No. 19-16102

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIERRA CLUB et al.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

MOTION FOR LEAVE TO FILE BRIEF FOR THE U.S. HOUSE OF REPRESENTATIVES AS AMICUS CURIAE IN SUPPORT OF APPELLEES' OPPOSITION TO APPELLANTS' MOTION TO STAY

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CONSENT MOTION FOR LEAVE TO FILE BRIEF

The U.S. House of Representatives respectfully moves for leave to file an amicus curiae brief supporting appellees' opposition to the Trump Administration's motion to stay the district court's preliminary injunction.[1] The parties consent to the filing of the brief.

1. The House's motion should be granted because the House has a compelling institutional interest in this case, which involves the Administration's unconstitutional expenditure of funds to build a wall along the southern border of the United States without a valid Congressional appropriation. The Appropriations Clause vests Congress with "exclusive power over the federal purse," *U.S. Dep't of the Navy v. FLRA*, 665 F.3d 1339, 1346 (D.C. Cir. 2012) (quotation marks omitted), and it "was one of the most important authorities allocated to Congress in the Constitution's 'necessary partition of power among the several departments,'" *id.* (quoting *The Federalist No. 51*, at 320 (James Madison) (Clinton Rossiter ed., 1961)). The Framers vested appropriations authority in Congress to provide it with "the most complete and effectual weapon with which any constitution can arm the

[1] The Bipartisan Legal Advisory Group (which consists of the Speaker, the Majority Leader, the Majority Whip, the Republican Leader, and the Republican Whip) authorized the filing of this brief on behalf of the House. This group "speaks for, and articulates the institutional position of, the House in all litigation matters." Rule II.8(b) of the U.S. House of Representatives (116th Cong.). The Republican Leader and the Republican Whip declined to support this filing for institutional reasons, as the appropriate recourse provided under Article I of the U.S. Constitution is to pass legislation.

immediate representatives of the people." *The Federalist No. 58*, at 359 (James Madison).

The Administration's trespass on Congress's appropriations authority therefore inflicts a serious injury upon the House as an institution. "Congress . . . is the only body empowered by the Constitution to adopt laws directing monies to be spent from the U.S. Treasury," and "this constitutional structure would collapse, and the role of the House would be meaningless, if the Executive could circumvent the appropriations process and spend funds however it pleases." *U.S. House of Representatives v. Burwell*, 130 F. Supp. 3d 53, 71 (D.D.C. 2015).

In order to defend Congress's constitutional authority, the House participated as amicus curiae in the district court proceedings below, and, on April 5, 2019, the House filed suit in the U.S. District Court for the District of Columbia to seek redress for defendants' unconstitutional actions. *See U.S. House of Representatives v. Mnuchin*, No. 1:19-cv-00969 (D.D.C.) The House seeks leave to file an amicus brief in this appeal to further defend its interests.

2. The House respectfully submits that its amicus brief will aid the Court's understanding of the Congressional appropriations issues presented here. The questions presented in this litigation involve matters that go to the heart of the separation of powers: Congress's power of the purse, and the restraints imposed on the Executive Branch by the Appropriations Clause, which expressly precludes expenditures of federal funds absent Congressional authorization. The House is well-positioned to provide this Court with unique insight into the appropriations process. As part of the Legislative Branch, the House offers a perspective distinct

from the parties, which is particularly important given the separation-of-powers concerns implicated by this action. And by addressing the injury to Congress's Appropriations Clause interests, the House's participation will provide the Court with an important perspective in this case. *See Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) (per curiam) (considering harm to interested non-parties in determining whether a stay was warranted); *Lair v. Bullock*, 697 F.3d 1200, 1215 (9th Cir. 2012) (same).

CONCLUSION

For the foregoing reasons, the Court should grant the House's motion for leave to file the attached brief as amicus curiae supporting appellees' opposition to the Administration's motion to stay the district court's preliminary injunction.

Respectfully submitted,

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June 11, 2019

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitations of Fed. R. App. P. 27 and Ninth Circuit Rule 32-3 because it contains 646 words. This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010: namely, 14-point Times New Roman font.

/s/ Douglas N. Letter
Douglas N. Letter

CERTIFICATE OF SERVICE

I certify that on June 11, 2019, I served a copy of the foregoing motion via the Ninth Circuit's ECF system on all parties in this case.

/s/ Douglas N. Letter
Douglas N. Letter

No. 19-16102

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SIERRA CLUB et al.,

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BRIEF OF THE U.S. HOUSE OF REPRESENTATIVES AS AMICUS CURIAE IN SUPPORT OF APPELLEES' OPPOSITION TO APPELLANTS' MOTION TO STAY

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INTEREST OF AMICUS CURIAE

The U.S. House of Representatives has a compelling interest in this case, which arises out of the Trump Administration's disregard for the bedrock constitutional principle that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. The Appropriations Clause vests Congress with "exclusive power over the federal purse," and it is "one of the most important authorities allocated to Congress in the Constitution[]." *U.S. Dep't of the Navy v. FLRA*, 665 F.3d 1339, 1346 (D.C. Cir. 2012).

This power over the purse is an essential element of the checks and balances built into our Constitution and serves as a protection against tyranny—even the monarchs of England learned long ago that they could not spend funds over the opposition of Parliament. The Framers enshrined this foundational principle into Article I of our Constitution. Yet, the Administration refuses to accept this limitation on its authority, as clearly demonstrated by the boast from Acting White House Chief of Staff Mick Mulvaney that President Trump's border wall "is going to get built with or without Congress."[1] Under our Constitutional scheme, an immense wall along our border simply cannot be constructed without funds appropriated by Congress for that purpose; in fact, not even a single plank of wood

[1] Andrew O'Reilly, *Mulvaney Says Border Wall Will Get Built, 'With or Without' Funding from Congress*, Fox News (Feb. 10, 2019), https://tinyurl.com/MulvaneyFoxNewsSunday.

or spool of wire can be purchased without a valid appropriation. *See FLRA*, 665 F.3d at 479.

The House participated as an amicus in the district court and has also filed suit in the U.S. District Court for the District of Columbia seeking to stop the Administration's unconstitutional use of funds that Congress did not appropriate and, indeed, denied for the purpose of building a wall. *See U.S. House of Representatives v. Mnuchin*, 1:19-cv-00969 (D.D.C.). The House submits this amicus brief to emphasize to this Court the immediate and irreparable harm to Congress's constitutional authority and the Nation that would be caused by granting a stay of the district court's preliminary injunction.[2]

SUMMARY OF ARGUMENT

This case involves the Administration's transfer, obligation, and expenditure of billions of dollars in federal funds to construct a wall along the southern border of the United States despite Congress's clear refusal to appropriate anything close to that amount of money for that purpose. In the face of that refusal, the Administration has improperly invoked inapposite appropriations authorities in an effort to circumvent Congress's judgment that billions of dollars should not be spent on such construction. This effort violates the Appropriations Clause, and the

[2] No counsel for a party authored this brief in whole or in part, and no person or entity other than the House contributed money to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(e).

district court correctly entered a preliminary injunction against that illegal action. This Court should deny the Administration's request for a stay pending appeal.

First, if the Administration is permitted to transfer, obligate, and expend the funds at issue here during this appeal, the harm to Congress and the Nation cannot be remedied. The Administration has been clear about the reason it seeks a stay pending appeal: Absent an injunction, it intends to quickly obligate and expend funds on border wall construction over the next four months. Indeed, but for the preliminary injunction, the Administration has stated that it would begin building the border wall within a matter of days at the rate of half a mile per day. *See* Order (May 24, 2019) (ECF No. 144) (Order) at 11. Once those funds are obligated and spent, they cannot be clawed back for the federal treasury. In its stay papers, the Administration does not deny (because it cannot) this important fact. Correctly emphasizing that "[t]he funding of border barrier construction, if indeed barred by law, cannot be remedied easily after the fact," *id.* at 50, the district court appropriately entered a preliminary injunction.

By contrast, there is no irreparable injury to the United States if the district court's injunction remains in effect during this expedited appeal. Among other reasons, if federal funds are not spent during this fiscal year, they are not lost; they return to the federal treasury and can be appropriated for use next year, if Congress believes at that time that they should be spent on construction of border barriers.

Indeed, President Trump publicly acknowledged that he "didn't need to do this" because the Administration could "build the wall over a longer period of time."[3]

Second, a stay pending appeal is also unwarranted because the Administration cannot demonstrate a sufficiently strong likelihood that it will succeed on the merits. As relevant here, the Administration asserts authority to spend $2.5 billion of Department of Defense (DOD) funds under 10 U.S.C. § 284, which authorizes DOD to construct fences to block drug smuggling corridors along the border. But Congress unmistakably refused to appropriate billions of dollars for border barrier construction, and the Administration's invocation of Section 8005 of the 2019 Department of Defense Appropriations Act is an impermissible attempt to circumvent that decision. Indeed, Section 8005 only authorizes transfers subject to specific requirements not satisfied here. The district court therefore correctly concluded that the Sierra Club had "shown a likelihood of success as to their argument that the reprogramming of $1 billion under Section 8005 to the Section 284 account for border barrier construction is unlawful." Order at 41-42.

The Administration's transfer, obligation, and expenditure of these funds thus violates the Appropriations Clause. Indeed, the district court explained that "reading Section 8005 to permit this massive redirection of funds under these circumstances likely would amount to an unbounded authorization for [the

[3] *Remarks by President Trump on the National Security and Humanitarian Crisis on Our Southern Border*, White House (Feb. 15, 2019, 10:39 AM), http://tinyurl.com/TrumpRoseGardenRemarks.

Administration] to rewrite the federal budget," Order at 38 (quotation marks omitted), and likely "would violate the Constitution's separation of powers principles," *id.* The House accordingly urges the Court to deny the Administration's request for a stay of the district court's preliminary injunction pending this expedited appeal.

ARGUMENT

"A stay is an 'intrusion into the ordinary processes of administration and judicial review,' and accordingly 'is not a matter of right, even if irreparable injury might otherwise result.'" *E. Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1245-46 (9th Cir. 2018). The Administration has not satisfied its burden of justifying a stay pending appeal here.

1. Congress's Appropriations Clause interests will be irreparably injured absent a stay, which is of overriding concern to the House as amicus here.[4] *See E. Bay Sanctuary Covenant*, 909 F.3d at 1245-46 (courts must consider "whether the issuance of the stay will substantially injure other parties interested in the proceeding" in determining whether to issue a stay (quotation marks omitted)).

The Administration made repeated demands for over $5 billion in border wall funding, and Congress adamantly rejected those demands, even after the Administration precipitated the longest Federal Government shutdown in history in

[4] In considering issuance of a stay, this Court takes into account harm to the interested non-parties. *See Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) (considering harm to interested non-parties in determining whether a stay was warranted); *Lair v. Bullock*, 697 F.3d 1200, 1215 (9th Cir. 2012) (same).

our Nation's history. *See* Order at 33. The Administration's transfer of $1 billion under Section 8005 to build a border wall, *see id.* at 9, is thus a transparent attempt to evade Congress's decision. Congress's Appropriations Clause interests have already been injured—and will continue to be injured, if the Administration is permitted to obligate and expend the unlawfully transferred funds to construct a border wall during this expedited appeal.[5]

In seeking a stay pending appeal, the Administration stresses that, if the preliminary injunction is stayed pending appeal, it will expeditiously obligate and expend the transferred funds under Section 284. *See* Mot. at 2-3 (explaining that DOD plans to "begin th[e] process" of "obligat[ing] the remaining money" "by late June"); *see also id.* at 21-22 (arguing that DOD must "take multiple steps" to obligate funds "before the September 30 deadline"). If DOD obligates and spends these funds while this appeal is pending, the constitutional injury to Congress and the Nation will be irreparable.[6] As the district court correctly concluded, "[t]he funding of border barrier construction, if indeed barred by law, cannot be remedied

[5] Notably, Congress has made it illegal to "involve [the United States Government] in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). This provision is among the "various statutory provisions" that reflect "[t]he Congressionally chosen method of implementing" the Appropriations Clause. *Harrington v. Bush*, 553 F.2d 190, 194-95 (D.C. Cir. 1977).

[6] *See City of Houston v. Dep't of Housing & Urban Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994) (explaining that "once the relevant funds have been obligated, a court cannot reach them in order to award relief"); *City of Suffolk v. Sebelius*, 605 F.3d 135, 141 (2d Cir. 2010) (similar).

easily after the fact, and yet [the Administration] intend[s] to commence construction immediately and complete it expeditiously." Order at 50.

Moreover, because "the Constitution is the ultimate expression of the public interest," *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (quotation marks omitted), and "all citizens have a stake in upholding the Constitution," *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quotation marks omitted), the district court correctly granted a preliminary injunction to enjoin the Administration's unconstitutional actions.

In addition, the harm to Congress—and our Constitution—that has occurred and will continue to occur absent the preliminary injunction outweighs any asserted harm to the Administration pending expedited appeal. *See E. Bay Sanctuary Covenant*, 909 at F.3d 1245-46 (courts must consider "whether the applicant will be irreparably injured" absent a stay (quotation marks omitted)).

The Administration claims that "[t]he district court's injunction frustrates the government's ability to stop the flow of drugs across the border." Mot. at 19. That claim is suspect because the Administration itself acknowledges that the overwhelming majority of drugs are smuggled *at* ports of entry.[7] Indeed, the amount of drugs smuggled *between* ports of entry in the Yuma and El Paso Sectors—where the Administration plans to construct the two projects at issue—accounted for only approximately 2.8% of the total amount of smuggled drugs in

[7] *See CBP Enforcement Statistics FY 2019*, U.S. Customs & Border Protection, https://tinyurl.com/CBPFY19Stats (last visited June 11, 2019).

fiscal year 2018.[8] Notably, while the Yuma Sector and El Paso Sectors span about 400 miles of the border, the two projects cover only about 50 miles.[9] Administration documents also reveal that (in addition to altering their routes) smugglers evade border walls by using drones, tunnels, and other techniques.[10] For these reasons, among others, Congress refused to fund "President Trump's wasteful wall."[11]

Moreover, the Administration has tools appropriated by Congress at its disposal to secure the border. For example, it could complete spending the funds that Congress did appropriate and deem sufficient for the construction of a border wall. To date, the Administration has completed only 1.7 of the 95 miles of border fencing Congress approved and appropriated funds for in fiscal year 2018.[12]

The Administration argues that the injunction "risk[s]" the cancellation of portions of the projects due to funds lapsing. Mot. at 3. Yet the Administration concedes that its fiscal year 2019 budget authority does not terminate until

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[8] *See id.*

[9] *See Yuma Sector Arizona*, U.S. Customs & Border Protection, https://tinyurl.com/YumaSector (last visited June 11, 2019); *El Paso Sector Texas*, U.S. Customs & Border Protection, https://tinyurl.com/ElPasoSector (last visited June 11, 2019); Decl. of Eric M. McFadden (McFadden Decl.) (ECF No. 146-2) ¶ 5.

[10] *Drug Smuggling at the Border*, U.S. Customs & Border Protection, https://tinyurl.com/CBPDrugSmugglingPresentation (last visited June 11, 2019).

[11] 165 Cong. Rec. S1362 (daily ed. Feb 14, 2019) (statement of Sen. Leahy).

[12] *See* Ltr. from U.S. House of Representatives (May 21, 2019) (ECF No. 161).

September 30, 2019. *Id.* The Administration suggests that its contracts require 100 days to "definitize" prior to that date. *See id.* But the Administration's evidence shows only that its contracts "*require* definitization not *later* than 100 days from the date of contract award," it does not show that definitization *takes* 100 days.[13] In any event, courts have "repeatedly reaffirmed the power of the courts to order that funds be held available beyond their statutory lapse date if equity so requires." *Connecticut v. Schweiker*, 684 F.2d 979, 997 (D.C. Cir. 1982) (quotation marks omitted); *see also* 31 U.S.C. § 1502(b).

Additionally, even if the funds that the Administration wished to use did lapse, that would not constitute irreparable injury to the United States. If Congress—the *only* body that can decide how federal funds should be appropriated—then decides that money should be used to build a border wall, it will appropriate that money, which the Administration can at that time lawfully spend. Accordingly, the Administration will have the funds it seeks if Congress decides that public money should indeed be spent as the Administration wishes.

In these circumstances, the Administration is not entitled to a stay of the district court's injunction so that it may irrevocably violate the Constitution while this Court considers this expedited appeal.

2. In addition, the Administration has not made a strong showing that it is likely to succeed on the merits of its appeal. *See E. Bay Sanctuary Covenant*, 909

[13] McFadden Decl. ¶ 10.

F.3d at 1245-46 (stay applicant must make a "strong showing that he is likely to succeed on the merits" (quotation marks omitted)).

Courts "have strictly enforced the constitutional requirement . . . that uses of appropriated funds be authorized by Congress." *FLRA*, 665 F.3d at 1342; *see also City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018). In considering whether the Administration's expenditures comply with Congress's will, "it is the court that has the last word and it should not shrink from exercising its power." *Delta Data Sys. Corp. v. Webster*, 744 F.2d 197, 202 (D.C. Cir. 1984) (quotation marks and punctuation omitted). The district court here correctly found that the Administration's transfer of funds under Section 8005 for obligation and expenditure under Section 284 on the construction of a border wall was likely unlawful.

A fundamental principle of appropriations law provides that "[a]n amount available under law may be withdrawn from one appropriation account and credited to another . . . only when authorized by law." 31 U.S.C. § 1532. The Administration incorrectly claims that section 8005 of the 2019 Department of Defense Appropriations Act authorizes such transfers here. In pertinent part, section 8005 provides that:

> Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may . . . transfer not to exceed $4,000,000,000 of . . . funds made available in this Act . . . *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress.

Pub. L. No. 115-245, § 8005, 132 Stat. 2981, 2999. Two limitations in this section preclude the Administration from transferring funds to construct a border wall. And, as the district court concluded, adopting the Administration's unbounded interpretation of this transfer provision would raise serious separation-of-powers concerns. *See* Order at 38, 40-41.

First, Section 8005 does not authorize the transfer of funds in cases "where the item for which funds are requested has been denied by the Congress." This restriction was added in fiscal year 1974, to "tighten congressional control of the reprogramming process." H. Rep. No. 93-662, at 16 (1973). The House committee report explained that DOD had sometimes "requested that funds which have been specifically deleted in the legislative process be restored through the reprogramming process," and that "[t]he Committee believe[d] that to concur in such actions would place committees in the position of undoing the work of the Congress." *Id*.

Indeed, of considerable significance here, the Committee stated that such a position would be "untenable." H. Rep. No. 93-662, at 16. Consistent with its purpose, this sort of appropriations restriction is intended to be "construed strictly" to "prevent the funding for programs which have been considered by Congress and for which funding has been denied." *See* H. Rep. No. 99-106, at 9 (1985) (discussing analogous appropriations restriction in Pub. L. No. 99-169, § 502(b), 99 Stat. 1005 (codified at 50 U.S.C. § 3094(b))).

Here, as discussed above, there can be no doubt that "Congress was presented with—and declined to grant—a $5.7 billion request for border barrier

construction." Order at 33. In these circumstances, the Administration's attempt to invoke DOD's transfer authority under Section 8005 in order to spend money that Congress refused to appropriate is "untenable," H. Rep. No. 93-662, at 16.

The Administration contends that Congress's decision is "irrelevant" because Congress denied a funding request by the Department of Homeland Security (DHS), and the supposedly "relevant question under Section 8005 is . . . whether Congress ever 'denied' DoD funds to provide counter-drug support" for border wall projects. Mot. at 15. This purported distinction is wrong. The purpose of the "denied by the Congress" limitation is to prevent DOD from using its transfer authority to circumvent Congress's appropriations decisions. The Administration has unequivocally explained in court that the reason DOD is constructing a border wall for DHS under Section 284 is because Congress denied "a direct appropriation" to DHS.[14] Simply put, Section 8005 in no manner authorizes the Administration to circumvent that denial, and the district court correctly entered a preliminary injunction to enjoin these unconstitutional expenditures.

Second, Section 8005 only authorizes transfers "based on unforeseen military requirements." Congress included this limitation to confine DOD's transfer authority to situations where unanticipated circumstances justify a

[14] Tr. of Proceedings at 80, *California et al. v. Trump et al.*, Case No. 19-872 (May 17, 2019); Tr. of Proceedings at 94, *House v. Mnuchin et al.*, Case No. 19-969 (May 23, 2019) (*Mnuchin* Tr.).

departure from Congress's previously authorized spending decisions. For example, DOD has used this authority to transfer funds to pay for unexpected hurricane damage to military bases.[15] Here, the district court correctly observed that the Administration's "argument that the need for the requested border barrier construction funding was 'unforeseen' cannot logically be squared with the Administration's multiple requests for funding for exactly that purpose dating back to at least early 2018." Order at 35. Indeed, President Trump has been demanding $5 billion for a border wall since summer 2018, and he has been expressing his views about a border crisis since the start of his election campaign. The Administration's alleged need to build a border wall was therefore entirely foreseen—Congress simply disagreed that $5 billion for a border wall was necessary and proper.

The Administration concedes that DHS's purported need for "border wall funding" was foreseen, but it argues that this fact is "irrelevant" because "the relevant question under Section 8005 is whether DoD's specific need in February 2019 to provide counter-drug support to DHS under Section 284 was 'foreseen' at the time of the September 2018 appropriation." Mot. at 15-16. The Administration's view of this limitation is unconvincing. Even according to the Administration, the "unforeseen military requirement" here is DOD's supposed

[15] Office of the Under Secretary of Defense (Comptroller), DOD Serial No. FY 04-37 PA, Reprogramming Action (Sept. 3, 2004), http://tinyurl.com/DOD2004ReprogrammingAction.

need *to support DHS in constructing a border wall*. *See* Mot. at 15-16. The conceded foreseeability of DHS's need for a border wall is therefore plainly relevant.

Moreover, the facts do not support the Administration's claim that DOD's alleged need to support DHS under Section 284 was unforeseen until February 2019. Mem. at 16. The Administration conceded in court that DOD has been considering using Section 284 to support DHS's border barrier construction since *the beginning of 2018*.[16] Specifically, DOD recently informed the House Committee on Armed Services that its Comptroller had withheld *nearly $1 billion* of fiscal year 2018 counter-drug funding until July 2018 because DOD was considering using that funding for "Southwest Border construction."[17] Accordingly, the Administration's transfer of $1 billion under Section 8005 for purposes of building a border wall plainly is not based on "unforeseen military requirements." The district court therefore correctly concluded that Administration's transfer, obligation, and expenditure of the funds at issue here is likely unauthorized and in violation of the Appropriations Clause.

[16] *See Mnuchin* Tr. at 95.

[17] Decl. of Paul Arcangeli, Ex. A to Mot. for Leave to File Supp. Decl. (ECF No. 44-1), *House v. Mnuchin et al.*, Case No. 19-969 (May 15, 2019).

CONCLUSION

The Court should deny the Administration's motion for a stay pending appeal.

Respectfully submitted,

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June 11, 2019

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5), 27(d)(2), and the Court's order dated June 7, 2019 (Dkt. No. 11), because it contains 3,494 words excluding the parts exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010: namely, 14-point Times New Roman font.

/s/ Douglas N. Letter
Douglas N. Letter

CERTIFICATE OF SERVICE

I certify that on June 11, 2019, I served a copy of the foregoing brief of the U.S. House of Representatives as Amicus Curiae in Support of Appellees' Opposition to Appellants' Motion to Stay via the Ninth Circuit's ECF system on all parties in this case.

/s/ Douglas N. Letter
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