UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

THOMAS VILLEGAS and AMY VILLEGAS, Plaintiffs, v. MICHAEL S. REGAN, in his official capacity as Administrator of the U.S. Environmental Protection Agency; MEG McCOLLISTER, in her official capacity as Administrator of the U.S. Environmental Protection Agency Region 7; and DAVID COZAD, in his official capacity as Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency Region 7, Defendants.	No. 2:23-cv-02171-EFM-TJJ **MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Around December 2015, Plaintiffs Tom and Amy Villegas purchased an undeveloped lot in Nebraska, intending to use it for outdoor recreation. Docket No. 1 ¶ 16. Over five years, they worked to improve the property by removing dead trees and invasive weeds. *Id.* ¶ 17. Their efforts made the property safer from wildfire and more welcoming for native wildlife, but to officials at the Environmental Protection Agency ("EPA"), the Villegases' good deeds were beside the point because the Villegases had allegedly violated the Clean Water Act. Accordingly, in August 2022, EPA officials within the agency's Kansas office filed an administrative complaint against the Villegases, initiating an in-house adjudication and seeking $299,857 in civil penalties. Villegas Decl. ¶¶ 3–5; Villegas Decl., Ex. 1 ¶ 26. In September 2022, Susan Biro, another EPA official, was designated as the presiding Administrative Law Judge ("ALJ") for the adjudication. *Id.* ¶ 6.

Plaintiffs maintain that they complied with the Clean Water Act, but the adjudication suffers from a more fundamental flaw than seeking to penalize innocent activity: Ms. Biro was never appointed as an ALJ and so is not authorized to conduct the adjudication. As Plaintiffs alleged and argue herein, EPA ALJs must be appointed as officers of the United States pursuant to the Appointments Clause of the Constitution. Because Ms. Biro was not so appointed, she lacks authority to conduct the adjudication. To protect themselves from the irreparable harm of "subjection to an illegitimate proceeding, led by an illegitimate decisionmaker," *Axon Enter., Inc. v. FTC*, 143 S. Ct. 890, 903 (2023), Plaintiffs respectfully move for a preliminary injunction enjoining the administrative proceeding while this lawsuit, which challenges the constitutionality of that proceeding, *see* Docket No. 1 ¶¶ 77–92 (regarding first cause of action), continues.

I. Standard

Plaintiffs are entitled to a preliminary injunction if they show: (1) a likelihood of success on the merits; (2) a likelihood that they will suffer irreparable harm in the absence of preliminary relief, that is, that remedies at law are inadequate; (3) that the balance of equities tips in their favor; and (4) that the injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20–21 (2008). When the government is the defendant, the last two elements merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

II. Argument

A. Plaintiffs are likely to succeed on the merits

Plaintiffs are likely to succeed on the merits of their Appointments Clause claim against the adjudication because EPA ALJs wield significant power and are not effectively supervised by Senate-confirmed officers. The result is that EPA ALJs must be Senate confirmed as principal officers, and there is no dispute that EPA ALJs are not Senate confirmed. Alternatively, even if

EPA ALJs were effectively supervised by Senate-confirmed officers, they are not properly appointed as inferior officers. Because Ms. Biro was not properly appointed to the office of ALJ, she lacks the power of that office and so may not preside over the adjudication against Plaintiffs.

1. The Appointments Clause

The Appointments Clause requires all "Officers of the United States" to be appointed pursuant to its provisions. U.S. Const. art. II, § 2, cl. 2. An officer is any official who holds a "continuing" office that is vested with "significant authority" under federal law. *Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018) (simplified). Officials without significant authority are merely employees and need not be appointed pursuant to Appointments Clause procedures. *Id.* This division between officers and employees ensures that significant authority is only ever allowed in the hands of someone appointed under the Appointments Clause's accountability-preserving provisions.

The permissible methods of appointment vary between principal and inferior officers. Principal officers must be appointed by Presidential nomination and Senate confirmation. That is also the default method of appointment for inferior officers. *Edmond v. United States*, 520 U.S. 651, 660 (1997). But if Congress allows "by Law," inferior officers may be appointed by the President alone, a head of department, or a court of law. U.S. Const. art. II, § 2, cl. 2.

Officers qualify as inferior only if they are "directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate." *Edmond*, 520 U.S. at 663. Thus, the distinction between inferior and non-inferior officers depends on "how much power an officer exercises free from control by a superior." *United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1982 (2021). A superior, "in the context of [the Appointments] Clause," must be a Senate-confirmed officer, not simply an official with a "higher rank, or . . . responsibilities of a greater magnitude." *Edmond*, 520 U.S. at 663. Therefore, inferior officers are

those who are adequately controlled by a Senate-confirmed officer; all other officers are principal officers and must be appointed as such. *Arthrex*, 141 S. Ct. at 1979. This arrangement balances two values: (1) ensuring that all significant federal authority is controlled by a Senate-confirmed officer, and (2) allowing the convenience of some officers being appointed by the President, a head of department, or a court of law rather than by Senate confirmation.

"The Appointments Clause prescribes the exclusive means of appointing 'Officers.'" *Lucia*, 138 S. Ct. at 2051. Thus, when an individual's selection does not conform to the Appointments Clause, that person does not hold title to the office but instead acts only "under the color of official title." *Ryder v. United States*, 515 U.S. 177, 180 (1995). Because such a person never actually filled the office, they "lack[] the authority to carry out the functions of the office" and their actions are therefore "void." *Collins v. Yellen*, 141 S. Ct. 1761, 1787, 1788 (2021).

2. ALJs are officers

EPA ALJs clearly constitute continuing positions vested with significant authority. First, there can be no dispute that EPA ALJs are continuing positions. *See* 5 C.F.R. § 930.204(a) ("An administrative law judge receives a career appointment[.]"). And EPA ALJs also wield significant authority. On this point, the Supreme Court's opinion in *Lucia v. SEC* is decisive. *Lucia* held that ALJs for the Securities and Exchange Commission ("SEC") were officers requiring appointment under the Appointments Clause. The ALJs there had significant authority because they "exercise . . . significant discretion when carrying out . . . important functions." *Lucia*, 138 S. Ct. at 2053 (simplified). Specifically, ALJs exercised four powers: the powers to "take testimony" and other evidence, "conduct trials," "rule on the admissibility of evidence," and "enforce compliance with discovery orders" (such as by "excluding the offender from the hearing"). *Id.* (simplified).

The EPA ALJs have identical powers. Just like SEC ALJs, they take testimony and other evidence, 40 C.F.R. § 22.4(c)(4) (Presiding Officer may "[e]xamine witnesses and receive documentary or other evidence"); conduct trials, *id.* § 22.4(c)(1) ("Conduct administrative hearings"); rule on the admissibility of evidence, *id.* § 22.4(c)(6) ("Admit or exclude evidence"); and enforce compliance with discovery orders, *id.* § 22.4(c)(5) ("[D]raw adverse influences against [a] party" that fails to comply with an "[o]rder . . . to produce testimony, documents, or other non-privileged evidence."). *See also id.* § 22.3(a) (defining Presiding Officer to be an ALJ); 5 U.S.C. § 556(c) (listing powers of agency adjudicators).

As *Lucia* noted, that is sufficient for significant authority; executive adjudicators are officers even if their decisions cannot become final. *See* 138 S. Ct. at 2053–54 (discussing Tax Court Special Trial Judges, whose decisions are pure recommendations and "count[] for nothing unless the regular judge adopts it as his own" but who are nonetheless officers). But where an ALJ's decision can "itself become[] final," that further establishes significant authority. *Id.* at 2054 (simplified). That was the case in *Lucia*, where an appeal from an ALJ decision is considered by the SEC, but "the SEC can decide against reviewing an ALJ decision at all," such that the ALJ decision becomes final. *Id.* That is also the case here, given that the ALJ's decision "shall become a final order 45 days after its service upon the parties" unless an appeal is taken. 40 C.F.R. § 22.27(c). Thus, just like SEC ALJs, EPA ALJs can issue decisions with "independent effect." *Lucia*, 138 S. Ct. at 2053.

3. ALJs are principal officers, but Ms. Biro was not appointed as such

EPA ALJs are not adequately supervised and controlled by Senate-confirmed officers and so must be appointed as principal officers. To determine whether an officer is adequately controlled by another, Senate-confirmed official, courts apply "the governing test from *Edmond*,"

which turns on three factors: whether a Senate-confirmed official (1) exercises "administrative oversight" over the officer, (2) may remove the officer without cause, and (3) "could review the [officer's] decisions." *Arthrex*, 141 S. Ct. at 1980, 1982 (simplified).

EPA ALJs are subject to only minimal administrative oversight by a Senate-confirmed officer. Consider the oversight exerted by the Patent and Trademark Office ("PTO") Director over administrative patent judges ("APJs") in *Arthrex*:

> The Director fixes the rate of pay for APJs, controls the decision whether to institute [an adjudication], and selects the APJs to reconsider the validity of the patent. The Director also promulgates regulations governing [the adjudications], issues prospective guidance on patentability issues, and designates past PTAB decisions as "precedential" for future panels.

Id. at 1980 (citations omitted). Despite this relatively strong oversight, APJs in *Arthrex* were still held to be principal officers. *Id.* at 1981. Here, the pay rate for ALJs is fixed by statute, not a Senate-confirmed officer, 5 U.S.C. § 5372, and no Senate-confirmed officer selects the ALJ to hear a particular case, *see* Villegas Decl., Ex. 2 (Ms. Biro designating herself as the ALJ to hear Plaintiffs' case). The Administrator of the EPA is Senate confirmed, but he does not designate any decisions as precedential. 85 Fed. Reg. 51,650, 51,653 (Aug. 21, 2020) (rule giving the Administrator some power over which administrative decisions are precedential); 86 Fed. Reg. 31,172, 31,175 (June 11, 2021) (repealing that provision). While the Administrator issues regulations to govern adjudications, *see* 40 C.F.R. § 22.1, *et seq.*, that accounts for only a small amount of the kinds of administrative oversight that the Court has considered. At most, this factor weakly supports inferior-officer status.

In contrast, the other two *Edmond* factors clearly favor principal officer status for EPA ALJs. With respect to the second factor, EPA ALJs are not removable at will. Rather, any removal must be for good cause and be approved by the Merit Systems Protection Board. 5 U.S.C.

§ 7521(a). Protections for ALJs go far beyond that, however. The requirement of good cause and approval by an outside agency extends to suspensions, reductions in grade or pay, and even furloughs. *Id.* § 7521(b).

Finally, and most importantly, as for the third factor, EPA ALJs "have the power to render a final decision on behalf of the United States" without review by Senate-confirmed officials. *Arthrex*, 141 S. Ct. at 1981 (simplified). Any appeals from ALJ decisions are heard by the Environmental Appeals Board ("EAB"), 40 C.F.R. § 22.4(a)(1), the members of which are not Senate confirmed, *id.* § 1.25(e)(1) (EAB members are selected by the Administrator). And, as noted above, when ALJ decisions are not appealed, they become final. *Id.* § 22.27(c).

In summary, two of the *Edmond* factors favor ALJs being principal officers and the administrative-oversight factor only weakly favors inferior-officer status. Accordingly, EPA ALJs are principal officers. Yet Ms. Biro was not Senate confirmed. Rather, she was selected for her position by the Administrator. *See EPA's Administrative Law Judges*, EPA.gov (Dec. 29, 2022) (click "Judge Biro ALJ Certificate of Appointment"), https://www.epa.gov/aboutepa/epas-administrative-law-judges.[1] Accordingly, Ms. Biro was never constitutionally appointed to her ALJ office and so "lack[s] the authority to carry out the functions of [that] office." *Collins*, 141 S. Ct. at 1788. Plaintiffs are therefore likely to succeed on their Appointments Clause claim.

4. Ms. Biro was not validly appointed as an inferior officer

Even if EPA ALJs were sufficiently directed and supervised by principal officers so as to constitute inferior officers, Congress has not "by Law," U.S. Const. art. II, § 2, cl. 2, vested the appointment of ALJs in the President, a head of department, or a court of law. In the absence of such a provision, Presidential nomination and Senate confirmation remains the "default manner of

[1] Ms. Biro's Certificate of Appointment is judicially noticeable. Fed. R. Evid. 201.

appointment for inferior officers." *Edmond*, 520 U.S. at 660. Because she was not nominated and confirmed, Ms. Biro is not properly an inferior officer.

a. 5 U.S.C. § 3105 did not vest appointment power in the Administrator

Plaintiffs expect that the government will argue that Congress has vested appointing authority in the Administrator through 5 U.S.C. § 3105, which provides that "[e]ach agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title." Statutory history and the canon of constitutional avoidance, however, direct that § 3105 should not be read as vesting inferior-officer appointing power under the Appointments Clause.

Section 3105 was enacted in 1966, *see* Pub. L. No. 89-554, 80 Stat. 378, 415 (1966), and its only amendment, which was limited to non-substantive changes, came in 1978, *see* Pub. L. No. 95-251, 92 Stat. 183 (1978) (changing the term "hearing examiners" to "administrative law judges"). These legislative actions preceded by decades the Supreme Court's first suggestion in 1991 that administrative adjudicators are officers who must be appointed under the Appointments Clause, *see Freytag v. Comm'r*, 501 U.S. 868 (1991), and by about a half-century the decision in *Lucia* which firmly established that proposition. Thus, when it enacted and then amended § 3105, Congress in all likelihood understood ALJs to be non-officers.

Section 3105 itself is strong evidence that Congress did not intend to vest inferior-officer appointment power for purposes of the Appointments Clause, which limits such vesting to the President, heads of departments, and courts of law. If § 3105 is read to vest inferior-appointment power, the statute would purport to vest such power in every federal "agency." 5 U.S.C. § 3105. An "agency" is "each authority of the Government of the United States, whether or not it is within . . . another agency," including every agency and sub-agency within a department. *Id.* § 551(1).

Accordingly, construing § 3105 to vest inferior-officer appointments would attribute to Congress an intent to directly contradict the plain language of the Appointments Clause by attempting to vest inferior-officer appointments far beyond the President, heads of departments, and courts of law. To avoid that surely-not-intended and undoubtedly unconstitutional result, § 3105 should be read as not vesting such appointing authority.

This conclusion is supported by *Edmond*. In that case, Coast Guard members, whose court-martial convictions had been affirmed by the Coast Guard Court of Criminal Appeals, argued that the Secretary of Transportation's appointments to the court under 49 U.S.C. § 323(a) were invalid because 10 U.S.C. § 866(a) vested those appointments in the Judge Advocates General. 520 U.S. 655–58. But that interpretation, the Court held, was not "consistent with the Constitution" because, "[u]nder the Appointments Clause, Congress could not give the Judge Advocates General power to 'appoint' even inferior officers of the United States," given that the Judge Advocates General were not the President, a head of department, or a court of law. *Id.* at 658. The Court thus rejected that interpretation of § 866(a), as accepting it "would render it clearly unconstitutional—which we must of course avoid doing if there is another reasonable interpretation available." *Id.* The Court opted instead to interpret 49 U.S.C. § 323(a) to authorize the Secretary of Transportation to make those appointments, consistent with the Appointments Clause. *Id.*

Edmond's analysis applies here. Because reading § 3105 to vest inferior-officer appointment authority in all federal agencies would render it unconstitutional—and additionally would be contrary to congressional intent—the Court must avoid doing so where there is a reasonable alternative. And there is such an alternative—§ 3105 establishes the ALJ position and provides the procedure for agencies to fill particular ALJ vacancies. The Appointments Clause

separately requires that agencies fill those vacancies from among individuals who have been Senate confirmed under the default method of appointment provided for inferior officers.[2]

This two-step arrangement mirrors existing administrative practice in the Senior Executive Service ("SES"), a significant part of the civil service. The Senior Executive Service comprises "high-level positions in the Executive Department, but for whom appointment by the President and confirmation by the Senate is not required." *United States v. Fausto*, 484 U.S. 439, 441 n.1 (1988). Individuals entering the Senior Executive Service must first be certified as qualified by the Office of Personnel Management. *See OPM Senior Executive Service Desk Guide*, United States Office of Personnel Management 2–3 (2020) ("OPM"), https://www.opm.gov/policy-data-oversight/senior-executive-service/reference-materials/ses-desk-guide.pdf ("OPM establishes interagency QRBs [Qualification Review Boards] to certify the executive qualifications of candidates for initial career SES appointment."); 5 U.S.C. § 3393(c); *Doe v. FBI*, 718 F. Supp. 90, 102 (D.D.C. 1989) ("Qualification Review Board[s] . . . [are] established within OPM to consider SES appointments."). Agencies may then fill vacancies from among the pool of these qualified

[2] It is not necessary that there be a statute specifying that ALJs shall be nominated by the President and confirmed by the Senate; the Appointments Clause provides the default rule whenever Congress creates an office and does not validly vest the appointment of an inferior officer in the President, a head of department, or a court of law. This mirrors the President's removal power under the Article II Vesting Clause; the Clause by default empowers the President (or his heads of departments) to remove officers at will—no explicit statutory provision is necessary. *See Myers v. United States*, 272 U.S. 52, 117 (1926) ("[I]n the absence of any express limitation respecting removals," Article II gives the President the "power of removing those for whom he cannot continue to be responsible."); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 509 (2010) ("Under the traditional default rule, removal is incident to the power of appointment."); *see also The Constitutional Separation of Powers Between the President and Congress*, 20 Op. O.L.C. 124, 1996 WL 876050, at *30 (1996) (agreeing that where an officer's "tenure is not protected by an explicit for-cause removal limitation, . . . we . . . infer that the President has at least the formal power to remove the [officer] at will"); *see, e.g.*, 28 U.S.C. § 503 (establishing the position of the Attorney General of the United States and providing for his appointment but declining to specify that he is removable at will).

Senior Executives. OPM at 2–3 ("The SES offers agency managers considerable flexibility in filling executive vacancies," including through "reassignment or transfer of a current SES appointee" or competitive appointment.); 5 U.S.C. § 3395(a)(1). The constitutional reading of § 3105 merely replicates this arrangement for ALJs: Rather than OPM review certifying a pool of eligible SES members from which agencies fill SES positions, Senate confirmation creates a pool of constitutionally adequate ALJs from which agencies fill ALJ positions. Under both arrangements, a separate authority approves individuals for a range of positions, while agencies fill specific vacancies with those approved individuals through statutory mandate.

b. The Reorganization Plan No. 3 of 1970 does not vest appointment authority in the Administrator

The government may also that argue that Reorganization Plan No. 3 of 1970, which created the EPA, *Train v. Colo. Pub. Int. Research Grp., Inc.*, 426 U.S. 1, 24 n.20 (1976); Reorganization Plan No. 3 of 1970, *reprinted in* 5 U.S.C. app. 1, provides the requisite inferior-officer-appointing authority. That is incorrect: no part of the Reorganization Plan vests the Administrator with authority to appoint ALJs as inferior officers. Section 3 of the Reorganization Plan—arguably the most relevant provision—merely provides that the Administrator may "authoriz[e] the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency." The plain language of § 3 only allows the Administrator to transfer his power to another official, such as an officer. It does not establish any offices or vest appointment of those offices in the Administrator.

* * *

Because no statute vests the appointment of ALJs in the Administrator, EPA ALJs must be Senate confirmed. Ms. Biro, however, was not Senate confirmed. She therefore was never

constitutionally appointed as an ALJ and lacks the power of that office. *Collins*, 141 S. Ct. at 1788. Plaintiffs are therefore likely to succeed on the merits of their claim.

5. Holding for Plaintiffs would have limited additional consequences

Though the above conclusions would justify providing relief to Plaintiffs, the broader impact of a preliminary injunction would be limited. Ruling for the Plaintiffs would not require concluding that any statute or regulation is unconstitutional. EPA's administrative adjudicative system would remain intact. ALJs would still be authorized to preside over hearings, though they would have to be Senate confirmed. Holding for Plaintiffs would mean only that two individuals—Ms. Biro and Christine Coughlin, *see EPA's Administrative Law Judges*, *supra*—were not in fact appointed as EPA ALJs. But essentially all of their decisions are already protected from direct attack by the 30-day statute of limitations. 33 U.S.C. § 1319(g)(8). And in the interim period during which EPA presumably would seek to obtain appointment of ALJs in accordance with the Appointments Clause, the agency would still have numerous other enforcement tools at its disposal, including seeking civil penalties that do not require ALJ adjudications, seeking civil penalties in court, seeking criminal convictions, and issuing compliance orders. *Id.* § 1319.

B. Injunctive relief is necessary to prevent irreparable harm, as there is no adequate remedy at law

Plaintiffs must show they are "likely to suffer irreparable harm before a decision on the merits can be rendered." *Winter*, 555 U.S. at 22 (citation omitted). "What makes an injury 'irreparable' is the inadequacy of, and the difficulty of calculating, a monetary remedy after a full trial. Any deprivation of any constitutional right fits that bill." *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792, 806 (10th Cir. 2019) (citation omitted).

As the complaint alleges, Plaintiffs are injured because Ms. Biro "lacks the authority of [an ALJ] and the Villegases should not be required to participate in the administrative adjudication or

be subject to Ms. Biro's orders." Docket No. 1 ¶ 70. That is, the adjudication deprives Plaintiffs of governance by properly appointed officers. *See NLRB v. Noel Canning*, 573 U.S. 513, 571 (2014) (Scalia, J., concurring, joined by three Justices) ("[T]he constitutional structure of our Government is designed first and foremost not to look after the interests of the respective branches, but to protect individual liberty." (simplified)). The Supreme Court has made clear that being subjected to an adjudication by an illegitimate decisionmaker is an irreparable injury.[3]

In *Axon v. FTC*, the FTC moved to initiate an administrative adjudication against Axon for alleged violations of antitrust statutes. 143 S. Ct. at 899. Axon filed suit in district court seeking to enjoin the adjudication on the grounds that the FTC ALJ's protection from removal violated Article II of the Constitution and that the combination of adjudicative and prosecutorial functions in the FTC violated due process. *Id.* The government argued that the district court lacked subject matter jurisdiction over Axon's case because Congress, in creating the FTC's administrative adjudicatory scheme, had implicitly stripped district courts of jurisdiction over claims like Axon's. *Id.* The Supreme Court disagreed. One factor against the FTC's position was that, in the absence of immediate jurisdiction in the district court, there would be no "meaningful judicial review." *Id.* at 902 (simplified). That is because even if Axon eventually sought review of the FTC's adjudicatory decision in circuit court, such review could not remedy Axon's injury. *Id.* at 903–04. The harm complained of in *Axon* was being "subject[ed] to an illegitimate proceeding, led by an illegitimate decisionmaker," which "th[e] Court has made clear . . . is a here-and-now injury." *Id.* at 903 (simplified). The claim "challeng[ed] the Commission['s] power to proceed at all, rather than actions taken in the agency proceedings." *Id.* at 904. The harm inflicted by being subjected to

[3] Additionally, Plaintiffs have been forced to expend considerable time and money defending themselves, Villegas Decl. ¶¶ 11–12, though they do not contend that such "litigation" injuries, standing alone, would establish irreparable harm under existing precedent.

the adjudication is "impossible to remedy once the proceeding is over," even if a circuit court could set aside the FTC's adjudicatory conclusion, because, unlike final determinations of liability, "[a] proceeding that has already happened cannot be undone." *Id.* at 903–04.

Just like in *Axon*, Plaintiffs challenge the EPA's "power to proceed at all, rather than actions taken in the agency proceedings." *Id.* at 904. Plaintiffs are "subject[ed] to an illegitimate proceeding, led by an illegitimate decisionmaker." *Id.* at 903. Each moment that passes, Plaintiffs suffer an injury by virtue of being subjected to the adjudication. The injury of each of those moments "cannot be undone" and so is irreparable. *Id.* at 904. Furthermore, due to the relative speed of administrative adjudications compared to federal court proceedings, *cf. id.* at 908 (Thomas, J., concurring) (administrative adjudications were favored for their "efficiency"), the adjudication may well be over before final judgment in this Court, thus necessitating preliminary relief. This *Winter* factor is satisfied.

C. The balance of the equities favors granting the motion

A party seeking a preliminary injunction must demonstrate "that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. "These factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. A government "does not have an interest" in the enforcement of an arrangement "that is likely constitutionally infirm." *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). Instead, "the public interest will perforce be served by enjoining" such "invalid" arrangements. *Id.* (simplified). Indeed, the Supreme Court has held that when an agency exceeds its authority, the court should not "weigh . . . tradeoffs" between its intended effect and harms. *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 666 (2022); *see Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485, 2490 (2021) ("[O]ur system does

not permit agencies to act unlawfully even in pursuit of desirable ends," including even the public's "strong interest in combating the spread of the COVID-19 Delta variant."). This factor is thus satisfied because Plaintiffs are likely correct on the merits that Ms. Biro has not been properly appointed as an EPA ALJ and wields the power of an ALJ unconstitutionally. The government has no legitimate interest in enforcing an unconstitutional scheme.

III. Bond

The Court should not impose any bond for the preliminary injunction under Rule 65(c). "[I]f there is an absence of proof showing a likelihood of harm [to the defendant], certainly no bond is necessary." *Continental Oil Co. v. Frontier Refining Co.*, 338 F.2d 780, 782 (10th Cir. 1964). Furthermore, courts do not require bonds when a plaintiff seeks to prevent the violation of constitutional rights. *See Voter Reference Found., LLC v. Balderas*, 616 F. Supp. 3d 1132, 1274 (D.N.M. 2022); *United Utah Party v. Cox*, 268 F. Supp. 3d 1227, 1260 (D. Utah 2017). There is no risk of harm to Defendants on these constitutional claims, and no bond should be required.

IV. Conclusion

For the foregoing reasons, Plaintiffs respectfully request a preliminary injunction enjoining the EPA proceeding against them.

Dated: May 5, 2023.

Respectfully submitted,

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Certificate of Service

I hereby certify that on May 5, 2023, the foregoing was efiled with the Court's ECF system and served on the following via first-class U.S. mail:

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

THOMAS VILLEGAS and AMY VILLEGAS, Plaintiffs, v. MICHAEL S. REGAN, in his official capacity as Administrator of the U.S. Environmental Protection Agency; MEG McCOLLISTER, in her official capacity as Administrator of the U.S. Environmental Protection Agency Region 7; and DAVID COZAD, in his official capacity as Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency Region 7, Defendants.	No. No. 2:23-cv-02171-EFM-TJJ **DECLARATION OF THOMAS VILLEGAS**

I, THOMAS VILLEGAS, declare as follows:

1. I am over the age of 18 years. The facts set forth in this declaration are based upon my personal knowledge and, if called as a witness, I could and would competently testify thereto under oath.

2. My wife Amy owns property in Nebraska.

3. On August 2, 2022, the Environmental Protection Agency ("EPA") filed an administrative complaint against me and Amy for alleged violations of the Clean Water Act on the Nebraska property.

4. The complaint initiated an administrative adjudication within the EPA styled *In the matter of Tom Villegas and Amy Villegas*, with Docket Number CWA-07-2022-0104.

5. Exhibit 1 attached hereto is a true and correct copy of the complaint.

6. On September 8, 2022, Susan Biro was designated as the presiding Administrative Law Judge for the adjudication.

7. Exhibit 2 attached hereto is a true and correct copy of the order designating Ms. Biro as the presiding Administrative Law Judge.

8. In the designation, Ms. Biro's title was given as "Chief Administrative Law Judge."

9. My wife and I have participated in the adjudication to protect our interests and rights as a practical matter, but we do not believe Ms. Biro is authorized to preside over the adjudication.

10. Not only do we believe that we should not be subjected to the adjudication, but the adjudication has also forced us to spend significant amounts of time and money defending ourselves.

11. I estimate that I have spent 80 hours consulting with attorneys, reviewing filings, gathering documentation, and otherwise responding to the administrative complaint.

12. I estimate that I have spent $14,000.00 on legal fees and associated costs responding to the administrative complaint.

13. The parties to the administrative adjudication are currently conducting pre-hearing preparations.

I declare under penalty of perjury that the forgoing is true and correct.

Executed this 1st day of May, 2023, at Hudson , Colorado.

THOMAS VILLEGAS

Exhibit 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF Tom Villegas and Amy Villegas, Respondents Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)	)	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING Docket No. CWA-07-2022-0104

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. This Complaint serves as notice that the EPA has reason to believe that Respondents have violated Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 ("Complainant").

4. Respondent Tom Villegas performed work at the site centered at approximately 41.008047, -100.453985, in Section 13, Township 12 North, Range 28 West, Lincoln County, Nebraska (the "Site").

5. Respondent Amy Villegas owns, and at all relevant times owned, the Site.

Statutory and Regulatory Framework

6. The goal of the CWA, 33 U.S.C. § 1251 *et seq.*, is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, except in accord with, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.

8. Section 404 of the CWA requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the U.S. Army Corps of Engineers ("Corps"), for any discharge of "dredged or fill material" into the "navigable waters" of the United States.

9. 40 C.F.R. § 232.2 defines "fill material" as any material that has the effect of "replacing any portion of a water of the United States with dry land" or "changing the bottom elevation of any portion of a water of the United States."

10. 40 C.F.R. § 232.2 defines "discharge of fill material" as "the addition of fill material into waters of the United States."

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

12. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the assessment of civil penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

13. Respondents are persons within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. In or around June 9, 2017, through May 18, 2021, Respondents and/or persons acting on their behalf used earth moving equipment to excavate and clear vegetation from wetlands, widen existing tributaries, create ponded areas, construct roadways, create culverted road crossings, and construct berms at the Site. In performing these activities, Respondents and/or persons acting on their behalf discharged dredged or fill material including dirt, spoil, rock, culverts, trees, and sand into waters of the United States including the Platte River, tributaries to the Platte River, and adjacent wetlands.

15. Complainant and Respondents have entered into a tolling agreement providing that the period commencing on June 8, 2022, and ending on August 2, 2022, inclusive, shall not be included in computing the running of any statute of limitations potentially applicable to any claims for relief brought by the United States pursuant to Sections 301 and 390 of the CWA.

16. On May 18, 2021, representatives from the Corps Omaha District visited the Site, observed fill material and associated excavation in the Platte River, tributaries to the Platte River, and wetlands adjacent to the Platte River, and determined a violation of the CWA had occurred.

17. On May 18, 2022, representatives from the Corps Omaha District and from EPA Region 7 visited the Site, observed fill material and associated excavation in the Platte River, tributaries to the Platte River, and wetlands adjacent to the Platte River, and again determined that a violation of the CWA had occurred.

18. Respondents' actions impacted approximately 5.7 acres of wetlands and 210 linear feet of tributaries to the Platte River.

19. The material discharged by Respondents constitutes "fill material," and their actions constitute the "discharge of fill material" as those terms are defined in 40 C.F.R. § 232.2.

20. The fill material discharged by Respondents into the Platte River, tributaries to the Platte River, and adjacent wetlands is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The earth-moving equipment used to place the fill material into the Platte River, tributaries to the Platte River, and adjacent wetlands is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. The discharge of the fill material into the Platte River, tributaries to the Platte River, and adjacent wetlands constitutes the "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

23. The Platte River is a traditionally navigable water, and the tributaries to the Platte River and adjacent wetlands are waters of the United States within the meaning of Section 502(7) of the CWA.

Findings of Violation

24. Respondents' discharge of pollutants from a point source into waters of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

Relief

25. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed $10,000 per day for each day during which the violation continues, up to a maximum total penalty of $125,000. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule of 2022, civil administrative penalties of up to $23,989 per day for each day during which a violation continues, up to a maximum of $299,857, may be assessed for violations of CWA Section 301, 33 U.S.C. § 1311, that occur

after November 2, 2015.

26. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region 7 hereby proposes to issue a Final Order Assessing an Administrative Penalty against Respondents for the violations cited above in the amount of $299,857.

27. The proposed penalty is based upon the facts stated in this Complaint, the nature, circumstances, extent, and gravity of the violation, and with respect to the violators, ability to pay, any prior history of such violation, the degree of culpability, economic benefit, or savings resulting from the violation, and such other matters as justice may require.

28. The penalty proposed in this Complaint is based upon the best information available to the EPA at the time the Complaint was issued. The penalty may be adjusted if Respondents establish bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

29. As required by Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), prior to the assessment of a civil penalty, the EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter within a thirty (30) day period, and present evidence in the event a hearing is held.

30. The EPA has notified the state of Nebraska regarding this proposed action by mailing a copy of this document to the Nebraska Department of Environment and Energy.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

31. Respondents may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herein.

32. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondents must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondents have any knowledge, or shall clearly state that Respondents have no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondents dispute; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. Said answer shall be filed with the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
r7_hearing_clerk_filings@epa.gov

33. Failure to admit, deny, or explain any material factual allegation in this Complaint constitutes an admission of the allegation.

34. A hearing upon the issues raised by this Complaint and the answer may be held if requested by Respondents in the answer. If Respondents do not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

35. In any hearing on the proposed penalty for this Complaint, members of the public, to whom the EPA is obligated to give notice of this proposed penalty action, will have the right, under Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and present evidence on the merits of the proposed CWA penalty assessment. If no hearing is held, the EPA will issue a Final Order Assessing Administrative Penalties pursuant to the CWA, and only members of the public who submitted timely comments on the proposed penalty assessment will have an additional thirty (30) days to petition to set aside the said Order and to hold a hearing thereon. The EPA will grant the petition and will hold a hearing only if the petitioners' evidence is material and was not considered by the EPA in the issuance of the Final Order.

36. If Respondents fail to file a written answer within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, they may be found in default. Such default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed herein shall become due and payable unless the record clearly demonstrates that the requested relief is inconsistent with the CWA.

37. Whether or not Respondents request a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Natasha Goss
Attorney-Advisor
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Telephone: (913) 551-7752
Email: goss.natasha@epa.gov

38. Please note that a request for an informal settlement conference does *not* extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

39. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order (CAFO) issued by the Regional Judicial Officer, EPA, Region 7. The issuance of such a CAFO shall constitute a waiver of Respondents' right to request a hearing on any matter stipulated on any matter stipulated therein.

DAVID COZAD

Digitally signed by DAVID COZAD
Date: 2022.08.01 11:50:57 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

NATASHA GOSS

Digitally signed by NATASHA GOSS
Date: 2022.08.01 11:56:05 -05'00'

Natasha Goss
Office of Regional Counsel

Certificate of Service

I certify that on the date indicated below, I hand delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits, 40 C.F.R. Part 22; and a copy of the Revised CWA Section 404 Settlement Penalty Policy to the following persons

By certified mail, to:

Amy Villegas
25599 WCR 4
Hudson, Colorado 80642

Tom Villegas
25599 WCR 4
Hudson, Colorado 80642

By electronic mail, to:

Stephen D. Mossman, Esq.
Counsel for Tom Villegas
sdm@mattsonricketts.com

CAROLINA ADAMS (Affiliate)
Digitally signed by CAROLINA ADAMS (Affiliate)
Date: 2022.08.01 12:34:49 -05'00'

Date

Signature

Exhibit 2

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Tom Villegas and Amy Villegas,	)	**Docket No. CWA-07-2022-0104**
	)	
Respondents.	)	

ORDER OF DESIGNATION

Chief Administrative Law Judge Susan L. Biro, U.S. Environmental Protection Agency ("EPA"), Washington, D.C., is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. Part 22.

Parties shall participate in this matter through the submission of documents in the manner described below.[1] Future orders will instruct the parties on what documents to submit.

Filing: As provided in 40 C.F.R. § 22.5(a), the original and one copy of each document intended to be part of the record of this proceeding shall be filed with the Headquarters Hearing Clerk.[2] Electronic filing is strongly encouraged. To file a document electronically, the document shall be submitted to the Headquarters Hearing Clerk using the OALJ E-Filing System, a web-based tool that can be accessed by visiting the OALJ's website at www.epa.gov/alj.[3] A document filed electronically is deemed to constitute both the original and one copy of the document.

Any party seeking to file a document electronically must first register to use the OALJ E-Filing System. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time that party will be able to upload documents into the system.

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[1] The parties are advised to visit the website for this Tribunal, EPA's Office of Administrative Law Judges ("OALJ") at https://www.epa.gov/alj/filing-and-service-during-covid-19 for the most current guidance on filing and service procedures in light of the ongoing COVID-19 pandemic.

[2] Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ's website at www.epa.gov/alj.

[3] More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, available on the OALJ's website at https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf.

A document submitted to the OALJ E-Filing System is considered "filed" at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the presiding judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.[4]

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.[5] Electronically filed textual documents must be in Portable Document Format ("PDF").

Alternatively, if a party is unable to file a document utilizing the OALJ E-Filing System, e.g., the party lacks access to a computer, the party may file the document by U.S. mail or facsimile.[6] U.S. mail is currently being delivered to this Tribunal at an offsite location on a weekly basis only, and documents sent by facsimile will also be received offsite. To file a document using U.S. mail, the document shall be sent to the following mailing address:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

Facsimile may be used to file a document if it is fewer than 20 pages in length. To file a document using facsimile, the document shall be sent to this Tribunal's offsite location at (916)

[4] The emailed electronic receipt will be the filing party's only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ's E-Docket Database webpage, available at https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf, or on the Agency's Administrative Enforcement Dockets webpage, available at https://yosemite.epa.gov/oa/rhc/epaadmin.nsf, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

[5] If a party's multimedia file exceeds 70 megabytes, the party may save the file on a compact disc and send it by U.S. mail to the mailing address identified in this Order, or the party may contact the Headquarters Hearing Clerk at (202) 564-6281 for instructions on alternative electronic filing methods.

[6] Because of the ongoing COVID-19 pandemic, this Tribunal's ability to receive filings and correspondence by U.S. mail and facsimile is limited. If a party is without access to a computer and must file documents by U.S. mail or facsimile, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by calling the Headquarters Hearing Clerk at (202) 564-6281.

At this time, the Tribunal is not able to accept filings or correspondence by courier or commercial delivery service, such as UPS, FedEx, and DHL. Likewise, the physical office of the OALJ is not currently accessible to the public, and the Tribunal is not able to receive documents by personal delivery. *See* Order Urging Electronic Service and Filing (April 10, 2020), *available at* https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.

550-9639. A document submitted by U.S. mail or facsimile is considered "filed" when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document.

Regardless of the method of filing, all filed documents must be signed in accordance with 40 C.F.R. § 22.5(c) and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

Service: A copy of each document filed in this proceeding shall be "served" by the filing party on the presiding judge and on all other parties. 40 C.F.R. § 22.5(b). While the Rules of Practice ordinarily allow documents to be served by U.S. mail, commercial delivery service, or personal delivery, as well as by facsimile or email if service by those electronic means is consented to in writing, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve all documents on opposing parties by electronic means only, *see* Order Urging Electronic Service and Filing (April 10, 2020), *available at* https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf. Documents filed electronically through the OALJ E-Filing System are deemed to have also been served electronically on the presiding judge. To serve a document on the presiding judge by U.S. mail or facsimile, the mailing address or facsimile number listed above shall be used. Service will be considered complete upon mailing or upon electronic transmission. 40 C.F.R. § 22.7(c).

Certificate of Service: Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on the presiding judge and each party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 22.5(a)(3).

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure: All information filed with the OALJ becomes part of the official case record, which is made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information ("CBI") or Personally Identifiable Information ("PII") pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

Where filing of a document containing such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the document filed. If the filing party wishes for the presiding judge to view and consider the CBI or PII in making a ruling a rendering a decision, the filing party *must* follow the procedures specified on the OALJ's website at www.epa.gov/alj and in 40 C.F.R. Part 2 to protect the given information against public disclosure. *To the extent that any person fails to adhere to those procedures and files any unredacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and consents to public disclosure by EPA, including posting on the Internet, of all such information*.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Dated: September 8, 2022
Washington, D.C.

In the Matter of *Tom Villegas and Amy Villegas*, Respondents.
Docket No. CWA-07-2022-0104

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order of Designation**, dated September 8, 2022, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic and Regular Mail to:
Natasha Goss, Attorney-Advisor
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219
Email: goss.natasha@epa.gov
Counsel for Complainant

Stephen D. Mossman
Andrew R. Spader
Mattson Ricketts Law Firm
134 S. 13th Street, Suite 1200
Lincoln, NE 68508-8433
Email: sdm@mattsonricketts.com
Email: ars@mattsonricketts.com
Counsel for Respondents

Dated: September 8, 2022
Washington, D.C.

From: KSD_CMECF@ksd.uscourts.gov
To: ksd_nef@ksd.uscourts.gov
Subject: Activity in Case 2:23-cv-02171-EFM-TJJ Villegas et al v. Regan et al Memorandum in Support of Motion
Date: Friday, May 5, 2023 3:27:46 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

DISTRICT OF KANSAS

Notice of Electronic Filing

The following transaction was entered by MacRoberts, Samuel on 5/5/2023 at 2:26 PM CDT and filed on 5/5/2023

Case Name: Villegas et al v. Regan et al
Case Number: 2:23-cv-02171-EFM-TJJ
Filer: Amy Villegas
Thomas Villegas
Document Number: 10

Docket Text:
MEMORANDUM IN SUPPORT of [9] MOTION for Preliminary Injunction by Plaintiffs Amy Villegas, Thomas Villegas (Attachments: # (1) Declaration, # (2) Exhibit 1, # (3) Exhibit 2)(MacRoberts, Samuel)

2:23-cv-02171-EFM-TJJ Notice has been electronically mailed to:

Damien M. Schiff dschiff@pacificlegal.org, incominglit@pacificlegal.org, tdyer@pacificlegal.org

Glenn E. Roper geroper@pacificlegal.org, incominglit@pacificlegal.org, tdyer@pacificlegal.org

Jeffrey Shaw jeff@kansasjusticeinstitute.org

Michael A. Poon mpoon@pacificlegal.org, incominglit@pacificlegal.org, tdyer@pacificlegal.org

Samuel G. MacRoberts sam.macroberts@kansasjusticeinstitute.org

2:23-cv-02171-EFM-TJJ Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

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Original filename:n/a
Electronic document Stamp:
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Document description: Declaration
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1028492125 [Date=5/5/2023] [FileNumber=5824272-1]
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Document description: Exhibit 1
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1028492125 [Date=5/5/2023] [FileNumber=5824272-2]
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Document description: Exhibit 2
Original filename:n/a
Electronic document Stamp:
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