

**20-138 BIDEN V. SIERRA CLUB**

DECISION BELOW: 963 F.3d 874

LOWER COURT CASE NUMBER: 19-16102, 19-16300

QUESTION PRESENTED:

In Section 8005 of the Department of Defense Appropriations Act, 2019, Pub. L. No. 115-245, Div. A, Tit. VIII, 132 Stat. 2999, Congress authorized the Secretary of Defense to transfer certain appropriated funds between Department of Defense (DoD) appropriations accounts "[u]pon determination by the Secretary \* \* \* that such action is necessary in the national interest." Section 8005 contains a proviso stating "[t]hat 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." *Ibid.* In 2019, the Acting Secretary of Defense transferred approximately \$2.5 billion pursuant to Section 8005 and another similar provision to make funds available for DoD to respond to a request from the Department of Homeland Security for counterdrug assistance under 10 U.S.C. 284, including in the form of construction of fences along the southern border of the United States. The questions presented are as follows:

1. Whether respondents have a cognizable cause of action to obtain review of the Acting Secretary's compliance with Section 8005's proviso in transferring funds internally between DoD appropriations accounts.
2. Whether the Acting Secretary exceeded his statutory authority under Section 8005 in making the transfers at issue.

ORDER OF FEBRUARY 3, 2021:  
THE MOTIONS TO HOLD FURTHER BRIEFING IN ABEYANCE AND TO REMOVE  
THE CASES FROM THE FEBRUARY 2021 ARGUMENT CALENDAR ARE GRANTED.

CERT. GRANTED 10/19/2020