UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

SAVANNAH RIVER SITE WATCH, TOM CLEMENTS, THE GULLAH/GEECHEE SEA ISLAND COALITION, NUCLEAR WATCH NEW MEXICO, and TRI-VALLEY COMMUNITIES AGAINST A RADIOACTIVE ENVIRONMENT, Plaintiffs, **v.** UNITED STATES DEPARTMENT OF ENERGY, JENNIFER GRANHOLM, in her official capacity as the Secretary, THE NATIONAL NUCLEAR SECURITY ADMINISTRATION and JILL HRUBY, in her official capacity as the Administrator, Defendants.	)	CA: 1:21-cv-01942-MGL

DEFENDANTS' SUR-REPLY

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Abbreviation	Definition
ATWIR	Annual Transuranic Waste Inventory Report
CEQ	Council on Environmental Quality
CT SPEIS	Complex Transformation Supplemental Programmatic Environmental Impact Statement
DNFSB	Defense Nuclear Facilities Safety Board
DOE	Department of Energy
EIS	Environmental Impact Statement
JSF	Joint Statement of Facts
LANL	Los Alamos National Laboratory
MOX	Mixed Oxide Fuel Fabrication Facility
NAS	National Academy of Sciences, Engineering, and Medicine
NEPA	National Environmental Policy Act
NNSA	National Nuclear Security Administration
NNSS	Nevada National Security Site
PEIS	Programmatic Environmental Impact Statements
ROD	Record of Decision
SA	Supplement Analysis
SEIS	Supplemental EIS
SRS	Savannah River
TRU	TRU Transuranic Waste
WIPP	Waste Isolation Pilot Plant

Plaintiffs' case turns on whether the Department of Energy ("DOE") and the National Nuclear Security Administration ("NNSA") were required to conduct a new or supplemental programmatic environmental impact statement when deciding to: (1) produce fewer pits than originally studied in the 2008 *Final Complex Transformation Supplemental Programmatic Environmental Impact Statement* ("2008 CT SPEIS"), and (2) spread the environmental impacts of production across two sites that were previously evaluated for pit production instead of one. Defendants have already explained why the National Environmental Policy Act ("NEPA") does not require what Plaintiffs demand. Defs.' Opening Br., ECF No. 191.

The six arguments raised in Plaintiffs' reply, ECF No. 195, do nothing to rebut the adequacy of DOE/NNSA's compliance with NEPA. First, Plaintiffs lack standing for claims 2–5, and their reply and newly submitted declaration do nothing to remedy this threshold problem. Second, DOE/NNSA fully complied with NEPA's letter and spirit in evaluating increased production at the national laboratory in Los Alamos, New Mexico ("Los Alamos") and the implementation of production at the Savannah River Site ("Savannah River") in South Carolina. Third and fourth, DOE/NNSA studied how much waste would be generated by its preferred alternative, and Plaintiffs have not shown there is any new information outside the scope of what DOE already knew and reported about waste generation and the Waste Isolation Pilot Plant's ("WIPP") storage capacity. Fifth, legacy waste will not be stored with new transuranic ("TRU") waste from pit production, so Plaintiffs' argument that DOE/NNSA needed to study the effects of storing chemically incompatible legacy waste and new TRU waste is misguided. And sixth, Plaintiffs have not shown there are changed circumstances increasing the risk of terror attacks on DOE/NNSA transports and have otherwise waived that claim.

Ultimately, Plaintiffs filed this suit because they disagree with the *policy* of producing more plutonium pits and are seeking to misuse NEPA to delay implementation of that policy. But *Congress* has determined that the increased production of plutonium pits is essential for the security of the United States. *See Mayo v. Reynolds*, 875 F.3d 11, 16 (D.C. Cir. 2017) ("NEPA is 'not a suitable vehicle' for airing grievances about the substantive policies."). DOE/NNSA complied with both the letter and spirit of NEPA in seeking to implement Congress' mandate, and the Court should enter judgment in their favor.

I. Plaintiffs Lack Standing for Claims 2–5.

Defendants' opening brief explains why Plaintiffs' alleged injuries are speculative, and certainly not imminent, and further, addresses why Plaintiffs have failed to demonstrate a causal relationship between their speculative injuries and the challenged agency action. Defs.' Opening Brief, ECF No. 191 at 6-14. Plaintiffs, in reply, argue that the Court has already definitively found standing for one Plaintiff, Tom Clements, at the motion to dismiss stage, and so the Court need not address standing again. *See* ECF No. 195 at 1. Plaintiffs miss the mark on multiple fronts. First, as this Court recognized, standing at the motion to dismiss stage is a more relaxed analysis. ECF No. 31 at 7 and 14 ("At the motion-to-dismiss stage, this burden is relatively modest. . . ."). At the summary judgment stage, though, standing must be supported by evidence. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *see also Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 212 (4th Cir. 2017). Because Plaintiffs have not adduced evidence supporting many of their standing theories, it is appropriate for Defendants to challenge standing at this stage.

Second, at the motion to dismiss stage, it was unclear Plaintiffs were raising five distinct NEPA claims. The Court based its preliminary decision on standing on the fact that pits will be

produced at Savannah River and that Mr. Clements' "informational injury," combined with potential environmental harms arising from that production could deter him from recreating near the site. ECF No. 31 at 12. But the Court's earlier reasoning appears to have only addressed Plaintiffs' first NEPA claim—that additional programmatic analysis was necessary before siting a second production facility at Savannah River. *Id.* Defendants are not challenging standing for that claim, but are challenging standing for claims 2–5, which are distinct.

A. Plaintiffs' injuries are distant and speculative.

1. No injury-in-fact for claims 2 and 3.

Plaintiffs' second and third claims assert NEPA violations based on Defendants' cumulative waste analysis and, relatedly, the storage capacity for the WIPP. Because none of the plaintiffs have demonstrated they live or recreate near the WIPP, the only conceivable asserted injury is that (1) the WIPP *may* become oversubscribed in the future; *and* (2) as a result, TRU waste may be permanently stored at Los Alamos or Savannah River. ECF No. 191 at 7-8. Such assertions are facially speculative, and certainly do not describe an "imminent" injury. *See id.* Plaintiffs do not deny that such future injuries are the sole basis for their claims. Instead, relying on facts provided by their new declarant,[1] Plaintiffs assert it is predictable that the WIPP will

[1] Plaintiffs attach the Declaration of Don R. Hancock for the first time to their reply brief. ECF No. 195-1. Mr. Hancock's declaration is problematic for several reasons. First, generally, facts raised for the first time in a reply brief (or attachment thereto) should not be considered. *See, e.g.*, *TeleSign Corp. v. Twilio, Inc.*, No. CV 15-3240 PSG (SSX), 2015 WL 12662344, at *1 (C.D. Cal. Oct. 9, 2015) (citing *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007)). Plaintiffs could have raised the facts contained in Mr. Hancock's declaration when they filed their opening brief but chose not to do so. Second, Mr. Hancock's declaration purports to address standing issues; however, it veers into the merits and to explaining the administrative record, which is generally not permitted. *See Camp v. Pitts*, 411 U.S. 138, 141–42 (1973); *see also Hodges v. Abraham*, 253 F. Supp. 2d 846, 855 (D.S.C. 2002), aff'd, 300 F.3d 432 (4th Cir. 2002) (noting there are only limited exceptions to the record review rule, like explaining technical or complex information not explained by the record). Third, even if Plaintiffs could establish admissibility,

either become oversubscribed or will stop accepting waste before 2083, and that it is equally probable that TRU waste will then be permanently stored at Savannah River and Los Alamos. Plaintiffs are wrong.

First, Plaintiffs claim the 2019 *Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement* ("2019 SPEIS SA"), the National Academies of Sciences, Engineering, and Medicine's 2020 Report ("2020 NAS Report"), and the 2020 Annual Transuranic Waste Inventory Report ("ATWIR") "show that WIPP's capacity will be exceeded with the additional pit production TRU waste." ECF No. 195 at 2. To the contrary, as previously explained, the 2019 SPEIS SA used conservative waste estimates because production design was in its infancy. ECF No. 191 at 24, n.11. The updated waste projections in the 2020 Final Environmental Impact Statement for Plutonium Pit Production at Savannah River Site; Aiken, South Carolina ("2020 SRS EIS"), which Plaintiffs ignore, show that the WIPP will have sufficient storage capacity for all past, current, and future waste streams. SRS_6382. For

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Plaintiffs provide no educational or professional background to establish the requisite expertise, and Defendants' search for publicly available information suggests Mr. Hancock does not have the educational or professional background to opine on the management or packaging of nuclear waste. *See* https://www.linkedin.com/in/don-hancock-7709b9122; *Gallatin Wildlife Ass'n v. U.S. Forest Serv.*, No. CV-15-27-BU-BMM, 2016 WL 6684197, at *3 (D. Mont. Apr. 7, 2016) (holding that a declarant must be an expert to explain complex or technical issues in the administrative record and that declarations cannot merely characterize evidence already in the administrative record). Fourth, Mr. Hancock's declaration sets up a "battle of experts" that is inappropriate where, as here, the Court must defer to the agency's factual findings on whether information requires supplementing a NEPA analysis. *Coal. for Advancement of Reg'l Transp. v. Fed. Highway Admin.*, 959 F. Supp. 2d 982, 1006 (W.D. Ky. 2013), aff'd, 576 F. App'x 477 (6th Cir. 2014) ("An agency's determination of whether the information is significant enough to require supplementation is 'a classic example of a factual dispute the resolution of which implicates substantial agency expertise.' An agency's analysis of new information 'requires a high level of technical expertise,' and as such, courts 'must defer to 'the informed discretion of the responsible federal agencies.'") (citing *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 376–77 (1989)). To the extent the Court accepts the Hancock Declaration, the agency will submit another declaration from a senior government official who oversees the WIPP, Mark Bollinger, to explain why Mr. Hancock's statements are inaccurate or misleading.

its part, the 2020 NAS Report used the 2019 SPEIS SA's conservative projections and is not predictive for that reason alone. Moreover, the 2020 NAS Report's projections also included several waste streams that are currently precluded from being deposited at the WIPP by the Waste Acceptance Criteria. Decl. of Mark Bollinger ("Bollinger Decl."), July 11, 2024, ¶ 9 attached as Exhibit A. Likewise, the 2020 ATWIR contained the more conservative waste projections from Savannah River.[2] The waste estimates Savannah River reported to DOE to include in the 2020 ATWIR were comparable to the estimates Savannah River used for the 2019 CT SPEIS SA, not the refined estimates it used in the 2020 SRS EIS. For their part, the 2022 and 2023 ATWIRs reflect the lower waste projections for Savannah River—in line with the projections Savannah River used for the 2020 SRS EIS. 2022 ATWIR[3] at 44; 2023 ATWIR[4] at 44. Moreover, on a complex-wide basis, ATWIRs have historically high reporting trends. *See* 2021 ATWIR[5] at 44; 2022 ATWIR at 45; 2023 ATWIR at 45; *see also* Bollinger Decl. ¶¶ 16, 19, 20. In light of these historically conservative reporting trends in ATWIRs, DOE/NNSA reasonably concluded that after removing this conservatism it is likely that all past, current, and future streams of TRU waste can be accommodated by the WIPP's current capacity. *Id.* To this

[2] Plaintiffs have asked for the administrative record to be supplemented with the 2020 ATWIR. *See* ECF Nos. 160, 160-1; *see also* ECF No. 160-11. While Defendants still oppose the inclusion of the 2020 ATWIR in the administrative record, Defendants recognize that the Court may consider this extra-record document for the limited purpose of determining whether the data contained therein shows a significant change in circumstances that would necessitate supplementation under NEPA. *See*, *e.g.*, *SOSS2 v. U.S. Army Corps of Eng'rs*, 403 F. Supp. 3d 1233 (M.D. Fla. 2019). However, as the Court considers extra-evidence for this limited purpose, it should consider all relevant extra-record evidence, not just the single ATWIR identified by Plaintiffs.

[3] Publicly available at https://wipp.energy.gov/library/TRUwaste/ATWIR-2022_CBFO_Final_SignatureOnFile.pdf

[4] Publicly available at https://wipp.energy.gov/library/TRUwaste/ATWIR-2023_CBFO_Final.pdf

[5] Publicly available at Annual Transuranic Waste Inventory Report - 2021 (energy.gov).

day, Mark Bollinger, the DOE official who directly oversees the WIPP, and both agencies "remain confident that WIPP has adequate capacity to meet defense TRU waste needs." Bollinger Decl. ¶ 20.

DOE/NNSA's conclusion that the WIPP will not become oversubscribed is entitled to deference. *Marsh*, 490 U.S. at 361. Plaintiffs ask this Court to disregard the agencies' expert finding. Regardless, though, Plaintiffs have failed to show that oversubscription of the WIPP is anything more than "conceivable." That does not suffice to demonstrate a concrete, actual injury. *See John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 629 (4th Cir. 2023) (risk of a future injury must be "substantial, not just conceivable").

Second, even if it were predictable that the WIPP's capacity will be reached, it is not predictable that DOE/NNSA will store TRU waste onsite at Savannah River or Los Alamos on a long-term basis. While the 2019 SPEIS SA studied temporarily storing waste at Savannah River or Los Alamos if shipments to the WIPP were temporarily stalled, Plaintiffs point to nothing indicating that Savannah River or Los Alamos will become permanent repositories of TRU waste. If storage capacity at the WIPP were to be reached, DOE/NNSA would have adequate warning to develop a permanent plan to disposition TRU waste somewhere other than Savannah River and Los Alamos. ECF No. 190-1 at ¶ 14; *see also South Carolina v. United States*, 912 F.3d 720, 728 (4th Cir. 2019) (South Carolina's claim that it might become a permanent repository of plutonium was too speculative where "the Department of Energy ha[d] twenty-eight years to identify an alternative method for disposing of the nuclear material."). Thus, the possibility that Plaintiffs will be harmed by long-term storage of TRU waste near their homes or recreational sites relies upon two equally speculative assumptions that are insufficient to support Article III standing.

Third, relying on the Hancock Declaration, Plaintiffs contend the WIPP could become unavailable within the next decade. To begin with, they claim the WIPP's lifespan only extends through 2033 because the current record of decision only authorizes shipments through that date. They also argue WIPP's viability is further at risk from state permitting and regulatory issues. These assertions reveal Plaintiffs' lack of understanding of the complex administrative and regulatory issues governing the WIPP. In his declaration, Mark Bollinger, who has a Master's degree in environmental science and twenty plus years of highly technical experience in the nuclear and waste fields, corrects the confusion, noting: (1) the WIPP Land Withdrawal Act does not establish any fixed end date for depositing TRU waste at the WIPP, *see* Bollinger Decl. ¶¶ 4–8; (2) the record of decision governing the WIPP does not mandate closure in 2033, *see id.* ¶ 8; and (3) federal and state regulatory authorities have limited mechanisms to close the WIPP and those regulatory powers would only be triggered if DOE violated the permits, a regulation, or a procedure, *see id.* ¶ 5–7. Thus, absent extraordinary and unforeseen circumstances, the WIPP will continue to operate until it reaches the current capacity limits authorized by the WIPP Land Withdrawal Act. *Id.* ¶¶ 12–13. The Court should reject Plaintiffs' misinformed attempt to make their speculative injuries appear more imminent.[6]

Fourth, Plaintiffs' discussion of the Supreme Court's *Lujan* decision does not advance their argument. They argue that *Lujan* focused not on "a delay between the decision and when harm is experienced; rather the focus is on whether the harm is hypothetical or speculative." ECF No. 195 at 3. But the latter is exactly what Defendants are arguing. *See* ECF 191 at 9-10.

[6] Even under Plaintiffs' best-case scenario for establishing standing, they assert the WIPP may close in 2033 – nine years from now. Even if Plaintiffs were right, which they are not, nine years would give DOE/NNSA ample time to formulate a waste storage solution that did not involve storing waste long-term at Savannah River and Los Alamos.

To the extent Defendants were discussing the elongated timeframe, the important point was that Plaintiffs' claimed injury was inherently speculative, because "[m]uch can change" over 50 years. *See id.* at 8-9. Accordingly, claims 2 and 3 rely on a speculative injury that is unlikely to ever happen—the long-term storage of TRU waste at Savannah River or Los Alamos—and *Lujan* does not allow Plaintiffs to rely on an improbable, hypothetical injury. In fact, in the past month, the Supreme Court has twice reiterated that Plaintiffs must show a substantial risk that the injury will occur where they rely on a future, unrealized injury. *FDA v. Alliance for Hippocratic Medicine*, 602 U. S. 367, 381 (2024) ("[T]he injury must be actual or imminent, not speculative—meaning that the injury must . . . be *likely to occur soon*.") (emphasis added); *Murthy v. Missouri*, No. 23-411, 2024 WL 3165801, *7 (U.S. June 26, 2024) (same). Article III does not open the courthouse doors for unlikely or improbable future injuries like the ones Plaintiffs allege in claims 2 and 3. *Id.*

Fifth, Plaintiffs suggest they can meet Article III's imminency requirement simply because they have alleged an informational injury that they claim will "lead[] to the substantial, reasonable likelihood of Plaintiffs' inevitable, personal, environmental injuries." ECF No. 195 at 4. But, particularly at this stage, Plaintiffs must establish the existence of these asserted "inevitable, personal environmental injuries." *See Lujan*, 504 U.S. at 561 (at summary judgment stage, "the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts.'") (quoting Fed. R. Civ. P. 56(e)). As this Court has already recognized, Plaintiffs only have Article III standing to prosecute a procedural harm when it is likely that procedural harm will lead to a concrete, particularized, and imminent injury. ECF No. 31 at 10 (quoting *Dreher v. Experian Information Solutions, Inc.*, 856 F.3d 337, 345 (4th Cir. 2017)). But as discussed above and in Defendants' opening brief, Plaintiffs have failed to set

forth any such specific facts. In failing to do so, they do not identify an injury in fact that is "'concrete in both a qualitative and temporal sense.'" *South Carolina*, 912 F.3d at 726 (quoting *Beck v. McDonald*, 848 F.3d 262, 271 (4th Cir. 2017)).

In sum, it is Plaintiffs' burden to "adduce facts . . . on the basis of which it could reasonably be found that concrete injury to their members was, as our cases require, 'certainly impending.'" *Lujan*, 504 U.S. at 567 n.3. Plaintiffs have not done so, and their waste storage/WIPP capacity claims should be dismissed.

2. No injury-in-fact for claim 4.

Plaintiffs likewise have not established standing for their fourth claim, which asserts that Defendants failed to adequately evaluate environmental impacts of potential packaging accidents arising from mixing chemically incompatible legacy materials, because it is highly speculative that legacy waste will ever be mixed with newly generated pit production waste. *See* ECF No. 191 at 9-10. In their reply, Plaintiffs rely heavily on the new Hancock Declaration, in which he challenges the sworn statement by Ms. Jill Hruby, Undersecretary for Nuclear Security and NNSA's Administrator, that there is, at best, *de minimis* risk that DOE/NNSA could mix legacy waste with newly generated TRU waste. *See generally* ECF No. 195-1. It is questionable whether Mr. Hancock has the requisite qualifications to rebut the statements by Ms. Hruby. In any case, his opinions are baseless. He asserts that Ms. Hruby "speculat[es] . . . that pit production and legacy waste will not be mixed," apparently based on the mere fact that legacy waste "will still be at those sites when pit production waste is being produced." ECF 195-1 ¶ 7. But, as corroborated by Mr. Bollinger's Declaration (attached to respond to Mr. Hancock's statements), it is highly unlikely legacy waste and pit production waste would ever be mixed. Bollinger Decl. ¶¶ 14–15. First, pit production waste will be packaged in a classified space that

is separate and distinct from where any legacy waste is housed. *Id.* Second, the Waste Acceptance Criteria contain requirements that would preclude mixing waste streams. *Id.* And finally, DOE has developed new standards and controls to ensure that incompatible chemicals will not be mixed. *Id*. Thus, it is factually "impractical to impossible" for the injury identified in Plaintiffs' fourth claim – *i.e.*, an accident based on mixing incompatible waste streams – to ever occur again.[7] *Id*.

3. No injury-in-fact for claim 5.

Finally, Plaintiffs have failed to demonstrate actual injury based on their assertion that Defendants failed to adequately address a potential terrorist attack relating to the transportation of nuclear materials and waste, because the risk of such an attack is indisputably speculative. *See* ECF No. 191 at 10. Plaintiffs' argument that the risk of a terror attack has increased since the 2008 CT SPEIS is unsupported. Plaintiffs appear to argue that "growing threats" from state actors like Russia, China, and North Korea somehow equates to an increased risk of a terror attack on an NNSA transport on American soil. *See* ECF 195 at 6. One does not follow from the other. Plaintiffs have pointed to no evidence that a terror attack is more likely today than it has ever been and ask this Court to find a "substantial risk" that something that has never happened will happen in the future. The Court should reject Plaintiffs' invitation to find, without evidence, that a future terror attack on an NNSA convoy is "likely to occur soon." *Alliance for Hippocratic Medicine*, 602 U. S. at 381.

[7] In its recent *Murthy* decision, the Supreme Court reiterated that past conduct or injuries "are relevant only for their predictive value." *Murthy*, 2024 WL 3165801 at 8. Plaintiffs, therefore, cannot rely exclusively on accidents that occurred in 2014 and 2018, when DOE/NNSA has thoroughly studied those accidents and taken concrete steps to ensure they are never repeated. Simply put, the incidents in 2014 and 2018 have no "predictive value" for whether Plaintiffs will suffer a "forward-looking" injury. *Id.*

B. Plaintiffs have not established a causal connection between the challenged agency action and their alleged injuries.

As Defendants demonstrated in their opening brief, in addition to failing to establish concrete, imminent injuries in fact, Plaintiffs also fail to establish a causal connection between the injuries they claim will arise for their Claims 2, 3, and 4 and the challenged agency action. ECF No. 191 at 11–13.

In their reply, Plaintiffs fail to address Defendants' specific causation arguments, but instead, simply note that two individuals associated with Plaintiffs recreate in the vicinity of Los Alamos and Savannah River, respectively. ECF No. 195 at 6-7. But this does nothing to connect the agency action they are challenging – *i.e.*, the decision of *where* to produce pits – with their claimed injuries arising from waste storage and waste packaging. Regardless of how much or how little DOE/NNSA studies waste, DOE/NNSA must produce 80 pits per year, which will create similar amounts of collective waste at any site or combination of sites. *See* ECF 191 at 11-13. Further, waste produced for pit production will not be packaged with legacy waste, and regardless, it will be packaged in the same manner wherever it is produced. *Id.* Because waste generation and waste packaging are unconnected to where pits are produced, Plaintiffs have not established Article III's causation element and lack standing for Claims 2, 3, and 4. *See Fla. Audubon Soc. v. Bentsen*, 94 F.3d 658, 668 (D.C. Cir. 1996).

C. Plaintiffs cannot manufacture standing by claiming "reticence."

Throughout this lawsuit, Plaintiffs have attempted to shore up the deficiencies in their injury claims by asserting they have suffered an "informational injury." But as noted above, Plaintiffs must tie their alleged informational injury to some specific, concrete interest particularized to them. ECF No. 191 at 13-14; *see also Found. on Econ. Trends v. Lyng*, 943 F.2d 79, 84–85 (D.C. Cir. 1991) (explaining that "sustain[ing] an organization's standing in a

NEPA case solely on the basis of 'informational injury' . . . would potentially eliminate any standing requirement in NEPA cases . . .").

Plaintiffs' reply leans on this Court's earlier standing decision. First, Plaintiffs note this Court's finding that Tom Clements is injured by his "reticence to 'conduct[] the professional and recreational activities he currently undertakes.'" ECF No. 195 at 8 (citing ECF No. 31 at 14). And second, they cite to this Court's earlier finding that Tom Clements "suffers a concrete informational injury where he is denied access to information required to be disclosed by statute, and he suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." *Id.* (citing ECF No. 31 at 12–13). But both of those prior conclusions were predicated on this Court's finding that "first-time" pit production at Savannah River without adequate NEPA compliance could lead to real, adverse environmental consequences that could affect Tom Clements. ECF No. 31 at 12. Defendants do not challenge this Court's prior ruling and have not moved to dismiss claim one for lack of standing. Rather, Defendants challenge whether Plaintiffs have produced evidence establishing associated concrete injuries for claims 2–5. As discussed in Sections (I)(A)(1–3), they have not; and therefore, claimed informational harms standing alone are insufficient to confer standing and plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Murthy*, 2024 WL 3165801 at 15.

II. DOE/NNSA complied with NEPA when exercising its expertise to decide supplementation was unnecessary.

Plaintiffs' first claim, distilled to its essence, is that DOE/NNSA violated NEPA by failing to prepare a programmatic EIS to consider multiple combinations of two-site alternatives before selecting Los Alamos and Savannah River as the locations for production. ECF No. 195 at 8–14. Defendants' opening brief offers five reasons why the Court should defer to

DOE/NNSA's factual decision to not prepare a new or supplement programmatic environmental impact statement, which was based on the agencies' technical expertise. ECF No. 191 at 15-49. Plaintiffs' reply fails to address many of these arguments, and when they attempt to, their arguments lack merit.

Fundamentally, Plaintiffs fail to address the primary point: courts have consistently found that agencies have considerable discretion in determining whether to prepare a programmatic EIS. *See id.* at 16-17. To be sure, agencies are not to improperly segment environmental review—but here, as explained by Defendants, Plaintiffs cannot convincingly argue that DOE/NNSA's production of plutonium pits are connected for purposes of NEPA. *Id.* at 17–18. In any case, Plaintiffs provide no reason why a supplemental programmatic EIS would be necessary. DOE/NNSA already considered the hypothetical impacts of pit production at Savannah River, Los Alamos, and at three additional sites— the Pantex Plant ("Pantex") in Texas; the Y-12 National Security Complex ("Y-12") in Tennessee; and the Nevada National Security Site ("NNSS")—in the 2008 CT SPEIS.[8] SRS_61708-61732; CT SPEIS_57579-57603 Despite this, Plaintiffs suggest that NEPA requires DOE/NNSA to author a new or supplemental programmatic environmental impact statement to take the already estimated impacts of production at Los Alamos, Savannah River, Pantex, Y-12, and NNSS and group them into the statistically possible permutations of two-site pairings and analyze each of these permutations individually. But issuing a new programmatic environmental impact statement that estimated, for example, the impacts of producing 30 pits at Los Alamos and 50 pits at Pantex or 30 pits at

[8] Producing pits at Y-12, NNSS, or Pantex would be less environmentally friendly because of the impacts associated with greenfield construction. SRS_62330-62403; 62405-62464; 62542-62608.

Los Alamos and 50 pits at Y-12 was neither required by NEPA nor needed to further NEPA's goals of informing decisionmakers and the public.

This is especially so where: (1) DOE/NNSA had already estimated the impacts at the other sites; (2) DOE/NNSA thoroughly evaluated the potential impacts of pit production at the preferred sites, Los Alamos and Savannah River; and (2) DOE/NNSA used its discretion and technical expertise when determining that new-construction (*i.e.*, greenfield) alternatives were no longer viable because of their timing, even greater costs, and the greater environmental impacts arising from constructing facilities from scratch. *See*, *e.g.*, SRS_6168 ("NNSA considered the alternative of building a new Greenfield pit production facility . . . [and] [t]he mean acquisition cost of such a new facility was determined to be approximately $1.8 billion more than the cost of repurposing the MFFF."); *see also Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 69 (D.C. Cir. 2011) ("The range of reasonable alternatives must include 'technically and economically practical or feasible' alternatives. . . . [and] [t]his range is delimit[ed] by the agency's reasonably defined goals for the proposed action."). Because producing pits at Pantex, Y-12, or NNSS would require greenfield construction and DOE/NNSA had eliminated greenfield alternatives from consideration, DOE/NNSA reasonably turned to two options it had previously considered in the 2008 CT SPEIS—either modifying or upgrading facilities at Los Alamos and modifying the MOX facility at Savannah River.

DOE/NNSA determined that upgrading at Los Alamos and modifying a facility at Savannah River was the only viable alternative with respect to the location of sites that met the Congressional production mandate and the instruction from national security officials to improve resiliency, flexibility, and redundancy. That single viable alternative was the selected alternative. *See* ECF No. 191 at 32 (collecting cases where there was only one (or few) viable

alternative(s)). DOE/NNSA complied with NEPA by previously considering a range of sites that required greenfield construction, but ultimately narrowing its selected alternative to the only two sites that did not require new construction. DOE further complied with NEPA by determining in the 2019 SPEIS SA that the modified alternative of producing 30 pits at Los Alamos and 50 pits at Savannah River would not have greater environmental impacts than the original alternatives analyzed in the 2008 CT SPEIS.

Plaintiffs' other arguments are easily addressed. They claim that the purpose and need fundamentally changed. Not so. The fundamental purpose remains to "continue to meet existing and reasonably foreseeable national security requirements." *See* CT SPEIS_024694. While Plaintiffs focus on a minor difference—a renewed focus on redundancy—they fail to demonstrate that such change would result in a "'seriously different picture of the environmental impact of the proposed project from what was previously envisioned.'" *Hickory Neighborhood Def. League v. Skinner*, 893 F.2d 58, 63 (4th Cir. 1990). They also argue that Defendants' statement that the 2020 SRS EIS considered cumulative impacts concedes that the 2019 SPEIS SA, and by extension the 2008 CT SPEIS, did *not* do so. This is not reflected by the record. The 2008 CT SPEIS discussed waste and other cumulative impacts. CT SPEIS_17711-17737. Likewise, the 2019 SPEIS SA acknowledges that legacy waste would need to be disposed of but ultimately concluded that in-depth analysis was unnecessary because the disposition of surplus plutonium would be a separate program and that pit plutonium waste would be given priority at the WIPP. CT SPEIS_ 68284-68285; 68288-68289. The fact that the agencies considered cumulative impacts in the SRS EIS (as well as other documents) corroborates the comprehensive nature of the agencies' overall analysis. Plaintiffs also argue that the Court should apply the prior version of the CEQ regulations. ECF No. 195 at 13. But they provide no argument as to

how the earlier CEQ regulations would alter the outcome. Finally, despite the comprehensive, years' long evaluation by Defendants and multiple opportunities for public engagement, Plaintiffs disagree that Defendants ensured NEPA's twin goals of informed decision-making and public involvement. They claim that "any public participation . . . was illusory at best." ECF No. 195 at 13. But they confirm that they had—and utilized—multiple opportunities to provide the agencies with their comments. *See*, *e.g.*, SRS_5912, 5924, 5947, 5951, 5976, 6016, 6071, 6550, 6671, 6757, 6922; CT SPEIS_32513, 32525, 32559, 32788-32798, 33130-33160; 68301-68303. Ultimately, Plaintiffs' complaint is that Defendants did not agree with their comments, not that they didn't have an opportunity to participate. Plaintiffs' disagreement with DOE/NNSA's policy determinations does not constitute a NEPA violation, *Mayo*, 875 F.3d at 16, and judgment as to claim 1 should be entered in favor of Defendants.

III. Cumulative impacts of waste were not required to be considered but nonetheless were.

DOE/NNSA's opening brief explains why Plaintiffs have not established NEPA's causation element for their second and third claims. ECF No. 191 at 35–37. "Under NEPA, an agency must consider an environmental effect of a proposed major federal action if there is a "'reasonably close causal relationship' between the environmental effect and the alleged cause." *Id.* (quoting *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004)). Here, the amount of TRU waste generated by pit production is the direct result of Congress's decision to produce 80 pits per year, not DOE/NNSA's decision about *where* to locate pit production facilities. ECF No. 191 at 35–37. Because DOE/NNSA had no discretion to prevent the increased generation of TRU waste, which is the focus of these two claims, the agencies had no obligation under NEPA to address the cumulative effect of the storage of that waste. *Id.*

Plaintiffs' reply offers a single response—that americium-241 recovery at Los Alamos demonstrates that pit production at Los Alamos is more efficient than production at Savannah River. ECF No. 195 at 15. But Plaintiffs' discussion of americium-241 recovery reveals a lack of technical expertise and understanding. DOE/NNSA experts have already explained that the collective amount of waste resulting from producing 80 pits per year will be the same regardless of where the pits are produced.[9] *See*, *e.g.*, ECF No. 191-5, Decl. of Patrick Moss ¶ 3; *see also* SRS_6999. While Los Alamos' practice of recovering and selling americium-241 (a radioactive byproduct) can slightly reduce the amount of waste produced per pit, *see* Joint Statement of Facts ("JSF"), ECF No. 187 at ¶ 230, the americium recovery program's reduction of waste is not infinite and the market demand for americium would be met if Los Alamos produces 30 pits per year. ECF No. 191-5 ¶ 4. Therefore, regardless of whether the additional 50 pits per year were produced at Los Alamos, Savannah River, Y-12, NNSS, or Pantex there would not be a sufficient market demand to justify recovering and selling that additional americium and therefore that americium would have to be stored as TRU waste. Plaintiffs disregard this simple explanation.

Simply put, DOE/NNSA, based on its technical expertise, understood that pit production would generate the same amount of TRU waste (on a collective basis) regardless of where the pits are produced. Plaintiffs, who have the burden of proof, have not established DOE/NNSA's understanding was arbitrary and capricious and have not shown there is a "reasonably close

[9] DOE/NNSA already responded to a comment about the different waste projections on a per pit basis for production at Los Alamos versus production at Savannah River and noted the effect of americium-241 recovery on difference between projections at Los Alamos and Savannah River. *See* SRS_6999.

causal relationship" between the amount of waste generated and the location where the waste is generated. *Public Citizen*, 541 U.S. at 767.

Even though DOE/NNSA was not required to study the cumulative effects of TRU waste generation when deciding where to locate pit production facilities, DOE/NNSA nonetheless did so. ECF No. 191 at 37–40. Plaintiffs concede that the "LANL SA SWEIS and the SRS EIS considered cumulative impacts," but argue that the "cumulative impacts analysis only occurred well after the SA CT SPEIS, which was where it had to occur in order for the cumulative impacts analysis to matter." ECF No. 195 at 15. But contrary to Plaintiffs' contention, DOE/NNSA's NEPA process did not begin and end with the 2019 SPEIS SA. Before making any final decision on where to locate pit production, DOE/NNSA undertook two extensive site-specific analyses—the 2020 SRS EIS and the 2020 Final Supplement Analysis of the 2008 Site-Wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory for Plutonium Operations ("2020 LANL SA"). As Plaintiffs concede, these two NEPA documents considered the cumulative impacts of pit production long before DOE/NNSA issued the records of decision authorizing the production of 30 pits at Los Alamos and 50 pits at Savannah River. Therefore, DOE/NNSA had the requisite environmental information before it made its final decision, which is all NEPA requires. It would be inconsistent with NEPA's rule of reason for the Court to remand this case for the agencies to combine their preexisting analyses into a single, programmatic document. *Ground Zero Ctr. for Non-Violent Action v. United States Dep't of Navy*, 860 F.3d 1244, 1253 (9th Cir. 2017).

Moreover, any suggestion that the analyses in the 2020 SRS EIS and LANL SA were insufficient because they only considered locating pit production at Savannah River and Los Alamos is also misleading. DOE/NNSA's analysis in the 2008 CT SPEIS demonstrated that pit

production at Savannah River, Y-12, NNSS, and Pantex were largely interchangeable in terms of the amount of waste generated. Therefore, formally studying and re-discussing waste generation at Y-12, NNSS, or Pantex would have yielded exactly what DOE/NNSA had already determined and disclosed to the public—the collective amount of waste generated from producing 80 pits will be the similar regardless of where the pits are produced.

IV. Nothing about the WIPP's storage capacity has changed.

Plaintiffs' claim that new information has come to light significantly changing estimates about the WIPP's storage capacity, thereby necessitating a supplemental EIS. ECF No. 195 16–17. As Defendants have already explained, Plaintiffs' claim is overblown. ECF No. 191 at 35–44. Plaintiffs' reply relies on a single argument—the 2020 ATWIR's waste projections are significantly different from previously considered waste projections. *See* ECF No. 195 at 16–17. The 2020 ATWIR is not the silver bullet Plaintiffs make it out to be.

To begin with, the 2020 ATWIR, like the 2020 DNFSB Report discussed below, was published after DOE/NNSA's NEPA documents were finalized. If DOE/NNSA were required to re-open the NEPA process every time an annual report is published, the process would never end. *Marsh*, 490 U.S. at 372; *see also Tri-Valley CAREs v. U.S. Dep't of Energy*, 671 F.3d 1113, 1130 (9th Cir. 2012) (same). This case is a prime example of when NEPA supplementation is unnecessary. An ATWIR is an annual report estimating waste values and these estimates fluctuate from year-to-year. Indeed, the estimates in the two most recent ATWIRs are significantly lower than the estimates in the 2020 ATWIR. 2022 ATWIR at 45; 2023 ATWIR at 45; *see* Bollinger Decl. ¶ 17. Under these circumstances, DOE/NNSA exercised their expertise and did not find it necessary to supplement their prior programmatic analyses because of the data contained in a single, annual waste report. This was not arbitrary and capricious.

In any case, the 2020 ATWIR does not show that the WIPP is likely to become oversubscribed, as Plaintiffs suggest. To begin with, ATWIRs, which are prepared by DOE based on projections from waste-producing sites, do not necessarily involve the same methodologies as a NEPA review. An agency conducting a NEPA review is permitted to rely upon more refined data than the information contained in another government report like an ATWIR, which is frankly a blunt instrument. Second, ATWIRs contain two data points: (1) projected waste that will likely be shipped and stored at the WIPP (referred to as "WIPP-bound TRU waste"), and (2) projected waste that may head to WIPP but does not currently meet the WIPP's Waste Acceptance Criteria (referred to as "potential TRU waste"). *See* ECF No. 160-11 at 9; *see also* Bollinger Decl. ¶ 18.[10] The 2020 ATWIR acknowledges, "potential waste streams have meaningful uncertainties regarding their eligibility, due to technical or legal considerations, for emplacement in the WIPP repository." ECF No. 160-11 at 11. And third, in addition to the uncertainty that any "potential TRU waste" will be accepted for storage at the WIPP, data shows that the projections provided to DOE by the waste-producing sites are historically more conservative than the amount of waste actually shipped to the WIPP.[11] *See* 2021 ATWIR at 44; 2022 ATWIR at 45; 2023 ATWIR at 45; *see also* Bollinger Decl. ¶ 16, 19–20. These three points

[10] As one of the senior government officials responsible for overseeing the WIPP and reviewing the annual ATWIRs, Mr. Bollinger provides explanations on technical terms and issues contained in the complex and difficult to understand ATWIRs. Mr. Bollinger provides these explanations to assist the court in understanding technical or complex matters, *Alsea Valley All. v. Evans*, 143 F. Supp. 2d 1214, 1216 (D. Or. 2001); however, the ATWIRs speak for themselves should the court prefer to rely directly upon those documents.

[11] As noted in Defendants' opening brief, waste producing sites like Savannah River report conservative waste estimates to DOE, which are then reflected in the ATWIRs. ECF No. 191 at 24, n.11. The waste producing sites remove conservatism from their estimates as their plans and designs mature. *Id.* The data in the 2020 ATWIR reflects the conservative waste projections used in the 2019 CT SPEIS, not the more refined data used in the 2020 SRS EIS. The more refined data is reflected in the 2021, 2022, and 2023 ATWIRs.

help explain why the 2020 ATWIR is not the smoking gun Plaintiffs believe it is and why DOE/NNSA, exercising its technical expertise that is entitled to deference, has concluded the WIPP will not be oversubscribed before 2083.

Moreover, more detailed analysis of the 2020 ATWIR's data demonstrates that the 2020 ATWIR's figures are below data points that DOE/NNSA considered before making its decision to produce 30 pits at Los Alamos and 50 pits at Savannah River. For example, the 2019 ATWIR, which DOE/NNSA reviewed and considered, estimated that waste emplaced at the WIPP through 2033 would be 113,000 cubic meters. SRS_00053482. By comparison, the 2020 ATWIR estimated that waste emplaced at the WIPP through 2033 would be 112,000 cubic meters – 1,000 cubic meters less than the 2019 ATWIR. ECF No. 160-11 at 25. The 2019 ATWIR did not estimate future pit production waste; however, the 2019 SPEIS SA estimated that pit production waste after 2033 would be 57,550 cubic meters. *See* JSF ¶ 162. By contrast, the 2020 ATWIR estimated that TRU waste generated after 2033 from pit production would be 48,980 cubic meters, which is 8,570 cubic meters lower than the 57,550 cubic meters projections considered in the 2019 SPEIS SA. ECF No. 160-11 at 44–45; CT SPEIS_68289. Thus, Plaintiffs' suggestion that DOE/NNSA did not rely upon information like that contained in the 2020 ATWIR is inaccurate. Given DOE/NNSA's evaluation of this issue—combined with the fact that it had no discretion to make a decision that would reduce the amount of waste produced (given that it has been ordered by Congress to produce 80 pits per year regardless of whether the WIPP becomes oversubscribed or not)—Plaintiffs' second and third claims relating to waste and WIPP storage fail.

V. Packaging issues are irrelevant to pit production.

Defendants' opening brief sets forth three reasons why Plaintiffs' fourth claim—that DOE/NNSA failed to address "new" information from the 2020 DNFSB report regarding radiation risks from improperly stored TRU waste—has no merit. *See* ECF No. 191 at 44-47. Plaintiffs' reply brief does not directly address any of those arguments, but instead reiterates uncontested facts Plaintiffs believe create the possibility of a packaging accident. Defendants agree that pit production will produce TRU waste, legacy waste is housed at Los Alamos and Savannah River, pit production waste will be packaged at Los Alamos and Savannah River, and the 2020 DNFSB Report expressed concern about mixing chemically incompatible waste streams in the same package. But none of these facts establish a NEPA violation.

Plaintiffs again ignore the Supreme Court's admonition against agency decision-making being made intractable by forcing agencies to consider every "new report" before finalizing a decision. *Marsh,* 490 U.S. at 372. Plaintiffs admit that DOE/NNSA only received the DNFSB's 2020 Report after the 2020 LANL SA and 2020 SRS EIS were finalized and only shortly before the November 2020 RODs were issued. ECF No. 189 at 18. Yet Plaintiffs still urge that DOE/NNSA had to reopen the entire NEPA process to discuss the DNFSB's 2020 Report even though: (1) the agencies had studied hypothetical accident scenarios that would have greater potential environmental impacts than the packaging incidents identified in the 2020 Report, and (2) the agencies had already addressed Plaintiffs' comments about the 2020 Report.

DOE/NNSA also explained that their packaging requirements (*i.e.*, DOE Order 435.1 and 460.1D), and a disposal facility's requirements for receiving waste, apply uniformly across sites and would apply to any location where the agency chose to produce pits. *See*, *e.g.*, SRS_00006256 – SRS_00006259. Therefore, Plaintiffs are using an issue that has nothing to do with the location of pit production facilities to attack DOE/NNSA's decision about where to

locate pit production facilities. Plaintiffs' reply does nothing to address their NEPA causation problem, which is dispositive. *See Public Citizen*, 541 U.S. at 767.

Finally, Plaintiffs fail to grapple with the undisputed evidence in the administrative record that DOE/NNSA studied hypothetical accident scenarios and considered potential environmental and health impacts of potential accidents. *See* JSF ¶192; SRS_00006326; SRS_00006335 – SRS_00006336. Accordingly, Plaintiffs have not shown that the 2020 DNFSB Report discussed accident scenarios that could "affect the quality of the human environment in a significant manner or to a significant extent not already considered." *No Mid-Currituck Bridge-Concerned Citizens v. N.C. Dep't of Transp.*, 60 F.4th 794, 801 (4th Cir. 2023). Where, as here, an agency has already considered the environmental impacts of potential accidents, NEPA does not require the agency to consider and discuss every potential accident scenario that a litigious plaintiff could imagine. *See*, *e.g.*, *Tri-Valley CAREs*, 671 F.3d at 1125 ("An agency is not required to consider every scenario."). The Court should enter judgment in favor of Defendants as to Plaintiffs' fourth claim.

VI. Plaintiffs' claim of an increased risk of a terror attack is meritless and waived.

Plaintiffs' fifth claim, that Defendants erred by not adequately addressing the impacts of a hypothetical terror attack on shipments of nuclear materials, should be dismissed, because (1) such an attack is not reasonably foreseeable for purposes of NEPA; and (2) regardless, they waived the claim by inadequately prosecuting it. ECF No. 191 at 47-48. Plaintiffs' reply brief does nothing to overcome these arguments.

Plaintiffs suggest shifts in international nuclear strategy will somehow increase the risk of a terror attack on a convoy transporting nuclear materials beyond the threats considered in previous programmatic analyses. However, Plaintiffs articulate no connection between changes

in other countries' nuclear postures and potential terror attacks on American soil. Plaintiffs then conflate, yet again, DOE/NNSA's heightened obligation to consider all threats, including the most remote ones, for national security purposes with the agencies' separate and distinct NEPA obligations. Defendants have, for national security purposes, "recognized" a potential risk of terrorism, ECF No. 195 at 19; however, that does not mean that such risk rises to the level of being a "reasonably foreseeable" effect for purposes of NEPA. *See Webster v. U.S. Dep't of Agric.*, 685 F.3d 411, 429 (4th Cir. 2012) ("[A]lthough agencies must take into account effects that are reasonably foreseeable, they generally need not do so with effects that are merely speculative."). As made clear by the numerous cases from various jurisdictions, NEPA does not generally require speculative analysis of the "remote possibilit[y]" of a terrorist attack. ECF No. 191 at 49 (collecting cases). Thus, judgment should be entered in favor of Defendants as to claim five.

Regardless, Plaintiffs have waived this claim. Their Amended Complaint *only* mentions anything remotely relevant to a terror attack in *one sentence* addressing *standing*. Am. Compl. ¶ 22. Defendants' reference to potential terrorist attacks in their Motion to Dismiss addressed that single standing allegation and did not touch upon the merits. Contrary to their argument, this single reference to terrorism in Defendants' Motion to Dismiss does not demonstrate that Defendants were on notice of a distinct NEPA claim based on DOE/NNSA's alleged failure to consider terrorist attacks. ECF No. 195 at 20. Plaintiffs never alleged Defendants failed to evaluate such a risk and that the failure to do so constituted a separate and distinct NEPA violation. *See* Am. Compl. generally.

Plaintiffs' failure to identify such a claim was prejudicial to Defendants' ability to adequately defend the claim now advanced. As Defendants argued in their opening brief, had

Defendants' been put on notice that Plaintiffs intended to challenge their classified review of potential terrorist threats, substantial procedural mechanisms to ensure the protection of such information would have been required. *See* ECF No. 191 at 48. Plaintiffs have never suggested those procedural mechanisms—like obtaining security clearances and negotiating a protective order for classified information—were necessary; yet now, just before the stroke of midnight, Plaintiffs reference a classified appendix that was not included in the administrative record. Plaintiffs should not be allowed to represent, both explicitly and implicitly, that their arguments would not touch upon classified matters and then point to the absence of classified evidence in the record.[12]

CONCLUSION

Summary judgment should be entered in favor of all Defendants on all claims, or alternatively, the Court should dismiss Claims 2 through 5 for lack of jurisdiction, and additionally because of waiver as to Claim 5, and enter summary judgment on behalf of Defendants as to Claim 1.[13]

[SIGNATURES ON NEXT PAGE]

[12] Should the Court look to the administrative record for the adequacy of DOE/NNSA's considerations, Defendants respectfully request that the Court refrain from addressing the adequacy of DOE/NNSA's review until, for example, the attorneys in this matter seek the requisite security clearances to review any classified documents that may become part of a classified administrative record.

[13] Defendants respectfully request that should the Court consider entering judgment for Plaintiffs on any claim, it should defer imposing a remedy until the parties are able to briefs the issue. Plaintiffs request that the Court enjoin all pit production activities. ECF No. 195 at 21. That request is at minimum overbroad. But an injunction is an extraordinary remedy and may not be issued unless a plaintiff demonstrates that "the traditional four-factor test is satisfied." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157 (2010).

Respectfully submitted this 12th day of July 2024,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 12, 2024, **DEFENDANTS' SUR-REPLY** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to all parties.

/s/ *J. Scott Thomas*
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