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17 **UNITED STATES DISTRICT COURT**  
18 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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21 **IN RE: BORDER**  
22 **INFRASTRUCTURE**  
23 **ENVIRONMENTAL**  
24 **LITIGATION**  
25  
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Case No. 3:17-cv-01215-GPC-WVG  
Consolidated with  
Case No. 17-cv-01873-GPC-WVG  
Case No. 17-cv-01911-GPC-WVG

**Plaintiff’s Notice of Appeal of Order  
Denying Plaintiffs’ Motions for  
Summary Judgment and Granting  
Defendants’ Motions for Summary  
Judgment (*Ultra Vires* Claims)**

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1 Notice is hereby given that Center for Biological Diversity, Plaintiff in Case  
2 No. 3:17-cv-01215-GPC-WVG (consolidated with Case No. 17-cv-01873-GPC-  
3 WVG and Case No. 17-cv-01911-GPC-WVG), hereby appeals to the United  
4 States Court of Appeals for the Ninth Circuit from the Court’s February 27, 2018  
5 Order Denying Plaintiffs’ Motions for Summary Judgment and Granting  
6 Defendants’ Motions for Summary Judgment in the consolidated cases, with the  
7 exception of Center for Biological Diversity’s seventh cause of action for  
8 violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 (ECF No.  
9 50). Final Judgment on this Order was entered on March 26, 2018 (ECF No. 54).<sup>1</sup>

10 Plaintiff’s Notice of Appeal is limited to its first cause of action, which  
11 alleges that the Department of Homeland Security Secretary’s August 2, 2017  
12 Determination Pursuant to Section 102 of the Illegal Immigration Reform and  
13 Immigrant Responsibility Act of 1996 (“IIRIRA”), 8 U.S.C. § 1103 note, to waive  
14 requirements under the National Environmental Policy Act, 42 U.S.C. § 4321 *et*  
15 *seq.*, Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and other laws, was *ultra*  
16 *vires* to the Secretary’s authority under that law. *See* Second Amended Complaint  
17 (ECF No. 16).<sup>2</sup>

18 Plaintiff’s Representation Statement, required by Federal Rule of Appellate  
19 Procedure 12(b) and Ninth Circuit Rule 3-2(b), is attached to this Notice of  
20 Appeal.

21 DATED: April 9, 2018

Respectfully submitted,

*s/ Brian Segee*

24 <sup>1</sup> On March 23, 2018, Plaintiff Center for Biological Diversity and Defendants  
25 entered a Joint Motion for Dismissal of FOIA Claims (ECF No. 52), which was  
granted by the Court pursuant to an Order issued March 26, 2018 (ECF No. 53).

26 <sup>2</sup> Plaintiff’s remaining causes of action allege constitutional violations in relation  
27 to the August 2, 2017 Determination. IIRIRA Section 102(c)(2)(C) provides that  
28 these claims “may be reviewed only upon petition for a writ of certiorari to the  
Supreme Court of the United States.”

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2018, I electronically filed Plaintiff's Notice of Appeal with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

s/ Brian Segee

Brian Segee