

**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 7-day extension of time, to and including January 24, 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 January 17, 2017. This is the United States' second 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*, and subsequently granted an unopposed request for an extension to January 17, 2017. The United

States has made progress developing its response. However, such progress has been affected by an illness to undersigned counsel and unanticipated responsibilities in other matters. This modest extension of time is sought to enable assigned counsel to complete preparation of the United States' response, confer with the agency, 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 24, 2017.

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
Division
United States Department of Justice
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January 11, 2017

Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 11th day of January, 2017, 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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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, and subsequently granted an unopposed motion for an extension of time, making the United States response due on January 17, 2017.

4. Progress has been made preparing the United States’ response. However, an illness and unexpected responsibilities in other matters, including two

matters that are going to trial later this month, affected the time that I could dedicate to finalizing the United States' response.

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

Executed this 11th day of January 2017.

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 24, 2017.

FOR THE COURT

Dated: _____, 2017

Washington, D.C.

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