No. 21-30505

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF LOUISIANA; STATE OF ALABAMA; STATE OF ALASKA; STATE OF ARKANSAS; STATE OF GEORGIA; STATE OF MISSISSIPPI; STATE OF MISSOURI; STATE OF MONTANA; STATE OF NEBRASKA; STATE OF OKLAHOMA; STATE OF TEXAS; STATE OF UTAH; STATE OF WEST VIRGINIA,
Plaintiffs – Appellees,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEB HAALAND, in her official capacity as Secretary of the Interior; MICHAEL NEDD, in his official capacity as Deputy Director of the Bureau of Land Management; CHAD PADGETT, in his official capacity as Director of the Bureau of Land Management Alaska Office; RAYMOND SUAZO, in his official capacity as Director for the Bureau of Land Management Arizona Office; KAREN MOURITSEN, in her official capacity as Director for the Bureau of Land Management California Office; JAMIE CONNELL, in his official capacity as Director for the Bureau of Land Management Colorado Office; MITCHELL LEVERETTE, in his official capacity as Director for the Bureau of Land Management Eastern States Office; JOHN RUHS, in his official capacity as Director for the Bureau of Land Management Idaho Office; JOHN MEHLHOFF, in his official capacity as Director for the Bureau of Land Management Montana-Dakotas Office; JON RABY, in his official capacity as Director for the Bureau of Land Management Nevada Office; STEVE WELLS, in his official capacity as Director for the Bureau of Land Management New Mexico Office; BARRY BUSHUE, in his official capacity as Director for the Bureau of Land Management Oregon-Washington Office; GREG SHEEHAN, in his official capacity as Director for the Bureau of Land Management Utah Office; KIM LIEBHAUSER, in her official capacity as Director for the Bureau of Land Management Wyoming Office; AMANDA LEFTON, in her official capacity as Director of the Bureau of Ocean Energy Management; MICHAEL CELATA, in his official capacity as Regional Director of the Bureau of Ocean Energy Management Gulf of Mexico Office; LARS HERBST, in his official capacity as Regional Director of the Bureau of Safety and Environmental Enforcement Gulf of Mexico OCS Office; MARK FESMIRE, in his

official capacity as Regional Director of the Bureau of Safety and Environmental Enforcement Alaska and Pacific Office,

Defendants-Appellants.

Appeal from the United States District Court for the Western District of Louisiana
No. 2:21-cv-00778 (Hon. Terry A. Doughty)

APPELLANTS' OPENING BRIEF

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Plaintiffs-Appellees
    a. State of Louisiana
    b. State of Alabama
    c. State of Alaska
    d. State of Arkansas
    e. State of Georgia
    f. State of Mississippi
    g. State of Missouri
    h. State of Montana
    i. State of Nebraska
    j. State of Oklahoma
    k. State of Texas
    l. State of Utah
    m. State of West Virginia
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b. Joseph Scott St. John

c. Benjamin William Wallace

4. Defendants-Appellants

a. Joseph R. Biden, Jr., President of the United States

b. Deb Haaland, Secretary of the Interior

c. Michael Nedd, Deputy Director of the Bureau of Land Management

d. Thomas Heinlein, Acting Director of the Bureau of Land Management Alaska Office

e. Raymond Suazo, Director for the Bureau of Land Management Arizona Office

f. Karen Mouritsen, Director for the Bureau of Land Management California Office

g. Jamie Connell, Director for the Bureau of Land Management Colorado Office

h. Mitchell Leverette, Director for the Bureau of Land Management Eastern States Office

i. Peter Ditton, Acting Director for the Bureau of Land Management Idaho Office

j. John Mehlhoff, Director for the Bureau of Land Management Montana-Dakotas Office

k. Jon Raby, Director for the Bureau of Land Management Nevada Office

l. Melanie Barnes, Acting Director for the Bureau of Land Management New Mexico Office

m. Barry Bushue, Director for the Bureau of Land Management Oregon-Washington Office

n. Greg Sheehan, Director for the Bureau of Land Management Utah Office

o. Kim Liebhauser, Acting Director for the Bureau of Land Management Wyoming Office

p. Amanda Lefton, Director of the Bureau of Ocean Energy Management

q. Michael Celata, Regional Director of the Bureau of Ocean Energy Management Gulf of Mexico Office

r. Lars Herbst, Regional Director of the Bureau of Safety and Environmental Enforcement Gulf of Mexico OCS Office

s. Mark Fesmire, Regional Director of the Bureau of Safety and Environmental Enforcement Alaska and Pacific Office

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STATEMENT REGARDING ORAL ARGUMENT

Given the nature of the claims and the importance of the legal issues presented by Defendants-Appellants' appeal of the district court's nationwide preliminary injunction, Defendants-Appellants respectfully submit that oral argument would be appropriate and helpful to the Court.

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INTRODUCTION

Existing federal law provides the Department of the Interior (Interior) broad discretion over onshore and offshore oil and gas leasing. As to onshore leasing, the Mineral Leasing Act (MLA) states that lands "may" be leased and the Supreme Court held more than 50 years ago that the statute gives Interior "discretion to refuse to issue any lease at all on a given tract." Despite more recent amendments to the MLA, Congress has never altered this permissive text. In addition, the Bureau of Land Management (BLM) has consistently interpreted the MLA to require compliance with all statutory mandates, such as the requirements of the National Environmental Policy Act (NEPA), before leasing may move forward.

Similarly, the Outer Continental Shelf Lands Act (OCSLA) provides Interior with considerable discretion in the timing of offshore lease sales. OCSLA directs Interior to develop a five-year program that includes a schedule of potential lease sales, and grants the agency discretion to make revisions to the program—without following the laborious procedures for approving the program itself—if the revisions are not "significant." Interior has consistently interpreted this language as granting discretion to determine whether cancellation or delay of particular lease sales is "significant." And of the nine five-year programs that have been approved, *all of them* have resulted in fewer lease sales than were originally scheduled.

It was in this context that President Biden issued Executive Order 14,008 in January 2021. Acknowledging that the United States and the world "face a profound climate crisis," the President directed federal agencies to take action to avoid the "most catastrophic impact of that crisis." As relevant here, the Executive Order directs Interior—"to the extent consistent with applicable law"—to pause new oil and gas lease sales pending a comprehensive review of federal oil and natural gas leasing. The Executive Order was therefore a straightforward articulation of the President's views as to how Interior should use the ample discretion Congress has granted the agency under existing law, including the MLA and OCSLA.

Despite the broad discretion Interior enjoys and the clear parameters of the Executive Order, the district court issued a nationwide preliminary injunction barring Interior and the other Agency Defendants from implementing the Executive Order on all eligible onshore and offshore lands. In doing so, the district court committed numerous errors. The court improperly proceeded to directly review the legality of the Executive Order itself even though President Biden is not an "agency" subject to the Administrative Procedure Act (APA). In conducting that review, the court concluded that the Order requires Interior to violate its governing statutes despite the Order's clear mandate to Interior to take actions only "to the extent consistent with" the law. And notwithstanding the ample discretion Interior possesses under OCSLA and the MLA, the court concluded that the agency's

authority over leasing is cramped and insufficient to permit even modest deferrals of planned lease sales. The district court thus ignored the long-established discretion at the heart of the MLA. And remarkably, the court held—contrary to more than four decades of consistent agency interpretation and practice—that *any* delay or cancellation of a potential offshore lease sale is a significant revision requiring resort to program-like procedures under OCSLA.

The district court likewise had no basis to enjoin implementation of the Executive Order as to the potential lease sales identified in the Complaint. The mere postponements of those potential sales is not final agency action subject to review under the APA. In any event, those postponements were lawful. As to the onshore program, the basis for the lease deferrals was NEPA compliance; the district court did not question this need to conduct NEPA review but issued an injunction anyway. And as to the two potential offshore lease sales, nothing in OCSLA or the five-year program required Interior to move forward with the sales on the schedule adopted by the prior Administration. The existing program calls for the sales to occur sometime in 2021, but recognizes the need for flexibility in carrying out the leasing program. And OCSLA itself grants Interior the authority to revise the program as necessary, with only significant alterations necessitating use of formal procedures.

Merits aside, the preliminary injunction cannot stand. Plaintiffs failed to demonstrate irreparable harm, relying instead on economic injuries that are highly

speculative, not immediate, and that could be remedied if Plaintiffs receive the relief sought in their complaint at the conclusion of the litigation. And the district court had no basis for issuing a *nationwide* injunction, or for applying the injunction to all eligible onshore and offshore lands.

The preliminary injunction order should be reversed and the injunction vacated.

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under the federal-question statute, 28 U.S.C. § 1331, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the APA, 5 U.S.C. §§ 701-706. The district court lacked jurisdiction in substantial part because Executive Order 14,008 itself is not directly reviewable, and because the identified lease sale postponements are not final agency actions subject to review under the APA. *See infra* pp. 22-24, 38-43.

The district court granted Plaintiffs' motion for a preliminary injunction in a ruling issued June 15, 2021. Record on Appeal (ROA).2103-2146; ROA.2191-2192. The United States timely appealed on August 16, 2021. ROA.2768-2770. This Court has jurisdiction over this appeal under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether the district court properly issued a broad injunction against implementation of Section 208 of Executive Order 14,008, where the Order directs

a pause of new oil and gas leasing only "to the extent consistent with applicable law," and where the MLA and OCSLA provide Interior with significant discretion in managing the onshore and offshore leasing programs.

2. Whether the district court properly enjoined implementation of the Order as to the identified onshore and offshore leasing postponements, including:

a. whether the postponements are final agency actions subject to review under the APA.

b. whether, if the postponements are final agency action, the postponements were lawful.

3. Whether the district court erred in concluding that Plaintiffs satisfied the remaining criteria for a preliminary injunction.

4. Whether the district court erred in extending its preliminary injunction nationwide, and in applying that injunction to all unspecified "eligible" lands under the MLA and OCSLA rather than limiting the injunction to any particular potential sales as to which Interior supposedly lacks discretion.

STATEMENT OF THE CASE

A. Statutory and regulatory background

1. The Mineral Leasing Act

The MLA governs onshore lease sales of public land. It provides that "[a]ll lands subject to disposition under [the statute] which are known or believed to

contain oil or gas deposits *may* be leased by the Secretary." 30 U.S.C. § 226(a) (emphasis added). In 1987, Congress amended the MLA to impose a number of new requirements regarding the means through which lease sales should be carried out. *See* Pub. L. No. 100-203, tit. V, § 5102(a), 101 Stat. 1330 (1987). Among other things, Congress added a directive concerning the frequency of lease sales, providing that "[l]ease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary." 30 U.S.C. § 226(b)(1)(A). That frequency directive is "[s]ubject to the Secretary's discretionary authority under [§ 226(a)] to make lands available for leasing." H.R. Rep. No. 100-378, at 11 (1987).

2. The Outer Continental Shelf Lands Act

OCSLA, 43 U.S.C. § 1331 *et seq.*, "gives the Federal Government complete 'jurisdiction, control, and power of disposition' over the" Outer Continental Shelf for purposes of energy production, *Parker Drilling Management Services, Ltd. v. Newton*, 139 S. Ct. 1881, 1888-89 (2019), though the States receive a portion of the revenues received by the Federal Government, 43 U.S.C. §1337(g)(2).

OCSLA prescribes a four-stage process for development. The first stage is the development of a five-year program, which includes a schedule of proposed lease sales. 43 U.S.C. § 1344(a). OCSLA sets forth certain procedural requirements applicable to a five-year program's promulgation, including consideration of

suggestions from Governors of affected states as well as interested federal agencies, and submission of the program to Congress. *Id.* § 1344(c)-(d). The second stage consists of the actual lease sales. The sale involves the "solicitation of bids and the issuance of offshore leases," as specified in 43 U.S.C. § 1337(a). But before a lease sale can take place, the "requirements of the National Environmental Policy Act and the Endangered Species Act must be met," *Secretary of the Interior v. California*, 464 U.S. 312, 338 (1984), as well as a number of additional steps taken, *infra* pp. 37-38. The five-year programs under OCSLA have set out a number of planned areas for which lease sales are scheduled, and a target year for each sale. But the list of potential lease sales and target dates have always served as guideposts rather than rigid requirements. Of the nine approved five-year programs, all have resulted in fewer lease sales being held than scheduled. *See infra* pp. 34-35.

The current five-year program—running from 2017 to 2022—schedules 11 potential offshore lease sales in four planning areas, including one sale tentatively scheduled in 2017, two per year from 2018 to 2020, three in 2021, and one in 2022. ROA.1310. The five-year program contemplates three potential lease sales in 2021: Lease Sales 257, 258, and 259. ROA.1310.

The third and fourth stages of the OCSLA process—not specifically at issue in this case—deal with post-leasing exploration and production plans.

3. The National Environmental Policy Act

NEPA serves the dual purpose of ensuring that federal agencies "consider every significant aspect of the environmental impact of a proposed action" and "inform the public" of their analysis. *Baltimore Gas & Electric Co. v. NRDC, Inc.*, 462 U.S. 87, 97 (1983). Among other provisions, NEPA requires an environmental impact statement (EIS) for any major federal action "significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). For actions that do not significantly affect the human environment, an agency may prepare an Environmental Assessment (EA) with a finding of no significant impact (FONSI). 40 C.F.R. § 1502.1.

B. Factual background

1. Executive Order 14008

Shortly after entering office, President Biden issued Executive Order 14,008, "Tackling the Climate Crisis at Home and Abroad." 86 Fed. Reg. 7619 (Jan. 27, 2021). Recognizing that the United States and the rest of the world have a "narrow moment to pursue action [that would] avoid the most catastrophic impacts of [the climate] crisis," the Order directs federal agencies to take action to address climate change. *Id.* at 7619. As relevant here, the Order directs Interior to undertake a comprehensive review of federal oil and natural gas leasing—including royalty rates—and, "to the extent consistent with applicable law," to pause new lease sales

to preserve the status quo while that comprehensive review is ongoing. *Id.* at 7624-25.

2. MLA Quarterly Lease Sales and NEPA

BLM's onshore oil and gas leasing decisions in recent years have faced numerous NEPA challenges. *See* ROA.992-1002 (identifying more than 20 pending challenges to BLM oil and gas lease sales). Many of these challenges have resulted in adverse decisions. ROA.987-988 (identifying eight cases involving oil and gas leases that resulted in either an adverse decision or BLM agreeing to voluntary remands to consider additional NEPA analysis, all but one of which occurred in the prior Administration). In light of the growing number of adverse decisions, BLM exercised its discretion under the MLA to postpone five quarterly lease sales on onshore lands that had been scheduled to occur in the first quarter of 2021. ROA.988.

Although these postponements occurred after the issuance of the Executive Order, BLM—which administers these sales—has explained that the first-quarter postponements were not a result of the Executive Order. Rather, BLM has reported that it postponed the sales because of a "growing accumulation" of NEPA challenges to its onshore lease sales. ROA.988; *see also* ROA.441-442 (postponing lease sales for 14 parcels in Alabama and Mississippi scheduled for March 18, 2021 "to complete additional air quality analysis to comply with" an opinion in *WildEarth*

Guardians v. Bernhardt (16-cv-01724, D.D.C.)); ROA.444-445 (recommending postponing March 2021 lease sale in Utah to evaluate a district court decision finding that an EA for a prior Utah lease sale was inadequate); ROA.1011-1012 (recommending postponement of proposed first quarter oil and gas lease sales in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming and elaborating on potential NEPA problems). BLM has explained that these ongoing deliberations about NEPA compliance and related issues have not stopped other aspects of the onshore program. *See* ROA.990.

3. OCSLA Lease Sale 257, and Lease Sale 258

Lease Sale 257 includes most of the Western and Central planning areas of the Gulf of Mexico and a small portion of the Eastern planning area. ROA.1310-1311. On November 18, 2020, Interior published a proposed notice of sale for Lease Sale 257, 85 Fed. Reg. 73,508 (Nov. 18, 2020), and sent the proposed notice to governors of the affected states, as OCSLA requires; Interior also issued the Record of Decision (ROD) for the sale, selecting its preferred alternative under NEPA. ROA.1564-1578. Then, shortly before the transition to the new Administration, Interior sent both the ROD and a Final Notice of Sale scheduling the sale for March 17, 2021 to the Federal Register.

Neither document had yet been published when the new Administration took office. ROA.1062. At that point, the Acting Director of the Bureau of Ocean Energy

Management (BOEM) emailed his staff to contact the Federal Register office with instructions to withdraw any pending notices, to the extent possible. The email referenced both the ROD and the Final Notice of Sale for Lease Sale 257, observing that, although it was likely too late to withdraw the ROD, the Final Notice of Sale could likely be withdrawn. *Id.* The email explained that the "withdrawals do not signify anything more than the new leadership team wanting to evaluate the pending items" and "[d]ecisions on whether to proceed with them will come later." *Id.* The ROD for Lease Sale 257 was published in the Federal Register on January 21, 2021, *see* 86 Fed. Reg. 6365 (Jan. 21, 2021), but the notice of sale was not, ROA.1063.

Following President Biden's issuance of Executive Order 14,008, BOEM's Acting Director proposed to withdraw the ROD "to avoid any confusion surrounding the status" of the lease sale. ROA.1091. BOEM then rescinded the ROD for Lease Sale 257 "to comply with Executive Order 14008." 86 Fed. Reg. 10,132 (Feb. 18, 2021). BOEM stated that, "[a]fter completion of the review specified in the Executive Order, BOEM may reevaluate . . . Lease Sale 257 and publish an appropriate ROD in the Federal Register." *Id.*

Lease Sale 258 is tentatively scheduled to offer for lease areas in the Cook Inlet in south-central Alaska. ROA.1310. On January 15, 2021, BOEM published the draft EIS for Lease Sale 258, and requested public comment. 86 Fed. Reg. 4117 (Jan. 15, 2021). After the Executive Order was released, BOEM cancelled the public

comment period and virtual hearings for the draft EIS, explaining that the "decision to postpone further environmental review of the lease sale pending completion of the review specified in the Executive Order was made to avoid administrative costs associated with holding hearings on the sale while it is under review." 86 Fed. Reg. 10,994 (Feb. 23, 2021). After the review is completed, if "BOEM resumes its environmental review of Lease Sale 258, a notice will be published in the Federal Register." *Id.*

No existing lease has been cancelled as a result of any action related to Lease Sales 257 or 258. ROA.971.

C. Procedural background

1. The Complaint

On March 24, 2021, the Plaintiff States brought this suit. ROA.47. The Complaint asserts that Interior unlawfully rescinded the Lease Sale 257 ROD, ROA.71-77, unlawfully delayed Lease Sale 258, ROA.77-78, and unlawfully postponed quarterly onshore lease sales in March and April of 2021, ROA.80-84. The Complaint asserts ten claims for relief. Counts I through IV attack an asserted "OCSLA Leasing Moratorium" (as well as the rescission of the Lease Sale 257 record of decision and Lease Sale 258 delay) as contrary to law, arbitrary and capricious, and for failure to use notice and comment procedures; Counts V through VIII attack an alleged "MLA Leasing Moratorium" on similar grounds, including a

contention that the supposed moratorium violates the MLA's directive to hold lease sales "for each State where eligible lands are available at least quarterly"; Count IX purports to bring a citizen suit under OCSLA; and Count X alleges that the Executive Order and Interior's implementation were ultra vires. ROA.89-96.

On March 31, 2021, Plaintiffs moved for a preliminary injunction, based solely on their APA claims. ROA.149.

2. The District Court's Issuance of a Nationwide Preliminary Injunction

On June 15, the district court granted a nationwide preliminary injunction enjoining and restraining Interior "from implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in" the Executive Order and "all documents implementing the terms of said Executive Order by said defendants, as to all eligible lands." ROA.2191. The order also "enjoined and restrained" Interior from "implementing said Pause with respect to Lease Sale 257, Lease Sale 258, and to all eligible onshore properties." ROA.2192.

The district court initially concluded that it had the authority to review Executive Order 14,008, that there was a "substantial likelihood" that the President had "exceeded his power" by issuing the Order because the power to "[p]ause" leasing lies solely with Congress, and that—although Plaintiffs had sought an injunction under the APA and the President's actions are not subject to review under that statute—the APA nonetheless permitted the court to enjoin the relevant agencies

from implementing the Executive Order. ROA.2106-2107. The court further concluded that Plaintiffs' challenge was reviewable because "the Pause and/or lease cancellations" constitute final agency action for purposes of the APA. ROA.2123-2126. And it concluded that the actions in question were not committed to agency discretion by statute because the agencies have discretion to "cancel or suspend a lease sale due to problems with [a] specific lease, but not as to eligible lands for no reason other than to do a comprehensive review pursuant to Executive Order 14008." ROA.2128.

The district court further suggested that there was indeed a "Pause," pointing to the Executive Order itself, the rescinding of the ROD for Lease Sale 257, the cancellation of the comment period for the Lease Sale 258 draft EIS, and the postponement of the quarterly lease sales under the MLA.[1] ROA.2129-2132. The district court acknowledged the government's assertion that the cancellation of the first quarter sales under the MLA occurred because of the requirements of NEPA, rather than because of the "Pause." ROA.2133. The district court also cited a series of memoranda setting forth specific NEPA-related reasons for postponing those sales. ROA.2132-2133. And although the district court acknowledged Plaintiffs'

[1] The district court only enjoined the "pause" set forth in the Executive Order, ROA.2191, and the government thus does not understand the district court to have found any separate policy that is inconsistent with or goes beyond the district court's (mistaken) understanding of what the Executive Order requires.

view that this environmental analysis explanation was somehow "pretextual," the district court did not credit this assertion, explaining only that "some of these [disputes] will need to be explored on the merits." ROA.2133.

The court concluded that Plaintiffs had a likelihood of success on the merits of their APA claims under multiple theories. First, it concluded that the government's actions taken to implement the Executive Order were "contrary to law" under 5 U.S.C. § 706(2)(A) and (C) because the MLA and OCSLA "required the Agency Defendants to sell oil and gas leases." ROA.2135. Specifically, the court found that Interior "has a Five-Year Plan in effect, which requires eligible leases to be sold" and "Defendants have no authority to make significant revisions" "without going through the procedure mandated by Congress." *Id.* Similarly, it found that Interior's actions were contrary to what it viewed as the MLA's requirement "to hold lease sales, where eligible lands are available." *Id.* Second, the court found that some particular decisions were arbitrary and capricious, stating that "[n]either Executive Order 14008, nor the cancellation of Lease Sale 257, offers any explanation for the Pause (other than to perform a comprehensive review)." ROA.2136. The court also faulted Interior for providing an inadequate explanation for other actions with respect to Lease Sale 257 and 258, and for its deferral of the quarterly lease sales under the MLA. ROA.2137. Third, the court concluded that the pause in the Executive Order represented a substantive rule that should have gone

through notice and comment. ROA.2137-2139. And fourth, it concluded that the government had unlawfully withheld discrete actions it was required to take because Lease Sales 257 and 258 were mandated by the OCSLA five-year plan, and the quarterly lease sales were mandated by the MLA. ROA.2139-2141.

The court then determined that the States had satisfied all the remaining preliminary injunction factors, including irreparable harm. ROA.2142-2144.

Addressing the scope of the injunction, the district court expressed "reluctance to issue a nationwide injunction" but nonetheless did so. ROA.2145. The district court held that a nationwide injunction was needed to provide "uniformity," citing this Court's decision in *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015). ROA.2144.

In light of the district court's order, BOEM announced on September 30 that it will hold Lease Sale 257 on November 17, 2021, while this appeal progressed. *See* https://www.boem.gov/Sale-257. As to Lease Sale 258, on October 22 BOEM published a draft EIS analyzing the potential environmental impacts of this sale, and opened a comment period on October 29, which will run through December 13. *See* https://www.boem.gov/ak258. As to the onshore program, BLM has published draft updated NEPA analysis for public comment (with a 30-day comment period) that will be followed by proposed notices of lease sales expected sometime in the first quarter of 2022.

SUMMARY OF ARGUMENT

I. The district court erred in broadly enjoining implementation of Section 208 of Executive Order 14,008.

A. The Executive Order itself is not subject to review because President Biden is not an "agency" for purposes of the APA. The district court recited this principle but did not follow it, instead improperly reviewing the Executive Order for its legality and compliance with the APA, and enjoining implementation of the Order rather than any specific, final agency actions taken under it. Although the district court appeared to believe that it could review the Order because it was allegedly unconstitutional, that contention fails both because APA review of presidential action is unavailable regardless of the nature of the challenge, and because Plaintiffs have alleged that the President exceeded his authority under statutes, not the Constitution.

B. Nor did the district court have any basis for enjoining the Agency Defendants from implementing the Executive Order, because the Order is fully compatible with the law.

1. The Executive Order applies only "to the extent consistent with applicable law," a condition the district court improperly nullified. As numerous courts have made clear, such a qualification precludes a finding that the Executive Order is unlawful because, if a statute or other source of law prevents an agency

from implementing the Executive Order, the Executive Order itself directs that the Order does not apply.

2. In addition to being lawful on its face, the Order is consistent with the broad discretion the MLA and OCSLA grant Interior over the leasing programs.

a. The MLA's text is permissive, not mandatory, and the Supreme Court held more than half a century ago that the statute grants Interior discretion to decline to lease on particular tracts. Although Congress amended the MLA in 1987, nothing in the text or history of the amendments suggests that they were intended to withdraw Interior's longstanding authority to decide whether to lease particular onshore lands and the legislative history explicitly shows otherwise. And Interior has consistently interpreted the MLA as requiring all statutory requirements and reviews to be completed, including compliance with NEPA, before making land available for leasing—an interpretation the district court did not question.

b. As to OCSLA, the statute allows Interior to make revisions to a governing program without undergoing the extensive process necessary to implement a new program so long as the change is not "significant." The district court concluded that *any* lease cancellation or delay constituted a significant change. But for four decades, Interior has interpreted the statute as granting it discretion to determine whether cancellation or delay of a particular sale is "significant," no five-year program has resulted in every potential sale being held, and most have not even

come close. Interior's interpretation and practice is consistent with OCSLA's text, judicial precedent, and the structure of the leasing program. The district court's contrary conclusion—under which administrations of both parties have been in more or less continuous violation of OCSLA since the five-year-program provision was enacted in 1978—is untenable.

II. Nor was there any basis for the district court's injunction as applied to the specifically identified onshore and offshore deferrals.

A. None of the deferrals are "final agency actions" reviewable under 5 U.S.C. § 706(2). The temporary postponements at issue are not final determinations by Interior on whether to hold the underlying sales. And they do not consummate the agency's decisionmaking process on any issue. The district court erred in concluding otherwise. Nor was there a basis for compelling any of the potential lease sales under 5 U.S.C. § 706(1), because Plaintiffs failed to identify any discrete agency action Interior was required but failed to take.

B. In any event, the deferrals did not violate any of the APA's requirements.

1. As to the onshore sales, Interior's actions in delaying quarterly sales pending completion of certain environmental analyses were not only lawful, but necessary under NEPA. Indeed, even the district court did not question Interior's

ability to postpone sales to comply with NEPA. And there is no merit to Plaintiffs' unsupported assertions that NEPA compliance was a mere pretext.

2. As to Lease Sales 257 and 258, in addition to Interior's authority to delay or cancel sales more generally, the five-year program contemplates that sales either may not occur or may be delayed. In any event, nothing in the program even arguably requires Interior to hold the sales on the precise schedule adopted by the prior Administration. There is likewise no basis for the district court's conclusion that these actions were inadequately explained. Nor was the agency required—for either the onshore or offshore deferrals—to go through notice and comment rulemaking simply to defer certain sales.

III. Plaintiffs also failed to demonstrate irreparable harm absent an injunction. The district court credited the Plaintiff States' economic-injury claims, even though those claimed injuries are highly speculative, not likely to be realized immediately (if at all), and premised in large part on a nonexistent "drilling ban." Nor are the States' claimed lost revenues from delays in potential lease sale bonus and rental payments "irreparable," since the States could receive such revenues if they receive a final judgment compelling Interior to hold particular sales.

IV. At the very least, the scope of the district court's injunction is overbroad. The court issued a nationwide injunction with almost no analysis, citing a supposed need for "uniformity" that it plucked from this Court's precedent specific

to immigration matters. And rather than limiting the injunction to specific deferrals or lease cancellations as to which Interior supposedly lacked discretion, the court enjoined implementation of the pause as to *all* eligible onshore and offshore lands.

STANDARD OF REVIEW

This Court reviews the district court's grant of injunctive relief as well as its weighing of the preliminary injunction factors for abuse of discretion, with legal rulings reviewed de novo. *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009). "A preliminary injunction is an extraordinary remedy." *Atchafalaya Basinkeeper v. United States Army Corps of Engineers*, 894 F.3d 692, 696 (5th Cir. 2018). A party seeking a preliminary injunction must demonstrate that: (1) it is likely to succeed on the merits; (2) it would suffer irreparable injury if the injunction were not granted; (3) the balance of the equities tips in its favor; and (4) the public interest would be furthered by the injunction. *Jones v. Texas Department of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018); *see also Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

ARGUMENT

I. The district court had no legal basis for broadly enjoining implementation of Section 208 of Executive Order 14,008.

The district court issued a nationwide injunction preventing the Agency Defendants from implementing the terms of Section 208 of Executive Order 14,008 as to all eligible public lands on and offshore. ROA.2191. There was no basis for

this broad order. The Executive Order itself is not subject to review under the APA. And there are no grounds for a broad injunction against the Agency Defendants because the Executive Order is lawful, and its terms are consistent with the broad discretion granted Interior under the MLA and OCSLA.

A. The Executive Order Itself Is Not Subject To APA Review.

The President is not an agency, *see Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992), and therefore "actions of the President . . . are not reviewable under the APA," *Dalton v. Specter*, 511 U.S. 462, 470 (1994). Thus, although final agency actions implementing Executive Order 14,008 may be subject to judicial review, *Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996), the Executive Order itself is not.

Although acknowledging that "President Biden is not an agency subject to the APA," ROA.2106, the district court proclaimed that a "court may review a Presidential Executive Order." ROA.2105. And it went on to do just that, holding that Plaintiffs "have made a showing that there is a substantial likelihood that President Biden exceeded his powers in Section 208 of Executive Order 14008," ROA.2107, that the Executive Order was "arbitrary and capricious" because it lacked a sufficient rationale, ROA.2136, and that it should have gone through notice and comment rulemaking, ROA.2137-2139. Then, going still further, the district court functionally enjoined the Executive Order itself. The district court did not

limit injunctive relief to specifically identified agency actions implementing the Executive Order in a manner that the court found unlawful. Rather, the district court enjoined any reliance on the Executive Order "as to all eligible lands, both onshore, and offshore." ROA.2145. Indeed, the district court broadly enjoined any use of the Executive Order even while acknowledging the government's argument that the onshore deferrals were based on the need to conduct additional environmental analysis under NEPA, not the Executive Order. ROA.2133; *see also infra* p. 44 (discussing this point further).

This was error. Plaintiffs and the courts may not subject the President to APA review simply by asserting that they are challenging the general implementation of a presidential action rather than the action itself. The district court appeared to believe that it could broadly review the Executive Order for legality because, in its view, the Order implicates the President's constitutional authority. *See* ROA.2106 ("A President may not transgress constitutional limitations."); ROA.2105-2106 (discussing, inter alia, *Medellin v. Texas*, 552 U.S. 491 (2008), and *Youngstown Sheet & Tube Company v. Sawyer*, 343 U.S. 579 (1952)). The district court was mistaken. Although the "President's actions may still be reviewed for constitutionality" through a cause of action in equity, even a constitutional challenge to the President's actions is not permissible *under the APA itself*. *Franklin*, 505 U.S. at 801.

In any event, Plaintiffs did not raise the sort of challenge that may be heard in equity. As the Supreme Court has explained, "claims simply alleging that the President has exceeded his statutory authority are not 'constitutional' claims, subject to judicial review under the exception recognized in *Franklin*." *Specter*, 511 U.S. at 473-74. The basis for Plaintiffs' claims here—and the district court's preliminary injunction ruling—are statutory violations, not freestanding constitutional claims. ROA.2135 (contending that "[n]either OCSLA nor MLA gives the Agency Defendants authority to pause lease sales"). Nor does this case involve "the conceded *absence* of *any* statutory authority," *Specter*, 511 U.S. at 473 (discussing *Youngstown*): OCSLA and the MLA unquestionably empower Interior to administer the onshore and offshore leasing programs and provide significant discretion. *See infra* pp. 28-38.

Accordingly, unlike the District of Alaska decision on which the district court relied, this is not a case involving any sort of independent constitutional prohibition that might make the case reviewable *outside* the APA. *See* ROA.2106-2107 (discussing *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013 (D. Alaska 2019), a case resting on Congress's exclusive authority under the Property Clause of the Constitution). And, regardless, the court acted well outside its authority in effectively reviewing the Executive Order *under* the APA.

B. The Executive Order is Lawful.

Even if the Executive Order were itself somehow reviewable under the APA, its implementation could not be enjoined because it is both lawful on its face and consistent with the broad discretion that both the MLA and OCSLA grant Interior.

1. The Executive Order is facially lawful.

As Judge Katsas recently explained, courts "cannot ignore . . . unambiguous qualifiers imposing lawfulness and feasibility constraints on implementing" presidential directives, such as the Executive Order at issue here. *Common Cause v. Trump*, 506 F. Supp. 3d 39, 47 (D.D.C. Nov. 25, 2020) (majority opinion for three-judge district court). A court that disregards such qualifications not only fails to give effect to the presidential directive as drafted, but also acts contrary to the presumption of regularity under which courts assume that co-equal branches of government will follow the law. *See NARA v. Favish*, 541 U.S. 157, 174 (2004) (stating that "in the absence of clear evidence to the contrary, courts presume that [public officials] have properly discharged their official duties" (cleaned up)).

The district court did not respect that principle. The district court briefly acknowledged the Order's "consistent with applicable law" constraint but nonetheless contended that "the Executive Order effectively commands that [Interior] stop performing its obligations under OCSLA and MLA." ROA.2138-2139. But as the D.C. Circuit has explained, such a directive almost uniformly

cannot be unlawful because, if the agency "may lawfully implement the Executive Order, then it must do so; if the agency is prohibited, by statute or other law, from implementing the Executive Order, then the Executive Order itself instructs the agency to follow the law." *Building & Construction Trades Dep't, AFL-CIO v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002). So too here. If OCSLA or the MLA actually require particular lease sales to be held, the Executive Order directs Interior to hold those sales.

This type of directive is a common and straightforward way for a President to exercise his undoubted authority to require a subordinate agency to determine what the law allows and then take whatever action is legally available to promote the President's priorities. Accordingly, to the extent courts have recognized that such consistent-with-law qualifications are not dispositive, they have done so in only narrow circumstances. In *Allbaugh*, for example, the D.C. Circuit suggested that despite such a clause the plaintiffs there could facially challenge the Executive Order at issue if it lacked "any valid application." 295 F.3d at 33. And other courts have reached similar conclusions where a directive "unambiguously commands action" incompatible with the law. *City and County of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018); *Hias, Inc. v. Trump*, 985 F.3d 309 (4th Cir. 2021) (similar). But Executive Order 14,008 does not come close to commanding actions that are incompatible with law. The Order does not facially contradict OCSLA, the MLA,

or any other federal statute. Indeed, the Executive Order here is addressed to an area in which the Executive Branch has substantial discretion under the MLA and OCSLA. *See infra* pp. 28-38. And the basic worry of the courts in *Allbaugh*, *San Francisco*, and *Hias*—that *any* implementation of the order at issue by the Executive Branch would violate the constitution or federal statute, unless the court interpreted the order as essentially a nullity—is wholly absent here.

This conclusion does not "allow the President to evade judicial review with the mere inclusion of the savings clause," as the Magistrate Judge concluded in denying Defendants' motion to dismiss Plaintiffs' *ultra vires* claim (in a report the district court adopted). ROA.2836. *Franklin* and *Dalton* in fact establish that as a rule the President's actions are not reviewable under the APA or otherwise. And *Allbaugh*, *San Francisco*, and *Hias* make clear that, even where review occurs under any narrow exception for equitable challenges alleging constitutional violations, a court may disregard a savings clause only where it provides no mechanism for an agency to actually implement the order consistent with law. And of course, Plaintiffs may challenge any reviewable final agency action that relies on the Executive Order. But where, as here, the challenged provision of the Executive Order applies only to the extent "consistent with" law *and* the Order is capable of being applied lawfully, there is no basis for pronouncing the Order *itself* unlawful, as the district court wrongly did here.

2. The Executive Order is consistent with applicable law because both the MLA and OCSLA give the Secretary ample discretion in managing the leasing programs.

The Executive Order is also consistent with the broad structure of OCSLA and the MLA. Contrary to the district court's analysis, Interior holds broad discretion in the management of leasing programs under the MLA and OCSLA, particularly when necessary to comply with other environmental statutes such as NEPA.

a. The Secretary has considerable discretion under the MLA to decline to lease or delay leasing.

As to the MLA, the statute grants the Secretary considerable discretion over whether and when leasing may occur on federal lands. This is clear as a matter of statutory text, judicial precedent, legislative history, and consistent Executive Branch practice by administrations of both parties.

Text: The MLA provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits *may* be leased by the Secretary." 30 U.S.C. § 226(a). "[T]he word 'may' clearly connotes discretion." *Opati v. Republic of Sudan*, 140 S. Ct. 1601, 1609 (2020) (quotation marks omitted). The district court repeatedly emphasized a different provision of the MLA, added in 1987, which provides that "[l]ease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the

Interior determines such sales are necessary." 30 U.S.C. § 226(b)(1)(A); *see* ROA.2110, 2126, 2128, 2135. But this sentence merely specifies the frequency at which any sales should occur—"at least quarterly"—and where any such sales should occur—"in each state where eligible lands are available." Especially read alongside the preexisting provision establishing that the Secretary "may" lease, the added sentence does not constrain the Secretary's discretion whether to lease particular lands in the first place. For one, the provision expressly states that sales should occur only "where eligible lands are available," without placing any constraints on when land must be deemed "eligible" or "available." The provision also says nothing about the number of lease sales to be held or the amount of land to be leased, and certainly does not mandate the leasing of any *particular* parcel.

Judicial precedent: Longstanding precedent confirms that the scope of the Secretary's discretion under the MLA is broad. As the Supreme Court has squarely held, the MLA "gave the Secretary of the Interior broad power to issue oil and gas leases on public lands" while giving "discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 380 U.S. 1, 4 (1965); *accord Schraier v. Hickel*, 419 F.2d 663, 666 (D.C. Cir. 1969). As the Tenth Circuit has more recently observed, the "MLA, as amended by the Reform Act of 1987, continues to vest the Secretary with considerable discretion to determine which lands will be leased." *Western Energy Alliance v. Salazar*, 709 F.3d 1040, 1044 (10th Cir. 2013).

The district court did not cite *Udall* or the other judicial precedent recognizing the Secretary's discretion over whether to lease on particular tracts. Instead, the district court seemed to believe that the 1987 amendments to the MLA—in particular, the provision directing quarterly lease sales on eligible and available lands—displaced that discretion. *See* ROA.2128, 2135, 2137-38. This was error, because the quarterly-lease sale provision simply will not bear the weight Plaintiffs and the district court place on it. *See supra* p.29.

In addition, courts "assume that Congress is aware of existing law when it passes legislation." *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). As noted above, prior to the 1987 amendments the Secretary's discretion to decline to lease was well-recognized, including by the Supreme Court. Had Congress intended to significantly alter this longstanding feature of the statute, one would expect it to say so clearly. But there is no indication that Congress had any intent to eliminate Interior's broad discretion to lease or refuse to lease. Rather, the principal purpose of the 1987 amendments was to reform *how* leases should be issued, mandating that most sales should occur through "competitive bidding," and requiring that "[l]ease sales shall" generally "be conducted by oral bidding." 30 U.S.C. § 226(b)(1)(A); *see also Western Energy Alliance*, 709 F.3d at 1044 (noting the 1987 amendment's principal purpose of shifting sales from non-competitive to competitive bidding).

Legislative history: Although legislative history necessarily plays a "secondary" role to text, *Boureslan v. Aramco*, 857 F.2d 1014, 1018 (5th Cir. 1988), here the history confirms with unusual clarity what the text already establishes: that Section 226(b)(1)(A)'s direction to hold quarterly sales was "[s]ubject to the Secretary's discretionary authority under [§ 226(a)] to make lands available for leasing." H.R. Rep. No. 100-378, at 11.

Moreover, the history specifically demonstrates that BLM has the authority to defer sales where (as here) it is necessary to complete NEPA compliance. A prior version of the bill from the Senate initially provided that decisions on whether "to hold particular lease sales are not subject to the requirements of" NEPA, which would have restricted the Secretary's discretion to condition leasing decisions on NEPA compliance. S. Rep. No. 100-188, at 6 (1987). But Congress then decided not to exempt lease sales from NEPA. H.R. Rep. No. 100-495, at 782 (1987) (Conference Report) (previous Senate amendment had waived NEPA requirements for "holding particular lease sales" but the "Senate recedes to the House"). And as noted above, the legislative history makes explicit that the frequency directive in § 226(b)(1)(A) was "[s]ubject to the Secretary's discretionary authority under [§ 226(a)] to make lands available for leasing." H.R. Rep. No. 100-378, at 11.

Likewise, the sponsor of the Senate bill explained that his bill did "not change the Secretary's discretion in refusing to lease."[2]

Executive Branch interpretation and practice: Finally, BLM has consistently interpreted the MLA in similar fashion to provide discretion to defer lease sales and has acted consistent with that interpretation. Specifically, BLM has explained that it will not find that "eligible lands are available" unless, at a minimum, "all statutory requirements and reviews have been met, including compliance with the National Environmental Policy Act." BLM Manual MS-3120 Competitive Leases (P).1.11 (2013). BLM has followed this interpretation since at least 1996. ROA.990.

Consistent with this interpretation, BLM has previously postponed onshore lease sales for a variety of reasons. For example, BLM has consistently "deferred lease sales in order to better comply with NEPA, often in light of recent adverse court decisions." ROA.989 (discussing three such examples in 2018 and 2019). And in the prior Administration, BLM deferred lease sales for a variety of other reasons. *See* ROA.990 (noting deferrals "due to workload and staffing considerations" as well as postponement of seven lease sales in May and June of 2020 due to the COVID-19 pandemic). Indeed, the district court did not dispute that Interior retains discretion to insist on compliance with NEPA and other statutory prerequisites before finding that "eligible lands are available" under the MLA (and its injunction

[2] S. Hrg. 100-464, 100th Cong. 106, 108 (1987).

does not prevent Interior from doing so). ROA.2128. There is thus no basis for the district court's injunction under the MLA.[3]

b. The Secretary has considerable discretion under OCSLA to delay or cancel particular lease sales.

As with the MLA and onshore leasing, OCSLA's text, judicial precedent, and Executive Branch practice all reinforce that Interior has significant flexibility in administering the offshore leasing program. Although OCSLA provides for a five-year program that includes a list of proposed sales, "the completion of the first stage of a leasing program . . . does not require any action." *Center for Biological Diversity v. Department of Interior*, 563 F.3d 466, 483 (D.C. Cir. 2009). And the statute provides that the Secretary "may revise and reapprove such program, at any time." 43 U.S.C. § 1344(e). Although certain revisions must occur in the "same manner" as the promulgation of the original program, this requirement does not apply to "a revision which is not significant." *Id.* § 1344(e).

The five-year program provision (including the authority to revise such programs) was added to OCSLA in 1978. *See* Pub. L. No. 95-372, 92 Stat. 629 (Sept. 18, 1978). Just over two years later, the Solicitor of the Interior issued a memorandum interpreting OCSLA to grant the Secretary discretion to decide when

[3] To the extent the district court's order merely instructs Interior to hold lease sales where the MLA would already require it to do so, such a "follow-the-law" injunction is likewise improper. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983).

a delay or cancellation of a lease constitutes a "significant" revision, and further explained that the Secretary has "considerable discretion to determine whether the deletion, delay, or advancement of sales or milestones within an approved 5-year program is significant or not." *Annual Review, Revision and Reapproval of 5-Year OCS Oil and Gas Leasing Programs*, M-36932, 88 I.D. 20, 21 (Jan. 5, 1981). The Solicitor reiterated that position in 1996, although noting that *adding* any new lease sales to the schedule would necessarily be "significant." *What are Significant Revisions in the Five-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program*, M-36983 at 4 (Feb. 12, 1996). And in the quarter century since, no administration has departed from the view that Interior may cancel or delay planned lease sales without going through the formal program procedures so long as it determines that the change is not "significant."

Interior's uniform practice since 1978 has been consistent with this interpretation. Including the five-year program currently in force, there have been nine programs submitted to Congress. *See Congressional Research Service, Five-Year Program for Offshore Oil and Gas Leasing: History and Program for 2017-2022*, at 9-10 (Aug. 23, 2019), https://fas.org/sgp/crs/misc/R44504.pdf. *All of them* have scheduled more lease sales than have actually occurred, sometimes many more. *Id.* The 1982 five-year program proposed 41 sales but only 23 were completed. *Id.* at 10, 12. The 1987 five-year program included 42 potential sales, 17 of which were

held before the program expired. *Id.* More recently, the 2002-2007 program proposed 20 sales, but only 15 occurred; the 2007-2012 program scheduled 21 potential sales (reduced to 16 following litigation) with 11 being held; and the 2012-2017 program scheduled 15 sales, 13 of which were held. *Id.* at 10-11. Because Interior did not conclude that any of these delays or cancellations amounted to a significant revision of the applicable program, *none* were accomplished through a formal revision to the program under 43 U.S.C. § 1344.

The district court nonetheless concluded, without qualification, that "pausing, stopping, and/or cancelling lease sales scheduled in OCSLA Five-Year Plan would be significant revisions of the plan." ROA.2141. But the district court did not seriously engage with the history discussed above. The district court acknowledged Interior's 1981 and 1996 opinions, but it incompletely described those opinions as demonstrating that "the Secretary of the [Interior] cannot make any significant changes to the Five-Year Plan without going through the same procedure by which the Five-Year Plan was developed." ROA.2129. The district court did not acknowledge the position articulated in these opinions that Interior has "considerable discretion" to determine whether the cancellation or delay of individual sales is a significant change. Nor did the court address the consistent—indeed, uniform—practice of scheduling more potential lease sales than ultimately are held.

This was error. "[A]gency interpretations that are of long standing come before [a court] with a certain credential of reasonableness, since it is rare that error would long persist." *Smiley v. Citibank*, 517 U.S. 735, 740 (1996). Here, however, the district court did not merely reject a longstanding agency interpretation (without acknowledging that it was doing so), but also adopted an alternative interpretation under which Interior would have been *in violation* of OCSLA since at least 1980.

Moreover, the basic distinction set forth in the 1996 Solicitor's M-Opinion (between delay or canceling lease sales on the one hand and adding new sales on the other) is supported by OCSLA's text and judicial precedent. *See* 43 U.S.C. § 1344(d)(3) (with narrow exceptions, "[a]fter the leasing program has been approved by the Secretary, or after eighteen months following September 18, 1978, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program" but including no similar language concerning delay or cancellation); *State of Cal. By & Through Brown v. Watt*, 712 F.2d 584, 588 (D.C. Cir. 1983) (noting that "while an area excluded from the leasing program cannot be leased, explored, or developed, an area included in the program may be excluded at a later stage"). Indeed, the D.C. Circuit—which has exclusive jurisdiction over challenges to the five-year program—has held that NEPA claims are not ripe when the program issues because at that time "no irreversible and irretrievable commitment of resources has been made." *Center for Sustainable Economy v.*

Jewell, 779 F.3d 588, 599 (D.C. Cir. 2015). That conclusion is difficult (if not impossible) to reconcile with the district court's holding—under which Interior *must* go forward with all potential lease sales in a five-year program unless it follows the same arduous and time-consuming procedures applicable to adopting the program in the first place.[4]

Finally, reading OCSLA to give the Secretary flexibility with respect to carrying out the five-year program also reflects the nature of the individual lease-sale process, which is anything but ministerial. The individual sale involves the "solicitation of bids and the issuance of offshore leases," as specified in 43 U.S.C. § 1337(a). *Secretary of the Interior v. California*, 464 U.S. 312, 338 (1984). And before a lease sale can take place, the requirements of NEPA and the Endangered Species Act must be satisfied. *Id.* In addition, the governor of any affected state must be given a formal opportunity to submit recommendations regarding the "size, timing, or location" of the proposed sale. 43 U.S.C. § 1345(a). The Secretary must accept those recommendations if they strike a reasonable balance between the national interest and the well-being of the citizens of the affected State. *Id.*

[4] Indeed, if Interior cannot feasibly delay or cancel potential lease sales when warranted, it may be forced to include fewer potential lease sales in the program in the first place. And if the district court's view of the law is correct, that may well suggest that NEPA challenges to the five-year program should be deemed ripe when the program takes effect. And yet the D.C. Circuit, which Congress designated in OCSLA as the sole venue to hear five-year program challenges, has expressly held otherwise.

§ 1345(c). Local governments may also be permitted to submit recommendations, which the Secretary "may accept." *Id.* After the completion of this process, the "Secretary *may* then proceed with the actual lease sale," *California*, 464 U.S. at 338 (emphasis added), but only after publishing a final "[n]otice of sale" "at least thirty days before the date of sale." 43 U.S.C. § 1337(1). That time-consuming process of weighing various considerations is incompatible with the district court's rigid insistence on the finality of the schedule adopted at the five-year program stage.

II. None of the individual lease deferrals provide a basis for the district court's injunction.

For the reasons stated above, there was no basis for broadly enjoining implementation of the Executive Order. Nor did the district court have any grounds for its injunction as applied to the specifically identified onshore and offshore lease deferrals.

A. None of the lease deferrals are final agency actions.

"Absent a specific and final agency action, [courts] lack jurisdiction to consider a challenge to agency conduct." *Sierra Club v. Peterson*, 228 F.3d 559, 565 (5th Cir. 2000). "As a general matter, two conditions must be satisfied for agency action to be 'final.'" *Bennett v. Spear*, 520 U.S. 154, 177 (1997). "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature." *Id.* at 177-78 (citation

omitted). "And second, the action must be one by which rights or obligations have been determined, or from which "'legal consequences will flow.'" *Id.* at 178.

Neither the agencies' actions with respect to Lease Sale 257 and 258, nor the deferral of the quarterly onshore lease sales under the MLA qualifies as final agency action. A decision to postpone a final determination pending additional review does not represent the "consummation of the agency's decisionmaking process" on the matter in question. *See, e.g.*, *American Petroleum Institute v. EPA*, 216 F.3d 50, 68 (D.C. Cir. 2000) ("A decision by an agency to defer taking action is not a final action reviewable by the court."); *Sound Action v. United States Army Corps of Engineers*, 2019 WL 446614, at *6 (W.D. Wash. Feb. 5, 2019); *Shawnee Trail Conservancy v. Nicholas*, 343 F. Supp. 2d 687, 701 (S.D. Ill. 2004).

The same is true here. The deferrals here do not represent the consummation of Interior's decision-making process on whether to make lands available for lease in a competitive auction. BLM has explained that it postponed certain first quarter lease sales in 2021 to conduct additional NEPA analysis. *See supra* pp. 9-10. And in announcing that it was rescinding the record of decision for Lease Sale 257 and cancelling the public comment period for Lease Sale 258, BOEM made clear that it had not reached a final decision on either. *See* 86 Fed. Reg. at 10,132; 86 Fed. Reg. at 10,994. In short, Interior has postponed some sales so it can review whether and when to have them. Plaintiffs may be able to challenge any such final decisions if

they are unsatisfied with them, but the deferrals themselves are not final agency actions under *Bennett*.

The district court nonetheless concluded that what it described as "the lease cancellations/postponements" were final agency actions. ROA.2123-2126. Its reasoning is unpersuasive and unclear. The court acknowledged Defendants' explanation that "the challenged decisions are merely interim postponements of lease sales, not decisions to forego the sales entirely," and did not dispute that contention. ROA.2124. The district court also noted the D.C. Circuit's holding "that a decision to defer taking action is not a final action reviewable by the courts" and likewise did not express any disagreement with this principle. *Id.* Yet although the district court held that the deferrals "mark[ed] the consummation of the decision-making process," *id.*, the district court did not explain how a mere interim postponement could consummate anything—or, for that matter, what *issue* was supposedly consummated. *Soundboard Association v. FTC*, 888 F.3d 1261, 1267 (D.C. Cir. 2018) (*Bennett*'s first prong concerns whether an action "represents the culmination of [the] agency's consideration of an issue").

Instead, the district court declared that individual lease sale postponements "are final agency actions that are reviewable under the APA" and cited a number of cases that it contended "support Plaintiff States' position." ROA.2125-2126. But although lengthy—the district court cited 16 decisions—the court's string cite does

not support its conclusion that the deferrals here are final agency actions. Several of the cited cases are inapposite on their face. *See, e.g.*, *BNSF Railway Company v. EEOC*, 385 F. Supp. 3d 512 (N.D. Tex. 2018) (EEOC's issuance of right-to-sue letter); *Wilbur v. U.S. ex rel. Barton*, 46 F.2d 217 (D.C. Cir. 1930) (case long predating the APA, which does not use the terms "agency action" or "final agency action"); *Environmental Defense Center v. BOEM*, 2018 WL 5919096, at *5 (C.D. Cal. Nov. 9, 2018) (programmatic EA on drilling permit modification authorizations for well stimulation treatments followed by a finding of no significant impact (FONSI) qualified as final agency action), *on appeal*, No. 19-55727 (9th Cir.); *Texas*, 809 F.3d at 163 n.82 (noting that United States did not dispute that DAPA program qualified as final agency action); *Natural Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988) (case having nothing to do with final agency action requirement). Three other cases the district court cited involved suspending the compliance deadlines of a previously promulgated final rule, *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017), suspending a final rule, *Natural Resources Defense Council v. Wheeler*, 955 F.3d 68 (D.C. Cir. 2020), or postponing application of a final rule, *Becerra v. United States Department of Interior*, 276 F. Supp. 3d 953 (N.D. Cal. 2017). These cases are also inapposite as none of the deferred potential lease sales were finalized and no legal authority required Interior to hold them.

Many of the remaining cases the district court cited address a different type of agency action, namely, policies that the reviewing courts concluded had immediate consequences for adversely affected plaintiffs. *Texas v. United States*, 524 F. Supp. 3d 598 (S.D. Tex. 2021); *Al Otro Lado, Inc. v. McAleenan*, 349 F. Supp. 3d 1168 (S.D. Cal. 2019); *Amadei v. Nielsen*, 348 F. Supp. 3d 145 (E.D.N.Y. 2018); *Velesaca v. Decker*, 458 F. Supp. 3d 224 (S.D.N.Y. 2020); *Gomez v. Trump*, 485 F. Supp. 3d 145 (D.D.C. 2020). But none of these cases is at all analogous to the deferrals here, which merely postpone a decisional process (and that, as discussed further below, have no irreparable consequences for Plaintiffs, *see infra* pp. 48-51).

Nor can Plaintiffs' APA claims be sustained by characterizing them as assertions that required agency action has been unlawfully withheld.[5] Section 706(1) of the APA permits such a claim "only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004). That standard is not met here. Notwithstanding the district court's cursory analysis to the contrary, *see* ROA.2140-2142, when the district court issued its injunction Interior had not failed to conduct

[5] For this reason, the district court's reliance on *Ensco Offshore Co. v. Salazar*, 781 F. Supp. 2d 332 (E.D. La. 2011), was likewise misplaced. *Ensco* addressed an APA section 706(1) claim seeking to compel withheld agency action. *See* 781 F. Supp. 3d at 337 (holding that government had a non-discretionary duty that was judicially reviewable under Section 706(1)).

any lease sales that it was required to conduct. As explained, the MLA and OCSLA grant Interior considerable discretion to decline to lease on particular onshore tracts as well as to cancel or delay proposed offshore lease sales included in a five-year program. *See supra* pp. 28-38. And as discussed in the next section, Interior was not required to immediately hold any of the lease sales Plaintiffs identified (and the injunction does not even purport to require Interior to do so). *See infra* pp. 43-48.

Accordingly, Plaintiffs' APA claims fail at the threshold because there is no final agency action subject to APA review. The district court erred in concluding otherwise.

B. The deferrals were lawful.

Even if the deferrals qualified as reviewable final agency action (which they do not), no injunction was warranted because the deferrals were legally permissible.

1. The deferral of the quarterly lease sales is lawful.

BLM's postponement of individual onshore lease sales was clearly permissible. As noted above, Interior postponed those sales for NEPA compliance reasons. *See supra* pp. 9-10. Those decisions were thus lawful for all of the reasons discussed above: the MLA's text, judicial precedent, legislative history, and Executive Branch practice all make clear that BLM may conduct and insist upon NEPA compliance before making lands available for leasing. *See supra* pp. 28-33.

Indeed, neither Plaintiffs nor the district court appear to dispute that BLM may lawfully defer sales for that reason. Moreover, although Plaintiffs suggested, without foundation, that the need to complete the NEPA assessments is pretextual, the district court did not credit this contention. ROA.2133. Nor would there have been any basis for doing so. Although the district stated that "no reasons were given for many of these cancellations," ROA.2133, BLM has provided detailed information regarding the numerous NEPA challenges to which it has been subject, and the negative decisions that have resulted, as well as explained the NEPA-related reasons for those deferrals, ROA.988-989.[6] That is more than enough to justify the deferrals, particularly given the past practice of postponing lease sales under the MLA for such NEPA-related reasons.

2. The challenged actions with respect to Lease Sales 257 and 258 were lawful.

The district court concluded that the government violated OCSLA by rescinding the ROD for Lease Sale 257, stopping the public comment period for

[6] The district court stated that no reason was given for the postponement of a March 2021 Nevada lease sale, but that postponement decision was made and posted on BLM's website before the Executive Order was even issued. ROA.989 n.3. And although one second-quarter sale initially scheduled for April 2021 was postponed "pending decisions on how the Department will implement the Executive Order . . . with respect to onshore sales," BLM had not yet decided how to implement the Order. ROA.1018. BLM later decided not to hold second-quarter sales, citing the Executive Order and ongoing review but also noted the need to ensure compliance with applicable laws, including NEPA. ROA.2045. In any event, that decision—made after the Complaint was filed—is outside the scope of this case.

Lease Sale 258, and announcing a plan to review those sales before moving forward with them. But that conclusion was also wrong in numerous respects.

First, nothing in OCSLA or the existing five-year plan required Interior to move forward with the sales on the schedule adopted by the prior Administration. The 2017-2022 five-year program calls for Lease Sales 257 and 258 to occur sometime in 2021, but it does not set particular dates, and it expressly contemplates that the lease-sale process will be time-consuming and subject to potential delays. For example, the program lists fifteen distinct steps, explains that the "process can take between 3 and 5 years to complete," and notes that in some cases, steps may "even be repeated, based on the particular needs of the lease sale and area." ROA.1333-1334. Moreover, the five-year program explicitly recognizes the possibility of changed conditions due to climate change in particular—the subject the Executive Order addresses—and empowers the Secretary to make alterations (including to the lease schedule) if the Secretary determines that circumstance so warrant. ROA.1391 (explaining that "[a]s the nation finds ways to deal with the ongoing challenges of GHG emissions and climate change . . . new policies will almost certainly be considered" and that "the Secretary has flexibility to re-evaluate the nation's energy needs and current market developments and can reduce or cancel lease offerings").

Given this language, Interior's actions in postponing and reviewing Lease Sales 257 and 258 cannot possibly be viewed as "significant" alterations requiring formal procedures, as the district court erroneously concluded. Indeed, as noted, every prior Administration has appropriately recognized that even cancellations do not necessitate formal procedures, and the current five-year program itself reiterates that the lease sales it schedules are by no means certain to occur. *See, e.g.*, ROA.1333 ("Each lease sale that is scheduled . . . will be subject to an established prelease evaluation and decision process…").

Nor is there any basis for the district court's conclusion that Interior's actions with respect to Lease Sale 257 and 258 were arbitrary and capricious because the agency did not provide a more fulsome explanation for them. ROA.2136-2137. Not only do the postponements fail to qualify as final agency action, *see supra* pp. 38-43, but the underlying proposed lease sales *also* were not final. As to Lease Sale 258, BOEM had merely published a draft EIS at the time it cancelled the public comment period. *See supra* pp. 11-12. And as to Lease Sale 257, although BOEM had issued a record of decision selecting its preferred alternative under NEPA, it had not published a Final Notice of Sale, which is required before a sale may proceed. 30 C.F.R. § 556.308. Although the APA may require an agency to provide reasons for reversing a policy or decision, *see FCC v. Fox Television Stations, Inc.*, 556 U.S.

502, 514 (2009), it does not require an agency to justify a mere postponement of a decision-making process that was never finalized in the first place.

Even if the rescission of the Lease Sale 257 Record of Decision were a final agency action subject to arbitrary-and-capricious review under the APA, the rescission was not arbitrary and capricious. BOEM rescinded the notice of decision immediately following the change in administration and the issuance of Executive Order 14,008 in order to allow for a comprehensive review of the offshore leasing program. A change in administration "is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs," *Motor Vehicle Manufacturers Association of U.S., Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part, dissenting in part). And as noted above, the governing five-year program expressly contemplates that "new policies will almost certainly be considered" as the United States deals with the challenges of climate change. In any event, Lease Sale 257 is slated to take place on November 17, 2021.

Finally, as to both the onshore and offshore program, there is no merit to the district court's conclusion that "the Pause and lease cancellations are substantive rules that required notice and comment pursuant to the APA." ROA.2137. As discussed above, there is no substantive "rule" banning all new leases, just an Executive Order that applies only to the extent consistent with applicable law (and

the Executive Order is itself obviously not subject to notice-and-comment procedures). And of course, the individual lease deferrals are not substantive rules requiring either notice and comment or detailed explanations because they do not establish binding standards of conduct that have the force of law. *See Professionals & Patients for Customized Care v. Shalala*, 56 F.3d 592, 595 (5th Cir. 1995).

III. The remaining preliminary injunction factors do not support the district court's injunction.

Because Plaintiffs failed to demonstrate a likelihood of success on the merits, this Court should reverse the district court's injunction on that basis alone. *See Texas Medical Providers Performing Abortion Services v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). To the extent the Court does address the remaining factors, they too do not support the district court's injunction.

Plaintiffs failed to "demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 22. To start, the district court noted that "Plaintiff States are alleging they would sustain damages due to reduced funding for bonuses, ground rent, royalties, and rentals as a result of the Pause of new oil and gas leases in federal waters or on federal land." ROA.2142. But these alleged harms are not irreparable. Generally even "the possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, [weighs] heavily against a claim of irreparable harm." *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012).

That principle forecloses injunctive relief here, since Plaintiffs' claimed losses are anything but irreparable. The district court contended that Plaintiffs' alleged harms were irreparable because the States could not "recover money damages against the Government Defendants due to sovereign immunity." ROA.2142. This is beside the point. Plaintiffs sought "[a]n order compelling the Defendants to proceed with leasing sales under OCSLA and the MLA as previously scheduled." ROA.96. If Plaintiffs prove entitlement to such relief, they would have an equally adequate remedy after judgment. Indeed, because the ongoing review that Executive Order 14,008 directs includes consideration of adjusting royalty rates, *see* 86 Fed. Reg. at 7,624-25, sales held after this litigation concludes might generate *more* revenue for Plaintiffs to the extent Interior increases royalty rates.

The district court also cited other alleged harms, stating that the "States are *also claiming* damages through loss of jobs in the oil and gas sector, higher gas prices, losses by local municipalities and governments, as well as damage to Plaintiff States' economy." ROA.2142 (emphases added). But as this language makes clear, the district court made no real attempt to probe these allegations. *See Canal Authority of Florida v. Callaway*, 489 F.2d 567, 573-74 (5th Cir. 1974) ("burden of persuasion on all of the four requirements for a preliminary injunction is at all times upon the plaintiff" and "where no irreparable injury is alleged and proved, denial of

a preliminary injunction is appropriate"). And indeed, these allegations do not withstand scrutiny.

Initially, Plaintiffs' allegedly irreparable economic injury is based in significant part on declarations forecasting harms premised on a nonexistent *drilling ban*. *See, e.g.*, ROA.188 (discussing "harm from leasing and drilling moratorium" (capitalizations omitted)); ROA.194 (discussing spillover harms caused by a "moratorium on leasing, *and a constructive ban or significant delay on drilling permits*" (emphasis added)); ROA.214; ROA.215; ROA.218; ROA.220. Indeed, the district court itself acknowledged that Plaintiffs' declarants premised their claims on supposed drilling and production restrictions. ROA.2113. As discussed previously, the premise of these claims is false. *See supra* p. 10.

These additional claims of irreparable harm are also divorced from the realities of post-leasing exploration and production. Royalty-generating production on a new lease typically does not begin until at least *five years* after a lease is issued. ROA.972. Indeed, of the more than 1,000 leases issued in the Gulf of Mexico over the last four years, only *one* has achieved production within two years of lease issuance. *Id.* And as one of Interior's declarants further explained, over half of leased federal land—including 99 percent of such land in Alaska and 82 percent in Louisiana—is not yet producing oil and gas, and there is thus "no reason to expect an imminent drop off in production from a temporary pause on leasing, as

development could continue to occur on the leased-but-not-yet-producing land." ROA.976. There is no reason to believe that any of these highly speculative harms will occur, if the harms occur at all, during the pendency of this litigation.

The district court further stated that "Louisiana is also claiming damage for reduced funding to the Coastal Master Plan, which would reduce proceeds that are used in Louisiana's coastal recovery and restoration program." ROA.2140. As explained in the district court, because Interior continues to approve drilling permits and exploration plans, Plaintiffs will continue to receive most of the funds used for these purposes during the pendency of this litigation, and the continuing revenues would more than cover Plaintiffs' restoration projects while this litigation is ongoing. ROA.1042. The district court did not evaluate this point and instead simply adopted Plaintiffs' allegations.

As to the remaining factors (the balance of the equities and the public interest), when "the Government is the opposing party," these factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). At the President's direction, Interior is undertaking a comprehensive review of oil and gas leasing on federal lands to determine how best to manage them. The public interest lies in favor of allowing that process to continue, while pausing new lease sales in the meantime—to the extent consistent with applicable law—keeps lands unencumbered so that they can best serve the public, as informed by that review.

IV. The injunction is overbroad.

At the very least, the scope of the injunction is overbroad both in its nationwide scope and in its application to all eligible onshore and offshore lands.

Article III requires a plaintiff to "demonstrate standing . . . for each form of relief that is sought." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017). Equitable principles thus require that an injunction "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 765 (1994); *see also Department of Homeland Security v. New York*, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring) (criticizing "injunctions of 'nationwide,' 'universal,'" or 'cosmic' scope'"); *Trump v. Hawaii*, 138 S. Ct. 2392, 2424-2429, (2018) (Thomas, J., concurring) (criticizing such injunctions at length and describing them as "legally and historically dubious"); *California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018) (district court abused its discretion in granting nationwide injunctive relief because such relief "must be *necessary* to give prevailing parties the relief to which they are entitled.") (internal quotations and citation omitted)).

The district court expressed "reluctance to issue a nationwide injunction" and stated that such extraordinary relief should not be issued "unless absolutely necessary." ROA.2144-2145. The district court nonetheless did just that, providing

only three sentences of supporting analysis. Neither of the district court's two asserted reasons provides a basis for a nationwide injunction here.

First, the district court, citing this Court's decision in *United States v. Texas*, 809 F.3d 134 (5th Cir. 2015), claimed that a nationwide injunction was "necessary here because of the need for uniformity." ROA.2144. But this Court upheld the nationwide injunction in *Texas* based on what it saw as an interest in uniformity in national *immigration* policy as set forth in the Constitution and other sources of law. *See* 809 F.3d at 187-88. That reasoning has no application here, for there is no special need for uniformity in this context (among other differences, there is of course no constitutional provision specifying "an uniform rule of" oil and natural gas leasing, *cf.* U.S. Const. art. I, § 8, cl. 4).

Second, the district court noted that the "Agency Defendants' lease sales are located on public lands and in offshore waters across the nation." ROA.2144-2145. But the scope of injunctive relief depends on the irreparable harm shown by *plaintiffs*, not the scope of defendants' operations. *See, e.g.*, *Azar*, 911 F.3d at 584 ("The scope of [injunctive relief] must be no broader and no narrower than necessary to redress the injury shown by *the plaintiff[s]*." (emphasis added)).

Nor are there any other plausible justifications for a nationwide injunction here. This is not a case, as this Court found in *Texas*, where "a geographically-limited injunction would be ineffective." 809 F.3d at 188. A geographically limited

injunction in this case would be readily administrable. And such an injunction would be sufficient to address any supposed irreparable harm to the Plaintiffs. As discussed above, although the district court erred in its analysis of asserted harm to the Plaintiff States, even that purported harm was economic in nature. ROA.2142-2143. As the district court itself noted, *see* ROA.2110, the MLA provides a State with a share of the sales, bonuses, royalties, and other revenues for leases sold *within* that State (50 percent or, in the case of Alaska, 90 percent), 30 U.S.C. § 191(a). And OCSLA, among other provisions, provides a portion of revenue generated from a tract "within three nautical miles of the seaward boundary of any coastal State" to that coastal State. 43 U.S.C. § 1337(g)(2). There is thus no plausible justification for the district court's injunction, which extends nationwide, to potential sales in which the Plaintiff States have no direct financial interest, including in states that either do not support Plaintiffs' legal challenge here or, in the case of one state, have brought their own challenge. *See State of Wyoming et al. v. Department of Interior et al.*, No. 21-cv-13 (D. Wyoming).

The injunction is also overbroad even apart from its nationwide scope. The district court enjoined implementation of the Executive Order as to *all* eligible lands, onshore and offshore. ROA.2191. But there is no basis for such a broad injunction given that the Executive Order is facially lawful and consistent with the broad discretion the MLA and OCSLA provide Interior. *See supra* pp. 25-38. Thus, even

if this Court otherwise agrees with the district court's analysis, it should at the very least limit the injunction to specific potential lease sales to which it finds that the Executive Order was unlawfully applied.

CONCLUSION

The preliminary injunction order should be reversed and the injunction should be vacated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2021, I electronically filed the foregoing Appellants' Opening Brief with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

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CERTIFICATE OF COMPLIANCE

I hereby certify:

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