

No. _____

In the Supreme Court of the United States

FOOD & WATER WATCH; FLUORIDE ACTION NETWORK; MOMS AGAINST
FLUORIDATION; AUDREY ADAMS, individually and on behalf of KYLE ADAMS;
KRISTIN LAVELLE, individually and on behalf of NEAL LAVELLE; BRENDA
STAUDENMAIER, individually and on behalf of KO STAUDENMAIER and
HAYDEN STAUDENMAIER;

Applicants,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, an agency
of the United States; and LEE ZELDIN, in his official capacity as Administrator of
the U.S. Environmental Protection Agency;

Respondents.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A WRIT OF
CERTIORARI**

To the Honorable Elena Kagan
Associate Justice for the Supreme Court of the United States and
Circuit Justice for the Ninth Circuit

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August 4, 2026

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicants, FOOD & WATER WATCH; FLUORIDE ACTION NETWORK; MOMS AGAINST FLUORIDATION; AUDREY ADAMS, individually and on behalf of KYLE ADAMS; KRISTIN LAVELLE, individually and on behalf of NEAL LAVELLE; BRENDA STAUDENMAIER, individually and on behalf of KO STAUDENMAIER and HAYDEN STAUDENMAIER, respectfully request that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days, to, and including October 19, 2026. That extension would not exceed the maximum 60-day extension authorized by Supreme Court Rules 13.5, 30, and 28 U.S.C. § 2101(c), taking into consideration that the 60th day is a Sunday, extending the period to the next day.

2. The Ninth Circuit issued its opinion and judgment on May 21, 2026. The opinion is appended as Exhibit A. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254.

3. Absent an extension of time, the Petition would be due on August 19, 2026. Petitioners are filing this Application at least ten days before that date. *See* S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

4. This case involves a citizen petition filed under the Toxic Substances Control Act (15 U.S.C. § 2620) in which the Plaintiffs/Petitioners alleged that the

addition of fluoridation chemicals to drinking water poses an unreasonable risk to human health. After two bench trials, the district court ruled in Petitioners' favor and ordered the Government to take regulatory action to address the identified risk. On appeal, a panel of the Ninth Circuit vacated the district court's decision on the ground that the district court had violated the party presentation principle by entering a stay to permit further development of the factual record after the first trial.

5. The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

- a. Undersigned counsel has a pending motion for clarification before the Ninth Circuit panel to clarify the panel's instruction as to the scope of standing evidence that the district court can consider on remand. The Ninth Circuit's resolution of this motion could impact whether Petitioners file Petition for a Writ of Certiorari, and the scope thereof.
- b. Undersigned counsel has a congested litigation schedule between now and October 2, including up 22 depositions and two significant discovery motions in the matter of *Gurrola v. Procter & Gamble* (N.D. Ill. Case No. 1:25-CV-00358), and an opposition to a motion to dismiss in *Clayborne v. Colgate-Palmolive Co.* (N.D. Ill. Case No. 1:25-CV-04877) (due August 10, 2026).
- c. Preparation of a Petition in this case requires careful attention, consideration, and preparation, and on that basis, additional time is requested.

6. For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended sixty days to, and including, October 19, 2026.

Respectfully submitted,

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Exhibit A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 21 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOOD & WATER WATCH; FLUORIDE
ACTION NETWORK; MOMS AGAINST
FLUORIDATION; AUDREY ADAMS,
individually and on behalf of KYLE
ADAMS; KYLE ADAMS; KRISTIN
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NEAL LAVELLE; NEAL LAVELLE;
BRENDA STAUDENMAIER, individually
and on behalf of KO STAUDENMAIER
and HAYDEN STAUDENMAIER; KO
STAUDENMAIER; HAYDEN
STAUDENMAIER,

Plaintiffs - Appellees,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, an agency of the
United States; LEE ZELDIN, in his official
capacity as Administrator of the U.S.
Environmental Protection Agency,

Defendants - Appellants.

No. 25-384

D.C. No.

3:17-cv-02162-EMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted March 3, 2026

San Francisco, California

Before: S.R. THOMAS and GOULD, Circuit Judges, and MORRIS, Chief District Judge.**

Defendant-Appellant United States Environmental Protection Agency (“EPA”) appeals the district court’s finding that adding fluoride to drinking water at a concentration of 0.7 mg/L presents an unreasonable risk to human health and ordering EPA to manage the risks in accordance with the Toxic Substances Control Act (“TSCA”). Plaintiffs-Appellees Food & Water Watch, et al. (“Plaintiffs”) petitioned EPA in 2016 seeking EPA to issue a rule banning the addition of fluoride to drinking water pursuant to Section 21 of TSCA. EPA denied Plaintiffs’ petition. Plaintiffs subsequently filed suit under Section 21’s judicial review provision. 15 U.S.C. § 2620(b)(4)(A).

The district court conducted two bench trials. Following the second bench trial, the district court held that the addition of fluoride to drinking water at a concentration of 0.7 mg/L presents an unreasonable risk to human health and ordered that EPA manage the risks associated with adding fluoride to drinking water in accordance with TSCA. EPA appealed. EPA argues that the district court erred by (1) taking over the case and holding a second bench trial in violation of the party

** The Honorable Brian M. Morris, United States Chief District Judge for the District of Montana, sitting by designation.

presentation principle; (2) reviewing an evidentiary record that differed from the record presented to EPA in the Plaintiffs’ original 2016 petition; and (3) ruling that Plaintiffs had Article III standing to bring their claim. Because the parties are familiar with the facts of this case, we do not recount the facts in full here except as necessary to provide context for our ruling. We have jurisdiction under 28 U.S.C. § 1291, and we vacate the district court’s decision and remand.

1. The district court abused its discretion after the first bench trial by commandeering the case. We review for abuse of discretion a district court’s adherence to the party presentation principle. *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). “In our adversarial system of adjudication, we follow the principle of party presentation.” *Id.* Under this principle, we “rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” *Id.* (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). EPA argues that the district court violated the party presentation principle in its handling of the case after the close of the first trial.¹ We agree.

Although the party presentation principle is “not ironclad,” and “[t]here are no doubt circumstances in which a modest initiating role for a court is appropriate,”

¹ Although Plaintiffs contend that EPA waived this issue by failing to raise it to the district court, we have previously ruled on party presentation challenges first raised in our Court. *See, e.g., Trader Joe’s Co. v. Trader Joe’s United*, 150 F.4th 1040, 1054–55 (9th Cir. 2025).

Sineneng-Smith, 590 U.S. at 376, we must determine whether the district court “departed so drastically from the principle of party presentation as to constitute an abuse of discretion.” *Id.* at 375. Here, we hold that it did.

We begin with guidance from the U.S. Supreme Court. The Supreme Court in *Sineneng-Smith* concluded that the Ninth Circuit had violated the party presentation principle when it moved the appeal “onto a different track,” rather than relying on the arguments presented by the parties. *Id.* at 374–75. There, the Ninth Circuit “named three *amici* and invited them to brief and argue issues framed by the panel, including a question [the defendant] herself never raised earlier[.]” *Id.* at 374. The Ninth Circuit permitted, but did not require, counsel for the parties to file supplemental briefs “*limited to responding to any and all amicus/amici briefs.*” *Id.* at 379 (emphasis in original). And the Ninth Circuit “gave invited *amici* 20 minutes for argument [but] allocated only 10 minutes to [the defendant’s] counsel.” *Id.* The Ninth Circuit ultimately agreed with the arguments presented by *amici* and resolved the appeal under a theory not originally presented by the parties. *Id.* at 375, 379.

The Supreme Court determined that the Ninth Circuit had abused its discretion and had let the defendant’s arguments “f[a]ll by the wayside.” *Id.* at 379. The Supreme Court in *Sineneng-Smith* acknowledged that “a court is not hidebound by the precise arguments of counsel,” but concluded that the “Ninth Circuit’s radical transformation of this case [went] well beyond the pale.” *Id.* at 380.

The district court’s decision to invite amendment on standing did not violate the party presentation principle. *See Cottonwood Env’t L. Ctr. v. Edwards*, 86 F.4th 1255, 1265 (9th Cir. 2023) (holding that “[w]hile other district courts may have taken a more passive approach,” the district court did not violate the party presentation principle through its “‘modest initiating role’ in suggesting that [the plaintiff] join [the proper defendant] to the litigation” (quoting *Sineneng-Smith*, 590 U.S. at 376)).

However, the district court’s remaining actions here clearly violate the party presentation principle. The district court abused its discretion when it refused to rule on the first trial record, despite the parties’ assertions that it should, and when it held the case in abeyance to wait for the completion of an additional study to which the parties had already stipulated not to present at trial. Plaintiffs argue that the party presentation principle only limits a court’s authority to raise new legal issues and does not limit a court’s authority to resolve the issues that the parties have raised. Plaintiffs suggest that no party presentation principle violation occurred because the district court never raised new legal issues and instead established its own procedure to resolve the case that the parties had shaped. EPA argues that the party presentation principle applies more broadly and limits a court’s ability to introduce new issues, of a legal or factual nature, to the proceedings. We agree with EPA’s position.

Our judicial system “is designed around the premise that [parties represented by competent counsel] know what is best for them and are responsible for advancing the *facts* and argument entitling them to relief.” *Sineneng-Smith*, 590 U.S. at 375–76 (quoting *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in judgment)) (emphasis added) (alteration in original). “What makes a system adversarial rather than inquisitorial is . . . the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of *facts* and arguments pro and con adduced by the parties.” *McNeil v. Wisconsin*, 501 U.S. 171, 181 n.2 (1991)) (emphasis added).

Concern over judicial development of the factual record can also present a party presentation issue. *Cf. Duncan v. Bonta*, 133 F.4th 852, 886–90 (9th Cir. 2025) (Berzon, J., concurring) (“[The Court’s] job is not to provide the facts that support [the Court’s] conclusions but to apply the law to the facts as presented by the parties.”). Here, the district court effectively provided its own factual presentation. The district court held the case in abeyance for a year and a half, awaiting new studies and the final NTP monograph. Both parties subsequently agreed that the district court should lift the abeyance and that it would be appropriate to decide the merits of the case based only on the first trial record. The district court lifted the abeyance but declined to decide the case on the first trial record. Instead, the district

court repeatedly expressed its belief that new evidence was necessary and insisted on seeing the NTP monograph that the parties had agreed not to present at the first trial. The district court rejected the parties' presentation of the case and determined, on its own, that the NTP monograph was relevant and important.

This case no longer “bear[s] a fair resemblance to the case shaped by the parties.” *Sineneng-Smith*, 590 U.S. at 380. The district court’s “takeover” of the evidentiary presentation, in combination with its repeated refusal to respect the decisions made by the parties in the case, violated the party presentation principle and constitute an abuse of discretion. *Id.* at 379. The district court’s “radical transformation” of the case by holding the case in abeyance for a year and a half and declining to rule on the first trial record as requested by both parties went “well beyond the pale.” *Id.* at 380. We accordingly vacate and remand to the district court to rule based solely on the first trial record.

2. Because, against EPA’s initial objection, both parties introduced new evidence to the district court during the first trial that went beyond the evidence presented in the 2016 petition to EPA, we hold that, *in these circumstances*, the district court did not err in relying on evidence not included in Plaintiffs’ 2016 petition in the first trial. *Cf. Independence Min. Co., Inc. v. Babbitt*, 105 F.3d 502, 511–12 (9th Cir. 1997) (holding that district court did not err in considering supplemental evidence when it “permitted both sides to submit supplemental

evidence”). However, we decline to address whether Section 21 of TSCA would allow the introduction of evidence beyond that contained in the initial petition under different circumstances.

3. We remand the issue of standing to the district court for consideration of EPA’s judicial notice request in the first instance. The district court as the trier of fact sits in the best position to determine whether to take judicial notice of EPA’s proffered facts and whether these facts affect Plaintiffs’ standing. Because we remand this issue to the district court, EPA’s motion for judicial notice (Dkt. 23) is denied as moot.

VACATED AND REMANDED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
 - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
 - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d). The deadlines for seeking reconsideration of a non-dispositive order are set forth in 9th Cir. R. 27-10(a)(2).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
 - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

Name of party/parties requesting costs to be taxed:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

COST TAXABLE	REQUESTED			
	(each column must be completed)			
DOCUMENTS / FEE PAID	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*			\$	\$
Principal Brief(s) (<i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i>)			\$	\$
Reply Brief / Cross-Appeal Reply Brief			\$	\$
Supplemental Brief(s)			\$	\$
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee / Appeal from Bankruptcy Appellate Panel Docket Fee/Appeal from District Court filing portion of fee (\$5)				\$
TOTAL:				\$

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:
 No. of Copies: 4; Pages per Copy: 500; Cost per Page: \$.10 (or actual cost IF less than \$.10);
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