

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,
et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS,
et al.,

Defendants,

and

FG LA LLC,

Defendant-Intervenor.

Case No.: 1:20-cv-00103-RDM

**AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF LOUISIANA
FOUNDATION IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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CORPORATE DISCLOSURE STATEMENT

In accordance with LCvR 7(o)(5) and Rules 26.1 and 29(a)(4) of the Federal Rules of Appellate Procedure, Amicus Curiae American Civil Liberties Union Foundation of Louisiana represents that it is a non-profit organization with no parent corporation and no outstanding stock shares or other securities in the hands of the public. No publicly held corporation owns any stock in amicus curiae.

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IDENTITY AND THE INTEREST OF THE AMICUS

The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan organization with approximately 1.5 million members dedicated to the principles of liberty and equality embodied in the Constitution and the nation’s civil rights laws. The ACLU has long been committed to racial justice, and it has participated in a panoply of critical cases concerning racial justice that have reached the Supreme Court. The ACLU Foundation of Louisiana is a statewide affiliate of the national ACLU. For more than 60 years, the ACLU Foundation of Louisiana has fought to defend all people, particularly Black Louisianans, from government abuse and overreach through litigation, policy, and advocacy. Furthermore, the construction of the proposed Formosa complex would directly harm the interests, values, and quality of life of the members of the ACLU Foundation of Louisiana who live in St. James Parish.

Amicus supports Plaintiffs’ Motion for Summary Judgment because the U.S. Army Corps of Engineers’ (the “Corps”) failed to prepare an Environmental Impact Statement and its woefully inadequate Environmental Assessment seriously undermine the core purposes of the National Environmental Policy Act (“NEPA”), including rigorous evaluation of environmental impacts, public disclosure, and fully-informed agency decision-making. Furthermore, the Corps’ failure to take account of site surveys indicating where enslaved people were buried not only violates the National Historic Preservation Act (“NHPA”), but also further harms the Black residents of St. James Parish, a community that has already experienced neglect and abuse.

STATEMENT OF COUNSEL

This brief was not authored in whole or part by counsel for a party to this litigation. No person other than Amicus Curiae or their counsel contributed money to fund preparing or submitting this brief.

INTRODUCTION

This core of this case concerns environmental racism and injustice. The proposed FG LA LLC Plastics petrochemical complex (“Formosa complex”) is sited on former plantations in the heart of Cancer Alley, an area infamous for its dense clusters of industrial factories among primarily low-income and Black communities. Construction is already under way on land comprising as many as six unmarked cemeteries that likely contain the remains of enslaved people. Over the insistent objections of nearby residents, and without properly investigating the property’s historical significance or assessing the Formosa complex’s environmental impact, the Corps issued federal permits and authorizations for it to proceed.

As alleged in the Plaintiffs’ Motion, ECF No. 62 at p. 25, the Corps failed to prepare an Environmental Impact Statement (“EIS”), in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, *et seq.*, and its finding that the complex would have no significant environmental effect was based on a gravely flawed, woefully inadequate Environmental Assessment. The Corps also violated the National Historic Preservation Act (“NHPA”) by failing to conduct an adequate historic properties identification and assessment process, specifically by overlooking historic cemeteries and failing to take account of records indicating where additional enslaved people may be buried.

ARGUMENT

I. The Corps violated the NEPA by failing to consider environmental racism.

Federal agencies such as the Corps are required to evaluate and address environmental racism during the NEPA review process:

Each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and

adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States ...

Exec. Order 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). This executive order (“EO”) obligates the Corps to analyze the environmental effects, including not only human health but the economic and social effects of proposed actions on minority and low-income communities when required by NEPA. NEPA requires the Corps to prepare an Environmental Impact Statement (“EIS”) for actions “significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Determining the significance of an action requires analysis of several contextual factors such as “society as a whole (human, national), the affected region, the affected interests, and the locality,” including short- and long-term effects. 40 C.F.R. § 1508.27. The severity of an action’s impact also requires evaluation of its “intensity,” including factors such as unique geographic characteristics (e.g., proximity to historic or cultural resources); the degree to which the action’s human environmental effects are “likely to be highly controversial”; whether it is related to other actions with “cumulatively significant impacts,” and the degree to which an action may cause loss of significant cultural or historical resources. 40 C.F.R. § 1508.27(b). As demonstrated by its environmental assessment (“EA”) and Statement of Findings (“findings” or “Corps findings”), the Corps failed to adequately consider the human impact of the Formosa complex on Black and poor communities in St. James Parish.

A. Black people are disproportionately affected by environmental hazards.

A baseline consideration for the Corps and any federal agency charged with addressing environmental justice in predominantly Black communities is the extensive history of environmental racism in the United States. Prominent examples such as the water contamination in Flint, Michigan, where 56 percent of the population are Black and 41.5 percent live below the

poverty line—underscore the longstanding nature of this problem. Loosely defined, environmental racism refers to institutional regulations, policies, or government and/or corporate decisions that target specific communities for locally undesirable land uses and lax enforcement of zoning and/or environmental laws, causing communities of color to be disproportionately affected by hazards such as toxic emissions and hazardous waste.¹ Areas such as Cancer Alley (*see* § I(B), *supra*) are best understood as the decades-long, cumulative effect of this phenomenon. The deleterious effects of inequitable land-use policies and practices are now, sadly, well-documented and empirically verifiable.

For example, communities of color have higher exposure rates to air pollution than white residents: a Yale University study published in the scientific journal *Environmental Health Perspectives* found that white people had the lowest exposure rates for 11 of 14 pollutants monitored in the study, while Black people had the highest for 13 of the 14.² Communities of color are most often where industrial facilities, hazardous waste sites, and landfills are located;³ people of color are almost twice as likely as white people to live within a fence-line zone of an hazardous chemical facility, according to a Center for Effective Government report.⁴

Low-income communities of color often have limited access to clean drinking water,⁵ and water contamination predominantly affects children of color who live in rural areas.⁶ For

¹ Environmental Justice & Environmental Racism, Green Action for Health & Environmental Justice, <http://greenaction.org/what-is-environmental-justice/> (last visited July 17, 2020).

² *See* Cheryl Katz, *People in Poor Neighborhoods Breathe More Hazardous Particles*, ENVIRONMENTAL HEALTH NEWS, November 1, 2012, available at: <https://www.scientificamerican.com/article/people-poor-neighborhoods-breathe-more-hazardous-particles/>

³ *See* Toxic Wastes and Race at Twenty (1987-2007), March 2007, available at <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>

⁴ *See* Living In The Shadow of Danger: Poverty, Race, and Unequal Chemical Facility Hazards (January 2016), available at: <https://www.foreffectivegov.org/sites/default/files/shadow-of-danger-highrespdf.pdf>.

⁵ James VanDerslice, *Drinking Water Infrastructure and Environmental Disparities: Evidence and Methodological Considerations*, *American J. of Public Health* (December 2011), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222486/?tool=pmcentrez>

⁶ Andrew Postman, *The Truth About Tap*, NRDC.org (Jan. 5, 2016), <https://www.nrdc.org/stories/truth-about-tap#note68>.

example, residents of isolated St. Joseph, Louisiana, have long complained of muddy, brown water flowing from their taps—a state health officer blamed the small town’s 95-year-old municipal system;⁷ nearly 40 percent of the town’s 1,176 people are living below the poverty line, and 55 percent are Black.⁸

Even the effects of climate change are disproportionately absorbed by low-income, communities of color; for example, Black people accounted for 73 percent of New Orleans residents displaced by Hurricane Katrina, and more than a third of them were estimated to have been impoverished, according to a Congressional Research Service report.⁹ In the current coronavirus pandemic, longstanding health and social inequities have put people of color at greater risk of contracting COVID-19 or experiencing illness, according to the CDC.¹⁰ As of June 12, 2020, age-adjusted hospitalization rates are five times higher for non-Hispanic Black people compared with white people.¹¹ Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, recently acknowledged that institutional racism contributes to the virus’ disproportionate impact on Black people.¹²

As the above reports, statistics, and data illustrate, environmental racism is an entrenched phenomenon, no less problematic than more overt forms of structural racism. Because racial minorities bear a disproportionate burden of morbidity and mortality, the Corps had an even

⁷ Mark Ballard, *State says St. Joseph’s brown drinking water is safe*, THE ADVOCATE, Dec. 22, 2016, available at: https://www.theadvocate.com/baton_rouge/news/politics/article_5123e7df-73c8-593b-b2ce-4d04751a3734.html

⁸ U.S. Census Bureau, Quick Facts: Tensas Parish, Louisiana (2019), available at <https://www.census.gov/quickfacts/tensasparishlouisiana>

⁹ Abby Phillip, *White people in New Orleans say they’re better off after Katrina. Black people don’t.*, THE WASHINGTON POST, August 24, 2015, available at: <https://www.washingtonpost.com/news/post-nation/wp/2015/08/24/white-people-in-new-orleans-say-theyre-better-off-after-katrina-black-people-dont/>

¹⁰ COVID-19 in Racial and Ethnic Minority Groups, CDC (update June 25, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

¹¹ *Id.*

¹² Jacqueline Howard, *Institutional racism contributes to COVID-19’s “double whammy” impact on the Black community, Fauci says*, CNN.COM, June 23, 2020, available at <https://www.cnn.com/2020/06/23/health/coronavirus-pandemic-racism-fauci-bn/index.html>

greater obligation to identify, assess, and address the environmental and health effects of the proposed Formosa complex on the neighboring Black and low-income communities in St. James Parish who will bear the brunt of its impact.

B. Cancer Alley, and St. James Parish, are already plagued by environmental hazards.

The 171-mile stretch of the Mississippi River between Baton Rouge and New Orleans has long been considered “ground zero in the national debate over environmental justice.”¹³ One third of the state’s Black residents, many of them descendants of formerly enslaved Americans, live in a corridor that comprises 3.6 percent of Louisiana’s land.¹⁴ Although Black people make up about 21 percent of the state’s population, they make up about 44 percent of the Mississippi River Corridor’s population.¹⁵ This area is densely packed with oil refineries, petrochemical plants, and waste dumps; it is considered one of the most heavily polluted areas in the United States.¹⁶ Known locally as “Cancer Alley,” the area accounts for approximately one-fourth of the country’s petrochemical pollution, according to a study by the U.S. Commission on Civil Rights.¹⁷

Although more white people than Black people live in this corridor, it is 21 percent more likely that a Black person will live within two miles of a polluter.¹⁸ An Environmental Protection Agency study found Black residents bear a 61 percent greater pollution burden than would be expected from a random dispersal of the state’s plants.¹⁹ The problem is so longstanding that the

¹³ John McQuaid, *Chemical corridor: Black residents shoulder the heaviest burden of pollution along the Mississippi River*, THE TIMES-PICAYUNE, May 21, 2000, available at:

https://www.nola.com/news/politics/article_04acb695-fd93-5c08-9479-b7b34d700b15.html

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice, at pp. 23, 124, available at <https://www.usccr.gov/pubs/envjust/ej0104.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

U.S. Commission on Civil Rights found in a 1993 study that Black communities in the corridor “are disproportionately impacted by the ... government system for permitting and expansion of hazardous waste and chemical facilities.”²⁰ The federal advisory panel noted that these communities “are most often located in rural and unincorporated areas, and residents are of low socioeconomic status with limited political influence.”²¹

In 2000, when the New Orleans *Times-Picayune* published a four-part series examining environmental racism, it identified the “top ten polluters” in the corridor, and the third-highest polluter was IMC-Agrico, which produced phosphate fertilizer in St. James Parish.²² It alone produced 12,592,973 pounds of pollutants into the air, land, and water.²³ Two of the other “top polluters” were in neighboring Donaldsonville: Triad Nitrogen, Inc. and CF Industries, Inc., which together produced 9,110,505 pounds.²⁴ Today, Mosaic Fertilizer, LLC owns the former IMC-Agrico plant, and the company maintains a 960-acre lake that contains “hundreds of millions of gallons of toxic, radioactive water that sits on top of a 200-foot pile of waste product, an enormous, chalky white wall” of phosphogypsum, a mound known locally as the big “gypstack.”²⁵ The storage site is an “eyesore” that has been under a federal consent decree since 2015 for releasing excessive amounts of sulfur dioxide and sulfuric acid mist into the air.²⁶

²⁰ John McQuaid, *Burdens on the Horizon* (part of the “Unwelcome Neighbors” series), THE TIMES-PICAYUNE, May 21, 2000, available at: https://www.nola.com/news/politics/article_4cdf0771-78f3-5f4f-a980-4ac317086a04.html

²¹ *Id.*

²² The series, which received the John B. Oakes Award for Distinguished Environmental Reporting, is available here: https://www.nola.com/news/article_65ec2bb8-fbf6-11e9-8b0b-9ffb21c4a287.html. See also the accompanying infographic, “Chemical Corridor,” available at <https://bloximages.newyork1.vip.townnews.com/nola.com/content/tncms/assets/v3/editorial/d/10/d1010e68-fc1f-11e9-b5f7-bbb70cf481b8/5dbb491c0c0d1.pdf.pdf>

²³ *Id.*

²⁴ *Id.*

²⁵ Lauren Zanolli, *‘If there’s a spill, it’s a disaster’: living next to a giant lake of radioactive waste*, THE GUARDIAN, Nov. 6, 2019, available at <https://www.theguardian.com/us-news/2019/nov/06/louisiana-st-james-parish-lake-radioactive-industrial-waste-cancer-town-pollution-mosaic>

²⁶ *Id.*; see also EPA announcement of settlement, available at: <https://www.epa.gov/enforcement/reference-news-release-major-fertilizer-producer-mosaic-fertilizer-llc-ensure-proper>

Mosaic is one of 10 industrial plants in the parish, including Air Products, DuPont, Louisiana Sugar Refining, Nucor, NuStar, OxyChem, Plains Pipeline, Rain CII, and Shell.²⁷

The above-cited facts and circumstances are the context in which the Corps was required to evaluate the Formosa complex, but it failed in its evaluation, as demonstrated by its findings. It failed to consider, for example, the “cumulatively significant impacts” of the Formosa complex, the other local and regional refineries, petrochemical plants, and waste sites, as required by 40 C.F.R. § 1508.27(b). It failed to consider the context of the region (the above-described “Cancer Alley”) and the locality of St. James Parish, as evidenced by its failure to deem the project significant enough to issue an EIS. 40 C.F.R. § 1508.27. Finally, and perhaps most significantly, it gave at best only cursory consideration to the underlying issue of environmental racism.

C. The Corps abdicated its duty to investigate allegations of racism.

Not only did the Corps fail to prepare an EIS, it failed utterly in undertaking its obligation to assess and investigate allegations of environmental racism. Indeed, the Corps’ environmental assessment and findings uses the word “racism” only once, in reference to community comments about Formosa’s project. AR000134.

In reference to EO 12898, the Corps determined that the Formosa complex “would not use methods or practices that discriminate on the basis of race ... nor would it have a disproportionate effect on minority or low-income communities.” AR000171. The Corps’ methodology in reaching this conclusion relied entirely on Formosa’s own representations and reasoning, apparently without any independent investigation or objective assessment. AR000171-AR000177. Formosa’s own defense of racism allegations likewise misapprehends or deliberately skews the question of disproportionate impact, focusing almost entirely on its own

²⁷ St. James Parish’s web site listing of industrial plants, <https://www.stjamesla.com/QuickLinks.aspx?CID=37>

site-selection process.

1. The Corps applied an incorrect standard to evaluate discrimination.

As a threshold matter, the Corps mistakenly adopted Formosa's incorrect methodology in reviewing allegations of discrimination. Formosa claimed there is no evidence of discriminatory intent in its site-selection process; the Corps noted Formosa provided data "showing that this project has not been planned to intentionally impact Environmental Justice Communities in the area." AR000171-AR000172. But this perfunctory review failed in two ways: the Corps failed to properly evaluate the project's effect, as required by EO 12898; the Corps also failed to evaluate the issue of intent, which required it to look beyond Formosa's narrow focus on its site-selection process. The inquiry is not whether Formosa "planned to intentionally" impact certain communities, but whether its project *will* impact those communities, and whether discriminatory intent can be inferred from circumstantial and direct evidence.

Although Formosa correctly asserted that Section 601 of Title VI prohibits only intentional discrimination, it incorrectly dismissed as inapplicable Section 602, which invites consideration of disparate impact. For example, the Environmental Protection Agency promulgated regulations that prohibit "criteria or methods of administering [a] program or activity which have the *effect* of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 CFR § 7.35(b) (emphasis added). Formosa asserted that, because Section 602 does not create a private right of action, claims of disparate impact or effect under these regulations "have been limited to the administrative complaint process." AR001045. But that is irrelevant in this context, and EO 12898 explicitly requires consideration of discriminatory effect. The Corps was required to consider the Formosa complex's effect on minority and low-income communities; in its blind acceptance of Formosa's self-assessment, the Corps failed to properly evaluate claims of

discrimination. Asking only whether Formosa’s final site-selection process contained evidence of discriminatory intent ignores the broader context that such an inquiry demands.

2. Formosa’s focus on its site-selection was outcome-oriented and narrow.

Formosa found no evidence of discriminatory intent in its own site-selection process, but its analysis was narrowly focused on the outcome, and failed to fully examine underlying assumptions and decisions that predated and pervaded its identification of sites within “Cancer Alley.” AR001046. For example, Formosa framed its analysis by discussing its evaluation of 14 sites, all of which are located in St. James Parish and two neighboring parishes, Ascension Parish (to the northwest) and St. John the Baptist Parish (to the southeast). Thus, its analysis began with an assumption that all the sites it considered were neutrally selected, and it did not examine whether discriminatory intent undergirded the process and criteria used to identify those sites.

The sites allegedly were selected in concert with the Louisiana Department of Economic Development (“LED”) and a consultant, using certain evaluation criteria including “proximity to ethylene, ethane, and natural gas pipelines” and “proximity of nearby residents.” AR001076-1081. However, it abandoned the site it initially selected (in St. James Parish) because the river pilots association objected to the construction of a dock there. Absent from this review was any discussion of Formosa’s decision to locate its complex within the South or, more specifically, Louisiana itself—consideration of other states was apparently omitted. Significantly, neither the Corps nor Formosa analyzed what factors other agencies (such as LED) and individuals (such as the unidentified consultant) considered. More importantly, neither the Corps nor Formosa considered the historical land-use policies and decisions that caused specific sites to fulfill its purported criteria (*see* §I(B) *infra*). In that specific context, facially neutral criteria such as “proximity to residents” can and did serve as a proxy for race. As previously noted, the region in

question has a disproportionately high Black population, and Black communities there are most often located in rural, unincorporated areas, with low socioeconomic status and limited political influence.

Ultimately, Formosa restarted the site-selection process with LED and a consultant, “along with the economic development committees of various parishes and service providers.”

AR001077. It again re-used similar criteria (such as “proximity to residents”) and did not discuss or examine the other parties’ influence or underlying considerations and assumptions.

For example, Formosa required access to the Mississippi River for water intake, discharge, and transportation; it put a premium on remoteness and distance from residents, as well as industrial use conformity. *Id.* But it (and the Corps) failed to consider the historical context that resulted in a dense concentration of Black farmers and laborers, descended from formerly enslaved people, living and working on remote property near the banks of the Mississippi River in the area where Formosa sought to establish its complex. The Corps also failed to consider the fact that decades of local (parish) and state land-use decisions caused the circumstances that made large, remote tracts of industrially zoned property available and attractive to Formosa.

3. The Corps failed to consider other relevant factors.

As Formosa correctly acknowledged, investigating discrimination “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Id.* (citing *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1976)). The impact of the official action, whether it bears more heavily on one race than another, may provide an important starting point. *Village of Arlington Heights*, 429 U.S. at 266. “Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of state action[.]” *Id.* But disproportionate impact is not determinative, and the Court must look to other

evidence, including the “historical background of the decision ... particularly if it reveals a series of official actions taken for invidious purposes.” *Id.* at 267. The legislative or administrative history, especially statements made by members of the decision-making body, may be relevant. *Id.* at 268. These factors are not an exhaustive list of the “subjects of proper inquiry in determining whether racially discriminatory intent existed.” *Id.*

As discussed above, the U.S. Commission on Civil Rights found more than 25 years ago that Black communities in the Mississippi corridor are disproportionately impacted by the “government system for permitting and expansion of hazardous waste and chemical facilities.”²⁸ In this case, this clear pattern emerged from local, state, and federal action that collectively targeted those communities for locally undesirable land uses. This disproportionate impact is obvious and well-documented, but it was either ignored or dismissed by the Corps’ review of the Formosa complex. It failed to consider the historical background, including the legislative and administrative history of land-use decisions in “Cancer Alley” broadly and St. James Parish specifically.

For example, the Corps did not consider the example of Shintech, Inc., which relocated from a minority community in St. James Parish after environmental justice challenges were raised.²⁹ In 1996, Shintech proposed a plastics plant near Convent, Louisiana, a heavily industrial and predominantly African-American community with high unemployment.³⁰ Because of health concerns, the community protested, and Shintech eventually located its plant elsewhere.³¹ And now, because of the Formosa project, the St. James landscape is “Shintech on steroids.”³²

²⁸ See fn. 22, *supra*.

²⁹ Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice, at p. 4, available at <https://www.usccr.gov/pubs/envjust/ej0104.pdf>.

³⁰ *Id.* at 23.

³¹ *Id.*; see also Alexander Cockburn, *Environmental Justice Is Put to the Test*, LOS ANGELES TIMES, August 28, 1997, available at <https://www.latimes.com/archives/la-xpm-1997-aug-28-me-26685-story.html>

³² Oliver Houck, *Shintech: Environmental Justice at Ground Zero*, 31 GEO. ENVTL. L. REV. 455, 503 (2019).

Other than cursory references to St. James Parish authorities' approval of a Drainage Impact Study for the Formosa complex and an evacuation route, and the parish president's statement that local residents were "job ready," the Corps did not review or probe statements and decisions by local authorities. AR000115; AR000132-AR000133. It failed to acknowledge that more than 100 residents opposed the project at a public hearing, and the only supportive vote came from a company representative.³³ The Corps noted that St. James Parish Planning Commission approved Formosa's application, and that the land of the proposed site was set aside and designated for industrial use. AR000135-136; AR000175. The Corps did not review the legislative or administrative history of those decisions, nor did it examine statements or decision-making by Louisiana State authorities regarding the proposed site and permits. In short, the Corps failed to consider relevant factors to determine whether racially discriminatory intent existed in the site-selection and permit-approval process.

4. Formosa's site-selection process demonstrates obvious discriminatory impact.

In disclaiming any discriminatory intent, Formosa concluded, "it is clear that the site was not intentionally placed in a predominantly African-American community." AR0001059. Even though an Black community "is also located in the general vicinity, 'this fact alone does not constitute environmental racism.'" *Id.* (citing *North Baton Rouge Environmental Ass'n v. LDEQ*, 00-1878 (La. App. 1st Cir. 11/13/01), 805 So. 2d 255). These statements obfuscate the appropriate inquiry, which is not whether Formosa set out with the specific intent to locate its complex in or near a Black community. The question is whether discriminatory intent can be inferred from the evidence and circumstances that resulted in that outcome. Even if Formosa never considered racial demographics, if it intentionally relied on other facially race-neutral

³³ *Id.* at 504. Parish officials "basically changed a black district into the petrochemical district." *Id.* at 505.

criteria that have a discriminatory impact, then it may have had discriminatory intent. Even if Formosa only considered properties in a specific geographic area that had several other indicia of poverty—and all those sites coincidentally were in or near Black communities—it could not absolve itself of discriminatory intent, even if it purportedly ignored racial demographics.

Moreover, Formosa’s site-selection process shows an obviously discriminatory impact. After discussing demographics and population densities within a 1, 2, and 5-mile radius of the project, Formosa showed that it narrowed 14 sites to 8 “based on ability to operate with emissions,” and all of the 8 remaining sites had at least 50 percent or more Black population; the least densely populated site was chosen. AR0001079. The 6 disregarded sites in neighboring parishes, all eliminated “based on the inability to produce emissions,” were majority-white communities. *Id.*

Even if Formosa’s reason for disregarding the sites in majority-white communities was racially neutral, it is significant that it disregarded them, regardless of its purported reasons. Additionally, it is extremely significant that the 8 remaining sites were all majority-Black communities. Even if the criteria that Formosa purportedly used to arrive at that stage of selection were racially neutral, the end result was an obviously discriminatory impact. As one environmental law professor has noted, “None of this is by accident.”³⁴

By failing to examine the systemic patterns underlying the process that made the 14 sites available in the first place, or the reasons why all 8 of the sites that met Formosa’s criteria had a majority Black population, and why all 6 of the rejected sites it rejected had a majority white population, Formosa completely ignored its own complicity in, and ratification of, environmental racism.

II. The Corps violated the NHPA by ignoring at least two slave cemeteries.

³⁴ *Id.* at 503 (“Coincidence or no,” the “future industrial” zones are “almost exclusively” St. James’ minorities).

The National Historic Preservation Act (NHPA), 16 U.S.C. § 470 *et seq.* requires that any federally funded undertaking “take into account the effect of the undertaking on any district, site, building, structure or object that is included in *or eligible for inclusion in the National Register*” of Historic Places (emphasis added). 16 U.S.C. § 470f. The criteria for a historic property are: “the quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures [or, alternatively,] objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association.” 36 C.F.R. § 60.4. The property must “have yielded, or may be likely to yield, information important in prehistory or history.” 36 C.F.R. § 60.4.

The National Park Service’s National Register Bulletin 41, Guidelines for Evaluating and Registering Cemeteries and Burial Places, recognizes that the public “can gain information significant in American culture from burial places” that may be eligible for inclusion on the National Register. The Bulletin provides the example of “West Africans carried in the slave trade to the east coast of America, and their descendants, who adapted traditional burial rites to plantation and community life.”

A. The Corps relied on faulty Formosa reports to justify its “no effects” finding.

The reports issued by Formosa’s consultants, which were used by the Corps to justify its “no adverse effects” finding, did not thoroughly research the slave cemeteries, relied on the wrong maps, were incomprehensive, and did not offer supporting evidence for its conclusions.

The Corps relied on a report that concluded that the slave cemetery located on the former Acadia Plantation could not be located. AR000165. However, this first report by Formosa’s consultant surveyed the wrong area, *id.*, and made no mention of the Acadia Plantation despite the fact that it is located on Formosa’s building site. Spees Decl., ECF No. 27-2 at 33.

After receiving a more detailed map from an independent researcher, Formosa's consultant explored the site again, reporting to the Corps that they "found nothing," a finding that the Corps accepted. AR000165. However, this second report did not follow technique and reporting guidelines established by the U.S. Department of the Interior³⁵ and Louisiana's Divisions of Archaeology and Historic Preservation³⁶ and did not provide supporting evidence for this claim.

While the Department of the Interior and Divisions encourage the use of remote sensing techniques, Formosa's consultant only used mechanical trenching during the second site exploration. ECF No. 27-2 at 91.

The Ninth Circuit has previously ruled on this issue, holding that the Bureau of Land Management "failed to make a reasonable and good faith effort to identify historical and cultural resources, as required under National Historic Preservation Act (NHPA) because the agency relied on existing information ... *which had been based on a combination of minimal site information and inconsistent survey methods* (emphasis added)." *Montana Wilderness Ass'n v. Connell*, 725 F.3d 988, 1009 (9th Cir. 2013).

Here, a report prepared by Coastal Environments, an outside firm, recommended that multiple types of testing should have been used to explore the site such as "metal detector scans, probing, and cadaver dogs" since it is "difficult to visually detect possible grave shafts." ECF No. 27-2 at 91. This recommendation is in line with guidelines encouraged by the U.S. Department of the Interior.³⁷

³⁵ Nat'l Park Serv., Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (1983), available at https://www.nps.gov/history/local-law/arch_stnds_2.htm#report. The Secretary's guidelines indicate that "Remote sensing techniques may be the most effective way to gather background environmental data [and] *plan more detailed field investigations* (emphasis added)."

³⁶ Louisiana's Divisions of Archaeology and Historic Preservation, Fieldwork Guidelines for Cultural Resource Investigations 17 (2018), <https://www.crt.state.la.us/Assets/OCD/archaeology/Section106/Field%20Standards%202018.pdf>.

³⁷ Nat'l Park Serv., *supra* note 35.

Additionally, the report used by the Corps to justify its finding contained no photos or justification of strategy, although Louisiana's Divisions of Archaeology and Historic Preservation requires this additional evidence.³⁸ As the 2020 Coastal Environment report states, "No photographs or sketches of any features were provided in [Formosa's consultant's report], nor were the locations of the features depicted on the site map, [all of which are] omissions that make it impossible to evaluate the conclusions presented in that report." ECF No. 27-2 at 33.

After Formosa's second report, the State of Louisiana was notified again that Formosa's consultants investigated the wrong site. *Id.* In the third report, consultants claimed that there was "no evidence of the [Acadia] cemetery." ECF No. 27-2 at 38. Furthermore, while sixteen trenches were initially planned, only eight were dug because "it was determined additional trench excavation was unnecessary." *Id.* However, the consultant's report has no evidence to support that conclusion. *Id.* Like the previous report, the methodology used to investigate this area consisted only of mechanical trenching and did not use other techniques. *Id.* The report also claimed that soil changes found on the site, which typically are evidence of buried remains and objects,³⁹ were not "cultural or man-made features." *Id.* However, no photographs or plans of these "soil changes" were presented in the report, in contravention of state guidelines.⁴⁰

Moreover, after Formosa was alerted to the possibility of the cemeteries in July 2018, the company acquired two more tracts of land near the Acadia Plantation in October and December

³⁸ Louisiana's Divisions of Archaeology and Historic Preservation, *supra* note 36, at 17 and 6.

³⁹ See generally Torri B. Thomas, Sheree J. Finley, Jeremy E. Wilkinson, Daniel J. Wescott, Azriel Gorski, & Gulnaz T. Javan, *Postmortem Microbial Communities in Burial Soil Layers of Skeletonized Humans*, 49 J. FORENSIC AND LEG MED. 43 (2017).

⁴⁰ Louisiana's Divisions of Archaeology and Historic Preservation, *supra* note 36, at 17.

of 2018.⁴¹ There is no indication in the record that these tracts of land were examined for additional burial grounds.⁴²

Coastal Environments also found five additional “anomalies” on the proposed building site that were not included in Formosa’s first report or mentioned in the Corps’ findings. ECF No. 27-2 at 38. “Research has ruled out the possibility of these five anomalies being related to 1) oil or natural gas wells, 2) structures shown on U.S. Geological Survey quadrangles, or 3) sugarhouse complexes depicted on historic maps.” *Id.* According to Coastal Environments, “it is possible that some of these anomalies represent additional unmarked burial sites, which must be verified archaeologically.” *Id.*

Furthermore, subsequent investigation by Coastal Environments reveal that another former plantation operated on the proposed building site: Elina. However, while the Corps’ assessment mentioned Elina’s potential as an alternative building site five times, the Corps took none of those opportunities to speak of Elina’s historical significance. AR000139; AR000140; AR000141; AR000143; AR000176. Archaeological investigations have verified the presence of graves at the Elina plantation, which enslaved 38 people. ECF No. 27-2 at 59. “Because the surrounding roads and ditch lines have not changed...since then,” it is likely that any human burials at that location have not been impacted and could remain relatively intact. ECF No. 27-2 at 75.

By issuing a “no effect” determination, the Corps chose to rely on studies “[that] apparently did not use historic or aerial images to pinpoint probable site locations,” were incomprehensive,

⁴¹ Letter from Pam Spees, Senior Staff Attorney, Ctr. for Const. Rts. to Linda Hubbell, Secretary, St. James Parish Council (Dec. 23, 2019), <https://ccrjustice.org/sites/default/files/attach/2019/12/RISE%20Letter%20to%20St.%20James%20Parish%20Council%20Burial%20Sites%2012.23.2019.pdf>.

⁴² *Id.*

did not offer supporting evidence for its conclusions, and only included two historic maps--one of which was assigned the wrong date. ECF No. 27-2 at 32. In doing so, they not only set aside federal and state guidelines, but also ignored the conditions, effects, and history of slavery, an institution that was formally in place for almost 250 years.

B. Slave cemeteries are historic properties.

Although the Corps believes that the cemeteries found on the Formosa property are not historic properties, slave cemeteries, graveyards, and memorials help remedy a profound absence in our collective memory.⁴³

The Corps' finding speaks to a widespread disregard of African-American history. Only 2% of the 95,000 entries on the National Register of Historic Places—"the list of sites deemed worthy of preservation by the federal government"—focus on the experiences of African Americans.⁴⁴ This absence is due to bias, deliberate destruction, and a lack of documentation.

Bias was written into the criteria that determine how sites are selected for the National Register. One of the criteria for preservation is architectural significance, meaning that unadorned buildings like slave cabins and tenement houses were excluded from consideration.⁴⁵ Additionally, some historically Black neighborhoods were deliberately targeted by arson in the years after Reconstruction⁴⁶ or displaced in later decades by highway construction,

⁴³ See generally James Oliver Horton, *On-Site Learning: The Power of Historic Places*, 23 Cultural Resources Management, No. 8, 2000, at 5. Professor Horton was the Benjamin Banneker Professor of American Studies and History at George Washington University and Historian Emeritus of the Smithsonian Institution's National Museum of American History.

⁴⁴ Casey Cep, *The Fight to Preserve African-American History*, The New Yorker (Jan. 27, 2020), <https://www.newyorker.com/magazine/2020/02/03/the-fight-to-preserve-african-american-history>.

⁴⁵ Brent Leggs, Keri Rubman, and Byrd Wood, Preserving African American Historic Places 4 (2013), <https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8a25da05-bc46-3141-bf02-ec8e6cb72e0b&forceDialog=0>

⁴⁶ Laura Ewen Blokker, The African-American Experience in Louisiana, 70 (2012), https://www.crt.state.la.us/Assets/OCD/hp/nationalregister/historic_contexts/The_African_American_Experience_in_Louisiana.pdf

gentrification, and urban renewal.⁴⁷ Lastly, “standard measures for tracing family histories and life in the United States do not account for the lived experience of Black Americans. Unlike the poorest whites, enslaved Americans were not guaranteed marriage licenses or even birth or death certificates by the state.”⁴⁸

Since emancipation, our collective memory of slavery has become abstract. Therefore, gravesites are material testaments to the millions of people who lived, worked tirelessly, and died in bondage. The widespread failure to preserve African-American history speaks to the grave need of halting construction on the proposed building site, where at least two slave cemeteries have been found.

C. Cemeteries on the proposed site show Louisiana’s brutal history of slavery.

Even though glass and metal items from as far back as 1803 were found on the proposed building site, the Army Corps of Engineers still concluded that none of the Formosa property was eligible for listing on the National Register of Historic Places. AR000110. However, proper evaluation would have revealed the historical significance of the proposed building site, which includes slave cemeteries. AR000107.

People enslaved in Louisiana produced much of the country’s cotton and sugar. In 1860, Louisiana produced about 800,000 bales of cotton, one-sixth of all cotton grown in the United States.⁴⁹ Almost one-third of all cotton exported from the United States, most of which went to

⁴⁷ Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 6 (2003). (“Blight was a facially neutral term infused with racial and ethnic prejudice.”); see also Citizen King: Three Perspectives, PBS Transcript, available at http://www.pbs.org/wgbh/amex/mlk/sfeature/sf_video_pop_04_tr_qry.html. In this interview, James Baldwin famously stated that “urban renewal...means moving the Negroes out. It means Negro removal, this is what it means.”

⁴⁸ Periwinkle Institute, *Memory and Landmarks: Report of the Burial Database Project of Enslaved Americans 18-19* (2017).

⁴⁹ Online Exhibit, Louisiana State Museum, *Two Centuries of Louisiana History – Antebellum Louisiana II: Agrarian Life*, <https://www.crt.state.la.us/louisiana-state-museum/online-exhibits/the-cabildo/antebellum-louisiana-agrarian-life/>.

Britain and France, came from Louisiana.⁵⁰ In the 1830 U.S. Census, the owner of the Acadia plantation, which forms part of the proposed building site, was recorded as “owning” 23 slaves while his son “owned” six. Archaeologists suggest that “the number of slaves owned indicates that [the owners] were likely involved in...cotton.” ECF No. 27-2 at 31. As the Louisiana State Museum notes, “Cotton picking was hard, back-breaking, finger-splitting work.”⁵¹ Slaves harvesting the crop averaged about 150 pounds per day, “working from sunup to beyond sundown.”⁵² Free people of color “often commented that slaves who did not meet an established quota were commonly whipped.”⁵³ Even the Corps’ finding and Formosa’s reports concede that “The Acadia cemetery ... is believed to include the slaves of the plantation.” AR000107.

Much of the sugar grown in the United States during the Antebellum period came from Louisiana.⁵⁴ Louisiana produced from one-quarter to one-half of all sugar consumed in the United States.⁵⁵ In any given year, the combined crop of other sugar-producing states in the South was less than five percent of Louisiana’s production rate.⁵⁶ This production translated to an inhumane environment.

Researcher and author Daniel Rasmussen writes,

“More than any other place in North America, Louisiana was becoming known for its brutal conditions. When slaves across the United States spoke with dread of being “sold south” or “sold down the river,” they were speaking of the slave plantations around New Orleans. Nowhere in America was slavery as exploitative, or profits as high, as in the cane fields of Louisiana. Slaves worked longer hours, faced more brutal punishments, and lived shorter lives than any other slave society in North America.”⁵⁷

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Daniel Rasmussen, *American Uprising: The Untold Story of America’s Largest Slave Revolt* 48-49 (2011).

In late November 2019, Plaintiff RISE St. James learned through a public records request to the Louisiana Division of Archaeology that a cemetery had been discovered by archaeological consultants employed by Formosa on a portion of the property owned by Formosa where the Buena Vista Plantation once operated.⁵⁸ A report prepared by Defendant’s archaeologists found that despite significant disturbances at the site, “numerous intact burials and grave shafts indicate much of the cemetery remains intact.”⁵⁹

Formosa’s archaeologists’ report also confirmed that the owner of the plantation, Benjamin Winchester, owned “dozens of slaves.” U.S. Census data from 1830 through 1860, some with “slave schedules” attached, show that Winchester “owned” over 200 people by 1860. ECF No. 27-2 at 86. According to the 1860 census, they ranged in age from as young as 10 months to as old as 60 years.⁶⁰

Because Louisiana’s sugarcane plantations were known for their harsh work environments, it is likely that the people enslaved on these various plantations died from disease or injuries suffered in the fields or in the sugarhouses during grinding season.⁶¹ People enslaved had no choice in where they lived or where they were buried. Because slaveowners prohibited burials on valuable land, slave burial grounds were often confined to remote areas or marginal property.⁶² Such burial grounds were rarely documented and infrequently appear on historical maps.

Because people enslaved had no control over their burial, there is scant evidence of other groups of people working the land, and there are records of the owners being buried

⁵⁸ Letter from Pam Spees, Senior Staff Attorney, Ctr. for Const. Rts. to Neil Gauthier, Project Manager, U.S. Army Corps of Engineers (Dec. 18, 2019).

⁵⁹ Letter from Pam Pam Spees, Senior Staff Attorney, Ctr. for Const. Rts. to Louisiana Department of Environmental Quality Public Participation Group (Dec. 18, 2019), <https://ccrjustice.org/sites/default/files/attach/2019/12/RISE%20St.%20James%20DEQ%20Comments%20Dec.%2018%20%20w%20attachments.pdf>.

⁶⁰ *Id.*

⁶¹ Rasmussen *supra* note 57; *See also* Louisiana State Museum, *supra* note 49.

⁶² *See generally* Allan Amanik, *Till Death Do Us Part: American Ethnic Cemeteries as Borders Uncrossed* (2020).

elsewhere, the people who were buried at these cemeteries are thought to be the people who were enslaved on the plantations.

D. Halting construction supports Louisiana’s interest in protecting slave cemeteries.

In one Louisiana parish alone, volunteers have uncovered over 3,500 burials.⁶³ In 2013, unmarked graves of as many as 1,000 slaves were found by an archaeologist in south Louisiana working for a Shell refinery.⁶⁴ In that same year, the National Burial Database of Enslaved Americans received evidence of 340 burial sites of people enslaved in Louisiana.⁶⁵

Vincent deForest, a civil rights activist who helped preserve two slave cemeteries in Washington, D.C., says, “The wholeness of the living is diminished when the ancestors are not honored.”⁶⁶ This epitaph conforms to Louisiana’s interest in abandoned cemeteries and unmarked burial sites.⁶⁷

Louisiana's Slavery Ancestral Burial Grounds Preservation Commission was established in 2018 to “study and develop measures to preserve and protect unmarked and historic burial grounds, graves, and cemeteries of the formerly enslaved in Louisiana.”⁶⁸

Louisiana’s interest extends to both preserved burial sites and those that are abandoned. Louisiana law clearly states that abandoned cemetery spaces may not be demolished. La. R.S. §

⁶³ Graham Ulkins, *Showcasing Louisiana: Group uncovers forgotten plantation cemeteries*, WAFB (May 30, 2019), <https://www.wafb.com/2019/05/30/showcasing-louisiana-group-uncovers-forgotten-plantation-cemeteries/>.

Louisiana has parishes, not counties.

⁶⁴ Kevin McGill, *Forgotten no more: Shell Oil preserves slave cemeteries*, AP News (June 14, 2018), <https://apnews.com/31e381032d534016bf9680d808c20022/Forgotten-no-more:-Shell-Oil-preserves-slave-cemeteries>.

⁶⁵ Periwinkle Institute, *supra*, note 48, at 34.

⁶⁶ McGill, *supra*, note 64.

⁶⁷ See also Online Exhibit, Louisiana State Museum, Two Centuries of Louisiana History – Antebellum Louisiana I: Disease, Death, and Mourning, <https://www.crt.state.la.us/louisiana-state-museum/online-exhibits/the-cabildo/antebellum-louisiana-disease-death-and-mourning/>. This exhibit also goes into detail about African-Americans’ influence on Louisiana’s mourning traditions, specifically stating, “Many [mourning] customs incorporated...African elements, a cultural heritage from Louisiana's colonial era.”

⁶⁸ H.R. No. 51., 2018 Leg., 2018 Reg. Sess. (La. 2018); see also African American Burial Grounds Network Act, H.R. 1179, 116th Cong. (2019). The bill explains that the “documentation and protection of African-American burial grounds have been shamefully neglected.”

8:308(B). In 1991, Louisiana passed the Louisiana Unmarked Human Burial Sites Preservation Act, noting that “there is a real and growing threat to the safety and sanctity of unmarked burial sites,” specifically citing “economic development of the land.” La. R.S. § 8:672.

This position was reaffirmed by the Louisiana Attorney General, who recognized in an advisory opinion, “Cemeteries are considered by most cultures to be sacred spaces” and that we have “moral duties to the wishes of the dead.”⁶⁹

E. The only way to protect cemeteries on the proposed site is to withdraw the permits.

Federal agencies must “develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.” 36 C.F.R. § 800.8. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.” 36 C.F.R. § 800.5. Adverse effects on historic properties include, but are not limited to: physical destruction, alteration, removal, change of the character of the property's use, or introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features. 36 C.F.R. § 800.5.

Here, the Corps only undertook a cursory review of the proposed building site, finding “no adverse effects” even though Formosa’s building plan includes building a complex on top of the human remains of enslaved people.

Plaintiff RISE St. James believes its members are the descendants of the people enslaved and buried at the Buena Vista Plantation.⁷⁰ Yet, despite this connection, Formosa has unsuccessfully

⁶⁹ La. Atty .Gen. Op. No. 07-0183.

⁷⁰ Sara Sneath, *St. James residents seek permission to hold Juneteenth ceremony at possible slave*

tried to block Plaintiff RISE St. James' access to one of the slave cemeteries, in contravention of state law.⁷¹ Additionally, emails released in response to a public records request to the Louisiana Division of Archaeology reveal that Formosa's representatives have discussed the removal of any remains should they be found at the Acadia cemetery.⁷² It was their assessment that protecting the burial ground at the Acadia site would be "a difficult option for FG," proving that the only way to protect this historic property is through legal intervention.⁷³

By issuing a "no adverse effects" determination, the Corps has not only dismissed Plaintiffs' connections to their history, but also threatens to rob our community of reminders of our past.

CONCLUSION

150 years after the Emancipation Proclamation, Black people in St. James Parish are still fighting for recognition.

Death is inevitable, but Black people in St. James Parish may die earlier and more painfully than many others because of racism. Tragically, their enslaved ancestors are still fighting for dignity, even in death. The loss of historic resources, which are irreplaceable, represents a significant loss to culture. "Although an unmarked grave may seem bleak, the soil is saturated with humanity that can educate and heal."⁷⁴

cemetery, The New Orleans Advocate/The Times Picayune (June 15, 2020), https://www.nola.com/news/environment/article_268b6c56-af18-11ea-9aa7-337a832274d0.html.

⁷¹ Associated Press, *Court: Allow Juneteenth service at cemetery*, WBRZ, (June 19, 2020), <https://www.wbrz.com/news/court-allow-juneteenth-service-at-cemetery/>. Cemetery dedication law in Louisiana prohibits landowners from unreasonably and categorically denying access to cemeteries on their property by descendants and friends. *See In re St. James Methodist Church of Hahnville*, 95-410 (La. App. 5 Cir. 12/27/95) 666 So. 2d 1206 (citing *Vidrine v. Vidrine*, 225 So.2d 691, 697-698 (La. App. 3rd Cir. 1969)).

⁷² Letter from Pam Spees, Senior Staff Attorney, Ctr. for Const. Rts. to Neil Gauthier, Project Manager, U.S. Army Corps of Engineers (Dec. 18, 2019).

⁷³ *Id.*

⁷⁴ Periwinkle Institute, *supra*, note 48, at 34.

DATED: October 9, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 29(a)(4)(G) and 32(g)(1) of the Federal Rules of Appellate Procedure and LCvR 7(o)(5), I hereby certify that the foregoing complies with LCvR 7(o)(4) because it does not exceed 25 pages.

/s/ Bruce Hamilton

Bruce Hamilton

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2020, I filed the foregoing with the Clerk of the United States District Court for the District of Columbia by using the CM/ECF system, which has provided electronic notice to all counsel of record.

/s/ Bruce Hamilton _____
Bruce Hamilton