

August 9, 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: No. 18-36082, *Juliana v. United States*  
Response to Appellants' Rule 28(j) Letter of August 6, 2019

Dear Ms. Dwyer,

*Animal Legal Defense Fund v. United States (ALDF)*, No. 6:18-cv-01860-MC, 2019 WL 3467927 (D. Or. July 31, 2019), a fundamentally distinguishable case, is not precedential authority and does not advance Appellants' arguments.

First, the *ALDF* court found the claims turned on recognition of the asserted "right to be free from government" or "right to wilderness"—"a broad philosophical concept with no legal definition or tangible scope." 2019 WL 3467927 at \*4. The *ALDF* court distinguished Appellees' "narrow" asserted right to a stable climate capable of sustaining human life, *id.* at 5, recognition of which is not determinative of Appellees' claims because Appellees also assert violation of recognized constitutional rights, the merits of which Appellants have not challenged. Doc. 36-3 at 4-9.

Second, the *ALDF* court made its generalized grievance determination because the asserted right "would necessarily be held in common by all citizens," 2019 WL 3467927 at \*3, both conflating the generalized grievance inquiry with, and misapplying, the fundamental rights-recognition inquiry. *See e.g., Marron v. U.S.*, 275 U.S. 192, 194 (1927) ("It has long been settled that the Fifth Amendment protects every person . . ."); Doc. 36-3 at 43. In contrast to a mere abstract interest in "proper application of the Constitution," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573 (1992), Appellees' injuries are concrete, actual, and particularized. Doc. 36-3 at 10-14 (detailing Appellees' past, continuing, and imminently threatened injuries unique to their personal interests, identities, and circumstances); *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) ("[I]t does not matter how many

Molly C. Dwyer  
August 9, 2019  
Page 2

persons have been injured” so long as the challenged conduct injures the claimant “in a concrete and personal way.”).

Finally, the *ALDF* court’s “case or controversy” analysis, is not only improperly divorced from any discrete, established doctrine of justiciability, but also inapplicable here. Unlike the *ALDF* plaintiffs, Appellees do not ask the “judiciary to make policy decisions” to “grant the relief they seek.” 2019 WL 3467927 at \*3; Doc. 36-3 at 26 and n. 17, 29-32 (explaining request for order for Appellants to prepare a plan *of their own devising* to remedy their constitutional violations).

Respectfully submitted,

s/ Julia A. Olson  
JULIA A. OLSON  
(OSB No. 062230, CSB No. 192642)  
Wild Earth Advocates  
1216 Lincoln Street  
Eugene, OR 97401

PHILIP L. GREGORY  
(CSB No. 95217)  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062

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)