

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 18 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SIERRA CLUB; SOUTHERN BORDER
COMMUNITIES COALITION,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States;
PATRICK SHANAHAN, in his official
capacity as Acting Secretary of the Defense;
KEVIN K. McALEENAN, in his official
capacity as Acting Secretary of Homeland
Security; STEVEN TERNER MNUCHIN,
in his official capacity as Secretary of the
Department of the Treasury,

Defendants-Appellants.

No. 19-16102

D.C. No. 4:19-cv-00892-HSG
Northern District of California,
Oakland

ORDER

Before: CLIFTON, N.R. SMITH, and FRIEDLAND, Circuit Judges.

At oral argument on Thursday, June 20, the parties shall be prepared to discuss whether, if the reprogramming of funds did not comport with section 8005, Plaintiffs' cause of action is properly understood as an equitable cause of action to enjoin a constitutional violation (e.g., a violation of the Appropriations Clause of Article I or an executive action that exceeds powers granted in Article II), a statutory cause of action, or both. Additionally, the parties shall be prepared to discuss whether there is a zone of interests requirement for the proper cause or

causes of action. Finally, the parties should be prepared to discuss whether this is a political question of a sort that is not justiciable.