

No. \_\_\_\_\_

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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IN RE PESTICIDE ACTION NETWORK NORTH AMERICA  
AND  
NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

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RENEWED PETITION FOR A WRIT OF MANDAMUS

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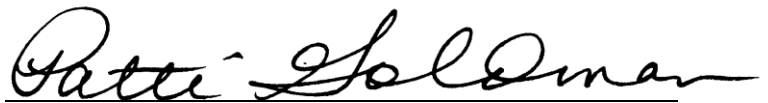
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CORPORATE DISCLOSURE STATEMENT REQUIRED BY FRAP 26.1

Petitioners Pesticide Action Network North America and Natural Resources Defense Council, Inc., have no parent, subsidiary, or affiliate that has issued shares or debt securities to the public.

Respectfully submitted this 10th day of September, 2014.



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TABLE OF CONTENTS

INTRODUCTION .....III

STATEMENT OF JURISDICTION AND APPLICABLE LAW.....3

THE ISSUE PRESENTED.....3

STATEMENT OF THE CASE.....3

    I.    EPA HAD UNTIL 2006 TO BRING CHLORPYRIFOS INTO  
          COMPLIANCE WITH TWO OVERLAPPING STATUTES  
          REGULATING PESTICIDE USE. ....4

    II.   EPA’S 2001 AND 2006 CHLORPYRIFOS DETERMINATIONS  
          FAILED TO ADDRESS SERIOUS HEALTH IMPACTS TO  
          CHILDREN AND BYSTANDER EXPOSURES.....7

        A.   Chlorpyrifos Poses Serious Health Risks to Children. ....7

        B.   EPA’s 2001 and 2006 Decisions for Chlorpyrifos and All  
              Organophosphates Failed to Comply with Statutory  
              Obligations. ....9

        C.   Petitions and Litigation to Obtain EPA Action on  
              Evidence of Chlorpyrifos Health Risks. ....12

    III.  EPA’S HANDLING OF THE 2007 PETITION TO BAN  
          CHLORPYRIFOS.....14

SUMMARY OF ARGUMENT .....20

ARGUMENT.....21

    I.    A WRIT OF MANDAMUS IS WARRANTED TO COMPEL EPA TO  
          ISSUE A FINAL DETERMINATION ON THE 2007 CHLORPYRIFOS  
          PETITION.....21

        A.   EPA’s Seven-Year Delay in Responding to the 2007  
              Petition is Excessive and Violates the Rule of Reason.....24

        B.   The 2006 Deadline for Ensuring EPA’s Pesticide  
              Authorizations Comply with the FQPA Shows that  
              EPA’s Delay Is Unreasonable.....26

C. The Health and Welfare of Those Suffering Ongoing Harms from Chlorpyrifos Support a Finding of Unreasonable Delay. ....29

D. No Higher, Competing Priorities Justify EPA’s Delay. ....32

E. EPA’s Delay Is Preventing Petitioners from Pursuing Administrative and Judicial Remedies to Protect Children from Harmful Chlorpyrifos Exposures. ....34

CONCLUSION.....36

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>In re American Rivers</i> , 372 F.3d 413 (D.C. Cir. 2004).....	34
<i>Biodiversity Legal Found. v. Badgley</i> , 309 F.3d 1166 (9th Cir. 2002) .....	26
<i>In re Cal. Power Exch. Corp.</i> , 245 F.3d 1110 (9th Cir. 2001) .....	21, 22
<i>Citizens for Better Forestry v. U.S. Dep’t of Agric.</i> , 341 F.3d 961 (9th Cir. 2003) .....	21
<i>Cutler v. Hayes</i> , 818 F.2d 879 (D.C. Cir. 1987).....	31, 32
<i>Friends of the Earth v. Laidlaw Envtl. Servs.</i> , 528 U.S. 167 (2000).....	21
<i>Independence Mining Co. v. Babbitt</i> , 105 F.3d 502 (9th Cir. 1997) .....	22, 24
<i>In re Int’l Chemical Workers Union</i> , 958 F.2d 1144 (D.C. Cir. 1992).....	26, 30, 33
<i>NRDC v. EPA</i> , No. 10-05590-CM.....	16, 17
<i>In re PANNA</i> , 532 F. App’x 649 (9th Cir. 2013).....	<i>passim</i>
<i>In re People’s Mojahedin Organization of Iran</i> , 680 F.3d 832 (D.C. Cir. 2012).....	34
<i>Pub. Citizen Health Research Grp. v. Auchter</i> , 702 F.2d 1150 (D.C. Cir. 1983).....	27, 28, 31
<i>Pub. Citizen Health Research Grp. v. Brock</i> , 823 F.2d 626 (D.C. Cir. 1987).....	26, 36

<i>Pub. Citizen Health Research Grp. v. Comm’r, Food &amp; Drug Admin.</i> , 740 F.2d 21 (D.C. Cir. 1984).....	30
<i>Telecomm. Research &amp; Action Ctr. v. FCC</i> , 750 F.2d 70 (D.C. Cir. 1984).....	<i>passim</i>
<i>UFW v. Adm’r, EPA</i> , No. 07-3950-JF (N.D. Cal. filed Aug. 1, 2007).....	12

**Statutes**

5 U.S.C. § 555(b) .....	23
5 U.S.C. § 706(1) .....	3
7 U.S.C. § 136(bb)(2).....	7
7 U.S.C. § 136a(a).....	5
7 U.S.C. § 136a(g)(1)(A)(iii) .....	14, 28
21 U.S.C. § 346a(b)(2)(A)(ii) .....	6
21 U.S.C. § 346a(b)(2)(C) .....	6, 9
21 U.S.C. § 346a(b)(2)(D) .....	6
21 U.S.C. § 346a(c).....	5
21 U.S.C. § 346a(d)(1)(A) .....	22
21 U.S.C. § 346a(d)(4).....	35
21 U.S.C. § 346a(q)(1).....	7, 27
28 U.S.C. § 1651 .....	3

**Other Authorities**

40 C.F.R. § 180.30(b) .....	34
59 Fed. Reg. 7,629 (Feb. 11, 1994) .....	11
62 Fed. Reg. 42,020 (Aug. 4, 1997).....	8

72 Fed. Reg. 58,845 (Oct. 17, 2007).....	16
76 Fed. Reg. 39,399 (Jul. 6, 2011).....	16
Exec. Order No. 12,898 .....	11

## INTRODUCTION

Pesticide Action Network North America and Natural Resources Defense Council (collectively “PANNA”) file this renewed petition for a Writ of Mandamus seeking an order from this Court requiring that the U.S. Environmental Protection Agency (“EPA”) finally and fully respond to a 2007 petition to ban uses of chlorpyrifos, a pesticide that causes large numbers of poisonings of workers, children, and rural families every year and that peer-reviewed studies have linked to neurological and behavioral impairments in children. *Petition to Revoke All Tolerances and Cancel All Registrations for the Pesticide Chlorpyrifos* (September 12, 2007) (the “2007 Petition”) (Exhibit B to First Sass Decl. (April 12, 2012)). The petition sought a ban on uses of chlorpyrifos that expose children to acute pesticide poisonings from pesticide spraying and to documented risks of neurological and other impairments from all exposures to chlorpyrifos whether from pesticide spraying, food residues, or other routes of exposure. EPA has initiated several processes to assess the health risks posed by chlorpyrifos as presented in the 2007 Petition and has released some partial responses that address discrete contentions. Jack Housenger Decl. in *In re Pesticide Action Network North America and Natural Resources Defense Council*, No. 12-71125, ECF No. 9-2 (9th Cir. July 24, 2012) (“*In re PANNA*”) (Exhibit 1 to this Mandamus Petition). However, it has yet to issue a final and reviewable decision on the



request to ban chlorpyrifos, leaving PANNA in legal limbo and this dangerous pesticide in widespread use.

Over the past seven years, EPA has made commitments to PANNA and the courts to resolve the 2007 Petition and decide whether to ban chlorpyrifos by various deadlines. Without fail, EPA has violated these commitments. When EPA failed to respond, PANNA filed its first lawsuit, leading to a stipulated deadline of November 23, 2011, which EPA missed. The second lawsuit in the form of a petition for a writ of mandamus before this Court extracted two promises from EPA: first, that it would respond by December 2012, and when that deadline passed, that it would fully resolve the petition by February 2014. *In re PANNA*, 532 F. App'x 649, 651 (9th Cir. 2013). In large part based on that commitment, which this Court characterized as “concrete,” this Court declined to issue a writ of mandamus, but it explicitly stated that its denial was “without prejudice to seeking the same relief at a future date in the event EPA fails to act.” *Id.* at 651-52. EPA’s promised February 2014 deadline has come and gone without a final response to the 2007 Petition. Accordingly, PANNA renews its petition for a writ of mandamus. PANNA asks this Court to find that EPA has unreasonably delayed fulfilling its legal obligations and to compel EPA to issue a final decision on the 2007 Petition by EPA’s newly promised timeline of December 2014 and summer of 2015, depending on its determination.

## STATEMENT OF JURISDICTION AND APPLICABLE LAW

This Court has authority to issue a writ of mandamus pursuant to the All Writs Act, 28 U.S.C. § 1651 (authorizing federal courts to issue all writs appropriate “in aid of their respective jurisdictions”) and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1) (reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed”). *See In re PANNA*, 532 F. App’x at 650 (citing 5 U.S.C. § 706(1)). As this Court recognized in ruling on the first petition for writ of mandamus, this Court has jurisdiction to review this challenge to the agency’s delay because challenges to any final action by EPA would lie in this Court. *See In re PANNA*, 532 F. App’x at 650; *Telecomm. Research & Action Ctr. v. FCC*, 750 F.2d 70, 75 (D.C. Cir. 1984) (hereinafter “TRAC”).

## THE ISSUE PRESENTED

Whether EPA’s seven-year delay in deciding whether to ban a hazardous and widely used pesticide that is particularly harmful to children, as requested in the 2007 Petition, is an unreasonable delay warranting an order from this Court requiring EPA to issue a final decision on the schedule EPA has most recently proposed.

## STATEMENT OF THE CASE

Chlorpyrifos is a widely used pesticide that has repeatedly been among the top pesticides causing acute pesticide poisonings of workers, their families, and

others who live near places where it is applied. The unacceptable harms to children exposed to chlorpyrifos on lawns and in their homes led EPA to negotiate a phase out-of-home uses in 2000. Inexplicably, EPA neglected to protect rural children from similar harms, despite acknowledging, in the face of litigation and petitions by PANNA and others, its legal obligation to protect rural children from pesticide drift and volatilization. Rural children exposed to chlorpyrifos are often the children of farmworkers, such that this harm falls disproportionately on children in low-income and minority communities. Compounding these harms, a series of peer-reviewed scientific studies has found links between chlorpyrifos and neuro-developmental and behavioral impairments in children at lower levels of exposure than those that cause acute pesticide poisonings. The 2007 Petition presented these risks to EPA. EPA has repeatedly promised to issue a final decision on the Petition, but has repeatedly broken those promises. This statement of the case reviews the pertinent statutory structure, EPA's failure to address serious health impacts to children and bystanders from chlorpyrifos use, and its handling of the 2007 Petition.

**I. EPA HAD UNTIL 2006 TO BRING CHLORPYRIFOS INTO COMPLIANCE WITH TWO OVERLAPPING STATUTES REGULATING PESTICIDE USE.**

EPA regulates pesticides under two, overlapping statutes, the Federal Food, Drug and Cosmetic Act ("FFDCA") and Federal Insecticide, Rodenticide and

Fungicide Act (“FIFRA”). EPA issues tolerances under the FFDCA, which establish the maximum residue of a pesticide allowed on food. 21 U.S.C.

§ 346a(b) & (c). EPA may “establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe.” *Id.* § 346a(b)(2)(A)(i). EPA has the authority to revoke a tolerance if it finds a pesticide residue would not be safe. *Id.* § 346a(b)(2)(A)(i).

Under FIFRA, EPA must establish a registration before a pesticide may generally be sold or used in the United States. 7 U.S.C. § 136a(a). To register or re-register a pesticide, EPA must determine that its use “will not generally cause unreasonable adverse effects on the environment,” which includes risks to human health. *Id.* § 136a(c)(5)(D); *see id.* § 136(bb) (definition of “unreasonable adverse effects”). EPA has the authority and the duty to cancel a pesticide registration if the pesticide use “causes unreasonable adverse effects on the environment,” including human health. *Id.* § 136d(b).

Congress overhauled our food safety laws in 1996. The overhaul responded to the seminal 1993 National Academy of Sciences (“NAS”) report criticizing EPA for treating children like “little adults” by failing to address the unique susceptibility of children to pesticide exposures based on the foods they eat, their play, and sensitive stages of their development. The NAS recommended that EPA revamp and strengthen its pesticide regulations to account for children’s

vulnerabilities, consumption patterns, and exposures.<sup>1</sup> In particular, because “[e]xposure to pesticide residues from ambient air sources is generally higher in areas close to agricultural lands,” the NAS recommended that “exposure from all sources—not just ingestion—must be considered when estimating total [pesticide] exposure and risk to children.”<sup>2</sup>

The Food Quality Protection Act (“FQPA”), passed unanimously in 1996, amends the FFDCA and FIFRA and requires EPA to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure” to pesticides. 21 U.S.C. § 346a(b)(2)(C)(ii)(I), (II). “Aggregate exposure” includes “all anticipated dietary exposures and all other exposures for which there is reliable information,” including pesticide drift exposures. 21 U.S.C. § 346a(b)(2)(A)(ii); *see also id.* § 346a(b)(2)(C)(vi). The FQPA also requires EPA to assess and protect against unsafe risks posed by cumulative exposures to pesticides that share a “common mechanism of toxicity.” *See* 21 U.S.C. § 346a(b)(2)(C)-(D). In addition, the FQPA directs EPA to afford added protection to children based on their exposure patterns, their special sensitivities such as during early or adolescent development, and gaps in available data to assess such risks. 21 U.S.C. § 346a(b)(2)(C)-(D).

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<sup>1</sup> NAS, *Pesticides in the Diets of Infants and Children*, Executive Summary at 307-09 (1993) (Exhibit 2) (“NAS Report”).

<sup>2</sup> *Id.* at 307, 308-09.

The FQPA also amended FIFRA’s “unreasonable adverse effects” definition to include “a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the [FQPA] standard.” 7 U.S.C. § 136(bb)(2). Accordingly, EPA can register or re-register a pesticide only if there is a reasonable certainty of no harm from aggregate and cumulative exposures to the pesticide under the FQPA standard.

Congress gave EPA a ten-year deadline, which ended in August 2006, to bring all food-use pesticides into compliance with these protective mandates. 21 U.S.C. § 346a(q)(1). The August 2006 deadline applied to both tolerances established under the FFDCAs as amended by the FQPA and re-registration decisions under FIFRA.

## II. EPA’S 2001 AND 2006 CHLORPYRIFOS DETERMINATIONS FAILED TO ADDRESS SERIOUS HEALTH IMPACTS TO CHILDREN AND BYSTANDER EXPOSURES.

### A. Chlorpyrifos Poses Serious Health Risks to Children.

Chlorpyrifos is a widely used pesticide first registered by EPA in the 1960s. It is an organophosphate pesticide, a class of pesticides developed as nerve agents in World War II. First Sass Decl. ¶ 4. After the war, chlorpyrifos and other organophosphates were adapted for use as insecticides. First Sass Decl. ¶¶ 3-4; 2007 Petition at 1. In setting priorities for reviewing old pesticides under the FQPA, EPA gave priority to organophosphates because they are among the

pesticides that “pose the greatest risk to public health.” 62 Fed. Reg. 42,020, 42,021 (Aug. 4, 1997).

Chlorpyrifos poses two types of serious public health risks. First, it is acutely toxic and causes systemic illnesses by inhibiting the body’s ability to produce cholinesterase, an enzyme necessary for the proper transmission of nerve impulses. 2007 Petition at 1. Symptoms of cholinesterase inhibition caused by chlorpyrifos poisoning include muscle spasms, confusion, dizziness, loss of consciousness, seizures, abdominal cramps, vomiting, diarrhea, cessation of breathing, paralysis, and death. First Sass Decl. ¶¶ 4-5; 2007 Petition at 1. Year after year, chlorpyrifos has been identified as one of the pesticides associated with an alarming number of pesticide poisonings in many states. Second Reeves Decl. ¶ 7 (Aug. 27, 2014). For example, a PANNA report found that in California, chlorpyrifos was in the top five chemicals for poisoning incidents. First Reeves Decl. ¶ 9. This trend is particularly significant given widespread under-reporting of pesticide poisonings due to such factors as inadequate reporting systems, fear of retaliation from employers, and reluctance to seek medical treatment. Second Reeves Decl. ¶ 7(a). Another recent report showed that chlorpyrifos is the eighth most commonly used hazardous pesticide within ¼ mile of schools. *Id.* at ¶ 7(d).

Second, a growing body of published scientific research links exposure to chlorpyrifos with long-term harmful human health effects, including neuro-

developmental disorders, hyperactivity, attention deficit disorder, low birth weights, and reduced newborn head circumference, which is indicative of impaired cognitive ability. First Sass Decl. ¶¶ 7, 19-20; 2007 Petition at 6-10.

B. EPA's 2001 and 2006 Decisions for Chlorpyrifos and All Organophosphates Failed to Comply with Statutory Obligations.

To comply with the FQPA, EPA conducted an aggregate exposure assessment for chlorpyrifos to add together all of the ways people, and particularly children, are exposed to the pesticide. The FQPA requires an assessment based on aggregation of all exposures to chlorpyrifos, whether from eating foods, drinking water with residues of the pesticide, or uses of the pesticide in and around the home or places like golf courses where people can be exposed. 21 U.S.C. § 346a(b)(2)(A)(ii), (C)(i)(I). EPA developed a “risk cup” approach that compares all of the exposures for specific population groups, including fetuses, infants, and children in different age ranges to what it finds to be unsafe exposure levels. If aggregate exposures to the pesticide “overflow” the risk cup for a particular subpopulation, the pesticide does not meet the FQPA safety standard. EPA must then reduce exposures to levels that no longer exceed what it has deemed to be safe levels by, for example, banning uses.



For chlorpyrifos, EPA found alarmingly high exposures to children from uses of chlorpyrifos in the home, on pets, and in lawns and gardens.<sup>3</sup> EPA, Occupational/Residential Handler and Post Application Residential Risk Assessment for Chlorpyrifos, at 5-7 (Oct. 1999) (Exhibit 3). In 2000, EPA reached an agreement with the registrants to cancel home and garden uses of chlorpyrifos after determining that residential uses of these pesticides cause the child risk cup to overflow. *See* EPA, Administrator Carol M. Browner, Dursban Announcement, Remarks Prepared for Delivery June 8, 2000 (Exhibit 4). Then-Administrator Carol Browner heralded this agreement as “particularly good news for children, who are among the most vulnerable to the risks posed by pesticides.” *Id.* at 1.

Inexplicably, EPA failed to assess children’s exposures from chlorpyrifos spray drift and volatilization from agricultural sites to homes, schools, daycares, and playfields. By failing to assess the risks to children who are exposed to agricultural pesticide drift and volatilization, EPA maintained a double-standard: protecting kids from pesticides used in urban and residential settings, while leaving kids who live near agricultural sites—often in low-income and minority communities—unprotected and vulnerable to pesticide. This failure to protect farmworker and rural children falls short of the FQPA’s requirements and the direction in federal executive orders to address disproportionate health risks to

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<sup>3</sup> EPA, Occupational/Residential Handler and Post Application Residential Risk Assessment for Chlorpyrifos, at 5-7 (Oct. 1999) (Exhibit 3).

people of color and low-income populations. Exec. Order No. 12,898, §§ 1-101(b), 2-202(b), 59 Fed. Reg. 7,629 (Feb. 11, 1994) (requiring each federal agency to “ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health or safety risks . . . that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breath [sic], the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).”).

In 2001, after negotiating the phase-out of residential uses, EPA issued an interim re-registration determination (“IRED”) for chlorpyrifos, which allowed chlorpyrifos uses and exposures to continue, although some at reduced levels. EPA, Interim Reregistration Eligibility Decision for Chlorpyrifos at 64-68 (Sept. 2001) (Attach. A to Housenger Decl.). PANNA, NRDC, and others commented on the 2001 IRED, but EPA never responded to these public comments. First Sass Decl. ¶¶ 15-18; Second Sass Decl. Ex. 2; Second Reeves Decl. ¶ 5; 2007 Petition at 3. NRDC and PANNA hoped that EPA would address the concerns raised in its IRED comments when it completed a cumulative risk assessment for all of the organophosphates. 2007 Petition at 3-4. However, EPA made no such changes when it finalized that cumulative risk assessment in 2006, even though by that

time, additional scientific studies and air monitoring confirmed the drift exposures and neuro-developmental risks posed by chlorpyrifos. *See* 2007 Petition at 4.

C. Petitions and Litigation to Obtain EPA Action on Evidence of Chlorpyrifos Health Risks.

Farmworker and health advocates then pursued three legal avenues challenging EPA's failure to protect children from the hazards posed by chlorpyrifos. First, United Farm Workers ("UFW") and other farmworker advocates filed a federal district court challenge to the 2001 chlorpyrifos interim re-registration decision, in part, for failing to protect children and other bystanders from pesticide drift. *UFW v. Adm'r, EPA*, No. 07-3950-JF (N.D. Cal. filed Aug. 1, 2007).<sup>4</sup> The parties negotiated principles on which the case could be settled with a commitment by EPA to make a new regulatory decision for chlorpyrifos by 2010 that would address drift exposures to children and other bystanders and human health risks from chlorpyrifos. However, after the Ninth Circuit ruled that challenges to FIFRA registration determinations must be brought in the courts of appeals within 60 days of the decision, the settlement fell apart, and the farmworker advocates voluntarily dismissed the district court chlorpyrifos challenge. *UFW*, Stipulation of Voluntary Dismissal, Dkt. 98, No. 07-3950-JF (N.D. Cal. filed April 27, 2010).

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<sup>4</sup> NRDC and Earthjustice were among the co-counsel for the farmworker advocates.

Second, PANNA joined other farmworker advocates in petitioning EPA to address pesticide drift as mandated by the FQPA. *See Pesticides In The Air – Kids At Risk: Petition to EPA to Protect Children From Pesticide Drift* (October 13, 2009) (the “Kids’ Petition”) (Exhibit 5 without attachments). The Kids’ Petition highlighted EPA’s violation of its legal duty to protect children from all aggregate exposures to each pesticide in tolerance and reregistration determinations and asked EPA to expedite adoption of mitigation for airborne routes of exposure to organophosphates and n-methyl carbamates, another nerve poisoning pesticide, because of the heightened poisoning risks posed by those classes of pesticides. As is its pattern, EPA failed to respond to the petition until petitioners filed a writ of mandamus with this Court. *See In re PANNA*, No. 13-72616 (9th Cir. filed July 31, 2013); Agency Response to *Pesticides In The Air – Kids At Risk: Petition to EPA to Protect Children From Pesticide Drift* (2009) (March 31, 2014) (Exhibit 6). In that response, EPA acknowledged its legal obligation to address pesticide drift under the FQPA and FIFRA; however, it indicated it would not do so until it reviewed pesticide registrations and tolerance decisions as a matter of course and refused to impose interim protections during that years-long delay. EPA Response to the Kids’ Petition at 2, 32-33.<sup>5</sup>

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<sup>5</sup> PANNA and other farmworker advocacy groups filed an administrative objection on May 28, 2014, and an appeal in this Court challenging EPA’s decision, *In re PANNA*, No. 14-71514 (filed May 29, 2014).

Third, on a separate track, PANNA and NRDC filed the 2007 Petition at issue here. That petition and its fate are described below. As with the position EPA took in response to the district court challenge to the 2001 chlorpyrifos registration decision and the Kids' Petition, EPA has acknowledged its legal obligation under the FQPA to address drift and volatilization as aggregate exposures and its failure to do so in the chlorpyrifos reregistration and tolerance decisions made in 2001 and 2006.

### III. EPA'S HANDLING OF THE 2007 PETITION TO BAN CHLORPYRIFOS

On September 12, 2007, PANNA and NRDC submitted the 2007 Petition to EPA to compel EPA to ban chlorpyrifos based on the mounting evidence of risks from chlorpyrifos that were left unaddressed in its 2001 and 2006 regulatory decisions. In the absence of a petition (or a successful lawsuit), EPA would review the chlorpyrifos registration as part of its registration review program, which has a statutory deadline of 2022. 7 U.S.C. § 136a(g)(1)(A)(iii).<sup>6</sup> While EPA has again prioritized organophosphates and chlorpyrifos in particular in its schedule for registration review because of the serious public health risks (*see* EPA Response to the Kids' Petition at 14, 35), the 2007 Petition sought an immediate ban because the risks posed by chlorpyrifos cannot wait for the registration review.

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<sup>6</sup> While registration review applies to the FIFRA registration, a pesticide may not be registered for a food use unless a tolerance is in place as to that food. Hence, a pesticide's tolerances may implicitly be part of the FIFRA registration review.

At its heart, the 2007 Petition raised two issues. First, the 2007 Petition raised EPA's failure to account for risks to children and bystanders from chlorpyrifos drift and volatilization, as required by the FQPA. In support of this obligation, the petition presented the California Air Resources Board's air monitoring reports and data, which documented concentrations above EPA's levels of concern near fields and in schoolyards, and community air monitoring, which showed widespread contamination in multiple locations and over a period of years, including in schoolyards. 2007 Petition at 17-21.

Second, the 2007 Petition (at 4-16) compiled mounting evidence documenting serious cognitive and behavioral effects from low-dose pre-natal chlorpyrifos exposures not captured in the studies used by EPA in its regulatory decisions. Peer-reviewed scientific studies have shown that children and infants exposed to chlorpyrifos can exhibit long-term neurological and neurodevelopmental difficulties, particularly from early life exposure. 2007 Petition at 6-14; *see also* First Sass Decl. ¶¶ 19-21; Second Sass Decl. ¶¶ 8-11. For example, two studies by Columbia University scientists documented decreases in birth weight, attention deficit disorder, hyperactivity, and delayed development in children exposed to chlorpyrifos *in utero*. 2007 Petition at 6-7. Scientists with Mount Sinai School of Medicine correlated *in utero* exposure to chlorpyrifos with reduced head circumference in newborns, which is predictive of impaired cognitive

ability. *Id.* at 7-8. These studies provide strong evidence that prenatal and early life-stage exposure to chlorpyrifos is associated with not only poor birth outcomes (lower birth weight and length), but also long-lasting, and possibly permanent, impaired cognitive development. *Id.* at 6-9, 11-13. Further, members of EPA's Scientific Advisory Panel expressed concern that EPA failed to account for scientific evidence showing brain impacts from early life exposures to chlorpyrifos at lower doses than those used by EPA in its regulatory decisions. *Id.* at 13, 22-23.

Shortly after PANNA filed the 2007 Petition, EPA found that the petition met the legal requirements for FFDCA petitions and filed a notice in the Federal Register requesting public comments. 72 Fed. Reg. 58,845 (Oct. 17, 2007). For the next three years, EPA failed to resolve the 2007 Petition, and in July 2010, PANNA filed a lawsuit, alleging that EPA unreasonably delayed responding to the 2007 Petition. *NRDC v. EPA*, No. 10-05590-CM, Compl., Dkt. No. 1 (S.D.N.Y. filed July 2010). On December 22, 2010, the parties executed a stipulation in which EPA agreed to complete a preliminary human health risk assessment for chlorpyrifos by June 1, 2011, and to respond to the 2007 Petition on or before November 23, 2011. *Id.* Dkt. No. 17, at 2-3 (Dec. 21, 2010) (Stipulation & Order Transferring Case to the Suspense Docket).

Following that stipulation, EPA released a preliminary human health risk assessment for chlorpyrifos for public comment. 76 Fed. Reg. 39,399 (Jul. 6,

2011). The preliminary human health risk assessment confirmed, as the 2007 Petition insisted, the importance of addressing drift, volatilization, and health impacts to children at low doses. Reader's Guide at 1-3 (July 1, 2011) (Attach. G to Housenger Decl.). The assessment expressed concern that current tolerances may not afford sufficient protection to children from drinking water and drift exposures. *Id.* at 2-3; Chlorpyrifos Preliminary Human Health Risk Assessment for Registration Review at 17 (June 30, 2011) (Attach. F to Housenger Decl.). As to the mounting evidence of neurodevelopmental impacts, EPA concluded that "chlorpyrifos likely played a role in long term neurological effects from early exposures that were evaluated in the epidemiology studies." Reader's Guide at 2-3.

Despite taking these preliminary steps, EPA failed to meet the agreed-upon November 2011 deadline for a final decision on the 2007 Petition. After EPA failed to meet the stipulated deadline, PANNA filed a writ of mandamus in the court of appeals based on a recent decision by the Ninth Circuit holding that jurisdiction over a challenge to the underlying determination would lie in the courts of appeals instead of the district courts. *NRDC v. EPA*, No. 10-05590-CM, ECF No. 21 (S.D.N.Y. April 16, 2012) (keeping case on the district court's suspense docket pending Ninth Circuit's resolution of the mandamus petition); *In*



*re PANNA*, Petition for Writ of Mandamus and For Relief from Unreasonably Delayed Action by EPA, No. 12-71125 (9th Cir. filed April 12, 2012).

On July 16, 2012, EPA issued a partial response to the 2007 Petition, promising a complete final response in December 2012. Letter of July 16, 2012, from Dr. Steven Bradbury, Director, EPA Office of Pesticide Programs, to Aaron Colangelo and Margaret Reeves, Ph.D (“First Interim Response”) (Attach. J to Housenger Decl.). EPA’s First Interim Response addressed six points made in the 2007 Petition but did not constitute a final response and did not determine whether EPA would ban chlorpyrifos. *See id.* The only practical effect of EPA’s July 2012 partial decision consisted of EPA’s announcement that the chlorpyrifos registrants had agreed to a spray drift mitigation package that calls for very small no-spray buffers (most were only ten feet) around school grounds, homes, residential lawns, athletic fields, nursing homes, hospitals, sidewalks, and other places frequented by bystanders. Spray Drift Mitigation Decision for Chlorpyrifos (July 2012) (Attach. K to Housenger Decl.). EPA then missed the December 2012 deadline for issuing a response to the 2007 Petition. *See* Letter of Dec. 18, 2012, from Dr. Steven Bradbury, Director, EPA Office of Pesticide Programs, to Aaron Colangelo and Margaret Reeves, Ph.D (Exhibit 7); Letter of Jan. 25, 2013, from Dr. Steven Bradbury, Director, EPA Office of Pesticide Programs, to Aaron Colangelo and Margaret Reeves, Ph.D (“Second Interim Response”) (Exhibit 8).

In briefing before this Court, EPA promised to respond to the 2007 Petition by February 2014. This Court heard argument on the first mandamus petition in February 2013 and directed the parties to engage in mediation with the assistance of the Ninth Circuit mediator. After the mediation proved unsuccessful, the Court denied the mandamus petition on July 10, 2013. *In re PANNA*, 532 F. App'x 649 (9th Cir. 2013). The Court found that EPA “set forth a concrete timeline for final agency action that would resolve the 2007 Petition by February 2014.” *Id.* at 651. In addition, the Court pointed to the lack of a statutory deadline for responding to petitions to revoke tolerances and the steps taken by EPA to work toward resolving the 2007 Petition. *Id.* The Court explicitly stated that its denial was “without prejudice to seeking the same relief at a future date in the event EPA fails to act.” *Id.* at 652.

EPA missed its February 2014 deadline. In July 2014, EPA issued another partial response and reversed its earlier preliminary determination that chlorpyrifos volatilization presents risks warrant large, no-spray buffers, in some instances many thousands of feet around schools, homes, and other places frequented by people. EPA based this reversal on two new studies conducted by Dow AgroSciences LLC, one of the primary chlorpyrifos registrants. Letter of July 15, 2014, from Jack E. Housenger, Director, EPA Office of Pesticide Programs, to Aaron Colangelo and Margaret Reeves, Ph.D, at 2-4 (“Third Interim Response”)

(Exhibit 9). In that partial response, EPA indicates that it now plans to release a revised human health risk assessment for public comment in December 2014, along with either a proposed rule revoking tolerances for chlorpyrifos or a proposed order denying the 2007 Petition. In its latest proposed deadline, EPA claims it will issue any final denial of the 2007 Petition by the summer of 2015. Third Interim Response at 5.

### SUMMARY OF ARGUMENT

Seven years ago, PANNA filed a petition seeking a ban on chlorpyrifos based on serious health risks, particularly to children. The 2007 Petition presented scientific evidence of exposures to children from chlorpyrifos drift that EPA ignored when it made its 2001 and 2006 regulatory decisions, even though it now acknowledges it had a legal obligation to address drift exposures. The 2007 Petition also presented evidence of alarming neurodevelopmental impairments to children from chlorpyrifos, which EPA discounted in 2001 and 2006, and which has been further substantiated in the scientific literature since that time. EPA has conducted assessments and internal peer reviews and has made repeated promises to resolve the petition by deadlines that have long since passed, including the “concrete timeline” relied upon by this Court in denying the first mandamus petition. EPA’s failure to make a final decision on the 2007 Petition leaves children at risk of harm from chlorpyrifos exposure and leaves PANNA without

legal remedies to challenge EPA’s ongoing failure to take necessary steps to protect children.

Under the APA, EPA must act “within a reasonable time.” EPA has not. Its delay has grown more unreasonable with each missed deadline and passing month. EPA’s enduring delay demonstrates that only an order from this Court will result in final resolution of the 2007 Petition. The Court, therefore, has ample justification for directing EPA to resolve the 2007 Petition according to the timeline EPA has now set for itself.<sup>7</sup>

## ARGUMENT

### I. A WRIT OF MANDAMUS IS WARRANTED TO COMPEL EPA TO ISSUE A FINAL DETERMINATION ON THE 2007 CHLORPYRIFOS PETITION.

This Court generally employs a three-part test to determine whether to grant mandamus relief: (1) the petitioner’s claim is clear and certain; (2) the duty is so plainly prescribed as to be free from doubt; and (3) no other adequate remedy is available. *In re Cal. Power Exch. Corp.*, 245 F.3d 1110, 1120 (9th Cir. 2001)

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<sup>7</sup> PANNA and NRDC have standing to pursue this writ of mandamus because they are the organizations that filed the 2007 Petition. Both organizations are dedicated to reducing and eliminating harmful human exposures to hazardous pesticides, and both have members who have been exposed to chlorpyrifos and other organophosphates, who live in close proximity to fields where these pesticides are used, and/or who are concerned about exposure to chlorpyrifos that is not within their control. Decls. of Gina Trujillo, Sattie Clark, Sharon Bolton, Margaret Reeves and Jennifer Sass; *see Friends of the Earth v. Laidlaw Env’tl. Servs.*, 528 U.S. 167, 180-81 (2000); *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 969 (9th Cir. 2003).

(citing *Or. Natural Res. Council v. Harrell*, 52 F.3d 1499, 1508 (9th Cir. 1995); *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986)). However, where a petitioner is seeking a writ of mandamus for unreasonable delay, this Court applies the so-called *TRAC* factors established by the D.C. Circuit in *Telecomm. Research & Action Ctr. v. FCC*, 750 F.2d 70, 75 (D.C. Cir. 1984) (hereinafter “*TRAC*”); see *In re Cal. Power Exch. Corp.*, 245 F.3d at 1124-25 (explicitly adopting the *TRAC* factors); *Independence Mining Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997) (same). This Court applied the *TRAC* factors to PANNA’s earlier petition for writ of mandamus. *In re PANNA*, 532 F. App’x at 650-52.

Before turning to the *TRAC* factors, PANNA satisfies the threshold requirements set out in *In re Cal. Power Exch. Corp.* as EPA has a clear and certain duty to respond to the 2007 Petition that is plain and free of doubt, and there is no other adequate remedy for EPA’s failure to do so. The FFDCA lays out a process for the public to petition to revoke a tolerance for a pesticide chemical residue or on a food, 21 U.S.C. § 346a(d)(1)(A), in practical effect banning the pesticide for that food use. The FFDCA directs EPA to take one of three actions in response to such a petition: (1) issue a final regulation modifying or revoking the pesticide tolerance; (2) “issue a proposed regulation” modifying or revoking the tolerance followed by a final regulation after notice and comment; or (3) issue an order denying the petition. *Id.* § 346a(d)(4)(A)(i)-(iii); see *In re PANNA*, 532 F.

App'x at 650 (recognizing EPA's duty to take one of these three actions in response to a petition to revoke pesticide tolerances). EPA has a clear duty to take one of these actions in response to the 2007 Petition. Failing to do anything is not an option.

The issue in this case is whether EPA has unreasonably delayed taking one of these actions by failing to issue a final response to the 2007 Petition after seven years and despite its many promised timeframes. The Administrative Procedure Act requires that federal agencies respond to petitions "within a reasonable time," 5 U.S.C. § 555(b), and authorizes agencies to "compel agency action unlawfully withheld or unreasonably delayed," *id.* § 706(1). To determine whether an agency has unreasonably delayed agency action, this Court applies the six *TRAC* factors:

- (1) the time agencies take to make decisions must be governed by a "rule of reason";
- (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
- (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
- (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority;
- (5) the court should also take into account the nature and extent of the interests prejudiced by the delay; and

(6) the court need not “find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.”<sup>8</sup>

*Independence Mining Co.*, 105 F.3d at 507 n.7 (quoting *TRAC*, 750 F.2d at 80). In light of EPA’s failure to respond by its own, self-imposed “concrete” deadline and the passage of additional time since this Court’s ruling on the first mandamus petition, the *TRAC* factors support issuance of a writ of mandamus holding EPA to its newly promised target dates for responding to the 2007 Petition since EPA has shown itself unwilling or unable to hold itself to any timeline.

A. EPA’s Seven-Year Delay in Responding to the 2007 Petition is Excessive and Violates the Rule of Reason.

In the first mandamus proceeding, EPA argued that its response to the 2007 Petition was appropriately taking so long because the issues are complex, characterizing the evidence as at the edge of evolving science. Housenger Decl. ¶¶ 11, 20. Given that the issues and scientific studies were presented to EPA in 2007 and that many had been before the agency for many years prior to the 2007 Petition, it is no longer credible for EPA to claim novelty as an excuse for delay.

Moreover, EPA has a process for obtaining reviews from its Scientific Advisory Panel of the scientific evidence, for developing models and methods for integrating the evidence of harm into EPA’s chlorpyrifos assessments, and for

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<sup>8</sup> In applying these factors in response to the first mandamus petition, this Court noted that factor 6 need not be addressed as no allegation of impropriety has been made. *In re PANNA*, 532 F. App’x at 651-52.

eliciting public and industry input. The Housenger Declaration submitted in the first mandamus case in July 2012 walked through the various Scientific Advisory Panel reviews and EPA assessments of the drift, volatilization, epidemiological studies, and other studies demonstrating neurodevelopmental impacts from chlorpyrifos exposures. Housenger Decl. ¶¶ 12, 14-19. Those various reviews and assessments had either been completed or released for public comment in draft form. No additional Scientific Advisory Panel reviews are underway, which EPA cited as a key reason for the delay in the prior litigation. While this Court might be reluctant to interfere with EPA's chosen process for reviewing the scientific evidence and making a final decision, that process has now largely run its course.

In July 2012, based on the various reviews and assessments underway, EPA asserted that it could respond to the 2007 Petition by the end of 2012. Housenger Decl. ¶ 22. When that date passed, EPA represented to this Court that it could issue a final decision in February 2014; the Court relied on that representation, finding "EPA's subsequent response in this court has set forth a *concrete timeline* for final agency action that would resolve the 2007 Petition by February 2014." *In re PANNA*, 532 F. App'x at 651 (emphasis added). EPA missed that deadline.

After missing those deadlines, EPA now asserts that it can complete the next stage of its decision-making in December 2014 and a subsequent final stage by mid-2015. Third Interim Response at 5. Other courts have held agencies to their



own proposed deadlines, and it is appropriate for the Court to do so here. In one case, the D.C. Circuit held an agency to a deadline the agency proposed because the agency's "timetable representations [had] suffered over the years from a persistent excess of optimism, [and the court shared] petitioners' concerns as to the probable completion date." *Pub. Citizen Health Research Grp. v. Brock*, 823 F.2d 626, 629 (D.C. Cir. 1987). In making an agency's expected timeline mandatory in another case, the D.C. Circuit noted its "grave cause for concern that if [the court did] not insist on a deadline now, some new impediment will be pleaded." *In re Int'l Chemical Workers Union*, 958 F.2d 1144, 1150 (D.C. Cir. 1992). It is appropriate for the Court to hold EPA to this timeline and not let this latest deadline slip like the ones before it.

B. The 2006 Deadline for Ensuring EPA's Pesticide Authorizations Comply with the FQPA Shows that EPA's Delay Is Unreasonable.

*TRAC* provides that "where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason." *TRAC*, 750 F.2d at 80.<sup>9</sup> Here, although this Court previously found that no specific

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<sup>9</sup> This factor does not ask whether Congress established a firm deadline for the challenged inaction, in which case balancing under *TRAC* would not be permitted. *See Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 n.11 (9th Cir. 2002). Rather, this factor asks whether the statutory scheme evinces a congressional intent that the agency should act more expeditiously.

deadline existed for responding to APA petitions, *In re PANNA*, 532 F. App'x at 651, the overall scheme of pesticide regulation gives the context and “other indication of speed” necessary to find EPA’s delay unreasonable. The FQPA gave EPA ten years to bring all of its pesticide authorizations into compliance with the FQPA’s requirements, including its mandate to consider all aggregate exposures and evidence of neurodevelopmental impacts to children and other special vulnerabilities. 21 U.S.C. § 346a(q)(1). While EPA re-registered chlorpyrifos and the other organophosphates by this August 2006 deadline, it did so without considering exposure to children from drift and volatilization and without accounting for the neurodevelopmental impacts to children already demonstrated by published scientific studies.

PANNA and NRDC filed comments on EPA’s 2001 chlorpyrifos re-registration decision raising these issues and fully expected EPA to address them in connection with its cumulative risk assessment for the organophosphate pesticides, but EPA did not. First Sass Decl. ¶ 15-18; Second Reeves Decl. ¶ 5; 2007 Petition at 3-4. While the FFDCA and FIFRA establish no deadline for acting on a petition to revoke tolerances or cancel a pesticide registration, the 2007 Petition must be viewed against the backdrop of the FPQA’s strict timelines for bringing EPA’s pesticide authorizations into compliance with the FQPA’s specific mandates for protecting children. *See Pub. Citizen Health Research Grp. v. Auchter*, 702 F.2d

1150, 1154, 1158 n.30 (D.C. Cir. 1983) (“The reasonableness of the delay must be judged ‘in the context of the statute’ which authorizes the agency’s action.”).

FIFRA also creates an obligation for EPA to review its pesticide registrations with a goal of doing so every 15 years and a hard deadline of 2022 for completion of the registration reviews of chlorpyrifos and all other pesticides re-authorized under the FQPA. 7 U.S.C. § 136a(g)(1)(A)(iii). However, EPA appropriately accelerated the chlorpyrifos registration review because of the seriousness of the issues presented in the 2007 Petition, Housenger Decl. ¶ 13, and because of the health issues posed by all organophosphates. EPA Response to Kids’ Petition at 14, 35.

This statutory scheme supports an order compelling EPA to act by the current timeline it has set. Since the Court’s prior order, EPA’s delay has only gotten longer and its commitment to *any* self-imposed deadlines has grown even more questionable. When judged against the context of the statute, *Pub. Citizen Health Research Grp. v. Aucter*, 702 F.2d at 1154, 1158 n.30, EPA’s seven-year failure to issue a final response is unreasonable. In light of EPA’s failure to comply fully with the FQPA’s mandates to consider all aggregate exposures and developmental impacts to children by the FQPA’s 2006 deadline for doing so and its appropriate expedition of registration review of chlorpyrifos due to the serious

health issues presented in the 2007 Petition, the statutory scheme supports issuance of an order compelling EPA to act by the current timeline EPA has itself set.

C. The Health and Welfare of Those Suffering Ongoing Harms from Chlorpyrifos Support a Finding of Unreasonable Delay.

The 2007 Petition concerns human health and welfare—presenting evidence of major, ongoing health risks from chlorpyrifos that disproportionately affect communities of color and low-income communities—and asks EPA to take urgent action to protect children against ongoing harm from chlorpyrifos. Chlorpyrifos causes acute pesticide poisonings and remains one of the pesticides most often cited in pesticide poisoning reports. Second Reeves Decl. ¶ 7. EPA’s 2001 and 2006 regulatory decisions acknowledged that chlorpyrifos exposure “can overstimulate the nervous system causing nausea, dizziness, confusion, and at very high exposures (e.g., accidents or major spills), respiratory paralysis and death.” Attach. A to Housenger Decl. at 7. People living near areas where chlorpyrifos has been sprayed have experienced serious flu-like symptoms and other acute health effects, like rashes and difficulties breathing. First Reeves Decl. 1 ¶¶ 5-14.

In addition to acute poisoning effects, numerous published scientific studies correlate exposures of children and infants to chlorpyrifos with long-term neurological and behavioral impairments. 2007 Petition at 6-9; First Sass Decl. ¶¶ 19-21. Low-level exposures to chlorpyrifos early in childhood can lead to attention deficit disorder, hyperactivity, loss of IQ, and other cognitive

impairments. *See* First Sass Decl. ¶¶ 6-9, 19-20; 2007 Petition at 6-8. In its preliminary Human Health Risk Assessment, EPA acknowledges that “there is a growing body of literature with laboratory animals (rats and mice) indicating that gestational and/or early postnatal exposure to chlorpyrifos may cause persistent behavioral effects into adulthood.” Attach. F to Housenger Decl. at 8. Further, EPA explains that “there is consistency across the animal behavior and epidemiology studies, such as delays in cognitive achievement, motor control, social behavior, and intelligence measures.” *Id.*

In compelling agencies to put an end to delay, courts have concluded that “[w]hen the public health may be at stake, the agency must move expeditiously to consider and resolve the issues before it.” *Pub. Citizen Health Research Grp. v. Comm’r, Food & Drug Admin.*, 740 F.2d 21, 34-35 (D.C. Cir. 1984); *In re Int’l Chemical Workers Union*, 958 F.2d at 1150 (court retained jurisdiction to enforce deadlines for regulating cadmium exposures after six-year delay).

Exposure to chlorpyrifos, a pervasive pesticide, is impossible to avoid. Chlorpyrifos is found in food and drinking water, in the air near agricultural communities, and in breast milk. *See* 2007 Petition at 4; First Sass Decl. ¶ 8. The risk of exposure is not limited to people who choose to buy or use products containing the pesticide; it can travel windborne from where it is sprayed, and it can be tracked inside the home on the shoes and clothes of people who come into

contact with its residues. First Sass Decl. ¶ 8; First Reeves Decl. ¶¶ 5, 9, 14.

“Lack of alternative means of eliminating or reducing the hazard necessarily adds to unreasonableness of a delay.” *See Cutler v. Hayes*, 818 F.2d 879, 898 (D.C. Cir. 1987).

In denying the first mandamus petition, this Court dismissed the health and welfare factor based on EPA’s 2001 and 2006 chlorpyrifos determinations and because EPA operates almost entirely in the realm of human health and welfare. *In re PANNA*, 532 F. App’x at 651. As to the first point, EPA ignored the exposures and health effects identified in the 2007 Petition when it made its 2001 and 2006 decisions, and EPA has acknowledged health risks associated with exposing children to chlorpyrifos in its reviews and evaluations of the evidence presented in the 2007 Petition. *Supra* at 29. EPA’s prior work, based on its own acknowledgements, did not consider all relevant paths to chlorpyrifos exposure and is, therefore, unreliable. Indeed, the D.C. Circuit noted in a case where it compelled an agency to act, that “[t]he risk to human life need not be a certainty to justify expedition [of agency action].” *Pub. Citizen Health Research Grp.*, 702 F.2d at 1158 n.26. It would be unseemly to allow EPA to try to minimize those risks in order to avoid a mandamus order before it has made a final determination

on the 2007 Petition based on an objective and complete evaluation of all the evidence.<sup>10</sup>

Moreover, while it is true that much of what EPA does involves human health, here EPA is addressing risks to children. When Congress passed the FQPA in 1996, it recognized that pesticide harm to children had been inadequately addressed. Congress changed that by requiring EPA to address all exposures, special sensitivities of children, and neurodevelopmental impacts, even before a full set of data is in hand. These heightened standards underscore Congress's concern about pesticides and children, above and beyond its normal human health docket.

D. No Higher, Competing Priorities Justify EPA's Delay.

In denying the first mandamus petition, this Court pointed to EPA's obligation to act on registration applications according to statutory deadlines. *In re PANNA*, 532 F. App'x at 650. However, justifications for delay "must always be balanced against the potential for harm," *Cutler*, 818 F.2d at 898, and an agency's "asserted justifications for the delay become less persuasive the longer the delay

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<sup>10</sup> Further, if EPA can say with confidence that chlorpyrifos poses little risk, its delay in responding to the 2007 Petition becomes even less explicable. That is, if EPA has somehow determined that exposure to chlorpyrifos is not a major threat, such information should constitute a basis for denial of the 2007 Petition. Rather, as EPA has previously acknowledged and the evidence demonstrates, there are major health risks associated with exposing children and adults to chlorpyrifos, and this petition for a writ of mandamus should be read in light of those risks.

continues.” *In re Int’l Chem. Workers Union*, 958 F.2d 1144, 1150 (D.C. Cir. 1992).

Here, EPA has statutory duties to protect children from pesticides and to comply with the FQPA’s mandates, and Congress established a 2006 deadline for doing so. EPA failed to address drift, volatilization, and the neurodevelopmental impacts to children when it re-registered chlorpyrifos in 2001 and 2006, and PANNA and NRDC then filed the 2007 Petition to compel EPA to correct its failure.

Against this backdrop, EPA should not be able to claim that any competing priorities allow it to delay further its decision on the 2007 Petition. As the D.C. Circuit stated in *In re United Mine Workers*, “[h]owever many priorities the agency may have, and however modest its personnel and budgetary resources may be, there is a limit to how long it may use these justifications to excuse inaction in the face of the congressional command to act.” 190 F.3d 545, 554 (D.C. Cir. 1999). EPA, of course, will always have competing duties, but it has yet to pinpoint any pesticide-related work that must take higher priority than evaluating the seven-year-old petition. EPA’s continuing delay cannot be justified by any other priorities.



E. EPA's Delay Is Preventing Petitioners from Pursuing Administrative and Judicial Remedies to Protect Children from Harmful Chlorpyrifos Exposures.

The considerable adverse health risks attributed to chlorpyrifos have been set forth in detail above. The bottom line is more time has now elapsed, resulting in more exposures and greater risk of serious health impairments to children. The longer EPA waits, the more children will be exposed to chlorpyrifos.

It is important to note that a final response to the 2007 Petition will not end but instead begin the administrative process. Only after EPA's response will PANNA be able to begin to exhaust its administrative remedies by filing objections if EPA denies the 2007 Petition or by participating in the tolerance revocation process if EPA grants it. These steps are mandatory prerequisites to seeking judicial review. *See* 40 C.F.R. § 180.30(b). EPA should not be permitted to add its own obstacles by unreasonably delaying its response and thereby frustrating the statutory framework and PANNA's ability to seek judicial relief.

EPA's inaction leaves PANNA "stuck in administrative limbo; it enjoys neither a favorable ruling on its petition nor the opportunity to challenge an unfavorable one." *In re People's Mojahedin Organization of Iran*, 680 F.3d 832, 837 (D.C. Cir. 2012) (observing that the State Department's delay in resolving an organization's petition for revocation of its Foreign Terrorist Organization listing effectively insulated the decision from judicial review); *see also In re American*

*Rivers*, 372 F.3d 413, 420 (D.C. Cir. 2004) (allowing judicial intervention to end FERC’s “marathon round of administrative keep-away”).

To date, EPA has released “partial responses” that address some of the arguments and evidence put forward in the 2007 Petition. *See supra* at 18-20.<sup>11</sup> The 2007 Petition, however, sought an outcome—a chlorpyrifos ban—and EPA has yet to decide whether to pursue that outcome. EPA has failed to respond in any of the three legally permissible ways to respond to a petition to revoke tolerances, *see* 21 U.S.C. § 346a(d)(4)(i)-(iii), instead creating a barrier to judicial review through inaction.

EPA’s pattern of moving the finish line just beyond the horizon violates the rule of reason. At various points over the last seven years, EPA committed to issue a final response by November 2011, December 2012, and February 2014. *See supra* at 17-20. This Court denied PANNA’s first mandamus petition primarily because EPA represented to the Court that final action was forthcoming and would be completed by February 2014. *In re PANNA*, 532 F. App’x at 651 (“EPA’s

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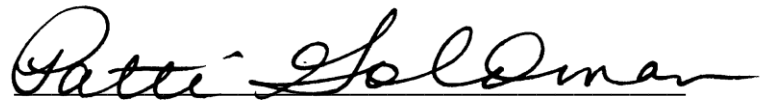
<sup>11</sup> In support of the requested ban, the 2007 Petition offered a series of inter-related and mutually reinforcing rationales supported by evidence. Second Sass Decl. ¶ 7. EPA has parsed the 2007 Petition and tried to divide it into discrete claims, but it would be incomplete and unresponsive to address each one in isolation. *See* Housenger Decl. ¶ 11 (stating that the remaining issues are “fundamentally intertwined” and “should not be addressed in isolation”). Until EPA addresses all shortcomings in EPA’s 2001 and 2006 chlorpyrifos decisions by issuing a final decision on the whole of the 2007 Petition, PANNA is without legal recourse regardless of EPA’s interim responses to PANNA’s legal arguments.

subsequent response in this court has set forth a concrete timeline for final agency action that would resolve the 2007 Petition by February 2014.”). EPA missed that timeline and now is proposing a new timeframe that pushes final agency action to mid-2015. It is appropriate for this Court to hold EPA to this new timeline and “let [the] agency know, in no uncertain terms, that enough is enough.” *Pub. Citizen Health Research Grp.*, 823 F.2d at 627 (“When lives are at stake,” as they are here, the agency “must press forward with energy and perseverance in adopting regulatory protections.”).

#### CONCLUSION

PANNA asks this Court to hold EPA to its latest deadline and order EPA to respond to the 2007 Petition by: (1) releasing the revised human health risk assessment for public comment in December 2014, along with either a proposed revocation rule or a proposed denial of the petition; and (2) a final denial order by July 1, 2015, if that is how EPA decides to resolve the 2007 Petition.

Respectfully submitted this 10th day of September, 2014.

A handwritten signature in black ink that reads "Patti Goldman". The signature is written in a cursive style with a horizontal line underneath the name.

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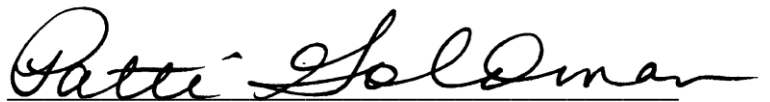
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## STATEMENT OF RELATED CASES

The undersigned, counsel of record for Petitioners Pesticide Action Network North America and Natural Resources Defense Council, Inc., are aware of no cases related to this petition pending before this court.

Respectfully submitted this 10th day of September, 2014.



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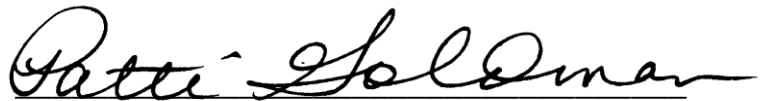
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## CERTIFICATE OF COMPLIANCE

This petition for writ of mandamus complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 7,990 words, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This petition for writ of mandamus complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 Times New Roman 14 point font.

Respectfully submitted this 10th day of September, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing documents via United States

Postal Service, electronic mail and/or overnight courier:

- 1. Petition for a Writ of Mandamus, including Corporate Disclosure Statement, Statement of Related Cases and Certificate of Compliance;
- 2. Declaration of Jennifer Sass, Ph.D., in Support of Petition for a Writ of Mandamus;
- 3. Declaration of Margaret Reeves, Ph.D., in Support of Petition for a Writ of Mandamus;
- 4. Declaration of Sattie Clark in Support of Petition for a Writ of Mandamus;
- 5. Declaration of Sharon Bolton in Support of Petition for a Writ of Mandamus; and
- 6. Declaration of Gina Trujillo in Support of Petition for a Writ of Mandamus

on the following parties:

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- via first-class U.S. mail
- via hand delivery
- via e-mail
- via electronic service by Clerk

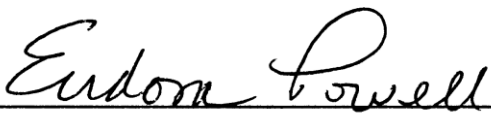
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Executed this 10th day of September, 2014, at Seattle, Washington.

  
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Eudora Powell