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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA;)
XIUHTEZCATL TONATIUH M.,)
through his Guardian Tamara)
Roske-Martinez, et al.)

Plaintiff,)

Case No. 6:15-cv-01517-AA

v.)

May 13, 2021

THE UNITED STATES OF AMERICA,)
et al.)

Defendant.)

TELEPHONIC STATUS CONFERENCE

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ANN L. AIKEN

UNITED STATES DISTRICT COURT JUDGE

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TRANSCRIPT OF PROCEEDINGS

(May 13, 2021)

(Telephonic hearing:)

DEPUTY COURTROOM CLERK: Now, is the time for Civil Case No. 15-01517. Juliana, et al. v. United States of America, et al., for a status conference.

If you could please introduce yourselves for the record, beginning with plaintiffs.

MS. OLSON: Good morning, Your Honor. This is Julia Olson on behalf of the plaintiff.

MR. GREGORY: Good morning, Your Honor. This is Phillip Gregory on behalf of the plaintiffs.

MS. RODGERS: And good morning, Your Honor. This is Andrea Rodgers. Also on behalf of the plaintiffs.

DEPUTY COURTROOM CLERK: For defendants?

MS. RODGERS: That's all for the plaintiffs today.

THE COURT: Thank you.

MR. DUFFY: Good morning, Your Honor. This is Sean Duffy on behalf of the federal defendants. And also on the call is Frank Singer, and it will just be the two of us.

THE COURT: So I have two purposes for this call. The first is to arrange and set a date for oral argument. That's the first order of business. And I'm looking at sometime in June.

Have you had discussions at all about what dates might

1 work?

2 MS. OLSON: Good morning, Your Honor. This is
3 Julia Olson. Counsel has not conferred on potential dates, but
4 we are very open in June, with the exception of -- June 17, 18,
5 and 21 are dates that do not work; but, otherwise, we are very
6 flexible. And the earlier, the better for plaintiffs' side.

7 THE COURT: Well, the 18th doesn't work. We have
8 re-entry court, and I have re-entry court on the 15th, and
9 so -- I have a full calendar on the 16th, so -- and you have --
10 the 17th is out.

11 For the government?

12 MR. DUFFY: Thank you, Your Honor. Federal
13 defendants have conferred, and we have no conflicts in the
14 month of June.

15 THE COURT: Oh, gosh. I have conflicts all over the
16 place.

17 How about -- how about the 24th or 25th -- 23rd or 25th of
18 June?

19 MS. OLSON: That works on plaintiffs' side,
20 Your Honor. Thank you.

21 MR. DUFFY: And either of those dates work for
22 federal defendants as well. Thank you.

23 THE COURT: All right. Let's do it on the 25th.
24 10:00. I'm assuming it will be 10:00 to 12:00 -- is that a
25 fair assumption -- at max?

1 MS. OLSON: That works for plaintiffs, Your Honor.

2 MR. DUFFY: And that works for federal defendants as
3 well.

4 THE COURT: Thank you.

5 Now I have a second part of this set -- this discussion.
6 I am going to refer you to Judge Tom Coffin for settlement
7 discussions, and I'm going to note for the record that
8 Judge Coffin is a re-called magistrate, which means he
9 essentially retired in 2016 and has been on recall status for
10 the sole purpose of presiding over settlement conferences,
11 which he conducts pursuant to the court rules which provide
12 that all communications related to mediation are privileged and
13 confidential and, as well, voluntary, with the consent of the
14 parties.

15 As a mediator, he does not rule on any issue in the
16 litigation but strictly limits his involvement to assisting the
17 parties to come to a consensual resolution of the case that's a
18 mutually agreeable result with all the parties.

19 He has been doing this service as a member of the court
20 since I -- long before I came to the bench, and he's been
21 instrumental in -- or an Oregon reputation for resolutions of
22 complex litigation. I know all of you know him, and I know all
23 of you know he understands and knows this case, and I'm
24 confident that his work with both the DOJ and -- for the DOJ,
25 as a settlement judge, and with and for many different

1 environmental groups in this state that let people know and
2 respect his work.

3 I'm sending you there purposefully, and I -- I expect you
4 to go there before the argument in this case and maybe
5 afterwards. And it's my hope that that -- that this will lead
6 to a different -- it will augment the arguments in this case,
7 and I think it's an appropriate moment for everybody to take a
8 look at decisions they need to make.

9 I have this matter to review as well.

10 So I think it's a tremendous opportunity, and so I am
11 going to leave it, at this juncture, to ask you to schedule
12 that with Judge Coffin.

13 You can go to -- you know, what I have indicated is I
14 expect you to go meet with him, and if -- if one or the other
15 of you say, "We will not negotiate," you can tell him that.
16 But you will tell him that first before you tell that to me.
17 Because I do believe that it has -- this case is in a position,
18 given many things that have intervened in the year that this
19 case was on appeal and changes that have taken place legally
20 and in the world, that it's a moment in time that I think
21 people should take advantage of.

22 How we resolve complex litigation when the courtroom is
23 not necessarily the best place to do it -- it's one place to do
24 it, but there are ways in which you're able to utilize having
25 the Court serve as the galvanizer or the convener, so to speak,

1 that allows people to go to a table with a mediator to resolve
2 disputes that are both resolvable through our various branches
3 of government.

4 So, with that said, I would ask you to make contact --
5 work with Cathy Kramer, my courtroom deputy, and Judge Coffin
6 directly to schedule a time for that settlement discussion.

7 Any comments?

8 MS. OLSON: Your Honor, this is Julia Olson for the
9 plaintiffs, and we are happy to utilize the services of
10 Magistrate Judge Coffin to discuss settlement with the
11 defendants and look forward to doing that.

12 One related issue: As the Court knows, we have an
13 approaching deadline to file a petition for cert with the
14 Supreme Court, pursuant to the COVID order, which allows for
15 150 days from the time of judgment. And it is plaintiffs'
16 position that if this case ever goes to the Supreme Court, it
17 would be better to do so upon a final judgment or final order,
18 if -- if we get to that place outside of a settlement.

19 So what we intend to do is file an application for a
20 60-day extension of time to that July 12 deadline that we
21 currently face and are hopeful that will be granted. If that's
22 not granted, we are faced with a decision point at that point.
23 And so we will keep the Court alerted as to the status of what
24 happens with that application for an extension of time.

25 And, obviously, the Court's decision on the motion for

1 leave to amend and any progress the parties begin to make on
2 settlement -- on the settlement front will also weigh heavily
3 on that ultimate decision that the plaintiffs make.

4 THE COURT: I think those are -- does the government
5 have anything to say?

6 MR. DUFFY: I have nothing to say with respect to
7 what the plaintiffs just raised.

8 If I could raise a separate issue? We're currently -- the
9 current -- we're currently operating under the Justice
10 Department's Workforce Safety Plan; and, under that, remote
11 meetings and hearings are strongly encouraged over in-person
12 appearances. Your Honor didn't address whether the hearing
13 would be remote or in person, but we would request a remote
14 hearing.

15 THE COURT: Who's speaking? Who's speaking?

16 MR. DUFFY: I'm sorry. This is Sean Duffy for
17 federal defendants.

18 THE COURT: Mr. Duffy, do you practice in Oregon?

19 MR. DUFFY: Yes.

20 THE COURT: We're under an order of remoteness.
21 We're remote. Judge Coffin has been doing his -- all of his
22 hearings remotely.

23 So I don't know. We -- we don't -- all of our mediations
24 are either -- he does them by phone. And when we're out from
25 under the Court's general order and are -- everyone is fully

1 vaccinated, we will return to the courtroom. But I'm aware
2 that Judge Coffin has been doing this work remotely for well
3 over a year. We all have. None of us -- I go to the
4 courthouse only for video. I have done no in-court work.
5 We're under a court order; so that is not a problem.

6 Number two, you know, people with authority -- I know
7 he'll encourage and want that to take place.

8 I am confident that the issues, Ms. Olson, that you've
9 raised are all good subjects for mediation discussion and --
10 and decision-making; so I'm sure that will get taken up.

11 And I'm going to ask that you be -- at least you have a
12 session before the argument in this case. Because I'm happy to
13 bump the argument, if I need to, to accommodate ongoing
14 negotiation. In other words, everyone should take a look at
15 what this case is about and what -- the best way to move it
16 forward and how to take advantage of a variety of a couple of
17 branches of government -- maybe all three -- working together
18 to resolve disputes in the set-in timelines and the set-in
19 goals, aspirations, and expectations.

20 You know, I read all the -- I read all the opinion, and I
21 read the dissent. And I know that this case, and I have
22 read -- people who have no idea, we have 3,000 issues that were
23 asked of the Court to take judicial notice of on each side. We
24 understand the information in this case very well.

25 I would hope that you are grateful and are appreciative of

1 having this opportunity to look globally at how this case may
2 be resolved that moves forward what we understand and -- and
3 what I refer to in there as a crisis.

4 So do not -- do not see that as just a ministerial step in
5 what you need to do to make the next legal decision. Take a
6 step back from it and take a look at what you need to do to
7 move forward on what you all know are issues in this case that
8 can be resolved, and there can be issues that can make progress
9 that will best address the rights that have been acknowledged
10 in the Ninth Circuit's opinion.

11 So, with that said, please make contact with
12 Judge Coffin's chambers shortly. He'll -- I'll be more than
13 willing to accommodate time schedules. And he, I know, has
14 been. When I asked him if he would do this, he said, "I will
15 clear the deck to take a -- take my best efforts to work on
16 trying to mediate this case."

17 So please take advantage of him. It is not just a
18 ministerial check-the-box pro forma referral. All right?

19 Let me know what I can do next. And we'll set that
20 hearing date for Friday the 25th at 10:00.

21 And, again, that date can be moved, and the decision
22 points can be moved, and some of those decision points can be
23 revisited.

24 So, with that said, is there anything else I can do to be
25 helpful?

1 MS. OLSON: Your Honor, this is Julia Olson. Just
2 one last question. On the oral argument, is it -- my
3 understanding is that will be telephonic and not video. Is
4 that correct?

5 THE COURT: At this time, that's correct.

6 MS. OLSON: Okay. Thank you very much for your
7 assistance today and for having this conference. The
8 plaintiffs are on the public call line, and we really
9 appreciate the opportunity for them to be able to listen in.

10 THE COURT: I understand that. The case took a very
11 long time to get back. You know, we are -- have been slammed
12 with cases dealing with any number of other topics, and our
13 criminal justice system is stretched about as thin as it can
14 be, and we will -- we will get at this, but it's -- and I know
15 there's some deadlines that people want to meet, but this is
16 our best effort to get to it as quickly as we can, but it's
17 certainly more than waiting a year to issue a decision.

18 So with that said -- again, is there anything else?

19 MR. DUFFY: Thank you, Your Honor.

20 MS. OLSON: That's all for plaintiff.

21 MR. DUFFY: No more from the defendants.

22 THE COURT: All right. Thank you for your time.
23 We're in recess.

24 (Hearing concluded.)

25

C E R T I F I C A T E

Juliana, et al. v. The United States of America, et al.

6:15-1517-AA

Telephonic Status Conference

May 13, 2021

I certify, by signing below, that the foregoing is a true and correct transcript, to the best of my ability, of the telephonic proceedings heard via conference call, taken by stenographic means. Due to the telephonic connection, parties appearing via speakerphone or cell phone or wearing masks due to coronavirus, speakers overlapping when speaking, speakers not identifying themselves before they speak, fast speakers, the speaker's failure to enunciate, and/or other technical difficulties that occur during telephonic proceedings, this certification is limited by the above-mentioned reasons and any technological difficulties of such proceedings occurring over the speakerphone at the United States District Court of Oregon in the above-entitled cause.

A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 5/13/2021
CSR Expiration Date: 9/30/2023