



DEPARTMENT OF THE ATTORNEY GENERAL

DAVID Y. IGE
GOVERNOR

CLARE E. CONNORS
ATTORNEY GENERAL

For Immediate Release
October 12, 2019

News Release 2019-70

Hawaii Attorney General Files Motion to Protect \$3.6 Billion in Military Construction Funds from Being Diverted for Rejected Border Wall

HONOLULU – Attorney General Clare E. Connors, as part of a multistate coalition, filed a motion for partial summary judgment to block the Trump Administration from unilaterally and unlawfully diverting \$3.6 billion in military construction funds toward construction of a border wall. The funds in question were appropriated by Congress for specific military construction projects, not a border wall. Congress has rejected multiple attempts to fund the border wall through budget appropriations, and has twice passed resolutions – in March 2019 and again in September 2019 – terminating President Trump’s false national emergency declaration. The states ask the court to enjoin the Trump Administration from unlawfully diverting the funding on the basis that it is unlawful and unconstitutional and would cause the states irreparable harm by: damaging the environments of California and New Mexico where the border barriers would be built; eliminating \$493 million for military construction projects within the states’ jurisdictions resulting in the loss of thousands of jobs and millions of dollars of tax revenue; and by increasing risks to the health and safety of both military personnel and surrounding communities.

“This diversion violates the separation of powers that is fundamental to our democracy,” said Attorney General Connors. “This illegal act has a direct impact on military facilities at Joint Base Pearl Harbor-Hickam and Marine Corps Base Hawaii at Kaneohe Bay, and, therefore a direct impact on the financial health of our state.”

President Trump is unlawfully attempting to divert a total of \$3.6 billion from over 120 military construction projects to build 11 sections of border fencing, including seven in California and New Mexico located on federal, state, and private lands. On September 3, 2019, the Secretary of Defense identified half of the funds, \$1.8 billion, to divert from 60 domestic military construction projects. Specifically at risk in Hawaii are two projects: (1) a consolidated training facility for Air Force Reserve units at Joint Base Pearl

Harbor-Hickam; and (2) security improvements to the Mokapu Gate at Marine Corps Base Hawaii (Kaneohe Bay).

The states further assert that the Trump Administration is:

- Violating the U.S. Constitution's separation of power doctrine and the Appropriations and Presentment Clauses. Congress has the "power of the purse" not the President. Congress refused to appropriate this funding for a border barrier and instead limited the appropriation to \$1.375 billion for fencing in a specified area. President Trump exceeds his authority in bucking the will and role of Congress;
- Exceeding its lawful authority under 10 U.S.C. section 2808 to construct a border barrier across vast swaths of the U.S.-Mexico border, as it fails to meet the conditions imposed by Congress to undertake military construction projects in a national emergency;
- Violating the Administrative Procedure Act's prohibition on arbitrary and capricious agency action by failing to address any of the harms to public health and safety arising from the defunding of over 120 military construction projects, including cancellation of a \$26.5 million project in Hawaii to improve security at one of only two access points to the Marine Corps Base at Kaneohe Bay, which the Marine Corps asserted was necessary to bring it into compliance with current anti-terrorism and force protection standards;
- Failing to meet the required environmental review by the National Environmental Policy Act, which would harm California and New Mexico's water and air quality, wildlife, land, environmental resources, and would harm public health.

###

For more information, contact:

Krishna F. Jayaram
Special Assistant to the Attorney General
(808) 586-1284
Email: atg.pio@hawaii.gov
Web: <http://ag.hawaii.gov>
Twitter: @ATGHgov