UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GUN OWNERS OF AMERICA, INC. et al.,
Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE et al.,
Defendants.

Case No. 1:20-cv-10639-TLL-PTM
Hon. Thomas L. Ludington

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

COME NOW Plaintiffs, by and through counsel, and for their Response to Defendants' Cross-Motion for Summary Judgment (ECF No. 63) state as follows:

I. Plaintiffs Clearly Have Standing, and the Sixth Circuit's Opinion Forecloses Defendants' Belated Contrary Claim.

Defendants devote a considerable portion of their summary judgment briefing to the claim that Plaintiffs lack standing to bring this challenge. ECF No. 63 at PageID.1288-91. In short, they claim that Plaintiff Roberts has suffered no injury-in-fact because he "is not a subject of the 2020 PSA – which regulates Michigan FFLs and Michigan law enforcement officials...." *Id.* at PageID.1289. Defendants claim that, since Roberts "neither alleges he will be denied or delayed in his purchase of a firearm as a result of the NICS background check," and because he is a "law-abiding person" who likely will pass such a background check, "he may not establish Article III injury by merely refusing to do so and then alleging he cannot obtain a

firearm."[1] *Id.* "For similar reasons," Defendants argue that Plaintiff GOA has no standing, because it "does not demonstrate that any member has been injured."[2] *Id.* at PageID.1291.

Notably, Defendants did not make this claim in their prior motion for summary judgment. *See* ECF No. 21. Nor did Defendants initially challenge Plaintiffs' standing on appeal in the Sixth Circuit. *See* 21-1131, ECF No. 16. Only after another district court decision (where Defendants did raise a standing challenge), and only after the Sixth Circuit requested post-argument supplemental briefing on the issue, did Defendants first object to Plaintiffs' standing. *See* 21-1131, ECF No. 26. Nevertheless, Defendants' belated claim[3] is wrong for several reasons.

In support of their argument, Defendants cite *Lee v. DOJ*, 554 F. Supp. 3d 1228 (N.D. Ala. 2021), where another district court found no standing on similar

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[1] The Second Circuit recently rejected a similar argument, explaining that, even if the plaintiff's "injury stems from his own unwillingness to comply with the challenged requirements[,] so long as the interest at stake is cognizable (as [the] interest in carrying a firearm surely is), a plaintiff suffers an injury-in-fact if the defendant's allegedly unlawful conduct impairs that interest, even if it does so by deterring the plaintiff due to his individual, but reasonable, sensibilities." *Antonyuk v. Chiumento*, 2023 U.S. App. LEXIS 32492, at *61 (2d Cir. Dec. 8, 2023).

[2] Since Defendants' argument against GOA's representational standing is premised entirely on Roberts' purported lack of standing (ECF No. 63 at PageID.1291), Plaintiffs do not separately argue that GOA has standing.

[3] If Defendants really believed, since at least September of 2021, that Plaintiffs lack standing, why did they engage in several more rounds of briefing and record supplementation, over the course of nearly two-and-a-half years, only to challenge Plaintiffs' standing now? *See Cranpark, Inc. v. Rogers Group, Inc.*, 821 F.3d 723, 730 (6th Cir. 2016) ("Article III standing … can be raised at any point.").

facts. ECF No. 63 at PageID.1290-91. There, the court held that a NICS background check is "a brief, inconsequential annoyance" and does not rise to the level of an Article III "injury." *Lee*, 554 F. Supp. 3d at 1235.[4] That court was wrong for a number of reasons. First, an unlawful background check to receive government preclearance to exercise an enumerated constitutional right is an injury no matter how brief the delay or how "inconsequential" one believes the process to be. *See District of Columbia v. Heller*, 554 U.S. 570, 634 (2008) ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.").

Second, the *Lee* holding would permit ATF to nullify Section 922(t)(3)'s benefit that Congress provided, and which Congress thought important enough to codify in statute. Under that theory, no gun owner could ever challenge ATF's revocations of state permits as NICS alternates, even if ATF decided to wholesale revoke the eligibility of *every* state. Third, if ATF can unlawfully create new background check requirements while avoiding legal challenge, then ATF could declare that all firearm transfers (even private sales) need background checks,

[4] It is worth noting that the *Lee* court rejected the traceability argument the government made there, finding that the alleged harm was directly traceable to the ATF PSA issued in Alabama. 554 F. Supp. 3d at 1234. The court similarly rejected the government's contention that the plaintiff had harmed herself by seeking to avail herself of Section 922(t)(3)'s exemption. *Id.* at 1235.

something federal law does not require. ATF could issue an edict requiring Walmart to run background checks prior to selling squirt guns, yet there would be no "injury" creating standing to challenge it. Finally, the only case relied on by the *Lee* Court (554 F. Supp. 3d at 1235) did not involve a challenge to a background check itself, but merely an objection to one of the databases accessed for NICS screening, which hardly justifies using the decision in *Lee*.

But whether this Court finds *Lee* persuasive or not, the law of this case forecloses Defendants' claim. First, because standing is a threshold jurisdictional issue that all courts must consider in all cases (courts may raise the issue *sua sponte* as well, *see Frank v. Gaos*, 139 S. Ct. 1041 (2019)), this Court's prior opinion (ECF No. 25) would seem to have concluded implicitly that Plaintiffs have standing. Second, fatal to Defendants' claim, the Sixth Circuit in September of 2021 ordered the parties to address Plaintiffs' standing in post-argument supplemental briefs. 21-1131, ECF No. 22. This means that the Court was aware of *Lee*, and was keyed in to the issue of standing. Yet after such briefing, the Sixth Circuit concluded that Plaintiff Roberts was "[c]aught between governments and deterred by the new background-check obstacle...." *Gun Owners of Am., Inc. v. United States DOJ*, 2021 U.S. App. LEXIS 33554, at *1 (6th Cir. Nov. 9, 2021). It is beyond reasonable debate that the Court clearly believed the new "obstacle" imposed by the 2020 PSA constituted sufficient injury-in-fact to confer standing on Plaintiffs. Thus, for

Defendants to argue here that Plaintiffs lack standing represents an invitation for this Court to effectively overrule the Sixth Circuit.

II. Defendants Misrepresent Federal Law to Create an Impossible Burden on States that They Themselves Fail to Meet.

A. Defendants' Claim that Background Checks Must Perfectly Weed Out Prohibited Persons Is Wrong, Hypocritical, and Has Been Rejected.

The very first sentence of Defendants' Motion for Summary Judgment is incorrect, claiming that a Federal Firearms Licensee may "not transfer a firearm until after a background check is completed...." ECF No. 63 at PageID.1274 (emphasis added). Not so. Rather, 18 U.S.C. Section 922(t)(1)(B)(ii) permits a dealer to transfer a firearm if "3 business days … have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate" the law. *See also* 28 C.F.R. §25.6(c)(1)(iv)(B) ("firearm transfer should not proceed" until a "'Proceed' response … or the expiration of three business days … whichever occurs first."). Defendants later admit as much. ECF No. 63 at PageID.1295-96 ("if NICS does not provide a further response within three business days … an FFL [may] carry out the transfer"). This nuance is important, because it represents a structural design of NICS that permits firearm transfers to occur even in cases where background checks are not "completed."

Indeed, although this case began after Defendants' complaint that "*fifty* CPLs had been issued without MSP officials having researched whether an MCDV prohibitor existed" (ECF No. 63 at PageID.1283, emphasis added), every year the FBI fails to complete *hundreds of thousands* of background checks. For example, an OIG report explains that, from 2003 to 2013, the FBI "purged … about 2 percent, or about 1.3 million records," representing background checks that were never completed.[5] A *Roll Call* Freedom of Information Act Request subsequently found the FBI had purged an additional 1.1 million background checks from 2014 to 2019.[6] Thereafter, NBC News reported that the FBI had purged an additional 0.7 million background checks in 2020 and 2021 alone, showing that the FBI's failure to complete background checks is only increasing in number.[7] Adding these numbers together results in a sum total of *3.1 million firearms in the hands of potentially prohibited persons* due to the FBI's failure to "complete" the very checks that it demands Michigan "complete" here.

Hypocritically, Defendants claim that "completed" background checks are a "crucial part" of a "'comprehensive scheme' designed to 'keep guns out of the hands of criminals and others who should not have them'...." ECF No. 63 at PageID.1274. But if that is the case, why are Defendants failing to complete *millions* of these

[5] http://tinyurl.com/ms85be3j, at 12.
[6] http://tinyurl.com/mwanswrt.
[7] http://tinyurl.com/227cfrrb.

checks? Defendants claim that they were all but forced to issue the 2020 PSA, because of "the public safety risk of issuing Michigan CPLs to potentially prohibited persons...." *Id.* at PageID.1284. But although projecting their own failures, Defendants fail to explain how "public safety" is harmed when Michigan fails to complete *fifty* background checks, but not when the FBI fails to complete background checks at a rate of *more than fifty every hour of every day*.[8]

Thus, Defendants' position that Michigan must "'disqualify ***all*** individuals prohibited under Federal law'" or else its "'permits … would not be accepted as alternatives'" (*id.* at PageID.1278, emphasis added) is both hypocritical and in conflict with the statute. Indeed, the Sixth Circuit already found as much, noting that the Section 922(t)(3) process, just like an ordinary NICS check, may have "shortcoming[s]." *Gun Owners of Am.*, 2021 U.S. App. LEXIS 33554, at *12. Rather, the Court explained, "[q]ualifying States under the Act must establish a **reliable proxy, not a perfect analog**." *Id.* at *13 (emphasis added). For Defendants' part, though, they act as if the Sixth Circuit's opinion was never issued.[9]

[8] *See* Matthew 7:3-5 KJV ("Thou hypocrite, first cast out the beam out of thine own eye; and then shalt thou see clearly to cast out the mote out of thy brother's eye.").
[9] In fact, while characterizing the Sixth Circuit's opinion, Defendants recount only that "[t]he Sixth Circuit rejected Plaintiffs' argument.... But … was left with 'several follow-up questions'...." ECF No. 63 at PageID.1285. Between those cherry-picked bookends, Defendants conveniently omit the numerous parts of the Sixth Circuit's opinion which explicitly rejected their arguments. *Gun Owners of Am.* at *12-13. And, aside from their incomplete procedural history, Defendants' brief hardly mentions the Sixth Circuit's decision.

They continue to parrot the same position advanced in their 2020 brief, arguing that "if the 'State did not disqualify ***all*** individuals under federal law,' 'the permits issued by that State would not be accepted as alternatives....'" ECF No. 63 at PageID.1278 (emphasis added). But again, the Sixth Circuit rejected this position, finding that "a real-time, perfect match between state-law convictions and federal-law prohibitions was never part of the design. … [C]ontrary to the ATF's argument … the mere presence of erroneous permit grants in the past [does not] establish authority by itself to remove a State from the eligibility list." *Gun Owners of Am.*, at *12. Simply, this Court cannot accept ATF's argument, because the Sixth Circuit already rejected it.

B. Defendants Cannot Use Isolated "Dictionary Definition[s]" to Change the Statute's Obvious Meaning.

Undeterred, Defendants claim that common dictionary definitions confirm "ATF's longstanding understanding" of the statutory text, such that state officials must seek out all "'information available' to them,' … must review that information … [and] must 'disqualify all individuals prohibited under Federal law'...." ECF No. 63 at PageID.1292. First, Defendants claim that the statutory term "**verify**" "requires an affirmative act on the part of the state official: to review the NICS information … and other 'information available' … to 'ascertain' whether … the individual is prohibited by law from possessing a firearm." *Id.* at PageID.1293. But Defendants overlook other provisions of the statutory text, namely Section 922(t)(4), which requires that the NICS system "**demonstrate**" whether "the transfer of a

firearm to or receipt of a firearm" would violate the law. Defendants offer no explanation as to why Congress chose to use entirely different verbiage in the very next section of the statute.

Yet through the use of different language, it is clear that Congress intended the statutory provisions to have different meanings. *See* Antonin Scalia & Brian A. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012). The word "demonstrate" means "[t]o establish the truth of … by providing practical proof or evidence."[10] Thus, the burden on NICS is to "demonstrate" whether a person may possess a firearm, by seeking out available information and "establish[ing]" "proof" and "evidence" of any disqualification. In contrast, the meaning of the word "verify," according to Defendants, includes to "ascertain" or "check" something. ECF No. 63 at PageID.1293. As indicated by the statutory context, this represents a lesser requirement on state officials, requiring only that they "verify" a person's prohibited status by "check[ing]" with NICS and "ascertain[ing]" whether NICS contains a prohibiting record. It can safely be assumed that, if Congress had intended "demonstrate" and "verify" to mean the same thing, then Congress would have used the same word. Since Congress instead used different words, the differing provisions should be assumed to have different meanings.

[10] *See* Oxford English Dictionary, s.v. "demonstrate (v.)," July 2023, https://doi.org/10.1093/OED/5535420363.

Defendants also claim that "[t]he dictionary definition of 'available' underscores their conclusion," arguing that state officials must root out all of the information "at [their] disposal." *Id.* at PageID.1294. But again, focusing only on their cherry-picked definition, Defendants overlook the statutory context, wherein Section 922(t)(3) discusses "the information available **to such official**," whereas Section 922(t)(4) discusses "the information available **to the system**." Again, it seems clear that, by defining different categories of available information, Congress intended the phrases to mean different things. Defendants argue that "the information available to such official" must mean virtually all information in existence, since states theoretically can track down errant "conviction records and police reports" and "pertinent records that appear to be missing but the provenance of which is known," including those obtained "from a specific state court." ECF No. 63 at PageID.1294. But the Sixth Circuit rejected this argument as well. *See Gun Owners of Am.*, at *14 ("[w]e also reject the position that there is no limit … to a state official's duty to root out matches….").

Defendants' approach fails for another reason – they tease out individual statutory words and interpret them in isolation, divorced from their broader statutory context. The Supreme Court explicitly rejects this sort of analysis: "[t]he definition of words in isolation [] is not necessarily controlling in statutory construction. ... Interpretation of a word or phrase depends upon reading the whole statutory text…."

Dolan v. United States Postal Serv., 546 U.S. 481, 486 (2006); *see also United States v. One TRW, Model M14, 7.62 Caliber Rifle*, 441 F.3d 416, 422 (6th Cir. 2006) (relying on "[t]he statutory canon of construction noscitur a sociis, or 'it is known by its associates'...."). Justice Kavanaugh clearly summarizes the principle: "this Court's precedents and longstanding principles of statutory interpretation teach a clear lesson: Do not simply split statutory phrases into their component words, look up each in a dictionary, and then mechanically put them together again...." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1827 (2020) (Kavanaugh, J., dissenting).

C. NICS Was Designed to Centralize Information, and States Were Intended to Rely on NICS.

The statute does not support Defendants' contention that states must scour heaven and earth, and then conduct a rigorous legal analysis of the resulting data under federal law. Rather, the NICS system was designed from the ground up to be a centralized repository of information from across the country, at a time when computerized systems, modern email, and sophisticated electronic databases (often available online) did not yet exist. Indeed, the Brady Act was introduced in 1993, after prior failed attempts at enactment in 1987 and 1991. Thus, in the then-absence of any easily accessible databases in which to verify a buyer's eligibility, "the NICS database will provide a more extensive background check of the purchaser than other record systems...." ECF No. 16-2 at PageID.234; *see also* 34 U.S.C. Section 40917 (NICS to be established "in coordination with the States and Indian tribal

governments … to ensure maximum coordination and automation of the reporting or making available of appropriate records to the National Instant Criminal Background Check System.").

Clearly then, Congress meant something different by "information available to such official" than it did by "information available to the system." Indeed, Defendants' 1998 regulation implementing the Brady Act made clear that "'the information available to' State officials will include the NICS database." ECF No. 16-2 at PageID.234. Defendants' position apparently has changed. Defendants erroneously assume that Section 922(t)(3) should be interpreted based on the information they believe is available to state officials *now* (virtually everything, virtually anywhere) as compared to what was available to state officials *more than two decades ago* (very little beyond what NICS was to centralize and make available).

But even by modern standards, NICS still obtains vast troves of information that are not *currently* available to the states. That is because, while state officials can only request information from other jurisdictions that possess it, the federal statute contains both carrot and stick to coerce the divulging of records. *See* 34 U.S.C. Section 40917(d) (creating both "accountability" and "incentives" for states and localities based on whether they "achieve substantial compliance with an implementation plan" to report all disqualifying records to NICS). It is thus patently

unreasonable for Defendants to argue that State officials must seek out all sorts of information that was never previously available, and some of which is still not available (at least not easily) when that was never Congress's intent. Certainly, if Congress wished to update Section 922(t)(3) to account for modern times, it could do so. Until then, it is clear that Congress intended states to be able to rely on NICS in performing Section 922(t)(3) checks.[11] Indeed, that was the entire purpose for NICS' creation.

Lastly, Defendants argue that "[b]oth the purpose and structure" of the statute confirm ATF's position. ECF No. 63 at PageID.1294. But as just explained, *infra*, the statutory structure supports Plaintiffs. Nevertheless, Defendants argue that Section 922(t)(3) "'should be read harmoniously'" with Section 922(t)(1), which requires the normal background check for gun sales. *Id.* at PageID.1296 ("should involve a review … similar to such checks under Section 922(t)(1)"). But a harmonious reading is not what Defendants think it is. Rather, Section 922(t)(1) does not require a conclusive determination in every case, such that NICS "must 'disqualify all individuals prohibited under Federal law....'" *See id.* at PageID.1292.

[11] *See Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067 (2018) ("Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences. Until it exercises that power, the people may rely on the original meaning of the written law.").

Rather, as discussed, Section 922(t)(1) *anticipates* that conclusive determinations *will not be made in every case*, and thus provides a safety valve in Section 922(t)(1)(B)(ii) whereby a dealer can transfer a firearm after three business days if NICS has not resolved the matter. As noted above, every year NICS fails to complete hundreds of thousands of background checks.

Thus, the "parity" Defendants demand between NICS and the states (*id.* at PageID.1296) would be a regime in which background checks are not being definitively resolved in every case (*i.e.*, what Michigan is doing now). Importantly, the Sixth Circuit explicitly recognized this structural reality, explaining that "[t]he Brady Act contains proof that a real-time, perfect match … was never part of the design. … [T]he Brady Act tolerates this shortcoming. … '[T]here is no question that the [Brady alternative regime] may result in the purchase of firearms by individuals with Federal firearms disabilities.'" *Gun Owners of Am.*, at *12.[12] Again, Defendants' contrary argument is dead on arrival.

[12] It is also worth noting that Michigan offered to seek out and provide all the information to the FBI, so that it could make final determinations itself. ECF No. 63 at PageID.1281 ("We are authorized to refer suspected MCDVs to the NICS for review and determination."). Of course, the FBI did not like this proposal, likely because it already is failing to complete millions of NICS checks. Nevertheless, the MCDV "prohibitor presents unique challenges because it is very difficult to determine whether potentially qualifying state misdemeanor convictions meet the federal statutory requirements for MCDVs." http://tinyurl.com/4b9baeaf, at 4.

III. Four Years Later, and Defendants Still Have No Idea *Who* in Michigan Made a *Supposed* Decision to Change Course.

Although Defendants note that *something* changed between 2006 and 2017 with respect to Michigan's issuance of Concealed Pistol Licenses (ECF No. 63 at PageID.1279-80), and that *someone* was responsible, they still do not know just whose decision led to that change, or definitively what any such decision was. Rather, the language (and substance) of Defendants' current motion for summary judgment largely mirrors their prior motion for summary judgment filed in October of 2020 (ECF No. 21). Defendants continue to be vague and obscure with respect to the impetus underlying the change, stating ambiguously that "Michigan officials have reinterpreted state law." ECF No. 63 at PageID.1274.[13]

But according to the Sixth Circuit, this lack of clarity should be fatal to ATF's 2020 PSA. As the Court explained, "[a]ll [ATF] has are ostensible statements by unidentified individuals in the Michigan State Police who spoke to unidentified people in the Michigan Attorney General's office...." *Gun Owners of Am.*, at *13.

[13] S*ee also id.* at PageID.1280 ("Michigan had revised its interpretation," "a MSP legal advisor opined," "[u]nder Michigan's new view," "Michigan had decided"); at PageID.1281 ("Michigan legal counsel again revised their interpretation"); at PageID.1284 ("Michigan's interpretation of state law"); at PageID.1291 ("Michigan's change in legal interpretation"); at PageID.1293 ("Michigan no longer interprets"); at PageID.1296 ("Michigan's revised interpretation of state law"); at 24 ("Michigan law has changed since 2006"); at PageID.1298 ("Michigan currently interprets," "Michigan's position," "Michigan interprets," "in Michigan's view"); at PageID.1302 ("Michigan's interpretations of state law").

According to the Court, this was insufficient because it established nothing definitive or authoritative "that contradicts or undermines the state statute," which otherwise favors Plaintiffs. *Id.* at *8 ("Michigan law seems to do what the federal law requires"). And as this Court subsequently noted, "[t]he exact reason for this change *remains* unclear...." ECF No. 55 at 3 (emphasis added). Critically, Defendants' motion makes no attempt to bridge these gaps. Rather, they continue to refer vaguely to "Michigan" and its "changed position" (ECF No. 63 at PageID.1286), without explaining precisely what that position is, how it was arrived at, who made the decision, or why that person's "interpretation" is authoritative such that it "contradicts or undermines the state statute."

Instead, the only thing new that Defendants offer is that "Michigan *currently* interprets" state law not to require definitive determinations in every case, based on the "Mich[igan] amicus brief" filed in September of 2022, and that "[t]his articulation of Michigan's [*current*] position is consistent with ATF's understanding of Michigan's position … *before* ATF issued the 2020 PSA." ECF No. 63 at PageID.1298.[14] But that is precisely the post hoc justification for agency action that no court permits. As this Court has explained, quoting Sixth Circuit authority, "'the

[14] To the extent that Defendants attempt to use newly contrived theories from the second Epstein declaration to buttress their position (*id.* at PageID.1280, 1283, 1300), Plaintiffs already discussed why such unsupported testimony is improper, and why Epstein's rampant speculation conflicts with the record. ECF No. 60 at PageID.1240-50; Reply at 8-9. Plaintiffs will not repeat those arguments here.

focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.'" ECF No. 39 at PageID.644; *see also* ECF No. 42 at PageID.693 ("the administrative record in this case was limited to the facts that the ATF considered at the time of its decision."). That is why this Court already has struck the 2022 amicus brief from the administrative record. *See* ECF No. 55 at PageID.1165. Thus, Defendants' argument is that 'we would have been right, had we known then what we know now.' But that is not the sort of "reasoned decisionmaking" the APA requires.[15] Permitting ATF to justify its 2020 PSA based *solely* on a 2022 amicus brief is what black-letter law prohibits.

CONCLUSION

Able to present no evidence to answer the Sixth Circuit's additional questions, and left with no way around the Sixth Circuit's legal conclusions, Defendants take the only path available – full steam ahead. Indeed, their current Motion for Summary Judgment makes the very same arguments as their prior motion, largely in copy-paste format. *Cf.* ECF No. 21 TOC, *with* ECF No. 63 TOC. And, tellingly,

[15] *See Coalition for Gov't Procurement v. Fed. Prison Indus.*, 365 F.3d 435, 442 (6th Cir. 2004) ("the APA does not relieve the agency of its obligation to develop an evidentiary basis for its findings. To the contrary, the APA reinforces that obligation. The agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.").

Defendants' summary of the case glaringly omits any reference to the Sixth Circuit's rejection of their arguments, and in fact barely acknowledges the opinion at all. But if the Sixth Circuit was unwilling to accept the 2020 PSA based on what Defendants offered previously, this Court cannot do so now, as Defendants have offered nothing new to justify their actions. This Court should deny Defendants' Motion for Summary Judgment.

Respectfully submitted,

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Dated: February 20, 2024

CERTIFICATE OF SERVICE

I, Kerry L. Morgan, hereby certify that I have filed with the Clerk of this Court a true and correct copy of the foregoing document or pleading, utilizing this Court's CM/ECF system, which generated a Notice and delivered a copy of this document or pleading to all counsel of record.

Dated: February 20, 2024

/s/Kerry L. Morgan
Kerry L. Morgan