

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

ANTHONY PISZEL,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	2015-5100
	)	
UNITED STATES,	)	
	)	
Defendant-Appellee.	)	

**DEFENDANT-APPELLEE'S UNOPPOSED  
MOTION FOR AN EXTENSION OF TIME**

Pursuant to Fed. R. App. P. 26(b), defendant-appellee, the United States, respectfully requests that the Court grant a 40-day extension of time, to and including January 15, 2017, to file its response to of the petition for rehearing *en banc* filed by plaintiff-appellant, Anthony Pizsel. The United States' response is currently due on December 6, 2016. This is the United States' first request for additional time for this purpose. We have contacted Mr. Pizsel's counsel, William Donnelly, who has informed us that Mr. Pizsel does not oppose the requested extension.

A response to a petition for rehearing *en banc* must authorized by the Court. *See* Fed. R. App. P. 35(e). The Court authorized the United States to submit a response to plaintiff-appellant's petition for rehearing *en banc* on November 22, 2016. This occurred just before the Thanksgiving holidays and undersigned

counsel was unavailable for several days as a result. Moreover, undersigned counsel's supervisory responsibilities, responsibilities in other matters, and holiday vacation plans will limit counsel's ability to dedicate time to the Government's response in upcoming weeks. These responsibilities include the supervision of a team of attorneys handing scores of cases in the United States Court of Federal Claims, the taking of deposition discovery in *Waverley View v. United States*, No. 15-371 (Fed. Cl.), and assisting with the briefing of appeals in *Love Terminal Partners, L.P. v. United States*, No. 16-2276 (Fed. Cir.), and *St. Bernard Parish Gov't v. United States*, Nos. 16-2301 & 16-2373 (Fed. Cir.).

This extension of time is sought to enable assigned counsel to review relevant materials, confer with the agency, prepare the United States' response, and obtain supervisory review, while at the same time complying with continuing responsibilities regarding other matters. The requested extension of time is reasonable under the circumstances.

Accordingly, the United States respectfully requests that this unopposed motion for extension be granted and that the Court permit the filing of United States' brief on or January 15, 2016.

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney  
General

ROBERT E. KIRSHMAN, JR.  
Director

FRANKLIN E. WHITE, JR.  
Assistant Director  
Commercial Litigation Branch  
Civil Division

s/ David A. Harrington

DAVID A. HARRINGTON  
Assistant Chief  
Natural Resources Section  
Environment and Natural Resources  
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P.O. Box 7611  
Washington, D.C. 20044  
(202) 305-0244

November 29, 2016

Attorneys for the United States

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on this 29th day of November, 2016, a copy of the foregoing Defendant-Appellee's Unopposed Motion For An Extension Of Time, the Declaration of David A. Harrington, and a Proposed Order was filed electronically.

X This filing was served electronically to all parties by operation of the Court's electronic filing system.

/s/ David A. Harrington

- A copy of this filing was served via:
    - hand delivery
    - mail
    - third-party commercial carrier for delivery within 3 days
    - electronic means, with the written consent of the party being served
- To the following address:

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	)	
UNITED STATES,	)	
	)	
Defendant-Appellee.	)	

**DECLARATION OF DAVID A. HARRINGTON**

In support of the motion of the United States for an extension of time, pursuant to 28 U.S.C. § 1746, I, David A. Harrington, declare as follows:

1. I am the lead attorney assigned to this action for defendant-appellee, the United States.

2. Pursuant to Federal Circuit Rule 26(b)(5), the circumstances that warrant this extension are set forth below.

3. The Court authorized the United States to submit a response to plaintiff-appellant’s petition for rehearing *en banc* on November 22, 2016. This occurred just before the Thanksgiving holidays and I was unavailable for several days as a result.

4. In addition, my supervisory responsibilities, responsibilities in other matters, and holiday vacation plans will limit my ability to dedicate time to the Government’s response in upcoming weeks. These responsibilities include the

supervision of a team of attorneys handling scores of cases in the United States Court of Federal Claims, the taking of deposition discovery in *Waverley View v. United States*, No. 15-371 (Fed. Cl.), and assisting with the briefing of appeals in *Love Terminal Partners, L.P. v. United States*, No. 16-2276 (Fed. Cir.), and *St. Bernard Parish Gov't v. United States*, Nos. 16-2301 & 16-2373 (Fed. Cir.).

5. This requested extension is sought to enable assigned me to review relevant materials, confer with the agency, prepare the United States' response, and obtain supervisory review, while at the same time complying with continuing responsibilities regarding other matters.

Executed this 29th day of November 2016.

s/ David A. Harrington

David A. Harrington  
Assistant Chief  
Environment and Natural Resources Division

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ORDER

Upon reading and considering DEFENDANT-APPELLEE’S UNOPPOSED MOTION FOR AN EXTENTION OF TIME and all other relevant papers and proceedings, it is

ORDERED that defendant-appellee’s motion is granted and defendant-appellee’s response to plaintiff-appellant’s petition for rehearing *en banc* is due to be filed on or before January 15, 2017.

FOR THE COURT

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Washington, D.C.

cc: David A. Harrington, Esq.  
William Donnelly, Esq.