



U.S. Department of Justice

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August 1, 2019

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

Re: No. 18-36082, *Juliana v. United States*
July 26, 2019 Stay Order in *Sierra Club v. Trump*, S. Ct. No. 19A60

Dear Ms. Dwyer:

On July 24, 2019, the Federal Appellants filed a letter explaining that the motions panel's majority opinion denying a stay in *Sierra Club v. Trump*, No. 19-16102, 2019 WL 2865491 (9th Cir. July 3, 2019), does not compel the Court to reject the government's argument based on the Administrative Procedure Act (APA). DktEntry 142. The government also noted that it had applied to the Supreme Court for a stay pending appeal. *Trump v. Sierra Club*, S. Ct. No. 19A60.

The Supreme Court granted the government's stay application on July 26, 2019. The Court cast doubt on the Ninth Circuit panel's conclusion that the *Sierra Club* plaintiffs had either an equitable cause of action or a cause of action under the APA. Indeed, the Court explained that "[a]mong the reasons" for granting the stay "is that the Government has made a sufficient showing at this stage that the plaintiffs have no cause of action to obtain review of the Acting Secretary's compliance with Section 8005." No. 19A60, 2019 WL 3369425 (U.S. July 26, 2019).

Likewise, Plaintiffs here also lack a cause of action. Because Congress granted a cause of action under the APA to challenge the types of agency actions that Plaintiffs challenge, Plaintiffs may not choose instead to proceed directly under the Constitution or under the district court's equitable authority.

Sincerely,

s/ Jeffrey Bossert Clark
Jeffrey Bossert Clark

Counsel for Appellants

cc: All counsel via CM/ECF