

EXHIBIT

A

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3
4 Jenny Lisette Flores, *et al.*,
5 Plaintiffs,

6 v.

7 Merrick Garland, Attorney General of
8 the United States, *et al.*,
9 Defendants.

Case No. 2:85-cv-04544-DMG

District Judge Dolly M. Gee

10
11
12 **DECLARATION OF BRENT L. SCHWERDTFEGER**

13 I, **Brent L. Schwerdtfeger**, pursuant to 28 U.S.C. § 1746, and based upon my personal
14 knowledge and information made known to me from official records and reasonably
15 relied upon in the course of my employment, relating to the above-captioned matter,
16 hereby declare as follows:

17
18 1. I currently serve as the Division Chief, Law Enforcement Operations
19 Division, San Diego Sector (SDC), U.S. Border Patrol (USBP), U.S. Customs and
20 Border Protection (CBP), U.S. Department of Homeland Security. I have officially
21 held this position since July 31, 2022. Prior to that, I held this position in an acting
22 capacity from August 1, 2021 until July 31, 2022. I am submitting this declaration in
23 support of Defendants' Opposition to Plaintiffs' Motion to Enforce.

24 2. As Division Chief of Operations, I am the senior leader that has direct
25 oversight of operations in SDC. I am responsible for planning, directing, and
26 overseeing 1,800 employees in a complex border security mission. I provide oversight
27 of 1,900 vehicles, 72 facilities, extensive infrastructure, and specialized technology. I
28 am responsible for administration and human resources activities, including hiring,

1 terminations, performance reviews, awards, and professional development. As part of
2 my duties, I receive daily reports regarding individuals arrested in SDC, including the
3 numbers of individuals arrested by each station. I also receive reports pertaining to
4 encounters of large groups of individuals, including the number of individuals in the
5 large group, the location where the large group was encountered, and, for those
6 individuals subject to arrest, the length of time such individuals remained in the field
7 before transport to a detention facility. I track daily metrics pertaining to the numbers
8 of single adults, family units, and unaccompanied children in custody at each facility
9 within San Diego Sector, and their time in custody.

10 3. USBP divides the country into several Sectors, one of which is SDC.
11 SDC encompasses 56,831 square miles, including 931 miles of coastal border from
12 the California border with Mexico north to Oregon. SDC's primary operational area
13 of responsibility consists of 7,000 square miles, including 61 linear miles of
14 international boundary with Mexico and 114 coastal border miles along the Pacific
15 Ocean. SDC has seven stations: Imperial Beach, Chula Vista, Brown Field, Campo,
16 Boulevard, San Clemente, and Newton-Azrak. SDC also operates the San Diego Area
17 Detention Facility, a temporary soft-sided structure (soft-sided facility) designed to
18 increase the detention capacity and processing capability within SDC, which currently
19 has a capacity of 750 individuals. SDC has a total detention capacity of 2,716
20 individuals across all facilities, including all stations and the soft-sided facility. In
21 terms of staffing, SDC is authorized to employ 1,982 Border Patrol Agents (BPAs).
22 However, currently SDC employs approximately 1,847.

23 4. USBP, a component of CBP, is a uniformed law enforcement
24 organization that is responsible for safeguarding all areas between the ports of entry.
25 USBP's mission is to deter, detect, and arrest terrorists, undocumented noncitizens,
26 and human smugglers entering or attempting to enter the United States, and seize
27 terrorist-related weapons, illicit drugs, and other contraband. In furtherance of this
28 mission, BPAs identify, track, and arrest persons suspected of making unlawful entry

1 into the United States.

2 5. In determining whether an individual encountered by USBP is subject to
3 arrest under U.S. immigration laws, BPAs conduct a “field interview” to determine,
4 for example, whether an individual is a noncitizen who entered the United States
5 unlawfully. The field interview consists of either a consensual encounter wherein the
6 BPA questions the individual regarding their nationality and immigration status, or an
7 investigative stop based on reasonable suspicion of an immigration violation. If the
8 BPA establishes probable cause to believe the individual is subject to arrest, the
9 individual is at that point arrested and transported to the nearest station or the soft-
10 sided facility for processing. Processing includes conducting background checks
11 (including any criminal convictions and immigration history), obtaining biometric
12 data, and determining the administrative pathway for the disposition of the individual’s
13 case.

14 6. Beginning in approximately October 2022, individuals unlawfully
15 entering the United States from Mexico between the ports of entry within Imperial
16 Beach Station’s (IMB) area of responsibility began to arrive in large groups. Over
17 time, the number of individuals arriving in large groups exceeded IMB’s ability to
18 immediately conduct a field interview and arrest them, due to constraints in detention
19 capacity, staffing, and transportation. The detention capacity at IMB is approximately
20 205 individuals. Beginning in January 2023, SDC had seven buses available for large
21 group transportation across the entire Sector. The maximum capacity based on the
22 safety rating for each bus is no more than 47 passengers. From March through
23 December 2023, IMB alone made over 71,000 arrests, accounting for approximately
24 32 percent of SDC’s total arrests in that time. In fiscal year 2023, from October 2022
25 to September 2023, IMB arrested 255 unaccompanied noncitizen children (UCs) and
26 5,366 noncitizens in family units. Thus far in fiscal year 2024, beginning October
27 2023, IMB has arrested 411 UCs and 3,588 noncitizens in family units. A family unit
28 consists of one or more noncitizen children under the age of 18 with one or more

1 noncitizen parent(s) or legal guardian(s).

2 7. The large groups arriving in IMB's area of responsibility consisted of
3 dozens to hundreds of individuals, often believed to be assisted by cartel-affiliated
4 smuggling organizations, who unlawfully entered the United States by crossing the
5 primary fence on the border with Mexico using ladders or other means. IMB
6 encountered large groups on a daily or weekly basis. Sometimes multiple large groups
7 were encountered in a single day. These large group encounters were in addition to
8 daily unlawful entries by persons individually or in smaller groups. Initially, large
9 groups of individuals arriving in SDC's area of responsibility primarily entered the
10 United States in the IMB area of operations, an area west of the San Ysidro Port of
11 Entry and within five miles of the Pacific Ocean coastline.

12 8. Over time, under the apparent direction of smugglers, large groups of
13 individuals began to concentrate primarily in two locations within IMB's area of
14 operations known as Whiskey 4 (W4) and Whiskey 8 (W8). SDC does not have a
15 policy or practice of directing individuals to these locations. Individuals and smaller
16 groups of individuals have also entered in and congregated in areas of operations
17 known as Spooner's Mesa and 91X, but there have not been large groups congregating
18 in those areas. Spooner's Mesa is approximately one mile to the west of W8. 91X is
19 approximately two and one-third miles to the west of W8.

20 9. The W4 location is located along the Tijuana riverbed, immediately
21 bordered on the south side by the major metropolitan city of Tijuana, Mexico, and on
22 the north side by the city of San Ysidro in San Diego, California. At W4, there is an
23 International Boundary Barrier (IBB) consisting of a 30-foot-high primary fence on
24 the south side of the Tijuana River on the border with Mexico.

25 10. At W8, the IBB consists of a 30-foot-high primary fence and a 30-foot-
26 high secondary fence that run parallel to each other along the boundary line between
27 the United States and Mexico. The area between the fences at W8 is restricted and
28 off-limits to non-authorized personnel. This area ranges in size from about 60 feet

1 wide to about 120 feet wide, depending on the location. “No-trespassing” signage is
2 posted indicating the area is restricted to authorized personnel.

3 11. Individuals arriving in the area of W4 and W8 as part of these large
4 groups who surmounted the primary fence generally remained in the area in which
5 they entered until BPAs conducted a field interview, arrested them, and transported
6 them to a USBP facility for processing. Individuals congregating in IMB’s area of
7 responsibility are not in custody until arrested by BPAs. Currently, there are only
8 occasionally large groups arriving in the W4 and W8 areas. Currently and throughout
9 calendar year 2024, large groups arriving in the W4 and W8 areas are generally
10 arrested by BPAs within 12 hours of encounter, even those in large groups.

11 12. Beginning in approximately March 2023, large groups of individuals also
12 began to arrive in Jacumba, California, an area along the international boundary
13 between the United States and Mexico approximately 60 miles east of the Pacific
14 Ocean coastline. The Boulevard Station (BLV) area of responsibility includes
15 Jacumba. Campo Station (CAO) also assists with conducting enforcement operations
16 in Jacumba for large groups. As in IMB, the number of individuals arriving in large
17 groups exceeded BLV’s and CAO’s ability to immediately conduct a field interview
18 and arrest them, due to constraints in detention capacity, staffing, and transportation.
19 The detention capacity at BLV is approximately 207 individuals, and at CAO is
20 approximately 246 individuals. During this period, SDC had approximately seven
21 buses available for large group transportation across the entire Sector. As noted above,
22 the maximum capacity based on the safety rating for each bus is no more than 47
23 passengers. From March through December 2023, CAO and BLV combined made
24 over 96,000 arrests, accounting for nearly 43 percent of SDC’s total arrests during that
25 time. In September 2023, BLV and CAO made nearly 11,000 arrests for the month,
26 and arrests steadily increased each subsequent month, reaching over 20,400 in
27 December 2023. The December 2023 arrests by CAO and BLV accounted for nearly
28 60 percent of SDC’s total arrests that month. In fiscal year 2023, from October 2022

1 through September 2023, CAO and BLV combined arrested 130 UCs and 3,972
2 persons comprising family units. Already this fiscal year, beginning October 2023,
3 CAO and BLV combined have arrested over 697 UCs and 13,274 persons comprising
4 family units.

5 13. In the Jacumba area, the IBB consists of a single 30-foot-high fence along
6 the international boundary between the United States and Mexico, with no secondary
7 fence. Therefore, once individuals have entered the United States across the IBB in
8 the Jacumba area, there is no further fencing restricting their movement. In the
9 Jacumba area, large groups of individuals, varying in size from dozens to hundreds,
10 arrived as often as daily, and often up to several times a day. Many of the large groups
11 of individuals are believed to be assisted by cartel-affiliated smugglers who guide their
12 unlawful entry into the United States. As in IMB, these large groups began to arrive
13 in numbers that exceeded USBP's ability to immediately conduct a field interview and
14 arrest them. As such, the large groups of individuals began to congregate primarily in
15 four locations known to SDC as the 75 Road, 177 Tower, Willows, and 121 Tower in
16 Zone 28. The area known as "Moon Valley" or "Valley of the Moon Trail" was not
17 an area that large groups typically congregated. The closest USBP Stations are BLV
18 and CAO, within approximately nine miles and twenty-one miles, respectively, from
19 the locations where individuals congregated.

20 14. Like in the IMB area of responsibility, individuals congregating in
21 Jacumba generally remained in the area in which they entered until BPAs conducted
22 a field interview, arrested them, and transported them to a USBP facility for
23 processing. Individuals congregating in the Jacumba areas are not in custody until
24 arrested by BPAs. Currently, there are only occasionally large groups arriving in the
25 Jacumba areas. However, like in IMB, currently and throughout calendar year 2024,
26 large groups are generally arrested by BPAs within 12 hours of encounter.

27 15. Congregation at any of the locations in IMB or Jacumba is believed to
28 occur under the direction of smugglers. SDC does not have a policy or practice of

1 directing or encouraging individuals to go to these locations, and does not have a
2 policy or practice of transporting or guiding individuals to these locations to await
3 arrest, transport, and processing.

4 16. As outlined above, IMB has a detention capacity of about 205 individuals.
5 Meanwhile, arrests in the IMB area of responsibility surged during calendar year 2023,
6 reaching over 10,000 monthly arrests in peak months. Similarly, for the Jacumba area,
7 arrests by CAO and BLV also surged during calendar year 2023, reaching over 20,000
8 arrests in December 2023. The arrest numbers for IMB, CAO, and BLV include the
9 individuals arriving in large groups, as well as persons arriving individually and in
10 smaller groups outside of the congregation locations. The number of individuals
11 unlawfully entering the United States from Mexico overwhelmed the ability of IMB,
12 CAO, and BLV to immediately conduct field interviews and arrest individuals
13 comprising the large groups, and subsequently transport those individuals to USBP
14 stations for processing. Due to limited detention space at the closest USBP stations,
15 and staffing and transportation limitations, SDC could not immediately conduct field
16 interviews, make arrests, and arrange for transport to a station for processing.
17 Accordingly, SDC exercised its discretion to not immediately perform field interviews
18 and arrest individuals comprising the large groups in IMB and Jacumba.

19 17. At the congregation areas in Jacumba and IMB, where SDC has not yet
20 conducted a field interview and arrested the individuals comprising the large groups,
21 the individuals in the large groups are not in SDC custody. Therefore, SDC cannot,
22 and does not, provide the same degree of humanitarian care and resources as it does to
23 individuals who have been arrested, taken into custody, and transported to a USBP
24 station for processing.

25 18. SDC does not restrict movement of individuals congregating in IMB and
26 Jacumba, and there are no fences or other barriers restricting their movement in the
27 Jacumba areas. SDC does count the individuals in these locations, in order to
28 determine the number of individuals in need of transportation and compare that

1 number with available detention space at the SDC facilities. SDC does not instruct its
2 BPAs to tell the individuals congregating in the IMB and Jacumba areas that their
3 immigration cases will be negatively impacted if they leave those areas. SDC is not
4 aware of individuals in large groups in the IMB and Jacumba areas leaving or walking
5 beyond the immediate border area in those locations, although there are options to do
6 so. For instance, in Jacumba, there are roads and gas stations within walking distance
7 of the locations where large groups congregate, and the town of Jacumba is less than
8 two miles from individuals congregating near 75 Road. In IMB, individuals arrive in
9 locations that are immediately adjacent to major metropolitan areas. However, it is
10 SDC's experience that, in both IMB and Jacumba, individuals generally remain in the
11 locations where large groups congregate and do not further their entry into the United
12 States. Were an individual to leave a location where a large group had congregated,
13 there is no direct consequence for such an action, but if they are encountered by USBP,
14 they, like any individual suspected of unlawfully entering the United States, may be
15 subject to a field interview and when appropriate, arrest. When individuals congregate
16 at locations within IMB and Jacumba and are not arrested, SDC has exercised its
17 discretion not to immediately perform field interviews and conduct arrests, due to
18 SDC's limited resources including detention space, staffing, and transportation, as
19 discussed above.

20 19. Family units (noncitizen minor(s) with their noncitizen parent(s) or legal
21 guardian(s)) are not separated from each other. However, single adult men
22 congregating with large groups are at times instructed to move to a different location
23 within the same area, away from other populations such as UCs and family units,
24 within a few hundred yards of the location at which they arrived. These instructions
25 to single adult men are issued for humanitarian and safety reasons, and to prioritize
26 UCs and family units for field interviews, arrest, and transportation. The humanitarian
27 and safety reasons include avoiding rape, assault, robbery, fighting, and other
28 lawlessness. Agents prioritize the arrest and transport of vulnerable groups, and may

1 prioritize arresting and transporting certain individuals for safety reasons. Single adult
2 men, like other populations, are free to leave areas where large groups congregate at
3 any point prior to arrest.

4 20. USBP has observed members of the public access the IMB and Jacumba
5 areas to provide individuals with water and food. Volunteers have also provided tent
6 shelters to individuals at the congregation areas in Jacumba. SDC does not have a
7 policy or practice of impeding or restricting access to the Jacumba locations by
8 members of the public. Similarly, in IMB, volunteers were permitted to approach the
9 IBB to provide humanitarian aid, including water and food, at W8. At W8, individuals
10 waiting within the IBB (in between the primary and secondary infrastructure near the
11 San Ysidro Port of Entry) to be interviewed, arrested, and transported to a USBP
12 facility communicated with and received aid from members of the public through the
13 secondary fence. In 2023, volunteers periodically set up a sunshade tent in order to
14 distribute food, water, and other aid to individuals near the W8 location.

15 21. SDC is unable to provide a constant presence at the locations where
16 individuals congregate in IMB and Jacumba due to limited resources including
17 staffing. However, SDC patrols these areas, and other border areas, as part of its
18 general duty to patrol and secure the border. There are cameras in IMB along the
19 southern border that were already in place prior to the arrival of large groups, which
20 are capable of providing surveillance at locations where large groups congregate in
21 IMB. The cameras are part of the Remote Video Surveillance System (RVSS)
22 designed to detect unlawful entries into the United States. The RVSS camera feeds
23 are constantly monitored by SDC personnel in the Tactical Communications Center.
24 In Jacumba, Autonomous Surveillance Towers (ASTs) are capable of providing
25 surveillance and detection in some areas, including 121 Tower and 177 Tower. The
26 ASTs are designed to detect the presence of individuals in the field. RVSS and ASTs
27 have been in place in these areas since 2006 and 2018, respectively, to assist in
28 detecting unlawful entries to the United States, and are not related to the current large

1 group entries.

2 22. However, recognizing the humanitarian concerns created by these large
3 groups of individuals arriving in the United States and congregating in these areas, and
4 dependent upon available resources such as staffing and transportation, SDC BPAs
5 prioritize interviewing, arresting, and transporting vulnerable populations from the
6 field to the nearest USBP station for processing as soon as possible. Vulnerable
7 populations include UCs, family units, pregnant individuals, and the elderly or infirm.

8 23. If an individual encountered in the field, including individuals
9 congregating at the locations in IMB and Jacumba, is in apparent medical distress,
10 emergency medical assistance is provided, consistent with agency practice. However,
11 full medical assessments are not conducted unless and until a person is in SDC
12 custody. For those individuals congregating at the locations in IMB and Jacumba,
13 SDC BPAs provide basic first responder care to individuals at the locations who are
14 in need of immediate care, and call Emergency Medical Services (EMS) for
15 individuals who are in need of advanced medical care. Both BPAs and individuals are
16 able to call EMS to the field on a daily basis to provide medical assistance to
17 individuals who are then transported to local area hospitals for treatment.

18 24. In light of humanitarian concerns, from approximately May 9 to
19 December 14, 2023, SDC provided colored wristbands to individuals congregating in
20 large groups in Jacumba and IMB in order to identify how long individuals had been
21 present in those locations, in order to help prioritize whom to interview, determine
22 alienage, arrest, and transport to a USBP station. SDC has consistently prioritized the
23 arrest, transportation, and processing of vulnerable populations, including UCs, family
24 units, pregnant individuals, and the elderly or infirm. The individuals were not
25 required to put on a wristband and could decline a wristband if they chose to do so.
26 However, declining a wristband might prevent agents on site from knowing how long
27 an individual had been present at the site. SDC has not received any reports of
28 individuals declining a wristband.

1 25. Since approximately April or May 2023, SDC began providing water and
2 snacks to the individuals in the large groups at the IMB and Jacumba areas if arrest
3 and transportation to a USBP station was not immediately available. Water and snacks
4 were dropped off during every shift, and were distributed periodically and upon an
5 individual's request, dependent upon available resources. BPAs are assigned to three
6 separate shifts within each 24-hour period. Additionally, BPAs and non-uniformed
7 employees contracted by USBP provided trash bags in the immediate areas where
8 large groups are congregating. Contract employees collected trash in these areas as
9 frequently as daily, depending on availability. Additionally, in 2023, USBP placed
10 two trash dumpsters near locations where individuals congregate in IMB. Between
11 May 2023 and January 2024, seven trash dumpsters were placed near congregation
12 locations in Jacumba. Of these seven dumpsters, three were funded by USBP, while
13 the other four were provided by external entities, including a local elected official and
14 a Non-Government Organization (NGO).

15 26. Between April 2023 and January 2024, SDC placed 10 portable toilets
16 near the congregation locations in IMB. Between September 2023 and January 2024,
17 14 portable toilets were placed near the locations in Jacumba. In January 2024, SDC
18 placed two hand wash stations near the locations in IMB, and six hand wash stations
19 were placed near the locations in Jacumba. In February 2024, SDC placed one water
20 station near a location in IMB, and three water stations were placed near the locations
21 in Jacumba. Two additional water stations are anticipated for delivery in Jacumba.
22 The water stations have an approximate capacity of 500 gallons. The portable toilets,
23 hand wash stations, and water stations were funded by USBP. The portable toilets,
24 hand wash stations, dumpsters, water, and food were provided solely to alleviate
25 humanitarian needs of the individuals in the areas where large groups of individuals
26 congregated that SDC could not immediately interview and arrest, and to assist in
27 keeping these areas free of human waste and refuse.
28

1 27. Large groups consisting of dozens to hundreds of individuals continue to
2 enter the United States in SDC on a weekly or daily basis, including at locations within
3 IMB and Jacumba. However, the number of large groups congregating in the IMB
4 and Jacumba areas has recently decreased. Large groups have instead begun arriving
5 to the United States in other locations, including locations within Campo Station's area
6 of operations. Campo Station is now experiencing the majority of large group arrivals.
7 During calendar year 2024, SDC has arrested noncitizens comprising these groups
8 within 12 hours of their encounter by BPAs and transported them from the field.
9 During calendar year 2023, SDC generally arrested noncitizens that comprised the
10 large groups within 24-hours of their encounter by BPAs. UCs and family units are
11 prioritized for arrest and transport from the field.

12 28. While USBP strives to take noncitizens arriving in large groups into
13 custody as soon as possible, it is not feasible for USBP to do so immediately in every
14 situation. This is because, as noted above, SDC faces resource and staffing shortages
15 and cannot maintain a consistent presence in these areas at all times. Similarly, it
16 would not be possible for USBP to, in all situations, take noncitizen children into
17 custody within a specified period of time. While SDC prioritizes the arrest and
18 processing of UCs, family units, and vulnerable individuals, situations on the ground
19 are fluid and constantly changing, based on arrest numbers at individual stations,
20 resource constraints, the number of arrests occurring throughout SDC, and SDC's
21 overarching detention capacity.

22 29. Already, approximately 198 BPAs from SDC have been reassigned from
23 patrol duties to the soft-sided facility solely to process arrested individuals, provide
24 security, distribute meals, etc. This reduces the personnel and resources available to
25 perform the central mission of USBP to deter, detect, and arrest terrorists,
26 undocumented noncitizens, and human smugglers, and seize terrorist-related weapons,
27 illicit drugs, and other contraband.

28 30. SDC's mission effectiveness is further reduced when BPAs are assigned

1 to arrest and transport large groups from the field. For example, it can take as long as
2 two and a half to three hours to arrest and then transport individuals from the Jacumba
3 area to the soft-sided facility. The soft-sided facility is approximately 65-70 miles
4 from Jacumba, or about one hour and 30 minutes driving time, one way. Additionally,
5 throughout calendar year 2024, the soft-sided facility alone has regularly exceeded
6 200% of its detention capacity, holding over 1,500 noncitizens in custody for
7 processing, and has reached numbers of over 2,000 in custody. BPAs performing
8 processing duties are not available to detect and arrest individuals who, unlike the
9 individuals who choose to await arrest at congregation areas, attempt to evade
10 detection and arrest and may pose national security threats to the United States.

11 31. Additionally, SDC has taken steps to further increase capacity and
12 resources to minimize the amount of time that noncitizens must wait in the field to be
13 arrested and processed. In particular, the capacity of the soft-sided facility was
14 increased from 500 to its current level of 750 individuals in October 2023. SDC now
15 has 15 buses to provide transportation for large groups. As noted above, SDC has
16 reassigned 198 BPAs from patrol duties in order to increase processing speed and
17 reduce time in custody. Additionally, SDC has received approval to upgrade the total
18 detention capacity at the soft-sided facility to 1,000 individuals when funding becomes
19 available. SDC is engaged in an active effort to transport arrested noncitizens to SDC
20 facilities as quickly and efficiently as possible, and continues to prioritize the arrest of
21 vulnerable populations, including UCs and family units, for transportation to the
22 nearest USBP station or the soft-sided facility for processing.

23
24 Executed on this 15th day of March 2024.

25 BRENT L

26 SCHWERDTFEGER

Digitally signed by BRENT L
SCHWERDTFEGER
Date: 2024.03.15 15:53:17
-07'00'

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28 Brent L. Schwerdtfeger
Division Chief, Law Enforcement Operations Division

1 San Diego Sector, U.S. Border Patrol
2 U.S. Customs and Border Protection
3 U.S. Department of Homeland Security
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