UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, HEALTHY GULF, SIERRA CLUB, and CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

DEBRA A. HAALAND, in her official capacity as Secretary of the Interior; LAURA DANIEL-DAVIS, in her official capacity as Assistant Secretary of the Interior for Land and Mineral Management; U.S. DEPARTMENT OF THE INTERIOR; and BUREAU OF OCEAN ENERGY MANAGEMENT,

Defendants,

STATE OF LOUISIANA,

Intervenor-Defendant.

Case No. 21-cv-02317-RDM

PLAINTIFFS' OPPOSITION TO MOTION TO TRANSFER VENUE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Regulations

** Authorities upon which we chiefly rely are marked with an asterisk*

INTRODUCTION

Intervenor seeks to transfer this case to a district where no defendant or plaintiff resides and where no events or omissions that gave rise to Plaintiffs' claims occurred. Because Plaintiffs could not have filed this lawsuit in the Western District of Louisiana, the Court should reject Intervenor's attempt at forum shopping. Even if venue were proper in the Western District (and it is not), none of the private or public interest factors favors transfer, and forcing Plaintiffs to restart this litigation in a new court on the eve of expedited summary judgment briefing would cause severe prejudice, precluding judicial resolution of the parties' disputes before the challenged oil-and-gas leases go into effect. Because venue is not proper in the Western District of Louisiana and Intervenor fails to carry its heavy burden to overcome the "substantial deference" owed to Plaintiffs' "choice of forum," this Court should deny Intervenor's motion. *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 128 (D.D.C. 2001) ("*GYC I*").

BACKGROUND

I. Statutory Framework

The National Environmental Policy Act ("NEPA") is this country's "basic national charter for protection of the environment." 40 C.F.R. § 1500.1 (2019);[1] *see* 42 U.S.C. § 4321 *et seq*. It was enacted by Congress to "promote efforts which will prevent or eliminate damage to the environment" and to ensure that federal agencies incorporate environmental concerns into the decisionmaking process. 42 U.S.C. § 4321; *see also id.* § 4332(a)–(b). NEPA requires all federal agencies to prepare a "detailed statement," called an Environmental Impact Statement ("EIS"),

[1] The Council on Environmental Quality's regulations implementing NEPA are "binding on all federal agencies." 40 C.F.R. § 1500.3 (2019). The Council recently revised those regulations, but the new regulations do not apply to the NEPA analyses challenged here. 85 Fed. Reg 43,304, 43,372 (July 16, 2020) (new regulations "apply to any NEPA process begun after September 14, 2020"). Accordingly, we cite the prior version of the NEPA regulations.

that includes a "full and fair discussion of significant environmental impacts" *before* taking any major federal action. *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 157 (D.C. Cir. 1985); 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.1. The process "forces the agency to take a 'hard look' at the environmental consequences of its actions, including alternatives to its proposed course," and "ensures that these environmental consequences, and the agency's consideration of them, are disclosed to the public." *Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017) (citations omitted). NEPA and its implementing regulations also impose a continuing duty on agencies to prepare a supplemental EIS if there are significant new circumstances or information relevant to environmental concerns. 40 C.F.R. § 1502.9(c)(1)(ii).

II. The Decision Plaintiffs Challenge

This case challenges the Federal Defendants' decision to hold Offshore Oil and Gas Lease Sale 257 in reliance on an unlawful and inadequate EIS. The lease sale will offer "all available, unleased blocks" in the Gulf of Mexico region to the oil and gas industry for development—80.8 million acres Ex. 1 at 13; *see id.* at 3. The record of decision for Lease Sale 257 was signed on August 31, 2021, by Laura Daniel-Davis, the Department of the Interior's Principal Deputy Assistant Secretary for Land and Minerals Management, who works in the Department's headquarters in Washington, D.C. *Id.* at 13; Dkt. 17 (Sept. 15, 2021). Deputy Assistant Secretary Daniel-Davis chose to hold Lease Sale 257 "[p]ursuant to [her] authority to exercise the delegable functions and duties of the [Department's] Assistant Secretary for Lands and Mineral Management" and based on, *inter alia*, balancing of "regional and national policy considerations." *Id.* at 3. In making this decision, Deputy Assistant Secretary Daniel-Davis acknowledged that environmental resources in the Gulf of Mexico "could be negatively impacted to varying degrees by routine activities and accidental events that could result from leases issued pursuant to GOM Lease Sale 257." *Id.*

To put the size of Lease Sale 257 in perspective, the total Gulf of Mexico region encompasses most of the Western and Central Planning Areas and a small portion of the Eastern Planning Area that is not under Congressional moratorium (91.93 million acres). Ex. 1 at 2–3; Ex. 2 at 7 (Lease Sale EIS); *see* Fig. 1.

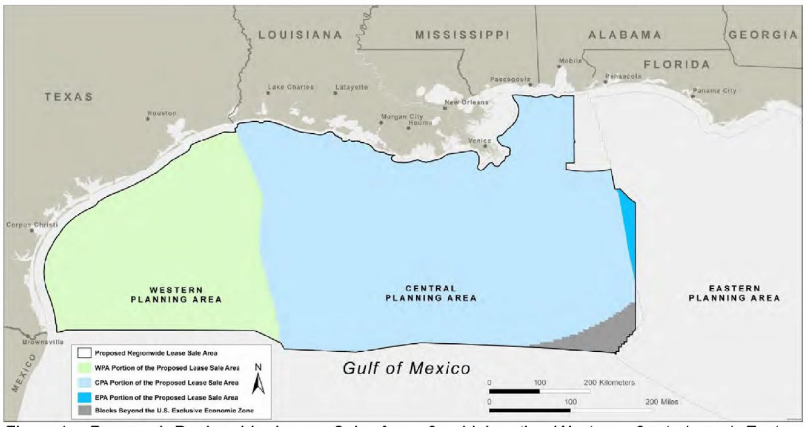

Figure 1: Map from Lease Sale EIS (Ex. 2 at 8)

The approximately 80.8 million acres available for lease in Lease Sale 257 encompass nearly 90% of the entire Gulf region, shown in blue and green in Figure 1, areas lying off the coasts of the states of Texas, Louisiana, Mississippi, Alabama, and Florida. *See* Ex. 1 at 3.

The record of decision for the challenged lease sale relies on the analysis in the *Gulf of Mexico Outer Continental Shelf Lease Sale: Final Supplemental Environmental Impact Statement 2018* ("Lease Sale EIS"). Ex. 1 at 1. The Bureau of Ocean Energy Management's ("the Bureau") Gulf of Mexico Outer Continental Shelf ("OCS") Regional office in New Orleans, Louisiana prepared the Lease Sale EIS, which was completed in December 2017. Ex. 3 (82 Fed. Reg. 59,644 (Dec. 15, 2017)); Ex. 2 at 2, 5.

As part of the process of preparing the Lease Sale EIS, the Bureau held meetings to receive public comments, initially to determine the scope of the Bureau's environmental review and later to receive comment on the draft EIS. Public meetings, which were coordinated by the

Bureau's New Orleans office, took place throughout the Gulf of Mexico region. Ex. 4 at 2 (81 Fed. Reg. 55,480, 55,481 (Aug. 19, 2016)); Ex. 5 (82 Fed. Reg. 16,060, 16,061 (Mar. 31, 2017)). None of these public meetings took place in the Western District of Louisiana.

The Lease Sale EIS tiered its analysis to and incorporated by reference two previous, broader environmental analyses: (1) a Programmatic EIS ("Program EIS") analyzing the effects of the 2017–2022 Five-Year Program for OCS oil and gas leasing, completed in November 2016; and (2) a Multisale EIS ("Multisale EIS") analyzing the impacts of the lease sales in the Gulf of Mexico under the 2017–2022 program, completed in March 2017. *See* Ex. 1 at 1; Ex. 6 (81 Fed. Reg. 83,870 (Nov. 22, 2016)); Ex. 7 (82 Fed. Reg. 13,363 (Mar. 10, 2017)). The Bureau's director, who works at the agency's headquarters in Washington, D.C., issued the notices of availability for both EISs.[2]

To prepare the Program EIS, the Bureau held meetings to solicit public comment on the draft EIS, all of which were coordinated by the Bureau's headquarters. Ex. 8 at 2–3 (80 Fed. Reg. 4,939, 4,940–41 (Jan. 29, 2015)); Ex. 9 at 1 (80 Fed. Reg. 12,204, 12,204 (Mar. 6, 2015)); Ex. 10 at 1–2 (81 Fed. Reg. 14,885, 14,885–86 (Mar. 18, 2016)). Former Bureau Director Hopper announced a total of 23 scoping meetings, which took place in Washington, D.C., 11 locations in Alaska, 8 locations on the East Coast, and 3 locations in the Gulf of Mexico region: Houston, Texas; New Orleans, Louisiana; and Mobile, Alabama. Ex. 8; Ex. 9. She subsequently announced 13 public meetings to receive comments on the draft Program EIS, which were coordinated by the Bureau's headquarters and took place in Washington, D.C.; 10 locations in Alaska; and 2 locations in the Gulf of Mexico region: Houston, Texas; and New Orleans,

[2] The Bureau's headquarters are located in the Department of Interior main building in Washington, D.C. and in Northern Virginia. *See* https://www.boem.gov/operating-status.

Louisiana. Ex. 10. None of these meetings took place in the Western District of Louisiana.

To prepare the Multisale EIS, the Bureau also held meetings on the draft EIS, all of which were coordinated by the Bureau's New Orleans regional office. Ex. 11 at 3 (80 Fed. Reg. 23,818, 23,820 (Apr. 29, 2015)); Ex. 12 at 1 (81 Fed. Reg. 23,747, 23,747 (Apr. 22, 2016)). Former Director Hopper announced five scoping meetings and five public meetings, which took place throughout the Gulf of Mexico region. Ex 11 at 2; Ex. 12 at 1–2. None of these public meetings took place in the Western District of Louisiana.

III. Plaintiffs' Lawsuit

On August 31, 2021, Plaintiffs filed suit in this Court to challenge Federal Defendants' decision to hold Lease Sale 257 in reliance on arbitrary environmental analyses, in violation of NEPA and the Administrative Procedure Act ("APA"). Dkt. 1 at 2 (Compl. ¶ 1). Plaintiffs specifically challenge Federal Defendants' reliance on an EIS that dramatically underestimates the climate-change-inducing greenhouse gases that would result from the sale. *Id.* at 46–49 (Compl. ¶¶ 169–84). In addition, Federal Defendants violated their duty to supplement their NEPA analysis when significant new information came to light after the Bureau completed its now outdated Lease Sale EIS. This new information, including new information on the severity of climate change and newly-listed endangered species, indicates Lease Sale 257 will have far greater environmental impacts than the Bureau presumed. *Id*. at 49–51 (Compl. ¶¶ 170–95).

Plaintiffs name as defendants Secretary of the Interior Debra Haaland, Deputy Assistant Secretary Daniel-Davis, the Department of the Interior, and the Bureau. *Id.* at 9–10 (Compl. ¶¶ 19–21). Plaintiffs alleged that venue is appropriate in this District "under 28 U.S.C. § 1391(e)(1) because the Bureau's headquarters are located in this District, a plaintiff resides in this district, and a substantial part of the events and omissions which gave rise to this action occurred in this District." *Id.* at 4 (Compl. ¶ 10).

In their request for relief, Plaintiffs ask this Court to declare that (1) the Department of the Interior's August 31, 2021 Record of Decision to hold Lease Sale 257 violates NEPA and the APA; (2) the EISs that the Bureau issued in connection with holding Lease Sale 257 violate NEPA and the APA; and (3) the Department of the Interior violated NEPA by failing to prepare a supplemental EIS that addresses the environmental impacts of its record of decision to hold Lease Sale 257. *Id.* at 51. Plaintiffs further ask this Court to vacate the August 31, 2021 Record of Decision, to vacate or enjoin any leases executed pursuant to Lease Sale 257, and, if necessary, to enter "other appropriate injunctive relief to ensure that [Federal] Defendants comply with NEPA and the APA, and to prevent irreparable harm to Plaintiffs and to the environment until such compliance occurs." *Id.* at 52.

IV. Intervenor's Lawsuit in the Western District of Louisiana

On March 24, 2021, Intervenor and 12 other states filed a lawsuit in the Western District of Louisiana challenging Executive Order 14008, which President Joseph R. Biden, Jr. issued on January 27, 2021, and which, among other things, imposed a pause on oil and natural gas leasing activities on public lands and offshore waters to allow for a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices ("the Pause"). *Louisiana v. Biden*, No. 2:21-CV-00778, Dkt. 1 at 5–6 (Compl. ¶¶ 3–7).; *see also* Ex. 13 at 6–7 (Exec. Order No. 14008, § 208, 86 Fed. Reg. 7,619, 7,624–25 (Feb. 1, 2021)). Intervenor claims that the executive order and "all actions taken in reliance upon Executive Order 14008" violate the APA, the Outer Continental Shelf Lands Act ("OCSLA"), and the Mineral Leasing Act ("MLA"). *Louisiana v. Biden*, Dkt. 1 at 6 (Compl. ¶ 7). Along with several other actions, Intervenor challenges the Bureau's rescission on February 18, 2021, of a prior record of decision to hold Lease Sale 257 that was signed by then-Secretary of the Interior David Bernhardt. *Id.* at 21, 26

(Compl. ¶¶ 62, 73–75).; *see* Ex. 14 (Bernhardt Record of Decision); Ex. 15 (86 Fed. Reg. 10,132 (Feb. 18, 2021)).[3]

Intervenor's lawsuit names as defendants President Biden, Secretary of the Interior Deb Haaland, Director of the Bureau of Ocean Energy Management Amanda Lefton, Regional Director of the Bureau's Gulf of Mexico Office Michael Celata, 14 officials at the Bureau of Land Management ("BLM"), and 2 officials at the Bureau of Safety and Environmental Enforcement. *Louisiana v. Biden*, Dkt. 1 at 12–13 (Compl. ¶¶ 21–40).

Citing 28 U.S.C. § 1391(e)(1), Intervenor alleges that venue for its lawsuit is appropriate in the Western District of Louisiana "because Defendants are United States agencies or officers sued in their official capacities, the State of Louisiana is a resident of this judicial district, and a substantial part of the events or omissions giving rise to the Complaint occur within this judicial district." *Id.* at 14 (Compl. ¶ 43). Intervenor does not allege any property that is the subject of its lawsuit is situated in the Western District.

Intervenor asks for declaratory judgments that the leasing pause violates the APA, OCSLA, and the MLA. *Id.* at 50. Intervenor further seeks to set aside the leasing pause and "[a]n injunction prohibiting [the Bureau], BLM, or the Secretary of the Interior from taking any actions based on Section 208 of Executive Order 14008 or any OCSLA or MLA Leasing Moratorium." *Id.* Finally, Intervenor seeks "[a]n order compelling the Defendants to proceed

[3] Intervenor's claim that Plaintiffs' lawsuit challenges "the same underlying Record of Decision" that is at issue in Intervenor's lawsuit is factually incorrect. Dkt. 25 at 1. Plaintiffs challenge an entirely separate record of decision that was issued on August 31, 2021, seven months after the record of decision at issue in Intervenor's case. The differences are not only temporal. For example, the record of decision at issue in Intervenor's case made 79.7 million acres in the Gulf of Mexico available for lease, while the August 31, 2021 Record of Decision that Plaintiffs challenge here opened more than one million additional acres (80.8 million acres in all) to leasing. *Compare* Ex. 14 at 2 (Bernhardt Record of Decision) *with* Ex. 1 at 3 (August 31, 2021 Record of Decision).

with leasing sales under OCSLA and the MLA as previously scheduled with reasonable allowance for the time lost due to their unlawful actions and this resulting litigation." *Id.*

On June 15, 2021, the court granted Intervenor's motion for a preliminary injunction. *Louisiana v. Biden*, No. 2:21-CV-00778, 2021 WL 2446010, at *2 (W.D. La. June 15, 2021). The court's order enjoins executive branch officials "from implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208 of Executive Order 14008." *Id*. at *22. The court's decision clarifies that Intervenor and its co-plaintiffs "are attacking a Pause of federal oil and gas leasing allegedly in violation of two Congressional statutes—MLA and OCSLA." *Id.* at *17. The decision further notes that "there is a huge difference between the discretion to stop or pause a lease sale because the land has become ineligible for a reason such as an environmental issue, and, stopping or pausing a lease sale with no such issues and only as a result of Executive Order 14008," *id.* at *13, and concludes that, "[w]ithout any other reason to delay the sale, the Government Defendants were legally required to go through with the sale of Lease Sale 257." *Id.* at *20. Federal Defendants appealed the decision, which is still pending in the Fifth Circuit. *Louisiana v. Biden*, Dkt. 152 (Aug. 16, 2021).

Shortly after Plaintiffs in this case requested that this Court hold a pre-motion conference, Intervenor filed a motion for status conference in *Louisiana v. Biden* asking that court to order Plaintiffs to the Western District of Louisiana to address Intervenor's "concerns" about conflicting judgments. *Louisiana v. Biden,* Dkt. 161 (Sept. 13, 2021). The court denied Intervenor's request to haul Plaintiffs into the Western District of Louisiana, but granted the request for a status conference with the parties in the case. *Id*., Dkt. 162 (Sept. 14, 2021). During the conference, Intervenor asked the Western District of Louisiana court to "enjoin the new

suit"—*i.e.,* this case—"from being filed" in this Court. *Id*., Dkt. 167 at 1 (Sept. 16, 2021). Federal Defendants disagreed that Plaintiffs' lawsuit "could cause noncompliance with the Preliminary Injunction" and "informed the Court that it is not unusual for lease sales to be challenged on [NEPA] grounds." *Id.* The *Louisiana v. Biden* court stated it would "take no action with regard to [this lawsuit] as it is in another judge's court and because the issues are not the same." *Id.* at 2.

STANDARD FOR TRANSFER OF VENUE

28 U.S.C. § 1404(a) provides that:

> For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

"[T]he purpose of the section is to prevent the waste 'of time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense.'" *Van Dusen v. Barrack,* 376 U.S. 612, 616 (1964) (citation omitted). Accordingly, the party seeking transfer bears the burden of demonstrating that transfer would be proper. *Aracely v. Nielsen*, 319 F. Supp. 3d 110, 127 (D.D.C. 2018). That burden is a heavy one; the moving party must "show decisively that transfer is proper." *Jalloh v. Underwood*, 300 F. Supp. 3d 151, 155–56 (D.D.C. 2018). The "D.C. Circuit has long held that 'a plaintiff's choice of forum will rarely be disturbed.'" *Rossville Convenience & Gas, Inc. v. Barr*, 453 F. Supp. 3d 380, 387 (D.D.C. 2020) (citation omitted).

A party moving for transfer under 28 U.S.C. § 1404(a) must first show that the action could have been brought in the transferee district. *See Garcia v. Acosta*, 393 F. Supp. 3d 93, 108 (D.D.C. 2019) (citing *Van Dusen,* 376 U.S. at 616). If the action could have been brought in the transferee district, the movant bears the further burden of demonstrating that the private and public interests—the "preferred forum of the parties," the "location where the claim arose," and

other "factors of convenience," as well as "the transferee district's familiarity with the governing law," "the relative congestion of the courts," and the "local interest in deciding local controversies at home"—weigh in favor of transfer. *Id*. (citing *Aracely*, 319 F. Supp. 3d at 127).

Section 1404(a) provides for transfer to only "a *more convenient* forum, not to a forum likely to prove equally convenient or inconvenient." *Van Dusen*, 376 U.S. at 645–46 (emphasis added). The Supreme Court has cautioned that "§ 1404(a) should not create or multiply opportunities for forum shopping." *Ferens v. John Deere Co.*, 494 U.S. 516, 523 (1990).

ARGUMENT

Intervenor's Motion must be denied at step one because venue is not proper in the Western District of Louisiana. And, even if venue were proper, the transfer factors all weigh against transfer; they certainly do not weigh "strongly" in favor. *Rossville Convenience & Gas,* 453 F. Supp. 3d at 387.

I. Venue Is Not Proper in the Western District of Louisiana

Plaintiffs could not have filed this case in the Western District of Louisiana, so it cannot be transferred to that district. The governing venue provision in this case, 28 U.S.C. § 1391(e)(1), limits where a plaintiff may bring a civil suit against a federal agency or official. Such suits can be brought in only judicial districts where "(A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." *Id.* Venue is not proper in the Western District of Louisiana because (1) Federal Defendants reside in Washington, D.C.; (2) none of the events or omissions that gave rise to Plaintiffs' claims occurred in the Western District of Louisiana; (3) there is no property that is the subject of this action, and, even if there were, it would be located on the outer continental shelf, not in the Western District of Louisiana (or any other district); and (4) no

plaintiffs reside in the Western District of Louisiana. Because Intervenor has failed to carry its burden to show that venue would be appropriate in the Western District of Louisiana, its motion to transfer "fails at the first step" and should be denied. *Garcia,* 393 F. Supp. 3d at 108.

A. No Defendant Resides in the Western District of Louisiana.

Intervenor does not assert that venue lies in the Western District of Louisiana under subsection (A) of 28 U.S.C. § 1391(e)(1), nor could it; no defendant in the action resides in that district. The named Federal Defendants all reside in Washington, D.C. *See Nestor v. Hershey*, 425 F.2d 504, 521 n.22 (D.C. Cir. 1969) ("Where a public official is a party to an action in his official capacity he resides in the judicial district where he maintains his official residence, that is where he performs his official duties") (citation omitted); *id.* ("Secretary of Interior reside[s] in District of Columbia."); https://www.boem.gov/contact-us (Bureau has headquarters in District of Columbia and a regional office in New Orleans). The Bureau does not even have a regional office in the Western District of Louisiana, but, even if it did, that would not change the Bureau's residency from this district. *See Garcia*, 393 F. Supp. 3d at 108 ("Although the Department maintains a regional office in Chicago, neither the Secretary of Labor nor the Department of Labor 'resides' in the Northern District of Illinois; both are, instead, residents of the District of Columbia.").

B. None of the events or omissions giving rise to the claim occurred in the Western District of Louisiana.

The sole basis for transferring venue that Intervenor asserts is under subsection (B) of 28 U.S.C. § 1391(e)(1). To determine whether a substantial part of the events giving rise to the claim occurred in the forum, the court first considers what acts or omissions by the defendants give rise to the plaintiffs' claims. *See Am. Action Network, Inc. v. Cater Am., LLC*, Civ. A. No. 12-cv-1972 (RC), 2014 WL 12675253, at *1 (D.D.C. Feb. 12, 2014). Second, the court considers

"whether a substantial part of those acts or omissions took place in the chosen venue." *Id.* In determining whether the "substantiality" test is satisfied, "a court is to consider only defendant's forum activities that 'directly give rise' to plaintiff's claim, that is, activities that 'have a close nexus to the wrong.'" *Id.* (quoting *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1372 (11th Cir. 2003)). "[C]oincidental contacts are insufficient to afford venue." *Daniel v. Am. Bd. of Emergency Med.,* 428 F.3d 408, 434 (2d Cir. 2005).

None of the acts or omissions that gave rise to Plaintiffs' claims occurred in the Western District of Louisiana. In cases like this one, which are "brought under the APA, courts generally focus on where the decisionmaking process occurred to determine where the claims arose." *Mashpee Wampanoag Tribe v. Zinke*, Civ. A. No. 18-2242 (RMC), 2019 WL 2569919, at *7 (D.D.C. June 21, 2019) (quoting *Nat'l Ass'n of Home Builders v. EPA*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009)). Plaintiffs challenge the Department of the Interior's issuance of the August 31, 2021 Record of Decision to hold Lease Sale 257, a decision that was made at the Department's headquarters in the District of Columbia. *See* Ex. 1. Because the Department "made the challenged decision in the District of Columbia," this district "is where 'the claim arose.'" *Mashpee Wampanoag Tribe*, 2019 WL 2569919, at *7 (citation omitted); *see also Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 6 (D.D.C. 2013) ("*Pritzker*") (noting that this District has an interest in "federal regulations promulgated in the capital"); *Greater Yellowstone Coal. v. Kempthorne,* Civ. A. Nos. 07-2111(EGS), 07-2112(EGS), 2008 WL 1862298, at *5 (D.D.C. 2008) ("*GYC II*") (finding "the claim did not 'arise elsewhere,' but rather arose in [the] District, where the Rule was drafted and published.").

In addition to the August 31, 2021 Record of Decision, Plaintiffs challenge the EISs that Federal Defendants allege support issuance of the record of decision. The Bureau prepared these

EISs in its Gulf of Mexico regional office in New Orleans, which lies in the Eastern District of Louisiana, not the Western District. Furthermore, even though the Bureau held public comment meetings required under NEPA throughout the Gulf of Mexico region, not a single meeting took place in the Western District of Louisiana. *See supra* at pp. 4–5. Intervenor fails to carry its burden to identify any events or omissions in the Western District of Louisiana that gave rise to Plaintiffs' claims.

The venue statute requires "that the events or omissions supporting a claim be 'substantial'" in order to "preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute." *Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 294 (3d Cir. 1994). This Court has noted that, "[w]hen material acts or omissions within the forum bear a close nexus to the claims, they are properly deemed 'significant' and, thus, substantial." *Ford-Bey v. United States,* Civ. A. No. 19-2039 (BAH), 2020 WL 32991, at *12 (D.D.C. Jan. 2, 2020) (quoting *Daniel*, 428 F.3d at 433). When, however, "a close nexus is lacking, so too is the substantiality necessary to support venue." *Daniel*, 428 F.3d at 433. Intervenor's attempts to grasp at attenuated connections to Plaintiffs' claims fail for several reasons.

First, Intervenor misconstrues the venue statute when it claims that venue is appropriate in the Western District of Louisiana because Plaintiffs' claims allegedly "touch on the same agency action that is now pending on appeal" in the Fifth Circuit. Dkt. 25 at 4. The venue statute does not list among the limited grounds that establish venue either that "claims that touch on the same agency action" or "related claims" are pending in a district. Rather, the test is whether a "substantial part of the events or omissions giving rise to [Plaintiffs'] claim"—not some other party's claim—occurred in the district. 28 U.S.C. § 1391(e)(1)(B). As the plain language of 28

U.S.C. § 1404(a) makes clear, the pendency of Intervenor's lawsuit may be relevant when balancing factors related to "the interest of justice" to determine which of two proper venues should hear a case, but the Court does not reach this second step of balancing factors unless Intervenor succeeds at "the first step"—"show[ing] that venue is proper" in the Western District of Louisiana. *Garcia*, 393 F. Supp. 3d at 108.[4]

The cases that Intervenor cites do not support its claim that venue is appropriate in the Western District of Louisiana based solely on the pendency in that district of Intervenor's separate lawsuit. In *Ute Indian Tribe v. United States Department of Interior*, there were abundant events giving rise to the Tribe's claims that took place in Utah and created a substantial nexus with the District of Utah: the contract that was the subject of the case was negotiated and executed in Utah by Utah state officials for a "Utah-wide water-exchange project." Civ. A. No. 1:18-cv-00547 (CJN), 2021 WL 4189936, at *12 (D.D.C. Sept. 15, 2021). While *Ute Indian Tribe* does mention a pending Tenth Circuit appeal, the existence of that lawsuit was not necessary to the court's conclusion that "the Tribe could have brought the remaining claims in the District of Utah," which was undisputed. *Id.*

Likewise, in *Me-Wuk Indian Cmty. of the Wilton Rancheria v. Kempthorne,* it was undisputed that venue was proper in the Northern District of California, with the plaintiff resisting transfer based on the step-two balancing factors: "deference in its choice of forum and that the current venue is in the interest of justice." 246 F.R.D. 315, 318 (D.D.C. 2007). While *Me-Wuk* does state in a very cursory fashion that "plaintiff could have originally filed suit in the

[4] Even if the existence of a related case in the transferee district were a statutory ground for venue, Intervenor's motion would fail because the *Louisiana v. Biden* case and this case challenge entirely separate agency actions on completely different legal theories. *See infra* at pp. 32–35.

Northern District of California because of the related . . . litigation," the decision does not suggest that it is holding that the pendency of other litigation in a transferee district alone is adequate to establish venue. *Id.* at 321. Nor could it have. As discussed, the venue statute provides limited grounds to establish proper venue, and the pendency of other litigation in a district is not one of them.

Second, Intervenors "who have the burden, present no evidence" of any substantial events or omissions occurring in the Western District of Louisiana that gave rise to Plaintiffs' claims. *GYC I*, 180 F. Supp. 2d at 128. Intervenor states that Plaintiffs' claims "stem from Defendants' alleged failure to conduct environmental analyses in and of the areas potentially affected by Lease Sale 257," and Intervenor then lists several studies that Plaintiffs allegedly claim Federal Defendants should have considered as part of its NEPA analysis. Dkt. 25 at 5–7.[5] Intervenor states that "[a]ny examination of the alleged "significant new information" would have to include acts along the entire Gulf Coast, including the Western District of Louisiana." Dkt. 25 at 5. However, "[o]nly locations hosting a 'substantial part' of the events that 'directly' ***give rise to a claim*** are relevant." *Abramoff v. Shake Consulting, LLC*, 288 F. Supp. 2d 1, 4 (D.D.C. 2003) (emphasis added) (citations omitted). Potential actions that the Federal Defendants may have to take after Plaintiffs prevail do not meet the "substantiality" requirement.

The venue statute "focuses venue on those districts in which "the events or omissions supporting a claim [are] substantial." *Id.* (quoting *Cottman Transmission Sys.,* 36 F.3d at 294).

[5] As one example, Intervenor claims that "Plaintiffs allege that Defendants were required to create a supplemental EIS to address 'new information' indicating that drilling will take place in shallower waters." *Id.* at 5. This is incorrect. Rather, Plaintiffs allege that new information reveals that companies are increasingly drilling in ***deeper water*** with greater risks of accidents. Dkt. 1 at 35–37 (Compl. ¶¶ 124–129).

The only evidence that Intervenor musters, however, involves activities that are too remote from the claim to satisfy the "substantiality requirement." For example, Intervenor points to one study that was conducted in the Western District in response to a petition to list the Bryde's whale under the Endangered Species Act and another study that "spotlights emissions in Shreveport, Louisiana." Dkt. 25 at 6. These studies are precisely the type of "coincidental contacts [that] are insufficient to afford venue." *Daniel*, 428 F.3d at 434. If venue were proper in every district where one of the many studies cited in the Bureau's EISs was conducted, the limitations imposed in the venue statute would be meaningless; virtually every district in the country would qualify. *See Griffin v. Oceanic Contractors, Inc.,* 458 U.S. 564, 575 (1982) ("[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.").

Further, *Villa v. Salazar*, 933 F. Supp. 2d 50 (D.D.C. 2013), does not support Intervenor's argument that "venue [is] appropriate in [a] judicial district where deficient investigation giving rise to [a] NEPA claim occurred." Dkt. 25 at 7. There were no NEPA claims in *Villa v. Salazar*, which involved claims arising under the Indian Gaming Regulatory Act. 933 F. Supp. 2d at 52. *Villa* certainly does not support Intervenor's argument that every study cited in an EIS constitutes a "substantial nexus" that establishes venue in the district where the study was carried out.

Third, there is no basis for Intervenor's claim that "the effects of an administrative decision on a judicial district," Dkt. 25 at 7, constitutes a "substantial part of the events or omissions giving rise to the claim." 28 U.S.C. § 1391(e)(1)(B). "[T]he fact that the plaintiff may feel damages in [a District] does not create venue under [28 U.S.C. §] 1391(a)(2)," which contains language that is identical to 28 U.S.C. § 1391(e)(1)(B). *Abramoff,* 288 F. Supp. 2d at 5;

see also Fin. Mgmt. Servs., Inc. v. Coburn Supply Co., No. 02 C 8928, 2003 WL 255232, at *2 (N.D. Ill. Feb. 5, 2003) (basing venue on the place of economic harm would "eviscerat[e]" the venue statute); *Bigham v. Envirocare of Utah, Inc.,* 123 F. Supp. 2d 1046, 1049 n.2 (S.D. Tex. 2000) ("[T]he place where the effects are felt is not in and of itself a proper venue"). While *Pritzker* does mention that "the fishermen affected by the challenged regulations . . . are located in Massachusetts" (the district where transfer was sought), that fact was not dispositive to the court's determination that venue in that district was proper. 58 F. Supp. 3d at 4. In that case, it was undisputed that "a substantial part of the events or omissions giving rise to the claim occurred" in Massachusetts; federal officials there "were involved in writing and promulgating [the challenged] rules." *Id.*; *see also id.* ("Plaintiff does not contest . . . that this case could have been brought in the District of Massachusetts.").[6] In contrast, in this case, none of the challenged decisions were made in the Western District of Louisiana, and none of the Federal Defendants reside there. Indeed, the Bureau does not even have a regional office in the Western District, and none of the many public meetings on the Bureau's EISs were held there.

Finally, the Court should reject Intervenor's argument that the Western District has a "real relationship to the dispute" because of Louisiana's role in the OCSLA consultation process. Dkt. 25 at 8 (quoting *Cottman Transmission Sys*., 36 F.3d at 294). A "real relationship" is not a statutory factor that gives rise to venue; Intervenors take the Third Circuit's analysis in *Cottman Transmission Sys*. out of context. When the Third Circuit emphasizes the need for a "real relationship to the dispute," it was referring to how the "substantiality" requirement narrowly

[6] Intervenor also cites *Trout Unlimited v. U.S. Department of Agriculture*, but that case found venue proper in the transferee district based on a substantial part of the property that was the subject of the action being situated there, which is a separate venue factor. 944 F. Supp. 13, 16 (D.D.C. 1996). Plaintiffs discuss *Trout Unlimited* in the next section.

limits the districts into which a defendant can be haled. 36 F.3d at 294. The existence of an allegedly "real relationship" does not provide an independent basis to expand venue to forums where events occur that "only have some tangential connection with the dispute in litigation." *Id.* The fact that the Bureau consults with states in the Gulf of Mexico, including Louisiana, does not establish that a substantial part of the events giving rise to Plaintiffs' claims occurred in the forum.

C. No "Property" Is the Subject of This Action.

Intervenor also invokes the second prong of subsection (B), arguing that property that is "the subject of the action" is situated in the Western District of Louisiana. Dkt. 25 at 8–9. This provision, however, is inapplicable to this case because no "property" is the "subject" of this action. In a 1990 amendment, Congress "contracted" 28 U.S.C. § 1391(e)(1)(B) "by requiring not merely that the case 'involve[]' property but that the property be 'the subject of the action.'" 14D Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3815 n.31 (4th ed. 2020). Courts have construed identical "subject of the action" language in 28 U.S.C. § 1391(b)(2) "to apply only to suits involving property disputes or in rem actions"; it is not enough that a property be "affected" by the action. *Steen v. Murray*, 770 F.3d 698, 704 (8th Cir. 2014) (citation omitted); *see also* Wright & Miller, *supra*, § 3815 (explaining because § 1391(b)(2)'s language is identical, "cases construing the general provision may be helpful in construing this provision of Section 1391(e)(1)(B)"); *cf. Jensen v. Rollinger*, No. SA:13-CV-1095-DAE, 2014 WL 3943705, at *8 (W.D. Tex. Aug. 12, 2014) (finding property was the "subject" of the action under § 1391(e) because action was *quasi in rem*). The subjects of this lawsuit are the Department of the Interior's August 21, 2021 Record of Decision and the EISs the Bureau prepared, not property in the Gulf of Mexico. *Cf. MTGLQ Invs., L.P. v. Guire*, 286 F.

Supp. 2d 561, 564 (D. Md. 2003) (finding that in dispute over promissory notes, "the 'property that is the subject of the action' is the loan itself, not the property securing it").

In cases raising NEPA claims, this District often looks to the plaintiff's residency to determine where venue is proper. *See, e.g.*, *GYC I*, 180 F. Supp. 2d at 128 ("[S]everal of the plaintiffs . . . reside in Montana . . .."); *Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 53–54 (D.D.C. 2012) ("[T]he District of South Carolina is Plaintiffs' home forum, making venue proper in that district."); *Niagara Pres., Coal., Inc. v. FERC*, 956 F. Supp. 2d 99, 103 (D.D.C. 2013) ("[P]laintiff and its members are based in New York . . .."); *Bergmann v. U.S. Dep't of Trans.*, 710 F. Supp. 2d 65, 72 (D.D.C. 2010) ("[P]laintiff is a resident of Michigan."). Given that a plaintiff's residency is relevant to venue only "if no real property is involved in the action," this Court would not consider this factor if it agreed with Intervenor that the location of the project that a NEPA document analyzes constitutes "property that is the subject" of a lawsuit challenging the NEPA document. 28 U.S.C. § 1391(e)(1)(B)–(C).

Notably, to establish venue for the APA challenge it filed in the Western District of Louisiana, Intervenor relies on its residency, which is relevant only when no property is at issue. *See Louisiana v. Biden,* Dkt. 1 at 14 (Compl. ¶ 43). Intervenor's inconsistent insistence that real property is the subject of Plaintiffs' APA challenge suggests "[t]he plausible possibility that [Intervenor is] using Section 1404(a) as a means of forum shopping," which "weighs against granting [Intervenor's] motion." *GYC I*, 180 F. Supp. 2d at 130; *see Ferens*, 494 U.S. at 523.

Intervenor notes that *Gulf Restoration Network v. Jewell* stated that "venue is proper in the Southern District of Alabama because the Project is located there." 87 F. Supp. 3d 303, 311 (D.D.C. 2015). The decision's cursory discussion does not explain why the project site was deemed the "subject of the action," rather than the deficient NEPA analysis that Plaintiffs were

challenging. 28 U.S.C. § 1391(e)(1)(B). The likely explanation is that the propriety of venue in the transferee district was undisputed. *See Gulf Restoration Network*, 87 F. Supp. 3d at 311 ("Both parties agree that this case originally could have been brought in the Southern District of Alabama."). Regardless, the case is not persuasive on this point.

Even assuming for the sake of argument that there were some "property that is the subject of [Plaintiffs'] action," it would not be "situated" in the Western District of Louisiana or, for that matter, any judicial district. 28 U.S.C. § 1391(e)(1)(B). The project that the challenged record of decision authorizes—Lease Sale 257—will "offer for lease certain Outer Continental Shelf (OCS) blocks located in the [Gulf of Mexico]." Ex. 1 at 1. Any "oil and gas exploration" activity occurring under Lease Sale 257 would "take place on the outer continental shelf, beyond the bounds of any state." *Oceana v. Bureau of Ocean Energy Mgmt.,* 962 F. Supp. 2d 70, 77 (D.D.C. 2013) ("*BOEM*"). "[T]here are no judicial districts in the outer Continental Shelf where . . . 'property' [as used in § 1391(e)] is located." *Superior Oil Co. v. Andrus*, 656 F.2d 33, 37 n.7 (3d Cir. 1981).

Intervenor's reliance on *Trout Unlimited* is misplaced. In that case, venue was proper in Colorado because the plaintiffs' claims arose "out of a nucleus of facts that involve property that is entirely located within the state of Colorado." 944 F. Supp. at 16. As discussed above, there is no property in dispute here, and, to the extent that any property is the subject of Plaintiffs' lawsuit, it is not located within the bounds of any State (or judicial district).

D. No Plaintiffs Reside in the Western District of Louisiana.

Because none of the other factors that can establish venue are present, we turn to the last prong. Intervenor does not assert that venue lies in the transferee district under subsection (C) of 28 U.S.C. § 1391(e)(1), nor could it. It is undisputed that no Plaintiff resides in the Western

District of Louisiana. *See* Manuel Decl. ¶ 3; Monsell Decl. ¶ 1; Sarthou Decl. ¶ 2; Templeton Decl. ¶ 1; submitted herewith.

* * *

Because Intervenor has failed to carry its burden of demonstrating that venue would be proper in the Western District of Louisiana, its motion to transfer "fails at the first step." *Garcia*, 393 F. Supp. 3d at 108.

II. The Public and Private Interest Factors Weigh Against Transfer

It is well established that a "[p]laintiff's choice of forum is due substantial deference." *Shapiro, Lifschitz & Schram, P.C. v. Hazard*, 24 F. Supp. 2d 66, 71 (D.D.C. 1998). "This is particularly true where, as here, plaintiff is a resident of the chosen forum and the activities forming the basis of the suit have a significant connection with the forum." *Id.* Even if venue were proper in the proposed transferee district, Intervenor has failed to carry its burden of showing that the private and public interest factors outweigh the substantial deference owed to Plaintiffs' choice of forum.

A. The Private Interest Factors Do Not Support Transfer.

"[T]he D.C. Circuit has long held that 'a plaintiff's choice of forum will rarely be disturbed . . . unless the balance of convenience is strongly in favor of the defendant.'" *Rossville Convenience & Gas,* 453 F. Supp. 3d at 387 (quoting *Gross v. Owen*, 221 F.2d 94, 95 (D.C. Cir. 1955)); *see also H & R Block v. United States*, 789 F. Supp. 2d 74, 79 (D.D.C. 2011) ("[A] plaintiff's choice of forum is ordinarily 'a paramount consideration' that is entitled to 'great deference' in the transfer inquiry.") (citations omitted). To determine if the substantial deference given to Plaintiffs' choice of forum can be overcome, the court assesses several private and public interest factors. *Stewart v. Azar*, 308 F. Supp. 3d 239, 245 (D.D.C. 2018). The private interest factors include: "(1) the plaintiff's choice of forum; (2) the defendant's choice of forum;

(3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses; and (6) the ease of access to sources of proof." *Id.* at 248. "[B]ecause this is an APA case," with review based on the administrative record, "the convenience of witnesses and the ease of access to sources of proof are 'not likely to be relevant here.'" *Id.* (citation omitted). Therefore, "the Court need not consider the fifth and sixth factors." *GYC II*, 2008 WL 1862298, at *4.

Intervenor addresses only two of the remaining four factors—(2) Defendant's choice of forum and (4) the convenience of the parties—and fails to carry its burden to show that those factors strongly warrant transfer. In fact, each of the four factors weighs *against* transfer.

1. Plaintiffs' Choice of Forum Is Entitled to Substantial Deference Because Strong Connections Exist Between This Case and the District of Columbia.

In cases where venue is properly laid in a forum, courts "must afford substantial deference to the plaintiffs' choice of forum." *GYC I,* 180 F. Supp. 2d at 128; *see also Wilderness Soc'y v. Babbitt,* 104 F. Supp. 2d 10, 12 (D.D.C. 2000) ("Absent specific facts that would cause a district court to question plaintiffs' choice of forum, plaintiffs' choice is afforded substantial deference."). Thus, a defendant seeking to transfer a case to another jurisdiction must "establish that the added convenience and justice of litigating in its chosen forum overcomes the [substantial] deference ordinarily given to the plaintiff's choice." *Rossville Convenience & Gas*, 453 F. Supp. 3d at 387 (quoting *Sheffer v. Novartis Pharms. Corp.*, 873 F. Supp. 2d 371, 376 (D.D.C. 2012)). If "a connection between the underlying case and this district . . . exists, the plaintiff's choice of forum is entitled to substantial deference which outweighs the deference conferred on the defendant's choice of forum." *Nat'l Ass'n of Home Builders*, 675 F. Supp. 2d at 180 (citations omitted).

Plaintiffs "have significant ties to the District of Columbia." *Wilderness Soc'y,* 104 F. Supp. 2d at 14. Lead Plaintiff Friends of the Earth has its headquarters in this District, and the two other national Plaintiffs—Sierra Club and Center for Biological Diversity—have offices here. *See* the Declarations submitted herewith. Where at least one plaintiff "has its headquarters in the District of Columbia, that "plaintiff is entitled to a strong presumption in favor of the chosen forum." *Sierra Club v. Van Antwerp,* 523 F. Supp. 2d 5, 11 (D.D.C. 2007); *see also Wilderness Soc'y,* 104 F. Supp. 2d at 14 (denying transfer where "[f]our of the [eight] plaintiffs are headquartered in Washington, D.C. and two others have offices here"); *GYC I,* 180 F. Supp. 2d at 129 (denying transfer where "two of the five plaintiffs . . . have offices in the District of Columbia").

In addition, Plaintiffs have "demonstrated a meaningful connection between the District of Columbia and the challenged decision because D.C. is where 'the claim arose.'" *Mashpee Wampanoag Tribe*, 2019 WL 2569919, at *7 (citation omitted). The Department of the Interior "made the challenged decision in the District of Columbia," issuing the August 31, 2021 Record of Decision "from [its] national headquarters in D.C." *Id.* "Consequently, the plaintiffs are entitled to substantial deference in their choice of forum, and this factor weighs against permitting transfer to the" Western District of Louisiana. *Nat'l Ass'n of Home Builders*, 675 F. Supp. 2d at 180.

The cases on which Intervenor relies to claim deference for its choice of forum are easily distinguished, as none of the plaintiffs in the cited cases were at home in this District. *See Sandpiper Residents Ass'n v. U.S. Dep't of Hous. & Urb. Dev.,* Civ. A. No. 20-1783 (RDM), 2021 WL 2582004, at *3 (D.D.C. June 23, 2021) ("Plaintiffs do not reside in the District of Columbia."); *Gulf Restoration Network*, 87 F. Supp. 3d at 312 ("Plaintiff is not a District of

Columbia resident"); *Alabama v. U.S. Army Corps of Eng'rs*, 304 F. Supp. 3d 56, 63 (D.D.C. 2018) (finding Plaintiff State of Alabama chose "a forum that is not its home forum") (citation omitted); *Mandan, Hidatsa & Arikara Nation v. U.S. Dep't of the Interior*, 358 F. Supp. 3d 1,10 (D.D.C. 2019) ("[T]he Tribe's choice of forum is entitled to less deference here [because] the District of Columbia is not [the Tribe's] home forum . . .."). In such cases, "deference to [a] plaintiff's choice of forum is lessened." *Sandpiper Residents Ass'n*, 2021 WL 2582004, at *3 (citation omitted). But that is not the case here.[7]

Deference to the plaintiff's choice of forum was further eroded in several cases that Intervenor cites because there were "no meaningful ties to [the] district." *Alabama*, 304 F. Supp. 3d at 63; *see also Mandan, Hidatsa & Arikara Nation*, 358 F. Supp. 3d at 10 ("That some of the federal defendants are located in the District of Columbia does not create a substantial factual nexus between the Tribe's complaint and the District."). Here, in contrast, the decision that Plaintiffs challenge was made in this district. "Absent any allegation that the decisions were made by officials located in [the Western District of Louisiana]"—and Intervenor proffers no evidence of that—"this case is distinguishable from cases in which the court has determined that transfer was appropriate notwithstanding the fact that the relevant decisions were made in the District of Columbia." *Nat'l Ass'n of Home Builders*, 675 F. Supp. 2d at 179.

That some of the effects of Lease Sale 257 will be felt in the Western District of Louisiana does not alter the calculus favoring Plaintiffs' choice of forum. Rather, for Intervenor's choice of forum to merit "some weight," Intervenor must establish that "the harm

[7] Even if the lead Plaintiff here were not in its home forum, Plaintiffs' "permissible choice of forum" would still be "entitled to *some* deference, and the burden of persuasion [would] remain[] with [Intervenor]." *Sandpiper Residents Ass'n*, 2021 WL 2582004, at *3.

from a federal agency's decision is felt ***most directly*** in the transferee district." *Gulf Restoration Network*, 87 F. Supp. 3d at 313 (emphasis added). Intervenor fails to carry its evidentiary burden.

Intervenor does not provide any admissible evidence that the alleged harm to "the wellbeing of Louisiana citizens who rely on the oil and gas industry" from canceling Lease Sale 257 would be felt most directly in the Western District of Louisiana, rather than extend equally into other districts, including the Eastern District of Texas, which would also have lease sales off its shores. Dkt. 25 at 9–10; *see* Ex. 2 at 8.[8] Notably, in its lawsuit, Intervenor alleges economic harm to *all* participating Gulf of Mexico states (Alabama, Mississippi, Texas), not just Louisiana. *See Louisiana v. Biden*, Dkt. 1 at 6–10 (Compl. ¶¶ 8–9, 13, 18). Unlike *Gulf Restoration Network*, where "the economic and environmental impacts of the Project will be felt most acutely in the Southern District of Alabama," Intervenor's alleged economic harm would be regionwide. 87 F. Supp. 3d at 313.

The harms that Plaintiffs allege would result from proceeding with Lease Sale 257 likewise would affect the *entire* Gulf of Mexico region, not one state or district more than another. *See e.g.* Dkt. 1 at 18 (Compl. ¶ 64) ("New oil and gas leasing will only amplify climate harms in the Gulf region and throughout the nation."). In the challenged record of decision and

[8] Intervenor cites a newspaper article detailing the federal offshore oil and gas revenue that Intervenor received in 2019. Dkt. 25 at 17 n.6 (citing https://www.ecomagazine.com/news/policy/louisiana-s-share-of-federal-offshore-oil-gas-revenue-increases-14-4-percent-for-coastal-restoration). This article is inadmissible hearsay. *See Spotts v. United States*, 562 F. Supp. 2d 46, 54–55 (D.D.C. 2008). Even if it were admissible, it does not support Intervenor's claim that the challenged decision most directly affects the Western District of Louisiana. The article states that parishes in that district (Calcasieu, Cameron, Iberia, St. Martin, St. Mary, and Vermillion) received about $5.8 million, less than half the $12.3 million that went to parishes in the Eastern District of Louisiana (Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Tangipahoa, and Terrebonne). *See* https://www.usmarshals.gov/district/la-m/general/area.htm (areas of service for Louisiana's judicial districts).

Lease Sale EIS, Federal Defendants acknowledge that "[p]ossible adverse impacts from expected OCS oil- and gas-related activities and reasonably foreseeable accidental events" throughout the Gulf of Mexico region "include degradation of wetlands, coastal resources, benthic habitat, and pelagic habitat; behavioral changes to fish, sea turtles, marine mammals, and birds; mortality of individual organisms; and changes in air and water quality." Ex. 1 at 3; *see also* Ex. 2 at 13–16. The impacts of the challenged project are not limited to the Western District of Louisiana.

Even if Intervenor could prove that the challenged decision's "effects would perhaps fall most strongly in and around" the Western District of Louisiana (and it has not), given that this case "involves a decision made at the *headquarters* of a federal agency with overwhelmingly *regional*—and perhaps even national—effects," Plaintiffs' choice of forum "deserves substantial deference and counsels against transfer." *Pritzker*, 58 F. Supp. 3d at 6. Denial of transfer is further warranted based on the forum preference of the Federal Defendants, which Intervenor ignores. Federal Defendants are on record opposing transfer to the Western District of Louisiana. *See* Dkt. 22 at 3.

2. Plaintiffs' Claims Arose in this District.

"An administrative claim is said to arise in this district if it was drafted, signed, and published in this district, and if the controversy 'stems from the formulation of national policy on an issue of national significance.'" *Pritzker*, 58 F. Supp. 3d at 6 (quoting *GYC II*, 2008 WL 1862298, at *5). While Bureau staff in New Orleans (which lies in the Eastern District of Louisiana) were also involved, the August 31, 2021 Record of Decision was issued "pursuant to authority belonging only to the Secretary [of the Interior], and the Secretary['s deputy] ultimately signed them." *Id.*; *see also GYC II*, 2008 WL 1862298, at *5. Intervenor does not question that Plaintiffs' claims arise in this District, so this factor is undisputed. In any event, "this case is

typical of cases involving federal regulations promulgated in the capital—cases in which courts have refused to authorize transfer." *Pritzker*, 58 F. Supp. 3d at 6.

3. The District of Columbia Is a Convenient Forum.

"In an APA case, 'neither the convenience of the parties and witnesses nor the ease of access to sources of proof weighs heavily in the analysis.'" *Tuttle v. Jewell*, 952 F. Supp. 2d 203, 208 (D.D.C. 2013) (quoting *Pueblo v. Nat'l Indian Gaming Comm'n*, 731 F. Supp. 2d 36, 42 (D.D.C. 2010)). Intervenor nonetheless asserts that transfer to the Western District of Louisiana would somehow "provide a central location to collect information." Dkt. 25 at 10. Intervenor's arguments ignore that judicial review of Plaintiffs' claims "is limited to the record developed by Interior." *Tuttle*, 952 F. Supp. 2d at 208. Pursuant to this Court's order, Federal Defendants will file the record by October 8, 2021, the same day Intervenor's reply brief is due. Dkt. 24 at 4. Transferring this case after the record is already on file in this Court would do nothing to expedite these proceedings.

On the contrary, transfer can only delay a decision on the merits of Plaintiffs' claims. Under the expedited briefing schedule this Court has established, Plaintiffs will file their motion for summary judgment on October 13, 2021, only two business days after Federal Defendants file the record. *Id.* Briefing will be completed by December 10, 2021. *Id.* The parties developed this schedule to ensure the Court can consider the merits of Plaintiffs' claims prior to January 1, 2022, "the earliest date a lease would be issued and effective." *Id.* (quoting Dkt. 19-1 at 3 (Thomas Decl. ¶ 12)). Particularly given the congestion in the Western District of Louisiana (*see infra* at p. 38–39), there is no basis for Intervenor's claim that transferring this case after summary judgment briefing is already underway would expedite this case.

In the final analysis, for the "convenience of the parties" factor to weigh in favor of transfer, litigating in the transferee court must not merely "shift inconvenience [from one party to

another] . . . but rather should lead to an overall increase in convenience for the parties." *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 771 F. Supp. 2d 42, 48 (D.D.C. 2011). Intervenor fails to carry its burden to proffer "documented proof" that litigating in this forum would cause it "to suffer a hardship." *Id.* Intervenor's history of voluntarily filing suit in this District belies any claim that litigating this case here would be unduly inconvenient. *See Wilderness Soc'y,* 104 F. Supp. 2d at 15; *see, e.g., Louisiana v. Salazar*, 170 F. Supp. 3d 75 (D.D.C. 2016) (challenge to Department of Interior's revised approach for calculating oil and gas revenues); *United States v. AT&T Inc.*, No. 1:09-cv-1932 (HHK), 2010 WL 1726890 (Feb. 10, 2010). In contrast, forcing Plaintiffs and Federal Defendants to leave their home forum and litigate in the Western District of Louisiana—where Plaintiffs and Federal Defendants have no offices—would increase the inconvenience for these parties. *See Pritzker*, 58 F. Supp. 3d at 6. Under the facts of this case, "the convenience of the parties clearly weighs in favor of denying transfer." *GYC II*, 2008 WL 1862298, at *4.

B. The Public Interest Factors Do Not Support Transfer.

When considering whether to transfer venue, courts generally consider three public-interest factors: "(1) the transferee's familiarity with the governing laws and the pendency of related actions in the transferee's forum; (2) the relative congestion of the calendars of the potential transferee and transferor courts; and (3) the local interest in deciding local controversies at home." *GYC I*, 180 F. Supp. 2d at 128 (citation omitted). In addition, "public-interest considerations that weigh against a transfer include the possibility that the defendants are forum shopping." *Id.* at 129. In this case, the public-interest factors all weigh against transfer.

1. Considerations of Judicial Economy Weigh Against Transfer.

To determine whether transferring venue would promote judicial economy, courts consider "the transferee's familiarity with the governing laws, and the possible pendency of a related case." *Id.*

a. Familiarity with Governing Law.

Consideration of familiarity with the governing law weighs in favor of retaining venue in this District. Generally speaking, "no federal court is more competent than any other to resolve questions of federal law, which are the only legal questions at issue here." *BOEM,* 962 F. Supp. 2d at 78. That said, "this Court has more experience with APA cases, which would weigh against transfer." *Stewart*, 308 F. Supp. 3d at 248; *see also Tuttle*, 952 F. Supp. 2d at 208 (finding relevant that D.C. "receives more APA claims than its western colleagues"); *Mashpee Wampanoag Tribe*, 2019 WL 2569919, at *8 ("D.C. Circuit is as familiar [with the APA], if not more so, than the First Circuit.").

There is no basis for Intervenors' contrary claim that the Western District of Louisiana has "specialized knowledge of both the parties, their history of litigation, and the statute at issue in the present litigation." Dkt. 25 at 14 (quoting *Wyandotte Nation v. Salazar*, 825 F. Supp. 2d 261, 267 (D.D.C. 2011)). Unlike *Wyandotte Nation*, where the District of Kansas had decided numerous cases over a 15-year period regarding "the plaintiff's rights under the Land Claim Settlement Act," 825 F. Supp. 2d at 267, Intervenor only points to one case in the Western District of Louisiana involving disputes over oil-and-gas leasing in the Gulf of Mexico: *Louisiana v. Biden*, Intervenor's pending challenge to the leasing pause.

Moreover, Intervenor's arguments presuppose that, if the Court were to transfer this case, the Western District would assign it to the Hon. Terry A. Doughty—the judge presiding over Intervenor's case—who would then consolidate the two cases. There is no basis for Intervenor's

assumption, particularly given Judge Doughty's recent statement that the issue in the two cases "are not the same." *Louisiana v. Biden*, Dkt. 167 at 2.

Related cases must involve "similar facts, parties, and legal issues" *Corvel Corp. v. Pain Mgmt.*, No. 06-CV-524, 2006 WL 2457627, at *1 (W.D. La. Aug. 22, 2006). None of the Plaintiffs in this case is a party in *Louisiana v. Biden*, and only one of the defendants in Intervenor's lawsuit—Secretary Haaland—is also a defendant in this case. *See supra* at pp. 2–6. Moreover, as Judge Doughty has noted, the legal issues in the two cases are entirely different. This case challenges Federal Defendants' failure to comply with NEPA, while Intervenor's lawsuit claims that Executive Order 14008 and "all actions taken in reliance upon [it]" violate OCSLA and the MLA. *See Louisiana v. Biden*, Dkt. 1 at 6 (Compl. ¶ 7). Because this case and Intervenor's case involve "unrelated claims against different parties," they are "unrelated" and ineligible for consolidation. *Webb v. Morella*, Civ. A. No. 10-01557, 2014 WL 3407084, at *6 (W.D. La. July 10, 2014).

Even if Intervenor were correct that transfer would result in Judge Doughty being assigned this case, Intervenor proffers no evidence that he has any particular expertise in applying NEPA, which is not at issue in *Louisiana v. Biden*. In the cases on which Intervenor relies, the transferee court had extensive experience with "the precise factual and legal situation" raised in the plaintiffs' cases. *F.T.C. v. Cephalon, Inc.*, 551 F. Supp. 2d 21, 30 (D.D.C. 2008); *see also Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 57 (D.D.C. 2000) (noting "the California court's familiarity with the parties' dispute"); *Alabama*, 304 F. Supp. 3d at 68 ("[T]he Eleventh Circuit's familiarity with the issues and parties involved in this controversy is paramount."). That is not the case here.

Particularly given this Court's superior familiarity with APA lawsuits and the expedited summary judgment schedule already in place, there is no reason to credit Intervenor's assertion that transfer "will likely expedite a final judgment on all claims." Dkt. 25 at 14. Far from promoting judicial economy, transfer would likely delay the expediated briefing schedule, prejudicing Plaintiffs. *See* Dkt. 11 at 5 ("[F]ailure to expedite could deprive the requested relief of much of its value."). Even if this case were consolidated with *Louisiana v. Biden* (and there is no reason to assume it would be), these cases are not on "parallel timelines." Dkt. 25 at 13. Summary judgment briefing in this case is set to conclude on December 10, 2021. *See* Dkt. 22 at 2. In contrast, briefing in *Louisiana v. Biden*—where the parties have requested and secured multiple extensions of the briefing deadlines—is not currently set to conclude until around February 2022, after the lease sale at issue in this case would likely become effective. *Louisiana v. Biden*, Dkt. 166 at 1; Dkt. 19-1 at 3 (Thomas Decl. ¶ 12), (stating "the earliest date a lease would be issued and effective is January 1, 2022"). Once leases are issued, procedural hurdles make it more complicated for the Bureau to voluntarily cancel the leases. *See, e.g.*, 43 U.S.C. § 1334(a)(2). And some courts have been reticent to vacate leases once issued. *See. e.g.*, *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 85 (D.D.C. 2019). It was precisely to avoid such prejudice that this Court ordered the expedited briefing schedule.

Even if this case were consolidated with Intervenor's pending litigation, consolidating the administrative record in this case with the one in *Louisiana v. Biden* would make proceedings incredibly cumbersome, delaying—not expediting—the merits briefing. The administrative record in *Louisiana v. Biden* is large, covering onshore and offshore leases across the country under the entire 2017–2022 Five-Year Program. The administrative record here is anticipated to be small as it covers only Lease Sale 257 in the Gulf of Mexico, a separate decision that came

out months after Intervenor filed its lawsuit in *Louisiana*. Pursuant to this Court's order, Federal Defendants will file the administrative record in this case by October 8, 2021, permitting expedited resolution of the parties' disputes. *See* Dkt. 24 at 4.

As the Western District of Louisiana has no demonstrated familiarity with the law governing Plaintiffs' claims and transfer would preclude expeditious and timely resolution of this case, this factor weighs against transfer.

b. There Is No Prospect for Inconsistent Judgments in This Case and Intervenor's Case.

This case and Intervenor's pending lawsuit in the Western District of Louisiana involve different final agency actions, different issues, different legal claims, and different parties, such that there is no prospect of inconsistent judgments. While both cases involve the same general topic—oil and gas leasing in the Gulf of Mexico—that mere fact does not overcome the substantial deference owed to Plaintiffs' choice of forum.

First, Plaintiffs' and Intervenor's cases challenge different final agency actions. Intervenor misleadingly states: "Plaintiffs' complaint raises the central question of ***whether Lease Sale 257's ROD*** is arbitrary and capricious or contrary to law. Louisiana, in turn, argues that rescinding ***the ROD*** is arbitrary and capricious under the APA and conflicts with OCSLA's statutory command of expeditious development." Dkt. 25 at 13 (emphasis added). Intervenor implies that both cases challenge the same record of decision, but that is simply not accurate. In this case, Plaintiffs challenge the Department of the Interior's August 31, 2021 Record of Decision to hold Lease Sale 257, which will open 80.8 million acres in the Gulf of Mexico to oil and gas exploration. In *Louisiana v. Biden*, Intervenor challenges an entirely separate decision made more than six months earlier: the Bureau's February 18, 2021 decision to rescind an earlier

record of decision that had authorized the leasing of a smaller area (79.7 million acres). *See supra* at pp. 2–6.

Because Plaintiffs and Intervenor challenge different agency decisions in their respective lawsuits, the situation here is distinguishable from the cases Intervenor cites where litigation in the transferee district and this District both involved "a single transaction or event." *WildEarth Guardians v. U.S. Bureau of Land Mgmt.,* 922 F. Supp. 2d 51, 55 (D.D.C. 2013); *see id.* (stating case in transferee district "addresses two of the same BLM leasing decisions at issue in the present case"); *Holland v. A.T. Massey Coal.*, 360 F. Supp. 2d 72, 74–75 (D.D.C. 2004) (both cases involved the Commissioner of Social Security's June 2003 Premium Decision); *Cephalon*, 551 F. Supp. 2d at 29 ("[T]wo cases in two different courts aris[e] out of precisely the same conduct"); *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 27 (D.D.C. 2002) (noting both cases "involve[] central questions regarding the future of the SFAAP property"); *Env't Def. v. U.S. Dep't of Transp.,* Civ. A. No. 06-2176 (GK), 2007 WL 1490478, at *2–3 (D.D.C. May 18, 2007) (both lawsuits challenged approval of Intercounty Connector project).

Second, the two cases involve different central issues and legal claims. The central issue in *Louisiana v. Biden* is whether "a Pause of federal oil and gas leasing [is] in violation of two Congressional statutes—MLA and OCSLA." *Louisiana v. Biden*, 2021 WL 1885650, at *17 (W.D. La. June 15, 2021). In contrast, the core issue in this case is whether Federal Defendants violated a separate statute, NEPA, by relying on arbitrary analysis and failing to prepare a supplemental environmental impact statement before finalizing their decision on August 31, 2021, to hold Lease Sale 257. *Louisiana v. Biden* does not concern NEPA and the adequacy of the environmental review of the lease sales. *Compare* Dkt. 1 at 46–51 (Compl. ¶¶ 169–195) *with*

Louisiana v. Biden, Dkt. 1 at 43–50 (Compl. ¶¶ 127–177).[9] As Judge Doughty, succinctly put it: "the issues are not the same." *Louisiana v. Biden*, Dkt. 167 at 2.

Because the legal claims in the two cases are entirely different, this case bears no relation to the cases Intervenor cites where the claims in pending litigation in the transferee district were "essentially identical to the claims alleged in [the plaintiff's] case" and "both the facts and the legal issues in each complaint overlap[ed]." *Barham v. UBS Fin. Servs.,* 496 F. Supp. 2d 174, 180 (D.D.C. 2007); *see also Cephalon*, 551 F. Supp. 2d at 29 ("[T]he two matters involve identical issues of fact and law."); *Env't Def.*, 2007 WL 1490478, at *5 (lawsuits involved overlapping NEPA claims); *WildEarth Guardians*, 922 F. Supp. 2d at 55 ("[T]he Forest Service case raises NEPA claims about the FEIS very similar to those raised in the present matter . . ..").

Third, there is absolutely no prospect of inconsistent judgments in the two cases. In this case, Plaintiffs seek to ensure that Federal Defendants comply with NEPA before proceeding with Lease Sale 257, with the primary relief sought being vacatur of the August 31, 2021 Record of Decision and any leases issued pursuant to it. *See* Dkt. 1 at 51–52. If Intervenor were to prevail in *Louisiana v. Biden*, the court would conclude that the leasing pause violates OSCLA and the MLA and would prohibit agency actions based on Executive Order 14008. *See Louisiana v. Biden,* Dkt. 1 at 50 (Compl. ¶ 177). Such a ruling would not, however, relieve Federal Defendants of their legal duty to comply fully with NEPA prior to holding any lease sale, including Lease Sale 257. After all, "a court may not order a federal agency to violate a valid statute." *Dilone v. Nielsen*, 358 F. Supp. 3d 490, 501 (D. Md. 2019).

[9] Intervenor questions why the Conservation Groups did not raise their NEPA claims when seeking intervention in *Louisiana v. Biden*. Dkt. 25 at 5 n.3. The simple answer is that the record of decision that Plaintiffs challenge here was not issued until August 31, 2021, and, thus, did not exist on March 31, 2021, when the Conservation Groups sought intervention.

The *Louisiana v. Biden* court understands this. In issuing its preliminary injunction, the court noted that "there is a huge difference between ***the discretion to stop or pause a lease sale because the land has become ineligible for a reason such as an environmental issue***, and, stopping or pausing a lease sale with no such issues and only as a result of Executive Order 14008." *Louisiana*, 2021 WL 2446010, at *13 (emphasis added). It was only the latter situation—delays in lease sales made in the absence of identified violations of environmental requirements—that the court found troubling. The court explained that ***"[t]he agencies could cancel or suspend a lease sale due to problems with that specific lease***, but not as to eligible lands for no reason other than to do a comprehensive [policy] review pursuant to Executive Order 14008." *Id*. at *14 (emphasis added). Because the Bureau had relied solely on the executive order to postpone Lease Sale 257 and had no "other reason to delay the sale," the *Louisiana* court concluded that "the Government Defendants were legally required to go through with the sale of Lease Sale 257." *Id*. at *20. Nothing in the preliminary injunction order, however, suggests that Federal Defendants would be obliged to proceed with the sale if they had "any other valid reason," such as the need to comply first with NEPA. *Id*. at *21.

Because Intervenor's lawsuit addresses only whether Executive Order 14008 can justify the postponement of lease sales, and not whether Federal Defendants have complied with all legal requirements—including NEPA—to proceed with Lease Sale 257, there is no prospect here of inconsistent judgments. Unlike *Hispanic Affairs Project v. Perez* and the other cases on which Intervenor relies, where lawsuits pending in two districts had to "come to the same conclusion," the remedy in each of the two cases here would be distinct, with the *Louisiana* court addressing the legality of the executive order and this Court determining whether the record of decision for one lease sale violated NEPA. 206 F. Supp. 3d 348 (D.D.C. 2016), *aff'd sub nom.* 901 F.3d 378

(D.C. Cir. 2018); *see also Env't Def.*, 2007 WL 1490478, at *5 ("[B]oth suits seek as their ultimate relief declaratory and injunctive relief invalidating the Federal Defendants' approval of the ICC Project."); *WildEarth Guardians,* 922 F. Supp. 2d at 55 (stating the two cases were "challenging the same FEIS for . . . identical reasons").

This Court has declined to transfer venue in cases with far more closely intertwined lawsuits than are present here. In *Mashpee Wampanoag Tribe*, the Tribe challenged a 2018 decision by then-Secretary of the Interior Ryan Zinke that the Tribe did not satisfy the definitions of "Indian" under the Indian Reorganization Act ("IRA"). 2019 WL 2569919, at *1. At the time the Tribe filed suit, there was already a case pending in the First Circuit that claimed the Tribe did not qualify as "Indian" under IRA and, accordingly, the Department of the Interior should not have decided in 2015 to acquire land in trust for the Tribe. *Id.* at *3. In that earlier case, the Hon. William D. Young of the District of Massachusetts had agreed that the Tribe did not qualify as "Indian" and had remanded to the Department of the Interior for further proceedings. *Id.* at *3–4. Judge Young subsequently clarified that his determination of the Tribe's status did not bind the Department on remand. *Id.* at *4. It was on remand from Judge Young (and while the district court's decision was on appeal) that Secretary Zinke made the 2018 decision that the Tribe then challenged. *Id.* at *4–5.

The plaintiffs in the first lawsuit intervened in the Tribe's case and moved to transfer it to Judge Young. *Id.* at *1. The intervenors argued that transfer was warranted because "the Mashpee are in Massachusetts, Judge Young has 'already waded significantly into the specific legal issue,' and the impact of any decision on the status of the lands . . . will be felt in Massachusetts." *Id.*

Even though Judge Young had already issued a ruling on "the precise legal question at issue" in the Tribe's lawsuit and the Massachusetts case was still pending on appeal, this Court denied the transfer motion. *Id.* at *8. The Court reasoned that Judge Young had not issued a definitive ruling on the legal question and, moreover, had "focused on a different agency decision"—"the 2015 ROD . . ., not the 2018 ROD that was issued on remand and is the subject of this lawsuit." *Id.* Because "Judge Young focused on a different agency decision altogether," the court concluded that "the duplicative use of judicial resources is not a concern here." *Id.* at *8 n.8.

In *Detroit International Bridge Company v. Government of Canada*, this Court denied a motion to transfer to the Eastern District of Michigan even though similar litigation was already proceeding in that district. 787 F. Supp. 2d 47, 53 (D.D.C. 2011). This Court held that although there would "be some factual overlap between the two cases," the matters were "sufficiently distinct in terms of relevant parties, facts and the nature of the claims and relief." *Id*. at 54.

In *Greater Yellowstone Coalition v. Bosworth*, the court denied a motion to transfer an action to the District of Montana despite arguments that transfer to a judge who was presiding over "closely related issues" "would promote judicial economy." 180 F. Supp. 2d at 129. The *Greater Yellowstone Coalition* plaintiffs claimed the U.S. Forest Service had renewed a cattle-grazing permit for the Horse Butte Allotment without analyzing the environmental impacts of the permit on bison. *Id.* at 126. The court denied the transfer motion because it found the issues before the Montana court to be "very different from the instant case." *Id.* at 129. While both cases involved the same allotment, the Montana case focused "on the impact of the Horse Butte Capture Facility on eagles and other birds, whereas this case focuses on the reissuance of the Horse Butte grazing permit and addresses its effect on the bison." *Id.*

Similarly, while this case and *Louisiana v. Biden* both raise claims related to Lease Sale 257, Intervenor's claims in the Western District of Louisiana are "very different from the instant case." *Id.* Accordingly, "the pendency of [Intervenor's case] does not support a transfer." *Id.* at 130.

In addition, this Court must guard against potential forum shopping. Intervenor's request to transfer this case to the Western District of Louisiana appears to seek to secure the same judge who recently issued a preliminary injunction in Intervenor's favor. *See* Dkt. 25 at 19 n.7 (urging "consolidation and transfer" with *Louisiana v. Biden*). Such maneuvering implicates the "systemic integrity" that this Court "must weigh in the balance." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30 (1988); *see also Ferens*, 494 U.S. at 523 ("§ 1404(a) should not create or multiply opportunities for forum shopping."). "The plausible possibility of forum shopping weighs against granting [Intervenor's] motion." *GYC I,* 180 F. Supp. 2d at 130.

2. The Congestion in the Western District of Louisiana Weighs Against Transfer.

"When a proposed transferee court's docket is 'substantially more congested' than the other, this factor weighs against transfer." *Mashpee Wampanoag Tribe*, 2019 WL 2569919, at *8 (citation omitted). "'In this district, potential speed of resolution is examined by comparing the median filing times to disposition in the courts at issue.'" S*paeth v. Michigan State Uni. College of Law*, 845 F. Supp. 2d 48, 60 (D.D.C. 2012) (quoting *Pueblo*, 731 F. Supp. 2d at 40 n.2). The median time from case filing to disposition for civil cases in this district is only 4.8 months, the second fastest of the Nation's 94 judicial districts. Ex. 16 (U.S. District Courts–Combined Civil and Criminal Federal Court Management Statistics (June 30, 2021)). In contrast, the Western District of Louisiana takes over twice as long—10.8 months, making it the 25th slowest in the country. *Id.* at 3. Additionally, the number of pending cases per judge in the Western District of

Louisiana is 525, compared to only 396 in this District. *Id.* at 2–3. Such a significant difference—particularly given the time-sensitive nature of this case—weighs against transfer. *See, e.g.*, *Ouachita Riverkeeper, Inc. v. Bostick,* Civ. A. No. 12-803 (CKK), 2013 WL 12324686, at *3 (D.D.C. Jan. 29, 2013) (finding that the relative congestion weighs against transfer because "it takes nearly twice as long for a civil case to reach a final disposition in the Western District of Arkansas compared to the District of Columbia").

3. This Case Concerns National Issues, and Not Local Issues.

The "local interest" factor favors "having local controversies decided at home." *Stewart*, 308 F. Supp. 3d at 249. Intervenor claims that "the localized interest . . . predominates." Dkt. 25 at 18. However, Plaintiffs' challenge to Federal Defendants' decision to sell leases in 80.8 million acres across the Gulf of Mexico is manifestly a "national," not a local, controversy. The mere existence of local interest in a controversy does not itself make the controversy "localized." "The [central] question . . . is not whether the people of [Louisiana] have an interest—even a strong one—in the outcome of this case. Instead, the Court must determine whether this is a 'question[] of national policy or significance.'" *Pritzker*, 58 F. Supp. 3d at 9 (second alteration in original) (quoting *BOEM*, 962 F. Supp. 2d at 77). Because "this case [is] of national, rather than local, importance, this factor weighs heavily against transfer." *Ctr. for Biological Diversity v. Ross,* 310 F. Supp. 3d 119, 127 (D.D.C. 2018).

This District rejected claims nearly identical to Intervenor's in *BOEM*, which also challenged the approval of oil and gas leases in the Gulf of Mexico. 962 F. Supp. 2d at 72. The court denied a motion to transfer to the Southern District of Alabama, finding that the challenged lease sales were "not 'overwhelmingly local in nature'" because "[t]he communities concerned with and affected by these lease sales are spread throughout the Gulf Coast region, not concentrated in one city or county." *Id.* at 76 (citation omitted); *see also id.* at 78 ("The court

does not doubt that many Alabamans are acutely interested in the outcome of this case, as are many citizens of Texas, Louisiana, Mississippi, and Florida."). Moreover, because the plaintiffs in *BOEM* had alleged violations of national environmental statutes based on activities that would take place on the outer continental shelf, the court found that "it cannot fairly say that [the case was] a 'localized controversy' that should fairly be heard in Alabama and nowhere else." *Id.* at 78.

Like *BOEM*, this case does not involve a purely localized controversy. Plaintiffs challenge Federal Defendants' decision to hold a lease sale in large swathes of the Gulf of Mexico, alleging "violations of national environmental statutes." *Id.* at 78. Lease sale decisions on the outer continental shelf always involve questions of "national policy or national significance" because they open "a vital national resource reserve held by the Federal Government for the public" and take place "beyond the bounds of any state." *Id.* at 77 (quoting 43 U.S.C. § 1332(3)). This case pertains to species, habitats, energy development, and communities across the *entire* Gulf of Mexico. Moreover, "[n]ew oil and gas leasing will only amplify climate harms in the Gulf region and throughout the nation." Dkt. 1 at 18 (Compl. ¶ 64). This controversy is not "localized" to only the Western District of Louisiana any more than the controversy in *BOEM* was not "localized" to the Southern District of Alabama. *See BOEM,* 962 F. Supp. 2d at 77–78. As in *BOEM*, this Court should conclude that the local interest factor does not justify "depriv[ing] the plaintiffs of their prerogative to choose where they will sue." *Id.* at 78.

BOEM's conclusion that "the Southern District of Alabama would not treat this case as related to the earlier, similar matter" does not, as Intervenor argues, call for a different outcome here. *Id.* at 79. The question whether a related case was pending in the Southern District of

Alabama had no bearing on the court's conclusion in *BOEM* that the controversy over oil-and-gas leasing in the Gulf of Mexico is national, not local, in nature. *See id.* Moreover, the *BOEM* court expressly stated that, even if the transferee court treated *BOEM* as a related matter, "that fact would not suggest that transfer there was in the interest of justice." *Id.* So too here.

BOEM is far from the only case where this Court concluded that "questions of national policy or national significance are quite appropriately resolved here (or, at least, no more appropriately resolved elsewhere)." *Id.* at 77; *see also Forest Cnty. Potawatomi Cmty. v. United States*, 169 F. Supp. 3d 114, 118 (D.D.C. 2016) ("Where a case involves . . . 'national implications,' the case cannot be considered the type of purely 'localized controversy' that would warrant transfer to the local district court.") (quoting *Stand Up for Cal. v. U.S. Dep't of the Interior*, 919 F. Supp. 2d 51, 64 (D.D.C. 2013)). Such cases include ones where the challenged activity was taking place in a single judicial district (as opposed to Lease Sale 257, which would take place outside any judicial district and affect many districts). For example, in *GYC II*, the court denied transfer of a challenge to the regulation of recreational snowmobile use in Yellowstone National Park to the District of Wyoming, explaining that "Plaintiffs' ties to the District of Columbia . . . and the national scope of the environmental issues at stake," among other factors, counseled against transfer, and that "[t]he management of the National Parks and the interpretation of federal environmental statutes are nationwide concerns," not localized controversies. 2008 WL 1862298, at *7. In *Wilderness Society*, the court refused to transfer a challenge to the decision to begin oil and gas leasing in the National Petroleum Reserve in Alaska to the District of Alaska, because the case was "not a local dispute affecting only the local residents of the Northern Slope of Alaska," but instead "affect[ed] a national energy reserve the management of which has received national attention." 104 F. Supp. 2d at *17. And, in *Otay*

Mesa Property, L.P. v. U.S. Department of Interior, the court denied a motion to transfer a challenge to a designation of critical habitat in San Diego County for endangered fairy shrimp to the Southern District of California, explaining that the lawsuit "affects the residents of San Diego County no more directly than it does the residents of the District of Columbia, or any other district within the United States, as this is an issue regarding the critical habitat of an endangered species whose vitality is as much a national concern as it is a local concern." 584 F. Supp. 2d 122, 126 (D.D.C. 2008). *See also Detroit Intern. Bridge*, 787 F. Supp. 2d at 54 (finding that the case involved national interests about transportation infrastructure even though it would also greatly affect the citizens of the Eastern District of Michigan).

Intervenor is right when it "acknowledges that this case is . . . of national interest." Dkt. 25 at 18. As in *BOEM*, this Court should reject claims that opening "'a vital national resource reserve held by the Federal Government for the public,' to oil and gas exploration" is a "localized controversy." 962 F. Supp. 2d at 77–78 (quoting 43 U.S.C. § 1332(3)). There is no reason in this case "to deprive the plaintiffs of their prerogative to choose where they will sue." *Id.* at 78. Rather, "the national interest in having national controversies decided where they arise wins the day." *Pritzker*, 58 F. Supp. 3d at 8.

* * *

To prevail on its Motion under the convenience factors, Intervenor must establish that the balance of the factors strongly outweighs any deference to Plaintiffs' choice of forum. This lawsuit has significant connections to this district, so Plaintiffs' choice of forum is entitled to great weight. Intervenor fails to carry its heavy burden to demonstrate that the interests of convenience and justice overwhelmingly favor transfer.

CONCLUSION

Because Intervenor has not shown that venue is proper in the Western District of Louisiana, its motion "fails at the first step" and must be denied. *Garcia*, 393 F. Supp. 3d at 108. Even if this Court were to reach the second step and balance the convenience factors, Intervenor has failed to carry its "burden to show decisively that transfer is proper." *Jalloh*, 300 F. Supp. 3d at 155–56. This Court should not disturb Plaintiffs' choice to file suit in its home forum, where Plaintiffs' claims arose, and where this Court's expedited briefing schedule will ensure the parties' disputes are resolved in a timely fashion, before the lease sale at issue in this case would likely become effective. For the foregoing reasons, Plaintiffs ask the Court to deny Intervenor's motion.

Respectfully submitted this 6th day of October, 2021.

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