

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): Case Nos. 21-139 (L), 21-339 (CON), 21-593 (CON)

Caption [use short title]

Motion for: Voluntary Dismissal

Set forth below precise, complete statement of relief sought:

Petitioners ask the Court to dismiss the petitions for review pursuant to Federal Rule of Appellate Procedure 42(b) with the parties to bear their own costs and fees.

NRDC, et al. v. NHTSA, et al.

Respondents and Respondent-Intervenors do not oppose.

MOVING PARTY: All Petitioners

OPPOSING PARTY: NHTSA and Alliance for Automotive Innovation

☐ Plaintiff

☐ Defendant

☒ Appellant/Petitioner

☐ Appellee/Respondent

MOVING ATTORNEY: Thomas Zimpleman

OPPOSING ATTORNEY: H. Thomas Byron

[name of attorney, with firm, address, phone number and e-mail]

Natural Resources Defense Council

U.S. Dept. of Justice, Civil Division, Appellate Staff

1152 15th St. NW, Suite 300

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Court- Judge/ Agency appealed from: National Highway Traffic Safety Administration

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/Thomas Zimpleman

Date: June 14, 2022

Service by: ☒ CM/ECF ☐ Other [Attach proof of service]

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

NATURAL RESOURCES	)	
DEFENSE COUNCIL, INC.,	)	
SIERRA CLUB, et al.	)	
	)	
Petitioners,	)	
	)	Case Nos. 21-139 (L), 21-339
v.	)	(CON), 21-593 (CON)
	)	
NATIONAL HIGHWAY	)	
TRAFFIC SAFETY	)	
ADMINISTRATION, et al.,	)	
	)	
Respondents,	)	

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**UNOPPOSED MOTION TO VOLUNTARILY DISMISS  
PETITIONS FOR REVIEW PURSUANT TO FEDERAL RULE OF  
APPELLATE PROCEDURE 42(b)**

Pursuant to Federal Rule of Appellate Procedure 42(b), Petitioners hereby move the Court for an order dismissing the above captioned petitions for review.

These consolidated petitions concern an interim final rule promulgated in January 2021 by the National Highway Traffic Safety Administration (“NHTSA”) concerning the penalty rate applied to automobile manufacturers that violate NHTSA’s corporate average fuel economy (“CAFE”) standards. *See* 86 Fed. Reg. 3016 (Jan. 14, 2021) (the

“Interim Final Rule”). This Court twice ruled against NHTSA’s earlier efforts to suspend or lower the penalty rate for violating CAFE standards. *See Nat’l Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95 (2d Cir. 2018); *New York v. Nat’l Highway Traffic Safety Admin.*, 974 F.3d 87 (2d Cir. 2020). Nevertheless, NHTSA’s Interim Final Rule purported to reduce the CAFE penalty rate from \$14 to \$5.50 for model years 2019–2021. Shortly after these petitions were filed, NHTSA undertook a review of the Interim Final Rule in response to Executive Order 13990 (“Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”), 86 Fed. Reg. 7037 (Jan. 25, 2021), and promulgated a final rule restoring the inflation-adjusted \$14 penalty rate for model years 2019–2021, which became effective on May 31, 2022. 87 Fed. Reg. 18,994 (Apr. 1, 2022) (the “Final Rule”).

These petitions have been in abeyance pending the outcome of NHTSA’s rulemaking. ECF No. 85. On May 13, 2022, the Court granted Petitioners’ unopposed motion to continue to hold these cases in abeyance until June 14, 2022. ECF No. 163. This date falls approximately two weeks after both the effective date of the Final Rule

and the statutory deadline for any petitions for review challenging the Final Rule. *See* 49 U.S.C. § 32909(b) (requiring that any challenge to a final rule under EPCA be filed within 59 days after its promulgation). Petitioners are not aware of any challenge to the Final Rule and NHTSA represents through counsel that it has not received any such petitions.

Because the Interim Final Rule was repealed by the Final Rule and NHTSA has restored the statutorily required penalty rate, Petitioners move to voluntarily dismiss these petitions for review under Federal Rule of Appellate Procedure 42(b). The Respondents and Respondent-Intervenors do not oppose this motion. The parties have agreed that each side shall bear its own costs and fees.

Dated: June 14, 2022

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing motion on June 14, 2022 with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Dated: June 14, 2022

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