No. 15-2356

In the

United States Court of Appeals

for the

First Circuit

SAI,
Petitioner,

– v. –

DAVID P. PEKOSKE, in his official capacity as Administrator of the Transportation Security Administration,
Respondent.

On petition for review
of Orders of the Transportation Security Administration

BRIEF OF THE INSTITUTE FOR JUSTICE AS *AMICUS CURIAE* SUPPORTING TRANSFER FOR LACK OF JURISDICTION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(A) and 26.1, *amicus curiae* The Institute for Justice states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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REASONS WHY ORAL ARGUMENT SHOULD BE HEARD

Amicus curiae The Institute for Justice respectfully submits that oral argument should be heard to aid the Court in its obligation to assess the appropriate jurisdiction—this Court or the district court—for judicial review of the policies, practices, and procedures of the Transportation Security Administration (TSA). The answer to this question will have substantial implications for future litigants harmed by unconstitutional policies, practices, and procedures of the TSA.

Amicus curiae stands ready to assist the Court by explaining at oral argument its position that this Court lacks jurisdiction and intends to move for leave to participate in the oral argument should the Court hear it.

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Petitioner Sai's petition for review presents an exceptionally important question concerning the federal courts' jurisdiction over the policies, practices, and procedures of the Transportation Security Administration (TSA). Section 46110 of Title 49 contains a procedure for judicial review of an "order issued" in a "proceeding conducted by" the agency, and it funnels review of such orders to this Court. That is a clear claim-channeling provision applicable to decisions made in individual quasi-judicial administrative proceedings. But in recent years, TSA has taken the position that everything it does is an "order" to which Section 46110 applies. In this way, TSA has endeavored to shield its policies from the searching judicial review—through discovery and fact development—that a court of appeals is ill-suited to manage.

This issue is of immense importance to *amicus curiae* The Institute for Justice (IJ). Founded in 1991, IJ is a nonprofit, public-interest legal center dedicated to defending the essential foundations of a free society: private property rights, economic and educational liberty, and the free exchange of ideas. As part of this mission, IJ represents a putative class of plaintiffs subjected to unconstitutional TSA policies, practices, and procedures. TSA has been seizing air travelers and their cash without probable cause or reasona-

[1] All parties have consented to the filing of this brief. Pursuant to Rule 29(a)(4), *amicus* states that no party's counsel have authored this brief in

ble suspicion simply because a traveler took a "large" amount of cash (typically $5,000 to $10,000), a perfectly legal act, with her to the airport. *See Brown v. Transp. Sec. Admin.*, No. 20-cv-64 (W.D. Pa.). TSA then turns the passenger over to another federal agency, typically the Drug Enforcement Agency (DEA), which in turn institutes civil forfeiture of the money. The Western District of Pennsylvania recently held that the plaintiffs' challenge to those TSA policies is not subject to Section 46110.

Those circumstances, like the petitioner's circumstances here, warrant judicial review of TSA's unconstitutional policies. Both concern widespread unconstitutional and unlawful TSA airport security checkpoint confiscation policies, practices, and procedures affecting the rights of air travelers. But that review is properly before a district court under the Administrative Procedure Act (APA), and not before this Court in the first instance under Section 46110. That is because Section 46110 applies only to "order[s] issued" by the agency following individualized adjudicative "proceedings." It does not apply to generally applicable agency policies, practices, or procedures. Petitioner's case challenges generally applicable unconstitutional policies, practices, and procedures generally applied across the TSA. It does not challenge any "order" issued in a "proceeding." Section 46110 therefore does not apply, and this Court lacks jurisdiction under the statute's plain meaning.

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part or in whole, and no person (other than *amicus* and its counsel) have contributed money to fund the preparation or submission of this brief.

Fundamental notions of due process further compel this result. Following a Section 46110 order, the affected party is served with the order (49 U.S.C. § 46105) and has 60 days from the date of the order to file a petition for review (*id.* § 46110(a)). That order is the result of a "proceeding" at which the affected party may raise "objection[s]." *Id.* § 46110(d). But travelers subjected to generally applicable TSA policies, practices, and procedures were certainly never served with notice that TSA had instituted these policies, practices, and procedures; thus, they never had an opportunity to file a petition within the statutory deadline, let alone to build a record or raise objections before the agency. Properly construing Section 46110 ensures that would-be victims of unconstitutional TSA policies, practices, and procedures are not deprived of their day in court before they had any reason to know they needed to be protecting their rights. TSA's reading of Section 46110, on the other hand, is not only contrary to the statute's plain text; it also raises serious constitutional concerns.

Because Section 46110 does not apply to the generally applicable TSA policies, practices, and procedures at issue here, this Court lacks jurisdiction and should transfer the case to the district court under 28 U.S.C. § 1631.

ARGUMENT

I. SECTION 46110 IS THE WRONG JURISDICTIONAL VEHICLE FOR CHALLENGES TO TSA POLICIES, PRACTICES, AND PROCEDURES.

This Court lacks jurisdiction over the petition for review. Section 46110's text and structure compel that conclusion for two reasons. *First*, TSA's prohibited item list and sensitive security information designation processes—like any other TSA policy, practice, or procedure—are not "orders" within the meaning of Section 46110. *Second*, Section 46110 is simply a claim-channeling provision governing review of agency adjudicative proceedings, not facial challenges like this one to TSA policies, practices, and procedures.

A. Generally applicable TSA policies, practices, and procedures are not "orders" within the meaning of Section 46110.

TSA policies, practices, and procedures—including the prohibited item list and sensitive security information designation processes challenged here—are not "orders" reviewable on petition to this Court under Section 46110.

1. Section 46110 provides that "a person disclosing a substantial interest in an *order issued* by … the Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration . . . in whole or in part under this part, part B, or subsection (l) or (s)

of section 114 may apply for review of the order by filing a petition for review in the [Court of Appeals]." 49 U.S.C. § 46110(a) (emphasis added). But Section 46110 does not define what constitutes an "order." Thus, it is this Court's task to construe it.

First, we begin with the "ordinary meaning" of the term "order," as a court must when "the statute does not define" a term. *Schindler Elevator Corp. v. U.S. ex rel. Kirk*, 563 U.S. 401, 407 (2011); *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009) ("Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose."). The ordinary meaning of an agency "order" does not encompass generally applicable agency policies.

In ordinary parlance, an "order" issued by an agency connotes an individualized command, rather than a generalized policy applicable to everyone. Take, for example, *Black's Law Dictionary*, which defines an "agency order" as "[a] command or ruling issued by an executive agency and *directed to a person or entity* over whom the agency has jurisdiction." *Agency Order*, Black's Law Dictionary (11th ed. 2019) (emphasis added).

The APA, a comprehensive statute governing review of agency actions, likewise reflects this commonsense understanding of what an "order" issued by an agency is: an "'order' means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency

in a matter *other than rule making* but including licensing." 5 U.S.C. § 551(6) (emphasis added). An order does *not*, in ordinary parlance, encompass generally applicable rules or policies, a distinction the APA likewise reflects by distinguishing an "order" from a "rule"—*i.e.*, "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." *See* 5 U.S.C. § 551(4), (5); *accord Perez v. Mortg. Bankers Ass'n,* 575 U.S. 92, 96 (2015); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1021 (D.C. Cir. 2000) ("'Interpretative rules' and 'policy statements' may be rules within the meaning of the APA … , although neither type of 'rule' has to be promulgated through notice and comment rulemaking.").

This is the ordinary understanding of courts too. Courts set forth their generally applicable rules (*e.g.*, United States Court of Appeals for the First Circuit Rulebook) and then issue orders in individual cases enforcing and applying those generally applicable rules.

Thus, the ordinary meaning of an "order issued by" an agency does not encompass generally applicable rules and policies, but rather speaks only to specific application of those rules and policies in particular cases.

Second, when a word "has many dictionary definitions," a court "must draw its meaning from its context." *Kucana v. Holder*, 558 U.S. 233, 234 (2010) (quoting *Ardestani v. INS*, 502 U.S. 129, 135 (1991)). The word "order,"

interpreted "in [its] context and with a view to [its] place in the overall statutory scheme" (*Tyler v. Cain*, 533 U.S. 656, 662 (2001)), confirms the understanding that a Section 46110 "order" does not encompass a TSA policy, practice, or procedure. A neighboring section, Section 46105—entitled "Regulations and Orders"—specifies mandatory "contents and service of orders." 49 U.S.C. § 46105(b). It provides that "[a]n order of the … Administrator of the Transportation Security Administration … shall include the findings of fact on which the order is based and shall be served on the parties to the proceeding and the persons affected by the order." *Id.* If a TSA policy or directive is really an "order," however, it would need to include "findings of fact," a strange demand in the context of issuing a policy. Even more nonsensical, though, is the directive that an order "shall be *served on the parties to the proceeding and the persons affected by the order*." *Id.* (emphasis added). In the context of TSA policies, practices, and procedures, there *aren't* any "parties" to a "proceeding."

For TSA's prohibited item list, for example, every individual traveling through the nation's airports is surely a person "affected by the [purported] order" (*id.*), but we have no reason to believe TSA "serves" every would-be traveler with the prohibited items list in real time when it is issued. That is because, as with the ordinary meaning of "order," a Section 46110 "order" simply does not encompass generally applicable policies, practices, and procedures. If TSA cannot be bothered to comply with the statutory protections

required for "orders," it cannot credibly contend that, for purposes of judicial review, its prohibited item list is an "order." Context dictates otherwise.

Third, reading the word "order" to include policies, practices, and procedures like the prohibited items list would lead to absurd results. It makes no sense to require an agency to serve a policy on "parties" or on persons affected by the policy (49 U.S.C. § 46015(b)) because policies are generally applicable. Characterizing TSA policies as orders under Section 46110 would mean that the TSA *must* serve the millions of Americans who fly every year with the TSA prohibited items list and updates when they are issued. That is the only way to square Section 46110's requirement that an "order" must be challenged within 60 days with the impossibility of doing that if a person affected by the order has not been served with it (and may not even know it exists). *See* 49 U.S.C. § 46110(a); *infra* Section II.

2. Case law supports this reading too. A district court in the Third Circuit recently held that Section 46110 applied only to "formal administrative orders rather than information policies or practices." *Brown v. Transp. Sec. Admin.*, 2021 WL 1206537 (E.D. Pa. Mar. 30, 2021); *see also Brown v. Transp. Sec. Admin.*, 2021 WL 1215819, at *4-5 (W.D. Pa. Jan. 7, 2021), *report and recommendation adopted in part, rejected in part sub nom. Brown*, 2021 WL 1206537 (holding Section 46110 only governs challenges to formal TSA orders, as demonstrated by "the statute's contemplation of a date of issuance, administrative proceedings and a record"). We acknowledge, howev-

er, that some circuits, like the Fourth, have construed "order" more broadly to encompass a standard operating procedure document. *E.g.*, *Blitz v. Napolitano*, 700 F.3d 733, 739-740 (4th Cir. 2012). This Court acknowledged as much in *Ruskai v. Pistole*, 775 F.3d 61, 65 (1st Cir. 2014).

This Court's precedents, however, are consistent with our position as to what constitutes a Section 46110 order and, critically, what does not. In *Ruskai*, this Court addressed a Section 46110 action challenging TSA's denial of an accommodation from a security protocol. 775 F.3d at 65. Though "[n]either party dispute[d] that TSA's security protocol and refusal to grant [the petitioner's] requested accommodation constitute a final order reviewable by this court" (*id.*), and this Court agreed, *Ruskai* illustrates the type of individualized determination fairly characterized as an "order" under Section 46110—an individual requested an accommodation and got a denial letter that constituted the final "order." *Ruskai* is thus consistent with our position as to the meaning of the word "order" under Section 46110.

It is also consistent with the Court's decision in *Aviators for Safe and Fairer Regulation, Inc. v. FAA*, 221 F.3d 222 (1st Cir. 2000). There, the Court addressed an FAA "notice of enforcement policy" that told regulated parties how it would enforce a regulation. *Id.* at 224-225. Pointing to the APA's definition of "order," the Court understood the notice to effectively be a final disposition in declaratory form of would-be adjudicative enforcement proceedings. *Id.* at 225. Because it foreordained the outcomes of soon-to-occur adjudi-

cations, this Court acknowledged that such an adjudicative disposition could fall within the definition of a Section 46110 "order."

Here, however, TSA policies, practices, and procedures like the prohibited items list are different in kind from the types of individualized Section 46110 "orders" the Court has considered before. Generally applicable TSA policies, practices, and procedures are simply not "orders" within the meaning of Section 46110's judicial review provision and, as such, this Court lacks jurisdiction to adjudicate the petitioner's challenges. Sai's case belongs in district court.

B. Section 46110 is a claim-channeling provision for judicial review of agency decisions made in adjudicative proceedings.

Generally applicable TSA policies, practices, and procedures are not Section 46110 "orders," which easily resolves this case against jurisdiction and requires transfer to the district court. There is yet another reason why Section 46110 remains an inappropriate vehicle for challenges to TSA policies, practices, and procedures: Section 46110 is merely a claim-channeling provision for appeals of agency decisions following *adjudicative* proceedings. Section 46110 is not the vehicle through which travelers' facial constitutional and *ultra vires* challenges to TSA policies, practices, and procedures can sensibly be brought.

1. Section 46110 has the hallmarks of an appellate provision for parties challenging the outcome of an administrative adjudication. To start,

chapter 461 (in which Section 46110 sits) fits within Subpart IV, entitled Enforcement and Penalties. And Chapter 461 itself is titled Investigations and Proceedings. Chapter 461 then includes provisions governing

- "complaints and investigations" (49 U.S.C. § 46101);
- "proceedings," in which a person "may appear and be heard" (*id.* § 46102);
- "service of notice, process, and actions" (*id.* § 46303);
- "evidence" that may be taken during a "hearing or investigation," including by subpoena and by examining witnesses (*id.* § 46104);
- "evidence" that may be taken "in a proceeding or investigation" by ordering a person to be deposed or to produce records (*id.*); and
- provisions for "joinder or intervention" in a proceeding (*id.* § 46109).

Section 46110 itself also includes details all reminiscent of an agency adjudicative or quasi-adjudicative proceeding. Those features include:

- The agency must "file with the court a record of any proceeding in which the order was issued." 49 U.S.C. § 46110(b).
- The agency's "findings of fact … if supported by substantial evidence, are conclusive." *Id.* § 46110(c). Factual findings are typically made within the purview of an adjudicative proceeding.
- "In reviewing an order … , the court may consider an objection to an order … only if the objection was made in the proceeding … or if

there was a reasonable ground for not making the objection in the proceeding. *Id.* § 46110(d). Making an "objection" also generally describes a procedure that sounds like an individualized adjudication, given the lack of an opportunity for the public to make objections to TSA's promulgation of policies, practices, or procedures.

- And the court may "affirm, amend, modify, or set aside any part of the order." *Id.* § 46110(c). Having a court "amend" or "modify" a generally applicable agency policy, practice, or procedure seems a strange exercise of judicial authority.

In sum, provisions like these "incorporate[] an assumption that the limited review provisions … apply only to claims that have been subject[] to administrative consideration and that have resulted in the creation of an adequate administrative record." *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 493 (1991).

Other statutory provisions that reference Section 46110 reflect the construction that it applies to individualized adjudicative proceedings. Section 114, which contains the TSA administrator's general statutory authority, provides in Section 114(u)(5) that "Chapter 461 shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary of Homeland Securi-

ty." 49 U.S.C. § 114(u)(5). Describing an "investigation" or "proceeding" being "brought" sounds like an individualized adjudicative proceeding, like bringing a lawsuit, and unlike promulgating a policy, practice, or procedure.

Other portions of the statute reference the judicial review provisions of Section 46110, all in the context of individualized adjudicative or quasi-adjudicative determinations:

- Section 41108 provides a right to appeal under Section 46110 if the Secretary of the Department of Transportation dismisses an application from an air carrier for a certificate of public convenience and necessity for it to operate;
- Section 44703 provides a right to appeal an order from the Federal Aviation Administration (FAA) regarding whether to issue an airman certificate to a prospective pilot;
- Section 44106 provides a right to appeal the revocation of an aircraft certificate on a finding that the aircraft was used to smuggle controlled substances; and
- Section 44709 provides a right to appeal an order from the FAA that amends, modifies, suspends, or revokes a certificate issued for an aircraft or to an airman.

In short, Section 46110 treats this Court as an appellate body sitting in review of an administrative adjudication—not as a court of first review over

the constitutionality and lawfulness of agency policies, practices, or procedures.

2. Facial challenges to generally applicable policies are an inappropriate fit for a claim-channeling provision like Section 46110, which is designed for adjudicative proceeding appeals. In *Ruskai*, this Court lamented the oddities produced by Section 46110 review, calling the record "somewhat unusual," because it was "the result of informal agency action"; "much of the record is sealed"; and "the underlying facts are not static." 775 F.3d at 66. As a result, both parties had to seek to supplement the record before the Court (*id.*), an "extraordinary" ask in a federal appeals court where the record is typically closed (*United States v. Muriel-Cruz*, 412 F.3d 9, 12 (1st Cir. 2005)).

These acknowledged oddities confirm why Section 46110 is meant as a claim-channeling provision for orders in individualized adjudicative proceedings. It is simply not built to be a vehicle for the type of facial challenges to agency policies like those brought here.

This concern animated the Supreme Court's decision in *McNary* too, further reinforcing that Section 46110 is not meant to provide judicial review outside the context of individual adjudicative proceedings. That is because "statutes that provide for only a single level of judicial review in the courts of appeals 'are traditionally viewed as warranted only in circumstances where district court factfinding would unnecessarily duplicate an adequate administrative record—circumstances that are not present in 'pattern and practice'

cases where district court factfinding is essential [given the inadequate administrative record].'" *McNary*, 498 U.S. at 497.

To be sure, the courthouse doors should not be shut for review of TSA actions. But that does not mean that Section 46110 and this Court must do the work for which neither was built. A traveler can instead challenge TSA policies, practices, and procedures—like many other agency actions—through an ordinary APA action in district court. There, the district court can resolve issues concerning the administrative record, order additional discovery as appropriate, and make appropriate findings and conclusions for a Court of Appeals to review on appeal.

Because facial challenges to TSA policies, practices, and procedures do not arise out of administrative adjudications, Section 46110 does not confer jurisdiction on this Court to resolve them. Such challenges belong in district court.

II. WERE IT OTHERWISE, SECTION 46110 WOULD VIOLATE DUE PROCESS BECAUSE TRAVELERS CANNOT TIMELY CHALLENGE UNSERVED, MOSTLY SECRET AGENCY ACTION.

Section 46110 must have the meaning we have just described. Otherwise, it would raise serious due process concerns through its severe restrictions and effective bars on a plaintiff's ability to bring a challenge to TSA policies in the first place.

The Court "begin[s] with the strong presumption that Congress intends judicial review of administrative action." *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 670 (1986). That is because "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Courts are therefore loathe to construe congressional enactments as barring judicial review of constitutional challenges to agency action. *Bowen*, 476 U.S. at 681 n.12.

If Section 46110 applies to facial constitutional and *ultra vires* challenges to TSA policies, practices, and procedures, travelers will be deprived of "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333.

TSA's policies, practices, and procedures are often not written down and, even if they are, are not published to the public. That is true of the "large"-amounts-of-cash policy IJ's clients have challenged in the Western District of Pennsylvania. A future victim of such a policy therefore has no way of *knowing* that such a policy even exists.

Nonetheless, if TSA policies, practices, and procedures are Section 46110 "orders," the future victim must file her petition "not later than 60 days after the order is issued." 49 U.S.C. § 46110(a). That deadline is impossible to meet when a traveler has no way of knowing the policy ever issued in the first place. Even if the policy were written down, it is unlikely to be pub-

licly available in the absence of a Freedom of Information Act request—which itself often takes more than 60 days to fulfill.

The Supreme Court recently raised precisely these due process and adequacy-of-hearing concerns regarding the applicability of a statute that required challenges to certain FCC orders within 60 days. *See PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051, 2056 (2019). There, the Court questioned "whether the Hobbs Act's exclusive-review provision, which requires certain challenges to FCC final orders to be brought in a court of appeals 'within 60 days after' the entry of the order in question afforded [petitioner] a 'prior' and 'adequate' opportunity for judicial review of the Order" for purposes of APA Section 703. *Id.* "If the answer is 'no,'" the Court went on, "it may be that the Administrative Procedure Act permits [petitioner] to challenge the validity of the Order in this enforcement proceeding."

It is cold comfort that a court may allow an untimely petition "if there are reasonable grounds" for the untimeliness. 49 U.S.C. § 46110(a). That is hardly a standard that promotes "predictability" in "deciding whether to file suit," and it runs headlong into the observation that "administrative simplicity is a major virtue in a jurisdictional statute." *Hertz Corp. v. Friend*, 559 U.S. 77, 94-95 (2010). Congress surely did not intend litigation over untimeliness as a matter of course in challenges to secret TSA policies, practices, and procedures.

Similarly, Section 46110 limits courts to considering "an objection to an order … only if the objection was made in the proceeding conducted by" TSA. 49 U.S.C. § 46110(d). Again, a future victim of a policy, practice, or procedure that has no idea TSA has issued the policy, practice, or procedure certainly has no opportunity to ensure her objections are made in the "proceeding" that she does not know about. The statute—if interpreted as TSA insists—leaves a petitioner with the unenviable task of asking the Court of Appeals to forgive her "if there was a reasonable ground" for her failure to object to the unknown policy, practice, or procedure before. But a statutory scheme that as a matter of course requires a court's favorable exercise of discretion two times over before a petitioner can even present the merits of her claim is hardly a meaningful opportunity to be heard. It also invites resource-consuming briefing in this Court regarding fact-bound issues wholly unrelated to the merits of petitioner's challenges.

An individual challenging a TSA policy, practice, or procedure is thus deprived of nearly all of the procedural protections that otherwise exist for parties to adjudicative proceedings under Chapter 461. That hardly reflects a scheme that comports with due process.

Adopting TSA's reading of the statute effectively renders it unconstitutional. The Court should therefore construe Section 46110 as we have proposed, by holding that Section 46110 "orders" do not encompass TSA policies, practices, or procedures, and are instead limited to "orders issued" following

adjudicative proceedings. Otherwise, constitutional and *ultra vires* challenges like the petitioner's here will have no meaningful opportunity for judicial review. "[A]dopting th[is] reading accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review." *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1069 (2020).

CONCLUSION

For the foregoing reasons, the Court should transfer this case to the district court because this Court lacks jurisdiction over the claims at issue, which do not arise from "orders" issued in adjudicative "proceedings."

Respectfully submitted,

Dated: April 9, 2021

/s/ *A.J. Kritikos*

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this brief:

(i) complies with the word limit of Fed. R. App. P. 29(a)(5) because it contains 4,246 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6.

Dated: April 9, 2021 /s/ *A.J. Kritikos*

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2021, I electronically filed the foregoing brief with the Clerk of this Court using the CM/ECF system, and counsel for all parties will be served by the CM/ECF system.

/s/ *A.J. Kritikos*