

United States Court of Appeals for the Fifth Circuit

No. 23-60037

R.J. REYNOLDS VAPOR COMPANY; RJR VAPOR COMPANY,
L.L.C.; AVAIL VAPOR TEXAS, L.L.C.; MISSISSIPPI PETROLEUM
MARKETERS AND CONVENIENCE STORES ASSOCIATION,

Petitioners,

versus

FOOD & DRUG ADMINISTRATION; ROBERT CALIFF, *in his official
capacity as Commissioner of the United States Food & Drug Administration;*
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES; XAVIER BECERRA, *in his official capacity as Secretary of the
United States Department of Health and Human Services,*

Respondents,

CONSOLIDATED WITH

No. 23-60128

R.J. REYNOLDS VAPOR COMPANY; RJR VAPOR COMPANY,
L.L.C.; AVAIL VAPOR TEXAS, L.L.C.; MISSISSIPPI PETROLEUM
MARKETERS AND CONVENIENCE STORES ASSOCIATION,

Petitioners,

versus

UNITED STATES FOOD & DRUG ADMINISTRATION; ROBERT M. CALIFF, *Commissioner of Food and Drugs*; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; XAVIER BECERRA, *Secretary, U.S. Department of Health and Human Services*,

Respondents.

Petition for Review from an Order of the
Food & Drug Administration
Agency No. PM0000637
Agency No. PM0000713
Agency No. PM0000554
Agency No. PM0000561

ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

*Judge Patrick E. Higginbotham, Jacques L. Wiener, Jr., Rhessa H. Barksdale, James L. Dennis, did not participate in the consideration of the rehearing en banc.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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NEW ORLEANS, LA 70130

February 06, 2024


MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-60037 R.J. Reynolds Vapor v. FDA
Agency No. PM0000637
Agency No. PM0000713
Agency No. PM0000554
Agency No. PM0000561
Agency No. PM0000973

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Majella A. Sutton, Deputy Clerk
504-310-7680

Mr. Isaac Belfer
Mr. Andrew Bentz
Mr. Noel John Francisco
Mr. Noah T. Katzen
Mr. Scott P. Kennedy
Ms. Alisa Beth Klein
Mr. Joshua Koppel
Mr. Scott P. Lewis
Ms. Catherine Meredith Padhi
Mrs. Hilary Keith Perkins
Ms. Lindsey E. Powell
Mr. Mark Raza
Mr. J. Gregory Troutman
Mr. Christian George Vergonis
Ms. Wendy S. Vicente
Mr. Ryan Jeffrey Watson