

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

**Petition for Review of Order of a Federal Agency, Board,
Commission, or Officer**

Name of Federal Agency, Board, Commission, or Officer:

ANDREW WHEELER, Administrator, United States Environmental Protection
Agency [Agency Representative],

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date of judgment or order: March 29, 2017 (82 Fed. Reg. 16,581 (April 5, 2017))
July 18, 2019 (84 Fed. Reg. 35,555 (July 24, 2019))

Fee paid for petition: Yes

List all Petitioners:

League of United Latin American Citizens
Pesticide Action Network North America
Natural Resources Defense Council
California Rural Legal Assistance Foundation
Farmworker Association of Florida
Farmworker Justice
Labor Council for Latin American Advancement
Learning Disabilities Association of America
National Hispanic Medical Association
Pineros y Campesinos Unidos del Noroeste
United Farm Workers

Related cases: *LULAC, et al. v. Andrew Wheeler, et al.*, Case No. 17-

71636, United States Court of Appeals for the Ninth Circuit.

Jurisdiction: Under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 346a(h), this Court has jurisdiction to review orders issued by the Environmental Protection Agency (“EPA”) on objections filed pursuant to 21 U.S.C. § 346a(g)(2). On June 5, 2017, in accordance with 21 U.S.C. § 346a(g)(2)(A), the petitioners timely filed objections to the order issued by EPA denying a petition to ban food uses of chlorpyrifos, 82 Fed. Reg. 16,581 (April 5, 2017) (“Petition Denial Order”). On July 18, 2019, EPA issued an order under 21 U.S.C. § 346a(g)(2)(C), denying the objections in full. 84 Fed. Reg. 35,555 (July 24, 2019) (“Objections Denial Order”). Pursuant to 21 U.S.C. § 346a(h), this Court has jurisdiction to review EPA’s Objections Denial Order. In its April 19, 2019 Order in the related case, *LULAC, et al. v. Andrew Wheeler, et al.*, Case No. 17-71636, Dkt. 171, the en banc court retained jurisdiction over that and any related cases.

STATEMENT

Petitioners hereby petition the United States Court of Appeals for the Ninth Circuit for review of: (1) the Petition Denial Order by Respondent EPA entitled “Chlorpyrifos; Order Denying PANNA and NRDC’s Petition to Revoke Tolerances,” which was issued May 29, 2017 and published in 82 Fed. Reg. 16,581 (April 5, 2017) (attached as Exhibit A); and (2) the Objections Denial Order by Respondent EPA, entitled “Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order,” which was issued on July 18, 2019, and

published in 84 Fed. Reg. 35,555 (July 25, 2019) (attached as Exhibit B).

Petitioners and their members will be adversely affected by the challenged orders as demonstrated in the standing declarations filed in the related case, *LULAC v. Wheeler*, Case No. 17-71636 (9th Cir.). Dkt. 37-2. Pesticide Action Network North America, California Rural Legal Assistance Foundation, United Farm Workers, and Pineros y Campesinos Unidos del Noroeste have their principal place of business in this Circuit.

Petitioners initiated the related case in June 2017 by filing a petition for review of the Petition Denial Order at the same time they filed their administrative objections with EPA. A divided Panel ruled that it had jurisdiction even without a final ruling by EPA on the objections and ruled for Petitioners on the merits. 899 F.3d 814 (9th Cir. 2018). Respondent EPA moved for rehearing en banc on the jurisdictional issue, which this Court granted. On rehearing en banc, this Court ordered EPA to issue a full and final decision on the objections by July 18, 2019, and retained jurisdiction over this and any related cases. 922 F.3d 443 (9th Cir. 2019) (mem.) (en banc). This petition seeks review of the Objections Denial Order in addition to the Petition Denial Order and seeks review initially en banc pursuant to Fed. R. App. P. 35(c), consistent with the en banc Court's order.

In addition to filing this petition for review, LULAC will seek leave to amend the petition for review in the related case, *LULAC v. Wheeler*, Case No. 17-

71636, to add a challenge to the Objections Denial Order to that case. Petitioners believe it would be most efficient and facilitate an expeditious resolution to combine and hear this petition in the related case, where the administrative record, excerpts of record, and standing declarations have already been filed, and the case has already been expedited.

Respectfully submitted this 7th day of August, 2019.

s/ Patti A. Goldman

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Representation Statement for Petition for Review

Petitioner(s):

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Farmworker Association of Florida
Farmworker Justice
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Learning Disabilities Association of America
National Hispanic Medical Association
Pineros y Campesinos Unidos del Noroeste
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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2019, I electronically filed the foregoing *Petition for Review with attachments* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. The following have been served by U.S. First Class Mail and email:

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I declare under penalty of perjury that the foregoing is true and correct.

s/ Patti A. Goldman
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