

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 27 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

HARRY A. BURNETT,

Plaintiff - Appellant,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Defendant - Appellee.

No. 06-55604

D.C. No. CR-05-00167-LAB

**MEMORANDUM\***

Appeal from the United States District Court  
for the Southern District of California  
Larry A. Burns, District Judge, Presiding

Argued and Submitted November 9, 2007  
Pasadena, California

Before: B. FLETCHER, RYMER Circuit Judges, and BEISTLINE,\*\* District  
Judge.

The facts of this case are known to the parties.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Ralph R. Beistline, United States District Judge for the  
District of Alaska, sitting by designation.

Unlike *Boyd v. U.S. Postal Service*, 752 F.2d 410 (9th Cir. 1985), the DEA litigated Burnett's claim for roughly seven years to a decision on the merits before the agency, and failed to affirmatively set forth statute of limitations as a defense in its first responsive pleading before the district court as required by Fed. R. Civ. P. 8(c). As a result, we conclude that the Government waived its timeliness objection.

**REVERSED.**