



For Immediate Release:

December 27, 2018

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### **In a 2-1 Decision, the Ninth Circuit Court of Appeals Grants Interlocutory Appeal in *Juliana v. United States* and in a Unanimous Decision Denies Mandamus**

San Francisco -- Yesterday, in a 2-1 decision, the Ninth Circuit Court of Appeals [granted](#) defendants' petition for permission to bring an interlocutory appeal in *Juliana v. United States*, the landmark constitutional climate lawsuit brought by young Americans. Chief Judge Sidney Thomas and Circuit Judge Marsha Berzon decided in favor of the petition, while Circuit Judge Michelle Friedland wrote a dissent. This three-judge panel is the same panel that [ruled against](#) the Trump administration's petition for writ of mandamus in this case on March 7, 2018. The Court's decision comes just over a month after District Court Judge Ann Aiken certified the case for interlocutory appeal on November 21, 2018.

At the same time, the full Ninth Circuit panel [denied](#) as moot both defendants' fourth petition for a writ of mandamus and plaintiffs' motion to lift the November 8 stay of trial. The Ninth Circuit's stay of trial automatically lifted when the court denied the mandamus petition.

Today, the youth plaintiffs' filed a [motion](#) in the district court, requesting an immediate order clarifying that pre-trial and trial proceedings may resume, and, in the alternative, reconsider and modify its November 21 order and lift the stay in this case. The brief filed by the youth plaintiffs argues that, as a result of yesterday's orders, there is no stay of litigation in place, and that Judge Aiken should resume pre-trial and trial proceedings over the factual and legal issues not covered by the government's interlocutory appeal.

The dissent authored by Judge Friedland criticizes both the defendants for wasting judicial resources, and the majority for not reading and analyzing the district court's certification order as a whole. In her dissent, Judge Friedland wrote:

“...the district court's statements prevent us from permitting this appeal.”

“Reading the certification order as a whole, however, I do not believe that the district court was actually “of the opinion” that “an immediate appeal from [these orders] [would] materially advance the ultimate termination of the litigation”—nor did it meaningfully “so state.””

“...it appears that the court felt compelled to make that declaration even though—as the rest of its order suggests—the court did not believe that to be true. This is very concerning, because § 1292(b) reserves for the district court the threshold determination whether its two factors are met.”

“...the district court—having, among other things, direct experience with the parties, knowledge of the status of discovery, and the ability to sequence issues for trial—is far better positioned to assess how to resolve the litigation most efficiently.”

“It is also concerning that allowing this appeal now effectively rewards the Government for its repeated efforts to bypass normal litigation procedures by seeking mandamus relief in our court and the Supreme Court. If anything has wasted judicial resources in this case, it was those efforts.”

“I believe we should allow the case to proceed to trial. We could then resolve any novel legal questions if and when they are presented to us after final judgment.”

**Julia Olson**, executive director and chief legal counsel of **Our Children’s Trust** and co-counsel for youth plaintiffs, commented:

“The panel had an obligation to assess independently both the order of the district court and whether interlocutory appeal was appropriate. Only the dissenting judge did that analysis in her reasoned opinion. The bottom line is, this case is ready for trial, and should not be held up by further appeals. The government has used the power of their office and the depth of taxpayer coffers to waste precious time and resources to avoid trial in this case, and now the court has capitulated with little scrutiny. This case deserves rigorous analysis based on the evidence introduced in court. Our youth plaintiffs did not receive that consideration in this majority opinion.”

**Philip Gregory**, of Gregory Law Group and co-counsel for the youth plaintiffs, said:

“I disagree with this decision. It is unfortunate that the Ninth Circuit majority failed to explain why an appeal makes sense now. As Judge Aiken observed, this case would be better served by further factual development at trial. The overwhelming evidence is that plaintiffs will suffer substantial harm from any further delay in resolving their claims. The more time that passes before a remedy is in place will result in irrevocable harm to plaintiffs and increased future litigation burdens. I wish the court would let the voices of these youth plaintiffs, as well as the climate science, be heard in the courtroom.”

*Juliana v. United States* is *not* about the government’s failure to act on climate. Instead, these young plaintiffs between the ages of 11 and 22, assert that the U.S. government, through its *affirmative actions* in creating a national energy system that causes climate change, is depriving them of their constitutional rights to life, liberty, and property, and has failed to protect essential public trust resources. The case is

one of many related legal actions brought by youth in several states and countries, all supported by Our Children's Trust, and all seeking science-based action by governments to stabilize the climate system.

*Counsel for Plaintiffs are Julia Olson, Esq. of Eugene, OR, Philip L. Gregory, Esq. of Gregory Law Group of Redwood City, CA, and Andrea Rodgers, Esq. of Seattle, WA.*

***Our Children's Trust** is a nonprofit organization, leading a coordinated global human rights and environmental justice campaign to implement enforceable science-based Climate Recovery Plans that will return atmospheric carbon dioxide concentrations to below 350 ppm by the year 2100. We elevate the voice of youth, those with most to lose in the climate crisis, to secure the legal right to a healthy atmosphere and stable climate on behalf of all present and future generations. [www.ourchildrenstrust.org/](http://www.ourchildrenstrust.org/)*

***Earth Guardians** is a Colorado-based nonprofit organization with youth chapters on five continents, and multiple groups in the United States with thousands of members working together to protect the Earth, the water, the air, and the atmosphere, creating healthy sustainable communities globally. We inspire and empower young leaders, families, schools, organizations, cities, and government officials to make positive change locally, nationally, and globally to address the critical state of the Earth. [www.earthguardians.org](http://www.earthguardians.org)*

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