

July 10, 2019

Via CM/ECF

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Kelsey Cascadia Rose Juliana, et al. v. United States, et al.*,
No. 18-36082

Dear Ms. Dwyer,

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6, Plaintiffs-Appellees submit *Sierra Club v. Donald Trump*, ___ F.3d ___, 2019 WL 2865491 (9th Cir. July 3, 2019), as supplemental authority relevant to interlocutory review in the above-captioned matter. *Sierra Club* denied an emergency request for a stay of a district court’s injunction of a decision by the President and certain cabinet members to “reprogram” funds appropriated by Congress to the Department of Defense and to redirect those funds toward building a barrier along our country’s southern border.

Finding the Constitution does not “leave the Executive Branch to police itself,” *id.* at *10, the Ninth Circuit panel held:

The Supreme Court has ‘long held that federal courts may in some circumstances grant injunctive relief against’ federal officials violating federal law. ‘The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.

Id. at *17 (internal citations omitted); *id.* (“*Trump v. Hawaii* and *Youngstown* therefore support the conclusion that Plaintiffs may seek equitable relief to remedy an alleged constitutional violation.”). The Ninth Circuit panel noted that, even absent a statute making Plaintiffs’ claims expressly reviewable, “Plaintiffs either have an equitable cause of action to enjoin a constitutional violation, or they can proceed on

their constitutional claims under the Administrative Procedure Act, or both.” *Id.* at *2.

Of relevance to the instant case, in *Sierra Club*, the Ninth Circuit panel found the APA did not foreclose Plaintiffs’ equitable, constitutional claim and “it cannot be that both an equitable claim and an APA claim foreclose the other, leaving Plaintiffs with no recourse.” *Id.* at *20. Rejecting Defendants’ APA arguments made in the instant case, the Ninth Circuit panel confirmed “*Navajo Nation* and *Presbyterian Church* clearly contemplate that claims challenging agency actions – particularly constitutional claims – may exist wholly apart from the APA.” *Id.* If anything, the “equitable claim to enjoin unconstitutional action would preclude [Plaintiffs’] APA claim to enjoin unconstitutional action.” *Id.* at 21.

Respectfully submitted,

s/ Philip L. Gregory

PHILIP L. GREGORY

(CSB No. 95217)

Gregory Law Group

1250 Godetia Drive

Redwood City, CA 94062

JULIA A. OLSON

(OSB No. 062230, CSB No. 192642)

Wild Earth Advocates

1216 Lincoln Street

Eugene, OR 97401

ANDREA K. RODGERS

(OSB No. 041029)

Law Offices of Andrea K. Rodgers

3026 NW Esplanade

Seattle, WA 98117

Attorneys for Plaintiffs-Appellees

cc: All Counsel of Record (via CM/ECF)