

No. 18-73014

---

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

In re UNITED STATES OF AMERICA, et al.

UNITED STATES OF AMERICA, et al., Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON,  
Respondent,

and

KELSEY CASCADIA ROSE JULIANA, et al., Real Parties in Interest.

---

On Petition for a Writ of Mandamus to the United States District Court  
for the District of Oregon (No. 6:15-cv-1517-AA)

---

**REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS  
AND EMERGENCY MOTION UNDER CIRCUIT RULE 27-3**

---

JEFFREY BOSSERT CLARK  
*Assistant Attorney General*  
JEFFREY H. WOOD  
ERIC GRANT  
*Deputy Assistant Attorneys General*  
ANDREW C. MERGEN  
SOMMER H. ENGELS  
ROBERT J. LUNDMAN  
*Attorneys*  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7415  
Washington, D.C. 20044  
(202) 514-0943  
eric.grant@usdoj.gov

Counsel for Petitioners

In its mandamus petition, the government sought (as alternative relief) “a writ of mandamus directing the district court . . . to certify its denials of the government’s dispositive motions for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).” Petition 38. The government observed that “[i]f the district court grants certification and stays all proceedings, as the Supreme Court has signaled that it should, it will obviate the need for this Court’s intervention by way of mandamus.” Petition 1.

As the government informed the Court earlier this week, *see* DktEntry 9 (Nov. 21, 2018), the district court did indeed grant certification for interlocutory appeal and stay all proceedings pending a decision by this Court. *See* ECF No. 444, at 6 (Nov. 21, 2018). That action has obviated the need for this Court’s immediate intervention by way of mandamus.

Accordingly, the government respectfully suggests that its mandamus petition be held in abeyance pending this Court’s action on the government’s forthcoming petition for permission to appeal under Federal Rule of Appellate Procedure 5. *Cf.* Fed. R. App. P. 5, Committee Notes on Rules — 1998 Amendment (“This new Rule 5 is intended to govern all discretionary appeals from district-court orders, judgments, or decrees. At this time that includes interlocutory appeals under 28 U.S.C. § 1292(b) . . .”). If and when the Court grants the petition under Rule 5 and Section 1292(b), the instant mandamus petition may be dismissed as moot.

Dated: November 23, 2018.

Respectfully submitted,

s/ Eric Grant

JEFFREY BOSSERT CLARK

*Assistant Attorney General*

JEFFREY H. WOOD

ERIC GRANT

*Deputy Assistant Attorneys General*

ANDREW C. MERGEN

SOMMER H. ENGELS

ROBERT J. LUNDMAN

*Attorneys*

Environment and Natural Resources Division

U.S. Department of Justice

Counsel for Petitioners

### **CERTIFICATE OF COMPLIANCE**

I certify that this reply brief contains 243 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f), which is less than half of the word limit of 8,400 words established for petitions in Circuit Rules 21-2(c) and 32-3(2) (specifying that total word count divided by 280 may not exceed page limit).

The brief's type size and type face comply with Appellate Rule 32(a)(5) and (6).

s/ Eric Grant  
Eric Grant

Counsel for Petitioners

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 23, 2018.

I certify that the all participants are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Eric Grant  
Eric Grant

Counsel for Petitioners