

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

HARRY WILEY, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

Case No: 2:25-cv-00227

ROBERT F. KENNEDY, JR., in his official  
Capacity as Secretary of Health and Human  
Services, and U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' RENEWED MOTION TO DISMISS**

Defendants, by and through undersigned counsel, respectfully file this Memorandum of Law in Support of Defendants' Renewed Motion to Dismiss. For the reasons discussed below, the Court should dismiss this civil action.

**INTRODUCTION**

Plaintiff brings claims under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702, 706, challenging the alleged closure of the Respiratory Health Division ("RHD") of the National Institute for Occupational Safety and Health ("NIOSH") facility in Morgantown, West Virginia, and the U.S. Department of Health and Human Services' ("HHS") alleged inability to carry out the Coal Workers' Health Surveillance Program ("CWHSP") in accordance with the Coal Mine Health and Safety Act of 1969 ("Coal Act"), as amended by the Federal Mine Safety and Health Act of 1977 ("Mine Act"), which was later amended by the Mine Improvement and New

Emergency Response Act of 2006 (“Miner Act”), and their implementing regulations.<sup>1</sup> *See generally* 30 U.S.C. § 843; 30 C.F.R. pt. 90; 42 C.F.R. pt. 37. Plaintiff purports to bring his claims on behalf of himself and a class of others similarly situated. (ECF No. 10 ¶¶ 5, 26-27.)

Plaintiff alleges that he developed coal workers’ pneumoconiosis in 2024 and applied for the option to transfer to a non-dusty job under the Part 90 regulatory program in November 2024. (*Id.* ¶¶ 14, 16-17.) Plaintiff further alleges that he never received a response from NIOSH regarding his application. (*Id.* ¶ 18.) He claims that because of a recent Reduction in Force (“RIF”) notice sent to certain employees at the Morgantown NIOSH facility, HHS no longer has the capacity to comply with its statutory duties to maintain the CWHSP and, consequently, his application will remain pending. (*Id.* ¶¶ 20-23.)

The Court should dismiss the Amended Complaint for several reasons. First, Plaintiff lacks Article III constitutional standing to pursue this case. He seeks redress for a nonexistent injury—the submission he made to NIOSH in November 2024 was adjudicated in December 2024. This alone necessitates dismissal of the Amended Complaint. Even if Plaintiff once had standing to pursue his claims, they are now moot. Plaintiff submitted additional medical evidence to NIOSH following the Court’s preliminary injunction hearing on May 7, 2025, and a determination on that evidence has been made and communicated to Plaintiff. As of this filing, Plaintiff has no pending correspondence or submission before the CWHSP.

In addition to the claims regarding Plaintiff’s own ability to apply for eligibility for a job transfer and submit additional medical evidence under Part 90—which he has demonstrated time and time again the ability to accomplish—Plaintiff’s claims about HHS’ capacity to comply with its statutory duties to maintain the CWHSP due to a set of RIF notices sent on April 1, 2025, are

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<sup>1</sup> Plaintiff abandoned his Fifth Amendment claim. (*See* ECF No. 37 at 1.)

similarly moot. A significant change in circumstances since the filing of the Amended Complaint demonstrates that the CWHSP is fully operational. All RIF notices at issue in this lawsuit have been revoked and all contracts and communications needed to carry out RHD's responsibilities under the CWHSP and Part 90 have been restored. There is no indication that RHD will return to the situation originally giving rise to this litigation. As such, Plaintiff suffers from no remediable harm from the current operations of the CWHSP.

Further, all three counts in the Amended Complaint are barred by sovereign immunity. Finally, insofar as Plaintiff argues that HHS' previously issued RIF notices or plans to reorganize are unlawful, this Court cannot at this juncture enter any order interfering with that process. The Supreme Court recently made clear that until a final reorganization plan is before this Court for consideration, any challenge to its process or anticipated effects is improper. Consequently, this Court cannot provide any relief broader than that which affects Plaintiff personally, and because Plaintiff suffers no injury in fact and lacks Article III standing, this case must be dismissed.

#### **STATUTORY AND REGULATORY BACKGROUND**

A comprehensive statutory and regulatory background was provided in the Defendants' previously filed Memorandum of Law in Support of Defendants' Motion to Dismiss, and that section is incorporated by reference herein. (*See* ECF No. 22 at 4–7.)

#### **FACTUAL BACKGROUND**

A factual background ranging from Plaintiff's first interaction with the CWHSP in 2010 through the CWHSP's determination on Plaintiff's November 2024 submission in December 2024 was provided in the Defendants' previously filed Memorandum of Law in Support of Defendants' Motion to Dismiss, and that section is incorporated by reference herein. (*See id.* at 7–8.)

Shortly after the Court held its preliminary injunction hearing on May 7, 2025, (ECF No. 27), Plaintiff provided information in the form of x-rays and CT scans to the CWHSP for review. (See ECF No. 52-1 at 3 ¶ 7.) The CWHSP's chest radiologist reviewed the information to determine whether Plaintiff's lungs had changes consistent with coal workers' pneumoconiosis. (*Id.*) The CWHSP sent the results of that review to Plaintiff in a letter dated May 27, 2025. (*Id.*)

On July 8, 2025, Plaintiff submitted an interpretation of an August 1, 2022, chest x-ray in support of his Part 90 application. (*Id.* n.4.) The CWHSP informed Plaintiff that it does not accept those types of interpretations as medical evidence and recommended that he obtain a more recent chest x-ray or CT scan to submit to the CWHSP for review. (*Id.*) The CWHSP also sent an email dated July 10, 2025, to Plaintiff's counsel in this case explaining that a recent CD submitted to the CWHSP purporting to contain an image from August 1, 2022, did not contain any images. (*Id.*) The CWHSP reiterated to Plaintiff's attorney that a more recent image from the last six months would be helpful in determining any progression of disease. (*Id.*)

As of the date of this filing, the CWHSP has no pending correspondence or submission of medical information from Plaintiff to resolve. Defendants previously submitted documentation supporting all the statements in Mr. Howard's Second Declaration about Plaintiff's recent interactions with the CWHSP. (See ECF No. 53-1.) In short, Plaintiff has experienced no issues receiving the services to which he is entitled under the CWHSP. (See ECF No. 52-1 at 3 ¶ 7.) And if Plaintiff wishes to take advantage of black lung screening at no cost to him through NIOSH-approved health facilities or its mobile health unit, he can do so. (See *id.* ¶ 6.)

Also, since the Court's preliminary injunction hearing, HHS has revoked all RIF notices at issue in this lawsuit and restored all other functions of the CWHSP. The process of revoking the RIF notices at issue here began prior to the Court's preliminary injunction order dated May 13,

2025, (ECF No. 36). (*See* ECF No. 52-1 at 2 ¶ 3.) HHS provided a RIF revocation notice to more than 300 NIOSH employees, including RHD employees, via email on May 13, 2025, that they were no longer subject to the RIF. (*See id.*) One NIOSH RHD employee who works on the CWHSP did not receive a RIF revocation notice on that day due to an administrative error, but that employee received a RIF revocation notice on June 26, 2025. (*Id.* n.3.) Ultimately, all NIOSH RHD full-time civilian employees received notices from HHS that their RIF notices were revoked, and none of those employees have separated from HHS due to that planned RIF. (*Id.* ¶ 5.)

Further, operations under contracts needed for RHD to carry out its responsibilities under the CWHSP and the Part 90 job transfer program have been restored. (*Id.*) RHD is communicating with partners and constituents as needed to carry out RHD's work under the Mine Act. (*Id.*) The CWHSP is providing black lung screenings to coal miners at no cost to the miners through NIOSH-approved health facilities and its mobile health unit. (*Id.*) Regarding the mobile health unit, RHD has scheduled monthly mobile unit surveys through September 2025. (*Id.*) Given these actions, the CWHSP, which is administered by RHD, is again operational. (*Id.*)

## ARGUMENT

### **I. Plaintiff Does Not Have Standing to Pursue This Case, and It Should Be Dismissed.**

Defendants previously explained why Plaintiff does not have standing to pursue this case under Article III of the United States Constitution, and that section of Defendants' Memorandum of Law in Support of Defendants' Renewed Motion to Dismiss is incorporated by reference herein. (*See* ECF No. 22 at 8–10.) As Defendants also explained, a plaintiff without standing cannot represent a putative class of similarly situated individuals. (*See* ECF No. 52 at 6–7.) Because this Court does not have subject matter jurisdiction due to Plaintiff's lack of standing, the Amended Complaint should be dismissed.

**II. Even If Plaintiff Originally Had Standing to Pursue This Case, His Claims Are Now Moot, and His Amended Complaint Should Be Dismissed.**<sup>2</sup>

Defendants again incorporate by reference their previous explanation of Article III standing and the injury in fact requirement from their Memorandum of Law in Support of Defendants’ Motion to Dismiss. (See ECF No. 22 at 8–9; *see also* ECF No. 52 at 2.)

In addition to the requirement of showing an injury in fact to pursue a case, “[p]laintiffs must maintain their personal interest in the dispute at all stages of litigation.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (citation omitted). Standing can be lost during the pendency of litigation, in which case the action becomes moot. *See Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (“The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).”). This Court has an obligation to dismiss a case for lack of subject matter jurisdiction at any stage of the proceeding—whether jurisdiction does not exist at the time a complaint is filed or whether it is lost at some later time. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines *at any time* that it lacks subject-matter jurisdiction, the court *must dismiss* the action.” (emphasis added)); *Sasser v. Administrator*, 990 F.2d 127, 129 (4th Cir. 1993).

“[T]he doctrine of mootness constitutes a part of the constitutional limits of federal court jurisdiction,” *Simmons v. United Mortg. & Loan Inv., LLC*, 634 F.3d 754, 763 (4th Cir. 2011) (alteration in original), “which extends only to actual cases or controversies,” *Porter v. Clarke*, 852 F.3d 358, 363 (4th Cir. 2017) (citing U.S. Const. art. III, § 2). In other words, “[w]hen a case

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<sup>2</sup> Issues of mootness are properly the subject of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, which may be raised at any time during litigation, as the doctrine “constitutes a part of the constitutional limits of federal court jurisdiction.” *Simmons v. United Mortg. & Loan Inv., LLC*, 634 F.3d 754, 763 (4th Cir. 2011) (quoting *United States v. Hardy*, 545 F.3d 280, 283 (4th Cir. 2008)). *See also* Fed. R. Civ. P. 12(h)(3). Additionally, the Court may consider documents outside of the pleadings when considering such a motion to dismiss if the documents are integral to the complaint and their authenticity is not disputed. *See CACI Int’l, Inc. v. St. Paul Fire & Marine Ins. Co.*, 566 F.3d 150, 154 (4th Cir. 2009).

or controversy ceases to exist—either due to a change in the facts or the law—“the litigation is moot, and the court’s subject matter jurisdiction ceases to exist also.” *Id.* (quoting *S.C. Coastal Conservation League v. U.S. Army Corps of Eng’rs*, 789 F.3d 475, 482 (4th Cir. 2015)). A case is moot “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 191 (4th Cir. 2018) (quoting *Simmons*, 634 F.3d at 763). “Mootness has been described as ‘the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).’” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997) (quoting *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980)).

An exception to the mootness doctrine is the principle of voluntary cessation. This exception “traces to the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior.” *Porter*, 852 F.3d at 364 (quoting *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001)). This “seeks to prevent ‘a manipulative litigant immunizing itself from suit indefinitely, altering its behavior long enough to secure a dismissal and then reinstating it immediately after.’” *Id.* (quoting *ACLU of Mass. v. U.S. Conf. of Cath. Bishops*, 705 F.3d 44, 54–55 (1st Cir. 2013) (citation omitted)). Although “a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur,” *Friends of the Earth, Inc.*, 528 U.S. at 190, a governmental defendant satisfies this burden when the entity “has not asserted its right to enforce [the challenged policy] at any future time,” *Telco Commc’ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1231 (4th Cir. 1989). The Fourth Circuit has found dismissal for mootness inappropriate “when the defendant

expressly states that, notwithstanding its abandonment of a challenged policy, it could return to the contested policy in the future . . . or when the defendant’s ‘reluctant’ decision to change a policy reflects ‘a desire to return to the old ways . . . .’” *Porter*, 852 F.3d at 365 (citing *Town of Nags Head v. Toloczko*, 728 F.3d 391, 394 n.3 (4th Cir. 2013); *Citizen Ctr. v. Gessler*, 770 F.3d 900, 908 (10th Cir. 2014) (citation omitted) (internal quotation marks omitted)) (“[T]hroughout the course of this litigation, [d]efendants have refused to commit to keep the revised policies in place and not revert to the challenged practices.”).

“When . . . it is a governmental authority that changes its policy, there is a presumption that it acts in good faith under the voluntary cessation exception.” *Beahn v. Gayles*, 550 F. Supp. 3d 259, 272 (D. Md. 2021) (citing *Am. Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir. 2010) (“The government’s change of policy presents a special circumstance in the world of mootness.”)). An analysis of the voluntary cessation argument “always requires a ‘factual inquiry’ into the *actual* ‘likelihood of recurrence of the offending behavior.’” *Eden, LLC v. Justice*, 36 F.4th 166, 172 (4th Cir. 2022) (emphasis added) (quoting *Lighthouse Fellowship Church v. Northam*, 20 F.4th 157, 164 & n.6 (4th Cir. 2021)). *See also Incumaa v. Ozmint*, 507 F.3d 281, 288 (4th Cir. 2007) (noting that the “‘voluntary cessation’ doctrine does not apply where ‘there is no reasonable expectation that the wrong will be repeated’” (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (internal quotation marks omitted))); *Cochran v. Ballard*, No. 2:17-cv-04312, 2019 WL 2323742, at \*10–13 (S.D. W. Va. May 8, 2019) (“While it is theoretically true that [d]efendants could revoke their voluntary cessation of the challenged practice . . . [d]efendants have repeatedly asserted in statements through counsel, as well as in pleadings before this Court, that [they will not return to the challenged conduct]. The Fourth Circuit has previously found that ‘formal assurances’ by the defendants alone were sufficient to establish that it was not

reasonably likely the challenged conduct would recur, at least when there was ‘no hint’ from the record that the defendants had any indication of restarting the challenged activities as soon as the lawsuit was dismissed.” (citations omitted)), *report and recommendation adopted*, 2019 WL 2323882, at \*1 (S.D. W. Va. May 30, 2019).

Here, Plaintiff testified at the preliminary injunction hearing that he could not submit additional medical evidence to NIOSH for consideration despite his desire to do so. (*See* ECF No. 35 at 15:21-24 (“Q. Okay. And do you still seek to become a Part 90 miner by submitting evidence to NIOSH for consideration in your application? A. Yes, I do.”).) Since the hearing, Plaintiff submitted evidence to the CWHSP in the form of x-rays and CT scans, and that information was reviewed by the CWHSP’s chest radiologist to determine whether his lungs had changes consistent with coal workers’ pneumoconiosis. (*See* ECF No. 52-1 at 3 ¶ 7.) As with Plaintiff’s November 2024 submission, the CWHSP made a timely determination and sent the results of that recent review to Plaintiff. (*Id.* (indicating that the letter sent to Plaintiff was dated May 27, 2025).) Plaintiff, through his counsel, has communicated with the CWHSP regarding the status of his Part 90 application on multiple other occasions since the preliminary injunction hearing. (*See id.* n.4; ECF No. 53-1.) At this time, with the CWHSP restored, the CWHSP has provided Plaintiff with all services to which he is entitled under the Program, and there is no outstanding or pending correspondence or information for the CWHSP to resolve as to Plaintiff. (*See* ECF No. 52-1 at 3 ¶ 7.) As such, Plaintiff has been able to submit additional medical evidence to NIOSH for consideration and can continue doing so.

Further, Plaintiff indicated at the preliminary injunction hearing that he wished to take advantage of the medical screening that the CWHSP provides at no cost to miners. (*See* ECF No. 35 at 16:9-12 (“Q. Mr. Wiley, if NIOSH would make available additional medical screening to

you, would you use that screening to help you qualify for Part 90? A. Yes, I would.”.) Again, since the hearing, the CWHSP now is providing black lung screenings to coal miners at no cost to the miners through NIOSH-approved health facilities and its mobile health unit. (*See* ECF No. 52-1 at 3 ¶ 6.) RHD has scheduled mobile unit surveys through September 2025 and will continue providing this service uninterrupted now that all operations under contracts needed for RHD to carry out its responsibilities under the CWHSP and the Part 90 program have been restored. (*Id.* at 2–3 ¶¶ 5-6.) Plaintiff can take advantage of this service as he wishes. In short, the CWHSP, which is part of RHD, is now operational, and RHD is communicating with partners and constituents as needed to carry out RHD’s work under the Mine Act. (*Id.*)

Now that the CWHSP is fully restored and operational and Plaintiff is able to access all these services, there are no allegations in the Amended Complaint that remain for this Court’s consideration. There is no injury to remedy. Plaintiff initially sought a declaration from this Court to the following effect:

[T]hat Defendants comply with their statutory duties under 30 U.S.C. § 843 (requiring examinations of coal miners and affording job transfer rights); 30 U.S.C. § 811(a)(7) (providing authority for examinations of all miners generally); 30 U.S.C. § 811(a)(9) (anti-backsliding provisions providing that no Administration may weaken protections for miners); and with the requirements of their own existing regulations, 30 C.F.R. Part 90, and cease depriving him of due process of law, by restoring all personnel in the Respiratory Health Division of the National Institute for Occupational Safety and Health who are integral to carrying out the epidemiological surveillance and job transfer provisions of the Mine Safety and Health Act of 1977.

(ECF No. 10 at 2 ¶ 5.) As stated in the Second Declaration of John J. Howard, HHS is complying with all the duties Plaintiff cites, and all RHD personnel responsible for carrying out the CWHSP and Part 90 program have been restored. (*See* ECF No. 52-1.)

HHS has asserted no intention to reinstate the revoked RIF notices, discontinue the receipt and evaluation of medical information, or end the offering of black lung screenings at no cost to

miners as required by the Part 90 program. Mr. Howard’s Second Declaration provides the “formal assurance” necessary “to establish that it not reasonably likely the challenged conduct w[ill] recur . . . .” *Cochran*, 2019 WL 2323742, at \*13 (citation omitted). Because Defendants have not expressly stated they could “return to the old ways” that led to this litigation and have shown a good faith effort—without reluctance—to restore RHD and the CWHSP to its pre-suit operations, dismissal for mootness is appropriate. *See Porter*, 852 F.3d at 365 (citation omitted); *Beahn*, 550 F. Supp. 3d at 272; *see also Friends of the Earth, Inc.*, 528 U.S. at 190; *Telco Commc’ns, Inc.*, 885 F.2d at 1231.

### **III. Plaintiff’s Claims Are Barred by Sovereign Immunity.**

Defendants’ previously filed Memorandum of Law in Support of Defendants’ Motion to Dismiss discussed the sovereign immunity enjoyed by Defendants in relation to the three counts in the Amended Complaint, and that section is incorporated by reference herein. (*See* ECF No. 22 at 11–15.) Without a waiver of sovereign immunity, this Court has no subject matter jurisdiction to adjudicate the claims in the Amended Complaint, and it should be dismissed.

### **IV. This Court Cannot Provide Relief That Affects Ongoing Agency Reorganization.**

Although this case should be limited to the alleged injury personally suffered by Plaintiff, Plaintiff has continuously attempted to expand the scope of this litigation to broader questions regarding the scope of HHS’ reorganization plan. However, until reorganization plans are finalized, this Court has no role to play while the process is ongoing. The Supreme Court recently stayed preliminary injunctions where district courts tried to insert themselves into unsettled executive agency plans.

In February 2025, “President Trump issued an Executive Order directing federal agencies to promptly undertake preparations to initiate large-scale [RIFs], consistent with applicable law,

including laws that mandate the performance of certain functions or require certain agency subcomponents.” Application to Stay the Order Issued by the United States District Court for the Northern District of California and Request for an Immediate Administrative Stay at 3, *Trump v. Am. Fed’n of Gov’t Emps.*, No. 24A1174 (U.S. June 2, 2025) (citation omitted) (cleaned up). Following that Executive Order, a follow-on memorandum was jointly issued to executive agencies by the Office of Personnel Management and the Office of Management and Budget. *See id.* at 3–4. Almost three months after the Executive Order’s issuance, “several labor unions, advocacy groups, and local governments . . . sued the President, almost every executive department [including HHS], and other federal defendants . . . in the United States District Court for the Northern District of California.” *Id.* at 3. That court issued both a temporary restraining order and then a preliminary injunction, enjoining the government entities “from proceeding with any existing or future RIFs pursuant to the Executive Order or Memo” and “refus[ing] to stay its prospective injunctive relief against the Executive Order and Memo. . . .” *Id.* at 3–4.

Upon the federal government’s application for a stay of that injunction, the Supreme Court paused the district court’s order that prohibited the government from carrying out the Executive Order and memorandum while its appeals continued, explaining that “the Government is likely to succeed on its argument that the Executive Order and Memorandum are lawful . . . .” *See Trump v. Am. Fed’n of Gov’t Emps.*, No. 24A1174 (U.S. July 8, 2025). The Court explained further: “The [d]istrict [c]ourt enjoined further implementation or approval of the [RIF and reorganization] plans based on its view about the illegality of the Executive Order and Memorandum, not on any assessment of the plans themselves. Those plans are not before this Court.” *Id.* The district court further required the government to produce agency RIF and reorganization plans—including those for HHS and NIOSH. *See id.* In her concurrence, Justice Sotomayor reiterated the majority’s

position, noting that “[t]he plans themselves are not before this Court, at this stage, and we thus have no occasion to consider whether they can and will be carried out consistent with the constraints of law.” *See id.* (Sotomayor, J., concurring).

Thus, as indicated by the Supreme Court, it is not the role of the district court to opine on or interfere with government agencies’ decisions regarding RIF or reorganization efforts prior to those plans’ finalization. *See also McMahon v. New York*, No. 24A1203 (U.S. July 14, 2025) (granting application for stay regarding District of Massachusetts order requiring the government to reinstate the Department of Education employees terminated as part of a RIF). Here, HHS has not solidified any reorganization plan, and there is no plan before the Court. (*See* ECF No. 36 at 30 (recognizing that HHS reorganization has not occurred); ECF No. 35 at 121:17-19 (“And particularly in this case, . . . we don’t have a plan for reorganization . . .”).) Therefore, this Court cannot interfere with HHS’ ability to reorganize generally, and, in any event, such considerations are beyond the scope of this litigation and Plaintiff’s interactions with the CWHSP.

### CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court grant Defendants’ Renewed Motion to Dismiss and dismiss this civil action.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 6, 2025, I electronically filed the foregoing **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND RESPONSE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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