No. 18-2486

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE DONALD J. TRUMP,
President of the United States of America,
in his official capacity,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the District of Maryland
(Peter J. Messitte, District Judge)

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION TO EXTEND THE STAY OF DISTRICT COURT PROCEEDINGS

In requesting that this Court stay "all district court proceedings in this case" pending a potentially forthcoming petition for certiorari, Mot. 1, the President continues to treat the "drastic" and "extraordinary" remedy of mandamus as a common entitlement. But the en banc Court has already found that his arguments do not meet the high standard for mandamus. And to justify a continued stay, the President must clear even higher hurdles by showing: (1) "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari"; (2) "a fair prospect that a majority of the [Supreme] Court will vote to reverse" this

Court's en banc judgment; and (3) "a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

The President's motion fails at each step. First, none of the questions he intends to present in his petition for certiorari were squarely addressed by this Court, making the prospect of Supreme Court review—let alone a reversal—particularly remote. Next, the President has not shown that he would suffer irreparable injury in the absence of a stay. *Id.* That is not least because the District of Columbia and Maryland have not served the President himself with discovery, and requesting non-party discovery from certain government agencies generates no irreparable injury to him or the Executive Branch. Finally, if this were a close case—and it is not—it would be appropriate for this Court to "balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* That balance would surely favor respondents, who are suffering concrete, here-and-now injury as a result of the President's illegal conduct, and have been unable to achieve even limited, non-party discovery in a suit filed over three years ago.

ARGUMENT

I. The Court Should Deny A Stay Because The President Has Not Shown A Reasonable Probability Of Supreme Court Review Or A Fair Prospect Of Supreme Court Reversal.

The President identifies two issues that may be the subject of a forthcoming petition for certiorari: (1) whether the en banc Court erred in declining to issue a writ

of mandamus requiring immediate dismissal of the entire suit, Mot. 4-9; and (2) whether the Court erred in declining to issue a writ of mandamus directing the district court to certify its interlocutory decisions denying the President's motion to dismiss for review under 28 U.S.C. § 1292(b), Mot. 10-18.[1] Neither satisfies the Supreme Court's criteria for granting certiorari, *see* S. Ct. Rule 10, nor is there a fair prospect of reversal on either issue.

A. The Supreme Court is unlikely to review—let alone reverse—this Court's denial of mandamus relief dismissing the suit outright.

The President first asserts that the Supreme Court will likely review and reverse the en banc Court's denial of mandamus relief to dismiss the entire lawsuit. This claim is centered on a contention that it is "'clear and indisputable[]' that the *entire action* cannot lie," contrary to this Court's reasoned conclusion otherwise. Op. 15. There are three reasons why the President's position respecting the likelihood of Supreme Court review and reversal on this score is mistaken: first, the President has not shown that it is "clear and indisputable" that the District and Maryland lack a cause of action to enjoin the President; next, any petition would be an exceedingly irregular vehicle for resolving such a question; and, finally, the

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[1] Curiously, the President now leads with an argument that was a mere postscript to his original petition for a writ of mandamus. *Compare* Pet. 11-27 (requesting that this Court mandamus district court certification under Section 1292(b)), *with* Pet. 28-30 (requesting mandamus to dismiss outright); *see also* Op. 15 (characterizing the President's dismissal argument as "secondary").

President has never tried to satisfy the other criteria for mandamus relief, most importantly, that "there are no other adequate means of obtaining the relief sought." Op. 7 (citing *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004)).

1. It is far from "clear and indisputable" that the District of Columbia and Maryland lack a cause of action or an equitable remedy.

To begin, the Supreme Court is unlikely to review and reverse this Court's en banc decision because the President has failed to show any clear and indisputable error concerning whether the District and Maryland have a cause of action to seek equitable relief against the President for violating the Constitution. After thorough briefing and oral argument, an experienced district judge disagreed with the President's arguments in considered written opinions, and nine judges of this Court recognized that these issues are subject to reasonable disagreement—and thus outside the boundaries of mandamus. Op. 15, 19-21; *cf. In re Trump*, 781 F. App'x 1, 2 (D.C. Cir. 2019) (per curiam) (describing the cause-of-action question as "unsettled").

There is a good reason why the President's arguments have failed to clear the hurdle to mandamus relief: they are, at most, debatable, not conclusive. First, the President's position remains dependent upon an untenable overreading of *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475 (1866), when it is simply implausible to assert that the significance of *Johnson* for equitable causes of action is so clear

and indisputable as to warrant the drastic remedy of mandamus relief. That is particularly true here, where a prohibition on accepting unlawful payments from foreign powers and domestic officials requires only ministerial—and not discretionary—action. *See* Op. 20; *see also Johnson*, 71 U.S. at 499-501. Next, and critically, the President's assertion that equitable causes of action are limited to the preemptive assertion of a defense has been expressly disclaimed by the Supreme Court. *See Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010); *see also* Mandamus Opp'n 22 (citing cases). It thus cannot provide a foundation for mandamus relief.

2. A petition raising the cause-of-action issue would be a poor vehicle because this Court did not decide it, there is no circuit split on the issues, and the Supreme Court is unlikely to decide it in a mandamus posture.

Any petition for certiorari raising the cause-of-action issue would also fail to satisfy the Supreme Court's usual criteria for review. To begin, the en banc Court did not even resolve the issue in its decision; rather, it concluded only that "reasonable jurists can disagree in good faith on the merits of these claims." Op. 15. Given that no other federal appellate court has even *answered* the cause-of-action question raised by the President, and given that this Court did not reach any resolution of it either, it would be exceedingly irregular for the Supreme Court to grant review of this splitless, novel issue and decide it in the first instance. *See, e.g.*, *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1784 (2019)

(Thomas, J., concurring in the Court's refusal to review a question "because further percolation may assist our review of this issue of first impression"). Nor would the Court be likely to take on such a review within the stringent constraints of a mandamus proceeding.[2] Accordingly, the Supreme Court is unlikely to review and reverse this Court's decision denying a writ of mandamus directing dismissal of the entire suit.

3. The President's mandamus petition fails for the independent reason that he has not established the other criteria for mandamus relief.

In his motion, the President confines his focus to the second element of mandamus relief: that his right to dismissal is "clear and indisputable." *Cheney*, 542 U.S. at 381. But the mandamus standard is comprised of three discrete elements,

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[2] The President suggests—in passing and for the first time despite several rounds of briefing and four oral arguments in this matter—that the en banc Court's decision conflicts with *Newdow v. Roberts*, 603 F.3d 1002 (D.C. Cir. 2010). Not so. *Newdow* involved a challenge to religious aspects of the presidential inauguration ceremony. While explaining why the plaintiffs lacked standing to obtain prospective declaratory relief, the court reasoned that they challenged "a decision committed to the executive discretion of the President or the personal discretion of the President-elect," and that "[a] court—whether via injunctive or declaratory relief—does not sit in judgment of a President's executive decisions." *Id.* at 1012. This part of *Newdow* addressed only declaratory relief, not the existence of a cause of action. Moreover, the court was considering challenges to actions "committed to the executive discretion of the President," *id.*, whereas the premise of the District and Maryland's case is that the President lacks discretion to accept unconstitutional emoluments, *cf.* Op. 20 ("[E]ven if obeying the law were somehow an official executive duty, such a duty would not be 'discretionary,' but rather a 'ministerial' act within the meaning of *Johnson*.").

and the President has not offered "any independent argument that he meets the other two." Op. 15 n.5.[3] Any entitlement to mandamus relief is squarely foreclosed. The President has made no attempt to establish that he has "no other adequate means to attain the relief he desires." *Cheney*, 542 U.S. at 380 (quoting *Kerr v. U.S. Dist. Ct.*, 426 U.S. 394, 403 (1976)); *see In re United States*, 139 S. Ct. 452, 453 (2018) (in a mandamus case, denying the United States' request for stay where it had other adequate means to obtain relief). As a result, his petition for certiorari will not be a proper vehicle for the question he describes.

The "no other adequate means" requirement is "designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Cheney*, 542 U.S. at 380-81. That is, "[mandamus] is not to be used as a substitute for appeal, even though hardship may result from delay and perhaps unnecessary trial." *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964) (citations omitted); *see Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) (per curiam) ("It has been Congress' determination since the Judiciary Act of 1789 that as a general rule appellate review should be postponed until after final judgment has been rendered by the trial court."); *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 30 (1943)

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[3] Although the Court made this comment in reference to the President's request for mandamus certification under Section 1292(b), it applies with equal force to his request to dismiss the case outright.

("Where the appeal statutes establish the conditions of appellate review an appellate court cannot rightly exercise its discretion to issue a writ whose only effect would be to avoid those conditions . . . ."). In addition, "the rule that [mandamus] may not be used to substitute for appeal is at times rested on another ground . . . that the writs, although legal remedies, are controlled by the equitable principle that an alternative adequate remedy is to be preferred." Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 3932.1 (3d ed. 2020); *see id.* (emphasizing that "[a]ppeal, when available, is an adequate remedy to be preferred to a writ").

Here, the availability of other adequate relief is plain: the President may seek review of the district court's decision concerning the availability of an equitable cause of action on direct appeal after a final judgment is entered. The mere fact that he disagrees with the denial of his motion to dismiss does not suspend operation of the final-judgment rule. Even as the President, he may not skip the regular appeals process because, as the Supreme Court has explained, there is no "[p]residential privilege of immunity from judicial process under all circumstances." *Clinton v. Jones*, 520 U.S. 681, 704 (1997) (quoting *United States v. Nixon*, 418 U.S. 683, 706 (1974)).

Because there is an independent and sufficient basis on which to deny the President's petition for a writ of mandamus seeking dismissal of the entire case, the

Supreme Court is unlikely to grant his petition for certiorari and reverse the en banc Court's conclusion that the President is not entitled to such extraordinary relief.

B. The Supreme Court is unlikely to review and reverse this Court's denial of mandamus relief directing certification.

1. There is no clear and indisputable right to relief on the Section 1292(b) issue.

No appellate court appears to have *ever* issued a writ of mandamus to command Section 1292(b) certification after the district court has declined to certify. In fact, appellate courts have routinely held that they cannot or will not review a Section 1292(b) certification decision through mandamus. *See* Note, *Interlocutory Appeals in the Federal Courts Under 28 U.S.C. § 1292(b)*, 88 Harv. L. Rev. 607, 616-17 (1975) ("The courts of appeals have so far been unanimous in refusing to grant mandamus either to reverse the trial court's decision on certification or to review the underlying order on its merits. The statutory history of section 1292(b) plainly indicates that this is the correct result . . . ." (footnote omitted)). Because the President seeks relief that has never been granted—and that most courts have said is strictly forbidden—he cannot show a clear and indisputable right to relief. For that reason, the Supreme Court is unlikely to review and reverse this Court's holding that the President is not entitled to mandamus relief directing Section 1292(b) certification.

2. There is no circuit split on the Section 1292(b) issue.

The President is mistaken that the federal appellate courts are divided on the Section 1292(b) issue in any way that matters. As noted above, most federal appellate courts have recognized that the statutory structure of Section 1292(b), as well as traditional principles of mandamus review, categorically prohibit writs of mandamus directing a district court to certify an issue for review. *See, e.g.*, *In re District of Columbia*, No. 99-5273, 1999 WL 825415, at *1 (D.C. Cir. Sept. 1, 1999) (per curiam); *In re Phillips Petroleum Co.*, 943 F.2d 63, 67 (Temp. Emer. Ct. App. 1991); *Green v. Occidental Petroleum Corp.*, 541 F.2d 1335, 1338 (9th Cir. 1976) (per curiam); *Pfizer, Inc. v. Lord*, 522 F.2d 612, 614 n.4 (8th Cir. 1975); *Plum Tree, Inc. v. Stockment*, 488 F.2d 754, 755 n.1 (3d Cir. 1973); *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326, 1344 (2d Cir. 1972), *abrogated on other grounds by Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 256-57 (2010). Other courts of appeals have issued decisions that treat such relief as overwhelmingly disfavored and all but forbidden in the absence of clear evidence that the district court acted in bad faith. *See, e.g.*, *In re Ford Motor Co.*, 344 F.3d 648, 654-655 (7th Cir. 2003); *In re Maritime Serv. Corp.*, 515 F.2d 91, 92-93 (1st Cir. 1975) (per curiam).

In its decision here, this Court expressly declined to "foreclose the possibility" that "a writ of mandamus may issue . . . [i]f the district court ignored a request for

certification, denied such a request based on nothing more than caprice, or made its decision in manifest bad faith." Op. 14. This is easily the most forgiving standard that *any* appellate court has articulated. Yet, even under this standard, the President's petition fell short. That is because "the district court promptly recognized and ruled on the request for certification in a detailed written opinion that applied the correct legal standards. The court's action was not arbitrary or based on passion or prejudice; to the contrary, it was in its nature a judicial act." Op. 14 (internal quotation marks omitted). The President is thus unlikely to obtain review or reversal of this Court's decision on the basis of any alleged division in the federal appellate courts.

In a bid to escape that conclusion, the President relies on *Fernandez-Roque v. Smith*, 671 F.2d 426 (11th Cir. 1982), an opinion that did not even involve a district court's Section 1292(b) certification decision. Mot. 12-13. There, the district court had granted a temporary restraining order without deciding a threshold jurisdictional defense the government had tried to assert. *Fernandez-Roque*, 671 F.2d at 428-31. To ensure that a hearing on the court's subject-matter jurisdiction was "promptly conducted," the Eleventh Circuit invoked its mandamus authority to order the district court to conduct such a hearing and to certify its ruling to facilitate review. *Id.* at 431-32. Notably, in *Fernandez-Roque*, the district court had never ruled on the government's arguments, nor had it ruled on—or even been presented with—a

request for certification under Section 1292(b). Here, in contrast, the district court issued two thoughtful and detailed opinions addressing the President's motion to dismiss, and then issued *another* detailed opinion denying Section 1292(b) certification. In this way, *Fernandez-Roque* is fully consistent with this Court's en banc opinion. The President's reliance on that case only confirms the absence of a genuine split among the federal appellate courts.

3. Supreme Court review of the Section 1292(b) issue is independently foreclosed.

As discussed in the District and Maryland's response to the President's mandamus petition, there are three additional reasons why the President is unlikely to obtain Supreme Court review and reversal on the Section 1292(b) issue. First, even under the generic abuse-of-discretion standard that the President describes (which no appellate court has ever accepted), the district court did not commit clear and indisputable error in declining certification. *See* Mandamus Opp'n 19-32. Next, the President is not entitled to a writ of mandamus because he has other adequate means of obtaining relief; as described *supra* pp. 6-9, he may seek review of the district court's decisions "on direct appeal after a final judgment has been entered." *Allied Chem. Corp.*, 449 U.S. at 36; *see* Op. 15 n.5 ("The President has not offered any independent argument that he meets the other two criteria for mandamus relief."). Finally, the district court's denial of certification is not the sort of "really extraordinary" circumstance warranting mandamus relief. *Cheney*, 542 U.S. at 380.

The President has chosen to maintain ownership of his business empire while holding the Nation's highest public office. Proceeding to discovery in service of assessing whether he has violated the Constitution does not constitute an emergency requiring drastic intervention, especially given that nearly all discovery will simply trace payments from third parties to the President's ownership stake in the Trump International Hotel. Although such litigation may be inconvenient—as all lawsuits are—it adheres in every respect to the separation of powers. *See Clinton*, 520 U.S. at 705 n.40.

For all these reasons, the President has demonstrated neither a "reasonable probability that four Justices will . . . grant certiorari" nor "a fair prospect that a majority of the Court will vote to reverse the [en banc Court's] judgment." *Hollingsworth*, 558 U.S. at 190. His motion for a stay of proceedings pending a potential petition for certiorari should be denied.

II. The Court Should Deny A Stay Because The President Will Not Suffer Irreparable Injury In Its Absence.

To demonstrate entitlement to a stay, the President bears the burden of proving that he would suffer irreparable harm without one. *Hollingsworth*, 558 U.S. at 190. That harm must also be "imminent." *See White v. Florida*, 458 U.S. 1301, 1302 (1982) (Powell, J., in chambers). The President comes nowhere close to making the requisite showing.

A. The President faces no risk of irreparable harm.

The President asserts that denial of a stay will cause him irreparable harm "because this unprecedented and potentially sprawling suit would be allowed to continue and plaintiffs would be able to probe into his personal finances solely because of the office he holds." Mot. 18. That argument—based on vague claims of "potential[]" burden—fails on its own terms.

At the outset, the District and Maryland have not served the President with any discovery requests. "[T]he discovery here—business records as to hotel stays and restaurant expenses, sought from private third parties and low-level government employees—implicates no Executive power" or "Executive Branch prerogative." Op. 19. Indeed, the President points to no actual discovery request in this litigation to substantiate his supposed fear of a free-wheeling probe into his finances. His claim of irreparable harm is thus not "imminent," *White*, 458 U.S. at 1302, and cannot justify a stay pending potential further review. That is especially true given the availability of procedures—including protective orders—designed to ensure the confidentiality of any sensitive information and the appropriate scope of discovery requests. *See In re United States*, 884 F.3d 830, 835 (9th Cir. 2018) ("The defendants will have ample remedies if they believe a specific discovery request from the plaintiffs is too broad or burdensome.").

In any event, the common burdens of litigation—such as responding to discovery requests—do not automatically inflict irreparable harm, even on the President. The Supreme Court has rejected the notion that deference to the President entitles him to an "immunity from judicial process under all circumstances." *Clinton*, 520 U.S. at 704. Indeed, the judicial branch may "direct appropriate process to the President himself." *Id.* at 705.

Consistent with this principle, the district court has already noted the availability of procedures to minimize any discovery burdens on the President, were that need ever to arise in the future. *See* Mandamus Add. 132 (Dist. Ct. ECF No. 135 at 29) ("[T]he [c]ourt is always available to limit given discovery to minimize an unusual impact."); *see also United States v. Nixon*, 418 U.S. 683, 714 (1974) ("The guard, furnished to the President to protect him from being harassed by vexatious and unnecessary subpoenas, is to be looked for in the conduct of a district court after those subpoenas have issued; not in any circumstance which is to precede their being issued." (alterations omitted)). Of course, *if* the President is served with discovery, and *if* that discovery imposes an undue burden, and *if* the President asks the district court to intervene, and *if* the district court fails properly to address that burden, then "the President can always seek relief from intrusive or overbroad discovery orders . . . through a petition for a writ of mandamus." Op. 19 n.8. But that chain of conjecture does not support a claim for irreparable harm *now*.

B. The Executive Branch faces no risk of irreparable harm.

The President separately asserts that "the Executive Branch" would be injured by the denial of a stay "because five federal agencies would be required to comply with intrusive and burdensome subpoenas, including into sensitive matters about government decisionmaking." Mot. 18. That contention lacks merit.

It is commonplace in litigation to serve non-parties with discovery, and for the district court to evaluate whether any particular subpoena is unduly burdensome. *See* Fed. R. Civ. P. 45(d). And to the extent that responding to a subpoena requires effort or imposes some cost, *see* Mot. 1, 18-19, such circumstances are common in litigation generally, and do not qualify as irreparable injury. *See, e.g.*, *In re United States*, 884 F.3d at 836 ("To the extent that the defendants are arguing that executive branch officials and agencies in general should not be burdened by this lawsuit, Congress has not exempted the government from the normal rules of appellate procedure, which anticipate that sometimes defendants will incur burdens of litigating cases that lack merit but still must wait for the normal appeals process to contest rulings against them."); *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." (internal quotation marks omitted)).

Citing *Cheney*, the President suggests that the burdens at issue in this case are different because they are fraught with constitutional concerns. But, as the en banc Court has already concluded, the President is mistaken. *See* Op. 18 ("*Cheney* offers no assistance to the President here."). The discovery in *Cheney* involved "everything under the sky," including requests for communications among the Vice President and senior officials about advice to the President on energy policy. 542 U.S. at 387. Those requests risked jeopardizing the "autonomy" and "confidentiality" of "[t]he Executive Branch, at its highest level" by exposing the internal processes through which officials "give advice and make recommendations to the President." *Id.* at 385.

Here, in stark contrast, no significant constitutional or other protected interests are implicated by targeted requests to the General Services Administration for communications about its leases or requests to the Department of Defense about where it booked event spaces. Nor are they implicated by requesting business records of hotel stays or restaurant dining from private companies, which clearly have no bearing on "the Executive Branch's interests in maintaining the autonomy of its office." *Id.* The absence of any credible constitutional concerns distinguishes this case from *Cheney* and requires rejection of the President's conclusory claim that further progress in this litigation would inflict irreparable injury on the Executive Branch.

C. To the extent considered, the balance of equities favors the District and Maryland.

The above analysis demonstrates why the President's request for a stay should be denied. But to the extent the Court finds it necessary to "balance the equities and weigh the relative harms to the applicant and to the respondent," *Hollingsworth*, 558 U.S. at 190, that balance weighs decisively in favor of the District and Maryland.

The President asserts that no harm will issue if this case is stayed pending any potential Supreme Court review. *See* Mot. 19. That is plainly not so. Residents of the District and Maryland have been suffering—and continue to suffer—concrete, here-and-now injury as a result of the President's illegal conduct. That injury will persist until the President stops violating the Emoluments Clauses.[4]

A stay would also harm the public interest. That is true, first and foremost, because upholding the Constitution's protections is *always* in the interest of the public. *See Legend Night Club v. Miller*, 637 F.3d 291, 303 (4th Cir. 2011). More broadly, the American people have a strong interest in the integrity of the political process and elected officials. As the Framers recognized in drafting the Emoluments Clauses, that interest is directly undermined—and the people of the United States

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[4] In support of his contention that any further delay will not harm the District and Maryland, the President notes that they did not seek preliminary injunctive relief. But that consideration "is not dispositive" of harm in this context, as a "variety of reasons" might influence a decision whether to seek preliminary relief. *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1319 (Fed. Cir. 2014).

suffer—when the President is financially entangled with foreign powers and domestic officials. Because the President's unconstitutional conduct threatens "public confidence" in the integrity of democratic institutions, staying this case and allowing him to continue accepting foreign and domestic emoluments would undermine the public interest and the Framers' design. *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019) (denying stay to "protect[] public confidence in elections" which is "deeply important—indeed, critical—to democracy").

CONCLUSION

For the foregoing reasons, this Court should deny the President's motion to stay the district court's proceedings pending the resolution of any forthcoming petition for a writ of certiorari or any further proceedings in the Supreme Court.

Respectfully submitted,

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June 17, 2020

CERTIFICATE OF COMPLIANCE

This opposition complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,521 words. This opposition also complies with the requirements of Federal Rule of Appellate Procedure 32(a) because it has been prepared in proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

/s/ Leah J. Tulin
Leah J. Tulin

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2020, I electronically filed the foregoing opposition with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

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