

In the Court’s December 27, 2017 decision (“Opinion”) granting Petitioners’ request that Respondent Environmental Protection Agency (“EPA”) take certain actions with regard to the dust-lead hazard standards and the definition of lead-based paint under the Toxic Substances Control Act (“TSCA”), the Court “order[ed] that EPA issue a proposed rule within ninety days of the *date this decision becomes final*” (Emphasis added). The Opinion did not explain when, or through what mechanisms, the decision would, in fact, *become* final.

Because it had 45 days in which to seek reconsideration of the Court's decision, and because under the Federal Rules of Appellate Procedure a decision of the Court of Appeals usually does not "become final" until (1) the time for reconsideration expires, (2) a certified copy of the Judgment is entered on the docket, and (3) the Mandate issues by noting it in the docket, the Department of Justice ("DOJ") advised EPA that the 90-day period to issue a proposed rule would commence running on the date the Mandate issues. After the Mandate did not issue within the time periods established in the Federal Rules of Appellate Procedure, DOJ, on behalf of EPA, contacted the Clerk of the Court to seek clarification, and was informed through a March 16, 2018 Order of the Clerk that no Mandate would issue in this matter. Accordingly, DOJ and EPA remains unaware of when the Court's decision will "become final" or whether it has, in the understanding of the Panel, already become final.

EPA has been actively working toward drafting a proposed rule, as called for in the Court's opinion. For example, since the Court's December 27, 2017 Opinion, EPA has re-established an Agency-wide work group, worked extensively on a technical support document, worked on an economic assessment of a potential change to the dust-lead hazard standards, and coordinated closely with the Department of Housing and Urban Development ("HUD") regarding potential revisions to the definition of lead-based paint. Morris Declaration (Ex. A) at ¶¶ 8-

12. Notwithstanding those actions, EPA and DOJ have, until receipt of the Clerk's March 16, 2018 Order, been proceeding with the understanding that the proposed rule would be required to be issued within 90 days of some action that has not yet occurred (i.e., issuance of the certified Judgment and/or Mandate). While it is important for the proposed rule to be issued expeditiously, it is also important for EPA to have a clear and reasonable timetable so it can plan to complete the various analyses and administrative processes for the proposal in a responsible and timely manner, and those analyses and processes are still in progress. *Id.* at ¶¶ 9, 11, 14.

Accordingly, DOJ and EPA respectfully move the Court to: (a) clarify what it meant in the Opinion when it stated that EPA is to “issue a proposed rule within ninety days of the date this decision becomes final;” and, (b) on the assumption that the Court intended that some action would need to occur for the Court's decision to become final, to issue a Mandate and/or certified Judgment so that the 90-day period for issuing a proposed rule commences forthwith. To the extent it was the Court's intent that its decision “becomes final” on some other date earlier than the date of this Motion, EPA alternatively moves for a 90-day extension in which to issue the proposed rule.

The undersigned counsel has contacted counsel for Petitioners who state that Petitioners oppose EPA's request that the Court issue the Mandate or similar order concluding that the Court's decision is final as of this date and further oppose

EPA's alternative request for an extension as set forth herein. Petitioners intend to file a response to this Motion.

BACKGROUND

In the Opinion, the Court determined that Petitioners are entitled to a writ of mandamus relating to potential revisions of the lead hazard standard and the definition of lead-based paint under TSCA. Specifically, the Court: (1) “order[ed] that EPA issue a proposed rule within ninety days of the date *this decision becomes final*,” (2) ordered EPA to issue a final rule one year thereafter; and (3) retained jurisdiction to address issues relating to EPA's compliance with the Court's directives. Opinion at p. 19 (emphasis added).

A decision of the Court of Appeals generally does not become final until after the time for filing a Petition for Reconsideration lapses *and* the Court thereafter issues the Mandate. *See, e.g., Beardslee v. Brown*, 393 F.3d 899 (9th Cir. 2004) (“An appellate court's decision is not final until its mandate issues.”). The Mandate, which “consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs . . . , is effective when it is issued.” Fed. R. App. P. 41(a), (c). In turn, the entrance of a Judgment is *required* under the Federal Rules of Appellate Procedure: “The clerk *must* prepare, sign and enter the judgment [] after receiving the Court's opinion.” *Id.* (emphasis added). Fed.

R. App. P. Rule 36(a). The Clerk also “must serve on all parties . . . a notice of the date when the Judgment was entered.” *Id.* at Rule 36(b).

In this case, the Court has not certified nor issued a Judgment, a notice of Judgment, or the Mandate, and none of these items has been noted on the docket. The Court also has not issued any direction about costs.¹ Hence, neither DOJ nor EPA have understood the Court’s decision to have “become final.”

The 45-day period for seeking reconsideration of the Court’s Opinion expired on February 12, 2018. A Mandate is to issue within seven days “after the time to file a petition for rehearing expires,” Fed. R. App. P. 41(b), and so in the normal course, the Mandate would have issued on or about February 19, 2018. The Mandate is not always issued by the Court within this timeframe and, in fact, Circuit Advisory to Local Court Rule 25-2 instructs that a party should write the Court in the event “the mandate has not issued within 28 days after the time to file a petition for rehearing expires.”

On March 13, 2018, 29 days after the time to file a petition for rehearing expired (i.e., the day after the prescribed waiting period in the above-cited Circuit Advisory ran), the undersigned called the Clerk’s office to inquire about the issuance of the Mandate, insofar as neither a Mandate nor a certified Judgment had

¹ On March 16, 2018, the Court did issue an Order stating that Petitioners’ request for costs was submitted on the wrong form. To the extent this is considered a direction under Fed. R. App. P. 41, it was as noted not issued until a few days ago.

yet issued. After consulting internally, the Clerk's office staff informed the undersigned that the Clerk's office would not be issuing a Mandate in this action because it was an action for mandamus. When the undersigned inquired about how one would then determine when the Court's decision would "become final" within the meaning of the Court's opinion, the Clerk's office staff stated that only the Panel would know what that meant and suggested that we write to the Court seeking such clarification.

Accordingly, on March 16, 2018, the undersigned wrote to the Court requesting that it "issue an order clarifying when its decision is deemed to be 'final' within the meaning of the Court's opinion," suggesting that this could be accomplished "by a direction to the Clerk to issue a mandate in this case forthwith." Doc. 10800740. Later that day the Clerk issued an Order stating that "as this was a mandamus proceeding, there will be no mandate issued." Doc. 10801046. Although this Order clarifies that the Court's decision will not become final when the Clerk issues the mandate because that is not going to occur absent direction from the Panel, it does not clarify when (or through what action) the decision will, in fact, "become final." Accordingly, DOJ and EPA file this motion to request clarification of this issue (or, alternatively, an extension of time) from the Panel.

ARGUMENT

EPA has been working diligently to comply with the Court's directive to issue a proposed rule and continues in a detailed planning process to attempt to meet that directive. *See* Morris Dec., Ex. A at ¶¶ 6-14 (describing the work groups created or reinstituted, modeling, data analyses, literature reviews, generation and review of reports, coordination within HUD, economic and health assessments, consultation with other agencies, and allocation of resources within EPA to perform these tasks, that has occurred – and continues to occur – since issuance of the Court's Opinion). The planning and coordination of all of these efforts has been based on the understanding that the 90-day period to generate a proposed rule would not be triggered until some action was taken that would cause the Court's decision to "become final," which until several days ago both DOJ and EPA understood would be the issuance of the Mandate -- or at least a certified Judgment.

Both DOJ and EPA reasonably understood the court's decision to anticipate some future action that would render the decision "final" (and thereby begin the 90-day period for issuance of a proposed rule). The Court ordered that EPA "issue a proposed rule within ninety days of the date that this decision becomes final," not alternatively "within ninety days of this Opinion" or simply "within ninety days." As the word "becomes" connotes a future event, and the Federal Rules of

Appellate Procedure set forth the specific future events that typically are taken in order to deem a decision final (i.e., issuance of the certified Judgment and/or Mandate), DOJ reasonably read the Court's directive to mean that there would be some future action or order that would render the Court's opinion "final." Nothing in the Court's rules states that a certified Judgment or Mandate will not issue in a mandamus case.

DOJ and EPA recognize that some case law reflects that in certain limited circumstances the Court in a mandamus action may choose not to issue a separate Mandate. In *Ellis v. U.S. District Court for Western District of Washington*, 360 F.3d 1022 (9th Cir. 2004, *en banc*), the Court explained that where a party seeks *interlocutory* relief through mandamus from an order of the district court in an ongoing district court proceeding, the court can grant a writ of mandamus and not find it necessary to issue a separate Mandate. The Court explained that because a Mandate relinquishes jurisdiction over the case back to the district court, and because in that case the mandamus petition was *interlocutory*, the district court never relinquished jurisdiction, and thus a Mandate in addition to the order granting mandamus was unnecessary.

The Court's ruling in *Ellis* on the limited issue presented there has no application to this case. First, this case has nothing to do with the continuing jurisdiction of the District Court, which was the basis for the *Ellis* Court

determining that a separate Mandate need not be issued. Here, there was no District Court decision. This is a key distinction because the Clerk's May 16, 2018 Order stating that a mandate will not issue notes in the caption that this case is an appeal from the United States District Court for the Northern District of California, which quite clearly is not the case. The Clerk's office may have been mistaken in this regard because page 2 of the Opinion itself mistakenly states that this is an "Appeal from the United States District Court for the Northern District of California." Opinion at 2.

Second, in *Ellis* the Court *did* note on the docket that the Mandate had issued, declaring in a separate docket entry from the opinion: "Writ of Mandate issued." Docket at Ex. B (second entry on Feb. 4, 2004). Moreover, the Court also entered a Judgment in that case, specifically noting in the docket: "Filed and Entered Judgment." *Id.* (first entry on Feb. 4, 2004). Indeed, the docket reflects there that all three elements required under the Federal Rules of Appellate Procedure to make a decision final (as of the date the opinion was issued) were docketed: the opinion, the "Filed and Entered Judgment," and the "Mandate Issued." And neither *Ellis* nor any other decision of which Respondent is aware declare that a decision is final absent a Judgment being issued, which as explained *supra*, the Clerk is required to enter under the Federal Rules of Appellate Procedure. No Judgment has been entered here.

Finally, and perhaps most importantly, while *Ellis* may provide a basis for the Court to refrain from entering a separate Mandate in limited types of mandamus actions, it does nothing to explain what the Panel in *this* case meant when it stated that EPA's 90-day timeline will be triggered once the Court's decision "becomes final."

EPA recognizes that the allegations in this case (and the Court's findings) relate to EPA's delay in acting on its grant of the Petitioners' request to revisit and potentially implement changes to the identified lead standards. This Motion does not seek to delay compliance with the Court's directive. To the contrary, DOJ and EPA have acted diligently to ascertain the precise date on which EPA needs to present such compliance. Acting in accordance with the Court's rules and procedures outlined above (including, for instance, waiting until the prescribed 28 days have run before inquiring about the issuance of the Mandate), DOJ and EPA have taken various affirmative steps to obtain clarification on when it needs to comply with the Court's initial directive to issue a proposed rule, including requesting that the Mandate be issued forthwith. DOJ and EPA are simply seeking a certain and reasonable time-frame so it can complete the necessary analytical and administrative work on the proposed rule called for in the Court's Order in an expeditious, orderly and appropriate fashion.

REQUEST FOR RELIEF

For the reasons outlined above, DOJ and EPA respectfully request that the Court issue an order clarifying when its decision is deemed to “become final” within the meaning of the Court’s opinion, and, therefore, when the ninety days for EPA to issue a proposed rule commences. DOJ and EPA specifically move the Court to issue the Mandate or certified Judgment forthwith, or alternatively, issue an Order declaring that the decision is now deemed final, with the effect being that the 90-day period for EPA to issue the proposed rule would commence on the issuance of such Mandate or Order.

Alternatively, in the event the Court interprets its opinion to have “become final” as of a date earlier than the date of this motion, DOJ and EPA respectfully move the Court for an extension of time of ninety days from today in which to issue the proposed rule that is the subject of the Court’s directive.

Respectfully submitted,

Date: March 20, 2018

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Div.

OF COUNSEL:

ALYSSA GSELL
U.S. Environmental Protection Agency
Office of General Counsel
William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Mail Code 2344A

/s/ Perry M. Rosen
PERRY M. ROSEN
United States Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044
Tel: (202) 353-7792

Washington, D.C. 20460

perry.rosen@usdoj.gov

Counsel for Respondents

CERTIFICATE OF COMPLIANCE UNDER FED. R. APP. P. 37(A)(7)(b)

I hereby certify that this Motion complies with the typeface and type-volume limitations of Fed. R. App. P. 27(d), because the Motion was prepared in proportionally spaced typeface using Microsoft Word 14 point Times New Roman type, and it contains 2,506 words, excluding the title, signature block and documents permitted to be filed under Rule 27(a).

Date: March 20, 2018

/s/ Perry M. Rosen
Perry M. Rosen
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of said filing to the attorneys of record for Petitioners and all other parties, who have registered with the Court's CM/ECF system.

Date: March 20, 2018

/s/ Perry M. Rosen
Perry M. Rosen
Counsel for Respondents

1. I declare that the following statements are true and correct to the best of my knowledge and belief and are based upon my personal knowledge and/or on my review of information contained in the records of the United States Environmental Protection Agency (“EPA” or “Agency”) or supplied by current employees.

2. I am the director of EPA's Office of Pollution Prevention and Toxics ("OPPT"). In my 25-year career at EPA, I have held a number of positions across the Agency, including serving as Acting Director of the Office of Science Policy and as National Program Director for Nanotechnology Research. I came to OPPT in August 2011 and served as Deputy Director for Programs until October 2016.

3. I have a PhD in Science and Technology Studies from Virginia Polytechnic Institute and State University and have published research on risk and environmental policy. I also have a BA in Business Administration from Western Washington University, an MA in International Relations from Ohio University, and an MA in Public Policy from the University of Maryland.

4. OPPT is the office assigned with the responsibility of regulating industrial chemicals, including lead, under the Toxic Substances Control Act ("TSCA") and administering the Pollution Prevention Act.

5. This declaration is filed in support of EPA's Motion for Clarification of the Court's Directive to EPA in its December 27, 2017 Opinion or, in the Alternative, for an Extension of Time to Comply with that Directive. The purpose of this declaration is to describe the work EPA has performed to date in order to comply with the Court's decision.

6. EPA has re-established an Agency workgroup of approximately 24 individuals from offices across the Agency. The workgroup has been active in providing feedback and technical support for the rulemaking.

7. With regard to the dust-lead hazard standards, EPA has two active work assignments that were in place prior to December 27th and remain in place to complete the technical analyses required.

The First Work Assignment

8. EPA's first work assignment focuses on the development of a technical support document to estimate exposures, blood-lead levels, and health effects from lead dust. To that end, since the Court's order of December 27, 2017, the Agency has completed the following work toward a lead hazard standard proposed rule:

- a. coordinated within the Agency to determine modeling inputs and defaults for non-dust parameters used for background estimates of blood-lead levels for use in the Integrated Exposure Uptake Biokinetic (IEUBK) Model – the model the Agency has determined is most appropriate for the rulemaking;
- b. estimated dust-lead concentrations for a wide range of dust-lead loadings considering the relative contribution of floor and sill dust,

time spent in different microenvironments, and approaches to convert from dust-lead loading to dust-lead concentration;

- c. estimated total blood-lead concentrations using the combination of dust-lead and non-dust contributions using central tendency values;
 - d. completed a literature search and a meta-analysis for studies that report both blood-lead and dust-lead to inform the empirical relationship between blood-lead and dust-lead. Completed a secondary literature search for lead-dust loadings on floor and sills;
 - e. compared dust-lead loadings reported in national surveys such as the American Healthy Homes survey with other studies reported in the literature;
 - f. coordinated across EPA to ensure that current approaches and data are used to estimate IQ change associated with blood lead change; and
 - g. completed three initial drafts of a technical support document which have been shared with the Agency workgroup for feedback.
9. While the above tasks have been completed, EPA has initiated, but not yet completed work in the following areas:

- a. working on a sensitivity analysis for IEUBK modeling for dust and non-dust parameters including coordination with other EPA offices that have conducted recent blood-lead modeling in other environmental media;
- b. scoping of a probabilistic exposure and blood lead (IEUBK) modeling effort to characterize upper percentile estimates of blood lead associated with ranges of potential exposures including coordination with other EPA offices that have conducted recent blood-lead modeling in other environmental media;
- c. considering and characterizing how empirical data can be used to inform modeled estimates and vice-versa to characterize variability and uncertainty;
- d. working on completing a final draft of a technical support document such that all parameters used to estimate exposure, blood lead, and IQ changes are transparently documented and available for use in the economics assessment.

The Second Work Assignment

10. EPA's second work assignment focuses on developing an economic assessment to characterize the costs and benefits associated with different

options of residential dust-lead hazard standards for the exposed population. To that end, EPA has developed a methodology for estimating the costs and benefits of revising the dust-lead hazard standards due to changes in hazard evaluation events (dust-lead testing to check whether a hazard exists). This methodology includes:

- a. estimating how often dust-lead results fall between the existing dust-lead hazard standard and options for the new standard;
 - b. estimating the numbers of individuals living in affected housing;
 - c. estimating the costs per-event associated with performing additional lead hazard reduction and clearance; and
 - d. estimating the benefits per-event of lowering the dust-lead levels in affected housing units.
11. While the above tasks have been completed, EPA has initiated, but not yet completed work in the following areas:
- a. performing the calculations to estimate the total costs and benefits based on the methodology described above;

- b. developing a method for estimating the costs and benefits of the effects of revising the dust-lead hazard standards on clearance testing events; and
- c. developing a method and model for estimating potential small entity impacts.

The Definition of Lead-Based Paint

- 12. With regard to the definition of lead-based paint, EPA has coordinated with the Department of Housing and Urban Development (HUD) to ensure that all available analyses have been identified.
- 13. EPA has completed a preliminary analysis of modeling approaches for estimating dust lead from lead based paint at levels below the current lead-based paint definition.
- 14. EPA and HUD are working together to devise an approach to fill the significant outstanding data gaps. To that end, EPA and HUD plan to conduct a literature search for any available data or modeling approaches, and may consider generation of new data. Once an approach to estimate dust-lead from lead-based paint at lower levels is developed, EPA can estimate incremental blood lead changes and associated IQ changes.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed this the 20th day of March 2018.

/s/ Jeffrey Morris

Jeffery Morris

This case was appealed from
Washington Western: [CR-99-05386-JET](#)

U.S. Circuit Court of Appeals

US Circuit Court of Appeals - 09th Circuit

01-70724

Ellis, et al v. USDC-WWT

This case was retrieved from the court on Monday, March 19, 2018

Header

Case Number: 01-70724

Date Filed: 05/08/2001

Date Full Case Retrieved: 03/19/2018

Status: Terminated 02/04/2004

NOS Description: (0) 0; Appeal

[\[Summary\]](#)[\[Associated Cases\]](#)[\[Participants\]](#)[\[Proceedings\]](#)[\[Pending Motion\]](#)[\[Brief\]](#)[\[Rehearings\]](#)[\[History\]](#)
[\[Additional Case\]](#)

Summary

No Information is Available for this case

Associated Cases

No Information is Available for this case

Participants

Litigant

In re: MARCIANO ELLIS

Marciano Ellis
Petitioner,

Attorney

Peter B. Gonick
[COR LD NTC Retained]
AGWA - Office of the Washington Attorney General (Olympia)
P.O. Box 40100
1125 Washington St., SE
Olympia, WA 98504-0100
360-753-6245

Miriam F. Schwartz, Esquire, Assistant Federal Public Defender
[COR LD NTC Assist Fed Pub Def]
Fpdwa - Federal Public Defender's Office (Tacoma)
Suite 400
1331 Broadway
Tacoma, WA 98402
253-593-6710

David Eugene Wilson, Esquire
[COR LD NTC Retained]
McKay Chadwell PLLC
Ste. 1601
600 University St.
Seattle, WA 98101
206/233-2800

Robert Harris Gombiner
[COR NTC Please Select]
Law Offices of Robert Gombiner
705 2nd Avenue
Suite 1500
Seattle, WA 98104
206-621-8777
206-622-1604

Udsc, Tacoma
Respondent,

David Eugene Wilson, Esquire
[COR LD NTC Retained]
McKay Chadwell PLLC
Ste. 1601
600 University St.
Seattle, WA 98101
206/233-2800

No Appearance
[NTC Please Select]
P.O. Box 2199
Pasadena, CA 91102

United States of America
Real Party in Interest,

Leonie G.H. Grant, Esquire, Attorney
[LD NTC Assist US Attorney]
DOJ-Office of the U.S. Attorney
700 Stewart Street
Seattle, WA 98101
206/553-7970

Robert Westinghouse, Assistant U.S. Attorney

[COR LD NTC Assist US Attorney]
 DOJ-Office of the U.S. Attorney
 Suite 5220
 700 Stewart Street
 Seattle, WA 98101
 206-553-4750

Proceedings

<u>Date</u>	<u>Details</u>
05/08/2001	Filed Petition For Writ of Mandamus, Docketed Cause And Entered Appearances of Counsel. Notified Real Parties in Interest Filing. (Moatt) [01-70724] (Djv)
05/08/2001	Filed ***EMERGENCY*** Request For Stay Pending Petition For Writ of Mandamus. (MOATT) [01-70724] [4161994] [01-70724] (DJV)
05/09/2001	Received Petitioner Marciano Ellis's supplemental appendix to Petition for Writ of Mandamus; served on 5/8/01. (MOATT) [01-70724] (CP)
05/23/2001	Filed order (Ferdinand F. FERNANDEZ, Kim M. WARDLAW,): Petitioner's motion for a stay of the dc proceedings pending resolution of the petition for writ of mandamus is granted. This petiiton for writ of mandamus raises issues that warrant a response. Accordingly, within 14 days of this order, the real party in interest shall file a response. [01-70724] (FT)
06/06/2001	Filed Real Party in Interest USA's response to petition for writ of mandamus; served on 6/5/01. (MOATT) [01-70724] (CP)
06/07/2001	Filed Respondent USDC-WWT's response to petition for writ of mandamus; served on 6/4/01. (MOATT) [01-70724] (CP)
06/07/2001	Filed Respondent USDC's pre-sentencing report UNDER SEAL. (MOATT w/response) [01-70724] (CP)
06/13/2001	Filed Petitioner Marciano Ellis reply to respondents and government's responses to petition for writ of mandamus; served on 6/12/01. (MOATT) [01-70724] (CP)
07/16/2001	Filed order (Alex KOZINSKI, Thomas G. NELSON, Richard C. TALLMAN,): The petition for writ of mandamus and response(s) are referred to the merits panel. The Clerk shall calendar this case in Seattle the week of 10/15- 10/19 2001. [01-70724] (FT)
07/18/2001	Calendar check performed [01-70724] (RG)
07/30/2001	Calendar materials being prepared. [01-70724] [01-70724] (RG)
08/01/2001	CALENDARED: SE. Oct. 17, 2001. 9:00 AM Courtroom Park Place, 21st Floor [01-70724] (RG)
08/13/2001	Filed notice of representation of David Eugene Wilson, Esq. on behalf of the petitioner. (Withdrew as counsel: attorney Miriam Schwartz for Marciano Ellis) [01-70724] (CP)
08/14/2001	Filed Petitioner Marciano Ellis's motion to be heard of respondent USDC for the WWT; served on 8/9/01. (MOATT) [4230524] [01-70724] [01-70724] (CP)
09/06/2001	Filed Certified Record on Appeal: 1 Clerk's Record. (Original) [01-70724] (Sd)
09/18/2001	Filed Respondent USDC-WWT's motion to file supplemental brief; served on 9/13/01. (PANEL) (CP)
09/18/2001	Received original and 4 copies of Respondent USDC-WWT's supplemental brief of 5 pages, served on 9/13/01. (PANEL w/motion to file supplemental brief.) [01-70724] (CP)
10/03/2001	Filed order (Deputy Clk/gb) The mtn of resp USDC for the District of WA to file supplemental brief is GRANTED. The brief lodged 9/18/01 shall be filed by the Clk. [21] [01-70724] (PHONED (at)8:52 am) (EL)
10/03/2001	Filed orig & 4 copies Resp's USDC-WWT supplemental brief of 5 pages, served on 9/13/01. (PREVIOUSLY REC'D) [01-70724] (EL)
10/16/2001	Filed by David Eugene Wilson additional citations, served on 10/16/01 [01-70724] (SS)
10/17/2001	

- ARGUED AND SUBMITTED TO Jerome FARRIS, Andrew J. KLEINFELD, Ronald M. GOULD [01-70724] (KM)
- 06/21/2002 FILED OPINION: The petition for writ of mandamus is DENIED. (Terminated on the Merits after Oral Hearing; Denied; Written, Signed, Published. Jerome FARRIS; Andrew J. KLEINFELD, author; Ronald M. GOULD.) FILED AND ENTERED JUDGMENT. [01-70724] (EL)
- 06/28/2002 Filed petr Ellis's mtn for an ext of time until 8/5/02 to file petition for rehearing or rehearing en banc; served on 6/27/02. [01-70724] [4469162] (FAXED TO AUTHOR) [01-70724] (EL)
- 06/28/2002 Filed RPI USA's mtn for an ext of time until 8/5/02 to file petition for rehearing or rehearing en banc; served on 6/27/02. [01-70724] [4469167] (FAXED TO AUTHOR) (EL)
- 07/05/2002 [4473311] Filed orig & 50 copies petr's Ellis petition for panel rehearing and petition for rehearing en banc 13 pgs, served on 7/3/02. (PANEL & ALL ACTIVE JUDGES) [01-70724] (EL)
- 07/08/2002 Filed order (Jerome FARRIS, Andrew J. KLEINFELD, Ronald M. GOULD) The mtns for ext of time to file a petition for rehearing & petition for rehearing en banc are GRANTED. The petitions shall be filed on or before 8/5/02 & shall not exceed 15 pgs. (PHONED (at) 11:55 am) [33] [34] [01-70724] (EL)
- 07/11/2002 Rec'd petr's amended certificate of svc for its mtn for ext of time & petition for rehearing en banc. (CASE FILE) [01-70724] (EL)
- 08/30/2002 Filed order (Jerome FARRIS, Andrew J. KLEINFELD, Ronald M. GOULD) Resp is ordered to file a response to petr's petition for rehearing & petition for rehearing en banc filed w/ this ct on 7/5/02. The response shall not exceed 15 pgs & shall be filed within 21 days of the date of this order. 50 copies of the response should be filed w/ the Clk of the Ct. [01-70724] (EL)
- 09/20/2002 Filed resp USDC-WWT's response to petr's petition for rehearing and petition for rehearing en banc; 11 pgs; served on 9/19/02. [35] (PANEL & ALL ACTIVE JUDGES) [01-70724] (EL)
- 12/05/2002 Filed order (Mary M. SCHROEDER) Upon the vote of a majority of nonrecused regular active judges of this ct, it is ordered that this case be reheard by the en banc ct pursuant to Cir. R. 35-3. The three-judge panel opinion shall not be cited as precedent by or to this ct or any district ct of the 9th Cir, except to the extent adopted by the en banc ct. [35] [01-70724] (EL)
- 12/06/2002 Filed order (Mary M. SCHROEDER) The parties shall forward to the Clk of the Ct 20 copies of their original petitions & responses within 7 days from the date of this order. (PHONED (at) 3:47 pm) (SERVED PARTIES & EN BANC JUDGES) [01-70724] (EL)
- 12/10/2002 Filed 20 copies petr's Ellis petition for rehearing with suggestion for rehearing en banc. (EN BANC PANEL) [01-70724] (EL)
- 12/10/2002 Filed 20 copies Govt's USA response to petition for writ of mandamus. (EN BANC PANEL) [01-70724] (EL)
- 12/10/2002 Rec'd notice of change of address from attys Peter B. Gonick & David Eugene Wilson dated 12/5/02. New address effective 12/16/02: 600 University St., Ste. 1601, Seattle, WA 98101. [01-70724] (EL)
- 12/12/2002 Filed 20 copies of resp's USA response & supp'l brf to petition for writ of mandamus. (EN BANC PANEL) [01-70724] (EL)
- 12/13/2002 Filed 20 copies of petr's petition for writ of mandamus. (EN BANC PANEL) [01-70724] (EL)
- 12/16/2002 Filed order (Mary M. SCHROEDER) Oral argument in the above case shall be reheard en banc in SF on 3/25/03, at 8:30 am. [01-70724] (EL)
- 12/16/2002 CALENDARED: SAN FRAN Mar 25 2003 8:30 am Courtroom 4 ** session to start at 9:00 am ** [01-70724] (AW)
- 12/30/2002 Filed resp's USDC-WWT mtn to postpone oral argument; served on 12/26/02. [01-70724] [4616532] (FAXED TO EN BANC PANEL) (EL)
- 01/08/2003 Filed order (Mary M. SCHROEDER): The motion to postpone oral argument is DENIED. (FAXED TO PENEL, ATYS NOTIFIED) [01-70724] (TM)
- 03/25/2003 ARGUED AND SUBMITTED TO Mary M. SCHROEDER, Harry PREGERSON, Stephen R. REINHARDT, Alex KOZINSKI, Stephen S. TROTT, Andrew J. KLEINFELD, Sidney R.

THOMAS, Kim M. WARDLAW, Raymond C. FISHER, Ronald M. GOULD, Marsha S. BERZON
[01-70724] (BJK)

10/14/2003 Filed petr's Ellis additional citations, served on 10/9/03. (ENBANC PANEL) [01-70724] (EL)

02/04/2004 FILED OPINION: GRANT the petition for mandamus and REMAND to the Chief Judge of the Western District of Washington for further proceedings consistent with this opinion. (Terminated on the Merits after Oral Hearing; Granted and Remanded; Written, Signed, Published. Heard en banc; Mary M. SCHROEDER; Harry PREGERSON; Stephen R. REINHARDT; Alex KOZINSKI, concurring; Stephen S. TROTT, concurring in part and dissenting in part; J. KLEINFELD, dissenting; Sidney R. THOMAS; Kim M. WARDLAW, author; Raymond C. FISHER; Ronald M. GOULD; Marsha S. BERZON.) FILED AND ENTERED JUDGMENT. [01-70724] (AF)

02/04/2004 WRIT OF MANDATE ISSUED. (served En Banc Court) [01-70724] (AF)

02/17/2004 Filed resp's USDC-WWT mtn for recall & stay of mandate; served on 2/13/04. [4977301] (en banc panel) (EL)

02/25/2004 Filed petr's Ellis response to mtn for recall & stay of mandate; served on 2/24/04. [65] (EN BANC PANEL) [01-70724] (EL)

03/02/2004 Filed resp's USDC-WWT rpy in support of mtn for recall & stay of mandate; served on 3/1/04. [65] (EN BANC PANEL) [01-70724] (EL)

03/05/2004 Filed order (Mary M. SCHROEDER, Harry PREGERSON, Stephen R. REINHARDT, Alex KOZINSKI, Stephen S. TROTT, Andrew J. KLEINFELD, dissenting, Sidney R. THOMAS, Kim M. WARDLAW, Raymond C. FISHER, Ronald M. GOULD, dissenting, Marsha S. BERZON) Judge Trott would grant the mtn. We hereby DENY resp's mtn for recall & stay of mandate because, due to the nature of mandamus proceedings, we have not issued a "mandate." As we explain below, our grant of Ellis's petition for a writ of mandamus operated as "a writ of mandate," which took immediate effect... IT IS SO ORDERED. (FOR COMPLETE TEXT SEE ORDER) [65] [01-70724] (EL)

12/16/2004 RECORD RETURNED. (See control card for details.) (Sefarian, Steve)

Pending Motion

No Information is Available for this case

Brief

No Information is Available for this case

Rehearings

No Information is Available for this case

History

No Information is Available for this case

Additional Case

Additional Case Information

original proceeding - paid mandamus/prohibition

Appeal from: U.S. District Court for Western Washington, Tacoma

District: 0981 Division: 3 CaseNumber: CR-99-05386-JET

Trial Judge: Jack E. Tanner , District Judge

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