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**UNITED STATES DISTRICT COURT
 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 of America, et al.,

Defendants.

**CONSENT MOTION FOR LEAVE TO
 FILE MEMORANDUM OF
 CHRISTOPHER SHAYS, CHRISTINE
 TODD WHITMAN, PETER KEISLER,
 CARTER PHILLIPS, JOHN BELLINGER
 III, STANLEY TWARDY, AND RICHARD
 BERNSTEIN AS AMICI CURIAE IN
 SUPPORT OF PLAINTIFFS' MOTION
 FOR A PRELIMINARY INJUNCTION**

Case No. 4:19-CV-00872-HSG

P.I. Hearing Date: May 9, 2019

Time: 2:00 PM

SIERRA CLUB and SOUTHERN BORDER
 COMMUNITIES COALITION,

Plaintiffs,

v.

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

Defendants.

Case No. 4:19-CV-00892-HSG

P.I. Hearing Date: May 17, 2019

Time: 10:00 AM

PB99-0000120
 12965191.1

Case Nos. 4:19-CV-00872-HSG
 4:19-CV-00892-HSG
 CONSENT MOTION FOR LEAVE

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Christopher Shays, Christine Todd Whitman, Peter Keisler, Carter Phillips, John Bellinger
3 III, Stanley Twardy, and Richard Bernstein respectfully move for leave to file the attached
4 memorandum as *amici curiae* in the above-captioned matters in support of Plaintiffs' Motion for a
5 Preliminary Injunction. The *amici* include a former Republican cabinet member, a former
6 Republican member of Congress, and a former Republican United States Attorney. See Appendix A
7 to proposed *amici* brief. Counsel for both Plaintiffs and Defendants have consented to filing the
8 appended *amici* brief. The *amici* have an interest in seeing that the power to make appropriations is
9 not shifted improperly from Congress to the executive branch.
10

11 **STATEMENT OF INTEREST AND ARGUMENT**

12 The *amici* brief would be helpful to the Court because the brief focuses on one of the
13 dispositive merits arguments. That argument is that Section 739 of Division D ("Section 739") of
14 the Consolidated Appropriations Act 2019, Pub. L. 116-6 ("Consolidated 2019"), prohibits the
15 proposed use of funds under 10 U.S.C. § 284 ("284"), 10 U.S.C. § 2808 ("2808"), or 31 U.S.C. §
16 9705 ("9705"), to construct the southern border barrier. Section 739 states in pertinent part: "None
17 of the funds made available in this or any other appropriations Act may be used to increase . . .
18 funding for a program, project, or activity as proposed in the President's budget request for a fiscal
19 year until such proposed change is subsequently enacted in an appropriation Act, or unless such
20 change is made pursuant to the reprogramming or transfer provisions of this or any other
21 appropriations Act."
22

23
24 Part I of the *amici* brief shows that because the President has requested an increase in funds
25 that Congress did not enact, Section 739's prohibition applies to all \$6.7 billion of proposed
26 increased funding. Part II of the *amici* brief shows that none of the proposed uses of 284, 2808, or
27

1 9705 satisfies Section 739's exception because none makes an increase in funding solely pursuant to
2 the provisions of an "appropriations Act." Although Section 739 is unambiguous, Part III of the
3 *amici* brief shows that two canons of construction favor interpreting Section 739 to preclude the
4 proposed increased funding.
5

6 Dated: April 23, 2019

Respectfully Submitted,

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16 John Bellinger III, Stanley Twardy, and Richard Bernstein
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/s/ Paula Johnson
Paula Johnson