ORAL ARGUMENT HELD SEPTEMBER 14, 2023

No. 22-1031 and consolidated cases

U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

States of Texas, Alabama, Alaska, Arkansas, Arizona, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, and Utah,
Petitioners,

v.

U.S. Environmental Protection Agency and Michael S. Regan, in his official capacity as Administrator, U.S. Environmental Protection Agency,
Respondents.

Petition for Review of a Rule of
the U.S. Environmental Protection Agency

EPA's Supplemental Brief

Todd Kim
Assistant Attorney General

Sue Chen
Daniel R. Dertke
U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
202.305.0283 (Chen)
202.514.0994 (Dertke)
sue.chen@usdoj.gov
daniel.dertke@usdoj.gov

Of counsel
David P.W. Orlin
Seth Buchsbaum
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Code of Federal Regulations

Federal Registers

INTRODUCTION

As ordered by this Court on July 29, 2024, EPA addresses the relevance of *Ohio v. EPA*, 98 F.4th 288 (D.C. Cir. 2024), to Petitioners' standing, and the relevance of *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), to issues of statutory interpretation presented in this case.

Like the petitioners in *Ohio*, State Petitioners have failed to meet their burden to show standing: Their opening brief did not show that their alleged injuries are sufficiently concrete and redressable because they offered no evidence that they have actually lost or will lose oil-extraction tax revenue or that they have particularized interests in electrical grids.

While this Court need not reach Petitioners' statutory-interpretation arguments because their claims fail on threshold grounds, *Loper Bright* does not cast any doubt on the validity of EPA's statutory interpretation. The agency's action should be upheld, for the reasons explained in EPA's principal brief and here. As that brief explained, Section 7521(a) is best read to authorize consideration of electrification technologies in standard-setting, to authorize emission standards for regulated classes of motor vehicles that are premised on fleetwide averaging, and to authorize inclusion of electric vehicles within a regulated class. Moreover, *Loper Bright* recognized that courts may look for guidance in longstanding and consistent agency interpretations made in pursuance

of official duty and informed by specialized expertise. The interpretation at issue bears all the hallmarks of agency decisionmaking with the power to persuade under *Loper Bright* and reflects the best reading of Section 7521(a).

ARGUMENT

I. State Petitioners have not shown standing.

In *Ohio*, groups of states and fuel manufacturers challenged EPA's decision to waive federal preemption of two California vehicle-emissions regulations under the Clean Air Act. 98 F.4th at 293. The fuel manufacturers argued that California's regulations depress demand for liquid fuels and thus injure them financially. *Id.* at 300-01. The state petitioners argued that they were injured because EPA's waiver would allegedly increase the cost of gasoline-powered vehicles, reduce fuel-tax revenue, and adversely affect the states' electrical grids. *Id.* at 301. Applying the established principle that a petitioner bears the "burden of establishing each of the elements of standing" "in its opening brief," *id.* at 300 (internal quotation marks omitted), this Court held, among other things, that petitioners lacked standing because they failed to explain how their claimed injuries would be redressed by a favorable decision. *Id.* at 301.

Ohio does not change familiar standing principles. Those well-established principles underpin EPA's point that State Petitioners failed to meet their burden to establish their standing here. EPA Br. 29-31; EPA's Rule 28(j) Letter (Apr. 15,

2024). Though the two cases have different facts, consistent with *Ohio*, State Petitioners here are "not [themselves] the object of the government action or inaction [they] challenge[]." 98 F.4th at 300. Rather, their claimed injuries "hinge on the actions of third parties—the automobile manufacturers" who are directly regulated by the vehicle emissions standards—and "[r]edressability . . . hinges on the response of those same automobile manufacturers." *Id.* at 302 (internal brackets and quotation marks omitted). Nonetheless, State Petitioners offered no evidence in their opening brief affirmatively demonstrating that their claimed injuries would be redressable given automakers' plans to increase production of electric vehicles. *See generally* EPA Br. 30-31; *see also* Auto Alliance Br. 3. Instead, the record shows that even before EPA finalized the challenged standards, a slew of automakers had already announced plans to shift production to fully electric vehicles and others planned major shifts to electrification technologies. EPA Br. 22-23.

State Petitioners' brief likewise failed to offer evidence that (1) State Petitioners have actually lost or will lose oil-extraction tax revenues as a result of the challenged standards; or that (2) State Petitioners own, operate, or have any other particularized interest in the electric grids. *See generally id.* at 30-31. State Petitioners cannot cure those failings by pointing to the "special solicitude" to which states are entitled when they seek to protect their quasi-sovereign interests.

See States Br. 14. *Ohio* reaffirmed the longstanding principle that "[t]he 'special solicitude' afforded to states can relax standing requirements only so far." 98 F.4th at 303 (quoting *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007)). "Even the 'greater leeway' afforded to states seeking to protect quasi-sovereign interests cannot save defective standing claims when, as here, the record is 'almost completely silent' with respect to an element of a state's standing." *Id.* at 303-04 (quoting *Alaska v. U.S. Dep't of Agric.*, 17 F.4th 1224, 1230 (D.C. Cir. 2021)).

The Court should thus dismiss State Petitioners' challenge for lack of standing.

II. *Loper Bright* does not diminish EPA's statutory arguments.

In *Loper Bright*, the Supreme Court overruled the deference framework of *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984), holding that courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." 144 S. Ct. at 2273. At the same time, *Loper Bright* recognized that Congress has often enacted statutes that "authorize[the agency] to exercise a degree of discretion," such as by empowering the agency to prescribe rules to "fill up the details" of a statutory scheme. *Id.* at 2263. *Loper Bright* also reaffirmed that courts addressing interpretive questions may "seek aid from the interpretations of those responsible for implementing particular statutes." *Id.* at 2262. "Such interpretations 'constitute a body of experience and informed

judgment to which courts and litigants may properly resort for guidance[.]'" *Id.* (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

A. The Court should not reach the statutory issues at all.

As an initial matter, *Loper Bright* is not relevant to the issues of statutory interpretation in this case because the Court should not reach Petitioners' statutory arguments. As explained in EPA's principal brief, Petitioners' claims fail on multiple threshold grounds. Their asserted injuries fall outside Section 7521(a)'s zone of interests. EPA Br. 31-34. Petitioners' arguments are untimely. *Id.* at 34-38. And Petitioners forfeited their arguments because they failed to raise them during the rulemaking. *Id.* at 38-39.

Section 7521(a) is designed to protect the public's interest in lower emissions of harmful pollutants and automakers' interests in technologically feasible standards. The zone of interests does not cover fuel producers' pecuniary interests in protecting market share, States' interest in preserving tax revenue and managing electrical grids, or consumers' interests in obtaining specific vehicles. *Id.* at 31-34.

Moreover, EPA established the basic regulatory elements of the standards' structure and form in 2010 and did not reopen those elements here. Indeed, EPA's averaging program—a key target of Petitioners' attack—dates back to the 1980s. *Id.* at 13. Petitioners thus challenge the wrong EPA action, and their arguments

about decisions made in 2010 (or earlier) are time-barred under 42 U.S.C. § 7607(b)(1). *Id*. at 35-38.

In addition, Petitioners raised none of their statutory arguments during the rulemaking. *Id.* at 38-39. Among other things, Petitioners failed to articulate their view that the level of projected electrification technologies and indirect effects on the economy triggers the major-questions doctrine, and thus did not give EPA the requisite opportunity to respond to their factual allegations and develop a record on those issues. *Id.* at 39. Petitioners thus did not satisfy the Clean Air Act's mandatory exhaustion rule. 42 U.S.C. § 7607(d)(7)(B). And because the exhaustion requirement is imposed by statute, this Court cannot excuse Petitioners' failure to exhaust, no matter the reason. *See Fleming v. USDA*, 987 F.3d 1093, 1098 (D.C. Cir. 2021) (citing *Ross v. Blake*, 136 S. Ct. 1850, 1856-57 (2016)).[1]

Exhaustion is all the more important in light of *Loper Bright*'s recognition that the thoroughness of an agency's consideration is a factor that gives an

[1] This Court's recent decision in *Huntsman Petrochemical LLP v. EPA* illustrates the proper application of the same mandatory-exhaustion provision at issue here. Case No. 23-1045 (Aug. 13, 2024). It shows that Petitioners cannot rely on dictum and pre-*Ross* case law to assert that the key-assumption doctrine excuses their failure to exhaust. Fuel Reply 10 (citing *Am. Fuel & Petrochemical Mfrs. v. EPA*, 937 F.3d 559, 589 (D.C. Cir. 2019), and *NRDC v. EPA*, 755 F.3d 1010, 1023 (D.C. Cir. 2014)). *Huntsman* held that 42 U.S.C. § 7607(d)(7)(B) did not permit the Court to excuse a failure to exhaust a nondelegation issue, Op. at 24—an issue that, in Petitioners' view, would have equally implicated a "key assumption" as an "assumption[] regarding the agency's statutory authority." Fuel Reply 10.

agency's interpretation the power to persuade. 144 S. Ct. at 2259; *see* EPA Br. 39. Would-be petitioners thus need to raise all their concerns about EPA's statutory interpretation during the rulemaking so that the agency can thoroughly consider them, apply its expertise, and develop a record.

By contrast, commenters raised some of the same statutory arguments in EPA's most recent vehicle-emission standards for light- and medium-duty vehicles. 89 Fed. Reg. 27842 (Apr. 18, 2024). That gave EPA a chance to thoroughly explain its position and address commenters' concerns about the agency's statutory interpretation—on the record. *E.g. id.* at 27887/2-902/3.[2] In fact, many Petitioners here challenged the 2024 standards and opening briefs in that case are due in early September. Order, *Kentucky v. EPA*, Case No. 24-1087 and consolidated cases (D.C. Cir. July 17, 2024). The Court should enforce the Act's mandatory-exhaustion rule against Petitioners' statutory arguments here. And it should wait to review those arguments where they are properly raised.

B. EPA's interpretation of Section 7521(a) is the best one.

If the Court nonetheless reaches the merits, *Loper Bright* does not change the bottom line. The Court should uphold EPA's interpretation of Section 7521(a)

[2] *See also, e.g.*, Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles Response to Comments 289-359 (Mar. 2024), *available at* https://www.epa.gov/system/files/documents/2024-03/420r24005.pdf.

because that interpretation is the best one, and because EPA acted well within the authority set forth in Section 7521(a).

Loper Bright recognized that a "statute's meaning may well be that the agency is authorized to exercise a degree of discretion," such as where the statute "empower[s] an agency . . . to regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility.'" 144 S. Ct. at 2263.

Section 7521(a) gives EPA significant discretion to decide which vehicles should be regulated and how to group those vehicles into classes, what form the standards should take, and what emission-control technologies to consider when setting standards. *See Massachusetts*, 549 U.S. at 532 (recognizing that Section 7521(a)(1) reflects Congress's "intentional effort" to give EPA "regulatory flexibility"). The provision, entitled "Authority of Administrator to prescribe by regulation," directs EPA to prescribe "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, *which in [the EPA Administrator's] judgment* cause, or contribute to" harmful air pollution. 42 U.S.C. § 7521(a) (emphasis added). Those standards take effect "after such period *as the Administrator finds necessary* to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." *Id.* § 7521(a)(2) (emphasis added).

In this way, Section 7521(a) creates the basic statutory scheme: EPA will set emission standards for classes of vehicles that emit harmful air pollution. The statute empowers EPA to "fill up the details" of that scheme by delegating to the agency the technical tasks of determining which classes of motor vehicles endanger the public and how to limit their emissions. *Loper Bright*, 144 S. Ct. at 2263. EPA's authority to perform those tasks is cabined in that the agency must consider whether the emission standards are technologically feasible during the relevant time period. 42 U.S.C. § 7521(a)(2). But no emission-control technologies are excluded from potential consideration and EPA has discretion over the form and content of the standards.

Petitioners challenge EPA's consideration of electrification technologies and use of fleet-averaging as part of that process. But as its principal brief explained, EPA acted well within the authority conferred by Section 7521(a) when it considered electrification technologies in setting the standards and when it promulgated fleet-average standards that cover electric vehicles. EPA Br. 40-46, 62-82. And EPA's interpretation of Section 7521(a) to authorize those actions reflects its longstanding and consistent position based on the agency's specialized expertise. Nothing in *Loper Bright* alters those conclusions.[3]

[3] EPA acknowledges that its principal brief invoked the *Chevron* framework—in passing as part of one sentence. *See* EPA Br. 82 ("But at a minimum, EPA's

Cont.

1. Under *Loper Bright*, courts must "use every tool at their disposal to determine the best reading of the statute." 144 S. Ct. at 2266. Applying all relevant interpretive tools here confirms that Section 7521(a) authorizes consideration of electrification technologies. EPA Br. 40-46. As explained, the plain text of that provision directs EPA to set technologically feasible standards. 42 U.S.C. § 7521(a)(1), (2). Doing so entails giving "appropriate consideration" to compliance costs and determining lead time "as the Administrator finds necessary to permit the development and application of the requisite technology." *Id.* § 7521(a)(2). Congress, in other words, authorized EPA to identify and evaluate available pollution-control technologies.

Electrification technologies are such technologies: These technologies, which have long been part and parcel of vehicle design, span the entire spectrum, from electric power steering, to hybrid electric vehicles, to battery electric vehicles that run solely on electricity. EPA Br. 8.

Electrification technologies undeniably can "control" and "prevent" greenhouse-gas emissions. 42 U.S.C. § 7521(a)(1). And nowhere does Section 7521(a) exclude electrification technologies (or any other emission-control

---

construction of Section 7521(a) is reasonable and may be sustained as such." (citing *Wash. All. of Tech. Workers v. DHS*, 50 F.4th 164, 192 (D.C. Cir. 2022)). In view of *Loper Bright*, EPA withdraws that alternative claim to deference under *Chevron*. But for the reasons explained in EPA's principal brief and here, such deference is not needed for EPA to prevail.

technology) from consideration. Indeed, Petitioners do not challenge EPA's consideration of all electrification technologies; they target only EPA's consideration of plug-in hybrids and battery vehicles, which are fully electric. Neither that distinction nor any exclusion of technologies that are available considering costs finds any basis in the Clean Air Act. EPA Br. 50. EPA thus acted well within its authority when it considered electrification technologies in the 2021 standards. And the degree that electrification technologies might reduce emissions is a technical determination that calls for review under the arbitrary-and-capricious standard. Petitioners' contrary reading would rewrite Section 7521(a) by adding a technology carveout that Congress eschewed. *See generally id.* at 40-43.

Statutory history and context support EPA's plain-text reading. *See id.* at 43-46. Congress enacted Section 7521(a) to push automakers to adopt innovative technologies to cut emissions. And Congress itself has made clear, including most recently in the Inflation Reduction Act, that electrification technologies are critical in reducing greenhouse-gas emissions. It would thwart Congressional intent to categorically exclude such an effective emission-control technology from the standard-setting analysis.

Section 7521(a) is also best read to authorize fleet averaging, including averaging of electric vehicles. EPA Br. 62-82. This provision directs EPA to set

standards "applicable to the emission of any air pollutant from any *class or classes* of new motor vehicles" "which in [the EPA Administrator's] judgment cause, or contribute to" harmful air pollution. 42 U.S.C. § 7521(a)(1) (emphasis added). The phrase "class or classes" in turn refers expressly to groups of vehicles. Section 7521(a) thus specifies that EPA can set standards for groups of vehicles—like the fleet-average standards at dispute here. And fleet averaging furthers Section 7521(a)(2)'s objective by allowing automakers to meet the standards with lower compliance costs, less lead time, and more compliance flexibility to optimize business plans. EPA Br. 64-65; *see id.* at 68-73 (explaining why EPA's reading also accords with the Act's conformity, warranty, and enforcement provisions). That is why automakers have always defended EPA's averaging authority.

As EPA further noted in its principal brief (EPA Br. 64, 72), this Court in *NRDC v. Thomas,* 805 F.2d 410 (D.C. Cir. 1986), upheld averaging as a permissible compliance mechanism for Section 7521 standards. To be sure, that case applied *Chevron*'s deference framework in upholding EPA's authority. *E.g.*, 805 F.2d at 420. But *Loper Bright* made clear that it does "not call into question prior cases that relied on the *Chevron* framework," which are entitled to "statutory *stare decisis*" notwithstanding the "change in interpretive methodology." 144 S. Ct. at 2273. So *NRDC*'s holding—that EPA's reading of Section 7521(a), to allow averaging, "makes sense"—remains good law (and is persuasive). 805 F.2d at

425. Moreover, after *NRDC* was decided, Congress made clear that it wanted to allow EPA to keep using averaging as upheld in *NRDC*. *See* EPA Br. 18 (citing legislative history from the 1990 Clean Air Act Amendments).

Relatedly, the disputed standards properly cover electric vehicles. EPA's reading—that standards can apply to a class including electric vehicles—is the best one. The 2021 standards apply to the light-duty class. They thus cover electric cars and trucks belonging to that class. That conclusion follows Section 7521(a)'s text, which says that the standards are applicable to emissions *not* "from any new motor vehicle," but "from any class or classes" of new motor vehicles that in the Administrator's judgment cause or contribute to harmful air pollution. 42 U.S.C. § 7521(a)(1). And "class," in its ordinary usage, means "a group, set, or kind sharing common attributes." Merriam-Webster.[4] The members of the light-duty vehicle class—including electric ones—are all motor vehicles as defined in the Clean Air Act and share the same load capacities. 42 U.S.C. § 7550(2); 40 C.F.R. § 86.1803-01. Petitioners' contrary reading would, again, rewrite the statute by striking out the phrase "class or classes." *See generally* EPA Br. 76.[5] And if more

[4] *Available at* https://www.merriam-webster.com/dictionary/class.

[5] Although a group's composition might be subject to an (unpreserved) arbitrary-or-capricious challenge, there is no categorical requirement that every member of a group share the characteristic of tailpipe emissions, as opposed to a functional characteristic (like being light-duty). EPA Br. 77-78. In prescribing statutory standards under Section 7521, Congress itself often regulated the class of "light-

Cont.

were necessary, Congress in Section 7521(a) as a whole evinced a desire to give EPA discretion to administer this program, not to restrict it through counter-textual limitations.[6]

Petitioners' view also ignores how the standard-setting process works. *Ex ante*, EPA does not know the characteristics of the motor vehicles that an automaker may produce. EPA thus sets standards for the entire class of vehicles, based on its consideration of all available technologies. Automakers respond to those standards by applying control technologies of their choice to vehicles in actual production. Only at that point does it become clear which vehicles have which control technologies, be they electrification or something else.

2. In addition to reflecting the best reading of Section 7521(a), EPA's interpretation—that this provision authorizes EPA to consider electrification technologies, to set fleet-average standards, and to apply those standards to electric

---

duty vehicles" as a whole, *see, e.g.*, 42 U.S.C. § 7521(g), as that term had been defined by EPA. *See id.* § 7550(7); 40 C.F.R. § 86.082-2; 46 Fed. Reg. 50464, 50476-77 (Oct. 13, 1981). And it would be perverse to conclude that in a scheme intended to control the emissions of dangerous pollution, Congress would have prohibited EPA from taking into account technologies—like fully electric vehicles—that reduce 100 percent of tailpipe pollution but not technologies that reduce 99 percent of tailpipe pollution.

[6] Later statutory enactments confirm that Congress views electric vehicles as part of the "class or classes" of vehicles subject to regulation. For example, tax credits for electric vehicles are conditioned on, among other things, those vehicles being "treated as a motor vehicle for purposes of title II of the Clean Air Act" and being in compliance with "the applicable provision of the Clean Air Act for the applicable make and model year of the vehicle." 26 U.S.C. § 30D(d)(1)(D), (f)(7).

vehicles—is consistent, longstanding, and rooted in technical expertise. EPA Br. 16. In *Loper Bright*, the Supreme Court noted that the "'interpretations and opinions' of the relevant agency, 'made in pursuance of official duty' and 'based upon . . . specialized experience,' 'constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance,' even on legal questions." 144 S. Ct. at 2259 (quoting *Skidmore*, 323 U.S. at 139-40). "'The weight of such a judgment in a particular case,' . . . 'depend[s] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'" *Id.* (quoting *Skidmore*, 323 U.S. at 140).

The longstanding and consistent interpretation at issue here has all the hallmarks that give it the power to persuade. It reflects the agency's decades-long expertise in evaluating emission-control technologies, setting emission standards, testing and certifying new motor vehicles, enforcing against violators, and running a world-class vehicle and fuel-emissions laboratory. *See, e.g.*, 56 Fed. Reg. 25724 (June 5, 1991); 62 Fed. Reg. 54694 (Oct. 21, 1997); 65 Fed. Reg. 6698 (Feb. 10, 2000); 65 Fed. Reg. 59896 (Oct. 6, 2000); 75 Fed. Reg. 25324 (May 7, 2010); 76 Fed. Reg. 57106 (Sept. 15, 2011); 77 Fed. Reg. 62624 (Oct. 15, 2012); 79 Fed. Reg. 23414 (Apr. 28, 2014); 81 Fed. Reg. 73478 (Oct. 25, 2016); 85 Fed. Reg.

24174 (Apr. 30, 2020); 88 Fed. Reg. 4296 (Jan. 24, 2023); https://www.epa.gov/aboutepa/about-national-vehicle-and-fuel-emissions-laboratory-nvfel.[7] Indeed, automakers—the regulated entities—have intervened to defend EPA's interpretation, on which they have long relied. Auto Alliance Br. 1; *see id.* at 9 (discussing the auto industry's longstanding reliance on EPA's averaging, banking, and trading program).

3. At bottom, Petitioners' statutory arguments all turn on the notion that Section 7521(a) somehow excludes electric vehicles. But no such exclusion exists. Section 7521(a) regulates classes of "motor vehicles." 42 U.S.C. § 7521(a)(1). And "motor vehicles" are defined without regard to how the vehicle is powered. *See id.* § 7550(2); EPA Br. 42.[8] So there is no legal distinction between a car that uses partial or full electrification technologies to control its greenhouse-gas emissions, and a car that uses stop-start technology or better aerodynamic design to do the same thing. Both cars are motor vehicles with emission controls and

[7] Earlier this year, EPA finalized the latest greenhouse-gas standards for light-, medium-, and heavy-duty vehicles. *See* 89 Fed. Reg. at 27842; 89 Fed. Reg. 29440 (Apr. 22, 2024). Those standards, like their predecessors, all consider electrification technologies, use fleet-averaging, and apply to electric vehicles. *See* 89 Fed. Reg. at 27853/1-2; *see also id.* at 27887/2-902/3 (setting forth EPA's statutory authority for 2024 rule).

[8] Indeed, Congress knew to specify internal-combustion engines when it wanted to address gasoline vehicles. *See, e.g.*, 42 U.S.C. § 7550(10)-(11). But it never did so in Section 7521(a). EPA Br. 42-43.

Section 7521(a) treats them the same way. The Court should reject Petitioners' attempts to draw a false distinction and write words into the statute.

CONCLUSION

The Court should dismiss or deny the petitions for review.

Submitted on August 19, 2024.

Of counsel
David P.W. Orlin
Seth Buchsbaum
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C.

Todd Kim
Assistant Attorney General

/s/ Daniel R. Dertke
Sue Chen
Daniel R. Dertke
U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
202.305.0283 (Chen)
202.514.0994 (Dertke)
sue.chen@usdoj.gov
daniel.dertke@usdoj.gov

CERTIFICATES OF COMPLIANCE AND SERVICE

I certify that this brief complies with Fed. R. App. P. 32(a)(5) and (6) because it uses 14-point Times New Roman, a proportionally spaced font.

I also certify that this brief complies with the Court's July 29, 2024, order because by Microsoft Word's count, it has 3845 words, excluding the parts of the brief exempted under Rule 32(f).

Finally, I certify that on August 19, 2024, I electronically filed this brief with the Court's CM/ECF system, which will serve each party.

/s/ Daniel R. Dertke
Daniel R. Dertke