

DAVID L. ANDERSON (CABN 149604)  
United States Attorney

SARA WINSLOW (DCBN 457643)  
Chief, Civil Division

Kimberly A. Robinson (DCBN 999022)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7298  
FAX: (415) 436-6748  
kimberly.robinson3@usdoj.gov

Attorneys for Plaintiff  
R. ALEXANDER ACOSTA, Secretary of Labor,  
United States Department of Labor

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

R. ALEXANDER ACOSTA, Secretary of Labor, United States Department of Labor,	)	CASE NO.
Plaintiff,	)	
v.	)	COMPLAINT FOR DECLARATORY
INTERNATIONAL LONGSHORE AND	)	AND INJUNCTIVE RELIEF UNDER
WAREHOUSE UNION,	)	THE LABOR-MANAGEMENT
Defendant.	)	REPORTING AND DISCLOSURE
	)	INTERNATIONAL LONGSHORE
	)	ACT OF 1959, 29 U.S.C. § 482(c)

**COMPLAINT**

Plaintiff R. Alexander Acosta, Secretary of Labor, alleges as follows:

**I. NATURE OF THE ACTION**

1. Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 481-483 (the "Act"), for a judgment declaring that the September 6, 2018, election of union officers conducted by the International Longshore and Warehouse Union (Defendant) for the offices of President, Vice President-Mainland, Secretary-Treasurer, and International Executive Board-Panama is void, and directing Defendant to conduct a new election for these offices under Plaintiff's supervision, and for other appropriate relief.

1                                   **II.       JURISDICTION AND VENUE**

2           2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 482(b), 28 U.S.C. § 1331,  
3 and 28 U.S.C. § 1345.

4           3. Venue lies in this district pursuant to 29 U.S.C. § 482(b) and 28 U.S.C. § 1391(b).

5                                   **III.       INTRADISTRICT ASSIGNMENT**

6           4. A substantial portion of the alleged conduct occurred in San Francisco County.

7                                   **IV.       PARTIES**

8           5. Plaintiff R. Alexander Acosta is the duly appointed Secretary of Labor, United States  
9 Department of Labor. Plaintiff is authorized to bring this action under section 402(b) of Title IV of the  
10 Act, 29 U.S.C. § 482(b).

11          6. Defendant International Longshore and Warehouse Union (“Defendant” or “ILWU”) is, and  
12 at all times relevant to this action has been, an unincorporated association residing within, and with its  
13 principle office in, the County of San Francisco, California, within the jurisdiction of this district.

14                                   **V.       FACTUAL ALLEGATIONS**

15          7. Defendant is, and at all times relevant to this action has been, an international labor  
16 organization engaged in an industry affecting commerce within the meaning of sections 3(i) and (j) and  
17 401(a) of the Act (29 U.S.C. §§ 402(i) and (j) and 481(a)).

18          8. Defendant, purporting to act pursuant to its Constitution, conducted an election of officers on  
19 September 6, 2018, and this election was subject to the provisions of Title IV of the Act (29 U.S.C. §§  
20 481-483).

21          9. Defendant has approximately 45,000 active members in the United States, Canada and  
22 Panama.

23          10. The Panama Canal Division is comprised of two local unions affiliated with Defendant,  
24 SINTRAPORSPA, which represents dockworkers, and the Panama Canal Pilots Union, which represents  
25 pilots.

26          11. On July 23, 2018, Defendant, via its contractor, mailed 1,970 ballot packages to eligible  
27 members in its Panama Canal Division, including 243 to members of the Panama Canal Pilots Union  
28 and 1,727 to members of the dockworkers union SINTRAPORSPA.

1 12. Voted ballots were due forty-five days later, by September 6, 2018, via mail, to Global  
2 Election Services (“GES”) at a designated Post Office box in San Francisco, California.

3 13. Each ballot package to Panama contained a ballot with voting instructions and two  
4 envelopes—a secret ballot envelope and an international business reply envelope.

5 14. The voting instructions directed ILWU members that voted ballots must reach GES in the  
6 international business reply envelope “ONLY,” and that if members destroyed their name and barcode  
7 on that envelope, their ballots would be void.

8 15. Neither the English nor the Spanish voting instructions notified members that Defendant  
9 would void ballots that were collected and mailed in their international business reply envelopes, within  
10 a larger shipping container.

11 16. The voting instructions were not fully or accurately translated into Spanish and failed to  
12 adequately notify voters of constitutional rules that Defendant invoked to disqualify the ballots.

13 17. The international business reply envelope stated “NO POSTAGE NECESSARY IF  
14 MAILED TO THE UNITED STATES.” This information was not provided on the envelope in Spanish.

15 18. On August 8, 2018, Defendant received notice that members of the dockworkers union had  
16 not received their ballots.

17 19. On August 11, 2018, Defendant received notice that members of neither the dockworkers  
18 union nor the pilots union had received their ballots.

19 20. On Friday, August 17, 2018, Defendant sent an email message seeking assistance from the  
20 United States Postal Service and wrote, “We do not believe that any of the ballots made it to the  
21 members in Panama. . . . It is our hope that you’ll be able to assist us with determining the status of what  
22 we believe is undelivered mail.”

23 21. On August 20, 2018, Defendant received written confirmation that some members in  
24 Panama had received their ballots and a report that union members were concerned that they would not  
25 be able to vote in time.

26 22. On August 23, 2018, Defendant received information indicating that the pre-paid  
27 international business reply envelope would not be honored by the postal service in Panama.  
28

1           23. On August 31, 2018, Defendant received further notice that Panama would not honor the  
2 pre-paid postage on the international business reply envelope, as well as notice that the dockworkers  
3 union had collected 1,080 of its members' voted ballots in a box and mailed them in bulk to the  
4 designated post office box so that the ballots would arrive in time to be counted.

5           24. The box of 1,080 ballots arrived in time for the September 6, 2018 tally.

6           25. Each of the 1,080 ballots within the box was in an individual international business reply  
7 envelope.

8           26. Out of the 1,080 ballots mailed in bulk, 1,078 of them appear to have been cast by eligible  
9 voters.

10          27. At its September 6, 2018, tally, Defendant challenged the 1,080 ballots that had been sent in  
11 the box by the dockworkers union and decided to disqualify the ballots because they were not voted in  
12 accordance with Defendant's Constitution.

13          28. Prior to July 23, 2018, Defendant did not provide members with a Spanish translation of its  
14 Constitution.

15          29. No other ballots from the Panama Canal Division were received in the designated post office  
16 box in time for the tally; no vote was counted from any Panama Canal Division member in Defendant's  
17 September 6, 2018 election.

18          30. On September 10, 2018, Defendant's International Balloting Committee ("IBC") issued its  
19 report on the tabulation of all valid ballots cast.

20          31. The election for President was decided by a margin of 393 votes.

21          32. The election for Vice President (Mainland) was decided by a margin of 1,365 votes.

22          33. The election for Secretary-Treasurer was decided by a margin of 403 votes.

23          34. The sole candidate for the International Executive Board position from the Panama Division  
24 was not elected because he received no votes.

25          35. By letter dated September 17, 2018, the complainant, Floyd Bryan, a member in good  
26 standing of Defendant, protested the election to the International Election Procedures Committee  
27 ("IEPC").

28          36. In a report, dated October 15, 2018, the IEPC denied challenges to the election.

37. On October 29, 2018, the International Executive Board denied the protest.

38. Having exhausted the remedies available and having received a final decision, Complainant filed a timely complaint with the Secretary of Labor on November 27, 2018, within one calendar month of the final decision as required by section 402(a)(1) of the Act, 29 U.S.C. § 482(a)(1).

39. By letter signed December 10, 2018, Defendant agreed that the time within which the Plaintiff may bring suit with respect to Defendant's aforesaid election be extended to March 11, 2019.

40. By letter signed February 11, 2019, Defendant agreed that the time within which the Plaintiff may bring suit with respect to Defendant's aforesaid election be extended to April 8, 2019.

41. By letter signed March 26, 2019, Defendant agreed that the time within which the Plaintiff may bring suit with respect to Defendant's aforesaid election be extended to April 18, 2019.

42. Pursuant to section 601 of the Act, 29 U.S.C. § 521, and in accordance with section 402(b) of the Act, 29 U.S.C. § 482(b), Plaintiff investigated the complaint and, as a result of the facts shown by his investigation, found probable cause to believe that: (1) violations of Title IV of the Act, 29 U.S.C. §§ 481-483, had occurred in the conduct of Defendant's September 6, 2018 election; and (2) that such violations had not been remedied at the time of the institution of this action.

## V. FIRST CAUSE OF ACTION

43. Section 401(e) of the Act states that, "[i]n any election required by this section which is to be held by secret ballot . . . every member in good standing . . . shall have the right to vote for or otherwise support the candidate or candidates of his choice . . .". 29 U.S.C. § 481(e).

44. Defendant violated section 401(e) of the Act, 29 U.S.C. § 481(e), by denying members of the Panama Division the opportunity to vote when ballots were not mailed to such members in a manner that enabled each member to receive his or her ballot, mark the ballot, and return it by the September 6, 2018 ballot deadline.

45. In further violation of Section 401(e) of the Act, ILWU denied members a reasonable opportunity to vote when (1) on August 31, 2018, the union learned that 1,080 ballots had been returned in bulk, and failed to take reasonable steps in response, such as issuing those voters replacement (duplicate) ballots, distributing and collecting ballots in person, and extending the voting period, and (2)

on September 6, 2018, having failed to take reasonable steps to address the bulk mailing, determined that the 1,078 ballots returned in bulk from the dockworkers union members could not be counted.

# **VI. SECOND CAUSE OF ACTION**

46. Section 401(c) of the Act requires that unions must provide adequate safeguards to insure a fair election. 29 U.S.C. § 481(c).

47. Defendant violated section 401(c) of the Act, 29 U.S.C. § 481(c), when it failed to: (1) provide adequate voting instructions at the outset of the election and throughout the voting period; (2) mail ballots to Panama Division members in a manner that enabled each member to receive his or her ballot, mark the ballot, and return it by the September 6, 2018 ballot deadline; and (3) provide other safeguards for its Panama Division members, to insure a fair election.

48. The above violations of sections 401(e) and 401(c) of the Act, 29 U.S.C. §§ 481(e) and (c), may have affected the outcome of the election for the offices of President, Vice President-Mainland, Secretary-Treasurer, and International Executive Board-Panama Division because the margin of victory for those offices was less than the 1,970 votes that members of the SINTRAPORSPA and the Panama Canal Pilots Union could have cast had sections 401(e) and 401(c) of the Act not been violated.

# **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for an order and judgment:

(a) declaring Defendant's election for the offices of President, Vice President-Mainland, Secretary-Treasurer, and International Executive Board-Panama Division to be void;

(b) directing Defendant to conduct a new election, including nominations, for the offices of President, Vice President-Mainland, Secretary-Treasurer, and International Executive Board-Panama Division under the supervision of Plaintiff;

(c) for the costs of this action; and

(d) for such other relief as may be appropriate.

//

//

//

//

Respectfully submitted,

DAVID L. ANDERSON  
United States Attorney

Dated: April 18, 2019

By: /s/ Kimberly A. Robinson  
Kimberly A. Robinson  
Assistant United States Attorney

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
R. Alexander Acosta, Secretary of Labor, U.S. Department of Labor

**(b)** County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
Kimberly Robinson, Assistant United States Attorney  
450 Golden Gate Ave.  
San Francisco, CA 94102

**DEFENDANTS**  
International Longshore and Warehouse Union  
  
County of Residence of First Listed Defendant San Francisco County  
(IN U.S. PLAINTIFF CASES ONLY)  
  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  
  
Attorneys (If Known)  
Eleanore Morton

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)  
  
☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)  
  
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice  <b>CIVIL RIGHTS</b> 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities-- Employment 446 Amer. w/Disabilities--Other 448 Education	<b>PERSONAL INJURY</b> 365 Personal Injury -- Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability  <b>PRISONER PETITIONS</b>  <b>HABEAS CORPUS</b> 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty  <b>OTHER</b> 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-- Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other  <b>LABOR</b> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157  <b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 835 Patent--Abbreviated New Drug Application 840 Trademark  <b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS--Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)  
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation--Transfer ☐ 8 Multidistrict Litigation--Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 U.S.C. §§ 481-483  
Brief description of cause:  
Complaint against the International Longshore and Warehouse Union, under the Labor-Management Reporting and Disclosure Act of 1959, seeking to void the ILWU's 9/6/18 election as to certain officers & asking the court to order a new election.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. ☐ DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**  
(Place an "X" in One Box Only) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE 04/18/2019

SIGNATURE OF ATTORNEY OF RECORD Kimberly A. Robinson