

September 13, 2019

VIA CM/ECF

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Re: *Sierra Club v. Trump, California v. Trump*,
Nos. 19-16102, 19-16300, 19-16299, 19-16336
Notice under Federal Rule of Appellate Procedure 28(j) and
Circuit Rule
28-6.

Dear Ms. Dwyer:

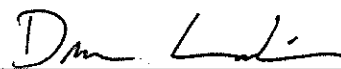
Plaintiffs-Appellees respectfully submit the following
authorities in response to Defendants-Appellants' 28(j) letter of
September 11, 2019.

Courts are unanimous that there is “no obligation to defer”
to GAO assessments. *U.S. Dep’t of Navy v. Fed. Labor Relations
Auth.*, 665 F.3d 1339, 1349 (D.C. Cir. 2012) (citation omitted)
(Kavanaugh, J.); *see also Delta Chem. Corp. v. West*, 33 F.3d
380, 382 (4th Cir. 1994) (“Opinions of the GAO . . . are not
binding on this court or the executive branch.”). “It is for the
courts to determine the intent of Congress as expressed in its
legislative enactments,” *Greene Cty. Planning Bd. v. Fed. Power
Comm’n*, 559 F.2d 1227, 1239 (2d Cir. 1976) and courts “should
not shrink from exercising [their] power,” *Delta Data Sys. Corp.
v. Webster*, 744 F.2d 197, 201–02 (D.C. Cir. 1984) (alteration
and quotation marks omitted). “[A]lthough [courts] consider the
Comptroller General’s reasoning to the extent it is persuasive, it
is the court that has the last word.” *U.S. Dep’t of Navy*, 665 F.3d
at 1349 (citation and quotation marks omitted).

The GAO opinion Defendants submit is inconsistent with
the record before this Court and not entitled to deference. For

example, although the GAO asserts that “there was no denial of fences at the southern border,” B-330862 at 10 (Sept. 5, 2019), “real-world events in the months and years leading up to the 2019 appropriations bills leave no doubt that Congress considered and denied appropriations for the border barrier construction projects that DoD now seeks to finance.” *Sierra Club v. Trump*, 929 F.3d 670, 691 (9th Cir. 2019). For example, Defendant Trump explained that he transferred billions in military funds to the wall because he “went through Congress,” did not get the money he had sought for the wall, and was “not happy” that “on the wall, they skimped.” SER235. In addition, days ago, Defendant Trump reiterated his understanding that Congress had denied his request: “we’re taking money from all over because as you know the Democrats don’t want us to build the wall.” A Message from President Trump on the Border Wall, <https://www.youtube.com/watch?v=0fEdhud7RJI> (Sept. 9, 2019).

Respectfully submitted,



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