

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

TEXAS INTERNATIONAL PRODUCE
ASSOCIATION, *et al.*,

Plaintiffs,

V.

No. 2:25-cv-261-Z

OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION, *et al.*,

Defendants.

**DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS OR
TRANSFER, AND IN THE ALTERNATIVE, CROSS-MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

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INTRODUCTION

Over the course of more than fifty years, safety standards issued under the Occupational Safety and Health Act (the Act or the OSH Act) have saved the lives and limbs of millions of American workers. These Occupational Safety and Health Administration (OSHA) safety standards include such common-sense measures as providing workers with protection against workplace fires and from falling objects.

This lawsuit is brought by two trade associations, the Texas International Produce Association and the Texas Vegetable Association, who have no meaningful connection to this district. They challenge a handful of safety standards—addressing first aid kits, fire extinguishers, and tractor training—that cause them no injury. Yet Plaintiffs ask this Court to eliminate *every single workplace safety standard* issued by OSHA for more than half a century, and with impact across the entire country.

Putting aside the merits of Plaintiffs' suit, however, one thing is clear at the outset: Plaintiffs' claim is procedurally improper. Venue is not proper in this District. Because this District is not an appropriate venue, this case should be dismissed pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure or transferred pursuant to 28 U.S.C. § 1406(a) or because factors of convenience and the interests of justice counsel in favor of transfer under 28 U.S.C. § 1404(a).

Alternatively, this action should be dismissed because it is not properly before the Court for several reasons. First, Plaintiffs lack standing to bring this action because they fail to establish injury in fact and redressability based on the OSHA safety standards that they challenge as promulgated under an allegedly unconstitutional delegation of authority. Second, this Court lacks subject-matter jurisdiction because Congress vested exclusive pre-enforcement review of OSHA standards in the courts of appeal pursuant to 29 U.S.C. § 655(f). Third, Plaintiffs' claim is barred as untimely under 28 U.S.C. § 2401(a)'s six-year statute of limitations. Accordingly, on any of these independent and alternative grounds, this action is not properly before this Court and should be dismissed.

In any event, Plaintiffs’ case fails on the merits. The OSH Act’s delegation of authority to OSHA to promulgate safety standards is within the bounds of constitutionally permissible delegations. Under the nondelegation doctrine, Congress must provide an “intelligible principle” directing the agency’s exercise of regulatory authority. *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 673 (2025). A delegation satisfies that standard, as here, “[i]f Congress [has] ma[de] clear both ‘the general policy’ [that] the agency must pursue and ‘the boundaries of [its] delegated authority.’” *Id.* at 658 (quoting *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)). As the Fifth Circuit has held, “[t]hose standards . . . are not demanding.” *Big Time Vapes v. FDA*, 963 F.3d 436, 442 (5th Cir. 2020). Accordingly, if the Court reaches the merits, it should grant summary judgment for the Government and deny Plaintiffs’ motion.

BACKGROUND

I. The Act Dramatically Improves Worker Safety

Since the enactment of the OSH Act, workplace fatalities have decreased substantially, “from about 38 worker deaths a day in 1970 to 15 a day in 2023.” OSHA, U.S. Dep’t of Labor, *Commonly Used Statistics*, <https://perma.cc/WL65-9SUF>. Similarly, the incidence rates of nonfatal occupational injuries and illnesses in private industry have fallen significantly—from 10.9 cases per 100 full-time equivalent workers in 1972 to 2.3 cases per 100 full-time equivalent workers in 2024. *See* Jeff Brown, U.S. Bureau of Labor Statistics, *Nearly 50 Years of Occupational Safety and Health Data*, July 2020, at chart 1, <https://perma.cc/ZQ98-2WGT>; U.S. Bureau of Labor Statistics, Economic News Release, Employer-Reported Workplace Injuries and Illnesses (Annual) News Release, January 22, 2026, <https://perma.cc/6GU9-4PZ8>.

The common-sense workplace safety standards that OSHA has promulgated include standards for workplace fire safety, Occupational Safety and Health Standards--Fire Protection; Means of Egress; Hazardous Materials, 45 Fed. Reg. 60,656 (Sept. 12, 1980) (codified at 20 C.F.R. pt. 1910,

subpt. L); use of personal protective equipment to protect workers from being injured or killed by foreign objects, Personal Protective Equipment for General Industry, 59 Fed. Reg. 16,334 (Apr. 6, 1994) (codified at 29 C.F.R. §§ 1910.132, .133, .135, .136, .138); protection from asphyxiation and chemical burns when working in confined spaces in construction, Confined Spaces in Construction, 80 Fed. Reg. 25,366 (May 4, 2015) (codified at 29 C.F.R. pt. 1926, subpt. AA); and fall and falling object protection, Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems), 81 Fed. Reg. 82,494 (Nov. 18, 2016) (codified at 29 C.F.R. § 1910.28). Other OSHA safety standards prevent injuries and deaths in particularly hazardous work, such as logging operations, 59 Fed. Reg. 51,672 (Oct. 12, 1994) (codified at 29 C.F.R. § 1910.266), and concrete and masonry construction, 53 Fed. Reg. 22,612 (June 16, 1988) (codified at 29 C.F.R. pt. 1926, subpt. Q).

II. Statutory Background

Congress enacted the OSH Act in 1970. Pub. L. No. 91-596, 84 Stat. 1590 (1970) (codified as amended at 29 U.S.C. § 651 *et seq.*). Before the Act, “workplace safety was addressed in a patchwork manner by federal and state regulations and, to a degree, employers’ voluntary efforts.” *Kiewit Power Constructors Co. v. Secretary of Labor*, 959 F.3d 381, 385 (D.C. Cir. 2020) (citation omitted). Those “measures were largely ineffective[,]” and “[i]n the four years preceding the Act’s adoption, more Americans were killed at work than in the Vietnam War[.]” *Id.*

The OSH Act led to the creation of “the Occupational Safety and Health Administration (OSHA), which is part of the Department of Labor and under the supervision of its Secretary.” *Nat’l Fed. of Indep. Bus. v. Dep’t of Labor* (“*NFIB*”), 595 U.S. 109, 114 (2022). Section 2 of the OSH Act sets forth its purpose: “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.” 29 U.S.C. § 651(b). To that end, the Act authorizes the Secretary “to set mandatory occupational safety and health standards.” *Id.* § 651(b)(3).

Section 3 of the OSH Act defines the term “occupational safety and health standard”¹ to mean “a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.” 29 U.S.C. § 652(8). The “reasonably necessary or appropriate” language requires OSHA standards to be economically and technologically feasible—*i.e.*, capable of being done. *See Am. Textile Mfrs. Inst., Inc. v. Donovan* (“*Cotton Dust*”), 452 U.S. 490, 513 n.31 (1981) (“[A]ny standard that was not economically or technologically feasible would *a fortiori* not be ‘reasonably necessary or appropriate’ under the Act.”). The “safe or healthful” language (in the phrase “reasonably necessary or appropriate to provide safe or healthful employment”) requires OSHA standards to address significant risks of harm. *See Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.* (“*Benzene*”), 448 U.S. 607, 642 (1980) (plurality op.) (The Secretary must “make a threshold finding that . . . significant risks are present and can be eliminated or lessened by a change in practices.”); *Cotton Dust*, 452 U.S. at 505–06 & n.25, 513 n.32 (adopting the significant-risk requirement). And the “employment” language requires OSHA standards to focus on occupational safety. *See NFIB*, 595 U.S. at 117 (The Act “empowers the Secretary to set *workplace* safety standards, not broad public health measures.”).

Section 5 of the OSH Act requires employers to “comply with occupational safety and health standards promulgated under” the OSH Act. 29 U.S.C. § 654(a)(2). It also imposes a “general duty” upon employers to “furnish . . . employment and a place of employment which are free from

¹ Plaintiffs challenge only OSHA’s delegated authority to issue safety standards under Section 6(b), not health standards. *See* Compl. at 9 n.3, ECF No. 1. As relevant here, “safety” standards address immediate hazards, such as injuries from falls, being struck by objects, fire, electrocution, or explosion. *See Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. OSHA*, 37 F.3d 665, 668 (D.C. Cir. 1994) (describing safety hazards as “hazards that produce immediately noticeable harm”). These standards are distinct from “health” standards, which deal with “toxic materials or harmful physical agents.” *See* 29 U.S.C. § 655(b)(5).

recognized hazards that are causing . . . death or serious physical harm.” *Id.* § 654(a)(1) (the General Duty Clause).

Section 6 of the OSH Act provides three methods by which the Secretary of Labor may promulgate occupational safety and health standards. *See id.* § 655(a)–(c). First, Section 6(a) permitted the Secretary to adopt “national consensus” and “established Federal standard[s]” as OSHA standards within the first two years of the OSH Act’s effective date. *Id.* § 655(a). Second, Section 6(b) permits the Secretary to adopt occupational safety and health standards, *see id.* § 655(b), subject to the “rigorous process” discussed more fully below, *NFIB*, 595 U.S. at 114. Third, Section 6(c) permits the Secretary to adopt “emergency temporary standard[s] with] immediate effect.” 29 U.S.C. § 655(c)(1).²

Under Section 6(b), the Secretary initiates the standard-setting process when she “determines that a rule should be promulgated in order to serve the objectives of” the Act. *Id.* § 655(b)(1). That process requires “notice, comment, and an opportunity for a public hearing.” *NFIB*, 595 U.S. at 114; *see* 29 U.S.C. § 655(b)(2)–(4). The standards issued must “prescribe the use of labels or other appropriate forms of warning” and “suitable protective equipment . . . as may be necessary.” 29 U.S.C. § 655(b)(7). And, when the adopted standard “differs substantially from an existing national consensus standard,” the Secretary must “publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of” the Act. *Id.* § 655(b)(8).

III. Factual and Procedural Background

Plaintiffs are two trade associations that share an office in Mission, Texas, and together employ seven people. *See* Compl. ¶¶ 15–16. Their members consist primarily of fruit and vegetable producers and suppliers. *Id.* Plaintiffs contend that they—or some of their members—are subject to various OSHA workplace safety standards, including the following:

² Plaintiffs do not challenge Section 6(a), Section 6(c), or the standards issued under them. *See* Compl., Relief Requested.

- **The First Aid Standard.** Plaintiffs allege that their office is subject to OSHA’s First Aid Standard, under which employers must ensure that a trained first-aid provider and adequate first aid supplies are available if the workplace is not in “near proximity” to an “infirmary, clinic, or hospital . . . which is used for the treatment of all injured employees.” 29 C.F.R. § 1910.151(b). However, Plaintiffs concede that “no injuries have occurred or are likely to occur in their workplace.” Compl. ¶ 59.
- **Fire Safety Standards.** Plaintiffs allege that their office is subject to OSHA’s fire safety standards, under which employers generally must make portable fire extinguishers readily accessible to all employees, 29 C.F.R. § 1910.157(c)(1), unless the employer implements an emergency action plan, *id.* § 1910.38, and a fire prevention plan, *id.* § 1910.39; *see id.* § 1910.157(b)(1).
- **Tractor Safety Standard.** Plaintiffs allege that some of their members are subject to OSHA’s tractor safety standard, under which employers are required to provide basic safety training to employees who operate tractors “at the time of initial assignment and at least annually thereafter.” 29 C.F.R. § 1928.51(d) & appx. A; *see* Compl. ¶ 57; *see also* Declaration of Dante Galeazzi ¶ 31, ECF No. 4-1 (“Galeazzi Decl.”). However, Plaintiffs concede that their members would continue to provide training for employees who need it even in that standard’s absence. Compl. ¶ 57.

On December 3, 2025, Plaintiffs filed this lawsuit, asking the Court to preliminarily and permanently enjoin and hold invalid *every* OSHA safety standard promulgated under Section 6(b)—*i.e.*, every workplace safety standard that OSHA has issued for more than fifty years. Compl. On the same day, Plaintiffs moved for summary judgment. *See* Pls.’ Br. In Support of Their Mot. for Summ. J., ECF No. 4 (“Pls.’ Br.”). Defendants now move to dismiss and, in the alternative, cross-move for summary judgment.

ARGUMENT

I. This Action Should Be Dismissed or Transferred Because Venue Is Improper

Under Federal Rule of Civil Procedure 12(b)(3), the Court should dismiss an action that is brought in an improper venue. *See* Fed. R. Civ. P. 12(b)(3); *Seville v. Maersk Line, Ltd.*, 53 F.4th 890, 894 (5th Cir. 2022) (“Where venue is improper, the district court should generally dismiss the case.”).³ “Once a defendant raises improper venue, the plaintiff has the burden to prove that venue is proper.” *Sigoloff v. Austin*, No. 4:22-cv-923-P, 2023 WL 2142982, at *1 (N.D. Tex. Feb. 21, 2023) (citation omitted). If venue is improper, the district court “shall dismiss, or if it be in the interest of justice, transfer [the] case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a).

A. Dismissal for Lack of Venue is Appropriate

Plaintiffs claim that venue is proper in this district based upon “transactional venue”—*i.e.*, because “a substantial part of the events or omissions giving rise to the claim occurred” here. *Id.* § 1391(e)(1)(B).⁴ Because that condition is not satisfied here, the case “must be dismissed or transferred.” *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 56 (2013).

Plaintiffs seek to establish venue because they “have members in this judicial district who are injured by the challenged delegation of lawmaking power.” Compl. ¶ 24. But this District has held that the mere presence of an association’s members, without more, does not establish transactional venue. *See Career Colls. & Schs. of Tex. v. U.S. Dep’t of Educ.*, No. 4:23-CV-206-P, 2023 WL 2975164, at *3

³ The court may properly consider the venue question before reaching subject-matter jurisdiction. *See Sinochem Co. Int’l v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007) (recognizing that federal courts have discretion “to choose among threshold grounds for denying audience to a case on the merits,” and stating that such issues “may be resolved before addressing jurisdiction”) (citations omitted).

⁴ Section 1381(e)’s provisions for venue based on the residence of the parties are inapplicable, and Plaintiffs do not—and cannot—argue otherwise. Neither Plaintiffs nor Defendants reside in the Northern District of Texas. Plaintiffs reside in Mission, Texas, while Defendants reside in the District of Columbia. *See* Compl. ¶¶ 15–16.

(N.D. Tex. Apr. 17, 2023); *see also Missouri v. FDA*, No. 2:22-cv-223-Z, 2025 WL 2825980, at *9–10 (N.D. Tex. Sept. 30, 2025) (Kacsmayk, J.) (holding that the presence of nonparties does not establish venue). Rather, under Section 1391(e)(1)(B), courts “look to . . . where the alleged wrongdoing occurred,” because that is where the events or omissions “giving rise to the claim” took place. *Missouri*, 2025 WL 2825980, at *10 (citations omitted). Although transactional venue may sometimes lie where the burdens of an allegedly unlawful rule are experienced, that is true only where “[the] party bringing the claim [i]s present in the district . . . in some real capacity and burdened by the unlawful rule.” *Id.* (quoting *Career Colls.*, 2023 WL 2975164, at *3). “It is not enough that nonparties experience” those burdens in the district. *Id.* That is true even if nonparties are members of a plaintiff association. *See Career Colls.*, 2023 WL 2975164, at *3.

Plaintiffs’ claim that venue is proper because their members allegedly have injuries in this District is similarly unavailing. Plaintiffs’ members are not named parties, Compl. ¶ 24, and for venue purposes, only events or omissions giving rise to the claims of the named plaintiffs are relevant, *Abrams Shell v. Shell Oil Co.*, 343 F.3d 482, 489 (5th Cir. 2003). In contrast, and as *Career Colleges* and *Missouri* make clear, allegations concerning nonparties do not establish venue under Section 1391(e)(1)(B).

Moreover, because Congress enacted the OSH Act in Washington, D.C., and OSHA continues to promulgate safety standards in Washington, D.C.—not in the Northern District of Texas—the District Court for the District of Columbia should be given priority. *See Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399, 1409–10 (D.C. Cir. 1998) (noting that challenges to agency rulemaking most naturally lie in the District of Columbia).

In sum, that some of Plaintiffs’ members may be located in this District and subject to OSHA safety standards does not bear a “close nexus” to Plaintiffs’ constitutional challenge. *See Tactacell, LLC v. Deer Mgmt. Sys., LLC*, 620 F. Supp. 3d 524, 530 (W.D. La. 2022) (internal citation omitted). Those circumstances do not meaningfully distinguish this District from the many districts nationwide in

which employers are subject to OSHA standards. Facts lacking such a nexus are “irrelevant” to venue. *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1373 (11th Cir. 2003).

The court should dismiss, rather than transfer, this case for improper venue. In deciding whether dismissal is appropriate, courts consider, among other factors, whether the plaintiff’s choice of an improper forum was reasonable and made in good faith. *See Seville*, 53 F.4th at 894 (citing Wright & Miller, Fed. Prac. & Proc. § 3827 (4th ed. 2021)). Here, Plaintiffs are sophisticated, well-resourced litigants represented by experienced counsel. *See* Compl. at 19–20 (signature block). They chose to file in this District despite having a home forum in the Southern District of Texas and an obvious alternative forum in the District of Columbia. Under these circumstances, there is no basis to transfer rather than dismiss this action. *See Seville*, 53 F.4th at 894 (recognizing dismissal as a tool to discourage improper filings); Wright & Miller, Fed. Prac. & Proc. § 3827 (noting that district courts often dismiss rather than transfer where counsel reasonably could have foreseen that venue was improper). And given the very early stages of this case, dismissal will cause minimal (if any) prejudice: Plaintiffs can refile in an appropriate district that complies with their obligation to do so under federal law. *See* Fed. R. Civ. P. 41(b).

B. Even if Venue Were Proper, the Court Should Transfer for Convenience

Even if venue were proper in this district—and it is not—the Court still “may transfer any civil action to any other district or division where it might have been brought” “[f]or the convenience of parties and witnesses, in the interest of justice[.]” 28 U.S.C. § 1404(a). The Fifth Circuit has emphasized that Section 1404(a) exists to prevent plaintiffs from abusing venue rules by subjecting defendants to forums lacking any substantial connection to the litigation. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 313 (5th Cir. 2008) (en banc). If “a civil action might have been brought in the destination venue,” then a court must consider the convenience of the parties and witnesses by evaluating certain private and public interest factors, none of which is given dispositive weight. *Id.*

at 312 (citations omitted). In addition, “the interest of justice” is an independent factor that incorporates considerations of judicial economy and fairness. *See DataTreasury Corp. v. First Data Corp.*, 243 F. Supp. 2d 591, 593–94 & n.2 (N.D. Tex. 2003) (citation omitted).

Here, the private factors that guide the Section 1404 analysis favor transfer or are neutral.⁵ *See id.* at 315. Congress enacted the challenged statutory delegation of authority, and OSHA promulgated the safety standards challenged in Plaintiffs’ complaint in Washington, D.C., where all Defendants reside. *See Volkswagen*, 545 F.3d at 316. The District of Columbia is uniquely familiar with litigation involving these Defendants. *See Sigoloff*, 2023 WL 2142982, at *3. Indeed, a case addressing this exact nondelegation challenge to OSHA’s authority to promulgate workplace safety standards under § 6(b) has already been decided by the D.C. Circuit. *See Nat’l Mar. Safety Ass’n v. OSHA*, 649 F.3d 743, 750 (D.C. Cir. 2011). In addition, Plaintiffs’ principal place of business is in Mission, Texas, making the Southern District of Texas more convenient than this District. Compl. ¶¶ 15–16. No private factor counsels in favor of allowing the case to proceed in this District.

The public-interest factors likewise counsel in favor of transfer.⁶ This District has a heavy docket and limited resources to hear cases. *Sigoloff*, 2023 WL 2142982, at *4; *see also* United States Courts, Federal Court Management Statistics (December 31, 2025), <https://perma.cc/2R4U-3L9G> (listing an average of 536 pending cases per judge in the Northern District of Texas, 889 pending cases per judge in the Southern District of Texas, and 464 pending cases per judge in the District of Columbia). The local interest favors adjudication in a forum with a genuine stake in the controversy,

⁵ “The private interest factors are: ‘(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.’” *Volkswagen of Am.*, 545 F.3d at 315 (citation omitted).

⁶ “The public interest factors are: ‘(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law.’” *Volkswagen*, 545 F.3d at 315 (citation omitted).

see Volkswagen, 545 F.3d at 316; the District of Columbia has a strong interest in cases involving federal agencies, and the Southern District of Texas has a direct interest in disputes involving plaintiffs headquartered there. By contrast, none of the parties resides in this District, and the case has no meaningful connection to it. Denying transfer under these circumstances would be improper. *See In re Radmax, Ltd.*, 720 F.3d 285, 290 (5th Cir. 2013), *reh'g and reh'g en banc denied by*, 736 F.3d 1012 (5th Cir. 2013), (holding that lower court abused its discretion in denying an intra-district transfer in part because “the case ha[d] no connection to the transferor forum”); *see also Volkswagen*, 545 F.3d at 307.

In addition, “the interest of justice” warrants transfer. 28 U.S.C. § 1404(a); *see Wright & Miller*, 15 Fed. Prac. & Proc. Juris. § 3854 (4th ed. 2025) (citing *Rsch. Automation, Inc. v. Schrader-Bridgeport Intern., Inc.*, 626 F.3d 973, 978 (7th Cir. 2010)). Allowing a case to proceed in a forum with no connection to the dispute undermines public confidence in the fair administration of justice. *See Seville*, 53 F.4th at 894. As Justice Gorsuch has observed, the federal judicial system presents “a nearly boundless opportunity” for plaintiffs to shop for “a friendly forum to secure a win nationwide.” *Dep’t of Homeland Sec. v. New York*, 589 U.S. 1173, 1176 (2020) (Gorsuch, J., concurring). Transfer would prevent forum shopping and conserve judicial resources.

Because this case is not properly before this District, the Court accordingly should dismiss for improper venue or (alternatively) transfer the case to either the District of Columbia, *see In re Planned Parenthood Fed’n of Am., Inc.*, 52 F.4th 625, 632 (5th Cir. 2022), or to the McAllen Division of the Southern District of Texas, where Plaintiffs reside.

II. This Action Should Be Dismissed for Lack of Standing and Subject-Matter Jurisdiction

“Federal courts are courts of limited jurisdiction” and “possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also* U.S. Const. Art. 3, § 2, cl. 1. It is “presume[d] that federal courts lack jurisdiction unless the contrary appears affirmatively from the record[.]” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006)

(citation omitted). A party may assert that a federal court lacks subject-matter jurisdiction under Rule 12(b)(1). *See* Fed. R. Civ. P. 12(b)(1). To survive a motion to dismiss under Rule 12(b)(1), the plaintiff bears the burden to establish a court's jurisdiction. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

A. Plaintiffs Lack Standing

Dismissal is required because Plaintiffs lack standing, the “essential and unchanging part of the case-or-controversy requirement of Article III.” *See id.* at 560 (citation omitted). “Indeed, standing determines a court’s fundamental power to even hear a suit.” *Dall. S. Mill, Inc. v. Kaolin Mushroom Farms, Inc.*, No. 3:05-CV-1890-B, 2006 WL 8437487, at *3 (N.D. Tex. Aug. 10, 2006) (citing *Lujan*, 504 U.S. at 560; *Grant ex rel. Family Eldercare v. Gilbert*, 324 F.3d 383, 386 (5th Cir. 2003)). Plaintiffs bear the burden to establish: “(1) an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood that a favorable decision will redress the injury.” *Croft v. Governor of Tex.*, 562 F.3d 735, 745 (5th Cir. 2009) (citation omitted). To be redressable, it must be “likely, as opposed to merely speculative,” that a favorable decision will redress a plaintiff’s injury. *Friends of the Earth, Inc. v. Laidlaw Emtl. Servs., (TOC), Inc.*, 528 U.S. 167, 181 (2000); *see also Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 102 (1998).

Because Plaintiffs are organizations, two kinds of standing are available: “organizational standing,” whereby they may “sue on their own behalf for injuries they have sustained,” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393 (2024) (citation omitted), and “associational standing,” whereby an organization may sue on behalf of its members, *see Nat’l Religious Broadcasters v. Fed. Commc’ns Comm’n*, 138 F.4th 282, 290 (5th Cir. 2025) (citing *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 553 (1996)). Plaintiffs claim organizational standing for their challenge to the First Aid standard and the fire safety standards, and associational standing for their challenge to the tractor

training standard. *See* Compl. ¶¶ 41–58. However, Plaintiffs fail to establish standing to bring *any* of their claims.

1. Plaintiffs Lack Standing to Challenge the First Aid Standard

Plaintiffs fail to demonstrate (1) how the First Aid standard has actually injured them, or (2) how such an injury could be redressed here. As an initial matter, Plaintiffs have not identified a concrete and particularized injury. The First Aid standard provides that “in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available.” 29 C.F.R. § 1910.151(b). But Plaintiffs concede that their office is near both a hospital and a clinic. Compl. ¶ 59. And Plaintiffs further admit that, *in the past 26 years*, none of their employees has had to go to the hospital. Galeazzi Decl. ¶ 14. Indeed, Plaintiffs acknowledge that no injuries are even “likely to occur in their workplace.” Compl. ¶ 59.

Nevertheless, Plaintiffs assert injury because the First Aid standard allegedly “force[s them] to commit” to sending all injured employees to those facilities or to maintain a first aid kit and a trained first-aid provider on site, while they would rather “keep a small first-aid kit in case of minor injuries, but nothing else, and would use the nearby hospital in case of a rare serious injury.” *Id.* This argument rests on a misreading of the First Aid standard. By its terms, the standard requires trained personnel and first aid supplies *only* when a nearby clinic or hospital is *not* available. 29 C.F.R. § 1910.151(b). Because Plaintiffs acknowledge that such facilities are nearby and can be used to treat injured employees, the standard imposes no additional requirements on Plaintiffs. And nothing in the standard prohibits an employer from voluntarily keeping a first aid kit, which an employee could use to treat his own minor injuries that do not require treatment from a trained individual. In any event, however, Plaintiffs have not explained how relying on a hospital, clinic, or other emergency services to treat

their employee would cause them to suffer compliance costs that are traceable to the standard. *See Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022).

Plaintiffs’ challenge to the First Aid standard also is not redressable because they still would be subject to it even if they prevail. Specifically, Plaintiffs challenge only OSHA’s authority to adopt safety standards under Section 6(b) of the Act—but do not challenge OSHA’s prior authority under Section 6(a) to adopt national consensus standards during the first two years after the Act was adopted. *See* Compl., Relief Requested, at A–D; *see also* Pls.’ Br. at 3. But the First Aid standard was initially promulgated under Section 6(a) in 1971, and it remains in near-identical form today. *See* National Consensus Standards and Established Federal Standards, 36 Fed. Reg. 10,466, 10,601 (May 29, 1971).

Specifically, the 1971 version of the First Aid standard states:

(b) In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.

The current version, adopted in 1998, similarly states:

(b) In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available.

Indeed, the change to the First Aid standard in 1998 actually *lessened* the regulatory burden on employers by removing the requirement that they obtain a consulting physician’s approval of First Aid supplies. *See* Standards Improvement (Miscellaneous Changes) for General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic, 63 Fed. Reg. 33,450 (June 18, 1998) (noting the change was intended to “reduce the burden imposed on the regulated community”). Consequently, if Plaintiffs were to succeed in this action by striking down the 1998 standard adopted pursuant to Section 6(b), then the First Aid standard would revert to its 1971

version adopted pursuant to Section 6(a), and thereby increase the compliance burden on Plaintiffs. That counterintuitive outcome forecloses redressability.

2. Plaintiffs Lack Standing to Challenge the Fire Safety Standards

Plaintiffs likewise cannot show how their challenge to the fire safety standards is redressable. OSHA initially adopted a fire safety standard under Section 6(a) in 1971 that required—without exception—that employers maintain portable fire extinguishers. *See* 36 Fed. Reg. at 10,602. Subsequently, OSHA added exceptions to that requirement. *See* 45 Fed. Reg. at 60,685, 60,708 (creating exceptions); Exit Routes, Emergency Action Plans, and Fire Prevention Plans, 67 Fed. Reg. 67,950, 67,964 (Nov. 7, 2002) (making minor revisions to the text). Here again, if Plaintiffs succeed, the fire safety standards would revert to the more onerous original 1971 version, thereby increasing Plaintiffs’ compliance burden by requiring them to maintain a fire extinguisher in the office, without exception.

Moreover, Plaintiffs reside in Mission Texas, which adopted the International Fire Code. That code independently requires portable fire extinguishers to be installed in office settings.⁷ Thus, prevailing in this action would not obviate Plaintiffs’ need to maintain a fire extinguisher in their offices, foreclosing redressability.

3. Plaintiffs Lack Standing to Challenge the Tractor Training Standard

Plaintiffs have not established associational standing to challenge the tractor training standard. To do so, Plaintiffs must show that their members “would otherwise have standing to sue in their

⁷ *See* International Code Council, Chapter 9 Fire Protection Systems, <https://perma.cc/7WZG-APPL> (“Portable fire extinguishers shall be installed in the following locations . . . In all Group . . . B . . . occupancies”); *see also* International Code Council: Chapter 2 Definitions, <https://perma.cc/22FH-QG7D> (defining “Group B” occupancies as “the use of a building or structure, or a portion thereof, for office, professional[,] or service-type transactions, including storage of records and accounts”); Mission, Texas-Code of Ordinances, Chapter 34 – Fire Protection and Prevention, <https://perma.cc/AE85-8J5Q> (“The 2000 International Fire Prevention Code is hereby adopted and made applicable to the city.”).

own right”; that “the interests [they] seek to protect are germane to the organization’s purpose”; and that “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Nat’l Religious Broadcasters v. FCC*, 138 F.4th 282, 290 (5th Cir. 2025) (quoting *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 553 (1996)). They cannot do so.

Specifically, Plaintiffs have not shown that “at least one member of the association ha[s] standing to sue in his or her own right” in satisfaction of the first prong of the test for associational standing. *NRA v. ATF*, 700 F.3d 185, 191 (5th Cir. 2012). Plaintiffs assert that some of their members must provide “basic” tractor safety training “at least annually,” Compl. ¶¶ 37, 49, and that, absent the rule, they *might* provide training less frequently or to fewer employees, Compl. ¶ 57; Galeazzi Decl. ¶ 31. But Plaintiffs concede that their members would continue providing tractor-safety training to at least *some* employees. Compl. ¶ 57. Further, Plaintiffs have neither measured their members’ compliance costs, nor demonstrated how their members’ training of tractor operators would cease or materially change if the standard were invalidated. *Id.* ¶¶ 36–39. Thus, by failing to show a concrete incremental burden caused by the safety standard, Plaintiffs have not established injury in fact, causation, or redressability for any of their members.

4. Plaintiffs Lack Standing to Challenge Safety Standards Not Included in Their Complaint

Plaintiffs lack standing to seek relief on behalf of nonparties. Although Plaintiffs identify only a handful of OSHA standards with which they must allegedly comply, Compl. ¶¶ 43–63, they nevertheless purport to seek relief on a global scale, which they cannot do, *id.* ¶ 35, Relief Requested, ¶ B (seeking to “enjoin[] Defendants from enforcing 29 U.S.C. § 655(b) and regulations promulgated under it”). It is well-established that “standing is not dispensed in gross,” and thus “plaintiffs must demonstrate standing for each claim that they press’ against each defendant, ‘and for each form of relief that they seek.’” *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (quoting *TransUnion LLC v. Ramirez*,

594 U.S. 413, 431 (2021)). Accordingly, for each claim, and for each form of relief sought, Plaintiffs must show “an injury that is ‘concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.’” *Id.* at 57 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013)).

Here, however, Plaintiffs ask the Court to remedy purported harm on a global scale. Pls.’ Br. at 31. That drastic and indefinite remedy is not “tailored to redress” these Plaintiffs’ “particular injury.” *Gill v. Whitford*, 585 U.S. 48, 73 (2018). Accordingly, Plaintiffs lack Article III standing to seek relief regarding standards that are inapplicable to, and thus have not harmed, Plaintiffs or their members.

B. The OSH Act Precludes District Court Jurisdiction Over Plaintiffs’ Claim

This Court also lacks jurisdiction over and therefore should dismiss Plaintiffs’ complaint because Congress has vested exclusive subject-matter jurisdiction in the courts of appeal. Specifically, in Section 6 of the OSH Act, Congress provided that “[a]ny person who may be adversely affected by a standard issued under [Section 6 of the OSH Act] may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals.” 29 U.S.C. § 655(f). The vesting of exclusive jurisdiction over pre-enforcement challenges in the courts of appeal precludes district court review. The Supreme Court has “several times held that the creation of . . . a review scheme for agency action divests district courts of their ordinary jurisdiction.” *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023). “The method Congress typically chooses,” as it has done here, “is . . . review in a court of appeals.” *Id.* When Congress establishes a comprehensive scheme for administrative and judicial review, courts must presume that scheme is exclusive. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207–08 (1994) (concluding that the Mine Act established the exclusive path for judicial review in the courts of appeal and prohibited pre-enforcement suits in district court).

Such is the case here. The OSH Act’s review provisions mirror those that the Supreme Court has repeatedly found to foreclose district court jurisdiction. *See In re Establishment Inspection of Manganas Painting Co.*, 104 F.3d 801, 803 (6th Cir. 1997) (OSH Act and Mine Act review schemes are “nearly identical”). The Fifth Circuit has repeatedly held that Section 6(f) of the Act provides the exclusive mechanism for pre-enforcement review of the validity of OSHA standards, *see, e.g., RSR Corp. v. Donovan*, 747 F.2d 294, 299 (5th Cir. 1984) (“[S]ection 6(f) is the exclusive vehicle for pre-enforcement review of an OSHA standard.”); *JTB Tools & Oilfield Servs., L.L.C. v. United States*, 831 F.3d 597, 599 (5th Cir. 2016) (collecting cases), and so has every other court of appeals that has considered the issue, *see, e.g., In re Nat’l Nurses United*, 47 F.4th 746, 755 (D.C. Cir. 2022); *Oil, Chem., & Atomic Workers Union v. OSHA*, 145 F.3d 120, 123 (3d Cir. 1998). Defendants have commenced no enforcement proceedings against Plaintiffs. Compl. ¶¶ 29 n.3, 35–42, 71–72; *id.* at 19 (Relief Requested ¶ A). As such, this is a challenge by a “person who may be adversely affected by a [safety] standard” that is governed by Section 6(f)’s unambiguous terms. 29 U.S.C. § 655(f).

That exclusive review scheme applies here notwithstanding that Plaintiffs bring a facial constitutional challenge to OSHA safety standards. Pls.’ Br. at 9. Nothing in a comprehensive review scheme becomes inapplicable merely because the plaintiff asserts a constitutional claim. *Elgin v. Dep’t of the Treasury*, 567 U.S. 1, 13 (2012). When a lawsuit challenges the “validity” of OSHA standards on any basis, even under the Constitution, that suit must comply with the jurisdiction and timing requirements that Congress prescribed. *See Int’l Brominated Solvents Ass’n v. Am. Conf. of Governmental Indus. Hygienists, Inc.*, 393 F. Supp. 2d 1362, 1385 (M.D. Ga. 2005) (finding constitutional and non-OSHA statutory claims were challenges “attacking the validity of the Rule itself” so Section 6(f)’s 60-day time limit and jurisdictional limits applied).

Free Enterprise Fund v. Public Company Accounting Oversight Board, 561 U.S. 477 (2010), invoked by Plaintiffs, does not change that analysis. While *Free Enterprise Fund* “indicated that individuals may have

an implied private right of action under the Constitution to seek equitable relief,” *Collins v. Yellen*, 594 U.S. 220, 263n.1 (2020) (Thomas, J., concurring); *Free Enter. Fund*, 561 U.S. at 491 n.2, that holding is inapposite. In *Free Enterprise*, the Supreme Court considered whether “[p]rovisions for *agency* review . . . restrict *judicial* review,” where the relevant statute provided for the Securities and Exchange Commission to review any rule or sanction by the Public Company Accounting Oversight Board which decisions could then be appealed directly to the courts of appeal. *See Free Enter. Fund*, 561 U.S. at 489 (emphasis added). But the question here is not whether Section 6(f) required an administrative proceeding at OSHA for constitutional claims before Plaintiffs could file suit, but rather *in which court*—district or circuit—Congress required Plaintiffs to bring their challenge. By specifying such venue is a court of appeals, Congress has provided “in so many words that district court jurisdiction will yield.” *Axon Enterprise, Inc.*, 598 U.S. at 185.

The fact that Plaintiffs purport to challenge *all* safety standards promulgated under section 6(b), rather than “any particular standard,” Compl. ¶ 22, is of no consequence. As discussed above, Plaintiffs only have standing to challenge the standards they allege to be impacted by, *i.e.*, the five safety standards identified in the Complaint. *Cf. Blocksom & Co. v. Marshall*, 582 F.2d 1122, 1124 (7th Cir. 1978) (a party cannot bring “independent action” in district court asserting a “generalized interest in the Act’s nonenforcement”). And it would defy logic to conclude that Congress would require direct appellate review for challenges to individual standards while permitting district court review of a claim challenging all standards.

For all these reasons, the Court should dismiss the Plaintiffs complaint for lack of subject matter jurisdiction.

III. This Action Should Be Dismissed Because Plaintiffs' Claim Is Untimely

A. Section 6(f) of the Act Bars Plaintiffs' Claim

Plaintiffs' claim under Section 6(f)—Plaintiffs' only avenue for federal-court recourse, *see* Part II.B, *supra*—is long time-barred. Any party “challenging the validity” of an OSHA standard must file a petition for review in the appropriate court of appeals “prior to the sixtieth day after such standard is promulgated.” 29 U.S.C. § 655(f). That sixty-day period “is jurisdictional in nature and may not be enlarged or altered by the courts.” *Nat'l Res. Def. Council v. Nuclear Regul. Comm'n*, 666 F.2d 595, 602 (D.C. Cir. 1981) (construing pre-enforcement review provision of Hobbs Act); *AFL-CIO v. OSHA*, 905 F.2d 1568, 1569-71 (D.C. Cir. 1990) (petition filed on 60th day was untimely under the OSH Act because statute required filing “prior to the sixtieth day”) (emphasis omitted) (citation omitted).

The Complaint does not—nor could it—allege that the five safety standards Plaintiffs challenge became effective within 60 days of their Complaint; those standards were enacted decades ago. *See infra* Pt. II.A. Likewise, the Complaint does not allege that the effects of the challenged safety standards only recently impacted them allowing tolling of their deadline; Plaintiffs have been subject to these standards since they were incorporated (which also occurred decades ago). Because Plaintiffs' claims fall within Section 6(f)'s exclusive review scheme, they were required to bring their challenge by *timely* petition to a court of appeals. Their failure to do requires the dismissal of their action.

B. The Statute of Limitations Bars Plaintiffs' Claim

Even assuming that Plaintiffs chose the right court, this suit is independently barred by 28 U.S.C. § 2401(a), which requires that civil actions against the United States be filed within six years after the right of action accrues. Plaintiffs' claim accrued (at best) over twenty years ago.⁸ Section

⁸ The Fifth Circuit is split on whether the six-year limitations period in § 2401(a) is jurisdictional. *See Brook v. Holzerland*, No. 24-40640, 2025 WL 2254514, at *4 (5th Cir. 2025) (“The parties dispute whether the six-year limitations in § 2401(a) is jurisdictional—and thus categorically immune to equitable doctrines. That question remains unresolved in our circuit.”); *Mann v. Adams*

2401(a) provides that “every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues,” subject to only limited exceptions not relevant here. 28 U.S.C. § 2401(a). “This provision applies generally to suits against the United States unless the timing provision of a more specific statute displaces it.” *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024). This is true not just when a statute, like the Administrative Procedure Act (“APA”), is invoked to supply the relevant right of action. The Fifth Circuit has clarified that “the six-year statute of limitations in § 2401(a) applies [specifically] to suits seeking nonmonetary relief through *nonstatutory review* of agency action.” *Geyen v. Marsh*, 775 F.2d 1303, 1309 (5th Cir. 1985) (emphasis added).

Here, Plaintiffs’ claim accrued over twenty years ago. *See* Compl. Relief Requested ¶¶ A, B. “A claim accrues when all elements of an actionable claim have been met and can be pleaded.” *Ortega v. Off. of the Comptroller of the Currency*, 155 F.4th 394, 410 (5th Cir. 2025) (citing *Corner Post*, 603 U.S. at 808-09); *Corner Post*, 603 U.S. at 817 (“statute of limitations begins to run at the time *the plaintiff* has the right to apply to the court for relief.” (citation omitted) (*italicized in original*)). OSHA was created in 1971. Compl. ¶ 28. The text of Section 6(b) has not changed since 1979, and even then, not substantively. *See* Department of Education Organization Act, Pub. L. 96-88, tit. V, § 509(b), 93 Stat. 668, 695 (1979) (redesignating references to the Department of Health, Education, and Welfare to the

Realty Co., 556 F.2d 288, 293 (5th Cir. 1977) (“A Rule 12(b)(6) motion to dismiss for failure to state a claim is an appropriate method for raising a statute of limitations defense.”). Therefore, the applicable standard arguably is Rule 12(b)(6)’s dismissal standard. Under that standard, the Court should dismiss a complaint that fails to state a claim for which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Both Rule 12(b)(1) and Rule 12(b)(6) require a complaint to contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “plausibility” standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). While the Court accepts well-pleaded factual allegations as true, “mere conclusory statements” and “legal conclusion[s] couched as . . . factual allegation[s]” are “disentitle[d] . . . to th[is] presumption of truth.” *Id.* at 678, 681 (citation omitted).

Department of Health and Human Services and redesignated references to the Secretary of Health, Education, and Welfare to the Secretary of Health and Human Services). The statute has been subject to constitutional challenges since at least that time. *See, e.g., Blocksom*, 582 F.2d at 1125; *Benzene*, 448 U.S. at 613. Plaintiffs therefore cannot plausibly argue that they previously lacked the ability to sue. The Texas International Produce Association was founded in 1942,⁹ and the Texas Vegetable Association has been in operation since at least 1984.¹⁰ For these Plaintiffs, the right of action accrued no later than 1979 (or, at the latest, 1984). Thus, Plaintiffs' cause of action has expired.

Even if the Court were to measure accrual from the promulgation of the specific regulations Plaintiffs identify, the result is the same. The standards Plaintiffs allege affect them or their members were promulgated more than six years ago. *See* 29 C.F.R. § 1928.51; Compl. ¶ 36. The Tractor Standard was first promulgated in 1975, Roll-Over Protective Structures for Agricultural Tractors, 40 Fed. Reg. 18,254 (Apr. 25, 1975), and most recently amended in 2005. Roll-Over Protective Structures, 70 Fed. Reg. 76,979 (Dec. 29, 2005). The First Aid Standard, 29 C.F.R. § 1910.151, and the Portable Fire Extinguisher Standard, 29 C.F.R. § 1910.157, were first promulgated in 1971, 36 Fed. Reg. at 10,601, 10,602, and most recently revised in 1998, 63 Fed. Reg. at 33,466, and 2002, 67 Fed. Reg. 67,950, respectively. The emergency action plan, § 1910.38, and fire prevention plan, § 1910.39, standards, to which 1910.157(b) refers, date back to 1980, 45 Fed. Reg. at 60,703 (creating § 1910.38), and 2002, 67 Fed. Reg. at 67963-64 (promulgating the current §§ 1910.38 and 1910.39). Plaintiffs, who have had a workplace for “at least . . . 26 years,” Galeazzi Decl. ¶ 14, accordingly have been subject to these standards for decades. At the latest, Plaintiffs' cause of action accrued in 2005, but they waited over twenty years—long after the statute of limitations had run—to bring this action. *See Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 418 (2005) (citation omitted).

⁹About Us, Texas International Produce Association, <https://perma.cc/GA57-NB5P>.

¹⁰ProPublica, Texas Vegetable Association, <https://perma.cc/9N6X-FBNJ>.

Plaintiffs may contend that the limited waiver of sovereign immunity recognized in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949), and *Dugan v. Rank*, 372 U.S. 609 (1963), defeats application of Section 2401(a) and its limitations period. *See Leal v. Azar*, No. 2:20-cv-185-Z, 2020 WL 7672177, at *6–7, n.7 (N.D. Tex. Dec. 23, 2020) (accepting that *Larson* defeats Section 2401(a) given the lack of contrary authority cited by the United States), *judgment entered sub nom., Leal v. Becerra*, No. 2:20-CV-185-Z, 2021 WL 1163663 (N.D. Tex. Mar. 26, 2021), and *vacated and remanded sub nom. Leal v. Becerra*, No. 21-10302, 2022 WL 2981427 (5th Cir. July 27, 2022). But the Fifth Circuit has expressly held that *any* action against the United States is subject to Section 2401(a)’s six-year limitation (if there exists no more specific limitations provision). *Geyen*, 775 F.2d at 1307. Because Plaintiffs bring this suit as a nonstatutory challenge to Defendants’ authority under Section 6(b) of the Act, such a challenge is subject to Section 2401(a)’s limitations period, and Plaintiffs’ claim should be dismissed.

C. The Equitable Doctrine of Laches Bars Plaintiffs’ Claim

Plaintiffs’ claim is also independently barred under the equitable doctrine of laches. To establish laches, “the defendant must show (1) a delay in asserting the right or claim; (2) that the delay was not excusable; and (3) that there was undue prejudice to the defendant.” *Id.* at 1310 (citation omitted). All three elements are satisfied here.

First, Plaintiffs’ dilatoriness spans decades. As discussed above, Plaintiffs could have brought their challenge to Section 6(b) or to the regulations they identify over twenty years ago. Second, Plaintiffs offer no justification for that delay (i.e., it is inexcusable). Any proffered excuse would be belied by the prior actions challenging OSHA under the nondelegation doctrine. *See Blocksom*, 582 F.2d at 1125; *Nat’l Mar. Safety Ass’n*, 649 F.3d at 755; *Allstates Refractory Contractors, LLC v. Su* (“*Allstates*”), 79 F.4th 755 759 (6th Cir. 2023), *cert. denied*, 144 S. Ct. 2490 (2024). Thus, the second element of laches is evident. Third, this delay substantially prejudices the Government. Courts have long recognized that laches bars belated challenges where delay prejudices the Government. *See Abbott Lab’s v. Gardner*,

387 U.S. 136, 155 (1967) (noting that the equitable “defense of laches could be asserted if the Government is prejudiced by a delay” in cases challenging agency rules); *see also Collins*, 594 U.S. at 276 (Gorsuch, J., concurring) (noting that a Court may set aside actions as “contrary to constitutional right” “subject perhaps to consideration of traditional remedial principles such as laches” (citation omitted)). Plaintiffs’ delay forces the Government to relitigate a constitutional theory that has been asserted and rejected each time it has been raised, after decades of settled enforcement and reliance. *See Blocksom*, 582 F.2d at 1125; *Nat’l Mar. Safety Ass’n*, 649 F.3d at 755; *Allstates*, 79 F.4th at 759.

That reliance has produced concrete benefits in workplace safety, including that workplace fatalities have declined dramatically since OSHA’s creation. *See* OSHA, U.S. Dep’t of Labor, *Commonly Used Statistics*, <https://perma.cc/WL65-9SUF> (noting a reduction from approximately 38 worker deaths per day in 1970 to 13 per day in 2020). Thus, Plaintiffs’ inexcusable delay and the attendant prejudice to the Government independently bar this suit, requiring its dismissal for laches.

IV. Summary Judgment Should Be Granted for Defendants and Against Plaintiffs

Should the Court determine that it has jurisdiction, it should grant OSHA’s cross-motion for summary judgment and deny Plaintiffs’ motion for summary judgment because an intelligible principle supports Congress’ delegation of authority in the OSH Act. Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is particularly appropriate where, as here, “the only issue before the court is a pure question of law.” *Sheline v. Dun & Bradstreet Corp.*, 948 F.2d 174, 176 (5th Cir. 1991). Plaintiffs “shoulder [a] heavy burden to demonstrate that [an] Act is ‘facially’ unconstitutional.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). To prevail, they must either “establish that no set of circumstances exists under which the Act would be valid,” *id.*, or show that

the law lacks “a ‘plainly legitimate sweep,’” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (citation omitted).

Congress’ delegation of authority in the OSH Act is amply supported by an intelligible principle: the Act promotes Congress’ express policy of promoting safe working conditions and imposes clear boundaries upon OSHA’s authority to issue safety standards—including that they must be economically and technologically feasible, address significant risks of harm, and focus on occupational hazards. Plaintiffs’ arguments to the contrary ignore the structure, history, and context of the OSH Act, as well as the intelligible principle standard which has repeatedly been applied to find the OSH Act constitutional, and thus are without merit. Accordingly, the Court should grant the Government’s motion for summary judgment and deny Plaintiffs’ cross-motion.

A. The OSH Act Permissibly Delegates Congressional Authority to OSHA

Since the Marshall Court, the Supreme Court has held that “Congress may certainly delegate to others[] powers which the legislature may rightfully exercise itself.” *Wayman v. Southard*, 23 U.S. (10 Wheat) 1, 43 (1825) (Marshall, C.J.). And Congress may seek the Executive’s “assistance” by “vesting discretion in [executive] officers to make public regulations interpreting a statute and directing the details of its execution.” *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406 (1928). Such delegations are constitutional so long as Congress “lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.” *Mistretta v. United States*, 488 U.S. 361, 372 (1989) (second alteration in original) (quoting *J.W. Hampton, Jr. & Co.*, 276 U.S. at 409). A statute articulates an intelligible principle if Congress “made clear both ‘the general policy’ that the agency must pursue and ‘the boundaries of [its] delegated authority.’” *Consumers’ Rsch.*, 606 U.S. at 673 (alteration in original) (quoting *Am. Power & Light*, 329 U.S. at 105). As the Fifth Circuit has held, “[t]hose standards . . . are not demanding.” *Big Time Vapes*, 963 F.3d at 442 (cleaned up).

1. Congress Made Clear the General Policy and Boundaries of the Act

The Secretary's delegated authority under the OSH Act to establish workplace safety standards readily meets the intelligible principle requirement. As to the general policy of the OSH Act, Congress was clear. Section 2 of the Act states: "The Congress declares it to be its purpose and policy . . . to assure so far as possible every working man and woman in the Nation safe and healthful working conditions." 29 U.S.C. § 651(b). Likewise, as to the scope of the authority delegated, Congress made clear "the 'boundaries' [that DOL] cannot cross." *Consumers' Rsch.*, 606 U.S. at 680 (citation omitted). The OSH Act "sets forth a host of principles, purposes, and goals that the agency must consider or fulfill" and "significantly limits OSHA's discretion in deciding whether it may issue a particular occupational safety and health standard." *Allstates*, 79 F.4th at 764–65. Specifically, the OSH Act constrains the Secretary of Labor's authority to promulgate Section 6(b) occupational safety and health standards by requiring that standards must: (1) address significant risks of harm; (2) be economically and technologically feasible; (3) focus on occupational hazards; (4) serve the objectives of the OSH Act; (5) prescribe the use of warning labels and protective equipment as necessary; (6) explain why the new standard is better than the existing national consensus; (7) provide a high degree of worker protection; and (8) have costs that are reasonably related to their benefits. Each of these boundaries or constraints on OSHA's authority will be discussed in turn.

First, the OSH Act requires that Section 6(b) standards address significant risks of harm. The OSH Act provides that standards must be "reasonably necessary or appropriate to provide safe or healthful employment." 29 U.S.C. § 652(8). That statutory language limits the Secretary to issuing safety standards only where she has determined that certain workplace conditions are not "safe." The Supreme Court has recognized that "safe" does not mean "risk-free," and that the OSH Act requires the Secretary "to make a threshold finding . . . that significant risks are present and can be eliminated or lessened by a change in practices" before issuing any permanent health or safety standard. *See*

Benzene, 448 U.S. at 642 (plurality op.); *Cotton Dust*, 452 U.S. at 505–06 n.25 (adopting the “significant risk” requirement as a holding of the Court); *Nat’l Mar. Safety Ass’n*, 649 F.3d at 750 n.8 (“Although *Benzene* commanded only a plurality of the Court . . . a majority of the Court has adopted the significant risk requirement.”). And the Supreme Court repeatedly has upheld similar delegations of authority to agencies to collect “sufficient” money to support universal-service programs, *Consumers’ Rsch.*, 606 U.S. at 681–82; to limit pollution to the level “requisite to protect the public health,” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 472 (2001) (quotation marks omitted); and to regulate broadcast licensing as “public interest, convenience, or necessity” requires, *National Broad. Co. v. United States*, 319 U.S. 190, 225–26 (1943). Moreover, a majority of the Circuit Courts—including the Fifth Circuit—agree that the Supreme Court interprets the Act’s text as including the “significant risk” requirement.¹¹

Second, the OSH Act requires that Section 6(b) standards be economically and technologically feasible. The OSH Act provides that “occupational safety and health standards” must be “reasonably necessary or appropriate.” 29 U.S.C. § 652(8). That statutory language limits the Secretary to promulgating only safety standards that employers are capable of implementing, as a safety standard that requires “practices, means, methods, operations, or processes” that employers simply could not implement could be neither reasonably “necessary” nor reasonably “appropriate.” *Id.* The Supreme Court in *Cotton Dust* thus interpreted the “reasonably necessary or appropriate” language to require that all OSHA standards must be “economically” and “technologically feasible.” 452 U.S. at 513 n.31 (quotation marks omitted). As the Supreme Court explained: “any standard that was not economically

¹¹ See *Nat’l Mar. Safety Ass’n*, 649 F.3d at 750 n.8; *Allstates*, 79 F.4th at 765; see also, e.g., *In re MCP No. 165*, 21 F.4th 357, 376 (6th Cir. 2021), stay application granted by NFIB, 595 U.S. 109 (2022); *Pub. Citizen Rsch. Grp. v. Dep’t of Labor*, 557 F.3d 165, 170, 176 (3d Cir. 2009); *Ala. Power Co. v. OSHA*, 89 F.3d 740, 745 (11th Cir. 1996) (citing *AFL-CIO v. OSHA*, 965 F.2d 962, 972–73 (11th Cir. 1992)); *Nat’l Grain & Feed Ass’n v. OSHA*, 866 F.2d 717, 727, 737 (5th Cir. 1988); *Forging Indus. Ass’n v. Sec’y of Lab.*, 773 F.2d 1436, 1444 (4th Cir. 1985) (en banc); *ASARCO, Inc. v. OSHA*, 746 F.2d 483, 490 (9th Cir. 1984); see also *Pratt & Whitney Aircraft, Div. of United Technologies Corp. v. Sec’y of Labor*, 649 F.2d 96, 104 (2d Cir. 1981) (“[T]he *Benzene* case clearly teaches that the Act is intended only to guard against significant risks . . .”).

or technologically feasible would *a fortiori* not be ‘reasonably necessary or appropriate’ under the Act.” *Id.*

Third, the OSH Act requires that Section 6(b) standards focus on occupational safety. The OSH Act provides that standards must focus on “employment and places of employment.” 29 U.S.C. § 652(8). That statutory language constrains the Secretary: OSHA safety standards must address *occupational* safety. As the Supreme Court recently explained, “OSHA is charged with regulating ‘occupational’ hazards and the safety and health of ‘employees.’” *NFIB*, 595 U.S. at 118 (citing 29 U.S.C. §§ 652(8), 654(a)(2), 655(b)–(c)). Thus, the OSH Act only “empowers the Secretary to set workplace safety standards” addressing “work-related dangers”—not “broad public health measures” addressing “the hazards of daily life.” *Id.* at 117–18 (citation omitted) (citing, *e.g.*, 29 U.S.C. § 655(b)). Accordingly, the Supreme Court has upheld fire-safety standards as a permissible exercise of the Secretary’s authority. *See id.* at 118 (discussing permissible workplace “fire or sanitation regulation[s]”). In contrast, the Supreme Court struck down the COVID-19 “vaccine mandate,” which crossed the line from addressing “occupational risk” to operating as “a general public health measure” addressing “risk more generally,” because permitting OSHA to issue such a standard “would significantly expand OSHA’s regulatory authority without clear congressional authorization.” *Id.* at 118–19.

Fourth, the OSH Act requires that Section 6(b) standards serve the objectives of the OSH Act. Section 6(b)(1) of the OSH Act provides that the Secretary initiates the standard-setting process only when she “determines that a rule should be promulgated in order to serve the objectives of” the OSH Act. 29 U.S.C. § 655(b)(1). This determination may be based upon information submitted by organizations of employers or employees, national standard setting organizations, the National Institute for Occupational Safety and Health (NIOSH), a State, or upon information developed by the Secretary herself. *See id.* However, the Secretary must make this predicate determination before she can begin the standard-making process, which imposes another limit on her discretion. The OSH

Act's delegation of authority for safety standards that "serve the objectives of" the Act, 29 U.S.C. § 655(b)(1), is comparable to the Sentencing Reform Act's delegation of authority for Sentencing Guidelines that "meet[] the purposes of sentencing," which was upheld by the Supreme Court, *see Mistretta*, 488 U.S. at 374–77.

Fifth, the OSH Act requires that Section 6(b) standards prescribe the use of warning labels and protective equipment as necessary. Section 6(b)(7) of the OSH Act provides that "[a]ny standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure." 29 U.S.C. § 655(b)(7). Likewise, this section provides that, "[w]here appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." *Id.* Similarly, this section provides that, "where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available . . . to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure." *Id.* This statutory language further cabins the agency's decision-making when crafting OSHA safety standards.

Sixth, the OSH Act requires that Section 6(b) standards explain why a new standard is better than any existing and relevant national consensus standard. Section 6(b)(8) of the OSH Act provides: "Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall . . . publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard." 29 U.S.C. § 655(b)(8). This statutory language requires OSHA to consider the

protectiveness of existing consensus standards, and to justify how a new standard would better assure safe working conditions, which must be supported by substantial evidence. A plurality of the Supreme Court in *Benzene* recognized that this provision “impose[s] upon the Secretary the duty” to consider existing consensus standards, and to determine whether they are not “adequate to protect workers from a continuing and significant risk of harm,” before promulgating a substantially different mandatory standard. *Benzene*, 448 U.S. at 644 (plurality op.). Thus, where there is an applicable national consensus standard, the Secretary is constrained to either (a) impose the requirements of that standard, or (b) explain—supported by substantial evidence—how OSHA’s new standard better protects workers. *See AFL-CIO v. Brennan*, 530 F.2d 109, 123-24 (3d Cir. 1975) (remanding a safety standard to the agency to explain how the new standard better effectuated the purposes of the Act).

Seventh, the OSH Act requires that Section 6(b) safety standards provide a high degree of worker protection. Numerous sections of the OSH Act impose this limitation on the Secretary’s discretion. Section 2 of the OSH Act provides that the Act’s purpose is to “assure so far as possible . . . safe. . . working conditions.” 29 U.S.C. § 651(b). Similarly, the General Duty Clause in Section 5(a)(1) creates a broad expectation that employers will “furnish to each of [their] employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm.” *Id.* § 654(a)(1). During the first two years of the OSH Act’s existence, Section 6(a) required that “the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees” in the event of a conflict between then-existing federal and consensus standards. *Id.* § 655(a). Today, when the Secretary issues standards that “differ[] substantially from . . . existing national consensus standard[s],” Section 6(b)(8) of the OSH Act requires her to “publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate” the purpose of assuring safe conditions for the American worker. *Id.* § 655(b)(8). Read together, this statutory language requires OSHA to set only safety standards that “provide a high

degree of employee protection.” *Int’l Union, UAW v. OSHA*, 37 F.3d 665, 669 (D.C. Cir. 1994) (citation omitted).

Eighth, in the Fifth Circuit, the OSH Act requires that the costs imposed by Section 6(b) standards be reasonably related to their benefits. As discussed above, the OSH Act provides that these standards must be “reasonably necessary or appropriate.” 29 U.S.C. § 652(8). The Fifth Circuit has interpreted this language as requiring OSHA to determine that “the cost of the rule be reasonably related to the expected benefits”—*i.e.*, that the safety standard will “on balance, produce a benefit the costs of which are not unreasonable,” and that the “protection afforded to workers should outweigh the economic consequences to the regulated industry.” *Nat’l Grain & Feed Ass’n, Inc. v. OSHA*, 903 F.2d 308, 311 (5th Cir. 1990) (quoting *Asbestos Information Ass’n/N. Am. v. OSHA*, 727 F.2d 415, 423 (5th Cir. 1984)).¹²

Collectively, the OSH Act provisions provide meaningful guideposts for, and impose meaningful constraints on, the Secretary’s issuance of safety standards under Section 6(b).

2. Courts Have Upheld the OSH Act and Similar Delegations from Congress.

The OSH Act tracks cleanly with all the other statutes that the Supreme Court has upheld as appropriate exercises of “Congress’ ability to delegate power under broad standards.” *Mistretta*, 488 U.S. at 373; *see also supra* Pt. IV.A.1, (discussing *Consumers’ Rsch.*, 606 U.S. at 873, *Whitman*, 531 U.S. at 472, *Mistretta*, 488 U.S. at 372, and *Nat’l Broad. Co.*, 319 U.S. 190). For example, the Supreme Court has found an intelligible principle and upheld delegations:

¹² OSHA does not agree that Section 6(b) safety standards are subject to a cost-benefit analysis, but acknowledges that *National Grain* and *Asbestos Information* are binding precedent in this circuit.

- directing the Sentencing Commission to promulgate then-binding Sentencing Guidelines for federal crimes based on broad directives such as “provid[ing] certainty and fairness in meeting the purposes of sentencing,” *Mistretta*, 488 U.S. at 374–77;
- authorizing the Federal Communications Commission (FCC) to regulate broadcast licensing as “public interest, convenience, or necessity” requires, *National Broad. Co. v. United States*, 319 U.S. 190, 225–26 (1943) (citation marks omitted);
- authorizing the Securities and Exchange Commission to ensure that a holding company’s structure does not “unfairly or inequitably distribute voting power among security holders,” *American Power & Light*, 329 U.S. at 104–05 (citation omitted);
- authorizing the wartime price administrator to fix “fair and equitable” commodities prices under the Emergency Price Control Act, *Yakus v. United States*, 321 U.S. 414, 420 (1944) (citation omitted);
- directing the Environmental Protection Agency to set nationwide air-quality standards “requisite to protect the public health,” *Whitman*, 531 U.S. at 472 (quotation marks omitted); and
- most recently, and as discussed below, directing the FCC to collect the amount of money that is “sufficient” to support universal-service programs, *Consumers’ Rsch.*, 606 U.S. at 681–82.

As these cases suggest, the Supreme Court “has countenanced as intelligible seemingly vague principles in statutory text such as whether something would ‘unduly or unnecessarily complicate,’ ... be ‘generally fair and equitable,’ in the ‘public interest,’ ... [or] authoriz[es] the recovery of excessive profits.” *In re Nat’l Sec. Agency Telecomms. Recs. Litig.*, 671 F.3d 881, 896 (9th Cir. 2011) (citation omitted). Moreover, the Supreme Court itself has recognized that it has “almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing

or applying the law.” *Whitman*, 531 U.S. at 474–75 (quoting *Mistretta*, 488 U.S. at 416 (Scalia, J., dissenting)).

In contrast, even though Congress has delegated authority from “the beginning of the government,” the Supreme Court “has found only two delegations to be unconstitutional.” *Big Time Vapes*, 963 F.3d at 442, 446 (quoting *United States v. Grimaud*, 220 U.S. 506, 517 (1911)). In both of those cases, “‘Congress had failed to articulate any policy or standard’ to confine discretion.” *Gundy v. United States*, 588 U.S. 128, 130 (2019) (plurality op.) (quoting *Mistretta*, 488 U.S. at 373, n.3).

More specifically, in *Panama Refining Co. v. Ryan*, “Congress left the matter to the President without standard or rule, to be dealt with as he pleased” by permitting him to prohibit the shipment of oil for any reason. 293 U.S. 388, 419 (1935). As the Supreme Court later explained, the stricken delegation “provided literally no guidance for the exercise of discretion.” *Whitman*, 531 U.S. at 474.

Similarly, in *A.L.A. Schechter Poultry Corporation v. United States*, the statute authorized private parties to write, and the President to approve or prescribe, “codes of fair competition” in order “to rehabilitate industry.” 295 U.S. 495, 535 (1935). However, Congress did not prescribe any methods to attain that goal, any limitations on the nature of the codes that could be created, or any standards against which the codes should be adjudged. *See Yakus*, 321 U.S. at 424. As the Supreme Court later explained, the stricken delegation “conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring ‘fair competition.’” *Whitman*, 531 U.S. at 474 (citation omitted).

The OSH Act’s delegation of authority meaningfully and repeatedly constrains the Secretary’s discretion in issuing Section 6(b) safety standards. It bears no resemblance to the unbridled statutes found constitutionally lacking in *Panama Refining Company* and *Schechter Poultry*. And every court of appeal to consider a nondelegation challenge to Section 6(b) has upheld the Secretary’s authority.

Most recently, the Sixth Circuit found that the OSH Act “passes the ‘intelligible principle’ test” in a challenge that raised arguments nearly identical to those presented by Plaintiffs here. *Allstates*, 79 F.4th at 764. The Sixth Circuit emphasized that the Act “sets forth a host of principles, purposes, and goals that the agency must consider or fulfill”; that the Act “significantly limits OSHA’s discretion in deciding whether it may issue a particular occupational safety and health standard”; and that “OSHA may adopt only those conditions that are ‘reasonably necessary or appropriate’ to improve workplace safety.” *Id.* at 764–65. The D.C. Circuit likewise upheld this delegation to OSHA, stating that “one cannot plausibly argue that [the Act’s] ‘reasonably necessary or appropriate to provide safe or healthful employment and places of employment’ standard is not an intelligible principle.” *Nat’l Mar. Safety Ass’n*, 649 F.3d at 756 (citation omitted). As the D.C. Circuit explained, the Secretary’s authority to promulgate “safety standards that are ‘reasonably necessary or appropriate to provide safe”’ places of employment “is no broader than other delegations that” the Supreme Court has upheld—such as delegations to “act in the ‘public interest,’” “or in a manner ‘requisite to protect the public health,’” “or when ‘necessary to avoid an imminent hazard to the public safety.’” *Id.* at 755–56 (citation omitted). Likewise, the Seventh Circuit found it “perfectly clear” that Congress “chose[] a policy and announced general standards” to guide the Secretary’s discretion. *Blocksom & Co.*, 582 F.2d at 1126.

Thus, Plaintiffs’ nondelegation doctrine challenge to OSHA’s authority to issue Section 6(b) safety standards has been rejected by every Circuit that has considered it. *See Blocksom*, 582 F.2d at 1125; *Nat’l Mar. Safety Ass’n*, 649 F.3d at 755; *Allstates*, 79 F.4th at 759. This Court should not depart from those decisions.

3. The Doctrine of Constitutional Avoidance Requires the Court to Uphold the Act

In any event, the Court should interpret Section 6(b) of the OSH Act so as not to raise constitutional concerns. “A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.” *Texas v.*

Yellen, 597 F. Supp. 3d 1005, 1016 (N.D. Tex. 2022), *aff'd*, 105 F.4th 755 (5th Cir. 2024) (citing *Lyng v. Nw. Indian Cemetery Prot. Ass'n*, 485 U.S. 439, 445 (1988)). Thus, “where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [the Court’s] duty is to adopt the latter.” *Jones v. United States*, 526 U.S. 227, 239 (1999) (quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)) (alteration in original).

OSHA’s longstanding interpretation—which tracks the text of the Act itself—requires that Section 6(b) safety standards materially reduce a significant risk of serious physical harm, be economically and technologically feasible, and provide a high degree of protection. Control of Hazardous Energy Sources (Lockout/Tagout), 58 Fed. Reg. 16612-02, 16614–16 (Mar. 30, 1993); *see Int’l Union, UAW*, 37 F.3d at 668. Contrary to Plaintiffs’ argument, this construction is not a strained reading of the statute. And, because the OSHA Act permits reasonable interpretation with adequate limiting principles, the Court should adopt that interpretation, which avoids implicating constitutional issues. As discussed above, every court of appeals to consider this issue has done just that.

Accordingly, the Court should adopt the interpretation that upholds the Act and avoids the constitutional question.

B. Summary Judgment Should Be Denied to Plaintiffs Because Their Arguments Are Foreclosed by Binding Precedent

Despite the significant statutory constraints on section 6(b) safety-standard promulgation discussed above, Plaintiffs nonetheless insist that the Act fails the intelligible principle test. Their arguments fall into five categories. Specifically, Plaintiffs: (1) leverage the “or” in “necessary or appropriate” to manufacture non-existent discretion, (2) misattribute Congress’ textual boundaries in the Act to either OSHA or the courts, (3) rely in error on the Supreme Court’s decision in *Consumers’ Research*; (4) appeal to the standardless delegations of the New Deal Era; and (5) suggest that this Court

revisit the intelligible principle test that the Supreme Court reaffirmed last term. Each of these arguments lacks merit.

1. The OSH Act Provides Boundaries

Plaintiffs argue that “Congress’s use of the disjunctive, ‘or,’ in the phrase, ‘reasonably necessary or appropriate’ exacerbates the freewheeling nature of” the OSH Act’s standard-setting authority. Pls.’ Br. at 22. But courts should “not examine . . . statutory phrases in isolation but instead look[] to the broader statutory context[], which inform[s] their interpretation and supplie[s] the content necessary to satisfy the intelligible-principle test.” *Consumers Rch.*, 606 U.S. at 684. This principle renders meritless Plaintiffs’ contention that the disjunctive “or” in the phrase “reasonably necessary or appropriate” means the statute violates the nondelegation doctrine.

Plaintiffs fail to consider the context and structure surrounding Section 6(b). The boundaries on the Secretary’s authority, as already described, exist whether a standard is reviewed for either reasonableness, necessity, appropriateness, or all three taken together. A standard that is not technologically feasible, for instance, is not “necessary,” “appropriate,” or “reasonably necessary,” and the OSH Act, viewed as a cohesive whole, makes this point unassailable. Moreover, no court has found merit in the disjunctive “or” point. Rather, every court that has considered the issue has concluded that the Act’s definition of “standard” meaningfully constrains the Secretary’s discretion. *See Allstates*, 79 F.4th at 765; *Nat’l Mar. Safety Ass’n*, 649 F.3d at 755–56; *Blocksom & Co.*, 582 F.2d at 1126.

Plaintiffs also erroneously suggest that “Congress does not require OSHA to make any findings before using its authority.” Pls.’ Br. at 21 (emphasis omitted). But significant risk, technological feasibility, and economic feasibility, among others, are threshold findings that OSHA must make before issuing a safety standard. *See Benzene*, 448 U.S. at 642; *Cotton Dust*, 452 U.S. at 505–506 & n.25; *see also supra* Part IV.A.1. As explained above, if the Secretary issues a permanent standard

that “differs substantially from an existing national consensus standard,” she must explain why the permanent standard “will better effectuate the purposes” of the Act. 29 U.S.C. § 655(b)(8).¹³ And she must initiate the standard-setting process if she “determines” that “a rule should be promulgated in order to serve the objectives of [the Act].” *Id.* § 655(b)(1). These provisions *require* the Agency to establish a factual record before acting (or declining to act), and not one was acknowledged by Plaintiffs.

Likewise, Plaintiffs ignore the Act’s procedural limitations under which the Secretary labors. For instance, Plaintiffs argue that the Act leaves the Secretary free to “not even . . . act at all” in the face of a significant risk. (Pls.’ Br. at 27 (internal quotation marks omitted)). In other words, Plaintiffs claim that the Secretary has the discretion to refrain from acting. Plaintiffs are incorrect. The Act provides that once OSHA “determines” that certain workplace conditions are not safe, OSHA then *must* enact a safety standard that provides a high degree of worker protection. 29 U.S.C. § 655(b)(8); *see supra* Part IV.A.1. Plaintiffs’ contrary interpretation would be flatly at odds with the statute’s text and purpose. Moreover, and further undermining Plaintiffs’ argument, courts have ordered the Agency to take action after finding that the statute mandates that it do so. *See JTB Tools & Oilfield Servs., L.L.C. v. United States*, 831 F.3d 597, 600 (5th Cir. 2016) (holding that courts of appeal “have exclusive authority to resolve allegations that OSHA unlawfully failed to act.”); *see also Pub. Citizen Health Rsch. Grp. v. Chao*, 314 F.3d 143, 145, 151–54 (3d Cir. 2002) (ordering issuance of safety standard after OSHA determined that the existing standard was inadequate to address a significant risk to worker health); *Pub. Citizen Health Rsch. Grp. v. Auchter*, 702 F.2d 1150, 1153–54, 1157 (D.C. Cir. 1983) (ordering expedited issuance of safety standard after OSHA determined that the existing standard was inadequate).

¹³ *See also AFL-CIO v. Brennan*, 530 F.2d 109, 123–24 (3d Cir. 1975) (remanding power press standard for explanation of why its departure from an applicable consensus standard better effectuates the Act’s purposes).

2. These Boundaries Were Created by Congress—Not the Courts or The Agency Itself

Plaintiffs also erroneously argue that “OSHA has attempted to voluntarily relinquish some of the broad discretion granted by the OSH Act to try to supply a missing intelligible principle,” Pls.’ Br. at 25, and cases (namely *Allstates*) have “attempted to cure the Act’s overly broad delegation of legislative power by reading . . . self-created limitations into the Act’s text,” *Id.* But the Supreme Court *Benzene* plurality concluded that the Act’s text mandates a finding of significant risk before a safety standard may issue, and the Supreme Court reaffirmed that conclusion in *Cotton Dust*. *See Benzene*, 448 U.S. at 639-43; *Cotton Dust*, 452 U.S. at 505-06 & n.25, 513 n.32. Moreover, in *Cotton Dust*, the Court made clear that statutory limitations on the Agency’s authority include that a standard must be economically and technologically feasible. Because “any standard that [i]s not economically or technologically feasible would a fortiori not be ‘reasonably necessary or appropriate’ under the Act,” *Cotton Dust*, 452 U.S. at 513 n.31, it follows that economic and technical feasibility is a congressionally mandated—not court imposed—limitation on OSHA’s rulemaking authority.

The Fifth Circuit has long recognized and enforced these statutory guardrails. *See Nat’l Grain & Feed Ass’n*, 866 F.2d at 738. So too have other courts of appeal. *See, e.g., Nat’l Mar. Safety Ass’n*, 649 F.3d at 752-53. And based on these Supreme Court precedents, the Sixth Circuit explicitly recognized that these “feasibility” and “significant risk” limitations on the Secretary’s authority “are rooted in the language of the Act itself, not, for example, in any agency-imposed limitation.” *Allstates*, 79 F.4th at 765.

Plaintiffs’ criticism of *Allstates* is similarly misplaced. The *Allstates* Court, like the Supreme Court in *Consumers’ Research*, reviewed the statutory text as a whole and in accordance with the text’s plain meaning to ultimately conclude that the Act itself provided meaningful constraints on agency power. *Consumers’ Rsch.*, 606 U.S. at 681–82. And upon review of that statutory text, *Allstates* rightly concluded that the Act “limits OSHA’s oversight to the workplace and restrict its standards to those

that facilitate workplace safety,” *Allstates*, 79 F.4th at 764, and held that the Act’s text—i.e., that the Agency may only promulgate “practices, means, methods, operations, or processes, *reasonably necessary or appropriate* to provide safe or healthful employment and places of employment”—supplies “the main ‘statutory criteria’ providing ‘direction’ to OSHA’s promulgation of permanent safety standard,” *id.* at 763 (emphasis in original) (citing *Benzene*, 448 U.S. at 640 n.45).

For these reasons, the Plaintiffs’ challenge fails.

3. *Consumer’s Research* Reaffirms the Intelligible Principle Test and Dooms Plaintiffs’ Argument

In contending that, “[u]nlike in *Consumers’ Research*, Congress set no statutory boundaries for OSHA,” Pls.’ Br. at 19 (emphasis omitted), Plaintiffs conduct a contrived dissection of the statute at issue in that case in an unsuccessful effort to demonstrate that the OSH Act fails by comparison, *id.* at 14–17. But this extensive discourse on *Consumers’ Research*—which *rejected* a nondelegation challenge—underscores their disregard of the OSH Act’s plain statutory text. Although Plaintiffs acknowledge that *Consumers’ Research* reaffirmed the use of “the usual intelligible-principle test,” Pls.’ Br. at 14 (quoting *Consumers’ Rsch.*, 606 U.S. at 680), Plaintiffs conduct a one-to-one comparison of the facts involved in this case to those in *Consumers’ Research*, and ultimately conclude the OSH Act’s safety standards delegation “fails” under the Court’s framework in that case. *Id.* at 22–32. They are wrong.

Implicit in their analysis is a suggestion that *Consumers’ Research* established a new test or heightened showing for an intelligible principle. But the *Consumers’ Research* Court repeatedly relied on its prior caselaw, and in rejecting the nondelegation challenge before it, concluded: “Congress laid out the general policy to be achieved, the principles and standards the FCC must use in pursuing that policy, and the boundaries the FCC may not cross. Our precedents do not require more.” 606 U.S. at 698 (citation modified). As explained above, the OSH Act’s safety standards delegation is

constitutional under these existing precedents, and nothing in *Consumers' Research* changes the substance of that analysis.

In Plaintiffs' view, the OSH Act differs from the statute at issue in *Consumers' Research* because the latter came with a congressionally established "clear policy" and "specific statutory boundaries." To the contrary, the OSH Act has both. *See supra* at Pt. IV.B.1. Like the authorization to the FCC to collect money in an "amount that is 'sufficient' to support the universal-service programs," *Consumers' Research*, 606 U.S. at 681, Congress "made clear the parameters" of OSHA's authority—and OSHA "has operated within them." 606 U.S. at 686-87; *see supra* Section II.B.1–2. Moreover, the statutory language approved by *Consumers' Research* is markedly similar to the "reasonably necessary or appropriate" language at issue here. *See id.* at 681 (defining "sufficient" as "'adequate' or 'necessary' to achieve [its] purpose," which "sets a floor and a ceiling" on the amount of money the FCC can collect to fund the programs); *see also Whitman*, 531 U.S. at 475 ("[W]e did not require the statute to decree . . . how 'necessary' was necessary enough[.]") (citing *Touby v. United States*, 500 U.S. 160, 163 (1991)). *Consumers' Research* thus provides this Court with more reason, not less, to reject Plaintiffs' claim.

Congress clearly established extensive boundaries—all derived from the statutory text—on OSHA's discretion and they are "sufficiently definite and precise" to guide OSHA's direction. Pls.' Br. at 19. It thus is no answer to say that the Act presents a nondelegation problem because Congress authorized the agency to make "its own policy judgment," *id.* at 28, and to weigh competing considerations, *id.* at 30. *Mistretta* and *Consumers' Research* foreclose that argument. In the former, the Supreme Court was unanimous in upholding Congress's delegation of authority to the Sentencing Commission to promulgate then-binding Sentencing Guidelines, even though the Sentencing Commission was granted "significant discretion in formulating [sentencing] guidelines," including "to determine the relative severity of federal crimes and to assess the relative weight of the offender characteristics." *Mistretta*, 488 U.S. at 377. The Court made clear that its "cases do not at all suggest

that delegations of this type may not carry with them the need to exercise judgment on matters of policy.” *Id.* at 378. And more recently in *Consumers’ Research* (issued just last term), the Supreme Court explained that while agencies may have to “strike balances” between competing considerations, “that kind of discretion—balancing or no—does not raise a constitutional problem: A ‘degree of policy judgment,’ . . . ‘can be left to those executing or applying the law.’” *Consumers’ Rsch.*, 606 U.S. at 688–89 (quoting *Whitman*, 531 U.S. at 474–75).

4. Plaintiffs’ New-Deal-Era Caselaw Is Inapt

In the Plaintiffs’ view, the OSH Act is “akin” to the statutes at issue in *Panama Refining* and *Schechter Poultry*—the only two decisions in which the Supreme Court has found a nondelegation problem. Those two cases, however, underscore the errors in Plaintiffs’ analysis. The Supreme Court has described the provision at issue in *Panama Refining*, which permitted the President to prohibit the shipment of oil for any reason, as “provid[ing] literally no guidance for the exercise of discretion.” *Whitman*, 531 U.S. at 474. There, “Congress left the matter to the President without standard or rule, to deal with as he pleased.” *Panama Refining*, 293 U.S. at 418–19. Similarly, in *Schechter Poultry*, the statute authorized private parties to write, and the President to approve or prescribe, “codes of fair competition” in order “to rehabilitate industry,” 295 U.S. at 530–31 & n.9, but did not prescribe any method of attaining that goal, any limitations on the nature of the codes that could be created, or the standards against which the codes should be adjudged, *see Yakus*, 321 U.S. at 424 (discussing *Schechter*). And the power to write the codes was placed not with “a public official responsible to Congress or the Executive,” but rather “private individuals engaged in the industries to be regulated.” *Id.*

For the reasons already explained, Congress’s delegation to the Secretary cannot plausibly be compared to the boundless delegations at issue in those cases, where Congress “placed almost no limits on how the President—and in *Schechter’s* case, private groups—could wield their delegated authority.” *Big Time Vapes*, 963 F.3d at 446 & n.27; *accord Mistretta*, 488 U.S. at 373 n.7 (“In *Schechter*

and *Panama Refining* . . . Congress had failed to articulate any policy or standard that would serve to confine the discretion of the authorities to whom Congress had delegated power.”). In other words, and like most of their arguments, Plaintiffs cannot escape that their advanced positions have received no traction for nearly a century—even if they are not entirely foreclosed by binding precedent.

5. This Court May Not “Revisit” the Intelligible Principle Test, Which the Supreme Court Has Recently Reaffirmed

Finally, Plaintiffs’ last-ditch argument is that “[i]f OSHA’s mandate to promulgate ‘reasonably necessary or appropriate’ safety standards for almost every employer in the country meets the intelligible principle test, then the test is meaningless and the Supreme Court should revisit it.” Pls.’ Br. at 27. But of course, lower courts are required to apply the Supreme Court’s precedent, “not . . . read tea leaves to predict where it might end up.” *Big Time Vapes*, 963 F.3d at 447 (citation omitted). Notably, as Plaintiffs acknowledge (Pls.’ Br. at 22–23), just this past year the Supreme Court reaffirmed the “usual” intelligible principle test as the appropriate standard in nondelegation challenges. *Consumers’ Rsch.*, 606 U.S. at 673–75, 680.

V. Plaintiffs’ Requested Relief Should be Denied.

A. Legal Standards for a Permanent Injunction

An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). An injunction also “does not follow from success on the merits.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008). “[A] plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief.” *Monsanto*, 561 U.S. at 156 (alteration in original). That is, “[a] plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Id.* at 156–57. The first two factors overlap: “[i]n general, a

harm is irreparable where there is no adequate remedy at law, such as monetary damages.” *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (citing *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981); *Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975)). Similarly, “[t]he final two injunction factors—balance of harms and the public interest—‘merge when the Government is the opposing party.’” *Space Exploration Techs. Corp. v. NLRB*, 151 F.4th 761, 773 (5th Cir. 2025) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). The party seeking relief must satisfy a cumulative burden of proving each of the four elements enumerated before an injunction can be granted. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987).

Here, each factor favors the Government. First, Plaintiffs lack an irreparable harm. For the reasons discussed above, Plaintiffs have not suffered any injury whatsoever. To the extent the Court disagrees, any purported injury is not irreparable, and in any event, Plaintiffs have not satisfied their burden of pleading such injury.

Second, the balance of hardships and public interest clearly favor maintaining workplace safety standards and OSHA’s ability to issue them. Protecting the safety of American workers is “a compelling interest at the heart of government’s function.” *Hous. Chron. Publ. Co. v. City of League City*, 488 F.3d 613, 622 (5th Cir. 2007). OSHA does just that: since its creation, American workplaces have had roughly 8,500 fewer deaths per year, OSHA, U.S. Dep’t of Labor, *Commonly Used Statistics*, <https://perma.cc/WL65-9SUF>, and have seen workplace injuries reduced from 10.9 cases per 100 full-time equivalent workers in 1972 to 2.3 cases per 100 full-time equivalent workers in 2024, Jeff Brown, U.S. Bureau of Labor Statistics, Vol. 9/No. 9, *Nearly 50 Years of Occupational Safety and Health Data*, July 2020, at chart 1, <https://perma.cc/ZQ98-2WGT>. Enjoining OSHA from enforcing its safety standards would make such workplace deaths more likely, and potentially cause a myriad of other workplace safety hazards. Plaintiffs’ interest in, for example, not having to purchase a fire extinguisher, is slight in comparison. Accordingly, both the balance of hardships and public interest

weigh in favor of the government and the public, whose interests “merge” in this context. *Nken*, 556 U.S. at 435.

B. Plaintiffs Are Not Entitled to a Global Remedy

Plaintiffs seek two types of relief: (1) a declaratory judgment stating that the OSH Act’s Section 6(b) delegation and all safety standards issued under it “are unconstitutional” and (2) an order “preliminarily and permanently enjoining Defendants from enforcing 29 U.S.C. § 655(b) and regulations promulgated under it.” *See* Compl., Relief Requested at A–D; Pls.’ Br. at 28–29.¹⁴

In so doing, Plaintiffs ask the Court to declare universal legal rights of nonparties to this proceeding. Yet the Supreme Court in *Trump v. CASA, Inc.*, expressly repudiated the relief Plaintiffs request, holding that “[n]either declaratory nor injunctive relief . . . ‘can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs.’” 606 U.S. 831, 844 (2025) (quoting *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)). Because Article III of the Constitution allows courts to hear only “Cases” and “Controversies,” any remedy courts grant must “be tailored to redress the plaintiff’s particular injury,” *Gill v. Whitford*, 585 U.S. 48, 73 (2018), and courts cannot grant “relief that extend[s] beyond the parties.” *Trump v. CASA, Inc.*, 606 U.S. at 833 (citing *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 123 (1940); *Commonwealth of Mass. v. Mellon*, 262 U.S. 447, 487–89 (1923)).

The face of the Declaratory Judgment Act comports with the standard that relief should bind the parties alone. It states in relevant part that “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration.” 28 U.S.C. § 2201(a).

¹⁴ On February 2, 2026, this Court denied Plaintiffs’ request for a preliminary injunction because Plaintiffs failed to file a separate motion for their preliminary injunction request under Local Rule 7.1(h). *See* ECF No. 19. Therefore, Defendants only address Plaintiffs’ request for a permanent injunction.

Therefore, any declaratory judgment issued by a lower court must be limited to the “actual controversy” over which it has jurisdiction and may only declare the rights of “interested part[ies].” *Id.* In other words, relief must be limited to resolving “concrete disputes with consequences for the parties involved.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 384 (2024).

For the same reason, Plaintiffs are not entitled to a permanent injunction of every OSHA safety standard promulgated under Section 6(b) of the Act. Injunctions are an extraordinary remedy, *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 189–210 (2003); for that reason, injunctive relief should be no more burdensome to the agency than necessary to provide complete relief to the plaintiffs. “Complete relief is not a guarantee—it is the maximum a court can provide.” *CASA*, 606 U.S. at 854 (noting at the outset that “[t]raditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the plaintiffs in the lawsuit”).

Here, Plaintiffs only claim injuries from five OSHA Section 6(b) safety standards they or their members are allegedly subject to. Compl. ¶¶ 46–47. Therefore, even if the Court finds jurisdiction is proper, the Court can enjoin only those standards, and only as to their enforcement against Plaintiffs or their members, the only interested parties in this case.¹⁵ That would redress Plaintiffs’ claimed injuries,¹⁶ which arise from “their obligation to comply with OSHA’s safety standards,” namely the

¹⁵ Plaintiffs submit a single declaration in support of their claim of irreparable harm, *see* Galeazzi Decl., but part of the declaration would be inadmissible hearsay at trial, and therefore cannot be considered at summary judgment. *See Fowler v. Smith*, 68 F.3d 124, 126 (5th Cir. 1995) (“Evidence on summary judgment may be considered to the extent not based on hearsay or other information excludable at trial.”); *see also Corbett v. Texas Tech Univ. Health Scis. Ctr.*, No. 5:21-CV-281-H, 2023 WL 4424269, at *11 (N.D. Tex. July 10, 2023) (excluding paragraphs of a declaration offered in support of summary judgment that contain inadmissible hearsay). The Galeazzi Declaration states that Plaintiffs’ members “have told,” “have informed,” and “have stated” to Galeazzi that they are subject to the Tractor Safety Standard and would alter their safety training in the standard’s absence. Galeazzi Decl. ¶¶ 30–31. Because Galeazzi lacks personal knowledge about members’ compliance and training practices, this part of his declaration is hearsay and should not be considered. *Fowler*, 68 F.3d at 126.

¹⁶ However, as discussed above, Plaintiffs’ alleged injuries would not be redressed even if Plaintiffs were to prevail, because Plaintiffs do not challenge OSHA’s prior authority under Section

five identified in the Complaint. *Id.* ¶ 63. Enjoining enforcement of any but those five, or their enforcement against anyone but Plaintiffs, would constitute a universal injunction, which the Supreme Court has decisively rejected. *CASA*, 606 U.S. at 861.

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' motion to dismiss or transfer this action to the District of Columbia or to the McAllen Division of the Southern District of Texas. Alternatively, the Court should grant Defendants' cross-motion for summary judgment, deny Plaintiffs' motion for summary judgment, and enter judgment in favor of the Government.

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Respectfully submitted,

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6(a) to adopt national consensus standards during the first two years after the Act was adopted. *See supra*, Pt. II.A.