UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Rigoberto HERNANDEZ HERNANDEZ, Petitioner, v. U.S. BORDER PATROL, et al. Respondents.	Case No. Agency No. AXXX-XXX-475 **DECLARATION OF RIVA DUNCAN IN SUPPORT OF PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER**

DECLARATION OF RIVA DUNCAN IN SUPPORT OF PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER

I, Riva Duncan, under penalty of perjury, do solemnly declare:

1. I am a strategic advisor and emergency management specialist with an emphasis on wildland fire management. I served for more than 31 years in the United States Forest Service and held various roles in fire management including working on engines, hotshot crews, and helicopter operations before moving into fuels management and then operations and managing the interagency responses for large and complex fires.

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2. I was the United States Forest Fire Chief, of the U.S. Forest Service, for the Umpqua National Forest in SW Oregon from 2017 until retirement in December 2020 where I managed all aspects of a large and complex interagency fire program.

3. My current work includes developing webinars and virtual workshops for firefighters and military personnel in Ukraine, primary US advisor for the development of the first Fire Management Plan for the Chernobyl Exclusion Zone, and capacity building for Borjomi-Kharagauli National Park in the Republic of Georgia and Sharr Mountain National Park in North Macedonia. I serve on the Executive Board of the Grassroots Wildland Firefighters non-profit supporting federal wildland firefighters. I have a Bachelor's Degree in Forest Management from Purdue University.

4. Wildland firefighters are highly trained professionals who meet rigorous physical fitness standards and training requirements to perform demanding work in challenging environments. They may serve on: (a) Hand crews, (b) Engine crews, (c) Helitack crews, or as. (d) Smokejumpers. With experience, some firefighters join interagency hotshot crews or Type 2 Initial Attack capability crews, tackling the toughest assignments on the fireline. Smokejumpers parachute into remote areas to respond to new fires, and helitack firefighters rappel into wildfires.

5. No matter the role, every type of crew works as part of a larger team to protect lives, property, infrastructure, and the natural landscapes.

6. National interagency coordination is based on a three-tier system of response, including local, geographic area, and national. There are more than 200 local dispatch centers across the nation including Oregon and Washington, which coordinate the initial and local response to a wildfire. If an incident grows in size or complexity, or there are multiple

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incidents in a local area, it may exhaust the capability of local teams, crews, equipment and aircraft, in which case regional and national resources may be available.

7. The Bear Gulch fire is currently classified as a large fire, and as of this declaration, is 9% contained. It is not expected to be fully contained until October 1, 2025 based on projections taking into account numerous variables. It has burned more than 10,000 acres. The lead agency responsible for the wildland fire response is the U.S. Forest Service.

8. For large fires such as Bear Gulch there is an interagency management response by federal Incident Management Teams (IMTs) made up of personnel fromthe Bureau of Indian Affairs, Bureau of Land Management, US Fish and Wildlife Service, US Forest Service, National Park Service, and, along with numerous state and local wildland fire agencies. Law enforcement is often involved in the interagency response for the safety and security of the firefighters and the public, including maintaining and monitoring area closures, but within the management and authority of the incident management team.

9. The U.S. Border Patrol is not considered to be part of an interagency wildland fire, generally and in my long experience has never been involved as an agency in a wildland fire management response. As far as my experience and knowledge, Border Patrol law enforcement officers receive no wildland fire training. The National Wildfire Coordinating Group (NWCG) provides national leadership to enable interoperable wildland fire operations among federal, state, local, Tribal, and territorial partners. The US Border Patrol is neither a primary nor associate member.

10. In all wildland fire responses, the single overriding suppression priority is the protection of human life – both that of the firefighters and of the public.

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11. All wildfires, regardless of complexity level, will have an incident commander (IC). The IC is a single individual responsible to the agency administrator(s) for all incident activities. ICs are qualified according to the NWCG standards and any additional agency requirements. The IC may assign personnel to any combination of incident command system functional area duties in order to operate safely and effectively. ICs are responsible for 1) Obtaining a delegation of authority and/or expectations to manage the incident from the agency administrator, and 2) ensuring that safety receives priority consideration in all incident activities, and that the safety and welfare of all incident personnel and the public is maintained (NWCG Standards for Fire and Fire Aviation Operations, 2025, Chapter 11). There are approximately 41 Complex Incident Management Teams (CIIMT) currently rostered across the US. The CIIMTs respond to the most challenging and complex incidents. They are "hosted" by various geographical areas but respond to fires and other disasters across the US and its territories. These are 'federal' teams utilized primarily on federal land but can also be used on other jurisdictional lands as requested (a few state wildfire agencies also have state-level IMTs). These teams are ordered by the local jurisdictional federal agency that must justify the need based on criteria such as long-term weather, threats to communities and/or infrastructure, expected duration, fire behavior, etc. The local jurisdictional agency provides each IMT a delegation of authority from the Agency Administrator. A standard team assignment is 14 days with extensions possible up to 21 days.

12. An Incident Action Plan (IAP) is an oral or written plan containing the objectives established by the Incident Commander /Unified Commanders and addressing tactics and support activities for the planned operational period, generally 12 to 24 hours. On large

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fires such as Bear Gulch, a written IAP is provided to the firefighters by the IMT on behalf of the IC for each operational shift. It contains other pertinent information such as the daily fire weather forecast, fire behavior forecast, hazard and risk identification/mitigations, resource assignments and tasks by Division[1], aircraft information, operational maps, etc.

13. Incident Action Plans have one or more maps that are used by field operations personnel and are essential tools for firefighter situational awareness. The IAP map effectively supports the incident management objectives in addition to displaying geographic and incident features. The IAP map is updated after every operational shift to reflect changes such as containment progress, kinds of firelines established, helicopter landing zones, water sources, and Division locations, and is used by operations staff to display the locations of field assignments. The map is reviewed at the operational shift briefing.

14. All fires have an established Incident Command Post (ICP). On large, complex wildfires the ICP can resemble a small village with large tents housing each staff section (Incident Command, Operations, Finance, Plans, Safety, Communications, Logistics, Public Information).. The ICP will be the base of operations for the fire response/IMT and serve many needs such as a centralized location to support the firefighting resources (caterer, supply, medical, laundry, showers, etc). At the beginning of every shift (for example, at 0600 or 0700 for day shift), the IMT holds an operational briefing for the firefighting resources. The IMT distributes the IAPs/Maps and goes over what happened on the previous shift and then goes over the IAP for that shift. At the end of the briefing the

[1] Each fire is broken up geographically by Division using letters. For example, Division A through Division Z. The larger the fire, the more divisions. There can also be specialized Groups such as a Structure Defense Group. The IAP lists assigned personnel by Division or Group and the operational maps shows where each Division/Group is located.

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resources break out into their Divisions/Groups. The Division/Group Supervisor can choose to brief at the ICP or out at the assigned Drop Point. They go over that shift's assignments, assign tasks to the resources, discuss hazards/safety, communications, etc.

15. There are three primary types of firefighting crews, Type 1, Type 2 Initial Attack (IA), and Type 2. All crews have a mixture of men and women totaling 17 to 22 crewmembers. Type 1 are known as Interagency Hotshots Crews who are highly skilled with chainsaws and experienced and must meet the highest levels of fitness and training. Hotshot Crews are typically given the most challenging assignments on the most complex fires. Type 2 Initial Attack crews are skilled with chainsaws, capable and well-qualified and are able to do initial attacks of emerging wildfires. In the absence of hotshot crews they are often given the toughest assignments. Type 2 crews meet the minimum standards for training and qualifications and are also capable. Many Type 2 crews have years of experience.

16. Each crew is responsible to construct firelines down to mineral soil. Crews use chainsaws and hand tools such as Pulaski's, shovels, and fire rakes. Crews may also use drip torches to burn-off excess vegetation before the head of a fire approaches, securing the fireline even further. During fireline construction, crews may request assistance from airtankers and helicopters. These air resources can drop water to wet or cool down vegetation reducing fire intensity. Fire retardant (red in appearance) is dropped by airtankers ahead of the approaching fire to slow down and/or halt fire progression and support firefighters on the ground. Sometimes heavy equipment is brought in to assist with fireline construction (bulldozers, mechanized tree fallers, chippers, etc.).

17. After a fireline has been secured, the fire mop-up phase begins. Mop-up is crucial in the suppression of every fire. In this phase, all burning, smoldering, and/or hot to the touch

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material near the fireline is extinguished. Crews may have to fell trees, cut brush, and dig-up remaining hot material to extinguish. It is a dirty, arduous, but essential part of the job.

18. I am aware of the public reporting that the U.S. Border Patrol was involved in the Bear Gulch Fire. The public reporting has suggested that they were involved because of a time card dispute involving two hand crews.

19. There are numerous policies and standards around firefighting and firefighters, including the dispute resolutions for contract issues such as time cards. The interagency incident business policies and guidelines are updated yearly and published on-line and available to the public at https://fs-prod-nwcg.s3.us-gov-west-1.amazonaws.com/s3fs-public/publication/pms902.pdf. These policies and standards do not include any reference to law enforcement from *any* agency, and, in my experience, have never involved the U.S. Border Patrol. Time cards for crews are filled out by the Crew Boss and list all crew members on one card. Individual firefighters, i.e. those on crews and engines, do not fill out their own time/hours. Time cards for crews are then signed/approved by their direct fireline supervisor who is either a Task Force Leader or the Division Supervisor. Once the time card is signed by the supervisor it is submitted by the Crew Boss to the timekeepers in Finance. Questioning an individual crew member about a time card would be generally of little value. As stated above, individual crew members, such as the Petitioner in this case, would not as a matter of policy or practice complete an individual time card. Also, it is not unusual for a timekeeper to question a time card. In fact, this happens all the time and across all resources (federal, local, contract). Typically, the crew in question would be asked to visit the Finance section and explain perceived discrepancies. The discrepancy is either corrected by the resource (crew) or allowed to stand after an explanation. Ongoing

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disputes, contradictions, or possible anomalies by contract/private crews are generally considered contractual issues, not criminal issues. If a crew were to continue to turn in their time card with the same errors, the Finance section would report it to the IC and they could be possibly demobilized (sent home) with a less than satisfactory evaluation. In my experience, the vast majority of these kinds of issues are resolved between Finance and the crew. It is extremely unlikely for a crew to be sent home for a time card issue. However, if they were to be demobilized from the incident, the issue would then be elevated to the *company* through the contracting branch, never at the individual firefighter level. It is important for firefighters to be focused and stay focused on the critical role of wildland firefighting. Distractions can be dangerous or deadly for the firefighter.

20. Staging areas are a place for "unassigned" resource to wait for an assignment. This often includes resources just getting to an incident but can also include resources that are no longer needed on a particular Division/Group but that the IMT doesn't want to let go of yet (demobilize). The Operations section is in charge of staging and will then try to get those resources assigned to the incident. A new resource might find themselves in staging for a couple of shifts, but that is rare. If there's not a Division that can use them then they will be demobilized and hopefully reassigned to another fire or, if not, sent to back to their home unit.

I HEREBY DECLARE UNDER PENALTY OF PERJURY PURSUANT TO 28 U.S.C. § 1746 THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated this 14th day of September, 2025, in Asheville, North Carolina.

Riva Duncan

RIVA DUNCAN

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