

No. 19-70115

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IN THE  
**United States Court of Appeals**  
**for the Ninth Circuit**

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NATIONAL FAMILY FARM COALITION, et al.,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,  
*Respondents,*

and

MONSANTO COMPANY,  
*Intervenor-Respondent.*

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ON PETITION FOR REVIEW FROM THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

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**BASF CORPORATION'S OPPOSITION TO PETITIONERS'  
EMERGENCY MOTION TO ENFORCE VACATUR AND  
CROSS-MOTION TO RECALL AND STAY MANDATE**

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## INTRODUCTION

BASF Corporation respectfully submits this Opposition to Petitioners' Emergency Motion to Enforce This Court's Vacatur, and Cross-Motion to Recall and Stay the Mandate (ECF 127).<sup>1</sup> It is neither necessary nor permissible for the panel to take steps to "enforce" its June 3, 2020 decision that vacated the registrations of three dicamba pesticide products, including BASF's Engenia. This Court lacks jurisdiction over EPA's June 8 "Final Cancellation Order for Three Dicamba Products," because it is a new order issued after vacatur. Moreover, EPA's order is entirely consistent with the Court's ruling. The order acknowledges that the registrations are vacated and speaks only to the legal and practical consequences of vacatur for existing stocks of product.

Contrary to Petitioners' assertions, EPA's order does not seek to maintain the *status quo* in the wake of the panel's vacatur of the registrations. To the contrary, the order confirms that registrants and distributors nationwide were (and still are) prohibited under FIFRA from selling or distributing any of the now-unregistered products, including existing stocks, as of the date of the panel's mandate, June 3, 2020. The exception is shipment for purposes of return or

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<sup>1</sup> BASF tenders this submission as a conditional filing pending resolution of its pending Motion to Intervene. ECF 130. BASF suggests that any responses to BASF's cross-motion be submitted by June 18 to correspond to Petitioners' reply deadline for their Motion.



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