

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 01-35950

Docketed: 10/15/2001

Nature of Suit: 3440 Other Civil Rights

Termed: 05/14/2003

Miranda B., et al v. Kitzhaber, et al

Appeal From: U.S. District Court for Oregon, Portland

Fee Status: Paid

Case Type Information:

- 1) civil
- 2) private
- 3) null

Originating Court Information:

District: 0979-3 : [CV-00-01753-AJB](#)

Trial Judge: Anna J. Brown, District Judge

Date Filed: 12/19/2000

Date Order/Judgment:
09/17/2001

Date NOA Filed:
10/02/2001

Prior Cases:

None

Current Cases:

	Lead	Member	Start	End
Related				
	01-35950	01-35984	08/22/2002	

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v.

JOHN KITZHABER, Governor of the State of Oregon

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Oregon Department of Justice

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OREGON DEPARTMENT OF HUMAN SERVICES

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BOB MINK, Director of the Oregon Department of Human Services

Defendant - Appellant,

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MIRANDA B; HANNAH C.; JAMIE G.; JONG K; JOANNE K.; JAMES R.; JAMES R.; GEORGE P.; ANTHONY G.; JUAN S.; LEONARD P., individually and on behalf of all others similarly situated,

Plaintiffs - Appellees,

UNITED STATES OF AMERICA,

Intervenor,

v.

JOHN KITZHABER, Governor of the State of Oregon; OREGON DEPARTMENT OF HUMAN SERVICES; BOB MINK, Director of the Oregon Department of Human Services,

Defendants - Appellants.

10/15/2001	☐	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): n. setting schedule as follows: appellant's designation of RT is due 10/12/01 ; appellee's designation of RT is due 10/22/01 ; appellant shall order transcript by 11/1/01 ; court reporter shall file transcript in DC ; certificate of record shall be filed by 12/10/01 ; appellant's opening brief is due 1/18/02,, ; appellees' brief is due 2/19/02 ; appellants' reply brief is due 3/4/02. [01-35950] (XX)
10/15/2001	☐	2	Filed attorney for Appellant Civil Appeals Docketing Statement served on 10/1/01 (to CONFATT) [01-35950] [01-35950] (XX)
10/15/2001	☐	4	Received copy of transcript designation and ordering form filed in DC (sent to case file) (XX)
10/15/2001	☐	5	recd notice of representation of Richard Wasserman as counsel for aplt. CASEFILE [01-35950] (XX)
10/25/2001	☐	7	Filed order MOATT (CD) A review of the record suggests that this ct may lack jurisdiction over the appeal because an order denying a deft's mtn to dismiss is

			not a final order. (CITE) W/i 14 days after entry of this order, aplts shall move for voluntary dismissal of the appeal or show cause why it should not be dismissed for lack of jurisdiction. If aplts elect to show cause, aples may respond w/i 10 days after svc of aplts' memo. If aplts do not comply w/this order, the Clerk shall dismiss this appeal pursuant to 9th Cir. R. 42-1. Brfing is suspended pending further order of the ct. [01-35950] (GN)
11/08/2001	☐	8	Filed Appellant's response to ct's October 25, 2001 order [7] ; served on 11/7/01 MOATT [01-35950] (GN)
11/14/2001	☐	10	Filed order CONFATT (em) Case referred to Confatt for assessment conference only. Conference to be on 12/4/01 at 10:00 A.M. Pacific (San Francisco) Time. By telephone (y/n): y. The brfing sched prvsly set by the ct remains in effect. [01-35950] (GN)
11/20/2001	☐	11	Filed Appellee's response to ct's October 25, 2001 order [7] ; served on 11/19/01 MOATT [01-35950] (GN)
11/27/2001	☐	12	Filed notice of appearance of Janet A. Metcalf (Withdrew as counsel: attorney Richard D. Wasserman for Aplt John Kitzhaber [01-35950] (GN)
11/29/2001	☐	13	Filed Appellant's rpy to Pltf-Aples' mem filed in response to Aplt's show of cause why appeal should not be dismissed for lack of jurisdiction [7] [7] ; served on 11/26/01 MOATT [01-35950] (GN)
11/30/2001	☐	14	Filed order CONFATT (DEL) The assessment conference originally scheduled for 12/4/01, is rescheduled to 12/19/01, at 11:00 A.M. Pacific (San Francisco) Time. [01-35950] (GN)
12/18/2001	☐	16	Filed order (Appellate Commissioner) The ct discharges the order to show cause issued on 10/25/01. The issue whether the Eleventh Amendment bars aples' causes of action against aplts under Title II of the ADA, 42 USC §12131-12165, and under section 504 of the Rehabilitation Act, 29 USC §794, appears to be appealable. The parties shall address in their brfs whether the other issues aplts seek to raise are inextricably intertwined with the Eleventh Amendment immunity issue. See Swint v. County Comm'n, 514 US 35 (1995). Aples' mtn to expedite the appeal is granted as follows: Aplt's opening brf ans exc of record are due 2/1/02; aples' answ brf is due 3/4/02; and the optional rpy brf is due w/i 14 days after svc of the aples' brf. (MOTIONS) [01-35950] (GN)
12/26/2001	☐	17	Filed order CONFATT (DEL) A further assessment conference will be held on 1/15/02 at 3:00 P.M. Pacific (San Franciscp) Time. [01-35950] (GN)
12/26/2001	☐	19	Filed certificate of record on appeal RT filed in DC 10/9/01 [01-35950] (GN)
01/07/2002	☐	20	Filed notice of appearance of Janet Metcalf for all Aplt's (Withdrew as counsel: attorney Richard D. Wasserman for Bob Mink, attorney Richard D. Wasserman for Oregon Dept. HS [01-35950] (GN)
01/17/2002	☐	22	Filed order CONFATT (DEL) The brfing sched prvsly set by the ct in this expedited appeal is amended as follows: aplts shall file an opening brf on or before 3/1/02; aples shall file an answ brf on or before 4/1/02; aplts may file an optional rpy brf w/i 14 days from the service date of the answ brf. A further assessment conf will be held by telephone on 3/5/02 at 3:00 P.M. Pacific (San Francisco) Time. [01-35950] (GN)
01/31/2002	☐	24	Filed order CONFATT (DEL) The assessment conference originally scheduled on 3/5/02, at 3:00 P.M., is rescheduled to same day at 4:00 P.M. Pacific (San

			Francisco) Time. [01-35950] (GN)
02/28/2002	☐	25	Filed order CONFATT (DEL) The brfing sched prvly set by the ct is vacated. A new sched will be established after the 3/5/02 telephone conf, if appropriate. [01-35950] (GN)
03/11/2002	☐	26	Filed order CONFATT (DEL) A further assessment conference will be held by telephone on 3/13/02 at 2:30 P.M. Pacific (San Francisco) Time. (FAXED TO COUNSEL BY CONFATT) [01-35950] (GN)
03/14/2002	☐	27	Filed order CONFATT (DEL) A further assessment conference will be held on 3/27/02 at 2:30 p.m. PT. By telephone (y/n): yes [01-35950] (XX)
03/29/2002	☐	29	Filed order CONFATT (DEL) A further assessment conference will be held by telephone on 4/25/02 at 3:30 P.M. Pacific (San Francisco) Time. [01-35950] (GN)
05/01/2002	☐	30	Filed order CONFATT (DEL) The brfg sch is AMENDED: aplt's opn brf is due 6/10/02; aple's answ brf is due 7/19/02; the opt rpy brf is due w/in 14 days from svc of the answ brf. The crt crt has determined that this appeal will not be selected for inclusion in the Mediation Program. Cst are requested to contact the Circ Mediator should circumstances develop that might warrant the initiation of settlement discussions. All other inquiries regarding this appeal, including reqs for exts ot tm should be directed to the clk's office [01-35950] (MF)
06/04/2002	☐	31	14 day oral extension by phone of time to file Appellant brief. [01-35950] appellants' brief due 6/24/02,, ; appellees' brief due 7/24/02,, ;the optional reply brief is due 14 days from service of the answering brief. (CG)
07/01/2002	☐	32	Received original and 15 copies Appellants John Kitzhaber, et al., opening brief (Informal: n) 57 pages, and 5 excerpts of record in 1 vol.; served on 6/24/02 (deficient: footnotes are too small) Notified counsel. [01-35950]
07/15/2002	☐	33	Filed original and 15 copies Appellants' substitute brief 57 pages ; & 5 copies of EOC in 1 vol; served on 6/24/02 [01-35950] (MF)
07/24/2002	☐	34	Filed original and 50 copies Appellants John Kitzhaber, Oregon Department of Human Services and Bob Mink's suggestion for initial hearing en banc, 21 pages, served on 7/23/02 (EnBanc Coordinator and Moatt) (remaining copies on shelf) [01-35950] (SM)
07/24/2002	☐	36	Received original and 15 copies Intervenor USA's brief of 27 pages; served on 7/23/02 (deficient: no cert of compliance) Notified counsel. [01-35950]
07/24/2002	☐	41	Filed USA's notice of intervention pursuant to 28 USC 2403(a); served on 7/23/02 (CASEFILES) [01-35950]
07/26/2002	☐	37	Filed original and 15 copies Appellees Miranda B., et al., answering brief, 38 pages, served on 7/24/02 (minor defcy: no stmt of rel cases) Notified counsel. [01-35950] record on appeal due 8/12/02;
08/02/2002	☐	42	Received Intervenor USA satisfaction of (minor) brief deficiency (orig and 15 cert of compliance). [01-35950]
08/02/2002	☐	45	Filed original and 15 copies Intervenor USA's brief, 27 pages; served on 7/23/02 [01-35950]
08/06/2002	☐	46	Received Appellees Miranda B., et al., satisfaction of (minor) brief deficiency (orig and 16 stmt of rel cases). (RECORDS) [01-35950]

08/07/2002	☐	44	14 day oral extension by phone of time to file Appellant's reply brief. [01-35950] appellants' reply brief due 8/26/02,, ; (XX)
08/27/2002	☐	48	Received intervenor USA's additional citations, served on 8/22/02 (***) RECORDS FOR MERITS PANEL ***) [01-35950]
08/28/2002	☐	49	Filed original and 15 copies appellants John Kitzh Haber, et al., reply brief, (Informal: n) 10 pages, and 5 suppl. excerpts in 1 vol.; served on 8/26/02 [01-35950]
09/16/2002	☐	52	Received aplts John Kitzh Haber, et al., additional citations, served on 9/9/02 (***) RECORDS FOR MERITS PANEL ***) [01-35950]
10/02/2002	☐	53	Calendar check performed [01-35950] (RG)
12/24/2002	☐	56	Calendar materials being prepared. [01-35950] [01-35950] (TH)
12/27/2002	☐	57	CALENDARED: Portland March 6 2003 9:00 a.m. [01-35950] (TH)
01/10/2003	☐	59	Filed notice of appearance of Kevin Russell (Withdrew as counsel: attorney Seth M. Galanter for USA [01-35950] (CW)
01/28/2003	☐	60	FILED CERTIFIED RECORD ON APPEAL IN: 3 clerk's records, 1 reporter's transcript. From dc transmittal. [01-35950]
02/24/2003	☐	61	Received USA's additional citations, served on 2/20/03 (PANEL) [01-35950] (SM)
03/06/2003	☐	62	ARGUED AND SUBMITTED TO Diarmuid F. O'SCANNLAIN, Ferdinand F. FERNANDEZ, Raymond C. FISHER [01-35950] (ME)
04/09/2003	☐	64	Received USA's additional citations, served on 3/27/03 (PANEL) [01-35950] (SM)
04/10/2003	☐	65	Received Miranda B., Hannah C., Jamie G., Jong K., Joanne K., James R., James R., George P., Anthony G., Juan S. and Leonard P.'s additional citations, served on 4/7/03 (PANEL) [01-35950] (SM)
04/10/2003	☐	66	Received Miranda B., Hannah C., Jamie G., Jong K., Joanne K., James R., James R., George P., Anthony G., Juan S. and Leonard P.'s additional citations, served on 4/7/03 (PANEL) [01-35950] (SM)
05/14/2003	☐	69	FILED PER CURIAM OPINION: AFFIRMED and REMANDED (Terminated on the Merits after Oral Hearing; Affirmed and Remanded; Published. Diarmuid F. O'SCANNLAIN, concurring; Ferdinand F. FERNANDEZ; Raymond C. FISHER) FILED AND ENTERED JUDGMENT. [01-35950] (SM)
05/23/2003	☐	70	Filed Appellees Miranda B., et al., bill of costs (\$76.80), served on 5/20/03 [01-35950]
06/04/2003	☐	71	MANDATE ISSUED; COSTS TAXED in the amount of \$76.80. [01-35950] (SM)
06/11/2003	☐	73	Filed appellees Miranda B., et al. motion to transfer fee issue to district court; served on 6/10/03 [4763630] (to PANEL)
06/13/2003	☐	74	Filed Appellants John Kitzh Haber, et al. motion to recall mandate; served on 6/12/03 [4763825] (to PANEL) [01-35950]

06/18/2003	☐	75	Filed Appellees Miranda B, Hannah C., Jamie G., Jong K., Joanne K., James R., James R., George P., Anthony G., Juan S. and Leonard P.'s response opposing appellant's motion to recall mandate [74] served on 6/17/03 (PANEL) [01-35950] (SM)
07/07/2003	☐	78	Filed order (Diarmuid F. O'SCANNLAIN, Ferdinand F. FERNANDEZ, Raymond C. FISHER,): The aplts' motion to recall the mandate and to stay the mandate is GRANTED. [74] The aplts have 90 days from the date of this court's opinion, 5/14/03, to file a petition for certiorari with the United States Supreme Court. If within that time a petition for certiorari is filed, then this stay shall remain in effect until final disposition by the Supreme Court. The aples' motion to transfer the consideration of attys' fees to the district court is GRANTED. [73] [01-35950]
10/29/2004	☐	79	MANDATE ISSUED. Cost taxed in the amount of \$76.80 [01-35950] (JI)
02/09/2005	☐	80	RECORD RETURNED. (See control card for details.) (SD)