

19-2896-cv

Natural Resources Defense Council v. United States Environmental Protection Agency

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of April, two thousand twenty.

Present:

Robert A. Katzmann,
Chief Judge,
Gerard E. Lynch,
Circuit Judge,
Lewis A. Kaplan,
*District Judge.**

NATURAL RESOURCES DEFENSE COUNCIL,
ENVIRONMENTAL DEFENSE FUND,

Plaintiffs-Appellants,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Defendant-Appellee.

ORDER

No. 19-2896-cv

Appellants move for expedited issuance of the mandate, citing the potential value of the information they seek in a significant administrative rulemaking process. The government opposes the motion, noting that the Federal Rules of Appellate Procedure allow additional time to seek further review in cases in which the government is a party, in part to accommodate the consultative process by which the Solicitor General decides whether to seek further review. *See* Fed. R. App. P. 40(a)(1). Appellants' concern is legitimate; however, the government also has a legitimate interest in making a deliberative decision about whether to seek further review. After

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Judge Lewis A. Kaplan of the United States District Court for the Southern District of New York, sitting by designation.

weighing all the circumstances in the case, we conclude that the balance of interests at this time favors the government and accordingly DENY appellants' motion.

We note, however, that the government not infrequently moves for *additional* time, beyond that provided in Rule 40(a)(1), to make its determination. As the government itself argues in opposing appellants' motion, the 45-day period provided to it by the Rule, far in excess of the 14 days allotted in other civil cases, is designed to accommodate the Solicitor General's review. In light of the interests cited by appellants, the government is cautioned that it is unlikely that any request for an extension of the 45-day period will be granted. The government is also advised that its deadline to seek further review in this case is not within the scope of, and will not be extended by, this Court's order dated March 16, 2020, which extended certain filing dates and deadlines by 21 days.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A handwritten signature in cursive script, reading "Catherine O'Hagan Wolfe". The signature is written in black ink and is positioned over a circular official seal.

A circular official seal of the United States Second Circuit Court of Appeals. The seal features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom. Two small stars are positioned on either side of the central text.