

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

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TERESA RICHARDSON,
[REDACTED],
CHRISTOPHER CARROLL,
[REDACTED],
GINA ARFI,
[REDACTED], and
AIDA ZYGAS,
[REDACTED]

Case No. 20-cv-02262

Plaintiffs,
-against-

DONALD J. TRUMP, *in his official capacity as President of the
United States*,
1600 Pennsylvania Avenue, N.W., Washington, D.C. 20500

LOUIS DEJOY, *in his official capacity as Postmaster General of
the United States*,
475 L'Enfant Plaza, S.W., Washington, DC 20260, and

UNITED STATES POSTAL SERVICE,
475 L'Enfant Plaza, S.W., Washington, DC 20260

Defendants.
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**PLAINTIFFS' ORIGINAL COMPLAINT AND REQUEST FOR PRELIMINARY AND
PERMANENT INJUNCTIONS**

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NATURE OF THE ACTION

This action arises from a conspiracy between Defendants President Donald J. Trump (“Trump”), Postmaster General Louis DeJoy (“DeJoy”), and the United States Postal Service (“USPS”), collectively “Defendants”, and the individual acts of Trump and DeJoy, by purposely compromising the right to vote of Plaintiffs Teresa “Terri” Richardson (“Richardson”), Christopher Carroll (“Carroll”), Gina Arfi (“Arfi”), and Aida Zygas (“Zygas”), collectively, “Plaintiffs”, and millions of other Americans, by making false statements about widespread mail-in voter fraud when such fraud is virtually non-existent (Trump) and by significantly slowing down mail delivery of flat mail like absentee and mail-in ballots (Trump and DeJoy), in an effort to suppress the vote during the pandemic, undermine faith in the election process and its results and lay the groundwork for Trump to challenge the results of the presidential election should he lose. Trump and DeJoy have not only violated the constitutionally protected right to vote but have also committed the federal crime of obstruction of mail.

PARTIES

1. Plaintiff Richardson is an individual who is registered to vote in and resides in the state of Texas.
2. Plaintiff Carroll is an individual who is registered to vote in and permanently resides in the state of Pennsylvania.
3. Plaintiff Arfi is an individual who is registered to vote in and resides in the state of New York.
4. Plaintiff Zygas is an individual who is registered to vote in and resided at the time of the August 11 primary in the state of Wisconsin and who currently resides in Indiana.
5. Defendant Trump is the President of the United States of America. He is being sued here in his official capacity as President.

6. Defendant DeJoy is the Postmaster General and Chief Executive Officer of USPS. He is being sued in his official capacity as Postmaster General and Chief Executive Officer of USPS.

7. Defendant USPS is an agency of the federal government of the United States and is headquartered in Washington, D.C.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1) because Defendants Trump and USPS reside in this District and because it is a judicial district in which a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred.

PRELIMINARY STATEMENT

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

-- *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964)

10. This is a suit for injunctive relief to protect the Plaintiffs' right to vote by ensuring that the United States Postal Service delivers absentee and mail-in ballots in a timely fashion to them and then, delivers their executed ballots to election officials in time to be counted.

11. In brief, each of the Plaintiffs applied for, but never received, either a mail-in or absentee ballot and were either unable to vote during the primaries in their states or placed themselves at risk of coronavirus by voting in person. Of note, Plaintiff Richardson applied for, but did not receive her absentee ballot, forcing her to either give up the right to vote or risk her

health – she has a disability – by going to her polling place in Houston, an epicenter of the coronavirus pandemic.

12. Neither these Plaintiffs nor any other citizen should have to face the Hobson's choice of giving up their vote because the USPS failed to deliver their ballot or risk their health, indeed their lives, by doing what Richardson did and voting at their polling place during a pandemic. That is why Plaintiffs are in this Court, complaining of the undue burden Defendants have placed on the right to vote by engaging in outrageous tactics to slow down mail delivery even more than it was already slowed by the challenges posed by the pandemic, resulting in failure to deliver mail-in ballots on time or at all and the widespread cases where mail-in ballots were received by election officials too late to have them counted – and leaving unsuspecting voters disenfranchised.

13. Trump, who has elevated gaslighting to a fine art, capitalized on mail-in voting challenges, claiming repeatedly in recent months that there is widespread mail-in voter fraud, when every credible study on the subject has concluded that incidence of mail-in voter fraud is statistically insignificant – so inconsequential that there has never been an election, or at least none reported, whose outcome has been changed by fraudulent mail-in voting.

14. Trump is candid about his motive: he believes, and has stated publicly, that no Republicans will be elected if there is widespread mail-in voting – and mail-in voting has increased in virtually every election cycle since 2000 and constituted a quarter of all votes cast during the 2018 election cycle. Trump has explained that shutting down or seriously delaying mail delivery is one way to avoid mail-in voting fraud. What is ironic is that mail-in voting has traditionally favored Republicans, so it seems more likely Trump's bogus claims are intended to set up grounds to contest the 2020 election if he loses. At least some people say that.

15. Trump gained a willing partner in his assault on the constitutional right to vote. In May 2020, the President's six appointees on the Postal Service Board of Governors appointed a longtime Republican fundraiser, huge Trump supporter and walking conflict of interest, DeJoy, as his Postmaster General. DeJoy has been allowed to keep XPO Logistics, his former company and major USPS contractor that processes mail for USPS.¹ Since his appointment, and perhaps even before, DeJoy and Trump have conspired with each other and have acted individually to undermine the legitimacy of the 2020 elections by crippling the ability of USPS to receive, process, sort and deliver applications for absentee and mail-in ballots, the ballots themselves, and the executed ballots in time, if at all, to state election officials to be counted.

16. Despite the devastating effects of the coronavirus on USPS' ability to deliver the mail during the Spring primaries and primary runoffs, and the thousands of USPS employees who were quarantined because they were exposed to and, in some cases, contracted, coronavirus, DeJoy has taken several steps calculated to slow down – and to undermine – the agency's ability to deliver the mail, all in the name of cost-cutting but at the expense of the right of citizens to vote.

17. In furtherance of that unmistakable end, DeJoy has gutted key efficiencies at USPS, removing high-speed mail sorting machines nationwide that sort flat mail like ballots, freezing additional hiring, cutting off overtime and prohibiting postal workers from making extra or later trips to complete deliveries. Although this is a civil lawsuit, this conduct, in violation of 18 USC § 1701, Obstruction of Mail, is evidence of Trump's and DeJoy's states of mind and how far they are willing to go to unlawfully impede Plaintiffs' right to vote

¹ Marshall Cohen, *Financial disclosures reveal postmaster general's business entanglements and likely conflicts of interest, experts say*, CNN (Aug. 12, 2020; 6:33 PM), <https://www.cnn.com/2020/08/12/politics/postal-service-dejoy-conflicts-amazon-trades-xpo-stake/index.html>.

18. In short, DeJoy, doing Trump's public bidding, has ensured even greater chaos in the Fall elections, putting his thumb on the electoral scales to help ensure Trump's reelection and/or provide grounds for an election contest – not to mention helping Trump sow doubt in the minds of Americans about the integrity of the electoral process and the outcome itself, a loathsome tactic once associated only with tin-horn dictators and banana republics.

19. All of which explains why Plaintiffs have come to this Court. In the remaining primary runoffs and more importantly, during the presidential election on November 3, voters who fail to receive their mail-in or absentee ballots are left with the choice of compromising their right to vote by not voting at all or risking their health, even their lives, by going to polling places and joining long lines where they risk infection with the coronavirus. It is this choice that is an irreparable injury to Plaintiffs (and the American public) for which there is no adequate legal remedy. And it is this choice that brings Plaintiffs to this court, asking this Court to shut down Defendants' assault on the right to vote, the unconscionable burden placed on the constitutional right to vote by the President of the United States and his cohort, DeJoy.

20. Plaintiffs' worst fears about the coming election were confirmed by a July 29, 2020 letter USPS' General Counsel, Thomas J. Marshall, sent to 46 Secretaries of State, itself a fit tribute to the incredibly quick conversion of the USPS to a weapon of political war. As the Washington Post reported, "The U.S. Postal Service is warning states coast to coast that it cannot guarantee all ballots cast by mail for the November election will arrive in time to be counted, even if mailed by state deadlines, raising the possibility that millions of voters could be disenfranchised."² This letter is ample evidence of just how successful Trump and DeJoy have

² Erin Cox et al., *Postal Service warns 46 states their voters could be disenfranchised by delayed mail-in ballots*, WASH. POST, https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html?hpid=hp_hp-top-table-high_uspsstates-230pm%3Ahomepage%2Fstory-ans.

been at tipping the electoral scale, tilting the balance in Trump's favor. No matter the claims of cost cutting at USPS, the evidence is overwhelming in support of the issuance of a preliminary and permanent injunction shutting down Trump's and DeJoy's increasingly successful efforts to corrupt the 2020 elections.

21. The Plaintiffs' cases provide highly personal, persuasive evidence of the difficulty ordinary citizens face when they cannot obtain their mail-in ballots. Richardson's experience, mentioned briefly above, is a case in point. Before coronavirus was declared a pandemic, Richardson, a longtime Houston resident, went to her polling place at Precinct #33, an elementary school, to cast her vote in the March 3, 2020 Texas primary. Once she arrived, she was surprised by the length of the voting lines, which snaked around the block. It took her two hours just to get inside the schoolhouse, during which she balanced herself with the help of her cane. Once inside, a woman she was talking to in line, who was a teacher at the school, found a chair for her. Each time the line moved, Richardson stood up and the man behind her pushed the chair forward, which they repeated for the next hour until she reached the voting booth.

22. Richardson suffers from debilitating arthritis that has resulted in two hip replacements, a shoulder replacement, and an expected knee replacement. Moreover, with the emergence of COVID-19 shortly after the March 3 primary elections, Richardson was also concerned because she is in her fifth and final year of prophylactic treatment resulting from a breast cancer diagnosis. Given her disability and the fact that she is at high risk for COVID-19, she visited the website of the Secretary of State of the State of Texas, filled out an application for an absentee ballot for the primary run-off and general elections, included her home (mailing) address on the lines indicated, and, as Texas requires a reason for receiving an absentee ballot for all persons under age 65, checked the box indicating "disability." Richardson signed and

mailed the completed application to Early Voting Clerk, Post Office Box 1148, Houston, Texas 77251-1148 around April 24, 2020.

23. Despite having done all that was required of her, Richardson did not receive her absentee ballot prior to the July 14, 2020 primary run-off election. Consequently, with the USPS slowdown in full swing and coronavirus spreading through Houston, she returned to Precinct #33, where she found the lines shorter and waited only 45 minutes to cast her ballot this time, albeit in 92-degree Houston heat. However, the option she required, the option Texas law guaranteed her given her disability, enabling her to vote by mail from the safety of her home, was not available to her. With the presidential election less than ninety days away, Richardson still has not received her absentee ballot for the general election.

24. Carroll applied for an absentee ballot because he was unable to be in his home state of Pennsylvania on primary election day. He has never received his absentee ballot, and because he was out-of-state at the time of the primaries, was unable to vote in Pennsylvania's June 9 primary election.

25. Arfi, a New York state resident, requested an absentee ballot that never arrived, and because she lives with her 85-year-old grandmother, could not vote in New York's June 23 primary election as she could not risk exposing herself and her 85-year-old grandmother to COVID-19.

26. Zygas, at relevant times a Wisconsin resident, requested an absentee ballot for the August 11, 2020 Wisconsin primary, as she expected to be out of town on the date of the election. To date, her absentee ballot has not arrived. Fortunately, she ended up being in Madison on election day after all, and was able to vote in person.

27. Zygas' experience in failing to receive an absentee ballot in Wisconsin and Carroll's experience in Pennsylvania were not unique. Nearly 700 voters in the cities of Milwaukee and Wauwatosa did not receive ballots they requested in late June for the Aug. 11 primary. Among the 13 postal districts serving key presidential battleground states, four failed to meet any on-time service goals handling first-class mail between April 1 and June 30, and six districts achieved only one. The laggards are in five battleground states — Pennsylvania, Michigan, Florida, Wisconsin and North Carolina – that may determine the presidential election. Indeed, three of the postal districts with the worst records represent the largest metropolitan areas in their respective states – Philadelphia (home to Carroll), Detroit and Milwaukee.

28. These delays are expected to continue into November and the general election. “I believe it is highly likely that in the November General Election, the absentee ballots of at least tens of thousands of voters will arrive at election offices after Election Day and will not be counted unless the Ballot Receipt Deadline is extended,” wrote Ronald Stroman, the deputy postmaster general from 2011 until June 1, in a recent court filing challenging the Wisconsin deadline for ballot submission.

29. There is one more fact that should not be overlooked: as USPS employees and American Postal Workers Union officials began speaking out, making clear what was going on at USPS and challenging DeJoy's authority to make the radical changes he has made, DeJoy removed any obstacle to his strategy by reassigning or displacing 23 seasoned postal executives, centralizing decision-making power in himself.

30. For these reasons and those below, Plaintiffs have filed this suit asking this Court to enjoin the Defendants from engaging in any further attempt to deny them the right to mail in their vote and compelling Defendants to return postal operations and restore postal service to that

in place on January 1, 2020, including, including but not limited to compelling them to: (1) replace or restore the high-speed sorting machines that have been taken out of service and put them back into operation; (2) restore overtime pay for all USPS employees; (3) lift the USPS hiring freeze so that USPS can hire additional employees when and where necessary to ensure the timely processing and delivery of mail-in ballots; (4) allow late deliveries instead of letting mail go undelivered and putting delivery even further behind and (5) restore the 23 seasoned employees to the jobs they held before being reassigned or displaced in the recent USPS reorganization. Otherwise, this election is in danger of being stolen.

PRELIMINARY STATEMENT

31. This action arises from a scheme orchestrated by Trump, the USPS and its Postmaster General and CEO, DeJoy, to infringe upon the fundamental right of Plaintiffs – and thousands of other Americans – to vote.

32. Trump has stated that he is against mail-in voting because it favors Democrats and “you’d never have a Republican elected in this country again” if universal mail-in voting were allowed, and recruited DeJoy to enact changes to USPS policies and procedures that have hampered USPS’ ability to receive, process, sort and deliver mail, with the predictable result, presaged by voters’ experience in the Spring 2020 primaries, that citizens will not receive their applications for absentee and mail-in ballots or if they do, that the ballots will not arrive in time to be counted – not because of voter negligence but because of purposeful impediments DeJoy and USPS have engineered to suppress turnout and jeopardize the chance ballots will be counted.³

³ Aaron Blake, *Trump just comes out and says it: The GOP is hurt when it's easier to vote*, WASH. POST (Mar. 30, 2020; 1:47 PM), <https://www.washingtonpost.com/politics/2020/03/30/trump-voting-republicans>.

33. Trump previously referred to USPS as a “joke” and threatened to withhold a \$10 billion loan to USPS authorized by Congress in the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act unless USPS quadrupled package delivery prices.⁴ He only recently dropped his opposition to the loan when USPS agreed to provide the Treasury Department with copies of ten of its largest contracts with high-volume third-party shippers, including FedEx, UPS, and Amazon, led by longtime Trump adversary and target, Amazon founder Jeff Bezos.

34. Trump has also repeatedly made false claims that mail-in voting is rife with fraud and opposed coronavirus relief bills that contain provisions with increased funding for USPS and mail-in voting.

35. In fact, the United States has a long history of mail-in and absentee voting and none of it involves any widespread fraud and none that could change the outcome of the election. The first widespread use of absentee voting occurred during the Civil War in 1864, when 150,000 absentee ballots were cast by Union soldiers. By World War II, every state let soldiers vote remotely. The 3.2 million absentee ballots cast by soldiers amounted to nearly seven percent of the total electorate in the 1944 presidential election and contributed to Franklin Delano Roosevelt’s reelection. However, there are no proven instances of widespread fraud in either of those elections.

36. Still today, there is no empirical evidence that mail-in voting fraud is widespread. In fact, multiple studies have found that *all* forms of voting fraud – including mail-in voting

⁴ Myah Ward, *Trump: Postal service is a 'joke' that must raise prices to get bailout money*, POLITICO (Apr. 24, 2020; 2:37 PM), <https://www.politico.com/news/2020/04/24/trump-us-postal-service-coronavirus-bailout-206851>.

fraud – are extremely rare. Instead of acknowledging this reality, when a commission that he created to investigate fraud in the 2016 election found no such fraud, Trump disbanded it.⁵

37. The absence of evidence relating to voting fraud provides a striking contrast to the abundance of evidence of the impact that Defendants’ scheme and changes to USPS has had on recent primary elections, including but not limited to undelivered ballots, ballots delivered too late to be mailed in on time, and ballots not delivered to election officials.

38. All of these problems occurred because DeJoy and USPS intentionally took steps to turn Trump’s claims of a “rigged” 2020 presidential election into a self-fulfilling prophecy—and they are doing the rigging.

39. As a result of Defendants’ efforts, such as removing the sorting machines, freezing hiring, cutting off overtime and prohibiting mailmen and women from making extra trips ensuring that mail is delivered on time, Plaintiffs – like thousands of other Americans – were prevented from casting a ballot by mail in the 2020 presidential primary. Defendants’ scheme will inevitably have an even greater impact on the 2020 presidential election. In 2016, more than one in five Americans voted by mail. By 2018, that number had increased to one in four, and a significantly greater number are expected to vote by mail this year due to the COVID-19 pandemic.

40. Trump’s constant assertions that the 2020 presidential election will involve massive amounts of voter fraud are plainly intended to elevate what Republicans and Democrats agree is a statically insignificant phenomenon into a basis to contest the 2020 election. Despite admitting that he had no evidence to back his claims, Attorney General William Barr claimed

⁵ All Things Considered, *Member Of Disbanded Trump Voter Fraud Commission Speaks Out*, NPR (Aug. 4, 2018; 5:33 pm), <https://www.npr.org/2018/08/04/635668304/member-of-disbanded-trump-voter-fraud-commission-speaks-out>.

that he believed an election conducted by predominantly by mail would not be secure, undoubtedly laying the groundwork for future legal challenges by the Department of Justice, and the massive litigation assets at its disposal, not the least of which are the lawyers in the offices of the United States Attorneys nationwide, if the results do not favor Trump.⁶

FACTS COMMON TO ALL CLAIMS

Appointment Of DeJoy As Postmaster General

41. According to campaign finance reports published by the Federal Elections Commission, between August 2016 and February 2020, DeJoy donated more than \$1.2 million to Trump's campaign.⁷

42. In March 2017, DeJoy hosted a fundraiser for Trump at his home in Greensboro, North Carolina, with tickets costing \$15,000 per couple for preferential seating and a VIP reception.⁸

43. In May 2017, Trump appointed DeJoy's wife, Dr. Aldona Wos ("Wos"), to serve as Vice Chair of the President's Commission on White House Fellowships, which is responsible for interviewing candidates and recommending them to the President.⁹

⁶ Caroline Kelly, *Barr says, without citing evidence, that an election done predominantly by mail would not be secure*, CNN (June 25, 2020; 10:25 PM), <https://www.cnn.com/2020/06/25/politics/barr-mail-in-voting-election-fraud-npr/index.html>.

⁷ *Individual Contributions*, FED. ELECTION COMM'N, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=Louis+DeJoy (last visited Aug. 16, 2020).

⁸ Jacob Bogage, *Under fire from Trump, Postal Service braces for arrival of new postmaster general allied with White House*, WASH. POST (May 7, 2020; 7:12 PM), <https://www.washingtonpost.com/business/2020/05/07/postal-service-postmaster-dejoy-trump>.

⁹ *About Us*, DEJOY WOS FAMILY FOUND., <http://louisdejoyandaldonawosfamilyfoundation.com/about-us-louis-dejoy-aldona-wos-family-foundation> (last visited Aug. 16, 2020).

44. In February 2020, Trump nominated Was to be the United States' ambassador to Canada.¹⁰

45. According to financial disclosure forms, DeJoy and Was had \$115,000 to \$300,000 invested in the United Parcel Service, USPS' major competitor.¹¹

46. On May 6, 2020, the USPS Board of Governors – whose six members were all appointed by Trump – announced its unanimous selection of DeJoy to serve as Postmaster General and Chief Executive Officer.¹²

47. DeJoy began serving as Postmaster General on June 15, 2020.¹³

Changes to USPS Under DeJoy's Leadership

48. A leaked PowerPoint titled "PMGs [sic] expectations and plan" states, in part, "The new PMG is looking at COST. Making the USPS financially solvent which we are not at this time. Here are some of HIS expectations and they will be implemented in short order." The expectations include, among other things, that "POT [penalty overtime] will be eliminated" and

¹⁰ Press Release, Office of the White House, President Donald J. Trump Announces Intent to Nominate and Appoint Individuals to Key Administration Posts (Feb. 11, 2020), *available at* <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-individuals-key-administration-posts-29>.

¹¹ Michael D. Shear et al., *Mail Delays Fuel Concern Trump Is Undercutting Postal System Ahead of Voting*, N.Y. TIMES (Aug. 14, 2020), <https://www.nytimes.com/2020/07/31/us/politics/trump-usps-mail-delays.html>.

¹² Press Release, Board of Governors Announces Selection of Louis DeJoy to Serve as Nation's 75th Postmaster General (May 6, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/0506-bog-announces-selection-of-louis-dejoy-to-serve-as-nations-75th-postmaster-general.htm>.

¹³ Press Release, Postmaster General Louis DeJoy's Opening Remarks for the USPS Board of Governors Aug. 7 Meeting (Aug. 7, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/0807-pmg-bog-meeting-comments.htm>.

“[o]vertime will be eliminated” because “we are paying too much in OT and it is not cost effective.”¹⁴

49. The PowerPoint also states, “The USPS will no longer use excessive cost to get the basic job done. If the plants run late they will keep the mail for the next day” and that “if we cannot deliver all the mail due to call offs or shortage of people and you have no other help, the mail will not go out.”

50. By letter, dated June 17, 2020, the contract administrator for the American Postal Workers Union (“APWU”) informed APWU president Mark Diamondstein that the USPS was planning to remove 502 Delivery Bar Code Sorters, 87 Advanced Facer Canceler Systems, 55 Automated Flat Sorting Machine 100s and 27 Flat Sequencing Systems and stated that “[t]he subject reduction is anticipated to take place over the next subject week.”¹⁵

51. The removals of those machines have begun, and is expected to be complete in the first quarter of 2021.¹⁶

52. In an internal memo leaked by the Federal News Network, dated July 10, 2020, the USPS made several specific “transportation changes,” including that “late trips are no longer authorized or accepted” and “[e]xtra trips are no longer accepted.”¹⁷

¹⁴ *Leaked USPS PowerPoint indicates PMG DeJoy focus on getting operating costs under control*, ALLIANCE OF NONPROFIT MAILERS (July 14, 2020), <https://www.nonprofitmailers.org/leaked-usps-powerpoint-indicates-pmg-dejoy-focus-on-getting-operating-costs-under-control>.

¹⁵ *USPS Plans Nationwide Reduction in Mail Processing Equipment Due to Mail Volume Decline*, 21ST CENTURY POSTAL WORKER BLOG (June 23, 2020), <https://www.21cpw.com/usps-nationwide-reduction-in-mail-processing-equipment-due-to-mail-volume-decline>.

¹⁶ Letter from Rickey R. Dean, Manager of Contract Admin., Am. Postal Workers Union, to Mark Diamondstein, Pres., Am. Postal Workers Union (June 17, 2020), *available at* https://www.21cpw.com/wp-content/uploads/2020/06/mail-processing-equipment-reduction_6-17-2020.pdf.

¹⁷ Jory Heckman, *USPS warns staff of temporary mail delays as it cuts ‘soaring’ delivery costs*, FED. NEWS NETWORK (July 15, 2020), <https://federalnewsnetwork.com/management/2020/07/usps-warns-staff-of-temporary-mail-delays-as-it-cuts-soaring-delivery-costs>.

53. The memo also notes that an “aspect of these changes that may be difficult for employees is that – temporarily – we may see mail left behind or mail on the workroom floor or docks (in P&DCs)” and that the changes have increased “delayed mail volumes.”

54. On July 16, 2020, USPS informed the National Association of Letter Carriers (“NALC”) that it would be implementing a new initiative called Expedited to Street/Afternoon Sortation (“ESAS”) on July 25, 2020 in 384 selected sites.

55. NALC expressed concern that “USPS chose to test [ESAS] unilaterally, without NALC participation” and that “[t]he ESAS Initiative, as described, does not appear to conform to the handbook provisions contained in the M-39 and M-41 [USPS handbooks] relating to [expedited preferential mail (‘EPM’)]” and has stated that it is expressing its concerns with USPS headquarters.¹⁸

56. Also in July 2020, the USPS issued another internal memo announcing its Expedited to Street/Afternoon Sortation (“ESAS”) initiative, which began on July 25, 2020. According to the memo, under ESAS, “[c]ity carriers will not sort any mail during the morning operation,” but will instead sort delivery in the afternoon “[u]pon return from street delivery.”

57. According to the memo, ESAS is designed to “reduce[] morning office time to allow carriers to leave for the street earlier.”¹⁹

58. However, postal workers are concerned that the practical impact of these changes will be to delay mail from getting to its final destination. Arthur Sackler, manager of the postal

¹⁸ *USPS announces new ESAS delivery initiative test*, NAT’L ASS’N OF LETTER CARRIERS (July 21, 2020), <https://www.nalc.org/news/nalc-updates/usps-announces-new-esas-delivery-initiative-test>.

¹⁹ Memorandum from USPS (July 2020), *available at* <http://www.nalc3825.com/SUT.ESAS.July.2020.pdf>.

industry advocacy group Coalition for a 21st Century Postal Service, stated if “there’s no real time to sort, and no overtime, then there could be a cumulative growing impact.”²⁰

59. On August 7, 2020, DeJoy released a reorganization memo reflecting that twenty-three postal executives, including several with decades of experience, were reassigned or displaced. According to the *Washington Post*, “[a]nalysts say the structure centralizes power around DeJoy . . . and de-emphasizes decades of institutional postal knowledge.”²¹

60. USPS also announced that it had implemented a “management hiring freeze and will be requesting future Voluntary Early Retirement Authority from the Office of Personnel Management for employees not represented by a collective bargaining agreement.”²²

61. Also in August 2020, the USPS began removing dozens of mailboxes in New York, Pennsylvania, Oregon and Montana. After an outcry erupted on social media, a USPS spokesman claimed that the boxes were being moved to areas with higher volumes of mail, and announced that no more boxes would be moved until after the election.²³

62. Although these USPS memos explain that these measures are intended to reduce costs and promoting efficiency, Article I, Section 8 of the United States Constitution provides Congress with the power to “establish post offices and post roads,” without regard to whether such offices are profitable.

²⁰ Rachel M. Cohen, *USPS Workers Concerned New Policies Will Pave the Way to Privatization* (July 29, 2020; 7:31 AM), <https://theintercept.com/2020/07/29/usps-postal-service-privatization>.

²¹ Jacob Bogage, *Postal Service overhauls leadership as Democrats press for investigation of mail delays*, WASH. POST Aug. 7, 2020; 7:10 PM), <https://www.washingtonpost.com/business/2020/08/07/postal-service-investigation-dejoy>.

²² Press Release, Postmaster General Louis DeJoy Modifies Organizational Structure to Support USPS Mission (Aug. 7, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/0807-pmg-modifies-organizational-structure.htm>.

²³ Jacob Bogage, *Postal Service will stop removing mailboxes*, WASH. POST. (Aug. 14, 2020; 6:20 PM), <https://www.washingtonpost.com/business/2020/08/14/people-are-freaking-out-about-mailbox-removals-postal-service-says-its-routine>.

63. Moreover, Trump has made comments that make clear the cost-cutting and efficiency explanations are pretextual, and that Defendants' true intent in orchestrating these changes is to hamper Americans' ability to vote by mail in the 2020 presidential election.

Trump's Comments Show The True Motivation Behind Defendants' Scheme

64. Trump has repeatedly suggested that voting by mail is rife with fraud.

65. On June 22, 2020, Trump tweeted, "This will be the Election disaster of our time. Mail-In Ballots will lead to a RIGGED ELECTION!"

66. On July 30, 2020, Trump tweeted, "With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history. It will be a great embarrassment to the USA. Delay the Election until people can properly, securely and safely vote???"²⁴

67. On August 13, 2020, Trump tweeted, "Nevada has ZERO infrastructure for Mail-In Voting. It will be a corrupt disaster if not ended by the Courts. It will take months, or years, to figure out."²⁵

68. However, there is no credible study nor any empirical evidence supporting Trump's self-serving claims. To the contrary, studies have found that, although there has been a significant increase in voting by mail in recent years, the incidence of all forms of voter fraud – including fraud associated with mail-in voting – is extremely rare.

²⁴ Donald J. Trump (@realDonaldTrump), TWITTER (July 30, 2020; 8:46 AM), <https://twitter.com/realDonaldTrump/status/1288818160389558273>.

²⁵ Cox, *supra* note 2.

69. According to the United States Election Assistance Commission, the percentage of people who voted by mail or absentee ballot increased from 12.1% in 2004 to 23.6% in 2016.²⁶

70. According to the Brennan Center for Justice, “Since 2000 more than 250 million votes have been cast via mailed-out ballots, in all 50 states, according to the Vote at Home Institute. In 2018, more than 31 million Americans cast their ballots by mail, about 25.8 percent of election participants.”

71. Despite this dramatic increase in mail-in voting over time, fraud rates remain infinitesimally small, which Trump has escalated by his false statements into a tsunami of voter fraud. As the *New York Times* editorial board has explained, “states that use vote-by-mail have encountered essentially zero fraud: Oregon, the pioneer in this area, has sent out more than 100 million mail-in ballots since 2000, and has documented only about a dozen cases of proven fraud.”²⁷ Statistically, that’s 0.00001 percent of all votes cast.

72. An exhaustive study of known voting fraud cases by national investigative reporting project News21 identified only 491 cases of absentee ballot fraud since 2000 – a number that the authors of the study described as “infinitesimal.”²⁸

²⁶ *EAVS Deep Dive: Early, Absentee, and Mail Voting*, U.S. ELECTION ASSISTANCE COMM’N (Oct. 17, 2017), <https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview>.

²⁷ Wendy R. Weiser & Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud> (quoting N.Y. Times Editorial Bd., *The 2020 Election Won’t Look Like Any We’ve Seen Before*, N.Y. TIMES (Mar. 21, 2020), <https://www.nytimes.com/2020/03/21/opinion/sunday/coronavirus-vote-mail.html>).

²⁸ Natasha Khan & Corbin Carson, *Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed*, NEWS21 (Aug. 12, 2012), <https://votingrights.news21.com/article/election-fraud>.

73. A commission created by Trump to study voting fraud in the 2016 election was disbanded after finding no substantiated evidence of voting fraud. One of the panel's members, Matthew Dunlap, stated in an interview with National Public Radio that "even though the idea was to investigate voter fraud, it is pretty clear that the purpose of the commission was to actually affirm and validate the president's claims whether or not we had any evidence of any such voter misconduct."²⁹

74. On August 3, 2020, during a press briefing at the White House, Trump claimed to have the authority to issue an executive order relating to mail-in voting in the 2020 election. Although Article I, Section 4 of the United States Constitution gives states the authority to regulate the time, place and manner of elections, Trump stated, "I have the right to do it. We haven't got [sic] there yet, but we'll see what happens."³⁰

75. Other Trump administration officials have also adopted Trump's false narrative. On June 25, 2020, in an interview with National Public Radio, despite admitting he had no evidence to back his claims, Attorney General William Barr has claimed that he believed an election conducted by predominantly by mail would not be secure, laying the groundwork for future legal challenges if the results do not favor Trump.³¹

76. Unsurprisingly, Trump has made other comments that plainly demonstrate that his professed concerns about voter fraud are pretextual and that, in fact, he is opposed to voting by

²⁹ All Things Considered, *Member Of Disbanded Trump Voter Fraud Commission Speaks Out*, NPR (Aug. 4, 2018; 5:33 pm), <https://www.npr.org/2018/08/04/635668304/member-of-disbanded-trump-voter-fraud-commission-speaks-out>.

³⁰ Caitlin Oprysko, *Trump claims right to issue executive order on vote-by-mail*, POLITICO, <https://www.politico.com/news/2020/08/03/trump-mail-in-voting-order-391066>.

³¹ Kelly, *supra* note 6.

mail because he believes it favors Democrats and is therefore contrary to his interest as a Republican presidential candidate.

77. On March 30, 2020, in an appearance on “Fox & Friends,” Trump stated that he opposed Democratic proposals for coronavirus relief that included increased funding for absentee voting and voting by mail “[t]hey had things – levels of voting that, if you ever agreed to it, you’d never have a Republican elected in this country again.”³²

78. On April 8, 2020, Trump tweeted, “Republicans should fight very hard when it comes to statewide mail-in voting. Democrats are clamoring for it. Tremendous potential for voter fraud, and for whatever reason, doesn’t work out well for Republicans.”³³ Adding to the irony and ignorance of what he said, that statement is factually incorrect. Republicans have traditionally come out ahead in mail-in voting.

79. More recently, Trump made clear that his opposition to proposed increases in funding for the USPS are fueled by his desire to limit mail-in voting, which he hopes will improve his chances of reelection.

80. At a news conference on August 12, 2020, Trump stated, “So they want \$25 billion for the Post Office. They want . . . \$3.5 billion for universal mail-in [voting] . . . [T]hey don’t have the money to do the universal mail-in voting. So therefore, they can’t do it, I guess.” Trump went on to explain that if universal mail-in voting does occur, “[i]t’ll be the greatest rigged election in history. It’ll be the greatest fraud ever perpetrated, other than perhaps what

³² Blake, *supra* note 3.

³³ Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 8, 2020), <https://twitter.com/realDonaldTrump/status/1247861952736526336>.

they did to my [2016] campaign, where they spied on my campaign – President Obama, Biden, and everybody else.”³⁴

81. On August 13, 2020, in an appearance on the Fox Business Network, Trump similarly explained:

[T]hey want \$3.5 billion for the mail-in votes, OK. Universal mail-in ballots. They want \$25 billion for the post office. Now they need that money in order to have the post office work, so it can take all of these millions and millions of ballots. Now in the meantime they aren't getting there. By the way, those are just two items, but if they don't get those two items, that means you can't have universal mail-in voting, because they're not equipped to have it.³⁵

82. Although Trump recently dropped his opposition to a \$10 billion Treasury Department loan to USPS authorized by Congress in the CARES Act, he had previously referred to USPS as a “joke” and threatened to withhold the authorized funding unless USPS quadrupled package delivery prices.³⁶ He only recently dropped his opposition to the loan when USPS agreed to provide the Treasury Department with copies of ten of its largest contracts with high-volume third-party shippers, including FedEx, UPS, and Amazon, led by longtime Trump adversary Jeff Bezos.³⁷

83. There is evidence that Trump's opposition to voting has reached its intended audience and had its intended effect. In early May, when asked in a Monmouth University poll

³⁴ Jacob Bogage, *Trump says Postal Service needs money for mail-in voting, but he'll keep blocking funding*, WASH. POST (Aug. 12, 2020; 8:43 PM), <https://www.washingtonpost.com/business/2020/08/12/postal-service-ballots-dejoy>.

³⁵ *Trump: Coronavirus stimulus negotiations sticking point is mail-in voting*, FOX BUSINESS (Aug. 13, 2020), https://video.foxbusiness.com/v/6180774889001/?playlist_id=3166411554001#sp=show-clips.

³⁶ Lisa Rein & Jacob Bogage, *Trump says he will block coronavirus aid for U.S. Postal Service if it doesn't hike prices immediately*, WASH. POST (Apr. 24, 2020; 7:22 PM), <https://www.washingtonpost.com/us-policy/2020/04/24/trump-postal-service-loan-treasury>.

³⁷ Jacob Bogage, *Treasury agrees to lend Postal Service \$10 billion in trade for rivals' shipping contracts*, WASH. POST (July 29, 2020; 12:36 PM), <https://www.washingtonpost.com/business/2020/07/29/postal-service-treasury-loan>.

if they intended to vote by mail, about half of Americans indicated that they would do so. About 4 in 10 Democrats stated that they were very likely vote by mail, compared with about half as many Republicans. This month, Monmouth released the results of a new poll that showed while the overall percentage of Americans who intended to vote by mail was the roughly the same, the percentage of Republicans fell to 22%.³⁸

Defendants' Scheme Has Impaired Americans' Voting Rights

84. In states that have recently held presidential primaries, it is clear that these changes are having exactly the effect that Defendants intended.

85. Richardson's, Carroll's, Arfi's and Zygas' inability to vote is not unique. Tens of thousands of voters who requested absentee ballots in presidential primaries did not receive them in time to vote – and, in some cases, did not receive them at all.³⁹

86. In California, 70,330 ballots were not mailed in time to be counted.⁴⁰

87. In Florida, more than 18,500 ballots were not counted because they arrived by mail after the deadline.⁴¹

³⁸ Philip Bump, *Only 1 in 5 Republicans say they're likely to vote by mail*, WASH. POST (Aug. 11, 2020; 4:18 PM), <https://www.washingtonpost.com/politics/2020/08/11/only-1-in-5-republicans-say-theyre-likely-vote-by-mail>.

³⁹ Marshall Cohen & Kelly Mena, *States failed to get absentee ballots to thousands of voters in recent primary elections, signaling problems for November*, CNN (June 22, 2020; 1:28 PM), <https://www.cnn.com/2020/06/20/politics/absentee-voting-election-problems/index.html>.

⁴⁰ Jane C. Timm, *States reject tens of thousands of mail ballots in this year's primaries, setting off alarm bells for November*, NBC NEWS (July 18, 2020; 4:30 AM), <https://www.nbcnews.com/politics/2020-election/states-reject-tens-thousands-mail-ballots-year-s-primaries-setting-n1233833>.

⁴¹ Elise Viebeck & Michelle Ye Hee Lee, (July 16, 2020; 10:26 AM), *Tens of thousands of mail ballots have been tossed out in this year's primaries. What will happen in November?*, WASH. POST, https://www.washingtonpost.com/politics/tens-of-thousands-of-mail-ballots-have-been-tossed-out-in-this-years-primaries-what-will-happen-in-november/2020/07/16/fa5d7e96-c527-11ea-b037-f9711f89ee46_story.html.

88. In Maryland, 160,000 absentee ballots – roughly 5% of those sent out, were not delivered.⁴²

89. In New York, many voters did not receive their election until the day before the primary, making it all but impossible for the ballots to be returned in time to be counted.⁴³ More than one in five mail-in ballots was rejected because they were not received on time or had other minor errors.⁴⁴

90. In Wisconsin, 14,000 absentee voters did not receive their ballots.⁴⁵ Nearly 700 voters in the cities of Milwaukee and Wauwatosa did not receive ballots they requested in late June for the Aug. 11 primary.⁴⁶ Among the 13 postal districts serving key presidential battleground states, four failed to meet any on-time service goals handling first-class mail between April 1 and June 30, and six districts achieved only one.⁴⁷ The laggards are in five battleground states — Pennsylvania, Michigan, Florida, Wisconsin and North Carolina — that may determine the presidential election.⁴⁸ Indeed, three of the postal districts with the worst

⁴² Cohen & Mena, *supra* note 39.

⁴³ Jesse McKinley, *Why the Botched N.Y.C. Primary Has Become the November Nightmare*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/03/nyregion/nyc-mail-ballots-voting.html>.

⁴⁴ Jane C. Timm, *1 in 5 mail ballots rejected in botched NYC primary*, NBC NEWS (Aug. 7, 2020; 1:57 PM), <https://www.nbcnews.com/politics/elections/one-five-mail-ballots-rejected-botched-nyc-primary-n1236143>.

⁴⁵ Cohen & Mena, *supra* note 39.

⁴⁶ Pam Fessler & Elena Moore, *Signed, Sealed, Undelivered: Thousands Of Mail-In Ballots Rejected For Tardiness*, NPR (July 13, 2020; 5:00 AM), <https://www.npr.org/2020/07/13/889751095/signed-sealed-undelivered-thousands-of-mail-in-ballots-rejected-for-tardiness>.

⁴⁷ Tom Scheck et al., *Postal Delays, Errors in Swing States Loom Over Election*, NPR (Aug. 16, 2020), <https://www.npr.org/2020/08/16/902604303/postal-delays-errors-in-swing-states-loom-over-election?ft=nprml&f>.

⁴⁸ *Id.*

records represent the largest metropolitan areas in their respective states — Philadelphia (home to Plaintiff Carroll), Detroit and Milwaukee.⁴⁹

91. These delays are expected to continue into November and the general election. "I believe it is highly likely that in the November General Election, the absentee ballots of at least tens of thousands of voters will arrive at election offices after Election Day and will not be counted unless the Ballot Receipt Deadline is extended," wrote Ronald Stroman, the deputy postmaster general from 2011 until June 1, as noted above, in a recent court filing challenging the Wisconsin deadline for ballot submission."⁵⁰

92. In Virginia, more than 5% of ballots were not counted because they arrived too late, and 1% of ballots in Nevada and Pennsylvania were rejected for the same reason.⁵¹

93. With even more voters expected to participate in mail-in voting during the presidential election, absent court intervention, these problems will undoubtedly increase.

94. In a letter dated May 29, 2020, USPS General Counsel and Executive Vice President Thomas Marshall acknowledged that "[d]ue to the impacts of the COVID-19 pandemic, the Postal Service anticipates that many voters will choose to use the mail to participate in upcoming elections, including the 2020 General Election in November," and warned that "if a state law requires completed ballots to be received by election officials by a specified date (such as Election Day) in order to be counted, voters should be aware of the possibility that completed ballots mailed less than a week before that date may not, in fact, arrive

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Fessler & Moore, *supra* note 46.

by the state's deadline." Marshall also emphasized that "*the Postal Service cannot guarantee a specific delivery date or alter standards to comport with individual state election laws.*"⁵²

95. A recent analysis by the *New York Times* found that 76% of American voters will be eligible to vote by mail in the 2020 presidential election, and that if current trends hold and turnout increases as predicted, roughly 80 million people will vote by mail this fall, more than double the number who did so in 2016.⁵³

96. It is clear that USPS has failed to take adequate steps to prepare for this anticipated surge in mail-in and absentee voting. In July 2020, USPS sent a second round of letters to 46 states and the District of Columbia warning that it cannot guarantee that all ballots cast by mail for the 2020 presidential election will arrive in time to be counted.⁵⁴

FIRST CAUSE OF ACTION
(Violation of the Right to Vote Guaranteed Under the Fourteenth Amendment to the United States Constitution)

97. Paragraphs 1 – 96 above are repeated and re-alleged as if set forth in full.

98. The right to vote is a fundamental right secured by the Constitution and laws of the United States, including but not limited to the Fourteenth, Fifteenth and Nineteenth Amendments.

99. Defendants are persons acting as officials of the United States government and under color of laws of the States and Territories thereof, including but not limited to the District of Columbia.

⁵² Letter from Thomas J. Marshall, Gen. Counsel & Exec. Vice. Pres., USPS (May 29, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/2020-05-29-marshall-to-election-officials-re-election-mail.pdf>.

⁵³ Juliette Lowe et al., *A Record 76% of Americans Can Vote by Mail in 2020*, N.Y. TIMES (Aug. 14, 2020), <https://www.nytimes.com/interactive/2020/08/11/us/politics/vote-by-mail-us-states.html>.

⁵⁴ *See Cox, supra* note 2.

100. By virtue of the conduct described above, Defendants, individually and collectively, have taken actions that were intended to and did deprive Plaintiff and thousands of other Americans of their fundamental right to vote.

101. Defendants have also violated the Equal Protection Clause of the Fourteenth Amendment by intentionally treating Plaintiffs – and other Americans who vote by mail – differently from Americans so vote in person, without any rational basis for doing so.

102. As a direct and proximate result of Defendants’ conduct, Plaintiffs. have suffered and will continue to suffer harm that is irreparable and have no adequate remedy at law, including but not limited to the loss of the right to vote in the state primaries and the 2020 presidential election.

103. The equities weigh heavily in Plaintiffs’ favor because Defendants will suffer no direct harm if Plaintiffs are given the opportunity to vote – indeed, Plaintiffs and other Americans may vote by mail in Trump’s favor. By contrast, Plaintiffs will suffer incalculable harm if not permitted to vote by mail, because they will face a Hobson’ s choice of putting their health at risk by voting in person in the midst of the COVID-19 pandemic or forsaking a once-in-a-lifetime opportunity to vote in the 2020 presidential election.

SECOND CAUSE OF ACTION

(Civil Conspiracy to Violate Plaintiffs Constitutionally Protected Right to Vote)

104. Paragraphs 1 – 96 above are repeated and re-alleged as if set forth in full.

105. Trump and DeJoy, using USPS, have acted in concert to impede the distribution of absentee and mail-in ballots, discourage mail-in voting and sow distrust in the results of the 2020 general election, in violation of American citizens’ constitutionally protected right to vote.

106. That conduct is inextricably linked with Trump’s false statements, inter alia, about mail in voter fraud and “rigged elections” and amount to a campaign of intimidation

designed to discourage Plaintiffs and other American from exercising their constitutional right to vote in state primary and runoff elections and the 2020 presidential election.

107. As a direct and proximate result of this conspiracy, Plaintiffs have suffered and will continue to suffer harm that is irreparable and for which there is no adequate remedy at law, including but not limited to the loss of the opportunity to vote by mail in state primaries and the 2020 presidential election.

THIRD CAUSE OF ACTION
(Administrative Procedures Act, 5 U.S.C. § 706)

108. Paragraphs 1 – 96 above are repeated and re-alleged as if set forth in full.

109. USPS is a government agency.

110. USPS' actions, including but not limited to, the nationwide removal of high speed sorting machines, removal of mailboxes, elimination of overtime, implementation of a hiring freeze, elimination of extra and late trips to deliver mail, and reassignment or displacement of seasoned employees, are contrary to Plaintiffs' and other Americans' constitutional right to vote.

111. USPS' actions are also arbitrary, capricious, and an abuse of discretion.

112. Accordingly, USPS' actions must be declared unlawful and set aside.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an order:

- a. Directing USPS to return postal operations and restore postal service to that in place on January 1, 2020, including, but not limited to:
- b. Directing USPS to replace or restore the removed the high-speed sorting machines and mailboxes that have been taken out of service and put them back into operation;
- c. Directing USPS to restore overtime pay and lift its hiring freeze so that USPS can hire additional employees when and where necessary to ensure the timely processing and delivery of mail-in ballots;
- d. Directing USPS to make all late mail deliveries instead of letting mail be delayed or go undelivered;
- e. Directing USPS to restore seasoned employees to their former positions, including the 23 employees who were reassigned or displaced in the recent USPS reorganization;
- f. Enjoining all Defendants from continuing to engage in conduct that is intended to interfere and/or interferes with Plaintiffs' fundamental right to vote in United States elections, including but not limited to the 2020 presidential election; and
- g. Granting such other and further relief as this Court deems just and proper.

DATED: Washington, D.C.
August 17, 2020

Respectfully submitted,

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