No. 20-1358

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

HIGH COUNTRY CONSERVATION ADVOCATES, et al.,
Plaintiffs/Appellants,

v.
UNITED STATES FOREST SERVICE, et al.,
Defendants/Appellees,

and

MOUNTAIN COAL COMPANY, LLC,
Intervenor-Defendant/Appellee.

Appeal from the U.S. District Court for the District of Colorado
No. 17-cv-03025-PAB (Hon. Philip A. Brimmer)

FEDERAL APPELLEES' OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

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GLOSSARY

BLM	U.S. Bureau of Land Management
CDRMS	Colorado Division of Reclamation, Mining and Safety
FEIS	Final Environmental Impact Statement
NEPA	National Environmental Policy Act
SFEIS	Supplemental Final Environmental Impact Statement
USFS	U.S. Forest Service

INTRODUCTION AND SUMMARY OF ARGUMENT

In a prior appeal taken by Plaintiffs High Country Conservation Advocates et al. (Conservation Groups), this Court ruled that the supplemental environmental impact statement prepared by the U.S. Forest Service to support re-promulgation of the "North Fork Exception" to the Colorado Roadless Rule did not comply with the National Environmental Policy Act (NEPA). *High Country Conservation Advocates v. U.S. Forest Service*, 951 F.3d 1217, 1224-27 (10th Cir. 2020) (*High Country III*). As remedy, the Court vacated the judgment of the district court and remanded to that court for entry of an order vacating the North Fork Exception. *Id.* at 1228-29.

Before the district court entered such an order, Mountain Coal Company constructed a temporary road for coal-mining operations, as authorized by its federal coal lease and by its mining permit issued by the State of Colorado pursuant to the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. §§ 1201 et seq. Conservation Groups then filed an "emergency motion to enforce remedy" in the district court; that motion requested the court to order Mountain Coal to immediately halt all surface disturbing activities in the North Fork Exception area. The district court vacated the North Fork Exception and, in an order entered on October 2, 2020, declined to grant further relief on Conservation Groups' motion.

Conservation Groups appealed the district court's October 2 order and filed the instant emergency motion for an injunction pending appeal, which seeks interim

relief against Mountain Coal (but not against the Forest Service). On October 7, this Court issued a temporary injunction enjoining Mountain Coal from engaging in specified activity.

Conservation Groups' emergency motion for an injunction pending appeal should be denied for two independent reasons: (1) Conservation Groups have not demonstrated that they are likely to suffer irreparable harm in the absence of preliminary relief; and (2) they have not demonstrated that they are likely to succeed on the merits. Mountain Coal, intervenor here, will undoubtedly detail the harms that it would suffer were the relief sought by Conservation Groups to be granted.

STATEMENT OF JURISDICTION

(A) The district court had subject matter jurisdiction under 28 U.S.C. § 1331 because Conservation Groups' claims arose under NEPA, 42 U.S.C. §§ 4321 et seq., and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). Exhibit 1 at 4.[1]

(B) This Court has jurisdiction under 28 U.S.C. § 1291 because the district court's October 2 order is final. Exhibit 1 at 1-11. Apart from a pending motion for attorneys' fees and costs filed by Conservation Groups, which does not affect the finality of the October 2 order, *Ray Haluch Gravel Co. v. Central Pension Fund*, 571 U.S. 177, 179 (2014), there are no remaining claims in the district court.

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[1] As in the text, the exhibits filed by Conservation Groups with their motion will be cited as "Exhibit N."

(C) The district court's order was entered on October 2, 2020. Exhibit 1 at 1-11. Conservation Groups timely filed their notice of appeal on October 5, or three days later. USFS Appendix 13 (filed herewith); *cf*. Fed. R. App. P. 4(a)(1)(B).

(D) With the caveat noted above (which does not affect the finality of the October 2 order), the appeal is from final judgment that disposes of all parties' remaining claims.

STATEMENT OF THE CASE

A. Legal background

The Colorado Roadless Rule generally restricts road construction and tree removal within Colorado Roadless Areas, subject to certain exceptions. 36 C.F.R. §§ 294.40-294.49. One such exception was provided by the North Fork Exception. Prior to its vacatur by the district court on remand from *High Country III*, that exception allowed the authorization of temporary road construction associated with coal leases issued under the Mineral Leasing Act, 30 U.S.C. §§ 181 et seq., namely, the construction of temporary roads "needed for coal exploration and/or coal-related surface activities for certain lands with Colorado Roadless Areas within the North Fork Coal Mining Area of the Grand Mesa, Uncompahgre, and Gunnison National Forests." 36 C.F.R. § 294.43(c)(1)(ix).

B. Factual background

As summarized below, this appeal arises in the context of prior litigation.

1. Prior litigation

In 2012, after preparing a final Environmental Impact Statement (FEIS) under NEPA, the U.S. Forest Service (USFS) promulgated the Colorado Roadless Rule, 36 C.F.R. §§ 294.40-294.49, including the North Fork Exception. 77 Fed. Reg. 39,576 (July 3, 2012). Also in 2012, after preparing a separate FEIS, the U.S. Bureau of Land Management (BLM) approved, with the consent of USFS, two lease modifications sought by Mountain Coal at the West Elk Mine. Those tracts are located within the North Fork Coal Mining Area, in the Sunset Roadless Area. *High Country III*, 951 F.3d at 1221.

Some of the Conservation Groups brought a NEPA-based challenge to the agency actions that relied on the 2012 FEISs. In 2014, the district court issued a decision holding that both FEISs violated NEPA in certain respects. *High Country Conservation Advocates v. U.S. Forest Service*, 52 F. Supp. 3d 1174, 1189-93, 1195-98 (D. Colo. 2014) (*High Country I*). The district court severed the North Fork Exception from the Colorado Roadless Rule, vacated that exception, and vacated the approval of the lease modifications at the West Elk Mine. *High Country Conservation Advocates v. U.S. Forest Service*, 67 F. Supp. 3d 1262, 1264-66 (D. Colo. 2014) (*High Country II*); *see generally High Country III*, 951 F.3d at 1221.

After *High Country II*, USFS prepared a supplemental FEIS to address NEPA deficiencies found in *High Country I* and to study reinstatement of the North Fork

Exception to the Colorado Roadless Rule (North Fork SFEIS). USFS and BLM also prepared a separate supplemental FEIS to determine whether to approve the lease modification applications resubmitted by Mountain Coal for the West Elk Mine (Leasing SFEIS). *High Country III*, 951 F.3d at 1221-22.

In 2017, based on those SFEISs, USFS reinstated the North Fork Exception; and BLM, with the consent of USFS, approved the requested lease modifications. *Id.* at 1222. Conservation Groups filed suit in the district court challenging the decisions to reinstate the exception and to approve the lease modifications, alleging that the SFEISs were not in compliance with NEPA. The district court rejected their claims and entered judgment for the agencies. *Id.*

Conservation Groups appealed. The Court issued an opinion on March 2, 2020 in *High Country III*. The Court concluded:

> [W]e reverse as to the North Fork SFEIS, holding that the Forest Service violated NEPA by failing to study in detail the "Pilot Knob Alternative" proposed by plaintiffs. Accordingly, *we remand to the district court with instructions to vacate the North Fork Exception.* With respect to the Leasing SFEIS, we hold NEPA did not require consideration of the "Methane Flaring Alternative" proposed by plaintiffs.

Id. at 1220-21 (emphasis added). The final sentence of the Court's opinion reads as follows: "For the foregoing reasons, we **VACATE** the district court's judgment and **REMAND** the case *for entry of an order vacating* the North Fork Exception." *Id.* at 1229 (emphasis added).

2. The instant litigation

This Court's mandate issued on April 24, 2020. Exhibit 1 at 5; USFS Appendix 22. Conservation Groups had not sought expedited issuance of the mandate pursuant to the final sentence of Federal Rule of Appellate Procedure 41(b).

Nevertheless, on June 12, 2020, Conservation Groups filed an "Emergency Motion to Enforce Remedy" in the district court. Exhibit 1 at 5. As summarized by the district court, Conservation Groups argued that, given this Court's (alleged) vacatur of the North Fork Exception in *High Country III*, the Colorado Roadless Rule prohibits road construction for mining purposes in the Sunset Roadless Area. *Id.* Conservation Groups advised the district court that Mountain Coal "bulldozed a new road in the Sunset Roadless Area the week of June 1, 2020, and plans to construct further new roads in the area." *Id.* Conservation Groups asked the court, among other relief, to order Mountain Coal to "immediately halt all surface disturbing activities" in the North Fork Exception area. *Id.*[2]

On June 15, 2020, the district court vacated the North Fork Exception, as it had been instructed to do by *High Country III*. Exhibit 1 at 5. Thereafter, the Colorado Division of Reclamation, Mining and Safety (CDRMS), which had issued

[2] Conservation Groups contend that the Forest Service's counsel "refused to disclose any information about the construction activities." Motion 8. But that contention is not supported by the cited declaration, which avers only that such counsel advised Conservation Groups' counsel that they "should talk to Mountain Coal Company about any construction activities." Exhibit 3, ¶ 3 (Declaration of Robin Cooley).

Mountain Coal a SMCRA permit for the West Elk Mine, issued a cessation order to Mountain Coal. That order abated Conservation Groups' need for a ruling from the district court on their motion. *Id.*; *see also* Exhibit 8 (cessation order).

On September 18, 2020, however, Conservation Groups asked the district court to expedite consideration of their motion because CDRMS had modified its cessation order effective September 17, such that Mountain Coal was authorized to "immediately resume construction in the North Fork Exception area." Exhibit 1 at 6; *see also* Exhibit 9 (modified cessation order). CDRMS' modified cessation order relied on letters that USFS and BLM had provided to Mountain Coal concerning the effect of the district court's vacatur of the North Fork Exception on Mountain Coal's activities other than road construction associated with a longwall mining panel called "SS2." Exhibit 9 at 3. Mountain Coal advised the district court that work was not expected to begin until October 2, 2020. Exhibit 1 at 6.

That day, the district court issued an order denying Conservation Groups' motion. The court concluded that "the Tenth Circuit's mandate to [the district court] was 'for entry of an order vacating the North Fork Exception.'" Exhibit 1 at 7 (quoting *High Country III*, 951 F.3d at 1229). And the district court had "entered such an order on June 15, 2020." *Id.* Consequently, the court declined to issue Conservation Groups' requested relief beyond vacating the North Fork Exception. Exhibit 1 at 7-10.

On October 5, 2020, Conservation Groups appealed from the district court's October 2 order and filed the instant emergency motion for injunction pending appeal. On the same day, Conservation Groups filed a motion for an injunction pending appeal in the district court. USFS Appendix 3-12; Motion 5 (noting filing).[3]

On October 7, 2020, to facilitate consideration of the emergency motion and responses thereto, this Court issued a temporary injunction "enjoining Mountain Coal Company from bulldozing additional drilling pads, drilling methane ventilation boreholes, and engaging in further surface disturbance in preparation for coal mining in the Sunset Roadless Area." Doc. 010110419778.

On October 15, 2020, the district court denied Conservation Groups' motion for an injunction pending appeal without prejudice as moot in light of the temporary injunction issued by this Court on October 7. USFS Appendix 1-2.

STANDARD OF REVIEW

The district court's order of October 2, 2020 is reviewed for an abuse of discretion. *See*, *e.g.*, *McKinney v. Gannett Co.*, 817 F.2d 659, 670 (10th Cir. 1987); *accord* Motion 4 (Conservation Groups agreeing that the October 2 order is reviewed for an abuse of discretion).

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[3] This opposition assumes arguendo that it would have been impracticable for Conservation Groups to await a decision from the district court before seeking this Court's aid, Fed. Rule App. P. 8(a)(2)(A)(i), because Mountain Coal had advised the district court that construction work could begin on or about October 2, 2020. Motion 5-6; Exhibit 1 at 6; *cf.* Fed. Rule App. P. 8(a)(1).

ARGUMENT

An injunction pending appeal is effectively preliminary injunctive relief. To obtain the "extraordinary remedy" of a preliminary injunction, the movant must establish that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20, 24 (2008); *see also Munaf v. Geren*, 553 U.S. 674, 689 (2008) (explaining that a preliminary injunction is an "extraordinary and drastic remedy").

I. Conservation Groups fail to show a likelihood of irreparable harm absent interim relief.

Conservation Groups do not demonstrate that they are "likely to suffer irreparable harm" absent a preliminary injunction enjoining Mountain Coal from "imminently bulldozing additional drilling pads" and "drilling methane ventilation boreholes in preparation for coal mining" in the Sunset Roadless Area. Motion 3. Their motion should be denied for that reason alone. *Winter*, 555 U.S. at 20.

First, Conservation Groups' allegation of irreparable harm is inconsistent with the fact that—unlike their motion in this Court—their motion for an injunction pending appeal in the district court does *not* seek relief on an emergency basis or even request a ruling by a particular date. USFS Appendix 3-12. But both motions make essentially the same allegations of irreparable harm absent interim relief. *Compare* Motion 19-23 *with* USFS Appendix 5-9. These circumstances undercut

Conservation Groups' contention that they are likely to suffer irreparable harm absent interim relief from this Court.

Second, Conservation Groups' allegations of irreparable harm are almost entirely premised on Mountain Coal's construction activity that occurred *more than four months ago* in June 2020. Such harm, having already occurred, cannot be prevented by an injunction pending appeal, even if the Court were to issue such relief now. Motion 20-22 (discussing and providing photographs of construction that occurred *during the week of June 1, 2020*).

Third, insofar as Mountain Coal's *future* construction activity is concerned, Conservation Groups offer only the company's plan (as they put it) "to imminently bulldoze two additional drilling pads," which will enable Mountain Coal to drill methane boreholes. Motion 20. But the declaration cited by Conservation Groups explains that those two additional pads involve only approximately "one total acre of construction." Exhibit 10, ¶ 4 (September 2020 declaration of Weston Norris). Though not de minimis, one total acre of construction is not reasonably characterized as "vast destruction" for purposes of demonstrating likelihood of irreparable harm. Motion 20.

In sum, Conservation Groups have not demonstrated a likelihood of irreparable harm absent their requested injunction pending appeal.

II. Conservation Groups do not establish that they are likely to succeed on the merits.

Conservation Groups do not demonstrate that they are likely to succeed on their argument that the district court abused its discretion in its October 2 order. To the contrary, that Order confirms that the court had *already*—indeed, months earlier, on June 15—entered an order vacating the North Fork Exception, just as it had been directed to do by this Court in *High Country III*, 951 F.3d at 1229. Exhibit 1 at 5, 7.

A. In its October 2 order, the district court did not abuse its discretion in declining to grant additional relief beyond vacatur of the North Fork Exception.

Contending that the district court should have issued such relief in its October 2 order, Conservation Groups ask this Court enjoin Mountain Coal "from imminently bulldozing additional drilling pads on an illegally constructed road and drilling methane ventilation boreholes in preparation for coal mining in the Sunset Roadless Area." Motion 3; *see also* Motion 14. By "illegally constructed road," Conservation Groups refer to the temporary road that Mountain Coal constructed in early June 2020 "to prepare for mining of longwall panel SS2." Motion 8; *see also supra* p. 6. However, Conservation Groups fail to show a likelihood of success on the merits of their claim that the temporary road for longwall panel SS2 is "illegal."

Conservation Groups' characterization of this temporary road as "illegal" rests on the premise that, in *High Country III*, this Court *itself* vacated the North Fork Exception, such that after March 2, 2020 (the date on which *High Country III*

issued) or perhaps April 24, 2020 at the latest (when the Court's mandate issued), Mountain Coal no longer was authorized to build a temporary road. Motion 11-12, 15-16. But the premise of this contention—that this Court itself vacated the North Fork Exception—is erroneous.

Rather, applying *WildEarth Guardians v. BLM*, 870 F.3d 1221, 1239-40 (10th Cir. 2017), this Court ordered relief akin to remedial option 2 set out in *WildEarth Guardians*: the court of appeals reverses and remands to the district court with instructions to vacate the agency action. This is in contrast to remedial option 3 set out in *WildEarth Guardians*: the court of appeals itself vacates the agency action. *See High Country III*, 951 F.3d at 1228-29.

WildEarth Guardians teaches that the court of appeals has a range of remedial options upon the determination of a NEPA violation; there is no "one size fits all" remedy. But Conservation Groups mistakenly assume that this Court chose *WildEarth Guardians* remedial option 3. But the Court actually chose remedial option 2 as the remedy for its holding that the North Fork SFEIS did not comply with NEPA. Thus, the North Fork Exception was not vacated until the district court vacated it on June 15, 2020. Consequently, temporary roads built prior to that date were lawfully constructed pursuant to Mountain Coal's SMCRA permit and lease modifications, which were upheld against Conservation Groups' NEPA challenge in *High Country III*.

Conservation Groups' reliance on the advisory committee note to Federal Rule of Appellate Procedure 41(c) is misplaced. Motion 16. That note explains that the court of appeals' "mandate is effective when the court issues it." But that explanation merely raises the same question: what is the Court's mandate in this case? The answer is as quoted above: that "the *district court* [is] instruct[ed] to vacate the North Fork Exception." *High Country III*, 951 F.3d at 1221 (emphasis added). The district court undisputedly complied with that mandate.

The mandate issued on April 24, 2020 and states that the "court's March 2, 2020 judgment takes effect this date." USFS Appendix 22. That judgment, in turn, states: "This case originated in the District of Colorado and was argued by counsel. The judgment of that court is vacated. *The case is remanded to the United States District Court for the District of Colorado for further proceedings in accordance with the opinion of this court*." USFS Appendix 24 (emphasis added). And the Court's opinion remanded the case to the district court "for entry of an order vacating the North Fork Exception." *High Country III*, 951 F.3d at 1229.

Accordingly, per Appellate Rule 41(c) and its advisory note, the Court's mandate became effective when it was issued on April 24, 2020. This means that as of that date, the district court was empowered to enter an order vacating the North Fork Exception, *not* that vacatur itself occurred or took effect as soon as the mandate issued. Under the Conservation Groups' reading of Rule 41(c), the district court's

June 15 order vacating the North Fork Exception was redundant and had no legal effect because the Exception had already been vacated upon issuance of the mandate.

Conservation Groups also cite cases to support the proposition that vacatur of a rule is retroactive to the date of the rule's original promulgation, but those cases do not hold that a rule is deemed vacated before it is actually vacated by a court order vacating the rule. *See* Motion 15 (citing, inter alia, *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 97 (1993), which addressed retroactive effect of judicial decisions); *High Country II*, 67 F. Supp. 3d at 1265 (district court itself vacating the North Fork Exception in the prior lawsuit, *see supra* p. 4)).

Notably, Conservation Groups concede that, notwithstanding any retroactive effect of the vacatur of the North Fork Exception in this case, Mountain Coal may use the temporary road for longwall panel *SS1* because that road was lawful at the time of construction in summer 2019. Motion 24 n.5; Exhibit 12, ¶ 10 (Declaration of Chad Stewart). The temporary road for longwall panel *SS2* is similarly situated.

B. The district court correctly construed *High Country III* in its October 2 order.

Conservation Groups make two arguments in an effort to show that the district court misconstrued *High Country III* in its October 2 order. Motion 17-18. Those arguments lack merit.

First, Conservation Groups contend that the district court "similarly erred when it found that precluding road construction in the Sunset Roadless Area

necessarily required vacatur of the lease modifications." Motion 17. That was error, Conservation Groups contend, because *High Country III* did not order that form of relief; rather, this Court upheld the lease modifications, rejecting Conservation Groups' methane-flaring-alternative claim. *Id.*

But that was not the district court's ruling. Rather, the court understood *Conservation Groups* as arguing that vacatur of the North Fork Exception necessarily required the court to vacate Mountain Coal's lease modifications. Exhibit 1 at 8. In any event, the district court correctly rejected that argument, explaining that this Court "explicitly vacated only the Nork Fork Exception, not Mountain Coal's lease modifications," and that if "vacatur of the North Fork Exception compelled vacatur of the lease modifications, this conclusion is not apparent from the mandate." *Id.*

Second, Conservation Groups contend that the district court erroneously concluded that if Mountain Coal were unable to construct roads as a result of the vacatur of the North Fork Exception, then this Court's holding on Conservation Groups' methane-flaring-alternative claim (rejecting their challenge to the Leasing FSEIS) would be "dicta." Motion 17-18.

Again, that was not the district court's conclusion. Rather, the court correctly noted that if "vacatur of the North Fork Exception automatically required vacatur of the lease modifications," then this Court's "discussion of the Leasing SFEIS would

seem to be little more than dicta." Exhibit 1 at 8 n.4. In other words, the district court correctly recognized that there would have been no need for this Court to address Conservation Groups' methane-flaring-alternative claim, challenging the lease modifications, if their successful NEPA challenge to the Nork Fork Exception meant that the lease modifications had to be vacated in any event.

C. Conservation Groups' other arguments do not show that the October 2 order was an abuse of discretion.

Conservation Groups' contentions concerning USFS' "primary defense to its inaction" and "bootstrap[ping]" are not relevant to whether the district court abused its discretion in its October 2 order and are in any event incorrect. Motion 15.

Regarding USFS' "inaction": in their June 12 "Emergency Motion to Enforce Remedy," Conservation Groups asked the district court to order Mountain Coal to "immediately halt all surface disturbing activities" in the North Fork Exception area, and to order USFS to "immediately withdraw consent to any approvals authorizing Mountain Coal to engage in surface disturbing activities." Exhibit 1 at 5. It was appropriate for USFS to await the district court's determination whether any such relief was warranted, since the matter was in litigation. USFS' decision to await the court's ruling on Conservation Groups' remedial theories has no bearing on whether the court abused its discretion in its October 2 order.

Regarding "bootstrapping": as an exchange of letters in July-August 2020 among USFS, BLM, and Mountain Coal indicates, USFS determined that Mountain

Coal's current activities related to mining longwall panel SS2 are consistent with the Colorado Roadless Rule and Mountain Coal's leases even after the North Fork Exception was vacated by the district court. USFS Appendix 15-16, 17, 20; *see also* Exhibit 9 at 3 (CDRMS modified cessation order).

Contrary to Conservation Groups' contention, USFS' determination does not effectively allow Mountain Coal to "bootstrap in any associated tree clearing, drilling of methane ventilation boreholes, and use of the road," Motion 15—the implication apparently being that the district court abused its discretion by not enjoining those activities in its October 2 order. But the road was built at a time when the North Fork Exception was still in effect. In USFS' view, *even without the exception*, the Colorado Roadless Rule does not prohibit such activities as (1) use of the road; (2) incidental tree cutting associated with well-pad construction authorized by Mountain Coal's CDRMS permits; and (3) drilling methane ventilation boreholes on those well pads. USFS Appendix 20.

In sum, Conservation Groups have not demonstrated a likelihood of success on their argument that the district court abused its discretion in its October 2 order.

CONCLUSION

For the foregoing reasons, Conservation Groups' emergency motion for an injunction pending appeal should be denied.

Respectfully submitted,

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90-1-4-15267

CERTIFICATE OF COMPLIANCE

I hereby certify:

1. This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Rule 32(f), this document contains 4,049 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

s/ *John Emad Arbab*
JOHN EMAD ARBAB

Counsel for Federal Appellees

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

(2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents; and

(3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Windows Defender Antivirus Version 1.325.883.0 (updated Oct. 16, 2020), and according to the program are free of viruses.

s/ *John Emad Arbab*
JOHN EMAD ARBAB

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, I electronically filed the foregoing using the court's CM/ECF system, which will send notification of such filing to the following:

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