

**United States Court of Appeals**  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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NEW ORLEANS, LA 70130

January 15, 2015

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 13-10014 BNSF Railway Company v. USA  
USDC No. 4:11-CV-455

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Enclosed is a copy of the court's decision. The court has entered judgment under FED R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Should a rehearing be pursued, we call your attention to the following guidelines for record citations.

**Important notice regarding citations to the record on appeal to comply with the recent amendment to 5TH CIR. R. 28.2.2.**

Parties are directed to use the new ROA citation format in 5TH CIR. R. 28.2.2 **only** for electronic records on appeal with pagination that includes the case number followed by a page number, in the format "YY-NNNNN.###". In single record cases, the party will use the shorthand "ROA.###" to identify the page of the record

referenced. For multi-record cases, the parties will have to identify which record is cited by using the entire format (for example, ROA.YY-NNNNN.###).

Parties may not use the new citation formats for USCA5 paginated records. For those records, parties must cite to the record using the USCA5 volume and or page number.

In cases with both pagination formats, parties must use the citation format corresponding to the type of record cited.

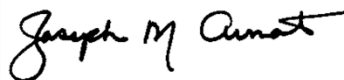
Explanation: In 2013, the court adopted the Electronic Record on Appeal (EROA) as the official record on appeal for all cases in which the district court created the record on appeal on or after 4 August 2013. Records on appeal created on or after that date are paginated using the format YY-NNNNN.###. The records on appeal in some cases contain both new and old pagination formats, requiring us to adopt the procedures above until fully transitioned to the EROA.

The recent amendment to 5<sup>TH</sup> CIR. R. 28.2.2 was adopted to permit a court developed computer program to automatically insert hyperlinks into briefs and other documents citing new EROA records using the new pagination format. This program provides judges a ready link to pages in the EROA cited by parties. The court intended the new citation format for use only with records using the new EROA pagination format, but the Clerk's Office failed to explain this limitation in earlier announcements.

The judgment entered provides that plaintiff-appellee pay to defendant-appellant the costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Joseph M. Armato, Deputy Clerk

Enclosure (s)

Mr. Paul D. Clement  
Mr. William F. Colgin Jr.  
Mrs. Ellen Page DelSole  
Mr. Kenneth L. Greene  
Mr. Jeffrey Matthew Harris  
Ms. Mary Bell Hevener  
Ms. Allyson Newton Ho  
Mr. Steven Paul Johnson  
Mr. Jeremy Daniel Kernodle  
Mr. Robert Ryan Martinelli  
Mr. Leif A. Olson  
Ms. Ellen L. Perlioni  
Mr. Curtis Cutler Smith  
Mr. John Clay Sullivan  
Ms. Francesca Ugolini