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**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, *et al.*,

Defendants.

Case Nos. 4:19-cv-00872-HSG,
4:19-cv-00892-HSG

Motion Hearing Date: Nov. 20, 2019
Time: 10:00 AM

SIERRA CLUB and SOUTHERN BORDER
COMMUNITIES COALITION,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, *et al.*,

Defendants.

**CONSENT MOTION OF FEDERAL
COURTS SCHOLARS FOR LEAVE
TO FILE *AMICI CURIAE* BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTIONS FOR PARTIAL
SUMMARY JUDGMENT
REGARDING BORDER BARRIER
PROJECTS UNDERTAKEN
PURSUANT TO 10 U.S.C. § 2808**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT federal courts scholars hereby respectfully move the
3 Court for leave to file a brief *amici curiae* in the above-captioned cases in opposition to
4 Defendants’ motions for partial summary judgment regarding border-barrier projects undertaken
5 pursuant to 10 U.S.C. § 2808. A copy of the proposed *amici curiae* brief is appended as an exhibit
6 to this motion.
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8 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

9 District courts have discretion to permit third parties to participate in an action as *amici*
10 *curiae*, and courts have “exercised great liberality” in allowing *amicus* briefs. *Woodfin Suite*
11 *Hotels, LLC v. City of Emeryville*, No. 06-1254, 2007 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007)
12 (quoting *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991)). District courts
13 frequently accept *amicus* briefs from non-parties when the legal issues in a case “have potential
14 ramifications beyond the parties directly involved” or if the *amici* have “unique information or
15 perspective that can help the court.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.
16 Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quotation marks omitted). There are no strict prerequisites
17 that must be established to qualify for *amicus* status; the sole criterion is that the applicant make a
18 showing that its “participation is useful or otherwise desirable to the court.” *Woodfin Suite Hotels*,
19 2007 WL 81911, at *3 (quotation marks omitted).
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23 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE***

24 *Amici curiae* are federal courts scholars with expertise in the jurisdiction of the federal
25 courts. They are thus particularly well suited to provide the Court with a detailed response to the
26 government’s argument that this Court cannot hear this case because Plaintiffs lack an equitable
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1 cause of action and are outside the “zone of interests” protected by § 2808 and the Consolidated
2 Appropriations Act of 2019 (“CAA”), Pub. Law No. 116-6, 133 Stat. 13. *Amici* are:

- 3 • Erwin Chemerinsky, Dean, Jesse H. Choper Distinguished Professor of Law,
4 University of California, Berkeley Law
- 5 • Michael C. Dorf, Robert S. Stevens Professor of Law, Cornell Law School
- 6 • David A. Strauss, Gerald Ratner Distinguished Service Professor of Law, Faculty
7 Director of the Jenner & Block Supreme Court and Appellate Clinic, University of
8 Chicago Law School
- 9 • Stephen I. Vladeck, A. Dalton Cross Professor in Law, University of Texas School
10 of Law

11 **III. PROPOSED *AMICI CURIAE* BRIEF’S RELEVANCE AND AID TO THE COURT**

12 The proposed, attached *amici curiae* brief plainly satisfies this Court’s standard for
13 accepting such briefs because it offers a detailed response to two arguments the government makes
14 in opposing Plaintiffs’ motions for partial summary judgment. Specifically, the government
15 argues that Plaintiffs’ injuries “fall outside the zone of interests protected by the limitations in
16 § 2808 and the CAA,” and that Plaintiffs “identify no history or tradition of courts of equity
17 inferring an analogous equitable cause of action directly under the Appropriations Clause in such
18 circumstances.” Defs. Mot. 9, 12. As *amici* know, however, the zone-of-interests test applies only
19 where plaintiffs rely on a statutory cause of action, not in cases like this one where plaintiffs seek
20 equitable relief from *ultra vires* or unconstitutional government conduct. And as *amici* also know,
21 equitable review is traditionally available when the executive is injuring a plaintiff by exceeding
22 its constitutional or statutory authority, unless Congress has clearly foreclosed such relief. This
23 case falls squarely within that legal tradition.
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26 **IV. POSITION OF THE PARTIES**

27 Counsel for all parties have consented to the filing of this brief.
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1 **V. CONCLUSION**

2 For the foregoing reasons, *amici* respectfully request this Court’s leave to file the attached
3 brief.
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6 DATED: November 4, 2019

Respectfully submitted,

7 /s/ Elizabeth B. Wydra

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 4, 2019, the foregoing document was filed with the Clerk
3 of the Court, using the CM/ECF system, causing it to be served on all counsel of record.
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5 Dated: November 4, 2019

6 /s/ Elizabeth B. Wydra
7 Elizabeth B. Wydra
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