

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

3  
4   **Docket 24-6787**  
5   **Case 1:24-CV-1300-MC**  
6   **David White, Pro Se**

**RESPONSE TO DktEntry: 13,**  
**13.1**

7  
8   18965 NW Illahe St,  
9   **Portland OR.**  
10   **5036087611**

11   [dave@salmonprotectiondevice.com](mailto:dave@salmonprotectiondevice.com)

12   Appellant

13   **vs.**

14   **Scott Ashford, in his personal capacity.**

15   **Jeff Nason in his personal capacity.**

16   **Philip Mote in his personal capacity.**

17   **Edward Feser in his personal capacity.**

18   **Appellees.**

19  
20  

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21   Legal Counsel for Appellees  
22   Michael Porter, P.C. (DLC)  
23   mike.porter@millernash.com  
24   Miller Nash LLP  
25   1140 SW Washington St, Ste 700 |  
26   Portland, OR 97205  
27   Direct: 503.205.2330

28  
29  
30                                   **TABLE OF AUTHORITIES**

31  
32  
33  
34       1) 18 U.S.C. § 1001 False Statements, Concealment.

35  
36       2) 28 U.S.C. §191 Proceedings in Forma Pauperis.

37  
38       3) 8 U.S. Code § 1324c - Penalties for document fraud.

39

1 4) Rule 5. Serving and Filing Pleadings and Other Papers.

2  
3 5) Rule 11. Signing Pleadings.

4  
5 6) 18 U.S.C. 1621 Perjury.

6  
7 7) Rule 21 Writ of Mandamus.

8  
9  
10 Federal Case Law

11 8) Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002): Pagtalunan  
12 was Pro Se and made numerous mistakes in filing his complaint  
13 resulting in the case being dismissed. However, upon appeal, the  
14 higher Court ruled that the lower Court was in error because they did  
15 not give allowance for Pagtalunan's lack of legal training.

16 9) 20-1199 Loper Bright Enterprises v. Raimondo and Relentless, Inc. v.  
17 Department of Commerce. US Supreme Court Ruled on 6/28/2024  
18 that courts can no longer function as Administrative Law courts. They  
19 must convene as Article III, Section 2 of the US Constitution Courts, in  
20 compliance with the judge's sworn oath of office. Therefore,  
21 Administrative Law shall no longer be used to override Federal Case  
22 Law or Statutory Law, per the U.S. Constitution.

23  
24 Also <https://pacificlegal.org/post-chevron-mine-case/>

25  
26 10) STUDENTS FOR FAIR ADMISSIONS, INC. v. PRESIDENT  
27 AND FELLOWS OF HARVARD COLLEGE

28 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
29 FIRST CIRCUIT.

30 [https://www.supremecourt.gov/opinions/22pdf/20-1199\\_hgdj.pdf](https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf).

31  
32  
33 11) WEST VIRGINIA ET AL. v. ENVIRONMENTAL PROTECTION  
34 AGENCY ET AL. [https://www.hsph.harvard.edu/news/features/the-  
35 supreme-court-curbed-epas-power-to-regulate-carbon-emissions-  
36 from-power-plants-what-comes-next/](https://www.hsph.harvard.edu/news/features/the-supreme-court-curbed-epas-power-to-regulate-carbon-emissions-from-power-plants-what-comes-next/).

1  
2 The Clean Air Act of 1967 directed the EPA to tackle issues like Acid  
3 Rain and other environmental dangers. The Act instructs the EPA to  
4 make a “toxic chemicals” list for purposes of regulation. Anything the  
5 EPA wants to regulate must be on that list, Section 111, subsection D.  
6 In 2015, the EPA illegally began to regulate “greenhouse gases” not  
7 on the list without including them on the toxic chemicals list-as  
8 prescribed by The Clean Air Act. That’s because Carbon Dioxide and  
9 Methane, to name a few, are not toxic chemicals, per Supreme Court  
10 ruling in 2022. In fact, every living animal and human being on Earth  
11 exhales Carbon Dioxide. The Supreme Court ruled these are not toxic  
12 chemicals in 2022.

13  
14 12) 28 U.S. Code § 455 (b), (1)- Disqualification of justice, judge, or  
15 magistrate judge. In this case obstruction of justice by unnecessary  
16 delay of Proceedings in Forma Pauperis.

17  
18 13) Judges Code of Conduct, Canons 2 and 3, which require officers  
19 of the Court to refrain from even the appearance of judicial bias or  
20 impropriety. [https://www.uscourts.gov/judges-judgeships/code-](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges)  
21 [conduct-united-states-judges](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges),

22  
23 14) 18 U.S. Code § 1621 – Perjury.

24  
25 15) 28 U.S. Code § 455 (b), (1) which says, “Where he (The Judge)  
26 has a personal bias or prejudice concerning a party, or personal  
27 knowledge of disputed evidentiary facts concerning the proceeding.”

28  
29 16) 18 U.S.C. 4 requires, “Whoever, having knowledge of the actual  
30 commission of a felony cognizable by a court of the United States,  
31 conceals and does not as soon as possible make known the same to  
32 some judge or other person in civil or military authority under the  
33 United States, shall be fined under this title or imprisoned not more  
34 than three years, or both.”

1  
2 This is further defined in law as Misprision of Felony to identify and  
3 prevent a crime in progress Proceedings in Forma Pauperis. There are  
4 two elements required to prove Misprision of Felony. For example,  
5 misprision exists when someone has knowledge that a crime is about to  
6 occur, and yet does nothing to stop it.-In the instant case it would include  
7 knowledge about use of a college textbook that has violated copyright  
8 laws and *confession* to illegal use of Affirmative action and DEI in  
9 selection process for doctoral candidates.  
10

11 17) 18 U.S.C. § 3501 (A) Admissibility of confessions

12  
13 18) 17 USC § 101-810 US Copyright law.  
14

15 19) FRCP 60.  
16

17 20) 10 Judges explain how they must be impartial.

18 [https://www.uscourts.gov/news/2021/09/14/what-judicial-impartiality-](https://www.uscourts.gov/news/2021/09/14/what-judicial-impartiality-judges-explain-how-they-apply-law)  
19 [judges-explain-how-they-apply-law](https://www.uscourts.gov/news/2021/09/14/what-judicial-impartiality-judges-explain-how-they-apply-law) 7 minute video.  
20

21 21) FRCP 55 [https://www.law.cornell.edu/rules/frcp/rule\\_55](https://www.law.cornell.edu/rules/frcp/rule_55).  
22

23 22) ORS 9  
24

25 23) Rule 27 motions. [https://www.law.cornell.edu/rules/frap/rule\\_27](https://www.law.cornell.edu/rules/frap/rule_27)  
26

27 (3) *Response*.

28 (A) *Time to file*. Any party may file a response to a motion; Rule  
29 27(a)(2) governs its contents. The response must be filed within 10 days  
30 after service of the motion unless the court shortens or extends the time.  
31 A motion authorized by Rules 8, 9, 18, or 41 may be granted before the  
32 10-day period runs only if the court gives reasonable notice to the parties  
33 that it intends to act sooner.  
34  
35

36 Rule 27-3 as 24) states that Appellees have 10 days (about 1 and a

1  
2 half weeks) to file against it, however, they filed DktEntry: 13 and 13.1,  
3  
4 on the 11th day.  
5

## 6 **TABLE OF AUTHORITIES ENDS**

7  
8  
9 The filing of Docket Entry 13 and 13.1 are simply delay tactics of  
10  
11 Appellees Legal Counsel and should be viewed as such.

12  
13 Appellant filed "Appeal Not Frivolous" on 1/12/2025 in Docket Entry  
14  
15 12. Therefore, DktEntry: 13 and 13.1 must be dismissed as untimely.

16  
17 No MOET was filed for this Docket to provide extra time.

18  
19 This case and appeal are not frivolous. Appellant was denied the  
20  
21 opportunity to finish his PhD -- needing only twenty-two credits -- because  
22  
23 of illegal affirmative action 10). Currently in the news, DEI and affirmative  
24  
25 action are being removed from company hiring practices. It must likewise be  
26  
27 removed from school selection practices.

28  
29 This conclusion of Appellee's Docket Entry is incorrect: "In short,  
30  
31 notwithstanding appellant's ongoing insistence, he had not satisfied service  
32  
33 Rules." However, FRCP Rule 3.4. and 3.7 default to state Service rules.

34  
35 ORCP 9c allows email of any court document. Thelawisyourattorney.com  
36  
37 has an email service for any attorney to use with a small service fee.

1  
2 The hunger for an accurate textbook on environmental science was  
3  
4 seen when Appellant received the second edition of our recently published  
5  
6 college textbook for Environmental Science. CRM notification emails sent to  
7  
8 over 600 professors of environmental science received an unprecedented  
9  
10 95% read rate.

11  
12 This statement is also incorrect: "Appellant's statement concerning frivolity  
13  
14 is filled with off-point citations and assertions that do nothing to demonstrate  
15  
16 that his appeal is anything other than frivolous". Again, we are constrained to  
17  
18 repeat the obvious: This case and appeal are emphatically *not* frivolous.

19  
20 Appellant was denied the opportunity to finish his PhD -- needing only  
21  
22 twenty-two credits -- because of illegal affirmative action 10). Currently in the  
23  
24 news, DEI and affirmative action are being removed from company hiring  
25  
26 practices. It must likewise be removed from school selection practices.

## 31 **BACKGROUND**

32  
33 Appellant filed a Complaint against Appellees who violated Federal law  
34  
35 and US Supreme Court Rulings in 2) 3) and 4) above. After filing the  
36  
37 complaint and observing defendants reply through Appellees Legal Counsel  
38

1 (ALC), the three-person team (retired 40-year Attorney who is expert in  
2  
3 federal and case law with emphasis on environmental law, and an  
4  
5 investigative Journalist), met to discuss ALC's profound lack of knowledge  
6  
7 of Federal Rules.

8  
9 The second Claim for Relief requested below is the same in the Amended  
10  
11 Complaint filed. This is a recent case which the US Supreme Court sent  
12  
13 back to the local court for illegal use of Administrative Law, similar to that of  
14  
15 Judge McShane in the local case. We filed two complaints in the 9<sup>th</sup> circuit  
16  
17 court against this judge. One in this lower case and Docket 24-5811  
18  
19 Case 1:24-CV-1301-MC where FERC was in default and this Judge illegally  
20  
21 dismissed it.

22  
23  
24 First, <https://pacificlegal.org/post-chevron-mine-case/>

25  
26 Had the judge ordered adjudication of Appellees crimes on time,  
27  
28 what Appellant said in ECF 21 would have obviously been found to be true.

#### 29 30 List of Trial Court Errors

- 31
- 32 1. The trial Court Judge did not dismiss Appellees' ECF 9 which was
  - 33 illegal use of court rules.
  - 34 2. Trial Court Judge did not allow for a requested hearing.
  - 35 3. Trial Court Judge dismissal of the federal case is perjury.
  - 36 4. Trial Court Judge failed to adjudicate Appellee's crimes of a) using a
  - 37 textbook in violation of US copyright law (19), and b) confessing to use
  - 38 of illegal DEI (10) as selection criteria. It is illegal for the Judge to

1 ignore such a confession. This is judicial violation of 13) 14) 16 and  
2 the judge deserves 17)

- 3 5. Trial Court Judge did not quickly approve Appellant's IFP, as have five  
4 other Courts, thus, interrupting and confusing the efficient unfolding of  
5 Courtroom events.

6  
7 The United States District Court of Oregon Sua sponte dismissal was illegal  
8  
9 bias and illegal use of Administrative Law. Appellant debunked it in the  
10  
11 Opening Appeal Brief filed in the instant case. If Appellees had read it, they  
12  
13 would have known this.

14  
15  
16 Appellant had previously taken time to inform and instruct Appellee regarding  
17  
18 Federal Service rules below. Nonetheless, he persisted in what amounts to  
19  
20 willful ignorance, with his inaccurate accusations. Both, the above statement  
21  
22 and the similar statement in Docket Entry 5 are therefore untruthful, and  
23  
24 steps to remove the bar license of Appellee's Legal Counsel are incumbent  
25  
26 on the Appeals Court.

27  
28  
29 These rules are Cornell College law listed on the internet.

30  
31  
32 FRCP Rule 3.4.

33  
34 When commencing an Action (Complaint) This rule provides that the first  
35  
36 step in an action is the filing of the Complaint. Federal law stipulates that  
37  
38 the case starts when the Court Clerk stamps the paperwork.



1  
2 Federal Rule 4M gives Appellant 90 days to serve the summons. Rule 4b  
3  
4 says “Issuance, on or after filing the Complaint, the Appellant may present a  
5  
6 summons to the clerk for signature and seal.”

7  
8 7 c) Service. (1) In general, a summons must be served with a copy of the  
9  
10 Complaint. The Plaintiff is responsible for having the summons and  
11  
12 Complaint served within the time allowed by Rule 4(m) and must furnish the  
13  
14 necessary copies to the person who makes service.

15  
16 Appellant Response: “In general,” does not mean “always” or that a  
17  
18 Complaint in general must always be served with a summons.

19  
20 e) Serving an Individual within a Judicial District of the United  
21 States. Unless federal law provides otherwise, an individual—other  
22 than a minor, an incompetent person, or a person whose waiver has  
23 been filed—may be served in a judicial district of the United States  
24 by:

25  
26 (1) following state law for serving a summons or complaint in an action  
27 brought in courts of general jurisdiction in the state where the district  
28 court is located or where service is made; under Oregon law  
29 email service is allowed. ORCP 9 (c) (3) explains a document  
30 may be a pleading or any other documents.

31  
32  
33 Federal Summons Service is governed by Fed Rule 4.

34  
35 Fed. R. Civ. P. 4(e)” says (e)(1) “following state law for serving

36  
37 a summons in an action brought in courts of general jurisdiction in the  
38

1 state where the district court is located or where service is made; however,  
2  
3 by Oregon law email service is allowed.” ORCP 9 (c) (3 explains  
4  
5 a document may be a pleading or many other documents. Rule 4M states  
6  
7 plaintiffs can serve the summons up to 90 days after the complaint is filed.  
8

9  
10 From this link at Cornell School of Law we see.

11  
12 [https://www.law.cornell.edu/rules/frcp/rule\\_4](https://www.law.cornell.edu/rules/frcp/rule_4)  
13

14  
15 The Appellant Team has noticed this exact same “modus operandi” in  
16  
17 several other cases we’ve filed in completely separate courts for corporate  
18  
19 malfeasance or criminal activity. It is very suspicious, as if some kind of a  
20  
21 signal is being sent -- known only to “insiders” -- for the judge to step in and  
22  
23 illegally dismiss the case by Administrative Law, completely ignoring  
24  
25 violations of Federal law in the process.

26  
27 Appellees legal counsel was served ECF 11 by 3<sup>rd</sup> party email. Which is  
28  
29 ORCP 9 C 3. If Appellees’ legal counsel did not read ECF 11 or deliver it to  
30  
31 the Appellees, then the Appeals Court should dismiss him. The Appeals  
32  
33 Court should remove him from the case and remove Appellees’ Legal  
34  
35 Counsel bar license for knowingly filing something untrue in the 9<sup>th</sup> Circuit  
36  
37 Court of appeals. Appellant also requested a hearing and the judge refused  
38

1 to fulfill the request.

2

3

### Conclusion

4

5 In conclusion, Docket Entry 13 and 13.1 must be dismissed as

6

7 untimely. Appellees' legal counsel is proven with clear and

8

9 convincing evidence to be untruthful in his assertion. After having

10

11 Acknowledged the service procedure as explained three times by

12

13 Appellant the Appellee has persisted in knowingly promoting a

14

15 False narrative on a legal document.

16

17

18



19

20 David C. White Pro Se. 1/27/2025

21