 5 U.S.C. section 702.

13 205. Defendant Department of the Interior (“DOI”) is the federal agency responsible for
14 managing federal lands.

15 206. Defendant David Bernhardt, acting Secretary of the Interior, oversees the
16 Department of the Interior, and is responsible for the actions that are being challenged by
17 Plaintiffs in this action. Defendant Bernhardt is sued in his official capacity.

18 **FACTUAL ALLEGATIONS**

19 **I. PRESIDENT TRUMP HAS LONG CLAIMED THAT A “CRISIS” AT THE BORDER** 20 **REQUIRES BUILDING A BORDER WALL, BUT HAS NOT DECLARED A NATIONAL** 21 **EMERGENCY UNTIL NOW**

22 207. Dating back to at least August 2014, President Trump has advocated for a wall
23 along the southern border.¹⁵

24 208. In his speech announcing his candidacy for President in June 2015, President
25 Trump claimed that a border wall is needed to stop a tide of illegal immigration, and that he
26 would build it as President and have Mexico pay for the wall.¹⁶ In the same speech, he also

27 ¹⁵ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 5, 2014, 1:34 PM),
<https://tinyurl.com/ydre3ep>.

28 ¹⁶ Time, *Here’s Donald Trump’s Presidential Announcement Speech* (June 16, 2015),
<https://tinyurl.com/qzk4wrv>.

1 stated, “When Mexico sends its people, they’re not sending their best . . . They’re bringing drugs.
2 They’re bringing crime. They’re rapists.” This claim and his promise to build a wall and have
3 Mexico pay for it became a consistent theme of his campaign.

4 209. President Trump repeatedly stated that the border wall he planned to build would
5 help prevent terrorism, crime, and drug smuggling. For example, on October 4, 2014, President
6 Trump tweeted, “The fight against ISIS starts at our border. ‘At least’ 10 ISIS have been caught
7 crossing the Mexico border. Build a wall!”¹⁷ More recently, on February 3, 2019, President
8 Trump tweeted, “If there is no Wall, there is no Security. Human Trafficking, Drugs and
9 Criminals of all dimensions - KEEP OUT!”¹⁸

10 210. On July 13, 2016, President Trump tweeted, “We will build the wall and MAKE
11 AMERICA SAFE AGAIN!”¹⁹

12 211. On August 27, 2016, President Trump tweeted that “[h]eroin overdoses are taking
13 over our children and others in the MIDWEST. Coming in from our southern border. We need
14 strong border & WALL!”²⁰

15 212. In a speech shortly before the 2016 presidential election, President Trump stated
16 that “[o]n day one [of his Administration], we will begin working on an impenetrable, physical,
17 tall, power [sic], beautiful southern border wall” to “help stop the crisis of illegal crossings” and
18 “stop the drugs and the crime from pouring into our country.”²¹

19 213. As President, President Trump has continued to repeatedly mention the need for
20 the border wall and his intention to build it.

21 214. On January 27, 2017, President Trump discussed his proposed border wall with
22 Mexico’s then-President Enrique Peña Nieto, in which he reportedly pressured Mexico to pay for
23

24 ¹⁷ Donald J. Trump (@realDonaldTrump), Twitter (Oct. 8 2014, 2:26 PM),
25 <https://tinyurl.com/yxntlamo>.

26 ¹⁸ *Id.* (Feb. 3, 2019, 2:03 PM), <https://tinyurl.com/yywmw9yx>.

27 ¹⁹ *Id.* (Jul. 13, 2016, 2:56 PM), <https://tinyurl.com/gm8yty6>.

28 ²⁰ *Id.* (Aug. 27, 2016, 7:17 AM), <https://tinyurl.com/y3f6bp9s>.

²¹ N.Y. Times, *Transcript of Donald Trump’s Immigration Speech* (Sept. 1, 2016),
<https://tinyurl.com/yalom4hl>.

1 the border wall and stated that he “[has] been talking about it for a two-year period.”²²

2 215. On February 28, 2017, President Trump delivered an address to a joint session of
3 Congress in which he stated that in order to “restore integrity and the rule of law at our
4 borders . . . we will soon begin the construction of a great, great wall along our southern
5 border.”²³

6 216. Additional statements by President Trump regarding the border wall include a
7 campaign rally speech on August 22, 2017 (“[W]e are building a wall on the southern border
8 which is absolutely necessary.”),²⁴ and tweets on January 26, 2017 (“badly needed wall”),²⁵
9 February 23, 2018 (“MS-13 gang members are being removed by our Great ICE and Border
10 Patrol Agents by the thousands, but these killers come back in from El Salvador, and through
11 Mexico, like water. . . . We need The Wall!”),²⁶ June 21, 2018 (“We shouldn’t be hiring judges
12 by the thousands, as our ridiculous immigration laws demand, we should be changing our laws,
13 building the Wall, hire Border Agents and Ice [sic] and not let people come into our country
14 based on the legal phrase they are told to say as their password.”),²⁷ December 19, 2018
15 (“Because of the tremendous dangers at the Border, including large scale criminal and drug
16 inflow, the United States Military will build the Wall!”),²⁸ and December 31, 2018 (“I
17 campaigned on Border Security, which you cannot have without a strong and powerful Wall. Our
18 Southern Border has long been an ‘Open Wound,’ where drugs, criminals (including human
19 traffickers) and illegals would pour into our Country. Dems should get back here an [sic] fix
20 now!”).²⁹

21 ²² Greg Miller, *Trump Urged Mexican President to End His Public Defiance on Border*
22 *Wall, Transcript Reveals*, Wash. Post (Aug. 3, 2017), <https://tinyurl.com/y3gqdf2m>.

23 ²³ White House, *Remarks by President Trump in Joint Address to Congress* (Feb. 28,
2017), <https://tinyurl.com/y4kvpj7n>.

24 ²⁴ Time, *President Trump Ranted for 77 Minutes in Phoenix. Here’s What He Said* (Aug.
24 23, 2017), <https://tinyurl.com/ycxt2woc>.

25 ²⁵ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 26, 2017, 5:55 AM),
<https://tinyurl.com/zm26eaf>.

26 ²⁶ *Id.* (Feb. 23, 2018, 3:28 AM), <https://tinyurl.com/y9xypa55>.

27 ²⁷ *Id.* (June 21, 2018, 5:12 AM), <https://tinyurl.com/y3zaqk7d>.

28 ²⁸ *Id.* (Dec. 19, 2018, 5:43 AM), <https://tinyurl.com/y95cnd8r>.

²⁹ *Id.* (Dec. 31, 2018, 5:29 AM), <https://tinyurl.com/y6stmopr>.

1 217. Indeed, President Trump has made it clear that his plan to build the border wall
2 would go forward regardless of the actual need for one. During a speech to the National Rifle
3 Association, President Trump stated in the context of statistics showing a decrease in unauthorized
4 border crossings that “we will build the wall no matter how low this number gets or how this goes.
5 Don’t even think about it. Don’t even think about it.”³⁰

6 218. The salient facts regarding the ostensible “crisis” that President Trump repeatedly
7 invoked in these numerous statements have not significantly changed since his inauguration as
8 President in January 2017.

9 219. President Trump acknowledged this when he stated that the “emergency” at the
10 border “began a long time [ago],” citing 2014 as the beginning of the ostensible “crisis at the
11 border.”³¹

12 220. There is no evidence of change to the historic pattern of unauthorized immigrants
13 committing crimes at substantially lower rates than native-born Americans.³²

14 221. The federal government’s own data also show that the vast majority of the drugs
15 smuggled into the country that the President has singled out as dangerous (methamphetamine,
16 heroin, cocaine, and fentanyl)³³ continue to come through, not between, ports of entry.³⁴

17 222. There continues to be a lack of credible evidence that terrorists are using the
18 southern border as a means of entering the United States, as a State Department report produced
19 under the Trump Administration makes clear.³⁵

20 ³⁰ White House, *Remarks by President Trump at the National Rifle Association*
21 *Leadership Forum* (Apr. 28, 2017), <https://tinyurl.com/y5dtnaej>.

22 ³¹ White House, *Remarks by President Trump Before Marine One Departure* (Jan. 10,
2019), <https://tinyurl.com/yycew5dk>.

23 ³² See, e.g., Alex Nowrateh, *The Murder of Mollie Tibbetts and Illegal Immigrant Crime: The Facts*, Cato Institute (Aug. 22, 2018), <https://tinyurl.com/y5boc9me> (showing that “[t]he
24 illegal immigrant conviction rate for homicide was 44 percent below that of native-born
25 Americans in 2016 in Texas”) (emphasis in original).

26 ³³ White House, *President Donald J. Trump’s Address to the Nation on the Crisis at the*
27 *Border* (Jan. 8, 2019), <https://tinyurl.com/y5uloxyg>.

28 ³⁴ CBP, *CBP Enforcement Statistics FY2018*, <https://tinyurl.com/y9c4c6ft> (showing that
through August 2018, federal agents seized 88 percent of cocaine, 90 percent of heroin, 87
percent of methamphetamine, and 80 percent of fentanyl at ports of entry in this fiscal year).

³⁵ U.S. Dep’t of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2017*

1 223. In his own public statements, President Trump has made clear that his emergency
2 declaration was triggered by his inability to secure funding for the border wall from Congress
3 rather than an actual national emergency at the border.

4 224. When asked by the media about his plans to declare a national emergency relating
5 to the border wall, President Trump stated his preference for “do[ing] the deal through Congress,”
6 but that if the deal did not “work out” he would “almost . . . definitely” declare a national
7 emergency.³⁶ While he reiterated his claims that the volume of drugs, criminals, and gangs
8 coming through the border between ports of entry constituted a “crisis,” President Trump
9 repeatedly cited the ongoing impasse with Congress as his rationale for the emergency
10 declaration.³⁷

11 225. Around the same time, when asked by the media what his threshold was for
12 declaring a national emergency, President Trump responded, “My threshold will be if I can’t
13 make a deal with people that are unreasonable.”³⁸

14 226. On February 1, 2019, President Trump made clear in an interview that he was
15 planning to wait until February 15, the deadline for a congressional conference committee to avert
16 another government shutdown, before issuing an emergency declaration.³⁹ President Trump
17 claimed he was already building the border wall, and strongly implied that he needed neither
18 additional funding nor an emergency declaration to build it.⁴⁰

19 _____
20 205 (Sept. 2018), <https://tinyurl.com/y93n5fes>.

21 ³⁶ *Trump Remarks before Marine One Departure*, *supra* note 31.

22 ³⁷ *Id.*

23 ³⁸ George Sargent, *Trump: I Have the ‘Absolute Right’ to Declare a National Emergency*
24 *if Democrats Defy Me*, Wash. Post (Jan 9, 2018), <https://tinyurl.com/y4vmtezb>.

25 ³⁹ N.Y. Times, *Excerpt from Trump’s Interview with the New York Times* (Feb. 1, 2019),
26 <https://tinyurl.com/y9gsosk4>; see also CBS, *Transcript: President Trump on “Face the Nation”*
27 (Feb. 3, 2019), <https://tinyurl.com/y8l38g72> (President Trump describing emergency declaration
28 as an “alternative” to the process that Congress was engaged in to avert another shutdown, which
was to end on February 15).

⁴⁰ *New York Times Interview*, *supra* note 39 (President Trump stating: “I’m building the
wall right now. . . . it’s been funded We’ll be up to, by the end of this year, 115 miles
At least And that doesn’t include large amounts of wall that we’ll be starting before the end
of the year. So we’ll be up to hundreds of miles of wall between new wall and renovation wall in
a fairly short period of time And I’ll continue to build the wall, and we’ll get the wall

1 227. During a press conference that same day, when asked whether he would consider
2 other options besides the emergency declaration, President Trump stated that “we will be looking
3 at a national emergency, because I don’t think anything is going to happen [in Congress]. I think
4 the Democrats don’t want border security.”⁴¹ President Trump also repeated his view that the
5 wall was already being built “with funds that are on hand . . . we’re building a lot of wall right
6 now, as we speak . . . [a]nd we’re getting ready to hand out some very big contracts with money
7 that we have on hand and money that comes in.”⁴²

8 **II. CONGRESS HAS APPROPRIATED LIMITED FUNDING TOWARD A BORDER BARRIER**
9 **AND NO FUNDING TOWARD PRESIDENT TRUMP’S PROPOSED BORDER WALL**

10 228. Congress has exercised its Article I powers by appropriating funds for the
11 construction of border barriers and related infrastructure when Congress deemed it appropriate.
12 During the period of 2005 through 2011, Congress appropriated funding for the construction of
13 hundreds of miles of border barriers.⁴³ Currently, there is a total of 705 miles of primary,
14 secondary, or tertiary fencing along 654 miles of the southwest border.⁴⁴

15 229. In the 115th Congress, between 2017 and 2018, Congress considered, but
16 repeatedly declined to adopt, legislation appropriating funding for President Trump’s proposed
17 border wall.⁴⁵

18 _____
19 finished. Now whether or not I declare a national emergency, that you’ll see”); *see also* Donald J.
20 Trump (@realDonaldTrump), Twitter (Jan. 31, 2019, 9:43 AM), <https://tinyurl.com/y56tevok>
21 (“Wall is being built!”).

22 ⁴¹ White House, *Remarks by President Trump in Meeting on Human Trafficking on the*
23 *Southern Border* (Feb. 1, 2019), <https://tinyurl.com/y5ghp3eh>.

24 ⁴² *Id.*

25 ⁴³ Gov’t Accountability Office, *Additional Actions Needed to Better Assess Fencing’s*
26 *Contributions to Operations and Provide Guidance for Identifying Capability Gaps*, GAO-17-
27 331 (Feb. 16, 2017), at 7-10, <https://tinyurl.com/yaqbny6e>; Gov’t Accountability Office, *Secure*
28 *Border Initiative Fence Construction Costs*, GAO-09-244R (Jan. 29, 2009), at 4-11,
<https://tinyurl.com/y2kgef5>.

⁴⁴ U.S. Border Patrol, *Mileage of Pedestrian and Vehicle Fencing by State* (Aug. 2, 2017),
<https://tinyurl.com/y6f27h4e>.

⁴⁵ *See, e.g.*, The WALL Act of 2018, S. 3713, 115th Cong. (2018) (proposed \$25 billion
appropriation for border wall; no committee action); 50 Votes for the Wall Act, H.R. 7073, 115th
Cong. (2018) (proposed \$25 billion appropriation for funding for border wall; no committee
action); Build the Wall, Enforce the Law Act of 2018, H.R. 7059, 115th Cong. (2018) (proposed

1 230. Near the end of the 115th Congress, Congress worked on a funding bill before the
2 December 22, 2018 deadline when federal funding ran out for a number of federal departments.
3 On December 11, 2018, President Trump held a televised meeting with the Democratic leaders of
4 Congress (then-House Minority Leader Nancy Pelosi and Senate Minority Leader Chuck
5 Schumer) to discuss the funding deadline. At that meeting, President Trump said he wanted \$5
6 billion to build a portion of the border wall. President Trump said at that meeting, “If we don’t
7 get what we want one way or the other, whether it’s through you, through a military, through
8 anything you want to call, I will shut down the government, absolutely.” President Trump
9 reiterated that he would be “proud to shut down the government for border security.” At the
10 meeting, Leaders Schumer and Pelosi said they disagreed with the President on providing funding
11 for the border wall.⁴⁶

12 231. On December 19, 2018, the Senate passed by voice vote a bill to fund the
13 government through February 8, 2019 that did not include any funding for a border wall.
14 Department of Defense Appropriations Act of 2018, H.R. 695, 115th Cong. (2018).

15 232. After the Senate passed the temporary funding bill, on December 20, 2018,
16 President Trump announced that “I’ve made my position very clear. Any measure that funds the
17 government must include border security,” which he clarified must include funding for a wall.⁴⁷

18
19 \$16.6 billion appropriation for border wall; no committee action); Fund and Complete the Border
20 Wall Act, H.R. 6657, 115th Cong. (2018) (proposed authorization of funding for border wall; no
21 committee action); American Border Act, H.R. 6415, 115th Cong. (2018) (proposed \$16.6 billion
22 appropriation for border wall; no committee action); Border Security and Immigration Reform
23 Act of 2018, H.R. 6136, 115th Cong. (2018) (proposed \$16.6 billion appropriation for border
24 wall; voted down by House 301 to 121); Securing America’s Future Act of 2018, H.R. 4760,
25 115th Cong. (2018) (proposed construction of physical barrier, including border wall; voted down
26 by House 231-193); Border Security and Deferred Action Recipient Relief Act, S. 2199, 115th
27 Cong. (2017) (proposal to make available \$38.2 million for planning for border wall construction;
28 no action in Senate); Make America Secure Appropriations Act, H.R. 3219, 115th Cong. (2017)
(proposed \$38.2 million appropriation for border wall; passed House of Representatives, but no
action by Senate).

⁴⁶ CSPAN, *President Trump Meeting with Democratic Leaders* (Dec. 11, 2018),
<https://tinyurl.com/yca1rz3x>.

⁴⁷ CNN, *Trump: “I’ve Made My Position Very Clear” on Spending Bill* (Dec. 20, 2018),
<https://tinyurl.com/yy9cvzdd>.

1 233. On December 20, 2018, the House of Representatives approved a short-term
2 funding bill appropriating \$5.7 billion for “U.S. Customs and Border Protection – Procurement,
3 Construction, and Improvements.” Department of Defense Appropriations Act of 2018, H.R.
4 695, 115th Cong. (2018). The Senate never passed the House-approved version of the legislation.

5 234. With no agreement between Congress and the President on funding, on December
6 22, 2018, the federal government partially shut down.

7 235. On January 3, 2019, Nancy Pelosi became Speaker of the House. The day before,
8 Speaker Pelosi reiterated in a televised interview that the House would be providing “[n]othing
9 for the wall.”⁴⁸ On January 3, the House of Representatives approved a short-term funding bill
10 without any funding for a border wall. Consolidated Appropriations Act of 2019, H.R. 21, 116th
11 Cong. (2019). The Senate never passed the House-approved version of the legislation.

12 236. The Office of Management and Budget formally requested \$5.7 billion from
13 Congress for the border wall on January 6, 2019.⁴⁹

14 237. On January 19, 2019, President Trump addressed the nation regarding the partial
15 government shutdown and laid out his immigration proposal. In his remarks, he repeated his
16 unsupported claims of an immigration enforcement crisis at the border in connection with his
17 continued proposal for \$5.7 billion in funding for a wall, stating that “[a]s a candidate for
18 president, I promised I would fix this crisis, and I intend to keep that promise one way or the
19 other.”⁵⁰

20 238. When he announced the congressional agreement that ended the government
21 shutdown on January 25, 2019, President Trump stated: “If we don’t get a fair deal from
22 Congress, the government will either shut down on February 15th, again, or I will use the powers
23 afforded to me under the laws and the Constitution of the United States to address this
24

25 ⁴⁸ Tal Axelrod, *Pelosi on Negotiations with Trump: “Nothing for the Wall”*, The Hill,
26 (Jan. 2, 2019), <https://tinyurl.com/y77o89hp>.

27 ⁴⁹ Letter from Russell T. Vought, Acting Director, Off. of Mgmt. and Budget, to Sen.
28 Richard Shelby (Jan. 6, 2019), <https://tinyurl.com/y224y59q>.

⁵⁰ White House, *Remarks by President Trump on the Humanitarian Crisis on our
Southern Border and the Shutdown* (Jan. 19, 2019), <https://tinyurl.com/y7gdj6s8>.

1 emergency.”⁵¹

2 239. After weeks of negotiation, on February 14, 2019, Congress passed the
3 Consolidated Appropriations Act, 2019 (H.J. Res. 31) (the “2019 Appropriations Act”). The
4 2019 Appropriations Act provides \$1.375 billion for “construction of primary pedestrian fencing,
5 including levee pedestrian fencing, in the Rio Grande Valley Sector” of the border. H.J. Res. 31
6 § 230(a)(1). That is the only funding in the 2019 Appropriations Act that Congress designated for
7 the construction of a barrier.

8 240. The 2019 Appropriations Act also imposes limitations on how the fencing may be
9 constructed. The amount designated for fencing in the Rio Grande Valley Sector “shall only be
10 available for operationally effective designs deployed as of the date of the Consolidated
11 Appropriations Act, 2017 (Public Law 115-31), such as currently deployed steel bollard designs,
12 that prioritize agent safety.” *Id.* § 230(b). The Consolidated Appropriations Act of 2017 was
13 enacted on May 5, 2017. *See* Pub. L. No. 115-31. Thus, the 2019 Appropriations Act authorized
14 fencing only using designs already “deployed” nearly two years ago. The Consolidated
15 Appropriations Act of 2017 likewise does not authorize the construction of a concrete or any
16 other solid wall. *Id.*

17 241. Congress made clear its intent that it was not appropriating any funding toward the
18 construction of a wall. Senator Patrick Leahy, Vice Chairman of the Senate Appropriations
19 Committee, who was actively involved in negotiations on the 2019 Consolidated Appropriations
20 Act, stated, “The agreement does not fund President Trump’s wasteful wall.” 165 Cong. Rec.
21 S1362 (daily ed. Feb 14, 2019). Senator Schumer, the Senate Minority Leader, noted that, “The
22 agreement will provide smart border security, increasing support for technologies at our ports of
23 entry. It will not fund the President’s expensive, ineffective wall.” 165 Cong. Rec. S1363 (daily
24 ed. Feb. 14, 2019). The congressional record in the House of Representatives is no different.
25 *See, e.g.*, 165 Cong. Rec. H2019 (daily ed. Feb. 14, 2019) (statement of Rep. Price) (“This
26 agreement denies the President billions of dollars for an unnecessary wall.”); 165 Cong. Rec.

27 _____
28 ⁵¹ White House, *Remarks by President Trump on the Government Shutdown* (Jan. 25,
2019), <https://tinyurl.com/y4mplplb>.

1 H2020 (daily ed. Feb. 14, 2019) (statement of Rep. Aguilar) (“What this bill will not do is . . .
2 fund the President’s wall from sea to shining sea, a wall that he said Mexico would pay for.”).

3 242. On February 15, 2019, President Trump signed the 2019 Consolidated
4 Appropriations Act into law.

5 **III. PRESIDENT TRUMP’S EXECUTIVE ACTION AND EMERGENCY DECLARATION**

6 243. That same day, the Trump Administration announced that the President was taking
7 Executive Action to redirect funding beyond what was appropriated by Congress toward
8 construction of a border wall. The Administration outlined specific plans for the diversion of an
9 additional \$6.7 billion “that will be available to build the border wall once a national emergency
10 is declared and additional funds have been reprogramed.”⁵² The Administration identified the
11 following funding for diversion to “be used sequentially”:

- 12 • \$601 million from the Treasury Forfeiture Fund;
- 13 • Up to \$2.5 billion under the Department of Defense funds transferred for Support for
14 Counterdrug Activities (10 U.S.C. § 284); and
- 15 • Up to \$3.6 billion reallocated from Department of Defense military construction projects
16 under the President’s declaration of a national emergency (10 U.S.C. § 2808).⁵³

17 244. In conjunction with that announcement, the President also declared a national
18 emergency under the National Emergencies Act claiming that there is a “border security and
19 humanitarian crisis that threatens core national security interests and constitutes a national
20 emergency.” The Emergency Declaration claimed that the border is an entry point for “criminals,
21 gang members, and illicit narcotics.”⁵⁴ The Emergency Declaration continues: “The problem of
22 large-scale unlawful migration through the southern border is long-standing, and despite the
23 executive branch’s exercise of existing statutory authorities, the situation has worsened in certain
24 respects in recent years. In particular, recent years have seen sharp increases in the number of

25 ⁵² White House, *President Donald J. Trump’s Border Security Victory* (Feb. 15, 2019),
26 <https://tinyurl.com/y3empmay>.

27 ⁵³ *Id.*

28 ⁵⁴ Declaring a National Emergency Concerning the Southern Border of the United States,
84 Fed. Reg. 4949 (Feb. 15, 2019).

1 family units entering and seeking entry to the United States and an inability to provide detention
2 space for many of these aliens while their removal proceedings are pending.”⁵⁵ The Emergency
3 Declaration concludes that the difficulty in removing these family units justifies the declaration,
4 but it does not make any connection to how the entry of these family units into the United States
5 contributes to the flow of “criminals, gang members, and illicit narcotics” into the country.⁵⁶

6 245. The President invoked the National Emergencies Act and declared that the
7 “emergency requires use of the Armed Forces” and “that the construction authority provided in
8 section 2808 of title 10, United States Code, is invoked and made available, according to its
9 terms, to the Secretary of Defense, and at the discretion of the Secretary of Defense, to the
10 Secretaries of the military departments.”

11 246. The Emergency Declaration directs the Secretary of Defense or the Secretary of
12 relevant military departments to “order as many units or members of the Ready Reserve to active
13 duty as the Secretary concerned, in the Secretary’s discretion, determines to be appropriate to
14 assist and support the activities of the Secretary of Homeland Security at the southern border.”⁵⁷
15 The Emergency Declaration acknowledges that DOD had previously “provided support and
16 resources to the Department of Homeland Security at the southern border” pursuant to President
17 Trump’s April 4, 2018 memorandum.⁵⁸

18 247. The Emergency Declaration further directs the Secretaries of Defense, Interior,
19 and Homeland Security to “take all appropriate actions, consistent with applicable law, to use or
20 support the use of the authorities herein invoked.”⁵⁹

21 248. At a press conference announcing the Executive Actions, President Trump
22 acknowledged that Congress provided more than enough funding for homeland security, and that
23 the Administration has “so much money, we don’t know what to do with it.” In explaining his
24 rationale for the Executive Actions, the President candidly admitted that the emergency

25 ⁵⁵ *Id.*

26 ⁵⁶ *Id.*

27 ⁵⁷ *Id.* § 1.

28 ⁵⁸ *Id.*

⁵⁹ *Id.* § 2.

1 declaration reflected his personal preference to construct the wall more quickly, rather than an
2 actual urgent need for it to be built immediately: “I could do the wall over a longer period of time.
3 I didn’t need to do this. But I’d rather do it much faster.”⁶⁰

4 249. Following the announcement of the Executive Actions, Defendants announced
5 their plans in more specific detail. Based on information and belief, on February 15, 2019, the
6 Treasury notified Congress that it would be transferring \$242 million from the Treasury
7 Forfeiture Fund to DHS to support law enforcement border security efforts conducted by CBP to
8 be available for obligation as of March 2, 2019, with the remaining \$359 million to be transferred
9 and available for obligation at a later date.

10 250. On February 26, 2019, the White House released a “fact sheet” indicating that in
11 order to accommodate the Executive Action’s directive to use \$2.5 billion from DOD’s drug
12 interdiction account toward construction of a border wall, DOD “will augment existing
13 counterdrug funds” through the Department’s transfer authority provided in section 8005 of the
14 FY2019 Department of Defense Appropriations Act, P.L. No. 115-245.⁶¹ Based on information
15 and belief, DOD has informed Congress that it immediately plans to divert \$1 billion in
16 “underutilized” funds that were appropriated for military pay and pensions for the construction of
17 the border wall.⁶²

18 **IV. LEGAL BACKGROUND**

19 **A. The National Emergencies Act (50 U.S.C. §§ 1601-1651)**

20 251. The National Emergencies Act (“NEA”), Pub. L. 94-412, 90 Stat. 1255, codified at
21 50 U.S.C. sections 1601-1651, was enacted by Congress in 1976 to rein in, rather than expand,
22 the power of the president. The NEA was designed to “insure” that the president’s
23 “extraordinary” emergency powers would “be utilized only when emergencies actually exist.” S.
24 Rep. No. 94-1168, at 2 (1976). Senator Frank Church, who was instrumental in the development

25 _____
26 ⁶⁰ White House, *Remarks by President Trump on the National Security and Humanitarian*
Crisis on our Southern Border (Feb. 15, 2019), <https://tinyurl.com/y3jenqeu>.

27 ⁶¹ White House, *The Funds Available to Address the National Emergency at Our Border*
(Feb. 26, 2019), <https://tinyurl.com/y3yu3pr8>.

28 ⁶² Andrew Taylor and Lisa Mascaro, *Pentagon May Tap Military Pay, Pensions for*
Border Wall, ABC News (Mar. 7, 2019), <https://tinyurl.com/y5pg7wtv>.

1 of the NEA, testified before the Senate Committee of Government Operations “that the President
2 should not be allowed to invoke emergency authorities or in any way utilize the provisions of this
3 Act for frivolous or partisan matters, nor for that matter in cases where important but not
4 ‘essential’ problems are at stake.” *Hearing on H.R. 3884 Before the S. Comm. of Governmental*
5 *Operations*, 94th Cong. 7 (1976) (statement of Sen. Frank Church). Senator Church continued
6 that “[t]he Committee intentionally chose language which would make clear that the authority of
7 the Act was to be reserved for matters that are ‘essential’ to the protection of the Constitution and
8 the people.” *Id.*

9 252. The NEA allows the president to utilize emergency powers, as authorized by
10 Congress in other federal statutes, when there is a national emergency, and one has been declared.
11 50 U.S.C. § 1621.

12 253. Under the NEA, the president must specify the statutory emergency authorities he
13 intends to invoke upon issuing a national emergency. He must also publish the proclamation of a
14 national emergency in the Federal Register and transmit it to Congress. 50 U.S.C. § 1631.

15 254. The NEA sets out a procedure whereby Congress may terminate the national
16 emergency if a resolution is passed by both houses of Congress and becomes law. 50 U.S.C. §
17 1622. This procedure requires that the joint resolution be signed into law by the President, or if
18 vetoed by the President, that Congress overrides the veto with a two-thirds vote in both chambers
19 of Congress.

20 255. On February 26, 2019, the House of Representatives passed H.J. Res. 46
21 terminating the Emergency Declaration by a vote of 245 to 182. The Senate has yet to act on the
22 resolution. President Trump has vowed to veto any resolution by Congress terminating the
23 Emergency Declaration.⁶³

24 **B. Section 2808’s Emergency Military Construction Authority (10 U.S.C.**
25 **§ 2808)**

26 256. The President seeks to reallocate “[u]p to \$3.6 billion . . . from Department of

27 ⁶³ Phil Helsel, *Trump Says He Will Veto Resolution Terminating National Emergency*,
28 NBC News (Feb. 28, 2019), <https://tinyurl.com/y2a53xrz>.

1 Defense military construction projects under the President’s declaration of a national
2 emergency.”⁶⁴

3 257. Section 2808 states that when the president declares a national emergency “that
4 requires use of the armed forces,” the Secretary of Defense may “undertake military construction
5 projects . . . not otherwise authorized by law that are necessary to support such use of the armed
6 forces.” 10 U.S.C. § 2808(a).

7 258. Section 2808 limits the funds available for emergency military construction to “the
8 total amount of funds that have been appropriated for military construction . . . that have not been
9 obligated.” *Id.*

10 259. “Military construction” under Section 2808 includes “any construction,
11 development, conversion, or extension of any kind carried out with respect to a military
12 installation,” and “military installation” includes a “base, camp, post, station, yard, center, or
13 other activity under the jurisdiction of the Secretary of a military department.” 10 U.S.C. § 2801.

14 **C. Section 284’s Authority to Support Counter-Drug Activities (10 U.S.C.
15 § 284) and Section 8005’s Transfer Authority**

16 260. The President seeks to use “[u]p to \$2.5 billion under the Department of Defense
17 funds transferred for Support for Counterdrug Activities.”⁶⁵ Defendants intend to transfer up to
18 \$2.5 billion from other DOD accounts into the Department’s account for counterdrug activities in
19 order to satisfy that directive.⁶⁶

20 261. Section 284 authorizes the Secretary of Defense to assist civilian law enforcement
21 with drug enforcement activities. 10 U.S.C. § 284. It states that the Secretary of Defense “may
22 provide support for the counterdrug activities or activities to counter transnational organized
23 crime” of any law enforcement agency. Such support may include “[c]onstruction of roads and
24 fences and installation of lighting to block drug smuggling corridors across international
25

26 ⁶⁴ *President Donald J. Trump’s Border Security Victory*, *supra* note 43 (citing 10 U.S.C. §
27 2808).

27 ⁶⁵ *Id.* (citing 10 U.S.C. § 284).

28 ⁶⁶ *Funds Available to Address the National Emergency at Our Border*, *supra* note
61(citing section 8005 of the FY2019 Department of Defense Appropriations Act).

1 boundaries of the United States.” *Id.*

2 262. Use of Section 284 is not dependent on the president declaring a national
3 emergency.

4 263. Congress has appropriated funding for interdiction and counterdrug activities to
5 the DOD. For instance, in FY2019, Congress appropriated \$217,178,000 for National Guard
6 counterdrug programs subject to specific limitations on how the Administration may expend these
7 funds.⁶⁷ That funding is intended to support counterdrug operations at all levels of government,
8 including on a state-wide basis.⁶⁸ According to a U.S. Government Accountability Office
9 analysis, National Guard Counterdrug Program funding was planned for all fifty states plus
10 Washington, D.C., Puerto Rico, the U.S. Virgin Islands, and Guam.⁶⁹

11 264. Section 8005 of the FY2019 Department of Defense Appropriations Act, P.L. No.
12 115-245 provides that “[u]pon determination by the Secretary of Defense that such action is
13 necessary in the national interest, he may, with the approval of the Office of Management and
14 Budget, transfer not to exceed \$4,000,000,000 of working capital funds of the Department of
15 Defense or funds made available in this Act to the Department of Defense for military functions
16 (except military construction) between such appropriations or funds or any subdivision thereof, to
17 be merged with and to be available for the same purposes and for the same time period, as the
18 appropriation or fund to which transferred.”

19 265. The “funds made available” in the FY2019 Department of Defense Appropriations
20 Act includes those funds for the States’ national guards such as over \$8.6 billion appropriated for
21 Army National Guard personnel, almost \$3.7 billion appropriated for Air Force National Guard
22 personnel, over \$7.1 billion appropriated for Army National Guard operations and maintenance,
23 over \$6.4 billion appropriated for Air Force National Guard operations and maintenance, and \$1.3

24 ⁶⁷ Department of Defense and Labor, Health and Human Services, and Education
25 Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 (Sept.
26 28, 2018).

26 ⁶⁸ Nat’l Guard, National Guard Counterdrug Program, <https://tinyurl.com/yx9whzd8> (last
27 visited Feb. 17, 2019).

27 ⁶⁹ Gov’t Accountability Off., *Drug Control, DOD Should Improve Its Oversight of the*
28 *National Guard Counterdrug Program*, GAO-19-27 (Jan. 2019), <https://tinyurl.com/y4e6ocra>.

1 billion for procurement items for the reserve components of the Armed Forces, including the
2 National Guard.⁷⁰

3 266. Section 8005’s transfer authority is subject to several conditions, including
4 “prompt” notification to Congress. In addition, the Section 8005 transfer authority “may not be
5 used unless for higher priority items, based on unforeseen military requirements, than those for
6 which originally appropriated and in no case where the item for which funds are requested has
7 been denied by Congress.”

8 267. Defendants have not explained how diversion of DOD funds toward construction
9 of a border wall would “block drug smuggling corridors” as contemplated by 10 U.S.C. section
10 284. Neither have Defendants explained how transferring funding for a border wall is for a
11 “higher priority item” nor an “unforeseen military requirement.” Defendants have not provided
12 an explanation, nor could they, as to how diverting funding toward construction of a border wall
13 would not be transferring funds for a project for which Congress has already denied funding.

14 **D. Authority to Transfer Funds from Treasury Forfeiture Fund (31 U.S.C. §**
15 **9705)**

16 268. The President seeks to use “about \$601 million” from the Department of the
17 Treasury’s Forfeiture Fund.⁷¹

18 269. Section 9705(g)(4)(B) provides that after reserves and required transfers, the
19 Treasury Forfeiture Fund’s “unobligated balances . . . shall be available to the Secretary . . . for
20 obligation or expenditure in connection with the law enforcement activities of any Federal
21 agency. . . .”

22 270. Defendants have not provided any explanation justifying the diversion of funding
23 from the Treasury Forfeiture Fund toward construction of the border wall. Specifically,
24 Defendants have not provided any explanation to warrant using Treasury Forfeiture Funds for the
25 construction of a border wall as opposed to reimbursing the Plaintiffs States’ outstanding claims
26 from the Treasury Forfeiture Fund.

27 _____
28 ⁷⁰ H.R. 6157, 115th Cong. § 4 (2019).

⁷¹ *Border Security Victory*, *supra* note 52.

1 **E. National Environmental Policy Act (“NEPA”)**

2 271. NEPA, 42 U.S.C. section 4321 et seq., is the “basic national charter for protection
3 of the environment.” 40 C.F.R. § 1500.1 (a). NEPA contains several action-forcing procedures,
4 most significantly the mandate to prepare an environmental impact statement (“EIS”) on major
5 federal actions “significantly affecting the quality of the human environment.” *Robertson v.*
6 *Methow Valley Citizen Council*, 490 U.S. 332, 348 (1989) (citing 42 U.S.C. § 4332 (2)(C)).

7 272. NEPA requires federal agencies to consider several factors relating to the
8 “intensity” of the project, including: the “[u]nique characteristics of the geographic area such as
9 proximity to . . . ecologically critical areas” (40 C.F.R. § 1508.27(3)); “[t]he degree to which the
10 action may adversely affect an endangered or threatened species or its habitat that has been
11 determined to be critical under the Endangered Species Act of 1973” (40 C.F.R. § 1508.27(9));
12 and “[w]hether the action threatens a violation of Federal, State, or local law or requirements
13 imposed for the protection of the environment.” 40 C.F.R. § 1508.27(10).

14 273. “NEPA requires that the evaluation of a project’s environmental consequences
15 take place at an early stage in the project’s planning process.” *State of California v. Block*, 690
16 F.2d 753, 761 (9th Cir. 1982) (citation omitted). A proposal subject to NEPA exists where an
17 agency has a goal and is actively preparing to make a decision on the alternatives in
18 accomplishing that goal, regardless of whether the agency declares that such a proposal exists:
19 “An agency shall commence preparation of an environmental impact statement as close as
20 possible to the time the agency is developing or is presented with a proposal.” 40 C.F.R. §
21 1502.5. A “[p]roposal exists at that stage in the development of an action when an agency subject
22 to the Act has a goal and is actively preparing to make a decision on one or more alternative
23 means of accomplishing that goal and the effects can be meaningfully evaluated.” 40 C.F.R. §
24 1508.23.

25 **V. THERE IS NO IMMIGRATION ENFORCEMENT “CRISIS” OR “INVASION” AT THE**
26 **SOUTHERN BORDER TO SUPPORT THE DECLARATION OF EMERGENCY**

27 **A. There Is No Evidence That a Massive Influx of Migrants Is Overwhelming**
28 **Government Resources at the Southern Border**

274. President Trump’s continued claim that an unprecedented flood of migrants is

1 causing an immigration enforcement crisis amounting to a “national emergency” is not supported
2 by the facts.⁷²

3 275. As CBP statistics show, apprehensions at the border in recent months—while they
4 show increases stemming from an increase in migrant families seeking asylum—are well within
5 the historic range.⁷³

6 276. In recent years, apprehensions at the southwest border have been near historic
7 lows, with fewer than 400,000 apprehensions in FY2018 compared to over 1.6 million in
8 FY2000.⁷⁴

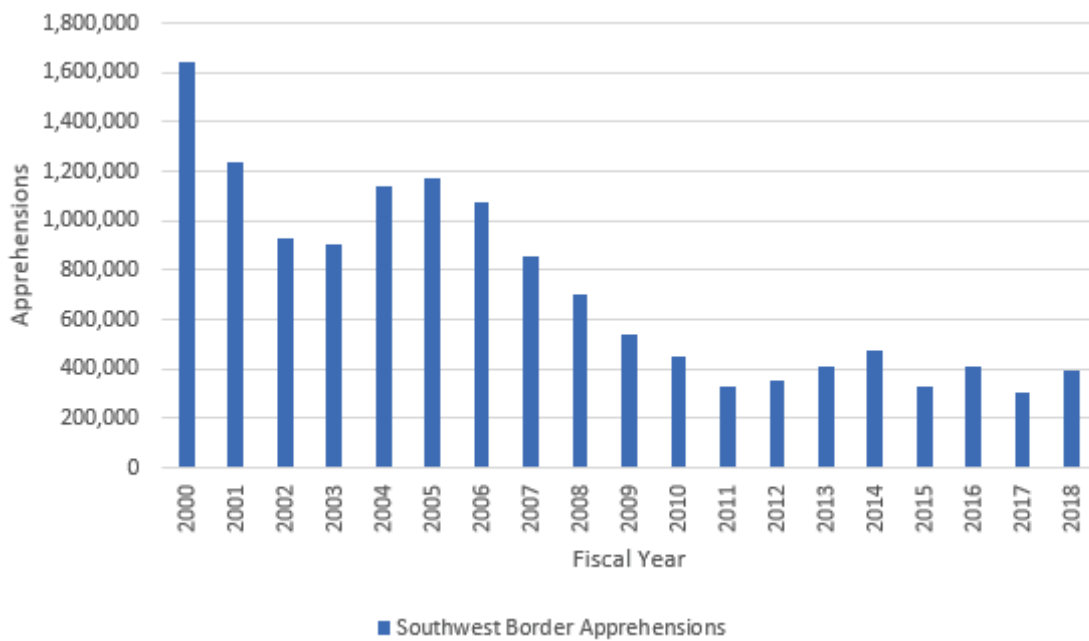
9 277. In FY2017, CBP made the fewest apprehensions since FY2000, and the number of
10 apprehensions in FY2018 was the fifth lowest since FY2000.⁷⁵

21 ⁷² See 165 Cong. Rec. S1412 (daily ed. Feb. 25, 2019) (joint declaration of 58 former
22 United States senior government national security, defense, and diplomatic officials, including
23 former Cabinet Secretaries Madeline Albright, Chuck Hegel, John Kerry, and Leon Panetta,
hereafter “Former Gov’t Officials Decl.”) (stating that “there is no evidence of a sudden or
emergency increase in the number of people seeking to cross the southern border”).

24 ⁷³ CBP, *Southwest Border Migration FY2019*, <https://tinyurl.com/CBP-app-2019> (last
visited Feb. 17, 2019).

25 ⁷⁴ CBP, *Nationwide Illegal Alien Apprehensions Fiscal Years 1925-2017*,
26 <https://tinyurl.com/y2kysbr8> (last visited Feb. 17, 2019) (also showing over 1 million
27 apprehensions in each of fiscal years 1954, 1983-87, 1990-99, 2001, 2004-06, as well as over
800,000 apprehensions in each of fiscal years 1953, 1977-79, 1981-82, 1988-89, 2002, 2003, and
2007).

28 ⁷⁵ *Id.* (also the source of data for the graph included herein).



278. During this same time span, there were dramatic increases in the number of Border Patrol agents utilized to patrol the southwest border between the ports of entry. From 2000 to 2017, CBP increased its Border Patrol agent staffing nationwide by 111 percent, from 9,212 to 19,437 agents. CBP increased the number of Border Patrol agents assigned to the southwest border sectors by nearly 94 percent, from 8,580 to 16,605 agents during the 2000-2017 time period.⁷⁶

279. The number of Border Patrol agents have significantly increased over the past two decades, while illegal border crossings have dropped, causing the average annual number of apprehensions made by each Border Patrol agent to drop by almost 91 percent, from 192 in FY2000 to only 18 in FY2017.⁷⁷

280. The Border Patrol’s budget has also significantly increased during this period, with Congress’ appropriations increasing from \$1.055 billion in FY2000 to \$3.805 billion in FY2017, an increase of over 260 percent.⁷⁸

⁷⁶ CBP, *Border Patrol Agent Nationwide Staffing by Fiscal Year*, <https://tinyurl.com/yyazdqm7> (last visited Feb. 17, 2019).

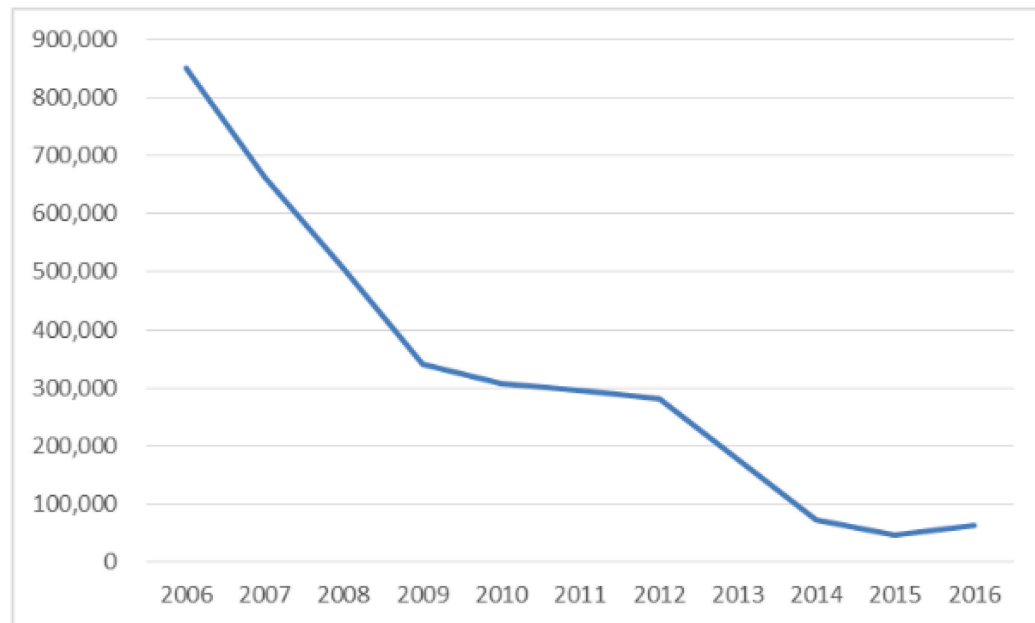
⁷⁷ *Id.*; CBP, *Total Illegal Alien Apprehensions by Fiscal Year*, <https://tinyurl.com/y73mzshs> (last visited Feb. 17, 2019).

⁷⁸ CBP, *Enacted Border Patrol Program Budget by Fiscal Year*,

1 281. In September 2017, DHS published a report in which it concluded that “the
2 southwest land border is more difficult to illegally cross today than ever before.”⁷⁹

3 282. This difficulty is borne out in the precipitous drop in undetected unlawful entries,
4 which, as a 2018 DHS study estimated, “fell from approximately 851,000 to nearly 62,000
5 [between FY2006 and 2016], a 93 percent decrease.”⁸⁰

6 **Figure 2: Estimated Southwest Border Undetected Unlawful Entries, FY 2006 – FY 2016**



17

18 283. That same DHS report contained data showing that probability of detection
19 markedly increased during this time period, “from 70 percent in FY2006 (when an estimated 2.0
20 million unlawful border crossers were detected out of an estimated 2.9 million total unlawful
21 border crossers) to 91 percent in FY2016 (611,000 detected out of 673,000 total estimated
22 unlawful border crossers).”⁸¹

23 284. In general, the undocumented population in the United States has dropped

24

25 <https://tinyurl.com/yxw4bj4b> (last visited Mar. 12, 2019).

26 ⁷⁹ DHS, Off. of Immigr. Stats., *Efforts by DHS to Estimate Southwest Border Security between Ports of Entry* (Sept. 2017), <https://tinyurl.com/y9gbn5js>.

27 ⁸⁰ DHS, *Border Security Metrics Report* (May 1, 2018), <https://tinyurl.com/y2p96d2o>
(2016 is the most recent year for which this data is available).

28 ⁸¹ *Id.*

1 significantly in recent years, falling by about 1 million between 2010 and 2017.⁸²

2 285. The overall characteristics of individuals who are apprehended at the southwest
3 border have changed significantly, from predominantly adult male Mexican nationals entering the
4 United States alone, to increasing numbers of families from Central America.⁸³ Many of these
5 migrant families are requesting asylum upon entry into the United States.⁸⁴

6 286. The Director of National Intelligence’s most recent “Worldwide Threat
7 Assessment” (“DNI Report”) was produced on January 29, 2019. That report discusses several
8 topics germane to the Emergency Declaration, including migration, terrorism, and transnational
9 crime (including human and drug trafficking).⁸⁵

10 287. While the DNI Report notes that “high crime rates and weak job markets will spur
11 additional United States-bound migrants from the Northern Triangle—El Salvador, Guatemala,
12 and Honduras,” the report contains no mention of a security threat at the southwest border.⁸⁶ The
13 report also discusses “transnational organized crime” as a driver of migration,⁸⁷ consistent with
14 research by federal officials indicating that most migrants from the Northern Triangle are “fleeing
15 violence at home” and seeking to claim asylum in the United States.⁸⁸

16 288. At the January 29, 2019, hearing of the Senate Intelligence Committee where the
17 report was presented, the heads of the Office of the Director of National Intelligence (DNI),
18 Federal Bureau of Investigation, and Central Intelligence Agency—all appointed by President

19 _____
20 ⁸² Robert Warren, *U.S. Undocumented Population Continued to Fall from 2016 to 2017, and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year*,
21 Ctr. for Migration Studies (Jan. 16, 2019), <https://tinyurl.com/y7wa849r>; see also Former Gov’t
22 Officials Decl., *supra* note 72, at S1412 (“The United States currently hosts what is estimated to
23 be the smallest number of undocumented immigrants since 2004”).

24 ⁸³ Cong. Res. Serv., *The Trump Administration’s “Zero Tolerance” Immigration*
25 *Enforcement Policy* (Jul. 20, 2018) <https://tinyurl.com/y6rxgipk>.

26 ⁸⁴ See, e.g., Nomaan Merchant, *Crush of Desperate Migrant Families Seek Asylum at*
27 *Border*, Associated Press (Jan. 23, 2019), <https://tinyurl.com/y4to9ykq>.

28 ⁸⁵ Daniel R. Coats, *Worldwide Threat Assessment*, Off. of the Dir. of Nat’l Intelligence
(Jan. 29, 2019), <https://tinyurl.com/y9r6kkhu>.

⁸⁶ *Id.* at 41.

⁸⁷ *Id.* at 19.

⁸⁸ Max Ehrenfreund, *The Huge Immigration Problem That Donald Trump’s Wall Won’t*
27 *Solve*, Wash. Post (Dec. 18, 2015), <https://tinyurl.com/yxgwlx2q> (citing research by Federal
28 Reserve Bank of Dallas economist).

1 Trump—testified about international threats to the United States. During that hearing, none of
2 these officials even mentioned issues relating to the southwest border; they also did not testify
3 that the situation at the United States-Mexico border constituted a threat to the United States’
4 national security.⁸⁹

5 **B. There Is No Evidence that Terrorists Are Infiltrating the United States via**
6 **the Southern Border**

7 289. The Trump Administration’s assertions that terrorism concerns justify its actions
8 here are without factual basis.

9 290. President Trump and other members of his Administration, including DHS
10 Secretary Nielsen, have repeatedly claimed that terrorists have attempted to infiltrate the United
11 States via the southern border and that the border wall is needed to stop this from happening.⁹⁰

12 291. However, the federal government’s own reports, as well as credible third-party
13 analysis, show that these claims are false.

14 292. In fact, while over 2,500 individuals on the Federal Bureau of Investigation’s
15 terrorist watchlist attempted to travel to the United States in FY2017, the vast majority—over
16 2,100—attempted to do so by air.⁹¹

17 293. More generally, a 2018 U.S. State Department report finds that there is “no

18 ⁸⁹ CSPAN, *Global Threats and National Security* (Jan. 29, 2019),
19 <https://tinyurl.com/ydyaugm5>; see also Former Gov’t Officials Decl., *supra* note 72, at S1413
20 (“In a briefing before the House Armed Services Committee the next day, Pentagon officials
acknowledged that the 2018 National Defense Strategy does not identify the southern border as a
security threat”).

21 ⁹⁰ See White House, *Remarks by Vice President Mike Pence at an America First Policies*
22 *Tax Reform Event* (Feb. 17, 2018), <https://tinyurl.com/y54tmrzo> (claiming that “seven individuals
a day who are either known or suspected terrorists” are apprehended at one Texas port of entry);
23 Donald J. Trump (@realDonaldTrump), Twitter (Oct. 22, 2018, 5:37 AM),
<https://tinyurl.com/mid-easterners-tweet> (asserting that “unknown Middle Easterners” are part of
24 the Caravan, and that he has “alerted Border Patrol and Military that this is a National Emergency
[sic.]”); see also Calvin Woodward, *AP FACT CHECK: Trump’s Mythical Terrorist Tide From*
25 *Mexico*, ABC News (Jan. 7, 2019), <https://tinyurl.com/yyhewhrl> (collecting other statements by
Administration officials asserting that large numbers of individuals with terrorist ties are
26 apprehended at the Southern Border).

27 ⁹¹ DHS and U.S. Dep’t of Justice, *Executive Order 13780: Protecting the Nation From*
Foreign Terrorist Entry Into the United States Initial Section 11 Report 9 (Jan. 2018),
28 <https://tinyurl.com/yy6bg66j>.

1 credible evidence indicating that international terrorist groups have established bases in Mexico,
2 worked with Mexican drug cartels, or sent operatives via Mexico into the United States.”⁹²

3 294. While noting that “[t]he U.S. southern border remains vulnerable to *potential*
4 terrorist transit,” the report concluded that “terrorist groups likely seek other means of trying to
5 enter the United States.”⁹³

6 295. A recent comprehensive study by the Cato Institute—using data going back to
7 1975—found that “there have been zero people murdered or injured in terror attacks committed
8 by illegal border crossers on U.S. soil.”⁹⁴

9 296. In fact, almost every individual convicted of even planning a terrorist attack on the
10 United States who entered the country illegally came over the Canadian border or jumped ship in
11 American ports.⁹⁵

12 297. Only three individuals convicted of a terrorist plot entered illegally through the
13 Mexican border, and they did so as children in the 1980s, decades before the planned attack was
14 foiled in 2007.⁹⁶

15 298. Further, the Cato Institute noted that “[n]ot a single terrorist in any visa category
16 came from Mexico or Central America during the 43-year period.”⁹⁷

17 299. The DNI Report contains a three-page discussion of terrorism. That discussion
18 does not mention any threat of terrorists infiltrating the United States through the southwest
19 border.⁹⁸ Indeed, terrorism is not discussed at all in the Western Hemisphere section of the
20

21 ⁹² U.S. Dep’t of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2017*
205 (Sept. 2018), <https://tinyurl.com/y93n5fes>.

22 ⁹³ *Id.* (emphasis added).

23 ⁹⁴ David Bier & Alex Nowrasteh, *45,000 “Special Interest Aliens” Caught Since 2007,
But No U.S. Terrorist Attacks from Illegal Border Crossers*, Cato Inst. (Dec. 17, 2018),
24 <https://tinyurl.com/yddqwes3>.

25 ⁹⁵ *Id.*; see also Former Gov’t Officials Decl., *supra* note 72, at S1412 (“Between October
2017 and March 2018, forty-one foreign immigrants on the terrorist watchlist were intercepted at
the northern border. Only six such immigrants were intercepted at the southern border”).

26 ⁹⁶ *Id.*

27 ⁹⁷ Alex Nowrasteh, *Does the Migrant Caravan Pose a Serious Terrorism Risk?*, Cato Inst.
(Oct. 23, 2018), <https://tinyurl.com/yap9uc9s>.

28 ⁹⁸ *DNI Report*, *supra* note 85 at 10–13.

1 report.⁹⁹

2 300. At the January 29, 2019, Senate Intelligence Committee hearing about the report,
3 none of the national security officials testified to terrorists infiltrating the United States through
4 the southern border. The DNI's and Central Intelligence Agency Director's testimony focused on
5 threats in the Middle East, Africa, and the Philippines.¹⁰⁰

6 301. Thus, while combating terrorism is an important national priority, illegal crossings
7 at the southern border do not materially contribute to that problem and provide no factual
8 justification for declaring an emergency requiring the diversion of funds to build a wall.

9 **C. There Is No Evidence that a Border Wall Will Decrease Crime Rates**

10 302. Studies have consistently shown that the connection that President Trump attempts
11 to draw between unauthorized immigration and increased crime rates is false.

12 303. According to a 2018 Cato Institute study examining 2016 incarceration rates,
13 unauthorized immigrants were 47 percent less likely to be incarcerated for crimes than native-
14 born Americans.¹⁰¹

15 304. A 2018 Cato Institute report examining 2015 Texas crime statistics found that
16 undocumented immigrants had a criminal conviction rate 50 percent below that for native-born
17 Americans.¹⁰²

18 305. A 2018 study published in *Criminology* examining national crime rates from 1990
19 to 2014 found “that undocumented immigration does not increase violence” and in fact
20
21

22 ⁹⁹ *Id.* at 40–42.

23 ¹⁰⁰ Global Threats and National Security, *supra* note 89 (24:12–:21; 32:05–:50; 1:27:15–
:50; 1:28:40–:29:57).

24 ¹⁰¹ Michelangelo Landgrave & Alex Nowrasteh, *Incarcerated Immigrants in 2016*, Cato
25 Inst. Res. and Pol’y Br. No. 7 (Jun. 4, 2018), <https://tinyurl.com/y2jn4e3x>; *see also* Former Gov’t
26 Officials Decl., *supra* note 72, at S1412 (stating that “in Texas, undocumented immigrants were
found to have a first-time conviction rate 32 percent below that of native-born Americans; the
conviction rates of unauthorized immigrants for violent crimes such as homicide and sex offenses
were also below those of native-born Americans”).

27 ¹⁰² Alex Nowrasteh, *Criminal Immigrants in Texas*, Cato Inst. Res. and Pol’y Br. No. 4
28 (Feb. 26, 2018), <https://tinyurl.com/y62qjsa6>.

1 “[i]ncreases in the undocumented immigrant population within states are associated with
2 significant decreases in the prevalence of violence.”¹⁰³

3 306. A 2017 study in the *Journal of Ethnicity in Criminal Justice* examining
4 immigration and crime rates nationally over a 40-year period found that in the 10 cities where the
5 immigrant population increased the most, crime levels in 2016 decreased to lower levels of crime
6 than in 1980.¹⁰⁴ “The most striking finding from our research is that for murder, robbery,
7 burglary and larceny, as immigration increased, crime decreased, on average, in American
8 metropolitan areas.”¹⁰⁵ Large cities with substantial immigrant populations have *lower* crime
9 rates, on average, than those with minimal immigrant populations.¹⁰⁶

10 307. A 2010 study showed that native-born American men between ages 18 to 39 with
11 no high school diploma had triple the incarceration rate of immigrant men from Mexico, El
12 Salvador, and Guatemala with the same age and education profile.¹⁰⁷

13 308. The Administration’s repeated claims that building a border barrier in El Paso,
14 Texas reduced a previously high rate of violent crimes there are also false.¹⁰⁸

15 309. In fact, when the new border barrier was built in 2009, crime in El Paso had been
16 dramatically decreasing since the 1990s, just as the violent crime rate decreased substantially
17 nationwide from the 1990s through the present.¹⁰⁹ “From 2006 to 2011—two years before the

18 ¹⁰³ Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent*
19 *Crime?* Criminology (Mar. 25, 2018), <https://tinyurl.com/yczsf27>.

20 ¹⁰⁴ Robert Adelman et al., *Urban crime rates and the changing face of immigration: Evidence across four decades*, *J. of Ethnicity in Crim. Justice*, Vol. 15 (2017),
21 <https://tinyurl.com/y6czenh7>; see also Anna Flag, *The Myth of the Criminal Immigrant*, *N.Y. Times* (Mar. 30, 2018), <https://tinyurl.com/y9hcu6kp>.

22 ¹⁰⁵ Charis Kubrin et al., *Immigrants Do Not Increase Crime, Research Shows*, *Scientific American* (Feb. 7, 2017), <https://tinyurl.com/h8xauk2>.

23 ¹⁰⁶ *Id.*

24 ¹⁰⁷ Walter Ewing, et al., *The Criminalization of Immigration in the United States*, *Am. Immigr. Council Rep.* (Jul. 13, 2015), <https://tinyurl.com/jxcv9aq>.

25 ¹⁰⁸ See, e.g., White House, *President Donald J. Trump’s State of the Union Address* (Feb.
26 5, 2019), <https://tinyurl.com/y77nquv5> (“The border city of El Paso, Texas, used to have
27 extremely high rates of violent crime—one of the highest in the entire country, and considered
28 one of our nation’s most dangerous cities. Now, immediately upon its building, with a powerful
barrier in place, El Paso is one of the safest cities in our country.”).

¹⁰⁹ Federal Bureau of Investigation, *Uniform Crime Reports, Crime in the United States*,

1 fence was built to two years after—the number of violent crimes recorded in El Paso increased by
2 17 percent.”¹¹⁰

3 310. CBP data show that as the mix of apprehended migrants has shifted to an
4 increasing proportion of families as discussed above, the numbers of violent crimes committed by
5 this group has also decreased.¹¹¹

6 **D. There Is No Evidence that a Border Wall Will Impact the Smuggling of**
7 **Dangerous Drugs into the United States**

8 311. For years, the vast majority of the drugs smuggled into the country that the
9 President has singled out as dangerous (methamphetamine, heroin, cocaine, and fentanyl)¹¹² have
10 been smuggled through, not between, ports of entry.¹¹³

11 312. From 2012-2018, 86 percent of cocaine, 88 percent of heroin, and 84 percent of
12 methamphetamine came through ports of entry.¹¹⁴

13 313. From 2017-2018, 83 percent of fentanyl came through legal border ports of
14 entry.¹¹⁵

15
16 Table 1 (showing violent crime rate reduction from 567.6 violent crimes per 100,000 inhabitants
17 in 1998 to 382.9 per 100,000 inhabitants in 2017), <https://tinyurl.com/yyvc6636> (last visited Feb.
18 17, 2019).

19 ¹¹⁰ Madlin Mekelburg, *State of the Union: Facts Show Trump Wrong to Say El Paso*
Dangerous City until Fence, El Paso Times (Feb. 5, 2019), <https://tinyurl.com/y9ol96az> (citing
20 crime data from El Paso County Sheriff’s Office and FBI Uniform Crime Reports).

21 ¹¹¹ Alex Nowrasteh, *There Is No National Emergency on the Border, Mr. President*, Cato
22 Institute, <https://www.cato.org/blog/there-no-national-emergency-border-mr-president> (citing
23 CBP data).

24 ¹¹² *Trump Address on Crisis at Border*, *supra* note 33; see also White House, *President*
Donald J. Trump Is Committed to Working with Congress to Solve Our Urgent Immigration
25 *Crisis* (Feb. 5, 2019), <https://tinyurl.com/yyhzvrq9> (“Tens of thousands of Americans are killed
26 by tons of deadly, illicit drugs trafficked into our country by criminal aliens, gangs, and cartels
27 exploiting our porous border. The lethal drugs that flood across our border and into our
28 communities include meth, heroin, cocaine, and fentanyl.”).

¹¹³ CBP, *Enforcement Statistics FY2018*, <https://tinyurl.com/y9c4c6ft> (showing that
through August 2018, out of all the drugs seized by CBP in that fiscal year, 88 percent of cocaine,
90 percent of heroin, 87 percent of methamphetamine, and 80 percent of fentanyl were seized by
Field Operations at ports of entry).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

1 314. For instance, CBP officers recently made what is being touted (including by
2 President Trump¹¹⁶) as the largest seizure of fentanyl in history. Some 254 pounds of the drug
3 and 395 pounds of methamphetamine were discovered hidden in a floor compartment of a truck
4 loaded with cucumbers as the truck tried to enter through the port of entry at Nogales, Arizona.¹¹⁷

5 315. The most recent Drug Enforcement Agency (DEA) National Drug Threat
6 Assessment affirms the CBP data showing that the bulk of dangerous illegal drugs flow through,
7 not between, ports of entry.¹¹⁸

8 316. For example, in that report, the DEA states that “[a] small percentage of all heroin
9 seized by CBP along the land border was between Ports of Entry (POEs).”¹¹⁹

10 317. As to fentatyl, the report states that “Mexican [Transnational Criminal
11 Organizations] most commonly smuggle the multi-kilogram loads of fentanyl concealed in
12 [privately owned vehicles] before trafficking the drugs through SWB POEs.”¹²⁰

13 318. Finally, the report notes that privately owned vehicles “remain the primary method
14 used to smuggle cocaine across the SWB. Traffickers hide cocaine amongst legitimate cargo of
15 commercial trucks or within secret compartments built within passenger vehicles.”¹²¹

16 319. The DNI Report discusses drug trafficking from Mexico; however, it contains no
17 mention of smuggling between ports of entry.¹²²

18 320. In fact, the DNI Report notes that as to fentanyl—one of the drugs that President
19 Trump has invoked in support of the border wall¹²³—“Chinese synthetic drug suppliers . . .
20 probably ship the majority of US fentanyl, when adjusted for purity.”¹²⁴

21 ¹¹⁶ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 31, 2019, 4:14 PM),
22 <https://tinyurl.com/y4c4zxo3>.

23 ¹¹⁷ Pete Williams, *Feds Make Largest Fentanyl Bust in U.S. History*, NBC News (Jan. 31,
2019), <https://tinyurl.com/y9zgnv7p>.

24 ¹¹⁸ DEA, *2018 National Drug Threat Assessment* (Oct. 2018),
<https://tinyurl.com/yaqyh3ld>.

25 ¹¹⁹ *Id.*

26 ¹²⁰ *Id.*

27 ¹²¹ *Id.*

28 ¹²² *DNI Report, supra* note 85.

¹²³ *Trump Address on Crisis at Border, supra* note 33.

¹²⁴ *DNI Report, supra* note 85 at 18; *see also* Former Gov’t Officials Decl., *supra* note 72,

1 **E. There Is No Factual Basis to Support the Statutory Criteria for Diverting**
2 **Funding**

3 321. Building a border wall does not “require[] use of the armed forces” under 10
4 U.S.C. section 2808.¹²⁵

5 322. Construction of border fencing has been carried out by civilian contractors in
6 recent years.

7 323. In fact, in 2007, the U.S. military informed DHS that “military personnel would no
8 longer be available to build fencing.”¹²⁶

9 324. This, along with the desire to not take CBP agents away from their other duties,
10 led CBP to decide to use “commercial labor for future infrastructure projects.”¹²⁷

11 325. This decision has been reflected in recent projects related to the border wall,
12 including contract awards in California¹²⁸ and Arizona¹²⁹ in Fall 2018.

13 326. The construction of a border wall also does not constitute a “military construction”
14 project, as defined in 10 U.S.C. section 2801. Since at least 2001, 10 U.S.C. section 2808 has
15 only been invoked to justify military construction directly linked to a military installation.¹³⁰

16 327. In fact, with one exception, it has only been invoked in relation to construction at
17

18 _____
19 at S1412 (noting that border wall will not “stop drugs from entering via international mail (which
20 is how high-purity fentanyl, for example, is usually shipped from China directly to the United
21 States)”).

22 ¹²⁵ See also Former Gov’t Officials Decl., *supra* note 72, at S1412 (noting that “the
23 composition of southern border crossings has shifted such that families and unaccompanied
24 minors now account for the majority of immigrants seeking entry at the southern border; these
25 individuals do not present a threat that would need to be countered with military force”).

26 ¹²⁶ Gov’t Accountability Office, *GAO-09-244R Secure Border Initiative Fence*
27 *Construction Costs* 7 (Jan. 29, 2009), <https://tinyurl.com/y2kgefp5>.

28 ¹²⁷ *Id.*

¹²⁸ CBP, *Border Wall Contract Awards in California* (Dec. 21, 2018),
<https://tinyurl.com/y3px9ubj> (announcing \$287 million contract with SLSCO Ltd. to build border
barriers).

¹²⁹ CBP, *Border Wall Contract Award in Arizona* (Nov. 15, 2018),
<https://tinyurl.com/y2t5u6pw> (announcing \$172 million contract with Barnard Construction Co.
to build border barriers).

¹³⁰ Michael J. Vassalotti & Brendan W. McGarry, *Military Construction Funding in the*
Event of a National Emergency, Cong. Res. Serv. (Jan. 11, 2019), <https://tinyurl.com/y23t8xbc>.

1 military installations outside the United States.¹³¹

2 328. That single instance related to securing domestic sites at which weapons of mass
3 destruction were sited.¹³²

4 329. Furthermore, the diversion of funding and resources for the proposed border wall
5 does not satisfy the requirements of 10 U.S.C. section 284, the Counterdrugs Activities statute
6 because the proposed border wall does not “block drug smuggling corridors,” 10 U.S.C. §
7 284(b)(7), as contemplated by the statute. Defendants also do not satisfy the criteria under
8 section 8005 of the FY2019 Department of Defense Appropriations Act to transfer other
9 Department of Defense funds toward construction of the border wall because it is not a “higher
10 priority item,” is not a “unforeseen military requirement,” and *is* an item for which Congress has
11 denied funding.

12 330. The diversion of Treasury Forfeiture Funds for construction of a border wall fails
13 to satisfy the criteria of 31 U.S.C. section 9705 because infrastructure construction is not within
14 the scope of the activities for which Treasury Forfeiture Funds may be used under that statute.

15 **F. Plaintiff States and their Residents Are Harmed by the Executive Actions**

16 **1. Harm caused by diversion of funding and other resources**

17 331. Plaintiff States and their residents are harmed by the Executive Actions and
18 Defendants’ unlawful actions undertaken to construct the border wall. *See Parties section supra.*

19 332. California will be harmed by the diversion of funds it receives from the federal
20 government for drug interdiction program funding, which will impact public safety and the
21 welfare of its residents.

22 333. California is typically allocated tens of millions of dollars in drug interdiction
23 funds from the federal government annually (for example, over \$25 million in FY2018-19). If
24 California loses this funding, there will be negative public safety impacts arising from the
25 impairment of the State’s criminal and narcotics operations.

27 ¹³¹ *Id.*

28 ¹³² *Id.*

1 334. Diversion of DOD funding from California’s National Guard will likewise cause
2 harm to the State. For FY2019-20, California expected to receive \$126.1 million in federal funds
3 that are at risk due to the Executive Actions.¹³³ Any diversion of military funding intended for
4 the California National Guard will also harm the State.

5 335. Diversion of funds from the Treasury’s Forfeiture Fund will deprive the State of
6 California and its local law enforcement agencies of access to millions of dollars of funds that
7 would otherwise be available for law enforcement purposes, negatively impacting the public
8 safety and welfare of California’s residents.

9 336. The law enforcement agencies within the Plaintiff States received over 73 percent
10 of the equitable shares paid to local and state agencies under the Treasury Forfeiture Fund’s
11 equitable share program in FY2018. California law enforcement agencies, many of which have
12 participated in the equitable share program for over a decade, received \$53,304,000 in funding
13 from the Treasury Forfeiture Fund in FY2018, more than any state.¹³⁴ Based on information and
14 belief, California’s state and local agencies, including the California Department of Justice,
15 California Highway Patrol, and California National Guard, have millions of dollars in outstanding
16 claims based on their previous participation in law enforcement activities.

17 337. California also will be harmed by diversion of funding for military construction.

18 338. More funds are spent on defense in California than in any other state, with \$48.8
19 billion in FY2017 alone.¹³⁵

20 339. California also leads the nation in defense contract spending, with \$35.2 billion
21 that same year.¹³⁶ Plaintiff States collectively account for \$142.3 billion in defense contract
22 spending, which represents 52 percent of all defense contract spending.

23 340. Three of the top ten defense contract spending locations in the nation are in

24 _____
25 ¹³³ State of California, *2019-20 Governor’s Budget, Statewide Financial Information* at 29
(Jan. 10, 2019) (estimating \$126.1 million in federal funding for the California Military
Department for FY2019-20), <https://tinyurl.com/y48pjdn1>.

26 ¹³⁴ *Forfeiture Fund Audit*, *supra* note 3, at 67.

27 ¹³⁵ DOD, Off. of Econ. Adjustment, *Defense Spending by State Fiscal Year 2017*,
<https://tinyurl.com/yxcqugzr>.

28 ¹³⁶ *Id.*

1 California (San Diego with \$9.2 billion, Los Angeles with \$5.3 billion, and Santa Clara County
2 with \$4.8 billion).¹³⁷

3 341. This defense spending—including construction—in California generates
4 significant economic activity, employment, and tax revenue.¹³⁸

5 342. In FY2016, this spending generated \$86.9 billion of direct economic activity in
6 California, \$17.4 billion of economic activity created through the supply chain, and \$52 billion of
7 “induced” economic activity created because of additional money in the economy.¹³⁹

8 343. This economic activity, in turn, generates employment for Californians. In
9 FY2016, approximately 358,000 jobs were directly attributable to employment by defense
10 agencies and their contractors, 84,000 were generated through the supply chain, and 324,000
11 resulted from economic activity induced by the additional money in the economy.¹⁴⁰

12 344. The economic activity generated by defense spending also resulted in significant
13 tax revenues for California at the state and local level, estimated at \$5.8 billion total annually,
14 including \$1.9 billion in income tax, \$1.7 billion in sales tax and \$1.3 billion in property tax.¹⁴¹

15 345. Certain regions of the state particularly rely on defense spending for employment,
16 including Lassen County (with 18% of jobs reliant on defense spending) and San Diego (16%).¹⁴²

17 346. In a briefing with reporters on February 15, 2019, White House officials (Acting
18 Chief of Staff John Michael Mulvaney, Defendant Nielsen, and Acting Director of the Office of
19 Management and Budget Russell Vought) discussed the Administration’s plans to carry out the
20 Emergency Declaration.¹⁴³ In response to a question regarding “which military construction
21 projects will see the money moved for the border wall,” one Administration official stated during

22 ¹³⁷ *Id.*

23 ¹³⁸ Devin Lavelle, *California Statewide National Security Economic Impacts*, Cal. Res.
24 Bureau (Aug. 2018), <https://tinyurl.com/yxqlw43b>.

25 ¹³⁹ *Id.*

26 ¹⁴⁰ *Id.*

27 ¹⁴¹ *Id.*

28 ¹⁴² *Id.*

¹⁴³ White House, *Background Press Call on President Trump’s Remarks on the National
Security and Humanitarian Crisis on Our Southern Border* (Feb. 15, 2019). This document was
available on the White House website but then taken down that same day.

1 that briefing: “We would be looking at lower priority military construction projects. We would
2 be looking at ones that are to fix or repair a particular facility that might be able to wait a couple
3 of months into next year.”¹⁴⁴

4 347. A number of military construction projects that could fit this description, and for
5 which funds have been appropriated but are as yet unobligated, are planned in California.¹⁴⁵
6 These projects include repairs to existing military infrastructure. If Defendants determine that
7 these projects can wait, funding for them could be diverted to the border wall, and California
8 would be deprived of this federal funding and the resulting positive economic, employment, and
9 tax consequences.

10 348. If these types of projects are delayed due to the diversion of funding for border
11 wall construction, California stands to suffer economic harm.

12 349. Other Plaintiff States will suffer similar harms due to diversion of military
13 construction, drug interdiction, and drug forfeiture funding.

14 **2. Environmental harms to the States of California and New Mexico**

15 350. On December 12, 2018, DHS announced that if it received \$5 billion in additional
16 funding, it would use this funding to construct 330 miles of new barriers along the United States-
17 Mexico border in areas that the United States Border Patrol identified as “highest priority” in each
18 of the four border states. DHS specifically identified a five-mile barrier project in the CBP’s San
19 Diego Sector (California), a nine-mile project in the CBP’s El Centro Sector (California), and a
20 nine-mile project in the CBP’s El Paso Sector (New Mexico).¹⁴⁶

21 351. Following Defendant DHS’s December 12, 2018 announcement that it intended to
22 construct 330 miles of new barriers along the United States-Mexico border, DHS now intends to
23 construct hundreds more miles of new border barriers. During a March 6, 2019 hearing before
24 the House of Representatives’ Homeland Security Committee, Defendant Nielsen testified that

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26 ¹⁴⁴ *Id.*

27 ¹⁴⁵ *E.g.*, DOD, *Construction Programs (C-1), Department of Defense Budget Fiscal Year*
2019 (Feb. 2018), <https://tinyurl.com/yy85dch9>.

28 ¹⁴⁶ DHS, *Walls Work* (Dec. 12, 2018), <https://tinyurl.com/y7ca6byc>.

1 DHS now seeks to construct more than 700 miles of additional barriers along the southern
2 border.¹⁴⁷

3 352. CBP’s San Diego Sector is located in San Diego County, California and
4 shares a 60-mile segment of the border with Mexico, 46 linear miles of which are already lined
5 with primary fencing.¹⁴⁸ The only portions of the border located within the San Diego Sector that
6 are not already lined with primary fencing are located in the southeastern portion of the county in
7 or near the Otay Mountain Wilderness Area.¹⁴⁹ Thus, the only segment of the border within the
8 San Diego Sector where DHS can construct new primary fencing, as it announced on December
9 12, 2018, are areas within or near the Otay Wilderness Area.

10 353. CBP’s El Centro Sector is located within Imperial County, California, and shares a
11 70-mile segment of the border with Mexico, 59 linear miles of which are already lined by primary
12 fencing.¹⁵⁰ The only portions of the border located within the El Centro Sector that are not
13 already lined with primary fencing are located in the southwestern portion of Imperial County,
14 which is comprised of a mountainous landscape and the Jacumba Wilderness Area.¹⁵¹ Thus, the
15 only segment of the border within the El Centro Sector where DHS can construct new primary
16 fencing, as it announced on December 12, 2018, are areas within or near the Jacumba Wilderness
17 Area.

18 354. The Otay Mountain Wilderness and the Jacumba Wilderness areas are home to
19 more than 100 sensitive plant and animal species that are listed as “endangered,” “threatened,” or
20 “rare” under the federal Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq., and/or the

21 _____
22 ¹⁴⁷ CSPAN, *Immigration and Border Security* (Mar. 6, 2019),
<https://tinyurl.com/y5fqdmma>.

23 ¹⁴⁸ CBP, *San Diego Sector California* (Jan. 26, 2018), <https://tinyurl.com/y5zgvftf>; Gov’t
24 Accountability Off., *GAO-17-331, Southwest Border Security: Additional Actions Needed to
25 Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying
26 Capability Gaps* 48, <https://www.gao.gov/products/GAO-17-331>.

27 ¹⁴⁹ CBP, *Border Fencing – California* (June 2011), <https://tinyurl.com/y24zbf4>; CBP,
28 *FY17 U.S. Border Patrol Apprehensions (Deportable) & Fencing* (Dec. 6, 2017),
<https://tinyurl.com/ydf146zk>.

¹⁵⁰ CBP, *El Centro Sector California* (Apr. 11, 2018), <https://tinyurl.com/y5kpbk2e>;
Southwest Border Security, *supra* note 148.

¹⁵¹ CBP, *Border Fencing 2011 & 2017*, *supra* note 149.

1 California Endangered Species Act, Cal. Fish & Game Code § 2050 et seq. These species include
2 the following federally and state endangered species: the Mexican flannel bush, Thornmint, the
3 Quino Checkerspot Butterfly, the Southwestern Willow Flycatcher, and the Peninsular Desert
4 Bighorn sheep.¹⁵² Some of the listed plant species, such as the Tecate Cypress and the Mexican
5 flannel bush, are so rare they can only be found in these wilderness areas.¹⁵³ The federally and
6 state-endangered Peninsular Desert Bighorn sheep has a range that includes mountainous terrain
7 in Mexico near the United States-Mexico border and extends north across the border through the
8 Jacumba Wilderness to California's Anza-Borrego State Park.¹⁵⁴

9 355. The construction of border barriers within or near the Jacumba Wilderness Area
10 and the Otay Mountain Wilderness Area will have significant adverse effects on environmental
11 resources, including direct and indirect impacts to endangered or threatened wildlife. These
12 injuries to California's public trust resources would not occur but for Defendants' unlawful and
13 unconstitutional diversion of funds.

14 356. The construction of a border wall in the El Paso Sector along New Mexico's
15 southern border will have significant adverse effects on the State's environmental resources,
16 including direct and indirect impacts to endangered or threatened wildlife.

17 357. If Defendants use the diverted funding announced in President Trump's February
18 15 Executive Actions to construct any of the border wall in New Mexico, it will impose
19 environmental harm to the State. The environmental damage caused by a border wall in New
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22
23 ¹⁵² Cal. Dept. of Fish & Wildlife, *Threatened and Endangered Species*,
24 <https://tinyurl.com/7l65784> (last visited Feb. 17, 2019); Wilderness Connect, *Jacumba*
25 *Wilderness*, <https://tinyurl.com/y5yh23x5> (last visited Feb. 17, 2019); U.S. Bureau of Land
26 Management, *Jacumba Wilderness* <https://tinyurl.com/y43hv424> (last visited Feb. 17, 2019); U.S.
Bureau of Land Management, *Otay Mountain Wilderness* <https://tinyurl.com/y3zamvsh> (last
visited Feb. 17, 2019); Wilderness Connect, *Otay Mountain Wilderness*,
<https://tinyurl.com/y3ymkazn> (last visited Feb. 17, 2019).

¹⁵³ Wilderness Connect, *Otay Mountain*, *supra* note 152.

27 ¹⁵⁴ Cal. Dept. of Fish & Wildlife, *Peninsular Desert Bighorn Sheep*
28 <https://tinyurl.com/yyvu5kwa> (last visited Feb. 17, 2019).

1 Mexico would include the blocking of wildlife migration, flooding, and habitat loss.¹⁵⁵

2 358. The Chihuahuan desert bisected by the New Mexico-Mexico border is the most
3 biologically diverse desert in the Western Hemisphere.¹⁵⁶ Species common along the border are a
4 number of endangered, threatened, and candidate species including the beautiful shiner,
5 Chiricahua leopard frog, jaguar, lesser long-nosed bat, loach minnow, Mexican long-nosed bat,
6 Mexican spotted owl, Mexican wolf, narrow-headed gartersnake, New Mexican ridge-nosed rattle
7 snake, northern aplomado falcon, northern Mexican gartersnake, southwestern willow flycatcher,
8 spikedace, and yellow billed cuckoo.¹⁵⁷ A barrier built in the Chihuahuan desert is likely to
9 disrupt or destroy habitat of these migratory animals, nesting birds and reclusive reptiles.

10 359. In particular, New Mexico's border is also home to the endangered Mexican gray
11 wolf, the rarest subspecies of gray wolf in North America, which was nearly extirpated by the
12 1970s and only recently reintroduced.¹⁵⁸ A wall impossible to breach may make it impossible for
13 the wolf to disperse across the border to reestablish recently extirpated populations or bolster
14 small existing populations. On March 14, 2018, the New Mexico Department of Game and Fish
15 signed an agreement with the U.S. Department of Fish and Wildlife to increase cooperation in
16 reintroduction of this species to the wild, evidencing the State's commitment to preventing the
17 extinction of this species.

18 360. The segment of New Mexico's border with Mexico that does not already have
19 primary fencing is in the State's "bootheel" region.¹⁵⁹ If Defendants' diverted funding resulted in
20 the construction of a barrier in New Mexico's bootheel, it would cause environmental harm in

21 ¹⁵⁵ See Robert Peters et al., *Nature Divided, Scientists United: US–Mexico Border Wall*
22 *Threatens Biodiversity and Binational Conservation*, BioScience (Oct. 2018),
<https://tinyurl.com/y3t4ymfn>.

23 ¹⁵⁶ Nat'l Park Service, *Chihuahuan Desert Ecoregion* (Sept. 20, 2018),
<https://www.nps.gov/im/chdn/ecoregion.htm>.

24 ¹⁵⁷ U.S. Fish & Wildlife Serv., *Species By County Report*, <https://tinyurl.com/yxmwz9qm>
25 (Hidalgo County, NM); <https://tinyurl.com/y4ojwrtq> (Luna County, NM) (last visited Feb. 17,
2019).

26 ¹⁵⁸ U.S. Fish & Wildlife Serv., *Mexican Wolf*, <https://tinyurl.com/y2hf5ea2> (last visited
27 Feb. 17, 2019).

28 ¹⁵⁹ CBP, *Border Fencing - New Mexico/West Texas* (June 2011),
<https://tinyurl.com/y24zfbf4>.

1 one of the State’s most ecologically pristine and fragile regions. The bootheel is where temperate
2 and subtropical climates converge, making it another of the most biologically diverse regions in
3 the world, home to jaguars and wolves that coexist along the U.S.-Mexico border.¹⁶⁰ Recognizing
4 the ecological importance of this region, the U.S. Fish and Wildlife Service has designated large
5 segments of the bootheel’s border with Mexico as critical habitat for the jaguar.¹⁶¹

6 361. Defendant DHS has not engaged in a public review of these adverse effects. By
7 failing to do so at the earliest possible stage of the project’s planning process, DHS is violating
8 the requirements of NEPA. *Robertson v. Methow Valley Citizen Council*, 490 U.S. 332, 348-49
9 (1989); 40 C.F.R. §§ 1508.27(b)(9), (10). California and New Mexico have suffered, and will
10 continue to suffer, injuries to their procedural rights under NEPA and the APA, 5 U.S.C. section
11 551, and injuries to their concrete, quasi-sovereign interests relating to the preservation of wildlife
12 resources within their boundaries, including but not limited to wildlife on state properties.
13 *Massachusetts v. EPA*, 549 U.S. 497, 519-24 (2007); *Sierra Forest Legacy*, 646 F.3d at 1178.
14 These injuries to California’s and New Mexico’s procedural rights and quasi-sovereign interests
15 would not occur but for Defendants’ unlawful and unconstitutional diversion of funds.

16 **DECLARATORY/INJUNCTIVE RELIEF**

17 362. Plaintiff States will suffer irreparable injury if Defendants take action to build the
18 border wall by diverting funds and resources in contravention of the United States Constitution
19 and several federal statutes, and Plaintiffs have no adequate remedy at law.

20 **FIRST CLAIM FOR RELIEF**

21 **VIOLATION OF CONSTITUTIONAL SEPARATION OF POWERS**

22 363. Plaintiff States incorporate the allegations of the preceding paragraphs by
23 reference.

24 364. Article I, Section 1 of the United States Constitution enumerates that “[a]ll
25 legislative Powers herein granted shall be vested in [the] Congress.” Article I, Section 8 of the

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27 ¹⁶⁰ Lauren Villagran, *Land That Time Forgot*, Albuquerque J. (Apr. 30, 2017),
<https://tinyurl.com/mxqht6r>.

28 ¹⁶¹ U.S. Fish & Wildlife Serv., *Jaguar (Panthera onca)*, <https://tinyurl.com/y6qpjdjl> (last
visited Feb. 17, 2019); 79 Fed. Reg. 12571 (Mar. 5, 2014).

1 United States Constitution vests exclusively in Congress the spending power to “provide for
2 the . . . General Welfare of the United States.”

3 365. Article I, Section 7, Clause 2 of the United States Constitution, known as the
4 Presentment Clause, requires that all bills passed by the House of Representatives and the Senate
5 be presented to the President for signature. The President then has the choice to sign or veto the
6 bill. Article II, Section 3 of the United States Constitution requires that the President “shall take
7 Care that the Laws be faithfully executed.”

8 366. The President acts at the lowest ebb of his power if he acts contrary to the
9 expressed or implied will of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,
10 637 (1952) (Jackson, J., concurring). Moreover, there is no provision in the United States
11 Constitution that authorizes the President to enact, amend, or repeal statutes, including
12 appropriations already approved by Congress and signed into law by the President. *Clinton v.*
13 *City of New York*, 524 U.S. 417, 438 (1998).

14 367. Defendants have violated the United States Constitution’s separation of powers
15 doctrine by taking executive action to fund a border wall for which Congress has refused to
16 appropriate funding. The 2019 Appropriations Act is an explicit denial of the President’s
17 requested funding for a border wall. Defendants have further violated the separation of powers
18 doctrine—specifically the Presentment Clause—by unilaterally diverting funding that Congress
19 already appropriated for other purposes to fund a border wall for which Congress has provided no
20 appropriations.

21 368. For the reasons stated herein, Plaintiffs are entitled to a declaration that
22 Defendants’ diversion of funding and resources toward the construction of a border wall is
23 unconstitutional, and the Court should enjoin Defendants’ implementation of the President’s
24 Executive Actions.

25 **SECOND CLAIM FOR RELIEF**

26 **VIOLATION OF APPROPRIATIONS CLAUSE**

27 369. Plaintiff States incorporate the allegations of the preceding paragraphs by
28 reference.

1 statute does not contemplate the construction of a border wall as proposed by the President.
2 Moreover, Defendants have acted ultra vires in seeking to transfer funding pursuant to section
3 8005 of the FY2019 Department of Defense Consolidated Appropriations Act to ultimately use
4 for the construction of a border wall because it is not being transferred for: (a) a “higher priority
5 item;” (b) “unforeseen military requirements;” or (c) an item for which Congress has not denied
6 funding.

7 378. Defendants have acted ultra vires in seeking to divert funding pursuant to 31
8 U.S.C. section 9705 for failure to meet the criteria required under that statute.

9 379. For the reasons stated herein, Plaintiffs are entitled to a declaration that
10 Defendants’ diversion of funding and resources toward the construction of a border wall is
11 unlawful, and the Court should enjoin Defendants’ implementation of the President’s Executive
12 Actions.

13 **FOURTH CLAIM FOR RELIEF**

14 **VIOLATION OF ADMINISTRATIVE PROCEDURE ACT** 15 **(Constitutional Violation and Excess of Statutory Authority under 10 U.S.C. section 284,** 16 **section 8005 of the FY2019 Department of Defense Appropriations Act, and 31 U.S.C.** 17 **section 9705)**

18 380. Plaintiff States incorporate the allegations of the preceding paragraphs by
19 reference.

20 381. Defendants DOD and the Treasury are “agencies” under the APA, 5 U.S.C. section
21 551(1), and diversions of funding for construction of a border wall constitute “agency action”
22 under the APA, *id.* section 551(13).

23 382. The diversion of federal funds toward construction of a border wall constitutes an
24 “[a]gency action made reviewable by statute and final agency action for which there is no other
25 adequate remedy in a court.” *Id.* § 704.

26 383. The APA requires that a court “hold unlawful and set aside agency action,
27 findings, and conclusions found to be . . . contrary to constitutional right, power, privilege, or
28 immunity,” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory
right.” *Id.* § 706(2)(B)-(C).

1 otherwise not in accordance with law.” *Id.* § 706(2)(A).

2 390. Defendants DOD and the Treasury’s diversion of funding and resources pursuant
3 to 10 U.S.C. section 284, section 8005 of the FY2019 Department of Defense Appropriations Act,
4 and 31 U.S.C. section 9705 for construction of a border wall is arbitrary and capricious and an
5 abuse of discretion because Defendants have relied on factors that Congress did not intend, failed
6 to consider an important aspect of the problem the agency is addressing, and offered no
7 explanation for the decision to divert funding and resources toward construction of a border wall
8 that is consistent with the evidence that is before the agencies. *See Motor Vehicle Mfrs. Ass’n of*
9 *the U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

10 391. For the reasons stated herein, because Defendants DOD and the Treasury acted in
11 an arbitrary and capricious manner in diverting federal funds and resources toward construction
12 of a border wall pursuant to the statutes described above, these actions are unlawful and should be
13 set aside under 5 U.S.C. section 706. Moreover, the Court should enjoin Defendants’
14 implementation of the Executive Actions.

15 **SIXTH CLAIM FOR RELIEF**

16 **VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT**

17 **(For Plaintiff States California and New Mexico)**

18 392. Plaintiff States incorporate the allegations of the preceding paragraphs by
19 reference.

20 393. Defendant DHS is an “agency” under the APA, 5 U.S.C. section 552(1).

21 394. Defendant DHS has taken final agency action by proposing southern border wall
22 development projects in “high priority” areas and has identified specific projects along the border
23 in the El Centro, San Diego, and El Paso Sectors.¹⁶²

24 395. Defendants, through the Executive Actions, have taken steps to divert federal

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26 ¹⁶² The proposed projects are not located within areas covered by any existing waiver
27 issued by DHS pursuant to section 102 of the Illegal Immigration Reform and Immigrant
28 Responsibility Act (8 U.S.C. § 1103 note). 84 Fed. Reg. 2897 (February 8, 2019); 83 Fed. Reg.
3012 (January 22, 2018); 82 Fed. Reg. 42829 (September 12, 2017); 82 Fed. Reg. 35984 (August
2, 2017).

1 funding and other resources for those southern border wall construction projects.

2 396. NEPA compels federal agencies such as Defendant DHS to evaluate and consider
3 the direct, indirect and cumulative effects that a proposed development project or program will
4 have on the environment by requiring the agency to prepare an EIS that analyzes a reasonable
5 range of alternatives and compares each alternative's environmental impacts. 40 C.F.R. §§
6 1502.16, 1508.7, 1508.8, 1508.27(b)(7). The EIS must also include an analysis of the affected
7 areas and resources and the environmental consequences of the proposed action and the
8 alternatives. 40 C.F.R. §§ 1502.10- 1502.19. The agency must commence preparation of the EIS
9 "as close as possible to the time that the agency is developing or is presented with a proposal" so
10 that the environmental effects of each alternative can be evaluated in a meaningful way. 40
11 C.F.R. § 1502.23.

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

17 398. The imminent nature of this action is shown by the Trump Administration's
18 expression of its intent to move quickly with the construction of the border wall, DHS's
19 announcement designating priority areas for new border wall construction within the San Diego,
20 El Centro, and El Paso Sectors, and Defendant Nielsen's testimony regarding the intent to
21 construct even more fencing than previously designated.¹⁶³ In addition, during his speech
22 announcing the Emergency Declaration, President Trump spoke of his desire to build the wall
23 "much faster" than he could otherwise,¹⁶⁴ and recently claimed that "[m]any additional contracts
24 are close to being signed."¹⁶⁵

25
26 ¹⁶³ Rachael Bade et al., *'A Recipe for Disaster'? Trump's Border Emergency Drags the*
27 *GOP into a Risky Fight Ahead of 2020*, Wash. Post (Feb. 15, 2019), <https://tinyurl.com/y413lu99>.

28 ¹⁶⁴ White House, *President Trump's Feb. 15, 2019, Remarks*, *supra* note 60.

¹⁶⁵ Donald J. Trump (@realDonaldTrump), Twitter (Mar. 8, 2019, 4:24 AM),
<https://tinyurl.com/y3tsqmg1>.

1 Dated: March 13, 2019

Respectfully submitted,

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