

Oral Argument Held on April 21, 2020

No. 19-70115

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents,

and

MONSANTO COMPANY,
Intervenor-Respondent.

On Petition for Review of Agency Action
of the United States Environmental Protection Agency

**MOTION OF AMERICAN FARM BUREAU FEDERATION, AMERICAN
SOYBEAN ASSOCIATION, NATIONAL COTTON COUNCIL OF
AMERICA, NATIONAL ASSOCIATION OF WHEAT GROWERS,
NATIONAL CORN GROWERS ASSOCIATION, AND NATIONAL
SORGHUM PRODUCERS FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN OPPOSITION TO PETITIONERS' EMERGENCY MOTION
AND IN SUPPORT OF RESPONDENTS**

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Pursuant to Federal Rule of Appellate Procedure 29 and Ninth Circuit Rule 29-3, the American Farm Bureau Federation, American Soybean Association, National Cotton Council of America, National Association of Wheat Growers, National Corn Growers Association, and National Sorghum Producers (together, “the Growers”) respectfully request leave to file the attached *amicus curiae* brief in opposition to Petitioners’ Emergency Motion to Enforce This Court’s Vacatur and to Hold EPA in Contempt. The proposed amicus brief is attached as Exhibit 1. In support of this Motion, the Growers state as follows:

1. Counsel for *amici curiae* endeavored to obtain consent from all parties before filing this motion. Respondents EPA and Monsanto Company consent to the filing of the brief. Petitioners, however, oppose the filing of the brief.

2. The Growers are six national trade associations that represent farmers, ranchers, and their families nationwide. The Growers’ soybean, corn, wheat, sorghum, cotton, and other crops provide the United States and the world with food, fuel, feed, and fiber.

3. Founded in 1919, the American Farm Bureau Federation (“AFBF”) is a voluntary general farm organization formed to protect, promote, and represent the business, economic, social, and educational interests of American farmers and ranchers. AFBF represents nearly six million member families through its state and county Farm Bureau organizations in all 50 states and Puerto Rico. A letter sent by

the AFBF to EPA regarding the need for EPA to issue guidance on the use of existing stocks of Xtendimax, Engenia, and FeXapan (the “Dicamba Products”) is attached as Exhibit 2.

4. Founded in 1920, the American Soybean Association (“ASA”) is a national, private, not-for-profit trade association representing U.S. soybean growers on domestic and international issues of importance to the soybean industry. It represents the interests of more than 300,000 soybean farmers nationwide. A letter sent by the ASA to EPA regarding the need for EPA to issue guidance on the use of existing stocks of the Dicamba Products is attached as Exhibit 3.

5. Founded in 1938, the National Cotton Council of America (“NCC”) is the trade association for the U.S. cotton industry, representing the seven segments of the raw cotton industry: producers, ginner, warehouse, merchant, cottonseed processor and merchandiser, cooperative, and textile manufacturer. The Cotton Council’s mission is to ensure the ability of all U.S. cotton segments to compete effectively and profitably in the raw cotton, oilseeds, and manufactured textile product markets at home and abroad. A letter sent by the NCC to EPA regarding the need for EPA to issue guidance on the use of existing stocks of the Dicamba Products is attached as Exhibit 4.

6. In 1950, a handful of wheat growers from across the country formed the National Association of Wheat Growers (“NAWG”) to work toward common

solutions and make decisions for the future of America's wheat producers. Decades later, the NAWG continues to focus on the policies of the U.S. government that affect the livelihoods of U.S. wheat producers as the primary representative in Washington, D.C. for wheat growers, working with a team of 20 state wheat grower organizations to benefit America's wheat producers.

7. Founded in 1957, the National Corn Growers Association is the trade association for U.S. corn growers. It represents the interests of more than 300,000 corn growers and works with 49 affiliated state organizations to create and increase opportunities for corn growers.

8. Founded in 1955 to increase demand for grain sorghum, National Sorghum Producers became the voice of the sorghum industry. For over 60 years, National Sorghum Producers has represented sorghum farmers nationwide on legislative and regulatory issues impacting the sorghum industry, and its mission is to lead positive change for sorghum farmers through effective policy and relationships.

9. Growers have direct and immediate interests in Petitioners' motion and the EPA's Final Cancellation Order for Three Dicamba Products, which regulates existing stocks (including farmers' use of existing stocks) of the Dicamba Products during this crucial period of this growing season.

10. Growers also have a broader interest in preserving EPA's authority to

issue cancellation orders in the first instance when a product registration is vacated or cancelled. This authority is essential for providing farmers, if circumstances so warrant, with continued access to existing stocks of cancelled products, particularly in scenarios involving mid-growing season cancellations or vacatures of registrations. Losing access to a pesticide product in the middle of a growing season could significantly limit a farmer's ability to control for weeds, insects, or other pests, resulting in potentially catastrophic economic losses on Growers.

11. The Growers' first-hand experience places them in a unique position to provide the Court with information about the importance of the Dicamba Products and EPA's Cancellation Order.

12. The Growers' amicus brief does not challenge the Court's vacatur of the existing registrations. Rather, it focuses exclusively on the relief that Petitioners' recent motion seeks, including an immediate ban on the use of the Dicamba Products, and the substantial risks that awarding such relief would pose to Growers.

13. The outcome of this motion will have a direct effect on the Growers, their productivity, their livelihoods, and their contributions to society. Further, the relief sought in Petitioners' Emergency Motion could devastate this season's plantings—already in the ground and depending on the formerly registered Dicamba Products for weed control. Growers would bear the significant costs of lesser alternative methods of weed control and yield losses if the Court grants Petitioners'

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