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INTRODUCTION

For more than fifty years, the Occupational Safety and Health Administration (“OSHA”) has, in accordance with Congress’ instructions, promulgated common-sense workplace safety standards that have protected millions of American workers from significant occupational hazards. Yet Plaintiffs – two trade associations employing a total of just seven people – now ask this Court to unwind over half a century of workplace safety improvements, against the interest of workers nationwide.

Plaintiffs bring this case without standing, before a Court without jurisdiction, and decades out of time. Should the Court nevertheless entertain the merits, Defendants are entitled to summary judgment. The OSH Act provides the requisite intelligible principle to guide OSHA’s exercise of congressionally delegated authority: it sets forth a clear policy of “assur[ing] . . . safe and healthful working conditions” for the American worker, 29 U.S.C. § 651(b), and it imposes at least eight statutory constraints upon OSHA’s exercise of authority in setting standards, *see infra* Section II.A.

Ignoring this compelling statutory authority, Plaintiffs instead rely upon a handful of *dissenting* opinions, and seek to have the Supreme Court revisit its decision from *just one year ago* in *FCC v. Consumers’ Research*, 606 U.S. 656 (2025). But the Supreme Court repeatedly has found even broad congressional delegations to be constitutional, and every court of appeals to consider the OSH Act’s Section 6(b) standard-setting authority has upheld its constitutionality. This Court should do the same.

ARGUMENT

I. Plaintiffs’ Complaint Is Not Properly Before the Court

Defendants’ cross-motion explained that (1) Plaintiffs lack Article III standing, *see* Defs.’ Mot., ECF 24, at 12–17; (2) the Court lacks subject-matter jurisdiction, *see id.* at 17–19; and (3) Plaintiffs’ claims are time-barred, *see id.* at 20–24. Each of these defects is independently fatal to this action, and Plaintiffs’ reply brief rebuts none of them.

A. Plaintiffs Lack Article III Standing

Plaintiffs must establish standing, but our motion demonstrated that they failed to show the required injury-in-fact, causal connection, and redressability for their claims. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *see* Defs.’ Mot. 12–17. In their reply brief, Plaintiffs argue that they have been injured because they are subject to an increased regulatory burden – largely ignoring the other elements of standing. *See* Pls.’ Rep., ECF 39, at 2–9.¹ Because Plaintiffs cannot show standing, the Court must end their case on this ground alone.

As a preliminary matter, Plaintiffs’ suggestion that they have standing merely because they are “employers” who “must comply with the various standards adopted under” Section 6(b) is in error. Pls.’ Rep. at 4. For standing to exist, an “injury must be ‘particularized’” rather than “a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens.” *Hotze v. Burwell*, 784 F.3d 984, 992 (5th Cir. 2015) (quoting *Lujan*, 504 U.S. at 560; *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). Such “a generally available grievance . . . does not state an Article III case or controversy,” and the plaintiff raising it “therefore lacks standing.” *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 428 (5th Cir. 2011) (quoting *Lujan*, 504 U.S. at 573–74). Thus, Plaintiffs’ mere “employer” status cannot suffice: were their argument correct, *every* employer could challenge *any* safety standard, even if they were not subject to it. Indeed, most OSHA safety standards do not impose obligations on Plaintiffs (or their members) at all.²

¹ Plaintiffs’ reply brief mischaracterizes our motion as having made only “two arguments” against standing: that Plaintiffs did not “suffer[] injuries,” and that Plaintiffs may not “seek[] relief for non-parties.” Pls.’ Rep. at 3. Plaintiffs are wrong. Our motion demonstrated that Plaintiffs failed to prove *any* of the elements of standing. *See* Defs.’ Mot. at 16 (“Plaintiffs have not established injury in fact, causation, or redressability for any of their members.”); *see also, e.g., id.* at 13–15 (arguing no injury-in-fact and no redressability); *id.* at 15 (arguing no redressability).

² *See, e.g.,* 29 C.F.R. § 1910.266(b)(2) (standards for “logging operations”); *id.* § 1926.1201(a) (standards for “construction activities at a worksite with one or more confined spaces”).

Nor does it follow that simply being “subject” to a Section 6(b) safety standard imposes an “increased regulatory burden.” Pls.’ Rep. at 3–4. To give rise to standing, a regulation must have caused, or be poised to imminently cause, a plaintiff to suffer “[a]n *increased* regulatory burden” – i.e., one that imposes a greater burden upon the plaintiff than existed before. *Contender Farms, LLP v. U.S. Dep’t of Agric.*, 779 F.3d 258, 266 (5th Cir. 2015) (emphasis added); *see id.* (finding “increased regulatory burden” where regulation imposed “harsher, mandatory penalties”); *Texas v. EEOC*, 933 F.3d 433, 446 (5th Cir. 2019) (finding standing where plaintiff suffered “injuries as a result” of regulatory guidance). Here, in contrast, Plaintiffs simply assert that they are “subject to many” of OSHA’s safety standards. Pls.’ Rep. at 1. That is not enough. *See Nuclear Info. and Res. Serv. v. Nuclear Regul. Comm’n*, 457 F.3d 941, 954 (9th Cir. 2006) (rejecting argument that plaintiffs “need not show the [challenged] rule causes more injury than the previous rule”); Defs.’ Mot. at 14–17.

This principle applies with even greater force when a plaintiff may be subject to other state or local laws imposing requirements similar to those of the challenged standards. “When multiple laws cause the same harm, that injury may not be traceable or redressable when only one of those laws is challenged. . . . [O]ne law alone does not cause the injury if the other law validly outlaws all the same activity.” *Leal v. Becerra*, 2022 WL 2981427, at *2 (5th Cir. 2022). Such is the case here. For example, as we explained in our motion, the International Fire Code would still require Plaintiffs “to maintain a fire extinguisher in their offices” even if OSHA’s fire safety standard were no longer in effect. Defs.’ Mot. at 15.

Moreover, when OSHA uses Section 6(b) to “modify” an original Section 6(a) safety standard to make it *less* burdensome, that standard-setting *decreases* the burden on regulated parties. 29 U.S.C. § 655(b). Such actions cannot support Plaintiffs’ increased-regulatory-burden theory of injury. *See Nuclear Info.*, 457 F.3d at 954 (Plaintiffs lacked standing because their interests would “be served, not harmed, by the enactment of the [challenged] regulations.”); *Texas v. U.S. Dep’t of Homeland Sec.*, 722 F.

Supp. 3d 688, 709 (S.D. Tex. 2024) (Tipton, J.) (No injury-in-fact where plaintiffs were “injured by a program that ha[d] actually lowered their out-of-pocket costs.”). In addition, the Court cannot assume that, but for Section 6(b) standard setting, Plaintiffs would have a lower compliance burden because invalidating new regulations that modified prior regulations generally “has the effect of reinstating prior regulations.” *PJM Power Providers Grp. v. FERC*, 88 F.4th 250, 265 (3d Cir. 2023); *see Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) (The ordinary result when agency action is deemed invalid is to “re-establish the status quo absent the unlawful agency action.”).³ Here, those prior regulations are the initial safety standards issued under Section 6(a).

In any event, because “[P]laintiffs must demonstrate standing for each claim that they press,” they could only obtain relief limited to the specific safety standards that they rely upon for standing. *Murthy v. Missouri*, 603 U.S. 43, 61 (2024); *see* Defs.’ Mot. at 16; Pls.’ Rep. at 9 (acknowledging that Plaintiffs must “establish standing for the relief they seek”). Based upon their allegations of harm, Plaintiffs are limited to – at most – challenging OSHA’s first aid, fire safety, and tractor safety standards. *See infra* Section III. They lack standing to obtain broader relief from other safety standards.

B. This Court Lacks Subject Matter Jurisdiction

Our motion showed that this Court lacks jurisdiction over Plaintiffs’ claims because Section 6(f) of the OSH Act requires that pre-enforcement challenges to OSHA safety standards be brought in an appropriate court of appeals – not in district court. 29 U.S.C. § 655(f); *see* Defs.’ Mot. at 17–19. In their reply brief, Plaintiffs assert that they are exempt from Congress’ channeling of their claims to the court of appeals because they are challenging the constitutionality of the OSH Act rather than the validity of any particular OSHA safety standard. *See* Pls.’ Rep. at 10–12. But that distinction makes no difference. At bottom, Plaintiffs ask this Court to invalidate every Section 6(b) safety

³ Plaintiffs have not challenged the constitutionality of OSHA’s “start-up” safety standards under Section 6(a). *See* 29 U.S.C. § 655(a); Pls.’ Mot., ECF 4, at 3; Pls.’ Rep. at 19.

standard that applies to them and their members. *See* Pls.’ Rep. at 22 (asserting that Plaintiffs have been required to comply with “invalid OSHA safety standards”).⁴ And because “[a]ny person who may be adversely affected by a standard issued under [Section 6 of the OSH Act] may . . . file a petition challenging the validity of such standard with the United States court of appeals,” Plaintiffs have brought suit in the wrong court. 29 U.S.C. § 655(f).

Citing *Thunder Basin Coal Co. v. Reich* (“*Thunder Basin*”), 510 U.S. 200 (1994), and its progeny (including *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), and *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 561 U.S. 477 (2010)), Plaintiffs argue that their claims are excepted from the comprehensive review structure that Congress prescribed in the OSH Act. *See* Pls.’ Rep. at 10–12. But the *Thunder Basin* line of cases is no help to Plaintiffs. Because Congress expressly provided for exclusive review in the courts of appeals (instead of an administrative proceeding), and Plaintiffs were free to have commenced their action there, this case falls squarely outside of *Thunder Basin*’s exception permitting collateral district court actions. *See* 510 U.S. at 206, 212–13 (Plaintiffs must follow Congress’ statutorily prescribed review structure unless their claim: (1) is “wholly collateral” to the statute’s review provisions; (2) falls outside of the agency’s expertise; and (3) would be “foreclose[d] from] all meaningful judicial review.”). Applying the *Thunder Basin* factors, first, Plaintiffs’ claim is not wholly collateral to Section 6(f) because that section provides Article III review of the “validity” of OSHA standards – i.e., the very claims that Plaintiffs now bring. 29 U.S.C. § 655(f). The second factor, whether the claim is outside the agency’s expertise, is irrelevant because a case before a court of appeals is obviously not before an “agency” at all. Third, precluding district court jurisdiction would not foreclose all meaningful judicial review: Plaintiffs were free to file in the court of appeals and, if that

⁴ That Plaintiffs’ suit actually attacks the validity of five safety standards is reflected in the complaint, which has an entire section called “OSHA’s Use of the Delegated Powers” detailing the specific standards that Plaintiffs challenge. Compl. ¶¶ 35–42. Plaintiffs also specifically challenge the reasonableness and appropriateness of those standards. *See id.* ¶¶ 38, 40, 42.

action is now foreclosed, it is only because of Plaintiffs' own untimeliness. *See Elgin v. U.S. Dep't of Treasury*, 567 U.S. 1, 17–21 (2012) (determining that constitutional claims could receive meaningful review based upon review of the statutory scheme itself, not whether the plaintiffs could still use it).

Plaintiffs' reliance on *Axon* is similarly unavailing. *See* Pls.' Rep. at 11. There, plaintiffs filed collateral suits in district courts to enjoin administrative enforcement proceedings by the Federal Trade Commission and the Securities and Exchange Commission. *See Axon*, 598 U.S. at 180. Consistent with the principle that an adjudicatory body should not decide the constitutionality of its own existence, the Supreme Court held that the district courts had jurisdiction to hear the *Axon* plaintiffs' constitutional challenges to the structure of the FTC and SEC. *Id.* at 195–96. Here, in contrast, Plaintiffs do not have a pending OSHA enforcement proceeding. Nor do they ask this Court to enjoin an ongoing administrative adjudication. Instead, theirs is precisely the sort of pre-enforcement claim that Congress intended to be heard directly in the courts of appeals. *See* 29 U.S.C. § 655(f).

Plaintiffs also rely upon the *district court's* discussion of *Thunder Basin* in *Allstates Refractory Contractors, LLC v. Walsh*, 625 F. Supp. 3d 676 (N.D. Ohio 2022) – even though the Sixth Circuit did not address the issue on appeal, *Allstates Refractory Contractors, LLC v. Su* (“*Allstates*”), 79 F.4th 755 (6th Cir. 2023). *See* Pls.' Rep. at 10–11. But that discussion is inapposite. The *Allstates* district court considered the process for adjudicating *enforcement* actions under Sections 10 and 11 of the OSH Act. *See* 29 U.S.C. §§ 659(c), 660(a)–(b). It did *not* address whether the OSH Act's *pre-enforcement* review provision – Section 6(f) of the OSH Act – might preclude the plaintiffs' suit. *See* 29 U.S.C. § 655(f).

Both the Fifth Circuit and the D.C. Circuit have made clear that challenges to OSHA safety standards must be brought in the courts of appeals. In *JTB Tools & Oilfield Serv., LLC v. United States*, the Fifth Circuit held that “the plain text of the [OSH Act] grants exclusive jurisdiction to courts of appeals for standards issued by the Secretary.” 831 F.3d 597, 599 (5th Cir. 2016). Likewise, the D.C. Circuit has held that it has jurisdiction over challenges to OSHA standards under Section 6(f). *See*

Chamber of Com. v. U.S. Dep't of Lab., 174 F.3d 206, 211 (D.C. Cir. 1999) (citing 29 U.S.C. § 655(f)). Those holdings reflect that “[s]pecific grants of jurisdiction to the courts of appeals,” like Section 6(f) of the OSH Act, “override general grants of jurisdiction to the district courts.” *Ligon v. LaHood*, 614 F.3d 150, 154 (5th Cir. 2010).

In sum, Congress foreclosed district court review of pre-enforcement challenges to the validity of OSHA standards by channeling them directly to the courts of appeals. Plaintiffs’ claim is such a pre-enforcement challenge to the validity of OSHA safety standards promulgated under Section 6(b). Accordingly, the Court should dismiss Plaintiffs’ claims for lack of jurisdiction.⁵

C. Plaintiffs’ Action Is Untimely

Even if Plaintiffs had standing and this Court had jurisdiction, Plaintiffs’ claims would be untimely because they were: (1) brought more than 60 days after promulgation of the challenged safety standards, 29 U.S.C. § 655(f); (2) filed more than six years after Plaintiffs’ claims accrued, 28 U.S.C. § 2401(a); and (3) delayed inexcusably, unduly prejudicing the United States. *See* Defs.’ Mot. at 20–24.

1. The Statute of Limitations Bars Plaintiffs’ Claims

Our motion showed that Plaintiffs’ complaint is untimely under Section 6(f) of the OSH Act because Plaintiffs did not sue within 60 days of promulgation of the safety standards that they challenge. *See* Defs.’ Mot. at 21 (citing 29 U.S.C. § 655(f)). Indeed, Plaintiffs do not dispute that, if Section 6(f) applies, their claim has long been time-barred. *See* Pls.’ Rep. at 12–15. Thus, because Section 6(f) *does* apply to Plaintiffs’ pre-enforcement challenge, the Court need go no further to dismiss this action as untimely. *See supra* Section I.B.

⁵ Certain suits challenging OSHA’s actions may proceed in district courts, but this action is not one of them. For example, challenges to “regulations” that are not “standards” may be brought in district courts under the Administrative Procedure Act (APA). *See Chamber of Com.*, 174 F.3d at 209 (distinguishing between regulations and standards).

As we also demonstrated in our motion, Plaintiffs’ claims are independently time-barred by the default six-year statute of limitations for claims against the United States because Plaintiffs did not sue “within six years” of when their claims accrued. 28 U.S.C. § 2401(a); *see* Defs.’ Mot. at 20–23. In their reply brief, Plaintiffs argue that we have “mischaracterize[d] the nature of the relief Plaintiffs seek” and that their “injuries are continually refreshed every day.” Pls.’ Rep. at 13. Neither argument can resuscitate Plaintiffs’ long-barred claims.

First, Plaintiffs argue that Section 2401(a) does not apply to bar their claims because they are challenging the *existence of* Congress’ delegation of authority to OSHA. *See* Pls.’ Rep. at 13. But, as shown in our motion, Section 2401(a) applies to bar “*every civil action* commenced against the United States” that is filed more than six years after it accrues. 28 U.S.C. § 2401(a) (emphasis added); *see* Defs.’ Mot. at 20–21. This time bar applies to “suits seeking nonmonetary relief through *nonstatutory review* of agency action,” including constitutional actions seeking nonmonetary relief. *Geyen v. Marsh*, 775 F.2d 1303, 1309 (5th Cir. 1985) (emphasis added); *see Am. Stewards of Liberty v. Dep’t of Interior*, 960 F.3d 223, 226, 229 (5th Cir. 2020) (applying Section 2401(a) to Commerce Clause and Necessary and Proper Clause claims); *Doe v. United States*, 853 F.3d 792, 801–02 (5th Cir. 2017) (applying Section 2401(a) to Due Process claims); *see also Hearn v. McCraw*, 856 F. App’x 493, 495–97 (5th Cir. 2021) (dismissing Due Process claims on statute of limitations grounds). And, no matter how Plaintiffs frame their suit, the gravamen of their complaint is a challenge to the validity of safety standards promulgated decades ago. *See supra* n.4. *Every* alleged injury flows from OSHA-promulgated standards. Plaintiffs’ request for relief underscores the point: their complaint seeks a declaratory judgment stating that all Section 6(b) safety standards “are unconstitutional” and an order “preliminarily and permanently enjoining Defendants from enforcing” them. Compl. at 19 ¶¶ A–D; *see* Pls.’ Rep. at 22–24; *infra* Section III. Proclaiming that their claims are freestanding constitutional objections changes nothing about the nature of Plaintiffs’ suit.

The cases cited by Plaintiffs do not change the result that Section 2401(a) applies and bars their claims as untimely. *Free Enterprise Fund* addressed forum and review-channel questions; it did not exempt structural constitutional challenges from ordinary principles governing review of agency action. 561 U.S. at 491 n.2; *see* Pls.’ Rep. at 13. *Deanda v. Becerra*, 645 F. Supp. 3d 600 (N.D. Tex. 2022), is a non-binding, out-of-district trial court decision that relied upon the continuing violation doctrine, which is inapplicable to the claims asserted by Plaintiffs here. *See* Pls.’ Rep. at 13. And the cited district court decision in *Leal v. Azar*, 2020 WL 7672177 (N.D. Tex. 2020), was *vacated* on appeal by the Fifth Circuit, *Becerra*, 2022 WL 2981427; *see* Pls.’ Rep. at 13.

Plaintiffs’ invocation of the Declaratory Judgment Act, 28 U.S.C. § 2201, and *Danos v. Jones*, 652 F.3d 577 (5th Cir. 2011), likewise changes nothing. *See* Pls.’ Rep. at 14. The Declaratory Judgment Act is purely procedural and does not displace statutes of limitation. *See Algrant v. Evergreen Valley Nurseries Ltd. P’ship*, 126 F.3d 178, 181 (3d Cir. 1997) (“[A]n action for declaratory relief will be barred to the same extent the applicable statute of limitations bars the concurrent legal remedy.”). Plaintiffs cite *Danos* for the proposition “that a sovereign-immunity exception could apply,” but that language relates to exceptions to sovereign immunity, not to Section 2401(a)’s statute of limitations, and nothing in *Danos* suggests that *Geyen* is no longer good law. Pls.’ Rep. at 14–15.

Second, Plaintiffs argue that they have “ongoing injuries that are new every morning” which “are evergreen” for statute of limitations purposes. Pls.’ Rep. at 13–14. They begin by suggesting that *Corner Post, Inc. v. Board of Governors*, 603 U.S. 799 (2024), was limited to only APA claims. *See* Pls.’ Rep. at 12–13. But that decision was not so restricted: the Supreme Court explained that “[a] claim accrues when the plaintiff has the right to assert it in court” and that, for parties challenging agency action such as regulations, a cause of action accrues six years after they were injured and thus able to bring a claim. *Corner Post*, 603 U.S. at 804. Here, Plaintiffs have long had the ability to challenge OSHA’s safety standards. Indeed, under their theory of injury – ongoing adherence to allegedly unconstitutional safety

standards – their cause of action first accrued decades ago. *See McMaster v. U.S. Dep’t of Labor*, ___ F.4th ___, 2026 WL 1811016, at *2–3 (4th Cir. 2026) (Section 2401(a) barred pre-enforcement facial challenge to OSHA rule that plaintiffs could have brought more than six years earlier.).

In their reply brief, Plaintiffs cite *Kuhnle Brothers, Inc. v. County of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997), and *Kelley v. Azar*, 2021 WL 4025804 (N.D. Tex. 2021), in support of their apparent argument that they should be able to bring this action whenever they choose to do so. *See* Pls.’ Rep. at 14. But *Kuhnle Brothers* concerned a “continuing and accumulating harm” from substantive Due Process claims involving a daily deprivation of liberty and is not applicable here. 103 F.3d at 522. And *Kelley* is distinguishable because it involved claim accrual “when no formal review procedures exist” – a situation not present here given the comprehensive statutory review procedure in Section 6(f). 2021 WL 4025804, at *8. In any event, neither of these cases is binding upon this Court, and both of them predate the Supreme Court’s more recent jurisprudence on claim accrual in *Corner Post*.

Moreover, the Fifth Circuit has cautioned that courts “must be careful not to confuse continuous violations with a single violation followed by continuing consequences; only continuous unlawful acts can form the basis of a continuous violation.” *McGregor v. Louisiana State Univ. Bd. of Sup’rs*, 3 F.3d 850, 867 (5th Cir. 1993); *accord United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558 (1977) (“[T]he emphasis should not be placed on mere continuity [of harm]” but on “whether any present violation exists.”). Indeed, a panel of the Fifth Circuit has rejected Plaintiffs’ theory by distinguishing between a continuing injury and a continuing violation: in *Hearn*, the court rejected plaintiffs’ continuing violation theory and held plaintiffs’ claims to be time-barred because “[s]imply, there is only one act at issue,” the challenged legislation that had been enacted more than six years prior. 856 F. App’x at 496; *cf. Doe*, 853 F.3d at 794, 802 (finding the “continuing violation doctrine is inapplicable” to Due Process claims). The same reasoning applies here. Plaintiffs do not attempt to argue that the safety standards they challenge were promulgated within the last six years, or that they were first

allegedly injured by them within the last six years. Thus, Section 2401(a)'s six-year statute of limitations applies and bars Plaintiffs' claims.

2. Laches Bars Plaintiffs' Claims

For similar reasons, and as explained in our motion, laches also bars Plaintiffs' claims because: (1) there was "a delay in asserting the right or claim"; (2) "the delay was not excusable"; and (3) "there was undue prejudice." *Geyen*, 775 F.2d at 1310; *see* Defs.' Mot. at 23–24. Plaintiffs do not dispute their delay or its inexcusability,⁶ thereby conceding the first two elements. *See Audler v. CBC Innovis Inc.*, 519 F.3d 239, 255 (5th Cir. 2008) ("A party waives an issue if he fails to adequately brief it." (cleaned up)). Instead, in their reply brief, Plaintiffs argue that laches does not apply because there is no prejudice and because they "seek prospective relief." Pls.' Rep. at 15. Not so. Plaintiffs' inexcusable delay is profoundly prejudicial to the government, and their requested relief changes nothing.

First, Plaintiffs assert that there is no undue prejudice. *See* Pls.' Rep. at 15. But the prejudice wrought by Plaintiffs' dilatory action cannot be overstated: American workers have relied upon OSHA's safety standards and the safer working conditions that they have brought about for more than half a century. Likewise, American employers and the government have relied upon the uniformity and predictability of those safety standards. Allowing Plaintiffs to mount a belated broadside now would destabilize these settled reliance interests across the nation. "The government's interest in finality outweighs a late-comer's desire to protest the agency's action as a matter of policy

⁶ Both the Texas International Produce Association and the Texas Vegetable Association predate the enactment of the OSH Act and every single safety standard enacted under it, meaning that their asserted injury – compliance with the challenged safety standards – began accruing on the date that the standards took effect. Specifically, the Texas International Produce Association was created in 1942 and the Texas Vegetable Association was formed in 1984. *See* Defs.' Mot. at 22 nn.9, 10. Even looking at the most recent dates that the challenged standards were amended, any injuries flowing from them accrued no later than 2005. *See* Defs.' Mot. at 22 (explaining that the first aid standard was most recently amended in 1988, the fire safety standards were most recently amended in 2002, and the tractor safety standard was most recently amended in 2005).

or procedure.” *Wind River Mining Corp. v. United States*, 946 F.2d 710, 715 (9th Cir. 1991); *see Env’t Def. Fund, Inc. v. Alexander*, 614 F.2d 474, 478 (5th Cir. 1980) (Laches is “applicable to suits questioning public authority to act.”).

Second, Plaintiffs argue that laches is inapplicable to requests for prospective relief. Plaintiffs are wrong. “There is no doubt that laches may defeat claims for injunctive relief” *Abraham v. Alpha Chi Omega*, 708 F.3d 614, 626 (5th Cir. 2013). Thus, Plaintiffs’ prospective-relief, get-out-of-laches-free argument fails.

II. Congress’ Delegation of Authority to OSHA to Set Safety Standards Is Constitutional

Should Plaintiffs’ standingless, jurisdictionless, and untimely action be allowed to proceed, the Court should grant summary judgment in Defendants’ favor. Our cross-motion demonstrated that the OSH Act contains an intelligible principle that directs and constrains the Secretary’s exercise of discretion in setting workplace safety standards, and that this delegation is supported by both Supreme Court and court of appeals precedent, as well as the doctrine of constitutional avoidance. *See* Defs.’ Mot. at 24–42. In their reply brief, Plaintiffs fail to meaningfully engage with – let alone refute – our arguments, instead placing their trust in dissenting opinions and their hopes on changes in the law. *See* Pls.’ Rep. at 15–22.

A. The OSH Act Provides a General Policy and Clear Boundaries

“The parties agree that the cornerstone of the nondelegation analysis is whether Congress provided the agency with both a general policy and the boundaries of its delegated authority.” Pls.’ Rep. at 16 (citing Defs.’ Mot. at 26); *see Consumers’ Rsch.*, 606 U.S. at 673 (Congress provides an “intelligible principle” if it “made clear both the general policy that the agency must pursue and the boundaries of its delegated authority.” (cleaned up)).

As to the general policy of the OSH Act, our motion explained that “Congress declare[d] . . . 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); *see* Defs.’ Mot. at 26. In their reply brief, Plaintiffs acknowledge this general policy for OSHA. *See* Pls.’ Rep. at 17 (citing 29 U.S.C. § 651(b)).

As to the boundaries upon Congress’ delegation of authority, our motion explained that the OSH Act imposes *at least eight* constraints on the Secretary’s discretion by requiring that Section 6(b) safety standards: (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 applicable national consensus standard; (7) provide a high degree of worker protection; and (8) have costs that are reasonably related to their benefits. *See* Defs.’ Mot. at 26–31. In their reply brief, Plaintiffs claim that each of these statutory constraints is “illusory” – but Plaintiffs do little else to refute our arguments or the boundaries of OSHA’s standard-setting authority. Pls.’ Rep. at 17–18.

First, our motion demonstrated that the OSH Act requires safety standards to address a significant risk of harm by providing that standards must be “reasonably necessary or appropriate to provide safe or healthful employment.” 29 U.S.C. § 652(8); *see* Defs.’ Mot. at 26–27. We also explained that delegations of authority containing similar statutory language have been upheld by the Supreme Court. *See* Defs.’ Mot. at 27 (citing *Consumers’ Rsch.*, 606 U.S. at 681–82; *Whitman v. Am. Trucking Ass’n*s, 531 U.S. 457, 472 (2001); *Nat’l Broad. Co. v. United States* (“NBC”), 319 U.S. 190, 225–26 (1943)). In their reply brief, Plaintiffs argue – without development or authority – that this constraint is “a legislative judgment call.” Pls.’ Rep. at 18. As a preliminary matter, Plaintiffs have conceded this issue by “fail[ing] to adequately brief it.” *Audler*, 519 F.3d at 255. In any event, Plaintiffs’ undeveloped argument misses the mark: congressional delegations of authority appropriately may “carry with them the need to exercise judgment on matters of policy.” *Mistretta v. United States*, 488 U.S. 361, 378 (1989). Agencies may “strike balances” and “exercise[] significant discretion.” *Consumers’ Rsch.*, 606 U.S. at 688, 691. And there is nothing illusory about the significant-risk requirement: courts have not hesitated to

vacate OSHA standards that failed to meet it. *See Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.* (“*Benzene*”), 448 U.S. 607, 653 (1980) (plurality op.) (invalidating standard that did not “present[] a significant risk of harm in the workplace”); *Tex. Indep. Ginners Ass’n v. Marshall*, 630 F.2d 398, 414 (5th Cir. 1980) (vacating standard that was not “reasonably necessary and appropriate to remedy a significant risk”).

Second, our motion established that the OSH Act requires safety standards to be economically and technologically feasible by providing that standards must be “reasonably necessary or appropriate.” 29 U.S.C. § 652(8); *see* Defs.’ Mot. at 27–28. Again, Plaintiffs have conceded this issue, *see Audler*, 519 F.3d at 255, having provided only the conclusory reply that this feasibility constraint “would not bar any of the[] alterations” that they propose in their hypothetical about possible changes to the tractor safety standard, Pls.’ Rep. at 18; *compare id.* at 17–18 (speculating about alternative formulations of the tractor safety standard), *with infra* p.16 (demonstrating the force of the OSH Act’s statutory constraints on Plaintiffs’ hypothetical changes). And again, this constraint has real teeth, as courts have struck down safety standards on feasibility grounds. *See Nat’l Mar. Safety Ass’n v. OSHA*, 649 F.3d 743, 753–54 (D.C. Cir. 2011) (vacating safety standard for failure to establish feasibility).

Third, our motion showed that the OSH Act requires safety standards to focus on occupational hazards by providing that standards must relate to “employment and places of employment.” 29 U.S.C. § 652(8); *see* Defs.’ Mot. at 28. Our motion also explained the significance of this constraint: the Supreme Court struck down the COVID-19 vaccine mandate as “a general public health measure,” contrasting it to permissible workplace fire safety standards. *Nat’l Fed. of Indep. Bus. v. U.S. Dep’t of Lab.* (“*NFIB*”), 595 U.S. 109, 119 (2022); *see* Defs.’ Mot. at 28. Yet the entirety of Plaintiffs’ reply to these arguments consists of just five words: “Nor would the third (occupational)” constraint bar Plaintiffs’ hypothetical changes to the tractor safety standard. Pls.’ Rep. at 18; *compare id.* at 17–18, *with infra* p.16. Plaintiffs have thereby conceded this issue. *See Audler*, 519 F.3d at 255.

Fourth, our motion demonstrated that the OSH Act requires safety standards to “serve the [statute’s] objectives” by providing that the Secretary must make such a determination in order to initiate the standard-setting process. 29 U.S.C. § 655(b)(1); *see* Defs.’ Mot. at 28–29. We also explained that this statutory constraint is similar to those in other delegations of authority that have been upheld by the Supreme Court. *See* Defs.’ Mot. at 29 (citing *Mistretta*, 488 U.S. at 374–77). Here, Plaintiffs’ reply almost doubles to all of nine words: that “the fourth (serve the objectives of the OSH Act)” also would not bar Plaintiffs’ hypothetical changes to the tractor safety standard. Pls.’ Rep. at 18; *compare id.* at 17–18, *with infra* p.16. This issue, too, has thus been conceded by Plaintiffs. *See Audler*, 519 F.3d at 255.

Fifth, our motion established that the OSH Act requires safety standards to prescribe the use of warning labels and protective equipment as necessary. Defs.’ Mot. at 29 (citing 29 U.S.C. § 655(b)(7)). In their reply brief, Plaintiffs suggest that this protective-equipment requirement “is a *power*” and not “a constraint at all.” Pls.’ Rep. at 18. That argument misapprehends the nature of this statutory provision. By requiring OSHA to include these compliance actions when appropriate, OSHA is deprived of the discretion to omit them.

Sixth, our motion showed that the OSH Act requires safety standards to justify why a new standard is better than any existing national consensus standard. Defs.’ Mot. at 29 (citing 29 U.S.C. § 655(b)(8)). We also explained that this constraint meaningfully limits the Secretary’s discretion, as courts have rejected safety standards where OSHA failed to satisfy this requirement. *See id.* at 30 (citing *AFL-CIO v. Brennan*, 530 F.2d 109, 123–24 (3d Cir. 1975)). In their reply brief, Plaintiffs conflate the OSH Act’s better-standard requirement with “the basic principles of judicial review of agency actions” in the APA. Pls.’ Rep. at 18–19. But the former limits OSHA to issuing safety standards only if they would “better effectuate the purposes” of providing safe and healthful working conditions for the American worker, 29 U.S.C. § 655(b)(8), while – by Plaintiffs’ own admission – the latter merely

requires that “OSHA may not behave in an entirely arbitrary and capricious manner, bereft of evidence, reason, or logic,” Pls.’ Rep. at 18. In other words, the better-standard requirement imposes an additional meaningful constraint on the agency’s discretion and is in no way similar to, let alone duplicative of, the standard of review imposed by the APA.

Seventh, our motion demonstrated that the OSH Act requires safety standards to afford a high degree of protection. *See* Defs.’ Mot. at 30–31. In their reply brief, Plaintiffs concede that they “did not challenge the initial two years of OSHA’s rulemaking authority.” Pls.’ Rep. at 19. But their argument that Section 6(a) “is not relevant” misses the mark. *Id.* That section, which required OSHA to “promulgate the standard which assures the greatest protection,” remains part of the OSH Act to this day, 29 U.S.C. § 655(a), so its words must be “give[n] effect” when interpreting the statute, *Vanderlan v. United States*, 135 F.4th 257, 269 (5th Cir. 2025); *see Consumers’ Rsch.*, 606 U.S. at 684 (Supreme Court “did not examine those statutory phrases in isolation but instead looked to the broader statutory contexts . . . to satisfy the intelligible-principle test.”). Moreover, we also showed that this high-protection requirement is rooted in other provisions of the OSH Act, such as the statement of purpose, the General Duty Clause, and the requirement that new standards “better effectuate the purposes” of the statute. *See* Defs.’ Mot. at 30 (citing 29 U.S.C. §§ 651(b), 654(a)(1), 655(b)(8)). Plaintiffs’ silence on these provisions concedes our arguments. *See Audler*, 519 F.3d at 255.

Eighth, our motion established that, in the Fifth Circuit, the OSH Act requires that the costs imposed by safety standards be reasonably related to their benefits by providing that standards must be “reasonably necessary or appropriate.” 29 U.S.C. § 652(8); *see* Defs.’ Mot. at 31. In their reply brief, Plaintiffs appear to acknowledge that “the statutory language all but says” this is required, but offer that this constraint only “means the standard must not have ‘unreasonable’ costs.” Pls.’ Rep. at 19. Binding circuit precedent says otherwise: “the reasonably necessary requirement imposes a substantive limitation upon the regulatory authority of OSHA,” *Tex. Indep. Ginners Ass’n*, 630 F.2d at 409, requiring

that “[t]he protection afforded to workers” by its safety standards “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).

Plaintiffs’ musings about hypothetical changes to the tractor safety standard, 29 C.F.R. § 1928.51(d) & Appx. A, do nothing to undermine the efficacy of the statutory constraints on OSHA’s discretion. *See* Pls.’ Rep. at 17–18. As a preliminary matter, *any* changes to the standard would require OSHA to use the OSH Act’s “rigorous” notice-and-comment rulemaking process, and would hinge on the evidence in the rulemaking record. *NFIB*, 595 U.S. at 114; *see* 29 U.S.C. § 655(b)(1)–(4). It is unlikely that “rescind[ing] the Tractor Rule in full,” Pls.’ Rep. at 18, would be consistent with the protective purposes of the OSH Act, *see* 29 U.S.C. §§ 651(b), 655(b)(1). Conversely, to make the standard more stringent, OSHA would need to demonstrate that the change is needed to address a significant risk of harm that remains under the existing standard. *See id.* § 652(8). The specific changes that Plaintiffs contemplate also likely would be outside the boundaries of OSHA’s discretion. For example, it is highly questionable that replacing an annual training requirement with a monthly one would materially reduce a significant risk of harm, be economically feasible to implement, or provide safety benefits reasonably related to the additional cost. *See id.* It is likewise dubious that requiring training every five years instead of annually would serve the objectives of the OSH Act or provide a high degree of employee safety. *See id.* §§ 651(b), 654(a)(1), 655(b)(1), 655(b)(8). It is also doubtful that drawing distinctions based upon the tractor operator’s age, height, eyesight, or holding of other licenses not specific to tractor safety would materially address a significant risk of harm, produce benefits reasonably related to the costs, or serve the objectives of the OSH Act. *See id.* §§ 651(b), 652(8), 655(b)(1).

B. Courts Have Upheld the OSH Act and Similar Congressional Delegations

Our motion explained that the OSH Act’s delegation of authority to issue safety standards is consistent with that of other statutes the Supreme Court has found constitutional, starkly different from the two unbounded delegations that the Supreme Court has struck down, and has been upheld as constitutional by every court of appeals to consider the issue. *See* Defs.’ Mot at 31–34. In their reply brief, Plaintiffs largely ignore these authoritative decisions, instead relying upon *dissenting* opinions. *See* Pls.’ Rep. at 21.

First, our motion set forth six separate decisions in which the Supreme Court upheld broad delegations of authority, including to regulate broadcast licensing as “public interest, convenience, or necessity” requires, *NBC*, 319 U.S. at 225; to fix “fair and equitable” commodities prices, *Yakus v. United States*, 321 U.S. 414, 420 (1944); and to set nationwide air-quality standards “requisite to protect the public health,” *Whitman*, 531 U.S. at 472; *see* Defs.’ Mot. at 31–33 (citing *Mistretta*, 488 U.S. at 374–77; *NBC*, 319 U.S. at 225–26; *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 104–05 (1946); *Yakus*, 321 U.S. at 420; *Whitman*, 531 U.S. at 472; *Consumers’ Rsch.*, 606 U.S. at 681–82).

In their reply brief, Plaintiffs do not discuss five of these decisions – at all. As to the sixth, Plaintiffs argue that *Consumers’ Research* is distinguishable because “Congress provided policy guidance and firm boundaries to the [FCC] . . . but almost no policy guidance or boundaries to OSHA.” Pls.’ Rep. at 21. But Plaintiffs do not – and cannot – rebut that *Consumers’ Research* upheld a delegation with language that is “markedly similar” to that of the OSH Act. Defs.’ Mot. at 40; *compare Consumers’ Rsch.*, 606 U.S. at 681 (upholding delegation for FCC to collect “sufficient” – i.e., “‘adequate’ or ‘necessary’” – funds to support universal service programs), *with* 29 U.S.C. § 652(8) (requiring OSHA safety standards to be “reasonably necessary and appropriate to provide safe or healthful employment”). As the Supreme Court explained, that language limits the FCC to collecting an amount of money not “much beyond” or “much below” that which is adequate or necessary. *Consumers’ Rsch.*, 606 U.S.

at 682; *cf. Allstates*, 79 F.4th at 765–66 (“[R]easonably necessary and appropriate” limits OSHA to safety standards that are “within the bounds of common sense” and “not to the exclusion of all else.”). “[E]ven in sweeping regulatory schemes,” a statute need not “provide a determinate criterion for saying how much of the regulated harm is too much.” *Whitman*, 531 U.S. at 475 (cleaned up).

Second, our motion distinguished *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), and *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) – the “only two delegations [held] to be unconstitutional” by the Supreme Court – because they “placed almost no limits on” Congress’ “delegated authority.” *Big Time Vapes Inc. v. FDA*, 963 F.3d 436, 446 (5th Cir. 2020); *see* Defs.’ Mot. at 33. In their reply brief, Plaintiffs make the unsupported assertion that the OSH Act “resembles th[is] New-Deal-Era caselaw” because it “lack[s] guidance and boundaries.” Pls.’ Rep. at 21. But the OSH Act bears no resemblance to those unbridled delegations: while the statute in *Panama Refining* established “no criterion” and “no policy,” and the statute in *Schechter Poultry* “set . . . no standards,” *Consumers’ Rsch.*, 606 U.S. at 683, the OSH Act imposes at least eight specific, statutory constraints, *see supra* Section II.A; Defs.’ Mot. at 26–31.

Third, our motion emphasized that all three courts of appeals to consider the delegation of authority in Section 6(b) have determined that the OSH Act provides an intelligible principle and upheld its constitutionality. *See* Defs.’ Mot. at 33–34 (citing *Allstates*, 79 F.4th at 765; *Nat’l Mar. Safety Ass’n*, 649 F.3d at 755–56; *Blocksom & Co. v. Marshall*, 582 F.2d 1122, 1126 (7th Cir. 1978)). In their reply brief, Plaintiffs *do not even cite* any of these decisions – let alone attempt to engage with their sound reasoning. And although Plaintiffs dismiss these circuit court authorities as non-binding, *see* Pls.’ Rep. at 20–21, their own reliance on dissenting opinions and a law review article belies the weakness of their arguments, *see id.* at 1, 5, 15–17 (citing *Consumers’ Rsch.*, 606 U.S. at 741 (Gorsuch, J., dissenting); *Allstates*, 79 F.4th at 781 (Nalbandian, J., dissenting); *Allstates Refractory Contrs., LLC v. Su*, 603 U.S. ___,

144 S. Ct. 2490, 2490–91 (2024) (Thomas, J. dissenting from denial of certiorari); Cass R. Sunstein, *Is OSHA Unconstitutional?*, 94 Va. L. Rev. 1407, 1448 (2008)).⁷

C. The Doctrine of Constitutional Avoidance Requires Upholding the OSH Act

In any event, and as we explained in our motion, the doctrine of constitutional avoidance requires the Court to construe the OSH Act to avoid “grave and doubtful constitutional questions.” *Jones v. United States*, 526 U.S. 227, 239 (1999); see Defs.’ Mot. at 34–35. In their reply brief, Plaintiffs acknowledge that this principle is “undoubtedly true,” but try to shift their burden by arguing that “*Defendants* provide no reason to adopt an alternative construction of the statute.” Pls.’ Rep. at 20 (emphasis added). This they cannot do: it is *Plaintiffs* who must “shoulder the[] heavy burden to demonstrate that the Act is ‘facially’ unconstitutional.” *United States v. Salerno*, 481 U.S. 739, 745 (1987).

With little explanation, and even less authority, Plaintiffs argue that any constitutional “construction of the statute . . . is implausible.” Pls.’ Rep. at 20. Plaintiffs are incorrect. Both the Supreme Court’s plurality opinion in *Benzene* and the D.C. Circuit have applied the constitutional avoidance doctrine to support the constitutionality of the OSH Act. See *Benzene*, 448 U.S. at 646 (construing OSH Act to avoid a “sweeping delegation of legislative power”); *Int’l Union, UAW v. OSHA*, 37 F.3d 665, 669 (D.C. Cir. 1994) (OSHA’s construction “satisf[ies] the demands of the nondelegation doctrine.”). Further, all three courts of appeals that have considered the delegation in Section 6(b) have upheld its constitutionality. See *Allstates*, 79 F.4th at 763–68; *Nat’l Mar. Safety Ass’n*, 649 F.3d at 755–56; *Blocksom*, 582 F.2d at 1125–26. In other words, Plaintiffs’ is *not* the only plausible

⁷ Professor Sunstein concluded that the OSH Act’s delegation of authority to set safety standards is “probably” constitutional because the significant risk and feasibility requirements are “sufficiently intelligible and constraining” – directly undermining Plaintiffs’ reliance on that article. 94 Va. L. Rev. at 1437. Separately, Plaintiffs rely exclusively on two law review articles in their unsuccessful attempt to refute that the doctrine of constitutional avoidance requires the Court to uphold the OSH Act. See Pls.’ Rep. at 20 (citing Frank H. Easterbrook, *Do Liberals and Conservatives Differ in Judicial Activism?*, 73 U. Colo. L. Rev 1401, 1405 (2002); Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2146 (2016)); see generally Defs.’ Mot. at 34–35; *infra* Section II.C.

interpretation. Accordingly, the doctrine of constitutional avoidance requires this Court to adopt a constitutional construction of the OSH Act.

III. Plaintiffs Are Not Entitled to Extraordinary Injunctive or Declaratory Relief

Even if Plaintiffs had established success on the merits – and they have not – Plaintiffs still would not be entitled to the extraordinary injunctive and declaratory relief that they seek.

A. Plaintiffs Are Not Entitled to a Permanent Injunction

A permanent injunction is “a drastic and extraordinary remedy,” and requires a plaintiff to prove: “(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.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–67 (2010). As we explained in our motion, Plaintiffs have failed to meet this burden. *See* Defs.’ Mot. at 42–44.

As to irreparable injury and adequacy of remedy, our motion demonstrated that Plaintiffs failed to show irreparable harm because they failed to show that they had been harmed at all. *See id.* at 43. In their reply brief, Plaintiffs still fail to prove that they have suffered any harm. *See Gould v. Control Laser Corp.*, 650 F.2d 617, 621 (5th Cir. 1981) (“[A] movant must prove a substantial threat that he will suffer irreparable injury . . . before he will be entitled to a[n] . . . injunction.” (cleaned up)). Instead, Plaintiffs argue that “complying with a regulation later held invalid almost always produces the irreparable harm,” and that they “are required to daily comply with invalid OSHA safety standards.” Pls.’ Rep. at 22 (cleaned up). But, factually, that argument presumes Plaintiffs’ success on the merits – i.e., that OSHA’s Section 6(b) safety standards are unconstitutional. And, legally, courts “do not axiomatically find that a plaintiff will suffer irreparable harm simply because it alleges a violation of its rights.” *Hanson v. District of Columbia*, 120 F.4th 223, 244 (D.C. Cir. 2024) (cleaned up).

Plaintiffs also suggest – but do not develop – an argument “that sovereign immunity likely bars recovery of monetary damages.” Pls.’ Rep. at 22. But simply gesturing to sovereign immunity cannot make Plaintiffs’ purported injury irreparable. Were it otherwise, the extraordinary remedy of injunctive relief, “never awarded as of right,” would become automatic in a lawsuit against the United States. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

As to the balance of hardships and public interest, our motion established that Defendants’ interest in assuring the safety of American workers heavily outweighs Plaintiffs’ interest in avoiding the minor potential inconvenience of complying with reasonable, common-sense safety standards such as having a fire extinguisher in the workplace. *See* Defs.’ Mot. at 43–44. In their reply brief, Plaintiffs insist that there is “no interest in enforcing unconstitutional and illegal regulations.” Pls.’ Rep. at 23. But, once again, Plaintiffs’ argument presumes their success on the merits: indeed, Plaintiffs argue that, “[b]ecause all 29 U.S.C. § 655(b) safety standards stem from an unconstitutional delegation, OSHA suffers no injury from ceasing enforcement of them.” *Id.*

In any event, the balance of hardships requires “the potential harm to each party [to be] weighed.” *Trinseo Eur. GmbH v. Kellogg Brown & Root, LLC*, 165 F.4th 399, 423 (5th Cir. 2026); *see Winter*, 555 U.S. at 24 (“[C]ourts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” (cleaned up)); *Daniels Health Scis., LLC v. Vascular Health Scis., LLC*, 710 F.3d 579, 585 (5th Cir. 2013) (“Against these harms, the court weighed the money . . .”). As we explained in our motion – and Plaintiffs have not attempted to refute – OSHA saves the lives of 8,500 American workers *each year*, and has reduced workplace injuries by nearly fivefold. *See* Defs.’ Mot. at 43. Those actual savings of life and limb far outweigh the minor inconvenience that Plaintiffs might avoid if OSHA were enjoined.

B. Plaintiffs Cannot Obtain Universal Relief – for all Persons or from all Standards

Our motion demonstrated that, even if they were successful, Plaintiffs could not obtain universal relief on behalf of all persons or against all OSHA safety standards – whether through an injunction or a declaratory judgment. *See* Defs.’ Mot. at 44–46.

In their reply brief, Plaintiffs now concede that “*Trump v. CASA, Inc.* . . . bars a universal injunction in this case.” Pls.’ Rep. at 22 (citing 606 U.S. 831 (2025)). And Plaintiffs therefore have narrowed their request to seek an injunction in favor of only “Plaintiffs and their members.” *Id.* Accordingly, the most relief that Plaintiffs could be awarded would run in favor of only the Texas International Produce Association, the Texas Vegetable Association, and their respective members – not to all persons, and not for any non-parties to this action.

However, Plaintiffs continue to insist that “[c]omplete relief requires enjoining enforcement of *all* safety standards promulgated under” Section 6(b). *Id.* at 23–24 (emphasis added). But not every Section 6(b) safety standard affects Plaintiffs or their members, and it was Plaintiffs’ responsibility to first plead and then establish which standards do. Asking the Court to expand relief beyond the standards that Plaintiffs set out in their complaint transgresses the principle that relief “must be tailored to redress the plaintiff’s particular injury.” *Gill v. Whitford*, 585 U.S. 48, 73 (2018). Plaintiffs pled injuries arising out of OSHA’s first aid, fire safety, and tractor safety standards. *See* Compl. ¶¶ 57–59. The scope of any relief granted must similarly be limited to just those standards.

That Plaintiffs have requested declaratory relief does not expand the maximum relief that is available to them. The Supreme Court’s decision in *CASA* was unambiguous: “[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. at 844. But Plaintiffs’ requested declaration that Section 6(b) “unconstitutionally delegates legislative power to OSHA, and . . . is therefore unlawful,” would extend far beyond the safety standards that affect Plaintiffs and their

members – let alone the first aid, fire safety, and tractor safety standards identified in Plaintiffs’ complaint. Pls.’ Rep. at 24. And, though Plaintiffs make much of what supposedly complete relief might require, *see id.* at 23–24, “[c]omplete relief is not a guarantee – it is the maximum a court can provide,” *CASA*, 606 U.S. at 854. Accordingly, any declaratory relief likewise must be limited solely to the specific Section 6(b) safety standards challenged by Plaintiffs.

CONCLUSION

Over the course of more than half a century, OSHA’s safety standards have protected the life and limb of millions of American workers. Plaintiffs’ challenge seeks to roll back over fifty years of these workplace safety improvements, and has been brought lacking standing, jurisdiction, or timeliness. Congress’ delegation of authority in the OSH Act is amply supported by an intelligible principle and has been upheld as constitutional by every court of appeals to consider it. Accordingly, for the reasons set forth above and in our cross-motion, the Court should grant Defendants’ motion to dismiss, or in the alternative, grant Defendants’ cross-motion for summary judgment.

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Respectfully submitted,

ERIC J. HAMILTON
Deputy Assistant Attorney General

STEVEN C. HOUGH
Principal Deputy Solicitor of Labor

OF COUNSEL:

ALEXANDER K. HAAS
Director, Federal Programs Branch
U.S. Department of Justice

EDMUND C. BAIRD
Associate Solicitor
for Occupational Safety and Health

EDWARD M. WENGER
Senior Counselor

LOUISE M. BETTS
Counsel for Appellate Litigation

BRIAN A. BROECKER
Senior Attorney

United States Department of Labor

/s/ Garry D. Hartlieb

GARRY D. HARTLIEB
Illinois Bar No. 6322571
Special Attorney,
U.S. Department of Justice
Senior Counselor,
U.S. Department of Labor
Office of the Solicitor
200 Constitution Ave. NW
Washington, D.C. 20210
Tel.: (202) 693-5260
Fax: (202) 693-5261
hartlieb.garry.d@dol.gov

Counsel for Defendants