UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMITÉ DIALOGO AMBIENTAL, INC., *et al.*, Plaintiffs, v. FEDERAL EMERGENCY MANAGEMENT AGENCY, *et al.*, Defendants.	Civil Action No. 23-984 (CKK)

MEMORANDUM OPINION AND ORDER
(March 12, 2024)

This case concerns the Federal Emergency Management Agency's ("FEMA's") purported failure to comply with the National Environmental Policy Act ("NEPA") in connection with two electrical service projects in Puerto Rico. *See* Compl., ECF No. 1. Plaintiffs allege that FEMA's environmental analyses for these projects violated NEPA and the Administrative Procedure Act ("APA"). *Id.* ¶ 1. Pending before the Court is Defendants' [17] Motion to Transfer Venue to the District of Puerto Rico ("Mot."). Plaintiffs oppose the proposed transfer, arguing that venue is proper in the District of Columbia. *See* Pls.' Opp'n, ECF No. 18. Upon consideration of the briefing,[1] the relevant authorities, and the record as a whole, the Court shall **GRANT** Defendants' [17] Motion to

[1] The Court's consideration has focused on the following documents:

- Plaintiffs' Complaint ("Compl."), ECF No. 1;
- Defendants' Motion to Transfer Venue to the District of Puerto Rico ("Mot."), ECF No. 17;
- Plaintiffs' Opposition to Defendants' Motion to Transfer ("Pls.' Opp'n"), ECF No. 18; and
- Defendants' Reply in Support of Their Motion to Transfer Venue ("Defs.' Reply"), ECF No. 19.

Transfer Venue to the District of Puerto Rico and **TRANSFER** this matter to the United States District Court for the District of Puerto Rico.

I. BACKGROUND

The Stafford Act of 1974, 42 U.S.C. §§ 5121 et seq., authorizes FEMA to provide disaster assistance, including grant money, to States, local governments, and private entities. *See* Compl. ¶ 68; Decl. of John McKee ("McKee Decl."), ECF No. 17-1, ¶¶ 7, 9. Following Hurricane Irma and Hurricane Maria in September 2017, the U.S. Government issued a major disaster declaration, authorizing FEMA to allocate funds for disaster assistance for the Commonwealth of Puerto Rico. Compl. ¶ 77. To accomplish this objective, FEMA's Puerto Rico Office (the "Puerto Rico Office") initiated various funding processes for potential relief projects. McKee Decl. ¶ 6. In doing so, the Puerto Rico Office prepared and issued a series of Programmatic Environmental Assessments ("PEAs") to "streamline" the NEPA review process. *Id.*

NEPA requires federal agencies, including FEMA, to consider the effects of a proposed action and any reasonable alternatives on the human environment. *See* 42 U.S.C. § 4332. To implement NEPA, agencies must perform assessments of the potential environmental impacts of their proposed actions and must make that information available to the public. *Id.* Pursuant to NEPA, an agency will prepare an Environmental Assessment ("EA"), which is a public document that, *inter alia*, "[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1501.5(a). If, after preparing an EA, the agency determines that an Environmental Impact Statement ("EIS") is not necessary, it must prepare a Finding of No Significant Impact ("FONSI"), setting forth the

reasons why the proposed action will not have a significant impact on the environment. *Id.* § 1501.6. When undergoing a NEPA review, agencies can perform the review on a programmatic (i.e., broader) level, as opposed to a site-specific or project-specific level. *See* Council on Environmental Quality, *Effective Use of Programmatic NEPA Reviews* at 6 (Dec. 18, 2014), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Effective_Use_of_Programmatic_NEPA_Reviews_Final_Dec2014_searchable.pdf. As stated by the Council on Environmental Quality, a federal agency established as part of NEPA, "[p]rogrammatic analyses have value by setting out the broad view of environmental impacts and benefits for a proposed decision." *Id.* Notably, FEMA utilizes programmatic NEPA review to "assess the environmental impacts of common types of disaster recovery activities." McKee Decl. ¶ 5. FEMA utilized this programmatic approach for its NEPA review process in Puerto Rico. *Id.* ¶ 6. From August 2020 to May 2023, the Puerto Rico Office prepared several PEAs for proposed projects that are intended to "restore Puerto Rican roadway transportation system[s], utilities ([]power, water, [and] communications), public facilities, and school facilities," as well as "meet the post-disaster needs of subrecipients and increase their resiliency in response to future disaster events." *Id.* ¶¶ 6–7. Plaintiffs challenge two PEAs issued by the Puerto Rico Office in this matter. *See generally* Compl.

First, in August 2020, FEMA issued the Utility Repair, Replacement, and Realignment PEA (the "Utilities PEA"), which was geared toward "provid[ing] grant funding to restore damaged utilities [in Puerto Rico] and increase their resiliency for future weather events." *See* FEMA, *Utility Repair, Replacement, and Realignment PEA* at 9 (Aug. 2020), https://www.fema.gov/sites/default/files/2020-08/fema_ea_puerto-

rico_utility-repair-replacement-realignment_guidedbook_august-2020.pdf; McKee Decl. ¶ 6. Second, in July 2022, FEMA issued the Public Facilities Infrastructure Recovery and Resiliency PEA (the "Public Facilitates PEA"), geared toward "restor[ing] Puerto Rican public facilities and their functions to meet the post-disaster needs of subrecipients and increase the resiliency of them in response to future disaster events." FEMA, *Public Facilities Infrastructure Recovery & Resiliency* at 8 (July 2022), https://www.fema.gov/sites/default/files/documents/fema_dr-4336-4339-4473-public-facilities-pea_08182022.pdf; McKee Decl. ¶ 6. FEMA received comments in response to these PEAs, and ultimately determined that the proposed projects would not have significant environmental impacts, thereby issuing FONSIs. *See* FEMA, *Finding of No Significant Impact: Utilities PEA* (June 2021), https://www.fema.gov/sites/default/files/documents/fema_oehp-fonsi-utilities-repair_06-17-21.pdf; FEMA, *Finding of No Significant Impact: Public Facilities PEA* (Dec. 2022), https://www.fema.gov/sites/default/files/documents/fema-4336-4339-4473-public-facilities-signed-fonsi_12272022.pdf. The PEAs and FONSIs were prepared by the agency's Puerto Rico Office, and involved assistance from Region 2, whose Regional Environmental Officer, John McKee, was deployed to Puerto Rico to establish a team at the Puerto Rico Office "to conduct environmental compliance reviews of disaster recovery projects funded by FEMA." McKee Decl. ¶¶ 1, 3.

Plaintiffs are nine non-profit and community-based organizations primarily based in Puerto Rico. *See* Compl. ¶¶ 22–54. Two Plaintiffs, the Center for Biological Diversity ("the Center") and El Puente de Williamsburg, Inc. ("El Puente"), maintain offices not in Puerto Rico. *Id.* ¶ 36 (the Center has "offices throughout the United States"); *id.* ¶ 48 (El

Puente has offices in Puerto Rico and New York). Broadly, Plaintiffs advocate for the health and well-being of the communities and environment in Puerto Rico. *See generally id.* ¶¶ 22–54. Plaintiffs submitted comments to FEMA on the PEAs at issue, primarily raising concerns about "FEMA's failure to consider a distributed renewable energy alternative and the inadequacy of its environmental impacts analysis," and urging the agency to prepare an EIS. *Id.* ¶¶ 90, 96. In January 2023, after the agency issued the FONSIs, Plaintiffs sent FEMA "a letter detailing important new developments and urging [the agency] to agree" to undergo supplemental NEPA review. *Id.* ¶ 166. On January 25, 2023, Plaintiffs received a response from FEMA Administrator Deanne Criswell, stating that FEMA "views the two PEAs as a start to a more comprehensive NEPA analysis as the energy efforts advance to address immediate and long-term critical needs regarding the Commonwealth[] [of Puerto Rico's] infrastructure." Pls.' Opp'n, ECF No. 18-1, at 14. FEMA did not agree to conduct supplemental NEPA review as Plaintiffs requested. *See id.*; Compl. ¶ 174.

In April 2023, Plaintiffs initiated this lawsuit against Defendants FEMA, Department of Homeland Security, Secretary Alejandro Mayorkas, and Administrator Criswell. *See* Compl. Defendants are based in the District of Columbia. *Id.* ¶¶ 55–58. Plaintiffs allege that Defendants violated both the APA and NEPA by failing to adhere to NEPA requirements and issuing inadequate PEAs and FONSIs for proposed projects in Puerto Rico. *Id.* ¶¶ 176–180, 188–192. Plaintiffs further allege that Defendants violated NEPA and the APA by failing to prepare an EIS and for refusing to conduct supplemental NEPA review. *Id.* ¶¶ 183–186, 193–197, 199–201.

II. LEGAL STANDARD

Pursuant to 28 U.S.C. § 1404(a), a court is authorized to transfer a civil action to any other district where it could have been brought "[f]or the convenience of parties and witnesses, [and] in the interest of justice[.]" 28 U.S.C. § 1404(a). Transfer may be appropriate "[e]ven where a plaintiff has brought its case in a proper venue." *Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 53 (D.D.C. 2012) (JEB). A case should not be transferred, however, "simply because another forum, in the court's view, may be superior to that chosen by the plaintiff." *The Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 12 (D.D.C. 2000) (RWR) (citation omitted). District courts have discretion "to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

Under Section 1404(a), the movant bears the burden of establishing that transfer is warranted. *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 16 (D.D.C. 1996) (RMU) (citation omitted). The movant first must show that the plaintiff could have brought the action in the transferee forum. *Van Dusen*, 376 U.S. at 622. The movant then must establish that "considerations of convenience and the interest of justice weigh in favor of transfer" to the transferee forum. *Schmidt v. Am. Physics Inst.*, 322 F. Supp. 2d 28, 31 (D.D.C. 2004) (RMU). For the latter inquiry, a court must "weigh in the balance a number of case-specific factors," reflecting the private and public interests at stake. *Stewart Org.*, 487 U.S. at 29.

The private interest factors that courts consider include: (1) the plaintiff's choice of forum; (2) the defendant's choice of forum; (3) where the claim arose; (4) the convenience

of the parties; (5) the convenience of the witnesses; and (6) the ease of access to sources of proof. *Trout Unlimited*, 944 F. Supp. at 16. The public interest factors include: (1) the transferee forum's familiarity with the governing laws; (2) the relative congestion of the dockets of the transferee and transferor forums; and (3) the local interest in deciding local controversies at home. *Id.*

III. DISCUSSION

Defendants move to transfer this case to the District of Puerto Rico, arguing that the case could have been brought in that forum originally and the public and private interests factors weigh in favor of transfer. *See generally* Mot. Plaintiffs oppose, claiming that the private and public interests considerations weigh in favor of keeping this case in the District of Columbia. *See generally* Pls.' Opp'n. For the foregoing reasons, the Court concludes that transferring this case to the District of Puerto Rico is warranted.

A. Transferee Forum

The Court begins by asking whether the transferee forum is one where the action "might have been brought" originally. 28 U.S.C. § 1404(a). When, as here, one or more defendants is a federal agency, or an officer or employee thereof sued in their official capacity, venue is generally permissible 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. § 1391(e)(1). The Court notes that venue is appropriate in this jurisdiction, where Defendants reside. *Id.* § 1391(e)(1)(A). Venue is also appropriate in the District of Puerto Rico, where almost all Plaintiffs reside. *Id.* § 1391(e)(1)(C); *see also* Compl. ¶¶ 22, 27, 31, 33, 42, 45, 48, 53. As such, the Court concludes that the first inquiry—whether the

action could have been brought in the transferee forum—is satisfied. 28 U.S.C. § 1404(a). The Court's analysis now turns to which forum best serves the convenience of the parties and witnesses (should there be any), and the interest of justice. *Id.*

B. Private Interest Factors

Turning to the private interest factors, the Court begins with the first factor—Plaintiffs' choice of forum. A plaintiff's choice of forum is "ordinarily entitled to deference," *Nat'l Ass'n of Home Builders v. U.S. E.P.A.*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009) (RMU) (quoting *Trout Unlimited*, 944 F. Supp. at 17), and, depending on the facts, may even be entitled to "substantial deference," *id.* at 180. But this choice is given considerably less deference when it is not the plaintiff's home forum, the chosen forum has few factual ties to the case, and defendants seek to transfer the case to the forum where plaintiffs do have significant ties. *Id.* at 179–80; *see also Trout Unlimited*, 944 F. Supp. at 17 (deference is "lessened" when, *inter alia*, "transfer is sought to the forum with which plaintiffs have substantial ties"). Here, Plaintiffs' choice of forum is entitled to some deference, as one Plaintiff—the Center—maintains an office in this jurisdiction. Pls.' Opp'n, Declaration of Peter Galvin ("Galvin Decl."), ECF No. 18-2, ¶ 3 (the Center "has maintained an active office in Washington D.C."). In addition, the District of Columbia has some connection to the projects in Puerto Rico, although this connection appears to be primarily financial. Pls.' Opp'n at 1–2 ("Plaintiffs' suit centers on [FEMA's] failure to comply with [NEPA] in connection with billions of dollars of assistance the federal government—*in Washington, D.C.*—has specifically directed towards work on Puerto Rico's electricity grid.") (emphasis in original). But the deference to Plaintiffs' choice of forum is diminished because Plaintiffs are not residents of this jurisdiction, and the

connection between the controversy and the District of Columbia is attenuated. *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 25–26 (D.D.C. 2002) (RJL) ("Mere involvement on the part of federal agencies, or some federal officials who are located in Washington, D.C. is not determinative."). In sum, Plaintiffs' choice of forum—the District of Columbia—is entitled to some deference, but not substantial deference. *See Gulf Restor. Network v. Jewell*, 87 F. Supp. 3d 303, 312 (D.D.C. 2015) (APM) (treating plaintiff's choice of forum with "some but not substantial deference" because plaintiff did not reside in D.C.).

As for the second factor, a defendant's choice of forum "must be accorded some weight" if there are "legitimate reasons for preferring" to litigate the case in the transferee forum. *Nat'l Wildlife Fed'n v. Harvey*, 437 F. Supp. 2d 42, 48 (D.D.C. 2006) (CKK). In the APA context, a defendant's choice of forum is afforded "some weight" when the harm from an agency's decision is felt most in the transferee forum. *Id.* at 46–47. Here, it is undisputed that FEMA's decisions with respect to the proposed projects would be felt most directly in Puerto Rico. *See* Mot. at 9 ("The claims in this case challenge a decision made in Puerto Rico related to anticipated projects that will be funded and implemented in Puerto Rico. These potential projects will impact local entities and several residents who rely on them."); Pls.' Opp'n at 11 (stating Plaintiffs initiated this suit "because they are concerned about FEMA's decision-making and the ways in which it is harming Puerto Rico and affecting the lives of its citizens[.]"). Accordingly, Defendants' choice of forum is afforded "some weight." *Harvey*, 437 F. Supp. 2d at 48.

The third private interest factor—where the claim arose—also weighs in favor of transfer. In the APA context, "courts generally focus on where the decisionmaking process

occurred to determine where the claims arose." *Home Builders*, 675 F. Supp. 2d at 179 (citation omitted). Where the decision-making process was concentrated in a particular location, this factor weighs heavily in the transfer analysis. *See, e.g.*, *Pres. Soc'y*, 893 F. Supp. 2d at 56 (finding that third factor supports transfer where all decision-making occurred in Charleston, and the potential effects will be felt in Charleston); *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 502 F. Supp. 2d 64, 67–68 (D.D.C. 2007) (denying transfer where agency process took place in D.C.). Here, most of the decision-making process occurred in Puerto Rico. The challenged PEAs and FONSIs were prepared and issued by the Puerto Rico Office. McKee Decl. ¶¶ 3, 6. The anticipated projects will be developed and implemented in Puerto Rico, by Puerto Rican entities. *Id.* ¶¶ 10, 17. And, while FEMA's Region 2 Office in New York is listed as one of the preparers for the PEAs, Pls.' Opp'n at 12, the Regional Environmental Officer of Region 2, Mr. McKee, was deployed to Puerto Rico to develop and conduct these environmental review materials, McKee Decl. ¶ 3. Lastly, with respect to Claim 5 (alleged NEPA violations for refusing to conduct supplemental NEPA review), the fact that Administrator Criswell issued the January 2023 letter from the District of Columbia is not dispositive. *See, e.g.*, *Shawnee Tribe*, 298 F. Supp. 2d at 25–26. In any event, Plaintiffs' remaining claims (Counts 1 through 4) arose from decisions developed and issued in Puerto Rico. *See* McKee Decl. ¶¶ 3, 6. Accordingly, this factor weighs in favor of transfer.

The remaining private interest factors do not weigh in the Court's analysis. With respect to the fourth factor—the convenience of the parties—the District of Columbia is not more or less convenient to either of the parties. Plaintiffs are based primarily in Puerto Rico, but their counsel are located in the District of Columbia. Pls.' Opp'n at 14.

Conversely, Defendants and their counsel are located in the District of Columbia, but it is the Puerto Rico Office that prepared the PEAs and FONSIs, and it is this office that will prepare the administrative record in this case. Mot. at 10. In sum, the District of Columbia is not an inconvenient forum, but neither is the District of Puerto Rico.

The final two private interest factors—the convenience of witnesses and the ease of access to sources of proof—are similarly neutral in this analysis. Generally, APA cases are decided on the administrative record, without discovery or witness testimony. *See* 5 U.S.C. § 706. Neither party disputes this. *See* Mot. at 8 (stating only the first four factors "are relevant here"); Pls.' Opp'n at 14 (stating these factors "do not bear on [this] case").

C. Public Interest Factors

The Court now turns to the public interest factors. The first two factors—the transferee forum's familiarity with the governing law and the relative congestion of the dockets—are neutral in the Court's transfer analysis. With respect to the former, each district "should be equally familiar with Plaintiff[s]' constitutional claims," even if, *arguendo*, a particular district is "less accustomed to receiving [certain] cases." *S. Poverty L. Ctr. v. U.S. Dep't of Homeland Sec.*, No. 18-760, 2019 WL 2077120, at *3 (D.D.C. May 10, 2019) (CKK). The Court sees no reason to deviate from "the principle that the transferee federal court is competent to decide federal issues correctly[.]" *In re Korean Air Lines Disaster of Sept. 1, 1983*, 829 F.2d 1171, 1175 (D.C. Cir. 1987). Because both courts are competent to interpret NEPA and the APA, "there is no reason to transfer or not transfer based on this factor." *Nat'l Wildlife Fed'n*, 437 F. Supp. 2d at 49.

The second factor—the relative congestion of the dockets—also does not affect the Court's analysis. The parties dispute which district court has the more congested docket,

but suffice to say, the dockets in both jurisdictions are substantial. *See* U.S. Courts, *U.S. District Courts—National Judicial Caseload Profile* at 2, 7 (Dec. 31, 2023), https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2023/12/31-1 (D.C. averaging 427 pending cases per judge; Puerto Rico averaging 422 pending cases per judge).

The third and final public interest factor, however, provides a compelling reason to transfer this case. This factor concerns the local interest in having local controversies decided at home. *Trout Unlimited*, 944 F. Supp. at 16. The DC Circuit has acknowledged that "in complex suits . . . [venue] policies must protect not only the interests of the technical defendants . . . but, more importantly, those whose rights and interests are in fact most vitally affected by the suit[.]" *Adams v. Bell*, 711 F.2d 161, 167, n.34 (D.C. Cir. 1983). The importance of respecting local interests applies even "to the judicial review of an administrative decision which will be limited to the administrative record." *Trout Unlimited*, 944 F. Supp. at 19.

Plaintiffs argue that this case implicates national concerns given the "disagreement about how to invest in Puerto Rico's electric system." Pls.' Opp'n at 19. Plaintiffs claim that there are "millions of Puerto Ricans" who have migrated to the continental United States following the natural disasters that have hit their homes, and "are in regular contact with their families who still live in Puerto Rico, send money back to Puerto Rico, and travel back to Puerto Rico regularly." *Id.* Plaintiffs also allege that FEMA's decisions on the projects in Puerto Rico will have "vital implications elsewhere," as the agency spends "billions of dollars on disaster recovery across the country each year." *Id.* at 20. Defendants, conversely, argue that this case implicates important localized interests: the

project recipients who will seek funding are in Puerto Rico; the funding will be granted in Puerto Rico; and these funds will be "used in Puerto Rico to benefit the electrical grid in Puerto Rico." Defs.' Reply at 5–6. Defendants also note that the challenged PEAs analyzed projects "specific to Puerto Rico," and therefore do not have a bearing on FEMA's disaster relief efforts in other parts of the country. *Id.* at 7.

The Court agrees with Defendants that this case should be litigated at the home of the people who will be "most vitally affected" by its outcome. *Adams*, 711 F.2d at 167, n.34. Although there are individuals and organizations outside of Puerto Rico that are interested in FEMA's decision-making process, Pls.' Opp'n at 19, their interest in this process is based on their desire to see the conditions *in Puerto Rico* improve, *id.* (stating "many would return to Puerto Rico permanently if conditions there improved—such as through reliable and affordable access to clean electricity."). Furthermore, Puerto Rico's interest in this case is "undeniable," as FEMA's relief projects will be funded and implemented *in Puerto Rico*, affecting *Puerto Rican* citizens, communities, and entities. *Gulf Restor. Network*, 87 F. Supp. 3d at 316; *id.* at 317 (transferring case to another district given the "substantial local interest in deciding local controversies at home"). Ultimately, Puerto Rico's citizens, communities, and organizations will feel the impacts of FEMA's proposed relief projects, and therefore the local interest factor weighs heavily in favor of transferring this case.

In sum, as this case could have been brought in the District of Puerto Rico originally, and in light of the Court's analysis of the private and public interests factors, the Court concludes that transfer is warranted in this case. Plaintiffs' choice of forum is entitled to some, but not substantial, deference as the District of Columbia is not their home forum,

and Defendants' choice of forum is afforded some countervailing weight. Most of the remaining factors the Court considered are neutral; however, the local interest in deciding local controversies at home weighs heavily in favor of transferring this case to the District of Puerto Rico.

IV. CONCLUSION AND ORDER

For the aforementioned reasons, the Court shall **GRANT** Defendants' [17] Motion to Transfer Venue to the District of Puerto Rico and **TRANSFER** this case to the District of Puerto Rico.

SO ORDERED.

Dated: March 12, 2024

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge