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May 24, 2022

Lyle W. Cayce
Clerk of Court
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *State of Louisiana, et al. v. Biden et al.*, No. 21-30505, response to Appellees'
Fed. R. App. 28(j) letter, Document# 00516325827

Dear Mr. Cayce:

This letter responds to Appellees' Rule 28(j) letter filed May 19.

Appellees' letter observes that the Bureau of Ocean Energy Management (BOEM) has announced it is not moving forward with Lease Sale 258, as well as two other lease sales that are not mentioned in their complaint. Appellees may bring separate litigation if they believe BOEM was legally required to hold those sales. The exclusive subjects of this appeal are the Executive Order and the individual lease sale postponements challenged in the Complaint. *See* Opening Brief at 21-28; Reply Brief at 4-23.

Appellees allege that BOEM's recent announcement shows that the Executive Order "has led to a systematic cancellation of lease sales for offshore and onshore oil-and-gas leasing—*despite* the district court's injunction." Letter at 2. On the contrary, as explained in BOEM's decision memorandum regarding Lease Sale 258 (attached hereto as Exhibit A¹), the agency "in no way considered or relied upon Section 208 of Executive Order 14008" in reaching that decision. The memorandum explains that the Lease Sale 258 cancellation stems from lack of industry interest, and—contrary to Appellees' view—does not constitute a significant revision to the Five-Year Program. Ex. A at 2-5; *see also* Ex. B ("Status Update" on BOEM's

¹ This memorandum was not previously public, as BOEM generally provides a shortened public explanation. But it would be part of the administrative record that would be produced if the cancellation were challenged.

website explaining lack of industry interest as well as why BOEM's decision not to go forward with the sale is consistent with BOEM's practice).

As to the two other lease sales (again, unmentioned in Appellees' complaint) that BOEM recently announced will not be held, they too are not going forward for reasons wholly independent of the Executive Order—namely, that BOEM no longer has sufficient time to hold them due to delays caused by conflicting court rulings. *See* Ex. C.

Respectfully submitted,

s/ Andrew M. Bernie

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